THE
INDIAN LAW REPORTS
ALLAHABAD SERIES

*****

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81. Hon'ble Mr. Justice Abdul Shahid
82. Hon'ble Mr. Justice Santosh Rai
83. Hon'ble Mr. Justice Tej Pratap Tiwari
84. Hon'ble Mr. Justice Zafeer Ahmad

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(2025) 8 ILRA 6
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 29.08.2025

BEFORE

THE HON'BLE ARUN BHANSALI, C.J.
THE HON'BLE KSHITIJ SHAILENDRA, J.

Appeal Under Section 37 of Arbitration And Conciliation Act 1996 No. 205 of 2025

S.S. Total Construction (I) Pvt. Ltd. ...Applicant

Versus

Union of India ...Respondent

Counsel for the Applicant:
Anurag Khanna, Sr. Advocate with Neelesh Ramchandani, Shivangi Tripathi

Counsel for the Respondent:
S.P. Singh, A.S.G.I., Vivek Kumar Singh

ISSUE FOR CONSIDERATION

Whether the Commercial Court erred in setting aside the arbitral award beyond the scope of challenge under Section 34 of the Arbitration and Conciliation Act, 1996.

HEADNOTES

Civil Law – Arbitration and Conciliation Act, 1996 - Section – 34, – **General Clauses of Contract –** Section – 25, 25(i)- Appeal u/s Section 37 of the Arbitration and Conciliation Act - challenges the Commercial Court, judgment – by which the court below set aside the impugned arbitral award – composite tender floated - for Civil and Electrical Works – Appellant participated in bidding process – contract and agreement - Contract dispute – appellant claimed required the respondent to release the withheld payment and for other losses and damages – Arbitration proceeding – Award – Appeal under Section 34 - refund of GST and interest and the rejection of the counter-claim – grounds taken that the Commercial Court erroneously addressed and invalidated the entire award based on compensation for project delay, an issue not raised in the challenge - Appellate court finds that, challenged laid was very limited only to the extent of two claims and rejection of counter-claim, however the commercial court in wholly misguided manner and apparently without even looking at the record of the case has dealt with the issue – consequently, the appeal is allowed – matter is remanded back to the commercial court for re-hearing and deciding the same afresh. (Para – 13, 14, 16)
Appeal Allowed. (E-11)

CASE LAW CITED

No case law cited.

LIST OF ACTS

Arbitration and Conciliation Act, 1996, General Clauses of Contract (GCC),

LIST OF KEYWORDS

Arbitration Award - Section 34 Challenge - GST Refund - Interest on Claim - Judicial Review - Procedural Impropriety – Remand – application of mind.

CASE ARISING FROM

Date of Judgment and order dated 13.05.2025 passed by the Commercial Court, Bareilly, – Award dated 10.12.2022 passed in Arbitration proceedings.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Anurag Khanna, Sr. Advocate with Neelesh Ramchandani, Shivangi Tripathi,
Counsel for Respondent(s) : S.P. Singh, A.S.G.I., Vivek Kumar Singh.

(Delivered by Hon'ble Arun Bhansali, C.J.
&
Hon'ble Kshitij Shailendra, J.)

1. This appeal is directed against judgement dated 13.05.2025 passed by the Commercial Court, Bareilly whereby the application filed by the respondent - Union of India under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') against award dated 10.12.2022 has been allowed and award impugned has been set aside.

2. Respondent floated a composite tender (civil and electrical work) for construction of permanent infrastructure at SHQ & Bn. Headquarters, Lakhimpur Kheri under Lucknow frontier; the appellant participated in the biding process and was awarded the contract and agreement was entered into. As per the agreement, date of commencement of the work was 04.05.2016 and the stipulated time for completion was fourteen months i.e. the scheduled date of completion was 03.07.2017.

3. It was claimed by the appellant that upon receiving the payment as per unilateral final bill finalized by the respondent, the appellant required the respondent to release the withheld payment and also claimed that it had suffered other losses and damages due to prolongation of the contract. It was also indicated that the payment received be treated as 'payment accepted under protest' and the notice be treated as notice under Section 25(i) of the General Clauses of Contract ('GCC').

4. In terms of the GCC, Dispute Redressal Committee was constituted, which rendered its decision on 15.01.2021, however, the appellant being dissatisfied with the said decision sought appointment of Arbitrator. Sole Arbitrator was appointed in terms of Clause 25 of the GCC.

5. Statement of claim raising claims under 13 distinct heads was filed to which statement of defence along with counter-claim was filed, a rejoinder to the statement of defence and reply to the counter-claim was filed by the appellant. The Arbitrator delivered the award on 10.12.2022 awarding claims under 9 heads and dismissing the counter-claim.

6. Aggrieved of the award dated 10.12.2022, application under Section 34 of the Act was filed by the respondent, which was limited to claim no. 10 pertaining to claim on account of refund of GST and claim no. 12 regarding award of interest on the claim awarded besides rejection of counter-claim pertaining to appellant's liability to pay GST on reimbursement.

7. The Commercial Court by the judgement impugned, dealt the merit of the award under Point no. 1 pertaining to award of compensation for the delay in completion of the work and came to the conclusion that the award was patently illegal and consequently, set aside the impugned award dated 10.12.2022.

8. Learned counsel for the appellant made vehement submissions that the judgement passed by the commercial court is a result of non-application of mind to the dispute before the court. Submissions have been made that the commercial court has passed the judgement in a wholly mechanical manner, without even adverting to the factual aspect of the matter.

9. Submissions have been made that before the Arbitrator claims under 13 distinct heads were raised, out of which under 9 heads, award was made in favour of the appellant and counter-claim was rejected and the application under Section 34 of the Act was restricted only qua two claims awarded in favour of the appellant and the rejection of the counter-claim.

10. It is further submitted that in fact the award made under 7 heads by the Arbitrator has already been paid to the appellant, however, the Commercial Court on an issue, which was not even raised in the case, pertaining to the compensation for

delayed completion of project has set aside the entire award, which determination deserves to be quashed and set aside.

11. Learned counsel for the Union of India could not dispute the submissions made pertaining to the limited extent of challenge laid under Section 34 of the Act, payment of rest of the award having been made and passing of the judgement by the commercial court de hors the challenge laid.

12. We have considered the submissions made by counsel for the parties and perused the material available on record.

13. A bare perusal of the award passed by the Arbitral Tribunal and challenge laid under Section 34 of the Act by the respondent, it is apparent that the challenge laid was very limited only to the extent of two claims and rejection of counter-claim. However, the Commercial Court though noticed the challenge laid pertaining to the claim on account of refund of GST and award of interest by the Arbitral Tribunal, in a wholly misguided manner and apparently without even looking at the record of the case has dealt with the issue, which did not arise in the application under Section 34 of the Act at all i.e. pertaining to the award of compensation for delayed completion of work.

14. The manner in which the judgement has been passed by the Commercial Court leaves much to be desired and is reflective of a total non-application of mind to the subject matter and essentially misuse of technology whereby apparently from the other judgement passed between the same parties, a part of the determination has been copy pasted in the present case, which action of the Presiding Officer of the Commercial Court cannot be appreciated and vitiates the judgement impugned.

15. Consequently, the appeal is **allowed**. The judgement dated 13.05.2025 passed by the Commercial Court is quashed and set aside.

16. The matter is remanded back to the Commercial Court, Bareilly for re-hearing and deciding the same afresh based on the submissions made and the record of the case.

(2025) 8 ILRA 8
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 29.08.2025

BEFORE

THE HON'BLE ARUN BHANSALI, C J.
THE HON'BLE KSHITIJ SHAILENDRA, J.

Appeal Under Section 37 of Arbitration And Conciliation Act 1996 No. 206 of 2025

S.S. Total Construction (I) Pvt. Ltd. ...Applicant

Versus

Union of India ...Respondent

Counsel for the Applicants:
Anurag Khanna, Sr. Advocate with Neelesh Ramchandani, Shivangi Tripathi

Counsel for the Respondents:
S.P. Singh, A.S.G.I., Vivek Kumar Singh

Issue for consideration

Pertains to application of mind while passing the judgement dated 13.05.2025 passed by the Commercial Court, Bareilly in application under Section 34 of the Arbitration Act.

Headnotes

Non-Application of mind-Award delivered awarding claims under 9 heads and dismissing the counter-claim-aggrieved-challenged under Section 34 of the Act-claim was limited only to the extent of six claims and rejection of counter-claim-impugned order -though noticed the challenge dealt with only one issue- reflective of a total non-application of mind to the subject matter-Out of 6 claims under challenge only 3 were dealt with -judgement cannot be sustained-**W.P. allowed.** (E-9)

Case Law Cited

Nil

List of Acts

The Arbitration Act

List of Keywords

Non-application of mind, wholly mechanical manner, de hors the challenge laid

Appearances of parties

Counsel for Appellant(s) : Anurag Khanna, Sr. Advocate with Neelesh Ramchandani, Shivangi Tripathi

Counsel for Respondent(s) : S.P. Singh, A.S.G.I., Vivek Kumar Singh

(Delivered by Hon'ble Arun Bhansali, C J.
&
Hon'ble Kshitij Shailendra, J.)

1. This appeal is directed against judgement dated 13.05.2025 passed by the Commercial Court, Bareilly whereby the application filed by the respondent - Union of India under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') against award dated 10.12.2022 has been allowed and award impugned has been set aside.

2. Respondent floated a composite tender (civil and electrical work) for construction of permanent infrastructure at SHQ & Bn. Headquarters, Lakhimpur Kheri under Lucknow frontier; the appellant participated in the biding process and was awarded the contract and agreement was entered into. As per the agreement, commencement of work was 07.05.2016 and the stipulated time for completion was fourteen months i.e. the scheduled date of completion was 06.07.2017.

3. It is alleged that the execution of the works was delayed inordinately due to events attributable to the respondents which led to the slippage in the planned progress of work. Extension of time was granted upto 15.01.2018 and to the actual date of completion i.e. 28.04.2018.

4. It was claimed by the appellant that upon receiving the payment as per unilateral final bill finalized by the respondent, the appellant required the respondent to release the withheld payment and also claimed that it had suffered other losses and damages due to prolongation of the contract. It was also indicated that the payment received be treated as 'payment accepted under protest' and the notice be treated as notice under Section 25(i) of the General Clauses of Contract ('GCC').

5. In terms of the GCC, Dispute Redressal Committee was constituted, which rendered its decision on 15.01.2021, however, the appellant being dissatisfied with the said decision sought appointment of Arbitrator. Sole Arbitrator was appointed in terms of Clause 25 of the GCC. Statement of claim raising claims under 11 distinct heads was filed to which statement of defence along with counter-claim was filed, a rejoinder to the statement of defence and reply to the counter-claim was filed by the appellant. The Arbitrator delivered the award on 10.12.2022 awarding claims under 9 heads and dismissing the counter-claim.

6. Aggrieved of the award dated 10.12.2022, application under Section 34 of the Act was filed by the respondent, which

was limited to claim 5(a) pertaining to claim on account of extra expenditure incurred due to increase in wages of labour in prolongation of contract, claim 5(c) pertaining to damages on account of site establishment in prolongation of contract, claim 5(d) pertaining to extra expenditure incurred on H.O. fixed expenditure due to prolongation of contract, claim 6 pertaining to bonus as per Clause 2A, claim 8 pertaining to refund of GST and claim 10 regarding award of interest on the claim awarded besides rejection of counter-claim pertaining to appellant's liability to pay GST on reimbursement.

7. The Commercial Court by the judgement impugned, only dealt with the issue pertaining to claim granted under claim nos. 5(a), 5(c) and 5(d) and set aside the entire award dated 10.12.2022 without even dealing with claim nos. 6, 8 and 10.

8. Learned counsel for the appellant made vehement submissions that the judgement passed by the commercial court is a result of non-application of mind to the dispute before the court. Submissions have been made that the commercial court has passed the judgement in a wholly mechanical manner, without even adverting to the factual aspect of the matter.

9. Submissions have been made that before the Arbitrator, claims under 11 distinct heads were raised, out of which under 9 heads, award was made in favour of the appellant and counter-claim was rejected and the application under Section 34 of the Act was restricted only qua 6 claims awarded in favour of the appellant and the rejection of the counter-claim.

10. It is further submitted that in fact the award made under 3 heads by the Arbitrator has already been paid to the appellant, however, the Commercial Court, though no challenge was laid to other claims awarded by the Arbitral Tribunal and in fact paid, by dealing with only claim awarded due to the delayed completion of project, which determination also is wholly incorrect, has set aside the entire award, which determination deserves to be quashed and set aside.

11. Learned counsel for the Union of India could not dispute the submissions made pertaining to the limited extent of challenge laid under Section 34 of the Act, payment of rest of the award having been made and that passing of the judgement by the commercial court de hors the challenge laid.

12. We have considered the submissions made by counsel for the parties and perused the material available on record.

13. A bare perusal of the award passed by the Arbitral Tribunal and challenge laid under Section 34 of the Act by the respondent, it is apparent that the challenge laid was limited only to the extent of six claims and rejection of counter-claim. However, the Commercial Court though noticed the challenge laid, in a wholly misguided manner and apparently without even looking at the record of the case has dealt with only one issue, which arose in the application under Section 34 of the Act i.e. pertaining to the award of compensation for delayed completion of work under Claim 5(a), 5(c) & 5(d) only.

14. The manner in which the judgement has been passed by the Commercial Court leaves much to be desired and is reflective of a total non-

application of mind to the subject matter and the extent of the challenge laid. Out of 6 claims under challenge only 3 were dealt with and not a word has been indicated qua the rest. Even the issue dealt with is in a wholly curosry manner and as such, the judgement cannot be sustained.

15. Consequently, the appeal is allowed. The judgement dated 13.05.2025 passed by the Commercial Court is quashed and set aside.

16. The matter is remanded back to the Commercial Court, Bareilly for re-hearing and deciding the same afresh based on the submissions made and the record of the case.

(2025) 8 ILRA 11
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 19.08.2025

BEFORE

THE HON'BLE RAJNISH KUMAR, J.

Criminal Appeal No. 19 of 1993

Devendra Singh & Ors. ...Appellants
Versus
State ...Respondents

Counsel for the Appellants:
S.H. Ibrahim, Amarendra Kr. Bajpai, Divesh Mishra, IK Mishra, I.P. Singh, K.K.Tewari, Kaushlendra Tiwari, Ratnesh Agnihotri, Rishad Murtaza, S K Shukla, Sachidanand Mishra, Shri Prakash Pandey

Counsel for the Respondents:
Govt. Advocate, Aniruddh Singh

Issue for Consideration

Matters relates to Criminal appeal against conviction and sentence for dacoity(S.395 IPC:10 years' RI and Rs. 10000 fine) and dacoity with deadly weapon (S. 397 IPC: 7 years' RI, concurrent), arising from a midnight home invasion involving alleged loot, assault, and attempted rape in a village feud.

Headnotes

Criminal law-Criminal Procedure Code,1973-S. 374(2)-Indian Penal Code,1860-Ss. 395,397-Challenge to-Conviction-Dacoity prosecution burden-Contradictions in eye witnesses-Non-production of key witnesses-Conviction based on presumption without resolving contradictions or improbabilities is unsustainable-Simple injuries to four persons amid alleged assault by 9-10 armed men-no medical examination of complainant-no loot recovery-Acquittal on benefit of doubt-The appeal is allowed.

Held

The court held that there is material contradictions in PW-1, PW-2 and PW-3's testimonies regarding arms carried by unnamed accused, source of firing and (courtyard or roof) and cartridge collection undermine credibility-Unexplained recovery of cartridges post-FIR suggests possible planting-Non-production of torches as material exhibits, despite memos, creates doubt-Failure to examine injured daughters –in –law or independent witnesses despite their materiality, coupled with IO's note of their non-disclousre of gun insertion, entitles accused to beneffit of doubt-The trial court's judgment dated 07.11.1993 set aside.(Para 13 to 35) (E-6)

Case law Cited

Iqbal & Anr Vs St. of U.P.(2015)4 ALJ 239, Rang Bahadur Singh Vs St. of U.P. (2000) J.Cr.C. 259 (S.C.),Harbeer Singh Vs Sheeshpal Singh & Ors (2017) JCR 508 (SC), Juggi @ Jugendra & Ors Vs St. of U.P. (2015)1 JIC 662 (All),Manzoor Vs St. of U.P. AIR (1983) SC 295 & Dhaniram Vs St. of U.P.(1997) J.Cr.C. 692 (All.),Ram Ratan Vs St. of M.P.,MANU/SC/1279/2021 [AIR 2022 SC 518], Amish Devgan Vs UOI & Ors; MANU/SC/0921/2020 [(2021) 1 SCC 1)], Ganesan & Ors Vs St. rep. by SHO & Ors, MANU/SC/1015/2021 [(AIR 2021 SC 5643)], Ashfaq Vs. St. (Govt. of NCT of Delhi), MANU/SC/1042/2003[(AIR 2004 SC 1253)],

Kuldeep Kumar Tripathi Vs Rang Bahadur Pandey & Ors, 2010 (3) ADJ 334-referred to.

List of Acts

Criminal Procedure Code, 1973, Indian Penal Code,1860

List of Keywords

Accused, Conviction, CrPC, Complainant, Recovery memo, Dacoity, cartridges, testimonies, benefit of doubt, acquittal, offenders, cognizable offence, contusion, deadly weapon, injuries.

Case Arising From

CRIMINAL APPELATE JURISDICTION: CRIMINAL APPEAL No. – 19 of 1993
From the Judgment and Order dated 19.08.2025 of the High Court of Judicature at Allahabad.

Devendra Singh & Ors Vs. State

Appearances for Parties

Advs. for Appellant:
S.H. Ibrahim, Amarendra Kr. Bajpai, Divesh Mishra, I K Mishra, I.P. Singh, K.K. Tewari, Kaushlendra Tiwari, Ratnesh Agnihotri, Rishad Murtaza, S K Shukla, Sachidanand Mishra, Shri Prakash Pandey
Advs. for Respondent:
G.A. Aniruddh Singh

(Delivered by Hon'ble Rajnish Kumar, J.)

1. Heard Sri I. K. Mishra and Sri Sachidanand Mishra, learned counsel for the appellant nos. 1 and 3 respectively and Shri Rajesh Kumar Shukla, learned Additional Government Advocate (here-in-after referred as AGA).

2. This appeal has been filed by the appellants namely Devendra Singh, Sripal Singh, Suresh Singh, Dinesh Singh and Yogendra Singh. During pendency of this appeal, Shripal Singh, Dinesh Singh and Yogendra Singh have died, therefore, this appeal has abated on their behalf on different dates. Now this appeal survives only on behalf of the appellant no. 1-Devendra Singh son of Indrapal Singh and appellant no. 3-Suresh Singh son of Hari Bux Singh.

3. This Criminal Appeal under Section 374(2) of Code of Criminal Procedure Code (here-in-after referred as CrPC) has been filed assailing the judgment and order dated 7/11-1-1993 passed in S.T. No. 387 of 1991; State Versus Devendra Singh and 4 Others, arising out of Case Crime No. 66/1990 under Sections 395/397 of the Indian Penal Code (here-in-after referred as IPC), Police Station Behtagokul, District Hardoi by IVth Additional Sessions Judge, Hardoi, by means of which the appellant nos. 1 and 5 namely, Devendra Singh and Yogendra Singh have been convicted under Section 395 IPC and sentenced each of them to 10 years rigorous imprisonment and a fine of ₹10,000, and in default of payment of fine, three years simple imprisonment and seven years rigorous imprisonment under Section 397 IPC and both the sentences have to run concurrently. The remaining appellant nos. 2, 3 and 4, namely Shripal Singh, Suresh Singh, and Dinesh Singh respectively have been convicted under Section 395 IPC and sentenced to 10 years rigorous imprisonment to each of them and a fine of ₹10,000 and in default of payment of fine, three years simple imprisonment.

4. Prosecution story, in brief, is that complainant-Ganga Bux Singh submitted written-report Ext.Ka.1 at Police Station Behta Gokul, District Hardoi, with the allegations that there is enmity between him and Sripal Singh, Suresh Singh, Dinesh Singh and Devendra Singh of his village in connection with the land since long and a case is also pending in the Tehsil and so many times hot words have

been exchanged in this regard. About a year ago his sons were also beaten, in regard to which, he gave an application to police and a day before the occurrence at about 6 P.M. Devendra Singh threatened his son-Hari Nam Singh in the grove near the village situated in the north and threatened to see him. In the last night at about 1.30 A.M., while he was sleeping at his door along with his brother-in-law Ranvir Singh and his sons Harinam Singh, Hari Shanker Singh along with their wives Savitri and Shiv Kumari were sleeping inside the house, on noise, he woke up and saw that a person flashed torch on his face. He also after flashing his torch saw that Devendra Singh, Sripal Singh, Suresh, Dinesh, Yogendra Singh and four other persons, who can be identified, were standing near him, out of them Devendra Singh was armed with single barrel gun, Yogendra was armed with 'Tamancha' and remaining were armed with 'Lathi-Danda". Devendra kept his gun on his chest and asked him "SALE UTH KER GHAR KA DARWAJA KHULWAO TUMHARE GUNDE LARKON KO JAAN SE KHATM KER DOONGA". Sripal Singh gave him 3-4 slaps. Suresh moved 'Danda'. Due to fear, he got opened the door of the house. It has further been alleged that inside the house a lantern was illuminating on the wall of kitchen. They, on being entered the house, began 'Maarpeet'. All of them used fists and kicks and beat his both the sons with 'Danda' also. Devendra Singh challenged and said "INKO ITNA MARO KI JHAGRA MITA DO". They had beaten his daughters-in-law also and Suresh, Dinesh and Yogendra tried to commit rape with them and tried to enter barrel of gun in their vagina. They also opened fire in the air. On the noise, Deva Singh, Om Prakash, Nand Kishore and several others reached on the spot. In the light of torches and on being challenged accuseds ran away. The accuseds were identified by them in the light of lantern and torches. In the last he requested that necessary action be taken after lodging his report.

5. On the basis of said written report Exihibit-Ka.1, F.I.R. Exihibit-Ka.10 was written at police station on 26.5.1990 at 9.50 hours under Sections 147, 148, 149, 452, 323, 504, 506 and 376/511 I.P.C. against the accuseds and the case was entered in general diary. In pursuance thereof, the investigation was made. The Investigating Officer (here-in-after referred as I.O.) recorded the statements of witnesses and after visiting the spot prepared the site plan, which is Exhibit-Ka.13. I.O. also took in his possession the lantern and torch and prepared their memos, which are Exhibits-Ka.2 and Ka.3 respectively. Injureds Smt. Savitri Devi, Smt. Shiv Kusari, Hari Singh and Harinam Singh were medically examined and their medical examination reports are Exhibits-Ka.4 to Ka.7 respectively. Injureds Smt. Shiv Kumari and Smt. Savitri were also referred to Women Hospital, Hardoi for examination of their injuries on their private part and in this regard their medical examination reports are Exhibits-Ka.8 and Ka.9 respectively. I.O. also took in his possession a torch, empty cartridges and torches of other witnesses and prepared their memos, which are Exhibits-Ka.12, Ka.14 and Ka.16 respectively. A copy of other relevant general diary report converting the case under Sections 395/397 I.P.C. is Exihibit-Ka.15. An application of Arún Pal Singh, scribe of the written-report, addressed to I.O. Behtagokul, District Hardoi is Exihibit-Ka.18. After completion of investigation, charge sheet, under Sections 395/397 IPC, was submitted against the aforesaid accused(s) in the court

of Magistrate concerned. The First Additional Chief Judicial Magistrate, Hardoi, committed the case to the court of Sessions for trial vide order dated 01.10.1991. After committal of the case to the court of Sessions, the charge was framed against the accused(s)-Devendra Singh, Shripal Singh, Suresh Singh, Dinesh Singh, and Yogendra Singh on 29.10.1991 under Section 395 read with Section 397 IPC. The accused(s) denied the charge and claimed for trial.

6. The prosecution, to prove its case, examined nine witnesses. Ganga Bux Singh; the complainant, appeared as P.W. 1, Hari Nam Singh-Injured and Ram Chandra appeared as P.W. 2 and P.W. 3 respectively, who are the eyewitnesses of the occurrence. Dr. S Thiriyani appeared as P.W. 4, Dr. Reeta Singh appeared as P.W. 5, Head Constable Raghupati Singh, scribe of F.I.R. appeared as P.W. 6, Sub-Inspector Sabhajit Rai appeared as P.W. 7, Sub-Inspector Pyarey Lal Yadav appeared as P.W. 8 and Sub-Inspector J.B. Singh appeared as P.W. 9. P.W. 7 to 9 were the investigating officers of the case. The prosecution also produced empty cartridges and belt of cartridges, which are material Exhibits-I to VIII.

7. After closure of prosecution evidence, accused(s) were examined under Section 313 of Criminal Procedure Code (here-in-after referred as CrPC) to explain the circumstances appeared against them in the evidence. They in their statement denied the prosecution allegations and merely stated that they have been falsely implicated in the present case due to enmity. The accused(s) did not examine any oral evidence in their defense, but they filed copies of certain documents, which are exhibits- Kha-1 to Kha-5.

8. Learned counsel for the appellants submitted that the appellants have been convicted without considering the evidence and material on record. He further submitted that the complainant could not have been present at the place of incident as per the First Information Report (here-in-after referred as FIR). He further submitted that Ganga Bux Singh was not examined medically. He further submitted that there was no allegation of loot of essential goods etc. in FIR and the looted property was also not recovered. He further submitted that no proof of use of weapon was found. He further submitted that there was contradiction in the statements of witnesses and they had also modified their statements. He further submitted that the source of light has been shown only a lantern, and it could not be proved that torches were present in lightening condition. It has also been submitted that the lantern and torches etc. were also not produced during the trial. No examination in regard to the cartridges was done to ascertain, as to whether they were of the gun of Devendra Singh or not. He further submitted that two injured ladies i.e. the daughter-in-laws' of P.W. 1, were not produced in evidence. In the investigation, they had not stated about Devendra Singh, therefore, the statement was contradictory to the evidence of P.W. 1 and P.W. 2. He further submitted that the injuries are simple in nature and the appellants had no criminal history. He next submitted that the use of a deadly weapon has not been found. It has also been submitted that it is very improbable that persons of the same village, residing in the vicinity, would commit the offense of dacoity, without covering their faces. Thus, it was submitted that the appellants have been wrongly and illegally convicted and sentenced, without considering and dealing with the evidence

and material on record appropriately. Thus, the impugned order is not sustainable in the eyes of law and liable to be set-aside and the appellants are liable to be acquitted.

9. Learned counsel for the appellants relied on **Iqbal and another vs. State of Uttar Pradesh; 2015 (4) ALJ 239, Rang Bahadur Singh vs. State of Uttar Pradesh; 2000 J.Cr.C. 259 (S.C.), Harbeer Singh vs. Sheeshpal Singh and others; 2017 JCR 508 (SC), Juggi @ Jugendra and others vs. State of U.P.; 2015 (1) JIC 662 (All), Manzoor vs. State of Uttar Pradesh; AIR 1983 SC 295 and Dhaniram vs. State of U.P.; 1997 J.Cr.C. 692 (All.).**

10. Learned AGA vehemently opposed the submissions of learned counsel for the appellants. He submitted that the impugned judgment and order has rightly been passed in accordance with law, after considering the evidence and material on record. He next submitted that it was a case of dacoity as there were more than five accuseds and in the incident, five persons were injured. He also submitted that Devendra Singh had a barrel gun; Yogendra Singh had a country-made pistol and the rest of the accuseds had lathi and danda in their hands. It was further submitted that the FIR was primarily lodged and it is settled law that it is not an encyclopedia. He further submitted that the F.S.L. report and the report of the lady doctor are in favor of the prosecution. It has further been submitted that merely because ornaments could not be recovered, it cannot be said that the prosecution has failed to prove its case because the participation of the accused in the instant case has not been proved. It has further been submitted that the conviction has rightly been made under Sections 395 and 397 IPC. He next submitted that the two injured persons have been examined. The FIR was lodged on 26.05.1990 at 09:15 in regard to the incident of the night of 25/26.05.1990 at about 11/2 AM, therefore, the FIR was lodged promptly and the accused Sripal Singh and Suresh Singh were arrested on 28.05.1990. However, nothing could be recovered. Thus, learned AGA submitted that the appellants have rightly been convicted in accordance with law and sentenced accordingly. There is no illegality or error in the impugned judgment and order. The appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed.

11. Learned AGA relied on **Ram Ratan vs. State of Madhya Pradesh; MANU/SC/1279/2021 [AIR 2022 SC 518], Amish Devgan vs. Union of India and others; MANU/SC/0921/2020 [(2021) 1 SCC 1)], Ganesan and others vs. State rep. by Station House Officer and others; MANU/SC/1015/2021 [(AIR 2021 SC 5643)], Ashfaq vs. State (Govt. of NCT of Delhi); MANU/SC/1042/2003 [(AIR 2004 SC 1253)] and Kuldeep Kumar Tripathi vs. Rang Bahadur Pandey and others; 2010 (3) ADJ 334.**

12. I have considered the submissions of learned counsel for the parties and perused the records.

13. One of the grounds argued by learned counsel for the appellants is that there was a delay in lodging the FIR. This issue has been considered by the learned trial court and it has been held that the delay in lodging the FIR has been fully explained by the prosecution because the incident had taken place in the midnight and the people of the same village committed such heinous crime of dacoity,

in which they had beaten four family members, in which two young women of the family also suffered injuries on their private parts. P.W.-1 Ganga Bux Singh; the complainant, has stated that, "रात में मैं डर की वजह से रिपोर्ट करने थाने नहीं गया था। सुबह मैंने अरुण पाल से घर पर हाल बताकर तहरीर लिखाई थी।" and the scribe of the written report, Exhibit Ka-1, Arun Pal Singh in his application, Exhibit Ka-18, has written that *"26.5.90 को सुबह 5.30 बजे मैं सोकर उठा तो सन्देश वाहक जो मेरे मामा ने भेजा था ने बताया कि खुजगीपुर में गंगाबक्श सिंह के घर रात में डकैती पड़ गई है ... मैं तुरन्त मामा के गांव गया .....गंगा बक्श सिंह अनपढ़ है अतः उनके बताये हुये तरीके से मैंने घटना की तहरीर लिख दी थी।"* This clearly shows that some time would have been taken in writing the written complaint.

14. It is written in the application dated 30.06.1990 of Arun Pal Singh, Exhibit Ka-18 that *"निवेदन करना है कि गांव में गंगाबक्श सिंह के घर डकैती पड़ी थी व गांव के कुछ लोग उसमे शामिल थे जिन्हे प्राथमिकी में दर्ज भी कराया गया है परन्तु घटना मार पीट व बलवा की लिखाई गई क्योंकि गंगाबक्श सिंह को कुछ लोगो ने भ्रमित कर दिया कि डकैती का केस नही चल पाएगा। अतः मारपीट का मुकदमा लिखाओं। गंगा बक्श सिंह अनपढ़ है अतः उनके बताये हुये तरीके से मैंने घटना की तहरीर लिख दी थी"* and the FIR was lodged under sections 147/148/149/452/323/504/506/376/511 IPC. However, during investigation, the case was converted under Sections 395 and 397 IPC. In any case, the delay in lodging the FIR has been explained by the prosecution. However, as admitted by the complainant; P.W.-1, his both the sons were educated, but he failed to explain as to when his sons were educated, why the FIR was got written only after calling Arun Pal Singh in the morning from the other village, but he was not produced in evidence. His statement under Section 161 Cr.P.C. was also not recorded.

15. The trial court observed that the main point for consideration in the case is as to whether the occurrence took place as alleged by the prosecution or not. The learned trial court, after considering the evidence of prosecution witnesses, which includes the doctors, who have proved the injury reports and the fact that empty cartridges and belts of cartridges were also found by the I.O. on the roof of the house of the complainant and it has also come in the evidence of P.W.-1 Ganga Bux Singh that the accuseds opened fire from the roof at the time of occurrence to create terror/ruckus in the village and I.O. also found some broken articles in the house of the complainant and that nobody would like to say wrongly that accused(s) persons, who are residents of his own villages, entered a barrel of the gun inside the vagina of daughter-in-laws', held that the incident of dacoity took place in the house of the complainant as alleged by the prosecution and P.W.-1 Ganga Bux Singh; the complainant, proved the prosecution case. In addition thereof, he stated that some miscreants climbed on the roof and opened fire and remaining others were beating them in the courtyard and were demanding cash and jewellery and accuseds snatched jewellery, which his daughter-in-laws were wearing and cash and looted jewellery kept in the boxes and other jewellery articles i.e. Payal, Nathuni, Bunda and seven silver coins, brass batua and paraat, three gagra etc.

16. P.W.-2 Hari Nam Singh, injured, who has been said to be the eyewitness of the occurrence, also supported the prosecution case. He stated about the enmity between him and accused Devendra Singh on account of land dispute, in regard to which the litigation was ongoing at the time of the occurrence also and in the

evening at about 06:00 P.M. before the night of occurrence, Devendra Singh abused him and threatened to see him. He stated that about two and half years ago, at about 01:30 in the night, he was lying with his wife in the western courtyard of his house and his brother was lying along with his wife in the eastern courtyard of the house and his father was lying along with Ranveer Singh on the Chabutara at the door. He also stated that on the call of his father, he opened the door and saw Devendra Pal Singh, Shripal Singh, Suresh Pal Singh, Dinesh Singh and Yogendra Pal Singh and 4-5 unknown persons holding his father. On opening the door, all the accuseds along with his father entered the western courtyard and at that time, the accused Devendra was armed with a single-barrel gun, Yogendra Singh with a country made pistol, Shripal Singh, Suresh Pal Singh and Dinesh Singh were having lathi-danda in theirs hands and they began to beat him and his brother with kicks and fists. He further stated that Suresh, Dinesh and Yogendra had tried to commit rape on Smt. Savitri Devi and Smt. Shiv Kumari, but when they were unsuccessful, the accused Devendra Singh inserted the barrel of the gun in their vagina, due to which they received injuries in their private parts. He further stated that the accuseds committed loot by entering in his house and looted the articles kept in the boxes of his wife and also looted utensils. He further stated that the unknown persons climbed on the roof and made 6-7 fire and on noise, witnesses reached on the spot with torches and lathis. Thereafter, the accused(s) ran away through the western door with the looted property and all the accuseds were identified in the light of the lantern and torches.

17. The site plan indicates that the accused(s) entered the house after getting the door opened at Point "H" and thereafter, after crossing Barotha Nos. 1 and 2, entered into the first courtyard, where on the south-western side, one of the sons of the complainant along with his wife was sleeping and the other son was sleeping in the courtyard subsequent thereto on the western side and his wife was sleeping on the northern side of the said courtyard, where the kitchen is also situated and the lantern was burning on the southern wall of the kitchen, in regard to which, firstly P.W.-1 stated that it was on the western wall, but subsequently he stated that he had wrongly stated it was on the western wall and it was actually on the southern wall. The accuseds ran away from the western gate at "G". It is the case of the prosecution that the accuseds were seen in the light of the lantern and torches, while they entered the house. However, the lantern appears to be after a wall in the first courtyard, in which there is a gate on the western side for going into the second courtyard, where the kitchen is situated on the northern side, therefore it can not be said that the light of lantern would have been on all the sides in the courtyard and it has not been shown or proved. The torches have neither been produced in evidence nor it has been proved that they were in working condition. The memos have been prepared in regard to the torches used by the informant and other persons, but on different dates. However, it has not been proved as to whether these torches were used at the time of the incident or not.

