PANCHRAJ TIWARI
v.
M.P. STATE ELECTRICITY BOARD AND OTHERS
(Civil Appeal No. 4371 of 2008)

MARCH 4, 2014

[H.L. GOKHALE AND KURIAN JOSEPH, JJ.]

SERVICE LAW:

Merger of services - Consequences of- Services of employees under erstwhile Rural Electricity Co-operative Society merged with Madhya Pradesh State Electricity Board - Graduate Junior Engineer of Erstwhile Society claiming promotion as Assistant Engineer as per MPSEB Circular dated 15.11.1990 - Held: Absorbed employees of Rural Electricity Cooperative Societies, having due regard to their date of appointment/ promotion in each category in the respective societies, shall be placed with effect from the date of absorption, viz., 15.03.2002 as juniors to the junior-most employee of the Electricity Board in the respective category - Thereafter, they shall be considered for further promotions as per the rules/regulations of MPSEB - Appellant accordingly shall be entitled to retrospective promotions at par with and with effect from the dates on which the junior-most graduate engineer in the parent service on the date of absorption obtained such promotions - However, it is made clear that benefits till date need to be worked out only notionally - Constitution of India, 1950 - Arts. 14 and 16.

The appellant was appointed as Junior Engineer in the Rural Electricity Co-operative Society, Rewa in 1986. The Board of Directors of the society passed a resolution on 27-12-1994 for his promotion as Assistant Engineer. Meanwhile, a policy decision was taken by the State Government to dissolve all such societies and merge the

same with Madhya Pradesh State Electricity Board and, ultimately, the Rural Electricity Co-operative Society, Rewa was completely merged with the MPSEB w.e.f. 15-03-2002. Consequently, the employees of the society were taken over and absorbed in the MPSEB. Since the appellant was not promoted as an Assistant Engineer, he filed a writ petition before the High Court. The single Judge dismissed the writ petition and the Division Bench of the High Court dismissed his appeal.

Allowing the appeal, the court

HELD: 1.1 Chances of promotion are not conditions of service, but negation of even the chance of promotion certainly amounts to variation in the conditions of service attracting infraction of Arts. 14 and 16 of the Constitution. No employee has a right to particular position in the seniority list but all employees have a right to seniority since the same forms the basis of promotion. If after integration, only the chances of promotion are affected, it is only to be ignored. In the instant case, there is complete denial of promotion forever, which cannot be comprehended under the constitutional scheme of Arts 14 and 16 of the Constitution. [para 16-18] [585-E-G; 586-A]

Tamil Nadu Education Department Ministerial and General Subordinate Services Association and others v. State of Tamil Nadu and others **(1980) 3 SCC 97 - referred to.**

1.2 Integration/merger of services means creation of a homogenous service by the merger of service personnel belonging to different services. Since it is not specifically provided as to the position of absorbed employees of the Rural Electricity Cooperative Society, Rewa in the integrated service, such employees are placed as junior to the junior-most officer of the category concerned in the MPSEB on the date of absorption, viz., 15.03.2002. [para 6 and 9] [582-C; 5

R.S. Makashi and others v. I. M. Menon and others **1982 (2) SCR 69 = (1982) 1 SCC 379;** *S. S. Bola and others v. B.D. Sardana and others* **1997 (2) Suppl. SCR 507 = (1997) 8 SCC 522; and** *Prafulla Kumar Das and others v. State of Orissa and others* **2003 (4) Suppl. SCR 301 = (2003) 11 SCC 614 - referred to.**

1.3 Having due regard to their date of appointment/ promotion in each category in the respective societies, they shall be placed with effect from the date of absorption, viz., 15.03.2002 as juniors to the junior-most employee of the Electricity Board in the respective category. Thereafter, they shall be considered for further promotions as per the rules/regulations of the MPSEB. All other principles/conditions of absorption shall remain as such. However, it is made clear that on such promotions, in the exigencies of service, the employee concerned would also be liable to be transferred out of the circle, if so required. [para 19] [587-A-C]

1.4 It is provided in the conditions of service of the MPSEB as per Circular dated 15.11.1990 that a graduate Junior Engineer having four years of regular satisfactory service can be considered for promotion to the post of Assistant Engineer after appropriate training. The appellant accordingly shall be entitled to retrospective promotions at par with and with effect from the dates on which the junior-most graduate engineer in the parent service on the date of absorption obtained such promotions. However, it is made clear that benefits till date need to be worked out only notionally. The impugned judgment is set aside. [para 10, 19 and 20] [583-B-C; 587-A. C-D]

Case Law Reference:

1982 (2) SCR 69	**referred to**	**para 14**
1997 (2) Suppl. SCR 507	**referred to**	**para 14**
2003 (4) Suppl. SCR 301	**referred to**	**para 14**
(1980) 3 SCC 97	**referred to**	**para 17**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4371 of 2008.

From the Judgment & Order dated 27.07.2007 of the Division Bench of the Madhya Pradesh at Jabalpur in Writ Appeal No. 1361 of 2006.

Rohit Kumar Singh, Prashant Bhushan, Daya Krishan Sharma for the Appellant.

Ashiesh Kumar for the Respodents.

The Judgment of the Court was delivered by

KURIAN, J. 1. Whether on integration/merger/ amalgamation, is it permissible to have complete denial of promotion forever in the integrated service, is the short question arising for consideration in this case.

2. Appellant a graduate started his career as junior engineer on 23.09.1986 in the Rural Electricity Cooperative Society, Rewa. During 1995, it appears a policy decision was taken by the State Government to dissolve all such societies and merge the same with Madhya Pradesh State Electricity Board (hereinafter referred to as 'MPSEB'). Accordingly, the Managing Committee of the Rural Electricity Cooperative Society, Rewa was superseded in May, 1995 and a Superintending Engineer of the MPSEB was appointed as Officer In-charge. However, it took a few years to complete the formalities of the merger. Finally the Rural Electricity Cooperative Society, Rewa was completely merged with the MPSEB w.e.f. 15.03.2002.

3. The principles of merger were clarified by the MPSEB after prolonged correspondence as per

15.06.2004. For the purpose of ready reference, we shall extract the contents:

"Please refer to this office order cited under reference. It is requested to issue necessary orders for absorption of employees of REC societies falling under your area of jurisdiction on the same terms & conditions of the societies. The terms & conditions of the societies may be obtained from DE (STC), Jabalpur.

Further other terms & conditions of which employees can be absorbed:-

1. The regular employees of the above societies shall be taken over on the same terms & conditions as existing in the Society except that no deputation allowance shall be paid.

2. Their pay scale will be the same which they were getting before the absorption.

3. The above employees may not be transferred out of the circle concerned, so that no anomaly arises.

4. Their age of superannuation will be the same as applicable in the societies.

5. Pension/gratuity will be payable to the employees absorbed in the Board as per the rules/regulation of the concerned society.

6. Their designation will be maintained as it was in the society."

(Emphasis supplied)

4. The principles of absorption as extracted above would clearly show that the employees of the society have been taken over and absorbed in the MPSEB. However, their pay-scale on the date of absorption was protected, their designation was

maintained as it was in the society at the time of absorption and the age of superannuation, pension and gratuity of such employees were to be governed by the rules/bylaws of the society concerned.

5. Though it may appear that there are some conditions which are normally not found in the principles of integration, the fact remains that the employees of the erstwhile society which merged with the MPSEB, have been absorbed in the service of MPSEB.

6. Integration/merger of services means creation of a homogenous service by the merger of service personnel belonging to different services. Though it is difficult to have a perfect coalescence of the services on such merger, the principle of equivalence is to be followed while absorbing the employees, to the extent possible.

7. Though integration of services thus postulates equation of posts, it is not invariably necessary to prepare the seniority list on the basis of the pay drawn by the incumbent in the equated category. It is always open to the authority concerned to adopt a just and the equitable principle on fixation of seniority.

8. Once a service is merged with another service, the merged service gets its birth in the integrated service and loses its original identity. There cannot be a situation, where even after merger, absorption or integration, such services which were merged or absorbed, still retain their original status. If so, it is not an absorption or merger or integration, it will only be a working arrangement without any functional integration.

9. In the instant case, the undisputed factual and legal position is that there is absorption of the employees of the Rural Electricity Cooperative Society, Rewa with the MPSEB. The Society has been deregistered, there is only one service thereafter and thus there is functional integration. On the basis of the protection of the designation e

employees have to be posted in the equivalent category. Since it is not specifically provided as to the position of such employees in the integrated service, it is a settled equitable principle that such employees are placed as junior to the junior-most officer of the category concerned in the MPSEB on the date of absorption, viz., 15.03.2002.

10. It is provided in the conditions of service of the MPSEB as per Circular dated 15.11.1990 that a graduate Junior Engineer having satisfactory service of four years of regular service can be considered for promotion to the post of Assistant Engineer after appropriate training. The appellant started his career as a graduate engineer in the Rural Electricity Cooperative Society, Rewa in 1986. He also claimed promotion on the basis of such circular. The Board of Directors of the appellant's society passed a Resolution on 27.12.1994 for his promotion as Assistant Engineer. By that time the steps for dissolution of society, it appears had already started. The Board of Directors was dissolved in May, 1995 and a Superintending Engineer of the MPSEB was appointed as Officer In-charge of the society. The said officer forwarded the proposal of promotion of the appellant as an Assistant Engineer to the MPSEB.

11. It appears, the Registrar of the Cooperative Societies as well as MPSEB have taken the stand that the appellant had not been duly selected for promotion as Assistant Engineer in terms of Rule 18 of the Society. The Rule reads as follows:

"18. SELECTION AND APPOINTMENT

The selection of suitable candidate for filling-up a post in the society as well as for making selection for promotion of eligible candidates shall be made by a selection committee to be constituted by the Board, consisting of the Chairman, a member of the Board to be elected by the Board, divisional Deputy Registrar of Cooperative Society, Divisional Engineer, M.P. Electricity Board and the

Managing Director of the Society.

Dearness allowances to employees borne on regular establishment shall be admissible as applicable to the employees of M.P.E.B. from time to time with previous approved of the Registrar Cooperative societies M.P.

Dearness allowances to employees borne on regular estt. shall be admissible as sanctioned by the M.P.E.B. to the similar categories of employees."

(Emphasis supplied)

12. It is the case of the appellant that since the Board of Governors had already been dissolved and since it had been decided to absorb the employees of the society in the Board, there was no point in following the process of selection in terms of the regulations of the society. Thus, the rejection was challenged before the High Court.

13. Learned Single Judge dismissed the writ petition on the ground that writ against a cooperative society was not maintainable. However, in appeal, it was admitted by the Board that the society had already merged with the Electricity Board and, hence, case was heard on merits before the Division Bench. It is the stand of the High Court in appeal that the principles of integration, as extracted above, cast no obligation on the Electricity Board to give promotion to the appellant. The obligation was only to absorb the appellant by protecting the designation and pay-scale and continue as such. In other words, since the appellant was absorbed as a Junior Engineer, he should continue forever as Junior Engineer till his retirement. We are afraid that the stand cannot be justified.

14. As held by this Court in *R.S. Makashi and others v. I. M. Menon and others,*[1] the courts will not interfere with the decision and principles of integration unless it is shown that they are arbitrary, unreasonable or unfair.

vested right for an employee to have a particular position in the integrated or merged service. On equitable considerations, it is always open to the authorities concerned to lay down the principles with regard to the fixation of seniority as held by this Court in *S. S. Bola and others v. B.D. Sardana and others*[2] and *Prafulla Kumar Das and others v. State of Orissa and others.*[3] However, in the instant case, equivalence has been decided since designation and pay-scale was protected. What remains is only the seniority.

15. It is open to the authority concerned to lay down equitable principles with regard to fixation of seniority in the merged cadre. Once a service gets merged with another service, the employee concerned has a right to get positioned appropriately in the merged service. That is the plain meaning of 'absorption'. The MPSEB, having absorbed the appellant and other employees, cannot maintain a stand that even after absorption they will retain a distinct identity in the equated cadre without any promotion as enjoyed by their compeers in the parent service. That is a plain infraction of the equity clause guaranteed under Articles 14 and 16 of the Constitution of India.

16. Chances of promotion are not conditions of service, but negation of even the chance of promotion certainly amounts to variation in the conditions of service attracting infraction of Articles 14 and 16 of the Constitution of India. No employee has a right to particular position in the seniority list but all employees have a right to seniority since the same forms the basis of promotion.

17. An employee has always an interest to seniority and a right to be considered for promotion. If after integration, only the chances of promotion are affected, it would have been only a case of heartburn of an individual or a few individuals which is only to be ignored, as held by this Court in *Tamil Nadu Education Department Ministerial and General Subordinate Services Association and others v. State of Tamil Nadu and others.*[4]

18. Instant is a case where there is complete denial of promotion forever which cannot be comprehended under the constitutional scheme of Articles 14 and 16 of the Constitution of India. In this context, we shall refer to a beautiful discussion on this aspect in S. S. Bola case (supra) at paragraph 153. The relevant portion reads as follows:

"**153.** xxx xxx xxx xxx

AB. A distinction between right to be considered for promotion and an interest to be considered for promotion has always been maintained. Seniority is a facet of interest. The rules prescribe the method of recruitment/ selection. Seniority is governed by the rules existing as on the date of consideration for promotion. Seniority is required to be worked out according to the existing rules. No one has a vested right to promotion or seniority. But an officer has an interest to seniority acquired by working out the rules. The seniority should be taken away only by operation of valid law. Right to be considered for promotion is a rule prescribed by conditions of service. A rule which affects chances of promotion of a person relates to conditions of service. The rule/provision in an Act merely affecting the chances of promotion *would not be* regarded as varying the conditions of service. The chances of promotion are not conditions of service. A rule which merely affects the chances of promotion does not amount to change in the conditions of service. However, once a declaration of law, on the basis of existing rules, is made by a constitutional court and a mandamus is issued or direction given for its enforcement by preparing the seniority list, operation of the declaration of law and the mandamus and directions issued by the Court is the result of the declaration of law but not the operation of the rules per se."

(Emphasis supplied)

19. In the above circumstances, we set aside the judgment in appeal. The absorbed employees of the Rural Electricity Cooperative Societies, having due regard to their date of appointment/promotion in each category in the respective societies, shall be placed with effect from the date of absorption, viz., 15.03.2002 as juniors to the junior-most employee of the Electricity Board in the respective category. Thereafter, they shall be considered for further promotions as per the rules/regulations of the MPSEB. All other principles/ conditions of absorption shall remain as such. However, it is made clear that on such promotions, in the exigencies of service, the employee concerned would also be liable to be transferred out of the circle, if so required.

20. The appellant accordingly shall be entitled to retrospective promotions at par with and with effect from the dates on which the junior-most graduate engineer in the parent service on the date of absorption obtained such promotions. However, we make it clear that benefits till date need to be worked out only notionally.

21. The appeal is allowed as above. There is no order as to costs.

R.P. Appeal allowed.

C.B.I.
v.
KARIMULLAH OSAN KHAN
(Criminal Appeal No. 1127 of 2009)

MARCH 4, 2014

[K.S. RADHAKRISHNAN AND VIKRAMAJIT SEN, JJ.]

CODE OF CRIMINAL PROCEDURE, 1973:

s.216 - Alteration of charge - One of the absconding accused in Bombay bomb blast case (12.3.1993) apprehended subsequently - Charges framed - Original charge of criminal conspiracy u/s 3(2) TADA r/w s.120 IPC and other offences, though applicable, but inadvertently not mentioned - Application by CBI for addition of the charges - Rejected by Designated Court - Held: This is a fit case where the court ought to have exercised its powers u/s 216 CrPC and allowed the application filed by CBI for alteration of charge. Consequently, impugned order is set aside -- Application preferred by CBI u/s 216 would stand allowed and Designated Court is directed to further proceed with the case in accordance with law.

The instant appeal was filed by the CBI against the order of the Designated Court established under the Terrorist and Disruptive Activities (Prevention) Act,1987 rejecting the application filed by the CBI u/s 216 of the Court of Criminal Procedure, 1973 for addition of the charges punishable u/s 302, IPC and other charges under the Penal Code and Explosives Act read with s.120-B IPC and also u/s 3(2) of TADA. The respondent was accused no. 193 in the Bombay bomb blasts case relating to the incident that took place on 12-03-1993 resulting into death of 257 persons, injuries to 713 persons and damage to properties worth approximately

Rs. 27 Crores. Since the respondent was absconding and was arrested on 22-08-2008, he was remanded to the police custody and further investigation was carried on. On 01-01-2009 the Designated Court framed charge of conspiracy against the respondent u/s 120-D IPC read with s. 3(3) of TADA. It was the stand of the CBI that inadvertently the original charge of criminal conspiracy u/s 3(2) of TADA read with s.120-B IPC and other offences applicable, was not mentioned. Therefore, the CBI filed an application on 26-02-2009 u/s 216 Cr.P.C for alteration of charge by addition of the charges for the offences punishable u/s 302 IPC and other offences under the IPC and the Explosives Act read with s.120-B IPC and s. 3(2) of the TADA. The Designated Court rejected the application.

Allowing the appeal, the Court

HELD: 1.1 The Designated Court failed to appreciate that the supplementary charge-sheet dated 17.11.2008 filed against the respondent accused was in continuation of the original charge-sheet filed on 4.11.1993 and the list of witnesses annexed to the supplementary charge-sheet was shown as list of additional witnesses. Further, the entire material available at that time, which led to the framing of charges during abscondance of the respondent accused and other accused persons, is available to the prosecution to be used against the respondent at the stage of charge or at the stage of modification of the charge. [para 10] [598-G-H; 599-A]

1.2 Besides, it is a case where the respondent accused was absconding for about 15 years and, therefore, the delay cannot be attributed to the prosecution alone. [para 11] [599-B]

1.3 Section 216, CrPC gives considerable powers to the trial court, that is, even after the completion of

evidence, arguments heard and the judgment reserved, it can alter and add any charge, subject to the conditions mentioned therein. The expressions "at any time" and before the "judgment is pronounced" would indicate that the power is very wide and can be exercised, in appropriate cases, in the interest of justice, but at the same time, the court should also see that its orders would not cause any prejudice to the accused. Alteration or addition of a charge must be for an offence made out by the evidence recorded during the course of trial before the Court. [para 15] [601-D-F]

Jasvinder Saini and others v. State (Government of NCT of Delhi) **2013 (7) SCR 340 = (2013) 7 SCC 256;** *Thakur Shah v. Emperor* **AIR 1943 PC 192;** *Harihar Chakravarty v. State of West Bengal* **AIR 1954 SC 266 - referred to.**

1.4 So far as the instant case is concerned, with regard to the incident occurred on 12.3.1993 (Bombay blasts), trial in respect of 123 accused persons had been concluded, out of which 100 persons were convicted by the Designated Court and this Court by its judgment recorded on 21.3.2013 confirmed the conviction of 98 accused persons. [para 16] [601-G-H]

Essa @ Anjum Abdul Razak Memon vs. State of Maharashtra **2013 (4) SCALE 1;** *Ibrahim Musa Chauhan @ Baba Chauhan vs. State of Maharashtra* **2013 (4) SCALE 207;** *Ahmed Shah Khan Durrani @ A.S. Mubarak S. vs. State of Maharashtra* **2013 (4) SCALE 272;** *State of Maharashtra vs. Fazal Rehman Abdul* **2013 (4) SCALE 401;** *Sanjay Dutt (A-117) vs. The State of Maharashtra through CBI (STF), Bombay* **2013 (4) SCALE 462 - referred to.**

1.5 The supplementary charge-sheet was filed against the respondent accused for offence of criminal conspiracy as well as for offences punishable u/s 3(3) of TADA Act and a list of additio d

documents was enclosed with that. The Designated Court framed charge of criminal conspiracy against the respondent u/s 120-B IPC read with s. 3(3) of TADA Act but, inadvertently, the original charge of criminal conspiracy u/s 3(2) of TADA Act read with s.120-B and other offences, was not mentioned. In the circumstances, this is a fit case where the court ought to have exercised its powers u/s 216 CrPC and allowed the application dated 26.12.2009 filed by CBI for alteration of charge. Consequently, the impugned order is set aside. The application preferred by CBI u/s 216 CrPC would stand allowed and the Designated Court is directed to further proceed with the case in accordance with law. [para 17-18] [602-F-H; 603-A-B]

Case Law Reference:

2013 (7) SCR 340	**referred to**	**para 12**
AIR 1943 PC 192	**referred to**	**para 13**
AIR 1954 SC 266	**referred to**	**para 15**
2013 (4) SCALE 1	**referred to**	**para 15**
2013 (4) SCALE 207	**referred to**	**para 15**
2013 (4) SCALE 272	**referred to**	**para 15**
2013 (4) SCALE 401	**referred to**	**para 15**
2013 (4) SCALE 462	**referred to**	**para 15**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1127 of 2009.

From the Judgment and Order dated 28.04.2009 of the Designated Court for Bombay Bomb Blast Case, Mumbai in BBC No. 2 of 2008.

Sidharth Luthra, ASG, A.K. Kaul, G.S. Bedi, Arvind Kumar Sharma, B.V. Balram Das for the Appellant.

Satbir Pillania, Somvir Deswal, Anil K. Chopra for the Respondent.

The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. We are, in this case, concerned with the legality of the order passed by the Designated Court under TADA (P) Act, 1987 for Bomb Blast Case, Greater Bombay, rejecting the application filed by the Central Bureau of Investigation (for short 'CBI') under Section 216 of the Code of Criminal Procedure (for short 'CrPC') for addition of the charges punishable under Section 302 and other charges under the Indian Penal Code (for short 'IPC') and the Explosives Act read with Section 120-B IPC and also under Section 3(2) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (for short 'TADA Act').

2. The city of Mumbai and its surrounding areas witnessed a series of bomb blasts on 12.3.1993, whereby 257 persons were killed, 713 persons got injured and extensive damage to properties worth approximately Rs.27 crores was caused. The State Police registered 27 criminal cases. On 4.11.1993, a single charge-sheet was filed in the Designated Court against 189 accused persons, of which 44 were shown as absconding. Investigation from the State Police was transferred to CBI on 19.11.1993 and the CBI registered Case Crime No. RC 1 (S)/ 93/STF/BB. CBI, later, submitted supplementary reports before the Designated Court under Section 173(8) CrPC and the case was registered as Court Case No. BBC-1 of 1993. Permission for further investigation was obtained by the CBI from the Designated Court on 25.11.1993. During the course of investigation, the involvement of the respondent accused, by name Karimullah Osan Khan, was disclosed and efforts were made to arrest him. The Designated Court issued proclamation against him and, on 5.8.1994, he was declared as a proclaimed offender. Later, the Designated Court, on 8.9.1994, issued warrant of arrest against him.

3. The Designated Court framed a common charge of criminal conspiracy on 10.4.1995 against all the accused persons present before the Court and also against the absconding accused persons, including the respondent - accused No. 193 and all other unknown persons, under the following Sections:

"1. Section 3(3) of TADA (P) Act, 1987 and Section 120(B) of IPC r/w section 3(2) (i) (ii), 3(3), 3(4), 5 and 6 of TADA (P) Act, 1987 and r/w Section 302, 307, 326, 324, 427, 435, 436, 201 and 212 of IPC.

2. Section 3 and 7 r/w Section 25(1A), [1B(a)] of the Arms Act, 1959.

3. Section 9-B (1),(a),(b),(c) of the Explosives Act 1884.

4. Section 3, 4(a), (b), 5 and 6 of the Explosives Substances Act, 1908.

5. Section 4 of Prevention of Damage to Public Property Act, 1984.

The Designated Court then issued an order dated 19.6.1995 for examination of the witnesses, including the absconding accused no.193, in accordance with the provisions contained in Section 299 CrPC.

4. Respondent accused No. 193, who was absconding was, later, arrested in Mumbai on 22.8.2008, and was remanded to the police custody and further investigation was carried on. During further investigation, the respondent accused made a confession which was recorded under Section 15 of the TADA Act, wherein he had admitted his role in the criminal conspiracy, for which the above mentioned common charges had been framed. On completion of investigation, a supplementary charge-sheet dated 17.11.2008 was filed against the respondent accused for offence of criminal

conspiracy as well as the offence punishable under Section 3(3) of TADA Act and lists of additional witnesses and additional documents were enclosed along with the supplementary charge-sheet. On 1.1.2009, the Designated Court framed charge of conspiracy against the respondent accused under Section 120-B IPC read with Section 3(3) of TADA Act but, it is the statement of CBI, that inadvertently the original charge of criminal conspiracy under Section 3(2) of TADA Act read with Section 120-B IPC and other offences applicable were not mentioned. On 3.2.2009, the evidence was closed by the CBI and on 6.2.2009, the statement of the respondent accused was recorded. CBI, as already indicated, filed an application on 26.2.2009 under Section 216 CrPC for alteration of charge by addition of the charges punishable under Section 302 IPC and other charges under the IPC and the Explosives Act read with Section 120-B IPC and Section 3(2) of the TADA Act. The Designated Court, on 28.4.2009, rejected the application filed by the CBI, against which this appeal has been preferred.

5. The Designated Court framed the following points while examining the application preferred by the CBI:

A) Is there any evidence existing on record to add further charges against the accused for agreeing to commit the terrorist acts by use of explosive substances at various places in Mumbai and for that purpose bringing the arms to Indian shore in furtherance of the implementation of the criminal conspiracy?

B) Is there any evidence on record to add charges of causing death and attempt to cause death, injuries to human bodies and loss to properties during commission of terrorist acts by use of explosive substances?

C) Whether the charges as alleged deserve to be altered and added as pray

6. In support of the application, CBI highlighted the following grounds:

(1) Conspiracy was hatched to cause communal disturbance and destabilizing the Government. Huge quantity of arms and ammunitions was smuggled into India by the accused persons and used at different places in Mumbai. 27 cases were registered and single charge-sheet came to be filed against 189 accused persons in the Designated Court, out of which 44 accused were shown as absconding in the said case No. BBC 1/ 1993.

(2) The Designated Court framed charges for conspiracy on 10.4.1995 against the accused persons who were present before it at that time, as well as against the respondent accused whose involvement was disclosed and charge was also framed against him, being absconding accused.

(3) The prosecution moved an application M.A. 139/ 94 under Section 299 CrPC and the Court granted the liberty to join the absconding accused in the trial whenever he is arrested and the said evidence was also recorded under Section 299 CrPC against the respondent accused vide order dated 19.6.1995.

(4) The prosecution adduced evidence to show that the respondent was deeply involved in the criminal conspiracy which was hatched by the accused persons to commit various terrorist activities and the respondent accused actively participated in the said criminal conspiracy.

(5) Mohd. Usman, who was an approver, was examined for charge punishable under Section 120-B IPC and the said witness identified the

respondent and also narrated his role in landing of arms by other co-accused for the prime accused Tiger Memon. Further, it was pointed out that the accused had participated in the conspiratorial meeting held by Memon before proceeding for landing work.

(6) The accused also aided the main accused twice in the landing operations and also in smuggling of various arms and ammunitions in Mumbai. Further, the respondent had also confessed about his participation in landing arms and also about his fleeing to Pakistan to escape from clutches of law.

(7) The confession made by him was proved by witnesses SP Mr. Sujit Pandey and Dy. S.P. Mr. Tyagi and that the confession was voluntary and is admissible in evidence, when read along with the confession of others.

7. Defence opposed the prayer for alteration of charges stating that the same would prejudice the accused and the intention is to delay the trial proceedings and to see that the accused languishes in jail. Further, it was pointed out that the abscondance is not a ground for alteration of charges. Further, it was also stated that the prosecution is trying to compel the court to appreciate the entire evidence at the fag end of the trial and pointed out that even the evidence already adduced required corroboration. The evidence already recorded, it was pointed out, would not show that the respondent was a party to the criminal conspiracy and that he had committed any act described by Section 3(2) of TADA Act. Further, it was also pointed out that the order passed by the Court on 6.2.2009 in respect of other accused persons has no bearing when an application under Section 216 CrPC is being examined, which has to be examined independently, on the basis of the materials available in that case.

8. We heard Shri Sidharth Luthra, learned Additional Solicitor General, appearing for the appellant and Shri Satbir Pillania, learned counsel appearing for the respondent, at length. Learned counsel highlighted their respective stand placing reliance on the materials already on record as well as on the interpretation of Section 216 CrPC.

9. We are, in this case, primarily concerned with the scope of Section 216 CrPC and the power of the Court to alter or add to the charge at any time before judgment is pronounced. We may point out that the following are the reasons given by the Designated Court in rejecting the application:

(a) The application is moved after closure of evidence and there is delay in the matter.

(b) The charge could not be framed against absconding Respondent.

(c) The order dated 06.2.2009 in SLP (Crl.) No. 569/ 2009 titled CBI V. Abu Salem Ansari & Anr. and order dated 02.12.2008 of the Designated Court is final, and charges against the Respondent were distinct.

(d) The voluntariness of the confession of the Respondent has to be tested in law at Trial Court.

(e) The evidence of Mohd. Usman Ahmed Jan Khan is not adequate.

(f) There is no sufficient material on record to indicate that the accused can be charged for being member of the criminal conspiracy and it is not the case of prosecution that the accused himself took any active part in commission of any terrorist act as were done by other accused who are already charged and convicted for individual acts in earlier Trial BBC 1/93.

(g) The delay in pursuing proper remedies at appropriate time has become the order of the day on the part of the prosecution which cannot be appreciated.

(h) Still there is no material to indicate that the accused was member of any such assembly which had agreed to commit terrorist acts in Mumbai or anywhere else. Even no shred of any earlier piece of evidence or witness is cited in the charge sheet nor is the statement of any witnesses annexed therewith.

10. We may have to examine whether the reasons stated above would be sufficient enough to reject the application filed by CBI under Section 216 CrPC. As already pointed out, initially, the investigation was started by the State Police and, later, it was entrusted to CBI and it was during the investigation by CBI that the involvement of the respondent accused was disclosed on 5.8.1994 and a warrant of arrest and proclamation was issued against him. On 19.6.1995, the Designated Court permitted examination of witnesses, in which the respondent's name was also recorded but, since he was absconding, he could not be examined. 7 accused persons, including the respondent, who were absconding, were later arrested on various days and as against 6 absconding accused persons trials proceeded based on the charges framed by the Designated Court, as originally contemplated. However, only against the respondent, with same materials in hand, charges were framed distinctly without invoking Section 3(2) of TADA Act read with Section 120-B IPC and other provisions of IPC. The Designated Court failed to appreciate that the supplementary charge-sheet dated 17.11.2008 filed against the respondent accused was in continuation of the original charge-sheet filed on 4.11.1993 and the list of witnesses annexed to the supplementary charge-sheet was shown as list of additional witnesses. Further, the entire material

which led to the framing of charges during abscondance of the respondent accused and other accused persons, is available to the prosecution to be used against the respondent at the stage of charge or at the stage of modification of the charge.

11. Apart from the above factual situation, it should be remembered that it is a case where the respondent accused was absconding for about 15 years and, therefore, the delay cannot be attributed to that of the prosecution alone and, it is in the above circumstances, we have to examine whether the application filed under Section 216 CrPC, could be rejected. Section 216 CrPC reads as follows :

"**216.** (1) Any Court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts

as those on which the altered or added charge is founded."

12. This Court in *Jasvinder Saini and others v. State (Government of NCT of Delhi)* (2013) 7 SCC 256, had an occasion to examine the scope of Section 216 CrPC and held as follows:

"11.. …… the court's power to alter or add any charge is unrestrained provided such addition and/or alteration is made before the judgment is pronounced. Sub-sections (2) to (5) of Section 216 deal with the procedure to be followed once the court decides to alter or add any charge. Section 217 of the Code deals with the recall of witnesses when the charge is altered or added by the court after commencement of the trial. There can, in the light of the above, be no doubt about the competence of the court to add or alter a charge at any time before the judgment. The circumstances in which such addition or alteration may be made are not, however, stipulated in Section 216. It is all the same trite that the question of any such addition or alternation would generally arise either because the court finds the charge already framed to be defective for any reason or because such addition is considered necessary after the commencement of the trial having regard to the evidence that may come before the court.

12. In the case at hand the evidence assembled in the course of the investigation and presented to the trial court was not found sufficient to call for framing a charge under Section 302 IPC. ….."

13. The Privy Council, as early as in *Thakur Shah v. Emperor* AIR 1943 PC 192, spoke on alteration or addition of charges as follows :

"The alteration or addition is always, of course, subject to the limitation that no course should be taken by reason of which the accused may be prejudi e

is not fully aware of the charge made or is not given full opportunity of meeting it and putting forward any defence open to him on the charge finally preferred."

14. Section 216 CrPC gives considerable powers to the Trial Court, that is, even after the completion of evidence, arguments heard and the judgment reserved, it can alter and add any charge, subject to the conditions mentioned therein. The expressions "at any time" and before the "judgment is pronounced" would indicate that the power is very wide and can be exercised, in appropriate cases, in the interest of justice, but at the same time, the Courts should also see that its orders would not cause any prejudice to the accused.

15. Section 216 CrPC confers jurisdiction on all Courts, including the designated Courts, to alter or add to any charge framed earlier, at any time before the judgment is pronounced and Sub-Sections (2) to (5) prescribe the procedure which has to be followed after that addition or alteration. Needless to say, the Courts can exercise the power of addition or modification of charges under Section 216 CrPC, only when there exists some material before the Court, which has some connection or link with the charges sought to be amended, added or modified. In other words, alteration or addition of a charge must be for an offence made out by the evidence recorded during the course of trial before the Court. (See *Harihar Chakravarty v. State of West Bengal* AIR 1954 SC 266. Merely because the charges are altered after conclusion of the trial, that itself will not lead to the conclusion that it has resulted in prejudice to the accused because sufficient safeguards have been built in in Section 216 CrPC and other related provisions.

16. We may point out, so far as the present case is concerned, with regard to the incident occurred on 12.3.1993 (Bombay blast), trial in respect of 123 accused persons had been concluded, out of which 100 persons were convicted by the Designated Court and this Court vide its judgment recorded on 21.3.2013 confirmed the conviction of 98 accused persons

in the following cases:

i. Essa @ Anjum Abdul Razak Memon vs. State of Maharashtra cited as 2013 (4) SCALE 1;

ii. Ibrahim Musa Chauhan @ Baba Chauhan vs. State of Maharashtra cited as 2013 (4) SCALE 207;

iii. Ahmed Shah Khan Durrani @ A.S. Mubarak S. vs. State of Maharashtra cited as 2013 (4) SCALE 272;

iv. State of Maharashtra vs. Fazal Rehman Abdul cited as 2013 (4) SCALE 401; and

v. Sanjay Dutt (A-117) vs. The State of Maharashtra through CBI (STF), Bombay cited as 2013 (4) SCALE 462."

17. Taking note of all those aspects and the fact that the respondent was declared as a proclaimed offender and was absconding for more than 15 years and sufficient materials are already on record and all elements of the crime are interconnected and interrelated, the Court cannot simply discard the confession made by him on 27.8.2008 during investigation, which was recorded under Section 15 of TADA Act, wherein he had admitted his role in the criminal conspiracy, of course, that has to be dealt with in accordance with law. Following that, the supplementary charge-sheet was filed against the respondent accused for offence of criminal conspiracy as well as for offences punishable under Section 3(3) of TADA Act and a list of additional witnesses and documents was enclosed with that. The Designated Court framed charge of criminal conspiracy against the respondent under Section 120-B IPC read with Section 3(3) of TADA Act but, inadvertently, the original charge of criminal conspiracy under Section 3(2) of TADA Act read with Section 120-B and other offences, was not mentioned.

18. Looking into all those aspects, in our view, this is a fit case where the Court ought to have exercised its powers under Section 216 CrPC and allowed the application dated 26.12.2009 filed by CBI for alteration of charge. Consequently, the impugned order is set aside. The application preferred by CBI under Section 216 CrPC would stand allowed and the Designated Court is directed to further proceed with the case in accordance with law. Ordered accordingly.

19. The Appeal is, accordingly, allowed.

R.P. Appeal allowed.

CENTRAL BANK OF INDIA

v.

N.R.C. LIMITED

(Contempt Petition No. 147 of 2014)

IN

SLP(C) 24874 of 2013

MARCH 05, 2014

[H.L. GOKHALE AND KURIAN JOSEPH, JJ.]

Contempt jurisdiction: Eviction order - Time granted to tenant to vacate the premises subject to filing of usual undertaking of not transferring interest to third party and payment of mesne profit and vacation of property peacefully on the stipulated date - Undertaking not filed - Contempt petition - Held: A tenant or an occupant cannot be permitted to remain in tenanted premises of the landlord without paying the rent, or the occupation charges, which is what the respondent attempted to do - The petitioner-landlord would be entitled to take back the possession of the premises with respect to which the order of eviction has been passed, and same is permitted by taking the help of police if required - Contempt petition allowed.

Public Premises (Eviction of Unauthorized Occupants) Act, 1971: Eviction proceedings under the Public Premises Act against Public Limited Company having paid up share capital of Rs. One crore - Maharashtra Rent Control Act, 1999 - Applicability of - Held: In the instant case, notice to evict issued on 26.6.2007 i.e. much after the Act of 1999 came into force on 31.3.2000 - The 1999 Act clearly lays down that it shall not apply to Public Ltd. Companies having a paid up share capital of Rs. One crores or more - No fault with the action of the landlord taken under the Public Premises Act - Maharashtra Rent Control Act, 1999.

Aggrieved with the eviction order, the respondent filed special leave petition before the Supreme Court which was dismissed on 19th August, 2013. However, considering the number of employees who were engaged in their registered office situated at that place, they were granted time till the end of December, 2014 to vacate the premises, subject to filing of the usual undertaking stating that it would not create any third party rights and would pay all the mesne profits in the meanwhile, and would peacefully vacate the premises concerned at the end of December, 2014. However, the undertaking was not filed, and the mesne profits as required was also not paid. Subsequently one more I.A. was filed by the respondent to be relieved of this undertaking. The said I.A. was not pressed, and the same came to be dismissed. In the instant contempt petition, the grievance of the petitioner was that the respondent has not complied with the order dated 19th August, 2013 and, therefore, an action be taken against them for committing contempt of the said order.

Allowing the contempt petition, the Court

HELD: 1. The notice to evict was issued on 26th June 2007 much after the Maharashtra Rent Control Act came into force on 31.3.2000. This Act clearly lays down that it shall not apply to Public Ltd. Companies having a paid up share capital of Rs. One crores or more. There is no dispute that the respondent is a company having a paid up share capital of more than rupees one crore. That being so, the protective umbrella of the State Rent Control Act which was available to the respondent would not be available to it beyond 31.3.2000. That being so, the provisions of Public Premises Act would clearly apply to these premise on or after 31.3.2000 for the purposes of eviction of unauthorised occupants and therefore, the action initiated by the petitioner could not be faulted with.

[para 7] [611-B-C, F-H]

2. The company's affairs were before the BIFR, and it also had correspondence with the trade union representing the employees, but the employees union was not ready to help in any manner. These were different aspects, the financial difficulties of the respondent were brought to the notice of this Court by filing the I.A. which was not pressed, and that being so, the issue cannot be allowed to be re-agitated. A tenant or an occupant cannot be permitted to be on the premises of the landlord without paying the rent, or the occupation charges, which is what the respondent is attempting to do. The petitioner will be entitled to take back the possession of the concerned premises with respect to which the order of eviction has been passed, and same is permitted by taking the help of police if required. [paras 8, 9] [612-A-E]

Ram Pyari (Smt.) & Ors. vs. Jagdish Lal **1992 (1) SCC 157: 1991 (3) Suppl. SCR 117;** *Santanu Chaudhuri vs. Subir Ghosh* **2007 (10) SCC 253: 2007 (8) SCR 482 ;** *Sushil Kumar vs. Gobind Ram* **1990 (1) SCC 193: 1989 (2) Suppl. SCR 149;** *Jagmittar Sain Bhagat vs. Director, Health Services, Haryana* **2013 (10) SCC 136;** *Ashoka Marketing Ltd. & Anr. vs. Punjab National Bank & Ors.* **1990 (4) SCC 406. : 1990 (3) SCR 649;** *Banatwala and Company vs. Life Insurance Corporation of India & Anr.* **2011 (13) SCC 446: 2011 (14) SCR 533;** *Rashtriya Mill Mazdoor Sangh, Nagpur vs. The Model Mills, Nagpur and Anr.* **AIR 1984 S.C. 1813: 1985 SCR 751;** *M/s Jain Ink Manufacturing Company vs. Life Insurance Corporation of India & Anr.* **1980 (4) SCC 435: 1981 (1) SCR 498 - referred to.**

Case Law Reference:

1991 (3) Suppl. SCR 117	**referred to**	**Para 3**
2007 (8) SCR 482	**referred to**	**Para 3**

1989 (2) Suppl. SCR 149	**referred to**	**Para 4**
2013 (10) SCC 136	**referred to**	**Para 4**
1990 (3) SCR 649	**referred to**	**Para 5**
2011 (14) SCR 533	**referred to**	**Para 5**
1985 SCR 751	**referred to**	**Para 6**
1981 (1) SCR 498	**referred to**	**Para 6**

CIVIL ORIGINAL JURISDICTION : Contempt Petition (C) No. 147 of 2014.

IN

Special Leave Petition (C) No. 24874 of 2013.

Raju Ramachandran, O.P. Gaggar, Alok Kumar Jain for the Appellant.

T.R. Andhyarujina, U.A. Rana, Levi A. Rubins, Mrinal Elker (for Gagrat & Co.) for the Respondent.

The Judgment of the Court was delivered by

H.L. GOKHALE, J. 1. This contempt petition makes a grievance that the respondent-N.R.C. Ltd. has not complied with the order dated 19th August, 2013 passed by this Court while dismissing their SLP (C) No.24874 of 2013, and an action be taken against them for committing contempt of the above order passed by this Court. The said order dismissed the SLP filed by the respondent, challenging their eviction from the premises occupied by them. However, considering the number of employees who were engaged in their registered office situated at that place, they were granted time till the end of December, 2014 to vacate the premises, subject to filing the usual undertaking in the Registry of this Court within four weeks from that date, stating that the petitioner will not create any third party rights, all the mesne profits will be paid in the meanwhile, and will peacefully vacate the premises concerned at the end of December, 2014.

2. That special leave petition was filed to challenge the judgment dated 10th May, 2013 of the High Court of Bombay in Writ Petition No.2898/2011 and L.P.A. No.174 of 2012 under which the order passed by the Estate Officer of the appellant, and confirmed by the City Civil Court was left undisturbed. The order dated 19th August, 2013 required the respondent to file the necessary undertaking, but it was not filed, and the mesne profits as required have also not been paid. It is also pointed out that subsequently one more I.A., being I.A. No.2 of 2014, was taken out by the respondent-N.R.C. Ltd. to be relieved of this undertaking, and that I.A. was not pressed, and the same came to be dismissed by this Court by its order dated 7th October, 2013.

3. Mr. Raju Ramachandran, learned senior counsel, appearing for the petitioner Central Bank of India points out that the financial difficulties of the respondent were placed on record in that I.A. and subsequently the same has been withdrawn. That being so, there was no reason for the respondent not to file the undertaking and not to pay the mesne profits as required. He has drawn our attention to two judgments of this Court in almost similar circumstances. One was the case of *Ram Pyari (Smt.) & Ors. vs. Jagdish Lal* reported in 1992 (1) SCC 157, and the other was that of *Santanu Chaudhuri vs. Subir Ghosh* reported in 2007 (10) SCC 253. In both these matters undertakings to vacate were given but they were not complied with, and therefore the contempt petition was filed. This Court in both these matters noted that since undertaking was not given, there could not be any contempt as such, but the order passed by this Court had to be complied with, and therefore permitted the petitioners to take the help of police to take back the possession of the concerned premises.

4. Mr. T.R. Andhiyarujina, learned senior counsel, appeared for the respondent-N.R.C. Ltd. He relied upon the judgment of this Court in *Sushil Kumar vs. Gobind Ram* reported in 1990 (1) SCC 193 to submit

was *coram non judice,* since according to him he did not have jurisdiction to pass the order of eviction. He referred to the judgment of this Court in the case of *Jagmittar Sain Bhagat vs. Director, Health Services, Haryana* reported in 2013 (10) SCC 136 to submit that the question of jurisdiction can be raised at any stage. He has drawn our attention to the judgment rendered by this Court in C.A.No.1970 of 2014 on 11th February, 2014 in the case of *Dr. Suhas H. Pophale vs. Oriental Insurance Co. Ltd. and Its Estate Officer* to which one of us (H.L. Gokhale,J.) was a party. Mr. Andhiyarujina has submitted that this judgment clearly lays down that the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 will not apply prior to the Act coming into force, that is prior to 16th September, 1958. He has drawn our attention to various paragraphs of this judgment and submitted that though this judgment has been rendered subsequent to the dismissal of the present special leave petition, inasmuch as the law is now clarified, the respondent-N.R.C. Ltd. cannot be said to be an unauthorized occupant, nor can the action under the Public Premises Act be said to be valid. He pointed out that the N.R.C. Ltd. has been a tenant of this property since about 1946. Subsequently, the building wherein its premises are situated, was taken over by the Life Insurance Corporation, and thereafter by the Central Bank of India. In view of this judgment, the relationship between the Central Bank of India and the N.R.C. Ltd. as landlord and tenant will continue to be governed under the Bombay Rent Act and now under The Maharashtra Rent Control Act, 1999.

5. Inasmuch as this submission has been raised by Mr. Andhiyarujina, learned senior counsel, we would like to point out that this judgment in Dr. Pophale's case clarifies the legal position as laid down by this Court earlier in the case of *Ashoka Marketing Ltd. & Anr. vs. Punjab National Bank & Ors.* reported in 1990 (4) SCC 406. That judgment has held that the Public Premises Act and the State Rent Control Acts were both referable to the concurrent list, and would be valid in their

spheres, but Public Premises Act will prevail to the extent of any repugnancy. Therefore, this Court held earlier in the case of Banatwala and Company vs. Life Insurance Corporation of India & Anr. reported in 2011 (13) SCC 446 that to the extent the Public Premises Act covers the relationship between the landlord and the tenant, namely, for eviction of unauthorized occupants and for recovery of arrears of rent, the Public Premises Act will apply and not in other aspects of their relationship. This is why in Banatwala's case (supra) it was held that the application for the maintenance of the premises would lie to the Court of Small Causes in Mumbai, and it will not be hit by the provisions of the Public Premises Act. The issue in Dr. Suhas H. Pophale's case was as to when the Public Premises Act will apply, and it was laid down that the Act will not apply prior to the Act coming into force, and until the premises concerned belonged to the concerned public corporation, whichever is the later date. This was on the footing that if there are any welfare provisions in the statutes, the legislature cannot be intended to have taken them away if there is no repugnancy.

6. In Dr. Suhas H. Pophale's case the judgment of this Court in the case of *Rashtriya Mill Mazdoor Sangh, Nagpur vs. The Model Mills, Nagpur and Anr.* reported in AIR 1984 S.C. 1813 was specifically referred in paragraph No.29 to point out that if there is any welfare provision in a statute it cannot be taken away. This was in the context of the Payment of Bonus Act. It was also held that the judgment in *M/s Jain Ink Manufacturing Company vs. Life Insurance Corporation of India & Anr.* reported in 1980 (4) SCC 435 did not consider the issue of protection in a welfare legislation to the tenant, prior to the premises becoming public premises, and the issue of retrospectivity. So also these issues were not in consideration in the case of *Ashoka Marketing Ltd.* (supra). In paragraph 49 of Dr. Pophale's case, this Court discussed the inter relation between Article 254(1) and 254 (2) of the Constitution, and specifically pointed out that the Govern y

corporations were taken out of the protective umbrella when the Maharashtra Rent Control Act was passed, and so they would be covered under the Public Premises Act, but of course from the date when the Act comes into force or from the date when the premises belong to the concerned Government corporation. What applies to the landlord, equally applies to the tenants.

7. As far as the present action initiated by the Central Bank of India is concerned, the notice to evict was issued on 26th June, 2007, much after the Maharashtra Rent Control Act came into force on 31.3.2000. This Act clearly lays down that it shall not apply to Public Ltd. Companies having a paid up share capital of Rs. One Crore or more. Section 3 (1) (b) of the Act reads as follows:-

> 3 Exemption
>
> (1) This act shall not apply
>
> (a) .....
>
> (b) To any premises let or sub-let to banks, or any Public Sector Undertakings or any Corporation established by or under any Central or State Act, or foreign missions, international agencies multinational companies, and private limited companies and public limited companies having a paid up share capital of rupees one crore or more."

There is no dispute that the respondent N.R.C. Ltd. is a company having a paid up share capital of more than rupees one crore. That being so, the protective umbrella of the State Rent Control Act which was available to the N.R.C. Ltd. would not be available to it beyond 31.3.2000. That being so, the provisions of Public Premises Act would clearly apply to these premise on or after 31.3.2000 for the purposes of eviction of unauthorised occupants and therefore, the action initiated by the Central Bank of India could not be faulted with.

8. Mr. Andhiyarujina, learned senior counsel, appearing for the N.R.C. Ltd. has drawn our attention to the fact that the company's affairs are before the BIFR, and it also had correspondence with the trade union representing the employees, but the employees union was not ready to help in any manner. Those are different aspects, and as pointed out by Mr. Raju Ramachandran, learned senior counsel, the financial difficulties of N.R.C. Ltd. were brought to the notice of this Court by filing the I.A.No.2 of 2014 which was not pressed, and that being so, the issue cannot be allowed to be re-agitated. A tenant or an occupant cannot be permitted to be on the premises of the landlord without paying the rent, or the occupation charges, which is what N.R.C. Ltd. is attempting to do.

