TAPASH KUMAR PAUL
v.
BSNL & ANR.
(Civil Appeal No. 4980 of 2014)

JANUARY 28, 2014

[GYAN SUDHA MISRA AND V. GOPALA GOWDA, JJ.]

LABOUR LAW:

*Full Back wages - Termination - Tribunal held that termination was in violation of s.25-F of the ID Act and passed an order of reinstatement, however declined to grant back wages to the appellant-workman except Rs. 20,000/- as compensation - Single Judge of High Court upheld the decision of Tribunal - On appeal, the Division Bench set aside the award and in lieu of reinstatement passed an order directing that the amount of Rs. 20,000 be paid by way of compensation - On appeal, held: Court may substitute reinstatement by compensation but the same has to be based on justifiable grounds i.e. where the industry is closed or where the employee has superannuated or going to retire shortly and no period of service is left to his credit or where workman has been rendered incapacitated to discharge the duties and is not fit to be reinstated or when he has lost confidence of the management to discharge duties - In the instant case, the appellant's case did not fall in any of the categories so as to justify compensation in lieu of reinstatement - There was no justification for the Division Bench to interfere with the order of the Tribunal and single judge - The Division Bench of the High Court gravely erred in ignoring the normal rule that ordinarily a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness - Relying upon the view expressed in *Deepali Gundu case to the effect that the order*

of termination affects the entire family of the employee and deprives them of food, education and advancement in life, appellant is reinstated with full back wages since in the absence of full back wages, he will suffer punishment for no fault of his own - Industrial Disputes Act, 1947 - s.25-F.

Deepali Gundu Surwase vs. Kranti Junior Adhyaypak Mahavidyalaya (D.Ed) and Ors.* **2013 (10) SCC 324: 2013 (9) SCR 1; *Senior Superintendent Telegraph (Traffic), Bhopal v. Santosh Kumar seal and Ors.* **2010 (6) SCC 773;** Jagbir Singh v. Haryana State Agriculture Mktg. Board & Anr. **2009 (15) SCC 327: 2009 (10) SCR 908;** *Hindustan Tin Works (P) Ltd. v. Employees of M/s Hindustan Tin Works Pvt. Ltd. & Ors.* **1979 (2) SCC 80: 1979 (1) SCR 563 ;** *Surendra Kumar Verma & Ors. v. central Government Industrial Tribunal-cum-Labour Court, New Delhi & Anr.* **1980 (4) SCC 443: 1981 (1) SCR 789 - relied on.**

Case Law Reference:

2010 (6) SCC 773	**Relied on**	**Para 2**
2009 (10) SCR 908	**Relied on**	**Para 2**
2013 (9) SCR 1	**Relied on**	**Para 3**
1979 (1) SCR 563	**Relied on**	**Para 3**
1981 (1) SCR 789	**Relied on**	**Para 3**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4980 of 2014.

From the Judgment and Order dated 04.02.2013 of the High Court at Calcutta in F.M.A. No. 1514 of 2011.

Pijush K. Roy, Kakali Roy, Rajan K. Chourasia for the Appellant.

R.D. Agrawala, Pavan Kumar, Prithvi Pal for the Respondents.

The following order of the Court was delivered

O R D E R

Leave granted.

This appeal has been preferred by the appellant who succeeded in getting an order of reinstatement in his favour by the Central Government Industrial Tribunal at Calcutta in Reference No. 27 of 1997 dated 13th May, 2002, by which the order of reinstatement was passed in his favour. However, the Tribunal declined to grant back wages to the appellant except Rs.20,000/- to be paid by the respondent as compensation towards back wages. This Award was passed by the Tribunal since the Management had failed to produce relevant documents to disclose the actual number of days for which appellant has worked and so his termination was held to be in violation of Section 25F of the Industrial Disputes Act, 1947.

The respondent-Management of the BSNL, however, appealed against the Award passed by the Tribunal by way of a Writ Petition in the High Court before the Single Judge whereby the learned Single Judge affirmed the Award passed by the Tribunal and dismissed the writ petition filed by the respondent- Management. The respondent was not satisfied with the order passed by the Single Judge and refused to give effect to the Award in favour of the appellant and preferred a further appeal before the Division Bench. The Division Bench, however, was pleased to allow the appeal by setting aside the Award passed in favour of the appellant and in lieu of reinstatement, passed an order directing that the amount of Rs.20,000/- be paid by way of compensation to the appellant which in any case had been passed by the Tribunal as compensation towards back wages. Thus, in effect, the compensation which has been ordered to be paid was legally due to the appellant towards back wages and the High Court set aside the entire Award passed by the Tribunal which in effect can be construed that no amount was paid by way of

compensation. Although the High Court recorded that Rs.20,000/- be paid by way of compensation, as aforesaid, the same was towards back wages as per the Award passed by the Tribunal.

It is no doubt true that a Court may pass an order substituting an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds viz. (I) where the industry is closed; (ii) where the employee has superannuated or going to retire shortly and no period of service is left to his credit; (iii) where the workman has been rendered incapacitated to discharge the duties and cannot be reinstated and / or (iv) when he has lost confidence of the Management to discharge duties. What is sought to be emphasised is that there may be appropriate case on facts which may justify substituting the order of reinstatement by award of compensation, but that has to be supported by some legal and justifiable reasons indicating why the order of reinstatement should be allowed to be substituted by award of compensation.

In the instant matter, we are not satisfied that the appellant's case falls in to any of the categories referred to hereinbefore which would justify compensation in lieu of reinstatement. We thus find no justification for the High Court so as to interfere with the Award passed by the Tribunal which was affirmed even by the Single Judge, but the Division Bench thought it appropriate to set aside the order of reinstatement without specifying any reasons whatsoever, as to why it substituted with compensation of a meagre amount of Rs.20,000/- to the appellant.

In view of this we set aside the judgment and order of the High Court and restore the Award of the Tribunal and the order of the Single Judge affirming the same.

The appeal accordingly is allowed but without cost.

V. GOPALA GOWDA, J. (Concurring)

1. While concurring with the finding and reasons recorded by my sister Justice Gyan Sudha Misra in allowing the Civil Appeal by setting aside the impugned judgment of the High Court of Calcutta and restoring the award of the Labour Court with consequential benefits of awarding backwages, I am giving my additional reasons after distinguishing decisions of this Court upon which reliance has been placed by the learned senior counsel appearing on behalf of the appellant.

2. The learned counsel on behalf of the respondent has relied upon the decision of this Court in the case of *Senior Superintendent Telegraph (Traffic), Bhopal v. Santosh Kumar Seal and Others*[1] to contend that in the last few years it has been consistently held by this Court that relief by way of reinstatement with back wages is not automatic even if the termination of employee has been found illegal or is in contravention to the prescribed procedure. The learned counsel has further relied upon the *Santosh Kumar Seal's* judgment (supra) which hold as under:

> "10. In a recent judgment authored by one of us (R.M. Lodha, J.) in *Jagbir Singh v. Haryana State Agriculture Mktg. Board & Anr.*[2], the aforesaid decisions were noticed and it was stated:
>
> 7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even

1. (2010) 6 SCC 773.
2. (2009) 15 SCC 327.

> though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.
>
> * * *
>
> 14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee."

The learned senior counsel has further relied upon the decision of this Court in Civil Appeal No.107 of 2014 titled *BSNL & Ors. Vs. Kailash Narayan Sharma* to hold that reinstatement may not be a natural consequence of termination of service of a work in contravention to Section 25 F of the ID Act. The relevant para reads as under:

> "The decisions of this Court referred to above, in no uncertain terms hold that in case of termination in violation of Section 25-F of the I.D. Act, relief of reinstatement may not be the natural consequence. It will depend upon the facts and circumstances of each case. It is not automatic. In the facts of a given case, instead of reinstatement, monetary compensation can be granted. The cases in hand clearly fall within the ratio of the decisions of this Court, referred to above."

3. However, it is pertinent to mention that the recent decision of this Court in the case of *De*[illegible]*e*

v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed) and Ors.[3] took a contrary view. The Court in this case, opined as under:

> "22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Thedenial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.

3. (2013) 10 SCC 324.

23. A somewhat similar issue was considered by a three-Judge Bench in *Hindustan Tin Works (P) Ltd. v. Employees of M/s Hindustan Tin Works Pvt. Ltd. & Ors.*[4] in the context of termination of services of 56 employees by way of retrenchment due to alleged non-availability of the raw material necessary for utilisation of full installed capacity by the petitioner. The dispute raised by the employees resulted in award of reinstatement with full back wages. This Court examined the issue at length and held:

> "It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately

4. (1979) 2 SCC 80.

he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavoured to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation up to the Apex Court now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of an invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them.

* * *

In the very nature of things there cannot be a straitjacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular."

(emphasis supplied)

After enunciating the abovenoted principles, this Court took cognizance of the appellant's plea that the company is suffering loss and, therefore, the workmen should make some sacrifice and modified the award of full back wages by directing that the workmen shall be entitled to 75% of the back wages.

24. Another three-Judge Bench considered the same issue in *Surendra Kumar Verma & Ors. v. Central Government Industrial Tribunal-cum-Labour Court, New Delhi & Anr.*[5] and observed:

"… Plain common sense dictates that th e removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional

5. (1980) 4 SCC 443.

circumstances which make it impossible or wholly inequitable vis-àvis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the court to make appropriate consequential orders. The court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted."

(emphasis supplied)

Therefore, in the light of the decision of this Court in *Deepali Gundu's* case (supra) which has correctly relied upon higher bench decisions of this Court in *Surendra Kumar Verma's* case (supra) and *Hindustan Tin Works Pvt. Ltd.* (supra), I am of the opinion that the appellant herein is entitled to reinstatement with full back wages since in the absence of full back wages, the employee will be distressed and will suffer punishment for no fault of his own.

4. The Division Bench of the High Court has gravely erred in law that the Tribunal and learned single Judge found that the order of the termination is bad in law for non-compliance with the above statutory provisions of the ID Act and therefore,

following the normal Rule of Award of reinstatement is awarded but erroneously denied full back wages in the absence of proof of gainful employment of appellant-workman.

5. For the foregoing additional reasons, the impugned judgment and order of the Division Bench is set aside and the Award of the Tribunal and the order of the learned single Judge are restored. The appeal is accordingly allowed, but without costs.

O R D E R

Leave granted.

In view of the two orders giving separate reasons, though concurring, the appeal is allowed.

D.G. Appeal allowed.

M/S BHARAT COKING COAL LTD AND ORS.
v.
CHHOTA BIRSA URANW
(Civil Appeal No. 4890 of 2014)

MARCH 25, 2014

[GYAN SUDHA MISRA AND PINAKI CHANDRA GHOSE, JJ.]

SERVICE LAW:

Date of birth - Correction of - Claim of employee to correct his date of birth and rectify discrepancies in his service record - Declined by employer - Allowed by High Court - Held: With an aim to prevent cascading inconveniences caused by change of date of birth, a wronged employee should not be denied of his rights especially when he has adhered to the procedure laid down and attempted to avoid litigation by resorting to in-house mechanisms - Public Corporations/ Departments, should not benefit from their own omission of duty - In the instant case, appellant-company failed to follow the procedure as laid down in Implementation Instruction - It was due to discrepancies which subsisted that appellants gave all its employees a chance to rectify the same - Respondent duly followed the procedure available -- Appellants are bound by their actions and their attempt to deny claim of respondent on the basis of technicality is incorrect - It has been correctly determined by single Judge of High Court that dispute was not raised at fag end of service nor on the eve of superannuation but it was raised at the earliest possible opportunity in 1987 when respondent became aware of the discrepancy - Order of High Court does not call for any interference.

EVIDENCE:

Date of birth - School leaving certificate - Evidentiary value of - Relevant date with regard to issuance of school leaving certificate - Held: Implementation Instruction No.76 clause (i)(a) permits rectification of the date of birth by treating the date of birth mentioned in school leaving certificate to be correct provided such certificates were issued by educational institution prior to date of employment - Date of issue of certificate actually intends to refer to the date with relevant record in school on the basis of which the certificate has been issued - A school leaving certificate is usually issued at the time of leaving school by student, subsequently a copy thereof also can be obtained where a student misplaces his said school leaving certificate and applies for a fresh copy thereof - Issuance of fresh copy cannot change the relevant record which is prevailing in records of the school from date of admission and date of birth of student, duly entered in records of the school.

The respondent joined appellant no. 1 company on 31.3.1973. At that time, his date of birth was recorded as 15.2.1947. He obtained a secondary school leaving certificate in 1979 in which his date of birth was recorded as 6.2.1950. In 1986 the respondent passed the Mining Sardarship and in the certificate acknowledging the same his date of birth was recorded as 6.2.1950. In 1987 in the process of identifying the discrepancies and correcting the service records in terms of Implementation Instruction no. 76, the respondent specifically sought that the incorrect date of birth be corrected as mentioned in the Mining Sardar Certificate and the School Leaving Certificate. However the same was not given effect to. The respondent subsequently made a representation on 16.7.2006 for correction of his date of birth but the same was rejected on 19.7.2006. By order dated 2.8.2006, the respondent was intimated that he v

from 28.2.2007. The respondent filed a writ petition seeking to quash the said order on the ground that his date of superannuation was incorrectly calculated by relying on the erroneous date of birth which should have been rectified as provided in the Mining Sardar Certificate and the School Leaving Certificate. The single Judge of the High Court allowed the writ petition. The Letters Patent appeal filed by the company was dismissed.

Dismissing the appeal the court

HELD: 1.1 With an aim to prevent the cascading inconveniences caused by a change of date of birth, a wronged employee should not be denied of his rights especially when he has adhered to the procedure laid down and attempted to avoid litigation by resorting to in-house mechanisms. Public Corporations/Departments, should not benefit from their own omission of duty. In the instant case, the appellant-company failed to follow the procedure as laid down in the Implementation Instruction. It is the appellant's omission and not the inaction of the respondent which led to the dispute being raised in the courts at such a delayed stage. The attitude of such Corporations, wherein to avoid the rectification of a date of birth, litigation is unnecessarily prolonged just because they have number of resources at their command, goes against the grain of equity and duty towards society at large. [para 13]

1.2 In 1973 when the respondent joined the service and Form 'B' register was filled and when it was filled once again in 1983, there were certain discrepancies regarding permanent address, father's name and date of joining. In 1987, when the appellant in terms of Implementation Instruction No. 76 contained in the National Coal Wage Agreement III, made available the details of all employees for verification of service records and gave them chance to identify and rectify the

discrepancies in their service records, the respondent raised the dispute as to incorrect particulars regarding his date of joining, father's name, permanent address and date of birth. The respondent duly followed the procedure available. In such circumstances, the appellant was bound by its actions, and its attempt to deny the claim of the respondent on the basis of technicality was incorrect. The appellants should have followed the procedure as laid down by Implementation Instruction No. 76 to determine the date of birth of an existing employee. Thus, it is evident and correctly determined by the single Judge of the High Court that the dispute was not raised at the fag end of service nor on the eve of superannuation but it was raised at the earliest possible opportunity in 1987 when the respondent became aware of the discrepancy. [para 8,11-12]

1.3 The High Court duly verified the genuineness of the school leaving certificate on the basis of a supplementary affidavit filed by legal inspector of the appellant company admitting that the school leaving certificate was verified and found to be genuine. Further, Implementation Instruction No.76 clause (i)(a) permits rectification of the date of birth by treating the date of birth mentioned in the school leaving certificate to be correct provided such certificates were issued by the educational institution prior to the date of employment. The date of issue of certificate actually intends to refer to the date with the relevant record in the school on the basis of which the certificate has been issued. A school leaving certificate is usually issued at the time of leaving the school by the student, subsequently a copy thereof also can be obtained where a student misplaces his said school leaving certificate and applies for a fresh copy thereof. The issuance of fresh copy cannot change the relevant record which is prevailing in the records of the school from the date of the admiss of

the student, duly entered in the records of the school. Therefore, the order of the High Court does not call for any interference. [para14-15]

G.M. Bharat Coking Coal Ltd., West Bengal vs. Shib Kumar Dushad and Ors. **2000 (4) Suppl. SCR 336 = (2000) 8 SCC 696;** *Bharat Coking Coal Ltd. vs. Presiding Officer and Anr.* **(1995) Suppl. 2 SCC 598;** *State of Punjab vs. S.C. Chadha* **2004 (2) SCR 216 = (2004) 3 SCC 394;** *State of U.P. & Anr. v. Shiv Narain Upadhyay* **2005 (1) Suppl. SCR 847 = (2005) 6 SCC 49;** *State of Maharashtra & Anr. vs. Goraknath Sitaram Kamble & Ors.* **2006 (3) Suppl. SCR 685 = (2010) 14 SCC 423;** *Registrar General, High Court of Madras vs. M. Manickam & Ors.* **(2011) 9 SCC 425;** *High Court of Andhra Pradesh vs. N. Sanyasi Rao* **2011 (13) SCR 403 = (2012) 1 SCC 674; and** *Mohd. Yunus Khan v. U.P. Power Corporation Ltd.* **2008 (14) SCR 1114 = (2009) 1 SCC 80 - cited.**

Case Law Reference:

2000 (4) Suppl. SCR 336	**cited**	**para 4**
(1995) Suppl. 2 SCC 598	**cited**	**para 4**
2004 (2) SCR 216	**cited**	**para 9**
2005 (1) Suppl. SCR 847	**cited**	**para 9**
2006 (3) Suppl. SCR 685	**cited**	**para 9**
(2011) 9 SCC 425	**cited**	**para 9**
2011 (13) SCR 403	**cited**	**para 10**
2008 (14) SCR 1114	**cited**	**para 10**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4890 of 2014.

From the Judgment and Order dated 20.09.2010 of the High Court of Jharkhand Judicature at Ranchi in LPA No. 90 of 2010.

Anupam Lal Das, Anirudh Singh, Didesh Sinha for the Appellant.

Gopal Prasad for the Respondent.

The Judgment of the Court was delivered by

Pinaki Chandra Ghose, J. 1. Leave granted.

2. The present appeal arises against the order of the High Court of Jharkhand at Ranchi in Letters Patent Appeal No.90 of 2010 dated September 20, 2010, which was filed against the order dated December 11, 2009 passed by the learned Single Judge in a writ being W.P. (S) No. 496 of 2007 filed by the respondent in the present matter, wherein the court quashed the order dated August 2, 2006 passed by the Project Officer, Jamunia Open Cast Project (hereinafter referred to as 'Project Officer') Area of the Bharat Coking Coal Ltd. (being appellant No. 1 in the present matter), which stated that the respondent will superannuate on February 28, 2007.

3. The brief facts leading to the same are as under :

3.1. The respondent joined appellant No. 1, Bharat Coking Coal Ltd. ('BCCL'), a 'Government Company' as under Section 617 of the Companies Act, 1956, his date of joining as per the impugned order is stated to be March 31, 1973. At the time of joining, his date of birth was recorded as February 15, 1947, in Form 'B', a statutory form stipulated under the Mines Rules, 1955, the basis of recording the same is not clear. The respondent obtained a Secondary School Leaving Certificate issued on October 12, 1979, which indicated that he attended Rajya Samposhit Uchcha Vidyalaya, Baghmara, a Government school in Dhanbad from January, 1964 to August, 1964. In the said certificate, the date of birth of the respondent is recorded as February 6, 1950, which is in conflict with his date of birth as entered by him in the service records being the aforementioned Form 'B'.

3.2. Subsequently, in 1983, he was transferred to the Jamunia Open Cast Project and as stated, he once again signed the Form 'B' wherein his date of birth was recorded as February 15, 1947 and he allegedly did not raise any objections then.

3.3. In 1986, the respondent passed the Mining Sardarship and in the certificate acknowledging the same his date of birth was recorded as February 6, 1950, corresponding to the date recorded in the aforementioned School Leaving Certificate. Therefore, there existed two sets of records of the respondent's details; first being the Form 'B' register on one hand in which the date of birth was recorded to be February 15, 1947 and second being the Mining Sardar Certificate and the School Leaving Certificate wherein the date of birth was recorded as February 6, 1950.

3.4. In 1987, the National Coal Wage Agreement III (hereinafter referred as 'NCWA III') being Implementation Instructions were put into operation for stabilizing service records of employees. Pursuant to Implementation Instruction No. 76, appellant No. 1 provided its employees with Nominee Forms as prescribed by the Implementation Instructions which contained relevant extracts from the service records in the Form 'B' register, thereby enabling the employees to identify any discrepancy or error in the records and get the same rectified as per the prescribed procedure. In wake of the same the respondent became aware of inconsistencies in the records regarding his date of birth, date of appointment, father's name and permanent address; therein the respondent made representations to the Project Officer, Jamunia Open Cast Project for rectification of the abovementioned errors and he specifically sought the incorrect date of birth to be corrected as per the date mentioned in the Mining Sardar Certificate and the School Leaving Certificate. It appears that the concerned authorities rectified the discrepancies regarding the name of the father and the permanent address; however the date of birth

and date of appointment remained unchanged. Thereafter, as stated by the respondent, he made a subsequent representation to the concerned Project Officer on July 16, 2006 for correction of the date of birth in the Form 'B' register in accordance with the Mining Sardar Certificate and the same was rejected by the appellant company vide letter dated July 19, 2006.

3.5. The Project Officer vide order dated August 2, 2006 intimated the respondent that he is to superannuate from February 28, 2007. Aggrieved by the same, the respondent filed a writ bearing W.P. (S) No. 496 of 2007 for quashing of the order of superannuation by the Project Officer on the grounds that the date of superannuation has been incorrectly calculated by relying on the erroneous date of birth which should have been rectified in terms of the NCWA III, which provided that the Mining Sardar Certificate and the School Leaving Certificate must be treated as authentic documents by the employer as proof of the date of birth of the employee. The appellant company without challenging the genuineness of the same countered the respondent on the grounds that the Form 'B' register was a conclusive proof of date of birth as it was verified by the signature of the employee being the respondent; and having accepted the entry then, the respondent is not entitled to raise any dispute after twenty years and at the fag end of his service. The High Court while allowing the writ determined that the respondent did not raise such a claim at the fag end of his career, rather such a claim was made in 1987 itself and the appellant company had failed to respond suitably to the dispute raised by the respondent. Thereby, the Court directed the appellant company to conduct an enquiry on the basis of the certificates produced by the respondent and to effectively communicate to the respondent the decision taken together with the reasons assigned within three months of the passing of the order.

3.6. Aggrieved, the appellant company preferred a Letters Patent Appeal, the order in which is impu[illegible]h

Court dismissed the appeal having found no merit in the same in light of the clauses in Implementation Instruction No. 76.

3.7. Thereafter, the matter lies before us.

4. The appellant in the present appeal has come before us seeking that the impugned judgment be set aside. The case of the appellant is, firstly, when a school leaving certificate is not a document mentioned in Implementation Instruction No. 76, the High Court was incorrect in substituting the same with the documents given in the said Instruction, thereby creating a situation which supersedes all other statutory documents like Form 'B' register. Secondly, the High Court should have considered that the date of birth recorded in Form 'B' register being a statutory document under Mines Act is binding and cannot be preceded by a non-statutory document and therefore, the inter alia holding of the High Court that School Leaving Certificate and Mining Sardar Certificate would take precedence over company records and other statutory documents is contrary to the judgment of this Court in *G.M. Bharat Coking Coal Ltd., West Bengal vs. Shib Kumar Dushad and Ors.*[1]. Thirdly, the appellant has challenged the exercise of jurisdiction by the High Court under Article 226 considering that the respondent as workman could avail efficacious remedy from the forum under the Industrial Disputes Act and the respondent could raise such a dispute at the fag end of his career de hors the judgment in *Bharat Coking Coal Ltd. vs. Presiding Officer and Anr*[2]. Fourthly, that the documents on which the respondent has relied being School Leaving Certificate and Mining Sardar Certificate are not those mentioned in Implementation Instruction No. 76 for review of determination of date of birth with respect to existing employees and that the implementation of the impugned order would give way to many unscrupulous employees to procure such documents and take advantage of the same. Fifthly, the

1. (2000) 8 SCC 696.
2. (1995) Suppl. 2 SCC 598.

respondent while signing the Form 'B' register at the time of appointment had verified his date of birth as February 15, 1947 on his joining on January 1, 1973 and later on his transfer in 1983; since he is a supervisory staff capable of reading and writing and understanding English his verification amounts to acceptance and his raising of dispute in 1987, fourteen years after is incorrect. Sixthly, the appellant has challenged the reliance placed on the School Leaving Certificate by the respondent on the grounds that the same was issued on October 12, 1979 six years after his appointment and as the Mining Sardar Certificate was based on the same reliance on it is also doubtful; furthermore, since both the documents were issued after the date of employment they cannot form basis of correction of date of birth; furthermore, the appellant has challenged the correctness of the School Leaving Certificate on the grounds that the alleged Certificate was not verified by the District Education Commissioner; that the attendance register for relevant period when the respondent allegedly attended school was not available and the verification was with respect to one Sri Birsa Prasad Uranw; it is further submitted that these discrepancies which were covered by legal inspector of company (who was duly charge-sheeted) in collusion with the respondent make the school leaving certificate dubious. Finally, it was submitted that the respondent has raised the issue at the fag end by means of a belated writ i.e. thirty years after appointment and after twenty years (as claimed by him) of his knowledge.

5. Per contra, the respondent has denied the averments of the appellant and has submitted that he has not disputed his date of birth at the fag end of his service as found by the learned Single Judge. It has been submitted that the respondent joined service on March 31, 1973, when his date of birth was recorded as February 15, 1947 basis of which is not clear; that subsequently in 1986 he cleared his Mining Sardarship and was given a Mining Sardar Certificate where his date of birth was recorded as February 6, 1950 s[illegible]ol

Leaving Certificate; that subsequently in 1987, on noticing the incorrect date of birth and other details in his service records, the respondent immediately submitted an application for the correction of his date of birth as February 6, 1950 and other minor corrections in his service records. On receiving no information regarding the same on inquiry from his superiors, he was given the impression that the necessary corrections were made in the service records and the respondent was surprised to receive his superannuation order in 2006 on the basis of the incorrect date of birth being February 15, 1947.

6. In these circumstances, the respondent has contended, firstly, that it is not the case that the respondent disputed date of birth at the end of service, instead he had disputed the same way back in the year 1987, it is the employer who disputed the same at the fag end by creating the impression that claim of respondent for correction of date of birth was accepted when, in reality, it was not and even the learned Single Judge has concurred that the rectification was not sought at the fag end. Secondly, it was contended that the respondent has relied on two documents for correction of his date of birth as February 6, 1950, namely the statutory Mining Sardar Certificate and the School Leaving Certificate. Thirdly, it has been contended that in light of the policy contained in part (B) of Implementation Instruction No. 76, the appellant as per clause (i)(a) accepted the School Leaving Certificate but it was contended before the High Court that as the same was issued in 1979 and as the workman joined service in 1979, the certificate was thus, 'not issued' prior to the date of employment and therefore cannot form the basis of correction of date of birth. However, this contention was rejected by the High Court, which held that the school records were created prior to joining and a copy issued on a subsequent date does not create a difference as the date of issue of certificate refers to the date when the relevant record was created on the basis of which the certificate has been issued. In addition to the same, it has also been submitted that the appellate court had granted time to the appellant to verify

the genuineness of the School Leaving Certificate and in response through a supplementary affidavit, the appellants have admitted the school leaving certificate to be genuine, thus contended by the respondent that as the School Leaving Certificate was found to be genuine, it warrants no interference. Fourthly, it has been contended by the respondent that his claim for correction was not considered on the basis of the Mining Sardar Certificate which as claimed has been given by the Central Government and was submitted by him, which is also mentioned as a basis for correction of date of birth in Clause (i)(b) in Part B of Implementation Instruction No. 76. It is further submitted that the appellant did not give any reason as to why the Mining Sardar Certificate was rejected by them. Finally, the respondent has submitted that he was made to retire prematurely and not allowed to work inspite of favourable orders from the High Court; furthermore, the respondent filed a contempt petition but was not allowed to work by the petitioners on the pretext of pendency of matter before higher courts. It is also the case of the respondent that he was not gainfully employed anywhere else during that period.

7. It is pertinent to note at this point that during the oral proceedings, this Court vide order dated July 4, 2013 directed the appellants as under:

> *"List after four weeks to enable the counsel for the petitioners to produce the original and also photocopy of the Form 'B' register where it is alleged that the respondent had affixed his signature on the date of birth which was recorded as 15.02.1947."*

However, as found by us and pointed out by the respondent instead of filing the original Form 'B' prepared in 1973, at the time of joining of the respondent with designation as Explosive Carrier (which as claimed admittedly did not bear the signature of the respondent), filed a photocopy of the alleged Form 'B' dated January 27, 1987 which showed the designation of the respondent to be that of Mining Sardar

by the respondent that his signature was taken on the alleged form on January 27, 1987 while handing over the photocopy of the same for necessary correction of the record.

8. On the basis of the above, we find that within the given set of facts the dispute is regarding the manner in which the date of birth should be determined; whether the reliance should be placed on the set of records being the Mining Sardar Certificate and the School Leaving Certificate which state the date of birth to be February 6, 1950 or reliance should be placed on the extracts of the Form 'B' register which state the date of birth to be February 15, 1947. The position which emerges on the basis of the above is that after having joined service in 1973 when the Form 'B' register was filled and when it was filled once again in 1983 when the respondent was transferred, there were certain discrepancies regarding permanent address, father's name and date of joining. In 1987, when the appellant made available the details of all employees for verification of service records, the respondent raised the dispute regarding his incorrect particulars being the date of joining, father's name, permanent address and date of birth. Apparently, the abovementioned corrections other than date of birth were made. Thus, it is evident and correctly determined by the learned Single Judge that the dispute was not raised at the fag end of service or on the eve of superannuation but it was raised at the earliest possible opportunity in 1987 when the respondent became aware of the discrepancy. As the factum of when the dispute was raised is settled what remains to be determined is the issue of date of birth.

9. In the corpus of service law over a period of time, a certain approach towards date of birth disputes has emerged in wake of the decisions of this Court as an impact created by the change in date of birth of an employee is akin to the far reaching ripples created when a single piece of stone is dropped into the water. This Court has succinctly laid down the same in *Secretary and Commissioner, Home Department vs. R. Kirubakaran* (supra), which is as under:-

"7. An application for correction of the date of birth should not be dealt with by the tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose their promotions for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. According to us, this is an important aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case, on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be held to be reasonable. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove the wrong recording of his date of birth, in his service book. In man[illegible]of

the strategy on the part of such public servants to approach the court or the tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their dates of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The court or the tribunal must, therefore, be slow in granting an interim relief for continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior."

The same approach had been followed by this Court while deciding on date of birth disputes irrespective of the relief being in favour of the workman or the employer. (See: *State of Punjab vs. S.C. Chadha*[3], *State of U.P. & Anr. v. Shiv Narain Upadhyay*[4], *State of Gujarat & Ors. v. Vali Mohd. Dosabhai Sindhi*[5], *State of Maharashtra & Anr. vs. Goraknath Sitaram Kamble*[6])

10. Another practice followed by the courts regarding such disputes is that date of birth of an employee is determined as per the prescribed applicable rules or framework existing in the organization. Even this Court inspite of the extraordinary powers conferred under Article 136 has decided date of birth disputes in accordance with the applicable rules and seldom has the Court determined the date of birth as it is a question of fact fit to be determined by the appropriate forum. (See: *State of Maharashtra & Anr. vs. Goraknath Sitaram Kamble & Ors.*[7]

3. (2004) 3 SCC 394.
4. (2005) 6 SCC 49.
5. (2006) 6 SCC 537.
6. (2010) 14 SCC 423.
7. (2010) 14 SCC 423.

Registrar General, High Court of Madras vs. M. Manickam & Ors.[8] *High Court of Andhra Pradesh vs. N. Sanyasi Rao*[9])

11. As stated earlier, this Court needs to decide the manner in which date of birth has to be determined. It is the case of the appellant that as the respondent raised the dispute at the fag end of his career and as there exists a set of records being the Form 'B' register which is a statutory document in which the date of birth has been verified by the respondent himself twice, other non statutory documents should not be given precedence and the orders of the High Court must be set aside. This claim of the appellant does not stand in the present matter. As determined, the dispute was not raised at the fag end of the career; on the contrary, it was raised in 1987 almost two decades prior to his superannuation when he first came to know of the discrepancy. It has been held in *Mohd. Yunus Khan v. U.P. Power Corporation Ltd.*[10], that, "an employee may take action as is permissible in law only after coming to know that a mistake has been committed by the employer." Thus, the case of the respondent should not be barred on account of unreasonable delay. Admittedly, the appellant as the employer in view of its own regulations being Implementation Instruction No. 76 contained in the National Coal Wage Agreement III, gave all its employees a chance to identify and rectify the discrepancies in the service records by providing them a nominee form containing details of their service records. This initiative of the appellants clearly indicated the existence of errors in service records of which the appellants were aware and were taking steps to rectify the same. Against this backdrop, the stance of the appellant that the records in the Form 'B' register must be relied upon does not hold good as it is admitted by the appellant that errors existed in the same. Even a perusal of the nominee form exhibits the ambiguity regarding the date of birth and date of joining. It was due to

8. (2011) 9 SCC 425.
9. (2012) 1 SCC 674.
10. (2009) 1 SCC 80.

the discrepancies which subsisted that the appellants gave all its employees a chance to rectify the same. In such circumstances, the appellants are bound by their actions and their attempt to deny the claims of the respondent is incorrect. The respondent in this case duly followed the procedure available and the attempt of the appellant to deny the claim of the respondent on the basis of technicality is incorrect. We, therefore, feel that the learned Single Judge has correctly held that:

> *"11. Having given the petitioner, like all employees, the benefit of seeking correction of the entries contained in their service records including their date of birth, the petitioner's claim cannot be denied, merely because he had signed upon the Form 'B' Register at the time of its opening and containing the entry of date of birth a recorded therein."*

12. The appellant in the present case should have followed the procedure as laid down by Implementation Instruction No. 76 to determine the date of birth of an existing employee. The provisions of which read as follows:

> **"(B) Review determination of date of birth in respect of existing employees.**
>
> (i)(a) In the case of the existing employees Matriculation Certificate of (sic: or) Higher Secondary Certificate issued by the recognized Universities of Board or Middle Pass Certificate issued by the Board of Education and/or Department of Public Instruction and admit cards issued by the aforesaid Bodies should be treated as correct provided they were issued by the said Universities/Boards Institutions prior to the date of employment.
>
> (i)(b) Similarly, Mining Sardarship, winding engine or similar other statutory certificate where the Manager had

> to certify the date of birth will be treated as authentic.
>
> Provided that where both documents mentioned in (i)(a) and (i)(b) above are available, the date of birth recorded in (i)(a) will be treated as authentic
>
> (ii) Wherever there is no variation in records, such cases will not be reopened unless there is a very glaring and apparent wrong entry brought to the notice of the Management. The Management after being satisfied on the merits of the case will take appropriate action for correction through determination committee/medical board.
>
> (C) Age Determination Committee/medical Board for the above will be constituted by the Management. In the case of employees whose date of birth cannot be determined in accordance with the procedure mentioned in (B) (i) (a) or (B) (i) (b) above, the date of birth recorded in the records of the company, namely, Form 'B' register, CMP Records and Identity Cards (untampered) will be treated as final. Provided that where there is a variation, in the age recorded in the records mentioned above, the matter will be referred to the Age Determination Committee/Medical Board constituted by the Management for the determination of age.
>
> (D) Age determination: by the Age Determination Committee/Medical Board referred to above may consider their evidence available with the colliery management; and/or
>
> (E) Medical Board constituted for determination of age will be required to manage (sic assess) the age in accordance with the requirement of medical jurisprudence and the Medical Board will as far as possible indicate the accurate age assessed and not approximately."

In another case, being *G.M. Bharat Coking Coal Ltd. vs. Shib Kumar Dushad* (supra) where the date of birth of an employee of the Bharat Coking Coal was in dispute and the same set of instructions were applicable, this court referring to the Implementation Instruction held that:

"20. From the provisions in the instructions referred to above, it is clear that in case of dispute over the date of birth of an existing employee who has neither a Matriculation Certificate/Secondary School Certificate nor a statutory certificate in which the Manager has certified the entry regarding the date of birth to be authentic the employer is to refer the matter to the Medical Board."

13. We give due regard to the sensitive nature of date of birth disputes and fully agree with the approach laid down in *R. Kirubakaran* Case (supra). However, with an aim to prevent the cascading inconveniences caused by a change of date of birth, a wronged employee should not be denied of his rights especially when he has adhered to the procedure laid down and attempted to avoid litigation by resorting to in-house mechanisms. Public Corporations/Departments, should not benefit from their own omission of duty. In the present case, the appellant-company failed to follow the procedure as laid down in the Implementation Instruction. It is the appellant's omission and not the inaction of the respondent which led to the dispute being raised in the courts at such a delayed stage. The attitude of such corporations wherein to avoid the rectification of a date of birth, litigation is unnecessarily prolonged just because they have number of resources at their command, goes against the grain of equity and duty towards society at large.

14. As noted by us, the respondent in 1987 on coming to know of the wrong recording of his date of birth in his service records from the nomination form sought rectification. Therefore, such rectification was not sought at the fag end of his service. We have further noticed that the High Court duly verified the genuineness of the school leaving certificate on the

basis of a supplementary affidavit filed by Shri Dilip Kumar Mishra, legal inspector of the appellant company on September 6, 2010 before the High Court. It has been admitted in the said supplementary affidavit that the school leaving certificate has been verified and has been found to be genuine. We have further noticed that Implementation Instruction No.76 clause (i)(a) permits rectification of the date of birth by treating the date of birth mentioned in the school leaving certificate to be correct provided such certificates were issued by the educational institution prior to the date of employment. The question of interpreting the words 'were issued' was correctly interpreted, in our opinion, by the High Court which interpreted the said words for the purpose of safeguarding against misuse of the certificates for the purpose of increasing the period of employment. The High Court correctly interpreted and meant that these words will not apply where the school records containing the date of birth were available long before the starting of the employment. The date of issue of certificate actually intends to refer to the date with the relevant record in the school on the basis of which the certificate has been issued. A school leaving certificate is usually issued at the time of leaving the school by the student, subsequently a copy thereof also can be obtained where a student misplaces his said school leaving certificate and applies for a fresh copy thereof. The issuance of fresh copy cannot change the relevant record which is prevailing in the records of the school from the date of the admission and birth date of the student, duly entered in the records of the school.

15. Therefore, the order of the High Court does not call for any interference. We endorse the reasoning given by the High Court and affirm the same.

16. In these circumstances, we do not find any merit in the appeal. Accordingly, this appeal is dismissed.

R.P. Appeal dismissed.

MOHD. HAROON & ORS.

v.

UNION OF INDIA & ANR.

(Writ Petition (Criminal) No. 155 of 2013)

MARCH 26, 2014

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

RIOTS:

Muzaffarnagar riots - Communal tension wrecking lives of a large number of people - Writ petitions seeking for an inclusive protection for each victim whose fundamental rights have been infringed in the said riot - Held: When the incidents of communal disturbance flared up, it was expected by the State intelligence agencies to apprise the State Government and the District Administration in particular, to prevent such communal violence - Prima facie, the State government is responsible for being negligent at the initial stage in not anticipating the communal violence and for taking necessary steps for its prevention - In these matters, from time to time various interim orders have been passed by the Supreme Court for monitoring the situation at the place of incident - On directions of the Supreme Court, the State Government has made arrangements in relief camps for medical facilities, sanitation, tents, items of daily use, cloths, financial assistance to the wounded and the families of deceased persons and for their resettlement and rehabilitation - State Government is also directed to pay compensation of Rs.5 lakhs for rehabilitation of victims of rape - Sincere efforts shall be made to apprehend all the accused of murders irrespective of political affiliation and produce them before the appropriate court - State is directed to identify the left out injured persons (simple/grievous), next kin of the deceased who died in the communal violence and settle the compensation - It is the

responsibility of the State Administration in association with the intelligence agencies of both State and Centre to prevent such recurrence of communal violence in any part of the State - The officers responsible for maintaining law and order, if found negligent, should be brought under the ambit of law irrespective of their status - The relief, not only be provided to all needy families irrespective of their religion but it should also be provided to only genuinely affected families.

Muzaffarnagar riots - Communal riots - Incidents of rapes - Government directed to formulate and implement policies in order to uplift socio-economic conditions of women and sensitization of society and police force - Victims to be paid compensation of Rs. 5 lakhs in addition to various benefits - Crime against women.

INVESTIGATION/INQUIRY:

Muzaffarnagar riots - Communal violence wrecking lives of large number of people - Brutal murders, rapes and large scale migration taken place - Writ petition under Article 32 - Prayer for transfer of investigation to CBI or SIT - Held: Such an order cannot be passed as a matter of routine or merely when some allegations are leveled against the local police - This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigation - Based on various interim orders in the instant writ petitions, the State Government had constituted a Special Investigation Cell (SIC) - Details furnished by the State showed that after constitution of SIC, it inquired about all those persons who had fled from their villages and had taken refuge in various relief camps and noted their problems by taking list of such persons staying in camps - In the light of steps taken by State, there is no need to either constitute SIT or entrust investigation to the CBI.

CRIME AGAINST WOMEN:

Victim Compensation in Rape Cases - Held: No compensation can be adequate nor can it be of any respite for the victims but since it is on account of failure of the State that such incidents take place, the State is duty bound to provide compensation, which may help in victims' rehabilitation - In 2009, a new s.357A was introduced in the Code which casted a responsibility on the State Governments to formulate Schemes for compensation to the victims of crime in coordination with the Central Government whereas, previously, s.357 ruled the field which was not mandatory in nature and only the offender could be directed to pay compensation to the victim under this Section - Under the new s.357A, the onus is put on the District Legal Service Authority or State Legal Service Authority to determine the quantum of compensation in each case.

CONSTITUTION OF INDIA, 1950:

Articles 32, 226 - Scope of - Held: Despite wide powers conferred by Articles 32 and 226, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers - The very plenitude of the power under the said articles requires great caution in its exercise - Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police - This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights - Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

An incident of violence took place on 27.08.2013 between two communities in Muzaffarnagar in which three youths were killed from both the sides. On 07.09.2013, a Mahapanchayat was organized by the Jat community to oppose the said incident. Thereafter communal riot erupted in Muzaffarnagar and its adjoining rural areas.

Several writ petitions were filed under Article 32 seeking for an inclusive protection for each victim whose fundamental rights have been infringed in the said riot and for seeking direction to the State and Central Government to provide adequate security forces to take all necessary measures to stop the genocide and to prevent further communal violence; to order a CBI inquiry into the whole incident; to constitute Special Investigation Team (SIT) headed by impartial experts of criminal investigation from the States other than Uttar Pradesh to investigate the incidents; to ensure proper and adequate rehabilitation of the victims whose houses have been burnt, properties got damaged and to provide immediate temporary shelters/transit camps, food and clothing; to issue direction to lodge FIR against all persons including the government officials who were responsible for failure to maintain the law and order within time; to direct to pay ex-gratia relief of Rs. 25,00,000/- each to the kin of the deceased and Rs. 5,00,000/- each to the injured from the Prime Minister's Relief Fund as well as from the corpus of the State Government; to direct the State Government to take stern action against the persons responsible for rape and other heinous offences and also to provide rehabilitation of the victims a

independent Commission apart from the one constituted by the State Government for impartial inquiry into the incidents.

The grievances of the petitioners was that in the remote villages more than 40,000 persons have migrated under threat; that many thousand persons including infants, children, women and elderly were without food and shelter in various villages and no facilities were being made available by the administration; that on the pressure of the other groups, innocent persons were being picked up and named in FIR without conducting any inquiry and are being arrested for none of their faults and the State has failed in its duty to ensure the security in the area; and that the failure on part of State Police has resulted in several rapes during the said communal riots.

