STATE OF M.P.
v.
NAJAB KHAN AND ORS.
(Criminal Apppeal No. 809 of 2013)

JULY 01, 2013

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

Sentence/Sentencing – Conviction u/s. 326/34 IPC by courts below – Sentence of 3 years RI imposed by trial court – Reduced by High Court to sentence for the period already undergone i.e. 14 days – On appeal, Held: In view of the serious nature of injuries, High Court was not justified in reducing the sentence to the period already undergone – Facts and circumstances of the case, nature of crime, manner of planning and commission of the offence, motive, conduct of accused, nature of weapons and all other attending circumstances are relevant while imposing sentence – It is duty of the Court to award appropriate sentence and not to show undue sympathy – Sentence awarded by trial court restored – Penal Code,1860 – s.326/34.

The three appellants-accused alongwith another co-accused 'M' were charged u/ss. 307, 341 and 326 IPC. The proceedings against the co-accused 'M' were stayed by High Court. During trial, in view of the compromise between the parties, the appellants-accused were acquitted u/s. 341 IPC. Trial court convicted them for the offence punishable u/s. 326/34 IPC and sentenced them to 3 years RI and imposed fine of Rs.500/- each with default clause.

In appeal, the appellants accused did not challenge their conviction, but prayed for reducing their sentence. High Court, confirmed their conviction and reduced their sentence to the period already undergone, i.e. 14 days.

Hence the present appeal by the State.

Allowing the appeal, the Court

HELD: 1. It is settled principle of law that the punishment should meet the gravity of the offence committed by the accused and courts should not show undue sympathy with the accused persons. In operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The Courts must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment. [Paras 9 and 15] [307-D; 308-B-E; 311-B-C]

Shailesh Jasvantbhai and Anr. vs. State of Gujarat and Ors. **(2006) 2 SCC 359: 2006 (1) SCR 477;** *Ahmed Hussein Vali Mohammed Saiyed and Anr. vs. State of Gujarat* **2009 (8) SCR 719: (2009) 7 SCC 254;** *Jameel vs. State of Uttar Pradesh* **(2010) 12 SCC 532: 2009 (15) SCR 712;** *Guru Basavaraj @ Benne Settapa vs. State of Karnataka* **(2012) 8 SCC 734: 2012 (8) SCR 189;** *Gopal Singh vs. State of Uttarakhand* **JT 2013 (3) SC 444;** *Hazara Singh vs. Raj Kumar and Ors.* **2013 (6) Scale 142 – relied on.**

2. Considering the nature of in n

of the complainant, due to which he remained in hospital for 29 days, the High Court was not justified in reducing the sentence to the period already undergone without assigning any acceptable and special reason for the same. The High Court also failed to take note of the opinion of the doctor that the injuries inflicted could have posed threat to the complainant's life. Though both the parties have amicably settled, in view of the fact that the offence charged under Section 326 is non compoundable and also in the light of serious nature of the injuries and no challenge as to conviction, the High Court is not justified in reducing the sentence to the period already undergone. Accordingly, the order of the High Court is set aside and the sentence imposed on the respondents by the trial court is restored. [Paras 8, 16 and 17] [307-B-C; 311-C-E]

Case Law Reference:

2006 (1) SCR 477	**referred to**	**Para 9**
(2009) 7 SCC 254	**referred to**	**Para 10**
2009 (15) SCR 712	**referred to**	**Para 11**
2012 (8) SCR 189	**referred to**	**Para 12**
JT 2013 (3) SC 444	**referred to**	**Para 13**
2013 (6) Scale 142	**referred to**	**Para 14**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 809 of 2013.

From the Judgment and Order dated 13.12.2011 of the High Court of Madhya Pradesh, Bench at Gwalior in Criminal Appeal No. 150 of 2006.

C.D. Singh, Anshuman Shrivastava, Sakshi Kakkar., for the Appeallant.

Lakhan Singh Chauhan, Anil Shrivastav, 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 13.12.2011 passed by the High Court of Madhya Pradesh, Bench at Gwalior in Criminal Appeal No. 150 of 2006 whereby the High Court partly allowed the appeal filed by the respondents herein by maintaining the conviction and reducing their sentence to the period already undergone (i.e. 14 days) while affirming the decision dated 08.02.2006 passed by the Additional Sessions Judge-I, Guna (MP) in Sessions Trial No. 311 of 2001 with respect to the conviction of respondents herein under Section 326 read with Section 34 of the Indian Penal Code, 1860 (in short "IPC").

3. *Brief facts:*

(a) On 11.08.2001, in the morning, when Mullo Bai, sister of Fida Hussain-the complainant, was passing through the field of Mohabbatdin - co-accused, at that time, Mohabbatdin abused her and told her not to pass through his field. On this, Mullo Bai assured him that she will not pass through his field in future. On the same day, in the evening, at about 7.00 p.m., when Fida Hussain, along with Ahmed Hussain, Gulabuddin and Guddu, was going to the shop of one Nawab, on their way near the hand pump, Najab Khan and Mohabbatdin having spade in their hands and Gani Khan holding a danda (stick) in his hand along with Munnawar Ali came at the spot and surrounded Fida Hussain. Fida Hussain tried to escape but could not succeed and Mohabbatdin attacked him with the spade due to which he sustained injury below his left shoulder and left arm. In order to save him, the other persons, viz., Guddu and Gulabuddin, who were accompanying Fida Hussain, intervened. After beating Fida Hussain, the accused persons fled away from the spot. Thereafter, Fida Hussain went to the Radhogarh Police Station and an FIR was lodged which was registered as Crime No. 248 of 2001.

(b) During the course of investigation, on 22.08.2011, Najab Khan was arrested and Gani Khan and Munnawar Ali were arrested on 10.09.2001. The police also got recovered the weapons (spades and stick) used in the commission of the aforesaid act.

(c) After the investigation, a charge-sheet was filed against the respondents herein under Sections 307, 341, 326 read with 34 IPC and the case was committed to the Court of the First Additional Sessions Judge-I, Guna (MP) which was numbered as Sessions Trial No. 311 of 2001. Further, besides the accused persons/respondents herein, Mohabbatdin was also charged under Sections 341 and 307 of IPC but vide order dated 11.10.2002, passed by the High Court in Revision No. 378 of 2002, it was directed to stay the proceedings against him and to continue the trial against rest of the persons i.e., the respondents herein.

(d) During the trial, on a compromise between the accused persons and Fida Hussain-the complainant, the accused persons were acquitted under Section 341 of IPC.

(e) By order dated 08.02.2006, the Additional Sessions Judge, convicted the respondents herein for the offence punishable under Section 326 read with Section 34 of IPC and sentenced them to undergo rigorous imprisonment (RI) for three years along with a fine of Rs.500/- each, in default, to further undergo RI for 3 months.

(f) Against the said order, the respondents moved an appeal being Criminal Appeal No. 150 of 2006 before the High Court. The High Court, by impugned judgment dated 13.12.2011, partly allowed the appeal by maintaining the conviction of the respondents herein and reduced their sentence to the period already undergone.

(g) Aggrieved by the said order, the State has filed this appeal by way of special leave.

4. Heard Mr. C.D. Singh, learned counsel for the appellant-State and Mr. Lakhan Singh Chauhan, learned counsel for the respondent-accused.

5. The only point for consideration in this appeal is whether the High Court is justified in reducing the sentence to the period already undergone, viz., 14 days, without providing any cogent reason for the conviction under Section 326 read with Section 34 IPC.

6. In view of the fact that the respondents herein-accused appellants before the High Court did not challenge the conviction but only prayed for reduction of sentence awarded by the trial Court, there is no need to traverse the details regarding the conviction. The fact remains that these persons were convicted by the trial Court under Section 326 read with Section 34 IPC and sentenced to RI for three years along with a fine of Rs. 500/- each.

7. It is stated before the High Court that during the trial they were in custody for a period of 14 days and the offence has already been compounded by the complainant and the appeal is pending since 2006. The High Court, taking note of the above said aspects, reduced their sentence to the period already undergone.

8. It is relevant to point out that after the registration of the FIR, the complainant was sent for the medical examination which was conducted by Dr. Anupam Singh (PW-9) and after examination, the doctor found the following two injuries on the person of the complainant:

"a. An incised wound of 15 inches long extending from left scapula to left shoulder joint bone deep bleeding present.

b. An incised would of 1 inch long inter scapula bleeding was present. The doctor also opined that injuries has been caused by hard and sharp object and was of grievous nature. The doctor also opined that

have supposed a threat to the life of the complainant."

It is further seen that on 13.08.2011, the x-ray of the chest and shoulder of the complainant was examined by Dr. Sitaram Raghuvanshi (PW-8) who found fracture of left scapula divided into two pieces extending from glenoid cavity with dislocation of left shoulder joint. Considering such injuries, due to which the complainant remained in hospital for 29 days, we are of the view that the High Court is not justified in reducing the sentence to the period already undergone without assigning any acceptable and special reason for the same. The High Court also failed to take note of the opinion of the doctor that the injuries inflicted could have posed threat to the complainant's life.

9. It is settled principle of law that the punishment should meet the gravity of the offence committed by the accused and courts should not show undue sympathy with the accused persons. This Court has repeatedly stressed the central role of proportionality in sentencing of offenders in numerous cases. In *Shailesh Jasvantbhai and Another vs. State of Gujarat and others,* (2006) 2 SCC 359, this Court held that the sentence imposed is not proportionate to the offence committed, hence not sustainable in the eyes of law. It was further observed as under:

> "7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law, which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice

> of "order" should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that: "State of criminal law continues to be - as it should be -a decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.
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> 8. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc."

10. This position was reiterated by a three-Judge Bench of this Court in *Ahmed Hussein Vali Mohammed Saiyed and Anr.* vs. *State of Gujarat,* (2009) 7 SCC 254, wherein it was observed as follows:-

> "99.....The object of awarding appropriate sentence should be to protect the society and to deter the criminal from achieving the avowed object to law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence, which reflects the conscience of the society and the sentencing process has to be stern where it should be. Any liberal attitude by imposing

taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter productive in the long run and against the interest of society which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

100. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The court must not only keep in view the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which both the criminal and the victim belong."

In this case, the court further goes to state that meager sentence imposed solely on account of lapse of time without considering the degree of the offence will be counter productive in the long run and against the interest of society.

11. In *Jameel vs*. *State of Uttar Pradesh,* (2010) 12 SCC 532, this Court reiterated the principle by stating that the punishment must be appropriate and proportional to the gravity of the offence committed. Speaking about the concept of sentencing, this Court observed thus: -

"15. In operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

16. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence."

12. In *Guru Basavaraj @ Benne Settapa vs*. *State of Karnataka,* (2012) 8 SCC 734, while discussing the concept of appropriate sentence, this Court expressed that:

"It is the duty of the court to see that appropriate sentence is imposed regard being had to the commission of the crime and its impact on the social order. The cry of the collective for justice, which includes adequate punishment cannot be lightly ignored."

13. This Court, in *Gopal Singh vs*. *State of Uttarakhand,* JT 2013 (3) SC 444 held as under:-

"18. Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence….."

14. Recently, the above proposition is reiterated in *Hazara Singh* vs. *Raj Kumar & Ors.,* 2013 (6) Scale 142.

15. In view of the above, we reiterate that in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of

of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. We also reiterate that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The Courts must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment.

16. Though it is stated that both the parties have amicably settled, in view of the fact that the offence charged under Section 326 is non compoundable and also in the light of serious nature of the injuries and no challenge as to conviction, we are of the view that the High Court is not justified in reducing the sentence to the period already undergone.

17. Accordingly, we set aside the order of the High Court and restore the sentence imposed on the respondents herein. Consequently, the appeal filed by the State is allowed and the respondents-accused (A-1 to A-3) are directed to surrender within a period of four weeks from today, failing which, the trial Judge is directed to take appropriate steps for sending them to prison to undergo the remaining period of sentence.

K.K.T. Appeal allowed.

AHSANUL HODA
v.
STATE OF BIHAR
(Civil Appeal No.5311 of 2012)

JULY 1, 2013

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

Land Acquisition Act, 1894 – Acquisition of land – Compensation – High Court reduced compensation awarded to claimant-appellant, by fixing lower market rate of the land and set aside the part of the order passed by the Reference Court granting Rs.10,000/- towards damages of standing crops– Justification – Held: On facts, not justified – Determination of market value by High Court was not based on any evidence but on mere presumption and surmises – High Court set aside compensation towards damages of standing crops by wrongly placing reliance on the statement of an Officer of the State (OP-W-1), who was posted elsewhere at the time of acquisition of the land – Order passed by the High Court set aside and the award passed by the Reference Court restored.

The High Court, vide the impugned order, reduced the compensation awarded to the claimant-appellant, by fixing lower market rate of the land and set aside the part of the order passed by the Reference Court granting Rs.10,000/- towards damages of standing crops.

The appellant challenged the judgment passed by the High Court on the grounds: (i) determination of market value was not based on any evidence but on mere presumption and surmises; and (ii) that the High Court wrongly relied on the statement of OP-W-1, who was posted elsewhere at the time of acquisition of the land.

Allowing the appeal, the Court

HELD: 1. This Court in number of cases has taken judicial notice of the fact that there is a steady increase in the market value of the land and has also adopted the procedure for determining the increased market value and relied upon the transaction at a given rate per year. [Para 16] [319-C]

General Manager, Oil and Natural Gas Corporation Limited vs. Rameshbhai Jilvanbhai Patel and Another **(2008) 14 SCC 745: 2008 (11) SCR 927;** *Sardar Joginder Singh vs. State of Uttar Pradesh and Another* **(2008) 17 SCC 133 – relied on**

2. Mere reliance made by a Court on sale deeds of smaller residential area for determination of market value of larger agricultural area will not render the determination illegal until and unless it is shown that the determination was not proper. [Para 19] [320-D-E]

Haridwar Development Authority vs. Raghubir singh and Others **(2010)11 SCC 581: 2010 (2) SCR 201 – relied on.**

3. In the instant case, as the sale-deeds relied upon by the Reference Court (Ext.1 and Ext.1/b) were in relation to smaller plots, deduction of 37% was made by the Reference Court and thereafter, by allowing appropriate 10% increase in the value of the land from the date of the sale deeds upto the date of Notification under Section 4 of the Act, the Reference Court arrived at a figure of Rs.250/- per decimal. The High Court while arriving at figure of Rs. 100/- per decimal considered only the fact that the sale deeds relied upon were in relation to smaller plots and those sale deeds(Ext.1 and Ext.1/b) were related to homestead land and hence fixed Rs. 10,000/- per acre as compensation. It completely failed to consider the increase in price of land and the deduction

made by the High Court is nearly 75% which is not in accordance with law. As Ext.1 and Ext.1/b which were related to smaller area, were the only sale deeds available for comparison, the same were relied upon by the Reference Court, but the High Court erred completely in disregarding the said sale-deeds and thus arrived at a finding of Rs.100/- per decimal as market value on mere presumption and surmises. The High Court also committed error in holding that the sale deeds (Ext.1 and Ext.1/b) relate to homestead land. No citation was found in Ext.1 showing the land as homestead land. On the other hand Ext.1/b specifically cites that the land is an agricultural land for which the annual revenue rent of Rs.25 is payable. [Paras 20, 21] [320-F-H; 321-A-B, D-E]

4. The High Court disregarded the evidence adduced by the claimants in its entirety without any reason; however, it relied on evidence of an officer of the State (OP-W-1) and set aside the compensation in relation to the standing crops. The Reference Court has clearly recorded in its order that the said State Officer was not posted in that area at the time of acquisition and his knowledge was limited to the official record. The fact that the Collector had not allowed any amount towards damage of standing crops and that no such amount is mentioned in the Khatiyan does not mean that no standing crop was there at the time of taking possession of the land. On the contrary, the witnesses AW-1 to AW-5 appeared and supported the statement of claimant that at the time of the possession, standing crops were there which were damaged causing loss to the extent of Rs.10,000 to Rs. 12,000/-. [Para 22] [321-E-G; 322-A]

5. In view of the finding as recorded above, the order passed by the High Court is set aside and the award passed by the Reference Court is restored. [Para 23] [322-B]

Case Law Reference:

2008 (11) SCR 927	**relied on**	**Para 17**
(2008) 17 SCC 133	**relied on**	**Para 18**
2010 (2) SCR 201	**relied on**	**Para 19**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5311 of 2012.

From the Judgment and Order dated 10.02.2011 of the High Court of Judicature at Patna in First Appeal No. 189 of 2005.

Gaurav Agrawal for the Appellant.

Manish Kumar for the Respondent.

The Judgment of the Court was delivered by:

SUDHANSU JYOTI MUKHOPADHAYA, J. 1. This appeal has been filed by the claimant-appellant against the judgment and order of the Patna High Court dated 10.2.2011 by which the High Court reduced the compensation awarded to the claimant, by fixing the lower market rate of the land in question and set aside the part of the order passed by the Reference Court granting Rs.10,000/- towards damages of standing crops.

2. Certain lands in Mauja Mothabari, Thana Katoria, Pargana Sarohi, District Bhagalpur (now Banka) were acquired for the construction of the Orni-reservoir. Land measuring 3.54 acres of Khata No.111, Khasra No.2925 of same village belonging to the appellant was also acquired. The Collector by an award order dated 16.10.1984 fixed the compensation of Rs.6513.60 for the entire land based on market rate at Rs.16 per decimal. No amount was awarded towards damages of standing crops.

3. The Reference Court to which the claims of the land owners for higher compensation were referred, determined the market value as Rs. 250/- per decimal i.e. Rs. 25,000/- per acre. The Reference Court based its decision on two sale transactions submitted by the claimant dated 25.11.1980 and 16.10.1975 (Ext.1 and Ext.1/b) relating to sale of plots in the neighbouring area. Considering the fact that the sale deeds were related to small extent of land of nearby village and the acquisition was related to a larger extent, the Reference Court was of the view that certain percentage could be deducted while determining the value of the land in question. However, as sale deeds were of the earlier period, after such deduction, appropriate increase in the value of the land from the date of the sale deed to the date of the Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was made.

4. The respondent preferred an appeal before the High Court. The High Court disposed of the said appeal by impugned judgment dated 10.2.2011. The High Court modified the judgment of the Reference Court with regard to the market value by reducing the market rate from Rs.250/- per decimal to Rs.100/- per decimal and set aside the part of the order whereby sum of Rs.10,000/- was granted by the Tribunal as damages of standing crops.

5. During the pendency of the appeal before the High Court and after 23 years of the acquisition, the appellant received a sum of Rs. 5,69,531/- on 4.7.2007 as per determination of the Reference Court and paid a sum of Rs 56,953/- towards tax. The effect of impugned judgment passed by the High Court is that the claimant has to refund part of the amount received by the claimant as compensation.

6. The questions that arise for our consideration are:

(i) Whether the market value as fixed by the Tribunal is excessive as contended

(ii) Whether the Tribunal rightly compensated the claimant for damages of standing crops.

7. The High Court by its impugned judgment modified the compensation and set aside the part of the order relating to compensation for standing crops on three counts, namely; (a) The sale deeds dated 25.11.1980 (Ext.1) and 16.10.1975 (Ext.1/b) related to smaller area of 25 and 6 ½ decimals of land respectively; (b) Aforesaid sale deeds do not relate to agricultural land but homestead land as in the boundary of one of the sale-deed 'Masjid' and 'road' is shown; (c) OP-W-1, Shri Ratneshwar Pd. Singh has stated that there was no crop standing on the land at the time of the possession.

8. Learned counsel for the appellant assailed the judgment passed by the High Court on the following grounds:

(i) In the absence of any other evidence except the sale deeds (Ext.1 and Ext.1/b), the determination of market value is not based on any evidence but on mere presumption and surmises.

(ii) The High Court wrongly relied on the statement of OP-W-1, Ratneshwar Pd. Singh, who was posted elsewhere at the time of acquisition of the land. On the other hand, the Reference Court decided the quantum of payment towards damages of standing crops on the basis of evidence on record.

9. Learned counsel for the State justified the order passed by the High Court. It was contended that the compensation with regard to larger area cannot be determined on the basis of sale deeds related to smaller area. As the sale deeds at Ext.1 and Ext.1/b related to homestead land having shown 'road' or 'masjid' in the boundary, no comparison can be made with the agricultural land acquired for other purpose.

10. Before the Reference Court claimant produced seven witnesses, AW-1 to AW-7 and three sale deeds, Ext.1, Ext.1/a

and Ext.1/b. On behalf of the State, one witness OP-W-1, Ratneshwar Pd. Singh, an assistant to the Land Acquisition Officer, Medium Irrigation Project, Bhagalpur and the two valuation Khatiyans, Ext. A and A/1 were produced.

11. AW-6, the claimant, himself in his deposition stated that 3.54 acres of his land acquired is 'three fasla' (produced three crops in an area) and was irrigated from the Orni river. At the time of taking possession by State, potato, wheat and sugar-cane were standing crops which were damaged causing a loss of Rs. 10,000/- to Rs.12,000/-. The market value of the land at the time of acquisition was between Rs. 50,000/- to Rs. 60,000/- per acre. Similar statements were made by other witnesses i.e. AW-1 to AW-5. They supported the claim of the claimant.

12. Kanhaiya Lall Ghosh, A.W.7, a deed writer proved sale deeds Ext. 1 dated 25.11.1980, Ext. 1/a dated 6.10.1980 and Ext.1/b dated 16.10.1975. He stated that he was the deed writer of Exts.1, 1/a and 1/b. By Ext.1/a, Bibi Rahana Sultana and others sold 70 decimals of land for consideration of Rs. 7,000/- on 6.10.1980. By Ext.1/b dated 16.10.1975, Seikh Janual and others sold 6 ½ decimals of land for consideration of Rs. 1500/- .

13. Ratneshwar Pd. Singh, OP-W-1 deposed before the Reference that the land of the appellant measuring 3.54 acres had been acquired by the State vide L.A. Case No. 76/81-82 and department paid Rs. 5664/- towards value of the land and Rs. 849.60 as additional compensation; a sum of Rs. 6513.60 in total was paid as compensation. He specifically stated that he was not posted at the time of acquisition and whatever he stated is based on the official record.

14. Ext. A and Ext. A/1, valuation Khatiayan mainly contains Khata No., Khesra No., area acquired, rate per acre, value of the land determined and other statutory benefits provided to one or other claimant. Those Exts. A and A/

about the market value of any land of the village or the nearby village.

15. The Reference Court, based on the sale deeds Ext.1 and Ext.1/b and considering the evidence on record, determined the market value at Rs.250/- per decimal and allowed a sum of Rs.10,000/- towards damage of standing crops.

16.This Court in number of cases has taken judicial notice of the fact that there is a steady increase in the market value of the land and has also adopted the procedure for determining the increased market value and relied upon the transaction at a given rate per year.

17. In *General Manager, Oil and Natural Gas Corporation Limited vs. Rameshbhai Jilvanbhai Patel and Another* reported in *(2008) 14 SCC 745,* this Court observed that in the absence of other acceptable evidence, a cumulative increase of 10 to 15 per cent is permissible with reference to acquisitions in 1990. In the decades preceding 1990s, the quantum of increase was considered to be less than 10 per cent per annum.

18. This Court in *Sardar Joginder Singh vs. State of Uttar Pradesh and Another* (2008) 17 SCC 133, noticed that the said case related to acquisition in the year 1979 and relying upon the award related to an acquisition of 1969 observed that the general increase between 1969-79 can be taken to be around 8-10 per cent per annum. If this increase is calculated cumulatively, the total increase in 10 years would be around 100 per cent.

19. The question relating to the value of larger extent of agricultural land, if required to be determined with reference to price fixed for small residential plot, came for consideration before this Court in *Haridwar Development Authority Vs. Raghubir singh and Others* (2010)11 SCC 581. In the said

case, this Court held as follows:

> *"When the value of a large extent of agricultural land has to be determined with reference to the price fetched by sale of a small residential plot, it is necessary to make an appropriate deduction towards the development cost, to arrive at the value of the large tract of land. The deduction towards development cost may vary from 20% to 75% depending upon various factors. Even if the acquired lands have situational advantages, the minimum deduction from the market value of a small residential plot, to arrive at the market value of a larger agricultural land, in the usual course, will be in the range of 20% to 25%. In this case, the Collector has himself adopted a 25% deduction which has been affirmed by the Reference Court and the High Court. We, therefore, do not propose to alter it."*

Therefore, it is clear that mere reliance made by a Court on sale deeds of smaller residential area for determination of market value of larger agricultural area, the same will not render the determination illegal until and unless it is shown that the determination was not proper.

20. In the instant case, the average value of the sale-deeds relied upon by the Reference Court (Ext.1 and Ext.1/b) was Rs. 401/- at the time of acquisition. Therefore, as the sale-deeds were in relation to smaller plots, the deduction of 37% was made by the Reference Court and thereafter, by allowing appropriate 10% increase in the value of the land from the date of the sale deeds upto the date of Notification under Section 4 of the Act, the Reference Court arrived at a figure of Rs.250/- per decimal. The High Court while arriving at figure of Rs. 100/- per decimal considered only the fact that the sale deeds relied upon were in relation to smaller plots and those sale deeds(Ext.1 and Ext.1/b) were related to homestead land and hence fixed Rs. 10,000/- per acre as compensation. It completely failed to consider the increa[illegible]d

the deduction made by the High Court is nearly 75% which is not in accordance with law.

As Ext.1 and Ext.1/b which were related to smaller area, were the only sale deeds available for comparison, the same were relied upon by the Reference Court, but the High Court erred completely in disregarding the said sale-deeds and thus arrived at a finding of Rs.100/- per decimal as market value on mere presumption and surmises. There was no evidence on record to arrive at this value and, even if it was a case of deduction, the High Court has not given any reason in support of the same.

21. The High Court also committed error in holding that the sale deeds (Ext.1 and Ext.1/b) relate to homestead land, on the ground that a 'road' and a 'masjid' has been shown in the boundary of one of the exhibits. From the copies of Ext.1 and Ext. 1/b on record (Annexure P-12 Colly), we find no citation in Ext.1 showing the land as homestead land. On the other hand Ext.1/b specifically cites that the land is an agricultural land for which the annual revenue rent of Rs.25 is payable.

22. The High Court disregarded the evidence adduced by the claimants in its entirety without any reason; however, it relied on evidence of an officer of the State (OP-W-1) Ratneshwar Pd. Singh and set aside the compensation in relation to the standing crops. The Reference Court has clearly recorded in its order that the said State Officer was not posted in that area at the time of acquisition and his knowledge was limited to the official record. The record was silent as to the standing crops. The Khatiyans (Ext.A and Ext.-A/1) were also not relating to standing crops. The fact that the Collector had not allowed any amount towards damage of standing crops and that no such amount is mentioned in the Khatiyan does not mean that no standing crop was there at the time of taking possession of the land. On the contrary, the witnesses AW-1 to AW-5 appeared and supported the statement of claimant that at the time of the

possession, standing crops were there which were damaged causing loss to the extent of Rs.10,000 to Rs. 12,000/-. During their cross examination the respondents could not extract any other material evidence against the claimants.

23. In view of the finding as recorded above, we have no other alternative but to set aside the order passed by the High Court and restore the award passed by the Reference Court. The impugned judgment passed by the High Court is accordingly set aside and the appeal is allowed. The respondents are directed to pay the appellant the compensation in terms of the award passed by the Reference Court after adjusting the amount already paid within three months. There shall be no separate order as to costs.

B.B.B. Appeal allowed

PRAMOD KUMAR

v.

STATE (GNCT) OF DELHI

(Criminal Appeal No. 562-563 of 2010)

JULY 1, 2013

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

Penal Code, 1860 – ss. 302 & 186/332 – Murder – Prosecution version that country-made pistol was fired by the accused that caused injuries to the deceased – Tenability – Held: Tenable – Deceased and the accused were grappling with each other – Country-made pistol seized from accused, which was in working order – Prosecution version that all of a sudden, the accused brought out his country-made pistol and fired from close range clearly established by evidence – Defence plea that while grappling, the position changed and bullet fired from the service revolver of PW-8 hit deceased not acceptable – No material to prove that gun shot was fired from the weapon of PW-8 – Evidently, the shot was fired from the country-made pistol seized from the custody of accused-appellant – Arms Act,1959 – ss.25 and 27.

Evidence – Witness – Official witnesses – Testimony of police official – Appreciation – Held: Witnesses from the department of police cannot per se be said to be untruthful or unreliable – It would depend upon the veracity, credibility and unimpeachability of their testimony – It cannot be said that the whole case should be thrown overboard because of non-examination of independent witness and reliance on the official witnesses – On facts, the official witnesses examined in support of the prosecution, stood embedded in their version – Despite searching cross-examination, none of the witnesses gave way to any tergiversation, thus, no reason to discard them.

On the instructions of SI PW-9, the Head Constable PW-8 and Constable 'M' went to the house of 'C' where appellant, a proclaimed offender was hiding. The appellant was asked to surrender, but, he allegedly took out a knife and tried to assault but was caught hold of by 'M' from the rear and both of them grappled with each other for some time. PW-8 thereafter snatched away the knife from the hands of appellant but, at that juncture, the appellant allegedly took out a country-made pistol (*desi katta*) and fired at 'M' and the bullet hit him in the stomach area. 'M' was taken to the hospital where he died due to the bullet injury.

The appellant was convicted by the courts below. He challenged his conviction before this Court, contending that 1) apart from the police officials, no other independent witness had been examined; and that 2) the appellant was not responsible for causing injury on the deceased 'M'; on the contrary, it was PW-8 who intended to fire at the appellant when the deceased and the accused were grappling, but the bullet hit the deceased.

Dismissing the appeals, the Court

HELD: 1.1. In the plea advanced under Section 313 CrPC, it has been stated by the accused-appellant that as the public became angry due to the conduct of PW-8, they assaulted him and in order to save him, the investigating agency chose not to cite any independent witness though many witnesses were present who had seen the occurrence. There is no denial of the fact that the occurrence had taken place in the house of 'C' who has turned hostile. His turning hostile does not affect the case of the prosecution. The witnesses from the department of police cannot per se be said to be untruthful or unreliable. It would depend upon the veracity, credibility and unimpeachability of their testimony. There is no absolute com[illegible]e

police officers cannot be cited as witnesses and their testimony should always be treated with suspicion. Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trustworthy, the court can definitely act upon the same. If, in the course of scrutinising the evidence, the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the department of police should be viewed with distrust. This is also based on the principle that quality of the evidence weighs over the quantity of evidence. [Para 10] [322-C-D, F-G; 333-A-B]

1.2. It cannot be said that the whole case should be thrown overboard because of non-examination of independent witness and reliance on the official witnesses. The trial Judge and the High Court, after x-ray of the evidence of the witnesses, have come to the conclusion that appellant was a proclaimed offender; that information was received by the competent authority that he was hiding in the house of 'C'; that a team had gone to apprehend him; that SI PW-9 along with other members of the team waited at a distance of 100 yards and 'M' went to the house of 'C'; that the accused was found on the verandah of the house and was asked to surrender but he immediately took out a knife from his shirt pocket; that before he could inflict a knife blow, he was overpowered by 'M' and there was a grapple between the two; and 'M', receiving a bullet injury, fell down and eventually succumbed to the injuries in the hospital. Appellant has received some injuries, but that would not be a ground for discarding the prosecution version and acceptance of the plea of the defence. The evidence on record is required to be scrutinized and appreciated. The witnesses, namely, PW-6, PW-8, PW-9,

PW-11 and PW-16, who have been examined in support of the prosecution, have stood embedded in their version. PW-8 has vividly described the occurrence and the graphic description has not been, in any manner, dented in spite of the roving cross-examination. Despite searching cross-examination, none of the witnesses has given way to any tergiversation. When their testimony has not been varied from any spectrum, there is no reason to discard them. Thus, the contention that there should have been examination of independent witnesses to corroborate the evidence of the police officials has to be treated as mercurial. [Para 11] [333-C-H; 334-A-B]

Kashmiri Lal v. State of Haryana **2013 AIR SCW 3102 – relied on.**

State of U.P. v. Anil Singh **1988 Supp SCC 686: 1988 Suppl. SCR 611;** *State, Govt. of NCT of Delhi v. Sunil and another* **(2001) 1 SCC 652: 2000 (5) Suppl. SCR 144 and** *Ramjee Rai and others v. State of Bihar* **(2006) 13 SCC 229: 2006 (5) Suppl. SCR 240 – referred to.**

2.1. On a perusal of the evidence and the FSL report relating to the country-made pistol, Ext. F-1, seized from the accused, it is manifest that the fire arm country-made pistol .303 bore was designed to fire a standard .303 cartridge and that the pistol was in working order. Its test fire was also successfully conducted and the empty cartridge of .303 bore, Ext. C-1, found in the chamber of the country-made pistol was the empty cartridge fired from the country made pistol. Therefore, to say that no shot was fired from the country-made pistol is belied and the prosecution version that it was the country-made pistol which was fired by the accused that caused injuries to the deceased deserves acceptance. [Para 12] [334-D-F]

2.2. From the post-mortem report, it is clear that the bullet injury was from front to back. It [illegible] at

the deceased and the accused were grappling. The version of the prosecution in that all of a sudden, the accused brought out his desi katta and fired from a close range. This has been clearly established by the evidence. The submission that while grappling the position changed and the bullet fired from the service revolver of PW-8 hit the deceased, cannot be given any acceptance as the desi katta was seized from the accused and the weapon, as opined in the FSL report, is the desi katta and further there is no material to prove that gun shot was fired from the weapon of PW-8. Thus, it is clear as crystal that the shot was fired from the country-made pistol seized from the custody of the accused-appellant. [Para 13] [334-F-H; 335-A-B]

Case Law Reference:

1988 Suppl. SCR 611	**referred to**	**Para 10**
2000 (5) Suppl. SCR 144	**referred to**	**Para 10**
2006 (5) Suppl. SCR 240	**referred to**	**Para 10**
2013 AIR SCW 3102	**relied on**	**Para 10**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 562-563 of 2010.

From the Judgment and Order dated 16.03.2007 of the High Court of Delhi at New Delhi in Crl. A. No. 828 of 2003 and Crl. MB No. 1756 of 2005.

Dr. V.P. Appan for the Appellant.

R. Nedumaran, Sadhana Sandhu, D.S. Mahra, Anil Katiyar for the Respondent.

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. On 19.3.1999, SI Prahlad Singh along Ct. Baljit Singh went to Village Gittorni where Inspector Mohd. Iqbal, PW-16, had reached along with his staff. After some time, ACP, Delhi Cantt., arrived at the spot. On enquiry,

they came to know that one constable of P.S. Hauz Khas, namely, Maharaj Singh, having suffered a gun shot injury, had been taken to the hospital. The Head Constable Samar Singh narrated the occurrence to the effect that he along with other officials had received information about the presence of Pramod Kumar, a proclaimed offender of PS Hauz Khas, was hiding in the house of Chander Pal and about 4.30 p.m., they reached Village Gittorni and as per the instruction of SI Jaswinder Singh, he and Ct. Maharaj Singh went to the place to obtain information about the presence of Pramod Kumar and SI Jaswinder Singh waited along with the staff at a distance of 100 meters from the house of Chander Pal. When he and Maharaj Singh reached near the house of Chander Pal, accused Pramod Kumar was standing outside the room. Maharaj Singh disclosed his identity to him and asked him to surrender, but, Pramod Kumar, instead of surrendering, took out a knife from his shirt pocket with his left hand and tried to assault. However, immediately he was caught hold of by Maharaj Singh from the rear and both of them grappled with each other for some time. The Head Constable, Samar Singh, tried to snatch the knife from the hands of Pramod Kumar and ultimately he was successful in snatching away the knife from his hands but, at that juncture, Pramod Kumar took out a desi katta and fired at Maharaj Singh and the bullet hit in the stomach area. Hearing the sound, the villagers surrounded and assaulted Pramod Kumar. During that time, SI Jaswinder Singh came to the spot along with his staff and injured Maharaj Singh was taken to the hospital. Desi katta and knife which were seized from the accused were given to the IO by Samar Singh. As further revealed, accused Pramod Kumar was apprehended and five cartridges were recovered and on the basis of the statement of Samar Singh, an FIR was registered under Section 307 of the Indian Penal Code (for short "IPC"). When Maharaj Singh succumbed to his injuries, the case was converted to one under Section 302 IPC. The bullet that had hit the stomach of the deceased was kept in a sealed cover and the same was sent to F.S.L. Malviya

on completion of the investigation, charge-sheet was filed in the competent court which, in turn, committed the matter to the Court of Session. Be it noted, after hearing the accused, charges under Sections 186/332 and 302 IPC were framed and separate charges under Sections 25 and 27 of the Arms Act,1959 were also framed against the accused-appellant.

2. The accused pleaded not guilty and claimed to be tried.

3. The prosecution, in order to establish its case, examined 19 witnesses and got number of documents exhibited.

4. The accused, in his statement under Section 313 of the Code of Criminal Procedure, 1973 (herein after CrPC), denied the entire allegations and pleaded that he was absolutely innocent. It was his further plea that one person caught hold of him and pushed him and started assaulting him. At that stage, he got up and grappled with that person who twisted his hand. The other person accompanying the first person gave him a kick and took out some weapon and fired at him, but he saved himself. The bullet hit the person who had caught hold of him and receiving the bullet injury, he fell down and later on, he learnt that he was Maharaj Singh and the person who had fired was Samar Singh. The neighbours, who had collected, started assaulting Samar Singh. Thereafter, many other police officials entered his room and beat him as a result of which his right leg was severely fractured and the plaster remained for eight months. That apart, 23 stitches were put on his head due to the beatings given by the police. He had become unconscious on the spot after receiving injuries. When he regained consciousness, he found himself in Safdarjung Hospital. It was his further plea that to save the police official Samar Singh, the investigating agency had falsely implicated him. He had also taken the plea that they had got his signatures on blank papers at the Police Station. Sanjay, who was brought by the police, had witnessed the entire episode. The police deliberately did

not cite any one from the public as witness as they gave beating to Samar Singh. Chander Pal was not present at his house on that day as he had gone out with his van. He came to know later on that the house of Maharaj Singh was at a distance of 50 yards from the place of occurrence, i.e., house of Chander Pal.

5. The defence, in order to substantiate its plea, examined one witness, namely, Sanjay.

6. We have heard Dr. V.P. Appan, learned counsel for the appellant and Mr. R. Nedumaran, learned counsel for the respondent.

7. Two fundamental points that have been urged before us are that apart from the police officials, no other independent witness has been examined and that the appellant was not responsible for causing injury on the deceased. On the contrary, it was the Head Constable Samar Singh who intended to fire at the accused when the deceased and the accused were grappling, but the bullet hit the deceased. Elaborating the said contention, it is canvassed by the learned counsel that to hide the atrocities of the police, the case has been foisted, but the learned trial Judge as well as the High Court failed to appreciate the same in proper perspective which makes the judgments absolutely faulted.

8. Per contra, the learned counsel for the respondent would contend that the post mortem report and the weapons seized would clearly show that the bullet was not fired from the pistol of Samar Singh but from the desi katta which was seized from the custody of the accused. It is also contended that the plea taken under Section 313 CrPC is fundamentally incredible and it only shows a figment of fertile imagination of the accused as such a situation could never have occurred.

9. To appreciate the aforesaid submissions, it is necessary to reproduce the autopsy report brough

by Dr. O.P. Murli, PW-3, which is as follows: -

"One lenear cresentric abrasion measuring 3 x 8 cms, 2 x 7 cms. and 1 x 3 cms with bruising in and around.

Gun shot entry wound of 2.5 x 1 cms. Over front of right side abdomen 5 cms. above the embilicus 1 cm from mid line, 21 cms. from right nipple and 45 cms above right sole. Margines were inerted blackened and surrounding hairs showed singeing, abdominal fact (omentum) protruded with effusion of blood in and around underneath the tissues. Omentum and small intestine were lacerated and showing cavitation consequent upon the fire arm injury with full of abdominal cavity blood bruising was also also seen in other parts of intestine. Fire arm exit wound of 1 x 1.5 cm. over the back side of right side abdomen 6.5 cms. from midline 3 cms. from waist line 20 cms. From right back bone anble margines everted and protruded wound communicating with the entry and all intervention structure were lacerated and injury effect. All organs were pale. Rest was NAD.

Clothing examination : One shirt was having a tear of 2.5 x 2.3 cms. soaked in block showing fire arm effect and the bullet entry had also fractured one button and half was present. The hole of the shirt was 28 cms. from lower margine on right side. The back part of the shirt shows corresponding to the exit wound of size 1 x 7 cms on the right lower part 18 cms from the margine. The direction of wound was from front to back and slight above to down.

The underneath banian showed tear of 1 x 7 cm on the back front tear was cut in the casualty.

Blood soaked pants and underwear

Opinion :

Death in this case was due to haemorrhage shock as result of gun shot injury which was sufficient to cause death in the ordinary course of nature and was fired from a close range showing powder and heat effect."

From the aforesaid report, it is quite clear that the death was due to bullet injury and the direction of the wound was from front to back and slight above to down. We shall dwell upon this aspect when we deal with the said point.

10. We shall deal with the first contention first. In the plea advanced under Section 313 CrPC, it has been stated by the accused-appellant that as the public became angry due to the conduct of Samar Singh, they assaulted him and in order to save him, the investigating agency chose not to cite any independent witness though many witnesses were present who had seen the occurrence. There is no denial of the fact that the occurrence had taken place in the house of Chander Pal who has turned hostile. However, from his testimony and other evidence brought on record, it is evident that the occurrence took place in his house. His turning hostile does not affect the case of the prosecution. The witnesses from the department of police cannot per se be said to be untruthful or unreliable. It would depend upon the veracity, credibility and unimpeachability of their testimony. This Court, after referring to *State of U.P. v. Anil Singh*[1], *State, Govt. of NCT of Delhi v. Sunil and Another*[2] and *Ramjee Rai and Others v. State of Bihar*[3], has laid down recently in *Kashmiri Lal v. State of Haryana*[4] that there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should always be treated with suspicion. Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trustworthy, the court can definitely act upon the

1. 1988 SUPP. SCC 686.
2. (2001) 1 SCC 652.
3. (2006) 13 SCC 229.
4. 2013 AIR SCW 3102.

same. If, in the course of scrutinising the evidence, the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the department of police should be viewed with distrust. This is also based on the principle that quality of the evidence weighs over the quantity of evidence.

11. Thus, the submission that the whole case should be thrown overboard because of non-examination of independent witness and reliance on the official witnesses cannot be accepted. Presently, we shall proceed to deal with the veracity and acceptability of the testimony of the witnesses. The learned trial Judge and the High Court, after x-ray of the evidence of the witnesses, have come to the conclusion that Pramod Kumar was a proclaimed offender; that information was received by the competent authority that he was hiding in the house of Chander Pal; that a team had gone to apprehend him; that SI Jaswinder Singh along with other members of the team waited at a distance of 100 yards and Maharaj Singh went to the house of Chander Pal; that the accused was found on the verandah of the house and was asked to surrender but he immediately took out a knife from his shirt pocket; that before he could inflict a knife blow, he was overpowered by Maharaj Singh and there was a grapple between the two; and Maharaj Singh, receiving a bullet injury, fell down and eventually succumbed to the injuries in the hospital. It is not in dispute that Pramod Kumar has received some injuries, but that would not be a ground for discarding the prosecution version and acceptance of the plea of the defence. The evidence on record is required to be scrutinized and appreciated. The witnesses, namely, Baljit Singh, PW-6, Samar Singh, PW-8, Jaswinder Singh, PW-9, Rajbir Singh, PW-11 and Md. Iqbal, PW-16, who have been examined in support of the prosecution, have stood embedded in their version. The witness, Samar Singh, PW-8, has vividly described the occurrence and the graphic description has not been, in any manner, dented in spite of the

roving cross-examination. It is apt to note that despite searching cross-examination, none of the witnesses has given way to any tergiversation. When their testimony has not been varied from any spectrum, there is no reason to discard them. Thus, the contention that there should have been examination of independent witnesses to corroborate the evidence of the police officials has to be treated as mercurial. Therefore, we unhesitatingly repel the said submission.

12. The next limb of argument pertains to the nature of weapon that has caused the injury on the deceased and the circumstances and the position in which the injury was caused. The first plank of this argument of the learned counsel for the appellant is that the deceased has been fired at by Samar Singh from his service revolver. On a perusal of the evidence and the FSL report relating to the country-made pistol, Ext. F-1, seized from the accused, it is manifest that the fire arm country-made pistol .303 bore was designed to fire a standard .303 cartridge and that the pistol was in working order. Its test fire was also successfully conducted and the empty cartridge of .303 bore, Ext. C-1, found in the chamber of the country-made pistol was the empty cartridge fired from the country made pistol. Therefore, to say that no shot was fired from the country-made pistol is belied and the prosecution version that it was the country-made pistol which was fired by the accused that caused injuries to the deceased deserves acceptance.

13. The second plank of this limb of proponement is that the accused-appellant could not have fired at the stomach region of the deceased. From the post-mortem report, it is clear that the bullet injury was from front to back. It is not in dispute that the deceased and the accused were grappling. The version of the prosecution in that all of a sudden, the accused brought out his desi katta and fired from a close range. This has been clearly established by the evidence. Learned counsel would submit that while grappling the position changed and the bullet fired from the service revolver [illegible]

deceased. In our considered opinion, such a submission cannot be given any acceptance as the desi katta was seized from the accused and the weapon, as opined in the FSL report, is the desi katta and further there is no material to prove that gun shot was fired from the weapon of Samar Singh. Thus, from the aforesaid, it is clear as crystal that the shot was fired from the country-made pistol seized from the custody of the accused-appellant. Hence, the plea that there was a gun shot from the revolver of Samar Singh while the accused-appellant was grappling with the deceased being absolutely mercurial in nature is rejected.

14. In view of the aforesaid premised reasons, the appeals, being sans substance, stand dismissed.

B.B.B. Appeals dismissed.

STATE OF RAJASTHAN
v.
SHIV CHARAN & ORS.
(Criminal Appeal Nos. 1425-1426 of 2007)

JULY 1, 2013

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

Penal Code, 1860:

s.302/149/148 – Conviction under – By trial court – Sentence of life imprisonment with fine – High Court allowed the conviction to one u/s.323 and reduced the sentence to one year imprisonment on the ground inter alia that fatal injury was attributable to the absconding accused and the complainant party was the aggressor – On appeal, held: Finding of High Court was based on no evidence and hence perverse – It is actually a case where common object of unlawful assembly stood translated into action and members of the assembly succeeded in their mission.

s. 149 – Common object – Invocation of – Discussed.

Criminal Trial – Non-explanation of serious injuries on the person of accused – Effect of – Held: Non-explanation of serious injuries on the person of accused may be fatal to the prosecution case, but if injuries are minor, even if not explained, prosecution case cannot be disbelieved.