9. This being the position, in our view, the Central Bank will be entitled to take back the possession of the concerned premises with respect to which the order of eviction has been passed, and we permit it to resume the same by taking the help of police if required.

The contempt petition is allowed in the above terms.

D.G. Contempt petition allowed.

STATE OF H.P.

v.

SUNIL KUMAR

(Criminal Appeal No. 1101 of 2005)

MARCH 5, 2014

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

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985:

s. 50 and s.20 - 'Chance recovery' - Compliance of s.50 - Police in routine traffic check for without ticket passengers, detected accused-appellant in possession of charas - Held: It was plainly a chance recovery of charas - It was not necessary for police officers to comply with provisions of s. 50 -- Mere suspicion, even if it is 'positive suspicion' or grave suspicion cannot be equated with 'reason to believe' -- Decision of trial court convicting the accused of an offence u/s 20 of the Act, upheld.

WORDS AND PHRASES:

Expressions 'chance recovery', 'reason to believe' - Connotation of in the context of Narcotic Drugs and Psychotropic Substances Act.

The respondent was prosecuted for an offense punishable u/s 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The prosecution case was that, while checking a bus, in usual 'traffic check' for ticket less passengers etc., the respondent was found concealing something under his clothes which turned to be 2.300 Kg of charas. The trial court held that in the circumstances provisions of s. 42 of the Act relating to search and

seizure were not applicable and convicted and sentenced the respondent to imprisonment for 10 years and to pay a fine of Rs. 1 Lakh. However, the High Court held that the recovery of charas was not a chance recovery and it attracted the provisions of s. 50 of the act and because of non-compliance thereof the conviction and the sentence were not justified.

In the instant appeal filed by the state, the question for consideration before the Court was: whether the accidental or chance recovery of narcotic drugs during a personal or body search would attract the provisions of s.50 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

Allowing the appeal, the Court

HELD: 1.1 In view of the Constitution Bench decision in Baldev Singh the personal search of the accused-appellant resulting in the recovery of contraband did not violate s. 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985. [para 11] [619-B]

State of Punjab v. Baldev Singh **1999 (3) SCR 977= (1999) 6 SCC 172;** *State of Punjab v. Balbir Singh* **1994 (2) SCR 208 = (1994) 3 SCC 299 - referred to.**

1.2 The expression 'chance recovery' has not been defined anywhere and its plain and simple meaning seems to be a recovery made by chance or by accident or unexpectedly, as in the instant case, where the recovery of contraband may not have been unexpected, but the recovery of charas certainly was unexpected notwithstanding the submission that drugs are easily available in the area. The police officers had no reason to believe that the accused was carrying any drugs. It was plainly a chance or accidental or unexpected recovery of charas - the accused c

carrying any other contraband such as, smuggled gold, stolen property or an illegal firearm or even some other drug. [para 14, 16] [620-C, G-H; 621-A-B]

1.3 Mere suspicion, even if it is 'positive suspicion' or grave suspicion cannot be equated with 'reason to believe'. These are two completely different concepts. It is this positive suspicion, and not any reason to believe, that led to the chance recovery of charas from the person of the accused. The view of the High Court that since the police officers had a positive suspicion that the accused was carrying some contraband, therefore, it could be said or assumed that they had reason to believe or prior information that he was carrying charas or some other narcotic substance and so, before his personal or body search was conducted, the provisions of s.50 of the Act ought to have been complied with, cannot be sustained. The recovery of charas on personal search of the accused was clearly a chance recovery and, in view of Baldev Singh, it was not necessary for the police officers to comply with the provisions of s. 50 of the Act. [para 19 and 21] [621-F-G; 622-B-D]

Joti Parshad v. State of Haryana, **1993 Supp (2) SCC 497; and** *Sheo Nath Singh v. Appellate Assistant CIT* **(1972) 3 SCC 234 - relied on.**

Mohinder Kumar v. State, Panaji Goa **(1998) 8 SCC 655;** *Sorabkhan Gandhkhan Pathan v. State of Gujarat* **(2004) 13 SCC 608;** *Bharatbhai Bhagwanjibhai v. State of Gujarat* **2002 (3) Suppl. SCR 491 = (2002) 8 SCC 327 - referred to.**

1.4 In the circumstances, the judgment and order passed by the High Court is set aside and the decision of the trial court convicting the accused of an offence u/s 20 of the Act upheld. [para 22] [622-E-F]

Case Law Reference:

1999 (3) SCR 977	**referred to**	**para 1**

1993 Supp (2) SCC 497	**relied on**	**para 11**
1994 (2) SCR 208	**referred to**	**para 11**
(1998) 8 SCC 655	**referred to**	**para 15**
(2004) 13 SCC 608	**referred to**	**para 15**
(1972) 3 SCC 234	**relied on**	**para 19**
2002(3) Suppl. SCR 49	**referred to**	**para 20**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1101 of 2005.

From the Judgment and Order dated 11.06.2004 of the High Court of Himachal Pradesh at Shimla in Criminal Appeal No. 37 of 2002.

Suryanarayana Singh, Addl. AG, Pragati Neekhra for the Appellant.

Debasis Misra, R.P. Vyas (AC) for the Respondent.

The Judgment of the Court was delivered by

MADAN B. LOKUR, J. 1. The question before us is whether the accidental or chance recovery of narcotic drugs during a personal or body search would attract the provisions of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the Act). In our opinion, the issue is no longer *res integra* having been answered in the negative by the Constitution Bench in *State of Punjab v. Baldev Singh*.[1]

The facts:

2. The respondent Sunil Kumar was travelling in a bus on 9th December, 2000 away from Chamba in Himachal Pradesh. The bus was stopped at Dhundiara Bungalow at about 1.15

1. (1999) 6 SCC 172.

p.m. for a 'traffic check' by ASI Joga Singh (PW-13), in-charge of Police Post Banikhet, accompanied by Head Constable Pritam Singh (PW-3), Constable Mazid Mohammad (PW-2) and Constable Des Raj (PW-5) all of whom were acting under the supervision of Gulab Singh (PW-12) the Deputy Superintendent of Police, Dalhousie. A 'traffic check', we were told, means a check for ticketless passengers etc. We were also told that narcotic substances are quite easily available in the Chamba area, but the bus was not stopped for checking the carriage or transportation of any narcotics.

3. Be that as it may, during the check, Constable Mazid Mohammad noticed the passenger occupying seat No. 20 (Sunil Kumar) concealing something under his clothes. Therefore, Sunil Kumar was asked to disembark from the bus and then asked to open his trousers. When he did so, the police officers found a polythene envelope tied below his belly with the help of a "parna" (piece of cloth). The polythene envelope was opened and was found to contain what looked like charas.

4. Steps were taken by the police officers to weigh and seize the item recovered as well as to seal necessary samples for the purpose of examination. We are not concerned with the correctness of this procedure, since there is no dispute about it. Suffice it to say that the item recovered was found to be charas weighing about 2.300 kilos.

5. On these broad facts Sunil Kumar was prosecuted for conscious possession of a narcotic substance and was prosecuted for an offence punishable under Section 20 of the Act.

Decision of the Trial Court:

6. The Sessions Judge, Chamba Division, Chamba, Himachal Pradesh in Sessions Case No. 9 of 2001 gave a rather detailed judgment and concluded that Sunil Kumar was in conscious possession of a narcotic substance and the

recovery thereof was a chance recovery. Accordingly, the provisions of Section 42 of the Act relating to search and seizure were not applicable since the police officials had no prior information about the possession of charas by Sunil Kumar. For arriving at this conclusion, the Trial Judge placed reliance on *Baldev Singh*.

7. The Sessions Judge in his judgment and order dated 28th November, 2001 found Sunil Kumar guilty of the offence charged and subsequently by an order dated 29th November, 2001 he was sentenced to undergo rigorous imprisonment of 10 years and to pay a fine of Rs. 1 lakh and in default of payment of fine to further undergo simple imprisonment for one year.

Decision of the High Court:

8. Feeling aggrieved, Sunil Kumar preferred Criminal Appeal No. 37 of 2002 before the High Court of Himachal Pradesh. In its decision dated 11th June, 2004 the High Court held that the recovery of charas was not a chance recovery.[2]

9. It was held that though the search conducted was a random search, but the police officers had a positive suspicion that Sunil Kumar might be carrying contraband. It is for this reason that he was asked to get down from the bus and then subjected to a body search. Therefore it was not a chance recovery. According to the High Court, this attracted the provisions of Section 50 of the Act and Sunil Kumar ought to have been given an option of being searched before a Gazetted Officer or a Magistrate in compliance with Section 50 of the Act. Since this option was not given, the conviction and sentence imposed upon Sunil Kumar was not justified.

10. Accordingly, the appeal filed by Sunil Kumar was allowed by the High Court.

2. MANU/HP/0123/2004.

Chance recovery:

11. The State is in appeal against the acquittal of Sunil Kumar and the broad submission is that the recovery of charas from him was a chance recovery. Under these circumstances, in view of the Constitution Bench decision in *Baldev Singh* which endorsed the view taken in *State of Punjab v. Balbir Singh*[3] the personal search of Sunil Kumar resulting in the recovery of contraband did not violate Section 50 of the Act. Reliance was placed by learned counsel on paragraph 25 in *Balbir Singh* which was also endorsed by the Constitution Bench. It was submitted that it is only after a chance or accidental recovery of any narcotic drug or psychotropic substance by any police officer that the provisions of the Act would come into play. It is then that the empowered officer should be informed and that empowered officer should thereafter proceed to investigate the matter in accordance with the provisions of the Act.

12. The relevant extract of paragraph 25 of *Balbir Singh* reads as follows:

> "(1) If a police officer without any prior information as contemplated under the provisions of the NDPS Act makes a search or arrests a person in the normal course of investigation into an offence or suspected offences as provided under the provisions of CrPC and when such search is completed at that stage Section 50 of the NDPS Act would not be attracted and the question of complying with the requirements thereunder would not arise. If during such search or arrest there is a chance recovery of any narcotic drug or psychotropic substance then the police officer, who is not empowered, should inform the empowered officer who should thereafter proceed in accordance with the provisions of the NDPS Act. If he happens to be an empowered officer also, then from that

3. (1994) 3 SCC 299.

> stage onwards, he should carry out the investigation in accordance with the other provisions of the NDPS Act."

13. In view of the opinion expressed by the Trial Court and the High Court, we need to firstly understand what a 'chance recovery' is. The next question would be whether the provisions of Section 50 of the Act would apply when there is a chance recovery.

14. The expression 'chance recovery' has not been defined anywhere and its plain and simple meaning seems to be a recovery made by chance or by accident or unexpectedly. In *Mohinder Kumar v. State, Panaji, Goa*[4] this Court considered a chance recovery as one when a police officer "stumbles on" narcotic drugs when he makes a search. In *Sorabkhan Gandhkhan Pathan v. State of Gujarat*[5] the police officer, while searching for illicit liquor, accidentally found some charas. This was treated as a 'chance recovery'.

15. Applying this to the facts of the present appeal, it is clear that the police officers were looking for passengers who were travelling ticketless and nothing more. They accidentally or unexpectedly came across drugs carried by a passenger. This can only be described as a recovery by chance since they were neither looking for drugs nor expecting to find drugs carried by anybody.

16. It is not possible to accept the view of the High Court that since the police officers conducted a random search and had a "positive suspicion" that Sunil Kumar was carrying contraband, the recovery of charas from his person was not a chance recovery. The recovery of contraband may not have been unexpected, but the recovery of charas certainly was unexpected notwithstanding the submission that drugs are easily available in the Chamba area. The police officers had no reason to believe that Sunil Kumar was carrying any drugs

4. (1998) 8 SCC 655.

5. (2004) 13 SCC 608.

and indeed that is also not the case set up in this appeal. It was plainly a chance or accidental or unexpected recovery of charas – Sunil Kumar could well have been carrying any other contraband such as, smuggled gold, stolen property or an illegal firearm or even some other drug.

17. We are not going into the issue whether the personal or body search of Sunil Kumar (without a warrant) was at all permitted by law under these circumstances. That was not an issue raised or canvassed before the Trial Court or the High Court or even before us, although it has been adverted to in the written submissions by learned counsel assisting us on behalf of Sunil Kumar.

Applicability of Section 50 of the Act:

18. As far as the applicability of Section 50 of the Act in a chance recovery is concerned, the issue is no longer *res integra* in view of the decision of the Constitution Bench in *Baldev Singh*.

19. It is true that Sunil Kumar behaved in a suspicious manner which resulted in his personal search being conducted after he disembarked from the bus. However, there is no evidence to suggest that before he was asked to alight from the bus, the police officers were aware that he was carrying a narcotic drug, even though the Chamba area may be one where such drugs are easily available. At best, it could be said the police officers suspected Sunil Kumar of carrying drugs and nothing more. Mere suspicion, even if it is 'positive suspicion' or grave suspicion cannot be equated with 'reason to believe'.[6] These are two completely different concepts. It is this positive suspicion, and not any reason to believe, that led to the chance recovery of charas from the person of Sunil Kumar.

20. Similarly, the positive suspicion entertained by the

6. Joti Parshad v. State of Haryana, 1993 Supp (2) Supp (2) SCC 497 and Sheo Nath Singh v. Appellate Assistant CIT, (1972) 3 SCC 234.

police officers cannot be equated with prior information.[7] The procedure to be followed when there is prior information of the carrying of contraband drugs is laid down in the Act and it is nobody's case that that procedure was followed, let alone contemplated.

21. We are not in agreement with the view of the High Court that since the police officers had a positive suspicion that Sunil Kumar was carrying some contraband, therefore, it could be said or assumed that they had reason to believe or prior information that he was carrying charas or some other narcotic substance and so, before his personal or body search was conducted, the provisions of Section 50 of the Act ought to have been complied with. The recovery of charas on the body or personal search of Sunil Kumar was clearly a chance recovery and, in view of *Baldev Singh*, it was not necessary for the police officers to comply with the provisions of Section 50 of the Act.

Conclusion:

22. Under the circumstances, we set aside the judgment and order passed by the High Court and uphold the decision of the Trial Court convicting Sunil Kumar for an offence punishable under Section 20 of the Act. Necessary steps be taken to apprehend Sunil Kumar to serve out the remainder of his sentence.

23. The appeal is allowed.

R.P. Appeal allowed.

7. Bharatbhai Bhagwanjibhai v. State of Gujarat

G.N. VERMA
v.
STATE OF JHARKHAND & ANR.
(Criminal Appeal No.122 of 2004)

MARCH 6, 2014

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

MINES ACT, 1952:

s.72-B r/w s.2(j) and 18(5) of 1952 Act and Regulation 8-A of Coal Mines Regulations - Deemed Agent - Fatal accident in mine - Complaint - Liability of Chief General Manager referred to in the complaint as deemed Agent - Held: Only a person who is authorised to act on behalf of the owner or purports to act on behalf `of the owner may be deemed to be an Agent -- In the absence of any statement having been made or any indication having been given by the owner enabling the appellant to act or purport to act on his behalf, it cannot be said that he was a deemed Agent for the mine -- s.2(j) which defines 'mine' has no reference to any administrative functions in relation to a mine but only technical matters related thereto - Appellant while performing administrative duties, cannot be assumed to have been involved in technical matters of mine -- Besides, the complaint does not state anywhere that appellant acted or purported to act on behalf of owner of the mine or that he took part in the management, control, supervision or direction of any mine and, therefore, no case for proceeding against him has been made out - Chief Judicial Magistrate erred in taking cognizance of complaint and issuing summons to appellant - Complaint against appellant is quashed.

A criminal complaint was filed against the appellant on 30.08.2004 on the allegation that in spite of the

prohibitory order, extraction of coal was carried out in the colliery concerned on or about 09-03-2000 resulting into a fatal accident. Consequent upon the enquiry report indicating violation of the prohibitory order, the Inspector of Mines filed Case no. 323 of 2000 before the Chief Judicial Magistrate on 30-08-2000 against three accused, namely, the appellant, who was the Chief General Manager and described as deemed Agent of the colliery concerned, the Agent of the colliery and the Manager of the colliery, that they contravened the provisions of s. 72-B of the Mines Act, 1952. The Chief Judicial Magistrate took cognizance of the complaint and issued summons to the accused including the appellant. The appellant filed a petition u/s 482 of the Code of Criminal Procedure, 1973 seeking to quash the proceedings and the summons issued to him. The single Judge of the High Court referred the matter to the Division Bench which held that in view of the extended definition of Agent read with s. 18(5) of the Act, the Chief General Manager of a mine would be deemed Agent responsible for the management, control, supervision or direction of a mine or a part thereof, and dismissed the petition.

Allowing the appeal, the Court

HELD: 1.1 This Court has been consistently adopting the view that when a statute creates an offence and imposes a penalty of fine and imprisonment, the words of the section must be strictly construed in favour of the subject. [para 24] [635-G; 636-A]

W.H. King vs. Republic of India **(1952) SCR 418 - relied on.**

1.2 It is true that "Agent" has an extended meaning in the Mines Act, 1952. It not only brings within its fold a person who is appointed as an Agent in relation to a mine but also a person not appointed a... o

acts or purports to act on behalf of the owner of the mine and takes part in the management, control, supervision or direction of the mine or any part thereof. [para 17] [633-C-D]

1.3 Regulation 8-A of the Coal Mines Regulations requires the owner of a mine to submit in writing a statement showing the name and designation of every person authorised to act on behalf of the owner in respect of the management, control, supervision or direction of a mine. There is nothing on record to show that any such statement was furnished by the owner of the mine to the Chief Inspector or the Regional Inspector appointed under the Act. Only a person who is authorised to act on behalf of the owner or purports to act on behalf of the owner may be deemed to be an Agent. In the absence of any statement having been made or any indication having been given by the owner enabling the appellant to act or purport to act on his behalf, it cannot be said that he was a deemed Agent for the mine. [para 22] [635-B-E]

1.4 The word 'mine' has been defined in s. 2 (j) of the Mines Act, 1952 and it has no reference to any administrative functions in relation to a mine but only technical matters related thereto. The appellant was the Chief General Manager of the colliery concerned and it is not possible to assume that apart from performing administrative duties, he was also involved in technical matters related to the mine. [para 23] [635-E-F]

1.5 Besides, the complaint does not allege anywhere that the appellant acted or purported to act on behalf of the owner of the mine or that he took part in the management, control, supervision or direction of any mine. The averment in the complaint is bald and vague. The complaint does not contain any allegation against the appellant. The only statement concerning him is that he

was the Chief General Manager/deemed Agent of the mine and was exercising supervision, management and control of the mine and in that capacity was bound to see that all mining operations were conducted in accordance with the Act, the rules, regulations, orders made thereunder. On the facts of the case and given the absence of any allegation in the complaint filed against the appellant, no case for proceeding against him has been made out. In these circumstances, there is no basis for proceeding u/s 72-B of the Act against the appellant. The Chief Judicial Magistrate, therefore, erred in taking cognizance of the complaint and issuing summons to the appellant. The judgment and order of the High Court is set aside and complaint against the appellant is quashed. [para 18, 20, 25 and 26] [633-E, G, 634-F-G; 636-B-C]

National Small Industries Corporation Ltd. v. Harmeet Singh Paintal and Anr. **2010 (2) SCR 805 = (2010) 3 SCC 330 - relied on.**

R.J. Sinha vs. The State **1983 BLT (Rep) 97 - cited.**

Case Law Reference:

1983 BLT (Rep) 97	**cited**	**para 11**
2010 (2) SCR 805	**relied on**	**para 19**
(1952) SCR 418	**relied on**	**para 24**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 122 of 2004.

From the Judgment and Order dated 19.09.2002 of the High Court of Jharkhand at Ranchi in Cr. Misc. No. 8331 of 2000(R).

S.B. Upadhyay, Param Kumar Mishra, Kaustuv P. Pathak, Santosh Mishra, Rameshwar Prasad Goyal for the Appellant.

Siddharth Luthra, ASG, Arita Singh[illegible], G. Mangal Sharma, D.S. Mehra, M.P.S. Tomer, Ravindera [illegible]h

Gaurav, Gopal Prasad for the Respondents.

The Judgment of the Court was delivered by

MADAN B. LOKUR, J. 1. Apart from the questions of law, this appeal raises a serious issue of process re-engineering and case management, a concern that we need to address.

2. A criminal complaint was filed against the appellant G.N. Verma on 30th August 2000. He sought quashing of the complaint which the High Court declined on 19th September 2002. Special leave to appeal against the said order was granted by this Court on 27th January 2004.

3. Despite the fact that this Court did not pass any interim order staying the proceedings before the Trial Judge, we were informed that the criminal complaint has made absolutely no progress over the last more than thirteen years. We were understandably disturbed with this state of affairs. However, we were later informed that the trial could not progress since the original records of the case had been transmitted to this Court. In the absence of the original records, the Chief Judicial Magistrate obviously could not proceed with the trial.

4. It is time to look into and revisit the rules, practices and procedures being followed not only by this Court but also by other superior courts requiring the routine summoning of the original records of a trial for no apparent reason except that the rules, practices and procedures provide for their requisitioning. This routine brings the trial to a grinding halt and delays the delivery of justice to an aggrieved litigant. It is time to decide on the customary summoning of the original records of a trial, particularly at an interlocutory stage of the proceedings. This appeal is an indicator that the disposal of some cases is delayed only because we follow some archaic rules, practices and procedures. If the original records had not been routinely summoned from the Chief Judicial Magistrate, we are confident that the trial could well have concluded many years ago, one way or another, and expeditious delivery of justice would not

have been converted into a mirage.

5. We are mentioning this only so that our policy planners and decision makers wake up to some harsh realities concerning our criminal justice delivery system.

6. The principal question for consideration is whether cognizance of the criminal complaint taken by the Chief Judicial Magistrate against the appellant G.N. Verma deserves to be set aside in the absence of any allegation made against him in the complaint. A related question is whether the appellant G.N. Verma could be described as a 'deemed Agent' of the owner of the Karkata Colliery in which an unfortunate fatal incident took place on or about 9th March 2000. In our opinion, the answer to the first question must be in the affirmative, while the related question must be answered in the negative.

The facts

7. On 15th December 1999 an order was issued by the Director of Mines Safety, Ranchi Region in Ranchi under Section 22A (2) of the Mines Act, 1952 (for short the Act).[1] The order related to the failure of the Agent, Karkata Colliery to rectify certain defects, despite time having been granted, in the Bishrampur and Bukbuka seams. Accordingly, by virtue of the

1. **22-A. Power to prohibit employment in certain cases.**-(1) Where in respect of any matter relating to safety for which express provision is made by or under this Act, the owner, agent or manager of a mine fails to comply with such provisions, the Chief Inspector may give notice in writing requiring the same to be complied with within such time as he may specify in the notice or within such extended period of time as he may, from time to time, specify thereafter.

(2) Where the owner, agent or manager fails to comply with the terms of a notice given under sub-section (1) within the period specified in such notice or, as the case may be, within the extended period of time specified under that sub-section, the Chief Inspector may, by order in writing, prohibit the employment in or about the mine or any part thereof of any person whose employment is not, in his opinion, reasonably necessary for securing compliance with the terms of the notice.

(3) and (4) xxx.

order the Chief Inspector of Mines prohibited the employment of persons for extraction of coal from the extended Block B of the Bukbuka seam till the defects were rectified.

8. Notwithstanding the prohibitory order, extraction of coal was apparently carried out at the Karkata Colliery and on or about 9th March 2000 there was an unfortunate fatal accident. The cause and circumstances leading to the accident were investigated by an inspection of the mines on several dates in March and April 2000. The inquiry and inspection of the site of accident revealed that extraction of coal was being carried out in Block B of Bukbuka seam at Karkata Colliery in violation of the prohibitory order.

9. Consequent to the inquiry report suggesting a violation of the prohibitory order, the Inspector of Mines filed Case No.323 of 2000 before the Chief Judicial Magistrate at Ranchi on 30th August 2000. The events leading to the filing of the complaint were stated and it was alleged that since there were signs of engagement of persons for mining operations and coal production in contravention of the prohibitory order, the three accused persons, G.N. Verma who was the Chief General Manager (North Karanpura Area) and deemed Agent, Karkata Colliery, B.K. Sinha, Agent, Karkata Colliery and B.K. Ghosh, Manager, Karkata Colliery had contravened the provisions of Section 72-B of the Act and were liable to be punished under the provisions of that section.[2]

10. On 31st August 2000 the Chief Judicial Magistrate took cognizance of the complaint and issued summons to the accused persons, including the appellant G.N. Verma.

2. **72-B. Special provision for contravention of orders under Section 22.**- Whoever continues to work in a mine in contravention of any order issued under sub-section (1-A), sub-section (2) or sub-section (3) of Section 22 or under sub-section (2) of Section 22-A shall be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine which may extend to five thousand rupees.

Provided that in the absence of special and adequate reasons to the contrary to be recorded in writing in the judgment of the court, such fine, shall not be less than two thousand rupees.

Proceedings in the High Court

11. Upon receipt of the summons, G.N. Verma preferred a petition under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of the proceedings and the summons issued to him. The petition filed by G.N. Verma being Criminal Misc. No. 8331 of 2000 R was taken up for hearing by a learned Single Judge of the High Court of Jharkhand who noted that the question before him was whether a person, other than an Agent, could be fastened with criminal liability for an offence under the Act on the ground that he is a deemed Agent. The learned Single Judge noted the decision of the Division Bench of the Patna High Court in *R.J. Sinha v. The State*[3] and observed that the definition of Agent in the Act had been amended since the decision rendered in *Sinha* and sub-section (5) had also been introduced in Section 18 of the Act. Accordingly, he was of the view that the import of Section 18(5) of the Act required further consideration and, therefore, referred the matter to the Division Bench for further consideration.

12. The Division Bench took up the matter for hearing and by its judgment and order dated 19th September 2002 (impugned) came to the conclusion that the definition of Agent as occurring in the Act prior to its amendment in 1983 had been substantially widened to include every person acting or purporting to act on behalf of the owner of a mine and taking part in the management, control, supervision or direction of any mine or any part thereof. Consequently, the law laid down in *Sinha* was no longer applicable.

13. The definition of Agent appearing in Section 2(c) of the Act prior to its amendment and subsequent to its amendment reads as follows:

> "2(c) "agent", when used in relation to a mine, means any individual, whether appointed as such or not, who acts as the representative of the owner in respect of the

3. 1983 BLT (Rep) 97.

management, control and direction of the mine or of any part thereof and as such is superior to a manager under this Act."

After its amendment, Section 2(c) of the Act reads as follows:

"2(c) "agent", when used in relation to a mine, means every person whether appointed as such or not, who, acting or purporting to act on behalf of the owner, takes part in the management, control, supervision or direction of the mine of any part thereof."

14. The Division Bench also took into consideration the amendment to Section 18 of the Act and the introduction of sub-section (5) therein. This sub-section reads as follows:

"(5) In the event of any contravention, by any person whosoever of any of the provisions of this Act or of the regulations, rules, bye-laws or orders made thereunder except those which specifically require any person to do any act or thing or prohibit any persons from doing an act or thing, besides the persons who contravenes, each of the following persons shall also be deemed to be guilty of such contravention unless he proves that he had used due diligence to secure compliance with the provisions and had taken reasonable means to prevent such contravention:-

(i) the official or officials appointed to perform duties of supervision in respect of the provisions contravened;

(ii) the manager of the mine;

(iii) The owner and agent of the mine;

(iv) The person appointed, if any, to carry out the responsibility under sub-section (2):

Provided that any of the persons aforesaid may not be proceeded against if it appears on inquiry and investigation, that he is not *prima facie* liable."

15. The High Court was of the opinion that in view of the extended definition of Agent read with Section 18(5) of the Act, the Chief General Manager of a mine would be a deemed Agent responsible for the management, control, supervision or direction of a mine or a part thereof. On this basis it was held that the Chief Judicial Magistrate rightly took cognizance of the complaint against G.N. Verma and that there was, therefore, no merit in the petition filed by him for quashing the proceedings.

16. It may be noticed that neither the definition of Agent nor Section 18(5) of the Act refer to a deemed Agent. This expression is to be found in Regulation 8-A of the Coal Mines Regulations, 1957 dealing with the appointment of an Agent. Regulation 8-A reads as follows:

"8-A. Appointment of Agent

(1) The owner of a mine shall submit in writing to the Chief Inspector and the Regional Inspector, a statement showing name and designation of every person authorized to act on behalf of the owner in respect of management, control, supervision or direction of the mine.

(2) The statement shall also show the responsibilities of every such person and the matters in respect of which he is authorized to act on behalf of the owner.

(3) Every such person shall be deemed to be an agent for the mine or group of mines, as the case may be, in respect of the responsibilities as specified in such statement.

(4) The statement aforesaid sh[illegible]n one month from the date of [illegible]e

Coal Mines (Amendment) Regulation 1985, in case of mines already opened, or reopened as the case may be, and in other cases within one month from the date of opening of the mine.

(5) Any change, addition or alteration in the names or other particulars of aforesaid statement shall be reported in writing to the Chief Inspector and the Regional Inspector within seven days from the date of change, addition or alteration."

Discussion

17. It is true that "Agent" has an extended meaning in the Act. It not only brings within its fold a person who is appointed as an Agent in relation to a mine but also brings within its fold a person not appointed as an Agent but who acts or purports to act on behalf of the owner of the mine and takes part in the management, control, supervision or direction of the mine or any part thereof.

18. It is nobody's case that G.N. Verma was appointed as an Agent of any mine. Also, the complaint does not allege or state anywhere that G.N. Verma acted or purported to act on behalf of the owner of the mine or that he took part in the management, control, supervision or direction of any mine. In fact his duties and responsibilities have not been described in the complaint. In the absence of G.N. Verma's duties having been spelt out in the complaint, it is not possible to say whether he was merely an administrative head of the Karkata Colliery being its Chief General Manager or he was required to be involved in technical issues relating to the management, control, supervision or direction of any mine in the Karkata Colliery. The averment in the complaint is bald and vague and is to the effect that at the relevant time G.N. Verma was the Chief General Manager/deemed Agent and was exercising supervision, management and control of the mine and in that capacity was bound to see that all mining operations were conducted in accordance with the Act, the rules, regulations, orders made thereunder.

19. It has been laid down, in the context of Sections 138 and 141 of the Negotiable Instruments Act, 1881 in *National Small Industries Corporation Ltd. v. Harmeet Singh Paintal and Anr.*[4] that Section 141 is a penal provision creating a vicarious liability. It was held as follows:

> "It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company *without anything more as to the role of the Director*. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability."

It was then concluded:

> "The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction."

20. Insofar as the criminal complaint is concerned, it does not contain any allegation against G.N. Verma. The only statement concerning him is that he was the Chief General Manager/deemed Agent of the mine and was exercising supervision, management and control of the mine and in that capacity was bound to see that all mining operations were conducted in accordance with the Act, the rules, regulations, orders made thereunder. In the face of such a general statement, which does not contain any allegation, specific or otherwise, it is difficult to hold that the Chief Judicial Magistrate rightly took cognizance of the complaint and issued summons to G.N. Verma. The law laid down by this Court in *Harmeet Singh Paintal* (though in another context) would be squarely

4. (2010) 3 SCC 330

applicable. Under the circumstances, we are of the opinion that on the facts of this case and given the absence of any allegation in the complaint filed against him no case for proceeding against G.N. Verma has been made out.

21. The other remaining question would be whether G.N. Verma could be deemed to be an Agent of the mine.

22. Regulation 8-A of the Coal Mines Regulations requires the owner of a mine to submit in writing a statement showing the name and designation of every person authorised to act on behalf of the owner in respect of the management, control, supervision or direction of a mine. There is nothing on record to show that any such statement was furnished by the owner of the mine to the Chief Inspector or the Regional Inspector appointed under the Act. Only a person who is authorised to act on behalf of the owner or purports to act on behalf of the owner may be deemed to be an Agent. In the absence of any statement having been made or any indication having been given by the owner enabling G.N. Verma to act or purport to act on his behalf, it cannot be said that he was a deemed Agent for the mine.

23. The word 'mine' has been defined in Section 2 (j) of the Act and it has no reference to any administrative functions in relation to a mine but only technical matters related thereto.[5] G.N. Verma was the Chief General Manager of the Karkata Colliery and it is not possible to assume that apart from performing administrative duties, he was also involved in technical matters related to the mine having the Bukbuka seam.

24. The law is well settled by a series of decisions beginning with the Constitution Bench decision in *W.H. King v. Republic of India*[6] that when a statute creates an offence and imposes a penalty of fine and imprisonment, the words of the section must be strictly construed in favour of the subject.

5. **Section 2. Definitions**

(j) "mine" means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes-

(i) all borings, bore holes, oil wells and accessory crude conditioning plants, including the pipe conveying mineral oil within the oilfields;

(ii) all shafts, in or adjacent to and belonging to a mine, whether in the course of being sunk or not;

(iii) all levels and inclined planes in the course of being driven;

(iv) all open cast workings;

(v) all conveyors or aerial ropeways provided for the bringing into or removal from a mine of minerals or other articles or for the removal of refuse therefrom;

(vi) all adits, levels, planes, machinery, works, railways, tramways and sidings in or adjacent to and belonging to a mine;

(vii) all protective works being carried out in or adjacent to a mine;

(viii) all workshops and stores situated within the precincts of a mine and under the same management and used primarily for the purposes connected with that mine or a number of mines under the same management;

(ix) all power stations, transformer sub-stations, convertor stations, rectifier stations and accumulator storage stations for supplying electricity solely or mainly for the purpose of working the mine or a number of mines under the same management;

(x) any premises for the time being used for depositing sand or other material for use in a mine or for depositing refuse from a mine or in which any operations in connection with such sand, refuse or other material is being carried on, being premises exclusively occupied by the owner of the mine;

(xi) any premises in or adjacent to and belonging to a mine on which any process ancillary to the getting, dressing or preparation for sale of minerals or of coke is being carried on;

This view has been consistently adopted by this Court over the last more than sixty years.

25. On the facts of this case, we would need to unreasonably stretch the law to include G.N. Verma as a person vicariously responsible for the lapse that occurred in the mine resulting in a fatal accident. We are of the view that under these circumstances, there is no basis for proceeding under Section 72-B of the Act against G.N. Verma.

Conclusion

26. The appeal is allowed, the judgment and order of the High Court is set aside and the complaint against G.N. Verma is quashed.

R.P. Appeal allowed.

6. (1952) SCR 418

MALATHI DAS (RETD.) NOW P.B. MAHISHY & ORS.
v.
SURESH & ORS.
(Civil Appeal No. 3338 of 2014)

MARCH 7, 2014

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

SERVICE LAW:

Regularization - Similarly situated daily rated employees like respondents, regularaised on the basis of directions of High Court, which directions attained finality on dismissal of SLP by Supreme Court - Respondents not regularized on the ground that meanwhile as per judgment in Uma Devi they were not entitled to regularization - Direction by High Court in contempt petition to regularise respondents, failing which matter to be posted for framing of charge - Held: Similarly placed employees having been regularized, and in the case of some of them such regularization being after the decision in Umadevi, stand taken by appellants in refusing regularization to respondents cannot be countenanced - However, as the stand of appellants stemmed from their perception and understanding of decision in Umadevi, they are not held liable for contempt but, it is made clear that appellants and all other competent authorities of State will be obliged and duty bound to regularize the services of respondents forthwith - Contempt of Court.

The instant appeal arose out of the contempt petition filed by 74 respondents before the High Court for non-compliance of the judgment and order dated 15.12.1999 passed by the High Court following an earlier order dated 10.9.1999 passed in similar writ petitions, directing regularization of services of 445 daily rated employees, including the respondents. Following the dismissal of the

SLPs of the State by the Supreme Court, by order dated 22.07.2005, a Scheme dated 29.12.2005 was framed by the State Government to implement the order dated 15.12.1999 passed in the subsequent writ petitions. Some of the employees were regularized under the scheme. Services of some others were regularized after filing of contempt proceedings. During the pendency of the contempt petition, the claim of regularization of respondents was rejected on the ground that the claimants did not fulfill the conditions for regularization as laid down by Supreme Court in *Umadevi*[1]. The High Court, by orders dated 26.3.2007, held the appellants prima facie guilty of commission of contempt and granted them two weeks time to comply with the relevant order, failing which the matter was directed to be posted for framing of charge.

Disposing of the appeal, the Court

HELD: 1.1 In a situation where a Scheme had been framed on 29.12.2005 to give effect to the order dated 15.12.1999 passed by the High Court in the writ petitions filed by the respondents and many of the similarly situated persons have been regularized, the action of the appellants in not granting regularization to the respondents cannot appear to be sound or justified. The fact that the regularization of 55 employees, similarly situated to the respondents, was made on 18.04.2006 i.e. after the decision of this Court in Umadevi leaves no doubt or ambiguity in the matter. Besides, it is wholly unnecessary to consider as to whether the cases of persons who were awaiting regularization on the date of the decision in Umadevi are required to be dealt with in accordance with the conditions stipulated in its para 53 inasmuch as the claims of the respondent employees can well be decided on principles of parity. [para 8] [643-F-H; 644-B-C]

Secretary, State of Karnataka and Others vs. Umadevi (3) and Others **2006 (3) SCR 953 = (2006) 4 SCC 1 - referred to.**

1.2 Similarly placed employees having been regularized by the State and in case of some of them such regularization being after the decision in Umadevi, this Court is of the view that the stand taken by the appellants in refusing regularization to the respondents cannot be countenanced. However, as the said stand of the appellants stemmed from their perception and understanding of the decision in Umadevi, they are not held liable for contempt but, it is made clear that the appellants and all the other competent authorities of the State will be obliged and duty bound to regularize the services of the respondents (74 in number) forthwith. [para 8] [644-C-E]

Case Law Reference:

2006 (3) SCR 953 referred to para 4

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3338 of 2014.

From the Judgment and Order dated 26.03.2007 of the High Court of Karnataka at Bangalore in CCC No. 669 of 2006.

K.N. Bhat, V.N. Raghupathy, Anantanarayana M.G. for the Appellants.

Guru Krishna Kumar, V. Lakshmi Naryana, Nishanth Patil, Sushil Balwada, Vikram Balaji, Sharan Thakur, Ramesh Babu M.R. for the Respondents.

The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. Leave granted.

2. This appeal is against the order dated 26.03.2007

passed by the High Court of Karnataka in a contempt proceeding registered as CCC No. 669 of 2006. By the aforesaid order, the High Court, after holding the appellants, *prima facie*, guilty of commission of contempt has granted them two weeks time to comply with the order in respect of which disobedience has been alleged failing which the matter was directed to be posted for framing of charge. Aggrieved, the appellants have filed the present appeal.

3. It may be necessary to briefly outline the relevant facts on the basis of which the allegations of commission of contempt have been made and the conclusions, indicated above, have been reached by the High Court.

445 daily rated employees of the State serving in different departments, including the 74 respondents herein, had instituted W.P. Nos. 39117-176/1999 claiming regularization of service. By order dated 15.12.1999, the High Court following an earlier order dated 10.9.1999 passed in similar writ petitions i.e. W.P. Nos. 33541-571/98 etc. had granted the relief(s) claimed by the writ petitioners-respondents. The aforesaid order dated 15.12.1999 of the learned Single Judge was affirmed by order dated 24.01.2001 passed in the writ appeals filed by the State. The petitions filed by the State seeking special leave to appeal against the order dated 24.01.2001 were dismissed by this Court on 22.07.2005. Two significant facts need to be noted at this stage. Firstly, that the order dated 10.09.1999 passed in writ petition Nos. 33541-571/1998 which was followed by the High Court while deciding the writ petitions (Writ Petition Nos. 39117-176/1999) filed by the respondents had been implemented by the State Government by granting regularization to the petitioners therein. The second significant fact that would require to be noticed is that following the dismissal of the special leave petitions filed by the State by order dated 22.07.2005, a Scheme dated 29.12.2005 was framed by the State Government to implement the order dated 15.12.1999 passed in t

Nos. 39117-176/1999). 161 persons who had filed contempt proceedings for non-compliance of the order dated 15.12.1999 were regularized on 29.12.2005. Thereafter, on 8.3.2006, 64 other persons, who were similarly placed to the aforesaid 161 persons as well as to the present 74 respondents, were also regularized. Such regularization was made without the concerned persons having to initiate any contempt proceeding. The cases of the other petitioners in W.P. Nos.39117-76/1999 were, however, not considered.

4. Consequently, 129 employees, including the 74 respondents herein whose case were not being considered by the State instituted another contempt proceeding being CCC No.67/2006. By Government Order dated 18.04.2006, 55 out of the aforesaid 129 employees were regularized while the claim of the remaining 74 employees (respondents herein) were not responded to. Accordingly, the Contempt Petition (CCC No. 67/2006) was heard and closed by the High Court by its order dated 20.06.2006 granting the respondents "***eight weeks' time to pass appropriate orders in accordance with law on the claim made by the complainants for regularization of their services in the office of the respondent authorities .....***" As no action was initiated pursuant to the aforesaid order of the High Court, the present contempt petition i.e. CCC No. 669/2006 was lodged by the 74 respondents. During the pendency of the aforesaid contempt petition the claim of regularization of respondents was rejected by specific orders passed on the ground that the claimants do not fulfill the conditions for regularization as laid down by this Court in *Secretary, State of Karnataka and Others* vs. *Umadevi (3) and Others*[1]. Some of the said orders/ endorsements were illustratively brought on record which demonstrate that the stand of the authorities with regard to the 74 respondents herein is that none of them fulfill/satisfy the conditions enumerated in paragraph 53 of the judgment in *Umadevi* (supra) as essential for the purpose of regularization.

1. (2006) 4 SCC 1.

On a detailed consideration of the facts of the case, particularly, the fact that the writ petitions as well as the writ appeals arising therefrom as also the order of this Court dated 22.07.2005 dismissing the special leave petitions filed by the State were prior in point of time to the decision of this Court in *Umadevi* (supra) [decided on 10.04.2006], the High Court took the view, as already noted, in its order dated 26.03.2007 which has given rise to the present appeal.

5. We have heard Shri K.N. Bhat, learned senior counsel for the appellants and Shri Guru Krishna Kumar, learned senior counsel for the respondents.

6. Shri Bhat, learned senior counsel for the appellants has drawn the attention of the Court to the fact that regularization in terms of the initial order of the High Court dated 10.09.1999 passed in W.P. Nos. 33541-571/1999 as well as regularization in part i.e. 161, 64 and 55 number of employees out of the 445 petitioners who had instituted writ petition Nos. 39117-176/ 1999, were prior to the judgment of this Court in *Umadevi* (supra). Shri Bhat has submitted that in terms of the directions in *Umadevi* (supra) while regularizations already made are not to be re-opened, matters subjudice are to be governed by the conditions mentioned in *Umadevi* (supra) and only on existence thereof regularization could be made. According to the learned counsel as none of the respondents herein satisfy the said conditions the impugned refusals to regularize the service of the respondents have been made by the authorities of the State.

7. On the other hand, Shri Guru Krishna Kumar, learned senior counsel for the respondents, has submitted that the writ petitions as well as the writ appeals and the special leave petitions filed in connection with the regularization of the respondents stood concluded on 15.12.1999, 24.01.2001 and 22.07.2005 respectively, all of which dates are prior to the decision in *Umadevi* (supra). It is contended that as all the proceedings concerning the regularization of the respondents had attained finality prior to the dec[illegible]n

Umadevi (supra) the regularization of the respondents cannot be understood to be sub-judice. Learned counsel has further urged that 161, 64 and 55 number of persons from the batch of 445 writ petitioners who are identically placed as the respondents have been regularized. In fact, according to learned counsel, the batch of 55 employees have been regularized on 18.04.2006 i.e. after 10.04.2006 (the date of decision in *Umadevi* (supra)). Learned counsel has also submitted that during the pendency of the present proceeding as many as 7 other persons, out of the batch of 445 writ petitioners, have also been regularized. It is accordingly submitted that in such circumstances on the principle of parity itself the entitlement of the respondents to be regularized cannot be doubted or disputed. The appellants, therefore, are clearly guilty of contempt and the impugned order of the High Court does not warrant any interference.

8. It is not in dispute that the original batch of employees who had filed writ petition Nos. 33541-571/1998 on the basis of which the writ petitions filed by the respondents herein (W.P. Nos. 39117-176/1999) were allowed by the order dated 15.12.1999 have been regularized. It is also not in dispute that out of the 445 employees who had filed writ petition Nos.39117-176/1999, by separate government orders, the service of 161, 64 and 55 employees have been regularized in three batches. The records placed before the Court would indicate that 7 other persons have been regularized during the pendency of the present appeal. In a situation where a Scheme had been framed on 29.12.2005 to give effect to the order of the High Court dated 15.12.1999 passed in the writ petitions filed by the respondents herein and many of the similarly situated persons have been regularized pursuant thereto the action of the appellants in not granting regularization to the present respondents cannot appear to be sound or justified. The fact that the regularization of 55 employees, similarly situated to the present respondents, was made on 18.04.2006 i.e. after the decision of this Court in *Umadevi* (supra) is also not in serious

dispute though Shri Bhat, learned senior counsel for the appellants, has tried to contend that the said regularizations were made prior to the decision in *Umadevi* (supra). The date of the order of regularization of the 55 persons i.e. 18.4.2006 will leave no doubt or ambiguity in the matter. In the aforesaid undisputed facts it is wholly unnecessary for us to consider as to whether the cases of persons who were awaiting regularization on the date of the decision in *Umadevi* (supra) is required to be dealt with in accordance with the conditions stipulated in para 53 of *Umadevi* (supra) inasmuch as the claims of the respondent employees can well be decided on principles of parity. Similarly placed employees having been regularized by the State and in case of some of them such regularization being after the decision in *Umadevi* (supra) we are of the view that the stand taken by the appellants in refusing regularization to the respondents cannot be countenanced. However, as the said stand of the appellants stem from their perception and understanding of the decision in *Umadevi* (supra) we do not hold them liable for contempt but make it clear that the appellants and all the other competent authorities of the State will now be obliged and duty bound to regularize the services of the respondents (74 in number) which will now be done forthwith and in any case within a period of two months from the date of receipt of this order.

9. The appeal shall stand disposed of in the above terms.

R.P. Appeal disposed of.

RANJIT KUMAR BOSE & ANR.
v.
ANANNYA CHOWDHURY & ANR.
(Civil Appeal No. 3334 of 2014)

MARCH 07, 2014

[A.K. PATNAIK AND V. GOPALA GOWDA, JJ.]

WEST BENGAL PREMISES TENANCY ACT 1997:

s.6 - Suit for eviction under Tenancy Act - Application by defendant to refer the dispute to arbitration as per agreement - Dismissed by trial court, but allowed by High Court - Held: In view of sub-s.(3) of s.2 of 1996 Act, arbitration agreement between landlord and tenant has to give way to s. 6 of Tenancy Act which confers exclusive jurisdiction on Civil Judge, to decide a dispute between landlord and tenant with regard to recovery of possession of tenanted premises in a suit filed by landlord - Impugned judgment of High Court set aside and matter remanded to trial court to deal with the suit in accordance with law -- Arbitration and Conciliation Act, 1996 - ss.2(3) and 8.

The appellants had inducted the respondents as tenants in respect of the suit property, i.e. a shop room, on a monthly rent, in terms of an unregistered tenancy agreement which was notarized on 10.11.2003. On 06.03.2008, the appellants served a notice on the respondents terminating the tenancy and asking them to vacate the shop premises. The appellants subsequently filed a suit in the Court of the Civil Judge (Senior Division), against the respondents for eviction, arrears of rent, arrears of municipal tax, mesne profit and for permanent injunction. In the suit, the respondents filed a petition u/s 8 of the Arbitration and Conciliation Act, 1996 ('the 1996 Act') stating that the tenancy agreement

contained an arbitration agreement, and prayed that all the disputes in the suit be referred to the arbitrator. By order dated 10.06.2009, the Civil Judge dismissed the petition. The respondents filed a petition under Art. 227 of the Constitution of India before the High Court, which referred the disputes to the arbitrators to be appointed by the parties.