Disposing of the writ petitions, contempt petitions, Transferred case, transfer petition, special leave petition, the Court

HELD: 1.1. From time to time during hearing of the petitions, various interim orders were passed for monitoring the situation at the place of incident. Because of various directions of this Court, the State Government initiated active investigation, relief measures, both in the camps as well as in shelter homes and provided more provisions for food, clothes and medicines etc., which is highlighted in the eleven Compliance Reports filed before this Court over the period of time. The State and Central Government made arrangements for relief camps. A total number of 58 camps were made functional, of which, 41 such camps were established in District Muzaffarnagar and 17 camps in District Shamli. Medical ambulances with all modern facilities were deployed for all the camps. Medical and paramedical staff was deployed at all the camps to regularly conduct medical checkup in the camps. In order to ensure proper sanitation and

cleanliness, five sweepers were deployed for each camp. To avoid epidemic, spray of pesticides and other chemicals was ensured. To kill mosquitoes, fogging was carried out near relief camp at Jaula. Safe and clean drinking water was also supplied through piped water supply schemes, permanent tubewells installed at the camp sites, India Marked-II hand pumps and water tankers from the urban local bodies situated near the camps. Chlorine tablets were distributed in all the camps. Though most of the camps were situated in pucca buildings like Madarsas and Schools, makeshift tents were also erected in 15 camps to provide shed and shelter. The displaced families could not bring any item of daily use with them, hence, two steel plates, two steel glasses, one medium size dari, two bed sheets, one bucket, one mug, one towel, milk powder, biscuit packets were provided to each and every family in the camps. Clothes to women and children were also distributed in camps. In addition to that, two toilet soaps, two washing soaps, one tooth paste and kerosene oil etc. were provided to the families living in the camps. A large number of villagers fled from their houses out of fear leaving behind their cattle and animals. The Animal Husbandry Department was directed to provide fodder to such cattle with the help of voluntary organizations. [Paras 29, 30]

1.2. Financial Assistance has been also given by Government of Uttar Pradesh to the wounded and the families of deceased persons. Financial Assistance has been also given by Government of India to the wounded and the families of deceased persons. The State Government decided to give employment to one member of the family of the deceased persons according to his or her qualification. Confidence buildings measures were taken. Meetings with important and effective persons from both the communities were org e

community had assured the safety and security of the other. Peace Committees were constituted and their meetings were organized at the Block, Tehsil and District levels. Senior officers like District Magistrate, Superintendent of Police, ADM, ASP, SDM, Circle Officer and other functionaries from the Revenue and police departments participated along with the Village Pradhans and important public persons from all the communities. Teams of officers were sent from Districts of Meerut and Baghpat to convince and take the persons living in the camps who belonged to the villages of these districts. To ensure the safety and building a feeling of confidence among those returning to the villages, para-miliatry forces were deployed in those villages. Families displaced from 6 villages in Muzaffarnagar, i.e., Fugana, Kutaba, Kutbi, Kakda, Mohammadpur Raisingh and Mundbhar and 3 villages in Shamli, i.e., Lisadh, Lank and Bahavadi have not agreed to return to their native villages even after confidence building measures and serious persuasion. Their decision was found to be justified largely based on the fear emanating from the kind of incidents of murders and arson that had happened in these villages during the violence that broke out on 7th and 8th September, 2013. The State Government, by its order dated 26.10.2013, has decided to give a lumpsum grant of Rs. 5 lacs per family for their resettlement and rehabilitation. In addition to this, 13 families in Muzaffarnagar have been given part payment of Rs.2 lacs each incurring Rs.26 lacs. Thus, 1644 families have been paid till date and an amount of Rs.81.81 crores has been spent for their resettlement and rehabilitation. Assessment was done for damage to the uninsured movable and immovable property during the riots. Efforts were made to assess the loss by a team of qualified persons in the presence of victims. Photography and videography was also done during the process. A total amount of Rs. 349.44 lacs has been paid as compensation for the loss of uninsured movable and

immovable property loss in 3 districts. By G.O. dated 18.02.2014 issued by the Home Secretary, Government of U.P., it has been decided that the State Government would provide further compensation of Rs. 3 lakhs in addition to the compensation already provided to the relatives of the deceased and a compensation of Rs. 2 lakhs to the parents of the deceased children below 5 years of age who died in the relief camps. [Para 30]

2. Regarding the stand of the petitioners that many false accused were shown as culprits, the State has filed a detailed note wherein it was stated that a total number of 566 cases were being investigated by the Special Investigation Cell (SIC) and it was found that many cases were false and many persons have been wrongly named in FIRs. The State pointed out that names of all such persons, viz., 549 persons, have been removed. Till now, 48 registered cases have been found false and the same were either expunged or removed. Names of 69 persons in murder cases have been found false and their names have been removed from the accused list. In addition to the above information, the State has furnished a list of accused found false which contains 516 persons from Hindu community and 33 from Muslim, i.e., a total number of 549 persons. The State has also furnished a list of expunged cases and the persons who were wrongly included. It was also observed that many persons were named in more than one case and a calculation of all these revealed that 3803 persons were named. Till date, 984 persons have been declared accused in investigated cases. Rest of the cases are under investigation. 337 accused have been arrested and 61 persons have surrendered before the Court. 374 Non-Bailable Warrants, 195 warrants under Section 82 of the Code and 3 kurki (attachment) warrants of Section 83 of the Code have been issued. Charge-sheet has been filed against 238 accused and Closure Reports have

102 persons. [Paras 35, 36]

3. Regarding arrest and follow-up actions, the State has filed a list of arrested persons in communal violence in Muzaffarnagar and adjoining areas. The list showed the names of 308 arrested persons in the Districts of Muzaffarnagar and Shamli. The State has furnished the names and addresses of arrested accused, the date on which they were arrested, offences under various enactments, crime number, police station, nature of the offence, district, etc. The State has also indicated the religion of the accused just to show that actions were being taken irrespective of the caste, community or religion. [Para 39]

4.1 Despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly

investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations. [Para 76]

Common Cause, A Registered Society vs. Union of India and Ors. **(1999) 6 SCC 667: 1999 (3) SCR 1279;** *Secretary, Minor Irrigation & Rural Engineering Services U.P. and Ors. vs. Sahngoo Ram Arya and Anr.* **(2002) 5 SCC 521;** *State of West Bengal and Ors. vs. Committee for Protection of Democratic Rights, West Bengal and Ors.* **(2010) 3 SCC 571: 2010 (2) SCR 979 - relied on.**

4.2 It is not in dispute that subsequent to the incident that took place on 07.09.2013 and afterwards, in and around Muzaffarnagar, a large number of persons, particularly, villagers from within and neighbouring districts, fled from their homes out of fear and took shelter in relief camps in various villages of two districts of Muzaffarnagar and Shamli. It is also seen that total 58 camps were made functional of which 41 camps were established in the district Muzaffarnagar and 17 in the district Shamli. The incidents of communal disturbance flared up sometimes on flimsy grounds blaming one community to other. Whatever may be, after the Mahapanchayat that took place on 07.09.2013, certain incidents such as eve teasing of other community girls followed by murders had taken place. Further, inasmuch as thousands of people gathered at a particular place in order to take revenge or retaliate, it was expected by the State intelligence agencies to apprise the State Government and the District Administration in particular, to prevent such communal violence. Though the Central Government even on day one informed this Court that all necessary help, both financially and for maintaining law and order, had been provided to the State, there is no authoritative information to this Court whether there was any advance intimation to the State

violence. Likewise, though the State has enumerated several aspects in the form of eleven compliance reports, there was no information to this Court whether the District Administration was sounded about the proposed action between the two communities. Had the Central and State intelligence agencies smelt these problems in advance and alerted the District Administration, the unfortunate incidents could have been prevented. Thus, prima facie, the State government is responsible for being negligent at the initial stage in not anticipating the communal violence and for taking necessary steps for its prevention. [Paras 78 and 79]

5. Based on various orders of this Court, even after the incident, the State itself has constituted a Special Investigation Cell (SIC). A total of 566 cases are being investigated by the SIC and after noting that many cases were false and many persons were wrongly named in the FIRs, 549 names have been removed. A total of 48 registered cases have been found false and have been removed from the records. Names of 69 persons in murder cases have been found false and those names have also been removed from the array of parties. The details furnished by the State also showed that after constitution of the SIC in September, it inquired about all those persons who had fled from their villages and had taken refuge in various relief camps and noted their problems by taking list of such persons staying in camps and getting their mobile numbers. The SIC also recorded the statements of the complainants and witnesses. SIC also noted community-wise affiliation of their political parties etc. [Para 81]

6. In respect of cases of rape, the State has assured this Court that they are taking effective steps to apprehend all the accused and in providing security cover to the rape victims. 50 teams of police personnel

have been constituted in order to arrest the accused persons in rape and other cases. The State has also filed details and progress of rape and molestation cases, statement of rape victims under Section 164 of the Code etc. action had been taken against 11 persons under the provisions of the National Security Act as well as persons belonging to various political parties. The State has also furnished the details regarding 24 missing persons out of which 3 have been traced and is taking effective steps for tracing the remaining missing persons. In respect of murder cases, the State has filed a separate chart showing the list of accused persons, verification of persons concerned who were involved, list of surrendered accused in murder cases as well as various other steps for apprehending the remaining accused. The State has also highlighted that through their public prosecutors/ counsel, it is taking effective steps for cancellation of bail in those heinous crimes in which persons involved have secured bail. In the light of various steps taken by the State, facts and figures, statistics supported by materials, there is no need to either constitute SIT or entrust the investigation to the CBI at this juncture. However, more effective and stringent measures are to be taken by the State administration. [Para 82 to 85]

Directions:

7.1. Victim Compensation in Rape Cases: As a long term measure to curb such crimes, a large societal change is required via education and awareness. The Government will have to formulate and implement policies in order to uplift the socio-economic conditions of women, sensitization of police and other concerned parties towards the need for gender equality and it must be done with focus in areas where statistically there is higher percentage of crimes a

compensation can be adequate nor can it be of any respite for the victims but as the State has failed in protecting such serious violation of fundamental rights, the State is duty bound to provide compensation, which may help in victims' rehabilitation. The humiliation or the reputation that is snuffed out cannot be recompensed but then monetary compensation will at least provide some solace. In 2009, a new Section 357A was introduced in the Code which casted a responsibility on the State Governments to formulate Schemes for compensation to the victims of crime in coordination with the Central Government whereas, previously, Section 357 ruled the field which was not mandatory in nature and only the offender can be directed to pay compensation to the victim under this Section. Under the new Section 357A, the onus is put on the District Legal Service Authority or State Legal Service Authority to determine the quantum of compensation in each case. However, no rigid formula can be evolved as to have a uniform amount, it should vary in facts and circumstances of each case. Nevertheless, the obligation of the State does not extinguish on payment of compensation, rehabilitation of victim is also of paramount importance. The mental trauma that the victim suffers due to the commission of such heinous crime, rehabilitation becomes a must in each and every case. Considering the facts and circumstances of these cases, the victims in the given case should be paid a compensation of Rs. 5 lakhs each for rehabilitation by the State Government. The State Government is directed to make payment of Rs. 5 lakhs, in addition to various other benefits, within 4 weeks from today. Further, according to Section 357B, the compensation payable by the State Government under Section 357A shall be in addition to the payment of fine to the victim under Section 326A or Section 376D of the IPC. [Paras 86, 87, 88 and 89]

7.2. Directions relating to rape cases: The SIC is directed to arrest and produce before the Court all the persons concerned in respect of petitioners in W.P. (Crl.) No. 11 of 2014 as well as other affected victims within a time-bound manner. They are also directed to record the statement of the victims under Section 164 of the Code before a lady Magistrate even if they had made a statement, if they desire to make additional statement, the same may be recorded as requested. The security cover provided to rape victims as shall continue till they desire or completion of the trial whichever is later. The victims of rape are to be paid compensation of Rs. 5 lakhs each, in addition to various other benefits, by the State Government. The State is also directed to provide other financial assistance as well as any other scheme applicable to them for their betterment and to continue their normal avocation. [Para 90]

7.3. Directions regarding other offences including murder: Sincere efforts shall be made to apprehend all the accused irrespective of political affiliation and produce them before the appropriate court. The particulars furnished by the State in respect of criminal action taken against political persons shall be continued by placing acceptable materials before the court concerned. The reason given by the State Police that whenever efforts were made to arrest the persons involved, women folk of their village form a human chain and block the police in execution of their work is unacceptable and untenable. If there is reliable material against a person irrespective of the community or religion, the police have to take sincere efforts in arresting those persons and produce them before the court concerned. There shall not be any let up and upon failure on the part of the police, action will be taken against the officers concerned. The victims or aggrieved persons are free to move such application befo

court. In respect of recovery of AK-47, 9 mm cartridges in village Kirthal, the police have to identify the persons concerned and proceed against them under the provisions of IPC and Arms Act. The investigating authorities should eschew communal bias and proceed against all the offenders irrespective of their caste, community and religion. In the case of murders, the police must take sincere efforts to identify and arrest the real culprits within a time-bound manner preferably within a period of two months and report the same before the jurisdictional court concerned. In heinous crimes, including murder cases, if any of the real accused was granted bail, as assured before this Court, the District Administration has to take effective steps for cancellation of their bail in appropriate cases. As assured before this Court, the persons concerned in the higher level to follow the letters issued to various government counsel/police officers/I.O. for apprehending the real accused and re-arresting the released persons by getting appropriate orders from the court concerned. The authorities concerned should continue to take effective steps to locate the missing persons. [Para 90]

7.4. Financial Assistance/Rehabilitation measures: Children who died in the violence as well as in the camps due to cold weather conditions shall be compensated to their parents as that of others. The State is directed to identify the left out injured persons (simple/grievous), next kin of the deceased who died in the communal violence and settle the compensation agreed to before this Court (Rs. 10,00,000 + Rs. 3,00,000 + Rs. 2,00,000 = Total Rs. 15,00,000). It is also directed to settle compensation for the damages caused to movable/ immovable properties of the person concerned due to the violence if they have not already received the same. The District Administration is also directed to implement Rani Lakshmibai Pension Yojana to eligible persons and

consider the case of persons who were left out or who have not made any such application till this date. Any of the victims, if need arise, may also approach the District Legal Services Authority and the DLSAs are directed to provide necessary help to the victims. For any reason, after receipt of Rs. 5 lakhs those who want to settle to other places than the place of occurrence after change of mind and in order to join their relatives and friends in the village/place where they lived at the time of violence, are permitted to resettle, in that event, the State is directed not to recover the amount already paid. However, the State is free to ascertain the genuineness of those persons concerned in their effort to resettle in the same place. The District Administration has to make all endeavours for their peaceful return to the same place in order to continue the same avocation along with their relatives and friends. The officers who have grievance about their transfer on vindictive ground from the district concerned to far away places are free to make a representation to the competent authority within a period of one month from today. If any such representation is made and if the same is acceptable, the competent authority is directed to take a fresh decision. Adequate compensation should be paid to the farmers who lost their source of livelihood, namely, tractors, cattles, sugarcane crops etc. In this category, the farmers who were yet to get compensation for the same are permitted to make a representation within one month from today supported by materials to the local/district administration. If any such representation is made, the same shall be considered and disposed off within a period of one month thereafter. Finally, it is the responsibility of the State Administration in association with the intelligence agencies of both State and Centre to prevent such recurrence of communal violence in any part of the State. The officers responsible for maintaining law and order, if found negligent, should be brough[t] [o]f

law irrespective of their status. It is important that the relief, not only be provided to all needy families irrespective of their religion but it should also be provided to only genuinely affected families. The affected persons, if come across any impediment in implementing the above directions, are permitted to highlight their grievance by filing application before this Court in the above matters. It is made clear that only after exhaustion of efforts with the District authorities concerned, they are permitted to file such application in the above disposed off matters. [Paras 90 and 91]

Case Law Reference:

1999 (3) SCR 1279	**Relied on**	**Para 73**
(2002) 5 SCC 521	**Relied on**	**Para 74**
2010 (2) SCR 979	**Relied on**	**Para 75**

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

Writ Petition (Criminal) No. 155 of 2013.

WITH

Writ Petition (Crl.) Nos. 158, 165, 170, 171, 179, 181 196, 206 of 2013,

Writ Petition (Crl.) No. 11 of 2014.

Contempt Petition (Crl.) No.…….of 2014 (D1372) IN

Writ Petition (Crl.) No. 155 of 2013.

Transferred Case (Civil) Nos. 123, 124 and 125 of 2013,

Transferred Petition (Civil) Nos. 1750, 1825, 1826, 1827, 1828, 1829, 1830 of 2013.

Special Leave Petition (Civil) No. 35402 of 2013.

L. Nageshwar Rao, ASG, V. Shekhar, S.P. Singh, Colin Gonsalves, Pinky Anand, K.T.S. Tulsi, Brijender Singh Chahar, Jitender Mohan Sharma, Fakhruddin and Uday U. Lalit, Gaurav Bhatia, Irshad Ahmad, AAGs, Santosh Kumar Tripathi, Birendra Kumar Choudhary, Sanjay Malik, Suresh K. Sharma, Ravi Shankar Kumar, Arun Kumar, Vishal Malik, Dr. Vinod Kumar Tewari, Tariq Adeeb, Jyoti Mendiratta, Amiy Shukla, Sanjay Kumar Tyagi, Dr. Vijendra Mahndiyan, Deepak Goel, Pallavi Awasthi, Sanjay Parikh, Aparna Bhat, P. Ramesh Kumar, Parul Kumari, Vidya, Gyan Kumar, Vishwa Pal Singh, Nagendra Singh, Dr. Sanjay Gupta, Vishwa Pal Singh, V.K. Biju, Sanchit Garga, Tasneem Ahmadi, Shadan Farasat, Gaurav Govinda, Ravi Prakash,\ Mehrotra, Kamini Jaiswal, Vrinda Grover, Abhimanu Shrestha, Shri Krishna Tiwari, Shilpi Dey, Manohar Lal Sharma, Suman, Vipin Kumar Saxena, N. Rajaraman, Aftab Ali Khan, Reshma Arif, M.Z. Chaudhary, Zahid Hussain, Prashant Bhushan, Aoopam Prasad, Nizam Pasha, B. Krishna Prasad, Ravi Prakash Mehrotra, Anuvrat Sharma, Abhishek Choudhary, M.R. Shamshad, Garvesh Kabra, Pawan Shree Agarwal, Raman Yadav, Vibhu Tiwari, Abhinav Kumar, Sudeep Kumar, Ahmed S. Azhar, Pulkit Manuja, Pahlad Singh Sharma, Vivek Gupta, Siddharth Mittal, Varun Punia, Shweta Sirohi, Alok Shukla for the appearing parties.

The Judgment of the Court was delivered by

P. SATHASIVAM, CJI. 1. These writ petitions and other connected matters relate to the riots that broke out on the fateful day of 07.09.2013. The riots erupted in and around District Muzaffarnagar, Uttar Pradesh as a result of communal tension prevailing in the city, which wrecked lives of a large number of people who fled from their homes out of anxiety and fear.

2. It is asserted in these petitions that the communal riot erupted in Muzaffarnagar, Shamli and its adjoining rural areas after a Mahapanchayat which was [illegible]t

community at Nagla Mandaur, 20 kms away from Muzaffarnagar city on 07.09.2013. In the said Mahapanchayat, over 1.5 lakh persons from Uttar Pradesh, Haryana and Delhi participated to oppose the incident which was occurred on 27.08.2013 in Kawal village under Jansath Tehsil of Muzaffarnagar because of which violence broke out between two communities and three youths were killed from both sides in the wake of a trivial incident which had occurred earlier and the whole incident was given a communal colour to incite passion.

3. It is the claim of the petitioners herein that the local administration instead of enforcing the law allowed the congregation not only to take place, negligently and perhaps with certain amount of complicity, but also failed to monitor its proceedings. It is asserted in the petitions that since 27.08.2013 more than 200 Muslims have been brutally killed and around 500 are still missing in the spurt of the incident in 50 villages of the Jat community dominated areas where the Muslim community is in minority. It is the stand of the petitioners that in the remote villages more than 40,000 persons have migrated under threat and have been forcibly asked to move out of the village otherwise they would be killed. It is further alleged that many thousand persons including infants, children, women and elderly are without food and shelter in various villages, and no facilities are being made available by the administration. Besides this, huge illegal and unauthorized arms and ammunitions have been recovered in and around Muzaffarnagar. It is also pointed out that the displaced persons of all communities are compelled to live in shelter camps where adequate arrangements are becoming the problem of survival.

4. Consequently, several writ petitions, under Article 32 of the Constitution, were filed by various individuals/Supreme Court Bar Association/NGOs seeking for an inclusive protection for each victim whose fundamental rights have been infringed in the said riot by praying for numerous rehabilitative, protective

and preventive measures to be adhered to by both the State and the Central Government.

5. There are various contra-allegations about the actual occurrence and reasons attributed to the cause by different community people. It is relevant to point out that an association representing Jat community has also approached this Court highlighting their stand. It is stated that on the pressure of the other group, innocent persons are being picked up and are being incorporated in the FIR without conducting any inquiry and they are being arrested for none of their faults. Thus, it is the stand of the petitioners in this petition that the State has failed in its duty to ensure the security in the area.

6. It is also pointed out that the State Government transferred the Jat community officers alone from the districts of Muzaffarnagar and Shamli to other parts of the State. It is their claim that in order to remove the apprehension from the minds of the Jat community people, it is desirable either to entrust the investigation to the CBI or to constitute SIT comprising persons from outside the State of Uttar Pradesh. They also predominantly prayed for registration of FIRs against all culprits including powerful persons.

7. Similar petitions were also filed in the High Court of Allahabad. In view of the similarity of the issues involved in these petitions, viz., reasons for such violence, rehabilitation measures, compensation for the loss of lives and properties, action against offenders/culprits, all the matters pertaining to the said incidents filed in the High Court of Allahabad were directed to be transferred to this Court by order dated 19.09.2013.

Writ Petition pertaining to Rape Cases

8. Serious allegations have been made against the State Police for not providing adequate security to women which resulted in several rapes being comm d

communal violence. The petition also highlights the inaction on the part of State Police against the real culprits and the indifferent attitude towards the victim's rehabilitation and security.

9. Rape victims (Seven) filed Writ Petition (Criminal) No. 11 of 2014 for protection of their right to life under Article 21. All the petitioners belong to the minority community who were brutally gang raped and sexually assaulted by men belonging to the other communities during the communal violence in Muzzafarnagar and adjacent districts. It is the assertion of the petitioners in this petition that their homes were destroyed and they were rendered homeless with no roof over their heads, they lost their earnings and it has become difficult for them to take care of their children and themselves.

10. It is further pleaded that due to the stigma attached to the victims of sexual violence, the agony of gang rape and looming fear of future assault, the petitioners were unable to promptly report the crime of gang rape committed against them. It is the stand of the petitioners that they had been displaced from their villages, namely, village Fugana and village Lakh, hence, they could not go to the police station to lodge the complaint of gang rape. It was further submitted that in these circumstances, the delay on the part of the petitioners in lodging FIR is reasonable and does not, in any way, impact on the veracity of their complaints of gang rape.

11. It is further stated by the petitioners that after registration of FIR under Section 154 of the Code of Criminal Procedure, 1973, (in short 'the Code') and recording of statements under Section 161, the law prescribes that under Section 164(5A) of the Code, for all sexual offences including crime of rape, the police shall have the statement of the woman against whom the offence has been committed recorded before a Judicial Magistrate as soon as the commission of offence is brought to the notice of the police. It is stated that even though Petitioner Nos. 1, 3, 4, 5 and 6 had lodged the FIRs in

September, 2013 and Petitioner No. 2 had lodged the FIR in early October, 2013, the police deliberately and with mala fide intention dragged the investigation. Their statements under Section 164(5A) of the Code were recorded as late as in December, 2013 after the delay of almost three months.

12. It is also highlighted that Section 164A of the Code provides for medical examination of the rape victim and casts a statutory duty upon the police to send the woman making the complaint of rape to a registered medical practitioner within twenty four hours from the time of receiving information regarding the commission of such an offence. In the case of the petitioners, in direct contravention of this legal provision, the police knowingly delayed their medical examination. The petitioners are all married women having children, hence, their medical examination almost 20-40 days after the incidents of gang rape is unlikely to provide any perpetrated evidence. It is further pointed out that the petitioners were gang raped on 08.09.2013 whereas the medical examination was conducted between 29.09.2013-18.10.2013.

13. In the case of Petitioner No.7, in spite of specific information, there is no reason as to why FIR was not registered. It was only during the hearing before this Court, on 13.02.2014, when the counsel for Petitioner No.7 handed over the copy of the complaint to the counsel for the State, an FIR was registered on 18.02.2014

14. Further, it is the grievance of the petitioners that FIRs of all the petitioners were registered under Section 376D of the Indian Penal Code, 1860 (in short 'the IPC') a specific provision relating to gang rape. Though Section 376(2)(g) of the IPC is squarely applicable to the crimes of gang rape that have been committed against the petitioners during the communal violence in September, 2013, the police has specifically omitted to include Section 376(2)(g) of the IPC in order to dilute the case of the petitioners and to exclude the legal presumption that the law raises through Section 114A of the

1872 in favour of the petitioners. Therefore, the petitioners submitted that biased and motivated investigation by the police is clear and manifest and done with the sole purpose of shielding the accused.

15. It is further submitted that though Petitioner Nos. 1-6 named total 22 men as accused in six FIRs, only in February 2014, one accused, namely, Vedpal, who was named in FIR No. 120 of 2013 was arrested. Even after lapse of four and a half months, 21 named as accused by the petitioners of the heinous crime of gang rape during communal violence roam free. Neither those persons were arrested nor any proceedings have been initiated under Section 83 of the Code. The petitioners claimed in the petition that the accused are roaming free and enjoying the support of dominant community, Khap Panchayat, political parties and besides because of their closeness, they are also intimidating the victims. Thus, it is the stand of the petitioners that unless the police give protection to the victims and witnesses, it would be impossible for them to depose against the persons involved in the gang rape.

16. The petitioners have also disputed the claim of the State in disbursing compensation. It was asserted that they were not paid compensation much less the adequate compensation. Further, a prayer was made for transfer of cases of gang rape outside the State of U.P. in the larger interest of the society and in order to ensure fair investigation, prosecution and trial of the cases relating to Petitioner Nos. 1 to 7. Finally, they asserted in the petition that if the investigation is not transferred to SIT comprising the officers of integrity from the States other than U.P., there cannot be justice for sexual violence suffered by them due to inaction on the part of the State of U.P.

Details Regarding Petitions:

17. On the whole, the following writ petitions/intervention applications/special leave petition pertaining to the aforesaid

incidents, have been filed in this Court:

(a) Writ Petition (Crl.) Nos. 155, 158, 165, 170, 171, 179, 181 196, 206 of 2013 and Writ Petition (Crl.) No. 11 of 2014

(b) Crl. M.P. Nos. 19442, 20245, 20247, 26156, 24202, 26705, of 2013 in Writ Petition (Crl.) No. 155 of 2013 and Crl. M.P. Nos. 1516-1518 of 2014 in Writ Petition (Crl.) No. 155 of 2013, Crl. M.P. No. 19878 of 2013 in Writ Petition (Crl.) No. 165 of 2013, Crl. M.P. Nos.19971, 20460 of 2013 in Writ Petition (Crl.) No. 158 of 2013, Crl. M.P. Nos. 1523 of 2014, 2965-2966 of 2014 in Writ Petition (Crl.) No. 170 of 2013, Crl. M.P. No. 23077 of 2013 in Writ Petition (Crl.) No. 171 of 2013, Crl. M.P. Nos. 24192 of 2013 in Writ Petition (Crl.) No.179 of 2013, Crl. M.P. No. 1124 of 2014 in Writ Petition (Crl.) No. 179 of 2013, Crl. M.P. No. 1895 of 2014 in Writ Petition (Crl.) No. 11 of 2014 and Crl. M.P. No.....of 2014 in Writ Petition (Crl.) No. 155 of 2013

(c) Contempt Petition (Crl.) No.....of 2014 (D1372) in Writ Petition (Crl.) No. 155 of 2013

(d) Special Leave Petition (Civil) No. 35402 of 2013

18. Apart from the above matters, we were also called upon to deal with the following cases from the High Court of Allahabad:

(a) Transferred Case (Civil) Nos. 123, 124 and 125 of 2013

(b) Transfer Petition (Civil) Nos. 1750, 1825, 1826, 1827, 1828, 1829, 1830 of 2013

Reliefs and Directions:

19. The reliefs and directions sought for in these matters are broadly classified as follows:

(a) Firstly, to direct the Union of India/Ministry of Home Affairs and State Government to provide adequate security forces to take all necessary measures to stop the genocide and to prevent further communal violence.

(b) Secondly, to order a CBI Inquiry into the whole incident.

(c) Thirdly, to constitute Special Investigation Team (SIT) headed by impartial experts of criminal investigation from the States other than Uttar Pradesh to investigate the incidents having taken place from 27.08.2013 to 08.09.2013 in Muzaffarnagar and adjoining districts.

(d) Fourthly, to ensure proper and adequate rehabilitation of the victims whose houses have been burnt, properties got damaged and to provide immediate temporary shelters/transit camps, food and clothing.

(e) Fifthly, to issue direction to lodge FIR against all persons including the government officials who are responsible for failure to maintain the law and order within time.

(f) Sixthly, to direct to pay ex-gratia relief of Rs. 25,00,000/- each to the kin of the deceased and Rs. 5,00,000/- each to the injured from the Prime Minister's Relief Fund as well as from the corpus of the State of Uttar Pradesh.

(g) Seventhly, to direct the State Government to take

stern action against the persons responsible for rape and other heinous offences and also to provide rehabilitation of the victims and

(h) Lastly, to appoint an independent Commission apart from the one constituted by the State Government for impartial inquiry into the incidents and submit a report for prevention of such incidents in future and rehabilitation measures for victims.

20. The prayers sought for by the petitioners in the aforesaid petitions are all in one way or other seeking for enforcement of fundamental rights guaranteed under the Constitution and it is the Constitutional obligation of this Court to intervene and admonish such violation of human rights and issue appropriate orders for rehabilitation while simultaneously issuing directions to ensure that no recurrence of this nature is witnessed by this country in times to come.

Interim monitoring orders issued by this Court:

21. On 12.09.2013, this Court, on going through various allegations levelled in the petitions, took on board the Writ Petition (Crl.) No. 155 of 2013 and the connected matters for examining the issues. Even at the preliminary hearing, Mr. Ravi P. Mehrotra, then standing counsel, accepted notice on behalf of the State of U.P. and its officers. After hearing the arguments of Mr. Gopal Subramanium and Mr. M.N. Krishnamani, learned senior counsel for the petitioners as well as Dr. Rajeev Dhawan, then learned senior counsel for the State of U.P., this Court issued the following directions:

"On going through various allegations levelled in the writ petitions, we are inclined to examine the matter. At present, we direct the State of U.P. in association with the Central Government to take immediate steps and take charge of all persons, who are stranded without food and water and set up relief camps p d

assistance. It is also directed to ensure that all stranded are taken to places of safety and are given minimum amenities of food and water and to make adequate arrangements for their stay, till rehabilitation and restoration takes place in their respective places. It is further directed to provide necessary medical treatment to all wounded and needy persons and also while lifting them to hospitals, either at Meerut or Roorkee, if required hospitals at Delhi or any other suitable places.

The State of U.P., as well as the Central Government, is directed to file the compliance reports by their senior officers on the next date of hearing.

Learned counsel for the parties are permitted to file additional documents.

List on Monday (16.09.2013) at 2.00 p.m."

22. Again, when this batch of cases was listed on 19.09.2013, after hearing counsel for the petitioners as well as the respondent-State, this Court, in the interest of justice and in view of the fact that this Court is monitoring the entire incident, directed that all cases pending on the file of the High Court at Allahabad be transferred to this Court and further made it clear that if there is any grievance pertaining to the aforesaid incident, they are free to approach this Court for necessary relief/ directions. Further, this Court issued the following directions:

"…Though, Mr. Gopal Subramanium, learned senior counsel appearing on behalf of the petitioners in W.P.(Crl.) No. 155 of 2013 after taking us through the compliance report/affidavits filed by Respondent Nos. 1 and 2 submitted that the steps taken by the said respondents are inadequate, however, it cannot be claimed that they have not taken effective steps. However, on going through the details mentioned in the respective affidavits as well as the reply filed by the petitioners, we direct both the

respondents viz., Union of India and State of U.P. to provide the required assistance/facilities as directed in our order dated 12.09.2013.

During the course of hearing, learned Attorney General apart from reiterating the stand taken in their affidavit assured this Court that the Government of India is fully committed to provide all required financial assistance as well as security measures for the immediate and permanent relief to the stranded and affected persons.

Dr. Rajeev Dhawan, learned senior counsel appearing for the State of U.P., after taking us through the various steps taken by them also assured this Court that apart from the steps taken by the State, they are taking further steps for providing food, water, shelter and medicines to all those affected persons. He also assured us that the State Government is taking effective steps for peaceful resettlement of those stranded persons. The above statement of both the respondents are hereby recorded.

In order to ascertain the further development and the steps taken by both the respondents, we adjourn the matter till next Thursday, i.e., 26th September, 2013. Respondent Nos. 1 & 2 are directed to file further report on that day.

The petitioners as well as others who are aware of more details about the sufferings of the people concerned are permitted to hand over all the details to the standing counsel for the State of U.P."

23. On 20.09.2013, at the request of learned senior counsel for the State of U.P., this Court, in continuation of order dated 19.09.2013 passed in the W.P. (Crl.) No. 155 of 2013 etc., directed to transfer W.P.No. 8289(MB) of 2013 (PIL) and W.P.No. 8643(MB) of 2013 (PIL) pending on the file of Lucknow Bench to this Court. When these matter[illegible]3,

after hearing all the parties, this Court issued notice on the transferred cases as well as the criminal miscellaneous petitions for intervention and direction (Crl.M.P. Nos. 20245 of 2013, 20247 of 2013 and 20460 of 2013) and in Writ Petition (Crl.) Nos. 165 of 2013 and 171 of 2013. This Court further directed the respondents to file separate response on the steps taken for the welfare of the victims and for their safe return to their homes and also directed to furnish the details regarding criminal cases registered against the persons involved in the incident.

24. On 17.10.2013, after hearing all the parties including the State, this Court passed the following directions:

> "Pursuant to our earlier direction, the State of U.P. has filed fourth, fifth and sixth reports in the form of an affidavit highlighting the steps taken by it. In addition to the same, the State has also filed a chart containing the existing camps and persons residing there.
>
> On behalf of the Union of India, learned Attorney General has submitted a report containing various communications from the Central and the State Government in the form of an affidavit in Court. The same is taken on record.
>
> W.P.(Crl.) No. 181 of 2013 is taken on Board.
>
> Exemption from filing O.T. in W.P.(Crl.) No. 170 of 2013 is allowed.
>
> Issue notice in the W.P.(Crl.)No. 181 of 2013 filed by ANHAD and W.P.(Crl.)No. 170 of 2013 filed by Citizens for Justice and Peace & Ors.
>
> After hearing all the counsel at the request of Mr. Rajeev Dhawan, learned senior counsel, appearing for the State of U.P., we intend to give sufficient time to respond the fresh writ petitions, the writ petitions as well as various

> applications in which we have issued notice on the last hearing date. We direct the State to file a detailed response in regard to all the matters mentioning the steps taken up to 17th November, 2013 and the future course of action to maintain peace and communal harmony positively by 18th November, 2013.
>
> Counsel for the petitioners are directed to serve notice on all the unserved respondents in the meanwhile.
>
> List all these matters for hearing on 21st November, 2013 at 2.00 p.m."

25. On 21.10.2013, while granting stay of further proceedings in C.M. Writ Petition No. 53891 of 2013 entitled *Pankaj Kumar and Ors. vs. State of U.P. and Ors.* pending in the High Court of Judicature at Allahabad, this Court issued the following directions:

> "It is made clear that any grievance pertaining to the incident that took place on 27th August, 2013 at Muzaffarnagar and nearby places aggrieved persons are to approach only to this Court for necessary relief/ directions.

26. On 21.11.2013, again, after hearing all the parties, this Court passed the following order:

> "The State of U.P. has so far filed nine Reports with reference to the incident highlighting the steps taken and the follow up action.
>
> During the course of the hearing, it was brought to our notice the proceeding No. 118/six-P.C.V.C. - 13-15(20) 2013, dated 26th October, 2013 which was issued by Mr. D.S. Sharma, Secretary, Government of Uttar Pradesh, to the Commissioner, Saharanpur Commissionery, Saharanpur.

Learned counsel appearing for the petitioners point out that the direction issued for rehabilitation of a particular community (Muslim families) alone are unacceptable.

When this was pointed out to Dr. Rajeev Dhawan, learned senior counsel appearing for the State of U.P., he readily agreed for recalling the said communication and also made a statement that the concerned authority will reissue proper proceedings taking care of all the affected persons involved in the incident.

It is also brought to our notice that even on the date of filing of Eighth Report on 18th November, 2013, 5024 persons are still residing in the camps arranged by the State. Though, learned senior counsel for the State has pointed out that as on date the number of persons in the camps are likely to be lesser, taking note of the fact that sizeable number of persons are still in the camps and considering the climatic conditions during winter months, we direct the State Government to provide necessary assistance/materials to all the affected persons residing in these camps.

The State of U.P. is directed to file its response in Writ Petition (Crl.) No. 179 of 2013, in Writ Petition (Crl.)No.171 of 2013, in Writ Petition (Crl.)No. 181 of 2013, in Writ Petition (Crl.)No.196 of 2013, in Writ Petition (Crl.)No. 206 of 2013, S.L.P.(c) No. 35402 of 2013 as well as Crl.M.P. No…..filed in Writ Petition (Crl.)Nos. 171 of 2013 and 179 of 2013, positively on the next date of hearing.

With regard to the compensation for tractors, sugarcane crops, tube-wells and other agricultural products, learned senior counsel for the State, has readily agreed that if proper application/representation is made to the District Magistrate of the concerned district, the same shall be considered.

The affidavit filed by the Union of India dated 21st November, 2013, is taken on record.

List these matters on 12th December, 2013, at 2.00 p.m. In the meantime, the petitioners are directed to take effective steps to serve the unserved respondents in all the matters."

27. On 12.12.2013, again, after hearing all the parties including the counsel for the State, this Court made the following directions:

"On behalf of the State of U.P., a consolidated compilation of documents and the Status Report have been filed in Writ Petition (Crl.) No. 155 of 2013 and connected matters. The same is taken on record.

In the Writ Petition (Crl.)No. 155 of 2013, the petitioners have filed Crl. Misc. Petition No. 26156 of 2013 praying for certain directions. In the said application based on the news report, the petitioners have asked not only direction to the respondents/State of U.P. but also for implementation of our earlier orders. The information which is mentioned in para 8 is as follows:

Para 8

"That recently various electronic news agencies like India TV and IBN Channel has reported between 02.12.2013 to 07.12.2013 in special coverage giving the images of the peoples struggling for their lives in cold in open sky in which more sufferer are the small children who were succumbed to death as they could not bear the cold temperature of the season. It has been reported that more than 50 children died on account of cold as their parents who are riot victims is having no means to protect their children. It is very unfo[illegible]y like India that the whole co[illegible]e

even the small children who were dying on account of their no fault. The death of various children which had also been reported in various newspapers."

In W.P.(Crl.) No. 181 of 2013, the petitioners based on another newspaper's report as well as investigation by themselves furnished various details about deaths in camps.

In both these petitions, it is the grievance of the petitioners that in spite of our earlier directions, the State Government has not fully implemented all directions in providing necessary help and assistance to the inmates of the camps particularly to the children, aged persons and all affected persons. In view of the same, we direct the State Government to ascertain the correct position and filed a detailed report on the next date of hearing.

In the meanwhile, the State Government is directed to look into the serious averments in para 8 in Crl.M.P. No. 26156 of 2013 (which we have extracted above) and take necessary steps and provide required remedial assistance at once. Dr. Rajiv Dhawan, learned senior counsel appearing for the State of U.P. assures this Court that necessary steps will be provided by tomorrow, i.e., 13th December, 2013 onwards. The above statement is hereby recorded.

Taking note of the cold conditions in the forthcoming months, we hereby further direct the State Administration particularly the district concerned to provide necessary materials including medical facilities for the inmates particularly children in the camps as well as all those affected due to riots.

During the course of hearing, counsel appearing on behalf of various petitioners/organizations raised certain complaints/grievances about the steps so far taken by the

State Administration. The respective counsel are permitted to hand over those details to the standing counsel for the State of U.P. by tomorrow, i.e., 13th December, 2013. The State of directed to take remedial steps at once and file their response on the next date of hearing.

Post all the matters for final disposal on 21st January, 2014 at 10.30 a.m. as item one.

In the meantime, parties are permitted to complete their pleadings."

28. Finally, on 20.02.2014, after hearing elaborate arguments of Mr. Uday U. Lalit, learned senior counsel for the State and Ms. Kamini Jaiswal, learned counsel for the rape victims, this Court reserved the judgment in these matters.

Compliance Reports:

29. The given petitions were heard over 5 months commencing from 12.09.2013 and ending on 20.02.2014. In this interim period, this Court issued numerous directions for monitoring the situation at the place of incidence. It is pointed out by learned counsel appearing for various parties that because of various directions of this Court, the State Government initiated active investigation, relief measures, both in the camps as well as in shelter homes and provided more provisions for food, clothes and medicines etc., which is highlighted in the eleven Compliance Reports filed before this Court over the period of time.

30. From the reports filed by the State Government, we culled out the following information, which will throw light on the rehabilitative and preventive measures adopted by the Central and the State Government.

1. Arrangements for Relief camps

A total number of 58 camps wer of

which, 41 such camps were established in District Muzaffarnagar and 17 camps in District Shamli.

In District Muzaffarnagar, the camps were established in different villages of two Tehsils, viz., Tehsil Sadar and Tehsil Budhana. After survey of these camps by the District Administration, it was found that most of the displaced families were living in Madarsas, private ghar (houses) and other buildings. Remaining people had taken refuge at open places by erecting tents.

After the survey, 30 relief camps were identified in Tehsil Budhana area and 11 relief camps in Tehsil Sadar area and a District Level Officer was deputed as a Nodal Officer for each camp. In addition to this, one police officer was also designated for each camp. Detailed guidelines and instructions were issued to the concerned officers for ensuring efficient and effective running of these camps.

A Purchase and Supply Committee, comprising of District Supply Officer, Deputy Regional Marketing Officer, Sachiv Mandi Samiti, ARTO, Joint Commissioner (Commercial Tax), General Manager of District Industries Centre and General Manager of Parag Dairy was formed to purchase and supply foodgrains and other articles of daily use to the families living in camps. After getting daily assessment of their requirements through Nodal Officers, foodgrains and other goods were supplied by trucks and other small vehicles to the camps.

The families going back from certain camps during the month of December 2013 were provided ration material for a period of 15 days so as to facilitate their resettlement and rehabilitation. An amount of Rs.152.95 lacs was spent on the foodgrains and other essential commodities provided in the camps and afterwards in the District Muzaffarnagar. In addition to this, Rs. 61.44 lacs were spent on arrangements for auxiliary items. In this manner, a total amount of Rs.214.39 lacs has been spent on the items supplied and the arrangements made

in the District Muzaffarnagar.

Similar arrangements were made in District Shamli. In District Shamli also two Tehsils, viz., Tehsil Shamli and Tehsil Kairana were affected. Six relief camps in Tehsil Shamli and 11 camps in Tehsil Kairana had been identified. Foodgrains and other essential commodities worth Rs. 32.39 lacs and milk worth Rs.53.10 lacs have been provided in the camps and to the families going back from the camps for resettlement and rehabilitation. In addition to that, Rs.27.65 lacs have been spent on other arrangements. Thus, a total amount of Rs.113.04 lacs has been spent on the items supplied and the arrangements made for the camps.

District Baghpat has also reported an expenditure of Rs.1.85 lacs for supplying foodgrains and other essential items for the people who had gone to the camps and have now been rehabilitated in their villages.

All 41 camps in District Muzaffarnagar have been closed and 2 camps and 4 satellite camps are in operation in District Shamli. A total number of 2618 persons are living in these camps. The relief operations on the same scale are being continued in these camps. The State Government has given directions to run the remaining camps and to take all necessary measures for providing foodgrains, milk, other essential commodities, medical facilities and materials required for shelter from cold etc. as long as the people are living in such camps.

2. Medical facilities to the injured and those living in the camps

Medical ambulances with all modern facilities were deployed for all the camps. Medical and paramedical staff was deployed at all the camps to regularly conduct medical checkup in the camps. According to the data provided by the Chief Medical Officer, Muzaffarnagar, the me d

cumulative medical check-up of 21,555 persons in the camps. It was ensured that if any person in the camp was found seriously ill he was shifted immediately to the District Hospital using ambulance and if required he was referred to the Medical Centre at Delhi and Meerut.

A sum of Rs.6.38 lacs in Muzaffarnagar and Rs.14.90 lacs in Shamli was spent towards treatment of the persons injured in the incidents. For better and specialized treatment, 21 injured persons were referred to higher medical facilities at Meerut and New Delhi. Instructions were issued by the State Government that the treatment of persons who got injured during incidents of violence is to be done free of cost. One such person who went for his treatment to private facility has been paid Rs.2.5 lacs from the Chief Minister's Discretionary Fund.

In District Shamli too, similar arrangements were made by the District Administration. According to the data provided by the C.M.O., the medical teams conducted cumulative medical check-up of 23,243 persons in the camps.

Female doctors and ANMs were deployed to the extent possible for taking care of the women especially the pregnant and lactating mothers. 303 pregnant women were identified and 44 of them were shifted to Community Health Centres (CHC), Primary Health Centres (PHC) or the District Hospital for safe deliveries in the district of Muzaffarnagar. Additional nutrition was provided under the ICDS by the Anganwadi workers to all those children who were below the age of 6 years and living in the camps.

Chlorine tablets and ORS packets were distributed on regular basis. More than 64000 chlorine tablets and nearly 7750 ORS packets were distributed in the two districts. In addition to this, routine immunization activity was also carried out in the camps. 573 children in Muzaffarnagar and 1107 children in Shamli were vaccinated during this period.

In compliance with the directions given by this Court, separate teams were constituted and deployed for special care of all those living in the camps especially women and children. For the camp at Loi Village in Muzaffarnagar, one general physician, one pediatrician for the treatment of children, one ANM/staff nurse, one para medical staff and ambulance was put on duty. The camp was closed on 31.12.2013 by rehabilitating all the families. Till then, 3114 cumulative patients were treated in the camps of which 509 were children, 65 children were vaccinated, 515 chlorine tablets and 154 ORS packets were distributed. It has been ensured that all those pregnant women, who were living in the camp before its closure would be taken to PHC Budhana or District Female Hospital for their deliveries.

Similarly, 3 doctors, 3 pharmacists, 3 ANMs, 2 ward boys, 2 drivers with ambulances, 1 LA, 1 OTA and 1 STLS have been deployed for 4 camps in operation at Malakpur, Khurgan, Sunaiti and Bibipur Hatia. 153 patients including 59 children have been treated in these camps.

The persons, who have been shifted to different villages for rehabilitation, are being tracked and being provided medical facilities at their places of stay. In Muzaffarnagar, 168 pregnant women and 4946 children have been examined and 860 children were treated for various ailments. 114 children were vaccinated. In Shamli, 328 children from total 1128 patients have been examined during last week in the camps.

3. Arrangement of Sanitation and Drinking Water

In order to ensure proper sanitation and cleanliness, five sweepers were deployed for each camp. It was ensured that the sweepers remained deployed till the camps were in place. Keeping in view the large number of women and children in the camps, mobile toilets were placed near the camps. In order to avoid epidemic, spray of pesticides and other chemicals was

ensured. To kill mosquitoes, fogging was carried out near relief camp at Jaula.

Safe and clean drinking water was also supplied through piped water supply schemes, permanent tubewells installed at the camp sites, India Marked-II hand pumps and water tankers from the urban local bodies situated near the camps. Chlorine tablets were distributed in all the camps as has been described in the paragraph above.

4. Arrangement of Tent, Dari and Bedsheets etc.

Though most of the camps were situated in pucca buildings like Madarsas and Schools, makeshift tents were also erected in 15 camps to provide shed and shelter. The displaced families could not bring any item of daily use with them, hence, two steel plates, two steel glasses, one medium size dari, two bed sheets, one bucket, one mug, one towel, milk powder, biscuit packets were provided to each and every family in the camps. Clothes to women and children were also distributed in camps. In addition to that, two toilet soaps, two washing soaps, one tooth paste and kerosene oil etc. were provided to the families living in the camps. The approximate value of abovementioned goods has crossed Rs. 1 crore. 104 quintals of fire wood was supplied in the camps through the Divisional Forest Officer. Another 54 quintals of firewood was supplied through District Supply Officer for its use as fuel. Apart from this, 48 gas cylinders were provided in the camps.

5. Arrangement of fodder for cattle

A large number of villagers fled from their houses out of fear leaving behind their cattle and animals. These animals were taken care of by the people from the community. The Animal Husbandry Department was directed to provide fodder to such cattle with the help of voluntary organizations. Identification of such villages and cattle was done and fodder was made available. So far, 568.30 quintals of wheat-hay has

been distributed. Teams of Veterinary Doctors have treated 301 cattle so identified.

6. Financial Assistance by Government of Uttar Pradesh to the wounded and the families of deceased persons

According to letter No. 1027k/chh-sa.ni.pr.-13/15(14)2013 dated 10.09.2013 and Government Order No. F.A.-2-367/Ten-92-100(30)D/92-Home Police, Section-12 dated 21.12.1992, financial assistance to the families of deceased and injured persons is to be given at the following rates:

1. In case of death - Rs. 10,00,000 per death
2. In case of serious injury - Rs.50,000 per person
3. In case of simple injury - Rs. 20,000 per person

District Muzaffarnagar

32 persons belonging to this District have died in various incidents of violence that took place on or after 07.09.2013. Of these deceased persons, two dead bodies are still unidentified. Three persons were killed in clashes on 27.08.2013 in village Kawal, Tehsil Jansath. One news channel reporter named Rajesh Verma died on 07.09.2013 in communal violence in Muzaffarnagar city. Financial assistance of Rs. 15 lacs was announced for his family. Thus, a total sum of Rs. 3.35 crores has been provided to the families of 33 persons. In addition to that, a total sum of Rs. 7.50 lacs was provided to 15 persons injured seriously. One person succumbed to his injuries and his family has been paid additional amount of Rs. 9.5 lacs. Thus, 34 families of deceased persons have been paid Rs.3.45 crores and the remaining 14 seriously injured persons were paid Rs.7 lacs. A sum of Rs.5.40 lacs has been distributed to 27 persons with simple injuries.

District Shamli

15 persons belonging to this District died in the incident on or after 07.09.2013. Of these, 13 persons died in incidents that took place in Muzaffarnagar and 2 persons died in the incidents within the District on or after 07.09.2013. One person was killed in another clash that had occurred on 03.09.2013 in the District. A total sum of Rs.1.60 crore has been provided to the families of all the 16 deceased persons. For the injured persons, a total sum of Rs.4.5 lacs has been provided to 9 seriously injured persons and a sum of Rs.3.20 lacs to 16 persons with simple injuries.

District Saharanpur

Three persons belonging to this District died in the incidents on or after 07.09.2013, of which one died in Muzaffarnagar and 2 died within the District. A sum of Rs. 30 lacs has been provided to all the 3 families. Moreover, a total sum of Rs. 20 lacs has been provided to 4 persons injured seriously.