Respondent-accused were prosecuted u/ss. 302/149/148 IPC. The accused had also filed a cross-case. Trial court convicted the accused for the offences charged and sentenced them to life imprisonment. The High Court in view of the facts that the fatal injury was attributable to the absconding accused; that FIR was registered on the basis of hearsay information; and in view of the injuries on the accused and also that the pending cross-

case suggest that complainant party was the aggressor, converted the conviction to one u/s. 323 IPC and converted the life sentence to imprisonment for one year. Hence the present appeal by the State.

Allowing the appeal, the Court

HELD: 1.1. Applicability of Section 149 IPC has its foundation on constructive liability which is the *sine qua non* for its application. It contains essentially only two ingredients, namely, (i) offence committed by any member of any unlawful assembly consisting five or more members and; (ii) such offence must be committed in prosecution of the common object (Section 141 IPC) of the assembly or **members of that assembly knew to be likely to be committed in prosecution of the common object. It is not necessary that for common object there should be a prior concert as the common object may be formed on spur of the moment. Common object would mean the purpose or design shared by all the members of such assembly and it may be formed at any stage. Even if the offence committed is not in direct prosecution of the common object of the unlawful assembly, it may yet fall under second part of Section 149 IPC if it is established that the offence was such, as the members knew, was likely to be committed. The court must keep in mind the distinction between the two parts of Section 149 IPC, and, once it is established that unlawful assembly had a common object, it is not necessary that all persons forming the unlawful assembly must be shown to have committed some overt act, rather they can be convicted for vicarious liability. However, it may be relevant to determine whether the assembly consist of some persons which were merely passive witnesses and had joined the assembly as a matter of ideal curiosity without intending to entertain the common object of the assembly. However, it is only the rule of caution and not**

the rule of law. Thus, a mere presence or association with other members alone does not *per se* be sufficient to hold everyone of them criminally liable for the offence committed by the others unless there is sufficient evidence on record to show that each intended to or knew the likelihood of commission of such an offending act, being a member of unlawful assembly as provided for u/s.142 IPC. It may also not be a case of group rivalry or sudden or free fight or an act of the member of unlawful assembly beyond the common object. [Para 16] [345-H; 346-A-H; 347-A]

Baladin and Ors. vs. State of U.P. **AIR 1956 SC 181;** *Masalti vs. State of U.P.* **AIR 1965 SC 202: 1964 SCR 133;** *Chandra Bihari Gautam and Ors. vs. State of Bihar* **AIR 2002 SC 1836: 2002 (2) SCR 1164;** *Ramesh and Ors. vs. State of Haryana* **AIR 2011 SC 169: 2010 (12) SCR 799;** *Ramachandran and Ors. Etc. vs. State of Kerala* **AIR 2011 SC 3581: 2011 (13) SCR 923;** *Onkar and Anr. vs. State of Uttar Pradesh* **(2012) 2 SCC 273: 2012 (2) SCR 1164;** *Roy Farnandez vs. State of Goa and Ors.* **AIR 2012 SC 1030: 2012 (1) SCR 477;** *Krishnappa and Ors. vs. State of Karnataka* **AIR 2012 SC 2946: 2012 SCR 1068 – relied on.**

1.2. Thus, for resorting to the provisions of Section 149 IPC, the prosecution has to establish that (i) there was an assembly of five persons; (ii) the assembly had a common object; and (iii) the said common object was to consist one or more of the five illegal objects specified in Section 141 IPC. [Para 17] [347-C-D]

1.3. In light of fact-situation of the present case, it is clear that 5 persons had come fully armed, in a vehicle and all of them caused injuries to the deceased. It is actually a case where common object of unlawful assembly stood translated into action and members of the assembly succeeded in their mission. Thus, the view taken by the High Court that the re e

for the acts attributed to them individually and not collectively, being perverse is not worth acceptance. The High Court has committed an error in presuming that the case was one where a free fight had occurred, and therefore, the provisions of Sections 148 and 149 IPC were not attracted; the complainant party were aggressors; and there had been some soft pedaling in the investigation. Such findings are based on no evidence and hence perverse. [Paras 17 and 18] [347-F-H; 348-A]

2. Non-explanation of serious injuries on the person of accused may be fatal to the prosecution case. But where the injuries sustained by the accused are minor in nature, even in absence of proper explanation of prosecution, story of the prosecution cannot be disbelieved. High Court has not considered the issue of non-explanation of injuries on the person of accused in correct perspective. [Paras 20 and 21] [348-G; 349-G-H]

Laxman vs. State of Maharashtra **(2012) 11 SCC 158: 2012 (8) SCR 910;** *Mano Dutt and Anr. vs. State of Uttar Pradesh* **(2012) 4 SCC 79: 2012 (3) SCR 686 – relied on.**

Case Law Reference:

AIR 1956 SC 181	**relied on**	**Para 16**
1964 SCR 133	**relied on**	**Para 16**
2002 (2) SCR 1164	**relied on**	**Para 16**
2010 (12) SCR 799	**relied on**	**Para 16**
2011 (13) SCR 923	**relied on**	**Para 16**
2012 (2) SCR 1164	**relied on**	**Para 16**
2012 (1) SCR 477	**relied on**	**Para 16**
2012 SCR 1068	**relied on**	**Para 16**
2012 (8) SCR 910	**relied on**	**Para 20**
2012 (3) SCR 686	**relied on**	**Para 21**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos.1425-1426 of 2007

From the judgment and order dated 20.09.2005 of the High Court of Judicature at Rajasthan at Jaipur Bench in D.B. Criminal Appeal Nos. 1454 and 1458 of 2002

Ajay Veer Singh, Nitin Jain Atul Agarwal, Milind Kumar, for the Appellant.

G.K. Bansal, Reepak Kansal for the Respondents.

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. These appeals have been preferred against the impugned judgment and order dated 20.9.2005, passed by the High Court of Judicature of Rajasthan at Jodhpur (Jaipur Bench) in D.B. Criminal Appeal Nos.1454 and 1458 of 2002, by way of which, the High Court has converted the conviction of the respondents herein, from one under Sections 302/149 of Indian Penal Code, 1860 (hereinafter referred to as 'the IPC') and Section 148 IPC to another under Section 323 IPC, and the sentence awarded by the Sessions Court to life imprisonment with fine, has also been substituted by a sentence of one year.

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

A. A complaint was submitted by Batti Lal (PW.1) in the Police Station, Bamanwas on 28.8.2000 at about 9 a.m., that on the said day, his brother Prahlad (since deceased), had been grazing buffaloes. The respondents herein alongwith one Mahesh, absconder, had attacked Prahlad and inflicted injuries on his person. Mahesh had hit Prahlad on the head with a rod, whereas the respondents had inflicted injuries with lathis. Kedar-accused had tried to push Prahl

the tractor driven by the accused, but could not succeed. Prahlad had then been taken to the local hospital, from where he was referred to Jaipur Hospital, but he succumbed to his injuries while in transit.

B. On the basis of the said report, a case under Sections 147, 148, 149 and 302 IPC was registered against the respondents and Mahesh, absconder, and investigation commenced. Autopsy on the dead body of Prahlad was performed. The respondents were arrested. All necessary memos were drawn up, and upon completion of the investigation, a charge sheet was filed against the respondents. However, the investigation against Mahesh remained pending, as he had been absconding.

C. The trial commenced. The prosecution examined 15 witnesses in support of its case. The respondents were examined under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr.P.C.'). They not only pleaded innocence but also examined one witness in defence. Upon completion of the trial, the learned Trial Court convicted and sentenced the respondents as has been referred to hereinabove.

D. Aggrieved, the respondents preferred criminal appeals before the High Court, which were allowed vide impugned judgment and order.

Hence, these appeals.

3. Shri Ajay Veer Singh, learned counsel appearing for the State, has submitted, that in light of the grievous injuries found on the body of Prahlad (deceased), which are undeniably homicidal in nature, the case certainly did not warrant the conversion of the conviction of the respondents from under Sections 302/149/148 IPC, to one under Section 323 IPC. There was sufficient evidence on record to show that the respondents were the aggressors, and the mere pendency of

the cross case before the Trial Court should not give leverage to the High Court to take such a lenient view. Therefore, the appeals deserve to be allowed.

4. Per contra, Shri G.K. Bansal, learned counsel appearing for the respondents has submitted, that the High Court has appreciated the entire evidence in correct perspective, and upon realising that it was a free fight, has held that it was not possible to determine, who were the actual aggressors? The view taken by the High Court does not require any interference whatsoever. Thus, the appeals lack merit and are liable to be dismissed.

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

6. Post-mortem on the body of Prahlad, deceased, was conducted by the team/Board consisting of Dr. N.K. Meena and Dr. Ramesh Chand Gupta (PW.9). The report (Ex.P-14), revealed the following ante-mortem injuries:

(1) "Lacerated wound 3" x ½" x bone deep - Mid of scalp.

(2) Contusion 2" x ½" (Rt.) wrist joint of both bones.

(3) Abrasion ½ x ½ on front of Rt. ear.

(4) Multiple linear abrasion on the left lower limb.

In the opinion of the Doctors, the cause of death was shock due to injury on scalp leading to brain hemorrhage.

7. The injuries found on the person of respondent Shiv Charan were as follows:

(1) Abrasion with swelling on Lt. Hand dorsal aspect of palms at 1 cm below junction of little finger.

(2) Abrasion with swelling of Rt. Side parietal region at skull.

(3) Complaint of pain whole back with injury.

8. The injuries found on the person of respondent Kedar were as follows:

(1) Lacerated wound on Rt. Parietal region on skull. Scalp deep soft clotted blood, 5 cm x ½ cm.

(2) Lacerated wound on center of skull soft clotted blood 4 cm x ½ cm scalp deep.

(3) Complaint of Pain Lt. Parietal region with swelling 2 cm x 2 cm.

(4) Complaint of pain Rt. Arm.

9. Ramdhan Meena (PW.2) has deposed that while Prahlad had been grazing the buffaloes in the morning, Mahesh, armed with an iron rod, alongwith the co-accused – respondents, who were armed with lathis, had come there. They all started abusing Prahlad. Mahesh had inflicted a blow on the head of Prahlad with an iron rod, and Shiv Charan had hit him with a lathi on the left side of the face. Nehru had then pushed Prahlad in front of the tractor driven by the accused-respondents, to crush him under it, but could not succeed. Prahlad, injured, had then been taken to a hospital in Jaipur, but died on the way.

This witness was declared hostile, as he did not support the case of the prosecution.

10. Khushi Chand (PW.5), deposed that Prahlad (deceased), had been grazing buffaloes. The respondents, alongwith Mahesh had come there on a tractor. They had started quarrelling with Prahlad. Mahesh had first assaulted Prahlad on the head with an iron rod, and thereafter, the

respondents herein had assaulted Prahlad with lathis. The witnesses had tried to save Prahlad, but the accused had fled in their tractor by road after beating him. Prahlad had then been taken to the Gangapur Hospital in a cart, after which he had been referred to Jaipur Hospital. He died on the way.

11. Gopal (PW.4) and Phool Chand (PW.7), had given the same version of events, as they had also been grazing their buffaloes/cattles alongwith Prahlad (deceased).

12. Dr. Shiv Singh Meena (PW.15), who had examined Prahlad in his injured condition, has proved the injuries on his person.

Dr. Ramesh Chand Gupta (PW.9), who was the member of the board, which conducted the postmortem, deposed that the layer around the brain had been fractured. There was fracture in his right parietal bone, and fractures on the right radius and alina bone. In his opinion, the cause of death was hemorrhage inside the brain. The injury found on the head of the deceased was sufficient to cause death in the normal course of nature.

13. Jitendra Jain (PW.12), the Investigating Officer, proved all the recoveries, and answered all questions relating to the investigation. He also admitted that a cross case had been registered by the respondents in regard to the very same incident, against the complainant party, as accused Kedar and Shiv Charan had also sustained injuries in the said incident.

14. The Trial Court has appreciated the entire evidence on record and has thereafter, rejected the version of Shiv Charan and Kedar, that they had received injuries as referred to in the cross case, while acting in self-defence. The court has also rejected the theory of grave and sudden provocation, and also that the quarrel had taken place suddenly, and that maar-peet had started without any previous intention or planning. In the instant case, the previous enmity b n

mortgaging the land also stood established. Considering the gravity of the injuries and the evidence on record, the Trial Court has convicted and sentenced the respondents as has been referred to hereinabove.

15. The High Court while deciding the appeals, has taken the following circumstances into consideration:

(i) The fatal injury on the head of Prahlad (deceased), has been attributed to Mahesh, the absconding accused;

(ii) The informant Batti Lal, was not an eye witness to the incident, and who got the FIR registered on the basis of hearsay information;

(iii) The injuries sustained by the accused, particularly by accused Kedar, suggest that the complainant party had in fact been aggressors; and

(iv) A cross case was registered against the complainant party and the same was pending.

The High Court came to the conclusion after taking into consideration the number of injuries suffered by the accused Kedar and Shiv Charan, that an inference could easily be drawn to the effect that there had been some soft pedaling in the investigation, and that the prosecution had not revealed the genesis of the incident. The High Court, thus, very abruptly reached the conclusion that as there had been no meeting of minds just prior to the incident, or even at the time of incident, the respondents were responsible for their individual acts. Since a fatal injury had been found on the head of the deceased, which had been attributed to be caused by co-accused Mahesh, an absconder, the conviction and sentences were altered as referred to hereinabove.

16. The pivotal question of applicability of Section 149 IPC has its foundation on constructive liability which is the *sine qua*

non for its application. It contains essentially only two ingredients, namely, (I) offence committed by any member of any unlawful assembly consisting five or more members and; (II) such offence must be committed in prosecution of the common object (Section 141 IPC) of the assembly ***or*** members of that assembly knew to be likely to be committed in prosecution of the common object. It is not necessary that for common object there should be a prior concert as the common object may be formed on spur of the moment. Common object would mean the purpose or design shared by all members of such assembly and it may be formed at any stage. Even if the offence committed is not in direct prosecution of the common object of the unlawful assembly, it may yet fall under second part of Section 149 IPC if it is established that the offence was such, as the members knew, was likely to be committed. For instance, if a body of persons go armed to take forcible possession of the land, it may be presumed that someone is likely to be killed, and all the members of the unlawful assembly must be aware of that likelihood and, thus, each of them can be held guilty of the offence punishable under Section 149 IPC. The court must keep in mind the distinction between the two parts of Section 149 IPC, and, once it is established that unlawful assembly had a common object, it is not necessary that all persons forming the unlawful assembly must be shown to have committed some overt act, rather they can be convicted for vicarious liability. However, it may be relevant to determine whether the assembly consist of some persons which were merely passive witnesses and had joined the assembly as a matter of ideal curiosity without intending to entertain the common object of the assembly. However, it is only the rule of caution and not the rule of law. Thus, a mere presence or association with other members alone does not per se be sufficient to hold everyone of them criminally liable for the offence committed by the others unless there is sufficient evidence on record to show that each intended to or knew the likelihood of commission of such an offending act, being a member of unlawful assembly as provi[illegible]n

142 IPC. It may also not be a case of group rivalry or sudden or free fight or an act of the member of unlawful assembly beyond the common object. (Vide: *Baladin & Ors. v. State of U.P.,* AIR 1956 SC 181; *Masalti v. State of U.P.,* AIR 1965 SC 202; *Chandra Bihari Gautam & Ors. v. State of Bihar,* AIR 2002 SC 1836; *Ramesh & Ors. v. State of Haryana,* AIR 2011 SC 169; *Ramachandran & Ors. Etc. v. State of Kerala,* AIR 2011 SC 3581; *Onkar & Anr. v. State of Uttar Pradesh,* (2012) 2 SCC 273; *Roy Farnandez v. State of Goa & Ors.,* AIR 2012 SC 1030; and *Krishnappa & Ors. v. State of Karnataka,* AIR 2012 SC 2946).

17. Thus, for resorting to the provisions of Section 149 IPC, the prosecution has to establish that (i) there was an assembly of five persons; (ii) the assembly had a common object; and (iii) the said common object was to consist one or more of the five illegal objects specified in Section 141 IPC.

There is evidence on record to show that all the respondents had, in fact, come together on a tractor. They had started abusing Prahlad (deceased). Mahesh, absconding accused, had hit Prahlad (deceased), with an iron rod, on his head, and the respondents- accused had also hit him with lathis. Even after inflicting first injury on the head by Mahesh, beating by the present respondents went on and thereafter, the accused ran away. Therefore, in light of such a fact-situation, it is clear that 5 persons had come fully armed, in a vehicle and all of them caused injuries to Prahlad, who succumbed to such injuries. Here, it is actually a case where common object of unlawful assembly stood translated into action and members of the assembly succeeded in their mission. Thus, the view taken by the High Court that the respondents are liable for the acts attributed to them individually and not collectively, being perverse is not worth acceptance.

18. The High Court has committed an error in presuming that the case was one where a free fight had occurred, and therefore, the provisions of Sections 148 and 149 IPC were not

attracted; the complainant party were aggressors; and there had been some soft pedaling in the investigation. Such findings are based on no evidence whatsoever, and hence, are held to be perverse.

19. So far as the injuries found on the person of accused Shiv Charan and Kedar are concerned, the injuries of Shiv Charan are merely abrasions. Dr. M.K. Meena (DW.1) opined that as injuries found on the person of Kedar could be caused by fall on stone and some of his injuries were of superficial nature. The Trial Court dealt with issue of injuries suffered by the said accused by making reference to the statement of Mohanlal (DW.2), who had stated that all the accused persons were going on a tractor to attend a claim case. The said witness was also with them and when they reached near Bandawal, 6-7 persons surrounded the tractor and stopped it. They started beating Kedar and Shiv Charan and caused injuries to them.

In fact, this has been a consistent case of all the accused persons while their statements were recorded under Section 313 Cr.P.C. None of the accused has explained how the injuries were caused to Prahlad (deceased). The Trial Court appreciated the evidence and came to conclusion that the respondents-accused were the aggressive party and they were five in numbers and all of them were armed. Thus, the High Court could not be justified in reversing the findings of fact recorded by the Trial Court without making reference to any evidence.

20. Non-explanation of serious injuries on the person of accused may be fatal to the prosecution case. But where the injuries sustained by the accused are minor in nature, even in absence of proper explanation of prosecution, story of the prosecution cannot be disbelieved. (Vide: *Laxman v. State of Maharashtra,* (2012) 11 SCC 158)

21. This Court considered the issue in *Mano Dutt & Anr. v. State of Uttar Pradesh,* (2012) 4 SCC r:

"38. The question, raised before this Court for its consideration, is with respect to the effect of non-explanation of injuries sustained by the accused persons. In this regard, this Court has taken a consistent view that the normal rule is that whenever the accused sustains injury in the same occurrence in which the complainant suffered the injury, the prosecution should explain the injury upon the accused. But, it is not a rule without exception that if the prosecution fails to give explanation, the prosecution case must fail.

39. Before the non-explanation of the injuries on the person of the accused, by the prosecution witnesses, may be held to affect the prosecution case, the Court has to be satisfied of the existence of two conditions:

(i) that the injuries on the person of the accused were also of a serious nature; and

(ii) that such injuries must have been caused at the time of the occurrence in question.

40. Where the evidence is clear, cogent and creditworthy; and where the court can distinguish the truth from falsehood, the mere fact that the injuries on the person of the accused are not explained by the prosecution cannot, by itself, be the sole basis to reject the testimony of the prosecution witnesses and consequently, the whole case of the prosecution. Reference in this regard can be made to Rajender Singh v. State of Bihar, (2000) 4 SCC 298, Ram Sunder Yadav v. State of Bihar, (1998) 7 SCC 365 and Vijayee Singh v. State of U.P., (1990) 3 SCC 190."

In view of the above, we are of the opinion that the High Court has not considered the issue of non-explanation of injuries on the person of accused in correct perspective.

22. In view of above, the appeals succeed and are allowed. The judgment and order impugned before us is set aside and the judgment and order of the Trial Court is restored. The respondents are directed to surrender within a period of 4 weeks from today, failing which, the learned Additional Sessions Judge (Fast Track), Gangapur City, is directed to take them into custody and send them to jail to serve the remaining part of the sentence. A copy of the order be sent to the learned Additional Sessions Judge (Fast Track), Gangapur City, for information and compliance.

K.K.T. Appeals allowed

S. MANICKAM

v.

METROPOLITAN TRANSPORT CORP. LTD.

(Civil Appeal Nos.4816-4817 of 2013)

JULY 1, 2013

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

Motor Vehicles Act, 1988 – Accident – Compensation – Determination of – "Just compensation" – Held: No precise formula to determine the quantum of compensation – Concept of "just compensation" suggests application of fair and equitable principles and a reasonable approach on the part of the tribunals and the courts – Law values life and limb in a free country in generous scales – Adjudicating authority to take note of the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned.

Motor Vehicles Act, 1988 – Accident – Compensation – Grant of – Under both the heads viz., loss of earning/earning capacity as well as permanent disability – Propriety – Victim was 45 year old proprietor of a furniture mart – He had sustained 85% permanent disability by way of amputation of his right leg below the knee – Held: Considering the age and avocation of the appellant and the fact that he cannot do the same work as he was doing prior to the accident due to amputation of his right leg, Tribunal fully justified in fixing a sum of Rs. 1 lakh towards 85% permanent disability –High Court erred in setting aside the award of Rs.1 Lakh under the head 'permanent disability' on the ground that substantial amount had been fixed under the head 'loss of earning' and 'loss of earning capacity'.

Motor Vehicles Act, 1988 – Accident – Compensation – Grant of – Under the head 'loss of earning/earning capacity' – Appropriate multiplier – Victim was 45 year old proprietor of a furniture mart – He sustained 85% permanent disability by way of amputation of his right leg below the knee – High Court reduced the multiplier from 13 to 10 – Propriety – Held: High Court, while computing the loss of earning capacity, without any acceptable reason, applied the multiplier of 10 – Though multiplier method cannot be mechanically applied to ascertain the future loss of income or earning power, depending on various factors such as nature and extent of disablement, avocation of the injured whether it would affect his or her employment or earning power, the loss of income or earnings may be ascertained by applying the same as provided under the second Schedule to the Act – Inasmuch as in the case on hand, on the date of the incident, the age of the claimant was 45 years, proper multiplier in terms of the second Schedule is 13 which was rightly applied by the Tribunal.

The appellant was the proprietor of a Furniture Mart and 15 persons were working under him. In view of an accident, he sustained 85% permanent disability by way of amputation of his right leg below the knee. The appellant was aged about 45 years at the time of the accident.

The Tribunal determined the income of appellant as Rs. 8,000/- per month and awarded a sum of Rs. 9,42,822/- as compensation with interest @ 12% p.a.. The High Court disallowed claim under the head permanent disability and also reduced the multiplier as provided in the second Schedule to the Act from 13, as adopted by the Tribunal, to 10. The total compensation amount was reduced to Rs.6,72,822/-

The present appeals were preferred by the victim/ claimant for enhancement of the co n

question arose for consideration as to whether compensation in a motor vehicle accident case is payable to a claimant for both heads, viz., loss of earning/earning capacity as well as permanent disability.

Partly allowing the appeals, the Court

HELD: 1. In matters of determination of compensation, particularly, under the Motor Vehicles Act, both the tribunals and the High Courts are statutorily charged with a responsibility of fixing a "just compensation". Determination of "just compensation" cannot be equated to a bonanza. On the other hand, the concept of "just compensation" suggests application of fair and equitable principles and a reasonable approach on the part of the tribunals and the courts. The determination of quantum in motor accidents cases and compensation under the Workmen's Compensation Act, 1923 must be liberal since the law values life and limb in free country in generous scales. The adjudicating authority, while determining the quantum of compensation, has to take note of the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. While computing compensation, the approach of the tribunal or a court has to be broad based and sometimes it would involve some guesswork as there cannot be any precise formula to determine the quantum of compensation. [Para 12] [361-A-F]

2.1. The High Court committed an error in setting aside the award amount of Rs. 1,00,000/- under the head 'permanent disability' on the ground that substantial amount had been fixed under the head 'loss of earning' and 'loss of earning capacity'. [Para 13] [361-F-G]

2.2. Considering the age and avocation of the appellant and the fact that he cannot do the same work as he was doing prior to the accident due to amputation of his right leg, the Tribunal is fully justified in fixing a sum of Rs. 1,00,000/- towards 85% permanent disability. The order of the High Court setting aside the compensation under the said head cannot be sustained. Accordingly, in addition to the amount determined by the High Court, a sum of Rs. 1,00,000/-, as awarded by the Tribunal, is granted towards 85% permanent disability. [Para 14] [362-B-D]

Cholan Roadways Corporation Limited, Kumbakonam vs. Ahmed Thambi and Others **2006 (4) CTC 433 – held overruled.**

Ramesh Chandra vs. Randhir Singh and Others **1990 (3) SCC 723: 1990 (3) SCR 1;** *B. Kothandapani vs. Tamil Nadu State Transport Corporation Limited* **(2011) 6 SCC 420: 2011 (6) SCR 791;** *K. Suresh vs. New India Assurance Co. Ltd. and Another* **2012 (10) JT 484 – relied on**.

3. The High Court, while computing the loss of earning capacity, without any acceptable reason, applied the multiplier of 10 and fixed a sum of Rs. 3,20,000 (Rs. 8000/- x 10x12x1/3) as against Rs. 4,00,000/- determined by the Tribunal. Though multiplier method cannot be mechanically applied to ascertain the future loss of income or earning power, depending on various factors such as nature and extent of disablement, avocation of the injured whether it would affect his or her employment or earning power, the loss of income or earnings may be ascertained by applying the same as provided under the second Schedule to the Act. Inasmuch as in the case on hand, the age of the claimant, i.e., 45 years, on the date of the incident has not been disputed by the Transport Corporation, the proper multiplier in [illegible]d

Schedule is 13 which was rightly applied by the Tribunal. Accordingly, while modifying the quantum under the loss of earning capacity, namely, Rs. 3,20,000/- as fixed by the High Court, the amount is restored to Rs. 4,00,000/-, as determined by the Tribunal. [Paras 15, 16] [362-E-H; 363-A-C]

United India Insurance Co. Ltd. vs. Veluchamy and Anr. **2005 (1) CTC 38 – referred to.**

4. Though, the appellant prayed for interest @ 12%, this Court is not inclined to accept the same, on the other hand, the rate of interest, namely, 9%, as fixed by the High Court, is reasonable and acceptable. [Para 17] [363-C-D]

5. The appellant is thus entitled to the following additional amount: a) Towards 85% permanent disability: Rs. 1,00,000/-; b) Towards loss of earning/earning capacity by applying the multiplier 13 (in addition to the amount of Rs. 3,20,000/- fixed by the High Court): Rs. 80,000/-. Accordingly, in addition to the amount awarded by the High Court, the claimant/the appellant is entitled to an additional amount of Rs. 1,80,000/-. Altogether the appellant is entitled to a total compensation of Rs. 8,52,822/- with interest at the rate of 9% from the date of claim petition till the date of deposit. [Para 18] [363-D-G]

Case Law Reference:

2006 (4) CTC 433	**held overruled**	**Paras 8, 10**
1990 (3) SCR 1	**relied on**	**Para 9**
2011 (6) SCR 791	**relied on**	**Para 10, 11**
2012 (10) JT 484	**relied on**	**Para 11**
2005 (1) CTC 38	**referred to**	**Para 16**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 4816-4817 of 2013.

From the Judgment and Order dated 29.01.2007 of the High Court of Judicature at Madras in C.M.A. (NPD-B) Nos. 82 and 150 of 2001.

P.B. Suresh, Vipin Nair, U. Banerjee, Temple Law Firm, for the Appellant.

B. Balaji, R. Rakesh Sharma, for the Respondent.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. (1) Leave granted.

2. The important question which arise for consideration in these appeals is whether compensation in a motor vehicle accident case is payable to a claimant for both heads, viz., loss of earning/earning capacity as well as permanent disability.

3. These appeals are directed against the common judgment and order dated 29.01.2007 passed by the High Court of Judicature at Madras in C.M.A. Nos. 82 and 150 of 2001 whereby the High Court partly allowed the appeal filed by the respondent-herein and dismissed the appeal preferred by the appellant-herein.

4. **Brief facts:**

(a) On 27.01.1997, when the claimant/the appellant herein was alighting from the bus owned by the Metropolitan Transport Corporation Limited (in short "the Transport Corporation") – respondent herein, the conductor of the bus blown the whistle without noticing him. Due to the sudden movement of the bus, the appellant fell down and the rear wheel of the bus rammed over on his right leg and he sustained severe injuries on his head, right hand and chest. After treatment, his right leg below the knee was amputated. At the time of accident, he was 45 years of age. He made a claim before the Motor Accidents Claims Tribunal ("the Tribunal" for short) Chennai in O.P. No.

1667 of 1997 claiming a sum of Rs. 21,00,000/- as compensation.

(b) The Tribunal, after holding that the accident was caused due to the negligence of the driver of the bus belonging to the Transport Corporation, by order dated 30.11.2000, awarded a sum of Rs. 9,42,822/- as total compensation by adopting the multiplier of 13 in terms of the second schedule to the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act").

(c) Dis-satisfied with the award of the Tribunal, the appellant preferred an appeal being CMA No. 150 of 2001 before the High Court praying for higher compensation, on the other hand, the Transport Corporation also preferred an appeal being CMA No. 82 of 2001 for reduction of the compensation.

(d) The High Court, by impugned common judgment dated 29.01.2007, reduced the compensation from Rs. 9,42,822/- to Rs. 6,72,822/-. Aggrieved by the reduction in the compensation amount, the appellant has preferred the present appeals by way of special leave for enhancement of the compensation.

5. Heard Mr. P.B. Suresh, learned counsel for the claimant/appellant and Mr. B. Balaji, learned counsel for the Respondent-Transport Corporation.

Discussion:

6. As posed at the first instance, mainly, we have to consider whether the High Court is justified in disallowing the claim under the head permanent disability when the appellant had sustained 85% permanent disability by way of amputation of his right leg below the knee. Incidentally, this Court has to consider whether the High Court is equally justified in reducing the multiplier from 13, as adopted by the Tribunal, to 10.

7. Inasmuch as the present appeals are preferred by the victim/claimant for enhancement of the compensation, there is no need to traverse the facts leading to the accident. In other

words, the finding that the accident occurred due to the negligent driving of the driver of the bus belonging to the Transport Corporation has become final.

8. It is also not in dispute that based on the evidence of the claimant (PW-1), the evidence with regard to permanent disability of 85%, amputation of the right leg below the knee, his age and avocation, the Tribunal has awarded a sum of Rs. 9,42,822/- as compensation with interest @ 12% p.a. on the said amount. The High Court, while considering the appeals of the Transport Corporation as well as the claimant, placed reliance on a Full Bench decision of the same Court in *Cholan Roadways Corporation Limited, Kumbakonam vs. Ahmed Thambi and Others,* 2006 (4) CTC 433 wherein it was held that if the injured is compensated for loss of earning and loss of earning capacity, compensation need not be awarded separately for permanent disability. Based on the said principle laid down in the Full Bench decision, learned Single Judge directed a reduction of Rs. 1,00,000/-, fixed under the head 'permanent disability', from the total award.

9. This Court, in *Ramesh Chandra vs. Randhir Singh and Others*, 1990 (3) SCC 723, has categorically held that compensation can be payable both for loss of earning as well as disability suffered by the claimant.

10. In addition to the same, in *B. Kothandapani vs. Tamil Nadu State Transport Corporation Limited,* (2011) 6 SCC 420, this Court (speaking through one of us) after considering the Full Bench decision of the Madras High Court in *Cholan Roadways (supra),* disagreed with the said view and granted separate compensation under the head permanent disability even after grant of compensation under loss of earning/earning capacity. The following conclusion is relevant:

"14. In *Ramesh Chandra* v. *Randhir Singh* while considering award of compensation for permanent disability (right foot amputated) ca[illegible]nt

under Section 110-B of the Motor Vehicles Act, 1939 which is similar to Section 168(1) of the Motor Vehicles Act, 1988, this Court upheld the award of compensation under the separate head of pain, suffering and loss of enjoyment of life, apart from the head of loss of earnings. The discussion and ultimate conclusion are relevant which read as under:

"7. With regard to Ground 19 covering the question that the sum awarded for pain, suffering and loss of enjoyment of life, etc. termed as general damages should be taken to be covered by damages granted for loss of earnings is concerned that too is misplaced and without any basis. The pain and suffering and loss of enjoyment of life which is a resultant and permanent fact occasioned by the nature of injuries received by the claimant and the ordeal he had to undergo. If money be any solace, the grant of Rs. 20,000 to the claimant represents that solace. Money solace is the answer discovered by the law of torts. No substitute has yet been found to replace the element of money. This, on the face of it appeals to us as a distinct head, quite apart from the inability to earn livelihood on the basis of incapacity or disability which is quite different. The incapacity or disability to earn a livelihood would have to be viewed not only *in praesenti* but *in futuro* on reasonable expectancies and taking into account deprival of earnings of a conceivable period. This head being totally different cannot in our view overlap the grant of compensation under the head of pain, suffering and loss of enjoyment of life. One head relates to the impairment of person's capacity to earn, the other relates to the pain and suffering and loss of enjoyment of life by the person himself. For these reasons, we are of the considered view that the contentions raised by the truck owner appellant in that behalf must be negatived and we hereby negative them."

15. It is true that the compensation for loss of earning power/capacity has to be determined based on various

aspects including permanent injury/disability. At the same time, it cannot be construed that compensation cannot be granted for permanent disability of any nature. For example, take the case of a non-earning member of a family who has been injured in an accident and sustained permanent disability due to amputation of leg or hand, it cannot be construed that no amount needs to be granted for permanent disability. It cannot be disputed that apart from the fact that the permanent disability affects the earning capacity of the person concerned, undoubtedly, one has to forego other personal comforts and even for normal avocation they have to depend on others.

After laying down the above ratio regarding merits of that case, it was concluded:

"16. In the case on hand, two doctors had explained the nature of injuries, treatment received and the disability suffered due to partial loss of eyesight and amputation of middle finger of the right hand and we have already adverted to the avocation, namely, at the time of accident, he was working as foreman in M/s Armstrong Hydraulics Ltd. Taking note of his nature of work, partial loss in eyesight and loss of middle finger of the right hand, not only affect his earning capacity but also affect normal avocation and day-to-day work. In such circumstance, we are of the view that the Tribunal was fully justified in granting a sum of Rs. 1,50,000 towards permanent disability."

The above decision makes it clear that the ratio laid down by the Full Bench of the Madras High Court in *Cholan Roadways (supra)* has not been accepted by this Court.

11. Following the ratio in *B. Kothandapani (supra)* in the subsequent decision, viz., *K. Suresh* vs. *New India Assurance Co. Ltd. and Another*, 2012 (10) JT 484 another Bench of this

Court, awarded separate amount for permanent disability apart from fixing compensation under the head 'loss of earning' or 'earning capacity'.

12. In matters of determination of compensation, particularly, under the Motor Vehicles Act, both the tribunals and the High Courts are statutorily charged with a responsibility of fixing a "just compensation". It is true that determination of "just compensation" cannot be equated to a bonanza. On the other hand, the concept of "just compensation" suggests application of fair and equitable principles and a reasonable approach on the part of the tribunals and the courts. We hold that the determination of quantum in motor accidents cases and compensation under the Workmen's Compensation Act, 1923 must be liberal since the law values life and limb in free country in generous scales. The adjudicating authority, while determining the quantum of compensation, has to take note of the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. While computing compensation, the approach of the tribunal or a court has to be broad based and sometimes it would involve some guesswork as there cannot be any precise formula to determine the quantum of compensation.

13. Keeping the above principles in mind, there is no difficulty in holding that the High Court has committed an error in setting aside the award amount of Rs. 1,00,000/- under the head 'permanent disability' on the ground that substantial amount had been fixed under the head 'loss of earning' and 'loss of earning capacity'. It is not in dispute that at the time of the accident, the appellant was aged about 45 years and he was the proprietor of Parvathy Furniture Mart and 15 persons were working under him. Based on the evidence, the Tribunal has determined his income as Rs. 8,000/- per month.

14. It is borne out from the records that the claimant was

treated as an inpatient in Pavithra Hospital from 27.01.1997 to 26.02.1997, and thereafter, he was treated as an outpatient vide Exh. P-1, which is the Discharge Summary. Further, it is seen from his evidence that he lost his earnings during the period of treatment from 28.01.1997 to 31.12.1997, and because of severe injuries, his right leg below the knee was amputated. Considering his age, avocation and the fact that he cannot do the same work as he was doing prior to the accident due to amputation of his right leg, we are of the view that the Tribunal is fully justified in fixing a sum of Rs. 1,00,000/- towards 85% permanent disability. The order of the High Court setting aside the compensation under the said head cannot be sustained. Accordingly, in addition to the amount determined by the High Court, we grant a sum of Rs. 1,00,000/-, as awarded by the Tribunal, towards 85% permanent disability.

15. According to the counsel for the appellant, while determining future loss of earning/earning capacity, the Tribunal rightly applied the multiplier of 13 as provided in the second Schedule to the Act. On the other hand, without any acceptable reason/basis, the High Court reduced the multiplier from 13 to 10.

16. In para 16 of the impugned judgment, the High Court, while computing the loss of earning capacity, without any acceptable reason, applied the multiplier of 10 and fixed a sum of Rs. 3,20,000 (Rs. 8000/- x 10x12x1/3) as against Rs. 4,00,000/- determined by the Tribunal. Learned counsel appearing for the appellant submitted that even for determining just and fair compensation in the case of injury/permanent disablement, the tribunal/courts are free to apply multiplier method for which he relied on a decision of the Madras High Court in *United India Insurance Co. Ltd. vs. Veluchamy and Anr.* 2005 (1) CTC 38. While agreeing with the said decision, though multiplier method cannot be mechanically applied to ascertain the future loss of income or earning power, depending on various factors such as nature and

avocation of the injured whether it would affect his or her employment or earning power, we are of the view that the loss of income or earnings may be ascertained by applying the same as provided under the second Schedule to the Act. Inasmuch as in the case on hand, the age of the claimant, i.e., 45 years, on the date of the incident has not been disputed by the Transport Corporation, we are of the view that the proper multiplier in terms of the second Schedule is 13 which was rightly applied by the Tribunal. Accordingly, while modifying the quantum under the loss of earning capacity, namely, Rs. 3,20,000/- as fixed by the High Court, we restore the amount to Rs. 4,00,000/- as determined by the Tribunal.

17. Though, learned counsel for the appellant prayed for interest @ 12%, we are not inclined to accept the same, on the other hand, the rate of interest, namely, 9%, as fixed by the High Court, is reasonable and acceptable.

(18) In the light of the above discussion, the appellant is entitled to the following additional amount:

a) Towards 85% permanent disability … Rs. 1,00,000/-

b) Towards loss of earning/earning capacity by applying the multiplier 13 … Rs. 80,000/- (in addition to the amount of Rs. 3,20,000/- fixed by the High Court)

Accordingly, in addition to the amount awarded by the High Court, the claimant/the appellant herein is entitled to an additional amount of Rs. 1,80,000/-. Further, we make it clear that altogether the appellant is entitled to a total compensation of Rs. 8,52,822/- with interest at the rate of 9% from the date of claim petition till the date of deposit.

19. The appeals filed by the claimant/appellant are allowed in part to the extent mentioned above with no order as to costs.

B.B.B. Appeals Partly allowed

PREMWATI

v.

UNION OF INDIA & ORS.

(Civil Appeal No. 949 of 2005 etc.)

JULY 2, 2013

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

*Land Acquisition – Land acquired – Determination of the value of the land – Land holder claiming the compensation at Rs.1,25,000/- per bigha – High Court by impugned order relying on another case *(Balbir Singh's case) held that value of the land should be fixed at Rs.50,000/- – But in view of the fact that in *Balbir Singh's case, acquisition was one year prior to the acquisition in the instant case, the Court adopted depreciated value and fixed the value at Rs.42,000/- per bigha – Held: Reasoning of High Court in relying on *Balbir Singh's case for enhancing the value of the land is confirmed – But the rate fixed by High Court is modified to Rs.50,000/- from Rs.42,000/- per bigha in view of the fact that value in *Balbir Singh's case was fixed on the basis of cases which were acquired prior to the acquisition in the present case.*

Land belonging to the appellants was acquired under Land Acquisition Act, 1894 by notification u/s. 4 dated 26.3.1983. The Land Acquisition Officer fixed the value of lands as Rs.13,000/- per bigha, and Rs.6000/- in respect of the lands falling under Block-A and Block-B respectively. The appellants approached the Reference Court seeking enhancement of the compensation amount to Rs.1,25,000/- per bigha. Reference Court enhanced the value of the land in Block A as well as Block B to Rs.17,500/- per bigha and Rs.18000/- per bigha for the lands abutting the road. The appellants approached High Court, for further enhancement of the value. The High

Court relied on its earlier judgments in ****Balbir Singh's* **case and *****Bedi Ram's* **case and agreed that the value of the land has to be fixed at Rs.50,000/- per bigha as done in those cases. But the Court applied rule of depreciation in the present case as acquisition in the present case was one year prior to the date of acquisition in ****Balbir Singh's* **case. The Court, therefore, deducted the value by12% per annum on the sum of Rs.50,000/- and then enhanced the value of the land to Rs.42,000/- per bigha. Hence, the present appeals.

Partly allowing the appeals, the Court

HELD: 1. The reasoning of the Division Bench of the High Court in having relied upon ****Balbir Singh's* **case and *****Bedi Ram's* **case fixing the value of the land was perfectly justified. When once the Division Bench rightly felt that whatever was decided in ****Balbir Singh's* **case, so far as it related to the value of the land fixed therein, can be applied even in respect of the land in the present case, which is situated in an adjacent village and the acquisition in respect of the lands in the said village was made simultaneously along with the lands which were subject matter in ****Balbir Singh's* **case and *****Bedi Ram's* **case, therefore, the same value, which was applied in ****Balbir Singh's* **case should have been applied even in respect of the lands belonging to the appellants. [Para 12] [370-H; 371-A-C]

2. While every other reasoning of the Division Bench in adopting the value, which was fixed in ****Balbir Singh's* **case was justified, there is no need to deduct any amount from the said value, in as much as the exemplar relied upon by the Division Bench in ****Balbir Singh's* **case, were all sale deeds pertaining to the period 18.01.1982 to 22.07.1983 i.e., prior to the very first notification issued in respect of the present acquisition of all the four villages viz., 01.08.1983. Therefore, even while confirming the

reasoning of the Division Bench in relying upon ****Balbir Singh's* **case for enhancing the value, the rate fixed by the Division Bench is modified to a sum of Rs.50,000/- per bigha. There is no merit in the claim of the appellants for claiming any further enhancement beyond the sum of Rs.50,000/- per bigha, in as much as there was absolutely no legally acceptable material in support of any such claim. [Paras 14 and 15] [371-E-H; 372-A-C]

Balbir Singh vs. Union of India* **50 (1993) DLT 40; ***Bedi Ram vs. Unionof India and Anr.* **93 (2001) DLT 150 – referred to.**

Case Law Reference:

50 (1993) DLT 40	**referred to**	**Para 12**
93 (2001) DLT 150	**referred to**	**Para 12**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 949 of 2005.

From the Judgment and Order dated 07.02.2003 of the High Court of Delhi at New Delhi in RFA No. 132 of 1999.

WITH

C.A. No. 2443 of 2005.

Sanjay Sharawat for the Appellant.

Rekha Pandey, Sadhana Sandhu, D.S. Mahra, Baldev Atrey, Anil Katiyar, for the Respondents.

The Judgment of the Court was delivered by

FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1. These two appeals arise out of a common judgment of the Division Bench of Delhi High Court dated 07.02.2003, passed in batch of first appeals commencing from RFA No.167 of 1991 etc. We are concerned with the judgments passed in RFA No.132 of 1999, wherein the appellant in C.A.No

appellant before the High Court and RFA No.129 of 1999, wherein the appellant in C.A.No.2443 of 2005 was the appellant before the High Court. The appellants were husband and wife. The appellant in C.A.No.2443 of 2005, died during the pendency of the appeal before the High Court and the appeal was pursued by his LRs.

2. The question involved in these two appeals is about the value of the land to be determined under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act'). There was a Notification under Section 4 of the Act, issued on 26.03.1983, followed by a Notification issued under Section 17(1) of the Act, in respect of the lands situated in Shahibabad Daulatpur, Khera Kalan, Siraspur and Samaipur villages. Under Section 6 of the Act a declaration was also made on the same date viz., 26.03.1983. The lands of the appellants before us were all situated in the village Shahibabad Daulatpur. The extent of land acquired from the appellants were 94 bighas and 2 biswas bearing different Khasra Nos. covered by LAC case Nos.27 of 93 and 23 of 1993. The other extent of land was 4 biswas in Khasra No.33/26, covered by LAC case Nos.28 of 1993 and 29 of 1993. The concerned Awards were Award Nos.26/83-84 and 57/83-84 respectively. The Awards were dated 01.08.1983 and 26.09.1983 respectively. As per the Award, the value of the lands were fixed by the Acquisition Officer in a sum of Rs.13,000/- per bigha, in respect of the lands falling under Block-A and Rs.6,000/- per bigha, in respect of the lands falling under Block-B. The same was the value fixed in Award No.57/83-84. Aggrieved by the compensation fixed under the Award, the appellants preferred LAC case Nos. 23, 27, 28 and 29 of 1993.

3. The reference Court by its judgment dated 07.01.1998, determined the value in respect of both categories of land viz., A and B in a sum of Rs.17,500/- per bigha and in respect of the lands abutting the road in a sum of Rs.18,000/- per bigha. Before the reference Court, the appellants initially claimed

compensation at the rate of Rs.50,000/- per bigha, but later on they amended their petition and claimed the market value in a sum of Rs.1,25,000/- per bigha. Aggrieved by the value fixed by the reference Court, the appellants approached the High Court and the High Court by the impugned judgment enhanced the value to a sum of Rs.42,000/- per bigha. Aggrieved against the same, the appellants have come forward with these appeals.

4. We have heard Mr.Sanjay Sharawat, learned counsel appearing for the appellants and Ms.Rekha Pandey, learned counsel for the respondent (s). We have also perused the Award, the judgment of the Reference Court, as well as that of the Division Bench of the High Court and other material papers placed before us.

5. Having considered the respective submissions and the judgment impugned, along with the other material papers, we are of the considered opinion that further enhancement to a marginal extent can be justifiably granted in favour of the appellants.