Allowing the appeal, the Court

HELD: 1.1 Section 6 of the West Bengal Premises Tenancy Act 1997 lays down that 'notwithstanding anything to the contrary contained in any contract', no order or decree for recovery of possession of any premises shall be made by the Civil Judge having jurisdiction in favour of the landlord against the tenant, 'except on a suit being instituted by such landlord' on one or more grounds mentioned therein. It is, thus, clear that s. 6 overrides a contract between the landlord and the tenant and provides that only the Civil Judge having jurisdiction can order or decree for recovery of possession in a suit to be filed by the landlord. [para 6] [652-A-C]

1.2 In the instant case, there is an arbitration agreement in clause 15 of the tenancy agreement, which provides that any dispute regarding the contents or construction of the tenancy agreement or dispute arising out of the tenancy agreement shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996. But the words 'notwithstanding anything in any contract' in s. 6 of the Tenancy Act, will override the arbitration agreement in clause 15 of the tenancy agreement where a suit for recovery of possession of any premises has been filed by a landlord against the tenant. Such a suit filed by the landlord against the tenant for recovery of possession, therefore, cannot be referred u/s 8 of the 1996 Act to arbitration. [para 8] [653-A-C]

1.3 Sub-s. (3) of s. 2 of the 1996 Act expressly provides that Part-I, which relates to 'arbitration' where the place of arbitration is in India, shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration. Section 6 of the Tenancy Act is one such law which clearly bars arbitration in a dispute relating to recovery of possession of premises by the landlord from the tenant. Since the suit filed by the appellants was for eviction, it was a suit for recovery of possession and could not be referred to arbitration because of a statutory provision in s. 6 of the Tenancy Act. The arbitration agreement between the landlord and the tenant has to give way to s. 6 of the Tenancy Act which confers exclusive jurisdiction on the Civil Judge, to decide a dispute between the landlord and the tenant with regard to recovery of possession of the tenanted premises in a suit filed by the landlord. [para 8-9] [653-C-E; 654-E-F]

Natraj Studios (P) Ltd. v. Navrang Studios & Anr. **1981 (2) SCR 466 = (1981) 1 SCC 523 - relied on.**

Booz Allen and Hamilton Inc. v. SBI Home Finance Limited & Ors. **2011 (7) SCR 310 = (2011) 5 SCC 532;** *Hindustan Petroleum Corporation Ltd. v. Pinkcity Midway Petroleums* **(2003) 6 SCC 503;** *Agri Gold Exims Ltd. v. Sri Lakshmi Knits & Wovens & Ors.* **2007 (1) SCR 1161 = (2007) 3 SCC 686;** *Branch Manager, Magma Leasing & Finance Limited & Anr. v. Potluri Madhavilata & Anr.* **2009 (14) SCR 815 = (2009) 10 SCC 103- distinguished.**

1.4 The relief claimed by the appellants being mainly for eviction, it could only be granted by the "Civil Judge having jurisdiction" in a suit filed by the landlord as provided in s. 6 of the Tenancy Act. The expression "Civil Judge having jurisdiction" will obviously mean the Civil Judge who has jurisdiction to grant the other reliefs: decree for arrears of rent, decree for recovery of arrears

of proportionate and enhanced municipal taxes, a decree for mesne profits and a decree for permanent injunction claimed in the suit. The impugned judgment of the High Court is set aside and the matter is remanded to the Civil Judge, Senior Division, who will proceed with the suit in accordance with law. [para 14-15] [657-A-D]

Case Law Reference:

2003 (6) SCC 503	**distinguished**	**para 3**
2007 (1) SCR 1161	**distinguished**	**para 3**
2009 (14) SCR 815	**distinguished**	**para 3**
1981 (2) SCR 466	**relied on**	**para 4**
2011 (7) SCR 310	**referred to**	**para 4**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3334 of 2014.

From the Judgment and Order dated 16.04.2010 of the High Court of Calcutta in Co. No. 2440 of 2009.

Parthapratim Chaudhuri, Amarendra Bal, Aditya Sharma, K.S. Rana for the Appellants.

Rana Mukherjee, Kasturika Kaumudi, Daisy Hannah (for Victor Moses & Associates) for the Respondents.

The Judgment of the Court was delivered by

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

Facts of the Case

2. The appellants have inducted the respondents as tenants in respect of a shop room measuring 600 sq. feet at HA-3, Sector-3, Salt Lake City, Kolkata, and paying a monthly rent to the appellants. In respect of the tenancy, the appellants and the respondents have executed an unregistered tenancy agreement which has been notarize

06.03.2008, the appellants, through their Advocates, served a notice on the respondents terminating the tenancy and asking them to vacate the shop premises and the notice stated that after April, 2008 the relationship of landlord and tenant between the appellants and the respondents shall cease to exist and the respondents will be deemed to be trespassers liable to pay damages at the rate of Rs.500/- per day for wrongful occupation of the shop. The respondents, however, did not vacate the shop premises and the appellants filed Title Suit No.89 of 2008 against the respondents for eviction, arrears of rent, arrears of municipal tax, mesne profit and for permanent injunction in the Court of the Civil Judge (Senior Division), 2nd Court at Barasat, District North 24-Parganas in the State of West Bengal. In the suit, the respondents filed a petition under Section 8 of the Arbitration and Conciliation Act, 1996 (for short 'the 1996 Act') stating therein that the tenancy agreement contains an arbitration agreement in clause 15 and praying that all the disputes in the suit be referred to the arbitrator. By order dated 10.06.2009, the learned Civil Judge dismissed the petition under Section 8 of the 1996 Act and posted the matter to 10.07.2009 for filing of written statement by the defendants (respondents herein).

3. Aggrieved, the respondents filed an application (C.O. No.2440 of 2009) under Article 227 of the Constitution of India before the Calcutta High Court and contended that the tenancy agreement contains an arbitration agreement in Clause 15, which provides that any dispute regarding the contents or construction of the agreement or dispute arising out of the agreement shall be settled by Joint Arbitration of two arbitrators, one to be appointed by the landlords and the other to be appointed by the tenants and the decision of the arbitrators or umpires appointed by them shall be final and that the arbitration will be in accordance with the 1996 Act and, therefore, the learned Civil Judge rejected the petition of the respondents to refer the disputes to arbitration contrary to the mandate in Section 8 of the 1996 Act. The appellants opposed

the application under Article 227 of the Constitution of India contending *inter alia* that the dispute between the appellants and the respondents, who are landlords and tenants respectively, can only be decided by a Civil Judge in accordance with the provisions of the West Bengal Premises Tenancy Act, 1997 (for short 'the Tenancy Act'). By the impugned judgment dated 16.04.2010, the High Court has held that in view of the decisions of this Court in *Hindustan Petroleum Corporation Ltd. v. Pinkcity Midway Petroleums* [(2003) 6 SCC 503], *Agri Gold Exims Ltd. v. Sri Lakshmi Knits & Wovens & Ors.* [(2007) 3 SCC 686] and *Branch Manager, Magma Leasing & Finance Limited & Anr. v. Potluri Madhavilata & Anr.* [(2009) 10 SCC 103], the Court has no other alternative but to refer the disputes to the arbitrators to be appointed by the parties as per the arbitration agreement. The High Court, however, has observed in the impugned judgment that if any dispute is raised regarding arbitrability of such dispute before the arbitral tribunal, such dispute will be decided by the arbitral tribunal.

Contentions of the learned counsel for the parties

4. Learned counsel for the appellants submitted that in *Hindustan Petroleum Corporation Ltd. v. Pinkcity Midway Petroleums, Agri Gold Exims Ltd. v. Sri Lakshmi Knits & Wovens & Ors.* and *Branch Manager, Magma Leasing & Finance Limited & Anr. v. Potluri Madhavilata & Anr.* (supra), this Court has not decided as to whether the dispute between the landlord and the tenant could be decided by the arbitrator in accordance with the arbitration agreement between the landlord and the tenant and the provisions of the 1996 Act or by the appropriate forum in accordance with the law relating to tenancy. He cited the decision of this Court in *Natraj Studios (P) Ltd. v. Navrang Studios & Anr*. [(1981) 1 SCC 523], wherein it has been held that Court of Small Causes alone and not the arbitrator as a matter of public policy has been empowered to decide disputes betwee

tenant under the Bombay Rent Act. He also relied on the observations of this Court in *Booz Allen and Hamilton Inc. v. SBI Home Finance Limited & Ors*. [(2011) 5 SCC 532] in para 36 at page 547 that eviction or tenancy matters governed by a special statute where the tenant enjoys statutory protection against eviction can be decided by specified courts conferred with the jurisdiction to grant eviction and such disputes are non-arbitrable.

5. Learned counsel for the respondents, on the other hand, relied on the decisions of this Court in *Hindustan Petroleum Corporation Ltd. v. Pinkcity Midway Petroleums, Agri Gold Exims Ltd. v. Sri Lakshmi Knits & Wovens & Ors.* and *Branch Manager, Magma Leasing & Finance Limited & Anr. v. Potluri Madhavilata & Anr.* (supra) to support the impugned judgment. He submitted that there can be no doubt that the Tenancy Act will determine the rights of the landlord and the tenant in this case, but when there is an arbitration agreement between a landlord and a tenant, instead of the Civil Judge, the arbitrator will decide the disputes between the landlord and the tenant by applying the provisions of the Tenancy Act.

Findings of the Court

6. The relevant portion of Section 6 of the Tenancy Act 1997 is quoted hereinbelow:

> "6. **Protection of tenant against eviction**.—(1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any contract, no order or decree for the recovery of the possession of any premises shall be made by the Civil Judge having jurisdiction in favour of the landlord against the tenant, except on a suit being instituted by such landlord on one or more of the following grounds:—
>
> ……."

It will be clear from the language of Section 6 of the Tenancy Act 1997 quoted above that 'notwithstanding anything to the contrary contained in any contract', no order or decree for recovery of possession of any premises shall be made by the Civil Judge having jurisdiction in favour of the landlord against the tenant, 'except on a suit being instituted by such landlord' on one or more grounds mentioned therein. It is, thus, clear that Section 6 of the Tenancy Act overrides a contract between the landlord and the tenant and provides that only the Civil Judge having jurisdiction can order or decree for recovery of possession only in a suit to be filed by the landlord.

7. Part-I of the 1996 Act is titled 'arbitration'. Section 8 of the 1996 Act is extracted hereinbelow:

> "8. Power to refer parties to arbitration where there is an arbitration agreement.— (1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.
>
> (2) The application referred to in subsection (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.
>
> (3) Notwithstanding that an application has been made under sub- section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made."

A reading of sub-section (1) of Section 8 of the 1996 Act will make it clear that a judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall refer the parties to arbitration. Without 'an arbitration agreement', therefore, a judicial authority cannot refer the parties to arbitration.

8. In this case, there is an arbitration agreement in clause 15 of the tenancy agreement, which provides that any dispute regarding the contents or construction of the tenancy agreement or dispute arising out of the tenancy agreement shall be settled by arbitration in accordance with the provisions of the 1996 Act. But the words 'notwithstanding anything in any contract' in Section 6 of the Tenancy Act, will override the arbitration agreement in clause 15 of the tenancy agreement where a suit for recovery of possession of any premises has been filed by a landlord against the tenant. Such a suit filed by the landlord against the tenant for recovery of possession, therefore, cannot be referred under Section 8 of the 1996 Act to arbitration. In fact, sub-section (3) of Section 2 of the 1996 Act expressly provides that Part-I which relates to 'arbitration' where the place of arbitration is in India shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration. Section 6 of the Tenancy Act is one such law which clearly bars arbitration in a dispute relating to recovery of possession of premises by the landlord from the tenant. Since the suit filed by the appellants was for eviction, it was a suit for recovery of possession and could not be referred to arbitration because of a statutory provision in Section 6 of the Tenancy Act.

9. In *Natraj Studios (P) Ltd. v. Navrang Studios & Anr*. (supra), there was a leave and licence agreement between Natraj Studios (P) Ltd. and Navrang Studios. On 28.04.1979, Navrang Studios purported to terminate the leave and licence agreement and called upon Natraj Studios (P) Ltd. to hand over the possession of the studios to them. Natraj Studios (P) Ltd. filed a suit on 08.05.1979 in the Court of Small Causes, Bombay, for a declaration that Natraj Studios (P) Ltd. was a monthly tenant of the studios and for fixation of standard rent and other reliefs. Navrang Studios filed a written statement contesting the suit. Natraj Studios (P) Ltd. filed an application under Section 33 of the Arbitration Act, 1940 in the Bombay High Court for a declaration that the arbitration clause in the

leave and licence agreement was invalid and inoperative. The High Court dismissed the application. Thereafter, Navrang Studios filed an application under Section 8 of the Arbitration Act, 1940 for appointment of a sole arbitrator to decide the disputes and differences between the parties under the leave and licence agreement. The High Court allowed the application and appointed a sole arbitrator. On appeal being carried to this Court by Natraj Studios (P) Ltd., this Court held that Section 28(1) of the Bombay Rent Act vests an exclusive jurisdiction in the Court of Small Causes to entertain and try any suit or proceeding between a landlord and tenant relating to the recovery of rent or possession of any premises. This Court further held that the Bombay Rent Act was a welfare legislation aimed at the definite social objective of protection of tenants against harassment by landlords in various ways and public policy requires that contracts to the contrary which nullify the rights conferred on tenants by the Act cannot be permitted and it follows that arbitration agreements between parties whose rights are regulated by the Bombay Rent Act cannot be recognized by a court of law. This decision in *Natraj Studios (P) Ltd. v. Navrang Studios & Anr*. (supra) supports our conclusion that the arbitration agreement between the landlord and tenant has to give way to Section 6 of the Tenancy Act which confers exclusive jurisdiction on the Civil Judge, to decide a dispute between the landlord and the tenant with regard to recovery of possession of the tenanted premises in a suit filed by the landlord.

10. The High Court, however, has relied on three decisions of this Court to hold that it is for the arbitral tribunal to decide under Section 16 of the 1996 Act whether it has the jurisdiction to decide the dispute between the appellants and the respondents. We may distinguish those cases from the facts of the present case.

11. In *Hindustan Petroleum Corporation Ltd. v. Pinkcity Midway Petroleums* (supra), Hindustan

Ltd. stopped supply of petroleum products to the dealer and the dealer filed a civil suit in the Court of Civil Judge, Rewari, for a declaration that the order stopping supply of petroleum product was illegal and arbitrary. Hindustan Petroleum Corporation Ltd. filed a petition under Section 8 of the 1996 Act praying for referring the dispute pending before the Civil Court to the arbitrator as per Clause 40 of the Dealership Agreement. The Civil Judge dismissed the petition and Hindustan Petroleum Corporation Ltd. filed a revision before the High Court, but the High Court also dismissed the revision. Hindustan Petroleum Corporation Ltd. thereafter filed an appeal before this Court and this Court held that Section 8 of the 1996 Act in its clear terms mandates a judicial authority before whom an application is brought in a matter, which is the subject-matter of an arbitration agreement, to refer such parties to the arbitration. In this case, the arbitration agreement contained in Clause 40 of the Dealership Agreement was not hit by a statutory provision like the one in Section 6 of the Tenancy Act providing that the dispute shall be decided only by a Civil Judge in a suit notwithstanding a provision in the contract to the contrary.

12. In *Agri Gold Exims Ltd. v. Sri Lakshmi Knits & Wovens & Ors.* (supra), the parties had entered into a memorandum of understanding in relation to the business of export and the memorandum of understanding contained an arbitration clause that in case of any dispute between the two parties, the same shall be referred to arbitration, by two arbitrators, nominated by each of the parties and the award of the arbitrators shall be binding on both the parties. Agri Gold Exims Ltd. filed a suit in the District Court at Vijayawada for recovery of an amount of Rs.36,14,887/- and for future interest on a sum of Rs.53,79,149/-. Sri Lakshmi Knits & Wovens filed an application under Section 8 of the 1996 Act for referring the dispute to the arbitral tribunal in terms of the arbitration agreement contained in the memorandum of understanding. This application, however, was dismissed by the District Court,

but on revision the High Court reversed the order of the District Court and referred the parties to arbitration. Agri Gold Exims Ltd. carried an appeal to this Court and this Court reiterated that Section 8 of the 1996 Act is peremptory in nature and in a case where there exists an arbitration agreement, the Court is under obligation to refer the parties to arbitration in terms of the arbitration agreement, relying on *Hindustan Petroleum Corporation Ltd.* (supra). In this case again, there was no statutory bar to arbitration like the one in Section 6 of the Tenancy Act providing that the dispute can only be decided by the Civil Judge in a suit.

13. In *Branch Manager, Magma Leasing & Finance Limited & Anr. v. Potluri Madhavilata & Anr.* (supra), Magma Leasing Limited Public United Company (for short 'Magma') and Smt. Potluri Madhavilata (for short 'hirer') entered into an agreement of hire-purchase for the purchase of a motor vehicle whereunder the hirer was required to pay hire-purchase price in 46 instalments. When the instalments were not paid, Magma seized the vehicle and sent a notice to the hirer saying that the hire-purchase agreement has been terminated. The hirer then filed a suit against Magma in the Court of the Senior Civil Judge for recovery of possession of the vehicle and for restraining Magma from transferring the vehicle. Magma filed a petition before the Civil Judge under Section 8 of the 1996 Act praying that the dispute raised in the suit be referred to an arbitrator in terms of Clause 22 of the Hire-Purchase Agreement, which contained the arbitration agreement. This Court reiterated that Section 8 is in the form of legislative command to the court and once the prerequisite conditions are satisfied, the Court must refer the parties to arbitration. In this case again, there was no statutory bar to arbitration like Section 6 of the Tenancy Act providing that the dispute can only be decided by a Civil Judge.

14. The High Court, therefore, was not correct in coming to the conclusion that as per the decisions of this Court in the aforesaid three cases, the Court has no

the parties to arbitration in view of the clear mandate in Section 8 of the 1996 Act. On the contrary, the relief claimed by the appellants being mainly for eviction, it could only be granted by the "Civil Judge having jurisdiction" in a suit filed by the landlord as provided in Section 6 of the Tenancy Act. The expression "Civil Judge having jurisdiction" will obviously mean the Civil Judge who has jurisdiction to grant the other reliefs: decree for arrears of rent, decree for recovery of arrears of proportionate and enhanced municipal taxes, a decree for mesne profits and a decree for permanent injunction claimed in the suit.

15. For the aforesaid reasons, we allow this appeal and set aside the impugned judgments of the High Court and the Civil Judge, Senior Division, and remand the matter to the learned Civil Judge, Senior Division, who will now give an opportunity to the respondents to put in their written statements and thereafter proceed with the suit in accordance with law. Considering the peculiar facts of this case, there shall be no order as to costs.

R.P. Appeal allowed.

K.V.S. RAO

v.

C.B.I. & ORS.

(Transfer Petition (Crl.) No. 89 of 2013 etc.)

MARCH 10, 2014

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

TRANSFER PETITIONS:

Transfer of cases - Cases against accused pending in Special Court, Lucknow and Special Court, Delhi - Held: It is the settled principle of law that when two or more cases are pending against the petitioners/respondents which are similar in nature, cases can be transferred from one court to another - Petitioners have made out a case for transfer - Taking note of the fact that most of the witnesses are either doctors or officers working in respective medical colleges and also that the ultimate decision was taken only at the ministerial level which is at Delhi, in the interest and convenience of all parties, all the cases are to be tried together at Delhi - Therefore, Criminal Case No. 5 of 2013 pending before the Court of Special Judge, Anti Corruption No. 4, CBI, Lucknow, is ordered to be transferred to the Court of Special Judge, C.B.I, Patiala House, New Delhi and is to be heard along with Criminal Case No. 3 of 2012.

CRIMINAL ORIGINAL JURISDICTION : Transfer Petition (Crl.) No. 89 of 2013.

WITH

T.P. (Crl.) Nos. 100, 108, 124 & 125 of 2013.

Sidharth Luthra, ASG, Mukul Rohtagi,, Huzefa Ahmadi, Dayan Krishnan, C.D. Singh, Sakshi Kakkar, Abdhesh Choudhary, Amit Kumar, Sanjay Singh, Sanjit Kumar, Rajiv Ranjan Dwivedi, S.D. Singh, Bharti Tyagi, Jitender Singh, Nikhil

Nayyar, Ambuj Agrawal, Akansha, Dhananjay Baijal, Kumud Lata Das, Rajiv Nanda, Meenakshi Grover, Supriya Juneja, C.K. Sharma, B.V. Balaram Das for the appearing parties.

The following Order of the Court was delivered

O R D E R

1. Heard learned senior counsel appearing on behalf of the petitioners as well as learned Additional Solicitor General appearing on behalf of the respondent-CBI.

2. After going into all the details furnished in the transfer petitions as well as the counter affidavit filed by the C.B.I., we are of the view that the petitioners have made out a case for transfer. It is the settled principle of law that when two or more cases are pending against the petitioners/respondents which are similar in nature can be transferred from one Court to another. In the case on hand the only objection projected by the learned Additional Solicitor General is that apart from the official witnesses, the other witnesses have to come from various places viz. Kanpur, Rampur, Bareilly, Ahmedabad, Lucknow, Patna, Kolkata, Rohtak, Latur, Chennai and Mumbai.

3. Taking note of the fact that most of the witnesses are either doctors or officers working in respective medical colleges and also of the fact that the ultimate decision was taken only at the ministerial level which is at Delhi, we feel that in the interest and convenience of all parties, all these cases are to be tried together at Delhi. Therefore, Criminal Case No. 5 of 2013 titled as Central Bureau of Investigation Vs. Dr. Keshav Kumar Agarwal & Ors. registered on the basis of the F.I.R. No. RC0062010A0014 of 2010 dated 22.5.2010 pending before the Court of Special Judge, Anti Corruption No. 4, CBI, Lucknow, is ordered to be transferred to the Court of Special Judge, C.B.I, Patiala House, New Delhi and is to be heard along with Criminal Case No. 3 of 2012 titled as *Central Bureau of Investigation Vs. Dr. Anbumani Ramadoss & Ors.*

4. The transfer petitions are allowed accordingly.

5. After transfer and receipt of all the required records, the transferee Court is directed to take all endeavour for early completion of the trial.

6. In view of the order in transfer petitions, no order is required in Criminal Miscellaneous Petition for discharge of earlier advocate.

R.P. Transfer Petitions allowed.

POOJA BHATIA

v.

VISHNU NARAIN SHIVPURI & ANR.

(Criminal Appeal No. 585 of 2014)

MARCH 10, 2014

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

BAIL:

Cancellation of bail -- Held: In the light of the principles for cancellation of bail and the assertion made by the Superintendent of Police in the form of counter affidavit and follow-up action, inasmuch as throwing acid on the complainant is a serious one, though no injury on her but spit on her t-shirt and it got burnt, and taking note of the conduct of respondent-accused after the impugned order of High Court, granting him bail, the accused is not entitled to continue the benefit of bail -- Accordingly, the impugned order of High Court is set aside and respondent-accused is directed to surrender.

Manjit Prakash and Others vs. Shobha Devi and Another, **2008 (10) SCR 1141 = (2009) 13 SCC 785 - relied on.**

Case Law Reference:

2008 (10) SCR 1141 relied on para 9

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 585 of 2014.

From the Judgment and Order dated 16.01.2014 of the High Court of Judicature at Allahabad, Bench at Lucknow in BA No. 5876 of 2013.

Meenakshi Arora, Vivek K. Tankha, Manish Mohan, Ajay Singh, Puja Sarkar, Mahima Sareen, Umang Shankar, Prashant

Kumar, Awantika Manohar, Sunil Sigh Parihar, Ap & J Chambers, Pragati Neekhra, Mukul Singh for the appearing parties.

The following order of the Court was delivered

O R D E R

1. Heard learned counsel for the parties.

2. Leave granted.

3. Against the grant of bail in favour of the Respondent No.1-accused viz. Vishnu Narain Shivpuri, the complainant has filed the above appeal.

4. Respondent No.1 was charged under Sections 342, 326-B and 506 of the Indian Penal Code. The bail application was filed initially before the Sessions Court. After taking note of all the materials and the seriousness of the allegations levelled against him, the Sessions Court rejected his bail application. Thereafter, he preferred an appeal before the High Court. The High Court by the impugned order after taking note of the submissions made by both the sides and considering the injury report as well as other factual matrix and without expressing any opinion on the merits of the case, released Respondent No. 1 (herein) on bail. The said order is under challenge by the complainant in the present appeal.

5. By order dated 23.01.2014, this Court issued notice to respondents. Pursuant to the same, the Respondent No.2-State viz. Superintendent of Police, Trans Gomti, Lucknow, filed counter affidavit highlighting the cases between the parties and conduct of the Respondent No.1-accused after grant of bail by the High Court order dated 16.01.2014. Among the various information, the assertion in paras 12 and 14 of the counter affidavit of the Superintendent of Police dated 05.02.2014 are relevant which read as under:

"It is submitted that the T-shirt in FIR No. 293/13 was sent for examination to the Forensic Science Laboratory, Lucknow. The chemical examination of the t-shirt worn by the complainant/petitioner at the time of incident confirms the presence of 'Sulphuric Acid'.

It is the case of the answering respondent that vide report No.11 dated 01.02.2004 P.S. Mahanagar Lucknow while patrolling at Papermill Colony it came to the knowledge that the Respondent No.1, a resident of Papermill Colony, Nishatganj, after being enlarged on bail was found telling people in the locality that he went to jail for throwing Sulphuric Acid on his wife namely Pooja Bhatia i.e. the petitioner herein and whenever he will again get a chance, will do the same to his wife in order to damage/cause injury to her face."

[Emphasis supplied]

6. Apart from the above assertion made by the Superintendent of Police, who is a highest police officer of the District, learned counsel appearing on behalf of the respondent-Sate during the course of hearing has brought to our notice the order passed by the Additional City Magistrate (5th), Lucknow in Case No. 107/2014 under Section 110G of Cr.P.C. which shows that pursuant to the action of the Respondent No.1 as revealed in report dated 15.02.2014, the above proceedings were initiated and the following information in the said proceeding dated 19.02.2014 which are relevant for the purpose of disposal of this appeal reads as under:

IN THE COURT OF ADDITIONAL CITY MAGISTRATE (5TH), LUCKNOW

CASE NO. 107/2014
UNDER SECTON 110G OF CR.P.C.
P.S. LUCKNOW CITY
STATE VS. VISHNU NARAYAN, SHIVPURAI

CASE fixed on:

ORDER UNDER 110/111 OF CRL.P.C.

It was revealed in the report dated 15.02.2014 of In-charge Inspector/SHO, City sent under Section 110 of Crl.P.C. which was received with the approval of C.O., City, that Vishnu Narayan Shivpuri S/o. Late Pratap Narayan Shivpuri, P.S. City Lucknow is a cunning criminal. Common public is quite perturbed and terrorized by his criminal acts. Every day he used to intimidate the common public, because of which witnesses avoids to depose against him. On the above basis, request was made to restrain him on heavy security and bail bond.

Therefore, I S.K. Mishra, Addl. City Magistrate, 5th Lucknow feeling satisfied by above report of In-charge, Lucknow P.S., do hereby direct that he shall appear in my Court on the prescribed date and cite that why should personal bail bond of Rs.25,000/- and two securities of similar amounts be not taken from him in order to maintain peace for a year?

Order issued today on 19.02.2014 under my signature and seal of the Court.

Sd/- illegible
Addl. City Magistrate (5th)
Lucknow

Order was read over and explained to the Opp. Party, which is acknowledged by him.

Sd/- illegible
Addl. City Magistrate (5th)
Lucknow

7. Mr. Vivek Tankha, learned senior counsel appearing on behalf of Respondent No.1-accused [illegible]h

various proceedings including the matrimonial disputes and assertions in the form of counter affidavit before this Court submitted that there is no valid ground for cancellation of bail at this juncture.

8. We have considered all the details.

9. It is useful to refer the principles laid down by this Court and the circumstances when bail granted can be cancelled which was highlighted in *Manjit Prakash and Others vs. Shobha Devi and Another*, (2009) 13 SCC 785 which reads as under:-

> "As stated in *Raghubir Singh v. State of Bihar, (1986) 4 SCC 481* the grounds for cancellation under Sections 437(5) and 439(2) are identical, namely, bail granted under Section 437(1) or (2) or Section 439(1) can be cancelled where (*i*) the accused misuses his liberty by indulging in similar criminal activity, (*ii*) interferes with the course of investigation, (*iii*) attempts to tamper with evidence or witnesses, (*iv*) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (*v*) there is likelihood of his fleeing to another country, (*vi*) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (*vii*) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.'
>
> 8. It is, therefore, clear that when a person to whom bail has been granted either tries to interfere with the course of justice or attempts to tamper with evidence or witnesses or threatens witnesses or indulges in similar activities which would hamper smooth investigation or trial, bail granted can be cancelled. Rejection of bail stands on one footing, but cancellation of bail is a harsh order because it takes away the liberty of an individual granted and is not to be lightly resorted to."

10. In the light of the above principles and the assertion made by the Superintendent of Police in the form of counter affidavit and follow-up action which we have been noted above, we are of the view that inasmuch as throwing acid on the complainant is a serious one though no injury on her, but spit on her T-shirt and it got burnt and taking note of his conduct after the impugned order of the High Court dated 16.01.2014, we are satisfied that the accused is not entitled to continue the benefit of bail. Accordingly, the impugned order of the High Court dated 16.01.2014 is set aside and the Respondent No.1-accused is directed to surrender within a period of two weeks from today.

11. Learned Trial Judge is directed to take all endeavour for early completion of the trial preferably within a period of six months from the date of receipt of copy of this order.

12. The appeal is allowed on the above terms.

R.P. Appeal allowed.

DINESHAN K.K.

v.

R.K. SINGH & ANR.

(Contempt Petition (C) No. 422 of 2012)

IN

CIVIL APPEAL NO. 25 OF 2008.

MARCH 11, 2014

[H.L. DATTU AND S.A. BOBDE, JJ.]

Contempt of Courts Act, 1971: s.12; Constitution of India, 1950: Article 129 - Contempt jurisdiction - High Court while disposing of writ petition filed by petitioner had issued directions to the Union of India and its officer to re-designate the petitioner from rank of Hawaldar to Warrant Officer as recommended by Ministry of Home affairs - Appeal by UOI-respondent against the said directions dismissed by Supreme Court - Non-compliance with the directions issued by High Court as well as by Supreme Court in spite of lapse of considerable period - Contempt petition filed u/Article 129 of the Constitution r/w s.12 of the Contempt of Courts Act, 1971 against respondent officers - Maintainability of - Held: The judgment passed by High Court merged with that of Supreme Court when the appeal filed by the petitioner was dismissed by Supreme Court - Supreme Court had dismissed the appeal and, therefore, it was the direction passed by High Court which in fact was allegedly disobeyed by respondents/ contemnors - In the interest of justice and to lessen the burden of Supreme Court in the current scenario, High Court requested to look into the grievance of the petitioner, if a petition is filed before them inter alia bringing to their notice and knowledge that their orders and directions have been disobeyed - This exercise would be beneficial to the parties because they were before the High Court in the writ petition wherein the directions were issued - The petitioner is directed to file an appropriate contempt petition before High Court for

alleged disobedience of the orders and directions issued by the High Court.

Oil and Natural Gas Corporation Ltd. vs. S.B.I. Overseas Branch, Bombay **2006 (6) SCC 385 - referred to.**

Case Law Reference:

2006 (6) SCC 385 referred to Para 8

CIVIL ORIGINAL JURISDICTION : Contempt Petition (Civil) No. 422 of 2012.

IN

Civil Appeal No. 25 of 2008.

Guru Krishna Kumar, Hiren Dasan, Avinash Singh, Sarla Chandra for the Petitioner.

Rakesh K. Khanna, ASG, R. Balasubramanium, Supriya Jain, B. Krishna Prasad for the Respondents.

The following Order of the Court was delivered

O R D E R

1. This contempt petition is filed by the petitioner inter alia requesting this Court to initiate contempt proceedings against the respondent Nos. 1 and 2 for alleged disobedience of the judgment and order passed by this Court in Civil Appeal No. 25 of 2008, dated 04.01.2008.

2. The High Court while disposing of the writ petition filed by the petitioner herein had issued certain directions to the Union of India and its officer to re-designate the petitioner from the rank of Hawaldar (Radio Mechanic) to Warrant Officer as recommended by the Ministry of Home affairs and also to extend the pay-scales as given to the rank counter parts in the Central Reserve Police Force (CRPF) and Border Security Force (BSF).

3. Being aggrieved by the order and directions issued by the High Court, the Union of India a[illegible]ir respective officer(s) had filed Civil A[illegible]8

before this Court inter alia questioning the judgment and order passed by the Gauhati High Court in Writ Petition No. 497 of 2001, dated 11.02.2005. The alleged contemnors herein Mr. R.K. Singh, Secretary, Government of India and Lt. General Ranvir Singh, Director General of Assam, Rifles were the respondent Nos. 1 and 2, respectively in the aforesaid appeal.

4. This Court has dismissed the appeal and held as under:

> "On a conspectus of the factual scenario noted above, we do not find any infirmity in the impugned directions given by the High Court, warranting interference. There is no merit in this appeal and it is dismissed accordingly with costs."

5. The petitioner before us, being of the view that since the contemnors/respondents herein have not complied with the orders and directions issued by the High Court as well as by this Court in spite of lapse of considerable period of time from the aforesaid judgment and order of this Court and hence willfully disobeyed the judgment and order of this Court, has filed this contempt petition under Article 129 of the Constitution of India read with Section 12 of the Contempt of Courts Act, 1971.

6. The respondents have entered appearance and also filed their respective counter affidavits before this Court.

7. At the time of hearing of this contempt petition, we have deliberated on two questions: firstly, whether the contempt petition filed by the petitioner is maintainable before this Court and secondly, whether the petitioner could approach High Court which has disposed of the writ petition and issued certain directions to the alleged contemnors for the grant of prayer sought before us in this petition.

8. The learned senior counsel for the complainant/ petitioner, Shri Kumar would bring to our notice the decision

of this Court in the case of *Oil and Natural Gas Corporation Ltd. vs. S.B.I. Overseas Branch, Bombay,* (2006) 6 SCC 385 and submit that the judgment and order passed by the High Court has now merged with the orders passed by this Court when this Court dismissed the civil appeal filed by the petitioner and therefore, this Court has the jurisdiction to entertain the present petition as it is the order of this Court which has been willfully disobeyed by the respondents/contemnors.

9. We have carefully perused the decision of this Court. A reading of the judgment would certainly indicate that when the civil appeals and the special leave petitions are dismissed with reasons, the orders passed by the Courts below would merge with the judgment and order passed by this Court. The said decision has been followed by this Court in a catena of subsequent judgments of this Court.

10. In view of what has been said by this Court in the aforesaid decision, we cannot hold that the judgment and order passed by the High Court has not merged with the judgment and order passed by this Court when the civil appeal filed by the complainant/petitioner was dismissed.

11. The first question having been answered, the next question that would arise for our consideration and decision is whether the contempt petition requires to be entertained by this Court or could this Court request the High Court whose directions are said to have been disobeyed by the respondents to consider and decide the matter.

12. We requested Shri K.K. Venugopal and Dr. Rajeev Dhawan, learned senior counsel to assist us in the matter. Their view on the second question is that undoubtedly the order passed by this Court, while accepting the judgment and order passed by the Courts below, would merge with the judgment and order passed by the Courts below. However,this Court in exercise of its powers under Articles 129, 136 and 142 of the Constitution of India could direct the co

approach the High Court and bring to its notice and knowledge that their orders and directions have been disobeyed by the respondents/contemnors.

13. In the instant case, the complainant/petitioner had approached the High Court for certain reliefs. The High Court has granted those reliefs to the petitioner and while doing so the High Court has issued certain direction(s) to the respondents to do a particular thing in a particular manner. The respondents, namely, the Union of India and other officers disturbed by the order and directions issued by the High Court had filed the special leave petition which on grant of leave had converted into civil appeal. This Court after hearing the parties did not find merit in the appeal and therefore, dismissed it.

14. We are mindful of settled law that the orders passed by the High Court would merge with the order passed by this Court. This Court has dismissed the appeal only and, therefore, it is the directions passed by the High Court which in fact have been allegedly disobeyed by the respondents/contemnors. In our considered view, it would be in the interest of justice and to lessen the burden of this Court in the current scenario, it would be appropriate to request the High Court to look into the grievance of the complainant, if a petition is filed before them inter alia bringing to their notice and knowledge that their orders and directions have been disobeyed. In our opinion, firstly, this exercise would be beneficial to the parties because they were before the High Court in the writ petition wherein the directions were issued and secondly, by entertaining the petitions of this nature wherein this Court has passed an order of dismissal simplicitor and the alleged contempt arises out of the order passed by the High Court, this Court would saddle the dockets with cases which could otherwise be effectively could be disposed of by the Courts below.

15. In view of the aforesaid aspects of the matter, in our considered opinion, though we hold that when the judgment and order passed by the High Court has merged with the order

passed by this Court while disposing of the civil appeal, we direct the complainant/petitioner to file an appropriate contempt petition before the High Court for the alleged disobedience of the orders and directions issued by the High Court within two months' time from today. If such a contempt petition is filed, the High Court would consider the same in accordance with law after giving an appropriate opportunity of hearing to all the parties concerned.

16. With these observations, the contempt petition is disposed of.

17. We clarify that we have not expressed any opinion on the merits of the contempt petition.

Ordered accordingly.

D.G. Contempt Petition disposed of.

JUMNI AND OTHERS
v.
STATE OF HARYANA
(Criminal Appeal No. 1159 of 2005 etc.)

MARCH 12, 2014

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

PENAL CODE:

s.302 - Death of a married woman by burns - Dying declaration - Relatives of husband of deceased convicted and sentenced - Plea of alibi of two of the appellants not accepted by courts below - Held: Testimony of alibi witnesses of two of the four appellants deserves acceptance - Further, the evidence of defence witness that the door of the room of the deceased was locked from inside and when he broke open it, he saw the deceased on fire, cannot be glossed over - Thus, it is not possible to discount the theory of suicide - Besides, with everybody being roped in for every event, it is not possible in this case to segregate or sever the actions of one from another - The two appellant setting up the plea of alibi are not found guilty of murder of deceased and are acquitted - The remaining two appellants are given benefit of doubt - Evidence - Plea of alibi - Severability of dying declaration.

EVIDENCE:

Plea of alibi - Held: Alibi witnesses have made out a strong case of demonstrating the improbability of the two appellants being involved in the incident of beating up the deceased and stopping her from going to police station the previous day and setting her on fire in the morning of the day of occurrence - Courts below proceeded on the basis that these two accused are required to prove their innocence -- It

is for the prosecution to prove the guilt of accused - Defence evidence has to be tested like any other testimony, always keeping in mind that a person is presumed innocent until he or she is found guilty.

Dying declaration - Evidentiary value of - Explained.

Dying declaration - Severability of - Held: Role of two sets of accused can be segregated, if dying declaration is severable - In the instant case, role of accused persons cannot be segregated as it mentions all accused persons to have been involved in all events - Deceased has referred to all of them as being involved in every incident - Alibi witnesses have made out a strong improbability for two of the appellants to have participated in the incidents - Further, if somewhat different roles were assigned to at least some of the accused persons, segregation or severance could have been possible- But with everybody being roped in for every event, it is not possible to segregate or sever the actions of one from another.

The four appellants and two other relatives of the husband of the deceased, were prosecuted on the basis of the dying declaration of the deceased alleging that her father-in-law, mother-in-law, 'jeth' (brother-in-law) and his wife, and both 'devars' (brothers-in-law) had been harassing her and they planned to eliminate her; that on 4.4.1996 during noon time all six accused gave her severe beatings; that when about 3.00 pm she was about to go to the police station, all of them prevented her; that on the day of incident, i.e. 5.4.1996 at about 7.30 A.M. all the six accused tied her and poured kerosene on her and set her on fire. The victim died in the hospital with 100% burns. During the trial, the brother in law of the deceased and his wife took a plea of alibi. However, the trial court convicted all the six accused u/s 302 IPC and sentenced them to imprisonment for life. The High Court affirmed the conviction and the sentence.

During the pendency of the appeals, the father-in-law and one brother-in-law of the deceased died.

Allowing the appeals, the court

HELD:

Plea of alibi:

1.1 Insofar as the appellants in Crl. A. No. 306 of 2005, who made a plea of alibi, are concerned, both the trial judge and the High Court proceeded on the basis that these two accused persons are required to prove their innocence. In fact it is for the prosecution to prove their guilt and that seems to have been lost in the consideration of the case.It is no doubt true that when an alibi is set up, the burden is on the accused to lend credence to the defence put up by him or her. However the approach of the court should not be such as to pick holes in the case of the accused person. The defence evidence has to be tested like any other testimony, always keeping in mind that a person is presumed innocent until he or she is found guilty. [para 24-25] [684-A-D]

Dudh Nath Pandey v. State of U.P. **1981 (2) SCR 771 = (1981) 2 SCC 166;** *Binay Kumar Singh v. State of Bihar* **1996 (8) Suppl. SCR 225 = (1997) 1 SCC 283;** *Jayantibhai Bhenkarbhai v. State of Gujarat.* **2002 (2) Suppl. SCR 255 = (2002) 8 SCC 165;** *Mohinder Singh v. State* **(1950) SCR 821- referred to.**

1.2 The alibi witnesses have made out a strong case of demonstrating the improbability of the two appellants being involved in the incident of beating up the deceased at about 12.00 noon and of stopping her at about 3.00 p.m. from going to the police to lodge a complaint on 4.4.1996, and setting her on fire at about 7.30 a.m. on 5.4.1996.I n view of the material on record, the plea of alibi of these two appellants is accepted. [para 37 and 46] [689-C-D; 692-D]

Severability of dying declaration:

2.1 Although at law there is no difficulty in segregating the role of two sets of accused persons if the dying declaration is severable, the instant case indicates that the role of the accused persons cannot be segregated. This is because dying declaration mentions all the accused persons as being involved in all the events that had taken place on 04-04-1996 and 05-04-1996. There is no distinction made in the role of any of the accused persons and they have all been clubbed together in every incident on 04-04-1996 and 05-04-1996. If somewhat different roles were assigned to at least some of the accused persons, segregation or severance could have been possible. But with everybody being roped in for every event, it is not possible to segregate or sever the actions of one from another. Notwithstanding this, it is not possible to accept the involvement of the appellants in Crl. A. No. 603 of 2005 in the events that took place on the two fateful days. [para 40-41] [690-C-G]

*Godhu v. State of Rajasthan***1975 (1) SCR 906 = (1975) 3 SCC 241 - referred to.**

2.2 Further, neither the trial court nor the High Court adverted to the crucial evidence of DW-8 who stated that he saw smoke coming out of the tenement and children were making a noise. When he reached there, he saw flames and smoke coming out from the ventilator of the tenement and along with another person, he had to break open the door of the tenement which was locked from inside and they found the deceased on fire. The evidence of DW-8 has not been challenged and so it cannot be glossed over. In the face of this, it is not possible to discount the theory that the case might be possibly one of the suicide out of extreme frustration and not of murder. [para 41-42] [691-A-C, F]

2.3 It is true that when a person is on his or her death bed, there is no reason to state a falsehood but it is equally true that it is not possible to delve into the mind of a person who is facing death. In the instant case, it does appear that for some inexplicable reason the deceased put the blame for her death on all her in-laws without exception. Perhaps a more effective investigation or a more effective cross-examination of the witnesses would have brought out the truth but unfortunately on the record as it stands, there is no option but to give the benefit of doubt to the appellants and to hold that they were not proved guilty of the offence of having murdered the deceased. [para 43] [691-G-H; 692-A-B]

2.4 In the result, the appellants in Crl. A. 603 of 2005 are found not guilty of having murdered the deceased and are acquitted. The other two appellants are also acquitted giving them benefit of doubt, as the charge against them of having murdered the deceased has not been proved beyond reasonable doubt. [para 44 and 46] [692-B, D-E]

Case Law Reference:

1981 (2) SCR 771	**relied on**	**para 26**
1996 (8) Suppl. SCR 225	**referred to**	**para 26**
2002 (2) Suppl. SCR 255	**referred to**	**para 26**
(1950) SCR 821	**referred to**	**para 27**
1975 (1) SCR 906	**referred to**	**para 39**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1159 of 2005.

From the Judgment and Order dated 25.10.2004 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 524 DB of 1998.

WITH

Criminal Appeal No. 603 of 2005.

D.P. Singh, Sonam Gupta, Salil Bhattacharya, Rajkiran Vats, Ravi Prakash Vyas, Sanjay Jain for the Appellants.

Manjit Singh, AAG, Vikas Sharma, Kamal Mohan Gupta for the Respondent.

The Judgment of the Court was delivered by

MADAN B. LOKUR, J. 1. The two questions for consideration and discussion relate to the value of the testimony of alibi witnesses and the severability of a dying declaration.

2. In the present appeals, we are of the opinion that the testimony of the alibi witnesses of two of the four appellants deserves acceptance and the dying declaration so closely concerns all four appellants that it is not possible to sever the role of the sets of appellants, resulting in our giving the benefit of doubt to the remaining two appellants.

The facts:

3. Six relatives (by marriage) of deceased Asha Devi were accused of having murdered her and thereby having committed an offence punishable under Section 302 of the Indian Penal Code. The accused persons were Rati Ram (father-in-law, now died), Jumni (mother-in-law and appellant in Criminal Appeal No. 1159 of 2005), Sham Lal (brother-in-law and appellant in Criminal Appeal No. 1159 of 2005), Balbir Prasad (brother-in-law and appellant in Criminal Appeal No.1159 of 2005, who, we were told has since died), Prem Nath (brother-in-law and appellant in Criminal Appeal No. 603 of 2005) and Raj Bala (wife of Prem Nath and appellant in Criminal Appeal No. 603 of 2005).

4. Asha Devi was married at the age of 16 to Jagdish who was employed in the army. According t vi

lived with Jagdish for about one year and thereafter she lived in village Bhojpur in district Jagadhari, Haryana, in a one room tenement along with her two children aged 5 years and 1½ years. Her in- laws were staying in an adjacent tenement. There is no allegation or evidence of any matrimonial disharmony between Jagdish and Asha Devi who had been married for about nine years nor is there any allegation of any demand or harassment for dowry from Asha Devi.

5. The case of the prosecution is entirely dependent on the dying declaration of Asha Devi. In her statement, Asha Devi stated that at about 12.00 noon on 4th April 1996 she was given a severe beating by all her in-laws. Thereafter, at about 3.00 p.m. she wanted to lodge a complaint with the police but all her in- laws prevented her from doing so. Rather, they suggested that she should be set ablaze.

6. On the morning of 5th April 1996, Asha Devi seems to have had a quarrel and in a fit of anger she broke her bangles. Upon this, Jumni said that she should be finished. Consequently, all her in-laws tied her up and poured kerosene on her and set her on fire. This was at about 7.30 a.m.

7. At about 10.30 a.m. Asha Devi was taken to the Civil Hospital at Jagadhari. Seeing her condition with 100% burns, the doctor on duty, Dr. M.R. Passi (PW-1) immediately informed the police who took urgent steps for having her statement recorded. Ms. Sarita Gupta, Judicial Magistrate, 1st Class (PW-9) was deputed for this purpose. According to Ms. Sarita Gupta, she recorded the statement of Asha Devi in the Civil Hospital between 11.22 a.m. and 12.05 p.m. on 5th April 1996. The statement/dying declaration reads as follows:-

> "Stated that I was married at the age of 16 years. I am 25 years old. I have two sons, one is 5 years old while the second is 1½ old. My husband is serving in military. Sometimes he visits us after a week and sometimes after 15 days. In my house, my father-in-law Rati Ram, mother-in-law Jumni, Jeth Prem Chand, Jethani Bala Rani, two Devars Sham Lal and Balbir Parshad are staying. My father-in-law, mother-in-law, Jeth Jethani and both the Devers had been harassing me from the very beginning. My mother-in-law, father-in-law, Jeth Jethani and both the Devers had been making plans to eliminate me. Last week my mother-in-law, father-in-law, Jeth, Jethani and Devers said, "let us get her bitten from a dog and in this way she would be eliminated". Yesterday, during noon time, my mother-in-law, father-in-law, Devers, Jeth and Jethani had given me severe beatings. Thereafter yesterday at about 3.00 PM when I was about to go to police station to lodge a report, all of them prevented me and said, "if she is bent upon to do so, she should be eliminated by setting her ablaze". After getting up today morning, I went to my mother-in-law and in a fit of anger, I broke my bangles (a sign of indignation against the married status). My mother-in-law, said that fault lies with her (Asha) and she should be finished. Mother-in-law, father-in-law, Jeth, Jethani and both the devers after conniving with one another tied me with my Chuni (head gear) and poured kerosene oil upon me. The kerosene oil also entered in my eyes. Mother-in-law, father-in-law, Jeth Jethani and both the devers set me on fire together. I made a lot of noise. The incident occurred at 7.30 AM. My mother-in-law Jumni, father-in-law Rati Ram, Jeth Prem Chand, Jethani Bala Rani and both the Devars Sham Lal and Balbir Parshad are responsible for setting me on fire. After my death, both of my children be handed over to my parents. Otherwise my in-laws would kill them also."

8. Soon after the statement was recorded Asha Devi's father Devi Dayal (PW-6) arrived in the Civil Hospital (although he says that he reached the hospital at about 11.45 a.m. but after the Magistrate left) and he made arrangements to take her to Chandigarh but she died on the way.

9. On these broad facts, investigations were carried out and a charge sheet was filed against the six accused persons for having murdered Asha Devi.

Proceedings in the Trial Court:

10. Before the Additional Sessions Judge, in Case No. 35 of 1996, the principal argument of the prosecution was that in view of the dying declaration there was no doubt at all that the accused persons were guilty of having murdered Asha Devi.

11.Prem Nath and Raj Bala produced alibi witnesses before the Trial Judge to show that Prem Nath was an employee in the HMT factory in Pinjore and that on 4th April 1996 as well as on 5th April 1996 he was in Pinjore and there was no question of his or his wife's involvement in the incident. The accused also produced Chandan Singh, Sub-Inspector, Food Supply, Yamunanagar as DW-7 to prove, on the basis of the ration card issued to Jagdish and Rati Ram, that they lived in the same neighbourhood but not together as stated by Asha Devi. Similarly, Puran Chand a neighbour of Jagdish was produced as DW-8 and his testimony was to the effect that he saw smoke coming out of Jagdish's house and he heard some children making a noise. Thereupon he went to Jagdish's house and found that the door of the tenement was bolted from inside. He, along with one Gurbachan broke open the door and found Asha Devi lying burnt in the tenement. They put out the fire and called Rati Ram who was working in the nearby fields. Thereafter, Rati Ram took Asha Devi to the Civil Hospital. Puran Chand also stated that Prem Nath and Raj Bala were not present at the spot.

12. One of the questions considered by the Trial Judge was whether Asha Devi was in a fit condition to make a statement, particularly since, according to Dr. M.R. Passi, she had 100% superficial as well as deep burns. The Trial Judge noted that Dr. Passi testified that Asha Devi was fit to make a dying declaration and that he was present when Ms. Sarita Gupta

was recording her dying declaration. He stated that Asha Devi was responding to the questions put to her by the Magistrate.