18. It is also a case of the prosecution that the accused(s), other than the named persons, went upstairs and fired to create a ruckus and terror, whereas the site plan shows that the stairs are outside the house, and none of the witnesses have stated that

after entering the house, any of the accused(s) had gone outside to go upstairs.

19. P.W.-2, Hari Nam Singh, the son of the complainant, has also stated in his evidence that on the call of his father, Ganga Bux Singh, he opened the main door and saw that Devendra Pal Singh, Shri Pal Singh, Suresh Pal Singh, Dinesh Pal Singh, Yogendra Pal Singh and 4-5 other unknown persons were holding his father. On opening the door, they all dragged his father into the courtyard. The accused-Devendra had a single barrel gun in his hand; Yogendra had a country-made pistol in his hand and Shri Pal Singh, Suresh Pal Singh and Dinesh Pal Singh had lathi and danda in their hands. However, he could not see which arms were with the remaining persons, whereas P.W.-1 Ganga Bux Singh, the informant, has stated that accused-Devendra Singh had a single barrel gun in his hand, Yogendra had a country-made pistol and the remaining had lathi and danda in their hands. Thus, there is contradiction in regard to the remaining unnamed persons about the arms in their hands. P.W.-1 has further stated that some of the accuseds went on the roof and fired, but he has not named the persons, who went on the roof, and according to him, the accused Devendra and Yogendra were in the house and were trying to do bad work with the daughter-in-laws' of the complainant, and they entered the barrel of the gun in their private parts, and as per his evidence no other person was having the gun. The similar statement has been given by the P.W.-2. Though he has stated about the gun shot, but he has not stated that who went on the roof and fired. Thus, there is contradiction in the evidence of the eyewitnesses i.e. P.W.-1 and P.W.-2. P.W.-3, who is a villager and a neighbour of the informant, stated that he saw that the dacoits were going up and down and coming in and going out. He further stated that 6-7 fires were made by the dacoits. Some fires were made from the courtyard and some from the roof and used cartridges were found on the roof. Ganga Bux Singh had collected the used cartridges and went to the police station. Thus, there is contradiction in the evidence of P.W.-1, P.W.-2 and P.W.-3 in regard to the fire from gun because on the one hand, P.W.-1 has stated that the fires were made from the roof, whereas P.W.-3 has stated that some fires were made from the courtyard also and according to P.W.-3, the used cartridges were collected by Ganga Bux Singh before going to the police station. On the contrary, P.W.-8, S.I. Pyarelal Yadav, who was one of the investigating officers of the case, has stated that the investigation was assigned to him on 27.05.1990 and thereafter he went to the site and recovered seven used empty cartridges and one rim of brass cartridge. Thus, once the used cartridges were already collected by the complainant on the date of the incident, then how seven used cartridges and one rim of brass cartridge were found on the roof of the complainant remains unexplained and it might have been planted subsequently because the FIR or any other material does not disclose that the cartridges collected by the complainant on the date of the incident were handed over to the police.

20. P.W.-2 has stated that the FIR was written by Arun Pal Singh before him, and it was mentioned in the written report that the accused(s), after entering the house, made loot and took away the jewelry of the ladies kept in the box and eating utensils, paraat, tasla, gagra and brass batua. Thereafter, he stated that he does not recollect as to whether it was mentioned in the FIR or not. In any case, the written

report made by Arun Pal Singh neither discloses the same nor it is mentioned in the FIR. However, subsequently, during investigation, the case of dacoity and the loot of the aforementioned articles was made and a written statement by Arun Pal Singh (Exhibit Ka.18) has also been placed on record to show that some persons had confused the informant, Ganga Bux Singh, that the case of dacoity would not be workable (चल पायेगा), therefore, the case of marpeet was got written, and Ganga Bux Singh is illiterate. Though this application may have no relevance as neither the statement of Arun Pal Singh has been recorded under Section 161 Cr.P.C. nor he has been produced in evidence. But, since it has been produced by the defense and relied, therefore, it has rightly been considered. Thus, if the version of Arun Pal Singh is taken to be correct, it is apparent that the FIR was lodged after consultation and thinking. The police, in the investigation, also could not find out about the remaining unnamed accused(s) and only the named accused(s), who were residents of the same village, were arrested and the trial was held against them.

21. The daughter-in-laws' of the complainant have not been produced in evidence to prove the incident and as to how they got the injuries. The injuries suffered by the said ladies are simple in nature and in regard to the injury in their private parts, the doctor stated that they are simple in nature caused by some blunt object. It is also very strange that both the ladies suffered a lacerated wound of the same size i.e. 0.25cmX0.25cm at 6 'O clock position and at 11 'O Clock position of their vagina. The other two injureds, namely Hari Singh and Hari Nam Singh, sons of the complainant, had also simple injuries caused by a blunt and hard object. It is very strange that in a beating by about nine to ten persons with lathi-danda, a single barrel gun and a country made pistol, only four persons have suffered simple injuries and no injury was suffered by the complainant. P.W.-3 Ramchandra has not stated in his evidence that the accuseds had beaten the complainant and his family members. He has stated that the accuseds were going up and down stairs and coming out and going in the house and taking out the goods and when they exhorted, the accuseds ran away and in the light of torch, they saw the accuseds, but they could not see what goods were being brought out and stated that they ran with the same. Thus, there is a contradiction in it also because once they were taking out the goods in front of him, this court failed to comprehend as to why the witness could not see the goods and tell anything about them.

22. Shri J.B. Singh, P.W.-9, who was handed over the investigation on 22.06.1990, stated that Smt. Savitri and Smt. Shiv Kumari had not told about entering the barrel of the gun in their vagina and despite his asking to ascertain the same, they had not told. It is further stated that they did not name any of the accuseds for the said act and the said ladies have not been produced in evidence. Therefore, the said statement of the Investigating Officer remains unrebutted and the fact that Arun Pal Singh was called from the other village for writing the complaint, whereas the sons of the informant had studied up to 9th and 8th grade respectively and letter of Arun Pal Singh i.e. Exhibit Ka-18 creates doubt about the veracity of the prosecution story itself. Even otherwise, the prosecution story appears to be highly improbable because the complainant and the family members waited until the morning for treatment and

lodging the FIR of the incident, in which at least four persons had suffered injuries, out of which two of the ladies suffered injuries on their private parts, and even then, no effort was made for their treatment and taking them to the hospital, whereas in such a situation, normally a prudent person would immediately take steps for treatment and lodging the FIR. The presumption drawn by the learned trial court about the firing of the dacoits also seems to be improbable and it has also not been stated by the complainant and other prosecution witnesses of fact and admittedly, the distance to the police station was about half an hour by vehicle. The accused(s) were of the same village and it also seems improbable that they would come for the dacoity with open faces and without covering them without fearing of their being recognized and in such a condition also, not firing to kill any of the family members, despite having fire arms. The complainant, Ganga Bux Singh, has also not been got examined medically because he would not have suffered any injury, whereas the allegation is that he has been dragged by about nine persons after getting the door opened by P.W.-2. In such a situation, it is not possible that certain injuries would not have been suffered by him, may be contusion, etc. The witnesses namely, Om Prakash, Nand Kishore, and Roshan, who were named by P.W.-1, P.W.-2, and P.W.-3, have not been produced in evidence, and they were discharged on the application by the learned Additional Government Counsel on the ground that they were won over by the accuseds. Ranvir Singh, who was brother-in-law of the complainant and was sleeping alongwith him, when the accuseds came and committed the crime, was a material eye-witness, but not produced in evidence, which also creates doubt about the whole prosecution story. They were material and independent witnesses and might have not been produced because they might not be ready to give evidence of a false prosecution case. Neither recovery of the stolen articles has been made nor the police could find out as to what happened to them, if they were stolen in the alleged robbery. The trial court, without considering the above and evidence and recording findings on the basis of presumption, has convicted the appellants and sentenced them, which could not have been done.

23. The Hon'ble Supreme Court, in the case of **Iqbal and Another versus State of Uttar Pradesh (Supra),** has held that in cases of dacoity, usually, the offence is committed by unknown persons with the criminal background. It is only in very few cases, the accused-dacoits are known to the victim. It has further been held that in order to bring home the guilt of the accused persons, it is the duty of the prosecution to prove that the stolen property was in the possession of the accused persons or that the accused had knowledge that the property was a stolen property or the accused persons had converted the stolen property. No such recovery was made to connect the appellants and other non-appealing accused persons with the crime. It has also been held that the prosecution ought to have adduced evidence as to how and in what manner the articles which were the subject matter of dacoity were either disposed of or converted.

24. The Hon'ble Supreme Court, in the case of **Rang Bahadur Singh vs. State of U.P. (Supra)**, has held that it is difficult to believe that the appellants who were well known to the inmates of the house would have gone there without covering/concealing their faces. The

Hon'ble Supreme Court has taken similar view in regard to the recovery of the articles as in the aforesaid case of **Iqbal and Another versus State of Uttar Pradesh (Supra).**

25. The Hon'ble Supreme Court, in the case of **Harbeer Singh vs. Sheeshpal Singh and others (Supra)**, has held that the corroboration by independent witnesses is an indispensable rule in cases where the prosecution is primarily based on the evidence of seemingly interested witnesses. It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the Court to place credence on the statement.

26. A Division Bench of this Court, in the case of **Juggi @ Jugendra and others vs. State of U.P. (Supra),** has held that if persons belonging to the same village or adjoining village to whom the witnesses are knowing since before the occurrence commits dacoity, they will try to conceal their identity but in the present case all the witnesses of fact have deposed that all the miscreants were having open faces and did not try to conceal their identity. So this creates a doubt upon the prosecution story and presence of the witnesses on the spot. The Court further held that non-production of torch is very relevant. In the present case, the source of light has been shown the lantern and torch, but the same have not been produced. Though recovery memos of the same were prepared but the same were handed over back.

27. The Hon'ble Supreme Court, in the case of **Manzoor vs. State of Uttar Pradesh (Supra)**, has taken the similar view and observed as under in paragraph 12:-

"12. There is then the evidence of P.Ws. 1 and 2, the home-guards of whom only P.W. 2 had identified the appellants in the identification parade held on 17.11.1978. The four home-guards including P.Ws. 1 and 2 are stated to have flashed their torch lights and to have seen the two persons running away from the scene of occurrence after they had heard the alarm of the injured Gul Bahar near the railway line. The torches have not been produced in evidence, and the investigating officer P.W. 12 would say in his evidence that he saw those torches 30 and returned them to the home-guards. It is not known why the investigating officer P.W. 12 thought it fit to return the torches with the aid of which the home-guards are stated to have seen the two persons running away from the scene of occurrence though that will be a relevant piece of material evidence in the case. P.W. 12 has stated that after recording the statement (Ex. Ka. 11) of the deceased Gul Bahar at the District hospital, Saharanpur he went to the mela and recorded the statements of the four home-guards. This evidence of P.W. 12 shows two things, namely (1) that the home-guards would have been on duty at the mela in the night of 22/23.9.1978 40 and could not have been on patrol duty, moving about near the railway line or the lime kiln which is stated by the P.W. 12 to be situate one furlong away from the mela, as P.Ws. 1 and 2 would have it, and (2) that none of the home-guards could have accompanied the injured Gul Bahar from the petrol pump where the First Information Report (Ex. Ka. 1) is stated to have been recorded to the Police Station, for if any home-guard had accompanied the injured Gul Bahar to the Police Station he would have been examined by the police at the Police Station itself in connection with this case and it would not have been

necessary for P.W. 12 to have examined that home-guard only at the mela. The evidence of P.Ws. 1 and 2 that Ex. Ka 1 was recorded at the petrol pump is not reliable, for it is stated in Ex. Ka. 1 that one of the home-guards took down the deceased's statement and brought him to the Police Station after recording the report. From the statement in Ex. Ka. 1 that one of the home guards brought the deceased to the Police Station, it would appear that Ex. Ka. 1 could have been written only after the injured Gul Bahar had been taken to the Police Station and not earlier. It is to be noted that none from the petrol pump and the rickshaw-puller who is stated to have carried the injured Gul Bahar from the petrol pump to the Police Station has been examined as a witness at the trial. It is seen from the evidence of P.W. 12 that the home-guard did not give him the description of any of the culprits when he examined them and that he did not even ask them about it though it is stated in the report Ex. Ka 1 that the home-guards had seen the culprits thoroughly and identified them. If at the earliest opportunity the home-guards did not mention any identifying features of the culprits when they were examined by P.W. 12, it is difficult for us to believe how P.W. 2 could have identified both the appellants nearly two months later on 17.11.1978. It has to be noted that the appellants have stated in the trial court that they were shown to the witnesses before the identification parade was held. In these circumstances we are not impressed with the evidence of P.Ws. 1 and 2."

28. A co-ordinate Bench of this Court, in the case of **Dhani Ram vs. State of U.P. (Supra),** has held that only such of the several miscreants, who use deadly weapon or cause grievous hurt to any person or attempt to cause death or grievous hurt, could be covered by offence of mischief of Section 397 IPC. In the present case, admittedly only two persons used the deadly weapons i.e. single barrel gun and country made pistol and it could not be proved as to who were the unknown persons and as to what deadly weapons were used by them, therefore, the allegation of fire to create ruckus and terror itself becomes doubtful.

29. The Hon'ble Supreme Court, in the case of **Ram Ratan vs. State of Madhya Pradesh (Supra),** has held that it is clear that the use of the weapon to constitute the offence under Section 379 IPC does not require that the 'offender' should actually fire from the firearm or actually stab if it is a knife or a dagger but the mere exhibition of the same, brandishing or holding it openly to threaten and create fear or apprehension in the mind of the victim is sufficient. The other aspect is that if the charge of committing the offence is alleged against all the accuseds and only one among the 'offenders' had used the firearm or deadly weapon, only such of the 'offender' who has used the firearm or deadly weapon alone would be liable to be charged under Section 379 IPC.

30. The Hon'ble Supreme Court, in the case of **Amish Devgan vs. Union of India and others (Supra),** has held that FIR is not an encyclopaedia disclosing all facts and details relating to the offence. The informant who lodges the report of the offence may not even know the name of the victim or the assailant or how the offence took place. He need not necessarily be an eye-witness. What is essential is that the information must disclose the commission of a cognisable offence and the information must provide basis for the police officer to suspect commission of the offence.

31. The Hon'ble Supreme Court, in the case of **Ganesan and others vs. State represented by Station House Officer**

and others (Supra), has taken similar view in regard to Section 397 IPC. The relevant paragraphs 12.6 to 12.7 are extracted here-in-below:

*"**12.6.** The aforesaid view has been subsequently reiterated by this Court in the case of Dilawar Singh (Supra) and in paragraphs 19 to 21 it is observed and held as under:*

19. The essential ingredients of Section 397 Indian Penal Code are as follows:

1. The Accused committed robbery.

2. While committing robbery or dacoity (i) the Accused used deadly weapon (ii) to cause grievous hurt to any person (iii) attempted to cause death or grievous hurt to any person.

3. "Offender" refers to only culprit who actually used deadly weapon. When only one has used the deadly weapon, others cannot be awarded the minimum punishment. It only envisages the individual liability and not any constructive liability. Section 397 Indian Penal Code is attracted only against the particular Accused who uses the deadly weapon or does any of the acts mentioned in the provision. But the other Accused are not vicariously liable under that Section for acts of the co-Accused.

20. As noted by this Court in Phool Kumar v. Delhi Admn. [MANU/SC/0210/1975: (1975) 1 SCC 797: 1975 SCC (Cn.) 336 AIR 1975 SC 905] the term "offender" Under Section 397 Indian Penal Code is confined to the offender who uses any deadly weapon. Use of deadly weapon by one offender at the time of committing robbery cannot attract Section 397 Indian Penal Code for the imposition of minimum punishment on another offender who had not used any deadly weapon. There is distinction between "uses" as used in Sections 397 Indian Penal Code and 398 Indian Penal Code. Section 397 Indian Penal Code connotes something more than merely being armed with deadly weapon.

21. In the instant case admittedly no injury has been inflicted. The use of weapon by offender for creating terror in mind of victim is sufficient. It need not be further shown to have been actually used for cutting, stabbing or shooting, as the case may be. [See Ashfaq v. State (Govt. of NCT of Delhi) [MANU/SC/1042/2003: (2004) 3 SCC 116: 2004 SCC (Cri.) 687: AIR 2004 SC 1253].

12.7. Thus, as per the law laid down by this Court in the aforesaid two decisions the term 'offender Under Section 397 Indian Penal Code is confined to the 'offender' who uses any deadly weapon and use of deadly weapon by one offender at the time of committing robbery cannot attract Section 397 Indian Penal Code for the imposition of minimum punishment on another offender who has not used any deadly weapon. Even there is distinction and difference between Section 397 and Section 398 Indian Penal Code. The word used in Section 397 Indian Penal Code is 'uses' any deadly weapon and the word used in Section 398 Indian Penal Code is 'offender is armed with any deadly weapon'. Therefore, for the purpose of attracting Section 397 Indian Penal Code the 'offender' who 'uses' any deadly weapon Section 397 Indian Penal Code shall be attracted.

In light of the above observations and the law laid down by this Court in the aforesaid two decisions the case on behalf of the Accused in the present appeals is required to be considered. Even as per the case of the prosecution and even considering the evidence on record it can

be seen that the present Accused Al and A3 are not alleged to have used any weapon. The allegation of use of any weapon was against Benny and Prabhakaran. Therefore, in absence of any allegations of use of any deadly weapon by the Appellants herein-Accused Nos. 1 and 3 Section 397 Indian Penal Code shall not be attracted and to that extent the learned Counsel appearing on behalf of the Appellants-Accused are right in submitting that they ought not to have been convicted for the offence punishable Under Section 397 Indian Penal Code."

32. The Hon'ble Supreme Court, in the case of **Ashfaq vs. State (Govt. of NCT of Delhi) (Supra),** has taken similar view in regard to the Section 397 IPC.

33. The judgment of Full Bench of this Court, in the case of **Kuldeep Kumar Tripathi vs. Rang Bahadur Pandey and others (Supra)**, relied by learned AGA is not applicable on the facts and circumstances of the present case and it is in regard to the jurisdiction of hearing of criminal appeal.

34. In view of above and considering the overall facts and circumstances of the case, this Court is of the view that the impugned judgment and order has been passed convicting and sentencing the appellants without considering the evidence and material on record appropriately and recording the findings on the basis of presumption, which could not have been done and the prosecution has failed to prove its case beyond reasonable doubt. Thus, the appellants could not have been convicted and sentenced. Therefore, the impugned judgment and order is not sustainable and liable to be set-aside and the appellants are liable to be acquitted on the basis of benefit of doubt.

35. The appeal is, accordingly, **allowed.**

36. The impugned judgment and order dated 7/11-1-1993 passed in S.T. No. 387 of 1991; State Versus Devendra Singh and 4 Others, arising out of Case Crime No. 66/1990 under Sections 395/397 IPC, Police Station Behtagokul, District Hardoi by IVth Additional Sessions Judge, Hardoi is hereby set-aside. The appellants are acquitted on the basis of benefit of doubt.

(2025) 8 ILRA 24
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.08.2025

BEFORE

THE HON'BLE MRS. SANGEETA CHANDRA, J.
THE HON'BLE SHREE PRAKASH SINGH, J.

Criminal Appeal U/S 372 CR.P.C. No. 46 of 2025
Alongwith
Criminal Appeal U/S 372 CR.P.C. No. 52 of 2025

Rajendra Prasad Singh ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Mahendra Pratap Singh, Ranjit Singh

Counsel for the Respondents:
G.A.

Issue for Consideration

Maintainability of a criminal appeal under S. 372 Cr.P.C. (now S. 430 of the Bhartiya Nagrik Suraksha Sanhita, 2023) filed by the informant / relative of the victim (brother of the deceased)—whether he falls within the definition of "victim" under S 2(wa) Cr.P.C. (now S. 2(1)(y) of the BNSS, 2023), and whether such appeal requires leave to appeal.

Headnotes

Criminal Procedure Code, 1973 - S. 372 proviso - Victim's right of appeal - Definition of 'victim'- scope - mental and

emotional injury - Appeal by victim - no special leave required - Legal heir - Class distinction under succession law not applicable.

Held: The **right to appeal under the proviso to S. 372 Cr.P.C.** is an **absolute and independent right of the victim,** not circumscribed by conditions or the requirement of leave - The term **'victim'** under S. 2(wa) must receive a **liberal, realistic, progressive and beneficial interpretation,** including persons who have suffered **mental, emotional, or economic injury** due to the offence - Appellant, being the brother of the deceased, is a "legal heir" - Emotional harm suffered by close relatives, even if not Class-I heirs, is sufficient to confer *victim status* - A complainant under the Negotiable Instruments Act (S. 138) is a victim for the purposes of S. 2(wa) Cr.P.C. and entitled to appeal against acquittal without seeking special leave - The anxiety expressed by the learned counsel for the State regarding award of compensation or its apportionment after appeal can be addressed by leaving it open for the Appellate Court to make specific order regarding awarding of compensation to the victims legal heirs in case the challenge to the order of the Trial Court is successfully made - **Appeals admitted** - bailable warrants issued against accused-respondents - matter listed for further hearing. (Paras 21,26,33,41,42,43) (E-7)

Case Law Cited

Manoj Kumar Singh v. State of U.P. & Ors. **[(2017) 2 UPLBEC 1245 (FB)];** *Satpal Singh v. State of M.P. & Ors.* **[2015 Cr.L.J. 4929 (SC)];** *Mallikarjun Kodagali v. State of Karnataka & Ors.* **[2019 (2) SCC 752];** *Ram Phal v. State (NCT of Delhi)* **[2015 SCC Online Delhi 9802 (FB)];** *Ankush Shivaji Gaikwad v. State of Maharashtra* **[2013 Cr.L.J. 3044 (SC)];** *M/s Celestium Financial v. Gnanasekaran* **[2025 LiveLaw (SC) 666];** *Tata Steel Ltd. v. Athma Tube Products Ltd.* **[2013 SCC OnLine P&H 5834];** *Parmeshwar Mandal v. State of Bihar* **[2013 SCC OnLine Patna 602]**

List of Acts

Code of Criminal Procedure, 1973; Bhartiya Nagrik Suraksha Sanhita, 2023; Indian Penal Code, 1860; Fatal Accidents Act, 1855; Negotiable Instruments Act, 1881; Amendment Act No. 5 of 2009; Hindu Succession Act; Indian Succession Act, 1925; Muslim Shariyat laws.

List of Keywords

Victim - Legal heir - Appeal against acquittal - Compensation - Emotional harm - Mental injury - Right to appeal - Leave to appeal - Class I and Class II heirs - Victim Compensation Scheme - Definition of injury - Bailable warrants.

Case Arising From

Criminal Appeal filed by close relatives of the deceased under S. 372 of the old Cr.P.C. (now S. 430 of the Bhartiya Nagrik Suraksha Sanhita, 2023), arising from orders of acquittal passed by the respective Sessions Judges in favour of the accused-respondents, objected to by the learned A.G.A.-I on the ground of maintainability as the appeals had been preferred by the informant/relatives of the victims.

Appearances for Parties

Advs. for the Appellants:
Mahendra Pratap Singh, Ranjit Singh
Advs. for the Respondents:
G.A. (U.C. Verma, A.G.A.-I)

(Delivered by Hon'ble Mrs. Sangeeta Chandra, J.)

1. These two Criminal Appeals have been filed by close relatives of the victims, under Section 372 of the old Cr.P.C. (Under Section 430 of the Bhartiya Nagrik Suraksha Sanhita, 2023), against orders of acquittal passed by Sessions Judges in favour of the accused respondents. When they were taken up as fresh, the Learned A.G.A.-1 Shri U. C. Verma, raised an objection regarding maintainability of the appeals as they had been filed by the informant/ relatives of the victims. This Court in its order dated 19.03.2025, directed the Registry to list the matters again as fresh to enable the counsel for the appellants to file Supplementary Affidavit indicating as to how the appellant fall within the definition of Section 2 (1)(y) of the BNSS (Section 2 (wa) of Cr.P.C.).

2. The appellant in Criminal Appeal No.C372/16/2025 *(Rajendra Prasad Singh Versus State of U.P. and others),* Rajendra Prasad Singh filed a Supplementary Affidavit indicating that the deceased is survived by his widow aged about 45 years, his son aged about 22 years and his two daughters aged about 19 years and 17 years, respectively. It was also informed to the Court that the mother of the deceased is also alive. The appellant reiterated his claim to prefer the appeal being the brother of the deceased and thus falling within the definition of "victim". Oral arguments were advanced in detail and have been mentioned in the order dated 26.03.2025, which is being quoted here in below.:—

"Supplementary affidavit filed today is taken on record.

We have heard Sri Mahendra Pratap Singh, who has placed reliance upon the supplementary affidavit and also on certain paragraphs of the full Bench judgment of this Court rendered in Manoj Kumar Singh Vs. State of U.P. and Others, reported in [(2017) 2 UPLBEC 1245].

He says that the appellant is the brother of the deceased and in his supplementary affidavit, he has stated that the deceased is survived by his widow, aged about 45 years, his son, aged about 22 years and his two daughters aged about 19 years and 17 years. The counsel for the appellant states that as per full Bench decision of this Court, the definition of 'legal heir', as given in civil laws, shall not be applicable for defining the legal heir, as given in Code of Criminal Procedure. There is no concept of Class-I and Class-II legal heir and no preferential order amongst them insofar as Code of Criminal Procedure is concerned and, therefore, it would be sufficient to show that he falls in the category of legal heir and it is irrelevant whether these Class-II legal heirs are Class-I legal heirs.

The learned AGA-I, Sri Umesh Verma has pointed out paragraph nos. 69 and 70 of the same judgment to argue that the proviso to Section 372 Cr.P.C. and is an exception to the general law, it confers on the victim to his/her right to appeal against acquittal. In the first part, the definition of the victim is given as 'a person who has actually suffered any loss or injury, caused by reason of any act of omission for which the accused person has been charged. Hence, only such person would be treated as a victim who is subject matter of the trial, being direct sufferer of the crime. The appellant is a brother of the deceased and he is not a direct sufferer. He has not suffered any loss or injury either in body, mind or reputation of the property. The deceased's widow or his three children can be said to have suffered loss or injury, both in mind and in property due to death of the deceased. The brother of the deceased can only replace such family member, if he is able to show that he himself has suffered any loss or injury. Since he cannot fall within the term of 'victim', he cannot be said also to be fallen within the definition of 'legal heir' or 'guardian' more so when legal heirs like widow and the children and also the mother of the deceased are alive.

It has also been pointed out that a right of appeal is given to the victim not only against acquittal but also against conviction for a lesser offence and even for inadequate compensation. If this Court on decision of an appeal under Section 372 Cr.P.C. finds inadequate compensation being given by the trial court, then compensation can also be increased. It is not a case of the State-respondents that in this case, the matter is that of

compensation. The State-respondents are only concerned that if the definition of legal heir is widened to include Class-II legal heirs, despite survival of Class-I legal heirs in some or the other case where the appeal is filed for inadequate compensation, such Class-I legal heirs will ultimately suffer, if the Class-II legal heirs are permitted to file appeal and get appropriate compensation.

Put up this matter on 02.04.2025, as fresh. "

3. Shri Umesh Chand Verma, while arguing against the maintainability of the appeal has referred to Section 372 as amended with effect from 31.12.2009, which is being quoted here in below: –

***"No appeal to lie unless otherwise provided** – no appeal shall lie from any judgement and order of a criminal court, except as provided for by this code or by any other law for the time being in force:*

(Provided that the victim shall have a right to prefer an appeal against any order passed by the court, acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court .)"

A "Victim" has been defined Under Section 2 (wa) as "a person who has suffered any loss or injury caused by the reason of the act or omission for which the accused person has been charged, and the expression victim includes his or her Guardian or legal heir."

4. It has been argued that by adding a *proviso* to Section 372 as it then existed by means of Amendment Act No.5 of 2009, the victim was given certain valuable rights against an order passed by the trial court –

a) acquitting the accused or

b) convicting the accused for a lesser offence or

c) imposing inadequate compensation on the accused .

It has been argued that out of the three categories as mentioned here in above the category of acquitting the accused is relatively simple to understand. In so far as, conviction for a lesser offence is concerned, it may happen that an accused may have been charged for commission of an offence under Section 302 I.P.C, but after appreciation of evidence in Trial, the Trial Court finds that there is no sufficient evidence and material to convict the accused Under Section 302 I.P.C. It may acquit the accused under Section 302 I.P.C but may still find that there is sufficient evidence and material to establish a different charge for commission of offence like that of Section 304 I.P.C. Part I or Part II, or under Section 326, or Section 325, Section 324 etc. for which, although the accused has not been charged, the Court, may still convict the accused under such Sections. Such order/judgment is termed as conviction for lesser offence and in such a situation, the Court is obliged to record a finding of acquittal Under Section 302 IPC, which is a grave offence and at the same time record a finding for conviction of the accused for a lesser offence for which no charge was framed initially. In such a situation, the accused may challenge the order of conviction for culpable homicide not amounting to murder, in an appeal Under Section 374 Cr.P.C. and the victim may also challenge the acquittal of the accused from the graver offence of murder and such appeal will lie to the same court,

where the appeal of the accused against his conviction shall be filed.

5. So far as the third category – "imposing inadequate compensation" is concerned, the word compensation is not defined in the I.P.C. separately nor it is part of the punishment as defined under Section 53 of the I.P.C.

Section 53 of the I.P.C. reads as under –

"53 **Punishment** – the punishments to which offenders are liable under the provisions of the Code are –

Firstly—death,

secondly – imprisonment for life.

Thirdly– repealed

Fourthly – imprisonment, which is of two descriptions, namely:-

(1) Rigorous that is with hard labour;

(2)- simple;

Fifthly – forfeiture of property;

Sixthly -fine

It has been argued that compensation has no relevance in relation to punishment, and as such, the question of compensation does not arise even in a case where the accused is convicted for an offence and punished/sentenced as per the First Schedule appended to the Cr.P.C. 1973.

6. In case of acquittal of an accused for the offence charged There cannot be any scope for compensation. The word compensation and its importance can be traced to the provision Under Section 357 of the Cr.P.C. and the introduction by the Legislature of Section 357A, which provides for a "Victim Compensation Scheme" introduced by way of the same Amendment Act No.5 of 2009, with effect from 31.12.2009.

Under Section 357(1), a court while imposing a sentence of fine or a sentence, including a sentence of death, of which fine forms apart, order the whole or any part of the fine recovered to be applied –

a. In deferring the expenses properly incurred in the prosecution;

b. In payment to any person of compensation for any loss or injury caused by the offence, when compensation is in the opinion of the court, recoverable by such person in a Civil Court;

c. When any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, paying compensation to the persons who are, under the Fatal Accidents Act 1855, entitled to recover damages from the person sentenced for the loss resulting to them from such death.

d. When any person is convicted of any offence, which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of stolen property, knowing or having reason to believe the same to be stolen, in compensating any bonafide purchaser of such property for the loss of same, if such property is restored to the possession of the person entitled there to

357(2) If the fine is imposed in a case, which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or if an appeal is presented, before the decision of the appeal.

357(3) When a court imposes a sentence of which fine does not form a part,

the court may, when passing judgment, order the accused person to pay by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

357(4) An order under this Section may also be made by an Appellate Court or by High Court or a Court of Session when exercising its power of revision.

357(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the court shall take into account any sum paid or recovered as compensation under this section.

7. In the State of U.P., certain amendments have been made in Section 357 in relation to compensation to Scheduled Caste and Scheduled Tribes persons which need not be referred to in this judgment as they are irrelevant to the issues raised.

8. Shri U.C. Verma has argued that as is evident from Sub Section (1) and Sub Section (3) of Section 357 of the Cr.P.C., the Court while imposing sentence on the accused may award compensation to a victim in two ways. Firstly, when fine forms part of the sentence, such fine may be directed to be payable to the victim and secondly, when the fine does not form the part of the sentence, the Court may direct the accused to pay compensation to a victim of an amount specified in the judgment and order.

In Clause (b) and (c) of Sub Section (1) of Section 357, the Legislature has provided that the Trial Court may order for payment to any person of compensation for any loss or injury caused by the offence, when compensation is in the opinion of the court recoverable by such person in a civil court, where a suit for the same may be filed.

9. Also, under Clause (c) when a person is convicted of any offence for having caused the death of another person or having abetted the commission of such an offence, the court may order paying compensation to such persons who are under the Fatal Accidents Act 1855, entitled to recover damages from the person sentenced for the loss resulting to them from such death.

10. Under the Fatal Accidents Act,1855 a provision has been made to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong. Section 1(a) of the Fatal Accidents Act provides that the suit for such compensation to the family of the person for loss occasioned to it, by his death shall be for the benefit of the wife, husband, parent, and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the nature of the executor, administrator, or representative of the person deceased.

Again, Section 4 of the Fatal Accident Act which relates to the interpretation clause has clarified *"– – the word 'person' shall include Father and Mother, and Grandfather and Grandmother; and the word 'child' shall include Son and Daughter, Grandson, and Granddaughter, and Stepson and Stepdaughter.*

11. It has been argued on the basis of the provisions of the Fatal Accidents Act that the compensation as has been

envisaged under Sub Section (3) of Section 357 of the Cr.P.C. has to be given to the person who has suffered any loss or injury by reason of action of the accused person who has been so sentenced. Referring to the judgment rendered by the Supreme Court in ***Ankush Shivaji Gaikwad Versus State of Maharashtra reported in 2013 Criminal Law Journal 3044 (SC),*** it has been argued that Section 357 confers a power coupled with the duty on the Court to apply its mind to the question of awarding compensation in every criminal case. It was observed by Hon'ble Supreme Court that the power to award compensation was intended to reassure the victim that he or she is not forgotten in the criminal justice system. *"The courts should not ignore the provision of grant of compensation altogether, and they should apply their mind to the question of compensation, every time they pass a sentence on conviction. If they do not award compensation, it would defeat the very object behind the introduction of the provision."*

12. Referring to the victim compensation scheme under Section 357A, it has been argued that in every case where there is a conviction there may or may not be any compensation awarded to the person who has suffered the loss or injury. Even where there is acquittal from a graver charge and conviction for a lesser offence, the Trial Court should consider the question of grant of compensation. Also in case of death, the only and direct sufferers of the offence is the immediate family of the deceased. that is the wife and son and daughter, and may be also the parents of the deceased. The brother of the deceased may be the informant and also a family member, but on his filing of the appeal and getting a favourable final order by the Appellate Court the question of compensation to the immediate family would still have to be considered. If this Court allowed any and every family member however distant, to be considered as victim or his/ her legal heir, and the immediate family of the deceased did not choose to file an appeal, which eventually raised a successful challenge to the order of the Trial Court then their right to due compensation will be ignored.