6. When we perused the judgments of the Reference Court, we find that on behalf of the appellants, four witnesses were examined. P.W.1 Shri Jasbir Rana, is the son of the original appellant Rajinder Singh, P.W.2 Shri Rehmat Ilahi, who was a Reader in the Office of the Deputy Commissioner, Delhi at the relevant time, P.W.3 Halqa Patwari Rajinder Singh, was examined to show that Aks Sajra of village Shahibabad Daulatpur and P.W.4 Shri Jaswahar, was a witness from the Ministry of Urban Development, Nirman Bhavan, New Delhi. On the side of the respondents, no evidence was let in, while two documents were tendered at the instance of the learned counsel for the respondents. One of the documents was the judgment of the Additional District Judge dated 30.03.1987, pertaining to the same village, as well as the same notification dated 26.03.1983 and the second document was a copy of the

Award under Reference being Award No.26/83-84 which were marked as Exs. R1 and R2.

7. On behalf of the appellants reliance was placed upon an earlier Division Bench decision of the Delhi High Court. While enhancing the compensation to a sum of Rs.42,000/- per bigha, the High Court relied upon its earlier judgment in *Balbir Singh Vs. Union of India* dated 30.10.1991, in RFA No.810 of 1988, which was reported in 50 (1993) DLT 40. In *Balbir Singh's case*, the question related to the value of the land in respect of the lands acquired in Siraspur village for planned development of Delhi, in particular for setting up an industrial estate. Notification under Section 4 of the Act in that case was dated 27.07.1984 and the total extent of land acquired was 2123 bighas and 5 biswas. The land value fixed by the Acquisition Officer was Rs.17,000/- per bigha for category A lands and Rs.13,000/- per bigha for category B lands. The reference Court enhanced it to Rs.25,000/- per bigha for A category and Rs.21,000/- per bigha for B category. In respect of some of the lands in B category, it was fixed at Rs.22,000/- per bigha. The High Court enhanced it to a sum of Rs.50,000/- per bigha for leveled land and Rs.45,000/- per bigha for the lands in depression.

8. While fixing the land value at Rs.50,000/- per bigha in *Balbir Singh's case*, the High Court took into consideration the sale deeds, which were executed between the periods 18.01.1982 to 22.07.1983, which was in the range of Rs.25,000/- to Rs.96,000/- per bigha. Certain other considerations also weighed with the High Court, while determining the land value in *Balbir Singh's case,* but we are not concerned with the same.

9. One other relevant factor which is required to be noted in the case on hand was that though in *Balbir Singh's case*, the lands were actually situated in the revenue estate of Siraspur, the High Court chose to rely on the same. In the case on hand, while enhancing the value to Rs.42,000/-, the High

Court applied the rule of depreciated value, in as much as the acquisition in respect of Siraspur village in *Balbir Singh's case* was pursuant to Section 4 Notification, dated 27.07.1984. It is relevant to note that the present acquisition was made pursuant to Section 4 Notifications of August 1983 and September 1983. The Division Bench therefore, deducted the value by 12% per annum on the sum of Rs.50,000/- and arrived at Rs.42,000/- per bigha.

10. For applying the said rate, the Division Bench relied upon another decision of the Delhi High Court in *Bedi Ram Vs. Union of India and another*, reported in 93 (2001) DLT 150, where the lands situated in the estate of Samaipur, which was also one of the villages governed by the present acquisition proceedings. One other relevant factor which is required to be noted is that P.W.3, who is Halqa Patwari, has deposed before the reference Court and confirmed that the site plan marked as 'E' is the correct consolidated site plan of village Samaipur and village Shahibabad Daulatpur. He also further confirmed that the boundaries of village Shahibabad Daulatpur and of village Samaipur are adjoining and continuous. By relying upon the testimony of P.W.1, the son of the appellant, as well as P.W.3 the Halqa Patwari, it was contended that the lands of the two villages viz., Shahhibabad Daulatpur and village Samaipur are adjoining villages and, therefore, the market value of the lands of these two villages cannot be different.

11. The High Court has in fact accepted the submission by referring to village Siraspur with reference to the lands, pertaining to the said village in *Balbir Singh's case*, in which a year later, the value of the land was fixed to a sum of Rs.50,000/- per bigha.

12. Keeping the above factors in mind, when we consider the submissions of the learned counsel for the appellants, we find that the reasoning of the Division Bench of the High Court in having relied upon *Balbir Singh's case* and *Bedi Ram's case* was perfectly justified. We would, howe[illegible]t

when once the Division Bench rightly felt that whatever was decided in *Balbir Singh's case*, so far as it related to the value of the land fixed therein, can be applied even in respect of the land situated in Shahibabad Daulatpur, which is an adjacent village and the acquisition in respect of the lands in the said village was made simultaneously along with the lands situated in Samaipur and Siraspur villages, are of the considered opinion that the same value, which was applied in *Balbir Singh's case* should have been applied even in respect of the lands belonging to the appellants. We say so because, we find in *Balbir Singh's case,* while fixing the land value in a sum of Rs.50,000/- per bigha, the High Court considered the various sale deeds of the period between 18.01.1982 and 22.07.1983.

13. In the case on hand, we are concerned with the land situated in Shahibabad Daulatpur village and the extent of land which were acquired from the appellants was 94 bighas 2 biswas of different Khasra Nos. covered by Award No.26/83-84 and 4 biswas in Khasra No.33/26, covered by Award No.57/83-84. Thus, the extent of land acquired from the appellants were also considerably large. The total extent of land thus, acquired in all the four villages were around 785 bighas of continuous lands and the acquisition was for the purpose of establishing the Delhi Technological University.

14. We are, therefore, of the view that while every other reasoning of the Division Bench in adopting the value, which was fixed in *Balbir Singh's case* was justified, there is no need to deduct any amount from the said value, in as much as the exemplar relied upon by the Division Bench in *Balbir Singh's case,* were all sale deeds pertaining to the period 18.01.1982 to 22.07.1983 i.e., prior to the very first notification issued in respect of the present acquisition of all the four villages viz., 01.08.1983, which notification pertains to the lands belonging to the appellants which were situated in Sahibabad Daulatpur village.

15. Therefore, even while confirming the reasoning of the

Division Bench in relying upon *Balbir Singh's case* for enhancing the value, we only modify the rate fixed by the Division Bench to a sum of Rs.50,000/- per bigha instead of Rs.42,000/- per bigha. With the modification only in respect to the rate per bigha, in all other respects the Division Bench decision deserves to be confirmed. We however, do not find any merit in the claim of the appellants for claiming any further enhancement beyond the sum of Rs.50,000/- per bigha, in as much as there was absolutely no legally acceptable material in support of any such claim.

16. The appeals stand partly allowed by enhancing the compensation from Rs.42,000/- per bigha as determined by the Division Bench of the High Court to a sum of Rs.50,000/- per bigha, in respect of both categories of land. With the above modification in the rate of land value, the appeals stand partly allowed. Needless to add that appellants would be entitled for consequential benefits as per the law, if any.

K.K.T. Appeal Partly allowed.

ANIL KUMAR MAHAJAN

v.

UNION OF INDIA THROUGH SECRETARY, MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS, DEPARTMENT OF PERSONNEL AND TRAINING, NEW DELHI. AND OTHERS

(Civil Appeal No. 4944 of 2013)

JULY 2, 2013

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

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 – s.2(i) and s. 47 and its first and second proviso – Officer in Indian Administrative Service, declared insane in Departmental inquiry and compulsorily retired, after 30 years of service – Administrative Tribunal dismissed the application of the officer – High Court granted liberty to the counsel of the officer to withdraw the petition with liberty to file the same through next friend as the officer was insane – Held: High Court should not have allowed the counsel to withdraw the petition – The Court should have referred the matter to Medical Board, and if the officer was found to be insane, the Court should have decided the matter on merit by appointing an advocate as amicus curiae – Even if, it is presumed that the officer was insane, he could not have been removed from service in view of s. 47, as insanity is one of the disabilities u/s. 2(i) – The respondents are directed to treat the officer continued in service till the date of his superannuation – He is entitled to full salary minus subsistence allowance and also full retiral benefits counting total period of service – Service Law.

The appellant joint Indian Administrative Service in the year 1977. He was placed under suspension in the year 1988. He had to move administrative Tribunal for

promotion and posting. Departmental inquiry was initiated against him, alleging that he was mentally sick. Allegations of indiscipline, irresponsibility and misbehaviour were also made. After 11 years of inquiry, finding was given that the appellant was insane and order of compulsory retirement was passed. The order was challenged by the appellant before Administrative Tribunal. The Tribunal dismissed the application. The appellant then preferred writ petition. The High Court, on the basis of submission of the counsel for the appellant that he sought to withdraw the petition with liberty to file an appropriate petition through the next friend, as the respondents had given a finding that the appellant was insane, dismissed the petition as withdrawn.

Appellant challenged the order of the High Court on the ground that High Court did not decide the question as to whether the appellant was insane, and if he was insane, the Court could not have allowed the counsel to withdraw the petition on the basis of instructions from an insane person.

Allowing the appeal, the Court

HELD: 1. It is not the case of the respondents that the appellant was insane and in spite of that he was appointed as an IAS Officer in 1977. Therefore, even if it is presumed that the appellant became insane, as held by the Inquiry Officer, mental illness being one of the disabilities under Section 2(i) of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, u/s. 47 of the Act, it was not open to the respondents to dispense with, or reduce in rank of the appellant, who acquired a disability during his service. If the appellant, after acquiring disability was not suitable for the post he was holding, should have been shifted to some other post with the same pay scale and service benefits. Further, if it was n

the appellant against any post, the respondents ought to have kept the appellant on a supernumerary post until a suitable post was available or, until the appellant attained the age of superannuation whichever was earlier. [Para 18] [383-G-H; 384-A-B]

2. It was not open to the authorities to dispense with the service of the appellant or to compulsorily retire him from service. The High Court also failed to notice the relevant fact and without going into the merit, allowed the counsel to withdraw the writ petition merely on the basis of the finding of Inquiry Officer. The High Court ought to have referred the matter to a Medical Board to find out whether the appellant was insane and if so found, in that case instead of dismissing the case as withdrawn, the matter should have been decided on merit by appointing an Advocate as *amicus curiae.* [Para 19] [384-B-D]

3. The case is remitted to the respondents with a direction to treat the appellant continued in the service till the date of his superannuation. The appellant shall be paid full salary minus the subsistence allowance already received for the period from the date of initiation of departmental proceeding till the date of compulsory retirement. The appellant shall also be provided with full salary from the date of compulsory retirement till the date of superannuation in view of the first and second proviso to Section 47 of the Act. If the appellant has already been superannuated, he will also be entitled to full retiral benefits counting the total period in service. [Para 20] [384-G-H; 385-A-B]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4944 of 2013.

From the Judgment and Order dated 20.04.2010 of the High Court of Delhi at New Delhi in CW No. 2622 of 2010.

Manoj Swarup, Hiren Dasan, Dhirendra, Kr. Mishra, Sarla Chandra, for the Appellant.

Brijender Chahar, Sunita Sharma, Kiran Bhardwaj, B.V. Balaram Das, for the Respondents.

The Judgment of the Court was delivered by

SUDHANSU JYOTI MUKHOPADHAYA, J. 1. Leave granted.

2. This appeal has been preferred by the appellant against the judgment of the Division Bench of the High Court of Delhi dated 20th April, 2010 in W.P.(C)No.2622 of 2010. The relevant portion of the said judgment reads as follows:

"ORDER

20.04.2010

After some arguments, learned counsel for the petitioner seeks to withdraw the petition as a finding has been given by the respondents, that the petitioner is an insane person and the petition has been filed by the insane person himself and notthrough the next friend.

In the circumstances, learned counsel for the petitioner seeks to withdraw the petition with liberty to file an appropriate petition through the next friend.

Dismissed as withdrawn with the liberty prayed for.

All the pending applications are also disposed."

3. The aforesaid order has been challenged by the appellant on two counts mainly:

(i) The High Court failed to decide the question as to whether the appellant is an insane person; and

(ii) If so, i.e. if the appellant is insan[illegible]t

not to have allowed the lawyer who received instructions from an insane person to withdraw the case.

4. In this case, it is not necessary to discuss all the facts, except the relevant one, as mentioned hereunder:

The appellant joined the Indian Administrative Service (I.A.S.) on 12th July, 1977. He alleged that while he was posted as an Additional Secretary-cum-Editor of State Gazatteer, Bihar at Patna, he was placed under suspension from 17th February, 1988 to 20th February, 1988 and by another order dated 24th February, 1988 he was placed under suspension till further orders. Subsequently, the order of suspension was revoked on 24th February, 1990. He moved before the Central Administrative Tribunal, Patna Bench, in O.A.No.288/1991 seeking a direction to the respondents to promote him to the selection grade from the date he became entitled with all the consequential benefits. The appellant contended that he has a clean service record, except for the year 1985-86 for which an adverse ACR was communicated to him by letter dated 25th February, 1989, after a lapse of near about three years. The detailed facts related to adverse entry, etc. were brought on record and the Tribunal after hearing the parties, by the judgment dated 22nd June, 1992 held that it was not just and fair to act upon the adverse entry of 1985-86 against which the appellant's representation is still pending and directed the respondents to consider his case in the next DPC for promotion to the selection grade on the basis of existing material. The said application was accordingly disposed of by the Tribunal.

5. It appears that another application Registration O.A.No.238/1991 was preferred by the appellant before the Central Administrative Tribunal, Patna Bench, wherein on the revocation order of suspension he prayed for a direction to the respondents to give him a post befitting to his status with further prayer to direct the respondents to pay his salary for the period from February, 1990 onwards with interest and cost. The said application was disposed of on 10th October, 1992 with a

direction to the respondents to pay the appellant salary for the certain period with interest.

6. Subsequently, the appellant was placed under suspension on 20th May, 1993 and was subjected to departmental inquiry by the Member Board of Revenue and Inquiry Officer who framed charges by Memo No. 6056 dated 22nd June, 1993 against the appellant.

7. Appellant in his reply stated that a number of time he was placed under suspension and proceedings were initiated in that regard, and orders are made directing him to be present before a Medical Board, which not only tortured him but also his family, and also stated that he had developed incurable ulcer, hence he expressed his inability to be present before the inquiry.

8. It appears that one of the charges was that the appellant while posted as Officer on Special Duty, Bihar State Planning Council had directed Treasury Officers, Secretariat Treasury, Patna to reject the bills of one Shri P.K. Mishra, Development Commissioner which was an act beyond his jurisdiction. The second charge was that while submitting one of the Travelling Allowance Bills, the appellant requested the Secretary(Personnel) to countersign the bill. He alleged that his Controlling Officer, i.e., the Development Commissioner cannot countersign the bill as a case is being pursued against him under Mental Health Act, 1987. The third charge was that the appellant accused the Development Commissioner of losing his mental stability. Fourth charge was related to description of duties written by him as per the confidential report (1985-86) which shows that the *appellant has become a victim of imbalanced mental illness.* Fifth charge was that one Shri Bhaskar Banerjee, the then Land Reforms Commissioner has accused the appellant of being indisciplined, irresponsible, unstable and *mentally sick.*

9. The appellant filed a representa

2000 to the respondents seeking voluntary retirement. He remained under suspension for a long period. When the suspension was not revoked even after several years, the appellant preferred representation before the higher authorities which was rejected by the Ministry of Personnel, Public Grievances& Pension Department of Personnel & Training on 29th April, 2002. The representation of the appellant seeking voluntary retirement was also rejected on the ground that he had not qualified the minimum 20 years of service and thus as per the respondents, he was not eligible for voluntary retirement.

10. After about 11 years the Inquiry Officer submitted the report on 4th December, 2004. According to the appellant he was not granted any opportunity of being heard and the Inquiry Officer submitted an ex-parte report against him. The suspension order seems to have been revoked by the respondents with effect from 23rd October, 1998.

11. A writ petition was filed by the appellant before the High Court; wherein a counter-affidavit was filed and the respondents took a plea that despite the revocation of the suspension order of the appellant, he never joined the duties and remained absent despite repeated reminders made by the Department. In the writ petition preferred by the appellant, the High Court has recorded the submissions of the appellant that he would be satisfied if the respondents considered his request for voluntary retirement and release him from his service. A contempt petition was also filed by the appellant in 2006 on the ground of violation of the order dated 9th May, 2006 passed by the Delhi High Court. During the pendency of the writ petition and the contempt petition, the authorities the passed impugned order dated 15th October, 2007, whereby the appellant was compulsorily retired from service.

12. The appellant preferred an application being O.A.No.2784/2008 before the Central Administrative Tribunal, Principal Bench, New Delhi wherein he challenged the departmental proceedings. Before the Tribunal, learned

counsel for the appellant contended that though the Inquiry Officer had returned a finding in favour of the appellant, insofar as charge No.3 is concerned, but the disciplinary authority without recording a note of dissent held that the said charge as well stands proved. The Tribunal accepted that the disciplinary authority had not recorded any note of dissent and accepted the report of the Inquiry Officer. The tentative view of the disciplinary authority, even when charge No.3 stood not proved; was to punish the appellant with the compulsory retirement. But the Tribunal found that it was only U.P.S.C. which has returned a finding of guilt insofar as, charge No.3 was concerned, and the disciplinary authority has only accepted the said finding. Confronted with the aforesaid position, learned counsel for the appellant contended that the U.P.S.C. had no jurisdiction whatsoever to return a finding on charge No.3 by reversing the finding given by the Inquiry Officer, and that it had only an advisory role to play. It was further urged that the disciplinary authority was not bound to accept the advice of U.P.S.C. The Tribunal went into the aspects of the case but held that in the context of the facts and circumstances of the present case, there is no need to go into the same as *a positive finding has been given by the Inquiry Officer that the appellant was totally insane*. The disciplinary authority agreed to the same and despite the fact that charge No.3 was not proved, and while taking the same to have not been proved, it was the opinion of the disciplinary authority that the appellant would need to be compulsorily retired. Therefore, the Tribunal held that the opinion or advice of U.P.S.C. has made no difference whatsoever in the case. Insofar as the insanity of the appellant was concerned, it appears that the appellant was asked to appear before the duly constituted Medical Board on eight occasions and he refused to appear before the Medical Board. Instead, he challenged the order of the Inquiry Officer calling upon him to appear before the Medical Board.

The Tribunal, further, observed that *yet another reason to hold the appellant is insane, i.e., his n*

the duly constituted Medical Board, which would necessarily lead to an irresistible presumption that had the appellant appeared before the Medical Board the opinion of the Board would indeed have been that the appellant is insane. Having found no merit, the Tribunal dismissed the original application.

13. The appellant then preferred the writ petition being W.P.(C)No.2622/2010 challenging the finding of the Tribunal in the said case. The Division Bench passed the impugned order dated 20th April, 2010, as quoted in the preceding paragraph.

14. The SLP was preferred by the appellant in person. In view of the severe cardio respiratory problem of the appellant, subsequently he did not appear in person, he engaged the counsel.

15. On hearing the parties and perusing the records, we find that there was some problem going on between the appellant and the authorities of the State which resulted in creating numerous problems. Since 1988, the appellant was suspended and for promotion and posting he had to move before the Tribunal in the year 1990. The departmental inquiry was initiated, wherein the allegation was made that the appellant was mentally sick and then the allegations of indiscipline, irresponsible and misbehaviour were made. The inquiry was proceeded for about 11 years, when the finding was given that the appellant is insane and the order of compulsory retirement was passed on 15th October, 2007.

16. The Persons with disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as the 'Act, 1995') was enacted in the year 1995 with the following statement of objects and reasons:

> *(i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;*

> *(ii) to create barrier free environment for persons with disabilities;*
>
> *(iii) to remove any discriminaton against persons with disabilities in the sharing of development benefits, vis-à-vis non-disabled persons;*
>
> *(iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;*
>
> *(v) to lay down a strategy for comprehensive development of programmes and services and equalization of opportunities for persons with disabilities; and*
>
> *(vi) to make special provision of the intergration of persons with disabilities into the social mainstream."*

Section 2(i) defines disability:

> "Section 2(i) "disability" means-
>
> (i) blindness;
>
> (ii) low vision;
>
> (iii) leprosy-cured;
>
> (iv) hearing impairment;
>
> (v) loco motor disability;
>
> (vi) mental retardation;
>
> (vii) mental illness;"

17. There is a prohibition imposed under Section 47 to dispense with, or reduce in rank, an employee who acquires a disability during his service, which reads as follows:

"47 - Non-discrimination nt

employments. - *(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:*

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

18. The appellant was appointed in the service of respondents as an IAS officer and joined in the year 1977. He served for 30 years till the order of his compulsory retirement was issued on 15th October, 2007. It is not the case of the respondents that the appellant was insane and in spite of that he was appointed as an IAS Officer in 1977. Therefore, even it is presumed that the appellant became insane, as held by the Inquiry Officer, mentally illness being one of the disabilities under Section 2(i) of the Act, 1995, under Section 47 it was not open to the respondents to dispense with, or reduce in rank of the appellant, who acquired a disability during his service. If the appellant, after acquiring disability was not suitable for the post he was holding, should have been shifted to some other

post with the same pay scale and service benefits. Further, if it was not possible to adjust the appellant against any post, the respondents ought to have kept the appellant on a supernumerary post until a suitable post is available or, until the appellant attained the age of superannuation whichever was earlier.

19. In view of the aforesaid finding, we are of the view that it was not open to the authorities to dispense with the service of the appellant or to compulsory retire him from service. The High Court also failed to notice the relevant fact and without going into the merit allowed the counsel to withdraw the writ petition merely on the basis of the finding of Inquiry Officer. In fact the High Court ought to have referred the matter to a Medical Board to find out whether the appellant was insane and if so found, in that case instead of dismissing the case as withdrawn, the matter should have been decided on merit by appointing an Advocate as *amicus curiae.*

20. It is informed at the bar that in normal course the appellant would have superannuated from service on 31st July, 2012. In that view of the matter, now there is no question of reinstatement of the appellant though he may be entitled for consequential benefits including arrears of pay. Having regard to the facts and finding given above, we have no other option but to set aside the order of compulsory retirement of the appellant dated 15th October, 2007 passed by the respondents; the order dated 22nd December, 2008 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A.No.2784/2008 and the impugned order dated 20th April, 2010 passed by the High Court of Delhi in W.P.(C)No.2622/2010 and the case is remitted to the respondents with a direction to treat the appellant continued in the service till the date of his superannuation. The appellant shall be paid full salary minus the subsistence allowance already received for the period from the date of initiation of departmental proceeding on the ground

from mental illness till the date of compulsory retirement. The appellant shall also be provided with full salary from the date of compulsory retirement till the date of superannuation in view of the first and second proviso to Section 47 of the Act, 1995. If the appellant has already been superannuated, he will also be entitled to full retiral benefits counting the total period in service. The benefits shall be paid to the appellant within three months, else the respondents will be liable to pay interest at the rate of 6% per annum from the date the amount was due, till the actual payment.

21. The appeal is allowed with the aforesaid observations and directions but there shall be no order as to costs.

K.K.T. Appeal allowed.

M.P. STATE MINING CORPORATION LTD.

v.

SANJEEV BHASKAR & ORS.

(Civil Appeal No. 4950 of 2013)

JULY 2, 2013

[T.S. THAKUR AND SUDHANSU JYOTI MUKHOPADHAYA, JJ.]

Mines and Minerals:

Mining lease – Granted for a period of 20 years – But after a period of 14 years, State Government determined the lease – The determination challenged by lessee – During pendency of the petition, death of lessee – Legal heirs not substituted – Subsequently High Court set aside the order of the Government – After 14 years from the death and 10 years from the order of High Court, legal heirs of the lessee filed application for substitution and sought permission for mining operation for the remaining period – State Government denied the same and granted lease in favour of Mining Corporation – High Court held that the legal heirs of lessee were entitled to extension of lease and grant of lease in favour of Mining Corporation was wrong – Held: Legal heirs of the lessee were neither entitled to continue the original lease nor entitled for renewal thereof – On death of the original lessee his petition before High Court, abated in absence of any substitution petition – Hence, the legal heirs of the lessee cannot derive advantage of the order of High Court whereby the order determining lease of the original lessee was set aside, as the order was inadvertently passed in absence of knowledge of the lessee – Moreover, at the time, when the lessee had died, there was no provision for orders to continue the application for a mining lease – Mines and Minerals (Regulation and Development) Act, 1957 – Mineral Concession Rules, 1960 – r.25A.

The predecesssor of the first respondent was granted mining lease by the State Government for a period of 20 years. After about a period of 14 years from the date of grant of lease, State Government determined the lease on the ground of contravention of Mineral Concession Rules, 1960. The original lessee challenged determination by filing petition before High Court of Madhya Pradesh. During pendency of the petition, the petitioner-original lessee died. No application for substitution was filed. Subsequently, the High Court set aside the order whereby the lease was determined by the State Government and further directed the State Government to decide afresh the question of determination of lease in accordance with law. After the order, the lease also expired. After about 10 years from the date of the judgment of High Court, legal heir of the original lessee to respondent No.1 filed an application before State Government for bringing him on record and to allow him to do mining for the rest of the period of 6 years, 6 months and 29 days because of illegal determination of the lease. State Government then, declined to extend the mining lease. Respondent No.1 challenged the order of State Government. During pendency thereof, State Government granted lease for five hectares out of the mining area in favour of the appellant-mining Corporation. Central Government directed not to grant mining lease to the third party. But when Mining Corporation filed writ petition, High Court of Madhya Pradesh by interim order directed the State Government to execute a lease deed in favour of Mining Corporation. Respondent No.1 challenged the grant of lease in favour of Mining Corporation. High Court of Delhi held that the respondent was entitled to the benefit of remaining expired period of the original lease, subject to his complying with all the requirements of the Mines and Minerals (Regulation and Development) Act, 1957 and Mineral Concession Rules, 1960; and that the lease could

not have been granted in favour of the Mining Corporation. The order of the Single Judge of High Court was upheld by the Division Bench of High Court. Hence the present appeals by the State and Mining Corporation.

Allowing the appeals, the Court

HELD: 1.1. Much before the decision of the Madhya Pradesh High Court, the original lessee died. The Miscellaneous Petition pending before the High Court abated in absence of any petition for substitution filed by the legal heirs. The legal heirs including the first respondent cannot derive the advantage of the order which was inadvertently passed by the High Court in absence of knowledge of death of the original petitioner/ lessee. [Paras 14 and 20] [395-E-F; 398-D-E]

1.2. Further, in the year 1982 when the original lessee died, there was no provision for orders to continue the application for a mining lease. Legal heirs/ representatives of the original lessee, if they wanted to continue the business or mining activity of the deceased and also if they had required qualification, could at best file an application for grant of fresh mining lease. Admittedly, after the death of the lessee legal heirs including the first respondent never applied for fresh grant of lease. It has also not been made clear that whether any one of them have required qualification for grant of mining lease. Therefore, after the death of the original lessee, all rights came to an end and the first respondent or any other legal heir(s) were neither entitled to continue with the lease nor entitled for renewal of lease. After a period of more than 9 years from the death of original lessee, Rule 25A was inserted in the Rules 1960. The provision is not applicable in the present case as it was not a case of death of the applicant during the pendency of grant or renewal of mining lease. Further Section 25A having inserted nine ye[illegible]f

the assessee, the first respondent and the other legal heirs cannot derive advantage of the same. [Paras 15, 16, 18 and 19] [395-E-H; 396-A-B; 397-F; 398-B-C]

1.3. The first respondent had not explained the delay of more than 14 years after the death of the original lessee and delay of 10 years after the order passed by the Madhya Pradesh High Court as to why they did not choose to move before any Court of Law. In absence of any such valid explanation, the High Court ought to have dismissed the case on the ground of delay and laches. [Para 21] [398-F-G]

G. Buchivenkata Rao vs. Union of India and Ors. **(1972) 1 SCC 734: 1972(3) SCR 665 – relied on.**

2. The third party rights were created in favour of the Mining Corporation pursuant to the order of Madhya Pradesh High Court. The order passed by the Madhya Pradesh High Court was not challenged in any appeal. In this back-ground, it was not desirable for the Delhi High Court to entertain the writ petition. Even though the revisional order was passed by the Central Government, the Delhi High Court ought to have asked the first respondent to move before the Madhya Pradesh High Court for appropriate relief. [Para 22] [398-H; 399-A-C]

Case Law Reference:

1972 (3) SCR 665 relied on Para 17

CIVIL APPELLATE JURISDICTION: Civil Appeal No(s). 4950 of 2013.

From the Judgment and Order dated 20.04.2011 of the High Court of Delhi at New Delhi in LPA No. 742 of 2010.

WITH

C.A. No. 4951 of 2013.

Dushyant A. Dave, Rakesh Dwivedi, Viplav Sharma, Nilanjana Banerjee, Santosh Kumar Tripathi, B.S. Banthia, Kirti Renu Mishra, Apurva Upmanyu, Sansriti Pathak, Vishnu Sharma, Arjun Garg, Mishra Saurabh for the appearing parties.

The Judgment of the Court was delivered by:

SUDHANSU JYOTI MUKHOPADHAYA, J. Leave granted. These two appeals are preferred by the appellants M.P. State Mining Corporation Ltd. (hereinafter referred to as the "Mining Corporation") and the State of Madhya Pradesh (hereinafter referred to as the "State") against the common judgment dated 20th April, 2011 passed by the Division Bench of Delhi High Court in LPA No. 742 of 2010 with LPA No. 284 of 2011. By its impugned judgment, the Division Bench dismissed the appeals preferred by the Mining Corporation and the State with costs quantified at Rs.25,000/- for each appeal and affirmed the judgment dated 21st September, 2010 passed by the learned Single Judge of Delhi High Court.

2. The factual matrix of the case is as follows:-

The Government of Madhya Pradesh on 3rd November, 1966 granted a mining lease over an area of 28.00 acres in Village Kari, District Tikamgarh, (M.P.) to one Rajendra Nath Bhaskar for extraction of Pyrophyllite and Diaspore minerals under the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as "the Act, 1957") read with Mineral Concession Rules, 1960 (hereinafter referred to as the "Rules, 1960") for a period of twenty years commencing from 3rd November, 1966 to 2nd November, 1986. After about 13 years, a notice dated 18th September, 1979 was issued to said Rajendra Nath Bhaskar by the Collector, Tikamgarh to show cause as to why his mining lease should not be revoked on the ground of certain breaches committed by him which were discovered during the inspection made by the Mining Inspector on 28th May, 1979. Rajendra Nath Bhaskar submitted his reply on 3rd October, 1979 and denied the alleged breaches. Thereafter, by an order dated 5th April, 1980, determination of the lease was done by the State Gove e

with the then Rule 27(5) of the Rules, 1960, on the ground of contravention of Clause(f) and (g) of sub-rule (1) of Rule 27 of the Rules, 1960. A Revision Application was preferred by Rajendra Nath Bhaskar to the Central Government under Rule 54, read with Section 30 of the Act, 1957 which was ultimately dismissed by an order dated 6th April, 1981.

3. Being dissatisfied, Rajendra Nath Bhaskar challenged the order of determination and the order passed in revision application by filing Misc. Petition No. 805 of 1981 before the Madhya Pradesh High Court. The Division Bench of Madhya Pradesh High Court by its judgment dated 16th July, 1986 held that the impugned orders did not disclose the aspects which were taken into account and accordingly set aside the orders with direction to the State Government to decide afresh the question of determination of lease in accordance with law.

4. In the meantime and before the decision of the Madhya Pradesh High Court, the original lessee, Rajendra Nath Bhaskar died on 7th September, 1982, but no application for substitution was filed. The period of lease also expired on 2nd November, 1986. Subsequently, the legal heirs, Sanjeev Bhaskar and others–respondents herein, filed an application on 2nd September, 1986 before the State Government praying therein for bringing them on record as the legal heirs and to permit them to carry out the mining operation for the remaining period, which came to 6 years, 6 months and 29 days as the lease could not be operated for the aforesaid remaining period because of illegal determination of lease, which had been quashed vide order dated 16th July, 1986 passed by the Madhya Pradesh High Court. No action was taken thereon for about four years. The Collector, Tikamgarh issued a demand notice on 8th June, 1990 determining the dead rent for the period before expiry of the lease deed in view of audit inspection note. Subsequently, two other demand notices were issued on 14th August, 1990 and 8th December, 1993 which according to the State, were inadvertently sent. The stand of

the State Government was that as per term of the lease, the period of twenty years expired on 2nd November, 1986 due to efflux of time. Subsequently, legal heirs of the original lessee made no application in the prescribed form and in the manner for grant of mining lease either by way of a fresh grant or by way of renewal. As the lessee was not a holder of the lease the dead rent for the subsequent period could not have been demanded and therefore, notices dated 14th August, 1990 and 8th December, 1993 were inadvertently sent.

5. The first respondent, one of the legal heirs, made representations, inter alia, on 28th August, 1996, 14th April, 1997 and 23rd September, 1997 to allow him to do mining for rest of the period of 6 years, 6 months and 29 days but it has not been made clear as to why no representation was made by legal heirs for more than 10 years after the order of the Madhya Pradesh High Court passed on 16th July, 1986.

6. Receiving no reply, the first respondent filed a contempt petition No. 186 of 1998 before the Madhya Pradesh High Court which was dismissed on the ground of being time barred. However, an observation was made by Madhya Pradesh High Court that it could hope and trust that the Government would implement the order passed in the year 1986, if they had not implemented the same so far.

7. For the first time, the State Government responded on 21st April, 1999 declining to extend the mining lease. It was communicated that in view of the order passed by the High Court on 16th July, 1986, the mining lease was automatically restored for the remaining period upto 2nd November, 1986. In absence of any direction given by the High Court for renewal of lease and the only direction being given for the State Government to decide afresh the question of determination of lease of original lessee, no renewal could be made.

8. The first respondent on 7th July, 1999, filed a Revision Application before the Central Governm 0

of the Act, 1957 read with Rule 55 of the Rules, 1960. During the pendency of the said revision application, the State Government granted a lease for five hectares out of the mining area in question to the M.P. State Mining Corporation. The Central Government vide order dated 12th August, 1999, granted an interim stay directed the State Government not to grant the mining lease to the third party. The Mining Corporation filed a Writ Petition No. 3914/1999 before the Madhya Pradesh High Court on 24th August, 1999 seeking a writ of mandamus directing the respondents to execute a lease deed for a period of 20 years commencing from the date of execution in terms of the grant made on 30th July, 1999. But the first respondent was not made a party therein.

9. In the said case on 15th September, 1999 , interim mandamus was issued on the State to execute the mining lease in favour of the Mining Corporation which was executed on 25th September, 1999. According to appellants, the writ petition filed by the Mining Corporation became infructuous.

10. The first respondent filed another Revision Application on 15th December, 1999, inter alia, praying for quashing of the grant made on 30th July, 1999 in favour of the Mining Corporation. The first revision application was dismissed on 7th November, 2001 by the Mines Tribunal, which was challenged by the first respondent in Writ Petition (Civil) No. 8033/2002 but this time before the High Court of Delhi. The Second Revision application was dismissed on 31st December, 2002, inter alia, on the ground that the lease was executed in favour of the Mining Corporation by the State Government in compliance of the order dated 15th September, 1999 of interim mandamus by the Madhya Pradesh High Court. The said order was assailed by first respondent by filing a Writ Petition(Civil) No. 5809/04 before the High Court of Delhi. Both the aforesaid Writ Petitions were heard by the learned Single Judge of High Court of Delhi who by common impugned judgment dated 21st September, 2010 allowed both the writ petitions filed by first

respondent holding that the grant could not have been made in favour of the Mining Corporation and that the first respondent was entitled to the benefit of remaining expired period of the original lease to begin from the date the decision was taken by the State Government, but subject to the first respondent complying with all the requirements of the Act and Rules and any other applicable law and paying the dead rent and other charges as required by law. The common order passed in those two writ petitions was upheld by the Division Bench of Delhi High Court by its common Judgment dated 20th April, 2011.

11. Learned counsel for the State and the Mining Corporation assailed the impugned judgment on the following grounds:

(a) Original Lessee Rajendra Nath Bhaskar having died on 7th September, 1982, the lease comes to an end. As per Rules, 1960 as was prevailing in June, 1982, if lessee dies during the continuation of the lease, a fresh application has to be presented by his heirs or legal representatives if they are continuing the business of the deceased and have the required qualification to obtain a grant on account of special reason for grant. In absence of any such application filed by legal heirs for grant of lease in their favour, they are not entitled for renewal of lease or to continue for the remaining period.

(b) The High Court of Delhi had no jurisdiction to interfere with the impugned order of grant passed in favour of the Mining Corporation, being granted by the State Government pursuant to the direction of the Madhya Pradesh High Court dated 15th September, 1999.

12. Per Contra, according to first respondent pursuant to the original order passed by the Madhya Pradesh High Court dated 16th July, 1986 it was the duty on the part of the State Government to re-examine and deci[illegible]h

regarding the question of determination of the lease. Admittedly, the State Government did not proceed to decide the matter afresh. Therefore, the first respondent was entitled for mining for the remaining period of six years, six months and twenty nine days. Learned counsel for the respondents contended that first respondent, Sanjeev Bhaskar, son of Rajendra Nath Bhaskar, original lessee moved an application on 2nd September, 1986 for mutating his name saying that in view of family settlement his name be mutated. He also requested for grant of benefit for the period during which mining was unlawfully interrupted. In this background, the High Court rightly interfered with the order as well as the order issuing grant in favour of the Mining Corporation which was passed during the pendency of the Revision Application.

13. Further, according to learned Counsel for the first respondent, part of the cause of action having taken place at Delhi, the orders in the Revision Applications had been passed by the Central Government, the Writ Petitions were maintainable before the Delhi High Court.

14. It is not disputed that much before the decision of the Madhya Pradesh High Court, the original lessee, Rajendra Nath Bhaskar died on 7th September, 1982. The Miscellaneous Petition No. 805/1981 pending before the Madhya Pradesh High Court abated in absence of any petition for substitution filed by the legal heirs.

15. Further, in the year 1982 when the original lessee died, there was no provision for orders to continue the application for a mining lease. Legal heirs/ representatives of the original lessee, if they wanted to continue the business or mining activity of the deceased and also if they had required qualification, could at best file an application for grant of fresh mining lease. Admittedly, after the death of the lessee (7th September, 1982), legal heirs including the first respondent never applied for fresh grant of lease. It has also not been made clear that

whether any one of them have required qualification for grant of mining lease.

16. In view of the aforesaid fact, we hold that after the death of the original lessee, Rajendra Nath Bhaskar, all rights come to an end and the first respondent or any other legal heir(s) were neither entitled to continue with the lease nor entitled for renewal of lease.

17. Similar issue fell for consideration before this Court in *G. Buchivenkata Rao v. Union of India & Ors., (1972) 1 SCC 734.* In the said case, this Court held as follows:

> **"14.** It has to be remembered that, in order to enable a legal representative to continue a legal proceeding, the right to sue or to pursue a remedy must survive the death of his predecessor. In the instant case, we have set out provision showing that the rights which an applicant may have had for the grant of a mining lease, on the strength of an alleged superior claim, cannot be separated from his personal qualifications. No provision has been pointed out to us in the rules for impleading an heir who could continue the application for a mining lease. The scheme under the rules seems to be that, if an applicant dies, a fresh application has to be presented by his heirs or legal representatives if they themselves desire to apply for the grant of a lease. It may be that the heirs and legal representatives, if they are continuing the business or industry of the deceased and have the required qualifications, obtain priority over an earlier applicant on account of special reasons for this preference. But, in each case, they have to apply afresh and set out their own qualifications. It has not been shown to us that any legal2919-32582919-3258 representatives have applied afresh. The legal representatives only claim to be entitled to succeed the deceased Buchivenkata Rao under a will. The assumption underlying the appl[illegible]er right the deceased may have h[illegible]e

survived and vested in the heirs after his death, we are unable to accept the correctness of this assumption.

15. In support of the contention on behalf of the heirs of Buchivenkata Rao, our attention was drawn to the case of Dhani Devi v. Sant Bihari7 which related to a right to obtain transfer of a permit for a Motor Vehicle under Section 61, sub-section (2) of the Motor Vehicles Act. It was held there that, in the case of the death of an applicant for the grant of a permit in respect of his motor vehicle, the Regional Transport Authority had the power to substitute the person succeeding to the possession of the vehicle in place of the deceased applicant. It was routed out there that the right to the permit was related to the possession of the vehicle. Moreover, there was a rule enabling the Transport Authorities to substitute the heir or legal representatives of the deceased. No such rule applicable to the case of the heirs of the deceased Buchivenkata Rao has been pointed out to us. Therefore, we are unable to hold that the heirs, who have been heard, had any right to continue the appeal before us. This feature of the case is decisive not only on the right to be heard on the fresh ground but also on the right to advance any argument in support of the appeal of the deceased."

18. After a period of more than 9 years from the death of original lessee, Rule 25A was inserted in the Rules 1960 by GSR 129(E), dated 20th February, 1991, which reads as follows:

"25A. Status of the grant on the death of applicant for mining lease.-(*1) where an applicant for grant or renewal of mining lease dies before the order granting him a mining lease or its renewal is passed, the application for the grant or renewal of a mining lease shall be deemed to have been made by his legal representative.*

(1.2)In the case of an applicant in respect of whom an order granting or renewing a mining lease is passed, but who dies before the deed referred to in sub-rule (1) of rule 31 is executed, the order shall be deemed to have been passed in the name of the legal representative of the deceased."

19. The aforesaid substituted provision of Section 25A is not applicable in the present case as it was not a case of death of the applicant during the pendency of grant or renewal of mining lease. Further Section 25A having inserted nine years after the death of the assessee, the first respondent and the other legal heirs cannot derive advantage of the same.

20. The Original Lessee died on 7th September, 1982 during the pendency of Miscellaneous Petition No. 805/81 and much before the final order dated 16th July, 1986 passed in the said case by the Madhya Pradesh High Court. In the absence of petition for substitution of legal heirs, the said case got abated. The legal heirs including the first respondent cannot derive the advantage of the order dated 16th July, 1986, which was inadvertently passed by the Madhya Pradesh High Court in absence of knowledge of death of the original petitioner/ lessee.

21. From the impugned judgment, it is clear that after 1986, the first respondent made representations on 28th August, 1996, 14th April, 1997 and 23rd November, 1997. In 1998, a Contempt Application No. 186/98 was filed by the first respondent which was dismissed for being barred by time. The first respondent had not explained the delay of more than 14 years after the death of the original lessee and delay of 10 years after the order dated 16th July, 1986 passed by the Madhya Pradesh High Court as to why they did not choose to move before any Court of Law. In absence of any such valid explanation, we are of the view that the High Court ought to have dismissed the case on the ground of delay and laches.

22. Admittedly, the third party righ e

meantime in favour of the Mining Corporation pursuant to the order of Madhya Pradesh High Court dated 15th September, 1999. The order passed by the Madhya Pradesh High Court was not challenged in any appeal. The Delhi High Court also failed to notice the aforesaid fact and failed to decide the jurisdiction of the High Court to entertain the appeal against the order passed in favour of the Mining Corporation which was passed pursuant to the direction of the Madhya Pradesh High Court. In this back-ground, it was not desirable for the Delhi High Court to entertain the writ petition. Even though the revisional order was passed by the Central Government, the Delhi High Court ought to have asked the first respondent to move before the Madhya Pradesh High Court for appropriate relief.

23. In view of our findings given in the preceding paragraph, the order dated 21st September, 2010 passed by the Single Judge of the High Court of Delhi and the impugned order dated 20th April, 2011 passed by the Division Bench of the Delhi High Court cannot be upheld. They are accordingly set aside. Both the appeals are allowed but there shall be no order as to costs.

K.K.T. Appeal allowed.

GANGA SINGH

v.

STATE OF MADHYA PRADESH

(Criminal Appeal No. 1118 of 2004)

JULY 4, 2013

[A.K. PATNAIK AND GYAN SUDHA MISRA, JJ.]

Penal Code, 1860 – s. 376 – Rape – Prosecution for – Acquittal of accused by trial court on the ground that sexual intercourse was with the consent of the prosecutrix – Convicted by High Court – Held: Evidence of the prosecutrix is reliable – The same is corroborated by evidence of PW2, the FIR and the FSL report – Prosecution case is proved beyond reasonable doubt – Accused is liable to be convicted – Evidence Act, 1872 – s.157.

Evidence – Evidence of prosecutrix – Nature and evidentiary value of – Held: Prosecutrix is a competent witness u/s.118 of Evidence Act – Prosecutrix is a victim and not an accomplice – Therefore her evidence should receive the same weight as that of an injured witness – It does not require corroboration as in the case of evidence of an accomplice – Evidence Act, 1872 – s.118.

Criminal Trial – Defective investigation, unless casts a reasonable doubt on prosecution case, cannot be a ground to acquit the accused.