13. The Trial Judge also considered the statement of Ms. Sarita Gupta who had confirmed from Dr. Passi regarding the fitness of Asha Devi to make a statement. Ms. Sarita Gupta stated that only after Asha Devi was declared fit to make a statement that her statement was recorded and read over to her. According to Ms. Sarita Gupta, during the recording of her statement, Asha Devi was conscious and responding to verbal commands. She also stated that Dr. Passi was present throughout when Asha Devi's dying declaration was being recorded.

14. On these facts, the Trial Judge concluded that Asha Devi was fit to make a dying declaration.

15. The next question addressed by the Trial Judge was whether the dying declaration contained any falsehood. In this regard, the Trial Judge came to the conclusion that there was nothing to suggest that the dying declaration was incorrect in any manner or that Asha Devi made allegations out of some vengeance.

16. Finally, the Trial Judge examined the plea of alibi raised by Prem Nath and Raj Bala and in this regard he concluded that there was every possibility of both of them being present in village Bhojpur both on 4th April 1996 when Asha Devi was given a beating as well as in the early morning of 5th April 1996 when Asha Devi was set on fire.

17. On the above conclusions, the Trial Judge held, in his judgment and order dated 28th October 1998, that all the accused were guilty of having murdered Asha Devi.

18. Feeling aggrieved, the accused persons filed Criminal Appeal No. 524-DB of 1998 in the High Court of Punjab & Haryana. By its judgment and order dated 25th October 2004,

the High Court dismissed their appeal.

Proceedings in the High Court:

19. The High Court considered the evidence of Dr. Passi as well as the evidence of Ms. Sarita Gupta and upheld the conclusion of the Trial Judge that Asha Devi was in a fit state of mind to make a statement before the Magistrate.

20. The High Court also upheld the conclusion that Asha Devi was in a condition to speak coherently and was capable of making a statement. Consequently, the High Court accepted the validity of the dying declaration.

21. The High Court then considered the question whether it could be held, despite the dying declaration, that Prem Nath and Raj Bala were not involved in the incident concerning Asha Devi. Relying upon a few decisions of this Court, the High Court was of the view that there was no error in law in accepting a part of the dying declaration and rejecting another part of the dying declaration. The High Court then examined the evidence of the alibi witnesses in an attempt to 'bifurcate' the dying declaration. However, the High Court rejected their testimony and concluded that there was every possibility of Prem Nath and Raj Bala being present both on 4th April 1996 when Asha Devi was subjected to a beating as well as on 5th April 1996 when she was allegedly set on fire.

22. The High Court affirmed the conviction of the accused as well as the sentence imposed upon them.

23. Unfortunately, the High Court overlooked the evidence of Puran Chand (DW-8) who stated that Asha Devi's tenement was locked from inside and that the door had to be broken open by him and Gurbachan who found her burning.

Plea of alibi

24. On a consideration of the material before us, what

strikes us as a little odd is that insofar as Prem Chand and Raj Bala are concerned, both the Trial Judge and the High Court have given us the impression that they proceeded on the basis that these two accused persons are required to prove their innocence. In fact it is for the prosecution to prove their guilt and that seems to have been lost in the consideration of the case.

25. It is no doubt true that when an alibi is set up, the burden is on the accused to lend credence to the defence put up by him or her. However the approach of the court should not be such as to pick holes in the case of the accused person. The defence evidence has to be tested like any other testimony, always keeping in mind that a person is presumed innocent until he or she is found guilty.

26. Explaining the essence of a plea of alibi, it was observed in *Dudh Nath Pandey v. State of U.P.*[1] that:

> "The plea of alibi postulates the physical impossibility of the presence of the accused at the scene of offence by reason of his presence at another place. The plea can therefore succeed only if it is shown that the accused was so far away at the relevant time that he could not be present at the place where the crime was committed."

This was more elaborately explained in *Binay Kumar Singh v. State of Bihar*[2] in the following words:

> "We must bear in mind that an alibi is not an exception (special or general) envisaged in the Indian Penal Code or any other law. It is only a rule of evidence recognised in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant."

Illustration (*a*) given under Section 11 of the Evidence Act

1. (1981) 2 SCC 166.
2. (1997) 1 SCC 283.

is then partially reproduced in the decision, but it is fully reproduced below:

> "The question is whether *A* committed a crime at Calcutta on a certain date; the fact that on that date, *A* was at Lahore is relevant.
>
> The fact that, near the time when the crime was committed, *A* was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant."

This Court then went on to say,

> "The Latin word alibi means "elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi."

This view was reiterated in *Jayantibhai Bhenkarbhai v. State of Gujarat*.[3]

27. On the standard of proof, it was held in *Mohinder Singh v. State*[4] that the standard of proof required in regard to a plea of alibi must be the same as the standard applied to the prosecution evidence and in both cases it should be a reasonable standard. *Dudh Nath Pandey* goes a step further and seeks to bury the ghost of disbelief that shadows alibi witnesses, in the following words:

> "Defence witnesses are entitled to equal treatment with those of the prosecution. And, courts ought to overcome their traditional, instinctive disbelief in defence witnesses. Quite often, they tell lies but so do the prosecution witnesses."

28. The defence put up by Prem Nath and Raj Bala needs to be examined in the light of the law laid down by this Court. What is the defence put up by them? Subhash Saini, Office Assistant with HMT in Pinjore appeared as DW-1 and stated that Prem Nath was on duty on 4th April, 1996 from 2.00 p.m. to 10.00 p.m. On the next day that is on 5th April, 1996 he was on half day leave and was on duty from 6.00 p.m. to 10.00 p.m.

29. This witness also stated that the entry and exit of an employee to and from the factory premises is recorded in a

3. (2002) 8 SCC 165.
4. 1950 SCR 821.

punching machine and two employees of the factory supervise the machine to avoid proxy punching. If there is any suspicion about any employee, the identity card is demanded from him or her. The Trial Court and the High Court had observed that it is possible to 'manipulate' the punching machine. While this may be so, there is nothing to suggest that despite the presence of employees and other safeguards having been set up by HMT, Prem Nath had manipulated the punching machine. The view of both the courts was speculative in nature and cannot form the basis for rejecting the alibi.

30. Jagan Nath Mishra (DW-2) is the tenant of Prem Nath and he stated that he met Prem Nath at about 10.30 p.m. on the night of 4th April 1996.

31. This witness further stated that he left his residence to attend duty the next morning at about 7.45 a.m. (This has wrongly been mentioned as 5.45 a.m. in the impugned judgment and we have verified from the original record that it is actually 7.45 a.m.) At that time he met Prem Nath and Raj Bala. He also stated that when he returned at about 5.45 p.m. he was given sweets by Raj Bala because they had purchased a new scooter.

32. On 5th April 1996 Prem Nath had taken half day leave for the purpose of purchasing a scooter. This was testified by Bhim Sen Verma (DW-3). It was stated by K.N. Sharma (DW-5) that Prem Nath was on duty on 4th April 1996 up to 10.00 p.m. and on half day duty on 5th April 1996.

33. K.K. Kanwal from Hind Motors Ltd. in Chandigarh entered the witness box as DW-6 and affirmed that at about 11.00 a.m. on 5th April 1996 Prem Nath had purchased and taken delivery of a scooter from his company. He further stated that prior to taking delivery of a vehicle, it takes about an hour to complete all procedural formalities in this regard.

34. The evidence of the alibi witnesses clearly brings out

that on 4th April 1996 Prem Nath was in his factory from 2.00 p.m. onwards till 10.00 p.m. and later in the night he was seen by his tenant at about 10.30 p.m. On the next day that is 5th April 1996 Prem Nath and Raj Bala were seen by their tenant at 7.45 a.m. and about 11.00 a.m. Prem Nath purchased and took delivery of a scooter from Hind Motors Ltd., Chandigarh before going to the factory at about 6.00 p.m. On 5th April 1996 his wife Raj Bala distributed sweets on the purchase of a new scooter.

35. The Trial Court and the High Court have disbelieved the entire case put up by Prem Nath and Raj Bala by holding that they could very well have been in village Bhojpur at 12.00 noon on 4th April 1996 when Asha Devi was given a beating and they could have travelled back to Pinjore to enable Prem Nath to be in the factory at 2.00 p.m. Nothing is said about how they could have stopped Asha Devi at 3.00 p.m. from going to the police to lodge a complaint. The same night, they could have left Pinjore to be in village Bhojpur early morning on 5th April 1996 at about 7.30 a.m. when Asha Devi was set on fire. Thereafter, they could have come back to Pinjore to enable Prem Nath to be in Hind Motors at about 10.00 a.m. to purchase a scooter at 11.00 a.m. There is nothing on record to indicate the distance between Pinjore and village Bhojpur but we were orally told that it takes more than a couple of hours to cover that distance. Prem Nath did not have any means of personal conveyance which could have enabled him to undertake these journeys.

36. Apart from the conclusions of the Trial Court and the High Court appearing far-fetched, the testimony of Jagan Nath Mishra (DW-2) the tenant of Prem Nath has not been correctly appreciated because of a typing error in transcribing it from the original record. As mentioned above, Jagan Nath Mishra had seen Prem Nath and Raj Bala at 7.45 a.m. on 5th April 1996 (and not at 5.45 a.m. as wrongly transcribed in the impugned judgment). Consequently, Prem Nath a[illegible]ot

have been in village Bhojpur at 7.30 a.m. on 5th April 1996. This evidence has gone unchallenged.

37. It seems to us that although the High Court has given due weightage to the dying declaration of Asha Devi but having accepted it, it has tried to pick holes in the defence evidence to justify the contents of the dying declaration. Given the law laid down by this Court, this was not the correct manner of approaching the evidence brought forth by Prem Nath and Raj Bala. In our opinion, the alibi witnesses have made out a strong case of demonstrating the improbability of Prem Nath and Raj Bala being involved in the incident of beating up Asha Devi at about 12.00 noon on 4th April 1996, of stopping her at about 3.00 p.m. from going to the police to lodge a complaint and setting her on fire at about 7.30 a.m. on 5th April 1996.

Severability of a dying declaration:

38. The next question is whether Asha Devi's dying declaration can be split up to segregate the case of Prem Nath and Raj Bala from the case of the other accused persons.

39. In *Godhu v. State of Rajasthan*[5] this Court found itself unable to subscribe to the view that if a part of the dying declaration is found not to be correct, it must result in its rejection in entirety. It was held,

> "The rejection of a part of the dying declaration would put the court on the guard and induce it to apply a rule of caution. There may be cases wherein the part of the dying declaration which is not found to be correct is so indissolubly linked with the other part of the dying declaration that it is not possible to sever the two parts. In such an event the court would well be justified in rejecting the whole of the dying declaration. There may, however, be other cases wherein the two parts of a dying declaration may be severable and the correctness of one part does not depend upon the correctness of the other part. In the last mentioned cases the court would not normally act upon a part of the dying declaration, the other part of which has not been found to be true, unless the part relied upon is corroborated in material particulars by the other evidence on record. If such other evidence shows that part of the dying declaration relied upon is correct and trustworthy the court can act upon that part of the dying declaration despite the fact that another part of the dying declaration has not been proved to be correct."

5. (1975) 3 SCC 241.

40. Although at law there is no difficulty in segregating the role of two sets of accused persons if the dying declaration is severable, the present case indicates that the role of the accused persons cannot be segregated. This is because Asha Devi's dying declaration mentions all the accused persons as being involved in all the events that had taken place on 4th April 1996 and 5th April 1996. There is no distinction made in the role of any of the accused persons and they have all been clubbed together with regard to the harassment of Asha Devi; making plans to eliminate her; Asha Devi being beaten up on 4th April 1996; all the accused persons preventing her from lodging a complaint with the police; all the accused persons tying up Asha Devi with her chunni and pouring kerosene oil on her and then setting her on fire. Asha Devi has referred to each one of them as being involved in every incident on 4th April 1996 and 5th April 1996. If somewhat different roles were assigned to at least some of the accused persons, segregation or severance could have been possible. But with everybody being roped in for every event, it is not possible in this case to segregate or sever the actions of one from another.

41. Notwithstanding this, as we have seen, it is not possible to accept the involvement of Prem Nath and Raj Bala in the events that took place on the two fateful days. Nevertheless, it is quite possible that the other four accused were involved in beating up Asha Devi on 4th April 1996

on 5th April 1996. But, what is of equal importance is that neither the Trial Court nor the High Court adverted to the crucial evidence of Puran Chand (DW-8) who stated that he saw smoke coming out of Jagdish's tenement and children were making a noise. When he reached there, he saw flames and smoke coming out from the ventilator of Jagdish's tenement and along with Gurbachan, he had to break down the door of the tenement which was locked from inside and they found Asha Devi on fire. If this statement of Puran Chand is correct, and there does not seem any reason to doubt it since nothing was put to him in this regard in cross examination, a case of suicide by Asha Devi is a possibility. At this stage, it may be noted that the investigating officer Gurdial Singh (PW-10) could not say if the bolt of the tenement was broken or not.

42. On a reading of the dying declaration it is quite clear that Asha Devi was very disturbed on the morning of 5th April 1996 and that is why she broke her bangles in the presence of Jumni. This may be because of the events of the previous day or her being a victim of continuous harassment. This, coupled with a lack of response from Jumni on the morning of 5th April 1996 may have completely frustrated Asha Devi leading her to commit suicide. Whatever be the cause of Asha Devi being upset, the evidence of Puran Chand has not been challenged and so it cannot be glossed over. In the face of this, it is not possible to discount the theory suggested by learned counsel that the case was possibly one of the suicide out of extreme frustration and not of murder.

43. It is true that when a person is on his or her death bed, there is no reason to state a falsehood but it is equally true that it is not possible to delve into the mind of a person who is facing death. In the present case the death of Asha Devi and the circumstances in which she died are extremely unfortunate but at the same time it does appear that for some inexplicable reason she put the blame for her death on all her in-laws without exception. Perhaps a more effective investigation or a more

effective cross-examination of the witnesses would have brought out the truth but unfortunately on the record as it stands, there is no option but to give the benefit of doubt to Jumni (and Sham Lal) and to hold that they were not proved guilty of the offence of having murdered Asha Devi.

44. Insofar as Prem Nath and Raj Bala are concerned there is sufficient material to accept their alibi and they must be acquitted of the charges made against them.

45. As mentioned above Rati Ram and Balbir Prasad are already dead and nothing need be said about their involvement in the incident. Were they alive, they too would have been entitled to the benefit of doubt since the facts pertaining to them were similar to those of Jumni and Sham Lal.

Conclusion:

46. The plea of alibi set up by Prem Nath and Raj Bala deserve acceptance and are accepted. They are found not guilty of having murdered Asha Devi. Jumni and Sham Lal are given the benefit of doubt and the charge against them of having murdered Asha Devi is not proved beyond a reasonable doubt. Both the appeals are accordingly allowed.

R.P. Appeals allowed.

SUDIPTA LENKA

v.

STATE OF ODISHA AND ORS.

(Writ petition (Civil) No. 957 of 2013)

MARCH 12, 2014

[P. SATHASIVAM, CJI., RANJAN GOGOI AND N.V. RAMANA, JJ]

CONSTITUTION OF INDIA, 1950:

Art. 32 - Writ petition seeking transfer of investigation of case to CBI - Sexual harassment of a contractual Government teacher - Victim stated to have been set ablaze resulting into her death - Held: Power of constitutional court to transfer investigation to CBI should be exercised only in situations befitting, judged on the touchstone of high public interest and the need to maintain the Rule of Law -Insofar as the facts and circumstances following the death of the deceased is concerned, in view of the charge-sheet filed and the departmental action taken against the erring officials, there is no necessity of any further direction in the matter, at this stage - As regards the events preceding the death of victim, the same, prima facie, disclose some amount of laxity and indifference - Therefore, even while noticing that disciplinary action has been taken against certain officials, State Government should hold a detailed administrative inquiry to ascertain whether any other official or authority, at any level, is responsible for not attending to the grievances raised by the deceased and to take necessary action in the matter accordingly - Public interest litigation.

A Siksha Sahayika (contractual government teacher) in Odisha was set ablaze on 27.10.2013. She was removed to the hospital where she succumbed to the burn injuries. Referring to the several newspaper reports

published with regard to the incident, the petitioner, a young law student filed the instant petition under Art. 32 of the Constitution of India stating the details that led to the incident, i.e., the deceased was sexually harassed by a Sub Inspector of Schools; she lodged a complaint before the local police on 18.07.2013, and forwarded petitions to various authorities and institutions of the State; some family members of the accused threatened the deceased to withdraw her complaint; the deceased lodged yet another complaint with the police on 19.09.2013. The petitioner further claimed that no steps were taken by the authorities concerned to provide the deceased with any security; no action was taken against the accused and no steps were taken to transfer the deceased from her place of posting. The petitioner alleged that perpetrators of the crime enjoyed political patronage and the accused had close proximity to a Member of Parliament and also a Minister. The petitioner sought a direction for the transfer of the investigation of the case involving the death of the said Siksha Sahayika from the State agency to the Central Bureau of Investigation and the monitoring of such investigation by the Supreme Court.

The State Government filed a counter affidavit stating that on the basis of the complaint dated 18.7.2013 filed by the deceased against the said Sub Inspector of Schools, Case No. 60 dated 18.07.2013 u/s 354/409 IPC was registered; that the complaints lodged by the deceased against the family members of the accused were acted upon and Case No. 62 dated 19.07.2013 and No. 70 dated 16.08.2013 were registered against them; that in respect of the incident involving the death of the deceased, Case No. 92 dated 28.10.2013 was registered and the said Sub Inspector of Schools was arrested. Further, the dismissal from service of the Inspector-in-Charge and an Assistant Sub Insp e

Station concerned, two officials of the Education Department and also the accused were highlighted as incidents of consequential action taken by the State, besides the ex gratia payment of Rs. 10 lakhs to the parents of the deceased. It was also evident that no material could be unearthed in the investigation of the case to show the involvement of any person, wielding political or bureaucratic power and influence, in connection with the incident that had occurred.

The questions for consideration before the Court were: (i) whether after filing of charge-sheet u/s 302/120B IPC against the accused and keeping open the investigation u/s 173 (8) Cr.P.C. there would be any justification to entrust further investigation of the case to the Central Bureau of Investigation; and (ii) whether any direction for determination of the liability of any officer or authority of the State who had the occasion to deal with the matter would be called for?

Disposing of the petition, the Court

HELD: 1.1 Transfer of the investigation to the Central Bureau of Investigation or any other specialised agency, notwithstanding the filing of the charge-sheet, would be justified only when the court is satisfied that on account of the accused being powerful and influential the investigation has not proceeded in a proper direction or it has been biased. Further investigation of a criminal case after the charge-sheet has been filed in a competent court may affect the jurisdiction of the said court u/s 173 (8) of the Code of Criminal Procedure, 1973. Therefore, it is imperative that the said power, which, though, will always vest in a Constitutional Court, should be exercised only in situations befitting, judged on the touchstone of high public interest and the need to maintain the Rule of Law. [para 9] [707-C-F]

Gudalure M.J. Cherian vs. Union of India **1991 (3) Suppl. SCR 251 = (1992) 1 SCC 397;** *Punjab & Haryana High Court Bar Association vs. State of Punjab* **1994 AIR 1023 = 1993 (3) Suppl. SCR 915 = (1994) 1 SCC 616;** *Rubabbuddin Sheikh vs. State of Gujarat* **2010 AIR 3175 = 2010 (1) SCR 991 = (2010) 2 SCC 200; and** *Disha vs. State of Gujarat and Others,* **2011 AIR 3168 = 2011 (9) SCR 359 = (2011) 13 SCC 337 - relied on.**

Vineet Narain vs. Union of India **1996 AIR 3386 = 1996 (1) SCR 1053 = (1996) 2 SCC 199;** *Union of India vs. Sushil Kumar Modi* **(1998) 8 SCC 661;** *Rajiv Ranjan Singh 'Lalan' (8) vs. Union of India* **2006 (4) Suppl. SCR 742 = (2006) 6 SCC 613 - held inapplicable.**

1.2 The events relevant to the instant adjudication may be divided into two compartments - one before the death of the deceased and the second subsequent thereto. Insofar as the facts and circumstances following the death of the deceased is concerned, in view of the chargesheet filed and the departmental action taken against the erring officials, there is no necessity of any further direction in the matter, at this stage. The power of this Court to refer a matter to Central Bureau of Investigation for further investigation, after filing of the chargesheet by the State investigating agency, ought not to be invoked in the instant case. Instead, the course of action that would be mandated by law against the accused should be allowed to reach its logical conclusion at the earliest. At the same time the investigation that has been kept open against the unidentified accused should be completed without delay. This Court directs accordingly and casts the responsibility in this regard on the Superintendent of Police concerned. However, it is made clear that the trial of the accused shall not be held up on that count or on any other count and the same shall p[illegible]d

be concluded within the earliest possible time. [para 10 & 11] [707-F-G; 708-B-E]

1.3 The events preceding the incident of death, however, stand on a slightly different footing. The same, prima facie, disclose some amount of laxity and indifference. Therefore, even while noticing that disciplinary action has been taken against certain officials, this Court is of the view that the State Government should hold a detailed administrative inquiry into the matter to ascertain whether any other official or authority, at any level, is responsible for not attending to the complaints, grievances and demands raised by the deceased either in the matter of action against the accused or in providing security to the deceased or in transferring her from her place of posting. On the basis of the findings and conclusions as may be reached in such inquiry, the State is directed to take necessary action in the matter. [para 12] [708-F-H; 709-A]

Case Law Reference:

2011 (9) SCR 359	**relied on**	**para 5**
1991 (3) Suppl. SCR 251	**relied on**	**para 8**
1993 (3) Suppl. SCR 915	**relied on**	**para 8**
1996 (1) SCR 1053	**held inapplicable**	**para 8**
1998 (8) SCC 661	**relied on**	**para 8**
1996 (1) SCR 1053	**held inapplicable**	**para 8**
2010 (1) SCR 991	**held inapplicable**	**para 8**

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

Writ Petition (Civil) No. 957 of 2013.

L. Nageswara Rao, ASG, Mukul Gupta, Suresh Chandra Tripathy, Sanjeeb Panigrahi, Siddhartha Chowdhury, Shibashish Misra, Vansdeep Dalmia, B.V. Balaram Das, Suvarna Kashyap, Aseem Swarup for the appearing parties.

The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. A young law student of Bangalore, who belongs to the State of Odisha, has filed the present application under Article 32 of the Constitution highlighting what she has perceived to be a serious infringement of the fundamental rights guaranteed by Article 21 consequent to a tragic incident wherein one Itishree Pradhan was set ablaze on 27.10.2013 at a place called Tikiri located in Rayagada District in the State of Odisha. The unfortunate victim of the incident died on 01.11.2013.

2. According to the petitioner, the aforesaid Itishree Pradhan (hereinafter referred to as "the deceased") joined as a Siksha Sahayika (contractual government teacher) in the Tikiri Upper Primary School on 18.06.2011. As she was facing difficulty in finding accommodation, one Netrananda Dandasena, (now an accused and hereinafter referred to as "the accused"), who was then serving as Sub Inspector of Schools at Tikiri, offered her accommodation in his own house. It appears that the deceased was sexually harassed by the aforesaid accused which led to a complaint by the deceased before the local police on 18.07.2013. The petitioner alleges that no action on the said complaint was taken by the local police. On 30.07.2013 the deceased had approached the State Women Commission and Odisha Human Rights Commission for intervention but the said bodies did nothing more than to forward her petition to the Superintendent of Police, Rayagada for necessary action. According to the petitioner, on 31.07.2013, the deceased had approached the Director General of Police and on 05.08.2013 she had approached the Superintendent of Police, Rayagada; on the same day she had sent a representation to the Chief Minister of the State. It is also alleged that on the same date i.e. 05.[illegible]d

had filed a complaint before the Collector, Rayagada District. According to the petitioner all the aforesaid approaches made by the deceased to different authorities did not yield any result. In the meantime, emboldened by the lack of any action by any authority, some family members of the accused threatened the deceased to withdraw her complaint to the police. The deceased retaliated by lodging another complaint with the police on 19.09.2013. (date is disputed by the State) The petitioner has further claimed that from 05.08.2013 till 22.10.2013 no steps were taken by the concerned authorities to provide the deceased with any security; no action was taken against the accused and no steps were taken to transfer the deceased from her place of posting i.e. Tikiri to another location. The petitioner has further alleged that on 27.10.2013 the deceased was set ablaze and she was removed to the hospital with 90% burn injuries; eventually, the deceased succumbed to the burn injuries sustained by her in a hospital at Vishakhapatnam on 01.11.2013. Referring to the several newspaper reports published with regard to the incident in question the petitioner has alleged that perpetrators of the crime enjoyed political patronage and the accused had close proximity to a Member of Parliament and also a minister. The petitioner has stated that notwithstanding the several criminal acts committed, the accused was moving around freely; receiving his salary and had even been granted a promotion in service. Consequently, the petitioner has sought a direction for the transfer of the investigation of the case involving the death of Itishree Pradhan from the State agency to the Central Bureau of Investigation and the monitoring of such investigation by this Court.

3. The writ petition filed on 12.11.2013 has been responded to by the State of Odisha by means of a counter affidavit dated 02.01.2014. According to the State, on the basis of the complaint dated 18.7.2013 filed by the deceased against Netrananda Dandasena, Tikiri P.S. Case No. 60 dated 18.07.2013 under Sections 354/409 of the Indian Penal Code

was registered. The State, in its counter affidavit, has set out in seriatim the action taken on the basis of the complaints/ representations submitted by the deceased to different bodies and authorities of the State. It is also submitted that the complaints lodged by the deceased against the family members of the accused have been acted upon and Tikiri P.S. Case No. 62 dated 19.07.2013 and No. 70 dated 16.08.2013 have been registered against the family members of the accused. In the counter filed, it has been further stated that in respect of the incident involving the death of Itishree Pradhan, Tikiri P.S. Case No. 92 dated 28.10.2013 has been registered and Netrananda Dandasena was arrested in connection with the said case on 30.10.2013. According to the State, the promotion of Netrananda Dandasena was pursuant to the recommendations of the Departmental Promotion Committee made some time in December, 2012. The dismissal of the Inspector-in-Charge of Tikiri Police Station and an Assistant Sub Inspector attached to the said police station from service; the dismissal of two officials of the Education Department posted at Rayagada and also the dismissal of accused Netrananda Dandasena from service by invoking proviso (b) to Article 311 (2) of the Constitution has also been highlighted as incidents of consequential action taken by the State besides the payment of extra gratia of Rs. 10 lakhs to the parents of the deceased.

4. Shri Suresh Chandra Tripathy, learned counsel for the petitioner has vehemently urged that the present case demonstrates the lack of concern for the rights of a young woman who was compelled by circumstances to accept employment at a place far away from her home. She had bravely resisted the attempts of the accused, Netrananda Dandasena, to sexually exploit her and mustered up courage to formally complain against the accused. Such complaints were lodged before the local police station and also made to the district police officials i.e. Superintendent of Police, District Collector as well as statutory bodies

human rights and her individual rights (State Human Rights Commission and State Women Commission). The deceased had even approached the Director General of Police and finally she had approached the Chief Minister of the State. Her repeated and frantic pleas failed to evoke requisite response from any of the aforesaid authorities. Despite the several complaints lodged by her the accused was roaming free. It is the inaction on the part of the authorities that had emboldened the accused to commit the acts resulting in her death. The sequence of events following the death of Itishree Pradhan have been, according to the learned counsel, equally appalling. Apart from some superficial and knee jerk actions like dismissing some lowly placed employees from service the investigation of the criminal case has not proceeded meaningfully. Though the accused, Netrananda Dandasena, had been arrested on 30.10.2013 no explanation has been forthcoming as to why he could not be apprehended earlier. The second person involved in the incident leading to the death of Itishree Pradhan i.e. the person who had poured kerosene on her is still at large and his identity is yet to be ascertained. According to the learned counsel, all this is on account of the fact that the accused enjoys political patronage; he is close to an elected Member of Parliament. It is also submitted that in her final dying declaration made in the hospital at Vishakhapatnam, which was recorded by a local TV channel, and thereafter telecast, the deceased had named the Chief Minister of the State as being involved/responsible for the incident leading to her death. All such facts are stated in the report of the Enquiry Committee of the National Commission of Women which is a part of the record of the case. According to learned counsel, the present, therefore, is a fit case where the investigation should be transferred to the Central Bureau of Investigation and proceeded with under the close supervision of this Court.

5. In reply, Shri L. Nageswara Rao, learned Additional Solicitor General who has appeared for the State of Odisha, has, at the outset, submitted that the deceased had made three dying declarations. The first dying declaration was recorded at

10.45 p.m. on 27.10.2013 by the Medical Officer of the Public Health Centre at Tikiri, the second was recorded at 1.05 a.m. on 28.10.2013 in the District Headquarter Hospital at Rayagada and the third on the same day before the Tehsildar, Rayagada. The aforesaid three dying declarations are to the same effect, namely, that the deceased was set ablaze by a person whom she did not recognize and before doing so the person had asked her to withdraw the case against accused Netrananda Dandasena, which she refused. It is submitted that the above dying declarations make it clear that two persons are involved in the crime i.e. Netrananda Dandasena and another unknown person who had actually set the deceased ablaze. The learned counsel has submitted that on 22.02.2014 chargesheet had been submitted in Tikiri P.S. Case No. 92/2013 against Netrananda Dandasena under Sections 449/450/302/120-B of the Indian Penal Code and the investigation is being kept open to bring to book the other person who is alleged to have set the deceased ablaze. Learned counsel has further submitted that on a conspectus of the facts of the case, the persons associated with the incident can be categorized in three groups – the first being persons who are actually involved in the crime; the second are the officials and bodies before whom complaints were filed by the deceased and the third is the person(s) who had allegedly tried to protect the accused. Insofar as the persons involved in the crime are concerned, according to the learned counsel, Netrananda Dandasena has already been chargesheeted and presently he is in custody. The investigation is being kept open to bring to book the unidentified person who is stated to have set the deceased ablaze. So far as the officials and functionaries of the State, at different levels, who were approached by the deceased from time to time and who had allegedly not taken proper and prompt action, it is submitted by the learned counsel that the said aspect of the case not being relatable to the actual commission of the crime, cannot, in any case, be a subject matter of a reference to the Central Bureau of Investigation. At best, the aforesaid issue could be a matter of administrative inq[illegible]al

action on that basis. Insofar as the issue of political or other influential persons shielding and protecting the offender(s) is concerned, Shri Rao has drawn the attention of the Court to the details of the investigation with regard to the allegations of phone calls made by one Shri Jayaram Pangi, M.P., Karaput Constituency to the deceased to withdraw her case against the accused. The attention of the Court has been drawn to the report of the CFSL, Hyderabad to which place the seized mobile of the deceased alongwith the Sim card(s) were sent. The report, it is mentioned in the chargesheet, is in the negative. Insofar as the alleged involvement of the Chief Minister is concerned, Shri Rao has drawn the attention of the Court to the facts found on investigation as recorded in the chargesheet which show that the video recording of the statement of the deceased made in the hospital and telecast on 05.11.2013 being in Odiya was been sent to an Odiya Professor of Ravenshaw University, Cuttack and also to the State Forensic Science Laboratory, Bhubaneswar for transcription of the exact version of the said statement. On due examination and analysis, it was found that the deceased in her statement had stated that "SI YE" (meaning 'he' in Odiya), amongst others, was responsible for the incident. It is stated that the said expression has been understood to be a reference to C.M. i.e. the Chief Minister. It is further submitted by Shri Rao that there is no material, whatsoever, to even remotely connect the Chief Minister to the incident except the fact that the deceased had submitted a written representation dated 05.08.2013 to the Chief Minister also. Shri Rao has contended that the chargesheet in the case having been filed and the matter being before the Court and furthermore the investigation being kept open under Section 173 (8) Cr.P.C. to bring to book the other culprit there is no reason why the matter should be entrusted to the Central Bureau of Investigation which would virtually amount to reopening of the investigation. In this regard Shri Rao has relied on the judgment of this Court in *Disha vs. State of Gujarat and Others*[1] (para 21).

1. (2011) 13 SCC 337.

6. From the resume of facts stated above the following events leading to and surrounding the death of Itishree Pradhan would be significant to be taken note of.

(i) Prior to her death the deceased had submitted numerous complaints to different authorities complaining of different instances of unlawful conduct of the accused and expressing apprehensions of harm at the hands of the accused.

(ii) Tikiri P.S. Case Nos. 60, 62 and 70 had been registered on the basis of such complaints against the accused Netrananda Dandasena and his family members and chargesheets have been submitted in the said cases.

(iii) The accused however remained at large; no protection was offered to the deceased; neither was she posted out of Tikiri.

(iv) The deceased was set ablaze on 27.10.2013. Her dying declarations, three in number, implicates accused, Netrananda Dandasena and one unknown person as being the perpetrators of the crime leading to her death.

(v) Tikiri P.S. Case No. 92 has been registered in connection with the said incident. The accused, Netrananda Dandasena has been arrested on 30.10.2013. Chargesheet has been submitted on 22.2.2014 against Netrananda Dandesena and the investigation has been kept open under Section 173 (8) Cr.P.C. against the other unidentified accused.

(vi) Two police officials namely Sujit Kumar Say, Inspector-in-Charge and Muralidhar Pradhan, Assistant Sub Inspector, Tikiri Police Station have been dismissed from ser[illegible]d

05.11.2013 of the Home Department, Govt. of Odisha.

(vii) Two officials of the Education Department namely Dharanidhar Behera, BEO Rayagada and IIC BEO Kashipur were dismissed from service by order dated 05.11.2013 of the School & Mass Education Department, Govt. of Odisha.

(viii) The promotion of accused Netrananda Dandasena was made alongwith 23 other officials by an order dated 15.10.2013 on the recommendations of the Departmental Promotion Committee dated 1.12.2012. He has since been dismissed from service by order dated 05.11.2013.

(ix) No material has been unearthed in the investigation of the case to show that Shri Jayaram Pangi, M.P., Karaput Constituency had made any phone calls to the deceased to withdraw the case lodged by her against Netrananda Dandasena.

(x) No incriminating material has been found in the course of investigation of the case nor any material has been laid before us to show the involvement of any other person, wielding political or bureaucratic power and influence, in connection with the incident that had occurred.

(xi) A sum of Rs. 10 lakhs as ex-gratia payment has been paid to the parents of the deceased which has been duly accepted.

7. Two issues arise for our consideration. The first-whether after filing of chargesheet under Section 302/120B IPC against the accused Netrananda Dandasena and keeping open the investigation under Section 173 (8) Cr.P.C. there is any justification to entrust further investigation of the case to the Central Bureau of Investigation. Irrespective of the above, the

second issue that will require consideration is whether any direction for determination of the liability of any officer or authority of the State who had the occasion to deal with the matter is called for?

8. On the question whether a criminal case in which a charge sheet has been filed by the local/state investigating agency can/should be referred to Central Bureau of Investigation for further investigation there is near unanimity of judicial opinion. In *Gudalure M.J. Cherian vs. Union of India*[2] and *Punjab & Haryana High Court Bar Association vs. State of Punjab*[3], it has held that after the chargesheet is filed the power to direct further investigation by Central Bureau of Investigation should not be normally resorted to by the Constitutional Courts unless exceptional circumstances exist either to doubt the fairness of the investigation or there are compulsive reasons founded on high public interest to do so. *Vineet Narain* vs. *Union of India*[4], *Union of India vs. Sushil Kumar Modi*[5] and *Rajiv Ranjan Singh 'Lalan' (8) vs. Union of India*[6] are not decisions on the same line as the issue in the said cases was with regard to the exercise of jurisdiction by the Monitoring Court to order further investigation of a case after chargesheet had been filed by the Central Bureau of Investigation to which body the investigation already stood entrusted. *Rubabbuddin Sheikh vs. State of Gujarat*[7], really, carries forward the law laid down in *Gudalure M.J. Cherian* and *Punjab & Haryana High Court Bar Association* (supra) which position finds reflection in para 60 of the report which is in the following terms :

"***.....Therefore, it can safely be concluded that in an***

2. (1992) 1 SCC 397.
3. (1994) 1 SCC 616.
4. (1996) 2 SCC 199.
5. (1998) 8 SCC 661.
6. (2006) 6 SCC 613.
7. (2010) 2 SCC 200.

appropriate case when the court feels that the investigation by the police authorities is not in the proper direction and in order to do complete justice in the case and as the high police officials are involved in the said crime, it was always open to the court to hand over the investigation to the independent agency like CBI. It cannot be said that after the charge-sheet is submitted, the court is not empowered, in an appropriate case, to hand over the investigation to an independent agency like CBI."

9. The position has also been succinctly summed up in ***Disha*** (supra) to which one of us (the learned Chief Justice) was a party by holding that transfer of the investigation to the Central Bureau of Investigation or any other specialised agency, notwithstanding the filing of the chargesheet, would be justified only when the Court is satisfied that on account of the accused being powerful and influential the investigation has not proceeded in a proper direction or it has been biased. Further investigation of a criminal case after the chargesheet has been filed in a competent court may affect the jurisdiction of the said Court under Section 173 (8) of the Code of Criminal Procedure. Hence it is imperative that the said power, which, though, will always vest in a Constitutional Court, should be exercised only in situations befitting, judged on the touchstone of high public interest and the need to maintain the Rule of Law.

10. The events relevant to the present adjudication may be conveniently divided into two compartments – one before the death of Itishree Pradhan and the second subsequent thereto. In this regard we would like to say that all human tragedies, man made or natural, may appear to be avoidable. To understand such phenomenon as pre-ordained is an attitude of self-defeat, if not self deception, and therefore must be avoided. At the same time determination of human culpability in not successfully avoiding an event of disaster must be made by the test of exercise of due care, caution and reasonable foresight.

This, according to us, is how the events surrounding the case will have to be judged.

11. Insofar as the facts and circumstances following the death of Itishree Pradhan is concerned, in view of the chargesheet filed and the departmental action taken against the erring officials, we do not feel the necessity of any further direction in the matter, at this stage. We are, therefore, inclined to take the view that the power of this Court to refer a matter to Central Bureau of Investigation for further investigation, after filing of the chargesheet by the State investigating agency, ought not to be invoked in the present case. Instead, the course of action that would be now mandated by law against the accused Netrananda Dandasena should be allowed to reach its logical conclusion at the earliest. At the same time the investigation that has been kept open against the unidentified accused should be completed without delay. We direct accordingly and cast the responsibility in this regard on the Superintendent of Police, Rayagada. However, we make it clear that the trial of accused Netrananda Dandasena shall not be held up on that count or on any other count and the same shall proceed forthwith and be concluded within the earliest possible time.

12. The events preceding the incident of death, however, stand on a slightly different footing. The same, prima facie, disclose some amount of laxity and indifference. Therefore, even while noticing that disciplinary action has been taken against certain officials of the State, we are of the view that the State should hold a detailed administrative inquiry into the matter to ascertain whether any other official or authority, at any level, is responsible for not attending to the complaints, grievances and demands raised by the deceased either in the matter of action against accused Netrananda Dandasena or in providing security to her or in transferring her from Tikiri, Rayagada District. On the basis of the findings and conclusions as may be reached in such inquiry, we dire

necessary action in the matter. We also make it clear that we have not expressed any opinion with regard to the liability or culpability of any official or functionary of the State in this regard.

13. We accordingly dispose of the writ petition and place on record our appreciation for the services rendered by the young law student in seeking to vindicate the fundamental rights of the deceased and for the painstaking efforts expended by her to uphold the Rule of Law.

R.P. Writ Petition disposed of.

PHATU ROCHIRAM MULCHANDANI
v.
KARNATAKA INDUSTRIAL AREAS DEVELOPMENT BOARD & ORS.
(Civil Appeal No. 3803 of 2014)

MARCH 12, 2014

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

KARNATAKA INDUSTRIAL AREA DEVELOPMENT ACT, 1966:

Lease-cum-sale agreement - Allotment of plots to company for setting up factory/industry - Industry not set up - Company in liquidation - Agreement terminated by Board - Held: Right to purchase the plots in question after the expiry of the lease period could accrue in favour of the Company only on fulfilling the covenants stipulated in clause 2(P) - On Company's failure to do so, Lease Agreement gave right to the Board to determine lease and resume the land - It is, thus, in the nature of Lease-cum-Sale Agreement, which started with lease and could culminate into sale - Lease came to be determined by Board because of the breach of covenants of lease agreement - Therefore, it cannot be accepted that Company had become the owner of the plots in question.

Validity of termination notice - Held: Company had committed clear breach in not completing the project and setting up the factory within the time given on the Lease Agreement or the time as extended by the Board - In such circumstances, the Lease Agreement gave a definite right to the Board to terminate the lease - Board was within its right to terminate the lease as provided in Lease Agreement.

Requirement of prior permission of Company Court before terminating the lease - Notice of cancellation of lease

given after the winding up order - Held: Serving of cancellation notice simplicitor would not come within the mischief of s.537 of Companies Act, as that by itself does not amount to attachment, distress or execution etc - No doubt, after the commencement of the winding up, possession of the land could not be taken without the leave of the Court - Therefore, no prior permission was required by the Board for cancelling the lease - Companies Act, 1956 - s.537.

COMPANIES ACT, 1956:

s.536 - Company in liquidation - Resumption of plots allotted to company, on its failure to set up Factory/industry - Application for permission by Board - Held: Termination notice by the Board is valid - Likewise, order of Company Judge permitting the Board to take possession of land in question is legal and justified.

LOCUS STANDI:

Company in liquidation - Cancellation of lease-cum-sale agreement in respect of two plots allotted to Company, for its failure to set up factory/industry - Order of Company Judge to OL to hand over possession of plots to Board - Challenged by one of the shareholder/Promoter of Company - Held: Appellant is very much concerned with the outcome of the proceedings in as much as, if the ownership of the land in question vests with the Company, it may reduce his personal liability, as he has given guarantees to the financial institutions for the loan advances to the Company.

Respondent No.2-company was allotted an industrial plot on lease-cum-sale basis for a period of 11 years under a lease agreement dated 21.12.1984 on certain terms and conditions. On 10.01.1989 the Board assigned an additional plot to the company. However, no lease-cum-sale agreement was executed for the latter allotment. Possession was given to the company on 19-01-1989.

Meanwhile proceedings for winding up were initiated against the company and by order dated 15-01-1996 the company was wound up. Respondent no.1 Board terminated the agreement in respect of the two industrial plots allotted to the company. Subsequently, the Board filed an application before the Company Judge seeking resumption of the two plots. The Company Judge directed the official Liquidator to handover possession of the said tow plots to the Board. The appellant claiming himself to be promoter/share holder of the company challenged the order in an appeal before the Division Bench of the High Court. The appeal was dismissed.

In the instant appeal, the questions for consideration before the Court were:

Q.1 Whether the Company had acquired the ownership of the two plots in question and, therefore, the Board was precluded from terminating the lease and resuming the plots?

OR

Whether the property in question continued to be leasehold property as per the Lease Agreement dated 21.12.1984?

Q.2 In the event it is decided that the property was on lease with the Company, whether the notice terminating the Lease Agreement was legal and justified?

Q.3 Whether prior permission of the Company court was required to terminate the Lease Agreement by the Board since the Company was under liquidation?

Q.4 Whether the circumstances warranted the Company court to allow t e

Board to resume the said land and take possession thereof?

Dismissing the appeals, the Court

HELD: 1. Prima facie, this Court is of the opinion that the appeal by the promoter/shareholder before the High Court was maintainable and should not have been dismissed on the ground that the appellant did not have locus standi to prefer the said appeal. The appellant is very much concerned with the outcome of the proceedings in as much as, if the ownership of the land in question vests with the Company, it may reduce his personal liability, as he has given guarantees to the financial institutions for the loan advances to the Company. [para 18] [728-A-C]

Q.1 Re: Status of the property in question:

2.1 Admittedly, the Lease Agreement dated 21.12.1984 was entered into between the Board and the Company by which the Board had agreed to lease to the Company the land in question upon certain terms and conditions, non-fulfilment of which would result in allotment being cancelled and agreement being terminated under Clause 4. Clause 7 of the Lease Agreement enabled the Company to purchase the property in question at the end of 11 years lease period or the extended period, if any. [para 21-22] [729-C-D; 731-A-B]

2.2 It is not in doubt that while construing an agreement, it is not the nomenclature but the substance thereof needs to be looked into. Therefore, mainly because the agreement in question is termed as "Lease Agreement" that by itself will not be the sole determinative factor. However, various clauses of the agreement also clearly manifest that it was an agreement

by which lease for 11 years period was created in favour of the Company. At the same time, it was also not a Lease Agreement simplicitor. It did not provide that on expiry of the lease period, the demised property is to be reverted back to the Board. The specified purpose of the Lease Agreement was to give the plots in question to the Company for setting up of radio factory/ industry. The Company was even allowed to construct the building for this purpose at its own cost within 24 months from the date of letter of allotment. On fulfilling these and other conditions, at the end of 11 years the Company could become entitled to even purchase the land at the sale price which was to be determined by the Board. So much so at that time the rental paid for the period of lease was to be adjusted against the sale consideration. However, this right to purchase the plots in question after the expiry of the lease period could accrue in favour of the Company only on fulfilling the covenants stipulated in clause 2(P). On the Company's failure to do so the Lease Agreement gave right to the Board to determine the lease and resume the land. In that event, the question of right to purchase the land could not arise. It is, thus, in the nature of Lease-cum-Sale Agreement, which started with lease and could culminate into sale. It is found as a matter of record that the Company failed to complete the construction and start factory on the demised land. In fact, no factory could be set up at all. [para 23-24] [731-D-H; 732-A-D]

2.3 It is thus clear that right to purchase the land did not fructify in favour of the Company. On the contrary, while the relationship between the Company and the Board was still that of lessee and lessor, the lease came to be determined by the Board because of the breach of the covenants of lease agreement. Therefore, it cannot accepted that the Company had become the owner of the plots in question. [para 25] [732-G-H

Q.2 Re: Validity of termination notice

3.1 On the failure of the Company to complete the project within the specified period, the Board served resumption letter dated 6.5.1992 upon the Company stating that the land would be resumed on 8.6.1992 for failure to implement the project in time. On 19.1.2002, the Board passed the orders terminating the lease in respect of both the plots. In this termination order, it was stated that the Company had failed to construct the factory building and implement the industrial projects on the main land within the extended period and to execute lease agreement in respect of additional land. [para 26 and 29] [733-B; 734-H; 735-A-B]

3.2 The Company had committed clear breach in not completing the project and setting up the factory within the time given in the Lease Agreement or the time as extended by the Board. In such circumstances, the Lease Agreement gave a definite right to the Board to terminate the lease. This Court is, therefore, of the opinion that the Board was very well within its right to terminate the lease as provided in the Lease Agreement. [para 30] [735-F-G]

Q.3 Re: Necessity of prior permission of the Company Court before terminating the lease:

4.1 In the instant case, the Company had gone into liquidation and there was an order of winding up when the notice of cancelling the lease was given. It is clear from the provisions of s. 537 of the Companies Act, 1956 that prior permission of the Court is required in respect of any attachment, distress or execution put in force or for sale of the properties or effects of the Company. Serving of cancellation notice simplicitor would not come within the mischief of this section as that by itself does not amount to attachment, distress or execution etc. No doubt, after the commencement of the winding up,

possession of the land could not be taken without the leave of the Court. Precisely for this reason the Board had filed the application seeking permission. It would have been premature on the part of the Board to approach the Company Judge for permission to resume the land without cancelling the lease in the first instance. This Court, thus, holds that no prior permission was required by the Board for cancelling the lease. [para 31, 38 and 39] [735-H; 736-A]

Q.4. Re: Validity of the order of the Company Court granting the permission.

5.1 Once the application for permission to resume the land is filed, it is permissible for the Company Judge to go into the validity of the action of the applicant. Thus, in the instant case, the Company Judge could find out as to whether cancellation of lease is proper or not. The Company Judge could also go into the question as to whether the Company had become the owner of the property, or it was only a lessee. Company Judge could also go into the question as to whether the property in question is required by the Company and parameters of the provisions of s.535 of the Companies Act are satisfied or not. [para 40] [741-E-G]

5.2 This Court does not find action of the Board to be illegal or blemished. The land was allotted to the Company for specified project which the Company failed to establish. In such an event, under the statute itself powers are given to the Board to cancel the allotment and resume such land. [para 41 and 43] [741-G-H; 743-B]

5.3 The Company is in liquidation. Till date there is no validly propounded scheme of rehabilitation u/s 391 to 394 of the Companies Act. Some obscure proposals, without concrete Scheme as required under the Act, cannot be made a sheet anchor to c

rights of the Board which still remains the owner of the plots. The O.L. could claim rights over this land only if it had become the property of the Company and the ownership was vested in it. Even that is not so. [para 44] [743-C-D]

5.4 This Court, therefore, holds that termination notice dated 19.1.2002 of the Board is valid. Likewise the order of the Company Judge permitting the board to take possession of the land in question is legal and justified. [para 45] [743-E-F]

Rajratna Naranbhai Mills Co. Ltd. v. New Quality Bobbin Works; **1973 (43) Company Cases 131; in** *United Bank of India v. Official Liquidator and Ors.;* **1993 (3) Suppl. SCR 1 = 1994 (1) SCC 575;** *M/s. Hanuman Silks & Anr. v. Karnataka Industrial Areas Development Board and Ors.;* **AIR 1997 Kar 134 - cited.**

Case Law Reference:

1993 (3) Suppl. SCR 1	**cited**	**para 13**
1973 (43) Company Cases 131	**cited**	**para 14**
AIR 1997 Kar 134	**cited**	**para 16**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3803 of 2014.