Apart from these 3 Districts, as mentioned above, under the Saharanpur Division, 9 persons who were killed, belonged to the three districts of the Meerut Division. According to the report received from these Districts, Rs. 50 lacs were paid to 5 families in District Meerut, Rs. 30 lacs to 3 families in Baghpat and Rs. 10 lacs to 1 family in District Hapur. One seriously injured person succumbed to his injuries in Meerut and his family has been paid additional financial assistance of Rs. 9.5 lacs. Thus, all the 10 families of the deceased persons have been provided ex gratia relief of Rs. 1 crore. In addition to this, 4 seriously injured persons in District Baghpat have been paid Rs. 2 lacs. Remaining 2 seriously injured persons in District Meerut have been paid an amount of Rs. 1 lac. 4 persons with simple injuries in Baghpat have been paid Rs.0.8 lacs. District Hapur has reported no injured person.

In addition to the above, the State Government has sanctioned pension to the eligible 63 injured persons at the rate of Rs.400/- per month under the Rani Laxmi Bai Pension Scheme under special circumstances.

Thus, the Government of Uttar Pradesh has paid Rs.6.35 crores to the families of 63 deceased persons, Rs.16.50 lacs to 33 seriously injured persons, Rs.9.80 lacs to 49 persons with simple injuries and pension to 63 injured persons.

7. Financial Assistance by Government of India to the wounded and the families of deceased persons

Government of India has also sanctioned ex-gratia relief from the Prime Minister's Relief Fund at the rate of Rs.2 lacs per family for the dependents or legal heirs of the deceased and at the rate of Rs. 50000 for the seriously injured persons. Rs. 15 lacs have been sanctioned to the family of Sri Rajesh Verma, the Journalist, who was killed in the city on 07.09.2013.

32 families in Muzaffarnagar, 16 families in Shamli, 3 families in Saharanpur, 5 families in Meerut, 3 families in Baghpat and 1 family in Hapur have been paid Rs.120 lacs. Rs. 10 lacs have been paid to the family of Late Sri Rajesh Verma. Rs. 16.50 lacs have been paid to 33 seriously injured persons. Two cases, in which the injured persons have died, have been forwarded for further assistance of Rs.1.50 lac per family.

Thus, Rs.146.50 lacs have been distributed to the injured persons and the legal heirs of the deceased persons from the funds made available by the Government of India.

8. Employment to the dependents of the deceased persons

The State Government decided to give employment to one member of the family of the deceased persons according to his or her qualification. Total 58 persons [illegible]s

died in the incidents on or after 07.09.2013 and 5 persons died in the incidents that had taken place before that. A proposal was made for employment of dependents of 61 persons killed in the incidents as 2 dead bodies remained unidentified. 2 persons had died from the same family and one person killed was a Government employee and his dependent will be considered as per "Dying in Harness" rules. Thus, the proposal was sanctioned by the Government for remaining 59 persons and all of them have been given employment.

Two new proposals, which were sent to the State Government with regard to 2 seriously injured persons who succumbed to their injuries have been sanctioned and formalities are being completed to give them employment.

9. Confidence building measures

A detailed survey and analysis of the families displaced from different villages and living in camps was done. The villages from where displacement took place were divided into three categories:

(i) Villages where no violence took place.

(ii) Villages where no death was reported.

(iii) Villages where death was reported.

First of all, measures were taken to rehabilitate and return those people who fell in the first category. In this category, displacement had taken place just out of fear. Meetings with important and effective persons from both the communities were organized in which one community had assured the safety and security of the other. Peace Committees were constituted and their meetings were organized at the Block, Tehsil and District levels. Senior officers like District Magistrate, Superintendent of Police, ADM, ASP, SDM, Circle Officer and other functionaries from the Revenue and police departments participated along with the Village Pradhans and important

public persons from all the communities. Teams of officers were sent from Districts of Meerut and Baghpat to convince and take the persons living in the camps who belonged to the villages of these districts.

At one stage, the total number of people staying in 58 camps in two districts had reached a figure of 50955 of which 27198 persons were in 41 camps at Muzaffarnagar and 23757 persons in 17 camps at Shamli. As a result of the efforts made by the administration in holding these meetings and providing one-time financial assistance for rehabilitation, all the persons living in the camps in Muzaffarnagar have returned either to their native villages or resettled elsewhere.

As far as District Shamli is concerned, 15 camps have been closed and 23757 persons living in the camps have either returned to their native village or to the other places of their choice after getting one-time assistance of Rs. 5 lacs. Remaining 2 camps at Malakpur (990 persons remaining) and Barnawi (330 persons remaining) have split into 4 additional satellite camps established on the forest land, Gaon Sabha land or the Government land of villages Akbarpur Sunhaiti (297 persons), Khurgan (595 persons), Dabhedi Khurd (203 persons) and Bibipur Hatia (203 persons). Thus, 2618 persons are still living in 2 camps and 4 satellite camps in the District Shamli. Efforts are being made to convince them to go back to their villages or settle elsewhere.

To ensure the safety and building a feeling of confidence among those returning to the villages, para-miliatry forces were deployed in those villages. Preventive action was also ensured under the provisions of the Code and effective legal action is being taken with respect to the FIRs lodged for the incidents of rioting. Notices were issued to 6616 persons in Muzaffarnagar and 1756 persons in Shamli under Section 107/111 of the Code. Out of these, 8372 persons in two districts, 5793 persons (4802 in Muzaffarnagar and 991 in Shamli) have been bound down under Section 107

addition to this, 356 persons in Muzaffarnagar and 239 persons in Shamli, thereby totaling 595 persons have been arrested in connection with various FIRs for incidents of violence, arson and looting etc.

Regarding safety of their lives and security of their properties, the State has brought to our notice that necessary forces have been deployed in all the areas in which the communal riots took place. The details furnished by the State show that at present, the following forces deployed for law and order duty:

Addl. SP	Dy. SP	Insp.	S.I	HC	Const.	HG	PAC
3	11	35	238	58 2 PL.	1447	400 Coy.	8

10. One time financial assistance to the families not returning to their villages

Families displaced from 6 villages in Muzaffarnagar, i.e., Fugana, Kutaba, Kutbi, Kakda, Mohammadpur Raisingh and Mundbhar and 3 villages in Shamli, i.e., Lisadh, Lank and Bahavadi have not agreed to return to their native villages even after confidence building measures and serious persuasion. Their decision was found to be justified largely based on the fear emanating from the kind of incidents of murders and arson that had happened in these villages during the violence that broke out on 7th and 8th September, 2013. The State Government, vide its order dated 26.10.2013, has decided to give a lumpsum grant of Rs. 5 lacs per family for their resettlement and rehabilitation. According to the preliminary estimates of houses in these villages, an amount of Rs.90 crores has been sanctioned for 1800 families, Rs.43.15 crores to 863 families out of 901 such families in Muzaffarnagar and Rs.38.40 crores to 768 such families in Shamli have been paid under the one-time financial assistance for their rehabilitation.

In addition to this, 13 families in Muzaffarnagar have been given part payment of Rs.2 lacs each incurring Rs.26 lacs. Thus, 1644 families have been paid till date and an amount of Rs.81.81 crores has been spent for their resettlement and rehabilitation.

11. Compensation for damage to movable and immovable property

Assessment was done for damage to the uninsured movable and immovable property during the riots. Efforts were made to assess the loss by a team of qualified persons in the presence of victims. Photography and videography was also done during the process.

According to the latest reports, an amount of Rs.124.06 lacs has been paid in 212 cases, out of 217 surveyed cases worth Rs.125 lacs. Similarly, in District Muzaffarnagar, 465 movable properties have been assessed at Rs.176.44 lacs and the claim of Rs.174.82 lacs has been settled for 459 properties. Hence, the claim of 671 properties out of 682 total damaged movable properties has already been settled and an amount of Rs.298.88 lacs has already been paid.

As per the order dated 26.10.2013 regarding one-time financial assistance to the families from 9 villages, the compensation for the damage to the immovable properties of these families is included in the one-time assistance. Therefore, the compensation for damage to immovable property has to be paid in the remaining villages only. Besides, the amount is to be paid in two equal instalments. All 24 cases identified in Shamli, all 6 cases identified in Baghpat and 55 out of 56 cases identified in Muzaffarnagar have been paid the first instalment of Rs.50.56 lacs. Thus, a total amount of Rs. 349.44 lacs has been paid as compensation for the loss of uninsured movable and immovable property loss in 3 districts.

Enhanced Compensation:

31. During the course of hearing, I el

and the Additional Advocate General of U.P. appearing for the State assured this Court that the Government would consider enhancing the amount of compensation to the victims of communal violence who had died and to the parents of the deceased children below 5 years of age.

32. It is brought to our notice that by G.O. dated 18.02.2014 issued by the Home Secretary, Government of U.P., it has been decided that the State Government would provide further compensation of Rs. 3 lakhs in addition to the compensation already provided to the relatives of the deceased and a compensation of Rs. 2 lakhs to the parents of the deceased children below 5 years of age who died in the relief camps.

33. In addition to the same, the State has also highlighted other reliefs that have been given to the riot victims for damage of immovable properties. The chart placed before us shows the names of the persons, father's name, type of property, type of damage, value of the property, name of the village, district and the actual amount paid to those persons. The said chart also shows that in this category, 181 persons received various amounts depending on the value of the property lost. Likewise, the State has also placed details regarding financial assistance to injured persons due to communal violence. The chart furnished shows that about 53 persons from Muzaffarnagar, Shamli, Saharanpur and Baghpat were benefitted. It also contains the name of the injured persons, their family details and their full address as well as the compensation received from the State Government. The State has also placed particulars regarding the beneficiaries of Rani Lakshmibai Pension Yojana relating to persons who sustained injuries both simple as well as grievous in communal violence. The chart also shows the name and details of their family, age, full particulars and the amount paid for the period September 2013 to March 2014.

Phase of Investigation:

34. Apart from the rehabilitative and preventive measures, certain concerns were also raised by the petitioners in regard to the inefficient investigation by State Police and lapse of procedural laws which leads to gross violation of rights of victims.

35. Regarding the stand of the petitioners that many false accused were shown as culprits, the State has filed a detailed note wherein it is stated that a total number of 566 cases are being investigated by the Special Investigation Cell (SIC). It was submitted that during investigation, it was observed that many cases were false and many persons have been wrongly named in FIRs. The investigating officers found sufficient ground and evidence for their innocence. The State has pointed out that names of all such persons, viz., 549 persons, have been removed. Till now, 48 registered cases have been found false and the same were either expunged or removed. Names of 69 persons in murder cases have been found false and their names have been removed from the accused list. In addition to the above information, the State has furnished a list of accused found false which contains 516 persons from Hindu community and 33 from Muslim, i.e., a total number of 549 persons. The State has also furnished a list of expunged cases and the persons who were wrongly included. Here again, the State has mentioned the names and addresses of those persons, crime number, police station, offences under various enactments and districts.

36. It is further seen from the information furnished by the State that at present SIC is investigating a total number of 566 cases registered during the communal violence in Muzaffarnagar and adjoining districts of Shamli, Baghpat, Saharanpur and Meerut. Out of 566 cases, 533 cases are of Muzaffarnagar, 27 of Shamli and 2 each of Baghpat, Saharanpur and Meerut. Of these 566 cases, 59 cases are of murder and rest are of arson, dacoity, [illegible]of

miscellaneous type. Six cases of rape have also been registered. All rape cases are of Village Fugana, Police Station Fugana, Muzaffarnagar. In all these cases, 6403 people were named and 253 came to light. Of these, 549 accused were found false. It was also observed that many persons were named in more than one case and a calculation of all these revealed that 3803 persons were named. Till date, 984 persons have been declared accused in investigated cases. Rest of the cases are under investigation. 337 accused have been arrested and 61 persons have surrendered before the Court. 374 Non-Bailable Warrants, 195 warrants under Section 82 of the Code and 3 kurki (attachment) warrants of Section 83 of the Code have been issued. Charge-sheet has been filed against 238 accused and Closure Reports have been given against 102 persons.

Constitution of the SIC:

37. About the constitution of SIC and the method of investigation, the State has highlighted:

> "Special investigation cell was constituted in the month of September after the communal violence in the district Muzaffarnagar and adjoining district to investigate the cases registered during communal violence. As the task was very daunting because most of the complainant had fled from their villages and had taken refuse in various relief camps and in their relatives. The first task was to locate the complainants and witnesses. This hardeous task was accomplished after taking the list of persons staying in camps and getting their mobile numbers. Thereafter, inquiring from one person to another complainants and witnesses were approached and their statements were recorded. This obviously delayed investigation to some extent, but once the complainants and witnesses were traced, investigation took pace and very soon investigation of all the cases will be completed.

> During investigation, SIC used scientific mode of investigation. Some of the methods which were used are as follows:
>
> 1. A large number of persons were named in various cases registered. To confirm the authenticity of complaint and accused person, location of both complainant and accused persons were collected through their mobile numbers. Mobile no. of various persons were analysed. Call details were also applied to work out unknown cases.
>
> 2. In the village Lisad of PS Fughana death of 13 persons were reported. The body of 11 persons out of 13 were not recovered and no traces of their body were found. SIC took the help of Forensic Science Laboratory, Lucknow to find the traces of their death. FSL used scientific methods to collect sign of some blood. Even though 20 days have passed after the claim of death, FSL was successful in finding sign of some blood by Benjamin test. The blood samples have been sent for examination. During investigation, some suspicious small pieces of bones were recovered, which has been sent for DNA and other scientific examination. In one another case, DNA samples have been sent to match of the claim of death."

38. In support of the above stand, the State has also placed copies of various orders passed by the SIC.

Arrest and follow-up action:

39. Regarding arrest and follow-up actions, the State has filed a list of arrested persons in communal violence in Muzaffarnagar and adjoining areas. The list shows the names of 308 arrested persons in the Districts of Muzaffarnagar and Shamli. Here again, the State has furnished the names and addresses of arrested accused, the date on which they were arrested, offences under various enactments, crime number, police station, nature of the offence, dist s

also indicated the religion of the accused just to show that actions were being taken irrespective of the caste, community or religion.

40. The State has also furnished a list of 50 persons who surrendered (31 belonging to Hindu community and 19 Muslim). Here again, the State has furnished the names and addresses of accused, date of surrender, offences involved, title of the crime, case number, police station and district etc.

41. In addition to the above particulars, the State has also furnished details about the action taken against accused persons in communal violence cases as on 08.02.2014. The chart contains the details of the number of the accused, number of crimes, details regarding action taken, types of offences, etc. The State also catalogued these details district-wise, viz., Muzaffarnagar, Shamli, Baghpat, Saharanpur and Meerut.

42. The State has also furnished the details regarding action being taken against political persons. The list contains total 22 persons in this category having their names and addresses, particulars regarding political party, post held, such as, Minister/MP/MLA, Crime number, police station, various offences and particulars regarding action taken, etc.

43. In addition to the above particulars, the State has also highlighted various difficulties faced by the District Police in making arrests. According to them, right from day one, the District Police has faced staunch opposition and strong protests in making arrests in riot cases. Many panchayats and dharnas have been organized to resist arrests. The accused from both the communities have found strong refuge in respective villages. In some cases, villagers have even attacked the police parties to stop them from making arrest. In the note submitted to this Court, they highlighted some of the notable episodes that took place on 15.10.2013, 21.10.2013, 26.10.2013, 28.10.2013, 01.11.2013, 25.01.2014, 26.01.2014. According to the State, in those days, women folk of the particular community

obstructed the police from entering their houses where the accused were hiding. Khap panchayats prevented the police from performing their duties. In spite of those protests and obstructions, the State has highlighted that the District Police has been persistent and diligent in making arrests of the accused persons in riot cases and so far 337 accused persons have been arrested and 61 accused persons have been forced to surrender. The raid teams from respective police stations are being sent regularly to make arrests. A dedicated surveillance team has been deployed with the Crime Branch to gather intelligence about the whereabouts of the accused persons of serious riot offences. Despite extreme adverse circumstances and strong protests from both communities, the police has made persistent attempts to effect the arrests of the accused people. The efforts made by the district police are:

(i) Continuous raids - Teams from various police stations led by senior police officers have been conducting raids for the accused on regular basis.

(ii) Gathering of information - To locate the accused, relevant information is being gathered, informers have been employed and people from the same villages have been identified who are willing to provide information about the accused people.

(iii) Surveillance and Crime Branch support - In making arrests, the district police have also sought support of surveillance teams and Crime Branch experts to gather information about accused to facilitate arrests.

(iv) Several meetings are being conducted in affected villages to generate confidence amongst the villagers and to ensure them that innocent people will not be harassed, to blunt their resistance about arrests.

(v) Meetings are also arranged between the two communities to restore faith and feeling of brotherhood. Such efforts are being made to alienate the actual accused people who are desperately trying to find support from their community.

(vi) The police has also been seeking relevant and timely court orders and have been implementing court processes and attachment orders to mount pressure on the accused.

(vii) Counseling efforts are being made so that the family members and supporters of the accused people can be convinced to offer arrests or surrender of accused persons before the Court.

(viii) In some suitable cases, reward is also declared on the accused to mount pressure.

(ix) A dedicated team of experienced police personnel for each accused is deployed to gather relevant information about his whereabouts, hiding places, refuse, and support base to effect arrests.

44. Regarding arms and ammunitions, recovery of AK47 cartridges, etc., particularly, in village Kirthal, Police Station Ramala, District Baghpat, the State has highlighted that:

"On 11/03/13 Ramala police was on law and order duty and was patrolling in village Kirthal PS Ramala. Irshad s/o Fakruddin, Shoaib s/o Munsab, Zahid s/o Iqbal, Basiruddin s/o Iqram all residents of village Kirthal PS Ramala mounted an unprovoked attack on the patrolling party with brickbats and caused obstruction in the discharge of duty. In this incidentone constable 832 CP Vijay Kumar was grievously injured. In this connection, SHO Ramala Shri Rajender Singh registered a Case Crime

Number 246/13 u/s 307, 353, 34 IPC against the above-mentioned four persons at PS Ramala. In the context of the above-mentioned incident, SHO Ramala Shri Rajendra Singh was engaged in checking and frisking of suspicious persons in village Kirthal. During this checking one Rojuddin s/o Fakruddin r/o village Kirthal PS Ramala was arrested and one cmp 315 bore, 41 cartridges of AK 47 rifle, 14 cartridges of 9 mm pistol were recovered from his possession. In this connection, one case crime number 249/13 u/s 25 Arms Act was registered at PS Ramala.

The case crime number 246/13 u/s 307, 353, 34 IPC was investigated by SI Shri Vijendra Sing Panwar, all the four named accused were arrested, one cmp 315 bore with cartridge, one licenced gun with cartridges were recovered and, finally, charge-sheet number 123/13 dated 19/10/13 was submitted to the concerned court against all the four named accused.

Similarly, the case crime number 249/13 u/s 25 Arms Act was duly investigated by SI Shri Subhash Chand. During the investigation the arrested person Rojuddin told the IO that the AK 47 and 9mm cartridges belonged to his brother Iqbal who had been discharged from BSF on poor health ground. On coming to light his brother Iqbal s/o Fakruddin was interrogated by the IO but no progress was made because Iqbal denied that the recovered cartridges belonged to him and no other independent incriminating evidence could be collected during investigation against him.

On completion of investigation, charge-sheet number 120/13 was submitted to the concerned Court on 12/10/13. The matter was investigated by SI Shri Subhash Chand. On completion of investigation, charge-sheet number 120/13 dated 12/10/13 has been submitted to the concerned court.

During the investigation all the four

arrested and sent to jail. One cmp with one cartridge 315 bore, one licensed gun with cartridge were recovered from them. When adequated evidence was collected against the accused, charge-sheet number 123/13 dated 19/10/13 was submitted to the concerned court."

45. In respect of allegations relating to Crime No. 148/13 under Sections 147, 148, 149 and 396 IPC, PS Fughana, Muzaffarnagar, it is stated:

"The above case was registered by Dilsad s/o Sakeel r/o Vill. Bahawadi P/s Fughana that on 8.09.13 his father was forcibly taken away by named persons and was killed. The case was investigated by Insp. Matadin Verma. When Inquest report and post mortem report was sought, no record of Inquest and Postmortem was found either in Police Station or in CMO office. The statement of complainant was recorded. He said that he had identified the chhared body of his father and buried in the graveyard. After going through records of police station, it was found that one post-mortem report was extra attached in the FIR of case crime no. 143/13 of P/s Fughana which was related to the incident of village Lak and no claimant of that post-mortem existed neither anyone had claimed that somebody is missing from village. Thus, it was assumed that since there was great commotion after the riots and more than 13 corpes were brought to PS, some mistake might have occurred in writing the place of incident in inquest report. So, the post mortem report was attached to the case no. 148/13. But, there was one anomaly that the age in Postmortem report of deceased was 25 years, but the age of deceased in Cr. No. 148/13 was more than 45 years. But, fortunately since the post-mortem report attached was of an unknown body, its tooth, hair and other parts of the body were preserved for DNA analysis. The complainant has not turned up in spite of repeated request both in written and personal by the investigating officer for

providing blood samples necessary for the test."

46. In the case of Crime No. 403/13, Police Station Jansath, Muzaffarnagar, the State has informed this Court that:

"On 27-08-13, Sachin s/o Bisan Singh and Gaurav S/o Ravindra Singh both resident of Malikpura p/s Jansath were killed in village Kawal P/s Jansath. In this regard, above case was registered against 6 persons. Out of six named persons, 2 were arrested and 3 surrendered before the court. Chargesheet no. 185/13 dated 24-11-13 has been filed against 5 accused. Investigation against one person is going on."

47. In the case of Crime No. 404/13, Police Station Jansath, Muzaffarnagar, the State has informed this Court that:

"On 27-08-13, Sahnawaj s/o Salim r/o Kawal was killed in village Kawal. In this regard, the above case was registered in which 8 persons were named including Sachin and Gaurav who were killed in the village Kawal. During investigation, it was found that no person of the name Yogendra s/o Prahlad r/o Malikpura (who was named accused) exists in Malikpura. One another person Nitin s/o Ravinder whose name was later on given through affidavit by witnesses had died six months before the incident. Till now against rest six persons, no evidence of their involvement in crime has been found."

48. Regarding allegations, viz., communal bias, the State, while denying all those allegations, furnished a list of arrested persons in communal violence in Muzaffarnagar and adjoining districts. Here again, it is furnished that the number of total arrested persons are 334, out of which, 256 belonged to Hindu community and 78 belonged to Muslim community. In addition to the same, they also furnished the names and addresses of the arrested accused, date of arrest, offences involved, case number, police station and district etc. I[illegible]e,

they also furnished present status of cases under investigation, community-wise and district-wise. It also shows the total registered cases in the districts of Muzaffarnagar, Shamli, Baghpat, Saharanpur, Meerut in the police stations as 316, from the camps 250, number of cases registered by Muslims 492, number of cases registered by Hindus 40, cases registered by the police 34, true cases found till date 518, number of named persons in those cases 6144, among those persons 5597 belonged to Hindu community and 547 belonged to Muslim community, number of persons against whom evidence found 984, etc.

Follow-up action in Rape/Molestation Cases:

49. Coming to the allegations relating to rape and inaction on the part of the police in apprehending the accused as well as for protection of the victims, the State has filed an Action Taken Report. In that report, it was mentioned that in CC No. 179 of 2013, Police Station Fugana, out of 5 accused, they arrested only one and in respect of remaining 4, non-bailable warrants were issued and steps were taken for declaring them as absconders under Section 82 of the Code. Insofar as CC No. 300 of 2013, Police Station Fugana is concerned, 6 persons were arrayed as accused but none was arrested so far and non-bailable warrants and proceedings under Section 82 of the Code are pending against all of them. As regards CC No. 360 of 2013, Police Station Fugana, out of 12 accused persons, none was arrested. Similarly, in CC No. 361 of 2013, Police Station Fugana, two persons were shown as accused. Here again, none of them was arrested.

50. Insofar as rape case pertaining to CC No. 300 of 2013, the State has furnished the following details:

Date of incident - 08.09.2013

Date of reporting - 26.09.2013

Offences - under Sections 395, 397, 376D, 153A, 436 IPC

Police Station - Fugana, Muzaffarnagar

Place of Incident - Village Fugana

Date of medical examination - 29.09.2013

Date of the statement under Section 161 Cr.PC - 25.10.2013

Date of statement under Section 164 Cr.PC - 09.12.2013

51. In the said case, an FIR was lodged stating that six named cuprits committed the above crime. As regards progress of the case, it is stated:

"The first investigation was taken by SI Esam Singh of P/s Fughana and it was transferred to Insp. Dharmpal Singh of SIC. As there was no Lady Police Officer in SIC, the investigation was taken by Insp. Mala Yadav of SIC on 18.10.13. Statement under 161 CrPC was recorded on 25.10.13 as earlier attempt to contact victim could not be made as she had gone to Delhi with her husband. On 08.11.13 scene of crime was visited along with the victim. In her 161 Cr.PC statement and in FIR there was some contradiction as in FIR she has said that six person has raped her but in 161 Crpc statement she said that only 4 person raped her and she does not know rest of the person. Further her call details did not match 161 statement. Her statement had to be verified and contradiction needed proper justification. Therefore, the investigating officer had to investigate the case cautiously. Later on statement of other witnesses were recorded. Statement under 164 Crpc was recorded on 09.12.13. After 164 Crpc statement some other statement had to be taken. Requisition of arrest was sent to the police station on 02.01.14 and NBW was taken against all six accused. Warrant under 82 Crpc has been [illegible]e

accused. Raids were conducted to arrest the accused on 04.01.14, 05.01.14, 20.01.14. Further raids are going on to arrest the accused."

52. As regards rape case pertaining to CC No. 360 of 2013, the State has furnished the following details:

Date of incident - 08.09.2013

Date of reporting - 01.10.2013

Offences - under Sections 147, 148, 149, 452, 352, 376D IPC

Police Station - Fugana, Muzaffarnagar

Place of Incident - Village Fugana

Date of medical examination - 18.10.2013

Date of the statement under Section 161 Cr.PC - 25.10.2013

Date of statement under Section 164 Cr.PC - 11.12.2013

53. In the said case, an FIR was lodged stating that 16 named cuprits committed the above crime. As regards progress of the case, it is stated:

"The investigation was started by SI R.S. Bhagaur of P/S Fughana on 09.10.13. It was taken by Insp. Mala Yadav of SIC on 18.10.13. The statement under 161 Crpc was recorded on 25.10.13 as the victim had gone to Delhi. The statement under 161 Crpc and FIR were contradictory as no. of persons accused of rape differed from FIR. Therefore, her statement had to be verified cautiously. Place of incident was visited on 08.10.13 as she was not available on other date. Statement under 164 Crpc was recorded on 11.12.13. Call details of mob. No. did not match with the incident. Further statement of other

witnesses has to be taken to corroborate the incident as according to FIR her husband, Father in law, brother in law and mother in law all were present at the time of incident. After collecting all evidence requisition of arrest was given on 18.01.14 to local police station. NBW was taken and sent on 23.01.14 and warrant under 82 Crpc was taken on 27.01.14. Raids were conducted on 18.01.14, 19.01.14 and on other dates in spite of strong resistance from local villagers."

54. Regarding rape case pertaining to CC No. 179 of 2013, the State has furnished the following details:

Date of incident - 08.09.2013

Date of reporting - 22.09.2013

Offences - under Sections 395, 342, 436, 153A, 506, 376D IPC

Police Station - Fugana, Muzaffarnagar

Place of Incident - Village Fugana

Date of medical examination - 29.09.2013

Date of the statement under Section 161 Cr.PC - 24.10.2013

Date of statement under Section 164 Cr.PC - 09.12.2013

55. In the said case, FIR was lodged against 5 named culprits. As regards progress of the case, it is stated:

"The case was registered on 22.09.13 at P/S Fughana Muzaffarnagar by the victim. The investigation was initially started by SI Anil Kumar Jayant of SIC on 30.09.2013 since at that time there was no Lady Police Officer attached to the SIC. Medical of the victim was done on 29.10.2013 by the local police. The investigation

over by Lady Police Officer Inspector Mala Yadav on 18.10.13. On 24.10.13 statement under 161 Crpc was recorded as earlier attempts on 21.10.13 and 23.10.13 to record her statement could not be made as the victim had gone to Delhi. On 8.11.13 the scene of the crime was inspected. Earlier attempt to contact her failed as she has gone to some relations. In her statement name of other witnesses also appeared but they could not be contacted. Call details of victim was also taken to verify the statement given by her son and the victim. The statement of victim differed from FIR as in FIR it was written that the culprits came from roof of the House but in her statement she said that they caught her on the road. She could not even identify the scene of crime. Besides this there were some contradictions in her statement which needed proper verification as she had stated that her domestic animals were stolen but it was found during investigation that she has taken her domestic animals back from one inhabitants of vill. Fughana. The clothes worn by her on the date of the incident could not be recovered as she said that she had thrown it. Her 164 Crpc statement was registered on 09.12.13. The earlier attempts to register her statement u/s 164 Crpc could not succeed because she was not available even though Safina was sent to her under section 160 Crpc. In her 164 Crpc statement she accused all the 5 named person of committing the crime. The statements of other witnesses were also recorded. Therefore, it took some time to ensure that innocent persons may not become culprit and proper sufficient evidence is collected to prosecute the offenders and all contradiction should have proper and reasonable justification. Requisition of arrest under 55 Crpc against all 05 culprit was issued on 18-01-14. NBW was issued against accused on 20.01.14. On 24.01.14 one accused Vedpal was arrested. On 27.01.14 Warrant under 82 Crpc was taken. Meanwhile attempts to arrest the accused was made on 18.01.14, 19.01.14 and even after 27.01.14, though under severe

protest from villagers. Further raids are being made to arrest the accused. No case of arson was found."

56. It is seen from the above particulars that a total number of six cases of rape were registered at the police station Fugana of District Muzaffarnagar. The cases were registered after more than 20 days from the date of incident. According to the State, investigation in all the six cases is almost complete. After taking the statement of victims under Section 161 of the Code, scene of crime has been visited by the investigating officer along with other officers. Medical examination of all the victims has been done and statements of all the victims have been recorded under Section 164 of the Code. It is further seen that although 41 persons were named in all the six cases, investigation and the statement of victims under Section 164 of the Code refers only to 22 persons. Only one accused had been arrested in the case of C.C. No. 179 of 2013 and proclamation under Section 82 of the Code has been issued against rest of the 21 accused persons. It is also seen that raids are being conducted by local police to arrest the remaining accused.

57. The particulars furnished further show that a total seven cases of molestation were registered during the communal violence. After investigation and recording the statement of complainant and the so-called victims, it was found that there was no case of molestation. Charges of molestation in all the seven cases were found false. Out of seven cases, in five cases, other charges of dacoity and injury were also found false as the complainants denied occurrence of any such incident. In rest of the three cases, act of dacoity was claimed by the complainant. Orders of arrest in Crl. No. 299 of 2013 have been given against five persons. In Crl. No. 254 of 2013, complainant stated involvement of 19 out of 22 named persons of committing dacoity and arson. Four fresh names were also given. Investigation is going on to find out the authenticity of involvement of accused person in this

No. 312 of 2013, complainant had named 14 persons but in statement under Section 161 of the Code, denied the charges of molestation. The scene of crime showed arson in the house. Though the complainant has not mentioned any act of arson in the house, the investigating officer has added the relevant Section in his investigation. Investigation is going on to find the involvement of four named persons.

58. In addition to the same, the State has also filed details of molestation cases, such as number of persons involved, offences, police station, summary of FIRs, progress of the case, etc.

59. Regarding the allegation that in the relief camp rape has been committed, based on the information, Case No. 537 of 2013 under Sections 376(g) and 506 IPC has been registered against Sachin and Sushil and the investigation of the same has been initiated by Kawarpal Singh Inspector in charge. During the investigation, both alleged accused Sachin and Sushil have been arrested and sent to the jail on 03.11.2013. Both the accused are in jail. In the investigation, proper and sufficient evidence have been found against both the accused and charge-sheet No. 73 of 2013 dated 08.12.2013 has been presented to the court concerned.

60. Apart from the above particulars, the State has also placed the actual statement of rape victims made under Section 164 of the Code before the court concerned. We have also perused the same.

61. With regard to various allegations raised in Writ Petition (Criminal) No.11 of 2014 relating to the rape victims, a request for recording fresh statement under Section 164 of the Code was made. Responding to this, the State has informed that the statement made by Petitioner No. 4 under Section 164 of the Code had not supported her version in FIR No. 141 of 2013 and Case Crime No. 296 of 2013. During the course of arguments, learned senior counsel for the State agreed to

record the statement of Petitioner No.4 before a lady Magistrate if the petitioner is willing to appear. It is clarified by the State that pursuant to the above statement, the I.O. concerned got in touch with Petitioner No.4 on 17.02.2014 and explained the circumstances to her for making a fresh statement under Section 164 of the Code to a lady Magistrate. However, according to the respondent-State, Petitioner No.4 declined to make a fresh statement under Section 164 of the Code before the lady Magistrate as requested. In addition to the same, counsel for the State has also brought to our notice the statement of Petitioner No.4 and video proceedings which are available with the State for perusal as and when desired by this Court.

62. Regarding the lack of security cover to the rape victims, on behalf of the State, it is brought to our notice that the State of U.P. has provided security cover to all the rape victims, except Petitioner No.4 in whose case Final Report has been filed. It is also brought to our notice that Petitioner No.1 and her husband had been provided security earlier. It is also stated that all the rape victims refused security cover being provided by a lady constable and on seeing the sensitivity of the matter, the State has provided them with one male and one female security personnel. As per the materials placed, the following are the details of the security personnel provided to the petitioners:

S.No.	Petitioner No.	Particulars
1.	Petitioner No.1	Gunner Constable No. 304 armed police Ravi Kumar/ Lady Constable No. 890 Nisha
2.	Petitioner No.2	Gunner Constable No. 238 armed police Anil Kumar/ Lady Constable No. 1195 Anjula

3.	Petitioner No.3	Gunner Constable No. 313 armed police Narendra Kumar /Lady Constable No. 157 Kashtina
4.	Petitioner No.5	Gunner Constable No. 55 armed police Arun Kumar/ Lady Constable No. 1991 Savita
5.	Petitioner No.6	Gunner Constable No. 319 armed police Vineet Kumar/ Lady Constable No. 1302 Meenakshi
6.	Petitioner No.7	Gunner Constable No. 232 armed police Ravish/Lady Constable No. 1023 Bharti

63. Regarding non-registration of FIR on the complaint sent by Petitioner No.7, the State has informed this Court that FIR No. 18 of 2014 being Case Crime No. 37 of 2014 under Sections 376D and 506 of the IPC at Police Station Fugana stands registered even on 18.02.2014. It is also brought to our notice that the following accused persons, viz., Kuldeep, Maheshveer and Sikandar have been made accused in the said case crime and investigation had already been commenced. As on date, Petitioner No. 7 has also been provided with one male and one female security personnel.

64. In respect of arrest of accused persons in cases related to the offence of rape, the State has highlighted that so far 50 teams of police personnel have been constituted. Each team is led by a Sub-Inspector and has 2-3 constables. Each team has been allotted 3-4 accused and has been given a specific time frame to affect these arrests since during the raids, it has been found that the accused persons are not staying in their native villages. These teams will track the location and

have a focussed strategy of arresting targetted persons. In addition to the same, it is highlighted that two companies of the State Paramilitary Force have been earmarked for assisting these arresting squads. Additional SP, Crime, Muzaffarnagar has been made in-charge of arrest operations. It is also assured to this Court that despite resistance to arrests, police has successfully conducted raids on the houses and probable places of hiding in villages on regular basis.

Action taken in murder and other offences:

65. Regarding murders which occasioned during the violence, the State has filed a compilation containing list of named accused who were found false in murder cases. The particulars furnished by them show that about 70 persons (54 Hindus and 16 Muslims) were shown as accused and after investigation it was found that they were falsely implicated. In the Action Taken Report dated 08.02.2014, under the caption "murder cases", the State has furnished information that in Muzaffarnagar, Shamli, Bagpat, Saharanpur, Meerut, 857 persons were implicated and after investigation they identified the total true accused as 337, out of which 94 persons were arrested, 14 surrendered, 6 reported dead and non-bailable warrants are pending against 198, Section 82 proceedings pending against 119, Section 83 proceedings pending against 3 and 6 persons were detained under the National Security Act. The details furnished further show that a total of 59 cases are being investigated by SIC. In these cases, 741 persons were named and 116 persons were brought to light. Of these, evidence has been found against 337 persons. Requisition of arrest has been sent against 289 accused. 94 accused have been arrested and 14 have surrendered before the Court. 6 accused died during investigation. Non-bailable warrants against 193 accused have been issued and action under Section 82 of the Code has been taken against 116 accused. Action under Section 83 of the Code has been taken against 3 accused. Charge-sheet was filed ag[illegible]0

persons were found false. Cases against 450 persons named/ brought to light are under investigation.

66. In addition to the same, the State has also furnished details showing the names of the accused found true in murder cases. It shows that a total number of 322 accused were found true, which consists of 286 from Hindu community and 36 from Muslim community. The chart also shows the names and residential particulars, crime number, police station, other details about action against those accused. The State also filed list of surrendered accused in murder cases which comes to total 13 persons (4 from Hindu community and 9 from Muslim community), all from Muzaffarnagar district. The chart also shows the names and residential particulars, case number, police station, offences under various enactments, date of surrender, etc.

Cancellation of Bail:

67. Regarding cancellation of bail orders, on hearing the counsel for the petitioners, this Court sought details of cancellation of bail and action undertaken by the State with regard to those accused who have been granted bail either by the Court of Magistrate or Sessions Court. In response to the same, the State has furnished that against 26 accused persons, the State has moved for cancellation of bail before the Court of Sessions. In addition to the same, the State has also placed a chart showing the details of cases in which the State has moved before the Court of Sessions. The details furnished show that in 26 cases in which the accused persons were charged with various offences under IPC read with Criminal Amendment Act, though court concerned has granted bail, the State has moved an application for cancellation of the same. The State Authorities are directed to pursue the same effectively. It is also brought to our notice that in another set of petitions where the accused persons have been granted bail by the competent court, the State has already given approval to file application for cancellation of bail before the High Court

and the Government counsel has been instructed that necessary action may be taken for moving such applications. The details of moving applications for cancellation of bail against 57 accused persons to be filed before the High Court are furnished before this Court for our perusal. The Government counsel has also brought to our notice such government orders instructing for moving such applications for cancellation. During the course of hearing, the counsel for the State has also brought to our notice Government Order dated 09.01.2014 for cancellation of the bail of Azad and others in Case Crime No. 415 of 2013.

68. During the course of hearing, various counsel appearing for the petitioners submitted that bail has been granted to some accused persons as the State had not strongly opposed their bail applications. By drawing our attention to certain documents placed before us, the counsel for the State has pointed out that the Additional Public Prosecutor had opposed the grant of bail then and there.

69. Regarding action taken against persons belonging to various political parties, it is highlighted that the State Government has taken strict action against all the accused persons irrespective of their political affiliation. Learned counsel for the State has pointed out that even the State Government invoked the provisions of National Security Act wherever required. It is pointed out that the provisions of National Security Act were invoked against 11 persons. Mr. Sangeet Som, MLA, BJP and Mr. Suresh Rana, MLA, BJP were amongst those 11 persons. The chart produced by the State for our consideration shows that against 11 persons hailing from Districts Muzaffarnagar, Shamli and Baghpat detention under National Security Act was claimed and the appropriate Board approved five detention orders and disapproved 6.

70. In addition to the same, the State of U.P. has moved application for cancellation of bail in relation to Mr. Kadir Rana, M.P. BSP, Mr. Suresh Rana, MLA, BJP, Mr. Kunwar Bhartendu, MLA, BJP and Mr. Shyam Lal. The State[illegible]at

against Mr. Sangeet Som, MLA BJP an application for cancellation of bail will be moved by the State of UP before the Allahabad High Court. It is also brought to our notice that against Mr. Sangeet Som, a case Crime No. 888/13 under Sections 153A, 420, 120B and 66AE of the IT Act read with 7th Criminal Law Amendment Act was lodged in which it was alleged that the accused had uploaded a false and inflammatory video clipping intended to incite communal violence in the State. In this regard, it is submitted that the said clipping was uploaded on the social website-Facebook which has its server in the US. It is submitted that the request for providing the details of the IP address of the computer which has been used to upload the said video is being made to the said company following the provisions of Section 166A of the Code. Letter dated 26.11.2013, written by the Under Secretary, Government of India to the Home Department, State of U.P. is also placed before us.

Follow-up action initiated for Missing Persons:

71. With regard to the allegations regarding missing persons, the State has placed materials to show that there were total 24 reported missing persons, out of which 3 have been traced and have returned to their houses and 2 dead bodies have been found. Remaining 19 persons are still missing and the State administration has assured that necessary steps have been taken for the same. If any person is declared dead in terms of Registration of Births and Deaths Act, 1969 and the Indian Evidence Act, the State will consider for paying compensation to the kith and kin of their families.

Whether investigation by SIT/CBI is required:

72. Regarding the claim for transfer of investigation to specialized agency like the Central Bureau of Investigation (CBI) or Special Investigation Team (SIT) or transfer of trial outside the State of U.P., it is useful to refer the principles enunciated by this Court in various decisions:-

73. In *Common Cause, A Registered Society vs. Union of India and Others,* (1999) 6 SCC 667, while considering the scope and ambit of a criminal case being tried or to direct an investigation by the CBI, a three-Judge Bench of this Court held as under:-

> "174. The other direction, namely, the direction to CBI to investigate "any other offence" is wholly erroneous and cannot be sustained. Obviously, direction for investigation can be given only if an offence is, prima facie, found to have been committed or a person's involvement is prima facie established, but a direction to CBI to investigate whether any person has committed an offence or not cannot be legally given. Such a direction would be contrary to the concept and philosophy of "LIFE" and "LIBERTY" guaranteed to a person under Article 21 of the Constitution. This direction is in complete negation of various decisions of this Court in which the concept of "LIFE" has been explained in a manner which has infused "LIFE" into the letters of Article 21."

74. In *Secretary, Minor Irrigation & Rural Engineering Services, U.P. and Others vs. Sahngoo Ram Arya and Another,* (2002) 5 SCC 521, again, considering the power of the High Court under Article 226 to direct an inquiry by the CBI, this Court held thus:

> "5. While none can dispute the power of the High Court under Article 226 to direct an inquiry by CBI, the said power can be exercised only in cases where there is sufficient material to come to a prima facie conclusion that there is a need for such inquiry. It is not sufficient to have such material in the pleadings. On the contrary, there is a need for the High Court on consideration of such pleadings to come to the conclusion that the material before it is sufficient to direct such an inquiry by CBI. This is a requirement which is clearly deducible from the judgment of this Court in the case of Comm

75. In *State of West Bengal and Others vs. Committee for Protection of Democratic Rights, West Bengal and Others,* (2010) 3 SCC 571, a Constitution Bench of this Court while considering direction of High Court under Article 226 or this Court under Article 32, directing the CBI to investigate cognizable offence in a State without the consent of the State Government, explained its scope and permissibility. Among various reasons, the direction in para 70 is relevant which is as under:

> 70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations."

76. With these principles, let us test whether the case on

hand, particularly, at this juncture is required to be entrusted to CBI or SIT to be formed with personnel from other States.

77. Almost all the petitioners, either victims, NGOs, persons hailing from that region, prayed for an independent investigation of the entire incident relating to communal violence and the subsequent action either by the Special Investigation Team (SIT) consisting of officers from outside U.P. or by the independent Agency like CBI. We have already referred and adverted to the grievance of various group of persons, organizations as well as the stand taken by the Union of India and specific stand taken by the State of Uttar Pradesh including having taken appropriate action against the culprits, rehabilitation measures for the victims, compensation for the loss of properties, both movable and immovable, for injuries, both simple and grievous, and fatal cases. The State has also highlighted the steps taken in respect of rape victims due to the communal violence and rehabilitation measures for those victims. In addition to the same, the State has also highlighted the cases filed against the persons concerned irrespective of their political affiliations, cases filed against political persons, either MLA/MPs and the status as on date.

78. It is not in dispute that subsequent to the incident that took place on 07.09.2013 and afterwards, in and around Muzaffarnagar, a large number of persons, particularly, villagers from within and neighbouring districts, fled from their homes out of fear and took shelter in relief camps in various villages of two districts of Muzaffarnagar and Shamli. It is also seen that total 58 camps were made functional of which 41 camps were established in the district Muzaffarnagar and 17 in the district Shamli.

79. The incidents of communal disturbance flared up sometimes on flimsy grounds blaming one community to other. Whatever may be, after the Mahapanchayat that took place on 07.09.2013, certain incidents such as eve-teasing of other community girls followed by murders ha[illegible]r,

inasmuch as thousands of people gathered at a particular place in order to take revenge or retaliate, it is expected by the State intelligence agencies to apprise the State Government and the District Administration in particular, to prevent such communal violence. Though the Central Government even on day one informed this Court through the Attorney General for India that all necessary help, both financially and for maintaining law and order, had been provided to the State, there is no authoritative information to this Court whether there was any advance intimation to the State about the communal violence. Likewise, though the State has enumerated several aspects in the form of eleven compliance reports, there is no information to this Court whether the District Administration was sounded about the proposed action between the two communities. Had the Central and State intelligence agencies smelt these problems in advance and alerted the District Administration, the unfortunate incidents could have been prevented. Thus, we prima facie hold the State government responsible for being negligent at the initial stage in not anticipating the communal violence and for taking necessary steps for its prevention.

80. At this juncture, viz., after a period of six months, whether an agency other than the State is to be directed to investigate and take appropriate steps. We have already noted various circumstances under which the court can entrust investigation to agency other than the State such as SIT or CBI. We have to keep in mind, as observed by the Constitution Bench referred to supra, that no inflexible guidelines can be laid down to decide whether or not such power should be exercised. However, this Court reiterated that such order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the State police. In other words, this extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility or instill confidence in investigation or where such an order may be necessary for doing complete justice in enforcing the fundamental rights.

Apart from this, immediately after the occurrence, Writ Petition (Crl.) No. 155 of 2013 came to be filed in this Court even in the first week of September, 2013. Pursuant to the same, this Court, after taking note of the importance of the issues, viz., many people lost their lives and properties, sufferings of both communities and children, issued various directions to the State and the Central Government. We have already extracted those orders in the earlier part of our judgment.

81. It is relevant to note that based on various orders of this Court, even after the incident, the State itself has constituted a Special Investigation Cell (SIC). It is also brought to our notice that a total of 566 cases are being investigated by the SIC and after noting that many cases were false and many persons were wrongly named in the FIRs, 549 names have been removed. A total of 48 registered cases have been found false and have been removed from the records. It is also brought to our notice that names of 69 persons in murder cases have been found false and those names have also been removed from the array of parties. The details furnished by the State also show that after constitution of the SIC in September, it inquired about all those persons who had fled from their villages and had taken refuge in various relief camps and noted their problems by taking list of such persons staying in camps and getting their mobile numbers. The SIC also recorded the statements of the complainants and witnesses. We have already referred to the total number of arrested persons in communal violence in Muzaffarnagar and adjoining areas, list of total surrendered accused in the investigated cases, number of persons against whom action was taken due to communal violence, details regarding political persons, difficulties faced by the District Police in making arrests, details regarding recovery of AK-47 and 9 MM cartridges in village Kirthal P.S. Ramola, District Baghpat. They also placed the details about the steps taken in respect of case Crime No. 148 of 2013 (Fagana, Muzaffarnagar) and 403/2013 (Janath, Muzaffarnagar). In the list of persons, SIC also noted communit ir

political parties etc.