Appellant-accused was prosecuted for offence of rape. The prosecution case was that the accused committed rape on PW5-prosecutrix. Prosecutrix, immediately after returning home, narrated the incident to PW2-her mother-in-law. One day after the incident, when her husband returned home, she lodged FIR. Since the prosecutrix was a married lady, medical report did not

give any definite opinion as to whether she suffered sexual intercourse. But the FSL report, confirmed spots of semen and spermatozoa on the petticoat of the prosecutrix. Trial court acquitted the accused u/s.376 IPC on the ground that sexual intercourse was with the consent of the prosecutrix. High Court convicted the accused. Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1. The prosecutrix is a victim of, and not an accomplice in, a sex offence and there is no provision in the Evidence Act requiring corroboration in material particulars of the evidence of the prosecutrix as is in the case of evidence of accomplice. The prosecutrix is thus a competent witness under Section 118 of the Evidence Act and her evidence must receive the same weight as is attached to an injured witness in cases of physical violence. [Para 10] [409-D-F]

*State of Maharashtra vs. Chandraprakash Kewalchand Jain (***1990) 1 SCC 550: 1990 (1) SCR 115 – relied on.**

2. PW-5 has categorically stated that the appellant fell her down, covered her mouth with one hand and restricted her hands with other hand and lifted her petticoat and committed rape on her. It is true that on her medical examination the next day, PW-9 did not find any injury on the person of PW-5, but PW-5 has explained that she fell on her back in the agricultural field which had a smooth surface and there were wheat and mustard crops in the field and this could be reason for her not suffering injury. [Para 10] [409-F-G]

3. In the absence of any question with regard to the seizure of the blouse, dhoti and broken bangles in presence of PW-5, omission of this fact from her evidence is no ground to doubt the veracity of her evidence. If the

appellant's case was that PW-5 cannot be believed because she made this significant omission in her evidence, a question in this regard should have been put to her during her cross-examination. Section 146 of the Evidence Act also provides that when a witness is cross-examined, he may be asked any question which tend to test his veracity. Yet no question was put to PW-5 in cross-examination on the articles seized in her presence. [Para 11] [410-B-C, F]

Browne vs. Dunn **(1894) 6 R 67 – referred to.**

4. The evidence of PW-5, in the present case, is also corroborated by other evidence. Section 157 of the Evidence Act provides that in order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact may be proved. The evidence of PW-5 is corroborated by the evidence of her mother-in-law (PW-2) before whom she stated about the commission of the rape by the appellant soon after the incident the very same evening. The evidence of PW-5 is also corroborated by the FIR before the Investigating Officer, PW-10, before whom she lodged the complaint one day after the incident. [Para 12] [410-G-H; 411-A-B]

5. Though the medical evidence of PW-9 and the medical examination report do not give any definite opinion on whether or not PW-5 suffered any sexual intercourse, But the FSL report confirms that PW-5 had been subjected to sexual intercourse some time before she lodged the complaint in the police station. Hence, the forensic evidence is not entirely in conflict with the evidence of PW-5 so as to belie her story that she was raped by the appellant. [Para 13] [411-C, D-E]

6. As the appellant had not ta of

consent of PW-5, the trial court was not correct in recording the finding that there was consent of PW-5 to the sexual intercourse committed by the appellant. The trial court should have instead considered the defence of the appellant that he had been falsely implicated because of a quarrel between him and the husband of PW-5. The appellant has not produced any evidence in support of this defence. As PW-2 has denied the suggestion in this regard., the defence of the appellant that he was falsely implicated on account of a quarrel between the appellant and the husband of PW-5, cannot be accepted. [Para 14] [411-G-H; 412-A-B]

7. It is not correct to say that the investigation by the police was shoddy and hasty and there were defects in the investigation and therefore benefit of doubt should be given to the appellant and he should be acquitted of the charge of rape. The prosecution is required to establish the guilt of the accused beyond reasonable doubt by adducing evidence. Hence, if the prosecution in a given case adduces evidence to establish the guilt of the accused beyond reasonable doubt, the court cannot acquit the accused on the ground that there are some defects in the investigation, but if the defects in the investigation are such as to cast a reasonable doubt in the prosecution case, then the accused is entitled to acquittal because of such doubt. In the present case, the evidence of PW-5 as corroborated by the evidence of PW-2 and the FIR establish beyond reasonable doubt that the appellant has committed rape on PW-5 and thus the appellant is not entitled to acquittal. [Para 15] [412-C-F]

Narender Kumar vs. State (NCT of Delhi) **(2012) 7 SCC 171: 2012 (6) SCR 148;** *Rai Sandeep alias Deepu vs. State (NCT of Delhi)* **(2012) 8 SCC 21: 2012 (6) SCR 1153;** *Karnel Singh vs. State of M.P.* **(1995) 5 SCC 518: 1995 (2) Suppl. SCR 629;** *Wahid Khan vs. State of Madhya Pradesh* **(2010) 2 SCC 9: 2009 (15) SCR 1207;** *State of Uttar Pradesh vs. Chhotey Lal* **(2011) 2 SCC 550: 2011 (1) SCR 406** – ***referred to.***

Case Law Reference:

2012 (6) SCR 148	**referred to**	**Para 5**
2012 (6) SCR 1153	**referred to**	**Para 7**
1995 (2) Suppl. SCR 69	**referred to**	**Para 7**
2009 (15) SCR 1207	**referred to**	**Para 8**
2011 (1) SCR 406	**referred to**	**Para 10**
1990 (1) SCR 115	**relied on**	**Para 10**
(1894) 6 R 67	**referred to**	**Para 11**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1118 of 2004.

From the judgment and Order dated 26.06.2003 of the High Court of Madhya Pradesh, Jabalpur Bench, Gwalior in Criminal Appeal No. 92 of 1990.

Ravi Prakash Mehrotra (A.C.), Vibhu Tiwari, for the Appellant.

Siddhartha Dave, Jemtiben Ao, Vibha Datta Makhija, for the Respondent.

The Judgment of the Court was delivered by

A. K. PATNAIK, J. This is an appeal by way of special leave under Article 136 of the Constitution against the judgment dated 26.06.2003 of the Madhya Pradesh High Court, Gwalior Bench, in Criminal Appeal No.92 of 1990.

2. The facts very briefly are that the informant lodged an oral complaint on 22.12.1987 at 6.00 P.M. [illegible]e

Station, alleging that on 21.12.1987 at 6.30 P.M. in the evening when she had gone to the field of Tilak Singh at Naya Kunwa to answer her natural call and was coming out from the field, the appellant came and caught hold of her and fell her down, gagged her mouth, lifted her petticoat and committed rape. She returned home and told her mother-in-law about the incident and on 22.12.1987 when her husband, who works on a truck, returned home, she has come to lodge the report in the police station. The police registered the complaint as an FIR, got the informant medically examined at 7.15 P.M. on the same day. Dr. (Mrs.) Kusumlata of Government Hospital, Seondha, opined that as the informant is a married lady and was habitual to intercourse, no definite opinion could be given on whether she was subjected to any sexual intercourse. The petticoat and vaginal smear slides (which were prepared and sealed) were sent for further examination. The police then undertook the investigation, went to the place of occurrence on 23.12.1987 and seized a blouse and a dhoti and got prepared the map of the site of occurrence and after recording statements of witnesses and completing the investigation, submitted a charge-sheet against the appellant under Section 376 of Indian Penal Code (for short 'IPC').

3. The appellant denied the charge and Session Trial No.9/1988 was conducted by the Sessions Judge, Datia. At the trial, the informant was examined as PW-5, who stood by her story in her complaint, the seizure witness was examined as PW-1, the mother-in-law was examined as PW-2, Dr. Kusumlata was examined as PW-9 and the Investigating Officer was examined as PW-10. The Sessions Judge, after considering the evidence on record held that as PW-5 did not obstruct or resist the appellant from doing the indecent act and no injury was caused on her person, PW-5 appears to have given her consent for the sexual intercourse and acquitted the appellant of the offence under Section 376, IPC, by judgment dated 30.11.1988.

4. The judgment of the Sessions Judge was challenged

before the High Court by the State of Madhya Pradesh in Criminal Appeal No.92 of 1990. The High Court held in the impugned judgment that PW-5 has categorically deposed that the appellant had committed rape against her consent and she had also deposed that she had informed her mother-in-law after returning home and this fact has been corroborated by her mother-in-law (PW-2) and, therefore, there was no reason to disbelieve the testimony of PW-5. The High Court further held that merely because there were some discrepancies in the deposition of PW-5, her testimony cannot be treated as doubtful. The High Court concluded that the finding of acquittal recorded by the trial court was totally perverse and contrary to the evidence on record and set aside the judgment of acquittal and convicted the appellant under Section 376, IPC, and sentenced him to seven years rigorous imprisonment, which was the minimum sentence for the offence of rape under Section 376, IPC.

5. At the hearing, Mr. Ravi Prakash Mehrotra, learned Amicus Curiae appearing for the appellant, submitted that this Court has held in *Narender Kumar v. State (NCT of Delhi)* [(2012) 7 SCC 171] that the prosecution has to prove its own case beyond reasonable doubt and cannot take support from the weakness of the case of defence and hence there must be proper legal evidence to record the conviction of the accused. He also cited *Rai Sandeep alias Deepu v. State (NCT of Delhi)* [(2012) 8 SCC 21] in which the qualities of a 'sterling witness' have been described and it has been held that the evidence of only a 'sterling witness' can be accepted by the Court without any corroboration. He submitted that in this case this Court further held that the version of such a 'sterling witness' on the core spectrum of the crime should remain intact in order to enable the Court trying the offence to rely on such core version.

6. Mr. Mehrotra submitted that PW-5 was not such a 'sterling witness' and her version that th

rape on her cannot be believed. He submitted that PW-5 has falsely implicated the appellant in the offence of rape on account of enmity between the appellant and the husband of PW-5. He contended that the Doctor (PW-9) in her evidence as well as the medical examination report (Ext.P-8) are clear that there were no external injuries on the person of PW-5. He submitted that PW-1, the seizure witness, has clearly proved the seizure of bangles, dhoti and a blouse from the field of Tilak Singh where the occurrence was alleged to have been taken place and these articles were seized in presence of PW-5 and yet PW-5 has omitted to mention about the seizure of these articles from the place of occurrence in her evidence. He finally submitted that the FIR (Ext.P-9) was scribed by V.S. Rathod of the Police Chowki and not by PW-10, the Investigating Officer. He argued that in fact PW-10 went on leave from 23.12.1987 and made a shoddy and defective investigation and hastily submitted a charge-sheet against the appellant. He submitted that there was, therefore, reasonable doubt in the prosecution case and the appellant was entitled to be acquitted because of such doubt.

7. Mr. Siddhartha Dave, learned counsel appearing for the State of Madhya Pradesh, submitted that the testimony of PW-5 that the appellant forcibly committed rape on her by felling her on the ground is corroborated by PW-2 before whom she made a statement soon after the incident as well as by the FIR (Ext. P-9) lodged by her to PW-10 one day after the incident. This is, therefore, not a case where the finding of guilt against the appellant recorded by the High Court is on the sole testimony of PW-5 as argued by Mr. Mehrotra. He cited *Karnel Singh v. State of M.P.* [(1995) 5 SCC 518] for the proposition that the prosecutrix of a sex offence cannot be put on par with an accomplice whose evidence needs to be corroborated in material particulars. He submitted that the nature of evidence of the prosecutrix is such that no corroboration is necessary and if the testimony of the prosecutrix is trustworthy and totality of the circumstances appearing on the record of the case disclose

that the prosecutrix does not have a strong motive to falsely implicate the person charged, the Court should ordinarily have no hesitation in accepting her evidence. He submitted that applying the aforesaid test to the evidence of PW-5 and considering all other circumstances in this case, the High Court was right in recording the conviction against the appellant.

8. In reply to the submission of Mr. Mehrotra that the medical evidence of PW-9 as well as the medical examination report (Ext.P-8) did not disclose any injuries on the person of PW-5, Mr. Dave cited the decision of this Court in *Wahid Khan v. State of Madhya Pradesh* [(2010) 2 SCC 9] in which even though there was no medical evidence to corroborate the testimony of the prosecutrix, this Court held that such corroboration was not necessary where the evidence of the prosecutrix was otherwise consistent and stood corroborated by other circumstances and the FIR. In reply to the contention of Mr. Mehrotra that the appellant has been falsely implicated on account of enmity between the husband of PW-5 and the appellant, he submitted that PW-2 has very fairly stated in her evidence that there was enmity between the two and yet has stated that the complaint against the appellant has not been falsely made. He submitted that a very strong circumstance against the appellant is that after the incident on 21.12.1987 the appellant absconded and he was arrested by the police after ten days on 31.12.1987.

9. Mr. Dave submitted that the trial court has not appreciated the meaning of the word 'consent' used in the definition of 'rape' in Section 375, IPC. He cited *State of Uttar Pradesh v. Chhotey Lal* [(2011) 2 SCC 550] for the proposition that consent for the purpose of Section 375, IPC, requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act as also after full exercise of the choice between resistance and assent. He submitted that the evidence of PW-5 clearly establishes that there was no [illegible]n

in the sexual intercourse by PW-5, and on the contrary, PW-5 could not physically resist the sexual intercourse forced on her by the appellant. He submitted that the High Court therefore rightly held the appellant guilty of the offence of rape and the finding of guilt recorded by the High Court against the appellant should not be disturbed by this Court in this appeal.

Findings of the Court

10. Mr. Mehrotra is right in his submission that burden is on the prosecution to prove beyond reasonable doubt that the appellant is guilty of the offence under Section 376, IPC and this burden has to be discharged by adducing reliable evidence in proof of the guilt of the appellant. In the present case, the prosecution seeks to establish the guilt of the appellant through the evidence of PW-5, the prosecutrix. Law is well-settled that the prosecutrix is a victim of, and not an accomplice in, a sex offence and there is no provision in the Indian Evidence Act requiring corroboration in material particulars of the evidence of the prosecutrix as is in the case of evidence of accomplice. He submitted that the prosecutrix is thus a competent witness under Section 118 of the Indian Evidence Act and her evidence must receive the same weight as is attached to an injured witness in cases of physical violence [see *State of Maharashtra vs. Chandrapraksh Kewalchand Jain* (1990) 1 SCC 550]. Keeping this principle in mind, when we look at the evidence of PW-5, we find that she has categorically stated that the appellant fell her down, covered her mouth with one hand and restricted her hands with other hand and lifted her petticoat and committed rape on her. It is true that on her medical examination the next day, PW-9 did not find any injury on the person of PW-5, but PW-5 has explained that she fell on her back in the agricultural field which had a smooth surface and there were wheat and mustard crops in the field and this could be reason for her not suffering injury.

11. According to Mr. Mehrotra, however, PW-5 is not a

reliable witness as she has made a significant omission in her evidence by not stating anything about the seizure of the blouse, dhoti and broken bangles which were made in her presence. But we find that no question has been put to PW-5 in cross-examination with regard to seizure of the blouse, dhoti and broken bangles in her presence. If the appellant's case was that PW-5 cannot be believed because she made this significant omission in her evidence, a question in this regard should have been put to her during her cross-examination. To quote Lord Herschell, LC in *Browne vs. Dunn* [(1894) 6 R 67]:

> "……it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross examination showing that the imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit."

Section 146 of the Indian Evidence Act also provides that when a witness is cross-examined, he may be asked any question which tend to test his veracity. Yet no question was put to PW-5 in cross-examination on the articles seized in her presence. In the absence of any question with regard to the seizure of the blouse, dhoti and broken bangles in presence of PW-5, omission of this fact from her evidence is no ground to doubt the veracity of her evidence.

12. The evidence of PW-5, in this case, is also corroborated by other evidence. Section 157 of the Indian Evidence Act provides that in order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the

place, or before any authority legally competent to investigate the fact may be proved. The evidence of PW-5 is corroborated by the evidence of her mother-in-law (PW-2) before whom she stated about the commission of the rape by the appellant soon after the incident the very same evening. The evidence of PW-5 is also corroborated by the FIR (Ex.9) before the Investigating Officer, PW-10, before whom she lodged the complaint one day after the incident.

13. Further, though the medical evidence of PW-9 and the medical examination report Ex. P-8 do not give any definite opinion on whether or not PW-5 suffered any sexual intercourse, soon after the medical examination on 22.12.1987, the petticoat and vaginal smear slides (which were prepared and sealed) were sent for further examination and the report of State Forensic Science Laboratory (Ex. P-15) confirms spots of semen and spermatozoa. This evidence confirms that PW-5 had been subjected to sexual intercourse some time before she lodged the complaint in the police station on 22.12.1987. Hence, the forensic evidence is not entirely in conflict with the evidence of PW-5 so as to belie her story that she was raped by the appellant.

14. We further find that the appellant has not taken a defence in his statement under Section 313 of the Criminal Procedure Code that the sexual intercourse was with the consent of PW-5. Instead, he has denied having had any sexual intercourse with PW-5 and has taken a stand that he has been falsely implicated on account of a quarrel between him and the husband of PW-5. Yet, the trial court held that there was proof of sexual intercourse between the appellant and PW-5, but the sexual intercourse was with the consent of PW-5. We are of the considered opinion that as the appellant had not taken any defence of consent of PW-5, the trial court was not correct in recording the finding that there was consent of PW-5 to the sexual intercourse committed by the appellant and should have instead considered the defence of the appellant that he had

been falsely implicated because of a quarrel between him and the husband of PW-5. We have, however, considered this defence of the appellant but find that except making a suggestion to PW-2, the appellant has not produced any evidence in support of this defence. As PW-2 has denied the suggestion, we cannot accept the defence of the appellant that he was falsely implicated on account of a quarrel between the appellant and the husband of PW-5.

15. We are also unable to accept the submission of Mr. Mehrotra that the investigation by the police is shoddy and hasty and there are defects in the investigation and therefore benefit of doubt should be given to the appellant and he should be acquitted of the charge of rape. The settled position of law is that the prosecution is required to establish the guilt of the accused beyond reasonable doubt by adducing evidence. Hence, if the prosecution in a given case adduces evidence to establish the guilt of the accused beyond reasonable doubt, the court cannot acquit the accused on the ground that there are some defects in the investigation, but if the defects in the investigation are such as to cast a reasonable doubt in the prosecution case, then of course the accused is entitled to acquittal because of such doubt. In the present case, as we have seen, the evidence of PW-5 as corroborated by the evidence of PW-2 and the FIR establish beyond reasonable doubt that the appellant has committed rape on PW-5 and thus the appellant is not entitled to acquittal.

16. In the result, we are not inclined to interfere with the finding of the guilt recorded by the High Court against the appellant as well as the minimum sentence of 7 years imprisonment for the offence under Section 376 IPC imposed by the High Court. The appeal is accordingly dismissed.

K.K.T. Appeal dismissed.

S.P. MALHOTRA
v.
PUNJAB NATIONAL BANK & ORS.
(Civil Appeal No.5128 of 2013)

JULY 4, 2013

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

Service Law – Disciplinary enquiry – Enquiry officer exonerated the delinquent officer of all the charges – Disciplinary authority partially disagreed with the findings – Imposed punishment of dismissal from service – Departmental appeal as well as review dismissed – Writ petition allowed by Single Judge of High Court holding that the punishment was vitiated – Division Bench of High Court, set aside the order of Single Judge – On appeal, held: Where the disciplinary authority disagrees with the Enquiry Officer, he must record reasons for his disagreement and communicate the same to the delinquent and should pass an order of punishment only after considering delinquent's explanation – In the present case, since such a course was not adopted, hence the punishment stood vitiated – Appeal allowed.

Punjab National Bank and Ors. vs. Kunj Behari Misra **AIR 1998 SC 2713: 1998 (1) Suppl. SCR 22;** *Institute of Chartered Accountants of India vs. L.K. Ratna* **AIR 1987 SC 71: 1986 (3) SCR 1048;** *Yoginath D. Bagde vs. State of Maharashtra and Anr.* **AIR 1999 SC 3734: 1999 (2) Suppl. SCR 490;** *State Bank of India and Ors. vs. K.P. Narayanan Kutty* **AIR 2003 SC 1100: 2003 (1) SCR 391;** *J.A. Naiksatam vs. Prothonotary and Senior Master, High Court of Bombay and Ors.* **AIR 2005 SC 1218: 2004 (5) Suppl. SCR 287;** *P.D. Agrawal vs. State Bank of India and Ors.* **AIR 2006 SC 2064: 2006 (1) Suppl. SCR 454;** *Ranjit Singh vs. Union of India*

and Ors. **AIR 2006 SC 3685: 2006 (3) SCR 885;** *Canara Bank and Ors. vs. Shri Debasis Das and Ors.* **AIR 2003 SC 2041: 2003 (2) SCR 968** – relied on.

Managing Director, ECIL, Hyderabad, etc.etc. vs. B. Karunakar etc.etc. **AIR 1994 SC 1074: 1993 (2) Suppl. SCR 576** – referred to.

Case Law Reference:

1993 (2) Suppl. SCR 576	**referred to**	**Para 3H**
1998 (1) Suppl. SCR 22	**relied on**	**Para 4**
1986 (3) SCR 1048	**relied on**	**Para 7**
1999 (2) Suppl. SCR 490	**relied on**	**Para 9**
2003 (1) SCR 391	**relied on**	**Para 9**
2004 (5) Suppl. SCR 287	**relied on**	**Para 9**
2006 (1) Suppl. SCR 454	**relied on**	**Para 9**
2006 (3) SCR 885	**relied on**	**Para 9**
2003 (2) SCR 968	**relied on**	**Para 10**

CIVIL APPELALTE JURISDICTION: Civil Appeal No. 5128 of 2013.

From the Judgment and Order dated 25.09.2012 of the High Court of Punjab & Haryana at Chandigarh in L.P.A. No. 2028 of 2011.

P.S. Patwalia, Ashok K. Mahajan the Appellant.

Rajesh Kumar, Anupam Dhurve, Yashraj Singh Deora, Mitter & Mitter Co. for the Respondents.

The following Order of the Court was delivered by:

ORDER

1. Leave granted.

2. This appeal has been preferred against the impugned judgment and order dated 25.9.2012 passed by the High Court of Punjab and Haryana at Chandigarh in L.P.A.No. 2028 of 2011, by way of which it has reversed the judgment and order of the learned Single Judge dated 20.5.2011 passed in Writ Petition No. 1201 of 1988, by which and whereunder the learned Single Judge had awarded the relief to the appellant herein on the ground that in case the Disciplinary Authority does not agree with the findings recorded by the Enquiry Officer in disciplinary proceedings, the Disciplinary Authority must record reasons for disagreement and communicate the same to the delinquent and seek his response and only after considering the same, he could pass the order of punishment.

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

A. The appellant was appointed as Clerk/Cashier in the respondent Bank in the year 1969 and was promoted as Accountant in the year 1977, and further promoted as Assistant Manager in the year 1981. The Disciplinary Authority put him under suspension in November, 1982 for certain delinquencies and in respect of the same, a chargesheet dated 7.2.1983 was served upon him containing four charges namely:

(i) Tampering with official record to the detriment of the Bank's interest;

(ii) Indulging in un-authorized business against the interest of the Bank;

(iii) Mis-utilising official position to benefit relatives and friends against the interest of the Bank; and

(iv) Concealment of facts from the authorities.

B. The appellant submitted his reply to the said charges in July, 1983 denying all the allegations and further submitting that it was the Branch Manager who had sanctioned all the loans and advances and all the entries had been made at his behest. As the Disciplinary Authority was not satisfied with the reply submitted by the appellant, an Enquiry Officer was appointed to examine the charges.

C. After conducting and concluding the enquiry, the Enquiry Officer submitted report dated 27.2.1985 exonerating the appellant on all the charges and in support of the findings sufficient reasons had been given on each charge.

D. The Disciplinary Authority partly agreed with the findings on charge Nos. (ii) and (iii), but disagreed with the findings qua charge Nos. (i) and (iv), and vide order dated 27.4.1985 imposed the punishment of dismissal from service.

E. Aggrieved, the appellant preferred the appeal against the said order under Regulation 17 of the Punjab National Bank Officers/Employees (Discipline and Appeal) Regulation 1977 (hereinafter referred to as the 'Regulations), and the appeal was dismissed vide order dated 14.8.1985 by the Appellate Authority. The Appellate Authority also concurred with the findings on two charges recorded by the Enquiry Officer.

F. Being aggrieved of the order of the Appellate Authority, the appellant filed review petition under Regulation 18 of the Regulations and the said review petition was also dismissed vide order dated 19.8.1987.

G. The appellant challenged the said orders of punishment by filing a Writ Petition No. 1201 of 1988 before the High Court of Punjab and Haryana at Chandigarh. The said writ petition was contested by the respondent Bank. The learned Single Judge allowed the said writ petition vide judgment and order dated 20.5.2011, holding that in case the Disciplinary Authority disagrees with the findings recorded by

must record reasons for the dis-agreement and communicate the same to the delinquent seeking his explanation and after considering the same, the punishment could be passed. In the instant case, as such a course had not been resorted to, the punishment order stood vitiated.

H. Aggrieved, the respondent Bank preferred LPA before the Division Bench which has been allowed taking a view that as the punishment had been imposed prior to the date of judgment in *Managing Director, ECIL, Hyderabad, etc.etc. v. B. Karunakar etc.etc.,* AIR 1994 SC 1074, i.e. 20.11.1990, and as there was no requirement of issuing a second show cause notice before the punishment was imposed, the question of serving the copy of the reasons recorded for dis-agreement to the delinquent would not arise.

Hence, this appeal.

4. Mr. P.S. Patwalia, learned senior counsel appearing for the appellant has submitted that the Division Bench has not examined the case in correct perspective and failed to appreciate that the judgment in *ECIL* (supra) had no application in the instant case. The matter was squarely covered by the judgment of this court in *Punjab National Bank & Ors. v. Kunj Behari Misra*, AIR 1998 SC 2713, and the ratio thereof had correctly been applied by the learned Single Judge. Thus, the appeal deserves to be allowed.

5. Per contra, Mr. Rajesh Kumar, learned counsel appearing for the respondent Bank has defended the judgment of the Division Bench contending that there was no requirement of serving the recorded reasons for dis-agreement by the Disciplinary Authority to the delinquent if such a decision was taken prior to the date of decision of *ECIL* (supra) i.e. 20.11.1990, and therefore, no interference is required in the appeal.

6. We have considered the rival submissions made by

learned counsel for the parties and perused the record.

7. In view of the rival submissions made by the learned counsel for the parties, two separate issues are involved in the instant case, namely, (a) requirement of issuing a second show cause notice by the Disciplinary Authority to the delinquent before imposing the punishment; and (b) serving the copy of the reasons recorded by the Disciplinary Authority disagreeing with the findings recorded by the Enquiry Officer.

In the case of *ECIL* (supra), only the first issue was involved and in the facts of this case, only second issue was involved. The second issue was examined and decided by a three-Judge Bench of this Court in *Kunj Behari Misra* (supra), wherein the judgment of *ECIL* (supra) has not only been referred to, but extensively quoted, and it has clearly been stipulated that wherein the second issue is involved, the order of punishment would stand vitiated in case the reasons so recorded by the Disciplinary Authority for dis-agreement with the Enquiry Officer had not been supplied to the delinquent and his explanation had not been sought. While deciding the said case, the court relied upon the earlier judgment of this court in *Institute of Chartered Accountants of India v. L.K. Ratna,* AIR 1987 SC 71.

8. *Kunj Behari Misra* (supra) itself was the case where the Disciplinary Authority disagreed with the findings recorded by the Enquiry Officer on 12.12.1983 and passed the order on 15.12.1983 imposing the punishment, and immediately thereafter, the delinquent officers therein stood superannuated on 31.12.1983. In *Kunj Behari Misra* (supra), this court held as under:

> ***"19.*** *The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge,* ***it must*** ***e***

reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. *The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."* (Emphasis added)

The Court further held as under:

"21. Both the respondents superannuated on 31-12-1983. During the pendency of these appeals, Misra died on 6-1-1995 and his legal representatives were brought on record. More than 14 years have elapsed since the delinquent officers had superannuated. It will, therefore, not be in the interest of justice that at this stage the cases should be remanded to the disciplinary authority for the start of another innings."

9. The view taken by this Court in the aforesaid case has consistently been approved and followed as is evident from the judgments in *Yoginath D. Bagde v. State of Maharashtra & Anr.,* AIR 1999 SC 3734; *State Bank of India & Ors. v. K.P. Narayanan Kutty,* AIR 2003 SC 1100; *J.A. Naiksatam v. Prothonotary and Senior Master, High Court of Bombay & Ors.,* AIR 2005 SC 1218; *P.D. Agrawal v. State Bank of India & Ors.,* AIR 2006 SC 2064; and *Ranjit Singh v. Union of India & Ors.*, AIR 2006 SC 3685.

10. In *Canara Bank & Ors. v. Shri Debasis Das & Ors.*, AIR 2003 SC 2041, this Court explained the ratio of the judgment in *Kunj Behari Misra* (supra), observing that it was a

case where the disciplinary authority differed from the view of the Inquiry Officer. "In that context, it was held that denial of opportunity of hearing was *per se* violative of the principles of natural justice."

11. In fact, not furnishing the copy of the recorded reasons for disagreement from the enquiry report itself causes the prejudice to the delinquent and therefore, it has to be understood in an entirely different context than that of the issue involved in *ECIL* (supra).

12. The learned Single Judge has concluded the case observing as under:

"The whole process that resulted in dismissal of the petitioner is flawed from his inception and the order of dismissal cannot be sustained. I am examining this case after nearly 23 years after its institution and the petitioner has also attained the age of superannuation. The issue of reinstatement or giving him the benefit of his wages for during the time when he did not serve will not be appropriate. The impugned orders of dismissal are set aside and the petitioner shall be taken to have retired on the date when he would have superannuated and all the terminal benefits shall be worked out and paid to him in 12 weeks on such basis. There shall be, however, no direction for payment of any salary for the period when he did not work."

13. As the case is squarely covered by the judgment of this court in *Kunj Behari Misra* (supra), we do not see any reason to approve the impugned judgment rendered by the Division Bench.

Thus, in view of the above, the appeal is allowed. The judgment and order of the Division Bench is set aside and that of the learned Single Judge is restored. No costs.

K.K.T. Appeal allowed.

M/S. HOTEL QUEEN ROAD PVT. LTD. & ORS.
v.
MR. RAM PARSHOTAM MITTAL & ORS.
(Civil Appeal No.5499 of 2013)

JULY 16, 2013

[ALTAMAS KABIR, CJI AND ANIL R. DAVE, J.]

Practice and Procedure – Extension of interim relief beyond the date of final disposal of the case – Propriety of – Held: Though continuation of interim relief beyond the date of disposal is not permissible – But where the matter is heard on merits, and withdrawal of the case is permitted on the facts of the case, Court is at liberty to extend the interim relief for a limited period after recording reasons for the same.

The High Court after hearing the matter on merits permitted the respondents (appellants in the High Court) to withdraw the matter so as to avail alternative remedy. The High Court, however, observed that the impugned order had *prima facie* finding and that the order of withdrawal would not prevent the parties from making legal submissions before the appropriate forum. The High Court also extended the interim relief granted to the respondent beyond the date of the withdrawal order. Hence the present appeal.

Appellant contended that while permitting withdrawal of the appeal, such observations could not have been made by the High Court; and that upon final disposal of the case, the High Court become *functus officio* and hence could not have extended the inerim relief beyond the date of judgment.

Dismissing the appeals, the Court

HELD: 1. The High Court did not ask the authority, which was to be approached by the appellants, that the observations made by the Single Judge should be ignored. The order of the Single Judge was to be challenged by the appellants before another forum and therefore, the Division Bench did not state anything on the merits of the order passed by the Single Judge. Thus, the Division Bench had made innocuous observations which cannot be said to be unjust or improper. [Para 10] [425-E-F]

2. If a petition is not maintainable and is ultimately withdrawn, the court should not continue interim relief for a period beyond withdrawal of the writ petition. However, where the matter is heard on merits and after considering the facts of the case, the court permits withdrawal of the case, the court is at liberty to extend the interim relief or can grant interim relief for a limited period after recording reasons for the same. In view of the facts of the case, the High Court was not in error while extending the interim relief for some time while permitting withdrawal of the appeal, as the High Court has also recorded the reasons for which the interim relief was extended beyond withdrawal of the appeal and especially when the matter was heard on merits by the High Court and only to facilitate the appellants, the High Court had permitted withdrawal of appeal. [Para 17, 18 and 19] [428-B-E]

The State of Orissa vs. Madan Gopal Rungta **A.I.R. (39) 1952 S.C.12 – followed.**

Ajay Mohan and Ors. vs. H.N. Rai and Ors. **(2008) 2 SCC 507: 2007(13) SCR 298;** *Padam Sen and Anr. vs. The State of Uttar Pradesh***1961(1) S.C.R. 884 – relied on.**

Case Law Reference:

2007 (13) SCR 298	**relied on**	**Para 13**
1961(1) S.C.R. 884	**relied on**	

A.I.R. (39) 1952 S.C.12 followed Para16

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5499 of 2013.

From the Judgment and Order dated 20.04.2010 of the High Court of Delhi at New Delhi in FAO (OS) No. 349 of 2009.

WITH

SLP (C) No. 22887 of 2013.

Jayant Bhushan, Mohit Chauhary, Jayant K. Mehta, R.K. Srivastava, Pragya Singh, Harsh Sharma, Puja Sharma for the Appellants.

Aman Lekhi, Atul Sharma, Nitesh Jain, A.D.N. Rao, Ajay Sharma, Abhishek Aggarwal, Respondent-In-Person for the Respondents.

The Judgment of the Court was delivered by:

ANIL R. DAVE, J. 1. Leave granted.

2. Though the present litigation has a chequered history, we do not propose to go into the details of the litigation for the reason that by virtue of the impugned order dated 20th April, 2010 passed in FAO (OS) 349 of 2009 by the High Court of Delhi, the appellants i.e. the present respondents had been permitted to withdraw the said appeal.

3. It appears that the appeal was substantially heard by the High Court but as the High Court was not persuaded to grant any relief to the appellants therein, the appeal was withdrawn so as to avail alternative remedy available to the appellants.

4. The appeal was permitted to be withdrawn. In normal circumstances, the present appellants, who were the respondents in the said appeal, should not have been aggrieved by withdrawal of the appeal but they are aggrieved because of certain observations made by the High Court while

permitting withdrawal of the appeal. The said observations, which have been objected to, are reproduced hereinbelow :

> "…All that we wish to observe is what we have said earlier, that the impugned order does, in fact, partake of a prima facie finding.
>
> Nothing in these Orders shall preclude or prevent either of the parties to make legal submissions before appropriate Forums.
>
> On 3.3.2010, we had restrained the Respondent from alienating, selling or creating any third party interest in the Rights issue dated 30.07.2009. When we had passed these Orders, we were desirous only to maintain status quo. We clarify that it was not passed at that stage, weighing the respective strength of the cases. In our view, we think it appropriate and expedient to extend the interim orders upto 10.05.2010."

5. It was mainly submitted that no such observation could have been made by the Court while permitting withdrawal of the appeal and the interim relief which had been granted earlier in the appeal should not have been continued even after withdrawal or disposal of the said appeal. It is clear from the aforestated order that the interim relief which had been granted during the pendency of the appeal had been extended till 10th May, 2010.

6. The parties have been referred to hereinbelow as they had been arrayed before the Division Bench of the High Court.

7. So far as the observations made in the impugned order with regard to the findings of the learned single Judge are concerned, we are of the view that the said observations cannot be said to be incorrect.

8.Upon perusal of the impugned order, we find that while seeking leave to withdraw the appeal, a y

the learned counsel appearing for the appellants, which has been recorded by the High Court as under:

> "He seeks leave to withdraw the Appeal with a clarification that the observation and decision contained in the impugned order should not influence the mind of either of the aforementioned Judicial Forums."

9. With regard to the aforestated request made on behalf of the appellants in relation to withdrawal of appeal, the High Court observed as under:-

> "Since the Appeal has been substantially heard, we are not persuaded to make any observation as prayed for by the Appellant. We shall only state that what is palpable from the legal position that the views and decisions contained in the impugned order are perforce of a prima facie nature."

10. Thus, upon reading the impugned order, the High Court did not ask the authority, which was to be approached by the appellants, that the observations made by the learned single Judge should be ignored. The order of the learned single Judge was to be challenged by the appellants before another forum and therefore, the Division Bench did not state anything on the merits of the order passed by the learned single Judge. In our opinion, the Division Bench had made innocuous observations which cannot be said to be unjust or improper.

11. We have heard the learned counsel appearing for both sides and have also considered the judgments cited by them.

12. So far as the direction with regard to continuation of the interim relief upto 10th May, 2010 is concerned, the learned counsel appearing for the appellants had submitted that upon disposal of the appeal, the High Court had become *functus officio* and therefore, the High Court ought not to have extended

the interim relief upto 10th May, 2010 especially when the appeal had been withdrawn on 20th April, 2010.

13. The learned counsel appearing for the appellants had relied upon certain judgments of this Court to the effect that upon final disposal of a case, the court becomes *functus officio* and therefore, the court should not extend interim relief. The learned counsel had relied upon the observations made in para 24 of the judgment delivered in the case of *Ajay Mohan and Others v. H.N. Rai and Others (2008) 2 SCC 507,* which reads as under :

> **"24.** The order of the City Civil Court dated 13-10-2006 may be bad but then it was required to be set aside by the court of appeal. An appeal had been preferred by the appellants thereagainst but the same had been withdrawn. The said order dated 13-10-2006, therefore, attained finality. The High Court, while allowing the appellant to withdraw the appeal, no doubt, passed an order of *status quo* for a period of two weeks in terms of its order dated 23-11-2006 but no reason therefor had been assigned. It *ex facie* had no jurisdiction to pass such an interim order. Once the appeal was permitted to be withdrawn, the Court became *functus officio*. It did not hear the parties on merit. It had not assigned any reason in support thereof. Ordinarily, a court, while allowing a party to withdraw an appeal, could not have granted a further relief. (See *G.E. Power Controls India v. S. Lakshmipathy*.)

14. On the basis of the aforestated contents of para 24 in the case of *Ajay Mohan* (supra), it had been submitted that upon withdrawal of the appeal, the High Court should not have extended the interim relief without assigning any reason, especially when the High Court had not heard the parties on merits.

15. On the other hand, it had b[illegible]e

learned counsel appearing for the respondents that in the interest of justice the court has inherent power to continue interim relief even after disposal of a case. So as to substantiate the aforesaid submission, the learned counsel appearing for the respondents had relied upon the judgment delivered in *Padam Sen and Another v. The State of Uttar Pradesh* 1961(1) S.C.R. 884.

16. Similar issue had arisen in the case of *The State of Orissa v. Madan Gopal Rungta* A.I.R. (39) 1952 S.C.12. A five-Judge Bench had observed in the said judgment that:-

> "…In our opinion, Art. 226 cannot be used for the purpose of giving interim relief as the only and final relief on the application as the High Court has purported to do. The directions have been given here only to circumvent the provisions of S. 80, Civil P.C., and in our opinion that is not within the scope of Art.226. An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding. If the Court was of opinion that there was no other convenient or adequate remedy open to the petitioners, it might have proceeded to investigate the case on its merits and come to a decision as to whether the petitioners succeeded in establishing that there was an infringement of any of their legal rights which entitled them to a writ of *mandamus* or any other directions of a like nature; and pending such determination it might have made a suitable interim order for maintaining the *status quo ante*. But when the Court declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a civil suit, it could not, for the purpose of facilitating the institution of such suit, issue directions in the nature of temporary injunctions, under Art.226 of the Constitution. In our opinion, the language of Art.226 does not permit such an action. On that short ground, the judgment of the Orissa High Court under appeal cannot be upheld."

17. In view of the aforestated judgments, it is very clear that if a petition is not maintainable and is ultimately withdrawn, the court should not continue interim relief for a period beyond withdrawal of the writ petition. However, the aforestated observation would not apply to a case where the matter is heard on merits and after considering the facts of the case the court permits withdrawal of the case. In such a case, the court is at liberty to extend the interim relief or can grant interim relief for a limited period after recording reasons for the same.

18. In view of the facts of the case, in our opinion, the High Court was not in error while extending the interim relief for some time while permitting withdrawal of the appeal as the High Court has also recorded the reasons for which the interim relief was extended till 10.5.2010.

19. In view of the aforestated legal position, in our opinion, the High Court did not commit any error while extending the interim relief especially when the matter was heard on merits by the court and only to facilitate the appellants therein, the High Court had permitted withdrawal of appeal.

20. In the circumstances, we dismiss the appeal with no order as to costs. Interim relief which had been granted earlier by this Court stands vacated.

S.L.P. (C) No. (CC No.20730) of 2009

1. In view of the fact that FAO (OS) No.349 of 2009 had been permitted to be withdrawn by the subsequent order passed by the High Court of Delhi at New Delhi on 20th April, 2010, the special leave petition does not survive as the impugned order has already been withdrawn. The special leave petition is dismissed as infructuous.

K.K.T. App

C. KESHAVAMURTHY
v.
H.K. ABDUL ZABBAR
(Criminal Appeal No. 1026 of 2013)

JULY 23, 2013

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

Negotiable Instruments Act, 1881 – ss. 138 and 139 – Dishonour of cheque – Complaint – Conviction by trial court and appellate court – Acquittal by revisional court – On appeal, held: Once the complaint case of cheque bouncing is prima facie established, the burden is on the accused to disprove the allegations – The accused in the instant case failed to disprove the allegation – Hence, order of conviction upheld.

Four cheques issued by respondents, in favour of the appellants were dishonoured. Appellant filed complaint u/s. 138 of Negotiable Instruments Act, 1881. Respondent took the plea that the cheques were issued in respect of some business transaction and the payments of the cheques were stopped by him by a notice. Trial court convicted the respondent not accepting his plea. Appellate Court confirmed the conviction. In revision, High Court acquitted him holding that the respondent had raised an acceptable defence. Hence the present appeal.

Allowing the appeal, the Court

HELD: The presumption under Section 139 of the Negotiable Instruments Act, 1881, includes the presumption of the existence at a legally enforceable debt or liability. That presumption is required to be honoured, and if it is not so done, the entire basis of making these

provisions will be lost. Therefore, it is for the accused to explain his case and defend it once the fact of cheque bouncing is prima facie established. The burden is on him to disprove the allegations once a *prima facie* case is made out by the Complainant. In the instant case, it has clearly come on record that disputed cheques were given subsequent to the Notice not to clear the earlier cheques. There was no explanation as to why the subsequent cheques could not have been cleared. The agreement on the basis of which the submission was made was not produced in the courts below. That being so, on facts there was no error on the part of the trial court as well as the appellate court in the view that they have taken. [Paras 9 and 11] [433-H; 434-A-B, E-F]

Rangappa vs. Sri Mohan **2010 (11) SCC 441: 2010 (6) SCR 507 – relied on.**

Krishna Janardhan Bhat vs. Dattatraya G. Hegde **2008 (4) SCC 54: 2008 (1) SCR 605 – referred to.**

Case Law reference:

2008 (1) SCR 605	**referred to**	**Para 7**
2010 (6) SCR 507	**relied no**	**Para 9**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No(s). 1026 of 2013.

From the Judgment and Order dated 08.12.2008 of the High Court of Karnataka at Bangalore in Crl R.P. No. 1295 of 2006.

R.S. Hegde, Girish Anantmurthy, Chandra Prakash, Rajeev Singh, for the Appellant.

G.V. Chandrashekar, Anjana Chandrashekar for the Respondent.

The Judgment of the Court was delivered by:

H.L. GOKHALE, J. 1 Heard Mr. R.S. Hegde, learned counsel in support of this petition and Mr. G.V. Chandrashekhar, learned counsel appearing for the respondent.

2. Leave granted.

3. Both the counsel have made their submissions.

4. The facts giving rise to this criminal appeal are as follows _

The respondent had issued four cheques to the appellant, which had bounced. Out of the five cheques, a cheque dated 31st July, 2003, was issued for an amount of ' 1,36,000/-, and three other cheques dated 10th August, 2003, 15th August, 2003 and 18th August, 2003, respectively were for a sum of ' One lakh each. Since those cheques got bounced, the appellant filed a Complaint bearing No.2857 of 2003, in the Court of Judicial Magistrate, First Class-II, Davangere, in the State of Karnataka, under Section 138 of the Negotiable Instruments Act, 1881. The case of the appellant is that since these cheques were dishonoured, an appropriate order under the law was necessary.

5. The defence of the respondent was that there was an agreement of sale between the parties, and that the Complainant was a businessman dealing in lands, and it was in that transaction that the respondent had issued some cheques earlier, but since transaction did not fructify, he had issued a notice dated 28th July, 2003, not to clear those cheques. However, this defence could not be accepted for the simple reason that all the cheques, which had bounced were issued subsequent to the said Notice dated 28th July, 2003. Therefore, no more justification was required for allowing the Complaint. The defence raised by the respondent could not be accepted and, therefore, the Learned Magistrate considered

the factual, as well as legal position and allowed the Complaint filed by the appellant herein.

6. The respondent being aggrieved therefrom filed a Criminal Appeal bearing No.51 of 2005, before the Additional Sessions Judge, Fast Track Court-II, Davangere. The learned Judge framed necessary points for consideration, namely, whether the impugned judgment of conviction recorded by JMFC-II, Davangere, could not be sustained under law and whether the punishment was in any way disproportionate. The learned Judge decided both those points in the negative, but passed an order whereby he partly allowed the appeal. The conviction recorded by the learned JMFC-II Court, Davangere, was confirmed, but the sentence was modified by him as follows:

> "The Accused/Appellant for the offence punishable under Section 138 of the Negotiable Instrument Act shall undergo simple imprisonment three months and pay fine of Rs.5,000/-. In default to pay such fine he shall undergo simple imprisonment for a further period of three months.
>
> The Accused/Appellant shall pay to the Complainant/ Respondent a sum of Rs.4,50,000/-(Four lakhs Fifty thousand) as compensation to the Complainant/ Respondent. In default to pay such compensation he shall undergo simple imprisonment for a further period of six months. It was further directed that the Accused/Appellant shall pay the fine amount and also the compensation amount within 45 (forty five) days from this date and surrender before the J.M.F.C.-II Court, Davangere, to undergo the sentence. In case of failure to do so, the Learned Magistrate shall take steps to enforce the sentence."

7. This judgment and order rendered by the Addl. Sessions Judge on 4th May, 2006, was carried by the respondent further in Criminal Revision Petition No.129[illegible],

however, the respondent was successful, and the plea raised by the respondent based on the Notice dated 28th July, 2003, was accepted by the learned Single Judge of the Karnataka High Court. The learned Single Judge referred to the judgment of a Bench of two Judges of this Court in *Krishna Janardhan Bhat Vs. Dattatraya G.Hegde,* reported in [2008(4)SCC 54], and stated that the burden is always on the Complainant to establish not only issuance of cheque, but existence of debt or legal liability. In the facts of this case, the learned Judge took the view that the respondent had raised an acceptable defence. He therefore, allowed the Revision and set aside the judgment rendered by the courts below. The accused respondent was acquitted of the offence under Section 138 of the Negotiable Instruments Act, 1888, and the amount deposited in court was directed to be refunded.

8. Being aggrieved by the judgment of the High Court dated 8th December, 2008, the present criminal appeal has been filed. Mr. R.S. Hegde, learned counsel for the appellant, submitted that the approach of the learned Judge was erroneous on facts, as well as on law. As noted above, though, the respondent had given some cheques earlier, and had issued a Notice dated 28th July, 2003 not to encash those cheques, the respondent had issued the disputed cheques thereafter. Therefore, the defence taken by the respondent that he had issued a Notice not to clear those cheques was not tenable on facts, and there was no defence as to why those cheques should not have been put into Bank and cleared.

9. Secondly, as far as the proposition canvased on the basis of the judgment in *Krishna Janardhan Bhat* (supra) is concerned, it must be noted that the same has been specifically held to be not a correct one in paragraph 26 of the judgment rendered by a three-Judge Bench in *Rangappa vs. Sri Mohan,* reported in [2010(11)SCC 441]. The judgment clearly held that the presumption under Section 139 of the Negotiable Instruments Act, 1881, includes the presumption of the

existence at a legally enforceable debt or liability. That presumption is required to be honoured, and if it is not so done, the entire basis of making these provisions will be lost. Therefore, it has been held that it is for the accused to explain his case and defend it once the fact of cheque bouncing is prima facie established. The burden is on him to disprove the allegations once a prima facie case is made out by the Complainant.

10. Mr. G.V. Chandrashekar, learned counsel for the respondent, on the other hand, submitted that in the facts of this case, there was an agreement between the parties. He contended that although it is true that the agreement was not produced, but the fact of it was not disputed by the appellant himself. That being so, since the agreement was not being acted upon, the cheques were not expected to be cleared. He, therefore, submitted that the order of the High Court was justified on the facts of the particular case.