From the Judgment and Order dated 11.02.2010 of the High Court of Karnataka at Bangalore in Original Side Appeal No. 4 of 2010.

C.A. Nos. 3804-3807 of 2014.

T.R. Andhyarujina, C.A. Sundaram, Basava Prabhu S. Patil, P.V. Shetty, M.K. Garg, Vijay Kumar Desai, Shakumbri Singh, M.K. Verma, Soumik Ghosal, Anand Sanjay Nuli, Rohini Musa, Sudarshan Rajan, Nishanth Patil, B. Subrahmanya Prasad, Shankar Divate, Naresh Kaushik, Manoj Joshi (for

Lalita Kaushik) for the appearing parties.

The Judgment of the Court was delivered by

A.K. SIKRI, J. 1. Delay condoned.

2. Leave granted.

3. In this appeal the appellant has assailed the judgment and order dated 11.2.2010 passed by the High Court of Karnataka in Company Appeal which was preferred by the appellant herein against the orders dated 3.9.2009 by the Company Judge of the said court. Respondent No. 2 namely M/s. Relectronics Ltd. (hereinafter referred to as the 'Company') is ordered to be wound up and liquidation proceedings are pending before the Company Court. Respondent No. 1 i.e. Karnataka Industrial Areas Development Board (hereinafter referred to as the 'Board') had allotted an industrial plots to the Company on lease-cum-sale basis for a period of 11 years. The Board terminated the lease. The Company Judge, on application filed by the Board, had directed the liquidator to release the said land to the Board and the appeal by the appellant against this order has been dismissed by the Division Bench of the High Court, not on merits but for want of *locus standi* of the appellant to question the orders. The appellant herein is questioning the veracity of the orders on the ground that it was the property of the Company which could not have been released in favour of the Board.

4. Before we mention about the credentials and *locus standi* of the appellant, we deem it appropriate to cull-out the seminal facts from the record leading to the passing of the impugned order. The Board had leased 13,657 sq. mtrs. of land in Plot No. 19 (A+B) of Sadramangala Industrial Area to the Company under the Lease Agreement dated 21.12.1984, on certain terms and conditions, for the purpose of establishing an industry for manufacture of AH/ FM Radio, Audio Tape Recorder in combination with radio. The

cum-Sale agreement ("Agreement") in favour of the Company in respect of Plot No. 19 (A+B), measuring 13,657 sq. m. (3.5. acres) situated in Sadarmangala Industrial Area, Krishnarajapuram, Bangalore South. The consideration paid by the Company towards the same was Rs. 3,07,102/- as initial deposit/premium and the lease rentals @ Rs. 6,921/- per annum were to be paid for a period of 11 years.

5. By its letter dated 10.1.1989, the Board assigned an additional plot bearing No. 18 measuring 20,337.87 sq. m (5 acres) to the Company. The consideration paid by Respondent No. 2 towards the same was Rs. 13,31,182/- after adjusting a sum of Rs. 10,19,441/- which was paid as rentals to Respondent No. 1 for Peenya Lands and further payment of Rs. 3,11,741 vide receipt No. 32754 dated 3.1.1989. However, no lease-cum-sale agreement was executed for this allotment. Possession of additional plot bearing No. 18, measuring 20,337.87 sq. m (5 acres) was given to the Company on 19.1.1989.

6. As mentioned above, the Board had allotted the aforesaid plots of lands to the Company for the purpose of establishing a factory to manufacture radio and TV sets. As per the appellant, though the Company started the construction of the factory sometime in the year 1989-1990 but could not complete the same due to the ill health of the Managing Director Mr. T.R. Mulchandani. The Company was also unable to pay debts of its various creditors as it was running in losses. One of the secured creditors namely M/s. Sanmar Financial Limited filed a petition seeking winding up of the Company which was registered as Company Petition No. 18 of 1994. Industrial Development Bank of India (IDBI), another creditor also joined as supporting creditor. Vide orders dated 15.11.1996, the High Court of Karnataka ordered the winding up of the Company. All the assets and liabilities were got transferred to Official Liquidator (OL) who took charge thereof.

7. The Board sent notice dated 23.12.1997 to the

Company for the resumption of the aforesaid industrial plots on a ground that Company had committed the breach of the terms and conditions of the Lease Agreement and had not established any factory for which purpose land was allotted to it. Thereafter, vide notice dated 19.1.2002 the Board terminated the agreement in respect of the two industrial plots. This order was also served upon the OL. Subsequent thereto application was preferred before the Company Judge by the Board seeking resumption of these Industrial Plots. This application was opposed by the OL. After hearing the parties, the Company Judge passed the orders dated 3.9.2009 allowing the said application and directing the OL to handover the possession of the industrial plots to the Board. In support, the Company Judge gave the following reasons:-

(a) KIADB had taken steps and measures as required under the provisions of the Act in placing the Company in liquidation on notice of its breach and its intention to resume the industrial plots after cancellation of the allotment.

(b) The benefit of industrial plots cannot be granted to a Company in liquidation to enhance its assets. The enrichment of the Company in liquidation at the cost of KIADB is not just and legal. Hence the termination of allotment by KIADB is proper.

8. The Official Liquidator did not contest the order of the Company Judge. However, the appellant herein, who claims to be the promoter/ shareholder of the Company, challenged this order by filing appeal before the Division Bench. His submission was that he is a bonafide person as promoter/ shareholder of the Company and is evincing genuine interest to revive this Company and for this purpose retention of land is very crucial. This contention of the appellant has not been accepted by the Division Bench of the High Court primarily on the ground that the merits of the appeal could not be gone into at the instance of the promoter/ sha[illegible]s

bonafides. On that basis, the appeal has been dismissed.

9. Mr. T.R. Andhyarujina, learned Senior Counsel appearing for the appellant questions the aforesaid wisdom of the High Court in dismissing the appeal of the appellant on the ground of want of bona fides. His submission in this behalf was that it is the Official Liquidator who is the custodian and trustees of the properties of the Company in liquidation and, therefore, it was his prime responsibility to file the appeal against the order of the Company Judge. As such the order was not in the interest of liquidation proceedings. He argued that a valuable asset of the Company was taken away by the Board and the Company Judge had given permission to the Board to do so. Therefore, it was the bounden duty of the O.L. to challenge such an order when huge amount of debts were payable by the Company to the Public Financial Institutions. He further submitted that in any case the appellant had also vital interest in the matter. The Company had taken financial accommodations from the financial institutions and against those loans etc. the Directors/ Promoters including the appellant had given personal guarantees. In the event of non-payment of dues to those financial institutions by the Company, liability was likely to fall upon the promoters as contributors. Further, the promoters as contributors had a right to intervene in the liquidation proceedings at any stage, if they have a scheme of revival. In these circumstances the appeal of the appellant could not have been dismissed for purported lack of bonafides. He also submitted that the Division Bench could have imposed suitable terms for the appellant which could be complied with by the appellant to establish his bona fides, instead of summarily dismissing the appeal. In this behalf he sought to demonstrate that in the meanwhile one of the two promoters, viz. Mr. G. Mohan Rao had offered to invest sufficient funds for reviving the business of the Company. So much so he had offered to pay off all the debts which are due from the Company to its creditors. The appellant along with Mr. G. Mohan Rao was ready to revive the business of the Company and even willing

to agree to the condition not to alienate the land in question.

10. Since it was agreed by and between the Counsel for the parties that in case the appeal filed by the appellant before the Division Bench of the High Court is held to be competent by this Court, then this Court itself should consider and decide the matter on merits, instead of remitting the case back to the High Court, we have heard the Counsel for the parties on merits as well.

11. As already pointed out above on an application filed by the Board, the Company Judge permitted the Board to resume the aforesaid two industrial plots which were allotted to the Company. Mr. Andhyarujina, learned Senior Counsel, drew our attention to the reply which was filed by the O.L. before the Company Judge opposing the aforesaid application of the Board. This reply shows that OL had contested the application on two grounds namely;

(i) There could not have been any termination of Lease Agreement by the Board without seeking prior permission of the Company Court, since the Company was under liquidation.

(ii) The two plots, in fact, had become the property of the Company, as the Company had paid the entire consideration in respect of these plots. Therefore, there was no question of termination of the lease and resumption of the plots.

12. Before us the order of the High Court was assailed on these very grounds. Referring to clause 7 of the Lease Agreement dated 21.12.1984 it was argued that the lease was for a period of 11 years initially and the amount of rent paid by the Company for the period of lease was to be adjusted towards the balance of the value of the property. The value of the property was to be fixed in the manner stated in the agreement and on payment of the c[illegible]d,

Clause 7 further provided that on payment of entire price as fixed by the Board the property in question was to be sold to the Company. He submitted that virtually the entire price had been paid by the Company in the form of rents which were to be adjusted and, therefore, the only requirement that was left was to execute sale deed in favour of the Company, which could not be done as in the meantime the Company had gone into liquidation. He submitted that the order of Company Court is totally erroneous, in as much as:

(a) In the first instance, the Court could not have given its imprimatur to the Order of termination of the Board dt. 19.1.2002 because such an order of termination, after an order of winding up, could not have been passed without the leave of the Company Court. For this proposition he referred to the judgment of the Karnataka High Court in the case of *Karnataka State Electronics Development Corporation Ltd. v. The Official Liquidator of M/s Anco Communication Ltd.* decided on 20.6.2005.

(b) Secondly, all the assets of a Company in liquidation after an order of liquidation belong to the creditors and shareholders and it is not open to the Company Court to give up the assets of the Company in liquidation except by way of disclaimer of onerous property under Section 535 of Company Act.

13. In support of second contention, the learned Senior Counsel referred to the judgment of this Court in *United Bank of India v. Official Liquidator and Ors.;* 1994 (1) SCC 575 and paras 10 and 11 which reads as under:

"10. While the aforesaid direction will dispose of the appeal, we would like to say, having heard counsel on the merits of the appeal, that we are not satisfied that the Division Bench appreciated the purpose of the provisions of Section 535 of the Companies Act. Thereunder the

High Court may give leave to the Official Liquidator to disclaim land of any tenure which is part of the property of the Company in liquidation if it is burdened with onerous covenants. The intention of Section 535 is to protect the creditors of the Company in liquidation and not mulct them by reason of onerous covenants. The power under Section 535 is not to be lightly exercised. Due care and circumspection have to be bestowed. It must be remembered that an order permitting disclaimer, while it frees the Company in liquidation of the obligation to comply with covenants, puts the party in whose favour the covenants are, to serious disadvantage. The Court must therefore, be fully satisfied that there are onerous covenants, covenants which impose a heavy burden upon the Company in liquidation, before giving leave to disclaim them.

11. We are of the view that the High Court ought to have appreciated that it was rather unlikely that the party who had the benefit of onerous covenants would apply for disclaimer and ought to have viewed the Official Liquidator's application to disclaim made pursuant to the Trust's letter to him in that behalf, in that light. We find it difficult to see how such a large area of land leased to the Company in liquidation for 99 years with the option of renewal for a further 99 years for the meager rent of Rs. 1200 per annum can be said to be land burdened with onerous covenants. We do not think that the High Court was justified in debating and holding in proceedings under Section 535 that the lease of the said land had been validly terminated so that the Official Liquidator became liable to pay mesne profits to the Trust, and that this coupled with arrears of rent, in five figures made the lease onerous. We are also of the view that the Bank's offer to pay the arrears of rent to the Trust should have been accepted by the High Court. The Bank to protect and keep alive its security, had put official liquidator in funds in rega d

was eager to meet this liability. Had this been done valuable property of the Company in liquidation could have been retained so that its undertaking, which stood on the said land, could have been sold as a running concern, as has been done upon intervention of this Court, for the benefit of its creditors."

14. Deprecating the inaction on the part of the O.L. in not filing the appeal and thereby protecting the property of the Company in question he relied upon the judgment in the case of *Rajratna Naranbhai Mills Co. Ltd. v. New Quality Bobbin Works;* 1973 (43) Company Cases 131, holding that the most important task assigned to the liquidator under the Companies Act while acting as liquidator of a Company ordered to be wound up is to collect assets of the Company and sell them and to distribute the realization amongst all those who have claims against the Company and payment must be made according to priorities fixed by law. This appears to be not only the foremost but the most basic duty of a Liquidator of a Company ordered to be would up. Now, if the liquidator in course of winding up is required to file suit for recovery of properties and assets of the Company, one has only to imagine at what length of time winding up proceedings can be brought to a close.

15. Mr. Andhyarujina, further mentioned that on 11.1.2010, Mr. Mohan Rao had offered to revive the Company and pay off the debts of the Company. In this behalf he also drew our attention to the orders dated 19.7.2009, 16.8.2010 and 11.2.2011 passed in the present case. In this context, his submission was that there was every chance of the Company to be revived and, therefore, a valuable asset of the Company should not be allowed to be frittered away.

16. Mr. Patil, Senior Advocate, appearing for the Board stoutly refuted the aforesaid submissions. His argument was that the plots in question were allotted by the Board to the Company on lease-cum-sale basis with clear stipulation that the

Company was to construct factory thereupon and complete the project within 24 months .The Company had miserably failed to implement the project in time for which show cause notices were given and all these happened much before the passing of the winding up order of the Company by the High Court. He further submitted that on failure of the Company to complete the project, lease-cum-sale agreement dated 21.12.1984 gave categorical right to the Board to resume the land. He, thus, submitted that the Company never became the owner of the land that too when no sale deed was executed in favour of the Company. Moreover, due procedure was followed before terminating the lease by giving appropriate and due opportunity to the Company which had even replied to the show cause notices. He further argued that before terminating the lease no prior permission under Section 537 of the Companies Act was required. It was only for resumption of the land, after termination of the lease, that such a permission was necessitated and keeping in view this legal requirement the Board had filed the application before the Company Judge which has been allowed by the impugned order. The learned Counsel relied upon the judgment of Karnataka High Court in the case of *M/s. Hanuman Silks & Anr. v. Karnataka Industrial Areas Development Board and Ors.;* AIR 1997 Kar 134. He also referred to the provisions of Karnataka Industrial Areas Development Act, 1966 (hereinafter referred to as 'KIAD Act') under which the Board has been constituted. Predicted on the provisions of this Act his submission was that the action, taken in terms of the said provisions, was absolutely justified and legal.

17. We may mention at this juncture that after the permission given by the learned Single Judge to the Board to resume the land, the possession of the plots was taken by the Board. The Board has made fresh allotment in favour of M/s. Relectronics Ltd., Respondent No. 3 herein. This action of the Board making allotment in favour of respondent No.3 was challenged by the appellant in the form

the High Court of Karnataka. Those Writ Petitions have also been dismissed by the High Court vide judgment dated 22nd June 2011 and the correctness thereof is challenged by the appellant in appeals arising out of S.L.P.(Civil)No…CC 14177-14180/2011. Counsel for the parties conceded that the outcome of appeal arising out of S.L.P.(Civil) No.14161/2010 shall govern these appeals as well. Mr. Sundram, learned Senior Counsel appeared for Respondent No. 3 also endeavoured to justify the action of the Board in terminating the lease. He heavily relied upon the judgment of the Karnataka High Court in the case of M/s. Hanuman Silks (supra) and submitted that as per the said judgment it was permissible for the Board to issue termination notice but for further action of taking possession, permission of the Court was to be taken which was done in the present case. He further referred to the provisions of the Lease Agreement dated 21.12.1984 and submitted that the allotment was on certain terms and conditions with specific purpose, viz. to set up industry. Since this could not be accomplished by the Company, action of the Board in resuming the land was justified. In such a scenario, the payment of money in the form of rental by the Company to the Board was totally immaterial. He further pointed out that resumption order was of the year 1992 i.e. before the winding up order was passed which was even challenged up by the Company by filing Writ Petition in the High Court and the said writ petition was dismissed. Thereafter, keeping in view the spirit of M/s Hanuman Silk's case, termination notice was given which is duly reflected in the show cause notice/ termination letter itself. This termination was never challenged by the Company or the O.L. He thus argued that in this manner once the termination is found to be valid, the Company Judge did not commit any error in allowing the Board to resume the land.

18. We have given our considered thoughts to the various issues involved on which arguments were addressed by the Counsel for the parties. We would like to point out, at the outset, that we are not venturing into detailed discussion on the

question of maintainability of the appeal filed by the appellant before the Division Bench of the High Court against the order of the Company Judge. Prima facie, we are of the opinion that this appeal was maintainable and should not have been dismissed on the ground that the appellant did not have *locus standi* to prefer the said appeal. The appellant is very much concerned with the outcome of the proceedings in as much as, if the ownership of the land in question vests with the Company and proceeds from the sale of this land comes into the kitty of the Company, the effect of that would be to reduce the liability of the creditors, particularly the financial institutions. In turn, it may result in reducing the personal liability of the appellant who has given guarantees to the financial institutions for the loan advances to the Company. However, we leave the matter at that, as Counsel for the respondents did not press the issue of maintainability very seriously.

19. In so far as the dispute on merits is concerned, it has various facets which give rise to the following questions:

Q.1 Whether the Company had acquired the ownership of the two plots in question and, therefore, the Board was precluded from terminating the lease and resuming the plots?

OR

Whether the property in question continued to be leasehold property as per the Lease Agreement dated 21.12.1984?

Q.2 In the event it is decided that the property was on lease with the Company, whether the notice terminating the Lease Agreement was legal and justified?

Q.3 Whether prior permission of the Company court was required to terminate the Lease Agreement by the Board since the C[illegible]r

liquidation?

Q.4 Whether the circumstances warranted the Company court to allow the application of the Board to resume the said land and take possession thereof?

20. We proceed to answer the aforesaid questions in seriatim:-

Q.1 Re: Status of the property in question:-

21. Admittedly, the Lease Agreement dated 21.12.1984 was entered into between the Board and the Company vide which the Board had agreed to lease to the Company the land in question upon certain terms and conditions. In consideration, the Company had paid a sum of Rs. 3,07,102/- as the initial deposit/ premium and it was also to pay the yearly rent of Rs. 6,921/- for the period of lease which was 11 years, computed from 4.8.1984. Clause 2 of the Lease Agreement stipulated various others covenants. Having regard to the nature of functions which the Board performs, which has been constituted for industrial development in that area, the plots in question were given to the Company exclusively for the purpose of establishing an industry/ factory for manufacture of AH/ FM Radio Audio Tape Recorder in combination with radio. The lease provided that the premises shall be used only for the aforesaid purpose and not for any other purpose. The lease also provided that the civil construction work and erection of factory shall be completed within stipulated period which was 24 months from the date of letter of allotment i.e. 21.02.1983. This time, however, could be extended in writing for good and sufficient reasons furnished by the Company. On extension being given, the Company was to complete the number of works within the extended period. For this purpose time bound schedule was provided in clause 2(P)(1) of the Lease Agreement which is reproduced below:

"2(P) (1) (i) To submit the property of the plan of the civil construction to him lessor or prior approval within six months from the date of receipt of letter of allotment within two months from the due date of.

(ii) The civil constructions works within three months from the approval of the blue prints, after obtaining licence from the Chief Inspector of Factory and Boilers of Karnataka State.

(iii) To complete civil construction works and erection of factory within twenty months from the date of letter of allotment that is the TWENTY FIRST day of February One Thousand nine hundred and Eighty Three.

(iv) To commence production within twenty four months from the ate of letter of allotment that is the Twenty First day of February one thousand nine hundred and Eighty Three.

For good and sufficient reasons, the Lessor may extend the time in writing in any of the cases mentioned in sub clauses (i) to (iv) above, by such period as the Lessor. In his discretion deem fit and the Lessee shall complete the item of works for which extension of the time given within such extended time.

Failure to fulfill any of the conditions (I) to (IV) mentioned above shall result in allotment begin cancelled and agreement being terminated under clause 4 and a sum not exceeding 5% of the cost of land as indicted in Clause 1 of the lease agreement subject to a maximum of Rs.10,000/- and minimum of Rs.1000/- and interest due and payable as per clause 1 from the date of taking possession to the date of resumption of the land by the Board shall be forfeited to the Lessor."

22. It was further specifically mentioned that in case there

is a failure on the part of the Company to fulfill the said condition, it would result in allotment being cancelled and agreement being terminated under Clause 4. Clause 4 of the Lease Agreement provided for determination of the Lease Agreement under certain circumstances including the one mentioned above. Clause 7 of the Lease Agreement enabled the Company to purchase the property in question at the end of 11 years lease period or the extended period, if any. For this purpose, the Board was supposed to fix the price of the demised premises for such sale. The rent already paid by the Company was to be adjusted towards the sale consideration so fixed and on payment of the balance amount of the value of the property within 1 month, the sale was to be effected, as provided in Clause 9. Amount of Rs. 3,07,102/- was to be kept by the Board as security for any loss of expenses that the Board may put to in connection with any legal proceedings including proceedings that may be taken against the Company.

23. It is not in doubt that while construing an agreement, it is not the nomenclature but the substance thereof needs to be looked into. Therefore, mainly because the agreement in question is termed as "Lease Agreement" that by itself will not be the sole determinative factor. However, various clauses of the agreement also clearly manifest that it was an agreement vide which lease for 11 years period was created in favour of the Company. However at the same time, it was also not a Lease Agreement simplicitor. It did not provide that on expiry of the lease period, the demised property is to be reverted back to the Board. Under this very lease agreement, certain rights were to accrue in favour of the Company, albeit on fulfilling various obligations imposed upon the Company under the Lease Agreement. In nut shell, the specified purpose of this Lease Agreement was to give the plots in question to the Company for setting up of radio factory/ industry. The Company was even allowed to construct the building for this purpose at its own cost within 24 months from the date of letter of allotment. On fulfilling these and other conditions, at the end of 11 years

the Company could become entitled to even purchase the land at the sale price which was to be determined by the Board. So much so at that time the rental paid for the period of lease was to be adjusted against the sale consideration. However, this right to purchase the plot in question after the expiry of the lease period could accrue in favour of the Company only on fulfilling the covenants stipulated in clause 2(P). On the Company's failure to do so the Lease Agreement gave right to the Board to determine this lease and resume the land. In that event, the question of right to purchase the land could not arise. It is, thus, in the nature of Lease-cum-Sale Agreement, which started with lease and could culminate into sale. The question is, whether this culmination has occurred in the given case?

24. Having considered the nature of agreement in question, in the instant case it is found as a matter of record that the Company failed to complete the construction and start factory on the demised land. In fact, no factory could be set up at all. One plot was allotted to the Company on 21.12.1984. Second plot was allotted to the Company on 10.1.1989. When the project did not take off by the prescribed time, the Board passed two separate resumption orders, both dated 6.5.1992 in respect of these two plots. Even thereafter, the company could not start factory operations. In fact, against these resumption orders Writ Petition No. 11957 of 1993 was filed by the Company and interim protection was given to the company because of which the Board could not take possession of the plots. However, this writ petition was dismissed by the High Court on 14.9.1999.

25. It is clear from the above that right to purchase the land did not fructify in favour of the Company. On the contrary, while the relationship between the Company and the Board was still that of lessee and lessor, the lease came to be determined by the Board because of the breach of the covenants of lease agreement. We, therefore, cannot accept the contention of the learned Senior Counsel for the appellant

become the owner of the plots in question.

Q.2 Re: Validity of termination notice

26. As mentioned above, on the failure of the Company to complete the project within the specified period, the Board served resumption letter dated 6.5.1992 upon the Company stating that the land would be resumed on 8.6.1992 for failure to implement the project in time. On the same date in respect of second plot, a show cause notice was also issued by the Board to the Company to show cause within 15 days as to why action be not taken to cancel the allotment for failure to execute the agreement and to implement the project. The Company submitted its reply dated 28.5.1992, inter alia, stating that development of the two plots could not be viewed independently more so when the Board itself had allotted the second plot as part of a consolidated project. It was further stated that the project involved an investment of Rs. 9 crores and the Company had already invested nearly Rs. 5 crores on the project by availing financial assistance from the financial institutions after pledging both the plots. The resumption proceedings were drawn thereafter. After considering this reply, vide letter dated 15.6.1992, the Board directed the Company to submit the following documents:-

(i) Copy of the loan sanctioned letter from IDBI and the details of balance loan to be released by them.

(ii) Certificate of investment on the project so far made issued by the financial institutions.

(iii) Proof for having invested Rs. 5 crores on the project so far along with supporting documents.

(iv) PERT Chart for implementing the project indicating monthly progress.

27. The Company submitted its reply/ detailed representation dated 4.7.1992 in response to the above.

Thereafter, the Board also asked the Company to furnish the proof of investment and in response thereto the Company submitted certificate issued by the Chartered Accountant. After considering the replies the Board was not satisfied and, therefore, issued another resumption order in respect of first plot dated 22.3.1993 stating that the possession will be taken on 21.8.1993 for failure to implement the project in time. At this moment, Writ Petition was filed by the Company against this order in which the interim order was passed staying the resumption proceedings because of which the Board could not take possession of the said plot. While these proceedings were pending, winding up petition was filed against the Company by one of its creditors in the year 1994 and winding up orders were passed in the said Company petition on 15.11.1996.

28. On 13.8.1997, another show cause notice in respect of second plot was issued to the Company asking it to show cause as to why the allotment be not cancelled. This notice was returned undelivered as factory was closed. Accordingly, notice was published in Deccan Herald Newspaper on 8.1.1998. In response to that public notice, IDBI informed the Board that the Company had been ordered to be wound up by the High Court on 15.11.1996. The Board did not take further action immediately thereafter. In the meantime, W.P. No. 11957 of 1993 filed against the resumption order dated 22.3.1993 in respect of Plot No. 19(A+B) came up for hearing before the High Court on 14.9.1999 and was dismissed with the following order:

> "When the matter came up today, learned counsel for the petitioner and the respondents submitted that the petitioner Company has been wound up in pursuance of the order of this court in Company Petition No. 18 of 1994 and, therefore, this petition may be dismissed, as having become infructuous. Petition is dismissed accordingly."

29. On 19.1.2002, the Board passed the orders terminating the lease in respect of b[illegible]s

termination order, after giving the past history of events which have already been noted above and mentioning that the Company had failed to construct the factory building and implement the industrial projects on the main land within the extended period and to execute lease agreement in respect of additional land, thereafter it was also stated that pursuant to the earlier resumption order, a writ petition was filed and because of the stay orders passed therein the Board could not resume the land. This writ petition was dismissed on 14.9.1999. Though the Board could act thereafter, however in the meantime High Court of Karnataka had passed orders dated 10.4.2001 in the matter of *The Karnataka Industrial Areas Development Board v. M/s. Electro Mobiles (India) Ltd.*; holding that when the allotment is on lease-cum-sale basis and possession is delivered to the allottee in pursuance of the allotment, it becomes a lease irrespective of the fact that whether a lease deed is executed or not. For this reason the Board did not attempt to resume the possession merely by cancelling the allotment without terminating the lease or taking action in accordance with law. It was for this reason that the Board was formally terminating the lease by the said notice dated 19.1.2002. The termination notice also mentioned that this was being done under Section 34B of the Karnataka Industrial Areas Development Act, 1966.

30. We have already held that the Company had committed clear breach in not completing the project and setting up the factory within the time given on the Lease Agreement or the time as extended by the Board. In such circumstances, the Lease Agreement gave a definite right to the Board to terminate the lease. We are, therefore, of the opinion that the Board was very well within its right to terminate the lease as provided in the Lease Agreement.

Q.3 Re: Necessity of prior permission of the Company court before terminating the lease:

31. As the Company had gone into liquidation and there

was an order of winding up when the notice of cancelling the lease was given, the next question is as to whether prior permission of the Company Court was necessary before terminating the lease. Case of the appellant is that such prior permission is required under Section 537 of the Companies Act and the appellant has relied upon the judgment of Karnataka High Court in the case of *Karnataka State Electronics Development Corporation Ltd. v. The Official Liquidator of M/s Anco Communication Ltd.* On the other hand, respondent stated that before terminating the lease no prior permission under the aforesaid provision of the Companies Act was needed and it was only for resuming the land that such a permission was required which led the Board to file an application for this very purpose. The respondents have relied upon the judgment of the Karnataka High Court in the case of *M/s. Hanuman Silks* (supra). It, therefore, becomes necessary to discuss these two judgments in the first instance.

32. In *M/s. Anco Communication Ltd.* (Supra) there was an allotment of industrial plot in favour of Anco by the Karnataka State Electronics Development Corporation (Corporation) on lease-cum-sale basis for which an agreement was executed. As per the said agreement, the Company was to establish its manufacturing unit within two years from the date of allotment of the Industrial Plot. In the meantime, the said Anco went into liquidation and winding up orders dated 8.6.2000 were passed. Much after the winding up orders, the corporation cancelled the lease-cum-sale deed on 28.6.2003 and took "paper possession" of the industrial plot. Thereafter, the Corporation filed the application in the Company Petition requesting the Company Judge to declare the Cancellation Order passed by the Corporation to be valid and direct the O.L. not to interfere with its paper possession. The Company Judge rejected the said application keeping in view the language employed in Section 537 of the Companies Act. The Corporation filed appeal which came to be dismissed by the Division Bench. The Division Bench was not impressed with e

Corporation was not aware of the winding up proceedings and for this reason it had resumed the possession of the industrial plot, after cancellation thereof, without obtaining the leave of the Court. Once the plea of ignorance was denounced, the court addressed the question as to whether the Corporation could have cancelled the allotment of industrial plot made in favour of the Company in liquidation and answered the same in the negative with the following observations:-

> "11. Now the only question before us is, whether after an order was made by this Court in winding up the respondent Company (Company in liquidation), the applicant Corporation could have ventured to cancel the allotment of industrial plot made in favour of the Company in liquidation? This could be answered only after noticing the provisions of Sec. 537 of the Act.
>
> 12. Section 537 of the Act, provides for avoidance of certain attachments, executions, etc. in winding up by or subject to supervision of Court. The winding up proceedings would commence from the date of presentation of the petition before this Court for winding up of the Company as envisaged under Section 433 of the Act and other similar provisions under the Act. Once such proceedings are initiated, any assets of the Company cannot be meddled without the leave of the Court. This settled legal proceedings, time and again is stated by various High Courts and also the highest Court. An elaboration of this settled legal principle, in our view, is wholly unnecessary.
>
> In the present case, an order of cancellation of the lease-cum-sale agreement is passed by the applicant Corporation, after presentation of the Company Petition and after passing the winding up order, but without the leave of the Court, and in our opinion, any such action is void. A void order cannot be regularised and, therefore, rightly the learned Company Judge has not acceded to the

> request made by the applicant Corporation. We do not see any error in the order passed by the learned Company Judge and, therefore, no interference with the said order is called for. Accordingly, appeal requires to be rejected and is rejected. No order as to costs. Ordered accordingly."

33. Though the aforesaid observations give the impression that there cannot even be a cancellation of the allotment of industrial plot in respect of a Company in liquidation without the prior permission of the Company court, we are of the view that these observations are to be read in the factual context of the aforesaid case. As noted above, the Corporation had not only cancelled the lease but had even resumed the land by taking "paper possession". Further, in the application filed before the Company Court, it did not pray for permission to take possession. On the contrary, the Corporation took up the stand that it already had the possession which should be declared as validly taken and the prayer made was to direct the Official Liquidator not to interfere with the possession. It is in this context that the High Court held that same could not be done without the leave of the court. We are of the opinion that the observations are to be read giving restricted meaning that possession could not be taken without the prior leave of the court. It may not be correct to hold that the law requires that prior permission of the Company Judge is mandated even for cancellation of the lease. In fact, question of resumption of land or taking possession thereof could have arisen only after the cancellation of the lease. We will dilate on this aspect further after discussing the judgment in *M/s. Hanuman Silks* (Supra).

34. In *M/s. Hanuman Silks* (supra) the said Company was allotted plots by the Board for which lease-cum-sale agreements were entered into on 18.8.1993 and 19.8.1993. The Company was to erect the factory within 12 months and to commence the production within 24 months (same conditions as in the instant case). The Company failed to commence the civil construction work and did not com[illegible]n

nor commenced production by these stipulated dates. Show cause notices were given by the Board and after that the plots allotted to the Company were resumed on 25.7.1995. The Company filed the petitions for quashing of the letters of resumption. The High Court formulated two questions which arose for consideration. We are concerned only with the first question which was couched in the following terms:-

> "Whether the Board can take possession of the plots in the possession of its lessees, without having recourse to a civil suit for possession or to an eviction proceedings under the provisions of the Karnataka Public Premises (Eviction of unauthorized occupants Act), 1974".

35. After taking note of various provisions of the Act and discussing case law cited by both the parties, the Court concluded that no where does the Act provide for the Board taking back possession of leased plots from the lessee, without recourse to eviction proceedings, whatever be the circumstances. On the other hand, the Act contains a specific provision (Section 25) providing for application of Public Premises Act to premises leased by the Board. The absence of any provision enabling the Board to take possession from lessees and the express provision for making Public Premises Act applicable to the premises leased by the Board, leads to inescapable conclusion that termination of leases and eviction of lessees are left to be governed by contract and general law. Therefore, any act of forcible dispossession of a lessee by the Board will be an act otherwise than in accordance with law. The court further held that the power of re-entry and 'resumption' that is reserved by the Board in the lease-cum-sale agreement, does not authorize the Board to directly or forcibly resume possession of the leased land, on termination of the lease. It only authorizes the Board to take possession of the leased land in accordance with law. It could be either by having recourse to the provisions of the Public Premises Act or by filing a Civil Suit for possession and not otherwise.

36. It, thus, becomes clear that even though order of re-entry or resumption can be passed by the Board, but for taking possession the Board is supposed to have recourse to legal proceedings act in accordance with law. However, this was a case where the Company had not gone into liquidation and, therefore, the question of applicability of Section 537 of the Companies Act could not arise.

37. In the present case, we are confronted with a situation where Company is in liquidation. Thereafter, we have to understand the implication of the provisions of Section 537, which reads as under:

> **"537. Avoidance of certain attachments, executions, etc., in winding up by Tribunal**.
>
> (i) Where any Company is being wound up by Tribunal-
>
> (a) any attachment, distress or execution put in force, without leave of the Tribunal against the estate or effects of the Company, after the commencement of the winding up; or
>
> (b) any sale held, without leave of the Tribunal of any of the properties or effects of the Company after such commencement shall be void.
>
> (ii) Nothing in this Section applies to any proceedings for the recovery of any tax or impost or any dues payable to the Government.

38. It is clear from the above that prior permission of the Court is required in respect of any attachment, distress or execution put in force or for sale of the properties or effects of the Company. We are of the opinion that the serving of cancellation notice simplicitor would not come within the mischief of this section as that by itself does not amount to attachment, distress or execution etc

commencement of the winding up, possession of the land could not be taken without the leave of the Court. Precisely for this reason the Board had filed the application seeking permission. But according to us no such prior permission was required before cancelling the lease. In fact, it is only after the cancellation of the leases that the Board would become entitled to file such an application under Section 537 of the Act. Had the Board gone ahead further and taken the possession, after the cancellation and then approached the Company Judge, the situation which occurred in *M/s. Anco Communication Ltd.* (supra) would have prevailed. On the other hand, it would have been premature on the part of the Board to approach the Company Judge for permission to resume the land without cancelling the lease in the first instance.

39. We thus, hold that no prior permission was required by the Board for cancelling the lease.

Q.4. Re: Validity of the order of the Company Court granting the permission.

40. Once the application for permission to resume the land is filed, undoubtedly it is permissible for the Company Judge to go into the validity of the action of the applicant. Thus, in the instant case the Company Judge could find out as to whether cancellation of lease is proper or not. The Company Judge could also go into the question as to whether the Company had become the owner of the property, or it was only a lessee. Company Judge could also go into the question as to whether the property in question is required by the Company and parameters of the provisions of Section 535 of the Companies Act are satisfied or not.

41. In view of our elaborate discussion above, we do not find action of the Board to be illegal or blemished. The land was allotted to the Company for specified project which the Company failed to establish. Let us examine the Scheme of the KIAD Act at this point of time, KIAD Act is enacted to make

special provisions for securing the establishment of industrial areas in the State and generally to promote the establishment and orderly development of industries therein, and for that purpose, to establish an Industrial Areas, Development Board, and for purposes connected with such matters. Chapter II deals with the declaration and alteration of Industrial Areas. Chapter III deals with establishment and constitution of the Board. Chapter IV deals with functions and powers of the Board and Chapter V deals with Finance, Accounts and Audit of the Board. Chapter VI deals with application of Public Premises Act and non-application of Karnataka Rent Control Act, 1961 to the premises of the Board. Chapter VII deals with Acquisition and disposal of land. Chapter VIII contains the supplementary and miscellaneous provisions. Section 13 in Chapter IV defines the functions of the Board as generally to promote and assist in the rapid and orderly establishment, growth and development of industries in industrial areas; and in particular, to develop industrial areas declared by the State Government and make them available for undertakings, to establish themselves; to establish, maintain, develop and manage industrial estates within industrial areas; and to undertake such schemes of programmes of works for the furtherance of the purposes for which the Board is established and for all purposes connected therewith.

42. Section 33 in Chapter VIII of KIAD Act provides that if the Board is satisfied that if a lessee of any land in an industrial area fails to provide any amenity or carry out any development of the land, the Board may after due notice in that behalf, may itself provide such amenity or carry out such development at the expense of the Lessee. Section 34 provides for penalty for construction or use of land and building contrary to terms of holding. Section 34 A provides for demolition or alteration of unauthorized construction or alteration. Section 35 of the Act enables a person authorized by the Board to enter upon any land for the purpose of inspection, survey, measurement, valuation or enquiry. Section 41 er

notification to make regulations consistent with the Act and Rules thereunder, to carry out the purposes of the Act with the previous approval of the State Government.

43. Thus, when it was found that the Company has not been able to establish the factory for which the land was allotted, under the statute itself powers are given to the Board to cancel the allotment and resume such land.

44. We, further find that the Company is now in liquidation. Till date there is no validly propounded scheme of rehabilitation under Section 391 to 394 of the Companies Act. Some obscure proposals, without concrete Scheme as required under the Act, cannot be made a sheet anchor to come in the way of the rights of the Board which still remains the owners of these plots. It, therefore, cannot even be said that the land in question is required by the Company. The O.L. could claim rights over this land only if it had become the property of the Company and the ownership was vested in it. Even that is not so (whether cost of construction should be reimbursed to Company).

45. The up-shot of the aforesaid discussion would be to hold that termination notice dated 19.1.2002 of the Board is valid. Likewise the order of the Company Judge permitting the board to take possession of the land in question is legal and justified.

46. As a result this appeal is dismissed with costs. Consequently, the appeals arising out of S.L.P.(Civil) 7602-7605 of 2014 CC 14177-14180/2011 are also dismissed.

R.P. Appeals dismissed.

KANHAIYA LAL

v.

STATE OF RAJASTHAN

(Criminal Appeal No. 595 of 2014)

MARCH 13, 2014

[T.S. THAKUR AND C. NAGAPPAN, JJ.]

PENAL CODE, 1860:

ss. 302 and 201 - Murder - Circumstantial evidence - Dead body recovered from the well belonging to accused-appellant - Appellant and deceased stated to have been last seen together previous night - Witness declared hostile - Held: In the instant case, circumstance of last seen together does not by itself and necessarily lead to the inference that it was appellant who committed the crime - Mere non-explanation on the part of appellant, by itself cannot lead to proof of guilt against him - Motive is not established -Conviction of appellant cannot be maintained merely on suspicion, however strong it may be, or on his conduct -- Conviction and sentence imposed on appellant are set aside and he is acquitted of the charge, by giving him benefit of doubt - Evidence - Circumstantial evidence.

The appellant (accused A-2) and accused A-1 were prosecuted in connection with the murder of the brother of PW4. The prosecution case was that at about 9 p.m. on 31-08-2003, the appellant-accused and the deceased visited PW4 and bought a bottle of liquor. When the deceased did not reach his home till the morning, his wife (PW10) went to the house of PW4, who told her about the visit of the deceased and A-2 on the previous night. When PW10 accompanied by PW11 went to the house of A-2 and did not find the deceased there, she lodged a report about the missing of her husband. The villagers

found the belongings of the deceased floating in the well of A-2. PW3 lodged another report at the Police station. Police took out the body of the deceased and registered a case of offenses punishable u/ss 302 and 201 IPC. A-2 and A-1 were arrested. The trial court convicted A-2 u/s 302 and 201 IPC and sentenced him to imprisonment for life and 3 years RI respectively under the two counts. A-1 was acquitted of the charge. The High Court affirmed the conviction and sentences of A-2.

Allowing the appeal, the Court

HELD: 1.1 From the medical evidence it is clear that the deceased suffered a homicidal death. However, nobody witnessed the occurrence and the case rests on circumstantial evidence. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. [para 8 and 10] [749-G-H; 750-A-B, G]

1.2 The primary, if not the solitary basis of the conviction of the appellant is on the theory of last seen, as the deceased along with accused A-2 visited the house of PW4 at 9.00 pm on 31.8.2003. PW4 did not fully support the prosecution case and was declared hostile. He has stated that on the occurrence night A-2 and the deceased came to his house and he gave one bottle of liquor and they returned together. It is the testimony of PW10 that her husband did not return home on the occurrence night and in the morning she went to the house of PW4 and inquired and came to know from him

about the visit of her husband along with accused A-2 to his house in the night. Though PW4 was treated as hostile witness, the above testimony of him is corroborated by the testimony of PW10. [para 11] [750-G-H; 751-A-D]

1.3 The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the appellant who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, by itself cannot lead to proof of guilt against him. [para 12] [751-D-E]

1.4 The alleged illicit intimacy of the appellant with the wife of PW3, the brother of the deceased, is said to be the cause for the occurrence. According to PW3, his wife left him four years back and was residing with her parents in a different village. PW3 and PW10 have categorically stated in their testimonies that there was no dispute between the deceased and the appellant and they had cordial relationship. Thus, the motive alleged by the prosecution that the deceased, as elder of the family dissuaded the appellant to sever his illicit relationship with his sister-in-law had triggered the murder, is not established. [para 13] [751-E-F; 752-A-C]

1.5 The conviction of the appellant cannot be maintained merely on suspicion, however strong it may be, or on his conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that there was cordial relationship between the appellant and the deceased for a long time.In the circumstances, it is not possible to sustain the impugned judgment of conviction and sentence. The conviction and sentence imposed on the appellant/accused A-2 are set aside and he is acquitted of the charge by giving him benefit of doubt [para 14-15] [752-C-F]

Madho Singh vs. State of Rajasthan **(2010) 15 SCC 588 - referred to.**

Case Law Reference:

(2010) 15 SCC 588 referred to para 14

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 595 of 2014.

From the Judgment and Order dated 17.04.2012 of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Criminal Appeal No. 515 of 2004.

Mohd. Adeel Siddiqui, B.K. Jha, Mohd. Irshad Hanif, N.A. Usmani for the Appellant.

Ruchi Kohli, Nidhi Jaswal for the Respondent.

The Judgment of the Court was delivered by

C. NAGAPPAN, J. 1. Leave granted.

2. This appeal is preferred against the judgment of the High Court of Judicature for Rajasthan at Jodhpur, in D.B. Crl. Appeal No.515 of 2004.

3. The appellant herein Kanhaiya Lal, is accused No.2 in Sessions Trial No.01 of 2004 on the file of Additional District & Sessions Judge, Fast Track No.1, Dungarpur, and he was tried for the alleged offences under Section 302 and 201 IPC and on being found guilty was convicted and sentenced to undergo imprisonment for life and to pay fine of Rs.1000 in default to undergo simple imprisonment for 6 months for the offence under Section 302 IPC and further sentenced to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.500 in default to undergo simple imprisonment for 3 months for the offence under Section 201 IPC, and the sentences were ordered to run concurrently. Accused No.1 Raman Lal was also tried along with accused No.2 Kanhaiya Lal for the alleged

offence under Section 201 IPC and was acquitted of the said charge. Challenging the conviction and sentence, accused No.2 Kanhaiya Lal preferred the appeal in D.B. Criminal Appeal No.515 of 2004 and the High Court by judgment dated 17.4.2012 dismissed the appeal. Challenging the same the appellant Kanhaiya Lal has preferred the present appeal.

4. The case of the prosecution in a nut shell is as follows: PW10 Smt. Shantibai is the wife of deceased Kala. PW3 Kama is the younger brother of Kala. Accused Kanhaiya Lal is the brother of PW4 Hurma. They are all residents of Gesu ka bagh village. PW4 Hurma returned home at 8.00 p.m. on 31.8.2003. At about 9.00 p.m. accused Kanhaiya Lal and Kala came to his house and demanded Daru and PW4 Hurma gave one bottle and received a sum of Rs.15/- from the accused Kanhaiya Lal. Thereafter, both of them went away together. Kala did not return home in the night and in the morning PW10 his wife Shantibai along with PW11 Dhula went to the house of PW 4 Hurma and inquired about her husband. PW4 Hurma told them about Kala visiting his house with Kanhaiya Lal the previous night and their returning together from his house. PW 10 Shanti Bai and PW 11 Dhula went to the house of the accused Kanhaiya Lal and he was not found there. PW10 Shantibai lodged a report at the Police Station about the missing of her husband. The villagers found Muffler, shoes and tobacco pouch floating in the well of accused Kanhaiya Lal. PW3 Kama lodged Ex.P10 written report before the Police Station Bichhiwara. Police took out the body of Kala from the well and a case came to be registered in Ex.P10 FIR No.230 of 2003 for the alleged offences under Section 302 and 201 IPC. PW12 Fateh Singh Chauhan took up the investigation. Ex.P11 is the spot map. Ex.P13 is the Panchayatnama. Ex.P14 is the seizure Memo of shoes, Muffler and tobacco pouch.

5. PW1 Dr. Rajesh Sharma along with Dr. Kanti Lal conducted the post-mortem and found the following injuries:

"External injuries:

1. Abrasion 5 x 2 cm on the left side of the neck.

2. Bruise 3 x 2 cm on the parietal aspect of the neck in the right side and all these injuries were anti mortem.

On the internal examination he found the fracture of Hyoid bone anteriorly."

They expressed opinion that the cause of death of Mr. Kala is due to neurogenic shock as well as haemorrhagic shock and the time of death was from 36 to 48 hours prior to the post-mortem.

Ex.P10 is the post-mortem report issued by them.

6. The accused were arrested and on completion of the investigation final report came to be filed. In order to prove the case, the prosecution examined 15 witnesses and marked 26 documents. No witness was examined on the side of the defence. The accused were questioned under Section 313 Cr.P.C. and their answers were recorded. The trial court found accused No. 2 Kanhaiya Lal guilty of the charges under Sections 302 and 201 IPC and sentenced him as narrated above. The trial court found accused No.1 Ramam Lal not guilty of the charge and acquitted him. Accused No.2 Kanhaiya Lal preferred the appeal and the High Court dismissed the appeal by confirming the conviction and sentence imposed on him. Aggrieved by the same he has preferred the present appeal.

7. We heard the learned counsel appearing on behalf of the appellant and the learned counsel appearing for the respondent State.

8. The prosecution case is that the appellant/accused Kanhaiya Lal committed the murder of Kala by strangulation and threw the body in the well. Nobody witnessed the occurrence and the case rests on circumstantial evidence. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can

be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.

9. The prosecution in order to prove its case mainly relied on the following circumstances :

i) The death of Kala was homicidal in nature;

ii) Kala was last seen with accused Kanhaiya Lal when both of them visited the house of PW4 Hurma on the occurrence night.

iii) Kala objected to the illicit intimacy of accused Kanhaiya Lal with the wife of his younger brother PW3 Kama and that led to the occurrence.

10. The autopsy on the body of Kala was conducted by two doctors and one of them namely Dr. Rajesh Sharma has been examined as PW1. According to him two external injuries were found on the neck namely an abrasion 5x2 cm on the left side of the neck and bruise 3x2 cm on the parietal aspect of the neck in the right side and on its internal examination he noticed the fracture of vertebrae c3 & c4 and the fracture of Hyoid bone anteriorly and all the injuries were anti mortem. It is opined that the cause of death of Kala is due to neurogenic shock as well as hemorrhagic shock. Ex.10 is the post mortem report. Accepting the medical evidence it is clear that Kala suffered a homicidal death.

11. The primary, if not the solitary basis of the conviction of the appellant is on the theory of last seen, as the deceased Kala along with accused Kanhaiya Lal visited the house of PW4 Hurma at 9.00 pm on 31.8.2003. PW4 Hurma did not fully support the prosecution case and was [illegible]s

examination-inchief he has stated that on the occurrence night he returned home at 8.00 pm and about 9.00 pm accused Kanhaiya Lal and Kala came to his house and demanded Daru and he gave one bottle and received a sum of Rs.15/- from the accused Kanhaiya Lal and they returned together and the next day morning wife of Kala PW10 Shantibai came and inquired him about her husband Kala and he told her about the visit of Kala with accused Kanhaiya Lal to his house the previous night. It is the testimony of PW10 Shantibai that her husband Kala did not return home on the occurrence night and in the morning she went to the house of PW4 Hurma and inquired and came to know from him about the visit of her husband along with accused Kanhaiya Lal to his house in the night. Though PW4 Hurma was treated as hostile witness, the above testimony of him is corroborated by the testimony of PW10 Shantibai.

12. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant.