82. In respect of cases of rape, the State has assured this Court that they are taking effective steps to apprehend all the accused and in providing security cover to the rape victims. 50 teams of police personnel have been constituted in order to arrest the accused persons in rape and other cases. The State has also filed details and progress of rape and molestation cases, statement of rape victims under Section 164 of the Code etc.

83. We have already noted that action had been taken against 11 persons under the provisions of the National Security Act as well as persons belonging to various political parties. The State has also furnished the details regarding 24 missing persons out of which 3 have been traced and is taking effective steps for tracing the remaining missing persons.

84. In respect of murder cases, the State has filed a separate chart showing the list of accused persons, verification of persons concerned who were involved, list of surrendered accused in murder cases as well as various other steps for apprehending the remaining accused. The State has also highlighted that through their public prosecutors/ counsel, it is taking effective steps for cancellation of bail in those heinous crimes in which persons involved have secured bail.

85. In the light of various steps taken by the State, facts and figures, statistics supported by materials coupled with the various principles enunciated in the decisions referred above, we are of the view that there is no need to either constitute SIT or entrust the investigation to the CBI at this juncture. However, we are conscious of the fact that more effective and stringent measures are to be taken by the State administration for which we are issuing several directions hereunder.

Victim Compensation in Rape Cases:

86. As a long term measure to curb such crimes, a large

societal change is required via education and awareness. The Government will have to formulate and implement policies in order to uplift the socio-economic conditions of women, sensitization of police and other concerned parties towards the need for gender equality and it must be done with focus in areas where statistically there is higher percentage of crimes against women.

87. No compensation can be adequate nor can it be of any respite for the victims but as the State has failed in protecting such serious violation of fundamental rights, the State is duty bound to provide compensation, which may help in victims' rehabilitation. The humiliation or the reputation that is snuffed out cannot be recompensed but then monetary compensation will at least provide some solace.

88. In 2009, a new Section 357A was introduced in the Code which casts a responsibility on the State Governments to formulate Schemes for compensation to the victims of crime in coordination with the Central Government whereas, previously, Section 357 ruled the field which was not mandatory in nature and only the offender can be directed to pay compensation to the victim under this Section. Under the new Section 357A, the onus is put on the District Legal Service Authority or State Legal Service Authority to determine the quantum of compensation in each case. However, no rigid formula can be evolved as to have a uniform amount, it should vary in facts and circumstances of each case. Nevertheless, the obligation of the State does not extinguish on payment of compensation, rehabilitation of victim is also of paramount importance. The mental trauma that the victim suffers due to the commission of such heinous crime, rehabilitation becomes a must in each and every case.

89. Considering the facts and circumstances of these cases, we are of the view that the victims in the given case should be paid a compensation of Rs. 5 lakhs each for rehabilitation by the State Government.

the State Government to make payment of Rs. 5 lakhs, in addition to various other benefits, within 4 weeks from today. Further, we also wish to clarify that, according to Section 357B, the compensation payable by the State Government under Section 357A shall be in addition to the payment of fine to the victim under Section 326A or Section 376D of the IPC.

Directions relating to rape cases:

90. We have already noted various steps taken by the State in respect of rape cases. In addition to the same, in the light of the apprehensions/grievance expressed by the learned counsel for the petitioner in W.P. (Crl.) No. 11 of 2014, we issue the following directions:

1) The SIC is directed to arrest and produce before the Court all the persons concerned in respect of petitioners in W.P. (Crl.) No. 11 of 2014 as well as other affected victims within a time-bound manner. They are also directed to record the statement of the victims under Section 164 of the Code before a lady Magistrate even if they had made a statement, if they desire to make additional statement, the same may be recorded as requested.

2) The security cover provided to rape victims as furnished before this Court shall continue till they desire or completion of the trial whichever is later.

3) The victims of rape who are parties in W.P. (Crl.) No. 11 of 2014 as well as other rape victims are to be paid compensation of Rs. 5 lakhs each, in addition to various other benefits, by the State Government within a period of 4 weeks from today.

4) The State is also directed to provide other financial assistance as well as any other scheme applicable to them for their betterment and to continue their normal avocation.

Directions regarding other offences including murder:

1) Sincere efforts shall be made to apprehend all the accused irrespective of political affiliation and produce them before the appropriate court.

2) The particulars furnished by the State in respect of criminal action taken against political persons shall be continued by placing acceptable materials before the court concerned.

3) The reason given by the State Police that whenever efforts were made to arrest the persons involved, women folk of their village form a human chain and block the police in execution of their work is unacceptable and untenable. If there is reliable material against a person irrespective of the community or religion, the police have to take sincere efforts in arresting those persons and produce them before the court concerned. There shall not be any let up and upon failure on the part of the police, action will be taken against the officers concerned. The victims or aggrieved persons are free to move such application before the jurisdictional court.

4) In respect of recovery of AK-47, 9 mm cartridges in village Kirthal, the police have to identify the persons concerned and proceed against them under the provisions of IPC and Arms Act.

5) In respect of Case Crime No. 148/2013, P.S. Fugana, Case Crime No. 403/2013, 404/2013 P.S. Jansath, more efforts must be taken for apprehending all the genuine accused and to produce them before the court for further action.

6) The investigating authorities should eschew communal bias and proceed against all the offenders irrespective of their caste, community and religion

7) In the case of murders, the police must take sincere efforts to identify and arrest the real culprits within a time-bound manner preferably within a period of two months and report the same before the jurisdictional court concerned.

8) In heinous crimes, including murder cases, if any of the real accused was granted bail, as assured before this Court, the District Administration has to take effective steps for cancellation of their bail in appropriate cases.

9) As assured before this Court, the persons concerned in the higher level to follow the letters issued to various government counsel/police officers/I.O. for apprehending the real accused and re-arresting the released persons by getting appropriate orders from the court concerned.

10) The authorities concerned should continue to take effective steps to locate the missing persons.

Financial Assistance/Rehabilitation measures:

1) Children who died in the violence as well as in the camps due to cold weather conditions shall be compensated to their parents as that of others.

2) The State is directed to identify the left out injured persons (simple/grievous), next kin of the deceased who died in the communal violence and settle the compensation agreed to before this Court (Rs. 10,00,000 + Rs. 3,00,000 + Rs. 2,00,000 = Total Rs. 15,00,000). It is also directed to settle compensation for the damages caused to movable/immovable properties of the person concerned due to the violence if they have not already received the same. Any of the victims referred above such as rape victims and the family members of the deceased who died in the violence, if they have not received any amount so far, they are permitted to make proper application to the local/district authority concerned within a period of one month from today. If any such application is made,

the authorities concerned are directed to verify and after satisfaction settle the eligible amounts within a period of one month thereafter. The District Administration is also directed to implement Rani Lakshmibai Pension Yojana to eligible persons and consider the case of persons who were left out or who have not made any such application till this date. Any of the victims, if need arise, may also approach the District Legal Services Authority and the DLSAs are directed to provide necessary help to the victims in the light of various directions referred above.

3) For any reason, after receipt of Rs. 5 lakhs those who want to settle to other places than the place of occurrence after change of mind and in order to join their relatives and friends in the village/place where they lived at the time of violence, are permitted to resettle, in that event, the State is directed not to recover the amount already paid. However, the State is free to ascertain the genuineness of those persons concerned in their effort to resettle in the same place. The District Administration has to make all endeavours for their peaceful return to the same place in order to continue the same avocation along with their relatives and friends.

4) The officers who have grievance about their transfer on vindictive ground from the district concerned to far away places are free to make a representation to the competent authority within a period of one month from today. If any such representation is made and if the same is acceptable, the competent authority is directed to take a fresh decision.

5) Adequate compensation should be paid to the farmers who lost their source of livelihood, namely, tractors, cattles, sugarcane crops etc. In this category, the farmers who were yet to get compensation for the same are permitted to make a representation within one month from today supported by materials to the local/district administration. If any such representation is made, the same shall be considered and disposed off within a period of one mo

91. Finally, we reiterate that it is the responsibility of the State Administration in association with the intelligence agencies of both State and Centre to prevent such recurrence of communal violence in any part of the State. It is made clear that the officers responsible for maintaining law and order, if found negligent, should be brought under the ambit of law irrespective of their status. It is important that the relief, as enumerated above, not only be provided to all needy families irrespective of their religion but it should also be provided to only genuinely affected families.

92. With the above directions, we dispose of all the matters including the intervention applications. However, the affected persons, if they come across any impediment in implementing the above directions, are permitted to highlight their grievance by filing application before this Court in the above matters after a period of two months from today. It is made clear that only after exhaustion of efforts with the District authorities concerned, they are permitted to file such application in the above disposed off matters. In those cases which have not been transferred to this Court and are still pending before the High Court of Allahabad, the parties are free to move the High Court for disposal of the same in accordance with the above directions.

D.G. Matters disposed of.

MANGAT RAM
v.
STATE OF HARYANA
(Criminal Appeal No. 696 of 2009)

MARCH 27, 2014

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

Penal Code, 1860 - ss.498A and 306 - Married woman died of burn injuries at her matrimonial home few months after marriage, while appellant-husband was away at his place of work - No evidence to show whether it was an accidental death or whether the deceased had committed suicide - Conviction of appellant-husband u/ss.498A and 306 - Justification - Held: Not justified - Circumstances of the case as pointed out by the prosecution totally insufficient to hold that the appellant had abetted his wife to commit suicide and the circumstances enumerated u/s.113A of the Evidence Act also not satisfied - Every reason to believe that, in the instant case, the death was accidental - Possibility of accidental death, since deceased was suffering from Epilepsy, cannot be ruled out - Evidently, deceased was in the kitchen and, might be, during cooking she might have suffered Epileptic symptoms and fell down on the gas stove and might have caught fire, resulting in her ultimate death - DW2, ASI, the Investigating Officer of the case, deposed that he had recorded the statements of the deceased wherein she had stated that she was suffering from Epilepsy for the last three years before the incident and that on the incident date, while she was preparing meals on stove, she had an attack of fits and fell on the stove and caught fire - Deceased had also deposed at that time that her husband was away at duty when the incident occurred - The trial Court as well as the High Court did not properly appreciate the scope of ss.498-A and 306 IPC - Alleged dowry demand of Rs.10,000/- and the demand of scooter, stated to have been

made by the appellant, not established - The fact that appellant had left deceased in the matrimonial home in the company of his parents would not amount to abetment to commit suicide - The prosecution did not succeed in establishing the offence u/ss.498-A and 306 IPC against the appellant -Evidence Act, 1872 - s.113A.

The wife of appellant died of burn injuries at her matrimonial home, while the appellant was away at the place of his work. There was no evidence to show whether it was an accidental death or whether the deceased had committed suicide. The marriage between the appellant and the deceased was an inter-caste love marriage and, the incident occurred after few months of marriage. The trial Court came to the conclusion that an offence under Section 498-A IPC was made out against the appellant. Further, it held that an offence under Section 306 IPC was also made out against the appellant, though no charge was framed under that section. The High Court affirmed the conviction. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1. The trial Court as well as the High Court have not properly appreciated the scope of Sections 498-A and 306 IPC. Taking into consideration all aspects of the matter, it is clear that the prosecution has not succeeded in establishing the offence under Section 498-A and Section 306 IPC against the appellant. Consequently, the conviction and sentence awarded by the trial Court and confirmed by the High Court, are set aside. [Paras 22, 29]

State of Punjab and others v. Jagdev Singh Talwandi **(1984) 1 SCC 596: 1984 (2) SCR 50;** *State of Punjab and others v. Surinder Kumar and others* **(1992) 1 SCC 489: 1991 (3) Suppl. SCR 553 and** *Zahira Habibulla H. Sheikh and*

another v. State of Gujarat and others **(2004) 4 SCC 158: 2004 (3) SCR 1050 - referred to.**

2. In order to establish the ingredients of Section 498-A IPC, the prosecution examined PW4, the maternal grand-father of the deceased, who had brought her up, on the demise of her parents. PW4 deposed that the accused persons had demanded a dowry of Rs.10,000/- and a scooter and, on 14.8.1993, PW4 gave Rs.10,000/- in cash to the accused and had also promised to make arrangement for the purchase of a scooter. PW5, a distant relative of PW4, also stated that after 15-20 days of the marriage, the deceased came along with the accused to the residence of PW4 and, at that time, the deceased had told PW4 and others that the accused was harassing her since she had not brought dowry. PW5 also deposed that articles like cooler, fridge, sofa, double bed were given to the accused by way of dowry. PWs 4 and 5 had deposed that a demand of dowry was made not only by the appellant, but also by his parents and sister. The trial Court recorded a clear finding that the prosecution had failed to bring home the guilt as against the parents and sister of the appellant under Section 498A, 304-B IPC, which was not questioned by the prosecution. However, if that part of the evidence of PWs 4 and 5 could not be believed against the rest of the accused, then it could not be put against the appellant alone, especially when PWs 4 and 5 had stated that the demand for dowry was made by all the accused on 13.8.1993. The evidence of PWs 4 and 5 has to be appreciated in the light of the fact that they were against the inter-caste marriage, since the appellant belonged to Scheduled Caste community and the deceased belonged to Aggarwal community, a forward community. Alleged dowry demand of Rs.10,000/- and the demand of scooter, stated to have been made by the accused, could not be established not only against the other three accused persons, [illegible]e

appellant as well. [Paras 8, 9]

3.1. When the deceased sustained burn injuries, the appellant was not at home. The trial Court itself said that there was no such evidence on the file that she was subjected to cruelty or harassment, but adopted a strange reasoning to hold that the conduct of appellant in keeping and leaving the deceased at his parental home amounted to causing cruelty and harassment to the deceased. Another perverse reasoning of the trial Court which, according to the trial Court, led to the act of suicide, was that the deceased had committed suicide out of frustration and discontentment and due to the reason that her maternal grandfather did not reach for her rescue. In the letters sent by the deceased to her maternal grand father PW4, there is absolutely no indication of any harassment or dowry demand by the accused. The letters only indicate that she was home-sick and wanted very much to see her grand father. [Paras 11, 12, 13, 14]

3.2. The picture that emerges from the conduct of the deceased was that she was very home-sick at her matrimonial home and was very much attached to PW4 and her friends and relatives at her home. The accused being a Police Constable had to serve at various places away from his village and, then necessarily he had to leave his wife at his home in the care and protection of his parents. Not taking the wife along with him, itself was, however, commented upon by the trial Court stating that the accused had left his wife, an educated girl belonging to a business community, in a village and in the house of a lower community people, whose way of life, whose way of talking, whose way of behaviour would not be at par with the family members of the deceased. On this reasoning, the trial Court concluded that the deceased was feeling perplexed, agitated and expected that the

accused would take her at his place of posting, rather than leaving in a village in the company of rustic persons which, according to the Court, led to discontentment and unhappiness. One fails to understand how a judicially trained mind would come out with such a reasoning. [Paras 16, 17]

3.3. The failure of a married person to take his wife along with him to the place where he is working or posted, would not amount to cruelty leading to abetment of committing suicide by the wife. Taking wife to place of posting depends upon several factors, like the convenience of both, availability of accommodation and so many factors. In the instant case, the appellant had left the wife in the matrimonial home in the company of his parents and one fails to see how that action would amount to abetment to commit suicide. Surprisingly, the High Court found fault with the appellant for leaving the deceased "at the mercy of his parents". [Paras 18, 19]

3.4. A woman may attempt to commit suicide due to various reasons, such as, depression, financial difficulties, disappointment in love, tired of domestic worries, acute or chronic ailments and so on and need not be due to abetment. The reasoning of the High Court that no prudent man will commit suicide unless abetted to do so by someone else, is a perverse reasoning. [Para 20]

4. Explanation to Section 498-A IPC gives the meaning of 'cruelty', which consists of two clauses. To attract Section 498-A, the prosecution has to establish the wilful conduct on the part of the accused and that conduct is of such a nature as is likely to drive the wife to commit suicide. The failure to take one's wife to his place of posting, would not amount to a wilful conduct of such a nature which is likely to drive a woman to commit suicide. A married woman [illegible]

home by the husband would not by itself amount to a wilful conduct to fall within the expression of 'cruelty', especially when the husband is having such a job for which he has to be away at the place of his posting. It cannot be said that a wife left in a village life "in the company of rustic persons", borrowing language used by the trial Court, would amount to wilful conduct of such a nature to fall within the expression of 'cruelty'. Both the trial Court as well as the High Court completely misunderstood the scope of Section 498-A IPC read with its explanation. Clearly, no offence under Section 498-A has been made out against the accused appellant. [Para 23]

5. The trial Court found that no offence under Section 304-B IPC has been made out against the appellant, but it convicted him under Section 306 IPC, even though no charge had been framed on that section against the accused. The scope and ambit of Section 306 IPC has not been properly appreciated by the Courts below. [Para 24]

6.1. The mere fact that if a married woman commits suicide within a period of seven years of her marriage, the presumption under Section 113A of the Evidence Act would not automatically apply. So far as the present case is concerned, the prosecution has not succeeded in showing that there was a dowry demand, nor the reasoning adopted by the Courts below would be sufficient enough to draw a presumption so as to fall under Section 113A of the Evidence Act. Section 113A gives discretion to the Court to raise such a presumption having regard to all other circumstances of the case, which means that where the allegation is of cruelty, it can consider the nature of cruelty to which the woman was subjected, having regard to the meaning of the word 'cruelty' in Section 498-A IPC. [Para 26]

6.2. The circumstances of the case pointed out by the prosecution are totally insufficient to hold that the accused had abetted his wife to commit suicide and the circumstances enumerated under Section 113A of the Evidence Act have also not been satisfied. [Para 27]

Hans Raj v. State of Haryana **(2004) 12 SCC 257: 2004 (2) SCR 678 and** *Pinakin Mahipatray Rawal v. State of Gujarat* **(2013) 10 SCC 48 - relied on.**

7. There is every reason to believe that, in the instant case, the death was accidental, for the following reasons.

- **Though not proved in her dying declaration, it has come out in evidence that the deceased was suffering from Epilepsy for the last three years i.e. before 15.3.1993, the date of incident. This fact is fortified by the evidence of the Doctor, who was examined as DW1. He deposed that the deceased was suffering from Epilepsy and was under his treatment from 23.12.1992 to 2.4.1993. The evidence of DW1 was brushed aside by the trial Court on the ground that he was not a Psychiatrist. Epilepsy is not a Psychiatrist problem. It is a disease of nerves system and a MD (Medicine) could treat the patient of Epilepsy. The reasoning given by the trial Court for brushing aside the evidence of DW1 cannot be sustained. Therefore, the possibility of an accidental death, since she was suffering from Epilepsy, cannot be ruled out. Evidently, she was in the kitchen and, might be, during cooking she might have suffered Epileptic symptoms and fell down on the gas stove and might have caught fire, resulting her ultimate death.**

- **DW2, ASI, the Investigating Officer of the case, deposed that he had recorded the statements of the deceased wherein she had stated that she was suffering from Epilepsy for the last three years before the incident and that on 15.9.1993 while she was preparing meals on stove, she had an attack of fits and fell on the stove and caught fire. She had also deposed at that time that her husband was away at duty at Madhuban, Karnal. The evidence of DW2 has to be appreciated in the light of overall facts and circumstances of the case. [Para 28]**

Case Law Reference:

1984 (2) SCR 50	**referred to**	**Para 4**
1991 (3) Suppl. SCR 553	**referred to**	**Para 4**
2004 (3) SCR 1050	**referred to**	**Para 4**
2004 (2) SCR 678	**relied on**	**Para 26**
(2013) 10 SCC 48	**relied on**	**Para 27**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 696 of 2009.

From the Judgment and Order dated 27.05.2008 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 592-SB of 1997.

Satinder S. Gulati (for Kamaldeep Gulati) for the Appellant.

The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. The appellant Mangat Ram, a member of SC community, married the deceased Seema, a member of the Aggarwal community on 13.7.1993 at Ambala. Few months after the marriage, on 15.9.1993, according to the prosecution, the appellant sprinkled kerosene

oil on the body of the deceased and set her on fire, having failed to meet the dowry demand. On hearing the hue and cry, neighbours assembled and took her to the Civil Hospital, Gohana and, later, she was shifted to the Medical College and Hospital, Rohtak, where she died on 17.9.1993. The appellant, along with his parents and sister, were charge-sheeted for the offences punishable under Sections 498-A and 304-B IPC.

2. The prosecution, in order to bring home the offences, examined PWs 1 to 7 and also produced various documents. On the side of defence, DWs 1 to 5 were examined and the accused appellant got himself examined as DW6. After the evidence was closed, the accused was questioned under Section 313 of the Code of Criminal Procedure (Cr.P.C.), who denied all the incriminating statements made against him. The trial Court, after appreciating the oral and documentary evidence, came to the conclusion that an offence under Section 498-A IPC was made out against the appellant, but not against the other three accused persons. The trial Court also found that no offence under Section 304-B IPC was made out against the accused persons, including the appellant. However, it was held that an offence under Section 306 IPC was made out against the appellant, though no charge was framed under that section. After holding the appellant guilty, the trial Court convicted the appellant under Section 498-A IPC and sentenced him to undergo imprisonment for three years and to pay a fine of Rs.1,000/-, in default, to further undergo rigorous imprisonment (RI) for six months. The appellant was also convicted under Section 306 IPC and sentenced to undergo imprisonment for a period of seven years and to pay a fine of Rs.4,000/-, in default, to further undergo RI for two years.

3. Aggrieved by the conviction and sentence awarded by the trial Court, the appellant preferred Criminal Appeal No. 592-SB of 1997, which when came up for hearing before the Division Bench of the High Court on 3.5.2007, the Court passed the following order:

"Present: Mrs. Ritu Punj, DAG, Haryana

Mrs. Harpreet Kaur Dhillon, Advocate is appointed as Amicus Curiae.

Heard

Dismissed, reasons to follow."

4. Aggrieved by the said order, the appellant preferred SLP (Criminal) No. 7578 of 2007 which was later converted into Criminal Appeal No. 182 of 2008. The criminal appeal came up for hearing before this Court on 25.1.2008 and this Court deprecated the practice of the High Court in disposing of the criminal appeals without recording reasons in support of its decision. Placing reliance on the judgments of this Court in *State of Punjab and others v. Jagdev Singh Talwandi* (1984) 1 SCC 596, *State of Punjab and others v. Surinder Kumar and others* (1992) 1 SCC 489 and *Zahira Habibulla H. Sheikh and another v. State of Gujarat and others* (2004) 4 SCC 158, this Court set aside the judgment of the High Court and directed the High Court to hear the appeal on merits.

5. The High Court then considered the criminal appeal and dismissed the same on merits vide its judgment dated 27.5.2008 confirming the conviction and sentence awarded against the accused by the trial Court. Aggrieved by the same, this appeal has been preferred.

6. Mr. Satinder S. Gulati, learned counsel appearing for the appellant, took us elaborately through the oral and documentary evidence adduced by the parties and submitted that the judgment of the trial Court as well as the High Court is based on conjunctures, full of contradictions and surmises and there is no evidence to substantiate the charges levelled against the accused. Learned counsel submitted that there was a complete misreading of the oral and documentary evidence and, at every stage, the Courts below adopted its own strange reasoning which was not brought out from the deposition of the

witnesses. Learned counsel pointed out that, throughout the judgment of the trial Court as well as the High Court, one can notice that the Courts below were prejudiced to the accused for having entered into an inter-caste marriage and opined that the plight of such marriages would be discontentment and unhappiness. Learned counsel pointed out that there is sufficient evidence to conclude that the deceased was suffering from Epilepsy for the last few years of the incident and that death might have been caused by accident and, in any view, it was not a homicidal death. Further, it was pointed out that the prosecution could not prove that the appellant was at home when the incident had happened. Learned counsel also submitted that the trial Court has committed an error in altering the offence to that of Section 306 IPC after finding the accused not guilty under Section 304-B IPC. Learned counsel pointed out that the ingredients of the offence under Section 304-B as well as Section 306 IPC are entirely different and the trial Court has committed a grave error in convicting the appellant under Section 306 IPC. Learned counsel also pointed out that there is absolutely no evidence of dowry demand and the conviction recorded under Section 498-A IPC is also without any material. In support of his various contentions, learned counsel also made reference to few judgments of this Court, which we will deal in the latter part of this judgment.

7. We did not have the advantage of hearing any counsel on the side of the State, even though, the hearing was going on for a couple of days. Learned counsel appearing for the appellant took us through the depositions of the witnesses examined on the side of the prosecution as well as the defence, as also the documentary evidence placed before the Court.

8. We may first examine whether an offence under Section 498-A IPC has been made out against the appellant. Admittedly, the marriage between the appellant and the deceased was an inter-caste love marriage and, after few months of the marriage, she died of burn injuries on 17.9.1993 at [illegible]e.

The question is whether immediately before and during the period between the date of marriage and the date of incident, was there any dowry demand on the side of the accused. In order to establish the ingredients of Section 498-A IPC, the prosecution examined PW4, the maternal grand-father of the deceased, who had brought up her on the demise of her parents. On a plain reading of the deposition of PW4, it is clear that he was against the inter-caste marriage of her grand-daughter with the appellant, who belonged to the Scheduled Caste community, while the deceased belonged to the Aggarwal community. PW4, in his cross-examination, stated that he had agreed for the marriage since the deceased was adamant to marry the appellant. PW4 also stated that he had not participated in Tikka ceremony held in the house of accused appellant. Further, it was also stated that he had not contacted any other member of the family of the accused before the marriage. PW4, in the cross-examination, stated that he had gone to Madhuban prior to the marriage to dissuade the appellant from entering into such a marriage and, for the said purpose, he met the DSP, Madhuban, who then called Mangat Ram, but he was adamant to marry Seema. We have to appreciate the evidence of PW4 in the light of the fact that he was totally against the inter-caste marriage between the accused and the deceased. PW4 also deposed that the accused persons had demanded a dowry of Rs.10,000/- and a scooter and, on 14.8.1993, PW4 gave Rs.10,000/- in cash to the accused and had also promised to make arrangement for the purchase of a scooter.

9. PW5, a distant relative of PW4, also stated that after 15-20 days of the marriage, the deceased came along with the accused to the residence of PW4 and, at that time, the deceased had told PW4 and others that the accused was harassing her since she had not brought dowry. PW5 also deposed that articles like cooler, fridge, sofa, double bed were given to the accused by way of dowry. PWs 4 and 5 had deposed that a demand of dowry was made not only by the

accused Mangat Ram, but also by his parents and sister. The trial Court recorded a clear finding that the prosecution had failed to bring home the guilt as against the parents and sister of the accused under Section 498A, 304-B IPC, which was not questioned by the prosecution. However, if that part of the evidence of PWs 4 and 5 could not be believed against the rest of the accused, then we fail to see how it could be put against the accused alone, especially when PWs 4 and 5 had stated that the demand for dowry was made by all the accused on 13.8.1993. The evidence of PWs 4 and 5 has to be appreciated in the light of the fact that they were against the inter-caste marriage, since the appellant belonged to Scheduled Caste community and the deceased belonged to Aggarwal community, a forward community. Alleged dowry demand of Rs.10,000/- and the demand of scooter, stated to have been made by the accused, could not be established not only against the other three accused persons, but also against the appellant as well.

10. We may now examine, apart from the dowry demand, had the appellant treated the deceased with cruelty and abetted the deceased in committing suicide. We have already found on facts that the prosecution could not establish that there was any dowry demand from the side of the appellant. Once it is so found, then we have to examine what was the cruelty meted out to the deceased so as to provoke her to end her life. It has come out in evidence that when the deceased sustained burn injuries, the accused was not at home. In this connection, we may refer to para 25 of the trial Court judgment, which reads as follows:

> "25. Secondly, Seema died un-natural death. The most crucial point which the prosecution was bound to establish, whether Seema was subjected to cruelty and harassment on account of paucity of dowry or there was a fresh demand of dowry, there is no such evidence on the file that she was subjected to cruelty and ha[illegible]d

and Avinash Chander both appeared. They did not state that Seema was subjected to cruelty and harassment for paucity of dowry given at the time of marriage....."

[Emphasis Supplied]

11. The trial Court itself says that there was no such evidence on the file that she was subjected to cruelty or harassment. But, in para 26 of its judgment, the trial Court, adopted a strange reasoning to hold that the accused had treated the deceased with cruelty, which is as follows:

"26. ..... An educated girl of business community was left in a village life and in the house of a lower community people whose way of living, whose way of talking, whose way of behaviour is not at par with the family members of Seema, since deceased. As such, Seema was feeling perplexed agitated. She expected from Mangat Ram that she must be kept with him at his place of posting and not to be left in a village life in the company of rustic persons and that appeared the cause of discontentment and unhappiness. It has been experienced that such marriage meets ill fate, like the present one. From statement of Bidhi Chand and letters Ex.PE and PF an inference can be easily drawn that Seema was fully unhappy and discontended from the behaviour of Mangat Ram accused, since he had left her in village life at the mercy of her mother-in-law Jiwni and that is why, she had been calling her grand maternal father to come for her rescue, but Bidhi Chand, as explained by him, could not rush to village Baroda because his son and his wife met with an accident at Chandigarh and he went there."

[Emphasis Supplied]

12. Further, in para 31, the trial Court has stated that the conduct of Mangat Ram keeping and leaving Seema in Baroda at his home amounted to causing cruelty and harassment to

Seema. In para 32, the trial Court has also recorded a very strange reasoning, which is as follows:

"32. Accused was very safely entered into defence and led defence evidence that Seema had been suffering from epilepsy prior to her marriage. In case, if this fact would have been in the knowledge of Mangat Ram, he would have never solemnised marriage with Seema. After enjoying sex with her, he must have deserted this lady....."

13. We fail to see how the Court can come to the conclusion that having known the deceased was suffering from Epilepsy, he would not have married the deceased. If the Court's reasoning is accepted, then nobody would or could marry a person having Epilepsy. Another perverse reasoning of the trial Court which, according to the trial Court, led to the act of suicide, is as follows:

"33. ..... She has been brought up by her grand maternal father Bidhi Chand and he contracted a love marriage with her. But in spite of that, he quenched his lust of sex by enjoying Seema and then left her in a rustic life of village. Seema, out of frustration and discontentment, wanted to get rid of that life. When her maternal grand father did not reach for her rescue, she being fully harassed, sprinkled kerosene oil on her body and took her life. ....."

[Emphasis Supplied]

14. The underlined portion indicates that the deceased had committed suicide out of frustration and discontentment and due to the reason that her maternal grandfather did not reach for her rescue. Reference to few letters sent by the deceased to her maternal grand father in this respect is apposite. In her letter dated 18.8.1993 (Annexure P-17) to PW4, there is absolutely no indication of any harassment or dowry demand by the accused. The letter would only s

home-sick and wanted very much to see her grand father, the operative portion of the same reads as follows :

> "…. But you should come it is very important work. If you will not come on 25th or 26th then I will give my life. Therefore both of you should come. Even if Somnath mama will say no for you to go to Baroda but both of you should come, it is important work. If you will not come then your daughter will give her life. What more should I write you are wise enough. If there is any mistake in the letter then forgive me. I sent a letter to Bandoi also. That day we reached Baroda at 3 O'clock. Both of us wish Namaste to all of you. Give love to Rahul, Sahul. I miss all of you a lot. Daddyji after getting my letter come to Baroda on 25th or 26th immediately, it is important work. If you will not come I will give my life therefore you and mamaji should come. I am closing my letter. I am writing again that Daddyji you should come. It is very important work. If you will not come on 25th or 26th then on 27th you will get a telephone call of my death. …."

15. Reference may also be made to another letter dated 11.9.1997 sent by her to PW4. In that letter also, there was no complaint of any harassment or dowry demand. On the other hand, the letter would further reemphasize that she was home-sick and very much wanted to see her maternal grand father, the operative portion of the letter reads as follows:

> "…. Daddyji you may not come for a night but you should come to meet me for an hour or two. It is very important work. Daddyji you keep on replying to my letter I feel very happy. I miss Rahul, Sahul, Raju, Sonu, Shalu and Rachit, Sapna, Aarti and all of you. I keep on crying the whole day and whole night by remembering you. I want to meet all of you. Nanaji come to Baroda immediately after reading my letter on 17th or 18th date, it is very important work. If you love me then you should come. Daddy if you will not come even after reading my letter then I take your vow that I will

> give my life. Reply to the letter on getting it. From my side and from my mother in law's side and from Mangat's side we wish Namaste to all of you. Give love to children. Writer of letter your daughter. (Seema)"

16. The picture that emerges from the conduct of the deceased was that she was very home-sick at her matrimonial home and was very much attached to PW4 and her friends and relatives at her home. The accused being a Police Constable had to serve at various places away from his village and, then necessarily he had to leave his wife at his home in the care and protection of his parents. Not taking the wife along with him, itself was, however, commented upon by the trial Court stating that the accused had left his wife, an educated girl belonging to a business community, in a village and in the house of a lower community people, whose way of life, whose way of talking, whose way of behaviour would not be at par with the family members of the deceased. On this reasoning, the trial Court concluded that the deceased was feeling perplexed, agitated and expected that the accused would take her at his place of posting, rather than leaving in a village in the company of rustic persons which, according to the Court, led to discontentment and unhappiness.

17. We fail to understand how a judicially trained mind would come out with such a reasoning and, at least, we expected that the High Court would have set right that perverse reasoning, but we are surprised to note that the High Court adopted yet another strange reasoning, which reads as follows:

> "When deceased had contracted marriage with the appellant-accused on her own accord against the wish of her maternal grandfather then, deceased was not expected to commit suicide because she was to stay with the appellant-accused. On the other hand, appellant-accused being employee had not kept the deceased with him at the place of his posting. Deceased was staying with the parents of the appellant-accuse[d] [th]e

appellant-accused abetted the deceased to commit suicide."

18. We fail to see how the failure of a married person to take his wife along with him to the place where he is working or posted, would amount to cruelty leading to abetment of committing suicide by the wife. Taking wife to place of posting depends upon several factors, like the convenience of both, availability of accommodation and so many factors. In the instant case, the accused had left the wife in the matrimonial home in the company of his parents and we fail to see how that action would amount to abetment to commit suicide.

19. We may point out that the High Court itself after placing reliance on the letters - Exh. PE and PF - written by the deceased to her maternal grandfather, has noted that there was no reference at all in these letters of the demand of dowry by the accused, but stated that the deceased was unhappy and upset over the behaviour of the accused, having left her in the company of his parents. We have gone through those letters and, in those letters, there is nothing to show that the deceased was upset by the behaviour of the accused. On the other hand, the letters only expose that the deceased was extremely home sick and wanted the company of her maternal grandfather. We are surprised to note that the High Court found fault with the accused for leaving the deceased "at the mercy of his parents". Again, the High Court made another strange reasoning, which reads as follows:

> "Immediately after marriage, two letters were written in the months of August and September, 1993. Appellant-accused being employee should have kept the deceased with him. No prudent man is to commit suicide unless abetted to do so. Actions of the appellant-accused amounts to cruelty compelling the deceased to commit suicide. Conviction under Section 306 IPC was rightly recorded by the trial Court. No question of interference. If husband is given a benefit of doubt on the allegation that

> no direct evidence, no circumstantial evidence, when the marriage was inter-caste, then what type of evidence deceased or complainant was to collect."

[Emphasis Supplied]

20. We find it difficult to comprehend the reasoning of the High Court that "no prudent man is to commit suicide unless abetted to do so." A woman may attempt to commit suicide due to various reasons, such as, depression, financial difficulties, disappointment in love, tired of domestic worries, acute or chronic ailments and so on and need not be due to abetment. The reasoning of the High Court that no prudent man will commit suicide unless abetted to do so by someone else, is a perverse reasoning.

21. We fail to see how the High Court can say that the accused being a police man should have kept his wife with him at his workplace. Further, the High Court then posed a wrong question to itself stating that if there is no direct evidence, no circumstantial evidence, then what type of evidence the deceased or complainant was to collect, when the marriage is inter-caste, a logic we fail to digest.

22. We are sorry to state that the trial Court as well as the High Court have not properly appreciated the scope of Sections 498-A and 306 IPC. Section 498-A IPC, is extracted below for an easy reference:

> **"498-A.** Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.
>
> Explanation.- For the purposes of this section, 'cruelty' means-
>
> (a) any wilful conduct which is s

likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security is on account of failure by her or any person related to her to meet such demand."

23. Explanation to Section 498-A gives the meaning of 'cruelty', which consists of two clauses. To attract Section 498-A, the prosecution has to establish the wilful conduct on the part of the accused and that conduct is of such a nature as is likely to drive the wife to commit suicide. We fail to see how the failure to take one's wife to his place of posting, would amount to a wilful conduct of such a nature which is likely to drive a woman to commit suicide. We fail to see how a married woman left at the parental home by the husband would by itself amount to a wilful conduct to fall within the expression of 'cruelty', especially when the husband is having such a job for which he has to be away at the place of his posting. We also fail to see how a wife left in a village life "in the company of rustic persons", borrowing language used by the trial Court, would amount to wilful conduct of such a nature to fall within the expression of 'cruelty'. In our view, both the trial Court as well as the High Court have completely misunderstood the scope of Section 498-A IPC read with its explanation and we are clearly of the view that no offence under Section 498-A has been made out against the accused appellant.

24. We have already indicated that the trial Court has found that no offence under Section 304-B IPC has been made out against the accused, but it convicted the accused under Section 306 IPC, even though no charge had been framed on that section against the accused. The scope and ambit of Section 306 IPC has not been properly appreciated by the Courts below. Section 306 IPC reads as under:

"306. If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Abetment of suicide is confined to the case of persons who aid or abet the commission of the suicide. In the matter of an offence under Section 306 IPC, abetment must attract the definition thereof in Section 107 IPC. Abetment is constituted by instigating a person to commit an offence or engaging in a conspiracy to commit, aid or intentional aiding a person to commit it. It would be evident from a plain reading of Section 306 read with Section 107 IPC that, in order to make out the offence of abetment or suicide, necessary proof required is that the culprit is either instigating the victim to commit suicide or has engaged himself in a conspiracy with others for the commission of suicide, or has intentionally aided by act or illegal omission in the commission of suicide.

25. In the instant case, of course, the wife died few months after the marriage and the presumption under Section 113A of the Evidence Act could be raised. Section 113A of the Evidence Act reads as follows:

"113A. Presumption as to abetment of suicide by a married woman.- when the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband and subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband."

26. We are of the view that the mere fact that if a married woman commits suicide within a period

marriage, the presumption under Section 113A of the Evidence Act would not automatically apply. The legislative mandate is that where a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband has subjected her to cruelty, the presumption as defined under Section 498-A IPC, may attract, having regard to all other circumstances of the case, that such suicide has been abetted by her husband or by such relative of her husband. The term "the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband" would indicate that the presumption is discretionary. So far as the present case is concerned, we have already indicated that the prosecution has not succeeded in showing that there was a dowry demand, nor the reasoning adopted by the Courts below would be sufficient enough to draw a presumption so as to fall under Section 113A of the Evidence Act. In this connection, we may refer to the judgment of this Court in Hans Raj v. State of Haryana (2004) 12 SCC 257, wherein this Court has examined the scope of Section 113A of the Evidence Act and Sections 306, 107, 498-A etc. and held that, unlike Section 113B of the Evidence Act, a statutory presumption does not arise by operation of law merely on the proof of circumstances enumerated in Section 113A of the Evidence Act. This Court held that, under Section 113A of the Evidence Act, the prosecution has to first establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband has subject her to cruelty. Even though those facts are established, the Court is not bound to presume that suicide has been abetted by her husband. Section 113A, therefore, gives discretion to the Court to raise such a presumption having regard to all other circumstances of the case, which means that where the allegation is of cruelty, it can consider the nature of cruelty to which the woman was subjected, having regard to the meaning of the word 'cruelty' in Section 498-A IPC.

27. We are of the view that the circumstances of the case pointed out by the prosecution are totally insufficient to hold that the accused had abetted his wife to commit suicide and the circumstances enumerated under Section 113A of the Evidence Act have also not been satisfied. In *Pinakin Mahipatray Rawal v. State of Gujarat* (2013) 10 SCC 48, this Court has examined the scope of Section 113A of the Evidence Act, wherein this Court has reiterated the legal position that the legislative mandate of Section 113A of the Evidence Act is that if a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty, as per the presumption defined in Section 498-A IPC, the Court may presume, having regard to all other circumstances of the case, that such suicide had been abetted by the husband or such person. The Court held that, though a presumption could be drawn, the burden of proof of showing that such an offence has been committed by the accused under Section 498-A IPC is on the prosecution. The Court held that the burden is on the prosecution to establish the fact that the deceased committed suicide and the accused abetted the suicide. In the instant case, there is no evidence to show whether it was an accidental death or whether the deceased had committed suicide.

28. We have every reason to believe that, in the instant case, the death was accidental, for the following reasons.

- Though not proved in her dying declaration, it has come out in evidence that the deceased was suffering from Epilepsy for the last three years i.e. before 15.3.1993, the date of incident. This fact is fortified by the evidence of Dr. Kuldeep, who was examined as DW1. He deposed that the deceased was suffering from Epilepsy and was under his treatment from 23.12.1992 to 2.4.1993 at Kuldeep Hospital, Ambala City. His evidence was brushed aside by the trial Court on

Kuldeep was not a Psychiatrist. It may be noted that Epilepsy is not a Psychiatrist problem. It is a disease of nerves system and a MD (Medicine) could treat the patient of Epilepsy. The reasoning given by the trial Court for brushing aside the evidence of DW1 cannot be sustained. Therefore, the possibility of an accidental death, since she was suffering from Epilepsy, cannot be ruled out. Evidently, she was in the kitchen and, might be, during cooking she might have suffered Epileptic symptoms and fell down on the gas stove and might have caught fire, resulting her ultimate death.

- DW2, ASI Ram Mohan, the Investigating Officer of the case, deposed that he had recorded the statements of the deceased wherein she had stated that she was suffering from Epilepsy for the last three years before the incident and that on 15.9.1993 while she was preparing meals on stove, she had an attack of fits and fell on the stove and caught fire. She had also deposed at that time that her husband was away at duty at Madhuban, Karnal. In our view, the evidence of DW2 has to be appreciated in the light of overall facts and circumstances of the case.

29. Taking into consideration all aspects of the matter, we are of the view that the prosecution has not succeeded in establishing the offence under Section 498-A and Section 306 IPC against the appellant. Consequently, the appeal is allowed and the conviction and sentence awarded by the trial Court and confirmed by the High Court, are set aside.

B.B.B. Appeal allowed.

NARINDER SINGH & ORS.
v.
STATE OF PUNJAB & ANR.
(Criminal Appeal No. 686 of 2014)

MARCH 27, 2014

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

Code of Criminal Procedure, 1973 - s.482 - Criminal proceedings -Settlement between the parties - Effect - Guidelines laid down to be kept in mind by the High Courts to take a view as to under what circumstances it should accept settlement between the parties and quash the proceedings and under what circumstances it should refrain from doing so - General discussion made in this behalf - Matter also examined in the context of offences u/s.307 IPC - Penal Code, 1860 - s.307.

Code of Criminal Procedure, 1973 - s.482 - FIR registered u/ss.307/324/323/34, IPC - Petition filed u/s.482 CrPC for quashing of the FIR on basis of compromise entered into between accused-petitioners and respondent No.2-complainant - High Court however, refused to accept the compromise and to quash the FIR and criminal proceedings pending against the petitioners - Held: The sole reason which weighed with the High Court in refusing to accept the compromise / settlement was the nature of injuries suffered by the complainant - However, other attendant and inseparable circumstances also require consideration - The FIR indicates that the complainant was attacked by the accused persons because of some previous dispute between the parties - But since elders of the village, including Sarpanch, intervened in the matter and the parties have not only buried their hatchet but have decided to live peacefully in future, this becomes an important consideration - Further, the evidence is yet to be led in the Court - In view of

compromise between parties, there is minimal chance of the witnesses coming forward in support of the prosecution case - Even though nature of injuries can still be established by producing the doctor as witness who conducted medical examination, it may become difficult to prove as to who caused these injuries - The chances of conviction, therefore, appear to be remote - It would, therefore, be unnecessary to drag these proceedings - Taking all these factors into consideration cumulatively, compromise between the parties accepted and the criminal proceedings against the petitioners quashed - Penal Code, 1860 - ss.307/324/323/34.

Petition under Section 482 CrPC was filed for quashing of FIR registered under Sections 307/324/323/34, IPC, on the basis of compromise entered into between the accused-petitioners and respondent No.2-complainant. The High Court refused to exercise its extraordinary discretion invoking the provisions of Section 482 CrPC on the ground that four injuries were suffered by the complainant and as per the opinion of the Doctor, injury No.3 was serious in nature. The High Court, thus, refused to accept the compromise entered into between the parties.

The question which arose for consideration, in these circumstances, was as to whether the Court should have accepted the compromise arrived at between the parties and quash the FIR as well as criminal proceedings pending against the petitioners.

The counsel for the State supported the verdict of the High Court arguing that since offence under Section 307 is non-compoundable, the accused could not be acquitted only because of the reason that there was a compromise/settlement between the parties.

The counsel for the appellant, on the other hand, submitted that merely because an offence is non-

compoundable under Section 320 CrPC would not mean that the High Court is denuded of its power to quash the proceedings in exercising its jurisdiction under Section 482 of the CrPC. He argued that Section 320(9) CrPC cannot limit or affect the power of the High Court under Section 482 CrPC; and further that having regard to the circumstances in the present case where the fight had occurred on the spot in the heat of the moment inasmuch as both sides were verbally fighting when the petitioners had struck the victim, this assault was more of a crime against the individual than against the society at large.

Allowing the appeal, the Court

HELD: 1.1. In the instant case, the two rival parties have amicably settled the disputes between themselves and buried the hatchet. Not only this, they say that since they are neighbours, they want to live like good neighbours and that was the reason for restoring friendly ties. In such a scenario, should the court give its imprimatur to such a settlement. The answer depends on various incidental aspects which need serious discourse. The Legislators has categorically recognized that those offences which are covered by the provisions of section 320 CrPC are concededly those not only do not fall within the category of heinous crime but also which are personal between the parties. Therefore, this provision recognizes where there is a compromise between the parties the Court is to act at the said compromise and quash the proceedings. However, even in respect of such offences not covered within the four corners of Section 320 of the Code, High Court is given power under Section 482 of the Code to accept the compromise between the parties and quash the proceedings. The guiding factor is as to whether the ends of justice would justify such exercise of power, both the ultimate consequences may be a

of indictment. [Para 26]

1.2. An attempt to take the life of another person has to be treated as a heinous crime and against the society. However, at the same time the Court cannot be oblivious to hard realities that many times whenever there is a quarrel between the parties leading to physical commotion and sustaining of injury by either or both the parties, there is a tendency to give it a slant of an offence under Section 307 IPC as well. Therefore, only because FIR/Charge-sheet incorporates the provision of Section 307 IPC would not, by itself, be a ground to reject the petition under section 482 of the Code and refuse to accept the settlement between the parties. While taking a call as to whether compromise in such cases should be effected or not, the High Court should go by the nature of injury sustained, the portion of the bodies where the injuries were inflicted (namely whether injuries are caused at the vital/delicate parts of the body) and the nature of weapons used etc. On that basis, if it is found that there is a strong possibility of proving the charge under Section 307 IPC, once the evidence to that effect is led and injuries proved, the Court should not accept settlement between the parties. On the other hand, on the basis of prima facie assessment of the aforesaid circumstances, if the High Court forms an opinion that provisions of Section 307 IPC were unnecessary included in the charge sheet, the Court can accept the plea of compounding of the offence based on settlement between the parties. [Paras 27, 28]

1.3. The timing of settlement would also play a crucial role. If the settlement is arrived at immediately after the alleged commission of offence when the matter is still under investigation, the High Court may be somewhat liberal in accepting the settlement and quashing the proceedings/investigation. Of course, it would be after

looking into the attendant circumstances. Likewise, when challan is submitted but the charge has not been framed, the High Court may exercise its discretionary jurisdiction. However, at this stage, since the report of the I.O. under Section 173, Cr.P.C. is also placed before the Court it would become the bounding duty of the Court to go into the said report and the evidence collected, particularly the medical evidence relating to injury etc. sustained by the victim. This aspect, however, would be examined along with another important consideration, namely, in view of settlement between the parties, whether it would be unfair or contrary to interest of justice to continue with the criminal proceedings and whether possibility of conviction is remote and bleak. If the Court finds the answer to this question in affirmative, then also such a case would be a fit case for the High Court to give its stamp of approval to the compromise arrived at between the parties, inasmuch as in such cases no useful purpose would be served in carrying out the criminal proceedings which in all likelihood would end in acquittal, in any case. [Para 29]

Rajendra Harakchand Bhandari vs. State of Maharashtra **(2011) 13 SCC 311;** *Dimpey Gujral v. Union Territory through Administrator* **2012 AIR SCW 5333;** *B.S. Joshi vs. State of Haryana* **(2003) 4 SCC 675: 2003 (2) SCR 1104;** *Gian Singh vs. State of Punjab & Anr.* **(2012) 10 SCC 303: 2012 (8) SCR 753;** *Shiji vs. Radhika & Anr.* **(2011) 10 SCC 705: 2011 (1) SCR 135 and** *State of Rajasthan vs. Shambhu Kewat & Ors.* **2013 (14) SCALE 235 - referred to.**

2. The principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to contin

proceedings, may be summed up and laid down as follows:

(I) Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

(II) When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any Court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

(III) Such a power is not be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

(IV) On the other, those criminal cases having overwhelmingly and pre-dominantly civil character, particularly those arising out of commercial transactions

or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

(V) While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

(VI) Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may e

relationship.