11. We have noted the submissions of both the counsel. As noted earlier, it has clearly come on record that disputed cheques were given subsequent to the Notice not to clear the earlier cheques. There was no explanation as to why the subsequent cheques could not have been cleared. The agreement on the basis of which the submission was made was not produced in the courts below. That being so, on facts there was no error on the part of the learned Magistrate, as well as the learned Addl. Sessions Judge, in the view that they have taken. As far as the legal position is concerned, in our view, that has been settled adequately in *Rangappa's* case(supra), which has specifically explained the observations in Krishna *Janardhan Bhat* (supra).

12. This being the position, we allow this appeal, set aside the order passed by the learned Judge of Karnataka High Court and restore the order passed by the Additional Sessions Judge. The parties will bear their own costs.

K.K.T

ANUJ KUMAR GUPTA @ SETHI GUPTA

v.

STATE OF BIHAR

(Criminal Appeal No. 1575 of 2009)

JULY 24, 2013

[A.K. PATNAIK AND FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ.]

Penal Code, 1860 – ss.302 and 201 – Death of PW-6's son – Dead body recovered from river – Circumstantial evidence – Confessional statement made by accused-appellant to Investigating officer PW-9 – Conviction of appellant by Courts below – Justification – Held: Justified – From the evidence of PW-9, supported by version of PW-4 (uncle of deceased), it is clear that at the instance of the appellant and a co-accused, the body of deceased was recovered from a river stream – There were signs of marks on the neck of the deceased – The identity of the place where the dead body was lying, which was exclusively within the knowledge of the appellant, was certainly admissible by virtue of the application of s.8, r/w s.27 of the Evidence Act – In absence of any convincing explanation on behalf of the appellant as to under what circumstances he was able to lead the Police party to the place where the dead body was found, such recovery would act deadly against the appellant considered alongwith the rest of the circumstances demonstrated by the prosecution – Chain of circumstances complete in every respect in order to lead to the only conclusion that the appellant was squarely responsible for killing of the deceased – Evidence Act, 1872 – s.8 r/w s.27 – Applicability of.

Based on the confessional statement made by accused-appellant before PW9, the Investigating Officer, the dead body of PW-6's son was recovered from a river.

Apart from appellant, there were three other accused. The trial Court convicted the appellant and one co-accused 'A' under Sections 364(A), 302, 201 and 120-B, IPC and imposed death penalty on them. The other two co-accused were acquitted. The High Court upheld the conviction of appellant under Sections 302 and 201 IPC but acquitted him of the charges under Section 364 and 120-B IPC. While affirming conviction, the High Court commuted the death sentence imposed upon the appellant to imprisonment for life for the offence under Section 302 IPC. The co-accused 'A' was however acquitted of all the charges.

In the instant appeal, it was contended by the appellant that merely based on the confessional statement of the appellant to PW-9, the Investigating officer, he was convicted and the same was not in consonance with law.

Dismissing the appeal, the Court

HELD: 1.1. According to PW-9, he recorded the confession of the appellant. Though PW-9 would refer to very many statements alleged to have been admitted by the appellant and co-accused 'A', the only part of the admission, which can be noted and accepted as admissible in the evidence related to the identification of the place where the dead body of PW6's son was found, based on the admission of the appellant and the co-accused. From the evidence of PW-9, supported by the version of PW-4, it has come to light that at the instance of the appellant and the co-accused 'A', the body of the deceased was recovered from Maldiha Dhar (river stream) and that at that time the eyes of the dead body and the tongue were protruding out. There were also signs of marks on the neck of the deceased. The identity of the place at the instance of the appellant and the co-accused, as to where the dead body [illegible]s

lying, which was exclusively within the knowledge of the appellant, was certainly admissible by virtue of the application of Section 8, read along with Section 27 of the Evidence Act. [Paras 13, 15] [444-C, D-E; 445-C-F]

1.2. In absence of any convincing explanation on behalf of the appellant accused as to under what circumstances he was able to lead the Police party to the place where the dead body of the deceased was found, it will have to be held that such recovery of the dead body, which is a very clinching circumstance in the case of this nature, would act deadly against the appellant considered along with rest of the circumstances demonstrated by the prosecution to rope in the appellant in the alleged crime of the killing of the deceased. Though the above incriminating circumstance was put to the appellant in the 313 questioning where he had an opportunity to explain, except a mere denial there was no other convincing explanation offered by him. [Para 16] [445-F-H; 446-B-C]

Bheru Singh v. State of Rajasthan **(1994) 2 SCC 467: 1994 (1) SCR 559;** *Sandeep v. State of Uttar Pradesh* **2012 (6) SCC 107: 2012 (5) SCR 952 – referred to.**

2. Besides, there were other circumstances which were considered by the trial Court, as well as the High Court. The said circumstances having been found to be fully established, the conclusion of the trial Court, as well that of the High Court in holding that the chain of circumstances was complete in every respect in order to lead to the only conclusion that the appellant was squarely responsible for the killing of the deceased, was well justified. The ultimate conviction of the appellant under Section 302 of IPC and the sentence of life imprisonment imposed on him by commuting the death penalty imposed by the trial Court, was perfectly justified. [Paras 17, 18] [446-D; 447-G-H; 448-B-C]

Case Law Reference:

1994 (1) SCR 559	**referred to**	**Para 11**
2012 (5) SCR 952	**referred to**	**Para 12**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1575 of 2009.

From the Judgment and Order dated 02.11.2007 of the High Court of Patna in CRLA No. 690 of 2005.

Rakhi Ray, (AC), Vaibhav Gulia, S.S. Ray, for the Appellant.

Chandan Kumar, Gopal Singh, for the Respondent.

The Judgment of the Court was delivered by

FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1. This appeal is directed against the judgment of the High Court of Patna at Bihar dated 02.11.2007, passed in Criminal Appeal No.690 of 2005. The said appeal was disposed of along with Criminal Appeal No.606/2005, as well as Death Reference No.8 of 2005.

2. To trace the brief facts, the deceased Chhotu Kumar Das @ Abhinav Das (hereinafter referred to as 'Chhotu') son of the informant Gopal Prasad Das (PW-6), left his house on 21.04.2002 at about 8.15 p.m., for visiting a local *Mela,* which was held every year in the village on the eve of Ram Navami. Thereafter, he could not be traced inspite of a search by his parents and, therefore, a written report was submitted by PW-6 at the police station on 22.04.2002 at 10.30 a.m. briefly narrating the circumstances in which the deceased could not be traced. No suspicion was raised against any person for the disappearance of the deceased.

3. Based on the written report, the police registered the FIR in P.S. Case No.39/2002 and

investigation. The investigation was carried out by PW-9, the Sub-Inspector of Police. In the course of the investigation, he came across some suspicious materials against the appellant by some of the witnesses. PW-9, therefore, interrogated the appellant on 22.04.2002, whereafter he was arrested. The appellant made a confessional statement before the police on 23.04.2002 and based on the admissible portion of the said confessional statement, the dead body of the deceased was recovered from a river known as Maldiha Dhar. The co-accused Arun Mandal @ Arun Kumar Mandal was also arrested, while another accused Sudhir Kumar Mandal could not be apprehended on that day. The inquest of the body was prepared on 24.4.2002 at 5.00 p.m. and the postmortem was conducted by PW-10. It was based on the above investigation, the prosecution proceeded against the appellant along with the other accused, namely, Girendra Gupta, Arun Mandal and Sudhir Mandal for offences under Sections 364(A), 302, 201 and 120-B IPC.

4. The appellant and the co accused pleaded innocence and the trial Court proceeded with the case. The prosecution examined PWs-1 to 10 on their side. In the 313 questioning, the appellant and the other accused made a total denial. The trial Court based on the evidence placed before it reached the conclusion that the appellant and the co-accused Arun Mandal, were guilty of the offences falling under Sections 364(A), 302, 201 and 120-B, IPC and imposed death penalty on them and in the light of the said sentence held that no separate sentence was passed against them. The other accused, namely, Girendra Gupta and Sudhir Mandal, were acquitted of all the offences charged against them.

5. By virtue of the death penalty imposed, the Death Reference No.8 of 2005 came to be dealt with by the High Court along with the appeals preferred by the appellant being Criminal Appeal No.690/2005 and the other appeal preferred by the co-accused Arun Mandal in Criminal Appeal No.606/

2005. The High Court by the judgment impugned, while upholding the conviction imposed on the appellant held that no offence was made out as against Arun Mandal and he was acquitted of all the charges. As far as the appellant was concerned, while affirming the conviction, the High Court commuted the death sentence to imprisonment for life for the offence under Section 302 IPC and held that there was no sufficient evidence to hold him guilty of the charge under Section 364 and 120-B IPC. He was found guilty of charges under Sections 302 and 201 IPC.

6. We heard Ms. Rakhi Ray, Amicus Curiae for the appellant and Mr. Sanat Tokas, learned counsel representing Mr. Gopal Singh, learned counsel for the State. Learned counsel for the appellant in her submissions was mainly contending that this case being one purely based on circumstantial evidence, the reliance placed upon by the trial Court, as well the High Court on the confessional statement of the appellant made to the investigating officer PW-9 cannot stand and, therefore, the conviction and sentence imposed on the appellant is liable to be set aside. The learned counsel was not able to address any other submission, while attacking the judgment impugned in this appeal.

7. Learned counsel for the State would contend that the trial Court, as well as the High Court have gathered the chain of circumstances, which led to the killing of the deceased by the appellant and since the chain of circumstances was complete in every respect, the conviction and sentence imposed on the appellant does not call for interference. Learned counsel for the State also contended that the trial Court, as well as the High Court have only placed reliance on the admissible portion of the confessional statement of the appellant made to PW-9, the investigating officer.

8. Having considered the respective submissions of the learned counsel and having perused the judgment of the Division Bench, as well as the trial Cour[illegible]al

papers, we find that the only contention of the learned counsel for the appellant was that merely based on the confessional statement of the appellant to PW-9, the Investigating officer, the conviction came to be imposed and the same was not in consonance with law.

9. When we examine the case on hand, we find that there was no eye witness to the occurrence. The whole case is based on the circumstantial evidence, therefore, our only endeavour is to find out whether the chain of circumstance noted by the trial Court, as well as the High Court was complete without any disruption in order to confirm the conviction and sentence imposed on the appellant.

10. As far as the admissibility of the confessional statement made by the appellant to the investigating officer PW-9 was concerned, the law on this aspect is quite clear, which we wish to explain at the very outset and before examining the chain of circumstances noted and explained in the judgment impugned.

11. As far as the admissibility of the confessional statement made by an accused to the police officer is concerned, the law is well settled, which can be succinctly stated by making reference to an earlier decision of this Court in *Bheru Singh v. State of Rajasthan* - 1994 (2) SCC 467. In the said decision, paras 16 and 19 can be usefully referred, which read as under:

> "**16.** A confession or an admission is evidence against the maker of it so long as its admissibility is not excluded by some provision of law. Provisions of Sections 24 to 30 of the Evidence Act and of Section 164 of the Code of Criminal Procedure deal with confessions. By virtue of the provisions of Section 25 of the Evidence Act, a confession made to a police officer under no circumstance is admissible in evidence against an accused. The section deals with confessions made not only when the accused was free and not in police custody but also with the one made by such a person before any investigation had begun. The expression "accused of any offence" in Section 25 would cover the case of an accused who has since been put on trial, whether or not at the time when he made the confessional statement, he was under arrest or in custody as an accused in that case or not. Inadmissibility of a confessional statement made to a police officer under Section 25 of the Evidence Act is based on the ground of public policy. Section 25 of the Evidence Act not only bars proof of admission of an offence by an accused to a police officer or made by him while in the custody of a police officer but also the admission contained in the confessional statement of all incriminating facts relating to the commission of an offence. Section 26 of the Evidence Act deals with partial ban to the admissibility of confessions made to a person other than a police officer but we are not concerned with it in this case. *Section 27 of the Evidence Act is in the nature of a proviso or an exception, which partially lifts the ban imposed by Sections 25 and 26 of the Evidence Act and makes admissible so much of such information, whether it amounts to a confession or not, as relates to the fact thereby discovered, when made by a person accused of an offence while in police custody.* Under Section 164 CrPC a statement or confession made in the course of an investigation, may be recorded by a Magistrate, subject to the safeguards imposed by the section itself and can be relied upon at the trial.
>
> **19.** From a careful perusal of this first information report we find that it discloses the motive for the murder and the manner in which the appellant committed the six murders. The appellant produced the bloodstained sword with which according to him he committed the murders. In our opinion the first information report Ex. P-42, however is not a wholly confessional statement, but only that part of it is admissible in evidence which does not amount to a confession and is not hit by the pr 5

of the Evidence Act. The relationship of the appellant with the deceased; the motive for commission of the crime and the presence of his sister-in-law PW 11 do not amount to the confession of committing any crime. Those statements are non-confessional in nature and can be used against the appellant as evidence under Section 8 of the Evidence Act. *The production and seizure of the sword by the appellant at the police station which was bloodstained, is also saved by the provisions of the Evidence Act. However, the statement that the sword had been used to commit the murders as well as the manner of committing the crime is clearly inadmissible in evidence.* Thus, to the limited extent as we have noticed above and save to that extent only the other portion of the first information report Ex. P-42 must be excluded from evidence as the rest of the statement amounts to confession of committing the crime and is not admissible in evidence."

(Emphasis added)

12. In this context we can also refer to a recent decision of this Court in *Sandeep v. State of Uttar Pradesh* - 2012 (6) SCC 107. In para 52, the legal position as regards the admissibility of some part of the statement of the accused, which can be treated as admission has been explained as under in para 52:

52. We find force in the submission of the learned Senior Counsel for the State. *It is quite common that based on admissible portion of the statement of the accused whenever and wherever recoveries are made, the same are admissible in evidence and it is for the accused in those situations to explain to the satisfaction of the court as to the nature of recoveries and as to how they came into possession or for planting the same at the places from where they were recovered.* Similarly, this part of the statement which does not in any way implicate the accused but is mere statement of facts would only amount

to mere admissions which can be relied upon for ascertaining the other facts which are intrinsically connected with the occurrence, while at the same time, the same would not in any way result in implicating the accused in the offence directly.

(Emphasis added)

13. Since the confessional statement was made before the investigating officer (PW-9), it is necessary to note what exactly was the confession stated to have been made, which enabled the IO to make some progress in his investigation. According to PW-9, he recorded the confession of the appellant at 11.30 p.m. on 23.04.2002. He also stated that based on the information furnished by the appellant, he also arrested Arun Mandal who also made a confession, which was identical to the one made by the appellant. Though PW-9 would refer to very many statements alleged to have been admitted by the appellant and co-accused Arun Mandal, in our considered opinion, the only part of the admission, which can be noted and accepted as admissible in the evidence related to the identification of the place where the dead body of the deceased Chhotu was found, based on the admission of the appellant and the co-accused.

14. Insofar as the said part of the evidence of PW-9 read along with the admission found in Exhibits-4 and 5 is concerned, it has come out in evidence that the appellant was taken to the place called Maldiha Dhar (a river stream) along with PW-4, the paternal uncle of the deceased where the dead body of the deceased Chhotu was recovered from the water of Maldiha Dhar. PW-9 stated that since Maldiha Dhar (stream) fell within the jurisdiction of Barhara P.S., of district Purnea, he could not immediately lift the body from that place, that he left the dead body at that very place under the protection of armed forces and, therefore, after getting necessary official clearance, the body was handed over to the police station of his jurisdiction and the same was sent for carrying out n

PW-4 in his evidence also corroborated the above said version of PW-9 by stating that he proceeded along with PW-9, as guided by the appellant and co accused Arun Mandal and that they reached the place Maldiha Dhar, where the dead body was found as pointed out by the appellant and co accused. He also stated that he identified the dead body as that of his nephew, Chhotu the deceased. He further stated that the eyes of the dead body were open, the tongue was protruding out and that there were marks of throttling in the neck of the deceased.

15. From the above evidence of PW-9, supported by the version of PW-4, it has come to light that at the instance of the appellant and the co-accused Arun Mandal, the body of the deceased Chhotu was recovered from Maldiha Dhar (river stream) and that it was noted at that time the eyes of the dead body and the tongue were protruding out. There were also signs of marks on the neck of the deceased Chhotu. The said part of the confessional statement as recorded by PW-9, cannot be said to straightaway implicate the appellant and the co-accused to the killing of the deceased. Leaving aside the rest of the part of the admission, the identity of the place at the instance of the appellant and the co-accused, as to where the dead body of the deceased was lying, which was exclusively within the knowledge of the appellant, was certainly admissible by virtue of the application of Section 8, read along with Section 27 of the Evidence Act.

16. In such circumstances, in the absence of any convincing explanation offered on behalf of the appellant accused as to under what circumstances he was able to lead the Police party to the place where the dead body of the deceased was found, it will have to be held that such recovery of the dead body, which is a very clinching circumstance in the case of this nature, would act deadly against the appellant considered along with rest of the circumstances demonstrated by the prosecution to rope in the appellant in the alleged crime of the killing of the deceased. Therefore, once we find that there was definite

admission on behalf of the appellant by which the prosecuting agency was able to recover the body of the deceased from a place, which was within the special knowledge of the appellant, the only other aspect to be examined is whether the appellant came forward with any convincing explanation to get over the said admission. Unfortunately though the above incriminating circumstance was put to the appellant in the 313 questioning where he had an opportunity to explain, except a mere denial there was no other convincing explanation offered by him.

17. Thus, we reach a conclusion that the said circumstance of recovery of the body of the deceased from the place called Maldiha Dhar (a river stream) at the instance of the appellant as spoken to by PW-9, supported by the evidence of PW4, we have to only see whether rest of the circumstances considered by the trial Court, as well as the High Court, were sufficient to confirm the ultimate conviction of the appellant and the sentence imposed on him. On this aspect when we perused the judgment of the trial Court, as well as the High Court, the following circumstances have been found to be established:

(i) PW-1 referred to the factum of the appellant attempting to ride a motorcycle in a narrow lane opposite to the shop of PW-1 and that when PW-1 advised him that vehicle cannot pass through the said lane the appellant parked the said motorcycle near the shop of PW-1 and went away to Thakurbari on foot;

(ii) PW-1 was asked by the father of the accused who was also arrayed as A-3, namely, Girendra Gupta who requested PW-1 not to divulge the said fact about the parking of the motorcycle to anyone;

(iii) According to PW-4, the uncle of the deceased, while he along with others were searching for the deceased he was informed by an old lady that she saw two persons going in a motorcycle with a boy sitting in between them though she could not identify any of

(iv) The deceased who went to attend the *Mela* at about 8 or 9 p.m. on 21.04.2002 did not return back as spoken to by PW-7.

(v) The body of the deceased was recovered from Maldiha Dhar (a river stream) based on the identification of the appellant.

(vi) When the body was recovered it was noted that the eyeball was bulging out and the tongue was protruding out apart from bruises noted on both sides of the neck.

(vii) The postmortem report of PW-10 confirms that the death of the deceased was due to asphyxia by strangulating the neck of the deceased. The said postmortem report also made it clear that eyeball was bulging and the tongue was protruding out and the abrasions on both sides of the neck were also noted.

(viii) The admissible version of the confessional statement of the appellant also revealed that his father A-3 asked PW-1 not to disclose the fact about the parking of a motorcycle of the appellant near his shop.

(ix) The recovery of the motorcycle bearing registration No.BR-39 0148 used by the appellant at the instance of the appellant from his house which was marked as Ext.8.

(x) PW-10 the postmortem doctor in the course of the cross-examination confirmed that he could mention the cause of death with certainty and that in any case it was not a case of drowning.

18. The above circumstances having been found to be fully established, the conclusion of the trial Court, as well that of the High Court in holding that the chain of circumstances was complete in every respect in order to lead to the only conclusion that the appellant was squarely responsible for the killing of the deceased, was well justified. Though the learned counsel for

the appellant attempted to point out some discrepancy in the matter of arrest of Arun Mandal and recording of the alleged confessional statement of the appellant under Ext.4, pursuant to which the body was traced out, we are of the view that the said discrepancy was a very trivial one and on that score we do not find any scope to dislodge the findings of the Courts below. We are, therefore, convinced that the ultimate conviction of the appellant under Section 302 of IPC and the sentence of life imprisonment imposed on him by commuting the death penalty imposed by the trial Court, was perfectly justified and we do not find any good grounds to interfere with the same. The appeal fails and the same is dismissed.

B.B.B. Appeal Dismissed.

BARKU BHAVRAO BHASKAR
v.
STATE OF MAHARASHTRA
(Criminal Appeal No.910 of 2010)

JULY 25, 2013

[A.K. PATNAIK AND FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ.]

Penal Code, 1860 – ss.364, 302 and 201 – Prosecution under – Conviction by courts below, holding that chain of circumstances against the accused were complete – Held: Evidence of the doctor who conducted post-mortem proved that the death was homicidal – In view of overwhelming evidence which proved all the circumstances against the accused, order of conviction is justified.

The appellant-accused was prosecuted for the offences punishable u/ss. 364, 302 and 201 IPC. Courts below convicted him on the basis of the circumstances namely the deceased was last seen with the deceased; extra-judicial confession of accused; recovery of blood-stained shirt of the accused and the dead body at the instance of the accused and motive for murder.

In appeal to this Court the appellant-accused *inter alia* contended that there were doubts as to whether the death was homicidal.

Dismissing the appeal, the Court

HELD: 1. In view of the specific statement of PW-6 (the doctor, who had conducted the post-mortem) who ruled out the possibility of the deceased having fallen down, either on her own or by way of an accidental fall by which she could have sustained the injuries, the conclusion that the death of the deceased was a

homicidal one, has become an irreversible one. [Para 11] [456-H; 457-A-B]

2. The Courts below held that the last seen theory was fully established by the evidence of PWs 3 and 7. Apart from PWs 3 and 7, there was one other child witness aged about 6 years, who had informed PW-1 about having seen the deceased in the company of the appellant on that very day. Though necessary steps were taken by the prosecution to examine the child, she did not open her mouth in the Court and the High Court has rightly noted that such a conduct displayed by the child cannot be found fault with, and the very factum of the attempt made to examine the child was held in favour of the prosecution by stating that the prosecution did not want to suppress any material in order to prove whatever evidence that was existing. [Paras 13 and 14] [458-C, E-G]

3. As regards the circumstance, namely, the blood stains found on the clothes of the appellant the High Court considered the plea of the accused that blood-group of the accused was not tested so as to ascertain whether the blood stain on his shirt could be of his own blood. The High Court noted that when at the instance of the appellant, his shirt was recovered and when the appellant was physically examined, it was found that there were absolutely no injuries on the body of the appellant and, therefore, the question of the blood stains from the body of the appellant to get transmitted to his shirt was ruled out. It was, therefore, held that the blood stains found on the appellant's shirt, considered along with the factum of the appellant having led the prosecution to discover his blood stained clothes and the body of the deceased put together, the blood stains found in the shirt of the appellant, could have been only that of the deceased and none else. There was no other

valid explanation offered on behalf of the appellant as to how the blood stains came to be found on his shirt, which was recovered at his instance, in the presence of the panch witnesses. The said conclusion arrived at by the High Court was fully justified. [Para 15] [458-H; 459-A-E]

4. As regards the recovery of the body of the deceased, the Courts below noted that such recovery came to be made only at the instance of the appellant, which was witnessed by PW-1, in whose presence at the foot of the mountain, the dead body covered by large and small stones, as well as 2-3 branches of *babool* tree. Therefore, there was no scope to doubt the finding that the recovery of the body of the deceased was only at the instance of the accused. [Para 16] [459-F-H]

5. Motive for murder got proved against the appellant, from the evidence of PWs-1, 4 and 5. All of them in unison deposed that the appellant had an axe to grind against PW-1 (father of the deceased child), since PW-1 had once abused him at the village, as regards the issue relating to the payment received by him, for which he did not render any service. [Para 17] [460-A-B]

6. Therefore, in view of the overwhelming evidence available on record, which proved every one of the circumstances put against the appellant and which has been examined in detail by the trial Court as well as by the High Court, there is no merit in the appeal. [Para 18] [460-D]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 910 of 2010.

From the Judgment and Order dated 10.02.2006 of the High Court of Judicature at Bombay in Criminal Appeal No. 1024 of 2001.

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

Sachin J. Patil, Sanjay V. Kharde, Asha Gopalan Nair, for the Respondent.

The Judgment of the Court was delivered by

FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1. This appeal is directed against the judgment of the High Court of Bombay dated 10.02.2006, in Criminal Appeal No.1024 of 2001. The sole accused is the appellant before us. He was convicted by the trial Court in Sessions Case No.49 of 2001, for the offences punishable under Sections 364, 302 and 201 of IPC. He was imposed with sentence of life for the offence proved under Section 302 IPC and five years' rigorous imprisonment for the offence under Section 354 IPC apart from three years rigorous imprisonment for the offence under Section 201 IPC. The trial Court also imposed fine with a default sentence. On appeal, the High Court having confirmed the conviction and sentence imposed, the appellant has come before us by filing this appeal.

2. The case of the prosecution as projected before the trial Court, to be stated in a nutshell was that the deceased was a female child aged about 6 years and was the daughter of the complainant PW-1. The accused was also related to the family of PW-1. PW-1 used to undertake masonry work. The appellant also worked under PW-1 on certain occasions and according to PW-1, as supported by the version of his brother PW-5, there was some dispute relating to payment received by the appellant, by way of wages and for which no services were rendered by him. It is the case of the prosecution that the appellant was responsible for the killing of the deceased Rakhi, daughter of PW-1 and the motive attributed for such killing was the wage dispute that was pending between the appellant and PW-1. The occurrence took place on 03.12.2000.

3. According to the prosecution, the mother of the deceased, PW-3, had seen the deceased in the company of the appellant at around 10.30 am at h[illegible]e

appellant said to have fed sugarcane to the child Rakhi. PW-3 at that time was stated to be washing the clothes and after completing her domestic work, she noticed that both of them were not present in the house. At around 1.15 pm, according to PW-7, a sweet vendor in that area had an occasion to see the appellant and the deceased, since the appellant bought some sweets in his shop for the deceased. Thereafter, in the evening, after PW-1 returned back from his work, he found that the deceased Rakhi was not at home. He then along with his brother PW-5 and one Balvant PW-4, went to the house of appellant but they could not find the child over there. PW-3 informed that she saw the child in the company of the appellant and that since the appellant was nowhere to be found she felt that the accused might have taken the deceased Rakhi to the village Kakane, as he was earlier stating that he wish to take the child to the village to see his mother who happened to be the grand-mother of the child. The complainant PW-1 along with PW-4, stated to have gone to the village Kakane and made enquiries about the missing child Rakhi but neither the accused nor the deceased were found there. Thereafter, in the evening, PW-1 came to know that appellant was seen taking the child along with him by one Mohna, another child of the same age group as the deceased. PW-1 once again went back to the village and brought the appellant to his house and on his way back, the appellant appeared to have made an extra-judicial confession by stating that if he was not beaten, he would tell the truth and so saying revealed that he had killed the child on account of the wage dispute as between him and PW-1. The appellant then stated to have informed that he took the deceased Rakhi to Patvihir Shivar area, near the mountain and killed her there where he stated to have hidden the dead body under the stones.

4. Thereafter, the appellant was taken to the police station, where a complaint Ext.1 was lodged wherefrom, the appellant took the policeman along with PW-1 and 7-8 others to Patvihir Shivar area in the Jeep, where the appellant identified the spot

of the incident. At the instance of the appellant, the dead body of the deceased Rakhi was recovered by removing the stones and it was found that the deceased had sustained bleeding injuries on her head and ear and that at that point of time she was wearing her school uniform. Further, at the instance of the appellant, in the presence of PW-2, a panch witness, the blood stained shirt of the accused was also recovered under Exts.16 and 17. The said shirt was recovered at a location on Khedgaon road, about two furlongs away from the village Nakode and it was found hidden under a stone. In support of the prosecution, as many as nine witnesses were examined and several exhibits were marked.

5. While PW-1 is the complainant, PW-2 is panch witness for recovery of the blood stained shirt of the appellant, PW-3 and PW-7 were examined for the last seen theory of the appellant, along with the deceased. PW-5, the brother of PW-1, deposed about the earlier dispute between the appellant and PW-1. PW-6 is Dr. Priyanka Asher who conducted the postmortem and issued Ext.21 report. The chemical analysis reports relating to the clothes of the deceased, as well as that of the appellant were marked as Ext.4. Based on the evidence recorded, when the incriminatory circumstances were put against the appellant under Section 313, the appellant made a simple denial of those circumstances and did not come forward with any explanation. No defence witness was examined on the side of the appellant. It is based on the above evidence, that the trial Court found the appellant guilty of the offences falling under Sections 364, 302 and 201 IPC, for which the sentence came to be imposed, which was ultimately confirmed by the High Court.

6. The case on hand was based on the circumstantial evidence, which were placed before the trial Court and based on the appreciation of the said evidence, the conviction came to be imposed. The trial Court after analysing the medical evidence as demonstrated by PW-6, the

the postmortem, as well as the certificate issued by her, reached a conclusion that the death of the deceased was a homicidal one. Based on the other evidence the trial Court also reached a conclusion that there were clinching circumstances against the appellant and that there was no missing link in the chain of circumstances demonstrated before it.

7. The circumstances which were examined by the trial Court were formulated and noted by the High Court, which were five in number. The circumstances were:

"(i) Rakhi being last seen in the company of the accused.

(ii) Extra-judicial confession of the accused.

(iii) Discovery of the blood stained shirt at the instance of the accused which bears
blood stains of the same group as that of the deceased.

(iv) Discovery of the dead body at the instance of the accused.

(v) Motive."

8. Both the Courts have discussed each one of the circumstances in depth. The ultimate conclusion was that the circumstances were incapable of being explained on any other reasonable hypothesis, except that the guilt of the appellant, were totally inconsistent to draw an inference of innocence of the appellant.

9. When we examine the circumstances dealt with by the Courts below in the foremost, it will be worthwhile to refer to the injuries sustained by the deceased, as there was an argument raised on behalf of the appellant that there were grave doubts as to whether the death itself was the homicidal one. The injuries as found in the postmortem report were as under:

"1) Abrasion of about 0.5 cm x 0.5 cm on inner part of upper lip swelling.

2) Abrasion of about 2 x 2 cm on left frontal area.

3) Abrasion of about 0.1 cm x 0.1 cm behind left ear lobula.

4) Swelling of left side of face.

5) Left black eye.

10. On the internal examination, she found following injuries.

1) Haematoma on the left side under the scalp.

2) Fracture of coronal sutured line extending towards temporal and parietal parts on both the sides.

3) Brain tissue congested.

Meningeal tear on temporal region right side, and on parietal region left side (about 2 x 2 cm each side)"

11. With that, when we consider the opinion of the postmortem doctor PW-6, according to her those injuries were antemortem in nature and the internal injuries were corresponding to the external injuries. The cause of death was shock due to cardio-respiratory arrest on account of the head injuries. The postmortem report was Ext.22. When we examine the evidence of PW-6, there was a clear suggestion put to her to the effect that these injuries could have been sustained by a fall or by an accident. It was suggested that if a person falls from a mountain or a considerable height, the very same injuries could have been sustained. While answering the said suggestion in affirmative, PW-6, however, qualified her statement by stating that the injuries sustained by fall will not be as extensive as it was in the case of the deceased. The said specific statement of PW-6, therefore, r y

of the deceased having fallen down, either on her own or by way of an accidental fall by which she could have sustained the injuries, which were noted in the postmortem report Ext.22. Further the trial Court has also stated that on behalf of the accused, the homicidal cause of death was not seriously disputed. In such circumstances the conclusion that the death of the deceased was a homicidal one, has become an irreversible one and proceeding on the above basis, the only other factor left to be examined was as to who was responsible for causing the said homicidal death of the deceased. When we examine the said question, the circumstances narrated by the Courts below require to be considered. All that we can examine in this appeal is as to whether there were any serious flaws in the judgment of the Courts below, while holding that the circumstances found proved against the appellant were all clinching and that there were no missing link in those circumstances, in order to hold that the appellant was not guilty of the charges found proved against him.

12. When we examine first of the circumstances, namely, the last seen theory put against the appellant, we find that the evidence of PW-3 and PW-7, were relied upon to support the said circumstance. PW-3 is none other than the mother of the deceased. The Court has found that the appellant being a relative, his presence at 10.30 am on the date of the occurrence in the house with the deceased sitting on his lap, was noted by PW-3, when she was washing the clothes and attending to the other domestic chores. The Courts have found that there was no reason for PW-3 to utter any falsehood on this aspect and that she had seen the deceased and the appellant together till about 11 am, in the morning and thereafter, she was under the impression that the appellant, as was suggested earlier, would have taken the girl to his mother's place in the village, who also happened to be the grand-mother of the child. Such an impression gained by PW-3, could not have been ruled out. However, when the child was not traced till the evening, it was quite natural that PW-1, the father of the deceased, was duly

informed, who along with PW-5, his brother, stated to have made an intensive search and in that process, they came across the version of PW-7, a petty shop owner, in whose shop the appellant and the deceased were found at around 1.15 pm, when the appellant procured some sweets valued at Rs.1 for the deceased child.

13. Therefore, t he Courts below have held that the last seen theory was thus fully established. An attempt was then made to find fault with the said evidence by contending that the role of PW-7 came to light only through one Mr. Ashok, who was not examined. The said contention was rejected by stating that on behalf of the appellant, a requisition was initially made to examine the said Ashok and for the reason best known to him, it was subsequently withdrawn. By referring to the said conduct displayed on behalf of the appellant, it was held that the evidence of PW-3 and PW-7, sufficiently establish the circumstance, namely, that the deceased was in the custody of the appellant before she ultimately met with her unfortunate death.

14. In fact, there was one other child witness by name Mohna, who appeared to have informed PW-1 about having seen the deceased in the company of the appellant on that very day. Though necessary steps were taken by the prosecution to examine the said child, it is found that the child witness who was about 6 years old, did not open her mouth in the Court and the High Court has noted that such a conduct displayed by the said child cannot be found fault with and the very factum of the attempt made to examine the child was held in favour of the prosecution by stating that the prosecution did not want to suppress any material in order to prove whatever evidence that was existing. We also fully concur with the said conclusion of the High Court, in so far as the said part of the prosecution case as displayed before the trial Court.

15. The other circumstance, namely about the blood stains found on the clothes of the appellant w s

contended that though the blood group found on the clothes of the appellant was 'A' and that the blood group of the deceased was also 'A', it was submitted on behalf of the appellant that the blood group of the appellant was not tested. While examining the said contention, the High Court has taken pains to note that when at the instance of the appellant, his shirt was recovered under Exts.16 and 17 and when the appellant was physically examined, it was found that there were absolutely no injuries on the body of the appellant and, therefore, the question of the blood stains from the body of the appellant to get transmitted to his shirt was ruled out. It was, therefore, held that the blood stains found on the appellant's shirt, considered along with the factum of the appellant having led the prosecution to discover his blood stained clothes and the body of the deceased put together, the blood stains found in the shirt of the appellant, could have been only that of the deceased and none else. The said conclusion arrived at by the High Court was fully justified and no fault can be found with the said conclusion. As regards the blood stains found on the shirt of the appellant, except the *ipsi dixit* submission made on this aspect, no other submission was made and there was no valid explanation offered on behalf of the appellant as to how the blood stains came to be found on his shirt, which was recovered at his instance, in the presence of the panch witnesses.

16. As far as the recovery of the body of the deceased was concerned, the Courts below have noted that such recovery came to be made only at the instance of the appellant, which was witnessed by PW-1, the father, in whose presence at the foot of the mountain called "Munja Dongar", in the precincts of village Patvihir, the dead body covered by large and small stones, as well as 2-3 branches of *babool* tree. The High Court has discussed the said evidence in minute details to hold that the recovery of the body of the deceased was only at the instance of the accused and, therefore, there was no scope to doubt the same.

17. With that when we come to motive aspect, which was one other circumstance found proved against the appellant, we find from the evidence of PWs-1, 4 and 5 that all of them in unison deposed that the appellant had an axe to grind against PW-1, since PW-1 had once abused him at the village, as regards the issue relating to the payment received by him, for which he did not render any service. Though a feeble attempt was made on behalf of the appellant to state that there was some variation in the version of the witnesses, the High Court considered the said submission in detail and has found that they were all trivial and that there was absolutely nothing to contradict the allegation of motive, as against the appellant, vis-à-vis PW-1, the complainant.

18. Having regard to such overwhelming evidence available on record, which proved every one of the circumstances put against the appellant and which has been examined in detail by the trial Court as well as by the High Court, we do not find any merit in this appeal. The appeal fails, the same is dismissed.

K.K.T. Appeal dismissed.

GOVINDA BALA PATIL (D) BY LRS.

v.

GANPATI RAMCHANDRA NAIKWADE (D) BY LRS.

(Civil Appeal No. 1675 of 2004)

JULY 29, 2013

[CHANDRAMAULI KR. PRASAD AND V. GOPALA GOWDA, JJ.]

Bombay Tenancy and Agricultural Lands Act, 1948:

s.32G – Proceedings under – Initiated by tenant – Rejected by Additional Tehsildar holding that the land was leased out for growing sugarcane – Appellate-authority set it aside holding that landlord failed to prove the specific purpose of the lease – Revisional Court gave its finding in favour of landlord, and held that the land was leased out for growing sugarcane – High Court, in writ petition set aside the order of revisional court – Held: The order of the authority was perverse as its conclusion was without reference to the evidence – Therefore, High Court erred in setting aside the order of revisional court.

s. 43A – Applicability of – Whether applicable to single person – High Court in view of plural expressions in the provision held that the provision covers only those cases in which lease is given to more than one person – Held: In view of s.13 of Bombay General Clauses Act which provides that singular shall include the plural and vice versa, *plural expression will include singular – Thus, s.43A would be applicable to single person – Bombay General ClausesAct, 1904 – s.13.*

Revision – Jurisdiction of revisional court – Scope of – Held: Revisional court ordinarily does not reappraise the evidence – But where finding recorded by appellate authority is perverse, it can upset the finding of appellate authority.

Evidence – Nature of evidence – In agricultural tenancy case – Held: Such cases are decided on the preponderance of probability – Principle of proof beyond reasonable doubt does not apply in such proceedings.

The respondent-tenant initiated proceedings u/s. 32G of Bombay Tenancy and Agricultural Lands Act, 1948 for determination of price of the land on the pela that he shall be deemed to have purchased the land. The Additional Tehsildar held that the land in question was leased out by the appellant land-holder for growing sugarcane and accordingly dropped the proceedings. Appellate authority allowed the appeal of the tenant on giving finding that the landlord failed to prove the specific purpose of the lease. Landlord filed revision petition, which was allowed by Maharashtra Revenue Tribunal setting aside the order of the appellate authority and restoring the order of the Additional Tehsildar. Tenant's writ petition was allowed by High Court setting aside the order of the Tribunal. It was held that the land was not leased out for cultivation of sugarcane and further held that s.43A of the Act would not govern the field as the lease in question was not given to more than one person. Hence the present appeal by the landlord.

Allowing the appeal, the Court

HELD: 1.1. The revisional court ordinarily does not reappraise the evidence, but in case it is found that the finding recorded by the appellate authority is perverse, nothing prevents it from upsetting the finding of the appellate authority. If the appellate authority records a finding without consideration of the relevant material or on consideration of irrelevant material or the finding arrived at is such that no person duly instructed in law can reach at that finding, such finding in law is called perverse and in such a contingency it is within the jurisdiction of the revisional court t[illegible]d

finding. [Para 6] [467-F-H]

1.2. In the present case, the finding recorded by the Sub-Divisional Officer (appellate authority) is patently perverse. The Sub-Divisional Officer has referred to the statement of the landlord and his witnesses that the land was leased out for growing sugarcane but rejected the evidence on the ground that the "landlord and his witnesses have not been able to prove the purpose of lease beyond reasonable doubt" and ultimately held that "the landlord has failed to prove the specific purpose of the lease." While doing so, the Sub-Divisional Officer has lost sight of the basic principle that the nature of the proceeding is decided on the preponderance of probability and the principle of proof beyond reasonable doubt does not apply in such proceeding. Further, appellate-authority, without assigning any reason, has rejected the evidence of the landlord and his witnesses and jumped to a conclusion without reference to the evidence. The Tribunal (the revisional court) has recorded the finding that it was leased out for the purpose of growing sugarcane. The Tribunal has referred to the evidence of the landlord and his witnesses and further to the record of rights and from that it has come to the aforesaid conclusion. Thus the Tribunal was well within its right in setting aside the finding of the appellate-authority and holding that the land was leased out for the purpose of growing sugarcane. That being so, the High Court erred in setting aside the finding of the Tribunal. Accordingly, the finding of the Additional Tahsildar as affirmed by the Tribunal is restored and held that the land was leased out for cultivation of sugarcane. [Paras 7 and 8] [468-A-G]

2. Section 43A excludes the application of various provisions of the Act including 33C in respect of "leases" granted to "any bodies or persons" inter alia for the

purpose of cultivation of sugarcane. However, in view of the plural expression "any bodies" or "persons", the High Court has come to the conclusion that it shall cover only those cases in which lease has been given to more than one person and not singular person. Section 13 of the Bombay General Clauses Act, 1904 *inter alia* provides that words in the singular shall include the plural and *vice versa*. In the plural word "persons", there is nothing repugnant in the subject or context so that it may not be read as singular. Sub-section (b) of Section 43A(1) of the Act has also used the plural expression "leases" and if the reasoning of the High Court is accepted, the aforesaid provision shall cover only such cases where there is more than one lease. This will defeat the very purpose of the Act. [Paras 10 and 11] [469-G-H; 470-A, E-F]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1675 of 2004.

From the Judgment and Order dated 08.01.2002 of the High Court of Judicature at Bombay in Writ Petition No. 3807 of 1988.

Dr. Rajeev B. Masodkar, Anil Kumar Jha, for the Appellants.

Kailash Pandey, Ranjeet Singh, K. V. Sreekumar, for the Respondents.

The Judgment of the Court was delivered by

CHANDRAMAULI KR. PRASAD, J. 1. This appeal arises out of a proceeding under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948. One Govinda Bala Patil, since deceased, the predecessor-in-interest of the appellants, hereinafter referred to as "the landlord", owned land being R.S. No. 51 admeasuring 35 gunthas at Village Pandewadi within Taluka Radhanag[illegible]

Kolhapur. A proceeding under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948, hereinafter referred to as "the Act", was initiated by one Rama Dattu Naikwade, predecessor-in-interest of the respondents, for determination of price of the land on the plea that he shall be deemed to have purchased the land. The Additional Tahsildar & ALT, Radhanagari, at the first instance, held that the land in question was leased out for growing sugarcane and, accordingly, dropped the proceeding. However, in appeal, the said order was set aside and the matter ultimately remitted back to him to hold fresh inquiry. Accordingly, the Additional Tahsildar held fresh inquiry and again by its order dated 10th of December, 1981 reiterated its earlier finding and held that the land was leased out for growing sugarcane and the proceeding was dropped. The tenant thereafter preferred appeal which was heard by the Sub-Divisional Officer, Shahuwadi Division, Kolhapur who allowed the appeal and set aside the order of the Additional Tahsildar on its finding that the landlord has failed to prove the specific purpose of the lease. The landlord then preferred revision before the Maharashtra Revenue Tribunal, Kolhapur, hereinafter referred to as "the Tribunal", which set aside the order of the Sub-Divisional Officer and restored that of the Additional Tahsildar. While doing so, the Tribunal held as follows:

> "In the instant case as I have stated earlier there is sufficient evidence on record to show on the basis of entries in the "E" Patrak that suit land was continuously growing sugarcane crop from the year 1946 and this particular fact is also corroborated to some extent by two independent witnesses examined by the applicant-landlords. So in this case it cannot be said that no agreement of lease was established between the parties and in as much as sugarcane crop was grown in the suit land since the year 1946, there are reasons to believe that the main purpose of lease was for growing sugarcane crop."

2. The tenant assailed the aforesaid order before the High Court in a writ petition. The High Court by the impugned order set aside the order of the Tribunal and held that the Tribunal erred in setting aside the finding of the Sub-Divisional Officer that the land in question was not leased out for sugarcane cultivation. The High Court, in this connection, has observed as follows:

> "12. While toppling the judgment and order passed by the Sub-Divisional Officer, Shahuwadi, the learned Member of M.R.T. has dislodged the findings of facts recorded by the said authority. After examining the judgment and order passed by the S.D.O. Shahuwadi, this Court comes to the conclusion that the findings recorded by the S.D.O. Shahuwadi were consistent with the evidence on record. The approach adopted by him was correct, proper and legal. When that was so, it was beyond the jurisdiction of the learned Member of M.R.T. to dislodge it in the revision. The findings of facts consistent with evidence and law cannot be dislodged by revisional authority."

3. The High Court has further held that Section 43A of the Act will not govern the field as the lease in question was not given to more than one person. At this juncture, we consider it appropriate to reproduce the reasoning of the High Court in this regard:

> "11. Section 43A of the Bombay Tenancy Act was exempting certain categories of the cultivation of the land and the persons cultivating it for growing sugarcane, for making improvement in the financial and social status of the peasants using the land for growing sugarcane, fruits or flowers or for the breeding of livestock. The words which are used in sub-clause (b) of Section 43A(1) clearly provide that such exemption was available to the leases of land granted by "any bodies" or "persons" other than those mentioned in clause (a) for cultivation of sugarcane or the growing of fruits or flowe[illegible]of

livestock. The words used in sub-clause (b) "any bodies" or "persons" cannot be made applicable to a single person. Such an attempt would be throttling the spirit of enacting Section 43A of the Bombay Tenancy Act....."

4. We have heard Dr. Rajeev B. Masodkar, learned counsel for the appellants whereas respondents are represented by Mr. Kailash Pandey, Advocate.

5. Dr. Masodkar contends that the finding recorded by the Tribunal that the lease was for cultivation of sugarcane has been set aside by the High Court without assigning any reason and it merely stated "that the finding recorded by the SDO Shahuwadi is consistent with the evidence on record" and "the approach adopted by him was correct, proper and legal" and in such circumstances "it was beyond the jurisdiction" of the Tribunal "to dislodge it in the revision". He points out that the Sub-Divisional Officer had jumped to a finding without assigning any reason and hence it was open for the Tribunal to upset the same and record its own finding. Mr. Pandey, however, submits that the Tribunal, which is a court of revision, cannot act as a court of appeal and, hence, the High Court was right in setting aside its finding.