13. Learned counsel for the appellant on the other hand have relied upon a Full Bench decision of this Court in ***Manoj Kumar Singh Versus State of U.P. and Others 2017, 2 U.P. LBEC1245***. The Full Bench of this Court was considering the question as to *"who will fall within the definition of victim as contemplated by Section 2(wa) of the Code inserted by Act Number 5 of 2009"*. The Supreme Court's decision in Satpal Singh Versus State of M.P. was considered as well as judgments of two Division Benches of this Court and of the Patna High Court respectively, namely, **Edal Singh Versus State of U.P. and Others** in Criminal Miscellaneous Application under Section 372 Cr.P.C. No.172 of 2014 decided by this Court on 10.04.2014; and in ***Parmeshwar Mandal Versus State of Bihar*** and Others in Criminal Appeal No.1078 of 2012, reported in ***2013, SCC Online Patna 602***; and judgment rendered by two Full Benches, one of Punjab and Haryana High Court in ***Tata Steel Limited Versus Mrs. Athma Tube Products Limited and Others reported in 2014 (1) PLR1;*** and the other by the Delhi High Court ***in Ram Phal Versus State of U.P. and Others reported in 2015 SCC Online Delhi 9802***. After considering such judgments which dealt with the evolution of the right to appeal given to a victim culminating in the

Amendment Act No.5 of 2009, and also issues framed by the two Division Benches, as aforesaid, of this High Court and Patna High Court, and the issues framed by the two Full Benches as aforesaid of Punjab and Haryana High Court and Delhi High Court, the Full Bench of this Court observed in paragraph 25 as follows: –

"25. The judgments quoted above would go to show that while analysing the definition of victim, various High Courts have taken note of various sources to find out as to what is the true meaning of victim. …,"

14. In respect of different approaches which could be adopted for interpreting the term 'victim', the Full Bench of the Delhi High Court in Paragraph 13 had observed as follows: –

"Para 13. A survey of these High Court decisions reveals four possible approaches to the question of victim's locus standi to maintain an appeal under the proviso to Section 372:

(a), a narrow reading of the word 'victim' (limiting it to direct and proximate physical harm); and a narrow reading of the term 'legal heir' (limiting it to lines of succession and personal law). This is the approach of the Division Bench of this Court in ***Chhatar Singh Versus Subhash 176 (2011) DLT356*** *and of the Andhra Pradesh High Court in* ***D. Sudhakar Versus Panapu Sreenivasulu reported in 2013, Criminal Law Journal 2764.***

(b) A broad reading of the word 'victim' (expanding it to emotional harm caused by the direct harm to someone that one is close to), and a narrow reading of the term, 'legal heir' (limiting it to lines of succession under personal law). This is the approach of the Patna High Court. The Guwahati High Court has also favoured a broad reading of the word 'victim', while returning no finding on the meaning of 'legal heir'.

(c), a narrow reading of the word 'victim' and a broad reading of the term 'legal heir'.

(d) a broad reading of the term 'victim' and also of the term 'legal heir'. This appears to be the view of Punjab and Haryana High Court, which favours abroad reading of 'legal heir' although it does not appear to have returned a conclusive finding on reading of the word 'victim'."

15. The Full Bench of this Court in Manoj Kumar Singh (Supra) went on to observe .. *"What we find from a reading of the judgments of the various High Courts is that while interpreting the word 'victim', the High Court have given elaborate meaning to the word 'victim'. In this background, as to whether the term victim has rightly been understood, is an issue to be answered by us".*

16. The Full Bench of this Court, thereafter observed that a perusal of the judgments of various High *Courts "….show that they dealt with the definition of victim in respect of an offence of murder without considering the impact of the nature of an offence of which one is a victim. There are various forms of offences provided under Indian Penal Code as well as other special laws. An offence may be against body, mind, property, etc. In that context injury caused by the offence would vary. Further, there may be a crime against society, which can be termed as a victimless crime because there is no victim in particular. None of these judgments consider the above aspect. In this*

background, we proceed to consider the case in hand…"

17. It was observed by the Full Bench in Manoj Kumar Singh (Supra) that Chapter 29 of the Code provides for appeal against conviction as an unrestricted right given to the accused (Section 374), whereas the appeal against acquittal is a restricted right given initially to the Government and the complainant of a case (Section 378) and now to the victim also under the *proviso* of Section 372.

18. The Full Bench of this Court in Manoj Kumar Singh initially dealt with the nature and scope of the remedy of appeal as is provided Under Section 372 *proviso* Cr.P.C., and thereafter from Paragraph 43 onwards proceeded to deal with the word 'victim' as used in Section 2(wa) for the purpose of maintenance of appeal Under Section 372 of the Code. It examined the context in which the word 'victim' has been used in the Code and observed that the victim has been given the right to engage an Advocate to assist the prosecution with permission of the Court, (Section 24); the right to prefer appeal against acquittal (*proviso* to Section 372); the statutory arrangement to compensate victim or his dependent through victims compensation scheme (Section 35, 7A, 35 7B, 35 7C); The manner in which the statement of a victim in relation to an offence of rape is to be recorded during investigation that is by giving facility of recording of statement at residence or at a place of her choice by a woman police officer in presence of parents or guardians etc. (Section 157).

19. The Full Bench in Manoj Kumar Singh thereafter considered the principles of interpretation used in various judgments of the Supreme Court and of Coordinate Benches of the Delhi High Court and Punjab and Haryana High Court and noticed that the definition of 'victim' as 'means X and includes 'Y' has been discussed and relying upon observations made by the Supreme Court in ***Black Diamond Beverages Versus Commercial Tax Officer reported in 1998 (1) SCC 458,*** in the context of use of words *"means and includes"* and has held that the first part of the phrase" means X "usually refers to the ordinary and natural meaning, but with an extension of the second part that is *includes Y,* the first part of the definition should be given its ordinary, popular or natural meaning, and the second part which includes certain others will not prevent the main provision from receiving its natural meaning.

20. Referring to "loss" or injury as mentioned in the definition of 'victim' under Section 2(wa), it was observed that loss or injury have been used as synonyms to each other and Section 44 of the IPC postulates the word injury to denote any harm whatsoever illegally caused to any person, in body, in mind, reputation or property. There can be four types of harm which may be illegally caused to any person as per this definition in respect of body, mind, reputation, and property and an offence may inflict upon a person, a combination of one or more types of harm as mentioned under Section 44 of the IPC. Any emotional harm or injury, however grave it may be, caused to any person, not being the direct sufferer, especially when emotional harm or injury is neither ingredient of the offence nor is the fact in issue in the trial of the accused, cannot grant status of 'victim' to such other person, not being the direct sufferer of offence, or receiver of harm caused by the

offence, and no person, other than actual receiver can be treated as 'victim' of offence so as to provide him/her right to prefer appeal under the *proviso* of Section 372. In absence of the direct sufferer or in a case where the direct victim suffers a disability, his or her legal heir or Guardian would qualify as a victim.

21. In so far as the expression legal heir is concerned, the Full Bench of this Court in Manoj Kumar Singh considered the conclusion drawn by the Full Benches of Delhi High Court and Punjab and High Court observed that the expression 'legal heir' is required to be read in a sense different from what it is for the purpose of civil rights, wherein the degree of legal heirs have been categorized as Class I, Class II and so on. Both the Full Bench decisions give a liberal interpretation to the term 'victim'. The Court considered the dictionary meaning of the word 'legal heir' and in all such definitions and found that the common thread is that the person who is entitled to receive property of any person when such person dies, is termed as heir. The use of the word "legal" as a prefix to the word "heir" denotes that the status of such person as heir must be recognized by law. It is only then he can be termed as legal. Succession and inheritance can be of two kinds – testamentary or intestate. The law on intestate succession for different communities in India is governed by different rules applicable for that particular community. Broadly speaking, succession is either under the Hindu Succession Act or the Indian Succession Act or the Muslim Shariyat laws. With the exception of Muslims, the Indian Succession Act 1925 has a common set of rules for persons of all religions. In civil law, pertaining to Hindu community, the legal heirs of Class I category in order of preference would oust the legal heirs of Class II category, but Class II legal heirs are nevertheless legal heirs. This preferential right has been recognized under Civil laws by way of statutory arrangements. But in the Code of Criminal Procedure, no such statutory arrangement is available to provide for classes of legal heirs or a preferential order amongst them. Hence, in the context of Code of Criminal Procedure, the expression, "legal heir" cannot be construed to create categories of legal heirs unless it requires determination of civil rights of the person claiming to be legal heir of the deceased.

22. The Full Bench of this Court thereafter observed in paragraph 69 and 70 as follows: –

"69. From the discussions that have been made above, it is clear that the proviso of Section 372 is an exception to the general law and the same confer on a victim, the right to appeal against the acquittal , which is subject to the grant of leave by the court. The first part of the definition 'victim' as given under Section 2(wa) (that is, victim means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged), is required to be construed in its literal sense and no liberal interpretation is required. Accordingly, only such person would be treated as victim who is the subject matter of trial being the direct sufferer of the crime in terms of loss or injury caused to his own body, mind, reputation, and property, and such loss or injury is one of the ingredients of the offence for which the accused person has been charged, and therefore any other person cannot be accepted as victim within the first part of Section 2 for the purpose of maintaining

appeal. The second part that is "includes his or her guardians or legal heir " , would come into play when the actual Sufferer is absent or suffers disability.

"70. In other words, 'victim' means the actual sufferer of offence (receiver of harm caused by the accused), no person, other than actual receiver of harm can be treated as victim of offence, so as to provide him/her right to prefer appeal under proviso of Section 372, though, in his or her absence or disability, his legal heir, or guardian would qualify as victim and have a right to appeal. A person who claims himself to be a legal heir of actual victim (Direct sufferer), would be able to maintain appeal provided he establishes his claim as such before the court in his application by disclosing his particulars; relationship with the victim; and the ground on which such claim of being legal heir or guardian is based…."

23. The Full Bench of this Court Manoj Kumar Singh (Supra) however had observed in Paragraph 26 as follows: –

"26. The Full Bench of Delhi High Court and the Division Bench of Patna High Court and the Full Bench of Punjab and Haryana High Court arrived at a unanimous conclusion that the proviso of Section 372 is not an exception but confers an independent statutory right of appeal to a victim, hence, no leave to appeal is required as provided under section 378 of the Code. This particular conclusion, that has been arrived at has been specifically overruled by the Apex Court in the case of ***Satyapal Singh Versus State of Madhya Pradesh and Others reported in 2015 Cr.L.J. 4929 (Supreme Court)*** *by holding that the proviso to Section 372 of Cr.P.C. must be read along with its main enactment, that is, Section 372 should be read together with sub Section (3) of Section 378 of the Code otherwise the substantive provision of Section 372 of the Code would be rendered nugatory, as it clearly provides that no appeal shall lie from any judgment or order of a criminal court, except as provided by the Court. Consequently, in view of the dictum of the Apex Court and Satpal Singh (Supra) the legal position stands clarified that the proviso of Section 372 is an exception to its main provision and cannot be construed as an independent statutory right in complete detachment with the main statutory arrangement. In the said case, the deceased's father had preferred appeal. The Apex Court in that context observed as follows: –*

"9. We have carefully examined the above mentioned provisions of Cr.P.C. and the Full Bench decision of the Delhi High Court referred to supra upon which strong reliance is placed by the learned counsel for the appellant. There is no doubt that the appellant, being the father of the deceased has locus standi to prefer an appeal before the High Court under proviso to Section 372 of the Cr.P.C., as he falls within the definition of 'victim' as defined Under Section 2wa of Cr.P.C., to question the correctness of the judgement and order of acquittal passed by the High Court in favour of respondent 2 to 6 in Sessions Case Number 293/2010 ."…

The Supreme Court in Satyapal Singh(Supra) after considering several case laws relating to the rules of interpretation observed that the proviso added to the main provision in Section 372 must be read along with its main enactment that is, Section 372 itself and together with Sub Section (3) to Section 378 of Cr.P.C., otherwise the substantive provision of Section 372 of Cr.P.C. will be rendered nugatory as it clearly states that no appeal

shall lie from any judgment or order of a criminal court, except as provided by the Cr.P.C.. The judgment of the Apex Court has settled so far as one particular aspect of the matter is concerned that is, the proviso of Section 372 is an exception to its main provision and cannot be construed as an independent statutory right in complete detachment with main statutory arrangement.

24. The Full Bench taking into account the law as settled by the Supreme Court in ***Satpal Singh Versus State of Madhya Pradesh and Others 2015,*** Criminal Journal 4929 (Supreme Court); observed that as per statutory arrangement under the Code, the victim has been conferred right to prefer appeal against acquittal with the leave of the Court.

25. This observation made by the Full Bench in Manoj Kumar Singh (Supra) no longer can be said to be a binding precedent in view of law settled by a larger bench of the Supreme Court in ***Mallikarjun Kodagali (dead) through Legal Representatives V. State of Karnataka and Others reported in 2019 (2) SCC 752;*** where the Supreme Court by a majority judgment delivered by Hon'ble Justice Lokur, approved the observation of the Full Bench of the Delhi High Court in ***Ram Phal Versus State reported in 2015 SCC Online Delhi 9802***; and of the Punjab and Haryana High Court in ***Tata Steel Limited Versus M/s Aatma Tube Products Limited reported in 2013 SCC Online,*** Punjab and Haryana 5834, and the observation made by Division Bench of the Patna High Court in ***Parmeshwar Mandal Versus State of Bihar reported in 2013 SCC Online Patna 602***, and overruled the observations made by the Division Bench ***in Satpal Singh Versus State of M.P. reported in 2015 (15) SCC 613*** on the point; and observed that several High Courts have taken a consistent view to the effect that the victim of an offence has a right of appeal Under Section 372 *proviso* Cr.P.C. and have also taken the view that the date of the alleged offence has no relevance to the right of the appeal. The significant date is the date of the order of acquittal passed by the trial court. The cause of action arises in favour of the victim of an offence only when an order of acquittal is passed and if that happens after 31.12.2009, the victim has a right to challenge the acquittal through an appeal. Indeed, the right not only extends to challenging the order of acquittal but also challenging the conviction of the accused for a lesser offence or imposing inadequate compensation. The language of Section 372 *proviso* Cr.P.C. is quite explicit and the court should not read nuances that do not exist in the *proviso*.

26. It was observed further by the Supreme Court in Mallikarjun (Supra) that Section 372 *proviso* Cr.P.C. must also be given a meaning that is realistic, liberal, progressive, and beneficial to the victim of an offence. There is a historical reason for this, beginning with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly of the United Nations in the 96th Planetary Session on 29.11.1985. The Declaration is sometimes referred to as the Magna Carta of the rights of victims. One of the significant Declaration made was in relation to access to Justice for the victim of an offence through Justice delivery mechanisms, both formal and informal. Putting the declaration to practise, it is quite obvious that the victim of an offence is entitled to a variety of rights. Access to mechanisms of Justice and redress through formal procedures as

provided for in National Legislation, must include the right to file an appeal against an order of acquittal. Specifically overruling the Gujarat High Court decision of Full Bench in ***Dinesh Bhai Makwana Versus State of Gujarat reported in 2012 SCC Online Gujarat 5764***; it was observed by the Supreme Court that the Gujarat High Court made an artificial and unnecessary distinction between a victim as a victim and a victim as a complainant in respect of filing an appeal against an order of acquittal . The *proviso* to Section 372 Cr.P.C. does not introduce or incorporate any such distinction. As far as the question of grant of special leave is concerned, the language of Section 372 *proviso* Cr.P.C. is quite clear, particularly when it is contrasted with the language of Section 378 (4) Cr.P.C. The text of this provision is quite clear and it is confined to an order of acquittal passed in a case instituted upon a complaint. The word complaint has been defined in Section 2(d) Cr.P.C. and refers to any allegation made orally or in writing to a Magistrate. This has nothing to do with the lodging or registration of FIR, and therefore it is not at all necessary to consider the effect of a victim being the complainant as far as Section 372 *proviso* Cr.P.C. is concerned.

27. Hon'ble Justice Deepak Gupta in Mallikarjun (Supra) took a dissenting view and observed that though *proviso* to Section 372 Cr.P.C. does give a right to the victim to file an appeal, this *proviso* cannot be read in isolation. It has to be given a meaning which fulfills the intention of the legislature. The *proviso* does not lay down the procedure as to how, in what manner, and within which time the appeal has to be filed. An appeal, being a creature of the statute, it is also necessary to prescribe the limitation and procedure for filing an appeal and the right of the victim to file an appeal is not taken away or in any manner weakened only because he has to seek leave to appeal. If Section 378 (3), 378 (4) and 372 Cr.P.C. are read together; it is clear that the victim is also required to apply for leave to appeal before his appeal can be entertained.

28. Since the Supreme Court in its judgment rendered in *Mallikarjun (Supra)* has affirmed the view taken by the Full Bench of the Delhi High Court in Ram Phal Versus State, it would be appropriate to refer to the judgment of the Delhi High Court in some detail. The Full Bench in *Ram Phal (Supra)* was considering the 'locus standi' of parties to maintain appeals by virtue of the *proviso* to Section 372 Cr.P.C. The Court overruled its previous view taken in ***Chhatar Singh Versus Subhash*** *reported in 2011 SCC Online, Delhi 81;* wherein it was held that the appellants being a Class II heir would not inherit anything from deceased, thus, he would not fall within the expression legal heir in the light of Section 2(wa) and hence he was not entitled to prefer an appeal by virtue of the *proviso* attached to Section 372 of Cr.P.C. While adjudicating this matter, two questions arose for the Full Bench to consider by virtue of the order of reference. Firstly, whether the term 'victim' which includes 'legal heir' means persons entitled to property of the victim under the law applicable of inheritance, or would embrace any person who has suffered any loss or injury caused by crime/offence for which the accused person has been charged, and secondly, whether the Appellate remedy given under *proviso* of Section 372 Cr.P.C. is available with respect to only such offences which were committed as on the date when the right was conferred by law, or the Appellate

right could be available with respect to the date of the decision or the remedies would be available without any reference of these two points, that is, the date when the offence was committed or when the trial court delivered its judgment.

29. We are not concerned here with the date of applicability of the *proviso* to Section 372 Cr.P.C. We are more concerned with the findings recorded by the Full Bench of the Delhi High Court regarding the first question which relates to the definition of 'victim' as provided in Section 2(wa) of the Cr.P.C. The Court held that the definition of victim includes legal heir, and therefore it cannot exclude those who actually fall within the definition of victim by virtue of emotional harm suffered by them. The laws of inheritance which decide one's legal heirs are not intended to be solely determinative of the entitlement to exercise rights of the victim, in criminal trial/appeal on his/her death. The Delhi High Court applied the Heydon's Rule that is the Mischief Rule, and expanded the scope of the term by saying that it is impermissible for an Appellate Court to shut out an appeal by legal heir based on his/her, not being an immediate heir , or being lower down in the hierarchy vis-a-vis his entitlement to the crime victim's estate.

30. We think it appropriate to quote, Paragraphs 52, 53 and 54 of the judgment rendered by the Delhi High Court in Ramphal versus State and Others. The Delhi High Court observed as under: –

"52. As has been discussed above, Section 2(wa), in its definition of victim, uses the phrase "means X and includes Y", while Chattar Singh reasoned that 'includes Y' extends the ordinary meaning of the" 'Means X' to cover things that would not otherwise be covered by every day meaning of X, it interpreted the two parts of the definition to include non-overlapping and mutually exclusive categories; injury being limited to the most direct and proximate sufferer of physical harm, and legal heir as covering the heirs entitled to succeed in personal law. A broader meaning of the word 'victim', encompassing sufferer of emotional harm, would have necessitated an overlap between the two categories, since it is possible that legal heir would also be a victim, in the sense of having suffered proximate mental injury as a result of the crime. This Court, therefore, does not agree with the decision in Chhatar Singh that a Class II heir can be excluded by Class I heir as a Class II heir may well have suffered injury that is emotional/mental, thus bringing him/her within the definition of victim itself. To permit such a victim to be excluded by Class I heir would amount to letting those included within the definition, exclude those falling within the ordinary and natural meaning of the word defined. The Court therefore cannot agree with the analysis in Chhattar Singh that treats the hierarchy of legal heirs in personal law as Solely determinative of who may qualify as a victim simpliciter , in the absence of which, a victim by inclusion. Subject to this, we are in agreement with the submissions of the learned amicus, and with the judgement of the Punjab and Haryana High Court, that the meaning of legal heir refers to all heirs designated as such by the relevant personal law, irrespective of whether or not, they are excluded by lines of succession at any given time.

53. To summarise, the conclusions from the above discussion are:

(i) victim, in Section 2 (wa) by virtue of being defined as a person who has

suffered any loss or injury must include a person who has suffered harm caused to the mind, given that Section 2(y) of the Code of Criminal Procedure, incorporated the definition of 'injury' in Section 44 of the IPC into the Code.

(ii) the "means X and includes Y" clause in Section 2(wa) cannot be interpreted so as to result in the included meaning Y excluding the actual meaning X of the term being defined; thus legal heirs who are included within the definition of the term victim cannot exclude those who actually fall within the definition of victim by virtue of emotional harm suffered, such as the father or the sibling of deceased, victim, or other categories of persons based on proximity noted previously.

(iii) the laws of inheritance, which decide ones legal heirs are not intended to be solely determinative of the entitlement to exercise the rights of the victim, in the criminal trial/appeal, on his/her death, application of Heydon's mischief rule, given that the object of the 2008 Amendment Act was to ensure the involvement of the victim, who has a presumably personal interest in the fair and efficient prosecution of the trial/appeal. Resultantly, it is impermissible for an Appellate Court to shut out an appeal by legal heir based only on her/his not being an immediate heir, or being lower down in the hierarchy vis a vis entitlement to the crime victims' estate.

54. As a concluding remark on the spectre of uncertainty (of defending multiple appeals) which would possibly, however, weighdown those acquitted of offences, this Court is in agreement with the view of the Punjab and Haryana High Court, that all such victims' or legal heirs' appeals would be heard together, and the issue can be resolved by proper docket management. The Court is reminded of the view in ***Pakala Narayana Swamy Versus Emperor reported in AIR 1930 9PC 47*** *that "– – in truth, when the meaning of words is plain, it is not the duty of the court to busy themselves with supposed intentions"– and one may add in the context, imagined difficulties.*

31. Relying upon observations made by the Delhi High Court in its judgment in Ram Phal, one of us (Hon'ble Shree Prakash Singh J) in an application Under Section 482 No.6853 of 2023 decided on 28.07.2023, ***Parmanand Sirumal Tahal Ramani Versus State of U.P. and Others;*** has observed that the definition of victim includes individuals who have suffered emotional or mental harm due to the offence and the Applicant no.1 who was the uncle of the deceased was held to be a victim as he suffered mental agony, due to the murder of his niece and her child. Such harm qualified as injury Under Section 44 of the IPC and the right to participate in the trial proceedings by the uncle of the deceased was upheld by the Court.

32. In a more recent decision rendered by a Division Bench of the Supreme Court in ***M/s Celestium Financial V. Gnanasekaran 2025 Live Law, Supreme Court 666***; while addressing the question whether the complainant in an application Under Section 138 of the Negotiable Instrument Act is a person who has suffered loss and can be regarded as a victim within the meaning of Section 2(wa) of the Cr.P.C. and whether an appeal would be maintainable under the *proviso* to Section 372 of the Code of Civil Procedure, 1973, against an order of acquittal in a case filed upon private complaint Under Section 138 of the Negotiable Instruments Act 1881 by treating the complainant in such

proceeding as a victim within the meaning ascribed to the term Under Section 2(wa) the Cr.P.C. It has observed thus: –

"In the context of offences under the Act, particularly Under Section 138 of the Act, the complainant is clearly the aggrieved party and has suffered economic loss and injury due to the default in payment by the accused due to the dishonour of the cheque, which is deemed to be an offence under that provision. In such circumstances, it would be just, reasonable, and in consonance with the spirit of the Cr.P.C. to hold that the complainant under the Act also qualifies as a victim within the meaning of Section 2(wa) of Cr.P.C. Consequently, such a complainant ought to be extended the benefit of the proviso to Section 372, thereby enabling him to maintain an appeal against the order of acquittal in his own right without having to seek special leave Under Section 378(4) of the Cr.P.C."

33. The Court noted that *proviso* to Section 372 creates an absolute right to file an appeal without any conditions .

Justice Nagarathna, while delivering the judgment in Celestium Financial (supra); has referred to the opinion of Justice Lokur in Mallikarjun and also observed in Paragraph 5.4 thus: –

5.4 in the said judgement, Deepak Gupta J was in complete agreement with Lokur J on the fact that victims must be permitted to access justice because it is sometimes found that the Investigating and Prosecuting Agency do not follow up cases with zeal which is required and therefore Proviso to Section 372 of the Cr.P.C. must be given a meaning, which is realistic, liberal, progressive, and beneficial to the victim of the offence. However, Deepak Gupta J was of opinion that one cannot ignore the rights of the accused and the procedure prescribed by law. Hence, he disagreed with Lokur J's view that a victim can file an appeal in the High Court without seeking leave to appeal in terms of Section 378 (3) of the Cr.P.C.

The Supreme Court in Celestium observed:

"5.5. The only difference of opinion was with regard to whether the victim is required to seek leave of the High Court, even in an appeal filed in the High Court. While dealing with this issue, it was observed by Deepak Gupta J that prior to the insertion of the proviso to Section 372 of the Cr.P.C., the victim had no right to file an appeal unless he was also a complainant. This was because the State represented the victim of the crime. Therefore, the question whether the victim, while filing in appeal against the acquittal of an accused under proviso to Section 372 of the Cr.P.C. in the High Court, is required to seek leave Under Section 378(3) of the Cr.P.C. was answered in the affirmative. In this regard, reference was made to Sub Section 4 of Section 378, which deals with an appeal filed by the complainant against the order of a Court in a case instituted upon a complaint. In such a case, an appeal has to be filed in the High Court. Such an appeal cannot be entertained unless the High Court grants leave to appeal from the order of a court. Sub Section (5) provides the limitation period for filing the petition for grant of special leave to appeal in terms of Sub Section (4). Sub Section (6) lays down that in case the application for special leave to appeal filed by the complainant under Sub Section (4) is refused, then no appeal from that order of acquittal shall lie under Sub Section (1) or under Sub Section (2). Thus, in a complaint case, complainant can file

an appeal only by seeking Special Leave to Appeal in case of appeal before the High Court. It was further noted that an appeal against an order of acquittal passed by a Magistrate in respect of cognizable and non-bailable offences would lie to the court and no leave to appeal is required. However, an appeal with respect to offences which are non-cognizable or bailable would lie to the High Court. In such cases, leave to appeal is a prerequisite. The remaining kind of appeals are those appeals which lie to the High Court against the judgment of the Session Court. These are serious criminal matters relating to graver offences. Even appeals against acquittal filed before the High Court must be scrutinized with great care. As opposed to Section 378(4) of the Cr.P.C., where a complainant would file an appeal against an order of acquittal he would require special leave to appeal being obtained, in case of an appeal filed by a victim under the Proviso to Section 372 of the Cr.P.C. no such leave to appeal is required. Then the question raised was, whether a victim is to be placed on a higher pedestal than the complainant, although in certain cases, the victim and the complainant may be one and the same person. Deepak Gupta J. considered a situation where there are two victims in a case and one of the victims files a complaint and the wheel of Justice moves accordingly and the case is tried as a complaint case and the accused is acquitted. In such a case, the complainant would have to seek Special Leave to Appeal, whereas the victim who had not even approached the Court at the initial stage would be entitled to file an appeal without seeking leave to appeal. While considering this situation, Deepak Gupta, J observed that while expanding the rights of victim to file an appeal, such right must be balanced with the rights of the accused. Hence, it was the view of the Deepak Gupta J. that even in a case when an appeal is filed by a victim, there has to be scrutiny and special leave to appeal must be obtained as the victim cannot be placed on a higher pedestal than the State or the complainant. It was his view that by this condition being imposed, the right of the victim to file an appeal is not taken away or in any way diluted. Thus, according to his view, Section 378 (3), 378 (4) and 372 of the Cr.P.C. have to be read together and victim is also required to apply for leave to appeal before his appeal can be entertained. Therefore, Deepak Gupta J. concluded that the right to file an appeal in the victim cannot be higher than the right of filing an appeal which inheres in the State and the complainant in a complaint case. Thus, if a victim files an appeal against the acquittal in the High Court, he has to seek leave to appeal Under Section 378 (3) of the Cr.P.C.

34. The Supreme Court in Celestium Financial observed in Paragraph 5.10 that *"in the light of two opposite views expressed in the above judgment of this Court, it is necessary to discuss certain provisions of the Cr.P.C. and arrive at our own conclusions on the point for consideration. We observe that we are inclined to follow the view taken by Lokur J. in so far as the right of victim of a crime to file an appeal is concerned."*

35. The Supreme Court thereafter undertook an analysis of the relevant provisions of the Cr.P.C. It considered the definition clause and Chapter 15, which deals with complaints to Magistrates and Chapter 29, which deals with appeals. It went on to observe that Section 372 is a preface to the Chapter on Appeals, which,

in substance states that appeal can be filed only in accordance with what has been stated in the provisions to follow Section 372. The *proviso* was introduced to Section 372 by the Code of Criminal Procedure Amendment Act, 2008 Act 5 of 2009, which came into effect from 31.12.2009. By virtue of this amendment, limited right of appeal has been conferred upon the victim of an offence. On reading of the *proviso* to Section 372, it is apparent that a victim shall have a right to prefer an appeal against: 1) any order passed by the Court acquitting the accused or 2) convicting for a lesser offence or 3) imposing inadequate compensation. Further, with effect from 31.12.2009, Sections 357A and 357B were inserted in the Cr.P.C. in the form of Victim Compensation Scheme for providing compensation to the victim or his dependents who have suffered loss or injury as a result of crime and who require rehabilitation.

36. The Supreme Court in Celestium Financial thereafter considered the definition of 'victim' as given under section 2(wa) of the Cr.P.C. and also the definition of 'injury' as given in Section 44 of the Indian Penal Code, together with the definition of injury given in Black's Law Dictionary where injury has been defined as – *"any harm whatsoever illegally caused to any person, in body, mind, reputation of property."* Additionally, the Court also considered the United Nations General Assembly's Declaration of Basic Principles of Justice for Victims of crime and abuse of 1985, where Article-1 defined 'victims' as *'persons who individually or collectively, have suffered through the acts or omission, which involve physical or mental injury, emotional distress, economic loss, or substantial impairment of the fundamental rights".* Article 2 further extends the definition of victim to include immediate family members, dependents or those who have intervened to assist the victim in crisis.

37. It was thereafter observed in para 6.4 :-

"that on reading of definition of 'victim', it is clear that the said expression is initially exhaustive and thereafter inclusive. The expression 'victim' means a person who has suffered any loss or injury. The loss or injury could be either physical, mental or financial loss or injury. The expression injury could also be construed as a legal injury in a wider sense and not just a physical or mental injury. The loss or injury must be caused by reason of an act or omission for which the accused person has been charged i.e. it can be both by a positive act or negatively by omission, which is at the instance of the accused and for which such accused has been charged. Further, the expression victim also includes his/her guardian or legal heir in case of demise of the victim."

38. After considering the definition of victim, Supreme Court observed in paragraph 6.5 as follows: –

"6.5. Thus, the expression 'victim' has been couched in a broad manner so as to include a person who has suffered any loss or injury. The expression 'loss' or 'injury' themselves are of very broad import, which expressions also enlarge the scope of the expression 'victim'. Further, the expression victim includes not only the person who has suffered any loss or injury caused by reason of any act or omission for which the accused person has been charged, but also includes his or her guardian or legal heir,

which means that the definition of victim is inclusive in nature.

39. The Supreme Court went on to observe in paragraph 6.6.1 as under: –

" 6.6 .1, the word 'victim' is derived from the latin word 'victima' originally contained the concept of sacrifice. In more contemporary times, the term victim has been expanded to imply a victim of war, an accident, a scam, et cetera. As a scientific concept, according to criminologist, B Mendelsohn (1976), the definition of a victim may be viewed as containing four fundamental criteria, which are as follows:

• *The nature of the determinant that causes the suffering. The suffering may be physical, psychological, or both, depending on the type of injurious act.*

• *The social character of the suffering. This suffering originates in the victims' and others reaction to the event*

• *the nature of the social factor. The social implications of the dangerous act can have a greater impact, sometimes, more than the physical or psychological impact.*

• *the origin of the inferiority complex. This term, suggested by Mendelsohn , manifest itself as a feeling of submission that may be followed by a feeling of revolt. The victim generally attributes his injury to the culpability of another person."*

Victimology is thus a social structural way of viewing crime and the law and the criminal and a victim. In so far as the injury is concerned, apart from their being short term and long term, physical injuries, there could also be economic or financial loss, which are also injuries within the meaning and definition of victim under clause (wa) of Section 2 of the Cr.P.C."

40. While dealing with the meaning of the words *"accused*" and *"charge",* the Supreme Court observed that the expression "accused of any offence " would include within it only a person against whom formal accusation relating to commission of offence has been levelled which in the normal course may result in his prosecution. Accusation /charge is a formal complaint made in a legal manner, either of omission or commission by the person charged of crime.

41. The Court then had considered Section 138 of the Negotiable Instruments Act, and observed that an accused is charged of an offence Under Section 138 of the Negotiable Instrument Act only when a complaint is filed under Section 200 of the Cr.P.C.. Chapter XXI of the Cr.P.C. deals with Summary Trials and said Chapter has to be read in conjunction with Section 143 of the Negotiable Instruments Act which states that all offences under Chapter XVII of the Act, including an offence under section 138 (dishonour of cheque for insufficiency of funds etc in the account) shall be tried by a Judicial Magistrate of the First Class or by Metropolitan Magistrate and the provision of Section 262 to 265 of the Cr.P.C. (both inclusive) shall as far as may be applied to such trial. The Negotiable Instruments Act does not have any provision for filing an appeal. It is a special enactment. In the circumstances, the Cr.P.C., which is general in nature would have to be resorted to. The *proviso* to section 372 of the Cr.P.C. considers the right of filing an appeal from the point of view of a victim, which expression not only includes an injured victim, but even the legal representatives of a deceased victim. The inclusion of *proviso* to the Section 372 of the Cr.P.C. has to be read in the context of the definition of victim in clause (wa) of

Section 2 of the Cr.P.C.. The expression victim as defined under the said provision includes not only the person who has suffered any loss or injury caused by the reason of omission for which the accused person has been charged, but the said expression also includes his or her guardian or legal heir. In the context of offences under the Act, particularly under Section 138 of the said Act, the complainant is clearly the aggrieved party who has suffered economic loss and injury due to the default in payment by the accused, owing to the dishonour of the cheque which is deemed to be an offence under that provision. In such circumstances, it would be just reasonable and in consonance with the spirit of the Cr.P.C. to hold that the complainant under the Act also qualifies as a victim within the meaning of section 2(wa) of the Cr.P.C. Consequently, such a complainant ought to be extended the benefit of the *proviso* to section 372, thereby enabling him to maintain an appeal against an order of acquittal in his own right without having to seek special leave under Section 378(4) of the Cr.P.C.. Since the complainant is indeed the victim owing to the alleged dishonour of a cheque, the complainant can proceed as per the *proviso* to section 372 of the Cr.P.C. and he may exercise such an option and he need not then elect to proceed under section 378(4) of the Cr.P.C.. A reading of Section 378 would clearly indicate that in case the complainant intends to file an appeal against an order of acquittal, his right is controlled by certain conditions precedent. When an appeal is to be preferred by a complainant, the first question is, whether the complainant is also the victim or only an informant. If the complainant is not a victim, and the case is instituted upon a complaint, then Sub Section (4) of Section 378 requires that the complainant may seek special leave to Appeal from an order of acquittal from the High Court. However, if the complainant is also a victim, he could proceed under the *proviso* to section 372, in which case the rigour of sub Section (4) of section 378, which mandates obtaining special leave to appeal, would not arise at all, as he can prefer an appeal as a victim and as a matter of right. If a victim, who is a complainant proceeds under section 378, the necessity of seeking special leave to appeal would arise, but if a victim whether he is a complainant or not, files an appeal in terms of *proviso* to section 372, then the mandate of seeking special leave to appeal would not arise.