(VII) While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/ investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. [Para 31]

3.1. In the present case, FIR was registered under Section 307/324/323/34 IPC. Investigation was completed, whereafter challan was presented in the court against the petitioner herein. Charges have also been framed; the case is at the stage of recording of evidence. At this

juncture, parties entered into compromise on the basis of which petition under Section 482 of the Code was filed by the petitioners namely the accused persons for quashing of the criminal proceedings under the said FIR. As per the copy of the settlement which was annexed along with the petition, the compromise took place between the parties when respectable members of the Gram Panchayat held a meeting under the Chairmanship of Sarpanch. It is stated that on the intervention of the said persons/Panchayat, both the parties were agreed for compromise and have also decided to live with peace in future with each other. [Para 33]

3.2. It is found from the impugned order that the sole reason which weighed with the High Court in refusing to accept the settlement between the parties was the nature of injuries. If one goes by that factor alone, normally one would tend to agree with the High Court's approach. However, some other attendant and inseparable circumstances also need to be kept in mind which compels this Court to take a different view. [Para 34]

3.3. The FIR gives an indication that the complainant was attacked allegedly by the accused persons because of some previous dispute between the parties, though nature of dispute etc. is not stated in detail. However, a very pertinent statement appears on record viz., "respectable persons have been trying for a compromise up till now, which could not be finalized". This becomes an important aspect. It appears that there have been some disputes which led to the aforesaid purported attack by the accused on the complainant. In this context when one finds that the elders of the village, including Sarpanch, intervened in the matter and the parties have not only buried their hatchet but have decided to live peacefully in future, this becomes an important consideration. The evidence is yet to [illegible] t.

It has not even started. In view of compromise between parties, there is a minimal chance of the witnesses coming forward in support of the prosecution case. Even though nature of injuries can still be established by producing the doctor as witness who conducted medical examination, it may become difficult to prove as to who caused these injuries. The chances of conviction, therefore, appear to be remote. It would, therefore, be unnecessary to drag these proceedings. Taking all these factors into consideration cumulatively, this Court is of the opinion that the compromise between the parties be accepted and the criminal proceedings against the petitioners be quashed. [Para 35]

Case Law Reference:

(2011) 13 SCC 311	**referred to**	**Para 9**
2012 AIR SCW 5333	**referred to**	**Para 10**
2003 (2) SCR 1104	**referred to**	**Para 11**
2012 (8) SCR 753	**referred to**	**Para 12**
2011 (1) SCR 135	**referred to**	**Para 22**
2013 (14) SCALE 235	**referred to**	**Para 23**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 686 of 2014.

From the Judgment and Order dated 08.10.2013 of the High Court of Punjab & Haryana at Chandigarh in CRM No. 27343 of 2013.

P.N. Puri for the Appellant.

Kuldip Singh for the Respondents.

The Judgment of the Court was delivered by

A.K. SIKRI, J. 1. The present Special Leave Petition has been preferred against the impugned judgment/final order dated 8.10.2013 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Miscellaneous Petition No.27343/2013. It was a petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as the "Code") for quashing of FIR No.121/14.7.2010 registered under Sections 307/324/323/34,IPC, on the basis of compromise dated 22.7.2013 entered into between the petitioners (who are accused in the said FIR) and respondent No.2 (who is the complainant). The High Court has refused to exercise its extraordinary discretion invoking the provisions of Section 482 of the Code on the ground that four injuries were suffered by the complainant and as per the opinion of the Doctor, injury No.3 were serious in nature. The High Court, thus, refused to accept the compromise entered into between the parties, the effect whereof would be that the petitioners would face trial in the said FIR.

2. Leave granted.

3. We have heard counsel for the parties at length.

4. It may be stated at the outset that the petitioners herein, who are three in number, have been charged under various provisions of the IPC including for committing offence punishable under Section 307, IPC i.e. attempt to commit murder. FIR No.121/14.7.2010 was registered. In the aforesaid FIR, the allegations against the petitioners are that on 9.7.2010 at 7.00 A.M. while respondent No.2 was going on his motorcycle to bring diesel from village Lapoke, Jasbir Singh, Narinder Singh both sons of Baldev Singh and Baldev Singh son of Lakha Singh attacked him and injured him. Respondent No.2 was admitted in Shri Guru Nanak Dev Hospital, Amritsar. After examination the doctor found four injuries on his person. Injury No.1 to 3 are with sharp edged weapons and injury No.4 is simple. From the statement of injured and MLR's report an FIR under sections 323/324/34 IPC w[illegible]K-

ray report relating to injury No.3, section 307 IPC was added in the FIR

5. After the completion of investigation, challan has been presented in the Court against the petitioners and charges have also been framed. Now the case is pending before the Ld.Trial Court, Amritsar, for evidence.

6. During the pendency of trial proceedings, the matter has been compromised between the petitioners as well as the private respondent with the intervention of the Panchayat on 12.07.2013. It is clear from the above that three years after the incident, the parties compromised the matter with intervention of the Panchayat of the village.

7. It is on the basis of this compromise, the petitioners moved aforesaid criminal petition under section 482 of the Code for quashing of the said FIR. As per the petitioners, the parties have settled the matter, as they have decided to keep harmony between them to enable them to live with peace and love. The compromise records that they have no grudge against each other and the complainant has specifically agreed that he has no objection if the FIR in question is quashed. Further, both the parties have undertaken not to indulge in any litigation against each other and withdraw all the complaints pending between the parties before the court. As they do not intend to proceed with any criminal case against each other, on that basis the submission of the petitioners before the High Court was that the continuance of the criminal proceedings in the aforesaid FIR will be a futile exercise and mere wastage of precious time of the court as well as investigating agencies.

8. The aforesaid submission, however, did not impress the High Court as the medical report depicts the injuries to be of grievous nature. The question for consideration, in these circumstances, is as to whether the court should have accepted the compromise arrived at between the parties and quash the FIR as well as criminal proceedings pending against the

petitioner.

9. The ld. counsel for the State has supported the aforesaid verdict of the High Court arguing that since offence under Section 307 is non-compoundable, the respondents could not have been acquitted only because of the reason that there was a compromise/settlement between the parties. In support, the learned counsel for the respondent-State has relied upon the judgment of this Court in the case of *Rajendra Harakchand Bhandari vs. State of Maharashtra* (2011) 13 SCC 311 wherein this Court held that since offence under Section 307 is not compoundable, even when the parties had settled the matter, compounding of the offence was out of question. Said settlement along with other extenuating circumstances was only taken as the ground for reduction of the sentence in the following manner:

> "We must immediately state that the offence under Section 307 is not compoundable in terms of Section 320(9) of the Code of Criminal Procedure, 1973 and, therefore, compounding of the offence in the present case is out of question. However, the circumstances pointed out by the learned Senior Counsel do persuade us for a lenient view in regard to the sentence. The incident occurred on 17.5.1991 and it is almost twenty years since then. The appellants are agriculturists by occupation and have no previous criminal background. There has been reconciliation amongst parties; the relations between the appellants and the victim have become cordial and prior to the appellants' surrender, the parties have been living peacefully in the village. The appellants have already undergone the sentence of more than two-and-a half years. Having regard to those circumstances, we are satisfied that ends of justice will be met if the substantive sentence awarded to the appellants is reduced to the period already undergone while maintaining the amount of fine.

Consequently, while confirming the conviction of the appellants for the offences punishable under Section 307 read with Section 34, Section 332 read with Section 34 and Section 353 read with Section 34, the substantive sentence awarded to them by the High Court is reduced to the period already undergone. The fine amount and the default stipulation remain as it is."

10. The learned counsel for the appellant, on the other hand, submitted that merely because an offence is non-compoundable under Section 320 of the Code would not mean that the High Court is denuded of its power to quash the proceedings in exercising its jurisdiction under Section 482 of the Cr.P.C. He argued that Section 320(9) of the Code cannot limit or affect the power of the High Court under Section 482 of the Cr.P.C. Such a power is recognized by the Supreme Court in catena of judgments. He further submitted that having regard to the circumstances in the present case where the fight had occurred on the spot in the heat of the moment inasmuch as both sides were verbally fighting when the petitioners had struck the victim, this assault was more of a crime against the individual than against the society at large. He further submitted that this Court in *Dimpey Gujral v. Union Territory through Administrator* 2012 AIR SCW 5333 had quashed the FIR registered under sections 147,148,149,323,307,452 and 506 of the IPC.

11. We find that there are cases where the power of the High Court under Section 482 of the Code to quash the proceedings in those offences which are uncompoundable has been recognized. The only difference is that under Section 320(1) of the Code, no permission is required from the Court in those cases which are compoundable though the Court has discretionary power to refuse to compound the offence. However, compounding under Section 320(1) of the Code is permissible only in minor offences or in non-serious offences. Likewise, when the parties reach settlement in respect of

offences enumerated in Section 320(2) of the Code, compounding is permissible but it requires the approval of the Court. In so far as serious offences are concerned, quashing of criminal proceedings upon compromise is within the discretionary powers of the High Court. In such cases, the power is exercised under Section 482 of the Code and proceedings are quashed. Contours of these powers were described by this Court in *B.S.Joshi vs. State of Haryana* (2003) 4 SCC 675 which has been followed and further explained/elaborated in so many cases thereafter, which are taken note of in the discussion that follows hereinafter.

12. At the same time, one has to keep in mind the subtle distinction between the power of compounding of offences given to Court under Section 320 of the Code and quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction conferred upon it under Section 482 of the Code. Once, it is found that compounding is permissible only if a particular offence is covered by the provisions of Section 320 of the Code and the Court in such cases is guided solitary and squarely by the compromise between the parties, in so far as power of quashing under Section 482 of the Code is concerned, it is guided by the material on record as to whether the ends of justice would justify such exercise of power, although the ultimate consequence may be acquittal or dismissal of indictment. Such a distinction is lucidly explained by a three-Judge Bench of this Court in *Gian Singh vs. State of Punjab & Anr.* (2012) 10 SCC 303. Justice Lodha, speaking for the Court, explained the difference between the two provisions in the following manner:

"Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different [illegible] of

criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.

B.S.Joshi, Nikhil Merchant, Manoj Sharma and Shiji do illustrate the principle that the High Court may quash criminal proceedings or FIR or complaint in exercise of its inherent power under Section 482 of the Code and Section 320 does not limit or affect the powers of the High Court under Section 482. Can it be said that by quashing criminal proceedings in B.S.Joshi, Nikhil Merchant, Manoj Sharma and Shiji this Court has compounded the non-compoundable offences indirectly? We do not think so. There does exist the distinction between compounding of an offence under Section 320 and quashing of a criminal case by the High Court in exercise of inherent power under Section 482. The two powers are distinct and different although the ultimate consequence may be the same viz. acquittal of the accused or dismissal of indictment."

13. Apart from narrating the interplay of Section 320 and Section 482 of the Code in the manner aforesaid, the Court also described the extent of power under Section 482 of the Code in quashing the criminal proceedings in those cases where the parties had settled the matter although the offences are not compoundable. In the first instance it was emphasized that the power under Sec. 482 of the Code is not to be resorted to, if there is specific provision in the Code for redressal of the grievance of an aggrieved party. It should be exercised very sparingly and should not be exercised as against the express

bar of law engrafted in any other provision of the Code. The Court also highlighted that in different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power under Section 482 on either of the twin objectives, (i) to prevent abuse of the process of any court, or (ii) to secure the ends of justice, is a sine qua non.

14. As to under what circumstances the criminal proceedings in a non-compoundable case be quashed when there is a settlement between the parties, the Court provided the following guidelines:

"Where the High Court quashes a criminal proceeding having regard to the facts that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc. or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly [illegible] g

arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed."

Thereafter, the Court summed up the legal position in the following words:

"The position that emerges from the above discussion can be summarized thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plentitude with no statutory limitation but it has to be exercised in accord with the guidelines engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse f the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of

mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act, or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavor stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal p

15. The Court was categorical that in respect of serious offences or other offences of mental depravity or offence of merely dacoity under special statute, like the Prevention of Corruption Act or the offences committed by Public Servant while working in that capacity. The mere settlement between the parties would not be a ground to quash the proceedings by the High Court and inasmuch as settlement of such heinous crime cannot have imprimatur of the Court.

16. The question is as to whether offence under Section 307 IPC falls within the aforesaid parameters. First limb of this question is to reflect on the nature of the offence. The charge against the accused in such cases is that he had attempted to take the life of another person (victim). On this touchstone, should we treat it a crime of serious nature so as to fall in the category of heinous crime, is the poser.

17. Finding an answer to this question becomes imperative as the philosophy and jurisprudence of sentencing is based thereupon. If it is heinous crime of serious nature then it has to be treated as a crime against the society and not against the individual alone. Then it becomes the solemn duty of the State to punish the crime doer. Even if there is a settlement/ compromise between the perpetrator of crime and the victim, that is of no consequence. Law prohibits certain acts and/or conduct and treats them as offences. Any person committing those acts is subject to penal consequences which may be of various kind. Mostly, punishment provided for committing offences is either imprisonment or monetary fine or both. Imprisonment can be rigorous or simple in nature. Why those persons who commit offences are subjected to such penal consequences? There are many philosophies behind such sentencing justifying these penal consequences. The philosophical/jurisprudential justification can be retribution, incapacitation, specific deterrence, general deterrence, rehabilitation, or restoration. Any of the above or a combination thereof can be the goal of sentencing. Whereas in various

countries, sentencing guidelines are provided, statutorily or otherwise, which may guide Judges for awarding specific sentence, in India we do not have any such sentencing policy till date. The prevalence of such guidelines may not only aim at achieving consistencies in awarding sentences in different cases, such guidelines normally prescribe the sentencing policy as well namely whether the purpose of awarding punishment in a particular case is more of a deterrence or retribution or rehabilitation etc.

18. In the absence of such guidelines in India, Courts go by their own perception about the philosophy behind the prescription of certain specified penal consequences for particular nature of crime. For some deterrence and/or vengeance becomes more important whereas another Judge may be more influenced by rehabilitation or restoration as the goal of sentencing. Sometimes, it would be a combination of both which would weigh in the mind of the Court in awarding a particular sentence. However, that may be question of quantum. What follows from the discussion behind the purpose of sentencing is that if a particular crime is to be treated as crime against the society and/or heinous crime, then the deterrence theory as a rationale for punishing the offender becomes more relevant, to be applied in such cases. Therefore, in respect of such offences which are treated against the society, it becomes the duty of the State to punish the offender. Thus, even when there is a settlement between the offender and the victim, their will would not prevail as in such cases the matter is in public domain. Society demands that the individual offender should be punished in order to deter other effectively as it amounts to greatest good of the greatest number of persons in a society. It is in this context that we have to understand the scheme/ philosophy behind Section 307 of the Code.

19. We would like to expand this principle in some more detail. We find, in practice and in reality, after recording the conviction and while awarding the ser[illegible]e

Court is generally governed by any or all or combination of the aforesaid factors. Sometimes, it is the deterrence theory which prevails in the minds of the Court, particularly in those cases where the crimes committed are heinous in nature or depicts depravity, or lack morality. At times it is to satisfy the element of "emotion" in law and retribution/vengeance becomes the guiding factor. In any case, it cannot be denied that the purpose of punishment by law is deterrence, constrained by considerations of justice. What, then, is the role of mercy, forgiveness and compassion in law? These are by no means comfortable questions and even the answers may not be comforting. There may be certain cases which are too obvious namely cases involving heinous crime with element of criminality against the society and not parties inter-se. In such cases, the deterrence as purpose of punishment becomes paramount and even if the victim or his relatives have shown the virtue and gentility, agreeing to forgive the culprit, compassion of that private party would not move the court in accepting the same as larger and more important public policy of showing the iron hand of law to the wrongdoers, to reduce the commission of such offences, is more important. Cases of murder, rape, or other sexual offences etc. would clearly fall in this category. After all, justice requires long term vision. On the other hand, there may be, offences falling in the category where "correctional" objective of criminal law would have to be given more weightage in contrast with "deterrence" philosophy. Punishment, whatever else may be, must be fair and conducive to good rather than further evil. If in a particular case the Court is of the opinion that the settlement between the parties would lead to more good; better relations between them; would prevent further occurrence of such encounters between the parties, it may hold settlement to be on a better pedestal. It is a delicate balance between the two inflicting interests which is to be achieved by the Court after examining all these parameters and then deciding as to which course of action it should take in a particular case.

20. We may comment, at this stage, that in so far as the judgment in the case of *Bhandari* (supra) is concerned, undoubtedly this Court observed that since offence under Section 307 is not compoundable in terms of Section 320(9) of the Cr.P.C., compounding of the offence was out of question. However, apart from this observation, this aspect is not discussed in detail. Moreover, on reading para 12 of the said judgment, it is clear that one finds that counsel for the appellant in that case had not contested the conviction of the appellant for the offence under Section 307 IPC, but had mainly pleaded for reduction of sentence by projecting mitigating circumstances.

21. However, we have some other cases decided by this Court commenting upon the nature of offence under Section 307 of IPC. In Dimpey Gujral case (supra), FIR was lodged under sections 147,148,149,323,307,552 and 506 of the IPC. The matter was investigated and final report was presented to the Court under Section 173 of the Cr.P.C. The trial court had even framed the charges. At that stage, settlement was arrived at between parties. The court accepted the settlement and quashed the proceedings, relying upon the earlier judgment of this Court in *Gian Singh vs. State of Punjab & Anr.* 2012 AIR SCW 5333 wherein the court had observed that inherent powers under section 482 of the Code are of wide plentitude with no statutory limitation and the guiding factors are: (1) to secure the needs of justice, or (2) to prevent abuse of process of the court. While doing so, commenting upon the offences stated in the FIR, the court observed:

> "Since the offences involved in this case are of a personal nature and are not offences against the society, we had enquired with learned counsel appearing for the parties whether there is any possibility of a settlement. We are happy to note that due to efforts made by learned counsel, parties have seen reason and have entered into a compromise."

This Court, thus, treated such offence

section 307, IPC were of a personal nature and not offences against the society.

22. On the other hand, we have few judgments wherein this Court refused to quash the proceedings in FIR registered under section 307 IPC etc. on the ground that offence under section 307 was of serious nature and would fall in the category of heinous crime. In the case of *Shiji vs. Radhika & Anr.* (2011) 10 SCC 705 the Court quashed the proceedings relating to an offence under section 354 IPC with the following observations:

> "We have heard learned counsel for the parties and perused the impugned order. Section 320 of the Cr.P.C. enlists offences that are compoundable with the permission of the Court before whom the prosecution is pending and those that can be compounded even without such permission. An offence punishable under Section 354 of the IPC is in terms of Section 320(2) of the Code compoundable at the instance of the woman against whom the offence is committed. To that extent, therefore, there is no difficulty in either quashing the proceedings or compounding the offence under Section 354, of which the appellants are accused, having regard to the fact that the alleged victim of the offence has settled the matter with the alleged assailants. An offence punishable under Section 394 IPC is not, however, compoundable with or without the permission of the Court concerned. The question is whether the High Court could and ought to have exercised its power under section 482 the said provision in the light of the compromise that the parties have arrived at."

23. In a recent judgment in the case of *State of Rajasthan vs. Shambhu Kewat & Ors.* 2013 (14) SCALE 235, this very Bench of the Court was faced with the situation where the High Court had accepted the settlement between the parties in an offence under Section 307 read with Section 34 IPC and set the accused at large by acquitting them. The settlement was arrived at during the pendency of appeal before the High Court

against the order of conviction and sentence of the Sessions Judge holding the accused persons guilty of the offence under Section307/34 IPC. Some earlier cases of compounding of offence under Section 307 IPC were taken note of, noticing under certain circumstances, the Court had approved the compounding whereas in certain other cases such a course of action was not accepted. In that case, this Court took the view that High Court was not justified in accepting the compromise and setting aside the conviction. While doing so, following discussion ensued:

> "We find, in this case, such a situation does not arise. In the instant case, the incident had occurred on 30.10.2008. The trial court held that the accused persons, with common intention, went to the shop of the injured Abdul Rashid on that day armed with iron rod and a strip of iron and, in furtherance of their common intention, had caused serious injuries on the body of Abdul Rashid, of which injury number 4 was on his head, which was of a serious nature.
>
> Dr.Rakesh Sharma, PW5, had stated that out of the injuries caused to Abdul Rashid, injury No.4 was an injury on the head and that injury was "grievous and fatal for life". PW8, Dr. Uday Bhomik, also opined that a grievous injury was caused on the head of Abdul Rashid. DR. Uday conducted the operation on injuries of Abdul Rashid as a Neuro Surgeon and fully supported the opinion expressed by PW5 Dr. Rakesh Sharma that injury No.4 was "grievous and fatal for life".
>
> We notice that the gravity of the injuries was taken note of by the Sessions Court and it had awarded the sentence of 10 years rigorous imprisonment for the offence punishable under Section 307 IPC, but not by the High Court. The High Court has completely overlooked the various principles laid down by this Court in Gian Singh (Supra), and has committed a mistake in taking the view that, the injuries were caused on th[illegible]d

in a fight occurred at the spur and the heat of the moment. It has been categorically held by this Court in Gian Singh (supra) that the Court, while exercising the power under Section 482, must have "due regard to the nature and gravity of the crime" and "the social impact". Both these aspects were completely overlooked by the High Court. The High Court in a cursory manner, without application of mind, blindly accepted the statement of the parties that they had settled their disputes and differences and took the view that it was a crime against "an individual", rather than against "the society at large".

We are not prepared to say that the crime alleged to have been committed by the accused persons was a crime against an individual, on the other hand it was a crime against the society at large. Criminal law is designed as a mechanism for achieving social control and its purpose is the regulation of conduct and activities within the society. Why Section 307 IPC is held to be non-compoundable, because the Code has identified which conduct should be brought within the ambit of non-compoundable offences. Such provisions are not meant, just to protect the individual, but the society as a whole. High Court was not right in thinking that it was only an injury to the person and since the accused persons had received the monetary compensation and settled the matter, the crime as against them was wiped off. Criminal justice system has a larger objective to achieve, that is safety and protection of the people at large and it would be a lesson not only to the offender, but to the individuals at large so that such crimes would not be committed by any one and money would not be a substitute for the crime committed against the society. Taking a lenient view on a serious offence like the present, will leave a wrong impression about the criminal justice system and will encourage further criminal acts, which will endanger the peaceful co-existence and welfare of the society at large."

24. Thus, we find that in certain circumstances, this Court has approved the quashing of proceedings under section 307,IPC whereas in some other cases, it is held that as the offence is of serious nature such proceedings cannot be quashed. Though in each of the aforesaid cases the view taken by this Court may be justified on its own facts, at the same time this Court owes an explanation as to why two different approaches are adopted in various cases. The law declared by this Court in the form of judgments becomes binding precedent for the High Courts and the subordinate courts, to follow under Article 141 of the Constitution of India. Stare Decisis is the fundamental principle of judicial decision making which requires 'certainty' too in law so that in a given set of facts the course of action which law shall take is discernable and predictable. Unless that is achieved, the very doctrine of stare decisis will lose its significance. The related objective of the doctrine of stare decisis is to put a curb on the personal preferences and priors of individual Judges. In a way, it achieves equality of treatment as well, inasmuch as two different persons faced with similar circumstances would be given identical treatment at the hands of law. It has, therefore, support from the human sense of justice as well. The force of precedent in the law is heightened, in the words of Karl Llewellyn, by "that curious, almost universal sense of justice which urges that all men are to be treated alike in like circumstances".

25. As there is a close relation between the equality and justice, it should be clearly discernible as to how the two prosecutions under Section 307 IPC are different in nature and therefore are given different treatment. With this ideal objective in mind, we are proceeding to discuss the subject at length. It is for this reason we deem it appropriate to lay down some distinct, definite and clear guidelines which can be kept in mind by the High Courts to take a view as to under what circumstances it should accept the settlement between the parties and quash the proceedings and under what circumstances it should refrain from doi ar

that though there would be a general discussion in this behalf as well, the matter is examined in the context of offences under Section 307 IPC.

26. The two rival parties have amicably settled the disputes between themselves and buried the hatchet. Not only this, they say that since they are neighbours, they want to live like good neighbours and that was the reason for restoring friendly ties. In such a scenario, should the court give its imprimatur to such a settlement. The answer depends on various incidental aspects which need serious discourse.

> The Legislators has categorically recognized that those offences which are covered by the provisions of section 320 of the Code are concededly those not only do not fall within the category of heinous crime but also which are personal between the parties. Therefore, this provision recognizes whereas there is a compromise between the parties the Court is to act at the said compromise and quash the proceedings. However, even in respect of such offences not covered within the four corners of Section 320 of the Code, High Court is given power under Section 482 of the Code to accept the compromise between the parties and quash the proceedings. The guiding factor is as to whether the ends of justice would justify such exercise of power, both the ultimate consequences may be acquittal or dismissal of indictment. This is so recognized in various judgments taken note of above.

27. In the case of *Dimpey Gujral* (supra), observations of this Court to the effect that offences involved in that case were not offences against the society. It included charge under Section 307 IPC as well. However, apart from stating so, there is no detained discussion on this aspect. Moreover, it is the other factors which prevailed with the Court to accept the settlement and compound he offence, as noted above while discussing this case. On the other hand, in *Shambhu Kewat* (supra), after referring to some other earlier judgments, this

Court opined that commission of offence under Section 307 IPC would be crime against the society at large, and not a crime against an individual only. We find that in most of the cases, this view is taken. Even on first principle, we find that an attempt to take the life of another person has to be treated as a heinous crime and against the society.

28. Having said so, we would hasten to add that though it is a serious offence as the accused person(s) attempted to take the life of another person/victim, at the same time the court cannot be oblivious to hard realities that many times whenever there is a quarrel between the parties leading to physical commotion and sustaining of injury by either or both the parties, there is a tendency to give it a slant of an offence under Section 307 IPC as well. Therefore, only because FIR/Charge-sheet incorporates the provision of Section 307 IPC would not, by itself, be a ground to reject the petition under section 482 of the Code and refuse to accept the settlement between the parties. We are, therefore, of the opinion that while taking a call as to whether compromise in such cases should be effected or not, the High Court should go by the nature of injury sustained, the portion of the bodies where the injuries were inflicted (namely whether injuries are caused at the vital/delicate parts of the body) and the nature of weapons used etc. On that basis, if it is found that there is a strong possibility of proving the charge under Section 307 IPC, once the evidence to that effect is led and injuries proved, the Court should not accept settlement between the parties. On the other hand, on the basis of prima facie assessment of the aforesaid circumstances, if the High Court forms an opinion that provisions of Section 307 IPC were unnecessary included in the charge sheet, the Court can accept the plea of compounding of the offence based on settlement between the parties.

29. At this juncture, we would like also to add that the timing of settlement would also play a crucial role. If the settlement is arrived at immediate[illegible]d

commission of offence when the matter is still under investigation, the High Court may be somewhat liberal in accepting the settlement and quashing the proceedings/ investigation. Of course, it would be after looking into the attendant circumstances as narrated in the previous para. Likewise, when challan is submitted but the charge has not been framed, the High Court may exercise its discretionary jurisdiction. However, at this stage, as mentioned above, since the report of the I.O. under Section 173,Cr.P.C. is also placed before the Court it would become the bounding duty of the Court to go into the said report and the evidence collected, particularly the medical evidence relating to injury etc. sustained by the victim. This aspect, however, would be examined along with another important consideration, namely, in view of settlement between the parties, whether it would be unfair or contrary to interest of justice to continue with the criminal proceedings and whether possibility of conviction is remote and bleak. If the Court finds the answer to this question in affirmative, then also such a case would be a fit case for the High Court to give its stamp of approval to the compromise arrived at between the parties, inasmuch as in such cases no useful purpose would be served in carrying out the criminal proceedings which in all likelihood would end in acquittal, in any case.

30. We have found that in certain cases, the High Courts have accepted the compromise between the parties when the matter in appeal was pending before the High Court against the conviction recorded by the trial court. Obviously, such cases are those where the accused persons have been found guilty by the trial court, which means the serious charge of Section 307 IPC has been proved beyond reasonable doubt at the level of the trial court. There would not be any question of accepting compromise and acquitting the accused persons simply because the private parties have buried the hatchet.

31. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be

guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

(I) Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

(II)When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any Court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

(III) Such a power is not be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

(IV) On the other, those criminal cases having overwhelmingly and pre-dominantly civil character, particularly those arising out of commercial transa of

matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

(V) While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

(VI) Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

(VII) While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/ investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.

32. After having clarified the legal position in the manner aforesaid, we proceed to discuss the case at hand.

33. In the present case, FIR No.121 dated 14.7.2010 was registered under Section 307/324/323/34 IPC. Investigation was completed, whereafter challan was presented in the court against the petitioner herein. Charges have also been framed; the case is at the stage of recording of ev[illegible]e,

parties entered into compromise on the basis of which petition under Section 482 of the Code was filed by the petitioners namely the accused persons for quashing of the criminal proceedings under the said FIR. As per the copy of the settlement which was annexed along with the petition, the compromise took place between the parties on 12.7.2013 when respectable members of the Gram Panchayat held a meeting under the Chairmanship of Sarpanch. It is stated that on the intervention of the said persons/Panchayat, both the parties were agreed for compromise and have also decided to live with peace in future with each other. It was argued that since the parties have decided to keep harmony between the parties so that in future they are able to live with peace and love and they are the residents of the same village, the High Court should have accepted the said compromise and quash the proceedings.

34. We find from the impugned order that the sole reason which weighed with the High Court in refusing to accept the settlement between the parties was the nature of injuries. If we go by that factor alone, normally we would tend to agree with the High Court's approach. However, as pointed out hereinafter, some other attendant and inseparable circumstances also need to be kept in mind which compel us to take a different view.

35. We have gone through the FIR as well which was recorded on the basis of statement of the complainant/victim. It gives an indication that the complainant was attacked allegedly by the accused persons because of some previous dispute between the parties, though nature of dispute etc. is not stated in detail. However, a very pertinent statement appears on record viz., "respectable persons have been trying for a compromise up till now, which could not be finalized". This becomes an important aspect. It appears that there have been some disputes which led to the aforesaid purported attack by the accused on the complainant. In this context when we find

that the elders of the village, including Sarpanch, intervened in the matter and the parties have not only buried their hatchet but have decided to live peacefully in future, this becomes an important consideration. The evidence is yet to be led in the Court. It has not even started. In view of compromise between parties, there is a minimal chance of the witnesses coming forward in support of the prosecution case. Even though nature of injuries can still be established by producing the doctor as witness who conducted medical examination, it may become difficult to prove as to who caused these injuries. The chances of conviction, therefore, appear to be remote. It would, therefore, be unnecessary to drag these proceedings. We, taking all these factors into consideration cumulatively, are of the opinion that the compromise between the parties be accepted and the criminal proceedings arising out of FIR No.121 dated 14.7.2010 registered with Police Station LOPOKE, District Amritsar Rural be quashed. We order accordingly.

36. Appeal is allowed. No costs.

B.B.B. Appeal allowed.

M/S. S.F. ENGINEER
v.
METAL BOX INDIA LTD. AND ANR.
(Civil Appeal No. 4189 of 2014)

MARCH 28, 2014

[ANIL R. DAVE AND DIPAK MISRA, JJ.]

Bombay Rent Act, 1947 - s.13(1)(e) - Suit for eviction - On ground of unlawful sub-letting - Principle of legitimate inference - Invoking of - Held: Requisite conditions for establishing the factum of sub-letting are parting of legal possession, and availing of monetary consideration which could be in cash or kind and which fact might not be required to be directly proven by the landlord in all circumstances - In the case in hand, plaintiff-landlord let out premises to defendant no.1-company exclusively for providing residential accommodation to its executive staff and not for any other purpose - Defendant no.1 handed over possession of the premises to an employee, defendant no.2 - Handing over of possession to defendant no.2 was in accord with the terms and conditions of agreement entered between landlord and tenant and, thus, entry of defendant no. 2 into the premises was legal - Trial Court and Appellate Court drew inference that after defendant no.2, employee, resigned from service but remained in occupation while he was not entitled to, defendant no.1 did not take any steps to get back the possession - But such inaction cannot lead to the conclusion that sub-letting was proved - Nothing to show that there was any kind of arrangement between defendant 1 and 2 - Non-payment of provident fund and gratuity and other retiral dues would not amount to consideration or a kind of arrangement - Barring withholding of retiral dues, defendant no.1 had not received any thing either in cash or in kind or otherwise from the defendant no. 2 and hence, under those circumstances, it cannot be held that factum of sub-letting was established.

Rent control and eviction:

Sub-letting - Legitimate inference - Held: Court under certain circumstances can draw its own inference on the basis of materials brought at the trial to arrive at the conclusion that there has been parting with the legal possession and acceptance of monetary consideration either in cash or in kind or having some kind of arrangement - The transaction of subletting can be proved by legitimate inference though the burden is on the person seeking eviction - Constructive possession of the tenant by retention of control would not make it parting with possession as it has to be parting with legal possession - Sometimes emphasis has been laid on the fact that the sub-tenancy is created in a clandestine manner and there may not be direct proof on the part of a landlord to prove it but definitely it can bring materials on record from which such inference can be drawn.

Sub-letting - Requisite conditions for establishing the factum of sub-letting - Discussed.

Revision: Scope of - Held: High Court, in revision, is not entitled to interfere with the findings of the appellate court, until and unless it is found that such findings are perverse and arbitrary.

The plaintiff-landlord had let out the premises in question to defendant no.1-company exclusively for the purpose of providing residential accommodation to its executive staff and not for any other purpose. The plaintiff-appellant filed suit for eviction of defendant no.1 and its former employee, defendant no. 2, contending that defendant no. 2 was an unlawful sub-tenant and thereby Section 13(1)(e) of the Bombay Rent Act, 1947 was attracted justifying the eviction. The defendant no.1 took stand that it had not breached the conditions in using the suit premises for the purpose of which the same was let out for continuous period of six m e

date of the suit without reasonable cause and the suit premises had been illegally and wrongfully occupied by defendant no. 2 against the will of defendant no.1 by remaining in the suit flat. It was the further case of defendant no.1 that the defendant no. 2, as an officer of defendant No. 1 was allotted flat as a part of his service amenities. Defendant No. 1 became sick company and thereafter defendant No.2 resigned from service. Defendant No. 2 continued to occupy the premises while the employer withheld his provident fund dues for which the Commissioner of Provident Fund issued a notice to defendant No. 1. Defendant No. 1 filed writ petition before the High Court against the Regional Provident Fund Commissioner and defendant No. 2 for settlement of dues of defendant No. 2 and for handing over vacant possession of the premises.

The question which arose for consideration in the present appeal filed by the landlord was whether there was an unauthorized subletting under 13(1)(e) of the Bombay Rent Act, 1947 warranting an order for grant of possession.

Dismissing the appeal, the Court

HELD: 1. The Court under certain circumstances can draw its own inference on the basis of materials brought at the trial to arrive at the conclusion that there has been parting with the legal possession and acceptance of monetary consideration either in cash or in kind or having some kind of arrangement. The transaction of subletting can be proved by legitimate inference though the burden is on the person seeking eviction. The materials brought out in evidence can be gathered together for arriving at the conclusion that a plea of subletting is established. The constructive possession of the tenant by retention of control would not make it parting with possession as it has to be parting with legal

possession. Sometimes emphasis has been laid on the fact that the sub-tenancy is created in a clandestine manner and there may not be direct proof on the part of a landlord to prove it but definitely it can bring materials on record from which such inference can be drawn. [Para 23]

Bharat Sales Ltd. v. Life Insurance Corporation of India **(1998) 3 SCC 1: 1998 (1) SCR 711;** *Joginder Singh Sodhi v. Amar Kaur***(2005) 1 SCC 31: 2004 (5) Suppl. SCR 303;** *Smt. Rajbir Kaur and another v. M/s. S. Chokesiri and Co.* **(1989) 1 SCC 19: 1988 (2) Suppl. SCR 310;** *Dipak Banerjee v. Smt. Lilabati Chakraborty* **(1987) 4 SCC 161: 1987 (3) SCR 680;** *Bhairab Chandra Nandan v. Ranadhir Chandra Dutta* **(1988) 1 SCC 383;** *M/s. Shalimar Tar Products Ltd. v. H.C. Sharma and others* **(1988) 1 SCC 70: 1988 (1) SCR 1023;** *United Bank of India v. Cooks and Kelvey Properties (P) Limited* **(1994) 5 SCC 9: 1994 (1) Suppl. SCR 55;** *Shama Prashant Raje v. Ganpatrao***(2000) 7 SCC 522: 2000 (3) Suppl. SCR 448;** *Celina Coelho Pereira (Ms) and others v. Ulhas Mahabaleshwar Kholkar and others* **(2010) 1 SCC 217: 2009 (15) SCR 558 and** *Vinaykishore Punamchand Mundhada and another v. Shri Bhumi Kalpataru and others* **(2010) 9 SCC 129: 2010 (9) SCR 963 - relied on.**

Associated Hotels of India Ltd. v. S.B. Sardar Ranjit Singh **(1968) 2 SCR 548 - referred to.**

2. In the case at hand, an agreement was entered into by the landlord and the tenant in respect of the premises with the stipulation that it would be used only for providing the residential accommodation of the executive staff and not for any other purpose. Undisputedly, defendant No. 2 was a member of the executive and he was provided the premises as a part of the amenities towards his perquisites. As the company sustained loss and was declared sick under SICA, defendant No. 2 resigned from his post and defendant [illegible]e

same. The trial Judge applied the principle of legitimate inference which was accepted by the appellate Judge. It is settled in law that the requisite conditions for establishing the factum of sub-letting are - parting of legal possession, and availing of monetary consideration which can be in cash or kind and which fact may not be required to be directly proven by the landlord in all circumstances. Defendant No. 2 was given possession by defendant No.1 as an executive of the company. It was made available to him under the conditions of service and such provision was in consonance with the agreement entered into by the landlord and the tenant, i.e., the plaintiff and the defendant No.1. Submission of the plaintiff-appellant was founded on inference made by the trial Judge that the provident fund, gratuity and other dues of the defendant No. 2 were withheld in lieu of allowing defendant No. 2 for such occupation. [Paras 24, 25]

3. Defendant No. 2 was put in possession by defendant No. 1 while he was in service. There was an agreement between defendant No. 2 and defendant No. 1. One of the stipulations in the agreement of tenancy between the plaintiff and defendant No. 1 was that the tenant was given the premises on lease for the purpose of occupation of its executive staff. Thus, handing over of the possession of the premises to the defendant No. 2 was in accord with the terms and conditions of the agreement entered between the landlord and the tenant and, therefore, the entry of the defendant No. 2 into the premises was legal. The trial court as well as the appellate court drew inference that after defendant No.2, the employee, resigned from service and remained in occupation while he was not entitled to, defendant No. 1 did not take any steps to get back the possession and the proceedings initiated under the Companies Act were dismissed for non-prosecution and at a belated stage

only a suit for recovery of occupational charges was instituted. The emphasis is on the inaction on the part of the defendant No. 1 to institute a suit for eviction. Such inaction would not by itself persuade a court to come to the conclusion that the sub-letting was proved. Nothing has been brought on record by way of documentary or oral evidence to suggest that there was any kind of arrangement between the defendant No. 1 and the defendant No.2. The written statement filed by defendant No.2, in fact, was a series of self serving assertions for his own benefit. His stand would show that non-payment of provident fund and gratuity and other retiral dues amounted to consideration or a kind of arrangement. That apart, he has claimed himself to become a tenant under the landlord and also had put an aspirational asseveration that he had negotiated with the landlord to purchase the property to become the owner. The High Court has noted that the tenant, defendant No.1, was a sick company under the SICA and could not have received any money in a clandestine manner. Be that as it may, withholding of retiral dues cannot be considered as a consideration or any kind of arrangement. The settlement before this Court shows that the defendant No.2 had paid the amount for overstaying in the premises in question and the deposited amount with the High Court was required to be paid towards the dues of the defendant No. 2 after deducting overstayal charges. The counsel for the appellant, has contended that the settlement before this Court was between the defendant No.1 and the defendant No. 2 to which the landlord was not a party and hence, it cannot have any effect on the issue of sub-letting. True it is, it is a settlement between the defendant No. 1 and defendant No.2, but it is a settlement between an employer and an erstwhile employee and, therefore, the landlord had no role. The settlement only shows that barring withholding of the retiral dues, the employer had not [illegible]g

either in cash or in kind or otherwise from the defendant No. 2 and hence, under these circumstances, it is extremely difficult to hold that the factum of sub-letting has been established. [Para 27]

4. It is well settled that the High Court, in revision, is not entitled to interfere with the findings of the appellate court, until and unless it is found that such findings are perverse and arbitrary. There cannot be any cavil over the said proposition of law. But in the present case, the trial court as well as the appellate court has reached their conclusions on the basis of inferences. The issue of subletting can be established on the basis of legitimate inference drawn by a court. Drawing inference from the facts established is not purely a question of fact. In fact, it is always considered to be a point of law insofar as it relates to inferences to be drawn from finding of fact. When inferences drawn do not clearly flow from facts and are not legally legitimate, any conclusion arrived at on that basis becomes absolutely legally fallible. Therefore, it cannot be said that the High Court has erred in exercise of its revisional jurisdiction by substituting the finding of fact which has been arrived at by the courts below. Therefore, the High Court has not committed any illegality in its exercise of revisional jurisdiction under the obtaining facts and circumstances. [Para 28]

Renuka Das v. Maya Ganguly and another **(2009) 9 SCC 413 and** *P. John Chandy and Co. (P) Ltd. v. John P. Thomas* **(2002) 5 SCC 90: 2002 (3) SCR 549 - relied on.**

Case Law Reference:

1998 (1) SCR 711	**relied on**	**Para 12**
2004 (5) Suppl. SCR 303	**relied on**	**Para 12**
(1968) 2 SCR 548	**referred to**	**Para 12**

1988 (2) Suppl. SCR 310	**relied on**	**Para 16**
1987 (3) SCR 680	**relied on**	**Para 16**
(1988) 1 SCC 383	**relied on**	**Para 17**
1988 (1) SCR 1023	**relied on**	**Para 18**
1994 (1) Suppl. SCR 55	**relied on**	**Para 19**
2000 (3) Suppl. SCR 448	**relied on**	**Para 20**
2009 (15) SCR 558	**relied on**	**Para 21**
2010 (9) SCR 963	**relied on**	**Para 22**
(2009) 9 SCC 413	**relied on**	**Para 28**
2002 (3) SCR 549	**relied on**	**Para 28**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4189 of 2014.

From the Judgment and Order dated 12.08.2010 of the High Court of Bombay in CRA No. 355 of 2010.

C.A. Sundram, Jatin Zaveri, Amit Mehta, Neel Kama Mishra for the Appellant.

S. Ganesh, J.K. Sthi, Preeti Ramani, Siddharth Srivastav, Indra Sawhney for the Respondent.

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. Leave granted.

2. This appeal, by special leave, by the landlord arises out of and is directed against the judgment and order dated 12.8.2010 of the Bombay High Court passed in Civil Revision Application No. 355 of 2010, allowing the respondent-tenants' appeal and - in reversal of the concurrent findings of the courts below that there was an unauthorized subletting - dismissing appellant's application under 13(1)(e) of

1947 for an order for grant of possession.

3. The appellant-plaintiff, owner of the suit premises, i.e., Flat Nos. 201 and 204 on second floor of the building known as "Marlow" and two garages Nos. 7 and 8 on the ground floor of the suit building situate at 62-B, Pochkhanwala Road, Worli, Mumbai, instituted RAE No. 45/84 of 1997 for eviction of the first respondent (defendant No. 1) and its former employee, the respondent No. 2 (defendant No. 2). For the sake of convenience, the parties hereinafter shall be referred to as per the rank in the suit.

4. The case of the plaintiff in the court below was that the defendant No. 1 was a tenant under the plaintiff on a consolidated monthly rent of Rs.1075/-. The premises, as set forth in the plaint, was let out to the defendant No. 1 exclusively for the purpose of providing residential accommodation to its executive staff and not for any other purpose. Though the defendant No. 2 had no right to remain in possession of the flat No. 201, yet the employer company unlawfully sublet the said flat to him. The plaintiff vide notice dated 19.1.1989 terminated the tenancy of defendant No. 1. The said notice was replied to by the defendant No. 1 through its advocate on 13.2.1989 denying the assertions made in the notice. This compelled the plaintiff to initiate the civil action for eviction of the defendants from the suit premises on the ground of subletting, bona fide requirement and non-user for the purpose for which it was let out.

5. The defendant No. 1 filed its written statement and denied the averments in the plaint. Its affirmative stand was, it had not breached the conditions in using the suit premises for the purpose of which the same was let out for continuous period of six months preceding the date of the suit without reasonable cause and the suit premises had been illegally and wrongfully occupied by the defendant No. 2 against the will of defendant No. 1 by remaining in flat No. 201. As far as flat No. 204 was concerned, the stand of the defendant No. 1 was that it was in

occupation of the staff, General Manager, officers and executives of the Company. The claim of bona fide requirement was seriously disputed on many a ground. It was the further case of defendant No.1 that the defendant No. 2, as an officer of defendant No. 1 was allotted flat No. 201 as a part of his service amenities under the terms and conditions stipulated in agreement dated 11.5.1982. On 27.5.1988 the defendant No. 1 was declared a sick company by the Board for Industrial and Financial Reconstruction (BIFR) under the provisions of the Sick Industrial Companies (Special Provision) Act, 1985 and thereafter on 11.2.1989 the defendant No. 2 resigned from his post which was accepted by the defendant No. 1. The defendant No. 2 continued to occupy the premises and the employer withheld his provident fund dues for which the Commissioner of Provident Fund on 19.10.1993 issued a notice to defendant No. 1. At that juncture, the defendant No. 1 filed writ petition No. 2134 of 1993 before the High Court against the Regional Provident Fund Commissioner and the defendant No. 2 for settlement of dues of the defendant No. 2 and for handing over vacant possession of the premises. The defendant No. 1 also filed a criminal complaint under Section 630 of the Companies Act, 1956 which was dismissed for non-prosecution. These asseverations were made to demolish the ground of subletting as asserted by the plaintiff and, eventually, the dismissal of the suit was sought.