6. We have considered the rival submission and we find substance in the submission of Dr. Masodkar. True it is that the revisional court ordinarily does not reappraise the evidence but in case it is found that the finding recorded by the appellate authority is perverse, nothing prevents it from upsetting the finding of the appellate authority. If the appellate authority records a finding without consideration of the relevant material or on consideration of irrelevant material or the finding arrived at is such that no person duly instructed in law can reach at that finding, such finding in law is called perverse and in such a contingency, in our opinion, it is within the jurisdiction of the revisional court to set aside the said finding.

7. Bearing in mind the principles aforesaid, when we consider the facts of the present case we are of the opinion that the finding recorded by the Sub-Divisional Officer is patently perverse. The Sub-Divisional Officer has referred to the statement of the landlord and his witnesses that the land was leased out for growing sugarcane but rejected the evidence on the ground that the "landlord and his witnesses have not been able to prove the purpose of lease beyond reasonable doubt" and ultimately held that "the landlord has failed to prove the specific purpose of the lease." While doing so, the Sub-Divisional Officer, in our opinion, has lost sight of the basic principle that the nature of the proceeding is decided on the preponderance of probability and the principle of proof beyond reasonable doubt does not apply in such proceeding. Further, the Sub-Divisional Officer, without assigning any reason, has rejected the evidence of the landlord and his witnesses and jumped to a conclusion without reference to the evidence. We have quoted the observations of the Tribunal which has recorded the finding that it was leased out for the purpose of growing sugarcane. The Tribunal has referred to the evidence of the landlord and his witnesses and further to the record of rights and from that it has come to the aforesaid conclusion.

8. In the face of what we have observed above, the Tribunal was well within its right in setting aside the finding of the Sub-Divisional Officer and holding that the land was leased out for the purpose of growing sugarcane. That being so, we are of the opinion that the High Court erred in setting aside the finding of the Tribunal. Accordingly, we restore the finding of the Additional Tahsildar as affirmed by the Tribunal and hold that the land was leased out for cultivation of sugarcane.

9. Dr. Masodkar, then submits that the High Court committed a grave error in coming to the conclusion that Section 43A of the Act would not govern the field and cannot be made applicable to a single person. He submits that in law, the plural covers the singular also. M[illegible]r,

submits that the High Court is right in holding that in view of the use of the expression "any bodies or persons" in sub clause (b) of Section 43A(1) of the Act, the same cannot be made applicable to a single person. He points out that in the present case, it is an admitted position that the land in question was given on lease to a single person. In order to appreciate the rival submissions, we deem it expedient to reproduce Section 43A(1)(b) of the Act:

> "43A.Some of the provisions not to apply to leases of land obtained by industrial or commercial undertakings, certain co-operative societies or for cultivation of sugarcane or fruits or flowers
>
> (1) The provision of sections 4B, 8, 9, 9A, 9B, 9C, 10, 10A, 14, 16, 17A, 17B, 18, 27, 31 to 31D (both inclusive), 32 to 32R (both inclusive), 33A, 33B, 33C, 43, 63, 63A, 64 and 65, shall not apply to-
>
> (a) xxx xxx xxx
>
> (b) leases of land granted to any bodies or persons other than those mentioned in clause (a) for the cultivation of sugarcane or the growing of fruits or flowers or for the breeding of livestock;
>
> (c) xxx xxx xxx"

10. Section 43A excludes the application of various provisions of the Act including 33C in respect of "leases" granted to "any bodies or persons" inter alia for the purpose of cultivation of sugarcane. However, in view of the plural expression "any bodies" or "persons", the High Court has come to the conclusion that it shall cover only those cases in which lease has been given to more than one person and not singular person. It seems that the attention of the Court was not drawn to Section 13 of the Bombay General Clauses Act, 1904 which inter alia provides that words in the singular shall include the

plural and vice versa. Section 13 of the aforesaid Act reads as follows:

> "**Section 13 - Gender and number.**
>
> In all Bombay Acts or Maharashtra Acts, unless there is anything repugnant in the subject or context, -
>
> (a) words importing the masculine gender shall be taken to include females; and
>
> (b) words in the singular shall include the plural, and vice versa."

11. It is relevant here to state that the High Court has not come to the conclusion that there is anything repugnant in the subject or context so as to come to the conclusion that the plural will not include the singular. We have examined the use of the plural word "persons" from that angle and we do not find that there is anything repugnant in the subject or context so that it may not be read as singular. It is worth mentioning here that sub-section (b) of Section 43A(1) of the Act has also used the plural expression "leases" and if we accept the reasoning of the High Court, the aforesaid provision shall cover only such cases where there is more than one lease. This, in our opinion, will defeat the very purpose of the Act.

12. Thus, the impugned judgment of the High Court is vulnerable on both the counts and, hence, cannot be sustained.

13. In the result, the appeal is allowed, impugned judgment of the High Court is set aside and that of the Tribunal is restored. In the facts and circumstances of the case, there shall be no order as to costs.

K.K.T. Appeal allowed.

DEVENDRA KUMAR
v.
STATE OF UTTARANCHAL & ORS.
(Civil Appeal No. 1155 of 2006)

JULY 29, 2013

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

Service Law – Termination of service – On account of suppression of the fact of pendency of criminal case – Held: Where an applicant gets an office by misrepresenting the facts by playing fraud upon competent authority, such order cannot be sustained in the eye of law – Material Information sought by the employer, if not disclosed, would amount to moral turpitude and is separate and distinct from the involvement in a Criminal case – The services of the appellant rightly terminated.

Maxims:

'fraus et jus nunguam cohabitant' – Applicability of.

'Subla fundamento cedit opus' – Applicability of.

'Nullus Commodum Capere Petest De Injuria Sua Propria' – Applicability of.

The appellant, who at the time of his appointment as a constable, submitted on affidavit that he had never been involved in a criminal case. The respondent-authorities in pursuance of the process of character verification found that the appellant was involved in a criminal case, in respect whereof, a closure report was submitted by the police and accepted by the Magistrate. Respondent-authority terminated his services. Single judge as well as Division Bench of High Court upheld the termination of service. Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1. A writ Court, while exercising its equitable jurisdiction, should not act to prevent perpetration of a legal fraud as Courts are obliged to do justice by promotion of good faith. "Equity is, also, known to prevent the law from the crafty evasions and subtleties invented to evade law." [Para 12] [480-G-H; 481-A]

2.1. Where an applicant gets an office by misrepresenting the facts or by playing fraud upon the competent authority, such an order cannot be sustained in the eyes of law. "Fraud avoids all judicial acts, ecclesiastical or temporal." "Fraud and justice never dwell together" *(fraus et jus nunquam cohabitant).* "Misrepresentation itself amounts to fraud", and further "fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. Dishonesty should not be permitted to bear the fruit and benefit those persons who have frauded or misrepresented themselves. In such circumstances, the Court should not perpetuate the fraud by entertaining petitions on their behalf. Suppression of material information and making a false statement has a clear bearing on the character and antecedent of the employee in relation to his continuation in service. [Paras 11, 14, 15, 16 and 18] [480-E-F; 481-C, D-G; 483-D]

S.P. Chengalvaraya Naidu (Dead) by LRs. vs. Jagannath (Dead) by LRs. and Ors. **AIR 1994 SC 853: 1993 (3) Suppl. SCR 422;** *Andhra Pradesh State Financial Corporation vs. M/s. GAR Re-Rolling Mills and Anr.* **AIR 1994 SC 2151: 1994 (2) SCC 647;** *State of Maharashtra* [illegible] *u*

(1994) 2 SCC 481; *Smt. Shrisht Dhawan vs. M/s. Shaw Bros.* **AIR 1992 SC 1555: 1991 (3) Suppl. SCR 446;** *United India Insurance Company Ltd. vs. Rajendra Singh and Ors.* **AIR 2000 SC 1165:** *M.P. Mittal vs. State of Haryana and Ors.***AIR 1984 SC 1888: 1985 (1) SCR 940;** *Ram Chandra Singh vs. Savitri Devi and Ors*. AIR **2004 SC 4096: 2004 (12) SCC 713;** *Vice-Chairman, Kendriya Vidyalaya Sangathan and Anr. vs. GirdharilalYadav* **(2004) 6 SCC 325;** *Union of India and Ors. vs. M. Bhaskaran* **AIR 1996 SC 686: 1995 (4) Suppl. SCR 526;** *District Collector and Chairman, Vizianagaram Social Welfare Residential School Society vs. M. Tripura Sundari Devi* **(1990) 3 SCC 655: 1990 (2) SCR 559 – relied on.**

Lazarus Estate Ltd. vs. Besalay **1956 All E.R. 349 – referred to.**

2.2. In the present case, an FIR was registered against the appellant and others under Sections 402/465/ 471 and 120-B IPC. In respect of the same, a closure report was submitted which was accepted by the Magistrate. [Para 6] [479-A-B]

2.3.The High Court has placed reliance on the Govt. Order dated April 28, 1958 relating to verification of the character of a Government servant, upon first appointment, wherein the individual is required to furnish information about criminal antecedents of the new appointees and if the incumbent is found to have made a false statement in this regard, he is liable to be discharged forthwith without prejudice to any other action as may be considered necessary by the competent authority. [Para 22] [484-B-D]

2.4. The purpose of seeking such information is not to find out the nature or gravity of the offence or the ultimate result of a criminal case, rather such information is sought with a view to judge the character and

antecedents of the job seeker or suitability to continue in service. Withholding such material information or making false representation itself amounts to moral turpitude and is a separate and distinct matter altogether than what is involved in the criminal case. [Para 22] [484-D-F]

2.5. The pendency of a criminal case/proceeding is different from suppressing the information of such pendency. The case pending against a person might not involve moral turpitude but suppressing of this information itself amounts to moral turpitude. In fact, the information sought by the employer if not disclosed as required, would definitely amount to suppression of material information. In that eventuality, the service becomes liable to be terminated, even if there had been no further trial or the person concerned stood acquitted/ discharged. [Para 10] [480-C-E]

2.6. More so, if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. "*Subla Fundamento cedit opus*"- a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent Court. In such a case the legal maxim *Nullus Commodum Capere Potest De Injuria Sua Propria* applies. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation. Nor can a person claim any right arising out of his own wrong doing. *(Juri Ex Injuria Non Oritur).* [Para 23] [484-F-H; 485-A]

Union of India vs. Maj. Gen. Madan Lal Yadav **AIR 1996 SC 1340: 1996 (3) SCR 785;** *Lily Thomas vs. Union of India and Ors.***AIR 2000 SC 1650: 2000 (3) SCR 1081 – relied on.**

2.7. Clause 4 of proforma aff a

situation, where a case has been registered, an investigation is conducted and the police have filed a final report. Though, the person concerned must have knowledge of the pendency of such an FIR/criminal complaint. Further, clause 7 requires, in case, a person has faced criminal prosecution, he has to furnish the information about the result of that trial as to whether the person has been punished/convicted or acquitted/ discharged. Therefore, it cannot be said that the clauses have to be read together and such information was required to be furnished only and only if the person faced the trial and not otherwise. [Paras 7 and 8] [479-E-H]

State of Haryana and Ors. vs. Dinesh Kumar **AIR 2008 SC 1083: 2008 (1) SCR 281;** *Secretary, Department of Home, A.P. and Ors. vs. B. Chinnam Naidu* **(2005) 2 SCC 746: 2005 (1) SCR 1147;** *R. Radhakrishnan vs. Director General of Police and Ors.* **AIR 2008 SC 578: 2007 (11) SCR 456;** *Delhi Administration through its Chief Secretary and Ors. vs. Sushil Kumar* **(1996) 11 SCC 605: 1996 (7) Suppl. SCR 199;** *Kendriya Vidyalaya Sangathan vs. Ram Ratan Yadav* **AIR 2003 SC 1709: 2003 (2) SCR 361;** *A.P. Public Service Commission vs. Koneti Venkateswarulu* **AIR 2005 SC 4292: 2005 (2) Suppl. SCR 1050 – referred to.**

Case Law Reference:

1993 (3) Suppl. SCR 422	**relied on**	**Para 11**
1956 All E.R. 349	**referred to**	**Para 11**
1994 (2) SCC 647	**relied on**	**Para 12**
(1994) 2 SCC 481	**relied on**	**Para 12**
1991 (3) Suppl. SCR 446	**relied on**	**Para 13**
AIR 2000 SC 1165	**relied on**	**Para 14**
1985 (1) SCR 940	**relied on**	**Para 14**

2004 (12) SCC 713	**relied on**	**Para 15**
(2004) 6 SCC 325	**relied on**	**Para 15**
1995 (4) Suppl. SCR 526	**relied on**	**Para 16**
1990 (2) SCR 559	**relied on**	**Para 16**
1996 (7) Suppl. SCR 199	**referred to**	**Para 17**
2003 (2) SCR 361	**referred to**	**Para 18**
2005 (2) Suppl. SCR 1050	**referred to**	**Para 18**
2008 (1) SCR 281	**referred to**	**Para 19**
2005 (1) SCR 1147	**referred to**	**Para 20**
2007 (11) SCR 456	**referred to**	**Para 21**
1996 (3) SCR 785	**relied on**	**Para 23**
2000 (3) SCR 1081	**relied on**	**Para 23**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1155 of 2006..

From the Judgment and Order dated 28.05.2004 of the High Court of Uttaranchal at Nainital in Special Appeal No. 16 of 2003.

Nanita Sharma, Vivek Sharma, for the Appellant.

Pankaj K. Singh, Mukesh Verma, Jatinder Kumar Bhatia, for the Respondents.

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. This appeal has been preferred against the impugned judgment and order dated 28.5.2004 in Special Appeal No. 16 of 2003 passed by the High Court of Uttaranchal. The order affirmed the judgment and order of the learned Single Judge dismissing the W[illegible]S/

B) of 2002 vide impugned judgment and order dated 1.8.2003 by which and wherein, the order of termination of service of the appellant by the respondent authorities had been upheld.

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

A. An advertisement was published in September 2001 inviting applications from candidates eligible for the 250 posts of Constables in the State of Uttaranchal. The appellant applied in response to the same vide application dated 7.9.2001. He appeared for the physical test and qualified on 28.9.2001. Subsequently, upon passing the written test, the appellant faced an interview in September, 2001 and, ultimately his name was mentioned in the list of selected candidates published on 30.9.2001. The appellant was called for medical examination on 4/5.10.2001, by which he was found fit. Thus, he was sent for training of six months on 18.10.2001.

B. While joining the training, the appellant was asked to submit an affidavit giving certain information particularly, whether he had ever been involved in any criminal case. The appellant submitted an affidavit stating that he had never been involved in a criminal case. The appellant completed his training satisfactorily and it was at this time in January 2002, that the respondent authorities in pursuance of the process of character verification came to know that the appellant was in fact involved in a criminal case. The final report in that case had been submitted by the prosecution and accepted by the learned Magistrate.

C. On the basis of the same, the appellant was discharged abruptly on 8.4.2002 on the ground that since he was a temporary government servant, he could be removed from service without holding any inquiry.

D. The appellant challenged the said order by filing a writ petition and since he was not favoured by the learned single

Judge, he challenged the same before the Division Bench but to no avail.

Hence, this appeal.

3. Ms. Nanita Sharma, learned counsel appearing on behalf of the appellant, has submitted that the appellant was not aware of any FIR/criminal complaint against him, nor had he been interrogated by the police at any stage. Thus, as it was not in his knowledge he had not suppressed any information regarding the registration of a criminal case against him. Even otherwise, he had not concealed any material fact while giving information in regard to clause 4 and clause 7 of Proforma of Affidavit, which have to be read together. The appellant was simply supposed to furnish the said information in 'Nil' with respect to whether he had been punished/convicted/discharged in any criminal case.

As in the instant case, only a final report had been submitted in case of the appellant under Section 173 of Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr.P.C.'). So, the question of suppression of material fact could not arise as the appellant had neither been punished, nor convicted, nor discharged. The matter did not reach the stage of trial, hence, the appeal deserves to be allowed.

4. On the contrary, Shri Pankaj Kumar Singh, learned counsel appearing on behalf of the respondent State, has submitted that the appellant suppressed the material fact of registration of a criminal case against him. Thus, the appointment had been obtained by misrepresentation and had become void/voidable. Thus, the courts below have correctly held the termination as valid. In view thereof, this Court should not grant any indulgence to the appellant and, the appeal is liable to be dismissed.

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

6. Facts involved herein remain undisputed. An FIR was registered against the appellant and others under Sections 402/ 465/471 and 120-B of the Indian Penal Code, 1860 (hereinafter referred to as 'the IPC') on 10.2.2001. In respect of the same a closure report was submitted on 16.2.2001, which was accepted by the learned Magistrate on 18.8.2001.

7. Further, clauses 4 and 7 of the Proforma affidavit to be filled up by every appointee, read as under:

> "4. That no cognizable or non-cognizable criminal case or proceeding has been registered against me to my knowledge and neither have I been fined by the police in any such case and neither is any (police investigation) pending against me.
>
> xx xx xx xx
>
> 7. That the details of such criminal cases, which were instituted against me in the Court and in which I was punished/convicted/discharged, is as given below. If such information is nil, then word 'NIL' should be entered."

8. The reading of the aforesaid clauses of the said affidavit makes it clear that both the clauses have to be read in isolation. Clause 4 deals with a situation, where a case has been registered, an investigation is conducted and the police have filed a final report. Though, the person concerned must have knowledge of the pendency of such an FIR/criminal complaint.

Further, clause 7 requires, in case, a person has faced criminal prosecution, he has to furnish the information about the result of that trial as to whether the person has been punished/ convicted or acquitted/discharged. Thus, we do not find any force in the submission made by Ms. Nanita Sharma, learned counsel for the appellant, that the clauses have to be read together and such information was required to be furnished only and only if the person faced the trial and not otherwise.

9. We have examined the judgments of the Division Bench as well as of the learned Single Judge, that are based on pleadings and evidence placed before them, recording the finding that the fact of involvement in the criminal case had been suppressed. No material has been placed before this Court on the basis of which we can take a contrary view.

10. So far as the issue of obtaining the appointment by misrepresentation is concerned, it is no more *res integra*. The question is not whether the applicant is suitable for the post. The pendency of a criminal case/proceeding is different from suppressing the information of such pendency. The case pending against a person might not involve moral turpitude but *suppressing of this information itself amounts to moral turpitude.* In fact, the information sought by the employer if not disclosed as required, would definitely amount to suppression of material information. In that eventuality, the service becomes liable to be terminated, even if there had been no further trial or the person concerned stood acquitted/discharged.

11. It is a settled proposition of law that where an applicant gets an office by misrepresenting the facts or by playing fraud upon the competent authority, such an order cannot be sustained in the eyes of law. "Fraud avoids all judicial acts, ecclesiastical or temporal." (Vide: *S.P. Chengalvaraya Naidu* (Dead) by LRs*. v. Jagannath* (Dead) by LRs. *& Ors.,* AIR 1994 SC 853. In *Lazarus Estate Ltd. v. Besalay,* 1956 All E.R. 349, the Court observed without equivocation that "no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything."

12. In *Andhra Pradesh State Financial Corporation v. M/ s. GAR Re-Rolling Mills & Anr.*, AIR 1994 SC 2151; and *State of Maharashtra & Ors. v. Prabhu,* (1994) 2 SCC 481, this Court has observed that a writ Court, while exercising its equitable jurisdiction, should not act to prevent perpetration of a legal fraud as Courts are obliged to do justice by promotion of good faith. "Equity is, also, known to

the crafty evasions and subtleties invented to evade law."

13. In *Smt. Shrisht Dhawan v. M/s. Shaw Bros.,* AIR 1992 SC 1555, it has been held as under:–

> *"Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct."*

14. In *United India Insurance Company Ltd. v. Rajendra Singh & Ors.,* AIR 2000 SC 1165, this Court observed that "Fraud and justice never dwell together" *(fraus et jus nunquam cohabitant)* and it is a pristine maxim which has not lost temper over all these centuries. A similar view has been reiterated by this Court in *M.P. Mittal v. State of Haryana & Ors.,* AIR 1984 SC 1888.

15. In *Ram Chandra Singh v. Savitri Devi & Ors.,* AIR 2004 SC 4096, this Court held that "misrepresentation itself amounts to fraud", and further held "fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad." The said judgment was re-considered and approved by this Court in *Vice-Chairman, Kendriya Vidyalaya Sangathan & Anr. v. Girdharilal Yadav,* (2004) 6 SCC 325).

16. The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit those persons who have frauded or misrepresented themselves. In such circumstances the Court should not perpetuate the fraud by entertaining petitions on their behalf. In *Union of India & Ors. v. M. Bhaskaran,* AIR 1996 SC 686, this Court, after placing reliance upon and approving its earlier judgment in *District Collector & Chairman, Vizianagaram*

Social Welfare Residential School Society v. M. Tripura Sundari Devi, (1990) 3 SCC 655, observed as under:–

> *"If by committing fraud any employment is obtained, the same cannot be permitted to be countenanced by a Court of Law as the employment secured by fraud renders it voidable at the option of the employer."*

17. In *Delhi Administration* through its *Chief Secretary & Ors. v. Sushil Kumar,* (1996) 11 SCC 605, this Court examined the similar case where the appointment was refused on the post of Police Constable and the Court observed as under:

> *"It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was found physically fit, passed the written test and interview and was provisionally selected,* **on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force.** *The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offence, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequence. The consideration relevant to the case is of the antecedents of the candidate. Appointing authority, therefore, has rightly focussed this aspect and found it not desirable to appoint him to the service."*
> (Emphasis added)

18. In *Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav,* AIR 2003 SC 1709; and *A.P. Public Service Commission v. Koneti Venkateswarulu,* AIR 2005 SC 4292, this Court examined a similar case, wherein, employment had been obtained by suppressing a material fact at the time of appointment. The Court rejected the plea taken by the employee that the Form was printed in English and he did not know the language, and therefore, could not understand what information was sought. This Court held that as he did not furnish the information correctly at the time of filling up the Form, the subsequent withdrawal of the criminal case registered against him or the nature of offences were immaterial. "The requirement of filling column Nos. 12 and 13 of the Attestation Form" was for the purpose of verification of the character and antecedents of the employee as on the date of filling in the Attestation Form. Suppression of material information and making a false statement has a clear bearing *on the character and antecedent of the employee in relation to his continuation in service.*

19. In *State of Haryana & Ors. v. Dinesh Kumar,* AIR 2008 SC 1083, this Court held that there has to be a deliberate and wilful misrepresentation and in case the applicant was not aware of his involvement in any criminal case or pendency of any criminal prosecution against him, the situation would be different.

20. In *Secretary, Department of Home, A.P. & Ors., v. B. Chinnam Naidu,* (2005) 2 SCC 746, this Court held that facts are to be examined in each individual case and the candidate is not supposed to furnish information which is not specifically required in a case where information sought dealt with prior convictions by a criminal Court. The candidate answered it in the negative, the court held that it would not amount to misrepresentation merely because on that date a criminal case was pending against him. The question specifically required information only about prior convictions.

21. In *R. Radhakrishnan v. Director General of Police & Ors.,* AIR 2008 SC 578, this Court held that furnishing wrong information by the candidate while seeking appointment makes him unsuitable for appointment and liable for removal/ termination if he furnished wrong information when the said information is specifically sought by the appointing authority.

22. In the instant case, the High Court has placed reliance on the Govt. Order dated April 28, 1958 relating to verification of the character of a Government servant, upon first appointment, wherein the individual is required to furnish information about criminal antecedents of the new appointees and if the *incumbent is found to have made a false statement in this regard,* he is liable to be discharged forthwith without prejudice to any other action as may be considered necessary by the competent authority.

The purpose of seeking such information is not to find out the nature or gravity of the offence or the ultimate result of a criminal case, rather such information is sought with a view to judge the character and antecedents of the job seeker or suitability to continue in service. Withholding such material information or making false representation itself amounts to moral turpitude and is a separate and distinct matter altogether than what is involved in the criminal case.

23. More so, if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. "*Subla Fundamento cedit opus*"- a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent Court. In such a case the legal maxim *Nullus Commodum Capere Potest De Injuria Sua Propria* applies. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation. (Vide: *Union of India v. Maj. Gen. Madan Lal Yadav,* AIR 1996 SC 1340; and *Lily Thomas v. Union of India & Ors.,* AIR 2000 SC 1

Nor can a person claim any right arising out of his own wrong doing. *(Juri Ex Injuria Non Oritur).*

24. The courts below have recorded a finding of fact that the appellant suppressed material information sought by the employer as to whether he had ever been involved in a criminal case. Suppression of material information sought by the employer or furnishing false information itself amounts to moral turpitude and is separate and distinct from the involvement in a criminal case.

In view of the above, the appeal is devoid of any merit and is accordingly dismissed.

K.K.T. Appeal dismissed.

RAKESH KUMAR SHARMA
v.
GOVT. OF NCT OF DELHI & ORS.
(Civil Appeal No. 6116 of 2013)

JULY 29, 2013

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

Service Law – Selection – Eligibility – Lack of – Effect – Termination of appellant on the ground that he had obtained employment by misrepresentation since he was ineligible, not being possessed of the requisite educational qualification of B.Ed on the last date of submission of the application – Justification – Held: Justified – Appellant was not eligible as per the requirement of rules/advertisement since he did not possess the required eligibility on the last date of submission of the application forms – The letter of offer of appointment issued to him was provisional and conditional subject to verification of educational qualification, i.e., eligibility, character verification etc. – It made it clear that in case character of appellant was not certified or he did not possess the qualification, the services will be terminated – Granting any benefit to the appellant would be violative of the doctrine of equality, a backbone of the fundamental rights under Constitution of India – Usurpation of a post by an ineligible candidate in any circumstance is impermissible – Moreover, the process of verification and notice of termination of appellant followed within a very short proximity of his appointment and was not delayed at all so as to even remotely give rise to an expectancy of continuance.

Respondent no.3-recruitment agency issued advertisement dated 12.10.2007 inviting applications for recruitment to the post of Trained Graduate Teachers ('TGT') for various courses including TGT (Sanskrit). The last date for submission of the application was 29.10.2007.

Pre-requisite qualification for the post was that of B.Ed. Though the appellant had appeared in the B.Ed examination prior to submission of the application for TGT (Sanskrit), the result however was declared only on 28.1.2008. He participated in the selection process as he made a representation that he had acquired the requisite eligibility. The appointment letter dated 19.6.2009 was issued making it clear that the appointment was temporary and on provisional basis for two years and further subject to verification of character, antecedents and educational qualification etc. by the Deputy Director Education ('DDE'). The appellant joined the service as TGT (Sanskrit) on 26.6.2009. The DDE issued a show cause notice dated 21.9.2010 to the appellant to show cause why his services should not be terminated as he was awarded the B.Ed degree only on 28.1.2008 which was much after the cut-off date which was 29.10.2007. Subsequently, the competent authority DDE passed order terminating the services of the appellant stating that the employment had been obtained by misrepresentation since he was ineligible, not being possessed of the educational qualification of B.Ed on the last date of submission of the application.

Aggrieved, the appellant challenged the show cause as well as the said order of termination by filing O.A. before the Tribunal, which was allowed. The order of the Tribunal was upheld by the High Court, and therefore, the instant appeal.

Dismissing the appeal, the Court

HELD: 1.1. There can be no dispute to the settled legal proposition that the selection process commences on the date when applications are invited. Any person eligible on the last date of submission of the application has a right to be considered against the said vacancy provided he fulfils the requisite qualification. [Para 6] [493-D-E]

1.2. In the instant case, the appellant did not possess the requisite qualification on the last date of submission of the application though he applied representing that he possessed the same. The letter of offer of appointment was issued to him which was provisional and conditional subject to the verification of educational qualification, i.e., eligibility, character verification etc. The letter of offer of appointment made it clear that in case character is not certified or he did not possess the qualification, the services will be terminated. The result of the examination does not relate back to the date of examination. A person would possess qualification only on the date of declaration of the result. Thus, in view of the above, no exception can be taken to the judgment of the High Court. [Para 16] [498-H; 499-A-C]

1.3. Like the appellant there could be large number of candidates who were not eligible as per the requirement of rules/advertisement since they did not possess the required eligibility on the last date of submission of the application forms. Granting any benefit to the appellant would be violative of the doctrine of equality, a backbone of the fundamental rights under our Constitution. A large number of such candidates may not have applied considering themselves to be ineligible adhering to the statutory rules and the terms of the advertisement.There is no obligation on the court to protect an illegal appointment. Extraordinary power of the court should be used only in an appropriate case to advance the cause of justice and not to defeat the rights of others or create arbitrariness. Usurpation of a post by an ineligible candidate in any circumstance is impermissible. The process of verification and notice of termination in the instant case followed within a very short proximity of the appointment and was not delayed at all so as to even remotely give rise to an expectancy of continuance. [Para 17] [499-D-G]

U.P. Public Service Commission, U.P., Allahabad & Anr. v. Alpana **–(1994) 2 SCC 723;** *Dr. M.V. Nair v. Union of India & Ors.* **(1993) 2 SCC 429;** *Smt. Harpal Kaur Chahal v. Director, Punjab Instructions, Punjab & Anr.* **1995 (Suppl) 4 SCC 706;** *Rekha Chaturvedi v. University of Rajasthan* **1993 Supp (3) SCC 168;** *Ashok Kumar Sharma v. Chander Shekhar* **(1997) 4 SCC 18;** *Bhupinderpal Singh v. State of Punjab* **AIR 2000 SC 2011;** *State of Gujarat v. Arvindkumar T. Tiwari* **AIR 2012 SC 3281;** *Pramod Kumar v. U.P. Secondary Education Services Commission* **(2008) 7 SCC 153 and** *State of Orissa v. Mamta Mohanty* **(2011) 3 SCC 436 – relied on.**

Ashok Kumar Sharma v. Chander Shekhar **1993 Supp (2) SCC 611 – held overruled.**

State of Punjab & Ors. v. Surinder Kumar & Ors. **AIR 1992 SC 1593 – referred to.**

Case Law Reference:

AIR 1992 SC 1593	**referred to**	**Para 5**
(1994) 2 SCC 723	**relied on**	**Para 7**
(1993) 2 SCC 429	**relied on**	**Para 8**
1995 (Suppl) 4 SCC 706	**relied on**	**Para 9**
1993 Supp (3) SCC 168	**relied on**	**Para 10**
1993 Supp (2) SCC 611	**held overruled**	**Para 11**
(1997) 4 SCC 18	**relied on**	**Para 12**
AIR 2000 SC 2011	**relied on**	**Para 13**
AIR 2012 SC 3281	**relied on**	**Para 14**
(2008) 7 SCC 153	**relied on**	**Para 15**
(2011) 3 SCC 436	**relied on**	**Para 15**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6116 of 2013

From the Judgment and Order dated 07.09.2010 of the High Court of Delhi in Writ Petition bearing W.P. (Civil) No. 1343 of 2010.

Rakesh K. Khanna, ASG, Rajat Aneja, K.N. Rai, Aruneshwar Gupta, Manish Raghav, Nikhil Singh Bijan Kumar Ghosh, Bharat Singh, Ajay Kumar Jha, Amit Pawan, Sanjiv Sen, Anirudh Gupta, P.Parmeswaran, Ms. Sunita Sharma, Neeraj Kr. Sharma, Priyanka Dixit, Seema Rao, D.S. Mahra, Anil Katiyar, B.V. Balram Das, Dharmendra Kumar Sinha for the appearing parties.

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. This appeal has been preferred against the impugned judgment and order dated 13.2.2013, passed by the High Court of Delhi at New Delhi allowing the Writ Petition No.5150 of 2012 filed by the respondents against the judgment and order of the Central Administrative Tribunal, New Delhi (hereinafter referred to as the 'Tribunal') dated 3.1.2012 passed in O.A. No. 3420/2010, whereunder the Tribunal quashed the show cause notice/order passed by respondent no.1 terminating the services of the appellant for not possessing the requisite eligibility as on the last date of submission of applications.

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

A. Delhi Subordinate Services Selection Board – Respondent no.3 being a recruitment agency issued an advertisement dated 12.10.2007 inviting applications for recruitment to the post of Trained Graduate Teachers (hereinafter called 'TGT') for various courses including TGT (Sanskrit). The last date for submission of the application was 29.10.2007.

B. A pre-requisite qualification for the post was that of B.Ed. Though he had appeared in the B.Ed examination prior to submission of the application for TGT (Sanskrit), the result however was declared only on 28.1.2008. He participated in the selection process as he made a representation that he had acquired the requisite eligibility. The appointment letter dated 19.6.2009 was issued making it clear that the appointment was *temporary and on provisional basis* for two years and further subject to verification of character, antecedents and educational qualification etc. by the Deputy Director Education, New Delhi (hereinafter called 'DDE'). The appellant joined the service as TGT (Sanskrit) on 26.6.2009. The DDE issued a show cause notice dated 21.9.2010 to the appellant to show cause why his services should not be terminated as he was awarded the B.Ed degree only on 28.1.2008 which was much after the cut-off date which was 29.10.2007.

C. In clause 11 of the letter of offer of appointment it was made clear that if at any stage it is found that any information/declaration and submission given by a candidate was false or that any information had been *concealed/misrepresented,* the appointment would be terminated and further the candidate would be liable to be proceeded against in the matter.

D. The appellant submitted the reply to the said show cause notice stating that *subsequent* to his joining the post he had submitted the copies of the documents including marks sheet of B.Ed for verification and he possessed the eligibility and there was no question of any concealment/ misrepresentation on his part. As the reply submitted by the appellant was found to be unsatisfactory, the competent authority DDE passed an order dated 5.10.2010 terminating the services of the appellant. The order recites that the employment had been obtained by *misrepresentation* since he was ineligible, not being

possessed of the educational qualification of B.Ed on the last date of submission of the application. The information furnished by him was found to be false and as per clause 11 of the terms of appointment as he had made a false representation. His services were accordingly liable to be terminated.

E. Aggrieved, the appellant challenged the show cause as well as the said order of termination by filing O.A. No.3420 of 2010 on various grounds before the Tribunal, which was allowed vide judgment and order dated 3.1.2012 quashing the said show cause notice and granting all consequential benefits to the appellant.

F. Aggrieved, the respondents, Govt. of NCT of Delhi challenged the same before the High Court of Delhi at New Delhi by filing Writ Petition No.5150 of 2012. When the matter came up for hearing on 13.2.2013, the High Court allowed the writ petition placing reliance on the judgment and order passed in connected Writ Petition No.4798 of 2012 basically on the ground that the appellant did not possess the requisite eligibility in qualification on the prescribed date.

Hence, this appeal.

3. We have heard S/Shri Rajat Aneja, Aruneshwar Gupta, Bharat Singh, Sanjiv Sen, learned counsel for the appellant in this appeal as well as in other connected appeals and Shri Rakesh K. Khanna, learned ASG for the respondents and perused the record.

4. The facts are not in dispute. As per the advertisement, applications had to be submitted by 29.10.2007 and the appellant made a representation that he had obtained the B.Ed degree but could not submit a copy of the marks sheet or Degree certificate. The appointment letter dated 19.6.2009 was temporary/provisional, subject to verifica s

including that of educational qualification. The appellant was permitted to join services on the basis of provisional appointment letter and therefore, the sole question involved herein is whether the appellant could claim any relief, if for one reason or the other his result had not been declared upto the last date of the submission of the application form.

5. A three Judge Bench of this Court in *State of Punjab & Ors. v. Surinder Kumar & Ors.,* AIR 1992 SC 1593 dealt with a case where regular appointment had not been made. The court held that unless a person holds the post permanently, his services would be governed by the terms and conditions incorporated in the appointment letter and the court must in all circumstances enforce the terms specifically stated therein.

6. There can be no dispute to the settled legal proposition that the selection process commences on the date when applications are invited. Any person eligible on the last date of submission of the application has a right to be considered against the said vacancy provided he fulfils the requisite qualification.

7. In *U.P. Public Service Commission, U.P., Allahabad & Anr. v. Alpana,* (1994) 2 SCC 723, this Court, after considering a large number of its earlier judgments, held that eligibility conditions should be examined as on last date for receipt of applications by the Commission. That too was a case where the result of a candidate was declared subsequent to the last date of submission of the applications. This Court held that as the result does not relate back to the date of examination and eligibility of the candidate is to be considered on the last date of submission of applications, therefore, a candidate, whose result has not been declared upto the last date of submission of applications, would not be eligible.

8. A three Judge Bench of this Court, in *Dr. M.V. Nair v. Union of India & Ors.,* (1993) 2 SCC 429, held as under:–

> *"It is well settled that suitability and eligibility have to be considered* ***with reference to the last date for receiving the applications,*** *unless, of course, the notification calling for applications itself specifies such a date."* (Emphasis added)

9. In *Smt. Harpal Kaur Chahal v. Director, Punjab Instructions, Punjab & Anr.,* 1995 (Suppl) 4 SCC 706, this Court held:

> "It is to be seen that when the recruitment is sought to be made, the last date has been fixed for receipt of the applications, such of those candidates, **who possessed of all the qualifications as on that date, alone are eligible to apply** for and to be considered for recruitment according to Rules." (Emphasis added)

10. This Court in *Rekha Chaturvedi v. University of Rajasthan,* 1993 Supp (3) SCC 168 held**:**

> *"The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in question or not, if they are yet to acquire the qualifications. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posts. The uncertainty of the date may also lead to a contrary consequence, viz., even [illegible]*

do not have the qualifications in praesenti and are likely to acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications. But a still worse consequence may follow, in that it may leave open a scope for malpractices. The date of selection may be so fixed or manipulated as to entertain some applicants and reject others, arbitrarily. Hence, in the absence of a fixed date indicated in the advertisement/ notification inviting applications with reference to which the requisite qualifications should be judged, ***the only certain date for the scrutiny of the qualifications will be the last date for making the applications****. Reference in this connection may also be made to two recent decisions of this Court in A.P. Public Service Commission v. B. Sarat Chandra (1990) 2 SCC 669;* and *District Collector and Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi* (1990) 3 SCC 655." (Emphasis added)

11. In *Ashok Kumar Sharma v. Chander Shekhar,* 1993 Supp (2) SCC 611 [hereinafter referred to as Ashok Kumar (1993)], the majority view was as under:

"The fact is that the appellants did pass the examination and were fully qualified for being selected prior to the date of interview. By allowing the appellants to sit for the interview and by their selection on the basis of their comparative merits, the recruiting authority was able to get the best talents available. It was certainly in the public interest that the interview was made as broad based as was possible on the basis of qualification. The reasoning of the learned Single Judge was thus based on sound principle with reference to comparatively superior merits. It was in the public interest that better candidates who were ***fully qualified on the dates of selection*** *were not rejected, notwithstanding that the* ***results of the examination in which they had appeared had been***

delayed for no fault of theirs. *The* ***appellants were fully qualified on the dates of the interview*** *and taking into account the generally followed principle of Rule 37 in the State of Jammu & Kashmir, we are of opinion that* ***the technical view adopted by the learned Judges*** *of the Division Bench was incorrect"*

(Emphasis added)

However, the opinion of Justice R.M. Sahai had been that these 33 persons could not have been allowed to appear for the interview as they did not possess the requisite eligibility/ qualification on the last date of submission of applications.

12. A three-Judge Bench of this Court in *Ashok Kumar Sharma v. Chander Shekhar* (1997) 4 SCC 18 reconsidered and explained the judgment of *Ashok Kumar Sharma* (1993) (supra) observing:

"The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a p... ir

applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment."
(Emphasis added)

The Court further explained that the majority view in *Ashok Kumar Sharma* (1993)(supra) was not correct, rather the dissenting view by Justice R.M. Sahai was correct as the Court held as under:

"The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33 respondents could not have been allowed to appear for the interview.

(Emphasis added)

It may also be pertinent to mention here that in the aforesaid case reference to *Rekha Chaturvedi* (supra) appears to have been made by a typographical error as the said judgment is by a two-Judge Bench of this Court. Infact the court wanted to make a reference to the case of *Ashok Kumar Sharma* (1993) (supra).

13. In *Bhupinderpal Singh v. State of Punjab,* AIR 2000 SC 2011, this Court placing reliance on various earlier judgments of this Court held**:**

"The High Court has held (i) that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment

is the date appointed by the relevant service rules and if there be no cut-off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no such date appointed then the eligibility criteria shall be applied **by reference to the last date appointed by which the applications have to be received by the competent authority.** The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with."

(Emphasis added)

14. This Court lately in *State of Gujarat v. Arvindkumar T. Tiwari,* AIR 2012 SC 3281 held**:**

"A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that **his appointment would be contrary to the statutory rules, and would therefore, be void** in law. **Lacking eligibility for the post cannot be cured at any stage** and appointing such a person would amount to serious illegality and not mere irregularity. Such a person cannot approach the court for any relief for the reason that **he does not have a right which can be enforced through court**. (See *Prit Singh v. S.K. Mangal* 1993 Supp (1) SCC 714 and *Pramod Kumar v. U.P. Secondary Education Services Commission* (2008) 7 SCC 153.)"

(Emphasis added)

15. A similar view has been re-iterated by this Court in *Pramod Kumar v. U.P. Secondary Education Services Commission,* (2008) 7 SCC 153; and *State of Orissa v. Mamta Mohanty* (2011) 3 SCC 436.

16. In the instant case, the appellant did not possess the requisite qualification on the last date of submission of the

application though he applied representing that he possessed the same. The letter of offer of appointment was issued to him which was provisional and conditional subject to the verification of educational qualification, i.e., eligibility, character verification etc. Clause 11 of the letter of offer of appointment dated 23.2.2009 made it clear that in case character is not certified or he did not possess the qualification, the services will be terminated. The legal proposition that emerges from the settled position of law as enumerated above is that the result of the examination does not relate back to the date of examination. A person would possess qualification only on the date of declaration of the result. Thus, in view of the above, no exception can be taken to the judgment of the High Court.

17. It also needs to be noted that like the present appellant there could be large number of candidates who were not eligible as per the requirement of rules/advertisement since they did not possess the required eligibility on the last date of submission of the application forms. Granting any benefit to the appellant would be violative of the doctrine of equality, a backbone of the fundamental rights under our Constitution. A large number of such candidates may not have applied considering themselves to be ineligible adhering to the statutory rules and the terms of the advertisement.

There is no obligation on the court to protect an illegal appointment. Extraordinary power of the court should be used only in an appropriate case to advance the cause of justice and not to defeat the rights of others or create arbitrariness. Usurpation of a post by an ineligible candidate in any circumstance is impermissible. The process of verification and notice of termination in the instant case followed within a very short proximity of the appointment and was not delayed at all so as to even remotely give rise to an expectancy of continuance.

The appeal is devoid of any merit and does not present

special features warranting any interference by this court. The appeal is accordingly dismissed.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6115 of 2013.

From the Judgment and Order dated 07.09.2010 of the High Court of Delhi in Writ Petition bearing W.P. (Civil) No. 1343 of 2010.

WITH

C.A. No. 6117 & 6119-6120 of 2013.

Rakesh K. Khanna, ASG, Rajat Aneja, K.N. Rai, Aruneshwar Gupta, Manis Raghav, Nikhil Singh, bijan Kumar Ghosh, Bharat Singh, Ajay Kumar Jha, Amit Pawan, Sanjiv Sen, Anirudh Gupta, P. Parmeswaran, Sunita Sharma, Neeraj Kr. Sharma, Priyanka Dixit, Seema Rao, D.S. Mahra, Anil Katiyar, B.V. Balram Das, Dharmendra Kumar Sinha for the appearing parties.

DR. B.S. CHAUHAN, J. In terms of the judgment in Civil Appeal No.6116 of 2013, the above-mentioned appeals are accordingly dismissed.

B.B.B. Appeals dismissed.

D.H.B.V.N.L. VIDYUT NAGAR, HISAR & OTHERS
v.
YASHVIR SINGH GULIA
(Civil Appeal No. 6150 of 2013)

JULY 30, 2013

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

Service Law:

Haryana State Electricity Board Employees (Punishment and Appeal) Regulations, 1999 – Regulation 7(8) – Initiation of proceedings under regulation 7 for imposition of major penalty – But after considering the reply of the delinquent imposition of minor penalty without holding departmental enquiry – Whether full fledged departmental inquiry was required – Held: Under regulation 7(8) the competent authority is empowered to dispense with departmental inquiry, even though it has contemplated major penalty proceedings – On being satisfied with the reply of the delinquent, can follow the procedure for imposing minor penalty.

The question for consideration in the present appeal was whether once a charge-sheet has been issued for imposition of a major penalty under Regulation 7 of the Haryana State Electricity Board Employees (Punishment & Appeal) Regulations, 1990, is it obligatory on the part of the Disciplinary Authority to conduct a full fledged departmental inquiry, even if, after considering the reply of the delinquent, the authority decides to impose a minor penalty, for which no departmental inquiry is provided under the Regulations.

Allowing the appeal, the Court

HELD: 1.1. Regulation 7(8) of Haryana State Electricity Board Employees (Punishment and Appeal) Regulations, 1990 clearly indicates that the competent authority has got the power to dispense with the procedure for holding a departmental inquiry, even though it had contemplated major penalty proceedings, on being satisfied with the reply submitted by the delinquent officer. In such a case, it can always follow the procedure for imposing minor penalty. Minor penalty, as per the Regulation, can be inflicted without holding any departmental inquiry, by giving only a show-cause-notice and a reasonable opportunity to make a representation to the show-cause-notice. Personal hearing can also be afforded and also can be dispensed with by a speaking order. [Para 12] [509-H; 510-A-B]

1.2. In the instant case, the procedure provided under regulation 7(8) has been followed by the Board. The delinquent officer was given an opportunity to submit his reply to the show-cause-notice which was considered and the Board took a conscious decision to impose only a minor penalty, i.e. barring one increment without cumulative effect, for which no full-fledged departmental inquiry is contemplated. The District Judge as well as the High Court has committed a grave error in interfering with the punishment imposed by the Board which is perfectly legal. [Para 13] [510-C-E]

2. If imposition of a minor penalty is not a bar in granting promotion to the respondent, due promotion be granted to him in accordance with the Rules and Regulations applicable to him. [Para 15] [510-F-G]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6150 of 2013.

From the Judgment and Order dated 24.07.2012 of the

High Court of Punjab & Haryana at Chandigarh in Regular Second Appeal No. 3094 of 2011 (O&M)

Narender Hooda, AAG. Surender Singh ,Hooda, Kamal Mohan Gupta for the Appellants.

Surbhi Mehta, Gaurav Sharma, for the Respondent.

The Judgment of the Court was delivered by

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

2. The question that arises for consideration in this appeal is whether once a charge-sheet has been issued for imposition of a major penalty under Regulation 7 of the Haryana State Electricity Board Employees (Punishment & Appeal) Regulations, 1990 [for short "the Regulations 1990"], is it obligatory on the part of the Disciplinary Authority to conduct a full fledged departmental inquiry even if, after considering the reply of the delinquent, the authority decides to impose a minor penalty, for which no departmental inquiry is provided under the Regulations.