42. The court while coming to the conclusion as aforesaid gave reasons in paragraph 7. 12 as follows: –

"The victim of a crime must have an absolute right to prefer an appeal which cannot be circumscribed by any condition precedent. In the instant case, a victim under Section 138 of the Act that is a Payee or holder of a cheque is a person who has suffered the impact of the offence committed by a person who is charged of the offence, namely the accused whose cheque has been dishonoured .

-Secondly, the right of a victim of a crime must be placed on par with the right of an accused who has suffered a conviction, who as a matter of right can prefer an appeal under section 374 of the Cr.P.C.. A person convicted of a crime has the right to prefer an appeal under section 374 as a matter of right and not being subjected to any conditions. Similarly , a victim of a crime, whatever be the nature of the crime, unconditionally must have a right to prefer in an appeal.

-Thirdly, it is for this reason that the Parliament thought it fit to insert the

proviso to sub section 372 without mandating any condition precedent to be fulfilled by the victim of an offence, which expression also includes the legal representatives of a deceased victim who can prefer an appeal. On the contrary, as against an order of acquittal, the State, through the public prosecutor can prefer an appeal, even if the complainant does not prefer such an appeal, though of course, such an appeal is with the leave of the court. However, it is not always necessary for the State or a complainant to prefer in acquittal. But when it comes to a victims right to prefer an appeal, the insistence on seeking special leave to appeal from the High Court under section 378 (4) of the Cr.P.C. would be contrary to what has been intended by Parliament by insertion of the proviso to section 372 of the Cr.P.C..

-Fourthly, the Parliament has not amended section 378 to circumscribe the victims 'right to prefer in appeal just as it has with regard to a complainant or the State filing an appeal. On the other hand, the Parliament has inserted the proviso to section 372, so as to envisage a superior right for the victim of an offence to prefer an appeal on the grounds mentioned there in as compared to a complainant.

-Fifthly, the involvement of the State in respect of an offence under section 138 of the Act is conspicuous by its absence. This is because the complaint filed under that proviso is in the nature of a private complaint as per section 200 of the Cr.P.C. and section 143 of the Act by an express intention, incorporates the provisions of the Cr.P.C. in the matter of trial of such a deemed offence tried as a criminal offence. Therefore, the complainant who is the victim of a dishonour of cheque must be construed to be victim in terms of the proviso to section 372 read with the definition of victim under section 2(wa) of the Cr.P.C.

43. To conclude, the Supreme Court in paragraph 8 observed that the right to prefer an appeal is no doubt a statutory right and right to prefer an appeal by an accused against a conviction is not only a statutory right but can also be considered to be a fundamental right under Article 14 and 21 of the Constitution. If that is so, then the right of a victim of an offence to prefer an appeal cannot be equated with the right of the State or the complainant to prefer an appeal. Hence, the statutory bar for filing of an appeal by the State or by a complainant against an order of acquittal cannot be read into the *proviso* to section 372 of the Cr.P.C. so as to restrict the right of a victim to file an appeal on the grounds mentioned therein, when none exist.

The observations made by the Supreme Court in Mallikarjun Kodagali and in Celestium Financial (Supra) make it amply clear that injury or loss can be more than just physical in nature and mental, emotional loss as well as monetary loss also can be considered for the purpose of defining 'injury' and a victim who suffers such loss may approach the Court under *Proviso* to Section 372 without seeking Special Leave to Appeal. Emotional loss caused by the death of a dear one/ a near relative, may bring all appellants within the definition of a 'victim' even thereafter he may not strictly speaking be termed as legal heir or guardian.

The anxiety expressed by the learned counsel for the State regarding award of compensation or its apportionment after appeal is filed under *proviso* to Section 372 can be sufficiently addressed by leaving it open for the Appellate Court to make specific order

regarding awarding of compensation to the victim's legal heirs in case the challenge to the order of the Trial Court is successfully made.

With these observations, we order accordingly the instant two Appeals are admitted.

Issue Bailable Warrants of Rs.15,000/- against the accused-respondents namely **Ashok Singh, Ramesh Singh and Ramesh Yadav** of Criminal Appeal U/S 372 CR.P.C. No.46 of 2025 and **Sahaj Ram Shukla, Lalit Kumar @ Kunnu, and Vinod Kumar** of Criminal Appeal U/S 372 CR.P.C. No.52 of 2025 to be served through the Chief Judicial Magistrate, concerned. If they are arrested or surrender before the court concerned, they shall be enlarged on bail, on their furnishing personal bonds and two sureties each in the like amount, on the undertaking that they shall appear before this Court through their counsel or in person on the next date of listing.

The C.J.M., concerned shall ensure that at the time of accepting bail bonds, an authenticated copy of the Current address/ I.D. Proof of the appellants be taken on record alongwith the photocopy of the bail bonds.

List this matter on **18.09.2025.**

The office shall intimate to the C.J.M. concerned forthwith about this order to ensure compliance.

(2025) 8 ILRA 45
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 19.08.2025

BEFORE

THE HON'BLE RAJNISH KUMAR, J.

Criminal Appeal No. 216 of 2013

Dharmeshwar & Anr. ...Appellants
Versus
State of U.P. ...Respondents

Counsel for the Appellants:
Pradeep Kumar Tripathi

Counsel for the Respondents:
Govt. Advocate, Arun Saxena

Issue for Consideration

Matter pertains to the legality of conviction of the appellants under Section 307 I.P.C. for firing a single gunshot causing injury on the right leg of the complainant in the background of a family land dispute, and the question whether, in absence of proof of intention to cause death, the conviction could be sustained under Section 307 I.P.C. or was liable to be altered to Section 324 I.P.C.; further, whether the appellants, having no criminal antecedents and being first offenders, were entitled to the benefit of probation under Sections 3 and 4 of the Probation of Offenders Act, 1958.

Headnotes

Criminal Law - Criminal Procedure Code, 1973 - SS. 307,361 - Attempt to Murder - Intention to kill must be proved - Single gunshot in leg - No evidence who fired - offence under S. 307 I.P.C. not made out - conviction converted to S. 324 I.P.C. - Probation of Offenders Act, 1958 - SS. 3 & 4 - Benefit of first offender - Convicts having no previous criminal history - Dispute regarding land between close family members - Settlement arrived at - Entitled to benefit of probation - Duty of Court to record special reasons for not granting benefit of probation - Omission by Trial Court - Improper.

Held: It cannot be said that the gun shot was made with the intention to kill - one gunshot made in the leg cannot constitute offence under Section 307 I.P.C. - Conviction under Section 307 I.P.C. is not sustainable and is liable to be converted under Section 324 I.P.C. - Appellants are first offenders - dispute was purely personal

between close family members - No purpose would be served by sending the appellants to jail - they are entitled for benefit of the First Offender - Conviction under Section 307 I.P.C. converted to Section 324 I.P.C. - sentence reduced to one year - Appellants released on probation of good conduct. (Para 17,19,21,24,27,28,29) (E-7)

Case Law Cited

State of Maharashtra v. Balram Balma Patil, **AIR 1983 SC 305***; Kundan Singh v. State of Punjab,* **AIR 1982 SC 2013;** *Merambhai Punjabhai Khachar v. State of Gujarat,* **AIR 1996 SC 3236;** *Ramesh v. State of U.P.,* **AIR 1992 SC 664;** *Neelam Bahal v. State of Uttarakhand,* **(2010) 2 SCC 229;** *Mohd. Hashim v. State of U.P.,* **(2017) 2 SCC 1998;** *Smt. Devki v. State of Haryana,* **(1979) 3 SCC 760;** *State of Maharashtra v. Natwarlal Damodardas Soni,* **(1980) 4 SCC 669;** *Dalbir Singh v. State of Haryana,* **(2000) 5 SCC 82;** *Devi Singh & Anr. v. State of U.P.,* **Cr. Appeal No. 220 of 1995.**

List of Acts

Code of Criminal Procedure, 1973; **Indian Penal Code, 1860**; Code of Criminal Procedure, 1973; Probation of Offenders Act, 1958.

List of Keywords

First Offender; Probation; Intention to Kill; Single Gun Shot; Land dispute; Simple hurt; Conviction; Attempt to murder; One gun shot without any evidence; Admonition or on probation of good conduct.

Case Arising From

Judgment and order dated 12.02.2013 passed in Session Trial No.561/2009; arising out of Case Crime No.159/2006, under Section 307 of I.P.C., Police Station Misrikh, District Sitapur, by the Additional District and Session Judge (Ex-cader) Court No.2, Sitapur.

Appearances for Parties

Advs. for the Appellant:

Pradeep Kumar Tripathi.

Advs. for the Respondents:

Govt. Advocate, Sri Dharmendra Kumar, Advocate holding brief of Sri Arun Saxena.

(Delivered by Hon'ble Rajnish Kumar, J.)

1. Heard, Sri Pradeep Kumar Tripathi,learned counsel for the appellants, learned AGA and Sri Dharmendra Kumar,Advocate holding brief of Sri Arun Saxena, learned counsel for the private respondent.

2. The instant Criminal Appeal under Section 374(2) of Criminal Procedure Code (hereinafter referred as Cr.P.C.) has been filed against the judgment and order dated 12.02.2013 passed in Session Trial No.561/2009; State of U.P. versus Dharmeshwar and others by the Additional District and Session Judge (Ex-cader) Court No.2, Sitapur arising out of Case Crime No.159/2006, under Section 307 of Indian Penal Code (hereinafter referred as I.P.C.), Police Station Misrikh, District Sitapur, by means of which the appellants Dharmeshwar and Babu Ram have been convicted under Section 307 I.P.C. and sentenced to rigourous imprisonment of four years with fine of Rs.2000/- each and in default of payment of fine, further two months additional rigourous imprisonment. It has further been provided that out of the fine deposited by the appellants, Rs.1500/- shall be paid to the injured Ved Prakash as compensation.

3. Learned counsel for the appellants submitted that the appellants are the real brothers and have been falsely implicated by their nephew due to land dispute. They have been convicted under Section 307 I.P.C. and sentenced rigorous imprisonment for four years with a fine of Rs.2000/- each, which has been deposited by them. The appellants have no criminal history either before passing the impugned order of conviction or thereafter and they are law abiding persons of society. The appellants

and the complainant; injured are close relatives and developed harmonious relations during pendency of the instant criminal appeal, as such, no fruitful purpose would be served by sending the appellants to jail to serve the remaining sentence. The appellants do not want to press the instant criminal appeal on merits and restrict their prayer for grant of benefit of First Offender, which has wrongly and illegally been denied by the trial court without assigning any special reason. The benefit of first offender cannot be denied without recording any special reason. It has further been submitted that the appellants undertake to follow all the terms and conditions as may be imposed by this Court while passing the order in the instant criminal appeal. He further submitted that even if the prosecution case is taken to be correct, the evidence under Section 307 I.P.C. is not made out and the offence under Section 324 is only made out because only one gun shot was made by the accuseds on leg and it is also not proved as to who made the shot out of the two appellants. Thus the conviction may be converted into Section 324 and the appellants may be granted benefit of First Offender.

4. Learned AGA opposed the submissions of learned counsel for the appellants and submitted that the appellants have rightly been convicted in accordance with law under Section 307 I.P.C. and sentenced accordingly and the appeal is liable to be dismissed.

5. Learned counsel for the complainant does not dispute that the appellants are the real brothers and the complainant is the nephew of the appellants and they have developed harmonious relations during the pendency of the criminal appeal and no fruitful purpose would be served by sending the appellants to jail and he has also no objection in case the benefit of first offender is granted to the appellants.

6. I have considered the submissions of learned counsel for the parties and perused the records.

7. The prosecution story, in short, is that on 19.04.2006 at about 7:00 in the evening, the uncle Dharmeshwar and Babu Ram sons of Late Shyam Lal were trying to keep the door on his wall, which was objected by his sister and mother on account of which there was quarrel between them, The complainant received information of the same at Gunjan Kiln, where he was working. Upon hearing the said information, while he was going to home and as soon as he reached near his agricultural field and village, Dharmeshwar and Baburam were present on the way and they fired at him with the intention to kill. The shot of the fire hit in his right leg. The incident is of about 8:30 p.m. Upon hearing the sound of gun shot, Lakshman son of Late Sri Rudai of his village and Rakesh son of Hardwari Lal of village Mahmoodpur came and saved him. On the basis of the said written complaint, the F.I.R. vide Case Crime No. 159/06 under Section 307 I.P.C. was registered at about 23:05 on 19.04.2006. During investigation, the I.O. inspected the site and prepared the site plan and recorded the statements of the complainant and F.I.R. writer. The X- ray of the injured Ved Prakash was got done and the report was mentioned in the CD and thereafter after recording the statement of the concerned persons, charge sheet under Section 307 I.P.C. was filed against the appellants Dharmeshwar and Babu Ram, upon which the cognizance was taken

by the Magistrate and finding it to be triable by the Sessions court, committed the case to the Session. The Session court framed charge against the appellants under Section 307 I.P.C., which was denied by the appellants and they prayed for trial.

8. During trial Prahlad, Ved Prakash and Ram Murti were examined as P.W.1, 2 and 3. On the basis of their evidence, the accused Anil was summoned under Section 319 Cr.P.C. vide order dated 15.03.2010 for trial in NCR No.60/2006 and charge was framed separately against him under Sections 323, 504, 506 I.P.C on 21.04.2010. The accused Anil also denied the charge and prayed for trial. Therefore Prahlad and Ram Murti were again summoned for re-examination. Thereafter the witnesses Lakshman, Anita Devi, Dr. R.A.L. Gupta, S.S.I, Dravid Kumar Singh, Head Constable Babu Ram and Dr. Rameshwar Prasad appeared for oral evidence. In addition to the oral evidence adduced by the prosecution witnesses, the documentary evidence i.e. the written report, Chik F.I.R., Site plan, X-Ray Plate, X-Ray report, Medical Examination Report etc. were also placed on record.

9. After conclusion of the evidence of prosecution, statement under Section 313 Cr.P.C. of the accused-appellants was recorded, in which they stated that a false report has been lodged and all the evidences are wrong and they have been falsely implicated on account of enmity. It was also stated that the wall is of the accuseds and Ved Prakash and his family members wanted to forcibly make possession on the same on account of the said enmity. It was also stated that the medical of the injured was got done on account of political pressure and the doctor's report is false. It has also been stated that on account of enmity of wall, complaint is also pending in the court of magistrate against the father of the complainant. Thus the prosecution has failed to prove it's case. Thereafter after hearing and considering the evidence and material on record and hearing the parties, the trial court recorded a finding that the evidence of all the witnesses is believable and they supported each other and accordingly found the prosecution case proved and convicted the appellants under Section 307 I.P.C. However, on account of no evidence against the accused Anil, he had been acquitted of the charges under Section 323, 504 and 506 I.P.C..

10. P.W.1 Prahlad, in his evidence stated that he, Dharmeshwar and Babu Ram are real brothers and Anil is son of Dharmeshwar.. Dharmeswar, Babu Ram and Anil were keeping the door and waste pipe after breaking his constructed wall, which was objected by his wife Anita Devi and daughter Ram Murti. On denying, they had beaten them with kick and fists and at that time he was at the kiln and on information he came to home and went to the police station Mishrikh with her daughter Ram Murti, where he lodged report . While he was in the police station, his son Ved Prakash was brought by tempo, who informed that while he was going to home from kiln, Babu Ram and Dharmeshwar fired by gun on him with the intention to kill at about 8:30 in the evening. The fire had hit in his right leg. Thereafter his son got report of the said incident lodged. In the cross examination, he admitted that the dispute in regard to the falling of land amongst the brothers is pending in the court.

11. Ved Prakash, the injured, appeared as P.W.2. He stated that on 19.04.2006, he

was in the kiln for labour work, where he got information that Dharmeshwar and Babu Ram are trying to keep the door and waste pipe on his wall and on objection by his sister Ram Murti and mother Anita Devi, Dharmeshwar, Babu Ram and Anil, entering into the house, have beaten them. Upon hearing the information, his father went with the motor cycle to home. Thereafter, while he was going back from the vehicle after completion of his work and reached in between the village and the kiln at about 8:30 Babu Ram and Dharmeshwar fired on him with the intention to kill. Gun shot hit at his right leg. On hearing the noise, Lakshman and Ramesh came to save him and sent him to home. The report of the incident was got written by Awadhesh Kumar. Thereafter, he went to the Police Station Mishrikh, on which the F.I.R. was lodged. He proved the F.I.R. He also stated that his X-Ray was also got done. In cross-examination, he stated that the gun shot was made from a distance of about 10-15 steps. He could not see as to whether the fire arm was small or big, where the gun shot was made, the pellets hit.The said pellets were shown by him to the Inspector. The gun shot was made from the front side and he fell turning back and got unconscious. After 5-6 minutes, he woke and saw that Lakshman and Rakesh were standing and the accused Dharmeshwar and Babu Ram were also standing.

12. Lakshman has been examined as P.W.4. He stated that the incident is of about four years back of about 8:30 in the evening. At that time, he was going to his house by road. When he reached between the kiln and village, he heard the noise of gun shot. Upon hearing the noise of gun shot, he went towards the noise and found Ved Prakash lying in the agricultural field. He saw that two persons were running and he recognised them with their voice as Dharmeshwar and Babu Ram. The gun shot was hit in the leg of Ved Prakash. He could not see as to what was in their hand. Upon reaching, Ved Prakash was speaking and he told that Dharmeshwar and Babu Ram have fired by gun on him. He does not know the reason of gun shot. In cross- examination, he stated that he had seen the accuseds running but could not recognise them. He was having a grocery shop near the kiln and it was at the time of incident also. He further stated that he supported Ved Prakash and took him to his house. Thereafter it started raining. Thereafter after eating food, he went back to the shop. He further stated that the things told today were not told by him to the Inspector. He had told him only what was asked by him.

13. Dr. R.A.L. Gupta appeared as P.W.6. He proved the X-ray of right leg of Ved Prakash, which was done on 20.04.2006, on being referred by the Medical Officer, Mishrikh. He further stated that in X-Ray small and round radio opic images were present, which may have come by the pellets of gun shot.

14. Dr. Rameshwar Prasad appeared as P.W.9. He stated that Ex. Ka-7 report was prepared by Dr. Satendra Singh. He was posted with him. He had seen him writing and reading. He had done the medical examination of Ved Prakash. He had died. As per Ex. Ka-7, which is medical report of Ved Prakash, there are many wounds of 0.2 mm to 0.5 mm on the right leg of Ved Prakash caused by gun shot arm, which were fresh.

15. Smt. Ram Murti daughter of P.W.1 and sister of P.W.2 has been got examined as P.W.3. She stated about the incident of

forcibly keeping the door and waste pipe on her wall by Dharmeshwar, Babu Ram and Anil at about 7:30 in the evening about 3 and 1/2 years back and on being objected by her and his mother, they were beaten by them by lathi and danda. The information of the same was given to her father Prahlad at Gunjan kiln. They had threatened her and her mother of dire consequences. His father came from the kiln and went to the police station alongwith them and lodged the report. On the same day, at about 8:30 p.m., Dharmeshwar and Babu Ram fired by gun on Ved Prakash with the intention to kill. The incident was told by her brother in Mishrikh, where she had seen her brother in serious condition. Similar statement has been given by Anita Devi wife of P.W.1, who appeared as P.W.5. She also stated the same incident as told by her daughter. Head Constable Babu Ram has proved the F.I.R.

16. S.S.I. Dravid Kumar Singh appeared as P.W.6, who had conducted the investigation and filed the charge sheet. He proved the injury report, X Ray report, site plan and charge sheet etc.

17. Admittedly, a single gun shot was made by two persons i.e. appellants Dharmeshwar and Babu Ram and it has not been disclosed by any of the witnesses as to who made the gun shot. It is also not in dispute that the gun shot was made in the right leg of the injured Ved Prakash on account of enmity for land between the father of the injured and his brothers, in regard to which an incident had occurred at the residence of the injured at about 7:30 in the evening, on account of keeping the door and waste pipe on the constructed wall, which appears to be between the houses of the father of the injured and his brothers and thereafter while his father went to lodge the F.I.R., the alleged incident had happened.

18. P.W.2 Ved Prakash, the injured has stated that the gun shot was made from a distance of about 10-15 steps and he could not see as to whether the fire arm was big or small. P.W.4 Lakshman, who reached on the spot upon hearing the noise of gun shot, has stated that he saw two persons running but in the cross-examination he stated that though he had seen the accused running but he could not recognise them. He also stated that the things told today were not told by him to the Inspector. Thus there is contradiction in the evidence of P.W.2 and P.W.4. P.W.2 stated that he fell unconscious on receiving the gun shot and when he woke up after 5-6 minutes, he saw Lakshman and Rakesh alongwith Dharmeshwar and Babu Ram standing, whereas P.W. 4 has stated that when he reached on the spot upon hearing the noise of gun shot, he found that the injured Ved Prakash was speaking and he told that the Dharmeshwar and Babu Ram had fired by gun on him but he does not know the reason of gun shot. Thus the presence of P.W.4 on spot itself becomes doubtful. It is also for the reason that on the one hand he states that while he was going back from his shop to his home, he on hearing the noise of firing went on the spot and found Ved Prakash lying there and recognised Babu Ram and Dharmeshwar from their voice, thereafter he stated that they were running from there and he could not recognise them and on the other hand he stated that after leaving the injured Ved Prakash at home, it started raining and thereafter after taking food he went back to his shop, which does not seem to be correct because when he was going back to his house at about 8:30 in the evening from his shop, question of his going back to shop at that time, which may be after 9:00 or 9:30 in the night does not seem correct.

19. Upon considering the evidence of P.W.2, firstly, it is apparent that only one

gun shot was made, that too in the leg and thereafter the appellants stopped and were present on the spot at the time when Ved Prakash woke up from unconsciousness. Therefore it cannot be said that the gun shot was made with the intention to kill by the appellants because if it would have been with intention to kill, the single gun shot would not have been made in the place where nobody else was present and that too in the leg and they would not have stayed thereafter. Neither the medical reports nor the evidence of doctors also even suggest that the injury was fatal in any manner. Thus, the finding recorded by the trial court that the gun shot was made by the appellants with the intention to kill Ved Prakash, that too without recording any finding as to who made the gun shot, is misconceived and not tenable. It is also noticed that conviction has been made under Section 307 I.P.C., whereas the charge was framed under Section 307/34 I.P.C. against two persons and two persons could not have been convicted under Section 307 I.P.C. for attempt to murder on account of one gun shot without any evidence and finding as to who and how made the gun shot.

20. Section 307 I.P.C. provides that whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is here-in-before mentioned. Section 307 I.P.C. is extracted hereinbelow:-

"307. Attempt to murder- "Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned."

21. In view of above, for conviction under Section 307 I.P.C., proof of intention and knowledge that by such act and in such circumstances, death would be caused is required, but in the present case, it is missing and as discussed above, this Court is of the view that the single gun shot on the leg cannot be said to had been made with the intention or knowledge of causing death. Otherwise two persons would not have made single gun shot and that too in the leg. They would not had stayed also thereafter. Thus, this Court is of the view that in the facts and circumstances of the case and on the basis of evidence adduced in this case, the offence of Section 307 I.P.C. is not made out. However, provisions of Section 324 I.P.C. are attracted, which provides that except in the case provided for by section 334, voluntarily causing hurt by means of any instrument for shooting, stabbing or cutting etc. which is likely to cause death shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. Section 324 I.P.C. is extracted here-in-below:-

"Section 324- Voluntarily causing hurt by dangerous weapons or means:-*Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any*

instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both"

22. A Co-ordinate Bench of this Court, in the case of **Devi Singh & Another versus State of U.P.; Criminal Appeal No.220 of 1995**, by means of the judgment and order dated 04.05.2016 has held that the Court has to see as to whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section. An Attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof has been laid down by the Hon'ble Apex Court in State of Maharashtra versus Balram Balma Patil, AIR 1983 SC 305. The relevant paragraphs 21 to 28 are extracted here-in-below:-

"21. To justify a conviction under Section 307 IPC, it is not essential that bodily injuries capable of causing death should have been inflicted. Although the nature of injuries actually caused may often give considerable assistance. Coming to the finding as to the intention of accused, such intention may also be deduced from other circumstances and may even in some cases be ascertained without any reference at all to the actual wounds. This section makes a distinction between an act of accused and its result, if any. Such an act may not be attended by any result. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this Section. An Attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof has been laid down by the Hon'ble Apex Court in State of Maharashtra versus Balram Balma Patil, AIR 1983 SC 305.

22. It is true that merely because the injuries are simple in nature, it cannot be said that the offence made out would not all be covered under Section 307 I.P.C. It would all depend upon the facts of a given case. Intention has to be seen in every case.

23. It also emerges that the sole injury, even if accepted to be attributed to the appellant, was simple in nature and there is no iota of evidence to show that this injury was sufficient in the ordinary course of nature to cause death. Resultantly, the evidence can be said to indicate involvement of the appellant in an offence punishable for simple hurt with a deadly weapon like country-made pistol.

24. In the facts and circumstances of the case, it is difficult to accept that knowledge or intention can be attributed to the appellants about the likely death of the victim by causing the injuries, because they have not repeated the attack particularly when there was no possible protest either from the injured or the eye witnesses. If the intention would have been to kill the injured, accused Devi Singh could have repeated the injuries and could have easily killed the injured.

25. In AIR 1982 SC 2013, Kundan Singh vs. State of Punjab, the Hon'ble Apex Court has observed as under:-

"We are of the view that having regard to the facts and circumstances of the present case and particularly in view of the fact that P.W. 6 and P.W. 7 were in the courtyard of their house when the appellant fired gun shots and he could not, therefore, have intended to injure them, the conviction of the appellant under Section 307, I.P.C. was not justified. We think that the conviction of the appellant could be maintained only under Section 324 of the I.P.C. since P.W. 6 and P.W. 7 received simple injuries. We accordingly allow the appeal and alter the conviction of the appellant to one under Section 324 of the I.P.C. for causing simple injuries to P.W. 6 and P.W. 7 and since the appellant has already suffered imprisonment for about 16 months, we direct that the sentence imposed on the appellant be reduced to that already undergone by him and that he may be set at liberty forthwith."

26. I would also like to place the law laid down by the Apex Court in AIR 1996 SC 3236, Merambhai Punjabhai Khachar and others vs. State of Gujarat, wherein an attempt to commit murder by fire arm and a pellet hit the victim, however, the Apex Court held that Section 307 I.P.C. cannot be held to have been satisfied and the conviction was altered to Section 324 I.P.C.

27. In the case of Ramesh vs. State of U.P., AIR 1992 SC 664, wherein the injury was found on the back of the injured. He was tried along with two other was convicted under Section 307/34 I.P.C. and sentenced to undergo rigorous imprisonment for four years, while the two others were acquitted, was partly allowed by the Apex Court. His conviction was altered into Section 324 I.P.C. and sentence was reduced to the period already undergone with fine of Rs. 3000/-, which was to be paid to the complainant as compensation.

28. Thus, there was only one lacerated wound on the body of injured caused by fire-arm which was on the back but there was no repeat of the injury nor there was any intervening circumstance to do away with the life of injured. There was no repeat shot. Thus, I am of the view that conviction of the appellants under Sections 307 and 307 read with Section 34 IPC cannot be sustained and the appellants are liable to be convicted for the offence punishable under Section 324 IPC."

23. The Hon'ble Supreme Court in the case of **Neelam Bahal & Another versus State of Uttarakhand; (2010) 2 SCC 229** has held that there is no categorical statement in the medical certificate issued by doctor that the injuries were in fact dangerous to life and we are unable to fathom as to whether this was a deliberate omission or an oversight but whatsoever it may be, the benefit must accrue to the accused and converted the conviction from under Section 307/34 to Section 326 I.P.C. It is true that merely because the injuries are simple in nature, it cannot be said that the offence made out would not at all be covered under Section 307 I.P.C. It would all depend upon the facts of a given case. Intention has to be seen in every case. It also emerges that the sole injury, even if accepted to be attributed to the appellant, was simple in nature and there is no iota of evidence to show that this injury was sufficient in the ordinary course of nature to cause death. Resultantly, the evidence can be said to indicate involvement of the appellant in an offence punishable for

simple hurt with a deadly weapon like country-made pistol.

24. In view of above, the conviction under Section 307 I.P.C. is not sustainable and it is liable to be converted under Section 324 I.P.C. Accordingly, the conviction is converted under Section 324 I.P.C., in which the maximum sentence of three years or with fine or with both can be awarded. As discussed above, this Court is of the view that it is not the case of award of the maximum sentence of three years. However learned counsel for the appellant has submitted that the appellants are the first offender and they are entitled for the benefit of the First Offender, which has not been considered and no special reasons have been recorded for declining the same by the trial court. It is settled law that Sections 3 and 4 of the Probation of Offenders Act,1958 which is applicable in the State of Uttar Pradesh as held by Hon'ble Supreme Court in the case of **Mohd.Hashim versus State of U.P.; (2017) 2 SCC 1998**, which provides power to court to release certain offenders after admonition or on probation of good conduct. Sections 3 and 4 of the Probation of Offenders Act are extracted here-in-below:-

3. Power of court to release certain offenders after admonition.—When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code, (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence, and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4, release him after due admonition. Explanation.—For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or section 4.

4. Power of court to release certain offenders on probation of good conduct.—(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour: Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond. (2) Before making any order under sub-section (1), the court shall take into consideration

the report, if any, of the probation officer concerned in relation to the case. 1. The words "except the State of Jammu and Kashmir" omitted by Act 34 of 2019, s. 95 and the Fifth Schedule (w.e.f. 31-10-2019). 3 (3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender. (4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender. (5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.

25. Section 361 of the Code of Criminal Procedure specifically provides that where in any case the Court could have dealt with an accused person under Section 360 or under the provisions of the Probation of Offenders Act, 1958 but has not done so, it shall record in its judgment the special reasons for not having done so.The Act does not create any distinction between the character of the offender and the provisions of Section 4 of the Probation of Offenders act. The provision can be applicable to any case where the convicted is found guilty for having committed an offence not punishable with death or imprisonment for life. Incidentally certain exceptions have been indicated by the Hon'ble Supreme Court in the case of **Smt. Devki Versus State of Harayana reported in 1979, (3) SCC 760**, where the Hon'ble Supreme Court has held that benefit of Section 4 of 1958 Act could not be extended to a culprit who was found guilty of abducting a teenaged girl and forcing her to sexual submission with criminal motive. Similarly in the case reported in **1980 (4) SCC 669 in Re: State of Maharashtra Versus Natwar Lal Damodar Das Soni** the Hon'ble Supreme Court declined to extend the benefit of the 1958 Act to an accused found guilty of gold smuggling.

26. The Hon'ble Supreme Court, in the case of **Dalbir Singh versus State of Haryana (2000) 5 SCC 82**, has held that the Parliament made it clear that only if the court forms the opinion that it is expedient to release him on probation for his good conduct regard being had to the circumstances of the case. One of the circumstances which cannot be sidelined in forming the said opinion is "the nature of the offence". Further, it has been held that Section 4 casts a duty on the court to take into account the circumstances of the case including the nature of the offence. The relevant paragraphs 8, 9 and 10 of the said judgment are reproduced hereinafter:

"8.Parliament made it clear that only if the court forms the opinion that it is expedient to release him on probation for

his good conduct regard being had to the circumstances of the case. One of the circumstances which cannot be sidelined in forming the said opinion is "the nature of the offence".

9.Thus Parliament has left it to the court to decide when and how the court should form such opinion. It provided sufficient indication that releasing the convicted person on probation of good conduct must appear to the court to be expedient. The word "expedient" had been thoughtfully employed by the Parliament in the section so as to mean it as "apt and suitable to the end in view". In Block's Law Dictionary the word "expedient" is defined as "suitable and appropriate for accomplishment of a specified object" besides the other meaning referred to earlier. In State of Gujarat v. Jamnadas G. Pabri & Ors., AIR (1974) SC 2233 a three Judge Bench of this Court has considered the word "expedient". Learned Judges have observed in paragraph 21 thus :

10.Again, the word 'expedient' used in this provisions, has several shades of meaning. In one dictionary sense, 'expedient' (adj.) means 'apt and suitable to the end in view', 'practical and efficient'; 'politic'; 'profitable'; 'advisable', 'fit, proper and suitable to the circumstances of the case'. In another shade, it means a device 'characterised by mere utility rather than principle conducive to special advantage rather than to what is universally right' (see Webster's New International Dictionary)."

It was then held that the court must construe the said word in keeping with the context and object of the provision in its widest amplitude. Here the word "expedient" is used in Section 4 of the P.O. Act in the context of casting a duty on the court to take into account "the circumstances of the case including the nature of the offence.....". This means Section 4 can be resorted to when the court considers the circumstances of the case, particularly the nature of the offence, and the court forms its opinion that it is suitable and appropriate for accomplishing a specified object that the offender can be released on probation of good conduct. Courts must bear in mind that when any plea is made based on Section 4 of the P.O. Act for application to a convicted person under Section 304-A of IPC, that road accidents have proliferated to alarming extent and the toll is galloping up day-by-day in India, and that no solution is in sight not suggested by any quarters to bring them down. When this Court lamented two decades ago that "more people die of road accidents than by most diseases, so much so the Indian highways are among the top killers of the country" the saturation of accidents toll was not even half of what it is today. So V.R. Krishna Iyer, J., has suggested in the said decision thus :

"Rashness and negligence are relative concepts, not absolute abstractions. In our current conditions, the law under Section 304-A IPC and under the rubric of negligence, must have due regard to the fatal frequency of rash driving of heavy duty vehicles and of speeding menaces."

27. Adverting to the facts of the present case, the incident had occurred on 19.04.2006 i.e. about 19 years back on account of dispute regarding land between close family members and the appellants have no criminal antecedents either before the incident in question or subsequent thereto and the appellants and the informant have settled their dispute and maintained their good relations, which is not disputed by learned counsel for the complainant. The affidavit in this regard

has also been filed. It is the duty of the trial court to consider for grant of the benefit of the first offender and if the same is denied, special reasons are required to be recorded but in the instant case, the trial court has failed not only to consider the case and material on record appropriately but it has also failed to consider the claim of first offender and record any special reason for declining the benefit of the first offender.

28. In view of above and considering the overall facts and circumstances of the case, this Court is of the view that no purpose would be served by sending the appellants to jail to serve the sentence and dispute was purely personal between the close family members, therefore, the public at large is also not going to be affected in any manner, therefore, the appellants are entitled for benefit of the first offender and the appeal is liable to be allowed partly and impugned judgment and order is liable to be modified accordingly.