13. The alleged illicit intimacy of the accused Kanhaiya Lal with Kamli, wife of PW3 Kama, is said to be the cause for the occurrence. According to PW3, his wife Kamli left him four years back and is residing with her parents in Sanchiya village. PW 10 Shantibai also in her testimony has confirmed that Kamli has been living in village Sanchiya for 4-5 years. It reveals that they were not living together for a number of years. It is the further testimonty of PW 3 Kama that he has never seen Kamli and accused Kanhaiya Lal together and no person in the village told him so and it is only his brother Kala who informed him about the illicit intimacy between them. In this context it is relevant to point out that wife of Kala namely PW10 Shantibai in her testimony has not alleged any illicit relationship between Kamli

and accused Kanhaiya Lal. In such circumstances it is doubtful as to whether there was any illicit intimacy between them as alleged. Further PW3 Kama and PW10 Shantibai have categorically stated in their testimonies that there was no dispute between the deceased Kala and accused Kanhaiya Lal and they had cordial relationship. Thus the motive alleged by the prosecution that Kala, as elder of the family dissuaded accused Kanhaiya Lal to sever his illicit relationship with his sister-in-law Kamli had triggered the murder, is not established.

14. The theory of last seen – the appellant having gone with the deceased in the manner noticed hereinbefore, is the singular piece of circumstantial evidence available against him. The conviction of the appellant cannot be maintained merely on suspicion, however strong it may be, or on his conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that there was cordial relationship between the accused and the deceased for a long time. The fact situation bears great similarity to that in *Madho Singh vs. State of Rajasthan* (2010) 15 SCC 588.

15. In view of the aforesaid circumstances, it is not possible to sustain the impugned judgment and sentence. This appeal is allowed and the conviction and sentence imposed on the appellant/accused Kanhaiya Lal are set aside and he is acquitted of the charge by giving benefit of doubt. He is directed to be released from the custody forthwith unless required otherwise.

R.P. Appeal Allowed.

BHAGWAN TUKARAM DANGE

v.

STATE OF MAHARASHTRA

(Criminal Appeal No. 1823 of 2008)

MARCH 13, 2014

[K.S. RADHAKRISHNAN AND VIKRAMAJIT SEN, JJ.]

PENAL CODE, 1860:

ss.302 and 498-A r/w s. 34 - Death of wife of appellant with burn injuries - Appellant and his father, drunk, asking the victim to bring money from her parental house - On refusal she was given severe beatings - Kerosene poured on her and appellant setting her on fire - Dying declarations - Conviction by courts below and sentence of life imprisonment - Held: Conviction was recorded on the basis of dying declarations recorded by Head Constable and Judicial Magistrate - Said statements were further corroborated by father of deceased and medical evidence - There is no reason to interfere with the conviction and sentence.

s.85 - Act of a person under influence of intoxication - Held: Intoxication, as such, is not a defence to a criminal charge - It cannot be accepted that since accused-appellant was under influence of liquor, offence will fall u/s 304 (Part I) or s.304 (Part II) - He was presumed to know the consequences of his action, of having lit the match stick and set his wife on fire, after his father sprinkled kerosene on her body - He was correctly charge-sheeted u/s 302 and there is no reason to interfere - Since appellant has already suffered 16 years of sentence without remission, State Government is directed to consider his case in terms of Resolution dated 11.04.2008 read with Annexure I - Sentence - Remission of - Government of Maharashtra Resolution No.RLP1006/CR621/ PRS-3 dated 11.04.2008.

EVIDENCE ACT, 1872:

s.32 - Dying declaration - Evidentiary value of - Explained.

The appellant (A-1) and his father (A-2) were prosecuted for offences punishable u/ss 302, 498A read with s.34 IPC, for the murder of the wife of A-1. The prosecution case was that on 18.10.1998 at about 7.00 PM, A1 and A2, while they were fully drunk, demanded money from the wife of A-1. On refusal, she was severely beaten up and asked to bring it from her parental house. A-2 then sprinkled kerosene on her and A-1 lit a match-stick and set her on fire. On 19.10.1998, at about 3.10 AM she was admitted in the Civil Hospital. Two dying declarations - one by Head Constable (PW-5) and the other by the Special Judicial Magistrate (PW-4) - were recorded. The narration of the incident by the deceased to her father (PW-6) was treated as the third dying declaration. The deceased succumbed to the burn injuries on 21.10.1998. The trial court convicted and sentenced both the accused for the offences charged. The High Court declined to interfere. Meanwhile A-2 died.

Disposing of the appeal, the Court

HELD: 1.1 The conviction was recorded on the basis of the dying declarations recorded by PW-5 and PW-4, and corroborated by circumstantial evidence. Both the times the deceased was examined by the doctors and they deposed that she was fully conscious and in a condition to give the statement. There is no inconsistency in the statements made by the deceased to PW5 as well as to PW4. The statements were further corroborated by the evidence of PW6, father of the deceased. The doctor, who conducted the post-mortem examination, stated that burn injuries found on the body of the deceased were ante-mortem in nature

sufficient to cause death. [para 6] [759-C-D, F-G]

1.2 Dying declaration is undoubtedly admissible u/s 32 IPC of the Evidence Act, but due care has to be taken by the persons who record the statement. Dying declaration is based on the maxim, "Nemo moriturus praesumitur mentire" i.e. a man will not meet his maker with a lie in his mouth. Dying declaration is an exception to heresay rule. The court has to carefully scrutinize the evidence while evaluating a dying declaration since it is not a statement made on oath and is not tested on the touchstone of cross-examination. As a rule of prudence, there is no requirement as to corroboration of dying declaration before it is acted upon. [para 7-8] [759-G-H; 760-A, C, D-E]

Harbans Singh & another v. State of Punjab **1962 Suppl. SCR 104 =AIR 1962 SC 439;** *State of Uttar Pradesh v. Ram Sagar Yadav and others* **1985 (2) SCR 621 = (1985) 1 SCC 552;** *State of Uttar Pradesh v. Suresh alias Chhavan and others* **(1981) 3 SCC 635 - referred to.**

2.1 Intoxication, as such, is not a defence to a criminal charge. At times, it can be considered to be a mitigating circumstance if the accused is not a habitual drinker, otherwise, it has to be considered as an aggravating circumstance. [para 11] [762-A-B]

Bablu alias Mubarik Hussain v. State of Rajasthan **2006 (10) Suppl. SCR 835 = (2006) 13 SCC 116 - relied on.**

2.2 It cannot be accepted that since the accused-appellant was under the influence of liquor, the offence will fall u/s 304 (Part I) or s.304 (Part II). A-1 was presumed to know the consequences of his action, of having lit the match stick and set fire on the saree of the deceased, after A-2 sprinkled kerosene on her body. The accused was correctly charge-sheeted u/s 302 IPC and there is no reason to interfere with the conviction and sentence

awarded by the trial court and affirmed by the High Court. [para 12] [762-F-G]

2.3 The Government Resolution No.RLP1006/CR621/ PRS-3 dated 11.04.2008 issued by the Government of Maharashtra read with Annexure I, would indicate that the appellant has to serve a period of minimum 20 years with remission. Since the appellant has already suffered 16 years of sentence without remission, the State Government is directed to consider his case in terms of Resolution dated 11.04.2008 read with Annexure I. [para 13 and 15] [763-B; 764-C-D]

Sukhbir Singh v. State of Haryana **2002 (1) SCR 1152 = (2002) 3 SCC 327 and** *Sandesh alias Sainath Kailash Abhang v. State of Maharashtra* **2012 (13) SCR 1049 = (2013) 2 SCC 479 - cited.**

Case Law Reference:

2002 (1) SCR 1152	**cited**	**Para 4**
2012 (13) SCR 1049	**cited**	**Para 4**
1962 Suppl. SCR 104	**referred to**	**Para 8**
1985 (2) SCR 621	**referred to**	**Para 8**
(1981) 3 SCC 635	**referred to**	**Para 8**
2006 (10) Suppl. SCR 835	**relied on**	**para 11**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1823 of 2008.

From the Judgment and Order dated 09.02.2004 of the High Court of Bombay in Crl. A. No. 11 of 2000.

Ranjan Mukherjee for the Appellant.

Shankar Chillarge (for Asha Gopalan Nair) for the Respondent.

The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. Appellant herein, accused No.1 (A-1) along with his father, accused No.2 (A-2) was charge-sheeted for the offences of murder of his wife under Sections 302, 498A read with Section 34 of the Indian Penal Code. A-1 and A-2 were found guilty and sentenced to suffer imprisonment for life, with a default sentence. Aggrieved by the order of conviction and sentence, they filed Criminal Appeal No.11 of 2000 before the High Court of Bombay and the same was dismissed vide judgment dated 09.02.2004. A-2 later died and A-1, aggrieved by the judgment of the High Court has filed this appeal.

2. The prosecution story is as under:

A-1 son and A-2 father returned to their house on 18.10.1998 at about 7.00 PM, fully drunk. On reaching home, they demanded Rs.200/- to Rs.300/- from the wife of A-1. On refusal, she was severely beaten up and asked to bring it from her parental house. A-2 then sprinkled kerosene from a plastic can over the body of the deceased and A-1 then lit a match-stick and set fire on the saree of the deceased. Deceased shouted for help and rolled down on the ground and ultimately succeeded in extinguishing the fire, but by the time she had suffered more than 80 per cent burns over the body. On getting information, parents of the deceased came to the spot and took her to the nearby Public Health Centre, Mayani. After first aid, the deceased was referred to the Civil Hospital, Satara and on 19.10.1998, at about 3.10 AM she was admitted there. Dr. Barge, PW1 treated her and informed Head Constable Shelar (PW5) regarding the admission of the deceased, in an injured condition. PW1 found that she was fully conscious and was in a condition to give statement. PW5, in the presence of PW1, recorded the dying declaration (Ext.P26). Later, Special Judicial Magistrate (PW4) reached the Civil Hospital, Satara. Dr. Suresh Pawar (PW3) informed PW4 that the deceased was fully conscious and was in a condition to give statement. PW4

recorded the second dying declaration (Ext.P23) of the deceased, which was sealed in an envelope (Ext.P24) and was deposited in the Court of the CJM, Satara. Father of the deceased, Rajaram Mahadu Tupe (PW6), also met the deceased, who had also narrated the same incident to him, which was considered as the third dying declaration.

3. PW7, the investigating officer, came to the spot of the incident and prepared the spot panchnama. PW7 seized the plastic can, match stick and partly burnt cloths from the spot where the deceased extinguished the fire by rolling on the ground. The deceased succumbed to the burn injuries on 21.10.1998 and accused were charge-sheeted.

4. Mr. Ranjan Mukherjee, learned *amicus curiae,* submitted that the evidence recorded is insufficient to warrant a conviction in the absence of any direct evidence. Learned counsel also pointed out that there are a lot of inconsistencies in the dying declarations recorded and a conviction solely on those inconsistent versions cannot be sustained. Learned counsel also submitted that unless there is corroborative evidence, no reliance could be placed on the inconsistent versions given by the deceased in the dying declarations. Learned counsel also submitted that, in any view, the present case would not fall under Section 302, and, at best, it may fall either under Section 304 Part I or Section 304 Part II. Reference was made to exception 4 to Section 300 IPC and stated that since the accused was under the influence of liquor, it has to be perceived that there was no intention to kill the deceased. Reference was made to the Judgments of this Court in *Sukhbir Singh v. State of Haryana* (2002) 3 SCC 327 and *Sandesh alias Sainath Kailash Abhang v. State of Maharashtra* (2013) 2 SCC 479.

5. Mr. Shankar Chillarge, learned counsel appearing for the respondent-State, submitted that the trial court as well as the High Court has correctly appreciated the oral and documentary evidence adduced in this

dying declarations. Learned counsel pointed out that both the dying declarations have been properly recorded and the doctor had certified that the deceased was in a sound state of mind to give her version and the statements of the deceased were correctly recorded in the dying declarations. Learned counsel submitted that the dying declaration made before the Executive Magistrate is consistent with the earlier statement made before the police in the presence of the doctor, who had deposed that the deceased was in a condition to give her version of the incident.

6. We may indicate that in this case the conviction was recorded on the basis of the dying declarations, Ext.P26 and Ext.P23 corroborated by circumstantial evidence. The first dying declaration was recorded by PW5, the Head Constable on 19.10.1998 when the deceased was admitted to the Civil Hospital, Satara. PW1, who treated the deceased, informed PW5 that the deceased was fully conscious and was in a condition to give her statement. Ext.P26 was recorded by PW5, in the presence of PW1. Later, the Special Magistrate (PW4) also reached the Civil Hospital. PW3, who examined the deceased, also informed PW4 that the deceased was fully conscious, well oriented and in a fit condition to give the statement. PW4, therefore, recorded the second dying declaration in the presence of PW3. We have gone through Ext.P26 and Ext.P23 and noticed no inconsistency in the statements made by the deceased to PW5 as well as to PW4. Statements therein were further corroborated by the evidence of PW6, father of the deceased. PW4, who conducted the post-mortem examination, stated that burn injuries found on the body of the deceased were ante-mortem injuries, which were sufficient to cause death.

7. Dying declaration is undoubtedly admissible under Section 32 of the Indian Evidence Act, but due care has to be given by the persons who record the statement. Dying declaration is an exception to the hearsay rule when it is made

by the declarant at the time when it is believed that the declarant's death was near or certain. Dying declaration is based on the maxim, "*Nemo moriturus praesumitur mentire*" i.e. a man will not meet his maker with a lie in his mouth. Dying declaration is a statement made by a dying person as to the injuries culminated in his death or the circumstances under which the injuries were inflicted. Hearsay evidence is not accepted by the law of evidence because the person giving the evidence is not narrating his own experience or story, but rather he is presenting whatever he could gather from the statement of another person. That other person may not be available for cross-examination and, therefore, hearsay evidence is not accepted. Dying declaration is an exception to hearsay because, in many cases, it may be sole evidence and hence it becomes necessary to accept the same to meet the ends of justice.

8. The Court has to carefully scrutinize the evidence while evaluating a dying declaration since it is not a statement made on oath and is not tested on the touchstone of cross-examination. In *Harbans Singh & another v. State of Punjab* AIR 1962 SC 439 this Court held that it is neither a rule of law nor of prudence that dying declaration requires to be corroborated by other evidence before a conviction can be based thereon. Reference may also be made to the decision of this Court in *State of Uttar Pradesh v. Ram Sagar Yadav and others* (1985) 1 SCC 552. This Court in *State of Uttar Pradesh v. Suresh alias Chhavan and others* (1981) 3 SCC 635 held that minor incoherence in the statement with regard to the facts and circumstances would not be sufficient ground for not relying upon statement, which was otherwise found to be genuine. Hence, as a rule of prudence, there is no requirement as to corroboration of dying declaration before it is acted upon.

9. Ext.P23, the first dying declaration in this case, as already stated, was recorded by PW5, t[illegible]n

the presence of PW1, the doctor who treated the deceased at the hospital. PW1 doctor had categorically deposed that the deceased was fully conscious and was in a condition to give the statement. Ext.P26, the second dying declaration was recorded by the Special Judicial Magistrate, PW4. The deceased at that time was examined by PW3, who had also deposed that the deceased was fully conscious, well oriented and was in a condition to give the statement. We have gone through Ext.P26 and Ext.P23 and find no reason to discard the statements recorded in both the dying declarations, which, in our view, are consistent and minor variations here and there would not be sufficient to discard the entire statement considering the fact that the victim was suffering from more than 80% burn injuries.

10. Learned counsel appearing for the accused-appellant submitted that since the accused was under the influence of liquor, he had no intention to kill the deceased wife and, therefore, at best, the offence would fall either under Section 304 Part I or Section 304 Part II of the Indian Penal Code. We find it difficult to accept this contention. Assuming that the accused was fully drunk, he was fully conscious of the fact that if kerosene is poured and a match-stick lit and put on the body, a person might die due to burns. A fully drunk person is also sometimes aware of the consequences of his action. It cannot, therefore, be said that since the accused was fully drunk and under the influence of liquor, he had no intention to cause death of the deceased-wife. Learned counsel for the Appellant made reference to *Sandesh alias Sainath Kailash Abhang* (supra), wherein even though it was stated that committing the offence under the influence of liquor is a mitigating circumstance, but was later clarified in an order passed in Review Petition (Crl.) No.D8875 of 2013, filed in that case, stating as follows :

> "… However our observations may not be construed to generally mean that drunkenness of an accused is a mitigating factor in the award of punishment."

11. Intoxication, as such, is not a defence to a criminal charge. At times, it can be considered to be a mitigating circumstance if the accused is not a habitual drinker, otherwise, it has to be considered as an aggravating circumstance. The question, as to whether the drunkenness is a defence while determining sentence, came up for consideration before this Court in *Bablu alias Mubarik Hussain v. State of Rajasthan* (2006) 13 SCC 116, wherein this Court held that the defence of drunkenness can be availed of only when intoxication produces such a condition as the accused loses the requisite intention for the offence and onus of proof about reason of intoxication, due to which the accused had become incapable of having particular knowledge in forming the particular intention, is on the accused. Examining Section 85 IPC, this Court held that the evidence of drunkenness which renders the accused incapable of forming the specific intent essential to constitute the crime should be taken into account with the other facts proved in order to determine whether or not he had the intention. Court held that merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts. This Court, in that case, rejected the plea of drunkenness after noticing that the crime committed was a brutal and diabolic act.

12. We find it difficult to accept the contention of the counsel that since the accused-Appellant was under the influence of liquor, the offence will fall under Section 304 Part I or Section 304 Part II. A-1 was presumed to know the consequences of his action, of having lit the match stick and set fire on the saree of deceased, after A-2 sprinkled kerosene on her body. In our view, the accused was correctly charge-sheeted under Section 302 IPC and we find no reason to interfere with the conviction and sentence awarded by the trial court and affirmed by the High Court.

13. Learned counsel appearing for [illegible]d

further submitted that the appellant has already served the sentence for more than 16 years without remission, he should be set free. Learned counsel appearing for the State brought to our knowledge the guidelines for pre-mature release under the "14 Year Rule" of Prisoners serving life sentence after 18th December, 1978. The Government Resolution No.RLP1006/ CR621/PRS-3 dated 11.04.2008 issued by the Government of Maharashtra has made applicable the guidelines to convicts undergoing life imprisonment and those having good behavior while undergoing the sentence.

14. Annexure 1 to the said Government Resolution refers to various categories of offences and the period of imprisonment to be undergone including set-off. In the instant case, relevant category No.2 which deals with "**the offences regarding the crimes against women and minors**" reads as under:

Annexure I

Category No.		Categorization of crime	Period of imprisonment to be undergone including remission subject to a minimum of 14 years of actual imprisonment including set off period
2		**Offences relating to crimes against women and minors**	
	a	Where the convict has no previous criminal history and committed the murder in an individual capacity in a moment of anger and without premeditation.	20
	b	Where the crime as above committed with premeditation	22

15. Resolution, referred to above read with Annexure I, would indicate that the appellant has to serve a period of minimum 20 years with remission. Since the appellant has already suffered 16 years of sentence without remission, the State Government is directed to consider as to whether he has satisfied the requirement of Resolution dated 11.04.2008 read with Annexure I and, if that be so, he may be set free if the period undergone by him without remission would satisfy the above-mentioned requirement.

16. The appeal is disposed of with the above direction.

R.P. Appeal disposed of.

KESHARBAI @ PUSHPABAI EKNATHRAO NALAWADE (D) BY LRS. & ANR.
v.
TARABAI PRABHAKARRAO NALAWADE & ORS.
(Civil Appeal No. 3867 of 2014)

MARCH 14, 2014

[SURINDER SINGH NIJJAR AND A.K. SIKRI, JJ.]

PARTITION:

Hindu undivided family - Partition -- Effect of -- Held: Once a partition in the sense of division of right, title or status is proved or admitted, presumption is that all joint property was partitioned or divided -- In the instant case, High Court has affirmed the findings of the trial court that in 1985, there was a complete partition and the parties had acted on the same -- Therefore, the presumption would be that there was complete partition of all the properties -- Burden of proof that certain property was excluded from the partition would be on the party that alleges the same to be joint property - High Court committed an error in placing the burden of proof on the appellants, who were defendants in the suit to prove that the property at Sl. No. V was a self-acquired property of their predecessor-in-interest - Findings recorded by High Court on Issue No. III is set aside - Consequently, suit filed by the plaintiffs-respondents shall stand dismissed - Evidence - Burden of proof.

HINDU LAW:

HUF - Partition -- Presumption -- Explained.

A suit for partition between the parties was dismissed by the trial court holding that a family arrangement had taken place in the year 1985, and every one took possession in their respective shares and was enjoying

the same. However, in appeal the High Court held that the plaintiffs were entitled to partition of property at Sl. No. V, and set aside the finding of the trail court with regard to issue no.III that the suit property at Sl. No.V was the self acquired property of the predecessor-in-interest of the defendants concerned.

Allowing the appeal, the Court

HELD: 1.1 The High Court having accepted the findings of the trial court that there was completed partition between the parties, has committed an error of jurisdiction in putting the burden of proof on the defendants on Issue No. III. [para 15] [775-A-B]

1.2 The trial court on appreciation of the entire evidence had concluded that the evidence on record disclosed that the family arrangement alleged to have taken place in the year 1985 in presence of three brothers and by accepting it, every one took possession of their respective shares and was enjoying the same. Their names were also mutated in revenue records. The trial court has rightly concluded that no objections having been taken at the time when the mutation entries were confirmed, the plaintiffs are estopped from saying that the said entries are effected on wrong basis of partition. Further, the plaintiffs sold the land allotted to them, without the consent of defendant Nos. 1 to 12, treating the same to be their exclusive property, and not coparcenary property. [para 16-17] [775-B-C, E-G]

1.3 On Issue No.III, the trial court has held that property at Sl. No. V was the self-acquired property of the predecessor in interest of the defendants concerned. The High Court has reversed the said findings on the basis that the appellants, who were defendants in the civil suit, had not led any evidence to show that their predecessor-in-interest(ER) had independently pu

Sl. No. V. The High Court further held that in this case, a presumption would arise that property at Sl. No. V was joint property, purchased from the income derived from the other joint property, which form the nucleus. The said presumption is wrong in law in view of the fact that the High Court has affirmed the findings of trial court that in 1985, there was a complete partition and the parties had acted on the same. It is a settled principle of law that once a partition in the sense of division of right, title or status is proved or admitted, the presumption is that all joint property was partitioned or divided. Undoubtedly, the joint and undivided family being the normal condition of a Hindu family, it is usually presumed, until the contrary is proved, that every Hindu family is joint and undivided and all its property is joint. This presumption, however, cannot be made once a partition (of status or property), whether general or partial, is shown to have taken place in a family. [para 18-19] [775-G; 776-D-H; 777-A-B]

Bhagwati Prasad Sah & Ors. Vs. Dulhin Rameshwari Kuer & Anr. **[1951] 2 SCR 603;** *Addagada Raghavamma & Anr. Vs. Addagada Chenchamma & Anr.* **1964 SCR 933 = AIR 1964 SC 136 = referred to.**

1.4 In the instant case, the trial court as well as the High Court has held that there was a complete partition in the year 1985. Therefore, the presumption would be that there was complete partition of all the properties. Consequently, the burden of proof that certain property was excluded from the partition would be on the party that alleges the same to be joint property. High Court clearly committed an error in placing the burden of proof on the appellants, who were defendants in the suit to prove that the property at Sl. No. V was a self-acquired property of ER. Consequently, the suit filed by the plaintiffs-respondents shall stand dismissed. [para 21-22] [778-A-D]

Case Law Reference:

[1951] 2 SCR 603	**referred to**	**para 19**
1964 SCR 933	**referred to**	**para 20**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3867 of 2014.

From the Judgment and Order dated 23.03.2009 of the High Court of Bombay at Aurangabad in FA No. 468 of 2004.

Shekhar Naphade, Sanjay Kharde, Shubhangi Tuli, Chandan Ramamurthi for the Appellants.

Rahul Jain, Shitakshi Talukdar, Shivaji M. Jadhav, Naresh Kumar for the Respondents.

The Judgment of the Court was delivered by

SURINDER SINGH NIJJAR, J. 1. Leave granted.

2. This appeal has been filed against the judgment and decree dated 23rd March, 2009 of the High Court of Bombay (Aurangabad Bench) rendered in First Appeal No.468 of 2004 whereby the High Court has partly allowed the First Appeal of the plaintiffs/respondent Nos. 1 to 3. The High Court has dismissed the suit of the plaintiffs in respect of the agricultural lands and house property at Chikalthan and Neem Dongri. At the same time, the High Court has set aside the judgment of the trial court on Issue No.3 relating to the question as to whether house bearing No.4.13.78 bearing CTS No.4705 admeasuring 138.2 sq. meters alongwith house structure standing therein situated at Nageshwarwadi, Aurangabad is the self acquired property of deceased Eknathrao.

3. The admitted facts are that plaintiff Nos. 1 and 2 to 4 are the wife and children of deceased Prabhakarrao s/o Saluba

respectively. Defendant Nos. 7 and 8 to 12 are the wife and children of deceased Trimbakrao s/o Deorao respectively. Defendant Nos. 13 to 15 are the subsequent purchasers of land from the plaintiff. For better understanding of the inter-se relationship between the parties, it would be appropriate to reproduce here the genealogy table of the family, as noticed by the trial court:

Mahipati

Deorao (son) died on 15.7.1974	**Sauba (son) died on 6.10.1980**
Shewantabai (wife) died Ansabai (wife) died	
Prabhakar (son) died	
Eknathrao Trimbakrao Tarabai Santosh Satish Manisha (Son) (son)	
Died on died on (P-1) (P-2) (P-3) (P-4) /11/97 31.5.86	
Indubai (wife) D-1	**Kamlabai (wife) D-7**
Kiran Kranti Asha Jyoti Bharti	
D-2 D-3 D-4 D-5 D-6	
	Pramod Vinod Rajendra Vidya Vijaya
	D-8 D-9 D-10 D-11 D-12

4. The plaintiffs filed a suit for partition and separate possession of half share of the plaintiffs in the following properties :-

(I) Agricultural land Gat No.453 whose survey number is 210 adms. 19 acre 1 guntha situated at village Chikalthana Tq. Kannad.

(II) Land bearing Gat No.146 of whose survey number is

65 adms. 27 acre 39 gunthas situated at Nimdongri Tq. Kannad.

(III) House property bearing No.725 adms. 26.39 sq. meters situated at Chikalthana Tq. Kannad.

(IV) Open plot bearing CTS No.709 adms. 64.3 squ. meter known as 'Girnichi Jaga' situated at Chikalthana Tq. Kannad.

(V) House bearing No.4.13.78 of whose CTS No. is 4705 adms. 138.2 sq. meters along with house structure standing thereon situated at Nageshwarwadi Aurangabad.

5. It was claimed that property at Sl.Nos.I and II were jointly purchased by deceased Deorao and deceased Saluba in the name of Deorao. The house at Sl.No.III was said to have been constructed on a plot jointly purchased by the two brothers. Both the brothers were residing in the same house during their life time. With regard to property at Sl.No.V, it was stated that both the brothers had purchased the plot on which the house is constructed. It was further claimed that the plot was purchased in the name of Eknathrao and his family was residing in that house. In short, it was claimed that during the life time of Deorao and Saluba, all the properties were jointly cultivated and were jointly enjoyed by all the family members. Trimbakrao was residing at Kannad and Eknathrao was residing at Aurangabad due to their employment. Similarly, Prabhakarrao was in service at different places. It was also the case of the plaintiffs that there was a family arrangement between Eknath, Trimbak and Prabhakarrao. Property at Sl.No.I was allotted to Trimbakrao and Prabhakarrao to the extent of half share each. Similarly, land at Sl.No.II was allotted to Trimbakrao (7 acres) and to Prabhakarrao (6 acres and 39 gunthas). Eknathrao was allotted 14 acres. After the family arrangement, it was alleged that everyone was in possession of the respective parts of land and their names were entered in the re e

further claim of the plaintiffs that in the same family arrangement house at Sl.No.III was given in possession of Trimbakrao and Prabhakarrao to the extent of half share each. Eknathrao was put in possession of the entire open space known as 'Girnichi Jaga'. It was specifically pleaded that house at Sl.No.V (hereinafter referred to as Nageshwarwadi Property) was not part of the family arrangement. It was exclusively in possession of the deceased Eknathrao and now in possession of petitioners herein, defendant Nos. 1 and 2 in the suit.

6. The plaintiffs also claimed that Prabhakarrao during his life time did not raise any objection with regard to the unequal allotment in the share of the joint properties in the family arrangement. It was stated that Prabhakarrao was an alcoholic and, therefore, remained under the domination of the petitioners. It is also admitted in the plaint that after the death of Prabhakarrao, out of necessity to survive, certain agricultural lands are sold by the plaintiffs to defendant No.13 to 16. This was necessary to clear up the dues of the co-operative societies and hand loan of other relatives taken by the deceased Prabhakarrao. After the death of Prabhakarrao, the plaintiffs claimed to have requested the petitioners i.e. defendants to undo the injustice done to Prabhakarrao at the time of the family arrangement. Instead of partitioning the joint properties equitably, it was claimed that after the death of Eknathrao, defendant No.1 to 12, which include petitioner No.1 and 2, were trying to enter their names in the revenue records with regard to the Nageshwarwadi Property at Aurangabad. Since the defendants had declined the request for partition, the plaintiffs were constrained to file the suit.

7. In the written statements filed by the defendants, it was pointed out that there was no ancestral joint family nucleus to purchase the agricultural lands and the house at Sl.No.III. It is further claimed that the suit properties are not coparcenery properties in which Deorao and Saluba had equal shares. It was contended that at the most property can be deemed as a

joint property of Deorao, Saluba, Eknathrao and Prabhakarrao. It was also claimed that the partition of the suit property had taken place on 22nd April, 1985, the respective shares were allotted, and final distribution of the property was made. It was contended that the partition having been completed, the suit ought to be dismissed. On the basis of the pleadings of the parties, the trial court framed 8 issues. The trial court records the issues and the findings as follows:-

ISSUES	FINDINGS
1. Do plaintiffs prove that the suit Properties are the joint family Properties?	In Negative
2. Do defendants prove that there Was already partition on 22.4.85 And all shares holders are in Possession of their respective Shares?	In affirmative
3. Do they further prove that suit Property mention at Sr.No.5 is self acquired property of deceased Eknath?	In affirmative
4. Whether suit is maintainable?	In affirmative
5. Whether the suit is barred by limitation?	In negative
6. Whether plaintiffs are entitled to partition and possession of half share in the suit properties?	In negative
7. Whether plaintiffs are entitled to future mesne profit?	In negative
8. What decree and order? As per	

On the basis of the aforesaid findings, the suit of the plaintiffs was dismissed with costs.

8. Aggrieved by the aforesaid judgment and decree, the plaintiffs filed First Appeal No.468 of 2004 before the High Court. The High Court formulated the points for consideration in appeal which are as follows:

(i) Whether the property at Nageshwarwadi, Aurangabad is self-acquired property of Eknathrao and as such is not liable for partition?

(ii) Whether the transaction entered into on 22.4.1985 by Eknathrao, Trimbakrao and Prabhakarrao was family arrangement not amounting to partition?

(iii) Whether Civil Application No.10005 of 2007 filed for filing additional evidence should be allowed and in case it is allowed can the partition list dated 22.4.1985 be admitted in evidence?

9. Upon consideration of the entire material, the High Court has answered point No.(i) in the negative and Point Nos.2 and 3 in the affirmative. As a result of the aforesaid findings, the suit in respect of agricultural lands and house property at Chikalthan and Neem Dongri has been dismissed. However, the plaintiffs/respondent Nos. 1 to 3 are held to be entitled to partition of Nageshwarwadi House at Aurangabad. It has been further directed that the respondents who are legal representatives of deceased Prabhakarrao are entitled to half share on the one hand and the remaining half share is to be divided equally by the petitioners and respondent No.1 to 6 on the other.

10. Aggrieved by the aforesaid judgment of the High Court, the petitioners who were defendants in the suit have filed the S.L.P. (C) No.27916 of 2009 giving rise to the present appeal.

11. We have heard the learned counsel for the parties.

12. Mr. Shekhar Naphade, learned senior counsel appearing for the appellants submitted that in Paragraph 25 of the impugned judgment, the High Court has accepted the fact that there was a complete partition between the parties. The High Court has held that the family arrangement amounts to final distribution of property amongst sharers. Plaintiffs themselves have also treated the property allotted to them as their exclusive property. Treating the property allotted to their share as their exclusive property, they have sold some portions of the land to respondent Nos. 13 to 16. The High Court also held that the plaintiffs are estopped from challenging the existence and validity of the partition effected in the year 1985. The High Court even held that they are not entitled to fresh partition of the properties which were admittedly covered by the partition of 1985. Mr. Naphade submitted that having held that there was a final partition between the parties, the High Court committed an error of jurisdiction in reversing the findings recorded by the trial court on Issue No.III. According to Mr. Naphade, the High Court has wrongly placed the burden of proof on the petitioners, who were defendants in the suit to prove that Nageshwarwadi property was self-acquired property of Eknathrao. Learned senior counsel also submitted that the High Court ignored the evidence produced by the parties, which would establish that the parties had always treated the Nageshwarwadi property as the self-acquired property of Eknathrao.

13. On the other hand, learned counsel appearing for the respondents has submitted that the trial court had wrongly decided the Issue No.III against the plaintiffs. The defendants (petitioners herein) have failed to prove that Eknathrao had sufficient independent income to have acquired the Nageshwarwadi property. It is submitted that although the defendants had claimed that Eknathrao was employed with the Indian Army, no proof with regard to the employment was produced.

14. We have considered the submissions made by the learned counsel for the parties.

15. Mr. Naphade is quite correct in his submission that the High Court having accepted the findings of the trial court that there was completed partition between the parties, has committed an error of jurisdiction in putting the burden of proof on the defendants on Issue No. III.

16. The trial court on appreciation of the entire evidence had concluded that "the evidence on record discloses that as contended, family arrangement alleged to have taken place in the year 1985 in presence of three brothers and by accepting it, every one took possession of their respective shares and was enjoying the same. Not only this but their names were mutated to revenue records. Everything was done in presence of deceased brother."

17. The trial court also finds that mutation entry bearing No.726 and No. 1116 were effected on the strength of the partition deed dated 22nd April, 1985. Furthermore, the mutation entries were confirmed by issuing notices to the parties. It was specifically noticed on the mutation entries that no objection was taken by any of the parties. The trial court, in our opinion, has rightly concluded that no objections having been taken at the time when the mutation entries were confirmed, the plaintiffs are estopped from saying that these entries are effected on wrong basis of partition. Noticing the conduct of the parties, even further, the trial court held that the plaintiffs by selling the land allotted to them, treating the same to be their exclusive property. This property was sold without the consent of defendant Nos. 1 to 12. Thus treating the same to be their exclusive property and not coparcenary property.

18. On Issue No.III, the trial court has held that there is no evidence except the bare words of the plaintiffs to show that Nageshwarwadi property is purchased by the deceased Deorao and deceased Saluba in the name of Eknathrao. The trial court, in our opinion, has correctly held that all the other joint property had been purchased either in the name of Deorao or deceased Saluba. There was no explanation as to why the

property at Nageshwarwadi was purchased by them exclusively in the name of Eknathrao. On the basis of the evidence, the trial court found that Eknathrao was residing *exclusively* in the aforesaid property. At that time Prabhakarrao himself was living in rented premises. No explanation is given as to why Prabhakarrao was not living in the aforesaid house, in case, it was joint property of Eknathrao and Prabhakarrao. The trial court also noticed that it was not only Nageshwarwadi property, which was not made part of the partition but also the house of Trimbakrao at Kannad was kept outside partition. The trial court also held that Eknathrao had independent means to purchase Nageshwarwadi property. He was employed with the Military as a Head Clerk from 1944 to 1956. On the basis of the entire evidence, the trial court came to the conclusion that Nageshwarwadi property was the self-acquired property of Eknathrao. The High Court had reversed the aforesaid findings on the basis that the petitioners, who were defendants in the civil suit had not led any evidence to show that Eknathrao had independently purchased Nageshwarwadi property at Aurangabad. The High Court has reversed the findings of the trial court on the basis that petitioners have failed to prove that Eknathrao was working in the Ammunition Factory, Khadki, Pune from 1944 to 1956. The High Court further held that in this case, a presumption would arise that Nageshwarwadi property was joint property, purchased from the income derived from the other joint property, which form the nucleus. Therefore, it was for the petitioner to prove that Nageshwarwadi property was acquired without the aid of the joint family.

19. In our opinion, the aforesaid presumption is wrong in law in view of the fact that the High Court has affirmed the findings of the trial court that in 1985, there was a complete partition and the parties had acted on the same. It is a settled principle of law that once a partition in the sense of division of right, title or status is proved or admitted, the presumption is that all joint property was partitioned or divided. Undoubtedly the joint and undivided family being the a

Hindu family, it is usually presumed, until the contrary is proved, that every Hindu family is joint and undivided and all its property is joint. This presumption, however, cannot be made once a partition (of status or property), whether general or partial, is shown to have taken place in a family. This proposition of law has been applied by this court in a number of cases. We may notice here the judgment of this Court in *Bhagwati Prasad Sah & Ors. Vs. Dulhin Rameshwari Kuer & Anr.*[1], wherein it was inter alia observed as under:

> "8. Before we discuss the evidence on the record, we desire to point out that on the admitted facts of this case neither party has any presumption on his side either as regards jointness or separation of the family. The general principle undoubtedly is that a Hindu family is presumed to be joint unless the contrary is proved, but where it is admitted that one of the coparceners did separate himself from the other members of the joint family and had his share in the joint property partitioned off for him, there is no presumption that the rest of the coparceners continued to be joint. There is no presumption on the other side too that because one member of the family separated himself, there has been separation with regard to all. It would be a question of fact to be determined in each case upon the evidence relating to the intention of the parties whether there was a separation amongst the other co-parceners or that they remained united. The burden would undoubtedly lie on the party who asserts the existence of a particular state of things on the basis of which he claims relief."

20. This principle has been reiterated by this Court in *Addagada Raghavamma & Anr. Vs. Addagada Chenchamma & Anr.*[2]

1. (1951) 2 SCR 603.
2. AIR 1964 SC 136.

21. In this case, the trial court as well as the High Court has held that there was a complete partition in the year 1985. Therefore, the presumption would be that there was complete partition of all the properties. Consequently, the burden of proof that certain property was excluded from the partition would be on the party that alleges the same to be joint property. Therefore, in our opinion, the High Court clearly committed an error in placing the burden of proof on the petitioners, who were defendants in the suit to prove that the Nageshwarwadi property at Aurangabad was a self-acquired property of Eknathrao.

22. In view of the aforesaid, we allow the appeal and set aside the findings recorded by the trial court on Issue No. III. The judgment of the Trial Court is confirmed on Issue No. III also. Consequently, the suit filed by the plaintiffs (respondents herein) shall stand dismissed.

R.P. Appeal allowed.

KESHARBAI @ PUSHPABAI EKNATHRAO NALAWADE (D) BY LRS. & ANR.

v.

TARABAI PRABHAKARRAO NALAWADE & ORS.

(Civil Appeal No. 3867 of 2014)

MARCH 27, 2014

[SURINDER SINGH NIJJAR AND A.K. SIKRI JJ.]

JUDGEMENT:

Modification in judgment -- Held: In the judgment dated 14-03-2014, the sentence, "The judgment of the Trial Court is confirmed on issue No. III also" is deleted.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3867 of 2014.

From the Judgment and Order dated 23.03.2009 of the High Court of Bombay at Aurangabad in FA No. 468 of 2004.

Chandan Ramamurthi for the Appellants.

Preshit Surshe (Mentioned By), Shivaji M. Jadhav, Naresh Kumar for the Respondents.

The following Order of the Court was delivered

ORDER

It has been brought to our notice that in paragraph 22 of the Judgment delivered on 14th March, 2014 in Civil Appeal No.3867 of 2014 [Arising out of Special Leave Petition (Civil) No.27916 of 2009], the sentence "The judgment of the Trial Court is confirmed on Issue No.III also." needs to be deleted. We order accordingly.

R.P. Judgment Modified.

KESHARBAI @ PUSHPABAI EKNATHRAO NALAWADE (D) BY LRS. & ANR.

v.

TARABAI PRABHAKARRAO NALAWADE & ORS.

(Civil Appeal No. 3867 of 2014)

APRIL 4, 2014

[SURINDER SINGH NIJJAR AND A.K.SIKRI, JJ.]

JUDGMENT:

Amendment in judgment - Held: Para 22 of judgment dated 14.3.2014 is amended to the effect that the judgment of trial court is confirmed on Issue No. III also and suit of plaintiffs stands dismissed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3867 of 2014.

From the Judgment and Order dated 23.03.2009 of the High Court of Bombay at Aurngabad in FA No. 468 of 2004.

Chandan Ramamurthi for the Appellants.

Preshit Surshe (Mentioned By), Shivaji M. Jadhav, Naresh Kumar for the Respondents.

The following Order of the Court was delivered

ORDER

1. On 27th March, 2014, we had directed to delete the following words in paragraph 22 of the Judgment delivered on 14th March, 2014 in Civil Appeal No.3867 of 2014 [Arising out of Special Leave Petition (Civil) No.27916 of 2009]:

"and set aside the findings recorded by the trial court on Issue No.III."

2. However, inadvertently, the following line in the said paragraph is deleted:

"The judgment of the Trial Court is confirmed on Issue No. III also."

3. Let the necessary amended be made and the amended paragraph 22 of the said judgment will read as follows:

"22. In view of the aforesaid, we allow the appeal. The judgment of the Trial Court is confirmed on Issue No. III also. Consequently, the suit filed by the plaintiffs (respondents herein) shall stand dismissed."

R.P. Judgment modified.

RAJASTHAN STATE TPT CORPN. & ANR.
v.
BAJRANG LAL
(Civil Appeal No. 4104 of 2007)

MARCH 14, 2014

[DR. B.S. CHAUHAN AND J. CHELAMESWAR, JJ.]

Service law: Termination from service - Embezzlement of money - Respondent-employee working as a trainee conductor on daily basis found carrying passengers without tickets - Chargesheeted - Enquiry officer found charges proved against him - Disciplinary Authority passed order of punishment of removal from service - Suit challenging removal decreed accepting the allegation of employee that in the inquiry the statement of the witnesses were not recorded in front of him; that he was not given an opportunity to cross-examine the witnesses produced by Corporation; that he was not supplied with the copies of the documents and was not heard on the quantum of the punishment - Corporation's appeal dismissed by first appellate court and High Court - Held: The findings recorded by trial court was based only on the allegations made by the employee in the plaint and on account of non-rebuttal of same on part of Corporation, though the trial court had proceeded with the case clearly observing that the burden of proving the issue was on the employee and not on the Corporation - There was no specific pleading as to what document relied upon by the enquiry officer was not supplied to employee or which witness was not permitted to be cross-examined by him - Also trial court did not make any reference to enquiry report or contents thereof - The entire case was based on ipsi dixit - High Court in Second Appeal refused to examine the issue by merely observing that no substantial question of law was involved and the findings of fact, even though erroneous, cannot be

disturbed in Second Appeal - The conclusion reached by High Court was erroneous as Second Appeal, in exceptional circumstances, can be entertained on pure questions of fact - Regarding the question of punishment, in cases involving corruption, there cannot be any other punishment than dismissal - Any sympathy shown in such cases is totally uncalled for and opposed to public interest - The amount misappropriated may be small or large; it is the act of misappropriation that is relevant - No interference called for with the order of dismissal.

Pleadings: Held: A party has to plead the case and produce/adduce sufficient evidence to substantiate his submissions made in the plaint and in case the pleadings are not complete, the Court is under no obligation to entertain the pleas.

Code of Civil Procedure, 1908: s.100 - Held: There is no prohibition for the High Court to entertain the Second Appeal even on question of fact where factual findings are found to be perverse.

M/s. Larsen & Toubro Ltd. & Ors. v. State of Gujarat & Ors. **AIR 1998 SC 1608: 1998 (2) SCR 339;** *National Building Construction Corporation v. S. Raghunathan & Ors.* **AIR 1998 SC 2779: 1998 (1) Suppl. SCR 156;** *Ram Narain Arora v. Asha Rani & Ors.* **(1999) 1 SCC 141: 1998 (1) Suppl. SCR 188 ;** *Smt. Chitra Kumari v. Union of India & Ors.* **AIR 2001 SC 1237;** *State of U.P. v. Chandra Prakash Pandey* **AIR 2001 SC 1298: 2001 (2) SCR 506;** *M/s. Atul Castings Ltd. v. Bawa Gurvachan Singh* **AIR 2001 SC 1684: 2001 (3) SCR 124;** *Vithal N. Shetti & Anr. v. Prakash N. Rudrakar & Ors.* **(2003) 1 SCC 18: 2002 (4) Suppl. SCR 284;** *Devasahayam (Dead) by L.Rs. v. P. Savithramma & Ors.* **(2005) 7 SCC 653: 2005 (3) Suppl. SCR 255;** *Sait Nagjee Purushotam & Co. Ltd. v. Vimalabai Prabhulal & Ors.* **(2005) 8 SCC 252: 2005 (3) Suppl. SCR 973;** *Rajasthan Pradesh V.S. Sardarshahar & Anr. v. Union of India & Ors.* **AIR 2010 SC 2221: 2010 (7) SCR 252;** *Ritesh Tiwari & Anr. v. State of U.P. & Ors.* **AIR 2010 SC 3823: 2010 (11) SCR 589;** *Union of India v. Ibrahim Uddin & Anr.* **(2012) 8 SCC 148: 2012 (8) SCR 35;** *U.P State Road Transport Corporation v. Suresh Chand Sharma* **(2010) 6 SCC 555: 2010 (7) SCR 239 - relied on.**

The Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke of Bombay & Ors., **AIR 1975 SC 2238: 1976 (1) SCR 427;** *Uttam Das Chela Sunder Das v. Shiromani Gurdwara Parbandhak Committee, Amritsar* **AIR 1996 SC 2133 1996 (3) Suppl. SCR 5;** *Rajasthan SRTC & Ors. v. Mohar Singh* **AIR 2008 SC 2553: 2008 (6) SCR 890;** *Rajasthan SRTC & Anr. v. Bal Mukund Bairwa* **(2009) 4 SCC 299;** *Rajasthan State Road Transport Corporation & Ors., v. Deen Dayal Sharma* **AIR 2010 SC 2662 - referred to.**

Case Law Reference:

1976 (1) SCR 427	**referred to**	**Para 6**
1996 (3) Suppl. SCR 5	**referred to**	**Para 6**
2008 (6) SCR 890	**referred to**	**Para 6**
(2009) 4 SCC 299	**referred to**	**Para 6**
AIR 2010 SC 2662	**referred to**	**Para 6**
1998 (2) SCR 339	**relied on**	**Para 12**
1998 (1) Suppl. SCR 156	**relied on**	**Para 12**
1998 (1) Suppl. SCR 188	**relied on**	**Para 12**
AIR 2001 SC 1237	**relied on**	**Para 12**
2001 (2) SCR 506	**relied on**	**Para 12**
2001 (3) SCR 124	**relied on**	**Para 13**
2002 (4) Suppl. SCR 284	**relied on**	**Para 13**
2005 (3) Suppl. SCR 255	**rel**	

2005 (3) Suppl. SCR 973	**relied on**	**Para 13**
2010 (7) SCR 252	**relied on**	**Para 13**
2010 (11) SCR 589	**relied on**	**Para 13**
2012 (8) SCR 35	**relied on**	**Para 13**
2010 (7) SCR 239	**relied on**	**Para 19**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4104 of 2007.

From the Judgment and Order dated 08.11.2005 of the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur in S.B. Civil Second Appeal No. 449 of 2003.

S.K. Bhattarcharya for the Appellant.

Anis Ahmed Khan for the Respondent.

The Order of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. This appeal has been preferred by the Rajasthan State Road Transport Corporation (hereinafter referred to as `Corporation') against the judgment and order dated 8.11.2005 passed by the High Court of Judicature for Rajasthan (Jaipur Bench) in S.B. Civil Second Appeal No. 449 of 2003 upholding the judgment and decree date 28.1.2003 in Civil Regular Appeal No. 119 of 2002 passed by Additional District Judge, Jaipur, by which and whereunder, it has affirmed the judgment and decree dated 30.11.1994 passed by the Additional Civil Judge (Jr. Div.) No. 2, Jaipur in Civil Suit No. 1346 of 1988.

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

A. The respondent while working as a trainee conductor on daily basis was found carrying certain passengers without tickets and, thus, an enquiry was initiated against him. Two

chargesheets dated 11.3.1988 were served upon him. In the first chargesheet, it was alleged that on 24.2.1988 while he was on duty enroute Kota-Rajpura, when his bus was checked, it was found that 10 passengers were traveling without tickets, though he had collected the fare from each of them. In the second chargesheet, it had been alleged that when he was on duty on route Kota-Neemuch, his bus was checked and he was found carrying two passengers traveling on tickets of lesser amount though, he had collected the full fare from them. The respondent submitted separate reply to the said chargesheets which were not found satisfactory. Therefore, the enquiry officer was appointed to enquire into the matter and a regular enquiry ensued. The enquiry officer after conclusion of the enquiry submitted the report holding that charges leveled against the respondent in both the chargesheets stood proved against him.

B. After considering the report, the Disciplinary Authority vide order dated 5.8.1988 passed order of punishment of removal from the service. The respondent filed a Civil Suit on 2.9.1988 challenging the order of removal alleging that he was not supplied with the documents referred to in the chargesheets, nor was given the enquiry report nor other documents. More so, the quantum of punishment was disproportionate to the proved delinquency.

C. The Suit was contested by the appellants denying all the averments made therein. However, on conclusion of the trial, the Suit was decreed vide judgment and decree dated 30.11.1994.

D. Aggrieved, the Corporation filed Civil Regular Appeal No. 119 of 2002, which stood dismissed vide judgment and decree dated 28.1.2003.

E. The Corporation challenged both the aforesaid judgments by filing Regular Second Appeal No. 449 of 2003, which also stood dismissed vide impugned judgment and decree.

Hence, this appeal.