3.The respondent herein who was working as an Assistant Law Officer, was served with a charge-sheet on 14.8.1992 alleging that he had exceeded his power by directing implementation of an arbitration award dated 10.9.1991 without getting approval of the superior Authorities. Respondent filed \three replies to the charge-sheet and the replies submitted by the respondent were considered by the Board and it was decided to impose only a minor penalty vide its order dated 4.7.1994, the operative portion of which reads as follows:

"HARYANA STATE ELECY. BOARD

OFFICE ORDER NO. 144/COMF-2407 DATED 4.7.94

Having considered the reply submitted by Sh. Y.S. Gulia, A.L.O. through his letters dated 20.1.93, 24.1.94 & dated 27.4.94 to the charge sheet served upon him vide this

office Memo No. Ch-4/Conf-2497 (IB-2(1010) dt. 14.8.92 in light of the comments given by L.B., BSEB, Punchkula through his note dated 6.6.94 and record/material available with this office, it has been decided to stop his one increment without future effect as Sh. Y.S. Gulia, ALO has been found responsible for not seeking the approval of L.R., HSEB, Panchkula before conveying the advice to Xen(OP) Divn., HSEB, Gurgaon to implement the award dt. 30.9.91 amount to Rs.26 lacs of the Arbitrator given in M/s. Kegg Farm.

As such one increment of Sh. Y.S. Gulia, Asstt. Law is hereby stopped without future effect.

This issues with the approval of MA&PF, HSEB, Panchkula."

4. Respondent preferred an appeal before the Appellate Authority of the Board. The same was, however, rejected by the Appellate Authority vide its order dated 22.5.1995.

5. Respondent, after a lapse of 10 years, filed a Civil Suit No. 157 of 2005 before the Civil Judge (JD), Gurgaon for a declaration that the order dated 4.7.1994 and the Appellate Authority's order dated 22.5.1995 were illegal and void and also for mandatory injunction directing the Board to refund the amount of one increment deducted from his salary with 18% interest. The Civil Judge dismissed the suit vide his judgment dated 29.1.2009.

6. Aggrieved by the same, respondent preferred an appeal being C.A. No. 34 of 2009 before the District Judge, Gurgaon. It was contended before the learned District Judge that the Board had committed a gross illegality in not holding a regular departmental inquiry after having initiated major penalty proceeding under Regulation 7 of the Regulations 1990. This argument was accepted by the learned District Judge holding that having invoked Re d

should have conducted a regular departmental inquiry and inflicting minor punishment without holding a regular departmental inquiry was illegal. Holding so, the order passed by the Civil Judge was set aside and the suit was decreed.

7. Aggrieved by the said order, the Board preferred R.S.A. No. 3094 of 2011 before the High Court of Punjab & Haryana. The appeal was dismissed holding that no substantial question of law arose for its consideration. Further, it was also held that the Board was bound to hold a regular departmental inquiry and minor punishment could not have been imposed merely considering the reply submitted by the respondent. Aggrieved by the same, this appeal has been preferred.

8. Shri Narender Hooda, Additional Advocate General appearing for the Board, submitted that the High Court has not properly appreciated the scope of Regulations 1990. Shri Hooda submitted that the Board was within its rights in not holding regular departmental inquiry since i was decided to impose only a minor penalty which is permissible under Regulations 1990. Shri Hooda also submitted that the rule does not provide for regular departmental inquiry for imposing minor punishment, consequently, non-conducting of regular departmental inquiry against the respondent cannot be a reason for interfering with the punishment imposed by the Board which is barring of one increment without cumulative effect. Further, it was also pointed out that there was considerable delay in approaching the Civil Court, the order imposing the punishment was passed on 4.8.1994, but the suit was filed only after a period of 10 years i.e. 13.6.2005 and hence the suit itself was barred by time.

9. Ms. Surbhi Mehta, learned counsel appearing for the respondent, on the other hand, submitted that there is no illegality in the order passed by the High Court calling for interference by this Court. Learned counsel pointed out that once the charge-sheet has been issued under Regulation 7, the Board is duty bound to conduct a regular departmental inquiry,

since major penalty proceeding has been contemplated against the respondent. Learned counsel also submitted merely by examining the replies submitted by the delinquent, the authority cannot impose a minor penalty without holding a regular departmental inquiry. The High Court, according to the learned counsel, was, therefore, justified in not interfering with the judgment of the learned District Judge.

10. We have heard the counsel on either side and examined various contentions raised by them. In order to properly appreciate the various contentions raised and to examine the correctness or otherwise the views expressed by the High Court, it is necessary to examine the relevant provisions of the Regulations 1990. Regulations 1990 was issued by the Board in exercise of its power conferred under Clause (c) of Section 79 of the Electricity (Supply) Act, 1948 for governing the conditions of the service of the employees of the Board. The term "Punishing Authority" has been defined under Regulation 2(g) as an authority notified under the Service Regulations to inflict on a Board employee any of the penalties specified in Regulation 4. Regulation 4 deals with both minor penalties as well as major penalties. The relevant portion of Regulation 4 is extracted for an easy reference:

"4. PENALTIES:

The following penalties may, for good and sufficient reasons, and as hereinafter provided, be inflicted on an employee:-

A. MINOR PENALTIES:

(i) Warning with a copy to be placed in the personal/ (Character roll) File;

(ii) Censure;

(iii) Withholding/stoppage if increments of pay without cumulative effect;

(iv) Withholding of promotion for a specific period;

(v) Recover from pay of the whole or part of any pecuniary loss, caused by negligence or breach of orders of the Board or Central Government or a State Government or to a Company Association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by Government or to a local authority set-up by an Act of Parliament or the Legislature of a State, during discharge of official duty.

B. MAJOR PENALTIES:

(vi) Reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the employee will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of post-pending the future increments of his pay.

(vii) Reduction to a lower scale of pay or grade, post or service, which shall ordinarily be a bar to the promotion of the employee to the time scale of pay or grade or post or service, from which he was reduced with or without further directions regarding conditions of restoration to the grade or post or service from which the employee was reduced and seniority and pay on such restoration to that grade or post or service;

(viii) Compulsory retirement;

(ix) Removal from service which shall not be a disqualification for future employment under the Board;

(x) Dismissal from service which shall ordinarily be a disqualification for future employment under the Board/State Govt./State Govt. Undertakings."

The procedure for inflicting major penalties is provided in Regulation 7. The relevant portion of the same is extracted hereunder:

"7. PROCEDURE FOR INFLICTING MAJOR PENALTIES:

(1) Without prejudice to the provisions of the Public Servants (Inquiries) Act, 1850; no order of inflicting a major penalty, shall be passed against a person to whom these Regulations are applicable unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

(2) (a) The grounds on which it is proposed to take such action, shall be reduced to the form of definite charge or charges which shall be communicated in writing to the person charged, together with a statement of allegations on which each charge is based alongwith a list of documents and witnesses to be relied-upon and of any other circumstances which it is proposed to take into consideration in passing orders on the case and he shall be required within a reasonable time to state in writing whether he admits the truth of all or any, of the charges, what explanation of defence, if any, he has to offer and whether he desires to be heard in person. If he so desires, or if the authority empowered to inflict major penalty upon him so directs, an enquiry shall be held at which all evidence(s) shall be heard as to such of the charges as are not admitted."

The procedure for inflicting minor penalties is proved in Regulation 8, which reads as follows:

"8. PROCEDURE FOR INFLICTING MINOR PENALTIES:

(a) Without prejudice to the provi 7,

an order for inflicting minor penalty shall not be passed on an employee unless he has been given a show-cause notice thereof and a reasonable opportunity of making representation there-against. If he requests for access to relevant record it may be allowed and opportunity of personal hearing be also given. Request for personal hearing may be rejected by the punishing authority by passing a speaking order.

(b) Provided that this condition shall not apply in a case where an order based on facts, has led to his conviction in a Criminal Court or an order has been passed superseding him for promotion to a higher post on the grounds of his unfitness for that post on account of the existence of unsatisfactory record."

11. The abovementioned provisions would indicate that an employee can be charge-sheeted for inflicting major penalties as well as minor penalties. In a given case even if a major penalty has been proposed on getting the reply from the delinquent, if the competent authority feels that no major penalty proceeding need be initiated, it can always switch over to initiate proceeding for inflicting minor penalties. Such a power is conferred on the Board vide Sub-regulation 8 of Regulation 7, which reads as follows:

"7(8) Where an employee has been charge-sheeted under this regulation and the Competent Authority, on receipt of his reply to the charge sheet is of the opinion that no major punishment as laid down in Regulation-4 (vi to x) is called for, it may dispense with the holding of enquiry and inflict straight-away any of the minor penalties as laid down in Clause (i) to (v) of the ibid Regulation by a speaking order."

12. Above referred regulations, especially Regulation 7(8) clearly indicates that the competent authority has got the power to dispense with the procedure for holding a departmental

inquiry, even though it had contemplated major penalty proceedings, on being satisfied with the reply submitted by the delinquent officer. In such a case, it can always follow the procedure for imposing minor penalty. Minor penalty, as per the Regulation, can be inflicted without holding any departmental inquiry, by giving only a show-cause-notice and a reasonable opportunity to make a representation to the show-cause-notice. Personal hearing can also be afforded and also can be dispensed with by a speaking order.

13. We are of the view that the procedure referred to hereinbefore has been followed by the Board. The delinquent officer was given an opportunity to submit his reply to the show-cause-notice which was considered and the Board took a conscious decision to impose only a minor penalty, i.e. barring one increment without cumulative effect, for which no full-fledged departmental inquiry is contemplated. Learned District Judge as well as the High Court, in our view, has committed a grave error in interfering with the punishment imposed by the Board which, in our view, is perfectly legal, going by the regulations referred to hereinbefore.

14. Consequently, the appeal is allowed and the judgment of the learned District Judge as well as that of the High Court is set aside.

15. Learned counsel for the respondent submits that, by virtue of the punishment imposed, he has not been given his due promotion. We are of the view that if imposition of a minor penalty is not a bar in granting promotion to the respondent, due promotion be granted to him in accordance with the Rules and Regulations applicable to him.

K.K.T. Appeal allowed.

MANJEET SINGH KHERA

v.

STATE OF MAHARASHTRA

(Special Leave Petition (Criminal) No. 5897 of 2013)

AUGUST 21, 2013

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

Criminal Trial – Supply of the complaint or content thereof – To the accused – Whether binding on the prosecution – Held: The complaint, in the instant case received by Anti-Corruption Bureau, only triggered the investigation – It did not form the foundation of the case o the FIR – The complaint was not part of the police report – Therefore, non-supply of the complaint or the contents thereof do not violate the principle of fair trial – The complaint was not part of the police report – Therefore, non-supply of the complaint or the contents thereof do not violate the principle of fair trial – The complaint has no relevance to the context of the prosecution in the instant case, and in no manner prejudices the accused – Special Leave Petition against the order of High Court whereby the plea for production of the complaint was rejected, dismissed.

V.K. Sasikala vs. State Represented by Superintendent of Police **(2012) 9 SCC 771: 2012 (10) SCR 641 – distinguished.**

Case Law Reference:

2012 (10) SCR 641 distinguished Para 6

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 5897 of 2013

From the judgment and Order dated 25.02.2013 of the High Court of Bombay in Writ Petition No. 1020 of 2011

Amol Chital (for Pragya Baghel) for the Petitioner.

The Order of the Court was delivered by:

K.S. RADHAKRISHNAN, J. 1. We are, in this case, concerned with the question whether the prosecution is bound to produce the original complaint/application filed by an unknown person, based on which an inquiry was initiated by the Anti Corruption Bureau.

2. The petitioner (first accused) along with three others moved an application before the Special Sessions Court of Greater Bombay for a direction to the prosecution/Anti Corruption Bureau to produce the original complaint/application filed by an unknown person, leading the accused person to be charge-sheeted for offences under Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988 read with Section 109 of the Indian Penal Code.

3. The petitioner submitted that on the basis of that complaint an open enquiry No.31/198 was conducted and following that Special Case No.39 of 1999 was registered against the accused person. It was brought out that one complaint/application was received by the Anti Corruption Bureau and copy of that application was forwarded to the Home Department. PW1 had deposed that he could not disclose the name of the person who had sent that complaint. It was mentioned therein that the first accused was having huge movable and immovable property at Bombay, Aurangabad and Nagpur. The first accused wanted a copy of the original complaint to be produced before the court as well as the name of the person who had sent that complaint.

4. The prosecution resisted the application preferred by the first accused contending that the prosecution would not be relying upon the complaint/application sought to be produced. On the other hand, discreet enquiry was conducted based on that application and after collecting su e

prosecution lodged first information report and thereafter investigation was carried out. Further it was pointed out that prosecution cannot examine the person who gave the complaint/application, otherwise no person would pass on any secret information to the Anti Corruption Bureau.

5. The Special Judge, Prevention of Anti Corruption, found no basis in the application calling upon for the production of the original complaint as well as the name of the complainant, who had sent the complaint and rejected the application vide his order dated 29.01.2011, which was confirmed by the High Court on 25.02.2013, against which this special leave petition has been preferred.

6. Shri Amol Chitale, learned counsel appearing for the petitioner submitted that the petitioner is not interested in getting the name of the person who made the complaint, but wanted to know the contents of the complaint, which cannot be said to be secret information. Learned counsel also submitted that prosecution cannot exercise privilege of non-disclosure of the information they have received, which lead to the investigation. Learned counsel placed reliance on the decision of this Court in *V.K. Sasikala* v. *State Represented by Superintendent of Police* (2012) 9 SCC 771 and submitted that when accused applies for inspection of documents in the custody of the court, even at the advanced stage of the trial, the court is duty bound to supply those documents and the same reasoning will apply in the case of prosecution as well.

7. Since the entire emphasis of the counsel for the petitioner is on *V.K.Sasikala case* (supra), before embarking on the discussion on the issue involved, we would first like to discuss the ratio of *V.K.Sasikala case*(supra). In that case, the appellant -accused had demanded copies/inspection of those documents which were not relied on by the prosecution but at the same time, these documents formed part of police report and were in the custody of the Court. Demand was made after the prosecution had led the evidence and at the stage of

Section 313 Cr.P.C. questioning. In this backdrop, the question that fell for determination was as to whether the accused would be entitled to the documents which were part of police report under Section 173(5) of the Code of Civil Procedure, and were in the custody of the Court. The Court explained the provisions governing the process of investigation of a criminal charge, the duties of the investigating agency and the role of the courts after the process of investigation is over and its legal expositor was narrated in the following manner:

> "13.Without dilating on the said aspect of the matter what has to be taken note of now are the provisions of the Code with a situation/stage after completion of the investigation of a case. In this regard the provisions of Section 173(5) may be specifically noted. The said provision makes it incumbent on the investigating agency to forward/transmit to the court concerned all documents/ statement, etc. on which the prosecution proposes to reply in the course of the trial. Section 173(5), however, is subject to the provisions of Section 173(5) which confers a power on the investigating officer to request the court concerned to exclude any part of the statement or documents forwarded under Section 173(5) from the copies to be granted to the accused.
>
> 14.The court having jurisdiction to deal with the matter, on receipt of the report and the accompanying documents under Section 173, is next required to decide as to whether cognizance of the offence alleged is to be taken in which event summons for the appearance of the accused before the court is to be issued. On such appearance, under Section 207 Cr.P.C, the court concerned is required to furnish to the accused copies of the following documents:
>
> 1. The police report;

2.The first information report recorded under Section 154;

3.The statements recorded under sub-section (3) of Section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section(6) of Section 173.

4. The confessions and statements, if any recorded under Section 164;

5. Any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of Section 173.

15. While the first proviso to Section 207 empowers the court to exclude from the copies to be furnished to the accused such portions as may be covered by Section 173(6), the second proviso to Section 207 empowers the court to provide to the accused an inspection of the documents instead of copies thereof, if, in the opinion of the court it is not practicable to furnish to the accused the copies of the documents because of the voluminous content thereof. We would like to emphasise, at this stage, that while referring to the aforesaid provisions of the Code, we have deliberately used the expression "court" instead of the expression "Magistrate" as under various special enactments the requirement of commitment of a case to a higher court (Court of Session) by the Magistrate as mandated by the Code has been dispensed with and the Special Courts constituted under a special statute have been empowered to receive the report of the investigation along with the relevant documents directly from the investigating agency and thereafter to take cognizance of the offence, if so required."

8. The Court also noticed that seizure of large number of documents in the course of investigation of a criminal case is a common feature. After completion of the process of investigation and before submission of the report to the Court under Section 173 Cr.P.C, a fair amount of application of mind on the part of the investigating agency is inbuilt in the process. These documents would fall in two categories: one, which supports the prosecution case and other which supports the accused. At this stage, duty is cast on the investigating officer to evaluate the two sets of documents and materials collected and, if required, to exonerate the accused at that stage itself. However, many times it so happens that the investigating officer ignores the part of seized documents which favour the accused and forwards to the Court only those documents which supports the prosecution. If such a situation is pointed out by the accused and those documents which were supporting the accused and have not been forwarded and are not on the record of the Court, whether the prosecution would have to supply those documents when the accused person demands them? The Court did not answer this question specifically stating that the said question did not arise in the said case. In that case, the documents were forwarded to the Court under Section 173(5) Cr.P.C. but were not relied upon by the prosecution and the accused wanted copies/inspection of those documents. This Court held that it was incumbent upon the trial court to supply the copies of these documents to the accused as that entitlement was a facet of just, fair and transparent investigation/trial and constituted an inalienable attribute of the process of a fair trial which Article 21 of the Constitution guarantees to every accused. We would like to reproduce the following portion of the said judgment discussing this aspect:

> "21.The issue that has emerged before us is, therefore, somewhat larger than what has been projected by the State and what has been dealt with by the High Court. The question arising would no longer be one of compliance or non-compliance with the provisions [illegible]C.

and would travel beyond the confines of the strict language of the provisions of Cr.P.C. and touch upon the larger doctrine of a free and fair trial that has been painstakingly built up by the courts on a purposive interpretation of Article 21 of the Constitution. It is not the stage of making of the request; the efflux of time that has occurred or the prior conduct of the accused that is material. What is of significance is if in a given situation the accused comes to the court contending that some papers forwarded to the court by the investigating agency have not been exhibited by the prosecution as the same favours the accused the court must concede a right to the accused to have an access to the said documents, if so claimed. This, according to us, is the core issue in the case which must be answered affirmatively. In this regard, we would like to be specific in saying that we find it difficult to agree with the view taken by the High Court that the accused must be made to await the conclusion of the trial to test the plea of prejudice that he may have raised. Such a plea must be answered at the earliest and certainly before the conclusion of the trial, even though it may be raised by the accused belatedly. This is how the scales of justice in our criminal jurisprudence have to be balanced.

23.1. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx"

9. Keeping in mind the principle of law and ratio laid down in the aforesaid case, we now proceed to deal with the case at hand. As noted above, the petitioner wants a copy of the complaint which was received by the Anti-Corruption Bureau. What is to be borne in mind is that this was a complaint given by some person to the Anti-Corruption Bureau which only triggered the investigation. Thus, this complaint simply provided an information to the Anti-Corruption Bureau and is not the foundation of the case or even the FIR. In fact, Anti-Corruption Bureau, thereafter, held its own independent investigation into the matter and collected the material which was forwarded to

the Home Department and on that basis challan was filed in the Court pointing out that sufficient material emerged on the record as a result of the said investigation to proceed against the petitioner for offences under the provisions of Prevention of Corruption Act read with Section 109 of the IPC. In the final report under Section 173(5) Cr.P.C., this complaint was never forwarded. Thus, it is not a part of police report and is not in custody of the trial court, unlike the situation in *V.K.Sasikala case* (supra). No reliance is placed on the documents by the prosecution either. It is not even a document which would support the case of the petitioner in any manner. Hence the judgment of *V.K.Sasikala* (supra) would have no application to the instant case.

10. We state at the cost of repetition that the prosecution has categorically taken the stand that they do not propose to rely upon the information passed on to the Anti Corruption Bureau leading to an open inquiry against the accused persons. We fail to see how the accused persons are prejudiced by non-disclosure of the name of the person who sent the complaint as well as the original copy of the complaint received by the Anti Corruption Bureau. Situations are many where certain persons do not want to disclose the identity as well as the information/complaint passed on them to the Anti Corruption Bureau. If the names of the persons, as well as the copy of the complaint sent by them are disclosed, that may cause embarrassment to them and sometimes threat to their life. This complaint only triggered an enquiry. Ultimately, the first information was lodged on the basis of an open inquiry bearing VER No.31/1987 and it is based on that inquiry the first information report dated 13.10.1992 was registered. After completion of the investigation and after getting the sanction to prosecute accused No.1, charge-sheet was filed. PW1 also did not depose anything about the receipt of complaint/ application in his examination-in-chief but receipt of the complaint/application and its contents having been relied upon by the defence during cross-examinatio

11. We also emphasize that in the instant case the prosecution has relied upon the material which was collected during the investigation. It is not a case where some materials/ documents were collected by the investigating agency during the investigations which are in favour of the prosecution and the prosecution is suppressing those documents. We are of the opinion that non-supply of the complaint or contents thereof do not, at all, violate the principle of fair trial. The said complaint has no relevancy in the context of this prosecution and in no manner, it would prejudice the petitioner.

12. Above being the factual and legal position, we find no reason to interfere with the order of the Bombay High Court and dismiss this special leave petition.

K.K.T. Appeal SLP dismissed.

DR. SUBRAMANIAN SWAMY AND ORS.

v.

RAJU, THROUGH MEMBER, JUVENILE JUSTICE BOARD AND ANR.

(Special Leave Petition (Crl.) No. 1953 of 2013)

AUGUST 22, 2013

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

Constitution of India, 1950 – Art. 136 – Special Leave Petition – Criminal proceedings – third party intervention – Maintainability – Held: Law does not recognize right of a third party/stranger to participate or came to aid of State in a criminal proceeding – In the instant case, the petitioner (a third party), is not seeking impleadment in the inquiry against the juvenile accused, pending before the Juvenile Justice Board or in the trial – He is seeking an authoritative pronouncement of the true purport and effect of different provisions of Juvenile Justice Act so as to take a juvenile out of the purview of the Act – Such adjudication has implications beyond the case of the juvenile accused – Therefore, the petition does not suffer from the vice of absence of locus of the petitioners and hence the petition is maintainable – Notice issued – Juvenile Justice (Care and Protection of Children) Act, 2000.

The case of the first respondent (a juvenile), who was an accused in a gang rape case, was before Juvenile Justice Board. The petitioner approached the Board, seeking his impleadment in the proceedings in order to seek interpretation of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000. When the Board expressed its inability to decide the question of law raised by the petitioners, they filed a public interest litigation before High Court seeking interpretation of the provisions of the Act. High Court dismissed the petition.

In appeal, union of India contended that the petition was not maintainable because third party/stranger does not have any right to participate in criminal prosecution, which is primarily function of the State.

Issuing notice in the Special Leave Petition, the Court

HELD: 1.The administration of criminal justice in India can be divided into two broad stages at which the machinery operates. The first is the investigation of an alleged offence leading to prosecution and the second is the actual prosecution of the offender in a court of law. The jurisprudence that has evolved over the decades has assigned the primary role and responsibility at both stages to the State, though in certain exceptional situations there is a recognition of a limited right in a victim or his family members to take part in the process, particularly, at the stage of the trial. The law, however, frowns upon and prohibits any abdication by the State of its role in the matter at each of the stages and, in fact, does not recognize the right of a third party/stranger to participate or even to come to the aid of the State at any of the stages. Private funding of the investigative process has been disapproved. [Para 7] [527-D-G]

2. The instant special leave petition does not suffer from the vice of absence of *locus* on the part of the petitioners so as to render the same not maintainable in law. The petitioners do not seek impleadment in the inquiry against the first respondent presently pending before the Juvenile Justice Board or in the trial to which he may be relegated in the event the questions of law are answered in favour of the petitioners and that too within the requisite time span. Such a prayer, i.e. for impleadment was raised and decided against the petitioners by the Board. The said prayer had not been pursued before the High Court. Neither the same has been raised before this

Court. All that the petitioners seek is an authoritative pronouncement of the true purport and effect of the different provisions of the Juvenile Justice (Case and Protection of Children) Act, 2000, so as to take a juvenile out of the purview of the said Act, in case he had committed an offence, which, according to the petitioners, on a true interpretation of Section 2(p) of the Act, is required to be identified and distinguished to justify a separate course of action, namely, trial in a regular court of law as a specific offence under the Penal Code and in accordance with the provisions of Cr.P.C. The adjudication that the petitioners seek clearly has implications beyond the case of the first respondent and the proceedings in which he is or may be involved. In fact, interpretation of the relevant provisions of the Act in any manner by this Court, if made, will not be confined to the first respondent alone but will have an effect on all juveniles who may come into conflict with law, both in the immediate and distant future. The issue of maintainability of the present proceeding from the aforesaid perspective reference to the case of the first respondent in the pleadings must be understood to be illustrative. If this Court is to interpret the provisions of the Act in the manner sought by the petitioners, the possible effect thereof in so far as the first Respondent is concerned will pale into insignificance in the backdrop of the far reaching consequences that such an interpretation may have on an indeterminate number of persons not presently before the Court. The special leave petition would be heard on merits and attempt would be made to provide an answer to the several questions raised by the petitioners. [Para 12] [529-H; 530-A-H; 531-A]

3. The Juvenile Justice Board had deferred further consideration of the proceedings against the first respondent in anticipa tion of the order of this Court in the present matter. In the light o e

questions raised by the petitioners require an answer which need not be specific qua the first respondent, it is now open for the Board to proceed further in the matter and render such orders, in accordance with law, as may be considered just, adequate and proper. [Para 14] [531-C-D]

Navinchanda N. Majithia vs. State of Meghalaya and Ors. **(2000) 8 SCC 323: 2000 (3) Suppl. SCR 725;** *Thakur Ram and Ors. vs. The State of Bihar* **AIR 1966 SC 911: 1966 SCR 740;** *Panchhi and Ors. vs. State of U.P.* **(1998) 7 SCC 177: 1998 (1) Suppl. SCR 40;** *Janta Dal vs. H.S. Chowdhary and Ors.* **(1992) 4 SCC 305: 1992 (1) Suppl. SCR 226;** *Simranjit Singh Mann vs. Union of India and Anr.* **(1992) 4 SCC 653 – referred to.**

Case Law Reference:

2000 (3) Suppl. SCR 725	**referred to**	**Para 7**
1966 SCR 740	**referred to**	**Para 8**
1998 (1) Suppl. SCR 40	**referred to**	**Para 9**
1992 (1) Suppl. SCR 226	**referred to**	**Para 10**
(1992) 4 SCC 653	**referred to**	**Para 10**

CRIMINAL APPELLATE JURISDICTION: SLP (Criminal) No. 1953 of 2013.

From the Judgment and Order dated 23.01.2013 of the High Court of Delhi at New Delhi in W.P. Crl. No. 124 of 2013

Petitioner-In-Person, Sidharth Luthra, ASG, Mukul Gupta, Geeta Luthra, Supriya Juneja, Anjali Chauhan, C.B. Prasad, Gurmohan Singh Bedi, B.V. Balram Das, B. Krishana Prasad, A.J. Bhambhani, Nisha Bhambhani, Anant K. Asthana, Apurv Chandola, Sudarsh Menon, Amod Kr. Kanth (Intervenor-In-Person), A.K. Singh for the appearing parties.

The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. Should the adjudication sought for by the petitioner be refused at the threshold on the basis of the fairly well established legal proposition that a third party/stranger does not have any right to participate in a criminal prosecution which is primarily the function of the State. The aforesaid question arises in the following facts and circumstances.

2. On 16.12.2012, a ghastly incident of gang rape took place in a moving bus in the streets of Delhi. In connection with the said incident six accused were arrested on 22.12.2012, one of whom, namely, the first respondent in the present special leave petition was a juvenile on the date of the occurrence of the crime. The victim of the offence died on 29.1.2013. While the Juvenile Justice Board (hereinafter for short "the Board") was in seisin of the matter against the first respondent, the petitioners in the special leave petition approached the Board seeking impleadment in the proceedings before the Board and an interpretation of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter for short 'the JJ Act') so as to enable the prosecution of the first respondent in a regular criminal court. According to the petitioners while the Board did not pass any written orders in the matter it had expressed its inability to decide the question of law brought before it and directed the petitioners to approach a higher Court. Accordingly, on 18.1.2013 the petitioners filed a public interest litigation in the High Court of Delhi with the following prayers.

(i) Laying down an authoritative interpretation of Sections 2(l) and 2(k) of the Act that the criterion of 18 years set out therein does not comprehend cases grave offences in general and of heinous crimes against women in particular that shakes the roots of humanity in general.

(ii) That the definition of offences under Section 2(p) of the Act be categorized as per the grievousness of the crime committed an c

safety and order.

(iii) That Section 28 of the Act be interpreted in terms of its definition, i.e., Alternative Punishment and serious offences having minimum punishment of 7 years imprisonment and above be brought outside its purview and the same should be tried by an Ordinary Criminal Court.

(iv) Incorporating in the Act, the international concept of age of Criminal Responsibility and diluting the blanket immunity provided to the juvenile offender on the basis of age.

(v) That the instant Act be read down in consonance with the rights of victim as protected by various Fundamental Rights including Article 14 and 21 of the Constitution of India.

(vi) Pass such other and further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

3. By order dated 23.1.2013 the High Court declined to answer the questions raised on the ground that the petitioners had an alternative remedy under the JJ Act against the order as may have been passed by the Board. On the very next day, i.e., on 24.1.2013 the Board dismissed the application filed by the petitioners seeking impleadment and the other reliefs. On 19.2.2013 the petitioners had approached this Court seeking special leave to appeal against the order dated 23.1.2013 passed by the High Court of Delhi dismissing the public interest litigation.

4. The prayers made by the petitioners in the public interest litigation before the High Court not having been touched upon in any manner whatsoever, on the ground already noticed, naturally the scope of the present special leave petition, if it is

to be entertained, must be understood to be co-extensive with the questions arising before the High Court.

5. At the very outset, Mr. Sidharth Luthra, learned Additional Solicitor General appearing for the Union as well as Mr. A.J. Bhambhani, learned counsel for the first respondent has raised a vehement plea that this special leave petition should not be entertained as the same ex facie disclose serious doubts with regard to its maintainability. The gravamen of the contentions raised by the learned counsels for the respondents is that the administration of criminal justice in India does not envisage any role for a third party/stranger and it is the State which represents the victim of a crime to vindicate the rights that may have been violated and the larger social interest in enforcing and maintaining the criminal law system. In this regard learned counsels have placed reliance on several decisions of this Court, which will be noticed hereinafter, wherein the aforesaid legal principle has been stated and reiterated.

6. To counter the arguments advanced on the plea of maintainability raised by the respondents, the first petitioner – Dr. Subramanian Swamy, who had appeared in person and were authorized to do so on their behalf by the other petitioners, has submitted that the prayers made before the High Court which would now require consideration of this Court make it clear that the petitioners neither seek impleadment in the proceeding pending before the Board against the first respondent nor the payers made have any specific bearing to the criminal acts committed by the first respondent. According to the first petitioner, reference to the 16th December, 2012 incident and to the role of the first respondent in the said incident is merely incidental and illustrative. The approach to the High Court and to this Court has been made in view of the larger public interest inherent in the question raised by the petitioners. All that the petitioners seek is an authoritative pronouncement on the provisions of the JJ Act and its applicability to juveniles within the mean[illegible]o

commit certain categories of extremely heinous and depraved criminal acts. On merits, the first petitioner has contended that the provisions of the JJ Act ought to be read down by this Court to provide for categorization of the offences committed by a juvenile depending on depravity thereof and for the trial of a juvenile for the most serious and heinous of such offences by treating such acts as offences under Indian Penal Code. We have noticed, in brief, the contentions of the petitioners on merits though we had confined the hearing that took place on 14.8.2013 to the question of maintainability of the special leave petition leaving the merits of the questions and issues raised open for consideration in the event it becomes so necessary.

7. The administration of criminal justice in India can be divided into two broad stages at which the machinery operates. The first is the investigation of an alleged offence leading to prosecution and the second is the actual prosecution of the offender in a Court of Law. The jurisprudence that has evolved over the decades has assigned the primary role and responsibility at both stages to the State though we must hasten to add that in certain exceptional situations there is a recognition of a limited right in a victim or his family members to take part in the process, particularly, at the stage of the trial. The law, however, frowns upon and prohibits any abdication by the State of its role in the matter at each of the stages and, in fact, does not recognize the right of a third party/stranger to participate or even to come to the aid of the State at any of the stages. Private funding of the investigative process has been disapproved by this Court in *Navinchanda N. Majithia v. State of Meghalaya and Others*[1] and the following observations amply sum up the position:

> **"18.** Financial crunch of any State treasury is no justification for allowing a private party to supply funds to the police for conducting such investigation. Augmentation of the fiscal resources of the State for meeting the expenses needed for such investigations is the lookout of the executive. Failure to do it is no premise for directing a complainant to supply funds to the investigating officer. Such funding by interested private parties would vitiate the investigation contemplated in the Code. A vitiated investigation is the precursor for miscarriage of criminal justice. Hence any attempt, to create a precedent permitting private parties to supply financial assistance to the police for conducting investigation, should be nipped in the bud itself. No such precedent can secure judicial imprimatur."

1. (2000) 8 SCC 323.

8. Coming to the second stage of the system of administration of criminal justice in India, this Court in *Thakur Ram and Others v. The State of Bihar*[2], while examining the right of a third party to invoke the revisional jurisdiction under the Code of 1898, had observed as under :

> "The criminal law is not to be used as an instrument of wrecking private vengeance by an aggrieved party against the person who, according to that party, had caused injury to it. Barring a few exceptions, in criminal matters the party who is treated as the aggrieved party is the State which is the custodian of the social interests of the community at large and so it is for the State to take all the steps necessary for bringing the person who has acted against the social interests of the community to book."

9. In *Panchhi and Others v. State of U.P.*[3] this Court have refused leave to the National Commission for Women to intervene in an appeal before this Court wherein a young mother was facing execution of the capital sentence imposed on her on the ground that the National Commission for Women or for that matter any other organization cannot have *locus standi* in a criminal case.

2. AIR 1966 SC 911.

3. (1998) 7 SCC 177.

10. This Court has also been slow in approving third party intervention in criminal proceedings on grounds of larger public interest. In *Janta Dal v. H.S. Chowdhary and Others*[4] the public interest litigation petitioner was held to have no locus to bring a public interest litigation seeking certain directions in a matter of issuance of a letter of rogatory/request to the Swiss Government in an investigation that was then pending in what came to be popularly known as the Bofors case. Similarly, in *Simranjit Singh Mann v. Union of India and Anr*[5]. this Court had declined leave to the President of a recognized political party, namely, Akali Dal (M) to challenge, under Article 32 of the Constitution, the conviction and sentence of the accused found guilty of the offence under Section 302 IPC. The view taken by this Court in *Simranjit Singh Mann* (supra) seems to be based on the fact that petitioner before this Court was a total stranger to the offence committed by the accused whereas in *Janta Dal* (supra) the public interest litigation petitioner was found to have a personal and private interest in the matter. [*para 119 of the Report in Janta Dal (supra*)]

11. Adverting to the facts of the present case, undoubtedly, in the pleadings of the petitioners there is a reference to the first respondent, i.e., the juvenile who is alleged to have committed the offence. There can also be no manner of doubt that if the provisions of the JJ Act are to be construed in the manner that the petitioners seek the first respondent will be affected. The petitioners are in no way connected with the incident in question. But would the above, by itself, render the action initiated by the petitioners non-maintainable on the ground that they have no locus to raise the questions that have arisen being total strangers to the alleged crime, as contended by the Respondents on the strength of the principles noticed above?

12. The petitioners do not seek impleadment in the inquiry

4. (1992) 4 SCC 305.

5. (1992) 4 SCC 653.

against the first respondent presently pending before the Board or in the trial to which he may be relegated in the event the questions of law are answered in favour of the petitioners and that too within the requisite time span. Such a prayer, i.e., for impleadment was raised and decided against the petitioners by the Board. The said prayer had not been pursued before the High Court. Neither the same has been raised before us. All that the petitioners seek is an authoritative pronouncement of the true purport and effect of the different provisions of the JJ Act so as to take a juvenile out of the purview of the said Act in case he had committed an offence, which, according to the petitioners, on a true interpretation of Section 2(p) of the Act, is required to be identified and distinguished to justify a separate course of action, namely, trial in a regular Court of Law as a specific offence under the Penal Code and in accordance with the provisions of the Code of Criminal Procedure. The adjudication that the petitioners seek clearly has implications beyond the case of the first respondent and the proceedings in which he is or may be involved. In fact, interpretation of the relevant provisions of the JJ Act in any manner by this Court, if made, will not be confined to the first respondent alone but will have an effect on all juveniles who may come into conflict with law both in the immediate and distant future. If we are to view the issue of maintainability of the present proceeding from the aforesaid perspective reference to the case of the first respondent in the pleadings must be understood to be illustrative. If this Court is to interpret the provisions of the Act in the manner sought by the petitioners, the possible effect thereof in so far as the first Respondent is concerned will pale into insignificance in the backdrop of the far reaching consequences that such an interpretation may have on an indeterminate number of persons not presently before the Court. We are, therefore, of the view that it would be appropriate for us hold that the special leave petition does not suffer from the vice of absence of locus on the part of the petitioners so as to render the same not maintainable in law. We therefore will proceed to hear the special leave p d

attempt to provide an answer to the several questions raised by the petitioners before us.

13. We, therefore, issue notice in this special leave petition and permit the respondents to bring their respective additional pleadings on record, if any.

14. By our order dated 31.7.2013 we had permitted the first petitioner to bring to the notice of the Board that the present special leave petition was to be heard by us on 14.8.2013. We are told at the Bar that in anticipation of our orders in the matter, the Board has deferred further consideration of the proceedings against the first respondent. In the light of the view taken by us that the questions raised by the petitioners require an answer which need not be specific qua the first respondent we make it clear that it is now open for the Board to proceed further in the matter and render such orders, in accordance with law, as may be considered just, adequate and proper.

K.K.T. Notice issued in SLP.

GM, SRI SIDDESHWARA CO-OPERATIVE BANK LTD. & ANR.

v.

SRI IKBAL & ORS.

(Civil Appeal No(s). 6989-6990 of 2013 etc.)

AUGUST 22, 2013

[R.M. LODHA AND CHANDRAMAULI KR. PRASAD, JJ.]

Security Interest (Enforcement) Rules, 2002 – r.9 – Auction of mortgaged property by lender- Bank – For realization of loan amount from the borrower – Auction purchaser paid 75% of the sale consideration after the period specified in Sub-rule (4) of r.9 – Bank issued sale certificate in favour of auction-purchaser – Writ petition challenging the confirmation of sale – High Court allowed the petition for non-compliance of r.9 – Held: The period specified in sub-rule (4) of r.9 for payment of balance amount of sale consideration is not mandatory – The period is extendable if there is written agreement between the parties i.e. the borrower, lender and auction purchaser – In the instant case, in view of the letter of the borrower giving consent that balance amount could be received from the auction-purchaser after the specified date, the letter having been accepted by the Bank and auction-purchaser having made payment accordingly, the period can be said to have been extended as per written agreement – Thus, condition in r.9(4) has been substantially satisfied – Even if a provision is mandatory it can be waived by the beneficiary of such provision – The borrower and the lender-Bank being the beneficiaries can be said to have waived their right in view of the letter of the borrower – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – s.13(4).

Constitution of India, 1950 – Article 226 – Jurisdiction under – Held: Availability of alternative remedy is not an

absolute bar to exercise of extraordinary jurisdiction u/Art. 226 – But where statute provides efficacious and adequate remedy, High Court should not entertain such petition – Statutory procedures cannot be allowed to be circumvented on misplaced considerations – In the instant case, High Court erred in invoking jurisdiction u/Art.226 as statutory remedy was efficacious – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – s.17.

Words and Phrases – 'Written agreement' and 'parties' – Meaning of, in the context of s.9(4) of Security Interest (Enforcement) Rules, 2002.

The property of the first respondent-borrower was mortgaged by the appellant-Bank under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, against the loan which he failed to pay. Respondent No.3 purchased the property. The auction-purchaser made payment of 25% of the sale consideration, but was not able to make payment of remaining 75% of the sale consideration within 15 days of confirmation of sale. As the proceeds from the sale of the mortgaged property fell short of the total outstanding amount against the borrower, the Bank moved the Joint Registrar of the Cooperative Societies for recovery of the outstanding amount, wherein *ex-parte* award, was passed against the borrower. The borrower filed writ petition under Article 226 of the Constitution, challenging the sale certificate issued by the Bank to the auction-purchaser and the notice which was issued by the Bank to the borrower whereby borrower was informed that his property would be sold on his failure to repay the loan amount. Single Judge of the High Court quashed the sale certificate and the notice. The Bank as well as auction-purchaser challenged the order. Division Bench of High Court held that on account of non-compliance of mandatory requirement of r.9 of Security Interest

(Enforcement) Rules, 2002, despite the availability of remedy u/s. 17 of the Act, a case was made out for interference. Hence he present appeals by the Bank as well as the auction-purchaser.

Allowing the appeals, the Court

HELD: 1.1. Single Judge of the High Court was not justified in quashing the sale certificate dated 16.11.2006 issued in favour of the auction purchaser and the notice dated 09.02.2007. The Division Bench also committed an error in upholding the erroneous order of the Single Judge. In the facts of the present case, it is apparent that the borrower had been chronic defaulter in repayment of the loan amount. Before issuance of notice under Section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, a demand notice was given by the Bank to the borrower calling upon him to pay the outstanding loan amount but he did not comply with that notice. Thereafter, 13(2) notice was given to him, but he did not bother to pay the outstanding dues. The secured interest which was immovable property was put up for auction more than six months after the notice under Section 13(2) was given to him by the Bank but still the outstanding payment was not made.The auction was held in the presence of the borrower and he did not raise any objection about time of the auction. When the auction purchaser did not pay the balance amount in time and took about 11 months in paying the balance amount, the borrower gave his written consent to the Bank that balance purchase price may be accepted from the auction purchaser and sale certificate may be issued to him. Moreover, the writ petition was filed by the borrower more than four years after the issuance of sale certificate. The above facts are eloquent and indicate that the observations made by the Single Judge that borrower was victimized and a[illegible]d

upon, have no basis. The finding by the Single Judge that the sale of secured interest had been in violation of borrower's right to livelihood and the observation of the Division Bench that non-compliance of Rule 9 has violated the borrower's right to property, are misconceived. [Paras 26 and 32] [546-B-C; 549-C-H]

1.2. A reading of sub-rule (1) of Rule 9 of Security Interest (Enforcement) Rules, 2002 makes it manifest that the provision is mandatory. Similarly, Rule 9(3) which provides that the purchaser shall pay a deposit of 25% of the amount of the sale price on the sale of immovable property also indicates that the said provision is mandatory in nature. As regards balance amount of purchase price, sub-rule (4) provides that the said amount shall be paid by the purchaser on or before the fifteenth day of confirmation of sale of immovable property or such extended period as may be agreed upon in writing between the parties. The period of fifteen days in Rule 9(4) is not that sacrosanct and it is extendable if there is a written agreement between the parties for such extension. 2002 Rules do not prescribe any particular form for such agreement except that it must be in writing. Therefore, term 'written agreement' means a mutual understanding or an arrangement about relative rights and duties by the parties. For the purposes of Rule 9(4), the expression "written agreement" means nothing more than a manifestation of mutual assent in writing. The word 'parties' for the purposes of Rule 9(4) must mean the secured creditor, borrower and auction purchaser. [Para 18] [542-D-H]

1.3. The borrower had given a letter dated 13.11.2006 to the Bank giving his express consent that the auction made in favour of the auction purchaser may be accepted and sale-certificate be issued to him. It is evident from the letter that at the time of auction sale on 11.01.2006, the borrower was present. He did not object to the auction

being held before expiry of 30 days from the date on which the public notice of sale was published. He also agreed that bid given by the auction purchaser for Rs.8,50,000/- which was highest bid be accepted as the auction purchaser happened to be his known person. It is also clear from the letter that the borrower expressly gave consent in writing that the balance sale price may be accepted from the auction purchaser and sale certificate be issued to him. The above letter sent by the borrower to the Bank has been accepted by the Bank. Thus, there is a written agreement between the borrower and the Bank for extension of time up to 13.11.2006. The auction purchaser made the payment of the balance purchase price forthwith on that day, i.e., 13.11.2006. This indicates that he was impliedly a party to the written agreement between the Bank and the borrower. In the circumstances, the condition in Rule 9(4) viz. "such extended period as may be agreed upon in writing between the parties" be treated as substantially satisfied. The Single Judge of High Court was clearly in error in holding that the letter dated 13.11.2006 written by the borrower to the Bank cannot be construed as written agreement falling under Rule 9(4). [Paras 20 and 22] [543-D-E; 544-F-H; 545-A-C]

1.4. It is settled position in law that even if a provision is mandatory, it can always be waived by a party (or parties) for whose benefit such provision has been made. The provision in Rule 9(1) being for the benefit of the borrower and the provisions contained in Rule 9(3) and Rule 9(4) being for the benefit of the secured creditor (or for that matter for the benefit of the borrower), the secured creditor and the borrower can lawfully waive their right. These provisions neither expressly nor contextually indicate otherwise. The question whether there is waiver or not depends on facts of each case and no hard and fast rule can be laid down in this re

case, the letter dated 13.11.2006 sent by the borrower to the Bank leaves no manner of doubt that the borrower had waived his right under Rule 9(1) or for that matter under Rule 9(3) and Rule 9(4) as well. The plea of disowning the letter saying that on one signed blank paper, the above document has been prepared, has neither been accepted by Single Judge nor the Division Bench. There is no justification for this Court as well not to accept the letter dated 13.11.2006 as true and genuine. [Paras 23 to 25] [545-D-H; 546-A-B]

2.1. An alternative remedy is not an absolute bar to the exercise of extraordinary jurisdiction under Article 226, but where a statute provides efficacious and adequate remedy, the High Court will do well in not entertaining a petition under Article 226. On misplaced considerations, statutory procedures cannot be allowed to be circumvented. [Para 31] [549-A-B]

2.2. Against the action of the Bank u/s. 13(4) of the Act, the borrower had a remedy of appeal to the Debts Recovery Tribunal u/s. 17. The remedy provided under Section 17 is an efficacious remedy. The borrower did not avail of that remedy and further remedies from that order and instead directly approached the High Court in extraordinary jurisdiction under Article 226 of the Constitution of India. The Single Judge was clearly in error in invoking his extraordinary jurisdiction under Article 226 in light of the peculiar facts of the case. [Paras 27 and 32] [546-C-E; 550-A-B]

United Bank of India vs. Satyawati Tondon and Ors. **(2010) 8 SCC 110: 2010 (9) SCR 1 – relied on.**

Case Law Reference:

2010 (9) SCR 1	**relied on**	**Para 30**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 6989-90 of 2013.