29. The appeal is **partly allowed**. The conviction under Section 307 I.P.C. is hereby converted into conviction under Section 324 I.P.C. and sentence of 1 year is awarded to both the appellants. However, they are released on probation giving benefit of First Offender and both the appellants namely Dharmeshwar and Babu Ram are directed to file two sureties each to the tune of Rs 20,000/- along with personal bonds before District Probation Officer concerned and also an undertaking to the effect that they shall maintain peace and good behavior during the period of one year from today. The said bonds are to be filed by the appellants within a period of two months from the date of this judgment.

30. In case of breach of any of the above conditions, the appellants shall be taken into custody and shall have to undergo the aforesaid sentence awarded to them.

31. A certified copy of this order alongwith the trial court record shall be sent to the court concerned for compliance forthwith and in any case within 10 days from today.

(2025) 8 ILRA 57
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.08.2025

BEFORE

THE HON'BLE ARUN KUMAR SINGH DESHWAL, J.

Criminal Misc. Anticipatory Bail Application U/S 482 BNSS. No. 4464 of 2025

Asheesh Kumar ...Applicant
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicant:
Abhishek Trivedi

Counsel for the Opposite Party:
G.A.,

Issue for Consideration

Matter pertains to whether the anticipatory bail application instituted u/s 482 B.N.S.S. is maintainable at the stage where only a **summons** has been issued in a **complaint case** alleging commission of **non-bailable offence**, in absence of any **reasonable apprehension of arrest by police without warrant**, so as to justify exercise of jurisdiction u/s 482 B.N.S.S..

Headnotes

Penal Code, 1860 - ss. 452, 504, 506, 392,323 - Bharatiya Nyaya Sanhita, 2023 - s.2(29) - Bharatiya Nagarik Suraksha Sanhita, 2023 - ss. 43(1), 480, 482 - Applicant is facing criminal proceedings in

complaint case wherein allegations relate to commission of non-bailable offence - Upon cognizance of complaint, concerned court issued summons to secure his presence - Aggrieved, applicant approached High Court u/s 482 B.N.S.S. seeking anticipatory bail, contending that issuance of summons in a complaint involving a non-bailable accusation generates a reasonable apprehension that upon appearance he may be taken into custody, thereby curtailing his personal liberty - Preliminary objection raised by State regarding maintainability of anticipatory bail, asserting that mere issuance of summons does not constitute reasonable apprehension of arrest by police without warrant - Essential controversy before High Court was confined to maintaining protection against arrest in event of only summons being issued in complaint case.

Held: In a complaint case involving allegations of non-bailable offence, the grant of anticipatory bail is not maintainable upon mere issuance of summons, as there exists no apprehension of arrest by police without warrant - Likewise, when bailable warrant is issued, accused, though apprehensive of arrest, is entitled to release upon furnishing bail, and hence anticipatory bail is also not maintainable - Furthermore, even in cases where non-bailable warrant or proclamation is issued, remedy of anticipatory bail ordinarily remains unavailable - In the present complaint case, as no bailable or non-bailable warrant has been issued till date, mere issuance of summon by order dated 23.08.2022 against applicant does not constitute circumstance giving rise to apprehension of arrest by police. [Paras 32, 33] (E-13)

Case Law Cited

Shri Gurbaksh Singh Sibbia and others v. State of Punjab, **(1980) 2 SCC 565;** Balchand Jain (Shri) v. State of Madhya Pradesh, **(1976) 4 SCC 572;** Sushila Aggarwal and Others v. State (NCT of Delhi) and Another**, (2020) 5 SCC 1;** Union of India v. Amrit Lal Manchanda and Another, **(2004) 3 SCC 75;** Jitendra Kumar Singh and Another v. State of U.P. and Others, **(2010) 3 SCC 119;** Arun Kumar Aggarwal v. State of Madhya Pradesh and Others**, (2014) 13 SCC 707;** Supreme Paper Mills Limited v. Assistant Commissioner, Commercial Taxes, Calcutta and others, **(2010) 11 SCC 593;** Sukhdev Singh v. State of Haryana, **(2013) 2 SCC 212;** Srikant Upadhyay and Others v. State of Bihar and Anr., **(2024) INSC 202;** Prem Shankar Prasad v. State of Bihar and Another, **(2022) 14 SCC 516;** Lavesh v. State (NCT of Delhi), **(2012) 8 SCC 730;** State of Madhya Pradesh v. Pradeep Sharma, **(2014) 2 SCC 171**; Bharat Chaudhary and Another v. State of Bihar and Another, **(2003) 8 SCC 77; - referred to.**

Muni Khatoon v. State of Bihar and others**, 2017 SCC Online Pat 3808;** P.V. Narsimha Rao v. State (CBI), **1997 (40) DRJ (DB) - distinguished**

Books and Periodicals Cited

Black's Law Dictionary, (5th Edition, 1979); Corpus Juris Secundum (Vol. 25 at p. 69)

List of Acts

Penal Code, 1860; Bharatiya Nyaya Sanhita, 2023; Bharatiya Nagarik Suraksha Sanhita, 2023

List of Keywords

Maintainability of anticipatory bail; Interim Bail; Complaint case proceedings; Issuance of summons; Reasonable apprehension of arrest; Non-bailable offence; Arbitrary arrest by police; Personal liberty of a person; Extraordinary remedy; Exceptional circumstances; Process of arrest; Reason to believe; Mere fear; Law Commission of India; Legislative intent of Section 482 B.N.S.S; Res integra.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Anticipatory Bail Application U/s 482 BNSS No. - 4464 of 2025

From the Complaint Case No. 938 of 2021, Police Station Rauja, District- Shahjahanpur.

Appearances for Parties

Advs. for the Applicant:

Abhishek Trivedi

Advs. for the Opposite Party:

G.A.

(Delivered by Hon'ble Arun Kumar Singh Deshwal, J.)

1. This matter was heard on 18.06.2025. On that date, a preliminary objection was raised by Sri Pankaj Saxena, learned A.G.A. that present anticipatory bail application is not maintainable as same is filed merely on issuance of summon in complaint case. On issuance of a summons, the applicant has no reason to believe that he may be arrested unless non-bailable warrant is issued in complaint case. The above preliminary objection raised by learned A.G.A. was vehemently opposed by Sri Abhishek Trivedi, learned counsel for the applicant. Therefore, this Court after releasing the applicant on interim bail reserved the judgement on the issue whether anticipatory bail is maintainable merely on issuance of summons in the complaint case wherein the accusation is regarding the non-bailable offence.

2. Learned counsel for the applicant has submitted that on issuance of a summons in a complaint case wherein there is an allegation of committing a non-bailable offence against the applicant, the applicant has reasonable apprehension that on his appearance before the Court, he may be taken into custody by the court which would also fall in the category of apprehension of arrest as the object of custody or arrest is of curtailing the personal liberty of a person. In support of his contention, learned counsel for the applicant has relied upon the judgement of Patna High Court in the case of **Muni Khatoon Vs. State of Bihar and others, 2017 SCC Online Pat 3808**, as well as the judgement of Division Bench of Delhi High Court in the case of **P.V. Narsimha Rao Vs. State (CBI), 1997 (40) DRJ (DB)** wherein the Patna High Court and the Delhi High Court have observed that power to release a person on anticipatory bail cannot be curtailed and this principle applies equally to both complaint cases as well as State cases.

3. Per contra, Sri Pankaj Saxena, learned A.G.A. has submitted that the words 'reason to believe' in Section 482 B.N.S.S. does not mean mere 'fear' and it must be founded on a reasonable ground and custody of the court cannot be equated with the arrest by the police. It is further submitted by learned A.G.A. that criminal enactment should be interpreted strictly, not liberally, as beneficial legislation.

4. After hearing the above submission, the legal question which arises is whether the anticipatory bail is maintainable during the proceeding of complaint case ? To decide this issue, it would be beneficial to reproduce Section 482 B.N.S.S. regarding anticipatory bail. Section 482 B.N.S.S. (corresponding Section 438 Cr.P.C.) is being quoted as under :-

Section 482 B.N.S.S. :-

1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including—

(i) a condition that the person shall make himself available for

interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of section 480, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should be issued in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).

(4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under section 65 and sub-section (2) of section 70 of the Bharatiya Nyaya Sanhita, 2023.

5. The main ingredients of Section 482 B.N.S.S. are as follows :-

(a) Reason to believe that a person may be arrested.

(b) on the accusation of having committed a non-bailable offence.

(c) Upon arrest without a warrant by a police officer on such accusation, he shall be released on his readiness to give bail.

6. From the above mentioned ingredients of Section 482 B.N.S.S., it is clear that anticipatory bail would be maintainable where the person has reason to believe that he may be arrested without warrant by a police officer on accusation of having committed a non-bailable offence.

7. As per Section 2(29) B.N.S., "reason to believe" means sufficient cause to believe that thing but not otherwise. Therefore, mere fear will not be sufficient. Section 2(29) B.N.S. is being quoted as under :-

*2. **Definitions** – In this Sanhita, unless the context otherwise requires –*

(29) "reason to believe" - A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise;

8. The words "reason to believe" have been considered by the Constitution Bench of the Hon'ble Supreme Court in the case of **Shri Gurbaksh Singh Sibbia and others Vs. State of Punjab, (1980) 2 SCC 565**. The Hon'ble Apex Court in the case of **Shri Gurbaksh Singh Sibbia (supra)** has observed that expression 'reason to believe' that the applicant may be so arrested must be founded on a reasonable ground and mere 'fear' is not 'belief' and ground on which belief of applicant is based, that he may be arrested for a non-bailable offence, must be capable of being examined by the Court objectively. Paragraph no. 35 of **Shri Gurbaksh Singh Sibbia (supra)** is being quoted as under :

35. Section 438(1) of the Code lays down a condition which has to be

satisfied before anticipatory bail can be granted. The applicant must show that he has "reason to believe" that he may be arrested for a non-bailable offence. The use of the expression "reason to believe" shows that the belief that the applicant may be so arrested must be founded on reasonable grounds. Mere 'fear' is not 'belief", for which reason it is not enough for the applicant to show that he has some sort of a vague apprehension that some one is going to make an accusation against him, in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable offence, must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be so arrested. Section 438(1), therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise, the number of applications for anticipatory bail will be as large as, at any rate, the adult populace. Anticipatory bail is a device to secure the individuals liberty; it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, likely or unlikely.

9. The word "non-bailable warrant" has been defined in Section 2(c) of B.N.S.S. wherein it is mentioned that all cases which are not mentioned as bailable in the First Schedule of B.N.S.S. would be non-bailable though the literal meaning of non-bailable offence is wherein the police normally would not grant bail after arrest. However, in bailable offence, police would release the person after arrest on bail if he is ready to give bail. But the Magistrate can grant bail in non-bailable offence on fulfilling certain conditions as mentioned in Section 480 B.N.S.S. Section 480 B.N.S.S. (corresponding Section 437 Cr.P.C.) is being quoted as under :-

*480**. When bail may be taken in case of non-bailable offence**-(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but-*

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years or more but less than seven years:

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is a child or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation or for police custody beyond the first fifteen days shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail

and gives an undertaking that he shall comply with such directions as may be given by the Court:

Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, subject to the provisions of Section 492 and pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond for his appearance as hereinafter provided.

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter VII or Chapter XVII of the Bharatiya Nyaya Sanhita, 2023 or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1), the Court shall impose the conditions,--

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter;

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected; and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence, and may also impose, in the interests of justice, such other conditions as it considers necessary.

(4) An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2), shall record in writing his or its reasons or special reasons for so doing.

(5) Any Court which has released a person on bail under sub-section (1) or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

(7) If, at any time, after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond for his appearance to hear judgment delivered.

10. The police can arrest a person if offence is cognizable whether bailable or non-bailable but if the person is arrested in bailable offence, he would normally be released on bail by the police if the accused is ready to furnish the bail but in case of non-bailable offence, police is also required to produce the person before the concerned

Magistrate within 24 hours as per Section 58 of B.N.S.S. Thereafter, the Magistrate decides whether a person should be sent to police custody or judicial custody or be released on bail. However, police can arrest a person if it is alleged that he has committed a cognizable offence but for the maintainability of anticipatory bail under Section 482 B.N.S.S., there must be apprehension to arrest regarding non-bailable offence not the bailable offence.

11. From the above discussion, it is clear that there must be apprehension of arrest on the basis of an allegation of committing the non-bailable offence. The procedure of arrest has been mentioned in Section 43(1) B.N.S.S. which provides that in making the arrest, the police officer or other person making the same shall actually touch or confine the body of the person to be arrested except in the case of a woman providing oral intimation of the arrest as per proviso of Section 43(1) of B.N.S.S. Section 43(1) of B.N.S.S. is being quoted as under :

43. (1) In making an arrest, the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action:

Provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody or an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.

12. The arrest can be made by a police officer, by any person or by a Judicial or Executive Magistrate. The process of arrest is the same as mentioned in Section 43(1) of B.N.S.S.

13. In Section 482 B.N.S.S., the word is 'arrest', not 'custody'. The Apex Court in the case of **Shri Gurbaksh Singh Sibbia (supra)** has also observed that for anticipatory bail if the proposed accusation appears to be stemmed not from motive of furthering the ends of justice but from some ulterior motive, the object being injure and humiliate the applicant by having him **arrested**, a direction for the release of the applicant on bail in the **event of his arrest** would generally be made.

14. The term "arrest" has not been defined in either B.N.S. or B.N.S.S. though Section 43 B.N.S.S. lays down the mode of arrest. Black's Law Dictionary, (5th Edition, 1979) defines "arrest" as follows :-

"To deprive a person of his liberty by legal authority. Taking, under real or assumed authority, custody of another for the purpose of holding or detaining him to answer a criminal charge or civil demand. Arrest involves the authority to arrest, the assertion of that authority with the intent to effect an arrest, and the restraint of the person to be arrested. All that is required for an "arrest" is some act by officer indicating his intention to detain or take person into custody and thereby subject that person to the actual control and will of the officer, no formal declaration of arrest is required."

15. Similarly, the term "custody" is also not defined in either B.N.S. or B.N.S.S. But the definition of "custody" can be borrowed from the Corpus Juris Secundum (Vol. 25 at p. 69) and the same is as follows :-

"When it is applied to persons, it implies restraint and may or may not imply physical force sufficient to restrain depending on the circumstances and with reference to persons charged with crime, it has been defined as meaning on actual confinement or the present means of enforcing it, the detention of the person contrary to his will. Applied to things, it means to have a charge or safe-keeping, and connotes control and includes as well, although it does not require, the element of physical or manual possession, implying a temporary physical control merely and responsibility for the protection and preservation of the thing in custody. So used, the word does not connote dominion or supremacy of authority. The said term has been defined as meaning the keeping, guarding, care, watch, inspection, preservation or security of a thing, and carries with it the idea of the thing being within the immediate personal care and control of the prisoner to whose custody it is subjected; charge; charge to keep, subject to order or direction; immediate charge and control and not the final absolute control of ownership."

16. From the perusal of the definition of "arrest" and "custody", it is clear that "arrest" is different from "custody". Therefore, the term "arrest" used in Section 482 B.N.S.S. cannot be equated with the term "custody" which the police takes after arrest or the court can take on surrendering or producing an accused before it.

17. Section 438 Cr.P.C. (corresponding Section 482 B.N.S.S.) was introduced on the basis of the 41st report dated 24.09.1969 of the Law Commission of India which pointed out the necessity of introducing the provision in the Code to grant anticipatory bail. The object of inserting this section has been mentioned in paragraph no. 39.9 of this report of Law Commission of India, and the same is being reproduced as under :-

"The suggestion for directing the release of a person on bail prior to his arrest (commonly known as "anticipatory bail") was carefully considered by us. Though there is a conflict of judicial opinion about the power of a court to grant anticipatory bail, the majority view is that there is no such power under the existing provisions of the Code. The necessity for granting anticipatory bail arises mainly because sometimes influential persons try to implicate their rivals in false cases for the purpose of disgracing them or for other purposes by getting them detained in jail for some days. In recent times, with the accentuation of political rivalry, this tendency is showing signs of steady increase. Apart from false cases, where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail, there seems no justification to require him first to submit to custody, remain in prison for some days and then apply for bail.

We recommend the acceptance of this suggestion. We are further of the view that this special power should be conferred only on the High Court and the Court of Session, and that the order should take effect at the time of arrest or thereafter.

In order to settle the details of this suggestion, the following draft of a new section is placed for consideration:

'497-A. (1) When any person has a reasonable apprehension that he would be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section.

That court may, in its discretion, direct that in the event of his arrest, he shall be released on bail.

(2) A Magistrate taking cognizance of an offence against that person shall, while taking steps under Section 204(1), either issue summons or a bailable warrant as indicated in the direction of the court under sub-section (1).

(3) If any person in respect of whom such a direction is made ***is arrested without warrant by an officer in charge of a police station on an*** *accusation of having committed that offence, and is prepared either at* ***the time of arrest or at any time while in the custody of such officer to give bail****, such person shall be released on bail.'*

We considered carefully the question of laying down in the statute certain conditions under which alone anticipatory bail could be granted. But we found that it may not be practicable to exhaustively enumerate those conditions; and moreover, the laying down of such conditions may be construed as prejudging (partially at any rate) the whole case. Hence we would leave it to the discretion of the court and prefer not to fetter such discretion in the statutory provision itself. Superior courts will, undoubtedly, exercise their discretion properly, and not make any observations in the order granting anticipatory bail which will have a tendency to prejudice the fair trial of the accused."

18. From the perusal of the above recommendation of the Law Commission of India, it is clear that the purpose of introducing the provision of anticipatory bail is to grant **protection from the arbitrary arrest by the police.**

19. The three-Judge Bench of the Apex Court in the case of **Balchand Jain (Shri) Vs. State of Madhya Pradesh, (1976) 4 SCC 572** also considered the object and legislative intent of Section 438 Cr.P.C. and observed that intention of the legislature in enshrining the salutary provisions in Section 438 Cr.P.C. which applies only to non-bailable offence, was to see that the liberty of a person is not to be in jeopardy on frivolous grounds at the instance of unscrupulous or **irresponsible officers or persons who may be incharge of prosecution.**

20. Similarly, the Constitution Bench of the Apex Court in the case of **Sushila Aggarwal and Others Vs. State (NCT of Delhi) and Another, (2020) 5 SCC 1** while considering the issue regarding limitation of period of anticipatory bail also observed that basic object behind Section 438 Cr.P.C. as per 41st and 48th report of Law Commission is protection against **arbitrary and unwanted arrest by the police** and also providing a preventive or curative measure to deal with unwanted arrest. It is worth noting that unwanted arrest or detention can be made by the police or a prosecuting agency rather than by the court. Paragraph nos. 57 and 62 of **Sushila Aggarwal (supra)** is being quoted as under :

57. The interpretation of Section 438 — that it does not encapsulate Article 21, is erroneous. This Court is of the opinion that the issue is not whether Section 438 is an intrinsic element of Article 21 : it is rather whether that provision is part of fair procedure. As to that, there can be no doubt that the provision for anticipatory bail is pro-liberty and enables one anticipating arrest, a facility of approaching the court for a direction that he or she not be arrested; it was specifically enacted as a measure of

protection against arbitrary arrests and humiliation by the police, which Parliament itself recognised as a ***widespread malaise on the part of the police.***

62. This Court cannot lose sight of the fact that the Law Commission's 41st and 48th Reports focused on the need to introduce the provision (for anticipatory bail) as a preventive, or curative measure, to deal with a particular problem i.e. unwarranted arrests. Sibbia [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] noticed this fact, and also that significantly, Section 438 is not hedged with any obligation on the court's power, to impose conditions. That situation remains unchanged : the provision remains unaltered — at least substantially (barring an amendment in 2005 which obliged the issuance of notice to the Public Prosecutor before issuing any order for anticipatory bail) [The amendment i.e. the Criminal Procedure Code (Amendment) Act, 2005 — which has till now, not been brought into force, reads as follows:"438. Direction for grant of bail to person apprehending arrest.—(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; that in the event of such arrest, he shall be released on bail and the Court may after taking into consideration inter alia the following factors, namely—(i) the nature and gravity of the accusation;(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;(iii) the possibility of the applicant to flee from justice; and(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,either reject the application forthwith or issue an interim order for the grant of anticipatory bail:Provided that where the High Court or as the case may be the Court of Session has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail it shall be open to an officer in charge of police station to arrest without warrant the applicant on the basis of the accusation apprehended in such application.(I-A) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days' notice, together with the copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.(I-B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice."] . The 203rd Report of the Law Commission, which reviewed the entire law on the subject and noticed later decisions, such as Salauddin [Salauddin Abdulsamad Shaikh v. State of Maharashtra, (1996) 1 SCC 667 : 1996 SCC (Cri) 198] , Adri Dharan Das [Adri Dharan Das v. State of W.B., (2005) 4 SCC 303 : 2005 SCC (Cri) 933] , etc. recommended no change in law on this aspect relating to conditions. In this background, it is important to notice that the only bar, or restriction, imposed by Parliament upon the exercise of the power (to grant anticipatory bail) is by way of a positive restriction i.e. in the case where

accused are alleged to have committed offences punishable under Section 376(3) or Section 376-AB or Section 376-DA or Section 376-DB of the Penal Code. In other words, Parliament has now denied jurisdiction of the courts (i.e. Court of Session and High Courts) from granting anticipatory bail to those accused of such offences. The amendment [Code of Criminal Procedure Amendment Act, 2018 introduced Section 438(4)] reads as follows:

"438. (4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub-section (3) of Section 376 or Section 376-AB or Section 376-DA or Section 376-DB of the Indian Penal Code."

21. Sometimes confusion arises from the observations made in the case of **Sushila Aggarwal (supra)** in paragraph no. 7.6, wherein the Apex Court while considering the observations of Constitution Bench of Apex Court in the case of **Shri Gurbaksh Singh Sibbia (supra)** regarding imposition of condition for limiting the period of anticipatory bail, that for limiting the period of anticipatory bail, the court may consider the circumstances especially the stage for filing the anticipatory bail whether at the stage before F.I.R. is filed or after filing of F.I.R. or at the stage when the investigation is complete and charge-sheet is filed. However, the above observations in **Sushila Aggarwal (supra)** do not suggest that anticipatory bail is maintainable upon issuance of a summons after the concerned court takes cognizance on the charge-sheet or complaint. Even otherwise, the Apex Court in the case of **Union of India Vs. Amrit Lal Manchanda and Another, (2004) 3 SCC 75** and **Jitendra Kumar Singh and Another Vs. State of U.P. and Others, (2010) 3 SCC 119** observed that observations of the court are neither to be read as Euclid's theorem nor as a provision of statute and that too taken out of their context and isolated observation in a judgement cannot be treated as a precedent dehors the fact. The discussion in a judgement is meant to explain, not to define.

22. The Constitution Bench of Apex Court in the case of **Shri Gurbaksh Singh Sibbia (supra)** while considering the issue of limitation on the duration of anticipatory bail also considered the legislative intent behind enacting the Section 438 Cr.P.C. (corresponding Section 482 B.N.S.S.) and observed that the proof of legislative intent can be gathered from the language which legislature uses but in case of ambiguity, same can be resolved by resort to extraneous aids. It was also observed that there must be imminent likelihood of arrest, which is the basis for the maintainability of anticipatory bail. Relevant extract of paragraph no. 12 of **Shri Gurbaksh Singh Sibbia (supra)** is being quoted as under :

"The proof of legislative intent can best be found in the language which the legislature uses. Ambiguities can undoubtedly be resolved by resort to extraneous aids but words, as wide and explicit as have been used in Section 438, must be given their full effect, especially when to refuse to do so will result in undue impairment of the freedom of the individual and the presumption of innocence. It has to be borne in mind that anticipatory bail is sought when there is a mere apprehension of arrest on the accusation that the applicant has committed a non- bailable offence. A person who has yet to lose his freedom by being arrested asks for freedom

in the event of arrest. That is the stage at which it is imperative to protect his freedom, insofar as one may, and to give full play to the presumption that he is innocent. In fact, the stage at which anticipatory bail if generally sought brings about its striking dissimilarity with the situation in which a person who is arrested for the commission of a non-bailable offence asks for bail."

23. The Constitution Bench of the Apex Court again in paragraph no. 41 of **Shri Gurbaksh Singh Sibbia (supra)** observed that while granting anticipatory bail under Section 438 Cr.P.C., a possible conflict between the **right of an individual to his liberty and the right of the police to investigate into crimes reported** to them can be avoided. Paragraph no. 41 of **Shri Gurbaksh Singh Sibbia (supra)** is quoted as under :

41. Apart from the fact that the very language of the statute compels this construction, there is an important principle involved in the insistence that facts, on the basis of which a direction under Section 438(1) is sought, must be clear and specific, not vague and general. It is only by the observance of that principle that a possible conflict between the right of an individual to his liberty and the right of the police to investigate into crimes reported to them can be avoided. A blanket order of anticipatory bail is bound to cause serious interference with both the right and the duty of the police in the matter of investigation because, regardless of what kind of offence is alleged to have been committed by the applicant and when, an order of bail which comprehends allegedly unlawful activity of any description whatsoever, will prevent the police from arresting the applicant even if he commits, say, a murder in the presence of the public. Such an order can then become a charter of lawlessness and a weapon to stifle prompt investigation into offences which could not possibly be predicated when the order was passed. Therefore, the court which grants anticipatory bail must take care to specify the offence or offences in respect of which alone the order will be effective. The power should not be exercised in a vacuum.

24. The Apex Court in the case of **Arun Kumar Aggarwal Vs. State of Madhya Pradesh and Others, (2014) 13 SCC 707** has considered the effect of observation made in the judgement and held that the term "obiter dictum" is a judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive).

25. When the intention of the legislature is evident from the language of a section, the court should not add any word to interpret in a way that would result in an interpretation that was never intended by the legislature. The Apex Court in the case of **Supreme Paper Mills Limited Vs. Assistant Commissioner, Commercial Taxes, Calcutta and others, (2010) 11 SCC 593** also observed as under :

"Where the statutory language is clear and unambigious, it would not be proper for the court to add any words thereto and evolve some legislative intent not found in the statute."

26. The Apex Court in the case of **Sukhdev Singh Vs. State of Haryana, (2013) 2 SCC 212** considered the issue of

interpretation of statute and observed as under :

"No law can be interpreted so as to frustrate the very basic rule of law. It is a settled principle of interpretation of criminal jurisprudence that the provisions have to be strictly construed."

27. From the perusal of Section 482 B.N.S.S. (438 Cr.P.C.) as well as judgement discussed above, it is clear that language of Section 482 B.N.S.S. is very clear and there is no ambiguity and purpose of anticipatory bail u/s 482 B.N.S.S. (438 Cr.P.C.) is to grant protection from unwanted and arbitrary arrest on the part of police or other prosecuting agency without warrant and not against the custody which could have been taken by the court on appearance before the concerned court concerning accusation of committing a non-bailable offence.

28. From the conjoint reading of Section 482 (1) and 482 (3) of B.N.S.S., it is clear that there must be an apprehension of arrest by the police without a warrant. Now, the question arises if in a complaint case, filed on accusation of committing non-bailable offence, the court issues an arrest warrant or proclamation against the accused for his appearance, whether in that case anticipatory bail would be maintainable even though the accused has apprehension of arrest ? This question is no more res integra.

29. The Apex Court in the recent judgement in the case of **Srikant Upadhyay and Others Vs. State of Bihar and Anr., (2024) INSC 202** after considering the earlier judgements of the Apex Court in the cases of **Prem Shankar Prasad Vs. State of Bihar and Another, (2022) 14 SCC 516, Lavesh Vs. State (NCT of Delhi), (2012) 8 SCC 730 and State of Madhya Pradesh Vs. Pradeep Sharma, (2014) 2 SCC 171** observed that in case wherein a warrant of arrest or a proclamation is issued, the applicant is not entitled to invoke the extraordinary remedy of anticipatory bail. However, in exceptional circumstances, the court can grant anticipatory bail even on the issuance of a non-bailable warrant or proclamation. Relevant extract of the judgement of **Srikant Upadhyay (supra)** is being quoted as under :

At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant.

30. Therefore, if a court issues a summons or a bailable warrant in a complaint case then it cannot be presumed that the person has a reasonable apprehension of being arrested by the police or prosecuting agencies even if there is an accusation of committing a non-bailable offence in the complaint.

31. So far as the judgement of the Apex Court in **Bharat Chaudhary and Another Vs. State of Bihar and Another, (2003) 8 SCC 77**, judgement of Division Bench of Delhi High Court in the case of **P.V. Narsimha Rao (supra)** and judgement of Patna High Court in the case of **Muni Khatoon (supra)** relied upon by learned counsel for the applicant are concerned, this Court with great respect

submits that these judgements are against the ratio of Constitution Bench judgement of Supreme Court in the case of **Shri Gurbaksh Singh Sibbia (supra)** as well as **Sushila Aggarwal (supra)** wherein it is clearly observed that apprehension of arrest in Section 438 Cr.P.C. (482 B.N.S.S.) must involve an arbitrary and **unwanted arrest by the police**. Therefore, when a person is taken into custody by the court upon appearing before it, in response to a summons, this cannot be classified as an arrest as mentioned in Section 482 B.N.S.S.

32. Therefore, on the basis of above analysis, this Court holds the following :

(i) In a complaint case involving accusation of a non-bailable offence, anticipatory bail is not maintainable upon the issuance of a summons, as there is no apprehension of arrest by the police without warrant;

(ii) in the aforementioned complaint case, when a bailable warrant is issued, although the accused may fear the arrest in pursuance of bailable warrant but he will be released on bail on his readiness to provide it. Therefore, in such cases also, the anticipatory bail is not maintainable as there is no apprehension of arrest and detention.

*(iii) In the event of a non-bailable warrant or proclamation issued in the above complaint case, anticipatory bail is typically not maintainable. However, in view of the judgement of the Apex Court in **Srikant Upadhyay (supra)**, the court may grant pre-arrest bail in exceptional circumstances in the interest of justice.*

33. Coming back to the facts of the present complaint case, record shows that till date, warrant whether bailable or non-bailable, has not been issued, therefore, merely issuance of summon by order dated 23.08.2022 against the applicant would not come within the premises of apprehension of being arrested by the police.

34. Therefore, the present anticipatory bail application is not maintainable. Accordingly, it is **rejected**.

35. However, the applicant is at liberty to file a regular bail application before the court below within a period of 15 days. In case such an application is filed, the court below shall consider the same in accordance with law.

(2025) 8 ILRA 70
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 29.08.2025

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.
THE HON'BLE SYED QAMAR HASAN RIZVI, J.

Criminal Misc. Writ Petition No. 7463 of 2025

Rama Shankar ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Ramesh Chandra Pandey

Counsel for the Respondents:
G.A.

Issue for Consideration

Whether the opening of the History-sheet by the concerned police authority on the basis of one case which was registered way back in the year 2008 and finally decided in favour the petitioner acquitting him vide the aforesaid judgment and order dated 06.04.2022 is justified under law without assigning any cogent reason in the light of Regulation(s) 228 & 240 of the U.P. Police Regulations

Head Notes

The Constitution of India, 1950-Article 14, 21 & 226 - The Uttar Pradesh Police Regulations-Regulations 228 & 240 - No criminal case is lying against the petitioner - Petitioner cannot be bracketed as confirmed or professional criminal - Regulation 228 of the U.P. Police Regulation casts duty to open the History-sheet only on the basis of credible material - No 'subjective satisfaction' or 'reasonable belief that the petitioner is a confirmed or professional criminal or habitual offender - Opening of the 'History-sheet' should not be a mechanical exercise - Liberty to the petitioner to prefer a comprehensive representation afresh before the Superintendent of Police - Petition disposed of.

Held- Petitioner cannot be bracketed as confirmed or professional criminal - Regulation 228 of the U.P. Police Regulation casts duty on the Police Officer to construe the regulation strictly and open the History-sheet only on the basis of credible material - Record available before this Court does not indicate any such order to show the 'subjective satisfaction' or 'reasonable belief' of the Superintendent of Police that the petitioner is a confirmed or professional criminal or habitual offender - The opening of the 'History-sheet' of any person should not be a mechanical exercise, rather the same should be careful, proper and thorough as it is directly connected with the Article 21 of the Constitution of India - Opening of 'History-sheet' must be on the basis of subjective satisfaction of the competent authority, and the subjective satisfaction must be armed with legal provisions vis-a-vis well reasoned and speaking decision, failing which it would be hit by Article 14 of the Constitution of India being arbitrary in nature and not permissible in law - Liberty granted to the petitioner to prefer a comprehensive representation afresh before the Superintendent of Police, Ambedkar Nagar (respondent no.2), raising all pleas and grounds which are available to him. **(Para 31 & 32)** (E-15)

Case Law Cited

Vijay Narain Singh versus State of Bihar, (1984) 3 SCC 14, AIR 1984 SC 1334;Malak Singh and others versus State of P&H and others, (1981) 1 SCC 420;Gobind versus State of Madhya Pradesh and others, (1975) 2 SCC 148;Amanatullah Khan versus The Commissioner of Police, Delhi and others (arising out of SLP (Crl.) No. 5719 of 2023; decided on 07.05.2024)

List of Acts

The Constitution of India, 1950, The Uttar Pradesh Police Regulations

List of Keywords

Opening of the History-sheet not mechanical exercise; Subjective satisfaction; Regulation 228 casts duty on the Police Officer; Construe the regulation strictly; History-sheet on the basis of credible material; Reasonable belief;

Case Arising From

Respondent is unnecessarily harassing the petitioner in one way or the other and not only the petitioner has been harassed, his entire family has been made to harassment causing unbearable disturbance in the life of the petitioner and his entire family and they are living under fear and threat perceptions. The petitioner has also filed a copy of the representation dated 17.07.2025 as contained in annexure no.9 to the writ petition, whereby the petitioner made request to the opposite party no.2/Superintendent of Police, District Ambedkar Nagar to close the History-sheet in view of the fact that no criminal case against the petitioner was pending till filing of the instant writ petition. (E-15)

Appearances for Parties

Counsel for Petitioner(s) : Ramesh Chandra Pandey
Counsel for Respondent(s) : G.A.

(Delivered by Hon'ble Syed Qamar Hasan Rizvi, J.)

1. Heard Sri Ramesh Chandra Pandey, learned counsel for the petitioner and Sri G.D. Bhatt, learned A.G.A. appearing for the State/opposite parties and perused the record.

2. In view of the controversy involved in this case, this Court with the consent of

the parties proceeds to dispose of the same without inviting counter affidavit.

3. By means of the present writ petition under Article 226 of the Constitution of India, the petitioner has prayed for a writ in the nature of certiorari seeking quashment of the History-sheet of the petitioner, if any, after summoning the same from its original.

4. The case of the petitioner is that he obtained information under the Right to Information Act that almost from all the police stations of the District- Ambedkar Nagar, no criminal case is lying against the petitioner but the Station House Officer, Police Station- Malipur, District- Ambedkar Nagar (respondent no.3) has published the name of the petitioner as History-sheeter in the list and has pasted the same at the police station.

5. It is pleaded on behalf of the petitioner that the third respondent is unnecessarily harassing the petitioner in one way or the other and not only the petitioner has been harassed, his entire family has been made to harassment causing unbearable disturbance in the life of the petitioner and his entire family and they are living under fear and threat perceptions. The petitioner has also filed a copy of the representation dated 17.07.2025 as contained in annexure no.9 to the writ petition, whereby the petitioner made request to the opposite party no.2/Superintendent of Police, District- Ambedkar Nagar to close the History-sheet in view of the fact that no criminal case against the petitioner was pending till filing of the instant writ petition.