6. The defendant No. 2 filed his separate written statement stating, inter alia, that he was not concerned with flat No. 204 and garage No. 8 and he was a statutory tenant in respect of flat No. 201 and he had been in long continuous use and occupation of the suit premises, i.e., flat No. 201 and garage No. 7. It was his further stand that he was not unlawfully occupying the suit premises because he was allowed to use the suit premises as an employee of the defendant No. 1 and hence, he was occupying the part of the suit premises as a lawful sub-tenant with the consent and knowledge of the plaintiff.

7. The trial Judge initially framed the following issues: -

"(1) Whether the plaintiffs prove that the suit premises have not been used by the defendants without reasonable cause for the purpose for which they were let for a continuous period of 6 months immediately preceding the date of the suit?

(2) Whether the plaintiffs prove that they required the suit premises reasonably and bonafide for their own use and occupation?

(3) To whom greater hardship would be caused by passing the decree than by refusing to pass it?

(4) Whether the plaintiffs are entitled to recover the possession of the suit premises from the defendants?

(5) What decree, order and costs?"

And thereafter framed the following additional issue:-

"Do plaintiffs prove that the defendant No. 1 unlawfully sub-let the part of the suit premises to defendant no. 2?"

8. On consideration of the evidence brought on record the Small Causes court came to hold that the plaintiff had failed to prove that it required the suit premises reasonably and bona fide for his use and occupation and also it had not been proven that greater hardship would be caused to the plaintiff. Accordingly, the issue Nos. 2 and 3 were answered in the negative. As far as issue No. 1 was concerned, i.e. non-user for a period of six months for the purpose it was let out which is a ground under Section 13(1)(k) of the Bombay Rent Act, 1947 (for short "the Act"), the learned trial Judge came to hold that the plea of non-user in respect of flat No. 204 was not established but the said plea had been proven as far as flat No. 201 was concerned but, regard being had to the language

used in the provision enshrined under Section 13(1)(k) of the Act to the effect that when a part of the tenanted premises was not in use of the tenant, the said provision would not be applicable and, accordingly, he answered the said issue against the plaintiff. While dealing with the additional issue the learned trial Judge referred to Section 13(1)(e) of the Act and came to hold that no case of unlawful subletting had been made out in respect of flat No. 204 and one garage, but, as far as flat No. 201 and another garage are concerned, plea of subletting stood established. To arrive at the same conclusion he took note of the fact that the use and occupation of defendant No. 2 on the said part of the suit premises before 12.2.1989 was on the basis of agreement Exh. 5A which showed that the defendant No. 2 was in use and occupation of flat No. 201 and garage No. 7 as licencee of his employer-defendant No.1 and thereafter from 12.2.1989 on ceasing to be in service of the defendant No. 1, the use and occupation of defendant No.2 in respect of the said premises could neither be considered as legal nor could it be protected under any provision of law. Thereafter, he considered the rival submissions and referred to clause 13 of the agreement dated 11.5.1982, Exh. 5A, the factum of resignation by the defendant No. 2 and acceptance thereof by the defendant No. 1, the liability on the part of defendant No. 1 to take appropriate legal steps to evict the defendant No. 2 from the said part of the suit premises within a reasonable time, the silence maintained by the defendant No. 1, the dismissal of the criminal proceeding instituted under Section 630 of the Companies Act for non-prosecution and filing of another criminal proceeding only in 2003, the use and occupation of the defendant No. 2 at the behest of the defendant No.1, the retention of provident fund by the defendant No. 1 of the defendant No. 2, the stand of the defendant No. 2 that he was in lawful occupation as a sub-tenant, the admission of the sole witness of the defendant No.1 to the effect that the defendant No.2 was in possession as a sub-tenant, and ultimately came to hold that the plaintiff had been able to establish that the defendan[illegible]y

sublet a part of the suit premises, i.e., flat No. 201 and garage No. 7 and, accordingly, directed that the defendant Nos. 1 and 2 jointly and severally to deliver the vacant possession of the suit premises, i.e., flat Nos. 201 and 204 along with garage Nos. 7 and 8.

9. On an appeal being preferred the Division Bench of the appellate court basically posed two questions, namely, (i) whether the suit premises, more particularly, flat No. 201 was illegally sublet by the defendant No. 1 to the defendant No. 2; and (ii) whether the flat Nos. 201 and 204 were not used for the purpose for which they were let out for more than 6 months without sufficient reason.

10. The appellate court answered the question No. 2 in the negative. As far as question No. 1 is concerned, the appellate court took note of the admission of the witness of the defendant No. 1, the inaction on the part of the plaintiff to take steps for eviction against defendant No.2 and proceeded to deal with the contours of Section 13(1)(e) of the Act and in that context opined thus: -

> "It covers different aspects under the heading of subletting, it is not mere subletting, it includes assignment or creating third party interest. Non user of the premises in possession of defendant No.2 by the defendant No. 1 is clear. Defendant No. 2 already found to be not in service after his resignation. With a gap of about three or four years, litigation is started by the defendant No. 1 that too on the count of arrears of provident fund. No substantial suit for seeking possession was filed immediately and act continued on that day. Aspect of subletting has its own importance. We find evidence of defendant No.1's witness is clear in itself. Ld. Trial Court arrived at the conclusion that this aspect attracts section 13(1)(e) of Rent Act. We find said aspect required to be accepted."

11. Being of this opinion, it affirmed the view expressed by the learned trial Judge and upheld the judgment and decree passed against the defendants.

12. The non-success compelled the defendant No. 1 to invoke the civil revisional jurisdiction of the High Court. The learned single Judge referred to the filing of the writ petition with regard to the provident fund dues, appeal by way of special leave preferred by the defendant No. 1 and the ultimate settlement arrived at between the two defendants on 4.4.2007, the stand of the defendant No. 1 that there was no consensus between it and the defendant No. 2 allowing to occupy the premises after he ceased to be in Company's employment and later to initiate action to evict him, and thereafter referred to the decisions in *Bharat Sales Ltd. v. Life Insurance Corporation of India*[1], *Joginder Singh Sodhi v. Amar Kaur*[2] and *Associated Hotels of India Ltd. v. S.B. Sardar Ranjit Singh*[3] and took note of certain facts, namely, (i) defendant No. 2 was inducted as a licencee under a licence agreement which was produced before the Courts; (ii) after cessation of his employment defendant No. 2 continued to occupy the premises; (iii) applicant had filed a suit for recovery of overstayal charges and, eventually, was allowed to recover a sum of Rs.4,17,000/- in terms of order of the Court dated 15.3.2007, in Civil Appeal No. 2425 of 2007; (iv) applicant had vacated the premises on 4.4.2007 in terms of the settlement; and (v) applicant was a sick company and not in a position to receive any clandestine payment and concluded thus: -

> "These facts are so glaring, as are the attempts of applicant to get rid of respondent No. 2 that it would be inconsistent with any clandestine agreement of sub-letting. True finding of facts by the courts below may be respected. But the conclusions drawn about a jural relationship was thoroughly unwarranted and runs in conflict with the very

1. (1998) 3 SCC 1.
2. (2005) 1 SCC 31.
3. (1968) 2 SCR 548.

requirement of a consensus. Therefore, the decree of eviction on the ground of sub-letting passed by the trial court and maintained upon appeal by the appellate bench cannot at all be sustained."

13. Criticizing the judgment and order passed by the learned single Judge, learned senior counsel for the appellant submitted that though the defendant No. 2, the employee, retired from service, yet the defendant No. 1, employer, did not take any steps for a period of more than four years from February, 1989 till October, 1993 and allowed the complaint filed under Section 630 of the Companies Act to be dismissed for non-prosecution and was constrained to prefer the writ petition challenging the direction of the Regional Provident Fund Commissioner only when it faced a statutory consequence and these circumstances go a long way to establish its conduct of tacit acceptance of the position of defendant No. 2 as a sub-tenant. He has also highlighted that the defendant No. 1 filed the second complaint under Section 630 of the Companies Act after a span of seven years and filed the summary suit under Section 37, CPC only for recovery of occupation charges and not for eviction after fourteen years of the resignation of the defendant No.2 from service of the defendant No.1 which ultimately resulted in a settlement before this Court, and these aspects, considered cumulatively, do clearly show that in effect the defendant No. 1, tenant, had sublet the premises in question and the High Court has fallen into grave error in overturning the finding based on legitimate inferences in exercise of revisional jurisdiction which is a limited one. It is his further submission that the finding recorded by the learned trial Judge and concurrence given to the same in appeal establish two aspects, namely, the defendant No. 2 was allowed to remain in exclusive use and occupation of the premises; and that there was involvement of consideration inasmuch as the employer withheld the provident fund to appropriate the same towards the occupational charges and the arrangement is obvious. The learned senior counsel would also contend that the sole witness

of defendant No. 1 has categorically admitted that defendant No. 2 is an unlawful sub-tenant and after such an admission any stand to the contrary has to be treated as paving the path of tergiversation. He has also laid immense emphasis on the fact that the defendant No. 2 in his written statement has clearly admitted that he was a sub-tenant with the consent of the landlord, but the factum of consent has not been proven.

14. Mr. Ganesh, learned senior counsel, per contra, in support of the decision of the High Court would contend that necessary ingredients of subletting have not been fulfilled and when the reasonings ascribed by the trial court and the appellate court are absolutely on the basis of perverse consideration of the materials brought on record, it was obligatory on the part of the High Court to rectify the same in supervisory jurisdiction and that having been done the impugned order is absolutely flawless and totally infallible. It is put forth by him that reliance on some evidence and the stand and stance of the defendant No. 2 who had an axe to grind against the defendant No. 1 and further had an ambitious motive to get the flat from the plaintiff on ownership basis would not establish the plea of subletting. It is further contended that the defendant No. 1 had taken appropriate steps at the relevant time to prosecute the defendant No. 2 under various laws and hence, it is inapposite to say that there was a tacit consent allowing the employee to occupy the premises. In any case, submits Mr. Ganesh, that withholding of provident fund dues or settlement as regards the same before this Court would not make out a case of subletting as proponed by the plaintiff-appellant.

15. To appreciate the revalised submissions raised at the Bar it is first necessary to have a survey of authorities of this Court which state the position of law as to how subletting of a premises alleged by a landlord are to be established.

16. In *Smt. Rajbir Kaur and another v. M/s. S. Chokesiri and Co.*[4], after referring to the decision in *Dipak Banerjee v.*

4. (1989) 1 SCC 19.

Smt. Lilabati Chakraborty[5] and other decisions the Court opined that if exclusive possession is established, and the version of the respondent as to the particulars and the incidents of the transaction is found acceptable in the particular facts and circumstances of the case, it may not be impermissible for the court to draw an inference that the transaction was entered into with monetary consideration in mind. It has been further observed that such transactions of subletting in the guise of licences are in their very nature, clandestine arrangements between the tenant and the subtenant and there cannot be direct evidence got and it is not, unoften, a matter for legitimate inference. Dealing with the issue of burden it held that: -

> "The burden of making good a case of subletting is, of course, on the appellants. The burden of establishing facts and contentions which support the party's case is on the party who takes the risk of non-persuasion. If at the conclusion of the trial, a party has failed to establish these to the appropriate standard, he will lose. Though the burden of proof as a matter of law remains constant throughout a trial, the evidential burden which rests initially upon a party bearing the legal burden, shifts according as the weight of the evidence adduced by the party during the trial."

17. In this context, reference to a two-Judge Bench decision in *Bhairab Chandra Nandan v. Ranadhir Chandra Dutta*[6] would be apposite. In the said case the tenant had permanently shifted his residence elsewhere leaving the rooms completely to his brother for his occupation without obtaining the landlord's permission. In that context, the Court observed thus: -

> "5. Now coming to the question of sub-letting, once again we find that the courts below had adequate material to conclude that the respondent had sub-let the premises, albeit to his own brother and quit the place and the sub-letting was without the consent of the appellant. Admittedly, the respondent was living elsewhere and it is his brother Manadhir who was in occupation of the rooms taken on lease by the respondent. The High Court has taken the view that because Manadhir is the brother of the respondent, he will only be a licensee and not a sub-tenant. There is absolutely no warrant for this reasoning. It is not as if the respondent is still occupying the rooms and he has permitted his brother also to reside with him in the rooms. On the contrary, the respondent has permanently shifted his residence to another place and left the rooms completely to his brother for his occupation without obtaining the consent of the appellant. There is therefore no question of the respondent's brother being only a licensee and not a sub-tenant."

5. (1987) 4 SCC 161.

6. (1988) 1 SCC 383.

18. In *M/s. Shalimar Tar Products Ltd. v. H.C. Sharma and others*[7], while dealing with parting of legal possession, the two-Judge Bench observed that there is no dispute in the legal proposition that there must be parting of the legal possession. Parting to the legal possession means possession with the right to include and also right to exclude others.

19. In *United Bank of India v. Cooks and Kelvey Properties (P) Limited*[8] the question arose whether the appellant-Bank had sublet the premises to the union. This Court set aside the order of eviction on the ground that : -

> "....though the appellant had inducted the trade union into the premises for carrying on the trade union activities, the bank has not received any monetary consideration from the trade union, which was permitted to use and enjoy it for its trade union activities. It is elicited in the cross-examination of the President of the trade union that the bank had retained its power to call upon the union to

7. (1988) 1 SCC 70.

8. (1994) 5 SCC 9.

vacate the premises at any time and they had undertaken to vacate the premises. It is also elicited in the cross-examination that the bank has been maintaining the premises at its own expenses and also paying the electricity charges consumed by the trade union for using the demised premises. Under these circumstances, the inference that could be drawn is that the appellant had retained its legal control of the possession and let the trade union to occupy the premises for its trade union activities. Therefore, the only conclusion that could be reached is that though exclusive possession of the demised premises was given to the trade union, the possession must be deemed to be constructive possession held by it on behalf of the bank for using the premises for trade union activities so long as the union used the premises for trade union activities. The bank retains its control over the trade union whose membership is only confined to the employees of the bank. Under these circumstances, the inevitable conclusion is, that there is no transfer of right to enjoy the premises by the trade union exclusively, for consideration."

20. In this context we may fruitfully refer to the decision in *Joginder Singh Sodhi* (supra) wherein the Court, dealing with the concept of subletting, has observed that to establish a plea of subletting two ingredients, namely, parting with possession and monetary consideration, therefor have to be established. In the said case reliance was placed on *Shama Prashant Raje v. Ganpatrao* [9] and *Smt. Rajbir Kaur* (supra). The Court also extensively referred to the principle stated in *Bharat Sales Ltd.* (supra) wherein it has been observed that it would also be difficult for the landlord to prove, by direct evidence, that the person to whom the property had been sub-let had paid monetary consideration to the tenant. Though payment of rent, undoubtedly, is an essential element of lease or sub-lease, yet it may be paid in cash or in kind or may have been paid or promised to be paid, or it may have been paid in lump sum in

9. (2000) 7 SCC 522.

advance covering the period for which the premises is let out or sub-let or it may have been paid or promised to be paid periodically. The Court further observed that since payment of rent or monetary consideration may have been made secretly, the law does not require such payment to be proved by affirmative evidence and the court is permitted to draw its own inference upon the facts of the case proved at the trial, including the delivery of exclusive possession to infer that the premises were sub-let.

21. In this regard reference to *Celina Coelho Pereira (Ms) and others v. Ulhas Mahabaleshwar Kholkar and others* [10] would be pertinent. In the said case a two-Judge Bench, after referring to number of authorities and the rent legislation, summarized the legal position relating to issue of sub-letting or creation of sub-tenancy. The two aspects which are of relevance to the present case are:

"(i) In order to prove mischief of sub-letting as a ground for eviction under rent control laws, two ingredients have to be established. (one parting with possession of tenancy or part of it by the tenant in favour of a third party with exclusive right of possession, and (two) that such parting with possession has been done without the consent of the landlord and in lieu of compensation or rent.

(ii), (iii) & (iv) .....

(v) Initial burden of proving sub-letting is on the landlord but once he is able to establish that a third party is in exclusive possession of the premises and that tenant has no legal possession of the tenanted premises, the onus shifts to the tenant to prove the nature of occupation of such third party and that he (tenant) continues to hold legal possession in tenancy premises."

22. In *Vinaykishore Punamchand Mundhada and*

10. (2010) 1 SCC 217.

another v. Shri Bhumi Kalpataru and others[11] it has been held that it is well settled that sub-tenancy or sub-letting comes into existence when the tenant voluntarily surrenders possession of the tenanted premises wholly or in part and puts another person in exclusive possession thereof without the knowledge of the landlord. In all such cases, invariably the landlord is kept out of the scene rather, such arrangement whereby and whereunder the possession is parted away by the tenant is always clandestine and such arrangements takes place behind the back of the landlord. It is the actual physical and exclusive possession of the newly inducted person, instead of the tenant, which is material and it is that factor which reveals to the landlord and that the tenant has put some other person into possession of the tenanted property. It has been further observed that it would not be possible to establish by direct evidence as to whether the person inducted into possession by the tenant had paid monetary consideration to the tenant and such an arrangement cannot be proved by affirmative evidence and in such circumstances the court is required to draw its own inference upon the facts of the case proved at the enquiry.

23. We have referred to the aforesaid decisions only to reaffirm the proposition that the Court under certain circumstances can draw its own inference on the basis of materials brought at the trial to arrive at the conclusion that there has been parting with the legal possession and acceptance of monetary consideration either in cash or in kind or having some kind of arrangement. The aforesaid authorities make it further spectacularly clear that the transaction of subletting can be proved by legitimate inference though the burden is on the person seeking eviction. The materials brought out in evidence can be gathered together for arriving at the conclusion that a plea of subletting is established. The constructive possession of the tenant by retention of control like in *Cooks and Kelvey Properties (P) Limited* (supra) would not make it parting with possession as it has to be parting with legal possession. Sometimes emphasis has been laid on the fact that the sub-

11. (2010) 9 SCC 129.

tenancy is created in a clandestine manner and there may not be direct proof on the part of a landlord to prove it but definitely it can bring materials on record from which such inference can be drawn.

24. Coming to the case at hand, on a studied scrutiny of the evidence it is quite vivid that an agreement was entered into by the landlord and the tenant in respect of the premises with the stipulation that it would be used only for providing the residential accommodation of the executive staff and not for any other purpose. It is not in dispute that the defendant No. 2 was a member of the executive and he was provided the premises as a part of the amenities towards his perquisites. As the company sustained loss and was declared sick under SICA, the defendant No. 2 resigned from his post on 11.1.1989 and the defendant No. 1 accepted the same. As is evincible, the plaintiff had terminated the tenancy on 19.1.1989. Submission of Mr. Sundaram, learned senior counsel, is that though the defendant No. 2 resigned from service and there was termination of tenancy, yet the defendant chose not to take any steps for evicting the defendant No. 2 from the premises in question. He has also highlighted on the factum that the application under Section 630 of the Companies Act, 1956 for seeking possession of the premises was filed after the notice for eviction was issued and the same was allowed to be dismissed for non-prosecution. It has also come out in evidence that only after a proceeding was initiated by the Regional Provident Fund Commissioner, the defendant No. 1 filed the writ petition and the controversy ended by way of settlement before this Court in an appeal. The summary suit was filed only for recovery of occupational charges after a span of 14 years wherein a decree was obtained. That apart, learned senior counsel has drawn our attention to the stand and stance put forth by the defendant No. 2 claiming himself as a sub-tenant. He has also, as has been stated earlier, referred to the admission of the witness cited by the defendant No. 1. It is apt to note here that from the aforesaid circ[illegible]d

trial Judge as well as the appellate court has drawn inferences to come to the conclusion that the defendant No. 2 was an unlawful sub-tenant thereby attracting the frown of Section 13(1)(e) of the Act justifying the eviction. Mr. Ganesh, learned senior counsel, submitted that mere procrastination on the part of the defendant No. 1 to take steps cannot be treated to have given rise to the legitimate inference to come to a conclusion that there was sub-letting in view of the authorities of this Court. He has also drawn inspiration from some parts of the assertions made by the defendant No. 2 in the written statement. To bolster the stand, he has pointed out that the defendant No.2 has clearly admitted that his possession was as sub-tenant as his entry was legal and further he had claimed that he had entered into negotiation with the plaintiff to become a tenant and thereafter to acquire ownership.

25. The facts being admitted, it really requires whether the High Court was justified in unsettling the conclusion arrived at by the courts below by taking note of certain factors into consideration. As we have stated earlier, the learned trial Judge has applied the principle of legitimate inference which has been given the stamp of approval by the learned appellate Judge. The basic question that emerges for consideration is whether in the obtaining factual matrix the principle of legitimate inference could have been invoked to come to a conclusion that the defendant No. 2 had been inducted as a sub-tenant. It is settled in law that the requisite conditions for establishing the factum of sub-letting are - parting of legal possession, and availing of monetary consideration which can be in cash or kind and which fact may not be required to be directly proven by the landlord in all circumstances. As is perceptible, the defendant No. 2 was given possession by the defendant No.1 as an executive of the company. It was made available to him under the conditions of service and such provision was in consonance with the agreement entered into by the landlord and the tenant, i.e., the plaintiff and the defendant No.1. Submission of the learned senior counsel for the appellant, as is clear, is founded

on inference made by the learned trial Judge that the provident fund, gratuity and other dues of the defendant No. 2 were withheld in lieu of allowing the defendant No. 2 for such occupation. The aforesaid foundation needs to be tested. For the said purpose it is essential to refer to the stand put forth in the written statement by the defendant No. 2 which has been emphatically referred to by Mr. Sundaram: -

> "This defendant submits that this defendant is occupying the suit premises as a lawful sub-tenant, sub tenancy having been created in favour of this Defendant with the knowledge and consent of the plaintiffs."

Thereafter, the stand of the defendant No. 2 is as follows:-

> "In February, 1988, there was a lock-out in defendant No. 1 company. The financial position of defendant No. 1 deteriorated. The defendant No. 1 was not even able to fulfill their minimum and urgent financial obligations and commitments. Since there was no scope of future progress with the defendant No. 1, this defendant resigned from the employment of Defendant No. 1 in January, 1989 on the understanding that he will continue to occupy the flat No. 201 and Garage No. 7 as Defendant No. 1 had no more use for the same and also the dues were still not settled. The defendant No. 1 was not even able to pay this defendant's dues like Provident Fund, Gratuity, Leave Salary etc. The defendant No. 1 was not even in a position to pay rent in respect of the suit premises as also other outgoings in respect of the suit premises as also other outgoings incurred by the Marlow Residents Association. At the request of the Defendant No.1, this defendant continued to use and occupy the suit premises."

Mr. Ganesh, learned senior counsel has also drawn immense inspiration from the written statement. The relevant part on which emphasis is put is as follows: -

> "This defendant thereafter approached the Plaintiffs' office to tender the rent in respect of [illegible]s.

However, this defendant was told and assured by the plaintiffs that as soon as the plaintiffs would be able to settle with the Defendant No.1, they would accept the entire arrears of rent proportionately, i.e. rent of Flat No. 201 and Garage No. 7 from this defendant. Till 1994 and even till date, neither the plaintiffs nor the defendant no.2 has settled the accounts to enable this defendant to pay the rent in respect of the suit premises to the plaintiffs."

xxx xxx xxx

The defendant No. 1 has been declared as a sick unit by BIFR. The Defendant No. 1 is now acting in collusion with the Plaintiffs. The plaintiffs and the defendant No. 1 are acting in collusion and falsely denying rights of this defendant in respect of Flat No. 201. This defendant is ready and willing to pay the rent in respect of the suit premises to the Plaintiffs.

The residents of Marlow Building formed Marlow Residents' Welfare Fund. This defendant has also contributed towards the said Welfare Fund since its inception and continues to contribute like any other member including the Plaintiffs who is also a member. The said Welfare Fund has also carried out major repairs of the building. This defendant has contributed his share towards major repair of the building. These facts are known to the plaintiffs."

26. On a close perusal of the assertions made by the defendant No. 2 it is luminous that he was allowed to occupy the premises as an executive by the company and thereafter as his dues could not be paid to him, he remained in occupation and also tried to become the owner of the premises. True it is, the defendant No. 1 did not initiate action at an early stage but in 1993 when the Provident Fund Commissioner made a demand, it moved the writ court and ultimately the matter was settled before this Court. The terms of the settlement in CA No. 1425 of 2007 are reproduced

hereinbelow: -

"(i) The respondent shall pay to the appellant a sum of Rs. 3,24,000/- (Three Lakhs and Twenty Four Thousand only) in full and final settlement of the amount payable by the respondent for overstaying in the premises in question.

(ii) A sum of Rs.4,17,000 (Rupees Four Lakhs and Seventeen Thousand only) has been deposited by the appellant in the High Court of Bombay in Writ Petition No. 2134/1993. The said amount of Rs.4,17,000/- together with interest that may have accrued thereon, after deducting the amount of Rs. 3,24,000/- shall be paid to the respondent. The sum of Rs.3,23,000/- shall be paid to the appellant.

(iii) The respondent shall handover vacant possession of the premises in question to the appellant on a date and time to be fixed by the senior Prothonotary of the High Court of Bombay in the presence of a representative of the Senior Prothonotary who shall record a memorandum signed by the respondent and a representative of the appellant. The possession shall be handed over by the respondent to the appellant within a period of three weeks from today. The amount payable to the respondent shall be handed over to him forthwith, or soon after the possession of the premises in question is handed over to the appellant.

(iv) The parties agree that Summary Suit No. 947/2004 pending before the High Court of Bombay; Complaint Case No.1195/S/2003 pending before the Metropolitan Magistrate, Dadar, Bombay which is challenged before the High Court of Bombay in Criminal Writ Petition No. 2514/2006 and Writ Petition No. 2134/1993 shall be withdrawn by moving appropriate appli y

concerned. Two suits, namely, RAE Suit No. 45/ 1984 pending before the Small Causes Court, Bombay giving rise to Appeal No. 372/2005 and TE&R Suit No. 153/165 of 2001 pending before the Small Causes Court, Bombay which have been filed by the landlord of the premises in question shall continue and the appellant herein may contest the same, if so advised. So far as the respondent herein is concerned, he shall stand absolved of any liability in the said wo suits before the Small Causes Court."

27. We have referred to the written statement in extenso and the terms that have been recorded by this Court solely for the purpose of appreciating the plea whether creation of sub-tenancy by the landlord has really been established. The thrust of the matter is whether the trial court and the appellate court have correctly arrived at the conclusion of sub-letting on the foundation of legitimate inference from the facts proven. As is evincible, the defendant No. 2 was put in possession by the defendant No. 1 while he was in service. There was an agreement between the defendant No. 2 and the defendant No. 1 which has been brought on record. The agreement of tenancy between the plaintiff and the defendant No. 1 is not disputed and one of the stipulations in the agreement is that the tenant has been given the premises on lease for the purpose of occupation of its executive staff. Thus, handing over of the possession of the premises to the defendant No. 2 is in accord with the terms and conditions of the agreement entered between the landlord and the tenant and, therefore, the entry of the defendant No. 2 into the premises is legal. The trial court as well as the appellate court has drawn inference that after the defendant No.2, the employee, resigned from service and remained in occupation while he was not entitled to, the defendant No. 1 did not take any steps to get back the possession and the proceedings initiated under the Companies Act were dismissed for non-prosecution and at a belated stage

only a suit for recovery of occupational charges was instituted. The emphasis is on the inaction on the part of the defendant No. 1 to institute a suit for eviction. Such inaction would not by itself persuade a court to come to the conclusion that the sub-letting was proved. Nothing has been brought on record by way of documentary or oral evidence to suggest that there was any kind of arrangement between the defendant No. 1 and the defendant No. 2. The written statement which has been filed by the defendant No.2, in fact, is a series of self serving assertions for his own benefit. His stand would show that non-payment of provident fund and gratuity and other retiral dues amounted to consideration or a kind of arrangement. That apart, he has claimed himself to become a tenant under the landlord and also had put an aspirational asseveration that he had negotiated with the landlord to purchase the property to become the owner. The High Court has noted that the tenant, defendant No.1, was a sick company under the SICA and could not have received any money in a clandestine manner. Be that as it may, withholding of retiral dues cannot be considered as a consideration or any kind of arrangement. The settlement before this Court shows that the defendant No. 2 had paid the amount for overstaying in the premises in question and the deposited amount with the High Court was required to be paid towards the dues of the defendant No. 2 after deducting overstayal charges. Mr. Sundaram, learned senior counsel for the appellant, has contended that the settlement before this Court was between the defendant No.1 and the defendant No. 2 to which the landlord was not a party and hence, it cannot have any effect on the issue of sub-letting. True it is, it is a settlement between the defendant No. 1 and defendant No.2, but it is a settlement between an employer and an erstwhile employee and, therefore, the landlord had no role. We have noted the settlement only to show that barring withholding of the retiral dues the employer had not received any thing either in cash or in kind or otherwise from the defendant No. 2 and hence, under these circumstances, it is extremely difficult to hold that the factum of sub-letting has been established.

28. At this juncture, we are obliged to deal with the submission of Mr. Sundaram, learned senior counsel for the appellant, that the High Court in exercise of its civil revisional jurisdiction could not have dislodged the concurrent findings of the courts below. We have been commended to an authority in *Renuka Das v. Maya Ganguly and another*[12] wherein it has been opined that it is well settled that the High Court, in revision, is not entitled to interfere with the findings of the appellate court, until and unless it is found that such findings are perverse and arbitrary. There cannot be any cavil over the said proposition of law. But in the present case, as we notice, the trial court as well as the appellate court has reached their conclusions on the basis of inferences. As has been held by this Court, the issue of subletting can be established on the basis of legitimate inference drawn by a court. In *P. John Chandy and Co. (P) Ltd. v. John P. Thomas*[13], while dealing with a controversy under the rent legislation arising under the Kerala Buildings (Lease and Rent Control) Act, 1965, it has been ruled that drawing inference from the facts established is not purely a question of fact. In fact, it is always considered to be a point of law insofar as it relates to inferences to be drawn from finding of fact. We entirely agree with the aforesaid view. When inferences drawn do not clearly flow from facts and are not legally legitimate, any conclusion arrived at on that basis becomes absolutely legally fallible. Therefore, it cannot be said that the High Court has erred in exercise of its revisional jurisdiction by substituting the finding of fact which has been arrived at by the courts below. Therefore, we have no hesitation in holding that the High Court has not committed any illegality in its exercise of revisional jurisdiction under the obtaining facts and circumstances.

29. Consequently, we do not perceive any merit in this appeal and, accordingly, the same stands dismissed without any order as to costs.

B.B.B. Appeal dismissed.

12. (2009) 9 SCC 413.

13. (2002) 5 SCC 90.

USHA BHARTI

v.

STATE OF U.P. & ORS.

(Civil Appeal No. 197 of 2014)

MARCH 28, 2014

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

U.P. KSHETTRA PANCHAYAT & ZILA PANCHAYAT ACT, 1961:

s.28 - Motion of No Confidence - Adhyaksh of the Zila Panchayat - Removal of - Held: s.28 ensures that an elected representative can only stay in power so long as such person enjoys the support of the majority of the elected members of the Zila Panchayat - No doubt, there are certain positions in the Constitution, which are filled up through election but individuals so elected cannot be removed by way of No Confidence Motion, e.g. Rajya Sabha Members, Lok Sabha Members and the President of India, however, Part IX of the Constitution of India has not placed office of an Adhyaksha of a Zila Panchayat on the same pedestal as the President of India - There is no prohibition under Article 243F disenabling any State Legislature for enacting that an elected Adhyaksha shall remain in office only so long as such elected person enjoys the majority support of the elected members of the Zila Panchayat - Issue with regard to the constitutionality of s.28 of the Act was considered by Supreme Court in Bhanumati case - In the face of the findings therein, it cannot be said that the judgment in Bhanumati was either per incuriam or required reconsideration - Constitution of India, 1950 - Articles 243C, 243F, 243N - Election laws.

s.28 - Whether repugnant to Part IX of the Constitution of India - Held: The provisions of Part IX are to ensure that

Panchayati Raj Institutions acquire "the status and dignity of viable and responsive people's bodies" - The provisions are not meant to provide an all pervasive protective shield to an Adhyaksha, Zila Panchayat, even in cases of loss of confidence of the constituents - Provision in s.28, therefore, cannot be said to be repugnant to Part IX of the Constitution of India.

s.28 - Reservation for Scheduled Caste Ladies - Removal of Scheduled Caste Ladies from the post of Adhyaksha - Held: The provisions contained in s.28 does not frustrate the provisions for reservation for Scheduled Caste Ladies - Even if an Adhyaksha belonging to one of the reserved categories, Scheduled Castes, Scheduled Tribes and other Backward Classes is removed on the basis of the vote of No Confidence, she can only be replaced by a candidate belonging to one of the reserved categories - Plea that s.28 deprive a candidate belonging to the reserved category of a position to which he or she has been elected on the basis of reservation is wholly fallacious - Appellant had contested the election as an Adhyaksha, Zila Panchayat from a seat reserved for Ladies - Merely because she happened to belong to the reserved category, it cannot be said that the provision with regard to the reservation for the members of the Scheduled Castes/Scheduled Tribes/Backward Classes has been in any manner diluted.

CODE OF CIVIL PROCEDURE, 1908: Order 47 r.1 - Scope of - Held: High Court or Supreme Court, in exercise of its powers of review can reopen the case and rehear the entire matter - But whilst exercising such power, the court cannot be oblivious of the provisions contained in Order 47 Rule 1 of CPC as well as the rules framed by the High Courts and Supreme Court.

The appellant contested the election held in October, 2010 for becoming a Member of the Zila Panchayat and was elected. On 12th December, 2010, the appellant was

elected as Adhyaksh of the Zila Panchayat. On 30th October, 2012, a notice of proposed Motion of No Confidence was given to the Collector, Sitapur for calling a meeting under Section 28 of the U.P. Kshettra Panchayat & Zila Panchayat Act, 1961 signed by 37 members. Aggrieved, the appellant filed a writ petition on various grounds alleging that the Motion for No Confidence was done with an ulterior motive to usurp the office of the appellant. It was alleged that atleast three members whose names were mentioned in the Motion for No Confidence had not signed the motion/notice for requesting the Collector to call a meeting. An enquiry was held on the direction of the High Court to ascertain genuinessness of the affidavits and signatures of the members. The report was duly submitted, which indicated that 33 Members had admitted their signatures appearing on the notice and the affidavits. The High Court accordingly dismissed the writ petition. The appellant filed SLP. Meanwhile, on 06.02.2013, the Collector issued notice fixing 22.02.2013 for consideration of the Motion of No confidence. The Supreme Court held that the remedy of the petitioner (Appellant) would be to seek review of the judgment of the High Court rather than to challenge the same by way of SLP. The prayer that the operation of the impugned order be stayed for two weeks to enable the appellant to approach the High Court by way of review petition was declined. It was, however, made clear that the result of the meeting, which was scheduled to be held on 22nd February, 2013, would not be declared for a further period of two weeks. Thereafter, the appellant filed review petition before the High Court. The High Court dismissed the review petition. On 10th July, 2013, the District Magistrate, fixed a meeting for counting of votes on 12th July, 2013.

Aggrieved by the judgment of the High Court, the appellant filed instant SLP. In

Confidence Motion was passed against the appellant with 33 votes in favour of the No Confidence Motion and 23 against with 6 votes being declared invalid. There was no challenge to the result of the No Confidence Motion, with regard to the counting of votes. On 12th July, 2013, the Supreme Court issued notice and directed that "in the meanwhile, status quo shall be maintained". Whilst the matter was pending, on 23rd July, 2013, the appellant filed Contempt Petition for violating the orders dated 12th July, 2013. I.A. was filed on 18th November, 2013 pointing out that in spite of No Confidence Motion having been passed, the appellant has continued to take policy decisions which were not only prejudicial to public interest but would also create several problems for Zila Panchayat, in case the instant appeal is dismissed. A direction was issued that the District Magistrate would chair the meeting on 8th November, 2013 and the issuance of the said direction would not in any manner vary/alter the status quo order passed on 12th July, 2013, which was directed to continue.

Dismissing the writ petition and the contempt petition and the appeal, the Court

HELD: 1. The provision contained in Section 28 of the U.P. Kushettra Panchayat and Zila Panchayat Act, 1961 Act is in no manner, inconsistent with the provisions contained in Part IX, in particular, Article 243N of the Constitution of India. Section 19 of the 1961 Act provides that in every Zila Panchayat, an Adhyaksha shall be elected by the elected members of the Zila Panchayat through amongst themselves. Section 19-A was introduced by U. P. Act No.9 of 1994 providing for reservation of the offices of Adhyaksha, for persons belonging to Scheduled Casts and Scheduled Tribes and the Backward Classes. Section 19-A(2) provides that "not less than one-third of the offices shall be reserved for the

ladies belonging to the Scheduled Castes, Scheduled Tribes or the Backward Classes as the case may be." Under this Section, on a seat reserved for the said categories of Scheduled Castes, Scheduled Tribes and the Backward Classes, a person belonging to that category would be elected from a particular Panchayat in which reservation is made on the basis of the roster provided in Section 19-A(3). Section 20 of the Act provides that a Zila Panchayat shall continue for five years from the date appointed for its first meeting and no longer. It is also provided that Section 20(2) that the term of office of a member of a Zila Panchayat shall expire with the term of Zila Panchayat unless otherwise determined under the provisions of the Act. Section 21 provides that save as otherwise provided in this Act, the term of office of the Adhyaksha shall commence on his election and with the term of Zila Panchayat. Section 26 provides for disqualification for being a member or an Adhyaksha in case a person has incurred any disqualification for being elected as a member of the Panchayat. [Paras 18 and 19]

2. Section 28 provides for a Motion of No Confidence in Adhyaksha. The section provides detailed procedure with regard to the issuance of written notice of intent to make the motion, in such form as may be prescribed, signed by not less than one-half of the total number of the elected members of the Zila Panchayat for the time being. Such notice together with the copy of the proposed motion has to be delivered to the Collector having jurisdiction over the Zila Panchayat. Therefore, the Collector shall convene a meeting of the Zila Panchayat for consideration of the motion on a date appointed by him which shall not be later than 30 days the date from which the notice was delivered to him. The Collector is required to give a notice to the elected members of not less than 15 days of such meeting in the manner prescribed. The meeting has to be [illegible]e

District Judge or a Civil Judicial Officer not below the rank of a Civil Judge. The debate on the motion cannot be adjourned by virtue of provisions contained in Section 28(7). Sub-section (8) further provides that the debate on the No Confidence Motion shall automatically terminate on the expiration of 2 hours from the time appointed for the commencement of the meeting, if it is not concluded earlier. Either at the end of 2 hours or earlier, the motion has to be put to vote. Further more, the Presiding Officer who is either District Judge or a Judicial Officer is not permitted to speak on the merits of the motion, and also not entitled to vote. Sub-section (11) provides that "if the motion is carried with the support of (more than half) of the total number of (elected members) of the Zila Panchayat for the time being". The said provision contained in Section 28 is, in no manner, inconsistent with the provisions contained in Article 243N. To accept the submission of inconsistency would be contrary to the fundamental right of democracy that those who elect can also remove elected person by expressing No Confidence Motion for the elected person. Undoubtedly, such No Confidence Motion can only be passed upon observing the procedure prescribed under the relevant statute, in the instant case the Act. [Para 20]

3. Section 29 provides for a procedure for removing an Adhyaksha who is found guilty of misconduct in the discharge of his/her duties. This Section, in no manner, either overrides the provisions contained in Section 28 or is in conflict with the same. [Para 21]

4. It is wrong to state that Section 28 could not have continued after expiry of one year of the enactment of 73rd Amendment of the Constitution of India, which came into effect on 24th April, 1993. Such an eventuality would have arisen only in case it was found that Section 28 is inconsistent with any provision of Part IX of the

Constitution. Merely because Article 243F is silent with regard to the removal of an Adhyaksha on the basis of a Motion of No Confidence would not render the provision inconsistent with the Article 243 of the Constitution of India. [Para 22]

5. The provisions contained in Section 28 does not frustrate the provisions for reservation for Scheduled Caste Ladies. Even if an Adhyaksha belonging to one of the reserved categories, Scheduled Castes, Scheduled Tribes and other Backward Classes is removed on the basis of the vote of No Confidence, she can only be replaced by a candidate belonging to one of the reserved categories. [Para 23]

6. Part IX of the Constitution has made provisions for self-governance at Panchayat level, including the election of Panchayat Members and its Chairman. Thus, ushering in complete decentralization of the Government and transferring the power to the grass roots level bodies; such as the Panchayats at the village, intermediate and District level, in accordance with Article 243C of the Constitution. Article 243 C as well as some others, such as Articles 243-A, 243-C(5), 243-D(4), 243-D(6), 243-F(1), (6), 243-G, 243-H, 243-I(2), 243-J, 243-K(2), (4) of the Constitution etc make provision for the State to enact necessary legislation to implement the provisions in Part IX of the Constitution of India. It is wrong to say that State Legislature will have no power to make provision for no-confidence motion against the Adhyaksha of Zila Panchayat. [Para 24]

7. It is also wrong to say that a person once elected to the position of Adhyaksha would be permitted to continue in office till the expiry of the five years terms, even though he/she no longer enjoys the confidence of the electorate. To avoid such catastrophe, a provision for no-confidence, has been made in S t.

Such contentions, if accepted, would destroy the foundational precepts of democracy that a person who is elected by the members of the Zila Panchayat can only remain in power so long as the majority support is with such person. [Para 25]

8. There is no interference whatsoever in the right of the electorate to choose. Rather Section 28 ensures that an elected representative can only stay in power so long as such person enjoys the support of the majority of the elected members of the Zila Panchayat. In the instant case, at the time of election, the appellant was the chosen one, but, at the time when the Motion of No Confidence in the appellant was passed, she was not wanted. Therefore, the right to choose the electorate, is very much alive as a consequence of the provision contained in Section 28. [Para 26]

I.R. Coelho v. Union of India **(2007) 2 SCC 1: 2007 (1) SCR 706 - held inapplicable**

D.S.Nakara vs. Union of India **(1983) 1 SCC 305: 1983 (2) SCR 165 - referred to.**

9. It is wrong to state that the provisions contained in Section 28 of the Act cannot be sustained in the eyes of law as it fails to satisfy the twin test of reasonable classification and rational nexus with the object sought to be achieved. [Para 27]

10. It is true that in the Constitution, Article 67B provides for removal of the Vice-President by a resolution of the Council of States as provided therein passed by the majority of all the then members of the Council and agreed to by the House of People. It is also correct that under Article 90C, the Deputy Chairman of the Council of States can be removed from his office on a resolution of the Council passed by all the majority members of the

then Council. Similarly, Article 94 provides that a member of holding office as Speaker or Deputy Speakers of the House of People may be removed from his office by a resolution of the House of People passed by a majority of all the then members of the House. It is also true that there are certain positions in the Constitution, which are filled up through election but individuals so elected cannot be removed by way of No Confidence Motion, e.g. Rajya Sabha Members, Lok Sabha Members and the President of India. It is wrong to state that Part IX of the Constitution of India has placed office of an Adhyaksha of a Zila Panchayat on the same pedestal as the President of India. Article 243F empowers the States to enact any law for a person who shall be disqualified for being chosen as a member of a Panchayat. This would also include a member of a Panchayat, who is subsequently appointed as Adhyaksha of a Zila Panchayat. There is no prohibition under Article 243F disenabling any State Legislature for enacting that an elected Adhyaksha shall remain in office only so long as such elected person enjoys the majority support of the elected members of the Zila Panchayat. [Paras 28, 29]

11. The seat for the office of Adhyaksha of Zila Panchayat was reserved for women candidates, i.e., all women candidates. It was not specifically reserved for Ladies belonging to the reserved categories of Scheduled Castes, Scheduled Tribes and the Backward Classes. The appellant contested as a Lady Candidate and not as a candidate belonging to any reserved category and was elected on a seat reserved for Ladies generally. [Para 30]

12. The provision under Section 28A of the Act in no manner dilutes or nullifies the protection given to the candidates belonging to Scheduled Castes, Scheduled Tribes and Backward Classes in the

the Constitution of India. [Para 34]

13. The appellant had contested the election as an Adhyaksha, Zila Panchayat from a seat reserved for Ladies. Merely because she happens to belong to the reserved category, it cannot be permitted to be argued, that the provision with regard to the reservation for the members of the Scheduled Castes/Scheduled Tribes/ Backward Classes has been in any manner diluted, let alone nullified. [Para 35]

14. The provisions of the 73rd Constitutional amendment are to ensure that Panchayati Raj Institutions acquire "the status and dignity of viable and responsive people's bodies". The provisions are not meant to provide an all pervasive protective shield to an Adhyaksha, Zila Panchayat, even in cases of loss of confidence of the constituents. Provision in Section 28, therefore, cannot be said to be repugnant to Part IX of the Constitution of India. [Para 36]

15. The amendment as well as the main provision in Section 28 is in absolute accord with the vision explicitly enunciated in the Preamble of the Constitution of India. In fact, the spirit which led to ultimately encoding the goals of "WE THE PEOPLE" in the Preamble of the Constitution of India, permeates all other provisions of the Constitution of India. The fundamental aim of the Constitution of India is to give power to the People. Guiding spirit of the Constitution is "WE THE PEOPLE OF INDIA". In India, the People are supreme, through the Constitution of India, and not the elected Representatives. Therefore, the provision for right to recall through the Vote of No Confidence is in no manner repugnant to any of the provisions of the Constitution of India. [Para 37]

16. The whole edifice of the challenge to the

constitutionality of Section 28 is built on the status of the appellant as a member belonging to the reserved category. It has nothing to do with the continuance, stability, dignity and the status of the Panchayat Institutions. The personal desire, of the appellant to cling on to the office of Adhyaksha is camouflaged as a constitutional issue. The provision of No Confidence Motion, is not only consistent with Part IX of the Constitution, but is also foundational for ensuring transparency and accountability of the elected representatives, including Panchayat Adhyakshas. The provision sends out a clear message that an elected Panchayat Adhyaksha can continue to function as such only so long as he/she enjoys the confidence of the constituents. [Para 40]

17. The submission that *Bhanumati case is per incuriam is not well founded. The ground that the Court in *Bhanumati case had not considered the provision with regard to special protection to be given to the members of the Scheduled Castes, Scheduled Tribes and the Backward Classes was never made before in *Bhanumati case. Secondly, the issue with regard to reservation for Scheduled Castes, Scheduled Tribes and the Backward Classes, does not arise in the facts of this case as the appellant had not been elected to the office of Adhyaksha of Zila Panchayat reserved for Scheduled Castes and Scheduled Tribes. The provision for removing an elected representative such as Panchayat Adhyaksha is of fundamental importance to ensure the democratic functioning of the Institution as well as to ensure the transparency and accountability in the functions performed by the elected representatives. In *Bhanumati case, the Court also mentions that the statutory provision of No Confidence Motion against the Chairperson is a pre-constitutional provision and was there in Section 15 of the 1961 Act. e

findings, it would not be possible to accept the submission that the judgment in *Bhanumati case is either per incuriam or requires reconsideration. [Paras 41, 47, 49 and 50]

Bhanumati & Ors. v. State of Uttar Pradesh through its Principal Secretary & Ors.* **(2010) 12 SCC 1: 2010 (7) SCR 585 - relied on.