From the Judgment and Order dated 17.01.2012 of the High Court of Karnataka Circuit Bench at Gulbarga in WA Nos. 50009 and 50010 of 2012.

WITH

C.A. Nos. 6991-6992 of 2013.

S.N. Bhat, Raja Venkatappa Naik, Raja Raghvendra Naik, S.K. Tandon, Pramod Deo Pujari (for Rameshwar Prasad Goyal), Shantha Kr. Mahale, Rajesh Mahale, Harish Hebbar, S.N. Bhat for the Respondent.

The Judgment of the Court was delivered by

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

2. The question to which we have to turn in these appeals, by special leave, centres around Rule 9 of the Security Interest (Enforcement) Rules, 2002 (for short, "2002 Rules").

3. The facts are these: on 08.02.1996, the respondent no.1, Ikbal (hereinafter referred to as "borrower"), took a housing loan of Rs. 5,00,000/- from Sri Siddeshwara Co-operative Bank Ltd. (for short, "the Bank"). He mortgaged his immovable property being RS No.872, Plot No.29, Mahalbagayat situate at Bijapur. The borrower committed default in repayment of the said housing loan. Despite several reminders when the borrower failed to make payment of the loan amount, the Bank issued a notice on 16.02.2005 calling upon him to repay the outstanding loan amount of Rs. 10,43,000/- with interest and costs failing which it was stated in the notice that the mortgaged property will be sold according to law.

4. The borrower failed to make payment of the outstanding loan amount as demanded in the notice dated 16.02.2005. The Bank then issued a notice to him on 30.06.2005 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "SARFAESI Act"). In that notice borrower was informed that if he failed to discharge the outstanding d e

Bank may exercise action under Section 13(4) of the SARFAESI Act and the mortgaged property shall be sold.

5. On 09.12.2005, the Bank got the mortgaged property valued which was fixed at Rs.9,00,000/-.

6. On 18.12.2005, the Bank published the auction notice in the local newspapers. The conditions of the public notice were also mentioned in the auction notice.

7. Bashir Ahmed (appellant in two appeals and respondent no.3 in the appeals of the Bank), who we shall refer to hereafter as "auction purchaser" made the payment of Rs.90,000/- towards earnest money deposit on 18.12.2005 itself. The public auction was conducted on 11.01.2006. The auction purchaser gave the bid of Rs.8,50,000/- which was accepted being the highest bid. The auction purchaser made payment of Rs.1,45,000/- towards 25% of the sale consideration. However, he did not make the payment of remaining 75% within 15 days of the confirmation of sale in his favour. He made the payment towards balance sale price in installments on various dates and the final payment was made on 13.11.2006. On 16.11.2006, the Bank issued the sale certificate in favour of the auction purchaser.

8. The proceeds from the sale of the mortgaged property fell short of the total outstanding amount against the borrower. As on 09.02.2007, Rs.2,27,000/- remained outstanding against him. The Bank moved the Joint Registrar of Co-operative Societies for recovery of the outstanding amount. In those proceedings, on 26.02.2007 an *ex parte* award for a sum of Rs.2,37,038/- including the interest and miscellaneous expenses was passed against the borrower.

9. The Bank levied execution of the *ex parte* award somewhere in 2011. It was then that the borrower challenged the sale certificate issued in favour of the auction purchaser and the notice dated 09.02.2007 in two writ petitions before the

Karnataka High Court, Circuit Bench at Gulbarga.

10. The Single Judge of that Court, after hearing the parties, by his order of 12.12.2011 quashed the sale certificate issued in favour of the auction purchaser and the demand notice dated 09.02.2007. In that order the Bank was granted liberty to conduct fresh sale in accordance with the law. The Single Judge made certain observations against the authorised officer and directed the Additional Registrar of the High Court to send a copy of the order to the Superintendent of Lokayukta Police at Bijapur for further action in accordance with law.

11. The Bank as well as the auction purchaser challenged the order of the Single Judge in intra-court appeals but without any success.

12. Both Single Judge as well as the Division Bench held that mandatory requirements of Rule 9 were not followed and, therefore, despite the remedy of appeal to the borrower provided under Section 17 of the SARFAESI Act, a case was made out for interference.

13. We have heard Mr. S.N. Bhat, learned counsel for the Bank (appellants in the appeals arising from SLP(C) No.17704-17705/2012), Mr. Raja Venkatappa Naik, learned counsel for the auction purchaser (appellants in the appeals arising from SLP(C) Nos.12106-12107/2012) and Mr. Rajesh Mahale, learned counsel for the borrower.

14. SARFAESI Act lays down the detailed and comprehensive procedure for enforcement of security interest created in favour of a secured creditor without intervention of the court or tribunal. Section 13(2) requires the secured creditor to issue notice to the borrower in writing to discharge his liabilities within 60 days from the date of the notice. Such notice must indicate that if the borrower fails to discharge his liabilities, the secured creditor shall be entitled to exercise its rights in terms of Section 13(4).

15. There is no dispute that a notice in terms of Section 13(2) was given by the Bank to the borrower on 30.06.2005. That the Bank proceeded for the enforcement of security interest in one of the modes provided under Section 13(4) is also not in dispute. The borrower in the writ petitions filed before the Karnataka High Court set up the plea that there was non-compliance of Rule 9 and that had rendered the sale in favour of the auction purchaser bad in law. The Single Judge and the Division Bench were convinced by the borrower's contention. We are required to see the correctness of that view.

16. 2002 Rules have been framed by the Central Government in exercise of the powers conferred on it by sub-section (1) and clause (b) of sub-section (2) of Section 38 read with sub-sections (4), (10) and (12) of Section 13 of the SARFAESI Act.

17. Rule 9* provides for the detailed procedure with regard to sale of immovable property including issuance of sale certificate and delivery of possession. Sub-rule (1) of Rule 9 states that no sale of immovable property shall take place before the expiry of 30 days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) or notice of sale has been served to the borrower. Sub-rule (2) provides that sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid. This is subject to confirmation by the secured creditor. There is a proviso appended to sub-rule (2) which provides that no sale under this rule shall be confirmed if the amount offered by sale price is less than the reserve price but this is relaxable in view of the second proviso appended to sub-rule (2). Sub-rule (3) lays down that on every sale of immovable property, the purchaser shall immediately make the deposit of 25% of the amount of the sale price. In default of such deposit, the property shall forthwith be sold again. Sub-rule (4) provides that the balance amount of purchase price payable shall be paid by the purchaser on or before the fifteenth day of confirmation of sale

of the immovable property or such extended period as may be agreed upon in writing between the parties. Sub-rule (5) makes a provision that if the balance amount of purchase price is not paid as required under sub-rule (4), then the deposit shall be forfeited and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold. According to sub-rule (6), on confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorised officer exercising power of sale shall issue a certificate of sale of the immoveable property in favour of the purchaser in the form given in Appendix V to the 2002 Rules.

18. A reading of sub-rule (1) of Rule 9 makes it manifest that the provision is mandatory. The plain language of Rule 9(1) suggests this. Similarly, Rule 9(3) which provides that the purchaser shall pay a deposit of 25% of the amount of the sale price on the sale of immovable property also indicates that the said provision is mandatory in nature. As regards balance amount of purchase price, sub-rule (4) provides that the said amount shall be paid by the purchaser on or before the fifteenth day of confirmation of sale of immovable property or such extended period as may be agreed upon in writing between the parties. The period of fifteen days in Rule 9(4) is not that sacrosanct and it is extendable if there is a written agreement between the parties for such extension. What is the meaning of the expression 'written agreement between the parties' in Rule 9(4)? 2002 Rules do not prescribe any particular form for such agreement except that it must be in writing. The use of term 'written agreement' means a mutual understanding or an arrangement about relative rights and duties by the parties. For the purposes of Rule 9(4), the expression "written agreement" means nothing more than a manifestation of mutual assent in writing. The word 'parties' for the purposes of Rule 9(4) we think must mean the secured creditor, borrower and auction purchaser.

19. On behalf of the borrower, the following non-compliances were brought forth: (i) the auction notice of sale was published on 18.12.2005 under Rule 9(1). The public auction should have been conducted not before 30 days therefrom, i.e., it must have been conducted on or after 17.01.2006 but the public auction in fact was conducted on 11.01.2006; (ii) 25% of the sale price from the auction purchaser should have been collected on the day of confirmation of sale in his favour, i.e., on 11.01.2006 but instead Rs. 90,000/- were adjusted which he deposited as earnest money deposit and a sum of Rs.1,45,000/- was only received which could not have been done, and (iii) on or before expiry of fifteenth day from the confirmation of sale, the auction purchaser did not pay the balance amount and having not done that in terms of Rule 9(5) the deposit made by the auction purchaser should have been forfeited and property resold.

20. In response to the above allegations, the Bank relied upon the letter dated 13.11.2006 written by the borrower to the Bank giving his express consent that the auction made in favour of the auction purchaser may be accepted and sale-certificate be issued to him.

21. The letter dated 13.11.2006 sent by the borrower to the Bank reads as follows:

"General Manager,
Shri. Shiddheshwar Co-op. Bank,
Bijapur.

Sub. : Issue of sale certificate of auctioned my house property.

I, Iqbal Balasab Mallad humbly submits in writing as under;

On my request the mortgaged property to my housing loan account no.194, is sold on 11.01.2006, in public auction for Rs.8,50,000/- to my known person, Sri. Basheer

Ahmed Gulam Hussain Inamdar, as he was the highest bidder. But, Sri. B.G. Inamdar could not repay the loan within one month. Today the said person is making the payment of entire balance amount of Rs.2 Lakhs and I request you to issue him the sale certificate as I have consented.

I request to appropriate the sale amount of Rs.8,50,000/- to my loan account.

Thanking you,

Yours faithfully,

Sd/-

Dated : 13.11.2006 (I.B. Mallad)

Signature of G.M.
And
Seal of the Bank.

Sd/-
General Manager
Shri. Shiddheshwar Co-op. Bank Ltd., Bijapur"

22. Two things clearly emerge from the above letter. First, at the time of auction sale on 11.01.2006 the borrower was present. He did not object to the auction being held before expiry of 30 days from the date on which the public notice of sale was published. He also agreed that bid given by the auction purchaser for Rs.8,50,000/- which was highest bid be accepted as the auction purchaser happened to be his known person. Second, and equally important, the borrower expressly gave consent in writing that the balance sale price may be accepted from the auction purchaser now and sale certificate be issued to him. The above letter sent by the borrower to the Bank has been accepted by the Bank. Thus, there is a written agreement between the borrower and the Bank for extension

of time up to 13.11.2006. The auction purchaser made the payment of the balance purchase price forthwith on that day, i.e., 13.11.2006. This indicates that he was impliedly a party to the written agreement between the Bank and the borrower. In the circumstances, there is no reason why the condition in Rule 9(4) viz. "such extended period as may be agreed upon in writing between the parties" be not treated as substantially satisfied. The learned Single Judge was clearly in error in holding that the letter dated 13.11.2006 written by the borrower to the Bank cannot be construed as written agreement falling under Rule 9(4).

23. There is no doubt that Rule 9(1) is mandatory but this provision is definitely for the benefit of the borrower. Similarly, Rule 9(3) and Rule 9(4) are for the benefit of the secured creditor (or in any case for the benefit of the borrower). It is settled position in law that even if a provision is mandatory, it can always be waived by a party (or parties) for whose benefit such provision has been made. The provision in Rule 9(1) being for the benefit of the borrower and the provisions contained in Rule 9(3) and Rule 9(4) being for the benefit of the secured creditor (or for that matter for the benefit of the borrower), the secured creditor and the borrower can lawfully waive their right. These provisions neither expressly nor contextually indicate otherwise. Obviously, the question whether there is waiver or not depends on facts of each case and no hard and fast rule can be laid down in this regard.

24. The letter dated 13.11.2006 sent by the borrower to the Bank leaves no manner of doubt that the borrower had waived his right under Rule 9(1) or for that matter under Rule 9(3) and Rule 9(4) as well.

25. It is true that before the High Court the borrower disowned the letter dated 13.11.2006 and a plea was set up by him that on one signed blank paper the above document has been prepared but neither the learned Single Judge nor the Division Bench accepted the said version of the borrower.

Rather they proceeded on the basis that the letter dated 13.11.2006 was written by the borrower to the Bank. There is no justification for us not to accept the letter dated 13.11.2006 as true and genuine.

26. In view of what we have discussed above, learned Single Judge was not justified in quashing the sale certificate dated 16.11.2006 issued in favour of the auction purchaser and the notice dated 09.02.2007. The Division Bench also committed an error in upholding the erroneous order of the learned Single Judge.

27. There is one more aspect in the matter which has troubled us. Against the action of the Bank under Section 13(4) of the SARFAESI Act, the borrower had a remedy of appeal to the Debts Recovery Tribunal (DRT) under Section 17. The remedy provided under Section 17 is an efficacious remedy. The borrower did not avail of that remedy and further remedies from that order and instead directly approached the High Court in extraordinary jurisdiction under Article 226 of the Constitution of India.

28. The learned Single Judge brushed aside the argument of alternative remedy by holding as follows :

> "16. As regards alternate remedy submitted by the learned counsel for respondents II to IV, in the decision cited supra, the Supreme Court has held that the rule of exhaustion of alternate remedy is a rule of discretion and not a rule of compulsion. The court has to assign reasons for entertaining writ petition without exhausting alternate remedy. The petitioner has been victimized by fraudulent acts of respondents III and IV. The III respondent had misused his official position and petitioner has been deprived of his property in the manner not known to law. There is violation of Article 21 of the Constitution of India. The petitioner has been deprived of his shelter. The right to livelihood is an integral facet of

Article 21 of the Constitution, (*Narendra Kumar Vs. State of Haryana*), (1994) 4 SCC 460. Therefore, the submission of learned counsel for respondents II to IV that petitioner should have availed alternate remedy cannot be accepted."

29. The learned Division Bench in this regard observed thus :

"14. Though the petitioner could agitate these matters in an appeal filed under Section 17 of the Act, it is settled law that when a Constitutional right of an individual is affected by statutory authorities by trampling upon the mandatory requirements of law, this court cannot be a silent spectator. It becomes not only a right, but the duty of this court to interfere and strike at these illegal activities and uphold the Constitutional right of a citizen of this country. Therefore, the learned Single Judge rightly interfered with these illegal acts of statutory authorities in its jurisdiction under Article 226 and it cannot be found fault with."

30. In *Satyawati Tondon*[1], the Court was concerned with an argument of alternative remedy provided under Section 17 of SARFAESI Act. Dealing with this argument, the Court had observed that where an effective remedy was available to the aggrieved person, the High Court must insist that before availing the remedy under Article 226 the alternative remedies available to him under the relevant statute are exhausted. In paragraphs 43,44 and 45 (pg. no. 123) of the Report, the Court stated as follows :

"43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of

1. United Bank of India v. Satyawati Tondon and Others; (2010) 8 SCC 10.

taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance."

31. No doubt an alternative remedy is not an absolute bar to the exercise of extraordinary jurisdiction under Article 226 but by now it is well settled that where a statute provides efficacious and adequate remedy, the High Court will do well in not entertaining a petition under Article 226. On misplaced considerations, statutory procedures cannot be allowed to be circumvented.

32. If the facts of the present case are seen, it is apparent that the borrower had been chronic defaulter in repayment of the loan amount. Before issuance of notice under Section 13(2) on 30.06.2005 a demand notice was given by the Bank to the borrower on 16.02.2005 calling upon him to pay the outstanding loan amount but he did not comply with that notice. Thereafter, 13(2) notice was given to him on 30.06.2005 but he did not bother to pay the outstanding dues. The secured interest which was immovable property was put up for auction more than six months after the notice under Section 13(2) was given to him by the Bank but still the outstanding payment was not made. The auction was held on 11.01.2006 in his presence and he did not raise any objection about time of the auction. When the auction purchaser did not make the balance amount in time and took about 11 months in paying the balance amount, the borrower gave his written consent to the Bank that balance purchase price may be accepted from the auction purchaser and sale certificate may be issued to him. Moreover, the writ petition was filed by the borrower more than four years after the issuance of sale certificate. The above facts are eloquent and indicate that the observations made by the Single Judge that borrower was victimized and a fraud was practiced upon, have no basis. The finding by the Single Judge that the sale of secured interest had been in violation of borrower's right to livelihood and the observation of the Division Bench that non-compliance of Rule 9 has violated, the borrower's right to property are misconceived. In our view, there was no justification whatsoever for the learned Single Judge to allow the borrower to by-pass the efficacious remedy provided to him

under Section 17 and invoke the extraordinary jurisdiction in his favour when he had disentitled himself for such relief by his conduct. The Single Judge was clearly in error in invoking his extraordinary jurisdiction under Article 226 in light of the peculiar facts indicated above. The Division Bench also erred in affirming the erroneous order of the Single Judge.

33. Before we close, one more fact may be noted. The auction-purchaser over and above the sale price of Rs.8,50,000/-, has discharged the entire liability of the borrower towards the bank by making further payment of more than Rs.2,37,000/-.

34.We are, thus, satisfied that impugned orders cannot be sustained. Appeals are, accordingly, allowed. The impugned orders are set aside. The writ petitions filed by the borrower before the High Court are dismissed with no order as to costs.

K.K.T. Appeals allowed.

BALDEV KRISHAN
v.
SATYA NARAIN
(Civil Appeal No. 7163 of 2013)

AUGUST 27, 2013

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

Rajasthan Premises (Control of Rent and Eviction) Act, 1950 – s. 13(1)(h) – Eviction suit – On the ground of bonafide requirement of the wife of landlord, landlord himself and his family – Decreed by trial court and first appellate court – During pendency of the case, demise of wife of the landlord – High Court set aside the decree holding that the ground of bonafide requirement did not survive due to demise of landlord's wife – In appeal to this Court, the parties reached settlement, agreeing that tenants could occupy the tenanted premises for a further period of three years and the rent shall stand increased.

Appellant-respondent filed a suit u/s.13(1)(h) of Rajasthan Premises (Control of Rent and Eviction) Act, 1950 on the ground of *bonafide* requirement for himself and his family stating that his wife wanted to start business and premises was needed for the sake of business as well as for residence. Trial court as well as first appellate court decreed the suit. In the meantime, wife of the landlord died. High Court, in second appeal, held that due to death of the wife of landlord, ground for *bonafide* requirement did not survive. Hence the present appeal was filed. Parties entered into settlement.

Allowing the appeal, in view of the settlement between the parties, the Court

HELD: The parties arrived at a settlement before this

Court. It has been agreed that the rent shall stand increased to Rs.1500/- per month and that the Respondent-tenant shall be permitted to continue to occupy the tenanted premises for a further period of three years. However, the Respondent-tenant is directed to hand over peaceful and vacant possession to the landlord or his legal heirs in the event of his demise on or before 31st August 2016, provided the tenant pays all the arrears of rent till date (if any); and with effect from September 2013 pays a sum of Rs.1500/- per month towards damages for use and occupation. [Para 9] [557-F-H]

Pasupuleti Venkateswarlu vs. The Motor and General Traders **(1975) 1 SCC770: 1975 (3) SCR 958;** *Phool Rani vs. Naubat Rai Ahluwalia* **(1973) 1 SCC688: 1973 (3) SCR 679;** *Shantilal Thakordas vs. Chimanlal Maganlal Telwala* **(1976) 4 SCC 417: 1977 (1) SCR 341;** *Hasmat Rai vs. RaghunathPrasad* **(1981) 3 SCC 103: 1981 (3) SCR 605;** *Shakuntala Bai vs. Narayan Das* **(2004) 5 SCC 772: 2004 (2) Suppl. SCR 114;** *Sheshambal vs. Chelur Corporation* **(2010) 3 SCC 470: 2010 (2) SCR 960 – referred to.**

Case Law Reference:

1975 (3) SCR 958	**referred to**	**Para 5**
1973 (3) SCR 679	**referred to**	**Para 5**
1977 (1) SCR 341	**referred to**	**Para 5**
1981 (3) SCR 605	**referred to**	**Para 5**
2004 (2) Suppl. SCR 114	**referred to**	**Para 5**
2010 (2) SCR 960	**referred to**	**Para 7**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7163 of 2013

From the Judgment and Order da e

High Court of Judicature for Rajasthan at Jodhpur in S.B. Civil Regular Second Appeal No. 216 of 2010.

Puneet Jain, Ms. Pratibha Jain, for the Appellant.

Aishwarya Bhati, Sanjoli Mittal, Amit Verma, Dr. Prikhshayat Singh, for the Respondent.

The Judgment of the Court was delivered by

VIKRAMAJIT SEN, J. 1. Leave granted. We have heard learned counsel for the parties in great detail, at the end of which a settlement was arrived at between them, the terms of which we shall spell out later.

2. The Appeal assails the order of the learned Single Judge of the High Court of Rajasthan in Second Appeal No.216 of 2010 dated 11.3.2011 which in turn related to the legal propriety of the decree of eviction passed by the First Appellate Court being the District Judge, Churu. The landlord/Appellant had filed a Suit for the eviction of the tenant/Respondent on sundry grounds out of which we are presently concerned only with that under Section 13(1)(h) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, which envisages the eviction of a tenant on the predication of the landlord, "that the premises are required reasonably and bonafide by the landlord (i) for the use or occupation of himself or his family, …..".

3. We have perused the Plaint, the salient averments of which are that "in order to solve his financial problem the plaintiff wants to start a business of *Paapad, Badi* and spices in the disputed shop to be looked after by his wife. The wife of the plaintiff also wants to do the same and the plaintiff after his retirement himself wants to pursue and continue this industry and business and keep up his source of income. In these situations since the plaintiff and his wife and children will also require place for their residence for which he wants to vacate and utilise two rooms, store and *varandah* as are built on the

first floor which is presently with Jaiprakash on rent. The plaintiff and his wife also need rooms built at the second floor of the house for the business and industry of *Paapad, Badi* etc., and for their residential purposes and for other needs. In this way, the plaintiff has legitimate, reasonable and bonafide need of the disputed shop and room which is at second floor for himself and his family members…….". After a perusal of these averments, it seems to us that it cannot be concluded that the eviction suit pleaded the bonafide need of only the subsequently deceased wife, either for commercial or residential requirement; the claimed need was of the plaintiff and his family.

4. The Trial Court, by its order dated 4.9.2003, decreed the Suit in favour of the Appellant-landlord which, as already indicated above, was upheld in appeal by the District Judge, Churu, by judgment dated 8.11.2010. However, in that duration, the Appellant-landlord's wife had passed away in 2007. In the impugned judgment, the High Court repelled the contention of the landlord that concurrent finding of fact ought not to be upset by the High Court in the Second Appeal. After doing so, the High Court did not view the claim of bonafide requirement of the tenanted premises favourably. This has resulted in the filing of the present appeal before us.

5. The discussion of the law should properly start with the three-Judge Bench decision in *Pasupuleti Venkateswarlu v. The Motor & General Traders* (1975) 1 SCC 770. Our research reveals that the question in hand has not received the attention of any larger Bench and hence if the *ratio decidendi* of *Pasupuleti* is to be varied, it per force has to be done by a larger Bench. In these circumstances, *Pasupuleti* holds the field on the question of the consideration to be given to events which have occurred subsequent to the institution of a suit and the disposal of any statutory appeal. *Pasupuleti* requires the Court to "take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrup[illegible]er

laying down these propositions the decision was to the effect that the recovery of another accommodation by the landlord during the pendency of the case, had material bearing on the right to evict since that right would be defeated by the statutory provisions itself. *Pasupuleti* did not have the occasion to consider *Phool Rani v. Naubat Rai Ahluwalia* (1973) 1 SCC 688; counsel were clearly remiss in not bringing this decision to the Court's notice. Close upon the heels of this decision is *Shantilal Thakordas v. Chimanlal Maganlal Telwala* (1976) 4 SCC 417 also rendered by a three-Judge Bench. *Phool Rani* was cited and overruled in *Shantilal* and, therefore, the former ought not to be cited or considered any further. The tenor of *Shantilal* is in consonance with and not contrary to *Pasupuleti,* as it necessarily must be. What has been held is that if the requirement of the Plaintiff as well as his heirs is in issue before the Court, the passing away of the Plaintiff will not defeat the *lis*. Another three-Judge Bench in *Hasmat Rai v. Raghunath Prasad* (1981) 3 SCC 103 has followed *Pasupuleti,* again as it was precendentially bound to. The plurality was of the view that a decree or order does not become final till the appeal filed against it is finally disposed of. In his dissenting note, Pathak.J emphasised upon the fact that it was only in the course of the Second Appeal that the tenant endeavoured to draw the attention of the court to the demise of the landlord. Accordingly, Pathak,J was of the opinion that since there were concurrent findings of fact rendered by the Trial Court as well as the first Appellate Court, the demise of the Plaintiff-landlord in the course of the Second Appeal would not have any detrimental legal consequences to his claim. We may add here, by way of emphasis, that a Second Appeal would not entail the determination of questions of fact but must conform to the discipline of only considering question of law of substantial importance. *Shakuntala Bai v. Narayan Das* (2004) 5 SCC 772 is a decision of a two-Judge Bench and, therefore, need not detain us in view of the *ratio decidendi* of larger Benches. Significantly, it was not brought to the notice of the Court that

Phool Rani had already been overruled by two larger Benches. However, the distinguishing feature in this case was that consequent upon the death of the original landlord-plaintiff his legal heirs had been allowed to be impleaded and the case progressed from that stage, not in the appellate court but before the Trial Court. It has been duly noted at the final hearing of the eviction Suit by the Trial Court, all the Plaintiff's sons had specifically set up their own bonafide needs.

6. We have briefly considered the previous precedents since disparate decisions inexorably lead to a vexed and a split exposition of the law. Our objective is to insulate the subordinate courts from choosing between decisions of the Apex Court by presenting only one opinion of the law.

7. We must immediately refer to the decision of this Court, in the nature of a re-statement of the law, in *Sheshambal v. Chelur Corporation* (2010) 3 SCC 470 in which my learned and esteemed brother Thakur J. had perspicuously yet concisely considered the plethora of precedents pertaining to the legal consequences of the demise of the landlord whose bonafide need was the substance of the eviction action, during the pendency of an appeal. After analysing several previous decisions, it has been held that events which transpired subsequent to filing of the eviction petition could and must be kept in perspective if they would have the effect of dislodging the very plinth or substratum of the claim. In *Sheshambal,* the bonafide need that had been pleaded pertained only to the landlord and his wife. It will be relevant to record that the claim had been concurrently rejected by the courts below, before whom the landlord-husband had passed away. The widow, whose bonafide need had also been set up, unfortunately, also passed away during the pendency of the appeal in this Court. In those circumstances, it was held that the bonafide need, even assuming that it existed at the time of filing of the eviction action, had thereafter lapsed altogether on the death of the petitioning protagonists. It seems to us that it is arg n

may change had there been a favourable verdict during their lifetime. Premium should not be placed on the filing of appeals merely to defeat a favourable decision on the unfair speculation that the endemic delay in disposal of appeals may result in defeating a decree because of the death of the landlord. It had been clarified in *Sheshambal* that "if the deceased landlord had any dependent member of the family, we may have even in the absence of a pleading assumed that the requirement pleaded extended also to the dependent member of their family. That unfortunately for the Appellant is neither the case set up nor the position on facts". The second aspect of the decision which needs to be recounted is that the rent had been increased by the High Court to Rs.10,000/- per month with effect from 1.11.2003 and thereafter by this Court to Rs.25,000/- per month with effect from 1.1.2009.

8. Returning to the pleadings before us, we are not seized of an eviction action in which the bonafide need of only the deceased wife of the Appellant had been pleaded. It is for this reason that we have extracted above the relevant parts of the Plaint. Therefore, it required our careful cogitation as to whether the landlord could still claim bonafide need for himself as well as his dependents.

9. In these circumstances, mindful of the uncertainty of which manner we may decide, the parties through their counsel have arrived at a settlement before us. It has been agreed that the rent shall stand increased to Rs.1500/- per month and that the Respondent-tenant shall be permitted to continue to occupy the tenanted premises for a further period of three years. The Appeal is accordingly allowed. The judgment of the High Court is set aside. However, the Respondent-tenant shall hand over peaceful and vacant possession to the landlord or his legal heirs in the event of his demise on or before 31st August 2016 provided the Respondent pays all the arrears of rent till date (if any); and with effect from September 2013 pays a sum of Rs.1500/- per month towards damages for use and occupation.

The usual undertaking to abide by these terms must be filed within four weeks from today failing which he shall be liable to be evicted/ejected forthwith.

10. Parties shall bear their respective costs.

K.K.T. Appeal allowed in view of the Settlement between the Parties.

UNION OF INDIA AND ORS.
v.
SHRI BHANWAR LAL MUNDAN
(Civil Appeal No. 7292 of 2013)

AUGUST 27, 2013

[ANIL R. DAVE AND DIPAK MISRA, JJ.]

Service Law:

Pay fixation – Repatriation of employee from deputation post in parent department on promotional post – Pay on the deputation post higher than the pay on promotional post – Pay fixation on promotional post on the basis of the higher pay on the deputation post – At the time of superannuation, accounts department realizing that pay fixation was erroneous, refixed the pay of the employee and directed to refund the excess sum – Courts below quashed the order – Held: Fixation of pay on the promotional post on the basis of higher pay scale on the deputation post, was erroneous – Hence, authorities were within domain to rectify it – However, there shall be no recovery of the excess amount paid to the employee.

The respondent employee in JU Division of the appellant-employer, was sent on deputation to Construction Organisation. He was called to participate in selection process for promotional post in his parent department. On being successful, he joined the promotional post. Since his pay on the deputation post was higher than the pay on the promotional post, his pay on the promotional post was fixed on the basis of the pay he was drawing on the deputation post. At the time of determination of his pension, on superannuation, it was

realized that he had been given excess pay due to erroneous fixation of pay. Therefore, the respondent was sent a communication re-fixing his pay and directing recovery of excess sum.

The respondent challenged the order of re-fixation, and the Administrative Tribunal quashed the same. High Court confirmed the order of Tribunal. Hence the present appeal.

Partly allowing the appeal, the Court

HELD: 1. The repatriation has to be to the original post and benefit of promotion in the department to which an employee is deputed is of no consequence subject to his entitlement of status otherwise available in the parent department. When a deputationist is repatriated he cannot claim promotions in the parent department on the basis of officiation in a higher post in the borrower organization. [Paras 19 and 20] [570-C-D]

2. In the present case, the respondent was getting higher scale of pay in the post while he was holding a particular post as a deputationist. After his repatriation to the parent cadre on selection to a higher post, he was given higher scale of pay as it was fixed keeping in view the pay scale drawn by him while he was working in the *ex-cadre* post. Such fixation of pay was erroneous and, therefore, the authorities were within their domain to rectify the same. Thus the tribunal and the High Court have fallen into error by opining that the respondent would be entitled to get the pension on the basis of the pay drawn by him before his retirement. [Para 22] [571-A-C]

3. Orders passed by the tribunal as well as by the High Court are set aside directing fixation of pension on the basis of pay drawn by the respondent. However, there shall be no recovery of the excess amount paid to the respondent. [Para 23] [571-D]

D.M. Bharati vs. L.M. Sud and Ors. **1991 Supp (2) SCC 162: 1990 (1) Suppl. SCR 580;** *Puranjit Singh vs. Union Territory of Chandigarh* **1994 Supp (3) SCC 471;** *State of Punjab and Ors. vs. Inder Singh and Ors.* **(1997) 8 SCC 372: 1997 (4) Suppl. SCR 425 – relied on.**

Inder Pal Yadav and Ors. vs. Union of India and Ors. **(2005) 11 SCC 301;** *Badri Prasad and Ors. vs. Union of India and Ors.* **(2005) 11 SCC 304;** *Sayed Abdul Qadir and Ors. vs. State of Bihar and Ors.* **(2009) 3 SCC 475: 2008 (17) SCR 917;** *Union of India and Anr. vs. P.N. Natarajan and Ors.* **(2010) 12 SCC 405;** *State of Orissa vs. Dr.Binapani Dei* **AIR 1967 SC 1269: 1967 SCR 625;** *Sayeedur Rehman vs. State of Bihar* **(1973) 3 SCC 333: 1973 (2) SCR 1043 – distinguished.**

Case Law Reference:

(2005) 11 SCC 301	**distinguished**	**Para 10**
(2005) 11 SCC 304	**distinguished**	**Para 14**
2008 (17) SCR 917	**distinguished**	**Para 14**
(2010) 12 SCC 405	**distinguished**	**Para 16**
1967 SCR 625	**distinguished**	**Para 16**
1973 (2) SCR 1043	**distinguished**	**Para 16**
1990 (1) Suppl. SCR 580	**relied on**	**Para 19**
1994 Supp (3) SCC 471	**relied on**	**Para 20**
1997 (4) Suppl. SCR 425	**relied on**	**Para 21**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7292 of 2013.

From the Judgment and Order dated 09.05.2011 of the High Court of Rajasthan at Jodhpur in CWP No. 11838 of 2010.

S.P. Singh, N.K. Karhail (for B. Krishna Prasad) for the Appellants.

Aishwarya Bhati for the Respondent.

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. Leave granted.

2. This appeal by special leave is directed against the judgment and order dated 9.5.2011 passed by the High Court of Judicature of Rajasthan at Jodhpur in D.B. Civil Writ Petition No. 11838 of 2010 whereby the Division Bench has concurred with the view expressed by the Central Administrative Tribunal, Jodhpur Bench at Jodhpur (for short "the tribunal") in O.A. No. 109 of 2008 wherein the tribunal had quashed the order passed by the competent authority re-fixing his pay prior to his retirement and directing recovery of the amount paid from 3.12.1994 to 31.12.2007.

3. The undisputed facts are that the respondent was appointed as a Gangman on JU Division on 15.1.1966 as a substitute and was regularized in the year 1972. He was promoted to the post of Store Keeper in October, 1977 and thereafter, he went on deputation to Construction Organization in December, 1977. He was given the post of PW Mistry in the Construction Organization with effect from 10.4.1981 in the pay

scale of Rs.380-560. On completion of the training he came in the grade of Rs.1400-2300 by the Construction Wing of the railways. Subsequently, when there was a regular selection for the post of JE-I in his parent department, he was called to participate in the selection which he did and being declared successful, he joined in the said promotional post on 3.12.1994. While giving him posting in the year 1994, his pay was fixed keeping in view the benefit he had availed while he was working in the Construction Organization. When the date of superannuation approached and pension was going to be determined, it was noticed by the accounts department that he had been given excess pay due to erroneous fixation of pay scale and, accordingly, a communication was sent on 22.10.2007 refixing his pay and directing recovery of the excess sum.

4. Being dissatisfied with the said action, the respondent approached the tribunal which, placing reliance on the authorities in *Inder Pal Yadav and others v. Union of India and others*[1], *Badri Prasad and others v. Union of India and others*[2] *and Sayed Abdul Qadir and others v. State of Bihar*[3] *and others,* quashed the order of refixation and directed the benefit of pension be extended to him on the basis of pay he was actually drawing before the retirement within three months failing which the employer would be liable to pay interest at the rate of 15% per annum.

5. Grieved by the aforesaid order, the Union of India and its functionaries approached the High Court, which, by the impugned judgment, came to hold as follows: -

"In our considered opinion, no flaw can be noticed in the

1. (2005) 11 SCC 301.
2. (2005) 11 SCC 304.
3. (2009) 3 SCC 475.

reasoning arid the conclusion of the Tribunal while allowing the Original Application. In the first place, it is based on the Supreme Court decision quoted in the order itself. Secondly, there is no distinction brought about the facts of the case that is subject matter of the case in hand the one before the Supreme Court. Thirdly the impugned directions for fixation of the pension on the basis of last drawn pay cannot be said to be either illegal or arbitrary or against any provision of Act or/and rule made thereunder."

6. On the basis of aforesaid analysis the writ court dismissed the petition.

7. Criticising the orders passed by the tribunal as well as by the High Court Mr. S. P. Singh, learned senior counsel for the appellants has submitted that when the respondent was sent on deputation and came back to the parent department accepting promotion he was to be treated at par with other promotees and could not have been entitled to draw higher pay scale solely on the ground that he was getting a better pay while he was on deputation. It is urged by him when the respondent had no legal right to get a particular pay scale and it was wrongly fixed and could only be noticed prior to his retirement it became obligatory on the part of the authorities to refix the pay and accordingly determine the pension and hence, the action of the authorities could not have been found fault with. It is his further submission that neither the tribunal nor the High Court has addressed the issue pertaining to the entitlement of the respondent but directed the pension to be paid on the basis of the pay drawn by him before the retirement. Learned counsel would further contend that as far as recovery is concerned, the petitioners have no intention to recover the same.

8. Ms. Aishwarya Bhati, learned counsel for the respondent relying on the authorities which have be[illegible]e

by the tribunal and accepted by the High Court urged that pay protection was given when the respondent came back to the parent cadre on promotion and, therefore, the said protection could not have been withdrawn on the foundation that there was an erroneous fixation of pay. It is argued by her that when a long time has lapsed from the date of repatriation on promotion to the parent cadre, steps for refixation immediately prior to superannuation of the respondent is neither permissible in law nor is it equitable. Learned counsel has canvassed that in any case there cannot be recovery of the same as there had been no misrepresentation by the respondent to avail the said benefit.

9. From the aforesaid rivalised submissions two questions, namely, (i) whether the pay of the respondent was erroneously fixed and (ii) whether there could have been a direction for recovery of the amount alleged to have been excessibly paid to the respondent, emerge for consideration.

10. It is perceptible from the orders passed by the tribunal as well as by the High Court that they have set aside the order dated 22.10.2007 placing reliance on three authorities. In *Inder Pal Yadav* (supra), a two-Judge Bench dealt with regularization and permanent absorption. It also dealt with the entitlement of the right of the employees to continue in the concerned project or to resist reversion back to the cadre or to enjoy a higher promotion merely on the basis of locally provisional promotion granted to them in the project in which they had been employed at a particular point of time. The Court has observed that if the stand of the petitioners therein was to be accepted, it would operate inequitably so far as the regular employees in the open line department are concerned. Thereafter, the learned Judges proceeded to state as follows: -

> ".....while the petitioners cannot be granted the reliefs as prayed for in the writ petition, namely, that they should not be reverted to a lower post or that they should be treated as having been promoted by reason of their promotion in the projects, nevertheless, we wish to protect the petitioners against some of the anomalies which may arise, if the petitioners are directed to join their parent cadre or other project, in future. It cannot be lost sight of that the petitioners have passed trade tests to achieve the promotional level in a particular project. Therefore, if the petitioners are posted back to the same project they shall be entitled to the same pay as their contemporaries unless the posts held by such contemporary employees at the time of such reposting of the petitioners is based on selection."

11. The learned counsel for the respondent would place reliance on the last part of above quoted paragraph but the same, we are inclined to think, does not in any way buttress the submission put forth by the learned counsel for the respondent.

12. In *Badri Prasad* (supra) the issue was whether an employee substantially holding Group 'D' post can claim regular promotional post, i.e., Group 'C'. The Court in that context observed that the practice adopted by the Railways of taking work from employees in Group 'D' post on higher Group 'C' post for unduly long period legitimately raises hopes and claims for higher posts by those working in such higher posts. As the Railways is utilising for long periods the services of employees in Group 'D' post for higher post in Group 'C' carrying higher responsibilities, benefit of pay protection, age relaxation and counting of their service on the higher post towards requisite minimum prescribed period of service, if any, for promotion to the higher post must be granted to them as their legitimate claim. But they cannot be granted relief of regularising their services on the post of Storeman/Clerk merely on the basis of their ad hoc promotion from open line e

project or construction side. After so stating the Court opined thus:-

> "Without disturbing, therefore, orders of the Tribunal and the High Court the appellants are held entitled to the following additional reliefs. The pay last drawn by them in Group 'C' post shall be protected even after their repatriation to Group 'D' post in their parent department. They shall be considered in their turn for promotion to Group 'C' post. The period of service spent by them on ad hoc basis in Group 'C' post shall be given due weightage and counted towards length of requisite service, if any, prescribed for higher post in Group 'C'. If there is any bar of age that shall be relaxed in the case of the appellants."

13. Reading the decision in entirety we are persuaded to think that the directions were issued in the special fact- situation and, in any case, it does not pertain to a situation where someone gets repatriated on being selected to a higher post and on that foundation would claim pay protection and consequent fixation of pay in the selection post.

14. In *Syed Abdul Quadir* (supra) the Court was dealing with fixation of pay under FR 22-C and as there was a wrong fixation, the question of recovery arose. The Court, relying on earlier decisions, opined thus:-

> "The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong

> payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See *Sahib Ram v. State of Haryana*[4], *Shyam Babu Verma v. Union of India*[5], *Union of India v. M. Bhaskar*[6], *V. Gangaram v. Director*[7], *Col. V.J. Akkara (Retd.) v. Govt of India*[8], *Purshottam Lal Das v. State of Bihar*[9], *Punjab National Bank v. Manjeet Singh*[10] and *Bihar SEB v. Bijay Bhadur*.[11]"

15. From the aforesaid decision it is clear as day that it has been relied upon to by the tribunal as well as by the High Court for the purpose that there should be no recovery. Mr. Singh has conceded that steps shall not be taken for any recovery, and we think that the concession has been justly given. Be it noted, the aforesaid decision does not assist the respond to pyramid the submission of pay fixation and grant of pension.

16. In *Union of India and another v. P.N. Natarajan and others*[12] the Court was dealing with a fact-situation where there was withdrawal of pensionary benefits. Adverting to the concept of natural justice and, relying on the decisions in *State of Orissa v. Dr. Binapani Dei*[13] and *Sayeedur Rehman v. State of Bihar*[14], the Court ruled thus: -

4. 1995 Supp (1) SCC 18.
5. (1994) 2 SCC 521.
6. (1996) 4 SCC 416.
7. (1997) 6 SCC 139.
8. (2006) 11 SCC 709.
9. (2006) 11 SCC 492.
10. (2006) 8 SCC 647.
11. (2000) 10 SCC 99.
12. (2010) 12 SCC 405.
13. AIR 1967 SC 1269.
14. (1973) 3 SCC 333.

"**16.** It is not in dispute that before directing revision of the pension, etc. payable to the private respondents, the Central Government did not give them action-oriented notice and opportunity of showing cause against the proposed action. Therefore, it must be held that the direction given by the Central Government to revise the retiral benefits including the pension payable to the respondents was nullity.

17. Dehors the above conclusion, we are convinced that the action taken by the appellants to revise and reduce the retiral benefits payable to the respondents was ex facie arbitrary, unreasonable and unjustified and the learned Single Judge did not commit any error by declaring that the Central Government did not have the jurisdiction to unilaterally alter/change the option exercised by the writ petitioners under Section 12-A(4)(*b*) read with Section 12-A(4-C)."

17. The aforesaid conclusion was arrived at as the Union of India as such could not have invoked the terms of the memorandum of settlement to justify the directives and retiral benefits payable to the respondents. The aforesaid decision has to be read in the context of its facts and not to be construed as a precedent for the proposition that if the pay has been erroneously fixed that cannot be revised even if the facts are absolutely clear and undisputed.

18. We may note with profit that Mr. Singh, learned senior counsel, has submitted that the respondent was holding an ex-cadre post and it was the duty of the employer to ask him to participate in the selection in the promotional post, in the parent cadre. The respondent, being conscious of his position and to have the status, appeared in the selection process, got selected and joined the parent cadre. The learned senior counsel would submit that under a mistaken pression his pay

was fixed in the promotional post in the parent cadre as a consequence of which he got more than the promotees in his batch and, hence, the same was required to be rectified and the employer was within its right to do so.

19. It is not in dispute that the respondent was sent on deputation and his lien in the parent department continued and hence, it was obligatory on the part of the authorities in the parent department to intimate him when the selection process for the higher post was undertaken as he had already come within the zone of consideration. In this context, we may refer with profit to the authority in *D.M. Bharati v. L.M. Sud and Others*[15] wherein the Court was dealing with a case whether the employee had got a promotion in the department to which he was sent on deputation. While considering the effect of the said promotion after repatriation the Court observed thus:-

> "that the appellant's promotion as junior draftsman and proposed promotion as Surveyor-cum-Draftsman in the Town Planning Establishment cannot confer any rights on him in his parent department. When he left the Municipal Corporation and joined the Town Planning Establishment he was a tracer and he can go back to the Estate Department or any other department of the Municipal Corporation only to his original post i.e. as tracer, subject to the modification that, if in the meantime he had qualified for promotion to a higher post, that benefit cannot be denied to him. "

Thus, the repatriation has to be to the original post and benefit of promotion in the department to which an employee is deputed is of no consequence subject to his entitlement of status otherwise available in the parent department.

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15. 1991 Supp (2) SCC 162.

20. In *Puranjit Singh v. Union Territory of Chandigarh*[16] it has been held that when a deputationist is repatriated he cannot claim promotions in the parent department on the basis on officiation in a higher post in the borrower organization.

21. In *State of Punjab and others v. Inder Singh and others*[17], the learned Judges elaborately adverted to the concept of deputation and the right of a deputationist and in that context opined thus:-

> "The concept of "deputation" is well understood in service law and has a recognised meaning. "Deputation" has a different connotation in service law and the dictionary meaning of the word "deputation" is of no help. In simple words "deputation" means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules."

22. In the case at hand, as stated earlier, the respondent was getting higher scale of pay in the post while he was holding a particular post as a deputationist. After his repatriation to the parent cadre on selection to a higher post he was given higher scale of pay as it was fixed keeping in view the pay scale drawn by him while he was working in the ex-cadre post. Such fixation of pay, needless to say, was erroneous and, therefore, the authorities were within their domain to rectify the same. Thus analysed, the irresistible conclusion is that the tribunal and the High Court have fallen into error by opining that the respondent would be entitled to get the pension on the basis of the pay

16. 1994 Supp (3) SCC 471.

17. (1997) 8 SCC 372.

drawn by him before his retirement.

23. Consequently, the appeal is allowed in part and the orders passed by the tribunal as well as by the High Court are set aside directing fixation of pension on the base of pay drawn by the respondent. However, as conceded to by Mr. Singh, there shall be no recovery from the excess amount paid to the respondent. There shall be no order as to costs.

K.K.T. Appeal Partly allowed.