6. The epitome of facts which needs to be mentioned for the purpose of deciding the controversy involved in the present writ petition and emanating from the material available before this Court is that the petitioner is resident of Village Rasoolpur Bakarganj, Police Station- Malipur, District- Ambedkar Nagar and earns the livelihood for himself and his family by setting up Cart of 'Batasha, Tikki and Chowmin'. It has been pleaded on behalf of the petitioner that he was falsely implicated in Case Crime No. 1125 of 2008, under Section 379/411 I.P.C. & Section 3(1) of The U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986, Police Station- Kotwali Ayodhya, District- Faizabad. The learned trial court held the trial and finally acquitted the petitioner vide the judgment and order dated 06.04.2022 passed by the learned Additional District & Sessions Judge/Special Judge (Gangster Act), Court No.5, Faizabad. For ready reference, the aforesaid order is quoted herein-below:

*"**आदेश***

विशेष दाण्डिक परीक्षण (गिरोहबंद) संख्या 80/2009 संबंधित मुकदमा अपराध संख्या 1125/2008 थाना को० अयोध्या जनपद फैजाबाद अयोध्या में अभियुक्त रमा शंकर अग्रहरि एवं मदन गोपाल तिवारी को अंतर्गत धारा 379 411 भा०द०स० एवं धारा 3(1) उ०प्र० गिरोहबंद एवं समाज विरोधी क्रियाकलाप निवारण अधिनियम 1986 के अपराध के आरोपो में दोषमुक्त किया जाता है। अभियुक्तगण जमानत पर है उनके जमानतनामें व बंध पत्र निरस्त किये जाते है तथा उनके जमानतदारो को उनके दायित्वो से उन्मोचित किया जाता है। अभियुक्त द्वारा

धारा 437ए द0प्र0स0 का अनुपालन अपील के प्रयोजन से पचास हजार रूपये का व्यक्तिगत बंध पत्र व इसी राशि की दो जमानते दाखिल किया जा चुका है जो अग्रिम छः माह तक अवधि के लिये प्रभावी होगी।"

7. The allegation as levelled by the petitioner in paragraph no.8 of the writ petition is that all of sudden the local police of the Police Station- Malipur, District-Ambedkar Nagar started harassing the petitioner without assigning any reason and informed him that the proceedings as history-sheeter is going on against him. Learned counsel appearing on behalf of the petitioner states that on coming to know that the name of the petitioner has been mentioned in the list of history-sheeters and his photograph has also been pasted at the Police Station- Malipur, District-Ambedkar Nagar, he made an application under the Right to Information Act seeking information regarding the status of registered cases, if any, in the respective police stations, the details whereof has been mentioned by the petitioner in paragraph no.10 of the writ petition, which is quoted hereinunder:

Information	Circle	Police Stations
13.3.2025	Alapur	Alapur, Jahangirganj, Rajesultanpur
17.3.2025	Jalalpur	Jalalpur, Jaitpur, Malipur and Katka
23.3.2025	Bhiti	Bhiti, Ahirauli, Mahraua and Mahila Thana
27.3.2025	-	Kotwali, Akbarpur, Baskhari, Sammanpur, Bewana
March 2025	-	Kotwali Tanda, Ibrahimpur, Hanswar, Aliganj

8. It is submitted on behalf of the petitioner that on moving the application dated 09.04.2025 under the Right to Information Act, he was informed on 24.04.2025 by the Public Information Officer/Circle Officer, Jalalpur, District-Ambedkar Nagar that no proceeding of history-sheet has been done against the petitioner by the Police Stations namely Jalalpur, Jaitpur and Katka, falling under Circle Jalalpur. However, proceeding has been done by the Police Station- Malipur, District- Ambedkar Nagar. Further, the Circle Officer, Tanda, District- Ambedkar Nagar vide letter dated 03.05.2025 also furnished information to the Public Relation Officer/Nodal Officer, Additional Police Commissioner, West, District-Ambedkar Nagar that no proceeding of History-sheet has been done by the Police Stations- Kotwali, Tanda, Ibrahimpur, Hanswar and Aliganj. Similar pieces of information were also provided by the Circle Officer, Bhiti, District- Ambedkar Nagar that no such proceeding against the petitioner has been done by the Police Stations- Bhiti, Ahirauli, Maharua and Mahila Thana.

9. Learned counsel for the petitioner has drawn the attention of this Court to a letter written by the Assistant Information Officer/Circle Officer, Ambedkar Nagar addressed to the Public Information Officer/Nodal Officer that no criminal case against the petitioner is found registered in any of the police stations falling under the concerned circle. It is also stated by the learned counsel for the petitioner that on the basis of the aforesaid definite information received from the concerned police stations and in the teeth of the fact that the only criminal case which was registered against the petitioner way back in the year 2008 bearing Case Crime No. 1125 of 2008, under Section 379/411 I.P.C. and Section 3(1) of The U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986, P.S. Kotwali Ayodhya, District-

Faizabad, has already been concluded wherein the petitioner has been acquitted vide the judgment and order dated 06.04.2022 passed by the Additional District & Sessions Judge/Special Judge (Gangster Act), Court No.5, Faizabad, against which no appeal was ever filed to the best of his information; the proceedings under Regulation 228 of the U.P. Police Regulations is totally arbitrary, illegal and unwarranted, as such the same is liable to be closed and the petitioner and his family may not be put to any harassment under the garb of such unwarranted proceeding.

10. It has been very emphatically argued by the learned counsel for the petitioner that the action on the part of the opposite parties bracketing the petitioner as History-sheeter despite having been acquitted in the only case as detailed herein-above and also when no case is pending in any of the police stations; suffers from the vice of non-application of mind and reflects the biased attitude of the opposite parties for the reason best known to them or may be at the instance of some persons inimical to the petitioner or due to some personal grudge. He further submits that the action of the concerned police authorities is in utter disregard to the mandatory provisions of Regulation(s) 228 and 240 of the U.P. Police Regulations, which require prior verification of facts and recording of its satisfaction before declaring anyone as History-sheeter.

11. It has been vehemently argued by the learned counsel for the petitioner that the petitioner was falsely implicated in only one criminal case as detailed in the preceding paragraphs in which he has been acquitted and no appeal against the acquittal has ever been preferred by the opposite parties. Even then, the petitioner has been put to unbearable harassment without just or legal cause, causing violation of petitioners Fundamental Rights guaranteed under Article 14, 19 and 21 of the Constitution of India. The contention of the learned counsel is that the basic requirement for opening History-sheet is that the person(s) must be of such kind that either they are or like to become habitual criminal or abettors of such criminals. He very categorically submitted that there is no material on record to show that the petitioner has ever posed any danger to law and order or public peace or in any manner falls within Class A and Class B as classified in Regulation 228 of the U.P. Police Regulations.

12. Learned counsel for the petitioner has also stated that the petitioners representation dated 17.07.2025 made before the second respondent/Superintendent of Police, District- Amebedkar Nagar has not been given any consideration till date, causing irreparable loss and injury to the petitioner.

13. Per contra, learned Additional Government Advocate appearing on behalf of the State-opposite parties on the basis of the instructions dated 13/14.08.2025 provided by the Sub Inspector, Police Station- Malipur, District- Ambedkar Nagar, submitted that the petitioner does not have a good image in the society and carries reputation of 'daring terrorist (दुस्साहसिक दहशतगर्द)' and a person dangerous to the society and as such taking into consideration the previous criminal history of the petitioner, History-sheet No. 67A dated 16.03.2010 has been opened in accordance with Regulation 240 of the U.P. Police Regulations. The relevant portion of the said instructions as placed by the

learned A.G.A. before this Court is extracted herein-below:

"1. यह कि प्रस्तर याचिकाकर्ता/ अभियुक्त रमा शंकर पुत्र गनपत सहाय निवासी रसूलपुर बाकरगंज, थाना मालीपुर, जनपद अम्बेडकरनगर एक हिस्ट्रीशीटर व शातिर किस्म का अपराधी है। जिनकी सामान्य ख्याति एवं दुस्साहसिक दहशतगर्द एवं जन समुदाय के लिये खतरनाक व्यक्ति होने की हैं तथा गुण्डा एवं बदमाश किस्म का व्यक्ति है। अभियुक्त/याची द्वारा कारित कृत्य आई०पी०सी० के अन्तर्गत वर्णित अपराधों का अभ्यस्त अपराधी है।

2. यह कि याचिकाकर्ता/अभियुक्त रमा शंकर पुत्र गनपत सहाय निवासी रसूलपुर बाकरगंज, थाना मालीपुर, जनपद अम्बेडकरनगर के विरूद्ध निम्नलिखित अभियोग पंजीकृत है:

1. मु०अ०सं०-1125/2008 धारा 379/411 आई०पी०सी० व धारा 3 (1) उ०प्र० गिरोह बंद एवं समाज विरोधी किया कलाप निवारण अधिनियत 1986 थाना कोतवाली अयोध्या, जनपद अयोध्या में पंजीकृत होकर विवेचनोपरान्त जरिये आरोप पत्र विवेचना समाप्त की गई तथा माननीय न्यायालय के आदेशानुसार दोषमुक्त किया जा चुका है।

3. यह कि याचिकाकर्ता/अभियुक्त रमाशंकर उपरोक्त एक अपराधी किस्म का व्यक्ति है। जो कि सह अभियुक्तो के साथ मिलकर चोरी सम्बन्धित अपराध कारित करने का आदि हैं। अभियुक्त/याची जिनका समाज में स्वच्छन्द रहना हितकर नहीं है व जिससे शांति भंग होने की प्रबल संभावना पाये जाने तथा अभियुक्त द्वारा आम जनता में भय एवं आतंक व्याप्त होने तथा अभियुक्त के विरूद्ध कोई गवाही देने को तैयार नहीं होता है। याची/अपीलार्थी ऐसे अपराधों को करने हेतु दूसरो को भी प्रेरित करता है जिसकी सामान्य ख्याति एव दुस्साहसिक दहशतगर्द एवं जन समुदाय के लिये खतरनाक व्यक्ति होने की है। गुण्डा एवं बदमाश किस्म का व्यक्ति है, जिसकी सामान्य ख्याति अच्छी नहीं है।

4. यह कि याची/अभियुक्त की सामान्य ख्याति एवं दुस्साहसिक दहशतगर्द एवं जन समुदाय के लिये खतरनाक व्यक्ति होने की है। जिसके विरूद्ध दर्ज आपराधिक इतिहास के आधार पर याची/अभियुक्त के पूर्व आपराधिक इतिहास तथा वर्तमान में आपराधिक गतिविधियों को दृष्टिगत रखते हुए अभियुक्त के विरूद्ध हिस्ट्रीशीटर संख्या-67ए दिनांक 16.03.2010 को खोली गई है। जोकि उ०प्र० पुलिस रेगुलेशन के पैरा 240 के अनुसार दोषसिद्ध या दोषमुक्त होने दोनो आधार पर खोली जा सकती हैं।

5. यह कि याचिकाकर्ता/अभियुक्त रमा शंकर पुत्र गनपत सहाय निवासी रसूलपुर बाकरगंज, थाना मालीपुर, जनपद अम्बेडकरनगर जोकि एक हिस्ट्रीशीटर है जिसकी समय-समय पर थाना स्थानीय की पुलिस द्वारा समय-समय पर निगरानी/सत्यापन हेतु याची/अभियुक्त से पूछताछ की जाती है तथा वर्तमान में भी

यावी/अभियुक्त की निगरानी की जा रही हैं। थाना मालीपुर, जनपद अम्बेडकरनगर द्वारा याची/अभियुक्त व उसके परिजनो को स्थानीय थाने की पुलिस द्वारा किसी भी प्रकार से हैरान व परेशान नहीं किया गया है तथा याची/अभियुक्त के द्वारा पुनः अपराध कारित किये जाने की संभावना से इनकार नहीं किया जा सकता है। हिस्ट्रीशीटर की निगरानी बन्द किये जाने हेतु उ०प्र० पुलिस रेगुलेशन के अनुसार पुलिस के उच्चाधिकारियों के आदेशो / निर्देशों के क्रम में कार्यवाही किया जाना समीचीन हैं।"

14. Confronting the aforesaid allegation as levelled by the learned A.G.A. on the basis of the instructions received from the Sub Inspector, P.S.- Malipur, District- Ambedkar Nagar, learned counsel for the petitioner very emphatically asserted that the same are totally baseless, purported and malicious. He submitted that in the absence of any proof or material on record, the aforesaid allegations made against the petitioner are highly deplorable and cannot be given any legal weightage to proceed against the petitioner in any manner, whatsoever. Further, the said instructions from the concerned police stations reflect the vindictive attitude of the local police against the petitioner which cannot be allowed under the law to give colour of a legal proceeding.

15. Heard the learned counsel for the parties and perused the material available before this Court.

16. Before arriving at a definite conclusion that in the instant case whether the opening of the History-sheet by the concerned police authority on the basis of one case which was registered way back in the year 2008 and finally decided in favour the petitioner acquitting him vide the aforesaid judgment and order dated 06.04.2022 is justified under law without assigning any cogent reason in the light of Regulation(s) 228 & 240 of the U.P. Police Regulations; it would be appropriate to go through the provisions of Regulation 228 & 240 of the U.P. Police Regulations. For convenience, the relevant extract of the same is quoted herein-below:

228. Part V consists of history sheets. These are the personal records of criminals under surveillance. History-sheets should be opened only for persons who are or likely to become habitual criminal or abettors of such criminals. There will be two classes of history-sheets:

(1) Class A history-sheets for dacoits, burglars, cattle-thieves, railway-goods wagon thieves, and abettors thereof

(2) Class B history-sheets for confirmed and professional criminals who commit crimes other than dacoity, burglary, cattle-theft, and theft from railway goods wagons, e.g. professional cheats and other experts for whom criminal personal files are maintained by the Criminal Investigation Department, poisoners, cattle poisoners, railway passenger thieves, bicycle thieves, expert pick-pockets, forgers, coiners, cocaine and opium smugglers, hired ruffians and goondas, telegraph wire-cutters, habitual illicit distillers and abettors thereof.

History-sheets of both classes will be maintained in similar form, but those for class B will be distinguished by a red bar marked at the top of the first page. No history-sheet of class B may be converted into a history-sheet of class A, though should be the subject of a history-sheet of

class B be found to be also addicted to dacoity, burglary, cattle-theft or theft from railway goods wagons. A class, as well as B class, surveillance may under paragraph 238 be applied to him. In the event of a class A history-sheet man becoming addicted to miscellaneous crime his history-sheet may be converted into a class B history-sheet with the sanction of the Superintendent.

.....

240. History-sheets of both classes may be opened (1) on suspicion or (2) on conviction or acquittal. No history-sheet may be opened without the orders of the Superintendent of Police.

(1) On suspicion- Whenever as a result of investigation into a case of dacoity, burglary, cattle theft from railway goods wagons or into a case of miscellaneous crime of a professional type, the officer-in-charge of a police station applies for the name of any person to be entered in the crime register as reasonably suspected, he must at the same time report whether the suspect is under surveillance, and if not, whether a history-sheet should in his opinion be opened for him. Should the gazetted officer-in-charge of a subdivision on receiving such a report and after such further inquiry as he may think necessary consider that a history-sheet is required he will forward the report to the Superintendent who if he accepts the proposal will define the class of history-sheet to be opened and pass orders as to whether the suspect should be 'starred'. Similarly whenever an officer-in-charge of a police station finds reason to believe, otherwise than in the course of an investigation, that any resident of his circle is addicted to crime, or whenever a gazetted officer or Circle inspector for any reason believes that a history-sheet for any person is necessary a report must be submitted to the Superintendent, who will pass orders on it as laid down above.

(2) On conviction or acquittal Whenever any person is sent for trial on a charge of dacoity, burglary, cattle theft or theft from a railway goods wagons or of miscellaneous crime of a professional type, the officer-in-charge of the police station must state in his diary whether the accused has a history-sheet and if not, whether he recommends that a history sheet should be opened for him. It will be the duty of the public prosecutor, if the accused is acquitted to inform the Superintendent, in his report on the acquittal or otherwise, whether in his opinion a history-sheet is required. On this the Superintendent will pass any orders to the station officer that may be necessary. If the accused is convicted, the public prosecutor must, in the remarks column of the daily report of convictions and acquittals (Form No. 107) enter in red ink the words. 'On H.S.' if a history-sheet is already open, or the letters 'H.S.' if he recommends that one should be prepared. In either case he must prepare and attach to the daily report of convictions and acquittals a P.R. slip (Form No. 313). If a history-sheet is already open or if the Superintendent agrees that a history-sheet should be opened he will sign this P.R. slip and initial the letters 'H.S. or 'On H.S.' on the daily report of convictions and acquittals. The public prosecutor will then communicate the Superintendent's orders for the opening of a history sheet to the police station concerned and will forward the P.R. slip to the Superintendent of Jail. If no history-sheet is opened and if the Superintendent does not agree that one should be prepared, he will not sign the P.R. slip. which will be cancelled.

If the accused is a resident of another district or State or has been sent for trial by the railway police, the same

procedure will be followed except that the Superintendent of Police will not order a history-sheet to be opened. If the accused is convicted and the Superintendent considers a history-sheet to be desirable the P.R. slip will be signed and sent to the Superintendent of the Jail and the Superintendent of Jail shall furnish the Superintendent of Police with a receipt for the P.R. slip. In column 10 Form No. 148 (conviction roll) the public prosecutor will note in red ink that this has been done and in column 15 of the same form a note will be made recommending that a history-sheet should be opened: Any conviction roll on which a recommendation for the opening of history-sheet has been made must on receipt in the district of the convict's residence be put up before the Superintendent of Police of that district who will decide whether a history-sheet should be opened or not, and will address the Superintendent of the Jail regarding the cancellation of the P.R. slip if he does not agree that a history-sheet is necessary. Notwithstanding anything in the above, the Superintendent of Police of any district in Uttar Pradesh shall subject to the final decision of the Deputy Inspector-General of the Range, to whom any question of disagreement must be referred, be bound to open a history-sheet at the request of the Superintendent of Government Railway Police for any person resident who is suspected or convicted of crime on the railway. The Superintendent, Railway Police should specify the kind of surveillance required in each case.

In the case of persons, sent for trial by the Railway police, in which the Superintendent considers a history-sheet desirable, the public prosecutor will send Form No. 143 (conviction roll) endorsed, as directed above, to the Superintendent of the man's district, through the Superintendent, Railway Police.

The Superintendent, Railway Police, in forwarding Form No. 148 to the Superintendent of the district concerned will state whether he considers a history-sheet necessary. If not, he will request the Superintendent of the Jail to cancel the P.R. slip.

17. Regulation 228 of the U.P. Police Regulations provides that <u>the History-sheets should be opened only for the persons who are or likely to become habitual criminal or abettors of such criminals.</u>

(emphasis supplied)

18. It is also provided that there will be two classes of History-sheets namely Class A and Class B. The process to start a History-sheet of a criminal arises from the stage that a particular person is considered or thought to be a confirmed or professional criminal for which there should be some basis or material and in case of complete absence of such material, the action in starting a History-sheet will be illegal and without jurisdiction. From perusal of Regulation 228 of the U.P. Police Regulations, it is explicit that the History-sheets can be opened only for the persons who are or likely to become habitual criminal **or** abettors of such criminals. The word Only used in the said Regulation reflects the scope of Regulation 228 of the Regulations only, meaning thereby that the History-sheets can be opened either for the persons who are or likely to become habitual criminal or abettors of such criminals. The expression Habitual Criminal has been categorically interpreted by the Hon'ble Apex Court in the Case of **Vijay Narain Singh versus**

State of Bihar, reported in (1984) 3 SCC 14, AIR 1984 SC 1334. Speaking for the majority, His Lordship, Hon'ble E.S. Venkataramaiah, J. held:

The expression 'habitually' means 'repeatedly' or 'persistently'. It implies a thread of continuity stringing together similar repetitive acts. Repeated, persistent and similar, but not isolated, individual and dissimilar acts are necessary to justify an inference of habit. .....A single act or omission .....cannot therefore be characterised as a habitual act or omission .....Because the idea of 'habit' involves an element of persistence and tendency to repeat the acts or omissions of the same class or kind, if the acts or omissions in question are not of the same kind or even if they are of the same kind when they are committed with a long interval of time between them they cannot be treated as habitual ones.

19. Canvassing the facts of the present case, in the light of the explanation given by the Hon'ble Supreme Court to the expression Habitual?, we find that there was only a solitary case having Case Crime No. 1125 of 2008 that resulted into acquittal in the year 2022 and there is no other criminal case or complaint found registered against the petitioner before the police station or the court concerned to indicate any criminal history. As such, this Court fails to comprehend any thread of continuity stringing together similar repetitive acts and as such there appears to be no basis to presume that the person is a confirmed or professional criminal. Further, the allegations levelled in the instructions dated 13/14.08.2025 as quoted herein-above also does not disclose the basis of the allegations or any reference of any case to establish such serious allegations as are made against the petitioner. As per the said instructions, the History-sheet No. 67A dated 16.03.2010 was opened against the petitioner on the basis of his past criminal history and the present criminal activities, in accordance with the provisions of Regulation 240 of the U.P. Police Regulations. Regulation 240 of the U.P. Police Regulations provides that the History-sheets may be opened in the following two situations, subject to the order of the Superintendent of Police:

1. On Suspicion
2. On Conviction or Acquittal

20. It goes without saying that no History-sheet can be opened without the orders of Superintendent of Police. In the first situation that is On Suspicion?, the Officer-in-charge of the police station applies for the name of any person to be entered in the crime register as reasonably suspected and at the same time shall submit its report as to whether the suspect is under surveillance, and if not, whether a history-sheet should in his opinion be opened for him. The gazetted officer-in-charge of the sub-division on receiving such a report and after such further inquiry as he may think necessary consider that the History-sheet is required he will forward the report to the Superintendent for appropriate orders. It is further provided that whenever an officer-in-charge of the police station finds reason to believe, otherwise than in the course of an investigation, that any resident of his circle is addicted to crime, or whenever a gazetted officer or Circle Inspector for any reason believes that a history-sheet for any person is necessary a report must be submitted to the Superintendent, who will pass appropriate orders.

21. In the second situation that is On Conviction or Acquittal, the specific order

of the concerned Superintendent of Police on the basis of the recommendation/ report as provided in Regulation 240(2) of the U.P. Police Regulations, is mandatorily required.

22. In the instant case, as per the record, only one case was registered in the year 2008 against the petitioner which ultimately resulted into acquittal and except the same there is nothing on record to show that the petitioner is or has been a habitual offender. Prima-facie, the petitioner cannot be classified as a History-sheeter, even otherwise Regulation 240 of the U.P. Police Regulations though contemplates opening of the History-sheet on the basis of suspicion and on the basis of conviction or acquittal, but at the same time requirement of cogent and reliable material to form 'suspicion' about a person cannot be ruled out. Further, the recital of the written instructions, as quoted herein-above, does not indicate any reference to any order passed by the Superintendent of Police as provided under Regulation 240 of the U.P. Police Regulations. Additionally, the documents as contained in Annexure No.5, 6, 7 and 8 also reflect that no criminal antecedents of the petitioner are available in the concerned police stations.

23. At this stage, it would not be out of place to notice that the Regulation 232 and 233 of the U.P. Police Regulations provide that the History-sheet of Class B will be continuously open records and the subjects of these sheets will except for every special reasons remain under surveillance until death. The discontinuance of surveillance of the subject of a History-sheet does not entail closing that History-sheet. A History-sheet which is only a record of information need never be considered closed. In the case of persons whose surveillance is discontinued a note should be made to this effect in the history-sheet, and thereafter no periodical or other entries need be made unless something comes to notice which it is desirable to enter in the sheet.

24. Further, Regulation 234 of the U.P. Police Regulations categorically provides that no History-sheet of Class A may be discontinued without the sanction of the Superintendent of Police. If it is denied to discontinue the surveillance of the subject of a history sheet of Class B, the sanction of the Deputy Inspector General or Superintendent, Railway Police, must be obtained.

25. Learned counsel for the petitoner also argued that putting the name of the petitioner in the History-sheet amounts to violation of his fundamental right guaranteed under Article 21 of the Constitution of India and by naming the petitioner as History-sheeter the police authorities have seriously encroached upon the privacy of the petitioner and his fundamental right of personal liberty.

26. Taking into consideration the spirit of the Article 21 of the Constitution of India, this Court finds that the fundamental right as guaranteed under Article 21 is so designed that it protects the rights of a person to the extent that he shall not be deprived of his life or personal liberty except by the procedure established by 'law'. The provisions of U.P. Police Regulations carry the force of law and as such the enforcement of the same within the legal bounds cannot be taken as the violation of the rights guaranteed under Article 21 of the Constitution of India.

27. This aspect of the matter has been dealt with by the Hon'ble Apex Court in the case of **Malak Singh and others versus State of P&H and others, reported in (1981) 1 SCC 420**, wherein Hon'ble Mr.

Justice Chinnapa Reddy (as he then was) speaking on behalf of Bench observed that:

"8. The entry in the surveillance register is to be made on the basis of the material provided by the history sheet whose contents, by their very nature have to be confidential. It would be contrary to the public interest to reveal the information in the history sheet, particularly the source of Information. Revelation of the source of information may put the Informant in jeopardy. The observance of the principle of natural Justice, apart from not serving the ends of justice may thus lead to undesirable results. We accordingly hold that the rule audi alteram partem is not attracted.

9. But all this does not mean that the police have a licence to enter the names of whoever they like (dislike) in the surveillance register; nor can the surveillance be such as to squeeze the fundamental freedoms guaranteed to all citizens or to obstruct the free exercise and enjoyment of those freedoms; nor can the surveillance so intrude as to offend the dignity of the individual. Surveillance of persons who do not fall within the categories mentioned in Rule 23.4 or for reasons unconnected with the prevention of crime, or excessive surveillance falling beyond the limits prescribed by the rules, will entitle a citizen to the court's protection which the court will not hesitate to give. The very Rules which prescribe the conditions for making entries in the surveillance register and the mode of surveillance appear to recognise the caution and care with which the police officers are required to proceed. The note following Rule 23.4 is instructive. It enjoins a duty upon the police officer to construe the rule strictly and confine the entries in the surveillance register to the class of persons mentioned in the rule. Similarly Rule 23.7 demands that there should be no illegal interference in the guise of surveillance. Surveillance, therefore, has to be unobtrusive and within bounds."

10. Ordinarily the names of persons with previous criminal record alone are entered in the surveillance register. They must be proclaimed offenders, previous convicts, or person who have already been placed on security for good behaviour. In addition, names of persons who are reasonably believed to be habitual offenders or receivers of stolen property whether they have been convicted or not may be entered. It is only in the case of this category of persons that there may be occasion for abuse of the power of the police officer to make entries in the surveillance register. But, here, the entry can only be made by the order of the Superintendent of Police who is prohibited from delegating his authority under Rule 23.5. Further it is necessary that the Superintendent of Police must entertain a reasonable belief that persons whose names are to be entered in Part II are habitual offenders or receivers of stolen property. While it may not be necessary to supply the grounds of belief to the persons whose names are entered in the surveillance register it may become necessary in some cases to satisfy the court when an entry is challenged that there are grounds to entertain such reasonable belief. In fact in the present case we sent for the relevant records and we have satisfied ourselves that there were sufficient grounds for the Superintendent of Police to entertain a reasonable belief. In the result we reject both the appeals subject to our observations regarding the mode of surveillance."

28. In **Gobind versus State of Madhya Pradesh and others, reported in (1975) 2 SCC 148**, the Hon'ble Supreme Court has been pleased to observe that:

"Depending on the character and antecedents of the person subjected to surveillance as also the objects and the limitation under which surveillance is made, it cannot be said surveillance by domiciliary visits would always be unreasonable restriction upon the right of privacy. Assuming that the fundamental rights explicitly guaranteed to a citizen have penumbral zones and that the right to privacy is itself a fundamental right, that fundamental right must be subject to restriction on the basis of compelling public interest As Regulation 856 has the force of law, it cannot be said that the fundamental right of the petitioner under Article 21 has been violated by the provisions contained in it; for, what is guaranteed under that Article is that no person shall be deprived of his life or personal liberty except by the procedure established by 'law'."

29. In the instant case, we find that only one criminal case against the petitioner was registered in the year 2008 wherein he was acquitted by the Court of Sessions vide the judgment and order dated 06.04.2022. This solitary case in the absence of any other criminal history or any substantial material to show that the petitioner is or like to become habitual criminal or abettor of such criminals, is not sufficient to entitle the Police Authorities to open History-sheet against the petitioner; as he cannot be termed as confirmed and professional criminal. If this proposition is not accepted then even a first offender may find himself history-sheeted and it will be an alarming situation to conceive.

30. Recently, the Hon'ble Apex Court of India in the case of **Amanatullah Khan versus The Commissioner of Police, Delhi and others (arising out of SLP (Crl.) No. 5719 of 2023; decided on 07.05.2024)**, has taken a very serious note of the issue in hand by passing a detailed order and expanded scope of the proceedings in exercise of its suo-moto power. The Hon'ble Supreme Court has been pleased to issue a guideline to the Police authorities of all the States and Union Territories to ensure that no mechanical entries in History Sheet are made of innocent individuals, simply because they happen to hail from the socially, economically and educationally disadvantaged backgrounds, along with those belonging to Backward Communities, Scheduled Castes & Scheduled Tribes. The relevant part of the aforesaid judgement is extracted herein-below:

14. Having partially addressed the grievance of the appellant, we now, in exercise of our suo motu powers, propose to expand the scope of these proceedings so that the police authorities in other States and Union Territories may also consider the desirability of ensuring that no mechanical entries in History Sheet are made of innocent individuals, simply because they happen to hail from the socially, economically and educationally disadvantaged backgrounds, along with those belonging to Backward Communities, Scheduled Castes & Scheduled Tribes. While we are not sure about the degree of their authenticity, but there are some studies available in the public domain that reveal a pattern of an unfair, prejudicial and atrocious mindset. It is alleged that the Police Diaries are maintained selectively of individuals belonging to Vimukta Jatis, based solely on caste-bias, a somewhat similar manner as happened in colonial times. All the State Governments are therefore expected to take necessary preventive measures to safeguard such

communities from being subjected to inexcusable targeting or prejudicial treatment. We must bear in mind that these pre-conceived notions often render them invisible victims due to prevailing stereotypes associated with their communities, which may often impede their right to live a life with self-respect.

15. The value for human dignity and life is deeply embedded in Article 21 of our Constitution. The expression life unequivocally includes the right to live a life worthy of human honour and all that goes along with it. Self-regard, social image and an honest space for oneself in ones surrounding society, are just as significant to a dignified life as are adequate food, clothing and shelter.

16. It seems that a periodic audit mechanism overseen by a senior police officer, as directed for the NCT of Delhi, will serve as a critical tool to review and scrutinize the entries made, so as to ascertain that these are devoid of any biases or discriminatory practices. Through the effective implementation of audits, we can secure the elimination of such deprecated practices and kindle the legitimate hope that the right to live with human dignity, as guaranteed under Article 21, is well protected.

17. We are conscious of the fact that States or Union Territories, other than the NCT of Delhi, are not before us. They have not been heard. No positive mandamus can thus be issued to them. Further, we are not aware of the existing Rules/Policies or Standing Orders in vogue in different States/Union Territories. We, therefore, deem it appropriate, at this stage, to direct all the States/Union Territories to revisit their policy-regime and consider whether suitable amendments on the pattern of the Delhi Model are required to be made so that our observations made in paragraphs 14 to 16 of this order can be given effect in true letter and spirit.

18. The Registry is, accordingly, directed to forward a copy of this judgement to the Chief Secretary and Director General of Police of all States and Union Territories to enable them to consider and comply with what has been held above, as early as possible but not later than six months.

31. Taking into consideration the factual matrix of the case as has been placed before this Court and in the light of the observations made by the Hon'ble Supreme Court as discussed herein-above, we are of the view that prima facie, the petitioner cannot be bracketed as confirmed or professional criminal. At the cost of repetition, it is reiterated that Regulation 228 of the U.P. Police Regulation casts duty on the Police Officer to construe the regulation strictly and open the History-sheet only on the basis of credible material. It also casts duty on the concerned authority to reasonably believe, that the person against whom History-sheet is opened, is a confirmed and professional criminal or habitual offender. The record available before this Court does not indicate any such order to show the 'subjective satisfaction' or 'reasonable belief' of the Superintendent of Police that the petitioner is a confirmed or professional criminal or habitual offender.

32. Keeping in a view the facts, circumstances, legal provisions and the above-noted case laws, we are of the considered opinion that the opening of the 'History-sheet' of any person should not be a mechanical exercise, rather the same should be careful, proper and thorough as it is directly connected with the Article 21 of

the Constitution of India. Opening of 'History-sheet' must be on the basis of subjective satisfaction of the competent authority, and the subjective satisfaction must be armed with legal provisions vis-a-vis well reasoned and speaking decision, failing which it would be hit by Article 14 of the Constitution of India being arbitrary in nature and not permissible in law. The impugned action in the present case, prima facie, does not qualify the aforesaid parameters for the reason that nothing has been indicated in the instructions dated 13/14.08.2025 as to what decision has been taken by the Superintendent of Police after the acquittal of the petitioner in Case Crime No.1125 of 2008; even reference of the acquittal order dated 06.04.2022 has not been given in the said communication/letter, the same is not appreciated.

33. Hence, instead of quashing the impugned 'History-sheet of the petitioner, we find it appropriate to grant liberty to the petitioner to prefer a comprehensive representation afresh before the Superintendent of Police, Ambedkar Nagar (respondent no.2), raising all pleas and grounds which are available to him. In case such a representation along with a copy of the earlier representation and copy of this order is filed by the petitioner before the respondent no.2 within a period of two weeks from today, the Superintendent of Police (respondent no.2) shall consider the same in the light of the observations made herein-above and shall pass a reasoned and speaking order, strictly in consonance with the relevant regulations of the U.P. Police Regulations. The second respondent/Superintendent of Police shall deal with each and every ground raised by the petitioner through his representation after summoning the relevant records from concerned police station, within a period of three weeks from the date of filing of the said representation.

34. It is expected that in the meanwhile, petitioner shall not be subjected to any unnecessary harassment by the police authorities in pursuance of the History-sheet as noted herein-above.

35. The present writ petition is **disposed of** with the aforesaid observations and directions.

36. No order as to cost

(2025) 8 ILRA 84
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 29.08.2025

BEFORE

THE HON'BLE MS. NAND PRABHA SHUKLA, J.

Matters Under Article 227 No. 9464 of 2025

Rekha Yadav ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Prashant Yadav, Rajeev Kumar

Counsel for the Respondents:
G.A.

Issue for Consideration

The alleged compromise deed all the respondent-accused are not the signatory, therefore, it was not properly verified, therefore, the impugned order is bad in the eyes of law.

Head Notes

The Constitution of India, 1950-Article 227 - The Code of Criminal Procedure, 1973- Section 320 - in the compromise deed all the respondent-accused are not the signatory - Section 320 Cr.P.C.

provides that the offence u/s 323 can be compounded by the person who has been hurt, and it does not require the court's permission - Petition dismissed.