18. Under Article 243N, any provision of law relating to Panchayats in force immediately before the 73rd Amendment, which is inconsistent with Part IX continues to be enforced until amended or repealed. In the absence of such amendment or repeal, the inconsistent provision will continue until the expiration of one year from the commencement of the Constitution (73rd Amendment) Act, 1993. The State of Uttar Pradesh enacted U.P. Panchayat Law (Amendment) Act, 1994 on 22nd April, 1994 to give effect to the provisions of Part IX of the Constitution. The pre-existing provision of No Confidence was not repealed. It was amended subsequently by the Amendment Act of 1998 (U.P. Act No. 20 of 1998). There was a further amendment by the Amendment Act of 2007 (U.P. Act No. 4 of 2007). By this amendment, the period for moving a No Confidence Motion was reduced from two years to one year. Furthermore the requirement that for a Motion of No Confidence to be carried, it had to be supported by a majority of "not less than two third" was reduced to "more than half". It was these amendment changes brought about by the Amendment Act of 2007, which was challenged in the case of *Bhanumati & Ors. The continuous of the provision of No Confidence Motion was not even challenged. In spite of the fact that the challenge was limited only to the amendment, this Court examined the question as to whether provision for bringing a Motion of No Confidence in Section 28 of the 1961 Act was repugnant or inconsistent with Part IX of

the Constitution of India. The Court thereafter noticed the submission that the position of Panchayat Adhyaksha is comparable with that of the President of India. This Court rejected the submission with the observation that "this is an argument of desperation and has been advanced, with respect, without any regard to the vast difference in constitutional status and position between the two posts." Even by stretching the imagination beyond all reasonable bounds, Chairman of a District Panchayat cannot be put on the same pedestal as the President of India. [Paras 51, 52]

19. No substantial question of law has arisen as envisaged under Article 145(3) of the Constitution of India as to the interpretation of the Constitution of India, in the facts and circumstances of this case. The entire issue has been elaborately, and with erudition, dilated upon by this Court in Bhanumati & Ors. There is no occasion for reconsideration of the judgment of this Court in Bhanumati & Ors. [Para 54]

Board of Control for Cricket in India v. Netaji Cricket Club **(2005) 4 SCC 741: 2005 (1) SCR 173;** *S. Nagaraj & Ors. v. State of Karnataka & Anr.* **(1993) Supp. 4 SCC 595: 1993 (2) Suppl. SCR 1;** *Green View Tea & Industries v. Collector, Golaghat, Assam & Anr.* **(2004) 4 SCC 122 - relied on.**

Deep Chand v. State of U.P. **(1959) Supp. 2 SCR 8;** *Ch. Tika Ramji v. State of U.P.* **(1956) SCR 393;** *Zaverbhai Amaidas v. State of Bombay* **(1955) 1 SCR 799;** *Synthetics and Chemicals Ltd. & Ors. v. State of U.P. & Ors.* **(1990 1 SCC 109: 1989 (1) Suppl. SCR 623;** *Zee Telefilms Ltd. v. Union of India* **(2005) 4 SCC 649: 2005 (1) SCR 913;** *Nirmaljeet Kaur v. State of M.P.* **(2004) 7 SCC 558: 2004 (3) Suppl. SCR 1006;** *Bharat Petroleum Corporation Ltd. v. Maddula Ratnavalli* **(2007) 6 SCC 81: 2007 (5) SCR 997;** *Khoday Distilleries Ltd. v. State of Karnataka* **(1996) 10 SCC 304: 1995 (6) Suppl. SCR 759;** *Magal[illegible]d.*

v. Municipal Corporation of Greater Bombay **(1974) 2 SCC 402: 1975 (1) SCR 1;** *Director of Industries v. Deep Chand Agarwal* **(1980) 2 SCC 332: 1980 (2) SCR 1015 - held inapplicable**

20. The High Court or this Court, in exercise of its powers of review can reopen the case and rehear the entire matter. But whilst exercising such power the court cannot be oblivious of the provisions contained in Order 47 Rule 1 of CPC as well as the rules framed by the High Courts and this Court. The High Court has not erred in law in not reviewing its earlier judgment. [Paras 62, 64]

State of Assam v. Ripa Sarma **(2013) 3 SCC 63: 2013 (4) SCR 151;** *Suseel Finance & Leasing Co. v. M. Lata & Ors.* **(2004) 13 SCC 675;** *Bore Gowda v. State of Karnataka* **(2000) 10 SCC 620;** *N. Bhargawan Pillai v. State of Kerala* **(2004) 13 SCC 217: 2004 (1) Suppl. SCR 444;** *State of U.P. v. Synthetics and Chemicals Ltd.* **(1991) 4 SCC 139;** *Babu Parasu Kaikadi Vs. Babu* **(2004) 1 SCC 681: 2003 (4) Suppl. SCR 1153;** *Shanker Motiram Nale v. Shiolalsing Gannusing Rajput* **(1994) 2 SCC 753;** *Dhondiram Tatoba Kadam v. Ramchandra Balwantrao Dubal (since deceased) by His LRs. & Anr.* **(1994) 3 SCC 366: 1993 (1) Suppl. SCR 419;** *Union of India vs. G.Ganayutham* **(1997) 7 SCC 463: 1997 (3) Suppl. SCR 549;** *State of A.P. v/s McDowell & Co.* **(1996) 3 SCC 709: 1996 (3) SCR 721;** *Senior Superintendent of Post Offices vs. Izhar Hussain* **(1989) 4 SCC 318: 1989 (3) SCR 796 - referred to.**

Case Law Reference:

2013 (4) SCR 151	**referred to**	**Para 16**
(2004) 13 SCC 675	**referred to**	**Para 16**
2010 (7) SCR 585	**relied on**	**Para 16**
2007 (1) SCR 706	**held inapplicable**	**Para 26**

(1959) Supp. 2 SCR 8	**held inapplicable**	**Para 16**
(1955) 1 SCR 799	**held inapplicable**	**Para 16**
2004 (1) Suppl. SCR 444	**referred to**	**Para 16**
(1991) 4 SCC 139	**referred to**	**Para 16**
2003 (4) Suppl. SCR 1153	**referred to**	**Para 16**
2004 (3) Suppl. SCR 1006	**held inapplicable**	**Para 16**
2005 (1) SCR 913	**held inapplicable**	**Para 16**
2005 (1) SCR 173	**relied on**	**Para 16**
1993 (2) Suppl. SCR 1	**relied on**	**Para 16**
(2004) 4 SCC 122	**relied on**	**Para 16**
(1994) 2 SCC 753	**referred to**	**Para 16**
1983 (2) SCR 165	**referred to**	**Para 27**
(1956) SCR 393	**held inapplicable**	**Para 57**
(2000) 10 SCC 620	**referred to**	**Para 59**
1989 (1) Suppl. SCR 623	**held inapplicable**	**Para 59**
1993 (1) Suppl. SCR 419	**referred to**	**Para 59**
1983 (2) SCR 165	**referred to**	**Para 60**
1997 (3) Suppl. SCR 549	**referred to**	**Para 60**
2007 (5) SCR 997	**referred to**	**Para 60**
1996 (3) SCR 721	**referred to**	**Para 61**
1989 (3) SCR 796	**referred to**	**Para 61**
1995 (6) Suppl. SCR 759	**held inapplicable**	**Para 61**
1975 (1) SCR 1	**held inapplicable**	**Para 61**
1980 (2) SCR 1015	**held in**	

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4197 of 2014.

From the Judgment and Order dated 04.07.2013 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Review Petition No. 103 of 2013 in Re: W.P. No. 9654/MB/2012.

WITH

Contempt Petition (Civil) No. 287 of 2013.

Civil Appeal No. 4199 of 2014.

Kamini Jaiswal, Rohit Kumar Singh for the Appellant.

Niraj Gupta, Gaurav Mehrotra, Rajeev Maheshwaranand Roy, Sanjay Kumar Visen, Rakesh Kumar Singh, Prem Prakash, Yash Pal Dhingra, Abhisth Kumar for the Respondent.

The Judgment of the Court was delivered by

SURINDER SINGH NIJJAR, J. 1. Leave granted.

2. These appeals are directed against the judgment and order passed by the High Court of Judicature at Allahabad (Lucknow Bench) in Review Petition No.103 of 2013 on 4th July, 2013 dismissing the review petition filed by the appellant.

3. Since the issues raised in these appeals are pristinely legal, it would not be necessary to make a detailed reference to the facts, leading to the filing of the present appeals. Even otherwise, the High Court in the impugned judgment has made an elaborate survey of the facts. Therefore, it is unnecessary to repeat the same. However, the foundational facts for challenging the impugned judgment of the High Court are recapitulated for ready reference.

4. The appellant successfully contested the election held in October, 2010 for becoming a Member of the Zila Panchayat, Sitapur, U.P. 62 candidates were elected as the Members of

the Zila Panchayat including the appellant and respondents 5 to 37. On 12th December, 2010, the appellant was elected as Adhyaksh of the Zila Panchayat, Sitapur. On 30th October, 2012, a notice of proposed Motion of No Confidence was given to the Collector, Sitapur for calling a meeting under Section 28 of the U.P. Kshettra Panchayat & Zila Panchayat Act, 1961 (for short 'the Act'). The notice calling for a Motion of No Confidence was signed by 37 members. The legal requirement under Section 28(2) is that a motion expressing want of confidence in the Adhyaksh must be signed by not less than half of the total number of elected members. On 31st October, 2012, the Collector, Sitapur issued a notice informing the elected members that a meeting for considering the Motion of No Confidence will be held on 23rd November, 2012.

5. Aggrieved by the issuance of said notice, the appellant filed Writ Petition No.9654 of 2012 on various grounds alleging that the motion for no confidence has been done with an ulterior motive to usurp the office of the appellant. It was alleged that atleast three members whose names were mentioned in the Motion for No Confidence had not signed the motion/notice requesting the Collector to call a meeting. The appellant made the following prayers in the writ petition :-

> "(i) Issue an appropriate writ, order or direction in the nature of certiorari quashing the impugned notice of intent to bring no-confidence motion against the petitioner;
>
> (ii) Issue a writ, order or direction or writ in the nature of certiorari quashing the notice dated 31st October, 2012, issued by respondent No.3, as contained in Annexure No.1 to the writ petition.
>
> (iii) Issue a writ, order or direction or writ in the nature of mandamus directing the respondent No.3 to verify the genuineness of the signature of the member's on the notice to b e

petition dated 30th October, 2012,

(iv) Issue a writ, order or direction or writ in the nature of mandamus commanding the opposite parties to let the petitioner to continue on the office of Adhyaksha, Zila Panchayat Sitapur of Tehsil & District Sitapur.

(v) Issues an ad-interim mandamus to the above effect.

(vi) Issue any other appropriate writ, order or direction in favour of the petitioner as the Hon'ble Court may deem fit in the circumstances of the case.

And

(vii) Award the costs of the petition to the petitioner."

6. The High Court on 21st November, 2012 directed the District Judge or any Additional District Judge nominated by him to hold an enquiry to ascertain genuineness of the affidavits and signatures of members and to submit a report thereon before the next date of hearing. It was also directed that further proceedings of "No Confidence Motion" shall remain in abeyance. The matter was to be listed on 20th December, 2012. The report was duly submitted, which indicated that 33 Members had admitted their signatures appearing on the notice, and the affidavits, submitted in connection with the motion of no confidence. It was also stated that "among those members, in respect of whom signatures and affidavits were doubted, the report of Deputy Director (Pralekh) mentions that Zila Panchayat Member Mr. Vijay Kumar has also proved to have been signed and submitted the notice and the affidavit. Accordingly, 34 Zila Panchayat Members are found to have applied for bringing in the motion of no confidence." Taking note of the aforesaid report, the High Court dismissed the writ petition with the following observations:

"As the requirement of valid signature for carrying out the No Confidence Motion is only 31, whereas in the enquiry report it has been found to be 34, now nothing would survive in this writ petition. Hence, it is dismissed."

7. On 6th February, 2013, the Collector, Sitapur issued notice fixing 22nd February, 2013 for consideration of the Motion of No Confidence.

8. Aggrieved by the judgment of the High Court dated 5th February, 2013, the appellant moved this Court through S.L.P.(C) No.8542 of 2013.

9. Mr. Shanti Bhushan, learned senior counsel appearing for the appellant submitted that the High Court had wrongly relied upon the report submitted by the Additional District Judge without giving the appellant any opportunity to submit any objection to the report. This apart, in view of the provisions contained in Article 243C(2)of the Constitution of India, no provision has been made for No Confidence Motion in Panchayat elections. It was submitted by Mr. Shanti Bhushan that the aforesaid issues with regard to the applicability of scope and ambit of Article 243 of the Constitution of India, even though specifically raised the writ petition and argued before the High Court have neither been noticed nor considered. Taking note of the aforesaid submissions, this Court passed the following order :-

"If that be so, in our opinion, the remedy of the petitioner would be to seek review of the judgment of the High Court rather than to challenge the same by way of this special leave petition."

10. The prayer made by Mr. Shanti Bhushan that the operation of the impugned order be stayed for two weeks to enable the appellant to approach the High Court by way of review petition was declined. It was, however, made clear that the result of the meeting, which was so[illegible]n

22nd February, 2013, shall not be declared for a further period of two weeks.

11. Thereafter, the petitioner filed Review Petition No. 103 of 2013 before the High Court. The appellant stated that members owning allegiance to the Samajwadi Party led by Smt. Madhu Gupta, W/o Shri Hari Om Gupta - Respondent No.5, were not able to muster any signature for the initiation of the Motion and, therefore, appended forged signature of several Members on the notice of intent to move the Motion of No Confidence. These forged signatures were used by the Samajwadi Party to induce other Members to join for giving the notice for moving the Motion of No Confidence. It was stated that the very initiation of the Motion was a fraud on the system and against the settled democratic principles. The act of forgery of signatures was committed on the instance of Respondent No. 5 and her supporters. Therefore, the initiation of Motion of No Confidence was invalid and illegal. The appellant pointed out that in the earlier writ petition, it was specifically pleaded that in terms of Article 243N, the provision of Section 28 have been rendered otiose. The provision contained in Section 28 of the Act, being inconsistent with the constitutional scheme, which does not comprehend the removal of Adhyaksh of Zila Panchayat, mid term and as such, the Motion otherwise also could not be permitted to be carried. It was further stated that "in view of the provisions of Article 243C(ii) of the Constitution of India, there being no provision in the Panchayat election for Motion of No Confidence whether Section 28 of the Panchayatiraj Adhiniyam would continue to operate in view of Article 243N".

12. Upon completion of the pleadings, the High Court by an elaborate judgment has dismissed the Review Petition by the impugned order dated 4th July, 2013. On 10th July, 2013, the District Magistrate, Sitapur fixed a meeting for counting of votes on 12th July, 2013. Aggrieved by the judgment of the High Court, the appellant filed SLP in this Court on 11th July, 2013.

The matter was mentioned in Court at 10.30 A.M. before the Chief Justice of India. A direction was issued by the Chief Justice of India to the Registry to place the matter before this bench at the end of the list. In the meantime, No Confidence Motion was passed against the appellant with 33 votes in favour of the No Confidence Motion and 23 against with 6 votes being declared invalid. The counting was supervised by the Civil Judge, Sitapur. The representative of the petitioner/appellant was present and had stated that he is satisfied with the counting of votes. There has been no challenge to the result of the No Confidence Motion, with regard to the counting of votes. On 12th July, 2013, at about 12.15 P.M., this Court issued notice and directed that "in the meanwhile, status quo, as it exists today, shall be maintained". Since Respondent No.5 had filed a caveat on 11th July, 2013 at about 11.00 A.M. and no notice had been given to her before hearing the Special Leave Petition, she filed an application seeking recall of the aforesaid order dated 12th July, 2013. It was claimed that Respondent No. 5 sought recall on the following grounds:-

(i) No notice was given to Respondent before hearing and passing Order dated 12.07.2013.

(ii) Counting of votes was already done and the no confidence Order was passed well before passing the Order dated 12.07.2013 by this Hon'ble Court.

(iii) Present SLP is not maintainable as per the settled law laid down by this Hon'ble Court namely that an SLP is not maintainable against the dismissal of review filed before the HC after dismissal of SLP.

(iv) In any case the SLP is also not maintainable as the issue raised in the SLP is already covered by the judgment of this Hon'ble Court in *Bhanumati and Ors. V. State of U.P. & Ors.* reported in 2010 (12) SCC 1.

13. Whilst the matter was pending, on 23rd July, 2013, the petitioner filed Contempt Petition No. 287 of 2013 for violating the orders of this Court dated 12th July, 2013. It is stated that Respondent No.5 admittedly made false statement in the application to recall the order dated 12th July, 2013. The order of this Court was communicated whilst the meeting for counting of votes was still in progress. The appellant states that one of the newspapers "Amar Ujala" has reported that the result had been declared at 1.15 P.M.

14. Respondent No. 5 was impleaded as Respondent No. 4 in the aforesaid Contempt Petition. However, notice of contempt was issued only against official Respondent Nos. 1, 2 and 3. I.A. No. 8 was filed on 18th November, 2013 pointing out that in spite of No Confidence Motion having been passed, the appellant has continued to take policy decisions which were not only prejudicial to public interest but would also create several problems for Zila Panchayat, in case the present appeal is dismissed. The aforesaid application came up for hearing on 19th November, 2013. It was pointed out on behalf of Respondent No. 5 that the appellant had issued a Notice of Meeting on 8th November, 2013 of the meeting of the Zila Panchayat, Sitapur to be held on 20th November, 2013 at 11.30 A.M. to take decision on Subject Nos. 1 to 16 enumerated in Annexure A3 to the Interlocutory Application.

15. On the other hand, it was submitted on behalf of the appellant that the notice merely indicates the subjects on which decisions are required to be taken for the development work within the Zila Panchayat. It was submitted that the appellant ought to be permitted to take necessary decisions. However, during the course of deliberations, Mr. Shanti Bhushan had very fairly submitted that the appellant will voluntarily not preside over the aforesaid meeting, rather the Collector may be requested to chair the meeting. A direction was, therefore, issued that the District Magistrate, Sitapur would chair the meeting on 8th November, 2013. It was made clear that the issuance of the aforesaid direction will not in any manner vary/alter the status

quo order passed by this Court on 12th July, 2013, which was directed to continue. Submissions of the parties in the appeal were heard on 3rd December, 2013, 5th December, 2013 and 11th December, 2013 when the judgment was reserved.

16. Very detailed and elaborate submissions have been made by the learned counsel for the parties, which can be briefly summed up as follows:-

(i) At the outset, Dr. Rajiv Dhawan submitted that the Special Leave Petition is not maintainable as it is directed only against the judgment rendered by the High Court in Review Petition No. 103 of 2013. In support of the submissions, learned senior counsel relied on judgments of this Court in *State of Assam Vs. Ripa Sarma*[1] *and Suseel Finance & Leasing Co. Vs. M. Lata & Ors.*[2]. Dr. Dhawan also submitted that even otherwise, the SLP deserves to be dismissed as the matter is squarely covered against the petitioner/appellant by the judgment of this Court in *Bhanumati & Ors.Vs. State of Uttar Pradesh through its Principal Secretary & Ors.*[3] Relying on the aforesaid judgment, it was submitted by Dr. Dhawan that the petitioner can not even be heard on the proposition that Section 28 of the Act is inconsistent with Part IX of the Constitution. Mr. Ashok Desai, learned senior counsel also submitted that in view of the law laid down in *Bhanumati & Ors.* (supra), the issue raised herein is no longer res integra. Learned senior counsel also submitted that the SLP against the judgment of the High Court rendered in the Review Petition would not be maintainable without challenging the judgment which was sought to be reviewed.

1. (2013) 3 SCC 63.
2. (2004) 13 SCC 675.
3. (2010) 12 SCC 1.

(ii) Mr. Shanti Bhushan has submitted that the issue raised in the present appeal is of vital importance, i.e., whether Section 28 of the Act, which provides for bringing No Confidence Motion against the Chairman of Zila Panchayat is valid in so far as it is inconsistent with Part IX of the Constitution of India. Therefore, this Court will have to determine whether the impugned provision falls within the legislative competence of the State Legislature. The Court will also have to decide as to whether the impugned provision is inconsistent with Article 243N of the Constitution of India?

(iii) It is submitted by the learned senior counsel that the provision of No Confidence Motion for removing the Chairman or Adhyaksha of Zila Panchayat is inconsistent with Part IX of the Constitution. He submits that Part IX of the Constitution containing Articles 243A to 243O were inserted wide the Constitution (73rd Amendment Act, 1992) w.e.f. 24th April, 1993. The aforesaid articles have laid down exhaustive provisions for self-governance at Panchayat level. This includes election of Panchayat Members and its Chairman as well as their disqualification. However, no provision is made for bringing a No Confidence Motion against the Chairperson of Panchayat. Article 243C(v) provides that the Chairperson of a Panchayat at the village level shall be elected in such a manner as the Legislature of a State may, by law, provide. Article 243F provides that Panchayat can make law for disqualification of Panchayat Members. Sections 18, 19 and 29 of the Act, which provides for composition of Zila Panchayat, election of Adhyaksha and removal of Adhyaksha respectively are in consonance with the aforesaid Articles of the Constitution of India. Section 19 of the aforesaid

Act provides for election of Adhyaksha by elected members of the Zila Panchayat from amongst themselves. Section 29(1) of the Act enumerates the grounds for removal of Adhyaksha but does not include the provision for bringing a Motion of No Confidence against the Chairman.

(iv) Learned senior counsel further submitted that the provision contained in Section 28(1) of the Act is repugnant to Part IX of the Constitution. Mr. Shanti Bhushan submits that in any event, the provisions contained in Section 28 of the Act could not have continued after expiry of one year of the enactment of the 73rd Amendment of the Constitution of India, which came into effect from 24th April, 1993. Such continuance would be inconsistent with the provisions contained in Article 243N of the Constitution of India.

(v) Learned senior counsel further submitted that Article 243D for the first time introduced reservation of seats for Scheduled Castes, Scheduled Tribes as well as ladies both in the election of members of Panchayat as well as for the office of Chairperson. It is submitted that the provision of "No Confidence" like Section 28 of the Act can frustrate the provision for such reservation. SC, ST and ladies always being in minority in Panchayat, a Chairperson from the reserved category can easily be removed from the said office by majority of general category Panchayat members. Such a result was not envisaged by the provisions contained in Article 243D. It is further submitted that Part IX of the Constitution has exhaustively specified the areas for which a State Legislature, as local self-governance falls in the State List, can make la[illegible]e

complete decentralization of the governance. This, according to the learned senior counsel was the main objective of the 73rd Amendment Act which does not provide for any law to be made by the State Legislature for bringing a No Confidence Motion against the Chairperson/Adhyaksha/Zila Panchayat.

(vi) According to Mr. Bhushan, if there had been no existing provision for No Confidence like Section 28 in the Act, then after 73rd amendment in the Constitution, the State Legislature could not have brought such a provision as it is not competent to do so. The provision, according to Mr. Bhushan, is likely to be struck down as the powers vested in the elected body are sought to be taken over and vested in the executive, which would be opposed to the basic structure of the Constitution of India. Mr. Bhushan emphasized that by permitting the provisions in Section 28 to continue, the State Legislature and Executive are trying to deprive the elected representatives of their fundamental rights enshrined in Part III and Part IX of the Constitution of India. Relying on the judgment of this Court in *I.R. Coelho Vs. Union of India*[4]. He has submitted that fundamental rights include within itself the right to choose. The aforesaid right to choose would continue till the tenure of the representative of the people for which he has been elected is exhausted. The provision in Section 28 permits such tenure to be curtailed, which would infringe the fundamental right of the voters that elected such a member. Giving numerous examples from different Articles of the Constitution of India, it is submitted that provision of No Confidence Motion has been specifically provided wherever it was intended. As

4. (2007) 2 SCC 1.

example, he points out Articles 67(b), 90(c), 94(c) providing for No Confidence Motion for the removal of Vice President, Deputy Chairman of the Council of States and the Speaker or Deputy Speaker of the House of people respectively. He also points out that there are offices/posts in the Constitution, which are filled up through a process of election but the persons so elected can not be removed by way of moving a Motion for No Confidence. For example, he relies on Article 80(4), 81(1)(a) and Article 54. Therefore, Rajya Sabha Members, Lok Sabha Members and President of India can not be removed by moving a Motion for No Confidence. Mr. Bhushan submits that the question here is as to whether the No Confidence provisions contained in the Act can continue after the amendment of the Constitution. A provision for moving a Motion for No Confidence is in other words the right to recall of an elected member by the voters. The Constitution may or may not provide for moving a Motion for No Confidence. He submitted that provision for moving the Motion for No Confidence is not necessarily part of democracy. In fact, right to recall an elected member has not been legally recognized. In support of this submission, he makes a reference to Article 243N read with Article 243(c)(iv) and (v) and in particular, sub-clause 5(b). He further submits that the reservation was introduced for the first time by 73rd amendment, which incorporated Article 243 in the Constitution of India w.e.f. 24th April, 1993. He, thereafter, outlined the various provisions for reservation of seats as contained in Article 243D. It is emphasized that the provision contained in Article 243D(ii) makes it mandatory that not less than one third of the total number of seats reserved under Clause 1 shall be reserved for ladies belonging to the Scheduled

may be, the Scheduled Tribes. Articles 243F(1)(a) and Article 243F(1)(b) which correspond to Article 102 and 103 provides for disqualification for being chosen as, and for being a member of a Panchayat. Mr. Bhushan submitted that the Constitution provides for removal and consequential disqualification. This would not apply to a vote of No Confidence. This would tantamount to giving the voters a right to recall which does not exist in law in so far as Panchayat Adhyaksha is concerned. Learned senior counsel further submitted that Article 243 makes provision for reservation, to advance the aim of our Constitution for the upliftment of the poor sections of the society. Therefore, the Parliament has taken extra care to ensure that such members of the weaker society once elected should not be removed by the strongest segment of the society by bringing a Motion of No Confidence. He reiterated that wherever it was felt necessary, the Parliament had provided for moving a Motion of No Confidence. He has made a specific reference to Articles 89, 90, 93, 94(c), 80(iv), 81, 54, 61, 66 and 67(b).

(vii) In support of the submission that Section 28 of the Act is repugnant to Part IX of the Constitution of India, in particular, Article 243N. The learned senior counsel relied on a number of judgments of this Court:-

Deep Chand Vs. State of U.P.[5]*, Zaverbhai Amaidas Vs. State of Bombay*[6]*, N. Bhargawan Pillai Vs. State of Kerala*[7]*, State of U.P. Vs. Synthetics and Chemicals Ltd.*[8]*, Babu Parasu*

5. (19590 Supp. 2 SCR 8.
6. (1955) 1 SCR 799.
7. (2004) 13 SCR 217.
8. (1991) 4 SCC 139.

Kaikadi Vs. Babu[9]*, Nirmaljeet Kaur Vs. State of M.P.*[10]*, Zee Telefilms Ltd. Vs. Union of India*[11]*, Board of Control for Cricket in India Vs. Netaji Cricket Club*[12]

(viii) Learned senior counsel then submitted that the judgment in *Bhanumati & Ors.* (supra) is per incuriam as the issue with regard to the reservation had not been considered at all. The judgment also does not consider the provisions where specifically Motion for No Confidence has not been provided. It is also submitted that most of the judgment is obiter. In fact, Mr. Bhushan submitted that the judgment is a treatise in law and should be given the same status.

(ix) Mr. Bhushan then addressed us on the issue as to whether the SLP would be maintainable against the judgment rendered in review without challenging the judgment of which the review was sought. The learned senior counsel submitted that firstly the petitioner had challenged the main writ petition by way of SLP No. 8542 of 2013. The same was disposed of with opportunity to file review petition before the High Court after noticing the objections raised by the petitioner, which were not considered by the High Court. The earlier judgment of the High Court in the writ petition clearly merged in the judgment of the High Court dismissing the review petition. Therefore, it was necessary only, in the peculiar facts of this case, to challenge only the judgment of the High Court in the review petition. It is submitted by Mr. Shanti Bhushan that Section

9. (2004) 1 SCC 681.
10. (2004) 7 SCC 558.
11. (2005) 4 SCC 649.
12. (2005) 4 SCC 741.

114 of the CPC contains no limits on the circumstances under which the Court can review its own judgment. The section merely states that the person aggrieved may apply for a review of judgment to the Court, which passed the decree or made the order, and the Court may make such order on it as it thinks fit. So far as the High Court is concerned, it would have inherent powers to review any decision.

(x) Learned senior counsel elaborated that Section 114 CPC gives full powers to the Court to pass any order in the interest of justice. It can not be curtailed by the Rules made by the High Court or the Supreme Court. These Rules can be amended by the High Court or the Supreme Court but Section 114 can only be amended by the Parliament. He points out that Section 121 and 122, which permits the High Court to make their own rules on the procedure to be followed in the High Court as well as in the Civil Court subject to their superintendence. Learned senior counsel further submitted that even Order 47 Rule 1 does not curtail the power to review which is untrammeled. According to Mr. Bhushan, Section 114 is incorporated in Order 47 Rule 1 as it provides that review can be made by the Courts either on facts as well as on law. The Court has a power to rehear the entire matter in order to do complete justice between the parties. Mr. Bhushan further pointed out that Section 151 CPC is also part of the same scheme to do complete justice between the parties. It is emphasized that the powers of the Courts have not been curtailed by the Code of Civil Procedure. In fact, it is well known that the provisions of Code of Civil Procedure are a hand maiden to justice. He, therefore, submitted that full play should be given

to the expression "or for any other sufficient reason" to ensure that the Court can do complete justice. The principle of Ejusdem Generis should not be applied for interpreting these provisions. Learned senior counsel relied on *Board of Cricket Control* (supra). He relied on Paragraphs 89, 90 and 91. learned senior counsel also relied on *S. Nagaraj & Ors. Vs. State of Karnataka & Anr.*[13] He submits finally that all these judgments show that justice is above all. Therefore, no constraints can be put on the power to review of the Court. Mr. Bhushan also relied on *Green View Tea & Industries Vs. Collector, Golaghat, Assam & Anr.*[14]

(xi) Mr. Bhushan has submitted that grounds for challenging the theories of the Act of the anvil of Article 243 or will be read into Prayers 1and 2(i) wherein a specific declaration is sought that the provision is ultra vires to the Constitution of India. Mr. Bhushan then referred to Article 243N. He reiterated that the provision in Section 28 ceased to exist after one year. Therefore, it was not necessary to plead as Section 28 would ipso facto be rendered unconstitutional. He reiterated on the basis of Paragraphs 20 and 21 that necessary averments have been made that provision for No Confidence Motion is not provided for in Part IX of the Constitution of India. Therefore, if Paragraph 28 and Paragraph 31 are read with Ground F, it would clearly indicate that the removal under the Act can only be under Section 29 which does not provide for moving a Motion for No Confidence.

(xii) Coming back to the submission that Section 28 is inconsistent with Part IX of the Constitution of India,

13. (1993) Supp. 4 SCC 595.
14. (2004) 4 SCC 122.

he submits that Part IX is a complete code in relation to Panchayats. Therefore, State Legislature can not make a provision inconsistent to Part IX. Similar power has been reserved for the Stated Legislature as exceptions as enumerated in Articles 243a, 243C(iv) & (v). He further submitted that Article 243f, 243G and 243H only give limited powers to the State Legislature. This clearly show that Part IX is a complete code. Therefore, unless power is specifically conferred on the State Legislature, it would not be competent to legislate on matters which are specifically dealt with in Part IX. He also refers to Articles 243I (ii), (iii) & (iv), J(iv) and K to emphasise that even in these Articles no provision existed for moving a Motion for No Confidence. Finally, it is submitted by Mr. Shanti Bhushan that since the issues raised in the appeal entail interpretation of the provisions of the Constitution of India, the matter needs to be referred to at-least five judges.

(xiii) Mr. Ashok Desai, learned senior counsel appearing for Respondent No. 5 has submitted that admittedly the petitioner does not enjoy the confidence of the majority of the members of the Panchayat. She has not even challenged the result of the No Confidence vote. He has given an elaborate explanation of all the proceedings, which we have recounted earlier.

(xiv) Countering the submissions of Mr. Shanti Bhushan that the Petitioner belongs to the Scheduled Casts, therefore, she is entitled to special protection, Mr. Ashok Desai has submitted that this issue was not raised in the writ petition or even in the review petition and is sought to be raised for the first time before this Court. He further pointed out that the petitioner did not contest the election of Adhyaksha

as a member of Scheduled Castes but as a lady candidate for whom the seat was reserved. He further submitted that the present case is, in any event, squarely covered by the judgment of this Court in Bhanumati & Ors. (supra). Therefore, there is no need for embarking on a fresh reconsideration of all the issues. He has submitted that the submission of Mr. Shanti Bhushan that the earlier judgment was confined to the amendment of Section 28 and not the original statute is a result of misreading of judgment. The judgment of this Court in Bhanumati & Ors. (supra) clearly applies in the facts and circumstances of this case and, therefore, the Special Leave Petition deserves to be dismissed. Learned senior counsel elaborated that the submission with regard to Section 28 of the Act being inconsistent with Part IX of the Constitution deserves to be rejected outright. This submission can only be considered on the basis of precise pleadings in the present case. Except for making a statement that the provision in the act is inconsistent with Part IX of the Constitution, no other reasons are given.

(xv) This apart, Section 28 can not be said to be contrary to the foundational principles of democracy. These provisions are referring to Sections 17, 18, 21 and 28 of the Act. The learned senior counsel submitted that the aforesaid provisions are to ensure that the Adhyaksha always enjoys confidence of the constituency while in power during the term for which such a person is elected.

(xvi) Mr. P.N. Mishra appearing for Respondent No.1 to 4 submitted that the Special Leave Petition deserves to be dismissed on the short ground that it is filed only against the jud[illegible]e

High Court in review petition. He has relied on judgment of this Court in *Shanker Motiram Nale Vs. Shiolalsing Gannusing Rajput*[15]. He also relied on an unreported judgment in *Sandhya Educational Society & Anr. Vs. Union of India & Ors.* [SLP(C) No. 2429 of 2012] to the same effect. He submitted that the powers of review would not permit this Court to reopen the entire issue and to rehear the entire matter on merits. The review is limited to the provision contained in Section 114 CPC read with Order 47 Rule 1. He submits that under this provision, review is limited only to circumstances where review is sought on discovery of new and important matter; or where evidence could not be produced in spite of exercise of due diligence or on account of some mistake or error apparent on the face of the record. He submits that the expression "or for any other sufficient reason" would not permit the Court to reopen the entire issue, which has already been judicially determined. This apart, according to the learned counsel, the petitioner has failed to show that injustice has been done to her in the face of the fact that majority of the members of her constituency have voted in favour of the No Confidence Motion. Learned senior counsel further submitted that it is a matter of record that the No Confidence Motion was not challenged on merits. Therefore, the SLP deserves to be dismissed.

(xvii) Mr. Shanti Bhushan in reply submitted that these submissions of Mr. Ashok Desai and Mr. Mishra are fallacious as no Act of Parliament can interfere with the powers of this Court under Article 136. In the event, this Court holds that SLP is only against the judgment of review and is not maintainable, it would

15. (1994) 2 SCC 753.

tantamount to amending Article 136 of the Constitution of India. The learned senior counsel submitted that the discretion of this Court cannot be whittled down let alone taken away as suggested by the learned senior counsel appearing for the respondents. Even on facts, Mr. Bhushan submitted that the main judgment was challenged. In the judgment relied upon by Mr. Mishra in *State of Assam Vs. Ripa Sarma* (supra), the impugned judgment had not been challenged. Therefore, this Court said that no SLP would be maintainable only against the judgment of the High Court rendered in a review petition, without challenging the main judgment. He reiterated that the judgment in *Bhanumati & Ors.* (supra) is mostly "obiter". It is also per incuriam as reservation for Scheduled Castes and Scheduled Tribes had not been taken into consideration.

17. We have considered the submissions made by the learned counsel for the parties.

18. We are not able to accept the submission of Mr. Shanti Bhushan that the provision contained in Section 28 of the Act are, in any manner, inconsistent with the provisions contained in Part IX, in particular, Article 243N of the Constitution of India.

19. Section 19 of the Act provides that in every Zila Panchayat, an Adhyaksha shall be elected by the elected members of the Zila Panchayat through amongst themselves. Section 19-A was introduced by U. P. Act No.9 of 1994 providing for reservation of the offices of Adhyaksha, for persons belonging to Scheduled Casts and Scheduled Tribes and the Backward Classes. It is, however, provided that the number of offices of Adhyaksha, so reserved, shall bear, as nearly as may be the same proportion to the total number of such offices in the State as the population of the Scheduled Castes, Scheduled Tribes and the Ba[illegible]e

State, bears to the total population of the State. The Section even provides that the offices so reserved shall be allotted by rotation to different Zila Panchayats in the State in such manner as may be prescribed by the State Government. But the reservation for the Backward Classes shall not exceed 27% of the total number of offices of the Adhyakshas in the State. Section 19-A(2) is important in the present context which provides that "not less than one-third of the offices shall be reserved for the ladies belonging to the Scheduled Castes, Scheduled Tribes or the Backward Classes as the case may be." Under this Section, on a seat reserved for the aforesaid categories of Scheduled Castes, Scheduled Tribes and the Backward Classes, a person belonging to that category would be elected from a particular Panchayat in which reservation is made on the basis of the roster provided in Section 19-A(3). Section 20 of the Act provides that a Zila Panchayat shall continue for five years from the date appointed for its first meeting and no longer. It is also provided that Section 20(2) that the term of office of a member of a Zila Panchayat shall expire with the term of Zila Panchayat unless otherwise determined under the provisions of the Act. Section 21 provides that save as otherwise provided in this Act, the term of office of the Adhyaksha shall commence on his election and with the term of Zila Panchayat. Section 23 provides for disqualification for corrupt practices, which is not applicable in the present case. Section 24 provides for resignation of Adhyaksha, again not applicable in the present case. Section 25 relates to filing of casual vacancy, again not applicable in this case. Section 26 provides for disqualification for being a member or an Adhyaksha in case a person has incurred any disqualification for being elected as a member of the Panchayat.

20. The whole debate in this case centres around Section 28, which provides for a Motion of No Confidence in Adhyaksha. The section provides detailed procedure with regard to the issuance of written notice of intent to make the motion, in such form as may be prescribed, signed by not less

than one-half of the total number of the elected members of the Zila Panchayat for the time being. Such notice together with the copy of the proposed motion has to be delivered to the Collector having jurisdiction over the Zila Panchayat. Therefore, the Collector shall convene a meeting of the Zila Panchayat for consideration of the motion on a date appointed by him which shall not be later than 30 days the date from which the notice was delivered to him. The Collector is required to give a notice to the elected members of not less than 15 days of such meeting in the manner prescribed. The meeting has to be presided over by the District Judge or a Civil Judicial Officer not below the rank of a Civil Judge. Interestingly, the debate on the motion cannot be adjourned by virtue of provisions contained in Section 28(7). Sub-section (8) further provides that the debate on the No Confidence Motion shall automatically terminate on the expiration of 2 hours from the time appointed for the commencement of the meeting, if it is not concluded earlier. Either at the end of 2 hours or earlier, the motion has to be put to vote. Further more, the Presiding Officer would be either District Judge or a Judicial Officer is not permitted to speak on the merits of the motion, and also not entitled to vote. Sub-section (11) provides that "if the motion is carried with the support of (more than half) of the total number of (elected members) of the Zila Panchayat for the time being". In our opinion, the aforesaid provision contained in Section 28 is, in no manner, inconsistent with the provisions contained in Article 243N. To accept the submission of Mr. Bhushan of inconsistency would be contrary to the fundamental right of democracy that those who elect can also remove elected person by expressing No Confidence Motion for the elected person. Undoubtedly, such No Confidence Motion can only be passed upon observing the procedure prescribed under the relevant statute, in the present case the Act.

21. We are unable to accept the submission of Mr. Bhushan that removal of Adhyaksha can only be on the grounds of misconduct as provided under Sect e

aforesaid Section provides that a procedure for removing an Adhyaksha who is found guilty of misconduct in the discharge of his/her duties. This Section, in no manner, either overrides the provisions contained in Section 28 or is in conflict with the same.

22. We also do not agree with the submission of Mr. Bhushan that Section 28 could not have continued after expiry of one year of the enactment of 73rd Amendment of the Constitution of India, which came into effect on 24th April, 1993. Such an eventuality would have arisen only in case it was found that Section 28 is inconsistent with any provision of Part IX of the Constitution. Merely because Article 243F is silent with regard to the removal of an Adhyaksha on the basis of a Motion of No Confidence would not render the provision inconsistent with the Article 243 of the Constitution of India.

23. We also do not find any merit in the submission of Mr. Bhushan that the petitioner being a Scheduled Caste Lady cannot be removed through a vote of No Confidence. We do not find any merit that the provisions contained in Section 28 would frustrate the provisions for reservation for Scheduled Caste Ladies. Even if an Adhyaksha belonging to one of the reserved categories, Scheduled Castes, Scheduled Tribes and other Backward Classes is removed on the basis of the vote of No Confidence, she can only be replaced by a candidate belonging to one of the reserved categories. Therefore, the submission of Mr. Shanti Bhushan seems to be focused only on the petitioner, in particular, and not on the candidates elected from the reserved categories, in general. The submission is wholly devoid of any merit and is hereby rejected.

24. We are entirely in agreement with Mr. Shanti Bhushan that Part IX of the Constitution has made provisions for self-governance at Panchayat level, including the election of Panchayat Members and its Chairman. Thus, ushering in complete decentralization of the Government and transferring the power to the grass roots level bodies; such as the

Panchayats at the village, intermediate and District level, in accordance with Article 243C of the Constitution. Article 243C is as under:

"243C. Composition of Panchayats. -

(1) Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats:

Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State.

(2) All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.

(3) The Legislature of a State may, by law, provide for the representation-

(a) of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level;

(b) of the Chairpersons of the Panchayats at the intermediate level, in the Panchayats at the district level;

(c) of the members of the House of the People and the members of the Legislative e

representing constituencies which comprise wholly or partly a Panchayat area at a level other than the village level, in such Panchayat;

(d) of the members of the Council of States and the members of the Legislative Council of the State, where they are registered as electors within-

(i) a Panchayat area at the intermediate level, in Panchayat at the intermediate level;

(ii) a Panchayat area at the district level, in Panchayat at the district level.

(4) The Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the Panchayats.

(5) The Chairperson of-

(a) a panchayat at the village level shall be elected in such manner as the Legislature of a State may, by law, provide; and

(b) a Panchayat at the intermediate level or district level shall be elected by, and from amongst, the elected members thereof."

This Article as well as some others, such as Articles 243-A, 243-C(5), 243-D(4), 243-D(6), 243-F(1), (6), 243-G, 243-H, 243-I(2), 243-J, 243-K(2), (4) of the Constitution etc make provision for the State to enact necessary legislation to implement the provisions in Part IX of the Constitution of India. Therefore, we are not able to agree with the submission of Mr. Bhushan that State Legislature will have no power to make provision for no-confidence motion against the Adhyaksha of Zila Panchayat.

25. We are also unable to agree with the submission of Mr. Bhushan that a person once elected to the position of Adhyaksha would be permitted to continue in office till the expiry of the five years terms, even though he/she no longer enjoys the confidence of the electorate. To avoid such catastrophe, a provision for no-confidence, as observed earlier, has been made in Section 28 of the Act. The extreme submission made by Mr. Bhushan, if accepted, would destroy the foundational precepts of democracy that a person who is elected by the members of the Zila Panchayat can only remain in power so long as the majority support is with such person.

26. We also do not find any merit in the submission of Mr. Bhushan that permitting the provision contained in Section 28 of the Act to remain on the statute book would enable the executive to deprive the elected representatives of their fundamental rights enshrined in Part III and Part IX of the Constitution of India. In our opinion, the ratio of the judgment in *I.R.Coelho* (supra) relied upon by Mr. Bhushan is wholly inapplicable in the facts and circumstances of this case. There is no interference whatsoever in the right of the electorate to choose. Rather Section 28 ensures that an elected representative can only stay in power so long as such person enjoys the support of the majority of the elected members of the Zila Panchayat. In the present case, at the time of election, the petitioner was the chosen one, but, at the time when the Motion of No Confidence in the petitioner was passed, she was not wanted. Therefore, the right to chose of the electorate, is very much alive as a consequence of the provision contained in Section 28.

27. We are unable to accept the submission of Mr. Bhushan that the provisions contained in Section 28 of the Act cannot be sustained in the eyes of law as it fails to satisfy the twin test of reasonable classification and rational nexus with the object sought to be achieved. In support of this submission, Mr. Bhushan has relied on the judgment

Nakara vs. Union of India[16]. We fail to see how the provisions contained in Section 28 of the Act would take away the autonomy of the Panchayati Raj Institutions. In our opinion, the judgments relied upon by Mr. Bhushan in support of the submissions that provisions of No Confidence Motion in Section 28 of the Act would put the executive authorities in the State in control of Village Panchayats or District Panchayats. Apart from the use of superlatives, that the party now in power is trying to remove all the office holders of Panchayats in U.P. belonging to the opposite party, no other material has been placed on the record.

28. It is true that in the Constitution, Article 67B provides for removal of the Vice-President by a resolution of the Council of States as provided therein passed by the majority of all the then members of the Council and agreed to by the House of People. It is also correct that under Article 90C, the Deputy Chairman of the Council of States can be removed from his office on a resolution of the Council passed by all the majority members of the then Council. Similarly, Article 94 provides that a member of holding office as Speaker or Deputy Speakers of the House of People may be removed from his office by a resolution of the House of People passed by a majority of all the then members of the House.

29. It is also true that there are certain positions in the Constitution, which are filled up through election but individuals so elected cannot be removed by way of No Confidence Motion, e.g. Rajya Sabha Members, Lok Sabha Members and the President of India. We are, however, unable to accept the submission of Mr. Bhushan that Part IX of the Constitution of India has placed office of an Adhyaksha of a Zila Panchayat on the same pedestal as the President of India. Article 243F empowers the States to enact any law for a person who shall be disqualified for being chosen as a member of a Panchayat. This would also include a member of a Panchayat, who is

16. (1983) 1 SCC 305.

subsequently appointed as Adhyaksha of a Zila Panchayat. There is no prohibition under Article 243F disenabling any State Legislature for enacting that an elected Adhyaksha shall remain in office only so long as such elected person enjoys the majority support of the elected members of the Zila Panchayat. Therefore, we have no hesitation in rejecting the aforesaid submissions of Mr. Shanti Bhushan.

30. The submissions of Mr. Bhushan on depriving a candidate belonging to the reserved category of a position to which he or she has been elected on the basis of reservation are wholly fallacious. The seat for the office of Adhyaksha of Zila Panchayat was reserved for women candidates, i.e., all women candidates. It was not specifically reserved for Ladies belonging to the reserved categories of Scheduled Castes, Scheduled Tribes and the Backward Classes. The petitioner contested as a Lady Candidate and not as a candidate belonging to any reserved category and was elected on a seat reserved for Ladies generally.

31. Having said all this, we would like to point out that in normal circumstances the present SLP would not have been entertained. Dr. Rajiv Dhawan and Mr. Ashok Desai had pointed out at the very initial hearing that the SLP would not be maintainable as it challenges only the judgment of the High Court rendered in review petition. The main judgment dated 5th February, 2013 rendered in W.P.(C) No.9654 of 2012 which has been reviewed by the High Court in the impugned order has not been challenged. As a pure statement of law, the aforesaid proposition is unexceptionable. However, in the present case, we have been persuaded to entertain the present SLP in view of the order passed by this Court on 19th February, 2013. In *Ripa Sarma* case (supra), it was not disputed before this Court that the judgment and order dated 20th November, 2007 passed in *Ripa Sarma* (supra) was not challenged by way of an SLP before this Court. Relying on Order 47 Rule 7 of the Code of Civil Procedure, 1908 and the earlier judgments of this Court it was held that :

"In view of the above, the law seems to be well settled that in the absence of a challenge to the main judgment, the special leave petition filed challenging only the subsequent order rejecting the review petition, would not be maintainable."