3. Shri S. K. Bhattacharya, learned counsel appearing on behalf of the appellants, has submitted that none of the courts below have examined the case in correct perspective. The stand taken by the appellants that the Suit itself was not maintainable, as the only remedy available to the respondent was to approach the Labour Court under the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act 1947') has not been properly examined by the courts below. More so, the pleadings in the plaint were vague. The respondent/plaintiff failed to prove any of the allegations made in the plaint, therefore, the courts below have erred in holding that the enquiry stood vitiated due to violation of statutory provisions and principles of natural justice. The enquiry had been conducted strictly in accordance with law, the provisions of Section 35 of the Standing Order have been fully complied with and the respondent was given full opportunity to defend himself. Therefore, the findings of fact recorded by the courts below in this respect are perverse. The respondent was found to have embezzled money of the corporation and the punishment of dismissal cannot be held to be disproportionate to the proved delinquency. Thus, the appeal deserves to be allowed.

4. On the contrary, Shri Anis Ahmed Khan, learned counsel appearing on behalf of the respondent, has opposed the appeal contending that there are concurrent findings of facts recorded by the three courts. The trial court as well as the first appellate court have recorded the findings of fact that the enquiry had not been conducted in accordance with law and the punishment of dismissal from service was disproportionate to the delinquency proved. Therefore, no interference is called for.

5. We have heard learned counsel for the parties and perused the record.

6. Undoubtedly, the appellant corporation had taken the

plea regarding the maintainability of suit on the ground that the respondent being a workman ought to have approached the forum available under the Act 1947 and the civil suit was not maintainable. In order to fortify this submission Shri Bhattacharya has placed reliance on the judgments of this Court in *The Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke of Bombay & Ors.,* AIR 1975 SC 2238; *Uttam Das Chela Sunder Das v. Shiromani Gurdwara Parbandhak Committee, Amritsar,* AIR 1996 SC 2133; *Rajasthan SRTC & Ors. v. Mohar Singh,* AIR 2008 SC 2553; *Rajasthan SRTC & Anr. v. Bal Mukund Bairwa,* (2009) 4 SCC 299; and *Rajasthan State Road Transport Corporation & Ors., v. Deen Dayal Sharma,* AIR 2010 SC 2662 and asserted that the judgments of the courts below are without jurisdiction.

7. Be that as it may, before the trial court, the appellants did not press the issue regarding the maintainability of suit even though the issue in this regard had specifically been framed. Thus, we are not inclined in delving into this controversy at all.

8. The relevant part of the plaint reads:

"That the plaintiff was imposed with the charge sheet no. 1158 dated 11.3.88 that on date 24.2.88 on the route Kota-Rajpura his vehicle was checked and it was found during the course of the inspection that he was carrying 10 passengers without tickets and another Charge sheet no. 1159 dated 11.3.88 was imposed with the statement that on date 27.11.88 the plaintiff was found carrying 2 passengers without tickets during the course of his giving the duty on the route Kota-Neernuch in the capacity of the conductor and he was also caught in the case of the difference in the ticket amount. That if the bus was not checked in time then the plaintiff would have used the entire sum of money he recovered from the passengers found without tickets for his personal use. Whereas as per the terms and conditions of the Corporation the plaintiff is required to issue the tickets to all th n

to get the same entered in the waybill and that then only the vehicle should have been departed. The aforesaid charges were totally wrong and baseless."

9. The appellant/defendant in its written statement basically stated:

"The Defendants have mentioned in the reply that the plaintiff had been appointed on the post of the conductor on the daily wage basis. The plaintiff is not entitled of receiving the salary of the regular pay scale from the date 7.12.85 because the plaintiff was appointed as a daily wageworker and the salary in accordance with the law was given to the plaintiff.

During the course of the inquiry the plaintiff was given full opportunity of defence and of being heard. The copy of the enquiry report was supplied to the plaintiff after the completion of the inquiry and he was also intimated the result of the inquiry. In this way no violation of the principle of natural justice was done as against the plaintiff whereas the provisions of section 35 of the standing orders were fully complied with. The Disciplinary Authority had by fully applying its mind passed the order of termination of the plaintiff. The plaintiff has produced the court fee at his own risk. The Defendant Corporation comes within the definition of the "Industry" and for which it is only the Hon'ble Industrial Tribunal who has got the jurisdiction to hear and decide the case of such nature. The plaintiff is not entitled of receiving the monetary benefits and other consequential benefits from the defendants. Therefore, the suit of the plaintiff be dismissed with costs."

10. After appreciating the material on record, the trial court held:

"In this way the plaintiff has clearly made the allegation in the plaint that in the inquiry the statement of the witnesses

were not recorded in front of the plaintiff. He was not given an opportunity to crossexamine the witnesses produced by the defendant corporation and nor he was given an opportunity to defend his case and lead the evidence. That he was not supplied with the copies of the documents and was not heard on the quantum of the punishment and he deposed the same by way of the affidavit. That in order to contradict the same the defendants have not produced any evidence by way of deposition and nor any other document in support of the same has been produced. Under these circumstances, there is no reason to disbelieve the evidence of the plaintiff. That since the inquiry which has been initiated against the plaintiff is against the principle of natural justice, under these circumstances, the order of termination which has been passed is also against the law. Therefore, this suit issue is decided in favour of the plaintiff and against the defendants." (Emphasis added)

11. The aforesaid findings recorded by the trial court is based only on the allegations made by the respondent in the plaint and on failure of the Corporation/defendant to rebut the same, though the trial court had proceeded with the case clearly observing that the burden of proving this issue was on the respondent/plaintiff and not on the Corporation/defendant. In such a fact situation, no reasoning whatsoever has been given by the trial court in support of its conclusion. Neither there is any specific pleading as to what document had not been supplied to him which has been relied upon by the enquiry officer or which witness was not permitted to be crossexamined by him. The trial court did not make any reference to enquiry report or contents thereof. The entire case is based on ipsi dixi.

12. It is settled proposition of law that a party has to plead the case and produce/adduce sufficient evidence to substantiate his submissions made in the plaint and in case the pleadings are not complete, the Court is under no obligation to entertain the pleas. (Vide: *M/s. Larse*

v. State of Gujarat & Ors., AIR 1998 SC 1608; *National Building Construction Corporation v. S. Raghunathan & Ors.,* AIR 1998 SC 2779; *Ram Narain Arora v. Asha Rani & Ors.,* (1999) 1 SCC 141; *Smt. Chitra Kumari v. Union of India & Ors.,* AIR 2001 SC 1237; and *State of U.P. v. Chandra Prakash Pandey,* AIR 2001 SC 1298.)

13. In *M/s. Atul Castings Ltd. v. Bawa Gurvachan Singh,* AIR 2001 SC 1684, this Court observed as under:–

> "The findings in the absence of necessary pleadings and supporting evidence cannot be sustained in law."

(See also: *Vithal N. Shetti & Anr. v. Prakash N. Rudrakar & Ors.,* (2003) 1 SCC 18; *Devasahayam (Dead) by L.Rs. v. P. Savithramma & Ors.,* (2005) 7 SCC 653; *Sait Nagjee Purushotam & Co. Ltd. v. Vimalabai Prabhulal & Ors.,* (2005) 8 SCC 252, *Rajasthan Pradesh V.S. Sardarshahar & Anr. v. Union of India & Ors.,* AIR 2010 SC 2221; *Ritesh Tiwari & Anr. v. State of U.P. & Ors.,* AIR 2010 SC 3823; and *Union of India v. Ibrahim Uddin & Anr.* (2012) 8 SCC 148).

14. Therefore, once the trial court has held that the burden of proof was on the respondent/plaintiff, it could not have come to the aforesaid findings as there is nothing on record to show how the averments/allegations made by the respondent stood proved.

15. Even the First Appellate Court misdirected itself while dealing with the issue as it held:

> " That no evidence was produced by the defendants/ appellants. The statement given by the plaintiff is unrebutted. That as per the statement of the plaintiff the statement of the witnesses were not recorded in front of the plaintiff. The plaintiff was not given an opportunity of cross-examining the witnesses produced by the Defendants/Appellants. The plaintiff was not given an opportunity of leading the evidence and defending his case. The copies of the documents were not supplied to the plaintiff. He was also not heard on the quantum of the punishment. In this way the deposition given by the plaintiff are not rebutted and due to the reason of the same been unrebuttable it can be said that no departmental inquiry was initiated as against the plaintiff. Due to the reason of not holding the departmental inquiry the proceeding initiated against the plaintiff was not in accordance with the principle of natural justice. The order of termination which has been passed without holding the inquiry cannot be said to be passed in accordance with the law. In this way the finding arrived at by the learned subordinate court in respect of the issue no. 1 is just and proper and there is no need to interfere in the same."

16. The appellate court committed a grave error by declaring the enquiry as non-est. The termination order as a consequence thereof stood vitiated though there is no reference to any material fact on the basis of which such a conclusion was reached. The finding that copy of the documents was not supplied to the respondent/plaintiff, though there is nothing on record to show that how the documents were relied upon and how they were relevant to the controversy involved, whether those documents had been relied upon by the enquiry officer and how any prejudice had been caused by non-supply of those documents, is therefore without any basis or evidence. When the matter reached the High Court in Second Appeal, the High Court refused to examine the issue at all by merely observing that no substantial question of law was involved and the findings of fact, however erroneous, cannot be disturbed in Second Appeal.

17. With all respect, we do not agree with such a conclusion reached by the High Court, as Second Appeal, in exceptional circumstances, can be entertained on pure questions of fact. There is no prohibitio[illegible]o

entertain the Second Appeal even on question of fact where factual findings are found to be perverse.

18. In *Ibrahim Uddin* (Supra), this Court held:

"65. In *Suwalal Chhogalal v. CIT,* (1949) 17 ITR 269 (Nag) the Court held as under: (ITR p. 277)

"… A fact is a fact irrespective of evidence by which it is proved. The only time a question of law can arise in such a case is when it is alleged that there is no material on which the conclusion can be based or no sufficient material.

67. There is no prohibition to entertain a second appeal even on question of fact provided the Court is satisfied that the findings of the courts below were vitiated by non-consideration of relevant evidence or by showing erroneous approach to the matter and findings recorded in the court below are perverse. [Vide *Jagdish Singh v. Natthu Singh,* AIR 1992 SC 1604, *Prativa Devi v. T.V. Krishnan,* (1999) 5 SCC 353, *Satya Gupta v. Brijesh Kumar,* (1998) 6 SCC 423, *Ragavendra Kumar v. Firm Prem Machinery & Co.,* AIR 2000 SC 534, *Molar Mal v. Kay Iron Works (P) Ltd.,* AIR 2000 SC 1261, *Bharatha Matha v. R. Vijaya Renganathan,* (2010) 11 SCC 483 and *Dinesh Kumar v. Yusuf Ali,* (2010 12 SCC 740]

68. In *Jai Singh v. Shakuntala,* AIR 2002 SC 1428, this Court held that (SCC p. 638, para 6) it is permissible to interfere even on question of fact but it may be only in "very exceptional cases and on extreme perversity that the authority to examine the same in extenso stands permissible—it is a rarity rather than a regularity and thus in fine it can be safely concluded that while there is no prohibition as such, but the power to scrutiny can only be had in very exceptional circumstances and upon proper circumspection".

Similar view has been taken in *Kashmir Singh v. Harnam Singh,* AIR 2008 SC 1749."

19. As regards the question of disproportionate punishment is concerned, the issue is no more res-integra. In *U.P State Road Transport Corporation v. Suresh Chand Sharma,* (2010) 6 SCC 555, it was held as under:

"22. In Municipal Committee, Bahadurgarh v. Krishnan Behari, AIR 1996 SC 1249 this Court held as under: (SCC p. 715, para 4)

"4. … In a case of such nature—indeed, in cases involving corruption—there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant."

Similar view has been reiterated by this Court in *Ruston & Hornsby (I) Ltd. v. T.B. Kadam,* AIR 1975 SC 2025, *U.P. SRTC v. Basudeo Chaudhary,* (1997) 11 SCC 370, *Janatha Bazar (South Kanara Central Coop. Wholesale Stores Ltd.) v. Sahakari Noukarara Sangha,* (2000) 7 SCC 517, *Karnataka SRTC v. B.S. Hullikatti,* AIR 2001 SC 930 and *Rajasthan SRTC v. Ghanshyam Sharma,* (2002) 10 SCC 330."

20. In view of the above, the contention raised on behalf of the respondent employee, that the punishment of removal from service is disproportionate to the delinquency is not worth acceptance. The only punishment in case of the proved case of corruption is dismissal from service.

21. As a result, the appeal succeeds and is allowed. The judgments of the courts below are set aside and the order of removal from service passed by the Disciplinary Authority is restored. No order as to costs.

D.G.

SHEELA JAWARLAL NAGORI & ANR.
v.
KANTILAL NATHMAL BALDOTA & ORS.
(Special Leave Petition (C) No. 36518 of 2013)

MARCH 25, 2014

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

TRANSFER OF PROPERTY ACT, 1882: Eviction decree by trial court, upheld by appellate court - Plea of tenant that the suit property was acquired by the Municipal Corporation for the purpose of a primary school and the Land Acquisition Officer had passed an award and, therefore, the landlord was divested of his right, title and interest in the suit property after the land acquisition proceedings and thus suit for eviction of tenant was not maintainable - High Court noted that there was no material to suggest that the Municipal Corporation had taken possession of the suit property from the landlord and on the contrary, the Corporation had sanctioned a development plan submitted by the landlord in respect of the suit property - Held: s.16 of the Land Acquisition Act, 1894 enables the acquiring authority to take possession of acquired land and when that is taken, it would be free from all encumbrances - In the absence of possession of the suit property being taken by Corporation, the plea by the tenant cannot be accepted that the landlord was divested of his right, title or interest in the suit property - The tenant continued to pay rent to the landlord even though according to the tenant the landlord had no concern with the suit property after the award was passed by the Land Acquisition Officer - The stand of the tenant was, therefore, self-defeating - Tenant was liable to be evicted.

UNDERTAKING: Eviction decree - Request by tenant for time to vacate the premises - Granted on condition of filing

undertaking - Non-filing of undertaking - Held: Amounts to flagrant disobedience and undermines the authority of the High Court - High Court advised to consider having the tenant first file an undertaking and placed on record before granting any interim order after dismissal of the tenant's petition.

The respondent-landlord filed a suit for eviction which was decreed and upheld by the first appellate court. The appellant-tenant filed a writ petition before the High Court on the ground that the suit property was acquired by the Pune Municipal Corporation for the purpose of a primary school and the Land Acquisition Officer had passed an award and, therefore, the landlord was divested of his right, title and interest in the suit property after the land acquisition proceedings and therefore a suit for eviction of the tenant was not maintainable. The High Court noted that there was no material on record to suggest that the Pune Municipal Corporation had taken possession of the suit property from the landlord and that to the contrary, the Corporation had sanctioned a development plan submitted by the landlord in respect of the suit property. Aggrieved, the tenant filed instant SLP.

Dismissing the SLP, the Court

HELD: 1. Section 16 of the Land Acquisition Act, 1894 enables the acquiring authority to take possession of acquired land and when that is taken, it would be free from all encumbrances. Therefore, on a plain reading of the provision, in the absence of possession of the suit property being taken by the Corporation, the contention for the tenant cannot be accepted that the landlord was divested of his right, title or interest in the suit property. The tenant continued to pay rent to the landlord even though according to the tenant the landlord had no concern with the suit property after the award was passed by the Land Acquisition Officer. The stand of the tenant was, therefore, self-defeating. [Paras 12, 13] [800-C, E-G]

2. The tenants had the benefit of an interim order passed by the High Court staying the execution of the decree against them as well as a stay of operation of the judgments of the trial court and the appellate Court. On the dismissal of the proceedings by the High Court, the tenants applied for continuation of the interim order for a period of 12 weeks. The appellants stated that he would file usual undertaking to the effect that they would neither create third party interests nor part with possession and would hand over vacant and peaceful possession of the suit premises to the landlord. The tenants failed to file any such undertaking in the High Court. This court directed the tenants to file the necessary undertaking as ordered by the High Court within a week and subsequently the undertaking was filed. This indicates that even though the High Court trusts a litigant before it to comply with its orders, sometimes a litigant does not take the High Court seriously. This is unfortunate and undermines the authority of the Court. Therefore, the High Court would be well advised to consider having the tenant first file an undertaking and placed on record before granting any interim order after dismissal of the tenant's petition. Otherwise this may place the High Court in a difficult position where its order is flagrantly disobeyed, as has happened in these cases. [Paras 14 to 16] [801-A-H; 802-A]

CIVIL APPELLATE JURISDICTION : Special Leave Petition (Civil) No. 36518 of 2013.

From the Judgment and Order dated 24.10.2013 of the High Court of Bombay in CRA No. 350 of 2013.

WITH

SLP (C) No. 37456 of 2013.

V. Giri, A.K. Singhla, Pravin Satale, Vijay Kumar, Rajiv Shankar Dvivedi for the Petitioners.

Caveator-In-person for the Respondents.

The Judgment of the Court was delivered by

MADAN B. LOKUR, J. 1. The question before us is whether a landlord can maintain a suit for eviction of his tenant even after an award has been passed in respect of the tenanted property under the provisions of the Land Acquisition Act, 1894. In our opinion, the answer must be in the affirmative.

2. The petitioners in both special leave petitions are the tenants of the respondent landlord. For convenience we have taken the facts from SLP (C) No. 37456 of 2013, but note that the issue that arises in both the cases is the same and the hearing proceeded on this basis.

3. The landlord had instituted Civil Suit No. 433 of 2000 in the Court of the 5th Additional Small Cause Judge and Jt. Civil Judge, Senior Division, Pune for vacant possession of the 'suit property' being CTS Old 99-B Raviwar Peth, New 767 Budhwar Peth, Pune from the tenant. The contention of the landlord was that the suit property was open space let out to the tenants and that it was not protected by the Maharashtra Rent Control Act, 1999 (for short the Act). The Trial Court accepted the contention of the landlord and passed a decree on 28th June, 2005 directing the tenant to hand over vacant possession of the suit property.

4. Feeling aggrieved, the tenant preferred Civil Appeal No. 515 of 2005 before the Additional District Judge, Pune. The appeal was allowed by a judgment and order dated 3rd February, 2006 and the decree passed by the Trial Court set aside. It was held that the suit property was an open plot and that the provisions of the Act were not applicable, but it was held that the tenancy was required to be terminated in terms of Section 106 of the Transfer of Property Act, 1882.

5. The judgment and order passed by the appellate Court has attained finality since neither the tena[illegible]s

challenged it.

6. Following up on the order passed by the Additional District Judge, the landlord issued a notice to the tenant on 13th February, 2006 terminating the tenancy under Section 106 of the Transfer of Property Act, 1882. The tenant did not respond to the notice and that led the landlord to file Civil Suit No. 207 of 2006 in the Court of the Small Causes Judge, Pune for eviction of the tenant. The suit was decreed on 3rd March, 2009 and the tenant was directed to deliver vacant possession of the suit property to the landlord.

7. Feeling aggrieved, the tenant preferred Civil Appeal No. 225 of 2009 before the District Judge but that was dismissed by judgment and order dated 19th January, 2012. The tenant was given two months time to vacate the suit property.

8. Against the decision passed by the appellate Court the tenant preferred Writ Petition No. 2089 of 2012 which was dismissed by the Bombay High Court by its judgment and order dated 24th October, 2013 (impugned).

9. In all the proceedings, the finding of fact has been that the suit property let out to the tenant was open land. We are not inclined to disturb this finding of fact arrived at by several Courts and indeed this finding was not seriously challenged by learned counsel for the tenant.

10. The question raised by the tenant is that the suit property was acquired by the Pune Municipal Corporation for the purpose of a primary school and the Special Land Acquisition Officer had passed an award in respect thereof on 3rd August, 1979. Accordingly, the landlord was divested of his right, title and interest in the suit property after the land acquisition proceedings and therefore a suit for eviction of the tenant was not maintainable.

11. The High Court noted that there was no material on

record to suggest that the Pune Municipal Corporation had taken possession of the suit property from the landlord. On the contrary, the Corporation had sanctioned a development plan submitted by the landlord in respect of the suit property through a notification issued on 5th January, 1987. It is clear, therefore, that the Corporation had not taken possession nor had any intention of taking possession of the suit property.

12. That apart, Section 16 of the Land Acquisition Act, 1894 enables the acquiring authority to take possession of acquired land and when that is taken, it would be free from all encumbrances. Section 16 of the Land Acquisition Act, 1894 reads as follows:

> **16. Power to take possession -** When the Collector has made an award under Section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

Therefore, on a plain reading of the provision, in the absence of possession of the suit property being taken by the Corporation, the contention of learned counsel for the tenant cannot be accepted that the landlord was divested of his right, title or interest in the suit property.

13. We may also note that it was brought out during the course of hearing that the tenant continues to pay rent to the landlord even though according to the tenant the landlord had no concern with the suit property after the award was passed on 3rd August, 1979 by the Special Land Acquisition Officer. The stand of the tenant seems to be self-defeating for on the one hand it is submitted that the landlord had no right, title or interest in the suit property but on the other hand the tenant continues paying rent to him.

14. An issue that arises out of these cases, and which we would like to flag, relates to the purpos[illegible] of

an order passed by the High Court granting time to the tenants to vacate suit premises. We are mentioning this because in these cases, the tenants had the benefit of an interim order passed by the High Court staying the execution of the decree against them as well as a stay of operation of the judgments of the Trial Court and the appellate Court. On the dismissal of the proceedings by the High Court, learned counsel for the tenants applied for continuation of the interim order for a period of 12 weeks. He stated that the tenants would file an undertaking along with all others using the suit property on or before 19th November, 2013 incorporating therein the following terms: (i) that they are in possession of the suit premises and nobody else is in possession; (ii) that they have neither created third party interests nor parted with possession; (iii) that they will hereafter neither create third party interests nor part with possession of the suit premises, (iv) that they will clear all arrears of rent, if any, within four weeks subject to adjustment, (v) they will not apply for extension of time, and (vi) that in case they are unable to obtain suitable orders from this Court within 12 weeks, they will hand over vacant and peaceful possession of the suit premises to the landlord.

15. The tenants failed to file any such undertaking in the High Court on or before 19th November, 2013. This was brought to our notice by the landlord on 4th February, 2014 and we directed the tenants to file the necessary undertaking as ordered by the High Court within a week. We were subsequently given to understand that the undertaking was filed.

16. These cases indicate that even though the High Court trusts a litigant before it to comply with its orders, sometimes a litigant does not take the High Court seriously. This is unfortunate and undermines the authority of the Court. We feel the recurrence of a situation as has happened in these cases needs to be avoided. Therefore, the High Court would be well advised to consider having the tenant first file an undertaking and placed on record before granting any interim order after

dismissal of the tenant's petition. Otherwise this may place the High Court in a difficult position where its order is flagrantly disobeyed, as has happened in these cases.

17. We find no merit in these petitions and they are accordingly dismissed. The interim applications are also dismissed.

D.G. SLPs dismissed.

UNION OF INDIA

v.

SHEO SHAMBHU GIRI

(Criminal Appeal No. 1027 of 2008)

MARCH 25, 2014

[DR. B.S. CHAUHAN AND J. CHELAMESWAR, JJ.]

Narcotic Drugs and Psychotropic Substances Act, 1985: s.23 - Applicability of - Held: s.23 creates three offences i.e. import into India, export out of India; and transhipment of any narcotic drug or psychotropic substance - Word "transhipment" occurring u/s.23 must necessarily be understood in the context of the scheme of the section and the preceding expressions of "import into India" and "export out of India" to mean only transhipment for the purpose of either import into India or export out of India - In the instant case, no evidence to prove that the respondent was carrying contraband either in the course of import into India or export out of India - Therefore, High Court rightly set aside conviction u/s.23.

The sole respondent along with two other accused was tried for offences under Sections 23 and 29 of the NDPS Act. The trial court found the respondent guilty of an offence under Section 23 of the NDPS Act but found that the charge under Section 29 of the Act was not proved against him. He was, therefore, convicted for an offence under Section 23 of the NDPS Act and sentenced to undergo RI for 10 years and also directed to pay a fine of Rs. 1 lakh for an offence under Section 23 of the NDPS Act.

The High Court held that prosecution could not prove that the contraband was of foreign origin and set aside his conviction under Section 23 of the NDPS Act.

Hence the instant appeal.

Dismissing the appeal, the Court

HELD: 1. Section 23 of the NDPS Act creates three offences and they are; (i) import into India, (ii) Export out of India; and (iii) Transhipment of any narcotic drug or psychotropic substance. The word "transhipment" occurring under Section 23 must necessarily be understood in the context of the scheme of the Section and the preceding expressions of "import into India" and "export out of India" to mean only transhipment for the purpose of either import into India or export out of India. [Para 7] [807-A-D]

2. It can be seen from the language of the Section 9(1) of NDPS Act that the Central Government is authorized to make rules which may permit and regulate various activities such as cultivation, gathering, production, possession, sale, transport, inter state import or export of various substances like coca leaves, poppy straw, opium poppy and opium derivatives etc., while the Parliament used the expression transport in the context of inter-state import or export of such material in sub-section 1(a)(vi), in the context of importing to India and export out of India, Parliament employed the expression transhipment in Section 9(i)(a)(vii). Therefore, the High Court rightly concluded that the conviction of the respondent under Section 23 of the NDPS Act cannot be sustained. There is no reason to interfere with the same. [Paras 9 and 10] [808-G-H; 809-A-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1027 of 2008.

From the Judgment and Order dated 19.05.2006 of the High Court of Judicature at Patna in Criminal Appeal No. 359 of 2003.

Dr. Ashok Dhamija, Binu Tamta, Sonia Dhamija, B.K. Prasad, Bhawna Singh Dev, B.V. Balaram Das for the Appellant.

Ardhendumauli Kumar Prasad, Nirmal Kumar Ambastha, Aviral Shukla for the Respondent.

The Judgment of the Court was delivered by

J. CHELAMESWAR, J. 1. Aggrieved by the judgment in Criminal Appeal No. 359 of 2003 of the High Court of Patna, the instant appeal is preferred by the Union of India.

2. By the judgment under appeal, three appeals came to be preferred by the three different accused who were convicted for different offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act") by the Court of 5th Additional District and Sessions Judge, Mothari of East Champaran District in Excise Case No. 31 of 2001 by its judgment dated 12th June, 2003. By the judgment under appeal, the conviction of all the appellants was set aside. It is not very clear whether any appeals are preferred against the acquittal of the other two accused except the respondent herein.

3. The sole respondent along with two other accused was tried for offences under Sections 23 and 29 of the NDPS Act. The trial court found the respondent herein guilty of an offence under Section 23 of the NDPS Act but found that the charge under Section 29 of the Act is not proved against him. He was, therefore, convicted for an offence under Section 23 of the NDPS Act and sentenced to undergo RI for 10 years and also to pay a fine of Rs. 1 lakh for an offence under Section 23 of the NDPS Act.

4. The High Court, allowed the appeal of the respondent and set aside his conviction under Section 23 of the NDPS Act. Relevant portion of the judgment reads as follows:-

> "17. So far as appellant Sheo Shambhu Giri of Cr. Appeal No. 359 of 2003 is concerned he has also assailed his conviction on many grounds including that the Ganja was recovered from his possession. His submission was also that though he was charged under sections 23 and 29 of the act but he was acquitted under Section 29 of the act and was not considered to be a part of conspiracy and admittedly he was only a carrier at the instance of other persons. As such his punishment under section 23 of the Act is also not tenable in the eye of law. That apart it has been submitted that the ingredients of section 23 of the Act is not attracted in this case because there is no evidence to prove that the Ganja was imported from foreign land. As per the wording of the section there must be import of the contraband to attract punishment under this section but the prosecution could not prove that the Ganja was of foreign origin. Even prosecution could not prove whether the substance so seized was actually Ganja or not because no chemical examination report has been produced in the court in original form neither the chemical examiner was examined to prove them. It has also been submitted that the mandatory provision of, sections 42, 52 and 57 of the act has not been strictly complied with. That apart it has also been submitted that there is no independent witness to support the recovery of contraband and the prosecution failed to examine them. Only independent witness is a witness to Panchnama (Ext. 18)"

5. Dr. Ashok Dhamija, learned counsel appearing for the appellant submitted that the High Court grossly erred in coming to the conclusion that in the absence of proof that the Ganja allegedly seized from the custody of the respondent is of foreign origin, Section 23 of the NDPS Act is not attracted.

6. The learned counsel further assailed the conclusion of the High Court that the prosecution could not prove that the material seized from the respondent wa

7. On the other hand, the learned counsel for the respondent submitted that Section 23 of the NDPS Act creates three offences and they are; (i) import into India, (ii) Export out of India; and (iii) Transhipment of any narcotic drug or psychotropic substance. If any one of the three activities is undertaken in contravention of any one of the provisions of the Act or the Rules made thereunder or in contravention of an order made or condition of licence or permit granted or certificate or authorization issued either under the Act or the Rules. The expression "transhipps" occurring under Section 23 must necessarily be understood in the context of the scheme of the Section and the preceding expressions of "import into India" and "export out of India" to mean only transhipment for the purpose of either import into India or export out of India. The learned counsel further submitted that the High Court rightly concluded in the absence of any proof that the respondent was carrying contraband either in the course of import into India or export out of India, section 23 is not attracted.

8. We agree with the submission made by the respondent on the construction of Section 23 of the NDPS Act, the expression "transhipps" occurring therein must necessarily be understood as suggested by the learned counsel for the respondent. There is yet another reason apart from the construction of the language of Section 23 which compels us to accept the submission made by the learned counsel for the respondent. Section 9(1)(a)(vii) also employs the expression transhipment. Section 9(1) reads as follows;

> **"9. Power of Central Government to permit, control and regulate.** -(1) Subject to the provisions of section 8, the Central Government may, by rules-
>
> (a) permit and regulate-
>
> (i) the cultivation, or gathering of any portion (such cultivation or gathering being only on account of the Central Government) of coca plant, or the production, possession, sale, purchase, transport, import inter-State, export inter-State, use or consumption of coca leaves;
>
> (ii) the cultivation (such cultivation being only on account of Central Government) of the opium poppy;
>
> (iii) the production and manufacture of opium and production of poppy straw;
>
> (iv) the sale of opium and opium derivatives from the Central Government factories for export from India or sale to State Government or to manufacturing chemists;
>
> (v) the manufacture of manufactured drugs (other, than prepared opium) but not including manufacture of medicinal opium or any preparation containing any manufactured drug from materials which the maker is lawfully entitled to possess;
>
> (vi) the manufacture, possession, transport import inter-State, export inter-State, sale, purchase, consumption or use of psychotropic substances;
>
> (vii) the import into India and export from India and transhipment of narcotic drugs and psychotropic substances;
>
> (b) prescribe any other matter requisite to render effective the control of the Central Government over any of the matters specified in clause (a)"

9. It can be seen from the language of the Section that the Central Government is authorized to make rules which may permit and regulate various activities such as cultivation, gathering, production, possession, sale, transport, inter state import or export of various substances like coca leaves, poppy straw, opium poppy and opium derivatives etc., while the Parliament used the expression transport in the context of inter-state import or export of such material [illegible],

in the context of importing to India and export out of India, Parliament employed the expression transhipment in Section 9(i)(a)(vii).

10. Therefore, the High Court rightly concluded that the conviction of the respondent under Section 23 of the NDPS Act cannot be sustained. We see no reason to interfere with the same.

11. In view of such conclusion, we do not deem it necessary to examine the correctness of other conclusions recorded by the High Court for acquitting the respondents. The appeal is, therefore, dismissed.

D.G. Appeal dismissed.

SMT. SAVITA
v.
BINDAR SINGH & ORS.
(Civil Appeal No. 4001 of 2014)

MARCH 25, 2014

[GYAN SUDHA MISRA AND PINAKI CHANDRA GHOSE, JJ.]

MOTOR VEHICLES ACT, 1988:

s.166 -- Fatal motor accident - Compensation --Tribunal and High Court ignoring to award compensation towards future prospects -- Awarding meager amounts under heads --"loss of consortium" and "funeral expenses"- Held: At the time of fixing such compensation, court should not succumb to niceties or technicalities to grant just compensation -- It is the duty of court to equate, as far as possible, the misery on account of accident with compensation so that the injured or dependants should not face vagaries of life on account of discontinuance of income earned by victim -- Therefore, it will be the bounden duty of Tribunal to award just, equitable, fair and reasonable compensation considering the price index prevailing at the moment and judging the situation prevailing -- Compensation under the head "future prospects of deceased" to be calculated by adding 30% to monthly income and by deducting 1/3 towards personal expenses -- Compensation under the heads "loss of consortium" and "funeral expenses" enhanced -- Interest to be paid @ 8% instead of 6% awarded by Tribunal from the date of application till payment -- Interest.

In a motor accident claim arising out of the death of a 26 year old victim, the Tribunal taking the notional annual income at Rs. 36,000/-, applying the multiplier of 17 and deducting one third as personal expenses of

deceased, allowed the compensation of Rs. 4,06,000/- besides Rs. 5000/- for cremation, Rs. 5000/- for loss of estate and Rs. 10,000/- as loss of consortiums with 6% interest. The High Court diminished the appeal of claimant.

Partly allowing the appeal, the Court

HELD: 1.1 In view of the decisions of this Court in *Santosh Devi* as well as *Rajesh v. Rajbir Singh,* it is the duty of the court to fix a just compensation. At the time of fixing such compensation, the court should not succumb to the niceties or technicalities to grant just compensation in favour of the claimant. It is the duty of the court to equate, as far as possible, the misery on account of the accident with the compensation so that the injured or the dependants should not face the vagaries of life on account of discontinuance of the income earned by the victim. Therefore, it will be the bounden duty of the Tribunal to award just, equitable, fair and reasonable compensation considering the price index prevailing at the moment and judging the situation prevailing at that point of time with reference to the settled principles on assessment of damages. In doing so, the Tribunal can also ignore the claim made by the claimant in the application for compensation with the prime object to assess the award based on the principle that the award should be just, equitable, fair and reasonable compensation. [para 6] [817-E-H; 818-A]

Santosh Devi v. National Insurance Company Ltd. & Ors. **2012 (3) SCR 1178 = (2012) 6 SCC 421; and** *Rajesh vs. Rajbir Singh* **(2013) 9 SCC 54 - relied on.**

1.2 In the instant case, the Tribunal and the High Court have failed to consider the fact-situation, and without taking any pragmatic view and further without considering the price-index prevailing at the moment,

they assessed the compensation ignoring the principle laid down by this Court in the recent decisions. The award suffers from proper assessment of compensation awarded by the Tribunal, and granted by the High Court on the conventional heads, i.e., 'loss of consortium' to the spouse, 'future prospects of the deceased' and further the sum awarded under the head 'funeral expenses', as the same cannot be said to be a just compensation. There should have been an endeavour on the part of the Tribunal as well as the High Court to consider the inflation factor. [para 7] [818-B-E]

Smt. Sarla Verma vs. Delhi Transport Corporation **2009 (5) SCR 1098 = (2009) 6 SCC 121- referred to**

1.3 Accordingly, as has been pointed out by this Court in Rajesh v. Rajbir Singh, this Court awards the compensation under the head 'loss of consortium' to the spouse, loss of love, care and guidance to children and funeral expenses as 1,00,000/- and 25,000/- respectively. [para 7] [818-E-F]

1.4 Further, since the Tribunal as well as the High Court lost its sight to hold that the victim could have had future prospects with regard to the amounts he used to earn, the notional income also needs to be increased by at least 30% and thereby the claimant is entitled to get the benefit of 900/- being the future prospects; the said amount should be added to the notional income of the victim i.e. Rs. 3000/-. Deducting one third of 3,900/- and applying the multiplier at 17, the amount of compensation to be paid would be 5,30,400/-. Thus, the claimant/ appellant is entitled to a total sum of 6,55,400/- plus interest @ 8 per cent per annum from the date of filing of the claim petition till the date of payment as compensation. [para 8 and 10] [819-A-D; 820-C-D]

Case Law Reference:

2009 (5) SCR 1098	**referred to**	**para 3.4**
2012 (3) SCR 1178	**relied on**	**para 4**
(2013) 9 SCC 54	**relied on**	**para 4**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4001 of 2014.

From the Judgment and Order dated 16.04.2013 of the High Court of Uttarakhand at Nainital in AFO No. 96 of 2013.

Neha Kedia (for Rohit Kumar Singh) for the Appellant.

A.K. Kaul, A.K. Raina (for Binay Kumar Das) for the Respondents.

The Judgment of the Court was delivered by

PINAKI CHANDRA GHOSE, J. 1. Leave granted.

2. This appeal is directed against the order dated April 16, 2013 passed by the High Court of Uttrakhand affirming the award dated December 3, 2012 passed by the Motor Accidents Claims Tribunal, Haridwar in Motor Accident Claim Petition No.75/2011. The Tribunal directed the respondent – Oriental Insurance Co. Ltd. – to pay a sum of 4,28,000/- to the claimant. Being aggrieved by the quantum of compensation, this appeal has been filed by the appellant-claimant.

3. Briefly the facts of this case are as follows:

3.1 One Sandeep Chauhan died in an accident on November 26, 2010 due to rash and negligent driving by the driver of a truck bearing registration No.HR-56-6047 between Ram Nagar and Dhandhera. The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 claiming compensation against the respondents.

3.2 In the claim petition, the appellant/claimant asked for compensation of 20,20,000/- along with interest at the rate of 12% per annum from the respondents/opposite parties. The parties filed their pleadings before the Tribunal and the following issues were framed:-

"1. Whether on dated 26.11.2010 the motor cycle of the deceased Sandeep Chauhan Chasis no. MD2DSPAZZTPE51258, Engine no. IBVBTF91396 Model Discover, Time: at about 10 PM at Malvia Chowk, then a driver of Truck bearing registration No. HR-56-6047 brought from the front side with high speed and careless and hit the motor cycle going on the side, due to which Sandeep Chauhan received many injuries and due to that injuries and the motor cycle was damaged and the injured Sandeep Chauhan was died to while taking him to the hospital? (sic)

2. Whether the motor used while accidence was having insurance, D.L., Fitness Registration etc. and was permitted to use?(sic)

3. Whether the petition of the claimants is contaminated from the required facts?

4. Whether the claimants are entitled to compensation. If so, to what amount and from whom?"

3.3 The Tribunal held that on November 26, 2010, Driver Binder Singh while driving Truck No. HR-56-6047 with speed and carelessness in the centre of the road, hit the motorcycle of Sandeep Chauhan, as a result of which Sandeep Chauhan was seriously injured and subsequently succumbed to his injuries. The issues were also discussed by the Tribunal which further held that accidental vehicle was permitted to be driven with legal and effective documents and driving licenses.

3.4 On the issue of compensation the Tribunal after taking

into account all the facts and materials placed before it, came to the conclusion that since the claimant could not prove that the deceased was getting 7,000/- per month as salary the Tribunal following the principle enunciated in an order of the Uttarakhand High Court, held that notional annual income of the deceased was 36,000/-. The Tribunal also followed the principle laid down in *Smt. Sarla Verma vs. Delhi Transport Corporation*[1] and held that one third share from the notional income of the deceased should be deducted as his personal expenses to calculate compensation on the basis of the notional annual income of the deceased. The Tribunal further held that the deceased's father, mother and wife were dependents on the deceased and they should be treated as dependents of the deceased. The multiplier of 17 was fixed by the Tribunal considering the age of the deceased who was 26 years of age at the time of the accident. After taking into account all these aspects, Tribunal came to the conclusion and assessed the compensation amount at 4,08,000/- and further granted 5,000/- for cremation, 5,000/- for loss of estate and 10,000/- for loss of consortium and thereby the compensation amount was determined at 4,28,000/- and also directed that interest to be paid at the rate of 6% per annum on the total compensation amount from the date of filing of the petition till the date of decision.

3.5 Being aggrieved, an appeal was filed before the High Court. The High Court dismissed the said appeal on the ground that there was no illegality in the award passed by the Tribunal. Hence this appeal has been filed.

4. We have heard the learned counsel for the parties. It has been pointed out by the learned counsel for the appellant that the said award is wrong on the ground that a salary certificate has been produced before the Tribunal and the Tribunal has not accepted the same without any reason. She further submitted that the compensation which has been granted by the Tribunal

1. (2009) 6 SCC 121.

and affirmed by the High Court does not include the future prospects which should have been added to the claim and further the deduction with regard to the personal expenses could not have been made more than one tenth of the total salary received by the victim. In support of such contention, she relied upon *Santosh Devi v. National Insurance Company Ltd. & Ors.*[2] and further submitted that compensation under the head 'loss of consortium' has not been properly assessed by the said Tribunal which has been assessed by this Court in *Rajesh vs. Rajbir Singh*[3] and the compensation under the said head should have been awarded for a sum of 1,00,000/-. She further submitted that the compensation under the head 'funeral expenses' should have been granted as 25,000/- and in support of her such contention, she relied upon the aforementioned decisions. On the contrary, it has been stated on behalf of the respondents that in *Sarla Verma* (supra), the principles laid down by this Court have been followed by the Tribunal and therefore there is no reason to interfere with the award passed by the Tribunal and the appeal dismissed by the High Court.

5. This Court in *Santosh Devi* (supra), held as follows:

"14. We find it extremely difficult to fathom any rationale for the observation made in paragraph 24 of the judgment in Sarla Verma's case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be nave to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life.

2. (2012) 6 SCC 421.
3. (2013) 9 SCC 54.

15. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families.

*** *** ***

18. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."

6. After considering the decisions of this Court in *Santosh Devi* (supra) as well as *Rajesh v. Rajbir Singh* (supra), we are of the opinion that it is the duty of the Court to fix a just compensation. At the time of fixing such compensation, the court should not succumb to the niceties or technicalities to grant just compensation in favour of the claimant. It is the duty of the court to equate, as far as possible, the misery on account of the accident with the compensation so that the injured or the dependants should not face the vagaries of life on account of discontinuance of the income earned by the victim. Therefore, it will be the bounden duty of the Tribunal to award just, equitable, fair and reasonable compensation judging the situation prevailing at that point of time with reference to the settled principles on assessment of damages. In doing so, the Tribunal can also ignore the claim made by the claimant in the

application for compensation with the prime object to assess the award based on the principle that the award should be just, equitable, fair and reasonable compensation.

7. In the instant case, it appears that the Tribunal and the High Court have also failed to consider the fact-situation of this case, without taking any pragmatic view and further without considering the price-index prevailing at the moment, assessed the compensation ignoring the principle laid down by this Court in the recent decisions (see: *Rajesh v. Rajbir Singh* (supra) as also *Santosh Devi (supra))* and without revisiting the present situation, came to the conclusion and awarded the total compensation for a sum of 4,28,000/-. In our opinion, such award suffers from proper assessment of compensation awarded by the Tribunal, and High Court on the conventional heads, i.e., 'loss of consortium' to the spouse, 'future prospects of the deceased' and further the sum awarded under the head 'funeral expenses', cannot be said to be a just compensation. In our opinion, there should have been an endeavour on the part of the Tribunal as well as the High Court to consider the inflation factor and further they should have considered the amounts fixed by the court several decades ago on such heads. Accordingly, as has been pointed out by this Court in *Rajesh v. Rajbir Singh* (supra), we hold that the compensation under the head 'loss of consortium' to the spouse, loss of love, care and guidance to children and funeral expenses amounts should have been awarded under such heads, that is, for 1,00,000/- and 25,000/- respectively and we award such compensation under the said heads. So far as the head of 'salary' is concerned, we do not express any opinion since we have found that the appellant could not prove the salary certificate and for such reason, we do not intend to interfere with the opinion expressed by the Tribunal on the established principle of notional income and accordingly, we do not want to disturb the said notional income while calculating the total compensation in favour of the appellant.

8. We have failed to understand why the Tribunal as well as the High Court lost its sight to hold that the victim could have had future prospects with regard to the amounts the victim used to earn during his life-time? Therefore, the notional income also needs to be increased by at least 30% and thereby the claimant is entitled to get the benefit of 900/- being the future prospects; the said amount should be added to the notional income of the victim. Therefore, it appears that the total salary along with future prospects of the victim should have been calculated at 3,000/- plus 900/- amounting to 3,900/- per month. The total deduction on personal expenses, in our opinion, should have been one third of 3,900/- amounting to 1,300/-. Therefore, salary after deduction would come to 2,600/- and the multiplier should be applied at 17, as has been done correctly by the Tribunal after taking into account the age of the victim. In this process, the total amount of compensation to be paid would be 2,600 x 17 x 12 amounting to 5,30,400/-.

9. We modify and reassess the compensation in accordance with the Calculation Table set out hereunder:

CALCULATION TABLE

Salary (Since it is not proved sufficiently as per the order of the Tribunal)	Rs. 3,000/- per month
Future prospects (at the rate of 30% as prayed for) (as per para 8)	[30% of Rs.3,000= 900/-] Salary is (3,000+ 900) = Rs. 3,900/-
Deduction towards personal expenses (as per Schedule II)	1/3rd of Rs. 3,900 = Rs. 1,300/-
Total salary after adding future prospects and deducting personal expenses	Rs.3,900 – Rs.1,300 = Rs.2,600/-
Multiplier i.e. 17 (as per Schedule II and Section166)	Rs.2,600 x 17 x 12 = Rs.5,30,400/-

Total amount of compensation (as per para 8)	Rs. 5,30,400/-
Compensation under the head of "loss of consortium" (as per para 7)	Rs. 1,00,000/-
Compensation under the head of 'funeral expense' (as per para 7)	Rs. 25,000/-
Grand Total	**Rs. 6,55,400/-**

10. The order of the High Court and Tribunal is modified. We direct that the claimant/appellant is entitled to a sum of 6,55,400/- plus interest @ 8 per cent per annum from the date of filing of the claim petition till the date of payment as compensation. Accordingly, we direct that the enhanced amount should be paid to the appellant after deducting the amount already paid, within a period of four weeks from date. For the reasons stated hereinabove, the appeal is partly allowed.

R.P. Appeal partly allowed.

SOUMIK SIL
v.
SUBHAS CHANDRA SIL
Civil Appeal No. 4003 of 2014

MARCH 25, 2014

[GYAN SUDHA MISRA AND PINAKI CHANDRA GHOSE, JJ.]

CODE OF CIVIL PROCEDURE, 1908:

O.7, r.11-- Rejection of plaint -- Title suit by mother and son for declaration and permanent injunction in respect of a flat - In a different matrimonial case, High Court ordered the mother to vacate the premises in lieu of the amount to be paid by her husband- Application by mother in title suit under O.7, r.11 -- Rejected by trial court, allowed by High Court -- Held: High Court has correctly perused the plaint in its entirety and after deletion of name of first plaintiff from title suit, held that plaint discloses no cause of action, as the very purpose of the suit has become infructuous in view of the order passed by High Court to hand over possession of the flat in question - Thus, provisions of O.7,r.11(a) are attracted.

In a title suit for declaration and permanent injunction filed by mother and son against the husband, who was a joint owner of the flat in question, the mother, plaintiff no.1, filed an application under O.7, r.11 of the Code of Civil Procedure, 1908 for deletion of her name from the plaint, in order to give effect to another order of the High Court in the matrimonial case by which she was required to handover the possession of the suit flat in lieu of the money to be paid by her husband. The trial court rejected the application, but on a revision petition by the defendant, the High Court allowed the application holding that handing over of possession of the flat was to carry

out the order of the High Court in the matrimonial case and plaintiff no.2, being the son, had no cause of action in the matter.

Dismissing the appeal, the Court

HELD: 1.1 The High Court perused the plaint in its entirety and after deletion of the name of plaintiff No.1 from the said title suit, has correctly held that the plaint discloses no cause of action, as the very purpose of the suit has become infructuous in view of the order passed by the High Court to hand over the possession of the flat in question. [para 12] [828-E-G]

1.2 The plaint discloses no cause of action and thereby it attracts the provisions of O.7, r.11(a) of the Code and, accordingly, the High Court has correctly ascertained the position and allowed the said application reversing the order of the trial court. There is no infirmity in the order passed by the High Court. [para 13-14] [829-B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4003 of 2014.

From the Judgment and Order dated 10.02.2011 of the High Court of Calcutta in Co. No. 104 of 2011.

Ranjan Mukherjee, S.C. Ghosh, S. Bhoumick, R.P. Yadav for the Appellant.

C. Mukund, Pankaj Jain, P.V. Saravana Raja, Firdouse Qutbwani, Bijoy Kumar Jain for the Respondents.

The Judgment of the Court was delivered by

PINAKI CHANDRA GHOSE, J. 1. Leave granted.

2. This appeal is directed against an order passed by the High Court dated February 10, 2011 w[illegible] application filed by the respondent herein under O[illegible]e

Code of Civil Procedure (for short 'the Code') was allowed and the plaint was rejected. The High Court set aside the order passed by the Trial Court refusing such prayer.

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

3.1) A suit was filed for declaration and injunction by the appellant along with Smt. Ashima Sen, mother of the present appellant. The appellant herein and plaintiff No.1 (the mother) filed a suit being Title Suit being No.2430 of 2007 before the City Civil Court at Calcutta, and the following reliefs were prayed for in the said suit :

"a) For a decree for declaration that the defendant, his men and agents have no right to obstruct the user of the suit flat by the plaintiffs by any means prejudicial to the interest of the plaintiffs.

b) For a decree permanent injunction restraining the defendants, their men, agents and associated from causing any obstruction towards free ingress and egress of the plaintiffs, for use and occupation of the suit flat at 5, Netai Babu Lane, Kolkata- 700 012, in any manner prejudicial to the interst of the plaintiffs.

c) Temporary injunction with ad-interim order in terms of prayer (b) above;

d) Commission;

e) Costs of the suit

f) Any other relief or reliefs as the Ld. Court may deem fit and proper"

3.2) The said suit was filed on the facts stated in the plaint that plaintiff No. 1 (Smt. Sen) and the defendant – Subhas Chandra Sil were married on 2nd June, 1986. Out of the said

wedlock, plaintiff No.2 – Soumik Sil was born on 20th April, 1989. Admittedly, the mother and son resided in the two rooms in the first floor of the premises No.5, Netai Babu Lane, Kolkata-700 012, being the matrimonial home of plaintiff No. 1.