Held- Section 320 Cr.P.C. provides that the offence u/s 323 can be compounded by the person who has been hurt, and it does not require the court's permission and section 506 IPC can be compounded by the person who is intimidated, therefore, there is no requirement of the signature of the respondent-accused. **(Para 4 & 6)** (E-15)

Case Law Cited

List of Acts

The Constitution of India, 1950, The Code of Criminal Procedure, 1973

List of Keywords

Offence u/s 323 can be compounded; does not require the court's permission

Case Arising From

Order dated 01.07.2025 passed by Additional Sessions Judge, F.T.C. Ist (Offence against women), District Mathura in Criminal Revision No. 595 of 2024 (Rekha Yadav Vs. State of U.P. and others) as well as the order dated 04.11.2023 passed by the Chief Judicial Magistrate, Mathura in Criminal Case No. 10967 of 2020 (State Vs. Surendra Pal Yadav and others) arising out of Case Crime No. 483 of 2014, u/s 323, 506 IPC, P.S. Highway, District Mathura.

Appearances for Parties

Counsel for Petitioner(s) : Prashant Yadav, Rajeev Kumar

Counsel for Respondent(s) : G.A.

(Delivered by Hon'ble Ms. Nand Prabha Shukla, J.)

1. Heard learned counsel for the petitioner, learned AGA for the State and perused the record.

2. The present petition under Article 227 of the Constitution of India has been filed with the prayer to set aside the impugned order dated 01.07.2025 passed by Additional Sessions Judge, F.T.C. Ist (Offence against women), District Mathura in Criminal Revision No. 595 of 2024 (Rekha Yadav Vs. State of U.P. and others) as well as the impugned order dated 04.11.2023 passed by the Chief Judicial Magistrate, Mathura in Criminal Case No. 10967 of 2020 (State Vs. Surendra Pal Yadav and others) arising out of Case Crime No. 483 of 2014, u/s 323, 506 IPC, P.S. Highway, District Mathura.

3. It has been submitted by the learned counsel for the petitioner that the petitioner was a signatory to a compromise dated 20.07.2023 filed before the Judicial Magistrate, Mathura wherein the petitioner and the other parties had entered into the compromise. Pursuant to the said compromise, the the learned Chief Judicial Magistrate, Mathura vide order dated 04.11.2023 had compounded the offence u/s 320 Cr.P.C.. Aggrieved by the said order, the petitioner preferred a criminal revision and the same was rejected and the present petition under Article 227 of the Constitution of India has been filed.

4. The main grievance of the learned counsel for the petitioner is that in the alleged compromise deed all the respondent-accused are not the signatory, therefore, it was not properly verified, therefore, the order dated 04.11.2023 is bad in the eyes of law.

5. Per contra, learned AGA for the State has refuted the aforesaid contention on the ground that as the offences are compoundable therefore, there is no illegality in the order impugned.

6. Upon hearing the learned counsel for the parties and from the perusal of record it is to be clarified that Section 320

Cr.P.C. provides that the offence u/s 323 can be compounded by the person who has been hurt, and it does not require the court's permission and section 506 IPC can be compounded by the person who is intimidated, therefore, there is no requirement of the signature of the respondent-accused.

7. There is no illegality in the order impugned, therefore, no interference is required. Accordingly, the petition stands dismissed.

(2025) 8 ILRA 86
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 11.08.2025

BEFORE

THE HON'BLE MS. NAND PRABHA SHUKLA, J.

Matters Under Article 227 No. 10801 of 2024

Suraj ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Harsh Kumar Mishra

Counsel for the Respondents:
G.A., Nitin Kumar Srivastava

Issue for Consideration

The learned Magistrate has recorded the conviction and awarded sentence in all the five cases separately but did not order that the sentence shall run concurrently. Therefore, the petitioner is compelled to undergo 5 years incarceration without being given an opportunity of proper trial merely recording conviction, on the basis of confession.

Head Notes

The Constitution of India, 1950-Article 227 - The Code of Criminal Procedure, 1973- Section 427 - Transactions related to the offences is not the same - Subsequent sentence should run consecutively - In absence of any direction as per general rule enunciated in Section 427(1), the subsequent sentence will not run concurrently but consecutively - Petition dismissed.

Held- Petitioner has been convicted separately in five different incidents having different case crime numbers lodged by various first informants and all the five cases have been decided by the separate judgments though, on a single date, there is no illegality in the order impugned. (E-15)

Case Law Cited

Iqram v. State of U.P. and others, 2023(3) SCC, Page 184 decided on 16.12.2022;Mohd. Zahid v. State through NCB, (2022) 12 Supreme Court Cases 426

List of Acts

The Constitution of India, 1950- The Code of Criminal Procedure, 1973

List of Keywords

Separate incidents took place on different dates; Petitioner tried separately different trials; Subsequent sentence concurrently with the previous sentence; Convicted separately in five different incidents; Subsequent sentence will not run concurrently but consecutively

Case Arising From

Judgments/orders dated 08.09.2023 passed by Additional Chief Judicial Magistrate (North Railway) Ghaziabad, in Criminal Case Nos. 2089/2022 under Sections 380, 411 arising out of FIR no. 114/2022, 2308/2022 under Sections 379, 411 arising out of FIR no. 176/2022, 2140/2022 under Section 380 arising out of FIR no. 212/2022, 2314/2022 under sections 382, 411 arising out of FIR no. 255/2022 and 2143/2022 under section 414 arising out of FIR no. 267/2022 (State versus Vicky & others), Police Station – G.R.P., Ghaziabad

Appearances for Parties

Counsel for Petitioner :- Harsh Kumar Mishra
Counsel for Respondent :- G.A.,Nitin Kumar Srivastava

(Delivered by Hon'ble Ms. Nand Prabha Shukla, J.)

1. Heard Mr. Harsh Kumar Mishra, learned counsel for the petitioners, Mr. Nitin Kumar Srivasatava, learned counsel for the respondents as well as Mr. Ratan Singh, learned Additional Government Advocate-I for the State and perused the record.

2. The present Writ Petition under Article 227 of Constitution of India has been filed with the following prayer:-

Issue a writ, order or direction that the sentences awarded to the accused/petitioner vide judgments/orders dated 08.09.2023 passed by Additional Chief Judicial Magistrate (North Railway) Ghaziabad, in Criminal Case Nos. 2089/2022 under Sections 380, 411 arising out of FIR no. 114/2022, 2308/2022 under Sections 379, 411 arising out of FIR no. 176/2022, 2140/2022 under Section 380 arising out of FIR no. 212/2022, 2314/2022 under sections 382, 411 arising out of FIR no. 255/2022 and 2143/2022 under section 414 arising out of FIR no. 267/2022 (State versus Vicky & others), Police Station G.R.P., Ghaziabad shall run concurrently and further may kindly be pleased issue orders or directions that the petition be released forthwith, on undergone sentences, in all the 5 criminal cases mentioned herein above.

3. Briefly stated, the petitioner has been convicted by the trial court in five different cases for the offence of theft and snatching. The details of the sentence awarded in five cases are as follows:-

Sr. No.	**FIR**	**First informant**	**Date of conviction**	**Sentence**
1.	**FIR No: 0114/2022** Dated : 22.05.2022 U/s : 380 IPC, PS: GRP, Ghaziabad, District: GRP Anubhag, Moradabad.	Rakshit Tiwari	08.09.2023	U/s: 380 IPC: 01 year SI with fine of Rs. 1000/- U/s: 411 IPC: 01 year SI with fine of Rs. 1000/- **(both the sentence shall run concurrently)**
2.	**FIR No: 0176/2022,** Dated: 05.07.2022, U/s: 379, 411 IPC, PS: GRP Ghaziabad, District: GRP Anubhag, Moradabad	Anubhav	08.09.2023	**U/s: 379 IPC**: 01 year SI with fine of Rs. 1000/- **U/s: 411** IPC: 01 year SI with fine of Rs. 1000/- **(both the sentence shall run concurrently)**
3.	**FIR No: 212/2022**, Dated: 27.07.2022 U/s: 380 IPC PS: GRP Ghaziabad, District Ghaziabad	Mohit Pal	08.09.2023	**U/s: 380 IPC**: 01 year SI with fine of Rs. 1000/-
4.	**FIR No: 0255/2022**, Dated : 20.08.2022, U/s: 379 IPC, PS: GRP Ghaziabad, District: Ghaziabad	Ravi Verma	08.09.2023	**U/s: 382 IPC**: 01 year SI with fine of Rs. 1000/- U/s: 411 IPC: 01 year SI with fine of Rs. 1000/- **(both the sentence shall run concurrently)**
5.	**FIR No: 0267/2022**, Dated: 17.09.202	SI Pramod Kumar	08.09.2023	**U/s: 414 IPC**: 01 year SI with fine of Rs. 1000/-

	2 U/s: 414 IPC PS: GRP Ghaziabad, District Ghaziabad			

4. The main submission of learned counsel for the petitioners is that the petitioner is languishing in jail since 17.09.2022. The petitioner is currently undergoing imprisonment in all the afore-mentioned 05 cases. The petitioner, being a poor fellow, is not in a position to pay the fine. For the non-payment of fine, petitioner would additionally undergo 16 days of imprisonment, which would lead to travesty of justice. It has also been submitted that the learned Magistrate has recorded the conviction and awarded sentence in all the five cases separately but did not order that the sentence shall run concurrently. Therefore, the petitioner is compelled to undergo 5 years incarceration without being given an opportunity of proper trial merely recording conviction, on the basis of confession.

5. It has been emphasized that the trial court failed to exercise its discretion while recording the sentence. The petitioner was neither defended by any advocate nor was offered any legal aid by the trial court. It has been pleaded that the petitioner is only 23 years of age and his family members were dependent on him. The petitioner was not named in the FIRs which were lodged against unknown persons and there was lack of evidence to hold the petitioner guilty.

6. Learned counsel for the petitioner has relied upon a judgment rendered by the Hon'ble Supreme Court in **Iqram v. State of U.P. and others, 2023(3) SCC, Page 184 decided on 16.12.2022**, wherein it has been held that once petitioner espoused remedy of moving a writ petition under Article 226 of Constitution of India, High Court ought to have noticed serious miscarriage of justice, which would occur consequent upon trial court not having exercised specifically its discretion within ambit of Section of 427(1) Cr.P.C.

7. Per contra, learned counsel for the State has vehemently, refuted the aforesaid contention on the ground that the petitioner has been convicted separately in five different FIRs, therefore, he cannot avail the benefit of serving the sentence concurrently.

8. Upon hearing learned counsel for the parties and from perusal of the record, it transpires that the petitioner has been implicated in five different FIRs for separate incidents which took place on different dates and the FIRs have been registered by different first informants. Though, the trial court recorded the conviction of the petitioner on a single date but was tried separately in five different trials.

9. To appreciate the submissions made by the learned counsel for the parties, it will be appropriate to refer the provisions of Section 427 Cr.P.C., which reads as under :

*427. **Sentence on offender already sentenced for another offence-**(1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent*

sentence shall run concurrently with such previous sentence; Provided that where a person who has been sentenced to imprisonment by an order under Section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.

10. Section 427 Cr.P.C. provides that when a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the court directs that the subsequent sentence shall run concurrently with such previous sentence. In other words, sub-section (1) of Section 427 confers

a discretion on the Court to direct that the subsequent sentence following a conviction shall run concurrently with the previous sentence.

11. Recently, the Hon'ble Apex Court has clarified the law on Section 427(1) Cr.P.C. and has also laid down the principles of law in respect to concurrent and consecutive running of sentences in **Mohd. Zahid v. State through NCB, (2022) 12 Supreme Court Cases 426**.

12. It has been held that if the transactions related to the offences is not the same or the facts constituting the two offences are quite different in that case the subsequent sentence should run consecutively- Further, in absence of any direction as to running of subsequent sentence, as per general rule enunciated in Section 427(1), the subsequent sentence will not run concurrently but consecutively.

13. It has further been observed that even while exercising discretion under 427(1) Cr.P.C. to run subsequent sentence concurrently with the previous sentence, the discretion is to be exercised judiciously and depending upon the offence/offences committed. Therefore, considering that offences under the NDPS Act are very serious in nature and against the society at large, held, no discretion shall be exercised in favour of such accused who is indulging in multiple offences under the NDPS Act.

14. Further, the principles of law laid down are as under:-

"(i) if a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, such subsequent term of imprisonment would normally commence at the expiration of the imprisonment to which he was previously sentenced;

(ii) ordinarily the subsequent sentence would commence at the expiration of the first term of imprisonment unless the court directs the subsequent sentence to run concurrently with the previous sentence;

(iii) the general rule is that where there are different transactions, different crime numbers and cases have been decided by the different judgments, concurrent sentence cannot be awarded under Section 427 of Cr.PC;

(iv) under Section 427 (1)of Cr.PC the court has the power and

discretion to issue a direction that all the subsequent sentences run concurrently with the previous sentence, however discretion has to be exercised judiciously depending upon the nature of the offence or the offences committed and the facts in situation. However, there must be a specific direction or order by the court that the subsequent sentence to run concurrently with the previous sentence.

15. From perusal of records, it transpires that the petitioner has been convicted separately in five different incidents having different case crime numbers lodged by various first informants and all the five cases have been decided by the separate judgments though, on a single date. Therefore, in light of the principles as laid down by Hon'ble Apex Court in **Mohd. Zahid** (supra), there is no illegality in the order impugned.

16. In view of the above and for the reasons discussed, there is no merit in the matter.

17. Accordingly, the instant petition is **dismissed**.

(2025) 8 ILRA 90

ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 28.08.2025

BEFORE

THE HON'BLE AJAY BHANOT, J.

Application U/S 528 BNSS No. 994 of 2025

Prakash Nut & Ors. ...Applicants
Versus
State of U.P. ...Opposite Party

Counsel for the Applicant:
Nijam Ahamad

Counsel for the Opposite Parties:
G.A.

Issue for consideration

Challenge raised to sureties fixed by the learned trial court while granting bail.

Headnotes

Sureties in bail-The right of liberty after grant of bail -should not be frustrated by arbitrary demands of sureties- onerous surety conditions which are unrelated to the socioeconomic status of the applicants-are oblivious to various relevant considerations in the facts of a case - curtail the personal liberty of an accused after he is enlarged on bail- learned trial court has acted contrary to the law - applicants should not be asked to furnish local sureties which they cannot produce- the applicants should be permitted to produce sureties from the respective places where they ordinarily reside - or from where they can otherwise furnish the – impugned order set aside. **Application allowed.**

Held:

A large number of the persons who belong to marginalized sections of the society or are financially destitute are often unable to arrange or provide sureties fixed arbitrarily by the learned trial courts. To deal with this situation the Constitutional Courts have held that the order granting bail cannot be defeated by arbitrary surety demands and have cautioned against determining sureties in a mechanical manner. Obligation is cast by law upon the learned trial court to apply its mind to the socioeconomic status of the accused and other relevant factors in a case while determining the sureties to be furnished by the said accused. **Application allowed.** (E-9)

Case Law Cited

1. Arvind Singh v. State of U.P. Thru. Prin. Secy. Home Deptt. (Application U/S no. 82 No.2613 of 2023

List of Acts

Nil

List of Keywords

Surety demands; curtailing the personal liberty of an accused after he is enlarged on bail; right of liberty after grant of bail; arbitrary demands of sureties; Onerous surety conditions.

Appearances of parties

Counsel for Applicant(s) : Nijam Ahamad, Counsel for Opposite Party(s) : G.A.

(Delivered by Hon'ble Ajay Bhanot, J.)

1. The applicants are aggrieved by the sureties fixed by the learned trial court while granting bail to them by orders dated 01.08.2025 and 25.07.2025. As per the impugned orders, only local sureties have to be furnished by the applicants.

2. Shri Nijam Ahamad, learned counsel for the applicants contends that the applicants assailing the condition of local sureties required to be furnished by the applicants in the order granting bail submits that the learned trial court has made surety demands in a mechanical manner and without due application of mind to the relevant considerations as laid down in the judgement rendered by this Court in **Arvind Singh v. State of U.P. Thru. Prin. Secy. Home Deptt. (Application U/S 482 No.2613 of 2023.** Shri Nijam Ahamad, learned counsel for the applicants further contends that all the applicants have relations in district-Chandauli and can furnish sureties from the aforesaid district.

3. Learned A.G.A. submits that the sureties have to be fixed by the learned trial court as per law.

4. The criminal cases are pending against the applicants in district-Ambedkar Nagar. The five applicants have been enlarged on bail by the learned trial court at Ambedkar Nagar.

5. However, they have not been set forth at liberty despite grant of bail due to their inability to furnish local sureties fixed by the learned trial court. The local sureties fixed by the court below in these facts and circumstances are arbitrary and negate the bails granted by the trial court. The applicants no.1 to 4 are residents of district Chandauli, while the applicant No.5 is the resident of district-Rohtas (Bihar). It is informed that the applicant No.5 can arrange sureties in district-Chandauli.

6. A large number of the persons who belong to marginalized sections of the society or are financially destitute are often unable to arrange or provide sureties fixed arbitrarily by the learned trial courts. To deal with this situation the Constitutional Courts have held that the order granting bail cannot be defeated by arbitrary surety demands and have cautioned against determining sureties in a mechanical manner. Obligation is cast by law upon the learned trial court to apply its mind to the socioeconomic status of the accused and other relevant factors in a case while determining the sureties to be furnished by the said accused.

7. While examining the issue pertaining to failure of accused persons to furnish sureties which are arbitrarily or mechanically fixed by the learned trial courts, this Court in **Arvind Singh (supra)** passed the following directions:

"24. However despite unequivocal holdings of various constitutional courts the trial courts continue to adopt a rote response to a dynamic problem and approach the issue of fixation of sureties in a mechanical manner and neglect to make requisite enquiries as contemplated in the preceding parts of the

judgment. The duties of the trial courts as well as other agencies while fixing sureties can be summed up as under:-

(1) In case a prisoner cannot arrange the sureties fixed by the trial court the former can make an application to the learned trial court for a lesser surety. Material facts relating to the socioeconomic status and roots in the community of the prisoner shall be stated in the application.

(2) Similarly it is bounden duty of the DLSA to examine the status of the prisoners who have been enlarged on bail but are not set at liberty within seven days of the bail order. In case the prisoners cannot arrange for sureties they may be advised and assisted to promptly move an application for refixation of the surety in light of this judgment.

(3) Once the prisoner makes such application the trial court shall make an enquiry consistent with this judgment and pass a reasoned order depicting consideration of relevant criteria for fixing sureties with utmost expedition.

(4) Every trial court is under an obligation to satisfy itself about the socioeconomic conditions of the prisoner and probability of absconding and his roots in the community and fix sureties commensurate with the same. The State authorities or other credible agencies as the court may direct to promptly provide the requisite details.

(5). In case the prisoner is from another State and is unable to produce local sureties, sureties from the prisoner's home district or any other place of his choice determined by the court of competent jurisdiction of the said district and State shall be accepted by the trial court.

(6) The prisoner/counsel may state the details of the socioeconomic status of the prisoner in the bail application in the first instance. This will facilitate an expeditious consideration of the issue related to sureties.

26. The right of fundamental liberties of the applicant are being curtailed on account of his poverty and inability to arrange multiple sureties for cases instituted against him."

8. Further, this Court has also repeatedly directed that the right of liberty after grant of bail should not be frustrated by arbitrary demands of sureties. Onerous surety conditions which are unrelated to the socioeconomic status of the applicants or are oblivious to various relevant considerations in the facts of a case end up curtailing the personal liberty of an accused after he is enlarged on bail.

9. In the instant case as seen above, the learned trial court has acted contrary to the law laid down by this Court in **Arvind (supra)** and has also made surety demands inconsistent with the preceding narrative. The applicants should not be asked to furnish local sureties from district-Ambedkar Nagar which they cannot produce. The learned trial court ought to have permitted the applicants to produce sureties from the respective places where they ordinarily reside or from where they can otherwise furnish the surety (as in the case of the applicant no.5). The order passed by the court below insofar as it requires the applicants to furnish local sureties is set aside.

10. In the wake of preceding discussion, the matter is remitted to the learned Chief Judicial Magistrate, district-Chandauli.

11. Learned Chief Judicial Magistrate, Chandauli shall fix local sureties which the applicants have to produce for being enlarged on bail and in light of the

judgment rendered by this Court in **Arvind Singh (supra)**. The aforesaid sureties shall then be transmitted by the learned Chief Judicial Magistrate, Chandauli after verification to the learned trial court at Ambedkar Nagar. The said sureties shall be accepted by the learned trial court at Ambedkar Nagar.

12. Learned trial court at Ambedkar Nagar and learned Chief Judicial Magistrate, Chandauli shall expedite the proceedings and ensure that the sureties submitted by the applicants are verified and processed at the earliest.

13. With the aforesaid direction, the application under Section 528 BNSS is disposed of.

(2025) 8 ILRA 93
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 18.08.2025

BEFORE

THE HON'BLE AVNISH SAXENA, J.

Application U/S 528 BNSS No. 5804 of 2025

Sunil Singh ...Applicant
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicant:
Manoj Kumar

Counsel for the Opposite Parties:
G.A.

Issue for consideration
Compromise in FIR u/s 376 IPC

Headnotes
Compromise in section 376 IPC-Charge-sheet submitted under Section 376 I.P.C.- applicant and opposite party no.2 were classmates and there was dispute between the two-led to lodging of F.I.R.- both have entered into compromise and does not want to pursue the matter- no point in getting the trial continued-as the star witness would not support the prosecution case. **Application allowed.** (E-9)

Case Law Cited
Nil

List of Acts
Indian Penal Code

List of Keywords
Compromise, Section 376 I.P.C.

Appearances of parties
Counsel for Applicant :- Manoj Kumar, Counsel for Opposite Party :- G.A.

(Delivered by Hon'ble Avnish Saxena, J.)

1. Heard learned counsel the applicant, learned counsel for opposite party no.2

2. The instant application under Section 482 Cr.P.C. has been moved with a prayer to quash the entire criminal proceedings of Case No.36783 of 2023 (State Vs. Sunil Singh) as well as charge sheet dated 05.11.2021 and cognizance/summoning order dated 30.01.2025, arising out of Case Crime No.482 of 2021, under Sections 323, 504 and 376 I.P.C., Police Station Gulriha, District Gorakhpur, pending before the court of Civil Judge (Senior Division), Fast Track Court/Additional Chief Judicial Magistrate, Gorakhpur in terms of compromise entered into between the parties. The charge-sheet has been submitted including under Section 376 I.P.C.

3. Sri Girish Pandey, holding brief of learned counsel for the applicant submits that the applicant and opposite

party no.2 were classmates and there was dispute between the two, which led to lodging of F.I.R. on 31.08.2021 under Sections 354, 354D, 323 and 504 I.P.C. in respect to incident dated 30.08.2021. It is further submitted that both the applicant and opposite party no.2 have entered into compromise and does not want to pursue the matter.

4. Sri Suraj Raj, learned counsel for opposite party no.2 admitted that there is a compromise between the parties and contents of paragraphs-3, 4 and 5 of the affidavit filed by opposite party no.2 reveal that the compromise has been accepted.

5. There is no point in getting the trial continued, when the parties have buried their differences as the star witness would not support the prosecution case.

6. In view of above, the charge sheet and the proceeding arose out of case crime number mentioned above is hereby quashed. Consequently, the proceedings of trial is also quashed.

7. The application under Section 528 of B.N.S.S. is allowed accordingly.

(2025) 8 ILRA 94
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 12.08.2025

BEFORE

THE HON'BLE VINOD DIWAKAR, J.

Application U/S 528 BNSS No. 6400 of 2025

Smt. Bacchi Devi ...Applicant
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicant:
Sanjeev Kumar Yadav

Counsel for the Opposite Parties:
G.A.

Issue for consideration

Pertains to limited relief to be permitted to appear before the trial court to face trial without being taken into judicial custody.

Headnotes

Bhartiya Nagrik Sanrakshan Sanhita, 2023- All District Judges shall ensure -in cases where the charge- sheet has been filed without arrest- whether because custodial interrogation was not effected during investigation by Investigating Officer-or the accused had secured anticipatory bail/protective orders and duly cooperated during investigation- the trial court shall not remand the accused to judicial custody upon appearance pursuant to summons-at the stage of proceedings u/s 88, 170, 204, and 209 Cr.P.C. (corresponding sections 91, 190, 227 and 232 of BNSS)-the trial court- shall inform the accused of his right to furnish a personal bond at the first instance-and may require surety subsequently- immediately after appearance of accused in response to summons- the court shall comply with Sections 230 and 231 of BNSS, 2023-committing the case to the court of session when exclusively triable by it, and proceed to the next trial stage without unnecessary delay.

Held:

It is hereby directed that the mandatory requirement of two sureties are dispensed with, and henceforth, (i) the accused(s)/convict(s), as the case may be, shall be released on a " single surety", subject to the satisfaction of the Magistrate or the court concerned– the satisfaction shall drive from the socio- economic condition of the accused- and that the surety bond amount be fixed in accordance with the financial strength of the accused. In case, the accused(s) is unable to produce sound surety within seven days from the date of grant of bail, it would be the duty of the Superintendent of Jail to inform the Secretary, DLSA who may depute from para legal volunteer or jail visiting advocate to interact with the prisoner and assist the prisoner in all ways possible for his release. (E-9)

Case Law Cited

1. HDFC Bank Ltd. v. J.J. Mannan, (2010) 1 SCC 679

2. Satpal Singh v. State of Punjab, (2018) 13 SCC 813

3. Naresh Kumar Yadav v. Ravindra Kumar, (2018) 1 SCC 632

4. Joginder Kumar v. State of U.P., (1994) 4 SCC 260

5. Musheer Alam v. State of U.P., (2025) SCC OnLine SC 116

6. Siddharth v. State of U.P., (2022) 1 SCC 676

7. Satender Kumar Antil v. CBI, (2021) 10 SCC 773

8. Satender Kumar Antil v. CBI, (2022) 10 SCC 51]

9. Satender Kumar Antil v. CBI, 2025 SCC OnLine SC 1322

10. Jasbir Singh v. State of Punjab, (2006) 8 SCC 294

11. Shiv Shyam Pandey v. State of U.P. and Others, 2008 SCC OnLine All 1264

12. Motiram v. State of Madhya Pradesh, (1978) 4 SCC 47

13. Ramchandra Thangappan Aachari v. State of Maharashtra, [2024 SCC OnLine SC 2629]

14. Girish Gandhi v. State of U.P. and Others-Writ Petition (Crl.) No.149 of 2024

15. Re: Policy Strategy for Grant of Bail Hani Nishad @ Mohd. Imran @ Vicky v. State of U.P., SLP (Crl.) Nos. 8914-8915 of 2018

List of Acts

Bhartiya Nagrik Sanrakshan Sanhita, 2023

List of Keywords

Accused first surrenders before the Magistrate; remand to judicial custody; deprivation of personal liberty; right to personal liberty and the interest of fair and effective investigation.

Appearances of parties

Counsel for Applicant: Sanjeev Kumar Yadav, Counsel for Opposite Party: G.A.

(Delivered by Hon'ble Vinod Diwakar, J.)

1. Heard Shri Satyaveer Singh, learned Amicus Curiae, along with learned counsel for the applicant, learned A.G.A. for the State-respondent, and perused the material available on record.

2. The applicant has challenged the summoning order dated 29.04.2022 passed in Case No. 10849 of 2022, which is pending trial before the learned Chief Judicial Magistrate, Gorakhpur. The applicant has also prayed to quash the impugned charge-sheet no. 1/2021, filed in connection with Case Crime No.0395 of 2021, registered under Section 420 IPC, read with Sections 63 and 65 of the Copyright Act, 1957.

3. In brief, the prosecution's case is that the applicant is the proprietor of a retail paint shop operating under the name Krishna Hardware Paints Centre, located at Shanti Nagar, Bichhiya, District Gorakhpur and on spot inspection by the officers of the authorised company, the applicant was found selling counterfeit Asian Paints products, and huge quantity of counterfeit paints have been recovered from the applicant's shop. Whereas the applicant's case is that she had procured paint products from a wholesale distributor, namely Force Trading, situated at Dharamshala Bazar, Gorakhpur, through valid tax invoices/receipts issued at the time of purchase. The paints were sold from the applicant's retail outlet in the ordinary course of business.

4. Learned counsel for the applicant submitted that the applicant had no knowledge or reason to believe that the paint products or packaging received from the wholesaler were counterfeit or adulterated. The alleged presence of counterfeit paint boxes only came to light during a raid conducted by the authorised representative of the complainant's company at the applicant's shop.

4.1 Even assuming the allegations to be true on their face, the essential ingredients required to constitute an offence under Section 420 IPC read with Sections 63 and 65 of the Copyright Act, 1957, are not satisfied. There is no dishonest intention or *mens rea* attributable to the applicant, nor any act of infringement knowingly committed by her. Thus, the continuation of the criminal proceedings against the applicant is a gross abuse of the process of law, as the statutory prerequisites for invoking the said penal provisions are clearly absent in the present case.

5. *Per contra*, learned A.G.A. submitted that during a spot inspection conducted at the applicant's premises by the authorised representative of SGS IPR Consultancy- the complainant- a substantial quantity of counterfeit Asian Paints products was recovered, indicating that the applicant was deriving significant illegal profit. As regards the applicant's knowledge and intention to earn such profit, these matters are to be examined during trial and can only be determined after the prosecution witness has deposed. At this stage, the veracity and probative value of the prosecution's evidence cannot be assessed and placed reliance on the principle laid down in *State of Haryana v. Bhajan Lal1*.

6. In the given facts and circumstances, the applicant was afforded an opportunity to address the merits of the case. However, learned counsel for the applicant has submitted that unless the trial court proceedings are stayed at the very outset during the pendency of the present petition, the applicant would be compelled to surrender before the trial court, be remanded to judicial custody, and only thereafter her bail application would be considered on merits. Although the applicant was not arrested during the investigation. Such a course of action, it is submitted, runs contrary to the established jurisprudence governing bail post-filing of a charge sheet within the criminal justice system, and the whole purpose of filing the present petition would be frustrated.

7. To address the issue raised herein, Shri Satyaveer Singh, learned Advocate present in court, voluntarily offered to assist. Accordingly, he has been appointed as Amicus Curiae to assist the court in facilitating a just and logical conclusion of the matter.

8. The present petition is one among several wherein the applicant(s) seek a limited relief- namely, to be permitted to appear before the trial court to face trial without being taken into judicial custody. Alternatively, the applicant(s) prays that the application(s) be disposed of with an observation or direction permitting the applicant(s) to file an application for discharge before the trial court, without the risk of being remanded to custody during the pendency or consideration of such application.

9. This court has observed a recurring and concerning trend in applications filed under Section 482

Cr.P.C. (corresponding section 528 of BNSS, 2023), wherein, barring a few instances where arguments are addressed on merits, most of such applications are filed prematurely. These applications are accompanied only by the FIR, bail orders, and the police report filed under Section 173 Cr.P.C. (corresponding section 193 of the BNSS, 2023), but are notably deficient in essential documents such as the statements of witnesses recorded under Sections 161 and 164 of the Cr.P.C. (corresponding sections 180 & 183 of the BNSS), seizure memos, site plans, or other incriminating material evidence relied upon by the police. This appears to be a consequence of such petitions being instituted before the stage contemplated under Section 207 of Cr.P.C. (corresponding section 230 of the BNSS, 2023)- i.e. supply to the accused(s) of the copy of police report and other documents.

10. It has been consistently observed that applications under section 482 Cr.P.C. (corresponding section 528 of the BNSS, 2023), are routinely filed before this Court immediately after the trial court takes cognisance and issues summoning orders. In such applications, litigants primarily seek quashing of the charge-sheet and setting aside of the cognizance order passed upon its filing. The underlying objective behind such applications appears, more often than not, to be the avoidance of judicial custody during trial or the securing of interim relief aimed at staying Non-Bailable Warrants (NBWs) or proceedings initiated under Sections 80 to 83 of Cr.P.C. (corresponding sections 82(1) to 85 of the BNSS, 2023) - reliefs which, in substance, are in the nature of final reliefs.

11. It is further observed that, on any given working day, approximately 350 to 500 cases are listed before this Court, and nearly 50 to 75 learned advocates make oral mentions of their matters, expressing apprehensions that, if their petitions are not taken up on that very day, the concerned trial courts may issue Non-Bailable Warrants (NBWs) against their clients or commit them to judicial custody. This concern is frequently raised even in cases where the charge-sheet has been filed without arresting the accused, and where the accused has fully cooperated during the investigation. It is pertinent to note that, in such cases, the investigating agency often either chooses not to arrest the accused at all, or the accused secures anticipatory bail till the filing of the charge-sheet. In some instances, the accused also obtains interim protection in the form of a "no coercive action" order by invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, until the conclusion of the investigation – a routine practice.

12. Surprisingly, there is another disturbing trend, in most of such cases, learned counsel do not press for quashing of the charge-sheet on merits. Instead, the primary concern appears to be securing an order from this Court that the petition be disposed of with liberty to the accused to raise all permissible legal and factual contentions at the stage of arguments on the application for discharge before the trial court. Such liberty is, as a matter of practice, invariably sought and granted by the High Court, along with protection to the accused from being taken into judicial custody upon appearance before the trial court in compliance with a summons issued pursuant to cognizance, for a limited period of a couple of weeks or so. However, this relief, though commonly granted, neither fulfils the requirements of law nor provides any substantive benefit to the litigants.

13. It is also commonly observed that in cases where the police have not arrested the accused during investigation and have filed the charge-sheet without custodial interrogation, the prevailing practice in the trial courts is to require the accused, nonetheless, to undergo, even if briefly, judicial custody in order to obtain regular or anticipatory bail after cognizance is taken. As a result, to avoid incarceration, the accused is compelled to file a fresh anticipatory bail application- either before the Court of Sessions or the High Court. If such anticipatory bail is not granted, the accused is then left with no option but to surrender before the trial court, whereupon they are remanded to judicial custody until a regular bail order is passed or approach the High Court under section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) for limited purpose discussed herein above, generally. This practice persists regardless of the fact that the accused was either on bail during the investigation or that the investigating agency did not find it necessary to arrest the accused at any stage before the filing of the charge-sheet.

14. This prevailing practice, which often results in the accused being compelled to spend anywhere from a month to several years in judicial custody, is neither sanctioned by law nor aligned with the principles consistently laid down by the Supreme Court in *Gurbaksh Singh Sibbia v. State of Punjab2, Sushila Aggarwal v. State (NCT of Delhi)3, Siddharth v. State of U.P.4 and Satender Kumar Antil v. CBI5.* Despite the settled legal position discouraging unnecessary pre-trial incarceration, this deviation has continued unabated and remains widely prevalent across district courts in Uttar Pradesh, without effective checks or corrective intervention.

15. In order to appreciate the gravity of the issue, it is essential to examine the procedural framework followed by trial courts in cases where the charge-sheet has been filed without the arrest of the accused during investigation, regardless of the reasons for such non-arrest. At this juncture, the learned *Amicus Curiae's* submission offers a comprehensive overview of the procedure followed by the trial courts. Upon submission of the charge sheet, the trial court issues a summons to ensure the accused's presence. In accordance with district court practices, the accused has three procedural options, which are outlined as follows:

15.1 First Option– Appearance and Surrender: The accused may choose to appear before the court in response to the summons and surrender. Upon surrender, the accused is invariably taken into custody. A regular bail application is then filed. The court, in turn, calls for objections from the prosecution, hears the matter on the merits, and thereafter passes an order. In cases triable by the court of session, it is commonly observed that bail is denied at the Magistrate level, and the accused is left to approach the sessions court. In non-session triable cases, bail is usually granted after 15 to 30 days, depending on the stage of the hearing and the court's discretion. In the interim, the accused remains in judicial custody, with the only recourse being to move a regular bail application before the sessions court.