32. With regard to the second submission of Dr. Dhawan and Mr. Ashok Desai that the issue raised in the present proceeding is no longer res integra in view of the law laid down by this Court in *Bhanumati* (supra), we are of the opinion that the submission deserves to be accepted, in so far as the matter is covered by the ratio laid down in *Bhanumati* (supra).

33. A careful perusal of the judgment of this Court in *Bhanumati* (supra) would show that this Court had considered the provisions contained in all the Articles Part IX of the Constitution, in all its hues and colours. However, it appears that the issue with regard to the adverse impact of the provision in Section 28 of the Act on the reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes was neither argued nor considered. We have, therefore, examined the issue raised by Mr. Bhushan.

34. In our opinion, the provision under Section 28A of the Act in no manner dilutes or nullifies the protection given to the candidates belonging to Scheduled Castes, Scheduled Tribes and Backward Classes in the 73rd Amendment of the Constitution of India. Therefore, we accept the submission of Dr. Dhawan and Mr. Ashok Desai that in view of the law laid down in *Bhanumati's* case (supra), the issue is no longer res integra.

35. As noticed earlier, we have been persuaded to entertain the Special Leave Petition as Mr. Bhushan had highlighted that permitting the Vote of No Confidence as a ground for disqualifying an elected Zila Panchayat Adhyaksha, Zila Panchayat would leave a candidate, elected from the reserved categories of Scheduled Castes/ Scheduled Tribes,

vulnerable to unjustified attacks from the elected members of the general category. This issue was not raised before the High Court either in original writ petition being W.P. No. 9654 of 2012 nor was it raised before the High Court in the Review Petition. However, in view of the seminal importance of the issue raised, we had entertained the Special Leave Petition. Having said that, it must be pointed out that the raising of such an issue is neither justified nor relevant in the facts of the present case. As pointed out earlier, the petitioner herein had contested the election as an Adhyaksha, Zila Panchayat from a seat reserved for Ladies. Merely because she happens to belong to the reserved category, it can not be permitted to be argued, that the provision with regard to the reservation for the members of the Scheduled Castes/Scheduled Tribes/Backward Classes has been in any manner diluted, let alone nullified. It has been specifically noted in the Statement of Objects and Reasons of the 73rd Amendment as follows:-

"Though the Panchayati Raj institutions have been in existence for a long time, it has been observed that these institutions have not been able to acquire the status and dignity of viable and responsive people's bodies due to a number of reasons including absence of regular elections, prolonged supersessions, insufficient representation of weaker sections like Scheduled Castes, Scheduled Tribes and Women, inadequate devolution of powers and lack of financial resources.

2. Article 40 of the Constitution which enshrines one of the directive principles of State Policy lays down that the State shall take steps to organise Village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. In the light of the experience in the last forty years and in view of the shortcomings which have been observed, it is considered that there is an imperative need to enshrine in the Constitution certain basic and essential features of Panchayati Raj institutio

continuity and strength to them."

36. The provisions of the 73rd Constitutional amendment are to ensure that Panchayati Raj Institutions acquire "the status and dignity of viable and responsive people's bodies". The provisions are not meant to provide an all pervasive protective shield to an Adhyaksha, Zila Panchayat, even in cases of loss of confidence of the constituents. Provision in Section 28, therefore, cannot be said to be repugnant to Part IX of the Constitution of India.

37. In our opinion, the amendment as well as the main provision in Section 28 is in absolute accord with the vision explicitly enunciated in the Preamble of the Constitution of India. In fact, the spirit which led to ultimately encoding the goals of "WE THE PEOPLE" in the Preamble of the Constitution of India, permeates all other provisions of the Constitution of India. The fundamental aim of the Constitution of India is to give power to the People. Guiding spirit of the Constitution is "WE THE PEOPLE OF INDIA". In India, the People are supreme, through the Constitution of India, and not the elected Representatives. Therefore, in our opinion, the provision for right to recall through the Vote of No Confidence is in no manner repugnant to any of the provisions of the Constitution of India.

38. Upon examination of the entire Scheme of the 73rd Amendment, in the context of framing of the Constitution of India, this Court in *Bhanumati & Ors.* (supra), observed as follows:-

> "54. The argument that as a result of the impugned amendment stability and dignity of the Panchayati Raj institutions has been undermined, is also not well founded. As a result of no-confidence motion the Chairperson of a panchayat loses his position as a Chairperson but he remains a member, and the continuance of panchayat as an institution is not affected in the least."

We are in respectful agreement with aforesaid conclusion.

39. We reiterate the view earlier expressed by this Court

in *Bhanumati & Ors.* (supra), wherein this Court observed as follows:-

> "57. It has already been pointed out that the object and the reasons of Part IX are to lend status and dignity to Panchayati Raj institutions and to impart certainty, continuity and strength to them. The learned counsel for the appellant unfortunately, in his argument, missed the distinction between an individual and an institution. If a no-confidence motion is passed against the Chairperson of a panchayat, he/she ceases to be a Chairperson, but continues to be a member of the panchayat and the panchayat continues with a newly-elected Chairperson. Therefore, there is no institutional setback or impediment to the continuity or stability of the Panchayati Raj institutions.
>
> 58. These institutions must run on democratic principles. In democracy all persons heading public bodies can continue provided they enjoy the confidence of the persons who comprise such bodies. This is the essence of democratic republicanism. This explains why this provision of no-confidence motion was there in the Act of 1961 even prior to the Seventy-third Constitution Amendment and has been continued even thereafter. Similar provisions are there in different States in India."

40. The whole edifice of the challenge to the constitutionality of Section 28 is built on the status of the petitioner as a member belonging to the reserved category. It has nothing to do with the continuance, stability, dignity and the status of the Panchayat Institutions. In our opinion, the personal desire, of the petitioner to cling on to the office of Adhyaksha is camouflaged as a constitutional issue. The provision of No Confidence Motion, in our opinion, is not only consistent with Part IX of the Constitution, but is also foundational for ensuring transparency and accountability of the elected representatives, including Panchayat Adhyakshas. The provision sends out a clear message that an elected Pancl n

continue to function as such only so long as he/she enjoys the confidence of the constituents.

Is Bhanumati & Ors. per incuriam ?

41. This submission again, in our opinion, is not well founded. The only ground urged in support of the submission by Mr. Shanti Bhushan was that this Court in *Bhanumati & Ors.* (supra) had not considered the provision with regard to special protection to be given to the members of the Scheduled Castes, Scheduled Tribes and the Backward Classes. Firstly, such a submission was never made before this Court in *Bhanumati & Ors.* (supra). Secondly, as we have already pointed out earlier, the issue with regard to reservation for Scheduled Castes, Scheduled Tribes and the Backward Classes, does not arise in the facts of this case as the petitioner had not been elected to the office of Adhyaksha of Zila Panchayat reserved for Scheduled Castes and Scheduled Tribes. Mr. Ashok Desai has placed before us enclosure to Government Order No.2746/33-1-2010-37G/2000 dated 15th September, 2010 indicating reservation for the year 2010 for the office of Adhyaksha of Zila Panchayat, District wise in the State of Uttar Pradesh. The order is divided into two columns: Districts' reserved for Schedule Caste Lady and Districts' reserved for Ladies. Extract of the aforesaid order is as follows:-

Districts' reserved for Schedule Caste Lady		**Districts' reserved for Ladies**	
S.No.	District	S.No.	District
1	Chatrapati Sahuji Maharajnagar	1	Allahabad
2	Sant Ravidas Nagar (Bhadohi)	2	Sitapur
3	Jaunpur	3	Hardoi
4	Ghajipur	4	Lakhimpur Khiri
5	Sant Kabir Nagar	5	Azamgadh

42. It is a matter of record that the petitioner was elected as Panchayat Adhyaksha of Sitapur District Reserved for Ladies, it is not reserved for a Schedule Caste Lady. Therefore, we are not able to accept the submission of Mr. Bhushan.

43. We also do not accept the submission of Mr. Bhushan that the aforesaid judgment needs reconsideration. A perusal of the judgment would show that this Court traced the history leading upto the insertion of Article 40 of the Constitution of India. The Court examined the relevant commentaries of many learned authors, Indian as well as Foreign; Constituent Assembly Debates; and concluded as follows :

> "13. The Constitution's quest for an inclusive governance voiced in the Preamble is not consistent with panchayat being treated merely as a unit of self-government and only as part of directive principle. If the relevant Constituent Assembly Debates are perused one finds that even that constitutional provision about panchayat was inducted after strenuous efforts by some of the members. From the debates we do not fail to discern a substantial difference of opinion between one set of members who wanted to finalise the Constitution solely on the parliamentary model by totally ignoring the importance of panchayat principles and another group of members who wanted to mould our Constitution on Gandhian principles of Village Panchayat."

44. The Court emphasized that Dr. Rajendra Prasad was the strongest critic of the Draft Constitution, who had opined that "the village has been and will even continue to be our unit in this country." (Para 15). The Court further notices the opinion of Mr. M.A. Ayangar and Mr. N.G. Ranga, both of whom suggested some amendments to the Draft Constitution. The Court also notices that a similar opinion was expressed by Mr. S.C. Mazumdar, who had struck a balance between Gandhian Principles and the Parliamentary model of the Constitution. The insertion of Article 40 was accepted by Dr. Ambedkar. This Court further notices the opinion of Sett[illegible]e

Central Provinces and Berar (Constituent Assembly Debates Vol. VII, PP.523-24) (See Paras 12 to 20).

45. Thereafter, the Court notices that "in other representative democracies of the world committed to a written Constitution and Rule of Law, the principles of self-Government are also part of the Constitutional doctrine." The Court emphasized that under the 73rd Amendment of the Constitution, Panchayats become "Institution of self-governance, which was previously a mere unit under Article 40". It was emphasized that the 73rd Amendment heralded a new era, which is a turning point in the history of local self-governance (Para 22). It was also emphasized that the 73rd Amendment is very powerful "tool of social engineering" (Para 24). We reiterate the opinion of this Court that as 74% of the Indian population live in villages, it is necessary to ensure that the power of governance should vest in the smallest units of the Panchayat having its hierarchy as provided under various Panchayat Acts throughout the country. The judgment analyses the changes introduced by the 73rd Amendment and concludes as follows :

> "34. The changes introduced by the Seventy-third Amendment of the Constitution have given Panchayati Raj institutions a constitutional status as a result of which it has become permanent in the Indian political system as a third Government. On a careful reading of this amendment, it appears that under Article 243-B of the Constitution, it has been mandated that there shall be panchayat at the village, intermediate and district levels in accordance with the provisions of Part IX of the Constitution."

46. This Court concluded upon examination of the Constitutional scheme introduced by the 73rd Amendment as follows:

> "39. Thus, the composition of the panchayat, its function, its election and various other aspects of its administration are now provided in great detail under the Constitution with

> provisions enabling the State Legislature to enact laws to implement the constitutional mandate. Thus, formation of panchayat and its functioning is now a vital part of the constitutional scheme under Part IX of the Constitution. Obviously, such a system can only thrive on the confidence of the people, on those who comprise the system."

47. In our opinion, the provision for removing an elected representative such as Panchayat Adhyaksha is of fundamental importance to ensure the democratic functioning of the Institution as well as to ensure the transparency and accountability in the functions performed by the elected representatives.

48. We also do not agree with Mr. Bhushan that the issue with regard to the constitutionality of Section 28 of the Act was not considered by this Court in *Bhanumati & Ors.* (supra). The submission made by the counsel for the petitioner therein is noticed as follows:

> "40. In the background of these provisions, learned counsel for the appellants argued that the provision of no-confidence, being not in Part IX of the Constitution is contrary to the constitutional scheme of things and would run contrary to the avowed purpose of the constitutional amendment which is meant to lend stability and dignity to Panchayati Raj institutions. It was further argued that reducing the period from "two years" to "one year" before a no-confidence motion can be brought, further unsettles the running of the panchayat. It was further urged that under the impugned amendment that such a no-confidence motion can be carried on the basis of a simple majority instead of two-thirds majority dilutes the concept of stability."

From this it is evident that the provision of No Confidence Motion in Section 28 was challenged on three grounds:

(a) It would be repugnant to the Scheme of the 73rd Amendment.

(b) It would unsettle the running of the Panchayat.

(c) It would dilute the concept of stability.

49. Upon consideration of the relevant provisions contained in various sub-articles of Article 243 and in particular, Article 243C(v), this Court concludes as under:

> "41. This Court is not at all persuaded to accept this argument on various grounds discussed below. A Constitution is not to give all details of the provisions contemplated under the scheme of amendment. In the said amendment, under various articles, like Articles 243-A, 243-C(1), (5), 243-D(4), 243-D(6), 243-F(1), (6), 243-G, 243-H, 243-I(2), 243-J, 243-K(2), (4) of the Constitution, the legislature of the State has been empowered to make law to implement the constitutional provisions.
>
> 43. Therefore, the argument that the provision of no-confidence motion against the Chairman, being not in the Constitution, cannot be provided in the statute, is wholly unacceptable when the Constitution specifically enables the State Legislature to provide the details of election of the Chairperson."

The Court also mentions that the statutory provision of No Confidence Motion against the Chairperson is a pre-constitutional provision and was there in Section 15 of the 1961 Act (Para 44). After taking into consideration Article 243N of the Constitution of India, it is observed as follows:-

> "45. It is clear that the provision for no-confidence motion against the Chairperson was never repealed by any competent legislature as being inconsistent with any of the provisions of Part IX. On the other hand by subsequent statutory provisions the said provision of no-confidence

> has been confirmed with some ancillary changes but the essence of the no-confidence provision was continued. This Court is clearly of the opinion that the provision of no-confidence is not inconsistent with Part IX of the Constitution."

50. In the face of these findings, it would not be possible to accept the submission of Mr. Bhushan that the judgment in *Bhanumati & Ors.* (supra) is either per incuriam or requires reconsideration.

51. Under Article 243N, any provision of law relating to Panchayats in force immediately before the 73rd Amendment, which is inconsistent with Part IX continues to be enforced until amended or repealed. In the absence of such amendment or repeal, the inconsistent provision will continue until the expiration of one year from the commencement of the Constitution (73rd Amendment) Act, 1993. It is a matter of record that the State of Uttar Pradesh enacted U.P. Panchayat Law (Amendment) Act, 1994 on 22nd April, 1994 to give effect to the provisions of Part IX of the Constitution. The pre-existing provision of No Confidence was not repealed. It was amended subsequently by the Amendment Act of 1998 (U.P. Act No. 20 of 1998). There was a further amendment by the Amendment Act of 2007 (U.P. Act No. 4 of 2007). By this amendment, the period for moving a No Confidence Motion was reduced from two years to one year. Furthermore the requirement that for a Motion of No Confidence to be carried, it had to be supported by a majority of "not less than two third" was reduced to "more than half". It was these amendment changes brought about by the Amendment Act of 2007, which was challenged by the petitioners in the case of *Bhanumati & Ors.* (supra). The continuous of the provision of No Confidence Motion was not even challenged. In spite of the fact that the challenge was limited only to the amendment, this Court examined the question as to whether provision for bringing a Motion of No Confidence in Section 28 of the 1961 [illegible]or

inconsistent with Part IX of the Constitution of India. Ultimately, in Paragraph 51, this Court records the following opinion:-

> "51. Many issues in our constitutional jurisprudence evolved out of this doctrine of silence. The basic structure doctrine vis-à-vis Article 368 of the Constitution emerged out of this concept of silence in the Constitution. A Constitution which professes to be democratic and republican in character and which brings about a revolutionary change by the Seventy-third Constitutional Amendment by making detailed provision for democratic decentralisation and self-government on the principle of grass-root democracy cannot be interpreted to exclude the provision of no-confidence motion in respect of the office of the Chairperson of the panchayat just because of its silence on that aspect."

We are in respectful agreement with the aforesaid opinion.

52. The Court thereafter notices the submission that the position of Panchayat Adhyaksha is comparable with that of the President of India. On this analogy, it was submitted that the office of Chairperson, i.e. Panchayat Adhyaksha should have the same immunity. This Court rejected the submission with the observation that "this is an argument of desperation and has been advanced, with respect, without any regard to the vast difference in constitutional status and position between the two posts." Mr. Bhushan has made the same submission before us. We would like to add here, that even by stretching the imagination beyond all reasonable bounds, we are unable to accept the submission of Mr. Bhushan that Chairman of a District Panchayat should be put on the same pedestal as the President of India.

53. Mr. Shanti Bhushan had also submitted that since the issues raised herein pertained to the interpretation of the Constitution of India, the matter needs to be referred to the five Judges as provided in Article 145(3) of the Constitution of India

read with Order VII Rule 2 of the Supreme Court Rules, 1966.

54. We are of the opinion that no substantial question of law arises as envisaged under Article 145(3) of the Constitution of India as to the interpretation of the Constitution of India, in the facts and circumstances of this case. The entire issue has been elaborately, and with erudition, dilated upon by this Court in *Bhanumati & Ors.* (supra). We also do not find any force in the submission of Mr. Bhushan that there is any occasion for reconsideration of the judgment of this Court in *Bhanumati & Ors.* (supra).

55. Mr. Bhushan has relied on numerous judgments of this Court in support of his submissions. Let us now consider the same.

56. On the issue of repugnancy, Mr. Bhushan has cited following judgments:

(1) *I.R.Coelho vs. Union of India* (supra) -

In our opinion, the reliance on the aforesaid judgment is wholly misplaced as the right to choose of the constituents is not curtailed by Section 28 of the Act. It is only the right of an elected Chairman/Adhyaksha to continue, who has lost the confidence of the electorate that has been curtailed.

(2) *Deep Chand vs. State of U.P.* (supra) -

In this case, this Court culled out the law pertaining to the rule of repugnancy. The three tests of inconsistency or repugnancy as formulated by Nicholas in his Australian Constitution 2nd Edition have been noticed which are as under:

"(1) There may be inconsistency in the actual terms of the competing statutes;

(2) Though there may be no direct conflict, a State law may be inoperative because the Commonwe[illegible]d

of the Commonwealth Court, is intended to be a complete exhaustive code; and

(3) Even in the absence of intention, a conflict may arise when both State and Commonwealth seek to exercise their powers over the same subject-matter."

57. The aforesaid three rules have been accepted by this Court in *Ch. Tika Ramji Vs. State of U.P.*[17] Similar test was laid down by this Court in, *Zaverbhai Amaidas Vs. State of Bombay* (supra) as follows:

"(1) Whether there is direct conflict between the two provisions;

(2) Whether Parliament intended to lay down an exhaustive code in respect of the subject-matter replacing the Act of the State Legislature and

(3) Whether the law made by Parliament and the law made by the State Legislature occupy the same field.

58. In our opinion, the provision contained in Section 28 can not be said to be repugnant to the 73rd Amendment on the basis of the aforesaid tests laid down by this Court.

59. On the issue of per incuriam, Mr. Bhushan has cited following judgments:

(1) *N. Bhargawan Pillai Vs. State of Kerala* (supra) -

Mr. Bhushan had relied on observations made by this Court in Paragraph 14 of the judgment. It was held that the judgment in the case of *Bore Gowda Vs. State of Karnataka*[18] was per incuriam as it did not consider the impact of Section 18 of the Probation of Offenders Act, 1958.

17. (1956) SCR 393.

18. (2000) 10 SCC 620.

In *Bhanumati & Ors.* (supra), it can not be said that any relevant provision of the Constitution or the Act had not been taken into consideration.

(2) *State of U.P. Vs. Synthetics and Chemicals Ltd.* (supra)

The observations made in Paragraph 86 in the earlier judgment of *Synthetics and Chemicals Ltd. & Ors. Vs. State of U.P. & Ors.*[19] were found to be per incuriam. The aforesaid observations would not be applicable in the present case as no such legitimate criticism can be made against the judgment of this Court in *Bhanumati & Ors.* (supra).

(3) *Babu Parasu Kaikadi Vs. Babu* (supra)

This judgment also reiterated the well known principle of per incuriam. It was held that the judgment in *Dhondiram Tatoba Kadam Vs. Ramchandra Balwantrao Dubal (since deceased) by His LRs. & Anr.*[20] was per incuriam as it had not noticed the earlier binding precedent of a coordinate Bench and also having not considered the mandatory provisions as contained in Sections 15 and 29 of the Bombay Tenancy and Agricultural Lands Act, 1948 (67 of 1948). The well known principle with regard to a judgment not being a binding precedent as stated in Halsbury's Laws of England, 4th Edn., Vol. 26 is as under:-

"A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow; or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force."

19. (1990) 1 SCC 109.

20. (1994) 3 SCC 366.

The same principle has been reiterated by this Court in *State of U.P. Vs. Synthetics and Chemicals Ltd.* (supra):-

> "40. 'Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'. (Young v. Bristol Aeroplane Co. Ltd.) Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law."
>
> (emphasis supplied)

In our opinion, the judgment in *Bhanumati & Ors.* (supra) can not be said per incuriam on the applicability of the aforesaid tests.

(4) *Zee Telefilms Ltd. Vs. Union of India* (supra)

In this case, again this Court reiterated that a decision is an authority for the question of law determined by it and that it should not be read as a statute. A decision is not an authority for the proposition which did not call for its consideration. These observations again are of no assistance to the petitioner.

(5) *Nirmaljeet Kaur Vs. State of M.P.*

In this case also, this Court has reiterated the principles earlier enunciated. Thus, this judgment is again of no help to the petitioner.

60. On the submission with regard to the Validity/Legality of a Legislative Act, reliance was placed upon:

D.S.Nakara vs. Union of India[21]*; Union of India vs. G.Ganayutham*[22]*; Bharat Petroleum Corporation Ltd. vs.*

21. (1983) 1 SCC 305.
22. (1997) SCC 463.

Maddula Ratnavalli[23] and *State of A.P. v/s McDowell & Co.*[24]*.* In our opinion, all these judgments are inapplicable to the facts of this case.

61. On the submission with regard to Arbitrary/ discretionary/unguided power to executive authority, Mr. Bhushan relied upon following judgments: *Senior Superintendent of Post Offices vs. Izhar Hussain*[25]*, Khoday Distilleries Ltd. vs. State of Karnataka*[26]*, Maganlal Chhagalal (P) Ltd. vs. Municipal Corporation of Greater Bombay*[27] *Director of Industries vs. Deep Chand Agarwal*[28]*.* In our opinion, these judgments have no application whatsoever either to the legal issue or to the facts of this case.

62. We have no hesitation in accepting the submission of Mr. Bhushan that the High Court or this Court, in exercise of its powers of review can reopen the case and rehear the entire matter. But we must hasten to add that whilst exercising such power the court cannot be oblivious of the provisions contained in Order 47 Rule 1 of CPC as well as the rules framed by the High Courts and this Court. The limits within which the Courts can exercise the powers of review have been well settled in a catena of judgments. All the judgments have in fact been considered by the High Court in Pages 16 to 23. The High Court has also considered the judgment in S. Nagaraj & Ors. Vs. *State of Karnataka & Anr.* (supra), which reiterates the principle that

> "19. Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in

23. (2007) 6 SCC 81.
24. (1996) 3 SCC 709.
25. (1989) 4 SCC 318.
26. (1996) 10 SCC 304.
27. (1974) 2 SCC 402.
28. (1980) 2 SCC 332.

the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice……."

63. These principles are far too well entrenched in the Indian jurisprudence, to warrant reiteration. However, for the sake of completion, we may notice that Mr. Bhushan had relied upon Board of Control for Cricket in *India v/s Netaji Cricket Club* (supra), and *Green View Tea & Industries* (supra). It would be useful to reiterate the following excerpts:

In the case of *Board of Control for Cricket in India* (supra), it was observed that:

"90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefore. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words "sufficient reason" in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit".

This court in *Green View Tea & Industries* (supra) reiterated the view adopted by it in *S. Nagaraj & Ors.* (supra). Therefore, the ratio of Green View Tea is not applicable in this case.

64. In view of the observations made in the aforesaid judgments, this Court would not be justified in holding that the High Court has erred in law in not reviewing its earlier judgment.

65. This apart, we have examined the entire issue threadbare ourselves as the issue with regard to the adverse impact on the candidates belonging to the reserves categories has not been raised before the High Court nor considered by it. In the earlier round, the issue was also neither raised nor considered by this Court. When the order dated 19th February, 2013 was passed, the issue with regard to reservation was also not canvassed. But now that the issue had been raised, we thought it appropriate to examine the issue to put an end to the litigation between the parties.

66. In view of the above, the appeal is accordingly dismissed.

Contempt Petition No.287 of 2013 in CIVIL APPEAL NO……..OF 2014 (Arising out of SLP (C) No.22035 of 2013)

67. This Petition was filed by the Petitioner/Appellant, seeking initiation of contempt proceedings against alleged contemnors/respondent for disobeying the order of status quo dated 12th July, 2013 passed by this Court in the aforesaid Civil Appeal.

68. In view of the judgment passed by this Court in Civil Appeal No…… of 2014 (Arising out of SLP (C) No.22035 of 2013), this Petition is dismissed as having become infructuous.

CIVIL APPEAL NO 4199 OF 2014 (Arising out of SLP(C) No.29740 of 2013

69. This Civil Appeal was filed by Smt. Rukmini Devi, challenging final order and judgment dated 19th August, 2013

passed by the High Court of Judicature at Allahabad, Lucknow Bench in Writ Petition No. (MB) 5999 of 2013.

70. The issues raised in this civil appeal are identical to those that we have examined in Civil Appeal No. 4197 of 2014 (Arising out of SLP (C) No.22035 of 2013). Therefore, in view of the judgment in the Civil Appeal No. 4197 of 2014 (Arising out of SLP (C) No.22035 of 2013), this appeal is also dismissed.

D.G. Matters dismissed.

NAVNEET KAUR
v.
STATE OF NCT OF DELHI & ANR.
(Curative Petition (Criminal) No. 88 of 2013)
IN
(Review Petition (Criminal) No. 435 of 2013)
IN
(Writ Petition (Criminal) No. 146 of 2011)

MARCH 31, 2014

[P. SATHASIVAM, CJI, R. M. LODHA, H.L. DATTU AND SUDHANSU JYOTI MUKHOPADHAYA, JJ.]

Sentence/ Sentencing - Commutation of death sentence to life imprisonment - Petitioner's husband convicted under TADA and sentenced to death - Plea for commuting the death sentence to life imprisonment on ground of supervening circumstance of delay of 8 years in disposal of mercy petition - Held: Insanity/mental illness/schizophrenia is also one of the supervening circumstances for commutation of death sentence to life imprisonment - Petitioner's husband suffering from acute mental illness and cannot be executed with the said health condition - Death sentence imposed on him commuted into life imprisonment both on the ground of unexplained/ inordinate delay of 8 years in disposal of mercy petition and on the ground of insanity - Terrorism and Disruptive Activities (Prevention) Act - Mercy Petition.

The petitioner's husband was convicted under the Terrorism and Disruptive Activities (Prevention) Act (TADA) and sentenced to death by the trial court. He preferred appeal before this Court which confirmed the death sentence. The petitioner's husband then preferred Review Petition which was also dismissed. Soon after dismissal of the review petition, he submitted a mercy petition dated 14.01.2003 to the President of India under

Article 72 of the Constitution and prayed for commutation of his sentence. During pendency of the mercy petition, he also filed Curative Petition which was also dismissed by this Court.

On 30.05.2011, the President of India rejected the mercy petition submitted on behalf of the petitioner's husband. The same was also communicated to the Jail Superintendent on 13.06.2011. On 24.06.2011, the wife of the accused (petitioner herein) preferred a Writ Petition before this Court praying for quashing the communication dated 13.06.2011. This Court dismissed the writ petition. Review Petition thereagainst was also dismissed.

Subsequently, the petitioner filed the instant Curative Petition praying for setting aside the death sentence imposed upon her husband by commuting the same to imprisonment for life on the ground of supervening circumstance of delay of 8 years in disposal of mercy petition.

Disposing of the curative petition, the Court

HELD: 1.1. Very recently, a three-Judge Bench of this Court, in the Shatrughan Chauhan case, commuted the sentence of death imposed on the petitioners therein to imprisonment for life which has a crucial bearing for deciding the petition at hand. In the aforesaid verdict, this Court validated the established principle and held that unexplained/unreasonable/inordinate delay in disposal of mercy petition is one of the supervening circumstances for commutation of death sentence to life imprisonment. [Para 8]

1.2. In addition, it is clear from letter dated 08.02.2014 received by the Registry on 12.02.2014 from the Institute of Human Behaviour and Allied Sciences, that the

accused herein (i.e. the petitioner's husband) was examined by the Standing Medical Board on 05.02.2014. The report signed by the Director & Chairman as well as four Members of the Medical Board clearly shows that he is suffering from acute mental illness. [Para 12]

1.3. The three-Judge Bench in Shatrughan Chauhan held that insanity/mental illness/schizophrenia is also one of the supervening circumstances for commutation of death sentence to life imprisonment. By applying the principle enunciated in Shatrughan Chauhan, the petitioner's husband cannot be executed with the said health condition. It is deemed fit to commute the death sentence imposed on him into life imprisonment both on the ground of unexplained/inordinate delay of 8 years in disposal of mercy petition and on the ground of insanity. [Paras 13, 14]

Shatrughan Chauhan & Anr. vs. Union of India & Ors. **2014 (1) SCALE 437 - held applicable.**

Triveniben vs. State of Gujarat **(1988) 4 SCC 574;** *Devender Pal Singh Bhullar vs. State (NCT) of Delhi* **(2013) 6 SCC 195 - referred to.**

Case Law Reference:

2014 (1) SCALE 437	**held applicable**	**Para 8**
(1988) 4 SCC 574	**referred to**	**Para 10**
(2013) 6 SCC 195	**referred to**	**Para 11**

INHERENT JURISDICTION : Curative Petiton (Crl.) No. 88 of 2013.

IN

Review Petition (Crl.) No. 435 of 2013.

IN

Writ Petition (Crl.) No. 146 of 2011.

G.E. Vahanvati, AG, Sidharth Luthra, ASG, KTS Tulsi, Raj Kamal, Niraj Gupta, Gaurang Vardhan, Paramjeet Singh, Anoopam Prasad, Tara Narula, Aadil Boparai, Meenakshi Grover, Supriya Juneja, D.S. Mahra, for the appearing parties.

The Judgment of the Court was delivered by

P. SATHASIVAM, CJI. 1. Navneet Kaur w/o Devender Pal Singh Bhullar, filed the present Curative Petition against the dismissal of Review Petition (Criminal) No.435 of 2013 in Writ Petition (Criminal) No. 146 of 2011 on 13.08.2013, wherein she prayed for setting aside the death sentence imposed upon Devender Pal Singh Bhullar by commuting the same to imprisonment for life on the ground of supervening circumstance of delay of 8 years in disposal of mercy petition.

2. Considering the limited issue involved, there is no need to traverse all the factual details. The brief background of the case is: By judgment dated 25.08.2001, Devender Pal Singh Bhullar was sentenced to death by the Designated Judge, Delhi. Thereafter, he preferred an appeal being Criminal Appeal No. 993 of 2001 before this Court and by judgment dated 22.03.2002, this Court confirmed the death sentence and dismissed his appeal. Against the dismissal of the appeal by this Court, the accused preferred Review Petition (Criminal) No. 497 of 2002, which was also dismissed by this Court on 17.12.2002.

3. Soon after the dismissal of the review petition, the accused submitted a mercy petition dated 14.01.2003 to the President of India under Article 72 of the Constitution and prayed for commutation of his sentence. During the pendency of the petition filed under Article 72, he also filed Curative Petition (Criminal) No. 5 of 2003 which was also dismissed by this Court on 12.03.2003.

4. On 30.05.2011, a communication was sent from the Joint Secretary (Judicial) to the Principal Secretary, Home Department, Government of NCT of Delhi, stating that the President of India has rejected the mercy petition submitted on behalf of Devender Pal Singh Bhullar. The same was also communicated to the Superintendent, Central Jail No. 3, Tihar Jail, New Delhi on 13.06.2011.

5. On 24.06.2011, the wife of the accused (petitioner herein) preferred a Writ Petition (Criminal) No. 146 of 2011 before this Court praying for quashing the communication dated 13.06.2011. By order dated 12.04.2013, this Court, after examining and analyzing the materials brought on record by the respondents, arrived at the conclusion that there was an unreasonable delay of 8 years in disposal of mercy petition, which is one of the grounds for commutation of death sentence to life imprisonment as per the established judicial precedents. However, this Court dismissed the writ petition on the ground that when the accused is convicted under TADA, there is no question of showing any sympathy or considering supervening circumstances for commutation of death sentence.

6. Aggrieved by the said dismissal, the wife of the accused preferred Review Petition being (Criminal) No. 435 of 2013 which was also dismissed by this Court on 13.08.2013. Subsequently, the wife of the accused, petitioner herein has filed the above Curative Petition for consideration by this Court.

7. Heard Mr. KTS Tulsi, learned senior counsel appearing on behalf of the petitioner and Mr. G.E. Vahanvati, learned Attorney General for India appearing on behalf of the respondents.

8. Very recently, a three-Judge Bench of this Court, in Writ Petition (Criminal) No. 55 of 2013 Etc., titled Shatrughan Chauhan & Anr. vs. Union of India & Ors., 2014 (1) SCALE 437, by order dated 21.01.2014, commuted h

imposed on the petitioners therein to imprisonment for life which has a crucial bearing for deciding the petition at hand. In the aforesaid verdict, this Court validated the established principle and held that unexplained/unreasonable/inordinate delay in disposal of mercy petition is one of the supervening circumstances for commutation of death sentence to life imprisonment.

9. While deciding the aforesaid issue in the above decision, the Bench was simultaneously called upon to decide a specific issue viz., whether is there a rationality in distinguishing between an offence under Indian Penal Code, 1860 and Terrorist and Disruptive Activities (Prevention) Act for considering the supervening circumstance for commutation of death sentence to life imprisonment, which was the point of law decided in Writ Petition (Criminal) No. 146 of 2011.

10. The larger Bench in *Shatrughan Chauhan* (supra), after taking note of various aspects including the constitutional right under Article 21 as well as the decision rendered by the Constitution Bench in *Triveniben vs. State of Gujarat* (1988) 4 SCC 574, held:

> "57) From the analysis of the arguments of both the counsel, we are of the view that only delay which could not have been avoided even if the matter was proceeded with a sense of urgency or was caused in essential preparations for execution of sentence may be the relevant factors under such petitions in Article 32. Considerations such as the gravity of the crime, extraordinary cruelty involved therein or some horrible consequences for society caused by the offence are not relevant after the Constitution Bench ruled in *Bachan Singh vs. State of Punjab* (1980) 2 SCC 684 that the sentence of death can only be imposed in the rarest of rare cases. Meaning, of course, all death sentences imposed are impliedly the most heinous and barbaric and rarest of its kind. The legal effect of the extraordinary depravity of the offence exhausts itself

> when court sentences the person to death for that offence. Law does not prescribe an additional period of imprisonment in addition to the sentence of death for any such exceptional depravity involved in the offence.
>
> 58) As rightly pointed out by Mr. Ram Jethmalani, it is open to the legislature in its wisdom to decide by enacting an appropriate law that a certain fixed period of imprisonment in addition to the sentence of death can be imposed in some well defined cases but the result cannot be accomplished by a judicial decision alone. The unconstitutionality of this additional incarceration is itself inexorable and must not be treated as dispensable through a judicial decision."
>
> *** *** ***
>
> "64) In the light of the same, we are of the view that the ratio laid down in *Devender Pal Singh Bhullar* (supra) is per incuriam. There is no dispute that in the same decision this Court has accepted the ratio enunciated in *Triveniben* (supra) (Constitution Bench) and also noted some other judgments following the ratio laid down in those cases that unexplained long delay may be one of the grounds for commutation of sentence of death into life imprisonment. There is no good reason to disqualify all TADA cases as a class from relief on account of delay in execution of death sentence. Each case requires consideration on its own facts."
>
> *** *** ***
>
> "70 Taking guidance from the above principles and in the light of the ratio enunciated in *Triveniben* (Supra), we are of the view that unexplained delay is one of the grounds for commutation of sentence of death into life imprisonment and the said supervening circumstance is applicable to all types of cases including the offences[illegible]y

aspect the Courts have to satisfy is that the delay must be unreasonable and unexplained or inordinate at the hands of the executive. The argument of Mr. Luthra, learned ASG that a distinction can be drawn between IPC and non-IPC offences since the nature of the offence is a relevant factor is liable to be rejected at the outset. In view of our conclusion, we are unable to share the views expressed in *Devender Pal Singh Bhullar* (supra)."

11. Learned Attorney General, taking note of the conclusion arrived at in *Shatrughan Chauhan* (supra) wherein this Court held that the ratio laid down in *Devender Pal Singh Bhullar vs. State (NCT) of Delhi* (2013) 6 SCC 195 is per incuriam, fairly admitted that applying the said principle as enunciated in *Shatrughan Chauhan* (supra), death sentence awarded to Devender Pal Singh Bhullar is liable to be commuted to life imprisonment. We appreciate the rationale stand taken by learned Attorney General and accept the same.

12. In addition, it is also brought to our notice by letter dated 08.02.2014, which was received by the Registry on 12.02.2014 from the Institute of Human Behaviour and Allied Sciences, that the accused Devender Pal Singh Bhullar was examined by the Standing Medical Board on 05.02.2014 and the Board opined as under:

"1.The patient has been diagnosed with Severe Depression with Psychotic features (Treatment Refractory Depression) with Hypertension with Dyslipidemia with Lumbo-cervical Spondylosis with Mild Prostatomegaly.

2. He is currently receiving Anti-Depressant, Anti-Psychotic, Anti-anxiety, Anti-Hypertensives, Hypolipedemic, Anit-Convulsant (for Neuropathic pain) and Antacid drugs in adequate doses along with supportive psychotherapy and physiotherapy.

3. Patient has shown partial and inconsistent response to

the treatment with significant fluctuations in the severity of his clinical condition.

4.The treatment comprising of various combinations of pharmacological and non-pharmacological treatments have brought about partial and inconsistent improvement in his clinical condition in the last three years of hospitalization. The scope for effective treatment options is limited and thereby the chances of his recovery remain doubtful in the future course of his illness".

The above report has been signed by the Director & Chairman as well as four Members of the Medical Board. The report clearly shows that he is suffering from acute mental illness.

13. The three-Judge Bench in *Shatrughan Chauhan* (supra) held that insanity/mental illness/schizophrenia is also one of the supervening circumstances for commutation of death sentence to life imprisonment. By applying the principle enunciated in *Shatrughan Chauhan* (supra), the accused cannot be executed with the said health condition.

14. In the light of the above discussion and also in view of the ratio laid down in *Shatrughan Chauhan* (supra), we deem it fit to commute the death sentence imposed on Devender Pal Singh Bhullar into life imprisonment both on the ground of unexplained/inordinate delay of 8 years in disposal of mercy petition and on the ground of insanity. To this extent, the Curative Petition stands allowed.

B.B.B. Curative Petition disposed of.

BHARATKUMAR SHANTILAL THAKKAR

v.

STATE OF GUJARAT & ANOTHER

(Writ Petition (C) No. 19 of 2012)

APRIL 1, 2014

[R.M. LODHA AND SHIVA KIRTI SINGH, JJ.]

Judicial Service - Subordinate judiciary in the State of Gujarat - Vide Resolution dated 14.6.2012, additional benefit of three advance increments given to Judicial Officers who possessed higher qualification in law - Sanction of the benefit however made conditional by making it available to those who possessed higher qualification in law on or after 1.11.1999 - Cut-off date (1.11.1999) prescribed in para 2 of Resolution dated 14.6.2012 - If wholly arbitrary - Held: A sentence in a communication dated 27.7.2009 made by the Registrar General of the Gujarat High Court to the Secretary to the Government of Gujarat, Legal Department created confusion which led to the cut-off date (1.11.1999) being provided in the Resolution dated 14.6.2012 - The date 1.11.1999 in the above sentence is referable to implementation date for three advance increments and not as the cut-off date for acquiring the higher qualification in law - As it is, the criteria provided in para 2 of Resolution dated 14.6.2012 is irrational - Expression "on or after 1.11.1999" in para 2 of Resolution dated 14.6.2012 to be read as "on or before 1.11.1999" - 1st National Judicial Pay Commission - Para 8.48 - Gujarat State Judicial Services Rules, 2005 - r.7-A.

By the instant writ petition filed under Article 32 of the Constitution, inter alia, prayer was made that direction be issued to the respondents to implement para 8.48 of the recommendations of the 1st National Judicial Pay Commission as approved by this Court.

During pendency of the writ petition, by Resolution dated 14.6.2012, additional benefit of three advance increments was given to Judicial Officers of the subordinate judiciary in the State of Gujarat pursuant to the recommendations made in the Ist Pay Commission particularly para 8.48 thereof. In that Resolution, however, the sanction of the benefit of three advance increments was made conditional upon fulfillment of condition set-out in para 2 or para 4, as the case may be. The additional benefit of three advance increments was made available to those who possessed higher qualification in law on or after 1.11.1999.

It was contended by the petitioner that the cut-off date prescribed in the Resolution was wholly arbitrary and had no nexus with the object sought to be achieved.

Allowing the writ petition, the Court

HELD: By communication dated 27.7.2009, the Registrar General of the Gujarat High Court had advised the Secretary to the Government of Gujarat, Legal Department that insertion of Rule 7-A in the Gujarat State Judicial Services Rules, 2005 may not be necessary if the recommendation of granting three advance increments to the candidates having higher qualification in law w.e.f. 1.11.1999 is incorporated as an addendum to the Government Resolution No. Pay/102003/1233/D dated 16.3.2007 and given effect from 1.11.1999. 2. It appears that the sentence "if the present recommendation of granting three advance increments to the candidates having higher qualification in law w.e.f. 1.11.1999" in the letter dated 27.7.2009 has really created confusion which led to cut-off date (1.11.1999) being provided in the Resolution dated 14.6.2012. The date 1.11.1999 in the above sentence is referable to implementation date for three advance increments and not as the cut-off date for acquiring the higher qualification in [illegible]s

no rationale in providing that those candidates who possessed higher qualification in law on or after 1.11.1999 would be given advance increments. The criteria provided in para 2 is irrational. The expression "on or after 1.11.1999" in para 2 of the Resolution dated 14.6.2012 shall be read as "on or before 1.11.1999". [Paras 8, 9 and 10]

All India Judges Association & Others vs. Union of India and others **(2002)4 SCC 247: 2002 (2) SCR 712 - referred to.**

Case Law Reference:

2002 (2) SCR 712	**referred to**	**Para 5**

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

Writ Petition (Civil) No. 19 of 2012.

Sanjay Parikh, Mamta Saxena, Bushra Parveen, N. Vidya, Anitha Shenoy for the Appellant.

Hemantika Wahi, Jayesh Gaurav, T. Mahipal for the Respondent.

The Judgment of the Court was delivered by

R.M. LODHA, J. 1. The petitioner - Bharatkumar Shantilal Thakkar joined judicial service in the State of Gujarat in 1995. Prior to his joining judicial service, the petitioner had done post-graduation in law. By this writ petition filed under Article 32 of the Constitution of India, inter alia, he has prayed that direction be issued to the respondents to implement para 8.48 of the recommendations of the Ist National Judicial Pay Commission (for short "Commission") which has been approved by this Court.

2. It appears that during the pendency of the writ petition, by Resolution dated 14.6.2012, additional benefit of three

advance increments has been given to the Judicial Officers of the subordinate judiciary in the State of Gujarat pursuant to the recommendations made in the Ist Pay Commission particularly para 8.48 thereof. In that Resolution, however, the sanction of the benefit of three advance increments is conditional upon fulfillment of condition set-out in para 2 or para 4, as the case may be. The relevant part of Resolution dated 14.06.2012 reads:

> 1. .....
>
> 2. The advance increments to be given to candidates who possessed higher qualifications in Law at the time of joining service on or after 1.11.1999. But, such increment shall be released upon successful completion of probation period.
>
> 3. .....
>
> 4. The Judicial Officers joined the services after 1.11.1999 and are having such higher qualifications at the time of selection, they shall be entitled to get such three advance increments.....

3. Mr. Sanjay Parikh, learned counsel for the petitioner submits that the above Resolution does not address the grievance of the petitioner as additional benefit of three advance increments has been made available to those who possessed higher qualification in law on or after 1.11.1999. He further submits that the cut-off date prescribed in the Resolution is wholly arbitrary and that has no nexus with the object sought to be achieved.

4. In para 8.48, the Commission made the following recommendation:

> If selected candidates are having a higher qualification like Post-Graduation in Law, we recommend that three advance increments be given as it is allowed by the Delhi Administration. It is an acknowl[illegible]st

Graduation in Law is a difficult course and it is better to reward appropriately such candidates.

5. In *All India Judges Association & Others vs. Union of India and others*[1], this Court accepted all the recommendations of the Commission except those which were modified in the judgment itself. This is apparent from para 37 of the judgment which reads as under:

"Subject to the various modifications in this judgment, all other recommendations of the Shetty Commission are accepted."

6. Having regard to the above, the Registrar General of the Gujarat High Court by his communication dated 2.4.2008 sent to the Secretary to the Government of Gujarat, Legal Department advised him to move the Government for insertion of Rule 7-A in the Gujarat State Judicial Services Rules, 2005 (for short "2005 Rules"). Rule 7-A of 2005 Rules, proposed by the High Court, reads as under:

A candidate selected for the post of Civil Judge who possesses higher qualification in law, such as LL.M., M.Phil in Law, Ph.D. in Law shall be entitled to get three additional increments, but such increments shall be released upon successful completion of the probation period.

7. Pertinently, in the proposed Rule 7-A, there is no cut-off date with regard to acquisition of higher qualification in law such as LL.M. in law, M.Phil in Law, Ph.D. in Law.

8. By subsequent communication dated 27.7.2009, the Registrar General advised the Secretary to the Government of Gujarat, Legal Department that insertion of Rule 7-A in 2005 Rules may not be necessary if the recommendation of granting three advance increments to the candidates having higher qualification in law w.e.f. 1.11.1999 is incorporated as an addendum to the Government Resolution No. Pay/102003/1233/D dated 16.3.2007 and given effect from 1.11.1999.

1. (2002) 4 SCC 247.

9. It appears that the sentence "if the present recommendation of granting three advance increments to the candidates having higher qualification in law w.e.f. 1.11.1999" in the letter dated 27.7.2009 has really created confusion which led to cut-off date (1.11.1999) being provided in the Resolution dated 14.6.2012. The date 1.11.1999 in the above sentence is referable to implementation date for three advance increments and not as the cut-off date for acquiring the higher qualification in law. This is also clear from the sentence preceding the controversial sentence which reads "...the Government in the Legal Department have issued Resolution No. Pay/102003/1233/D dated 16/03/2007 and given effect to the same from 01/11/1999. (emphasis supplied). It is not in dispute that while recommending insertion of Rule 7-A in 2005 Rules, no cut-off date has been given. As a matter of fact, Mr. Jayesh Gaurav, learned counsel for the respondent No. 2 - High Court of Gujarat submits that by letter dated 27.7.2009, it was neither intended nor meant that three advance increments shall be available only to those judicial officers who have acquired higher qualification in law w.e.f. 1.11.1999. As it is we do not find any rational in providing that those candidates who possessed higher qualification in law on or after 1.11.1999 would be given advance increments. The criteria provided in para 2 is irrational.

10. We, accordingly, hold that the expression "on or after 1.11.1999" in para 2 of the Resolution dated 14.6.2012 shall be read as "on or before 1.11.1999".

11. Writ Petition is allowed as above with no order as to costs. All financial benefits as per this order shall be paid to the petitioner as early as possible and in no case later than two months from the date of receipt of copy of this order. This order shall also be applicable to all Judicial Officers who have been denied benefit of three advance increments on the basis that they acquired higher educational qualification in law before 1.11.1999.

B.B.B.