3.3) Admittedly, the defendant was a joint owner of the said premises along with his two brothers. Subsequently, the eldest brother gifted his 1/3rd share in the said premises to his two brothers, and thereby the defendant and one of his brothers became the owners of the said premises in equal shares. On December 17, 1993 the said property was partitioned between them and the portions were demarcated between the two brothers.

4. The defendant filed a suit for dissolution of marriage in the City Civil Court at Calcutta which was transferred before the Family Court and on 15th July, 1998 a decree for dissolution of marriage was passed by the Family Court against plaintiff No.1. Being aggrieved, she preferred an appeal before the High Court which, in turn, was pleased to pass the following order :

"In the facts of the present case, we are of the view that a sum of Rs.4,00,000/- should be paid by the husband to the wife provided the wife hands over the vacant possession of the rooms over which she has already filed a suit in the City Civil Court to the husband within a month from today. Simultaneously, with the surrender of possession, the husband will pay a sum of Rs.2,00,000/- by account payee cheque of any nationalised bank in the name of the wife to be handed over to the learned Advocate for the appellant and will pay the balance amount of Rs. 2,00,000/- by March, 2009. If the first instalment of Rs.2,00,000/- is paid, from that moment, the husband will pay the monthly alimony at the rate of Rs.2,500/- instead of the existing alimony of Rs.5,000/- The moment the balance amount of Rs.2,00,000/- w d

will not be required to pay any further monthly sum as alimony. If the wife fails to deliver vacant possession of the rooms mentioned above within a month from today, this part of the order granting permanent alimony will stand recalled and the wife would be free to initiate fresh proceedings for fixation of permanent alimony on the basis of the then income of the husband after taking into consideration the conduct of the wife as provided in Section 25 of the Act.

The decree for divorce is, thus, affirmed with the aforesaid additional direction as regards permanent alimony."

5. In these circumstances, in accordance with the said order the wife duly gave effect to the order of the High Court and filed an application before the City Civil Court, Calcutta, for deletion of her name as the plaintiff No.1 from the said suit. In the wake of the above, an application for rejection of plaint under Order VII Rule 11(a) of the Code of Civil Procedure was filed by the defendant (husband/father) and it was stated that the remaining plaintiff had no cause of action to institute the suit against the defendant and that the plaint does not disclose any cause of action.

6. After hearing the parties, the City Civil Court at Calcutta was pleased to reject the said application on 13th December, 2010. Being aggrieved and dissatisfied with the said order, a revision petition was filed against the said order by Subhas Chandra Sil, being the defendant in the said suit before the High Court. The High Court after perusing the facts as stated hereinabove, and after considering the averments made in the plaint held that after deleting the name of plaintiff No.1 from the plaint, it is clear from the averments that the plaint discloses no cause of action, and accordingly held that plaintiff No.2 has no independent cause of action to proceed with the suit and the handing over of possession of the suit premises is nothing but to carry out an order passed by the High Court and thereby

plaintiff No.2 being the son, cannot have any cause of action in the matter. In view of the above, the High Court reversed the order of the trial court, allowed the application and rejected the plaint. Being aggrieved, this appeal has been filed on the ground that the said property is a trust property and that the appellant has a right to reside there as one of the trustees, and that he as a legal heir and son of the respondent, is entitled to reside in the suit property in terms of the trust deed.

7. It is also to be noted that to assert such right, the appellant herein has already filed a suit before the City Civil Court at Calcutta, being T.S. No. 2451/2008, being a suit for declaration, accounts and permanent injunction and thereby it appears to us that the appellant has already taken steps in the matter to assert his rights and title in respect of the said property in the said suit.

8. The sole question which arises for our consideration is whether the High Court was right in rejecting the plaint holding that the plaint does not disclose any cause of action.

9. Learned counsel appearing on behalf of the appellant submitted that the appellant is the son of the respondent and is a trustee of the said trust property and he used to reside at the said premises with his mother. It is further submitted that he has a right to occupy the said premises in terms of the registered deed of settlement. He further stated that in accordance with the deed of settlement, after the death of the original settlor Mrinalini Dassi, the trust property would devolve for the use and benefit of her male heir in the male line in equal shares absolutely and for ever. Therefore, it is contended that he has a right to stay in the said premises, and accordingly submitted that the plaint discloses no cause of action.

10. Per contra, it is submitted that the possession was handed over by the mother and son pursuant to the directions given by the High Court and the premises were vacated in compliance with the said order. Aft[illegible]e

possession in terms of the order dated 22nd August, 2008, there was no cause of action subsisting in Title Suit No.2430 of 2007. In these circumstances, it is submitted that the order passed by the City Civil Court, Calcutta, rejecting the said application of the respondent under Order VII Rule 11 is wrong. The ground that the said trial court did not consider that the cause of action in the suit was in connection with the possession of the rooms in question and the said rooms were handed over pursuant to the order passed by the High Court. Therefore, the said cause of action as pleaded in the plaint by the plaintiffs and/or by the son was not subsisting after the order of the High Court. In these circumstances, the High Court correctly reversed the said order by allowing the said application in favour of the respondent after perusing the averments in the plaint. It is further submitted that the appellant is in gross suppression of material facts from this Court that the appellant did institute a suit on the basis of the rights claimed under the said trust deed which is pending for adjudication before the City Civil Court at Calcutta, being Title Suit No.2451/2008. In the plaint the plaintiffs/appellants did not aver that their rights flow from the trust deed as they tried to point out here.

11. It is necessary for us at this stage to set out the relevant provisions of Order VII Rule 11 of the Code :

"**11. Rejection of plaint**

The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued but the

plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law:

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply sub-rule (2) of rule 9;

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

12. After perusing the order passed by the High Court and the reasoning given therein, it appears to us that the High Court has correctly perused the plaint in its entirety and after deletion of the name of plaintiff No.1 from the said Title Suit, held that the plaint discloses no cause of action after taking into account the fact that the very purpose of the suit has become infructuous in view of the order passed by the High Court to hand over the possession of the rooms in question. Therefore, the foundation of the suit was not subsisting after the handing over of possession to the defendant by plaintiff No.1 in terms of the order. Hence, in these circumstances, the High Court held that the plaint discloses no cause of action.

13. Now, it is necessary for us to find out whether the plaint discloses any cause of action, after deletion of the name of

plaintiff No. 1 in Title Suit No. 2430 of 2007. We have gone through the averments made in the said plaint. After perusing the averments and on the basis of its entirety and considering that the statements made in the plaint are correct, it appears to us that the plaint discloses no cause of action and thereby it attracts the provisions of Order VII Rule 11(a) of the Code, and accordingly we hold that the High Court has correctly ascertained the position and allowed the said application reversing the order of the City Civil Court at Calcutta.

14. In these circumstances, we do not find any infirmity in the order passed by the High Court. We find no merit in the appeal and the same is, accordingly, dismissed.

R.P. Appeal dismissed.

VIJAY SINGH & ANR.
v.
STATE OF MADHYA PRADESH
(Criminal Appeal No. 444 of 2008)

MARCH 25, 2014

[CHANDRAMAULI KR. PRASAD AND JAGDISH SINGH KHEHAR, JJ.]

PENAL CODE, 1860:

s.326 -- Death of a person by injuries caused by several persons -- Conviction and sentence u/s 302 of two upheld by High Court-Held: Appellants had caused one injury each, whereas deceased had sustained five injuries -- According to doctor, death had occurred on account of shock and excessive bleeding due to the injuries caused on the person of deceased -- Thus, death had not taken place as a result of injuries caused by appellants or any one of them -- Therefore, they cannot be held guilty u/s 302 simplicitor or with the aid of s.34 -- But their acts come within the mischief of s. 326 -- Accordingly, their conviction is modified and they are held guilty u/s 326 and sentenced to rigorous imprisonment for 10 years and fine of Rs.5,000/- each.

The two appellants and 9 others were prosecuted for committing the murder of the father of PW1 by causing injuries on his person. The trial court acquitted the said 9 persons and convicted and sentenced the appellants u/s 302 IPC. The High Court confirmed the judgement and the order.

Partly allowing the appeal, the Court

HELD: 1.1 From the evidence of the eye-witnesses, it is evident that appellant no.1 had caused one injury to

the deceased by ballam whereas appellant no.2 caused one injury on the neck by farsa. They have also testified that other accused had also given farsa blows to the deceased. In the face of it, the High Court clearly erred in holding that excepting injury no. 1, all other injuries were caused by appellant no.2. [para 7] [834-C-E]

1.2 From the evidence of the prosecution witnesses what is proved beyond doubt is that the appellants caused one injury each on the person of the deceased. It is relevant to mention that no charge u/s 34 IPC has been framed against the appellants. PW-7 has deposed that during the post-mortem examination, he found 5 injuries on the person of the deceased, and the death had occurred due to excessive bleeding and shock on account thereof. Thus, it cannot be said that only injury no.1 was the cause of the death. Therefore, the death had not taken place as a result of the injuries caused by the appellants or any one of them and, as such, they cannot be held guilty u/s 302 IPC simplicitor or with the aid of s.34 IPC. The High Court, thus, committed serious error by holding that injury no. 1 was sufficient to cause death of the deceased. [para 10, 11 and 12] [835-D; 836-A-F]

1.3 However, the prosecution has been able to prove that the appellants have assaulted the deceased with ballam and farsa, which are dangerous weapons. Further, the appellants had caused grievous injuries on the person of the deceased. Their acts come within the mischief of s.326 IPC. Accordingly, the appellants' conviction is modified. Their conviction u/s 302 IPC is set aside and they are held guilty u/s 326 IPC and sentenced to rigorous imprisonment for 10 years and a fine of Rs.5,000/- each. [para 14-15] [836-G-H; 837-A-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 444 of 2008.

From the Judgment and Order dated 14.09.2007 of the High Court of Madhya Pradesh, Jabalpur Bench Gwalior in Criminal Appeal No. 37 of 1995.

Rajesh for the Appellants.

C.D. Singh, Sakshi Kakkar for the Respondent.

The Judgment of the Court was delivered by

CHANDRAMAULI KR. PRASAD, J. 1. In the present appeal by way of special leave, we are concerned with appellants Vijay Singh and Hari Singh.

2. According to the prosecution, on 16th of June, 1992 at about 6.30 A.M., a report was lodged by the informant, Pohap Singh (PW-1), alleging that while he was at his house, his father Bhagirath (deceased) was returning home after answering the nature's call and at that time, 11 accused persons including appellant no. 2 Hari Singh armed with farsa and appellant no. 1 Vijay Singh armed with a ballam and other accused armed with axes surrounded him. Seeing this, according to the informant, his mother Prema Bai (PW-2), his wife Sheela (PW-3) and grandfather Jagannath (PW-6) went to rescue him, whereupon informant Pohap Singh was assaulted by lathi by one of the accused. Meanwhile, appellant no. 2, Hari Singh inflicted an injury on the neck of the deceased with farsa upon which he fell down. Thereafter, all the accused assaulted the deceased with the weapons with which they were armed. It is the case of the prosecution that appellant no. 1, Vijay Singh caused an injury with a ballam near the eye of the deceased and he died on the spot.

3. On the basis of the report given by Pohap Singh, a case under Section 147, 148 and 302/149 of Indian Penal Code, 1860 (hereinafter referred to as "the IPC") was registered. Police after usual investigation submitted the charge-sheet against all 11 accused persons and ultimately they were

committed to the Court of Sessions to face the trial. The Sessions Judge acquitted 9 of the 11 accused and convicted the appellants herein for commission of offence under Section 302 of the IPC and sentenced them to imprisonment for life. The learned Judge found the allegations as to the infliction of injuries, on the head and neck of the deceased by specific weapon such as ballam by appellant no.1 and farsa by appellant no.2 respectively, to have been corroborated by the medical evidence. Hence, the two appellants were convicted and sentenced as above.

4. On appeal, the High Court confirmed their conviction and sentence and while doing so, observed as follows:

> "**5**.....Dr. Kapil Dev Singh, who has performed the postmortem of the deceased on 16.6.1992 and found as many as six injuries on the body of the deceased, out of which injury No.1 is caused by some pointed object near the face of the deceased. Thus, the injury attributed to Vijay Singh is corroborated. The other injury was incised wound on the body of the deceased. All the injuries were caused by sharp and edged weapons. As per opinion of Doctor injury No. 1 was sufficient to cause death of the deceased.....
>
> **6**. After perusal of the statements of PW-1, PW-2 and PW-3, we find that the Sessions Court rightly convicted the present appellants. So far as the other accused are concerned the Doctor has specifically stated that except the injury No.1 which is attributed to Vijay Singh, all other injuries were caused by the same weapon. Thus, the other injuries are attributed to Hari Singh**.** Moreso, the witness could not point out which of the injuries were caused by other accused, hence, acquitted the other accused. But so far as the present appellants are concerned, there are specific allegation against them for causing injuries to the deceased.
>
> "Underling ours"

5. Aggrieved by the same, the appellants are before us.

6. At the outset, while assailing the conviction of the appellants, Mr. Rajesh learned counsel appearing for the appellants, submits that the High Court erred in holding that excepting injury no. 1, all other injuries are attributable to Hari Singh. He draws our attention to the evidence of PW-2 Prema Bai and PW-3 Sheela, who claim to be the eye-witnesses to the occurrence and have clearly stated in their evidence that the appellant Hari Singh gave farsa blow on the neck of the deceased and other accused persons (since acquitted) have also assaulted the deceased with farsa.

7. We have gone through the evidence of the eye-witnesses and from their testimony it is evident that appellant Vijay Singh had caused one injury to the deceased by ballam whereas appellant Hari Singh caused one injury on the neck by farsa. They have also testified that other accused had also given farsa blows to the deceased. In the face of it, the High Court clearly erred in holding that excepting injury no. 1, all other injuries were caused by the appellant Hari Singh.

8. Mr. Rajesh, then submits that the appellants can be held guilty under Section 302 of the IPC only when it is proved that the injuries inflicted by them have resulted into death. He refers to the evidence of PW-7 Dr. Kapil Dev Singh and submits that according to his opinion, the death occurred because of excessive bleeding and shock on account of all the injuries found on the person of the deceased. He points out that this doctor had found 5 injuries on the person of the deceased and all those injuries cannot be attributed to the present appellants. Mr. Rajesh further points out that even if it is assumed that appellant Vijay Singh had assaulted the deceased with ballam on the face and appellant Hari Singh by farsa on the neck, they cannot be held guilty under Section 302 of the IPC as those injuries only did not cause death.

9. Mr. C.D. Singh, learned counse

other hand, submits that since the doctor in evidence has stated that injury no. 1 was sufficient to have caused death, the High court rightly convicted the appellants. In any view of the matter, according to Mr. Singh, the deceased died of various injuries caused to him during the occurrence, and therefore, the appellants can well be convicted under Section 302 with the aid of Section 34 of the IPC.

10. True it is that the High Court, while upholding the conviction of the appellants, has observed that "as per the opinion of the doctor, injury no. 1 was sufficient to cause death of the deceased". We have gone through the evidence of PW-7 Dr. Kapil Dev Singh. PW-7 in his evidence stated that during the post-mortem examination, he found the following injuries on the person of the deceased:

"1.Depressed fracture with contusion with open wound cutting front parietal bone 4" x 1½" x bone deep on right side.

2. Incised wound on cheek cutting auxiliary bone 5"x 1/2" x bone deep right side.

3. Incised wound of the size 4" x ½" x muscle deep and cutting breathing pipe and major blood arteries on right side.

4. Incised wound on superior collar bone right side, 5" x ½" cutting breathing pipe.

5. Incised wound right side on the face cutting right jaw bone size 3" x ½" x bone deep."

As regards the cause of death, he has stated as follows:

"In my opinion, all the injuries were caused by sharp and blunt weapon. In my opinion cause of death is excessive bleeding and shock…."

11. Thus, the doctor has altogether found 5 injuries on the person of the deceased and the death had occurred due to excessive bleeding and shock on account thereof. Therefore, it cannot be said that only injury no.1 was the cause of the death. Hence, we are constrained to observe that the High Court committed serious error by holding that injury no. 1 was sufficient to cause death of the deceased.

12. Nonetheless from the evidence of the prosecution witnesses what is proved beyond doubt is that appellant Vijay Singh caused injury on the face of the deceased by ballam and appellant Hari Singh on neck by farsa. In this backdrop, we proceed to consider the nature of offence. It is relevant here to mention that no charge under Section 34 IPC has been framed against the appellants. Even if we assume in favour of the State, as contended by Mr. Singh, that it is possible to hold the appellants guilty under Section 302 read with Section 34 of the IPC in the absence of charge, in our opinion, for that the prosecution will have to prove that injuries attributable to the appellants or any of them were the cause of death. As observed earlier, the appellants had caused one injury each, whereas the deceased had sustained five injuries. According to the doctor, death had occurred on account of shock and excessive bleeding due to the injuries caused on the person of the deceased. Therefore, the death had not taken place as a result of the injuries caused by the appellants or any one of them. Hence, they cannot be held guilty under Section 302 IPC simplicitor or with the aid of Section 34 IPC.

13. However, the prosecution has been able to prove that the appellants have assaulted the deceased with ballam and farsa, which are dangerous weapons. Further, the appellants had caused grievous injuries on the person of the deceased. Hence, they may not be held guilty under Section 302 or 302 read with Section 34 IPC, but surely their acts come within the mischief of Section 326 IPC. Accordingly, we modify the appellants' conviction and hold them gu[illegible]6

IPC and sentence them to undergo rigorous imprisonment for 10 years each and fine of Rs.5,000/- each, in default to suffer imprisonment for six months. We have been told that both the appellants have already remained in custody for more than the period of their sentence. If that be so, they be released forthwith unless required in any other case.

14. In the result, the appeal is partly allowed, the conviction and sentence of the appellants under Section 302 IPC is set aside, instead they are convicted under Section 326 IPC and sentenced to the period as above with the direction aforesaid.

R.P. Appeal Partly Allowed.

EXECUTIVE DIRECTOR, STEEL AUTHORITY OF INDIA & ORS.

v.

TYCOON TRADERS & ORS.

(Civil Appeal No. 4026 of 2014)

MARCH 26, 2014

[GYAN SUDHA MISRA AND PINAKI CHANDRA GHOSE, JJ.]

CONTRACT:

Contract becoming unenforceable impossible-Contract for removal of iron ore fines-Granted in 2007 -- Renewed in 2009 -- Principal Chief conservator of Forests declining to grant permission for lifting and transporting of iron ore fines by plying vehicles as the area was declared as 'Tiger Reserve' -- High Court holding that contract stood frustrated and it was illegal for SAIL not to refund entire amount -- Held: Contract is unenforceable and further, it is also hit by s.38(v) of Wildlife (Protection) Act -- High Court was correct in allowing the writ petition, and there is no reason to interfere - Wild life (Protection) Act, 1972 - s.38(v).

In an e-auction for removal of iron ore fines, respondent no.1, being the successful bidder deposited the required amount and security deposits in March 2007. The contracted was revalidated till November 26, 2009. However, the Principal Chief Conservator of Forests declined to grant permission for lifting the iron ore fines by plying vehicles as the area was declared as 'Tiger Reserve'. The High Court allowed the writ petition of respondent no.1 holding that the contract itself stood frustrated and could not have been performed by the respondent even if it desired to do so, and further held that in case of frustrated contract, parties must be

restored to their original position and, as such, it was illegal for SAIL not to refund the entire money received by it from the respondent.

Dismissing the appeal, the Court

HELD:

The contract is unenforceable and further, the contract is also hit by s.38(v) of the Wildlife (Protection) Act, 1972 as amended in 2006 and, as such, the object of the contract is forbidden by law. Therefore, the said contract is unlawful and cannot be given effect to. The High Court was correct in allowing the writ petition, and there is no reason to interfere with its order. [para 8-9] [842-F-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4026 of 2014.

From the Judgment and Order dated 21.02.2012 of the High Court of Karnataka at Bangalore in WP No. 38280 of 2011.

Dr. Rajiv Dhawan, Anurag Sharma, Prashant Kumar, Joseph Pookkatt, AP & J Chambers for the Appellants.

Shushil Kumar Jain, Satish G., H. Chandra Sekhar, A.V. Manavalan, V.N. Raghupathy for the Respondents.

The Judgment of the Court was delivered by

PINAKI CHANDRA GHOSE, J. 1. Leave granted.

2. This appeal has been filed against the order dated February 21, 2012 passed by the High Court of Karnataka in W.P. No.38280/2011.

3. The facts of the case reveal that on February 19, 2007, Steel Authority of India (for short 'SAIL') had advertised for E-auction of 1.00 lakh metric tons of iron ore (fines) from

Kemmanagundi mines. On March 13, 2007, auction was held and respondent No.1 was declared as the successful tenderer. It would be evident from the sale order dated March 16, 2007 that the price was agreed upon at Rs.1,132/- per metric ton plus VAT of 4% aggregating to Rs. 11,32,00,000/- plus VAT of 4%. The appellant duly paid 176 lakhs being 15% of the total sale value on March 15, 2007. Out of the said amount, Rs.58.86 lakhs being 5% of the total sale value was retained as Security Deposit and a sum of Rs.117.74 lakhs was kept for adjustment along with the final instalment. The balance payment was to be made in two monthly instalments with the grace period of 30 days with interest at the rate of 6% per annum. The entire material was to be lifted within four months from the date of the sale order.

4. On May 26, 2010, SAIL informed the respondent that the contract was revalidated by letter dated July 27, 2009 till November 26, 2009 for a period of four months commencing from July 27, 2009 and that the said contract had expired on the lapse of the said period. It is also not in dispute that on November 9, 2009, SAIL had addressed a letter to the Principal Chief Conservator of Forests (Wildlife) and Chief Wildlife Warden, Karnataka, for renewal of permission granted for lifting and transporting iron ore fines through Bhadra Wildlife Sanctuary. The Principal Chief Conservator of Forests by letter dated March 31, 2010, declined to grant such permission for the removal of 1.00 lakh tons of iron ore fines by plying vehicles. In these circumstances, the High Court held that the contract itself stood frustrated and could not have been performed by the respondent even if it desired to do so, and further held that in case of frustrated contract, parties must be restored to their original position.

5. On the basis of the aforesaid reason, the High Court held that it is illegal and unconscionable for SAIL not to refund the entire sum of money received by it from the respondent. The High Court further held that the extens[illegible]e

instance of SAIL and such extension amounts to waiver of the delivery conditions in the sale order dated March 16, 2007. The High Court further held that the Bhadra Wildlife Sanctuary has been declared as a 'Tiger Reserve' and that it is required to be maintained as 'inviolate' for tiger population, and the permission which has been refused cannot be granted in view of section 38(v) of the Wildlife (Protection) Act, 1972 as amended in 2006. In this background, the writ petition was allowed and SAIL was directed to refund the entire amount within four weeks from the date of the order.

6. Being aggrieved, the appellant filed the present appeal before this Court. It was contended before us that this is a case where there was a breach of contract which was committed by the respondent and thereby SAIL has a right to forfeit the earnest money and security deposit on the basis of such breach. It is also stated whether it would come within the purview of a case of frustration of the contract. Dr. Rajiv Dhawan, learned senior counsel appearing in support of the appellants, has drawn our attention to the original agreement and contended that there was a breach of the original agreement since no clearances were obtained, payments were not made and further contract was not completed. It has been further submitted that the respondent could not lift the iron ore fines although SAIL could manage to get permission from the State Government. Furthermore, it is the case of the appellant that in the light of the respondent's request, the contract was revalidated on July 27, 2009 on the same terms and conditions and, in fact, there was no waiver of any conditions stipulated in the sale order dated March 16 2007; therefore, on this question the High Court is not correct since, according to him, there was no question of any waiver. He further submitted that there was no frustration due to impossibility because the Principal Chief Conservator of Forests had granted clearance.

7. Per contra, Mr. Sushil Kumar Jain, learned senior counsel appearing on behalf of the respondent, drew our attention to the letter dated March 31, 2010 whereby the

Principal Chief Conservator of Forests (Wildlife) & Chief Wildlife Warden, Bangalore, has specifically stated to the General Manager (Operations) of the appellant that Bhadra Wildlife Sanctuary was declared as a Tiger Reserve and was required to be maintained as 'inviolate' for tiger population, hence, refused to allow the transportation through the said Tiger Reserve under Section 38(v) of the Wildlife (Protection) Act, 1972 as amended in 2006. By the said letter, the request to lift and transport the iron ore fines was rejected. Therefore, the contract which was entered into between the parties, as would be evident, is in violation of the said Act and is against public policy. Hence, the contract cannot be given effect to as the contract is already frustrated. He also drew our attention to the fact that the appellant by a fax message dated July 6, 2007 duly relaxed condition Nos.8, 9 and 10 as stipulated in the G.O. dated 2nd May, 2007. Learned senior counsel further contended that by relaxing the said conditions, there was no need for the respondent to obtain permission. On the contrary it was the duty of the appellant to take permission from the authority for implementation of such contract.

8. After considering the submissions made on behalf of the parties, we find that there is substance to accept the contentions of Mr. Jain, learned senior counsel in the matter. In our opinion, the contract is unenforceable and further, the contract is also hit by Section 38(v) of the Wildlife (Protection) Act, 1972 as amended in 2006. Therefore, the object of the contract is forbidden by law. Hence, the said contract is unlawful and cannot be given effect to. In these circumstances, we do not accept the contention of Dr. Dhawan, appearing on behalf of the appellants.

9. Accordingly, we hold the High Court was correct in allowing the writ petition, and we do not find any reason to interfere with the said order of the High Court. Hence, we do not find any merit in the appeal, and the same is dismissed.

R.P.

UDAY GUPTA

v.

AYSHA & ANR.

(SLP (Crl.) No. 3390 of 2014)

APRIL 21, 2014

[DR. B.S. CHAUHAN AND J. CHELAMESWAR, JJ.]

FAMILY LAW : Institution of marriage - In the impugned order, the High Court made observation that a valid marriage does not necessarily mean that all the customary rights pertaining to the married couple are to be followed and subsequently solemnized - Instant SLP filed by Advocate not party before the High Court challenging the said observations - Held: Such observations had been made in the facts of that case - In fact, the High Court observed that if a man and woman are living together for a long time as husband and wife, though never married, there would be a presumption of marriage and their children could not be called illegitimate - High Court made the said observations as the alleged marriage took place in 1994 and two children were born in 1996 and 1999 respectively - Therefore, the observations made by the High Court in the said judgment were restricted to the facts of that case and do not lay down the law of universal application - Precedent - Presumption.

Madan Mohan Singh & Ors. v. Rajni Kant & Anr. **AIR 2010 SC 2933 : 2010 (10) SCR 30;** *Bharatha Matha & Anr. v. R. Vijaya Ranganathan & Ors.* **AIR 2010 SC 2685 : 2010 (7) SCR 154 - relied on.**

Case Law Reference:

2010 (10) SCR 30	**Relied on**	**Para 7**
2010 (7) SCR 154	**Relied on**	**Para 7**

CRIMINAL APPELLATE JURISDICTION : SLP (Criminal) No. 3390 of 2014.

From the Judgment and Order dated 17.06.2013 of the High Court of Judicature at Madras in Crl. R.C. No. 674 of 2007.

M.R. Calla, Shivani M. Lal, M.K. Tripathi, Pratiksha Sharma, Ankit Achariya, Gaurav Dave in the Petitioner Uday Gupta (Petitioner-In-Person).

The following Order of the Court was delivered

O R D E R

1. Permission to file special leave petition is granted.

2. This petition has been filed by an Advocate of this Court though not a party before the Madras High Court wherein the judgment impugned dated 17.6.2013 had been passed in Criminal R.C. No.674 of 2007 making certain observation regarding the relationship between man and woman and particularly the institution of marriage.

3. Mr. M.R. Calla, learned senior counsel appearing for the petitioner has submitted that the observations made by the High Court that "a valid marriage does not necessarily mean that all the customary rights pertaining to the married couple are to be followed and subsequently solemnized" are not legally tenable. It has been pointed out by Mr. Calla, learned senior counsel that such observations demolish the very institution of marriage itself, and therefore, are liable to be set aside.

4. In view of the nature of the order we propose to pass, we do not consider it necessary to issue notice to anyone.

5. We have gone through the judgment and order impugned and perused the record of the case.

6. We are of the view that such observations had been made in the facts of that case. In fact, what the learned Judge wanted to say is that if a man and woman are living together for a long time as husband and wife, though never married, there would be a presumption of marriage and their children could not be called to be illegitimate. Such a view stands fully fortified by a very large number of judgments.

7. This Court in *Madan Mohan Singh & Ors. v. Rajni Kant & Anr.,* AIR 2010 SC 2933 held as under:-

> "The courts have consistently held that the law presumes in favour of marriage and against concubinage, when a man and woman have cohabited continuously for a number of years. However, such presumption can be rebutted by leading unimpeachable evidence. (Vide: *Mohabbat Ali Khan v. Mohd. Ibrahim Khan,* AIR 1929 PC 135; *Gokalchand v. Parvin Kumar,* AIR 1952 SC 231; *S.P.S. Balasubramanyam v. Suruttayan,* (1994) 1 SCC 460; *Ranganath Parmeshwar Panditrao Mali v. Eknath Gajanan Kulkarni,* (1996) 7 SCC 681; and *Sobha Hymavathi Devi v. Setti Gangadhara Swamy & Ors.,* (2005) 2 SCC 244)."

In *Bharatha Matha & Anr. v. R. Vijaya Ranganathan & Ors.,* AIR 2010 SC 2685, this Court dealt with the legitimacy of the children born out of such relationship observing:

> "Thus, it is evident that Section 16 of the (Hindu Marriage) Act intends to bring about social reforms, conferment of social status of legitimacy on a group of children, otherwise treated as illegitimate, as its prime object."

8. In the instant case, the High Court made the aforesaid observations in the facts of that case as the alleged marriage took place in 1994 and two children were born in 1996 and 1999 respectively. Therefore, the observations made by the

High Court in the said judgment are restricted to the facts of that case and do not lay down the law of universal application.

9. In view of the above, we do not deem it necessary to consider the case any further.

10. With these observations, the special leave petition stands disposed of.

D.G. S.L.P. disposed of.

ARSAD SK. & ANR.
v.
BANI PROSANNA KUNDU & ORS.
(Civil Appeal No. 4805 of 2014)

APRIL 23, 2014

[CHANDRAMAULI KR. PRASAD AND PINAKI CHANDRA GHOSE, JJ.]

CODE OF CIVIL PROCEDURE, 1908: s.100 – Second appeal – Substantial question of law – Non-framing of substantial question of law at the time of admission of second appeal but framing thereof after conclusion of the arguments – Correctness of – Held: The general rule regarding an appeal u/s.100 is that the jurisdiction of High Court is limited to the substantial question of law framed at the time of the admission of appeal – However, omission of the High Court in formulating the 'substantial question of law' (while admitting the appeal) does not preclude the same from being heard, as litigants should not be penalized for an omission of the Court – Substantial question of law can be formulated in some exceptional cases, at a later point of time, even at the time of argument stage provided the opposite party is put on notice thereon and is given a fair or proper opportunity to meet out the point – Furthermore, the judgment of High Court should be set aside on the ground of non-compliance with sub-section (4) of s.100, only if some prejudice has been caused to the appellants by not formulating such a substantial question of law.

The question which arose for consideration in the instant appeal was whether the impugned judgment passed by the High Court in second appeal suffered from patent error on the ground that the High Court did not frame the substantial question of law at the time of

admission of the second appeal but formulated a question only in the impugned judgment after conclusion of the arguments.

Dismissing the appeal, the Court

HELD: 1. In the instant case, no substantial question of law was formulated at the time of admission of appeal and as such the question was understood to be regarding the correctness of judgments of the lower courts. Furthermore, if any such lapse in adhering to the procedure existed at the second appellate stage, the counsel for the parties should have pointed out the same at that stage only but they never did so. Moreover, the High Court basically framed the substantial question of law, though at a later stage, and then answered it. [Para 7] [852-C-D]

2. The general rule regarding an appeal under Section 100 of CPC is that the jurisdiction of the High Court is limited to the substantial question of law framed at the time of the admission of appeal or at a subsequent later stage, if the High Court is satisfied that such a question of law arises from the facts found by the Courts below. [Para 8] [852-E-F]

Manicka Poosali & Ors. v. Anjalai Ammal & Anr. **(2005) 10 SCC 38: 2005 (2) SCR 1027 – relied on.**

3. In light of the well accepted principle that rules of procedure is a handmaiden of justice, the omission of the Court in formulating the 'substantial question of law' (while admitting the appeal) does not preclude the same from being heard as litigants should not be penalized for an omission of the Court. In the instant case, the substantial question of law was formulated by the High Court, though not at the admission stage but at a later stage before the hearing, it does n[illegible]y

because the "substantial question of law" was formulated by the High Court at a later stage, the judgment of the High Court becomes a nullity, liable to be set aside on that ground alone and for the same the appellants must also show prejudice to them on this account. [Paras 9 and 10] [852-F-H; 853-A-B]

Kannan & Ors. v. V.S. Pandurangam **(2007) 15 SCC 157 : 2007 (12) SCR 591 – relied on.**

4. Substantial question of law can be formulated at the initial stage and in some exceptional cases, at a later point of time, even at the time of argument stage such substantial question of law can be formulated provided the opposite party should be put on notice thereon and should be given a fair or proper opportunity to meet out the point. Furthermore, the judgment of the High Court should only be set aside on the ground of non-compliance with sub-section (4) of Section 100 of CPC, if some prejudice has been caused to the appellants by not formulating such a substantial question of law. In the instant case, substantial question of law was framed by the High Court before the hearing took place and the appellants were put on notice and after giving an opportunity to the appellants to meet the question, second appeal was decided by the High Court. Therefore, no prejudice has been caused to the appellants. [Paras 11, 12] [853-E-H; 854-A]

CASE LAW REFERENCE

2005 (2) SCR 1027	**Relied on**	**Para 8**
2007 (12) SCR 591	**Relied on**	**Para 10**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4805 of 2014.

From the Judgment and Order dated 13.03.2008 of the

High Court at Calcutta in Second Appeal No. 490 of 2003.

Uday Tiwari, Dharmendra Kumar Sinha for the appellants.

Ranjan Mukherjee, Siddhartha Chowdhury, Snehasish Mukherjee for the Respondents.

The Judgment of the Court was delivered by

PINAKI CHANDRA GHOSE, J. 1. Leave granted.

2. This appeal is directed against the judgment and decree dated March 13, 2008 passed by the High Court of Calcutta in Second Appeal No.490 of 1993 by which the High Court while allowing the second appeal filed by the respondents herein, set aside the concurrent judgments of the Trial Court and the First Appellate Court.

3. The facts revealed in this case are that respondent Nos.1 to 6 herein filed a suit in the Court of First Munsif, District Malda, praying, inter alia, for a permanent injunction against the defendants (who are appellants herein) by declaring the title over 27 decimals of land in R.S. Plot No.95/425 situated in Mouza Mahesh Mati, P.S. Engrej Bazar in District Malda, West Bengal. The Munsif Court, Malda, by its judgment and order dated May 15, 1989 dismissed the said suit with the finding that the plaintiffs did not have any right, title or interest in the schedule property. Aggrieved by the dismissal of their suit, the respondents-plaintiffs preferred first appeal, being O.C. Appeal No. 25 of 1989, before the District Judge, Malda, wherein they specifically pleaded that they owned and possessed the suit land within the boundary through purchase and gifts. Simultaneously, further claimed the title to the whole area by adverse possession. On July 12,1991, the Assistant District Judge, Malda dismissed the First Appeal and upheld the findings of the Trial Court. Aggrieved thereby the respondents-plaintiffs preferred a second appeal before the Calcutta High Court stating, inter alia, that in a dispute in a conveyance deed

between the area and description of boundary, the description of boundary would prevail and also pointed out that the Court below had failed to consider the question of adverse possession.

4. The High Court by its judgment and order dated March 13, 2008 set aside the concurrent judgments of the Trial Court and the First Appellate Court and allowed the second appeal filed by the respondents, holding that where there is a dispute in a conveyance deed between the area and the description of the boundary, the description of the boundary shall prevail. Aggrieved by the said judgment and order passed by the High Court, the appellants have come up before this Court by filing this appeal.

5. Learned counsel appearing on behalf of the appellants submitted that the impugned judgment passed by the High Court in second appeal suffers from patent errors, both in law and in fact. It was submitted that the High Court did not frame the substantial question of law at the time of admission of the second appeal but formulated a question only in the impugned judgment after the arguments had been concluded.

6. Per contra, the case of the respondents is based on the premise that under the proviso to sub-Section (5) of Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC"), nothing shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question and the High Court has correctly proceeded to frame the question of law set out in the impugned judgment. It is further submitted that the question of law as set out by the High Court in the impugned judgment is the appropriate and substantial question of law arising in the facts and circumstances of this case and that the appeal should be dismissed as the Second Appellate Court has merely set right the apparent perversity in the

judgments of the lower courts. It is submitted that the High Court has correctly decided the matter on the basis of the question of law framed in the impugned judgment by holding, inter alia, that where there is a dispute between the area of the transferred land indicated in the deed and the boundaries mentioned in the deed, boundaries mentioned in the conveyance deed shall prevail.

7. In the present case, it appears from the impugned judgment that no substantial question of law was formulated at the time of admission of appeal and as such the question was understood to be regarding the correctness of judgments of the lower courts. Furthermore, if any such lapse in adhering to the procedure existed at the second appellate stage, the counsel for the parties should have pointed out the same at that stage only but they never did so. Moreover, it is clear that the High Court basically framed the substantial question of law, though at a later stage, and then answered it.

8. The general rule regarding an appeal under Section 100 of CPC is that the jurisdiction of the High Court is limited to the substantial question of law framed at the time of the admission of appeal or at a subsequent later stage, if the High Court is satisfied that such a question of law arises from the facts found by the Courts below. The same has been noted by this Court in *Manicka Poosali & Ors. v. Anjalai Ammal & Anr.*[1].

9. In light of the well accepted principle that rules of procedure is a handmaiden of justice, the omission of the Court in formulating the 'substantial question of law' (while admitting the appeal) does not preclude the same from being heard as litigants should not be penalized for an omission of the Court.

10. In the present case it is true that the substantial question of law was formulated by the High Court, though not at the admission stage but at a later stage before the hearing, it does

1. (2005) 10 SCC 38.

not follow that merely because the "substantial question of law" was formulated by the High Court at a later stage, the judgment of the High Court becomes a nullity, liable to be set aside by this Court on that ground alone and for the same the appellants before us must also show prejudice to them on this account. This Court in the case *Kannan & Ors. v. V.S. Pandurangam*[2] even went on to hold as under:

> *"In our opinion, this Court should not take an over-technical view of the matter to declare that every judgment of the High Court in second appeal would be illegal and void, merely because no substantial question of law was formulated by the High Court. Such an over-technical view would only result in remitting the matter to the High Court for a fresh decision, and thereafter the matter may again some up before us in appeal. The judiciary is already over-burdened with heavy arrears, and we should not take a view which would add to the arrears."*

11. In light of the above, we are of the opinion that substantial question of law can be formulated at the initial stage and in some exceptional cases, at a later point of time, even at the time of argument stage such substantial question of law can be formulated provided the opposite party should be put on notice thereon and should be given a fair or proper opportunity to meet out the point. Furthermore, the judgment of the High Court should only be set aside on the ground of non-compliance with sub-section (4) of Section 100 of CPC, if some prejudice has been caused to the appellants before us by not formulating such a substantial question of law.

12. In the instant case, we have noticed that substantial question of law was framed by the High Court before the hearing took place and the appellants were put on notice and after giving an opportunity to the appellants to meet the

2. (2007) 15 SCC 157.

question, second appeal was decided by the High Court. Therefore, in our opinion no prejudice has been caused to the appellants.

13. In view of the discussion in the foregoing paragraphs, we find no merit in this appeal and the same is dismissed accordingly. However, there shall be no order as to costs.

D.G. Appeal dismissed.

POOJA ABHISHEK GOYAL

v.

STATE OF GUJARAT & ORS.

(Special Leave Petition (Crl.) No. 7121 of 2011)

APRIL 25, 2014

[T.S. THAKUR AND GYAN SUDHA MISRA, JJ.]

Code of Criminal Procedure, 1973: s.173(8) – Dowry case filed by petitioner-wife against husband and in-laws – Charge-sheet – At the time of framing of charges, petitioner filed application seeking further investigation of the case with respect to her 'stridhan' properties and the palmtop communicator, stating that though in the complaint there was a specific case that 'stridhan' was with husband and his family members, no efforts were made by Investigating Officer to recover it – Further investigation ordered – Ornaments produced by husband but refusal by petitioner to take them on the ground that they were not the complete ornaments – Investigating Officer finally gave report that nothing was required to be done with respect to the Palmtop – Thereafter, petitioner submitted another application before Magistrate for further investigation u/s.173(8) with a special direction that the same be conducted under the direct supervision of an officer not below the rank of Asstt. Commissioner of Police of zone, within whose jurisdiction the Police Station falls, reiterating the same grievance which was made earlier – Magistrate allowed the said application – Revision application by respondents partly allowed observing that Magistrate was not justified in directing further investigation on a particular aspect (Stridhan and Palmtop) and that too by a particular officer – High Court upheld the order – SLP – Held: High Court was right in holding that all steps pertaining to investigation of stridhan property had been allowed in favour of the petitioner and even suo moto investigation was conducted by the police which subsequently

was confirmed by the order of the Magistrate – Thus, whatever was legally possible was already allowed in favour of petitioner – The attending circumstances showed that she had not moved the Court bonafide but perhaps to teach a lesson to the respondent-husband rather than recovery of her stridhan property – In any view, if the investigation conducted by the authorities did not suffer from the lacunae or serious infirmity, there is no reason to issue any further direction to the court below to take steps in the matter – However, all remedies in accordance with law for recovery of 'stridhan property', would be available to the petitioner.

Hemant v. CBI, **(2001) Crl. L.J. (SC) 4190 – relied on.**

Case Law Reference:

(2001) Crl. L.J. (SC) 4190 relied on Para 6

CRIMINAL APPELLATE JURISDICTION : Special Leave Petition (Criminal) No. 7121 of 2011

From the judgment and order dated 13.12.2010 of the High Court of Gujarat at Ahmedabad in Special Criminal Application No. 2145 of 2010.

S.B. Sanyal, Huzefa Ahmadi, Abhijat P. Medh, Rauf Rahim, Yadunandan Bansal for the appellant.

Jesal, Hemantika Wahi, S. Panda for the respondents. Respondent-in-person.

The order of the Court was delivered by

GYAN SUDHA MISRA, J. 1. The petitioner herein has filed this special leave petition challenging the order passed by the learned single Judge of the High Court of Gujarat at Ahmedabad in Special Criminal Application No.2145 of 2010 whereby the High Court dismissed the petition filed by the

petitioner and upheld the order passed by learned 3rd Additional Sessions Judge dated 20.10.2010 passed in Criminal Revision Application No.70/2010. The petitioner and the contesting respondent and all other counsel in the matter were heard at the stage of admission itself after which the order had been reserved.

2. The petitioner's case is that she is the wife of respondent No.2 and respondent Nos.3 to 6 are the family members of respondent No.2 i.e. father-in-law, mother-in-law and sister-in-law of the petitioner-original complainant. The marriage between the petitioner and the respondent No.2 was solemnized at Ahmedabad on 22.11.2007 and soon after their marriage, the petitioner and respondent No.2 stayed together at the house of in-laws of the petitioner and thereafter they went for honeymoon to Bali. On their return, there was a dispute between the petitioner and the respondent No.2 and the petitioner straightaway went to her parental home. Thereafter, the petitioner had lodged one FIR before the Satellite Police Station against respondent Nos.2 to 6 for offences punishable under Sections 498-A, 406, 34 and 114 of IPC and Sections 3 and 4 of Dowry Prohibition Act, which was registered as C.R. No.I-274/2008. After completion of the investigation, respondent Nos.2 to 6 were chargesheeted for the above mentioned offences. At the time, when the learned CJM was to frame the charge against respondent Nos.2 to 6, the petitioner submitted an application (Exh.8) before the learned CJM for an appropriate order directing the Investigating Officer of Satellite Police Station to further investigate the case with respect to her 'stridhan' properties and the palmtop communicator, stating that though in the complaint there was a specific case that 'stridhan' is with respondent No.2 and his family members, no efforts were made by the Investigating Officer to recover the Stridhan.

3. The learned CJM partly allowed the application and directed the Investigating Officer of the Satellite Police Station

to further investigate the case with respect to the Stridhan and Palmtop Communicator and submit a report regarding the same within 30 days. Thereafter, the Investigating Officer conducted further investigation and respondent No.2 produced certain ornaments in the Police Station but the petitioner and her family members refused to take those ornaments which were produced by submitting that they were not the complete ornaments/stridhan. After further investigation and necessary inquiry, it was found that no palmtop was carried by respondent No.2 while going to Bali and therefore the concerned Investigating Officer opined that nothing was required to be done with respect to the Palmtop. Thereafter, on the basis of the aforesaid further investigation, the Police Inspector, Satellite Police Station submitted the report to the learned CJM pursuant to the order passed by learned CJM for further investigation under Section 173 (8) of Cr.P.C.

4. In the meantime, the petitioner submitted an application (Exh.47) requesting learned CJM to call for, from the IO, all statements, documents, communications and/or processes carried out in compliance to the order of further investigation dated 12.03.2009 in respect to which reports dated 13.04.2009, 08.05.2009, further report dated 08.05.2009, additional reports dated 08.05.2009, 23.05.2009, 16.06.2009, 30.06.2009 and 17.09.2009 which had been tendered before the Court. Learned CJM dismissed the said application by order dated 30.01.2010.

5. Thereafter, the petitioner submitted another application (Ex.55) before the learned Magistrate for an appropriate order and to direct further investigation under Section 173 (8) of Cr.P.C. with a special direction that the same be conducted under the direct supervision of an officer not below the rank of Asstt. Commissioner of Police of zone, within whose jurisdiction the Satellite Police Station falls, reiterating the same grievance which was made earlier while submitting the application (Ex.8 and Ex.47) and subm[illegible]g

Officer has failed to recover the stridhan and the Palmtop. Learned CJM by order dated 07.08.2010 allowed the said application and directed the Assistant Commissioner of Police of the zone to hold further investigation with respect to stridhan and Palmtop and to submit the report within 30 days.

6. The respondents dissatisfied with the above order preferred revision application before the Sessions Court and the 3rd Additional Sessions Judge by order dated 20.10.2010 partly allowed the revision application and set aside that part of the order of the learned CJM by which there was a specific direction for further investigation with respect to stridhan and Palmtop, but maintained the order with respect to further investigation by observing that learned CJM was not justified in directing further investigation on a particular aspect (Stridhan and Palmtop) and that too by a particular officer, relying upon decision of the Supreme Court in the case of *Hemant Vs. CBI,* reported in (2001) Crl. L.J. (SC) 4190 and the decision of this Court in Criminal Revision Application No.738/2008 that the Magistrate should not direct that a particular officer or even an officer of particular rank should conduct further investigation.

7. The petitioner being aggrieved with the above order passed by Revisional Court, preferred Special Criminal Application in the High Court of Gujarat at Ahmedabad under Article 227 of the Constitution. But the learned single Judge was pleased to dismiss the same and hence this special leave petition.

8.We have heard the counsel for the parties as also the contesting respondent who appeared in person and perused the impugned order passed by the High Court whereby the learned single Judge has taken note of the fact that the Revisional Court had directed further investigation by the concerned officer in charge of the Satellite Police Station which had the capacity to include every circumstance and thus no prejudice in the opinion of the learned single Judge would be

caused to the petitioner and, therefore, the impugned order passed by the learned III Addl. Sessions Judge, Ahmedabad dismissing the criminal revision petition was not required to be interfered with by the High Court.

9. Having considered the sequence of events and all the circumstances, we agree with the view of the learned single Judge that all steps pertaining to the investigation of the stridhan property of the petitioner had been allowed in favour of the petitioner and even suo moto investigation was conducted by the police which subsequently was confirmed by the order of the Magistrate. However, as per the averment of the petitioner the revisional court interfered and disturbed the course of investigation, but the High Court appears to have correctly noted that the revisional court has also permitted further investigation by the concerned officer in charge of the Satellite Police Station in regard to the complaint of the petitioner alleging non-recovery of her stridhan property. Thus, whatever was legally possible has already been allowed in favour of the petitioner and yet she has come up to this Court by way of this special leave petition. From the attending circumstances, we are inclined to infer that she has not moved this Court bonafide but perhaps to teach a lesson to the respondent-husband rather than recovery of her stridhan property. In any view, if the investigation conducted by the authorities do not suffer from the lacunae or serious infirmity, we do not see any reason to issue any further direction to the court below to take steps in the matter. It goes without saying that all remedies that may be available to the petitioner in accordance with law for recovery of her 'stridhan property', would surely be made available to her. But in so far as the impugned order of the High Court is concerned, the same does not require any interference in our considered view. We, thus do not find any reason to entertain this special leave petition which is hereby dismissed at the admission stage itself.

D.G.