15.2 Second Option– Anticipatory Bail: Alternatively, the accused may choose to apply for a fresh anticipatory bail either before the Court of Sessions or the High Court. This process, however, is often lengthy, cumbersome, and procedurally complex, especially in cases involving serious offences, and until the accused obtains anticipatory bail, they continue to avoid appearing before the trial court.

15.3 Third Option – The course adopted in the present case, namely, filing an application under Section 528 of the *Bharatiya Nagarik Suraksha Sanhita, 2023* (BNSS), for the limited purpose discussed hereinabove.

16. In cases triable by the Sessions Court, the procedure becomes even more intricate and onerous:

16.1 The accused first surrenders before the Magistrate and is remanded to judicial custody. A regular bail application is then moved before the Magistrate. Upon rejection- which is common in cases triable by the Sessions Court- the accused is required to file a fresh application before the Sessions Court. If bail is granted, the accused is released; however, if it is denied, the accused must then approach the High Court by filing a regular bail application, and thereafter Supreme Court as has been done in *Musheer Alam case* (supra).

16.2 If the accused opts not to surrender, they must first apply for anticipatory bail before the Sessions Court. If the bail is granted, the accused must comply by furnishing the required bail bonds. If the application is rejected, the accused is required to approach the High Court for anticipatory bail to avoid judicial custody during the trial.

16.3 This procedural labyrinth, especially in cases where the investigating agency has not felt it necessary to arrest the accused during the investigation, results in avoidable incarceration and undue hardship, contrary to the spirit of the law and the constitutional guarantee of personal liberty.

17. Learned *Amicus Curiae* further invited the attention of the Court to the glaring consequences of the aforesaid mode of procedural options highlighted herein above.

17.1 The decision on an application for anticipatory bail, when successively filed before both the Sessions Court and the High Court, may take several years. In the meantime, proceedings before the trial court remain effectively paralysed, with the court continuously issuing summons, bailable warrants, non-bailable warrants, and even initiating proceedings for declaring the applicant as an absconder.

17.2 To circumvent the cumbersome and coercive procedural framework outlined above, the accused often resorts to filing a petition under Section 528 of the BNSS, 2023, seeking the limited reliefs discussed herein before- primarily to avoid judicial custody upon appearance before the trial court and to secure liberty to pursue remedies such as discharge or bail without the risk of incarceration.

17.3 This vicious cycle recurs in virtually every case where the police have filed the charge-sheet without arresting the accused, leading to an unwarranted procedural burden and an avoidable deprivation of personal liberty. Such a practice not only undermines the constitutional mandate of fairness and due process but also poses a serious threat to the rule of law and judicial propriety.

17.4 In this process, the accused is often compelled to engage in multiple rounds of litigation- typically 4 to 5 separate proceedings-before both the Sessions Court and the High Court, seeking protection from arrest or relief against coercive measures. Simultaneously, trial

courts become overburdened with the task of hearing regular and anticipatory bail applications in such cases, where the police have filed the charge-sheet without arresting the accused. As a result, each trial court may spend approximately 2 to 2.5 hours daily solely on bail-related hearings of such a nature of cases. The High Court's docket, in turn, becomes increasingly congested with repetitive, routine, and largely innocuous prayers, leading to inefficient use of judicial time and resources. In cases where there is more than one accused, they often approach the court one after another, at their own convenience, with the intention of delaying the trial and waiting until a favourable order is obtained. This practice further hampers the functioning of the courts, leaving the system virtually choked.

17.5 During this period, the trial court continues to proceed with coercive measures- beginning with the issuance of summons, followed by bailable warrants, then non-bailable warrants, and eventually initiating attachment proceedings under Sections 80 to 83 of Cr.P.C. (corresponding sections 82(1) to 85 of the BNSS, 2023). In practice, it often takes approximately five years or more for the matter to reach the stage contemplated under Sections section 228 of Cr.P.C. (corresponding section 251 of the BNSS, 2023), which pertain to the supply of police reports and accompanying documents to the accused, and the committal of the case to the Court of Session for trial, defeating the spirit of speedy trial enshrined under Article 21 of the Constitution of India.

17.6 As a result, this futile and repetitive process consumes significant judicial time at both the trial and High Court levels, while simultaneously draining the resources of litigants.

18. In effect, it's a no-win situation for all stakeholders- a judicial stalemate that continues unchecked, despite its apparent inconsistency with established principles of criminal law, procedural fairness, and constitutional liberty. Yet, the practice persists. This may be attributed to several possible factors: (i) a perception among judicial officers that their conduct escapes scrutiny; (ii) a diminished sense of constitutional duty in upholding the rule of law; (iii) a lack of initiative or interest in upgrading judicial skills; (iv) a belief that their orders will remain unchallenged by the High Court under the guise of long-standing practices; (v) apathy towards the hardships faced by the ordinary litigant; and/or (vi) an absence of accountability or fear of departmental action. These reasons are merely illustrative, and there may be many more contributing factors.

19. The entire process exposes a deeply troubling reality, thus it is both appropriate and necessary to revisit the celebrated Constitution Bench judgments of the Supreme Court that have authoritatively addressed the principles governing anticipatory bail-particularly in the context of whether anticipatory bail is required after the issuance of summons in cases where the police have filed the charge-sheet without arresting the accused. A re-examination of these precedents will provide clarity on the legal framework and help assess the validity of the prevailing practices.

20. The Indian criminal justice system has been constitutionally mandated to balance two competing interests: the right to personal liberty and the interest of fair and effective investigation. The remedy of anticipatory bail, codified in Section 438 of the Code of Criminal Procedure, 1973

(corresponding section 482 of the BNSS), and the filing of a charge-sheet without the arrest of the accused, serve as critical safeguards for protecting personal liberty in cases involving non-bailable offences. *However, in the District Courts of Uttar Pradesh, a peculiar and widespread judicial anomaly has arisen; should an accused person, who was not arrested during investigation and against whom a charge-sheet has been filed, be required to seek a fresh anticipatory bail merely to avoid being remanded to judicial custody post-cognisance?*

21. The answer, emerging from the progressive jurisprudence laid down by the Supreme Court, increasingly suggests a clear departure from ritualistic and automatic arrests, emphasising that appearance and bail bond are sufficient to secure an accused's presence before the court. This jurisprudence traces its roots from *Gurbaksh Singh Sibbia (supra), travelled through Sushila Aggarwal (supra)* - a constitutional Bench judgement, *Siddharth (supra)*, and was recently summarised in *Satender Kumar Antil (supra)* by the 3-Judge Bench of the Supreme Court.

22. In *Gurbaksh Singh Sibbia (supra),* the Constitution Bench of the Supreme Court laid down the foundational principles of anticipatory bail. It held that (i) anticipatory bail is not an extraordinary remedy, to be granted only in rare cases, but a part of the broader right to liberty under Article 21, (ii) there is no fixed time limit or procedural stage beyond which anticipatory bail cannot be granted, and (iii) the Court must balance the interests of liberty and legitimate investigation without treating arrest as necessary in every case. The Constitutional Bench rejected the notion that the right to anticipatory bail should automatically end with the filing of a charge-sheet or commencement of trial.

23. Despite *Gurbaksh Singh Sibbia (supra),* a problematic practice became entrenched in many trial courts- in Uttar Pradesh-wherein the accused(s) not arrested during investigation are compelled to surrender and seek regular bail post-cognisance, failing which they risk remand to judicial custody.

24. The Supreme Court, through a consistent line of authoritative decisions- including *Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P.6, Gurbaksh Singh Sibbia (supra), and Sushila Aggarwal (supra),*- has firmly established the foundational principle that personal liberty is a cornerstone of the criminal justice system. That arrest should not be used as a punitive or mechanical measure.

25. In *Gudikanti Narasimhulu (supra)*, Justice V.R. Krishna Iyer memorably articulated the guiding philosophy by stating that *bail is the rule, jail the exception*. Justice Krishna Iyer emphasised that courts must act with judicial sensitivity and constitutional awareness when dealing with questions of pre-trial detention. That arrest and incarceration before conviction must be guided by necessity- not routine. This judgment remains a cornerstone in the evolution of bail jurisprudence, firmly grounding the grant of bail in the values of fairness, reasonableness, and the overarching protection of individual liberty.

26. In *Siddharam Satlingappa Mhetre v. State of Maharashtra7,* the Supreme Court reaffirmed the principles laid down in *Gurbaksh Singh Sibbia*

(supra) by holding that the order granting anticipatory bail for a limited duration and thereafter directing the accused to surrender and apply for a regular bail is contrary to the legislative intention and the judgment of the constitution Bench in *Gurbaksh Singh Sibbia case (supra)2,* and further clarified that the restriction of the provision of anticipatory bail under section 438 Cr.P.C. (corresponding section 482 BNSS) limits the personal liberty of the accused granted under Article 21 of the constitution. The added provision is nowhere found in the enactment and bringing in restrictions, which are not found in the enactment is again an unreasonable restriction. It would not stand the test of fairness and reasonableness, which is implicit in Article 21 of the constitution after the decision of the case in Menaka Gandhi v. Union of India8 and further clarified the scope and duration of anticipatory bail. The court held that a fixed time limit should not ordinarily restrict anticipatory bail and, unless exceptional circumstances warrant otherwise, such protection should continue until the conclusion of the trial.

27. However, in *Salauddin Abdulsamad Shaikh v. State of Maharashtra9*, a 3-judge Bench of the Supreme Court took a view that stood in contrast to the principles laid down in *Gurbaksh Singh Sibbia (supra).* The court in *Salauddin* (supra) held that anticipatory bail should ordinarily be limited in duration. The rationale offered was that since anticipatory bail is granted at a stage when investigation is still underway, the relief must be temporary and subject to judicial reassessment upon completion of the investigation or filing of the charge-sheet. It was further observed that once the investigation progresses or a charge sheet is submitted, the accused should apply for regular bail.

28. Notably, the judgment in *Salauddin (supra)* failed to adequately engage with the binding precedent established by the Constitution Bench in *Gurbakhs Singh Sibbia (supra),* and for this reason, it has often been viewed as rendered per incuriam.

29. Despite these apparent doctrinal deficiencies, the decision in *Salaluddin (supra)* was followed in a series of subsequent judgments, thereby creating a judicial anomaly that imposed unwarranted limited durations on anticipatory bail. These included cases such as *K.L. Verma v. State10, Sunita Devi v. State of Bihar11, Adri Dhran Das v. State of West Bengal12, Nirmal Jeet Kaur v. State of M.P.13, HDFC Bank Ltd. v. J.J. Mannan14, Satpal Singh v. State of Punjab15, and Naresh Kumar Yadav v. Ravindra Kumar16.* This line of decisions effectively narrowed the scope of anticipatory bail.

30. However, this view was decisively overruled by the Constitutional Bench of the Supreme Court in *Sushila Aggarwal (supra).* The court categorically held that the protection granted under Section 438 of the Cr.P.C. (corresponding section 482 of BNSS) is not inherently time-bound and cannot be curtailed arbitrarily. It clarified that an order granting anticipatory bail does not automatically lapse upon the issuance of a summons, filing of the charge-sheet, or framing of charges. Unless the court specifically limits the duration of such protection based on particular facts and compelling circumstances, the anticipatory bail shall ordinarily remain in force till the

conclusion of the trial. The judgment thus reaffirmed the primacy of personal liberty and sought to harmonise the provision with the constitutional guarantee under Article 21.

30.1 The Supreme Court in Sushila Aggarwal (supra) further clarified that anticipatory bail under Section 438 Cr.P.C. (corresponding section 482 of BNSS) can be made subject to reasonable conditions- such as full cooperation with the investigation, mandatory appearance before the court when required, and abstaining from tampering with evidence or influencing witnesses. However, the imposition of arbitrary or mechanical time limits on the duration of anticipatory bail was expressly held to be impermissible, unless justified by specific and compelling reasons. The Constitution Bench emphasised that the protection granted under anticipatory bail must not be rendered illusory by unwarranted limitations.

30.2 It is further held that an order granting anticipatory bail does not automatically cease to operate upon the filing of a charge sheet, upon the accused being summoned, or upon the framing of charges. In the absence of any supervening circumstances, such anticipatory bail may ordinarily continue until the conclusion of the trial. The trial court, however, retains the power under Section 439(2) of the Cr.P.C. (corresponding section 483(3) of BNSS) to cancel such bail and direct the arrest of the accused, if warranted by the facts and circumstances of the case. Mere filing of the charge sheet does not compel an accused, who has been granted anticipatory bail, to surrender and seek regular bail- unless specific allegations or material indicate that the accused is absconding, evading the process of law, intimidating witnesses, violating conditions of bail, or has otherwise abused the concession granted. Subject to continued compliance with the conditions imposed at the time of grant, anticipatory bail can subsist till the conclusion of the trial.

30.3 The observations in *Siddharam Satlingappa Mhetre (supra)* and other similar judgments that no restrictive conditions at all can be imposed, while granting anticipatory bail, has overruled. Likewise, the decision in *Salauddin Abdulsamad Shaikh (supra), and subsequent decisions including K.L. Verma (supra), Sunita Devi (supra), Adri Dharan Das (supra), Nirmal Jeet Kaur (supra), HDFC Bank Ltd. (supra), Satpal Singh (supra), and Naresh Kumar Yadav (supra),* which lay down such restrictive conditions, or terms limiting the grant of anticipatory bail, to a period of time have also been overruled in *Sushila Aggrawal (supra).*

30.4 This judicial insistence on custody is often based on an erroneous interpretation of Section 170 Cr.P.C. (corresponding section 190 of BNSS), which states that the police shall forward the accused ***"in custody"*** along with the charge-sheet. Trial courts and police have frequently misread this as requiring physical custody, disregarding the liberty-centric mandate of Article 21 of the constitution.

31. In *Siddharth v. State of U.P. (supra),* the police had completed the investigation and were ready to file a charge-sheet. However, they insisted that the accused be arrested and produced before the Magistrate for the charge-sheet to be formally taken on record. The accused approached the Supreme Court challenging this insistence, and the court held through a progressive and practical interpretation of the law that personal

liberty is an important aspect of the constitutional mandate. The occasion to arrest an accused during investigation arises when a custodial investigation becomes necessary, or when the crime is heinous, or when there is a possibility of influencing the witnesses, or the accused may abscond. A distinction must be made between the existence of the power to arrest and the justification for the exercise of it17. There is no need to send an accused to judicial custody at the stage of 170 Cr.P.C., especially in cases where the police themselves saw no reason to arrest during the investigation. By cautioning against ritualistic arrest practices, the Supreme Court has once again highlighted the need for rational, liberty-conscious criminal procedure, in tune with constitutional mandates and the evolving ethos of human rights.

31.1 The Supreme Court decisively addressed this misinterpretation in *Siddharth (supra)* by holding that: (i) custody in Section 170 Cr.P.C. does not mean arrest. It only means presentation of the accused before the court to take cognisance, (ii) if the police never found the need to arrest the accused during investigation and the accused has cooperated throughout, there is no justification for arrest merely to take cognizance or file the charge-sheet, and (iii) liberty cannot be sacrificed on the altar of procedural formality. This ruling marked a pivotal moment, as it acknowledged that a bail bond or undertaking is sufficient to secure the accused's presence, obviating the need for anticipatory or regular bail in such circumstances.

32. The Supreme Court, in *Musheer Alam v. State of U.P.18,* deprecated the practice of sending an accused to judicial custody after the court has taken cognizance of the charge sheet, if the accused was not arrested during the investigation. In this case, the petitioner was not arrested during the investigation, and the charge sheet was filed without an arrest. The trial court subsequently took cognizance of the case. Following the trial court's practice, the petitioner filed for anticipatory bail before the Sessions Court, which was rejected. The petitioner then challenged the rejection order before the High Court, which upheld the decision. Aggrieved by this, the petitioner approached the Supreme Court seeking anticipatory bail. While allowing the petition, Justice J.B. Pardiwala, speaking for the Bench, termed the practice as ***"unusual."*** The relevant extract of the order is reproduced below for reference:

".....5. We take notice of the fact that the investigation is over and charge-sheet has been filed in the CBI Court at Gorakhpur.

6. While the investigation was in progress, the Investigating Officer did not deem fit to arrest the petitioner herein.

7. The CBI Court has taken cognisance and has issued summons to the petitioner herein to appear.

8. The learned counsel appearing for the petitioner would submit that there is a practice in the State of Uttar Pradesh that arrest is effected after the charge-sheet is filed and the Court takes cognisance of the charge-sheet. We do not propose to say anything as regards in this unusual practice except that it makes no sense.

9. <u>We are of the view that once the investigation is over and charge-sheet is filed then the accused should be asked to appear before the Court concerned and should furnish bail to the satisfaction of the trial court.</u>

10. If at all, the Investigating Officer wanted to interrogate the petitioner, he could have arrested him during the course of the investigation itself. Now there is no point in making a formal arrest.

11. In such circumstances, referred to above, we order that the petitioner herein shall appear before the CBI Court, Gorakhpur and furnish bail to the satisfaction of the Court……"

(emphasis lead)

33. In *Satender Kumar Antil (supra),* the Supreme Court laid down comprehensive guidelines aimed at streamlining the procedures relating to arrest and bail. It also issued specific directions in cases where the police have filed a charge sheet without arresting the accused, along with other related directives. The relevant excerpts from the orders passed in the Miscellaneous Applications are outlined in succeeding sub-paragraphs for ready reference. This Court confines itself to referring only to those directions that are pertinent to the issue at hand and are specifically applicable to the State of Uttar Pradesh.

33.1 The Court emphasised that if an accused has not been arrested during investigation and has cooperated with the investigation, there is ordinarily no justification for taking the accused into custody by the courts upon filing of a charge sheet, as held in the case of *Sidharth (supra).* In such cases, the trial court is expected to accept the appearance of the accused upon service of summons and permit them to furnish a bail bond under Section 88 Cr.P.C. (corresponding section 91 of BNSS), rather than insisting on surrender or seeking anticipatory bail. The Court emphasised that in such cases, it is not mandatory for the accused to seek anticipatory bail, as the filing of the charge-sheet without arrest is a clear indication that the investigating agency did not find it necessary to curtail the liberty of the accused during investigation. Therefore, there is no occasion for the Court to send the accused to judicial custody until or unless there are pressing reasons for it.

33.2 It is pertinent to note that, in view of repeated non-compliance with this mandate, the Supreme Court expressed concern over the entrenched practice of insisting on judicial custody or anticipatory bail, notwithstanding that the accused had never been arrested during the investigation. The relevant para of the order dated 11.7.2022, passed in *Satender Kumar Antil (supra)* are extracted herein below:

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"43. The scope and ambit of Section 170 has already been dealt with by this Court in Siddharth v. State of U.P.2 This is a power which is to be exercised by the Court after the completion of the investigation by the agency concerned. Therefore, this is a procedural compliance from the point of view of the Court alone, and thus the investigating agency has got a limited role to play. In a case where the prosecution does not require custody of the accused, there is no need for an arrest when a case is sent to the Magistrate under Section 170 of the Code. There is not even a need for filing a bail application, as the accused is merely forwarded to the Court for the framing of charges and issuance of process for trial. If the Court is of the view that there is no need for any remand, then the Court can fall back upon Section 88 of the Code and complete the formalities required to secure the presence of the accused for the commencement of the trial. Of course, there may be a situation where a

remand may be required, it is only in such cases that the accused will have to be heard. Therefore, in such a situation, an opportunity will have to be given to the accused persons, if the Court is of the prima facie view that the remand would be required. We make it clear that we have not said anything on the cases in which the accused persons are already in custody, for which, the bail application has to be decided on its own merits. Suffice it to State that for due compliance of Section 170 of the Code, there is no need for filing of a bail application.

44. This Court in Siddharth v. State of U.P.2, has held that: (SCC pp. 680-82, paras 4-11)

"4. ... There are judicial precedents available on the interpretation of the aforesaid provision albeit of the Delhi High Court.

5. In High Court of Delhi v. CBI27, the Delhi High Court dealt with an argument similar to the contention of the respondent that Section 170CrPC prevents the trial court from taking a charge-sheet on record unless the accused is taken into custody. The relevant extracts are as under: (SCC OnLine Del paras 15-16 & 19-20).

'15. Word "custody" appearing in this section does not contemplate either police or judicial custody. It merely connotes the presentation of accused by the investigating officer before the Court at the time of filing of the charge-sheet whereafter the role of the Court starts. Had it not been so the investigating officer would not have been vested with powers to release a person on bail in a bailable offence after finding that there was sufficient evidence to put the accused on trial and it would have been obligatory upon him to produce such an accused in custody before the Magistrate for being released on bail by the Court.

16. In case the police/investigating officer thinks it unnecessary to present the accused in custody for the reason that the accused would neither abscond nor would disobey the summons as he has been cooperating in investigation and investigation can be completed without arresting him, the IO is not obliged to produce such an accused in custody.

19. It appears that the learned Special Judge was labouring under a misconception that in every non-bailable and cognisable offence the police is required to invariably arrest a person, even if it is not essential for the purpose of investigation.

20. Rather the law is otherwise. In normal and ordinary course, the police should always avoid arresting a person and sending him to jail, if it is possible for the police to complete the investigation without his arrest and if every kind of cooperation is provided by the accused to the investigating officer in completing the investigation. It is only in cases of utmost necessity, where the investigation cannot be completed without arresting the person, for instance, a person may be required for recovery of incriminating articles or weapon of offence or for eliciting some information or clue as to his accomplices or any circumstantial evidence, that his arrest may be necessary. Such an arrest may also be necessary if the investigating officer concerned or officer in charge of the police station thinks that presence of the accused will be difficult to procure because of grave and serious nature of crime as the possibility of his absconding or disobeying the process or fleeing from justice cannot be ruled out.'

6. In a subsequent judgment the Division Bench of the Delhi High Court in High Court of Delhi v. State28 relied on these observations in High Court of Delhi v. CBI (supra) and observed that it is not essential in every case involving a cognisable and non-bailable offence that an accused be taken into custody when the charge-sheet/final report is filed.

7. The Delhi High Court is not alone in having adopted this view and other High Courts apparently have also followed suit on the proposition that criminal courts cannot refuse to accept a charge-sheet simply because the accused has not been arrested and produced before the Court.

8. In Deendayal Kishanchand v. State of Gujarat29, the High Court observed as under: (SCC OnLine Guj paras 2 & 8).

'2. ... It was the case of the prosecution that two accused i.e. present Petitioners 4 and 5, who are ladies, were not available to be produced before the Court along with the charge-sheet, even though earlier they were released on bail. Therefore, as the Court refused to accept the charge-sheet unless all the accused are produced, the charge-sheet could not be submitted, and ultimately also, by a specific letter, it seems from the record, the charge-sheet was submitted without Accused 4 and 5. This is very clear from the evidence on record.

8. I must say at this stage that the refusal by criminal courts either through the learned Magistrate or through their office staff to accept the charge-sheet without production of the accused persons is not justified by any provision of law. Therefore, it should be impressed upon all the courts that they should accept the charge-sheet whenever it is produced by the police with any endorsement to be made on the charge-sheet by the staff or the Magistrate pertaining to any omission or requirement in the charge-sheet. But when the police submit the charge-sheet, it is the duty of the Court to accept it especially in view of the provisions of Section 468 of the Code which creates a limitation of taking cognisance of offence. Likewise, police authorities also should impress on all police officers that if charge-sheet is not accepted for any such reason, then attention of the Sessions Judge should be drawn to these facts and get suitable orders so that such difficulties would not arise henceforth.'

9. We are in agreement with the aforesaid view of the High Courts and would like to give our imprimatur to the said judicial view. It has rightly been observed on consideration of Section 170 CrPC that it does not impose an obligation on the officer-in-charge to arrest each and every accused at the time of filing of the charge-sheet. We have, in fact, come across cases where the accused has cooperated with the investigation throughout and yet on the charge-sheet being filed non-bailable warrants have been issued for his production premised on the requirement that there is an obligation to arrest the accused and produce him before the Court. We are of the view that if the investigating officer does not believe that the accused will abscond or disobey summons, he/she is not required to be produced in custody. The word "custody" appearing in Section 170 CrPC does not contemplate either police or judicial custody, but it merely connotes the presentation of the accused by the investigating officer before the Court while filing the charge-sheet.

10. We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation

becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it30. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the investigating officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.

11. We are, in fact, faced with a situation where contrary to the observations in Joginder Kumar case30 how a police officer has to deal with a scenario of arrest, the trial courts are stated to be insisting on the arrest of an accused as a prerequisite formality to take the charge-sheet on record in view of the provisions of Section 170 Cr.P.C. We consider such a course misplaced and contrary to the very intent of Section 170 Cr.P.C."

46. Section 204 of the Code speaks of issue of process while commencing the proceeding before the Magistrate. Sub-section (1)(b) gives a discretion to a Magistrate qua a warrant case, either to issue a warrant or a summons. As this provision gives a discretion, and being procedural in nature, it is to be exercised as a matter of course by following the prescription of Section 88 of the Code. Thus, issuing a warrant may be an exception in which case the Magistrate will have to give reasons.

47. Section 209 of the Code pertains to commitment of a case to a Court of Session by the Magistrate when the offence is triable exclusively by the said Court. Clauses (a) and (b) of Section 209 of the Code give ample power to the Magistrate to remand a person into custody during or until the conclusion of the trial. Since the power is to be exercised by the Magistrate on a case-to-case basis, it is his wisdom in either remanding an accused or granting bail. Even here, it is judicial discretion which the Magistrate has to exercise. As we have already dealt with the definition of bail, which in simple parlance means a release subject to the restrictions and conditions, a Magistrate can take a call even without an application for bail if he is inclined to do so. In such a case he can seek a bond or surety and thus can take recourse to Section 88. However, if he is to remand the case for the reasons to be recorded, then the said person has to be heard. Here again, we make it clear that there is no need for a separate application and Magistrate is required to afford an opportunity and to pass a speaking order on bail.

100.2. The investigating agencies and their officers are duty-bound to comply with the mandate of Sections 41 and 41-A of the Code and the directions issued by this Court in Arnesh Kumar16. Any dereliction on their part has to be brought to the notice of the higher authorities by the Court followed by appropriate action.

100.5. There need not be any insistence of a bail application while considering the application under Sections 88, 170, 204 and 209 of the Code.

100.6. There needs to be a strict compliance of the mandate laid down in the judgment of this Court in Siddharth2.

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33.3 In the course of hearing *Satender Kumar Antil (supra),* the Supreme

Court, on multiple occasions, issued orders and expressed concern over the persistent non-compliance with the directions *in Sidharth v. State of U.P. (supra)* by the District Courts in the State of Uttar Pradesh. The Supreme Court further issued guidelines by order dated 7.10.202119 based on categorisation of offences and followed *Sidharth v. State of U.P. (supra)* for cases where the accused was not arrested during the investigation and cooperated throughout the investigation, including appearing before the Investigating Officer whenever called. The order dated 11.7.2022 was widely circulated to all the High Courts and District Courts of Uttar Pradesh.

33.4 The Supreme Court has once again clarified that if, during the course of the investigation, there was no occasion for them to arrest the accused, mere filing of a charge sheet does not ipso facto constitute a valid ground for sending the accused to judicial custody. This principle, which was laid down in *Sidharth v. State of U.P. (supra),* has been reiterated and reinforced in *Statender Kumar Antil (supra).*

33.5 By its subsequent order dated 3.2.2023, the Supreme Court directed all States and Union Territories to incorporate the decisions in *Satender Kumar Antil (supra)* and *Sidharth (supra)* as part of the curriculum of the State Judicial Academies as well as the National Judicial Academy20.

33.6 In continuation, the relevant extract of the order dated 21.3.2023, passed in Misc. Application No.2034 of 202221 is reproduced herein below for ready reference:

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3. We have little option but to direct for the personal appearance of the Registrars of all the High Courts.

4.. Counsels have produced before us a bunch of orders passed in breach of the judgment in the case of Satender Kumar Antil v. CBI only as samples to show how at the ground level despite almost 10 months passing, there are a number of aberrations. It is not as if these judgments have not been brought to the notice of the trial Courts and in fact have even been noted, yet orders are being passed which have a dual ramification i.e., sending people to custody where they are not required to be so sent and creating further litigation by requiring the aggrieved parties to move further. This is something which cannot be countenanced, and, in our view, it is the duty of the High Courts to ensure that the subordinate judiciary under their supervision follows the law of the land. If such orders are being passed by some Magistrate, it may even require judicial work to be withdrawn and those Magistrates to be sent to the judicial academies for upgradation of their skills for some.

5. Amongst the illustrative orders, every large number of them happens to be from Uttar Pradesh and we are informed that orders passed specially in Hathras, Ghaziabad and Lucknow Courts seem to be in ignorance of this law. We call upon the counsel for the High Court of Allahabad to bring this to the notice of the Hon'ble the Acting Chief Justice so that necessary directions are issued to ensure that such episodes don't occur, including some of the suggestions made by the above.

6. Another aspect which is sought to be pointed out by learned counsel is that not only is there a duty of the Court but also of the public prosecutors to plead correct legal position before the Court as

officers of the Court. Illustrations are being given once again where the submissions of the public prosecutors are to the contrary. In this behalf Mr. Maninder Singh, learned Senior Counsel submits that even in an earlier order passed by this Court in Aman Preet Siingh v. C.B.I. Through Director22, this aspect was flagged as under:

"7. Learned counsel for the appellant has brought to our attention to the proceedings recorded on 26.8.2021 before the Magistrate to submit that the high handedness of the respondent is apparent from the fact that the public prosecutor, despite these orders from this Court, sought to plead that the appellant had not been allowed any bail, non bailable warrants had been issued against him, the direction of this Court for the appellant not to be arrested did not mean that he could not be sent to judicial custody and since this Court observed that he could attend virtually till physical hearing started, which had by then resumed, he should be sent to judicial custody. We may only note all these submissions are completely inappropriate and indefensible. Neither did the learned Additional Solicitor General seek to contend except stating that those are only submissions. We except a public prosecutor to be conscious of the legal position and fair while making submissions before the Court. We say no more as at least the Chief Judicial Magistrate understood the order clearly and thus did not agree with the submission of the public prosecutor."

33.7 Likewise, in continuation of the proceedings in the same petition, the Supreme Court, by order dated 2.5.2023, passed in *Miscellaneous Application No. 2034 of 2022 in M.A. No. 1849 of 2021 in SLP (Crl.) No.519 of 202123*, observed as under, and the relevant extracts thereof are reproduced hereinbelow:

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"(ii) The Registrar of the Allahabad High Court appears not to have even filed the affidavit setting out what steps have been taken in pursuance to the directions passed by us on 21.3.2023 and it is now stated before us that it will be filed. We find this completely unacceptable. A date is fixed where considerable time is spent in this matter to ensure that the law is followed. The least we expect is that the affidavits will be filed well in time with advance copies to the Amicus so that he can assist the Court. This is more so of a State where it has been found that there are large number of examples of orders being passed by judicial officers, not in conformity with the judgment passed in the present matter.

We call upon the Allahabad High Court to file appropriate affidavit within four weeks with advance copy to the learned Amicus setting out the steps taken in this regard and as to whether it has been identified if some judicial officers have been still frequently passing orders not in conformity with the judgment and whether any of the officers have been sent to the judicial academies for further upgradation of their skills.

We may also note that as per some orders handed over to the learned Amicus, even after the last order, such orders as have been illustratively passed by the Lucknow and Ghaziabad Courts are not following the judgment of this Court. We would like to emphasise that if counsels want to bring to the notice of the Court that such orders are being passed, the least which is expected is that the Amicus would have been handed over advance copies of

such orders to facilitate him in assisting the Court.

One of the orders pointed out is of Sessions Judge, Lucknow in Bail Application24 i.e. even after the order passed by us on 21.03.2023. The order rejects an anticipatory bail application in a matter of a matrimonial dispute where it was alleged that there was an assault on the complainant and various family members were sought to be roped in which included the husband, brother-in-law, mother-in-law and father-in-law. It was stated before the Court that the accused applicants were not arrested during the investigation and now charge sheet has been filed. The statement of the Public Prosecutor is also recorded that the offences levelled are punishable with less than seven years of imprisonment. Thereafter the order notes the 2021 judgment of this Court. Despite this the anticipatory bail application is rejected qua all the applicants while recording "since ample safeguards in given situation is already available to the accused-applicant, therefore, no ground exists for grant of anticipatory bail."

We have thus, specifically brought this order to the notice of learned counsel for the Allahabad High Court as an illustration where despite all directions, much leaves to be desired.

Certainly, the learned Judge concerned meets the parameters for upgradation of his skills in a Judicial Academy and the needful be done by the High Court.

The fact that the directions in the case would apply to anticipatory bail cases was enunciated in the order dated 21.3.2023 and thus, there could not have been any confusion on this aspect.

Another illustrative order, we may note is in the case of a Second Anticipatory Bail Application No. 1287 of 2023 in the Court of the Special Judge, Anti-Corruption CBI Court No.1, Ghaziabad dated 18.4.2023 which also the High Court needs to look into."

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33.8 Further, in the course of the same proceedings, the Supreme Court, by order dated 13.02.202425, observed as under, the pertinent extracts whereof, are reproduced hereinbelow:

*****

"State of Uttar Pradesh — Directions to be complied with

229. In terms of direction contained in para 100.2, it is directed to provide the particulars of first information reports of cognizable and non-bailable cases in which the mandate of Sections 41, 41-A CrPC and Arnesh Kumar5 has not been followed and consequently to provide the details of necessary actions that have been taken against erring police officers. Also, in terms of direction contained in para 100.2, information has to be provided as to whether the Standing Order is being complied with by the investigating officers

230. In terms of the directions contained in 100.7, it is directed that the State shall provide details of Special Court constituted and the necessary steps taken for creation of additional Special Courts and its stage.

231. Compliance with the order dated 21-3-20232 passed by this Court:

(a) In terms of the above referred order, we direct the State to ensure that the Prosecutors are stating the correct position of law as per the judgment passed by this Court in Siddharth4 and Satender Kumar Antil 1.

(b) To circulate the judgment passed by this Court in Siddharth4 and Satender Kumar Antil 1.

(c) To train and update the Prosecutors on a periodical basis and provide details of the same.

High Court of Allahabad- Directions to be complied with

232. In terms of the compliance of the directions issued in para 100.2, the affidavit submitted highlights discrepancy, wherein information highlights compliance of Section 41 and 41-A Cr.P.C., however, bail is being granted due to non compliance of the same in certain districts such as Barabanki, Farrukhabad, Kashiram Nagar, Lakhimpur Kheeri and Moradabad. Since the two conditions cannot co-exist, the High Court is directed to ensure uniform compliance and furnish information on the same.

233. In terms of the directions issued in para 100.5, the High Court is directed to ensure compliance to the effect that bail applications should not be insisted upon in applications under Sections 88, 170, 204 and 209 CrPC as they are being insisted upon in certain districts such as Agra, Chitrakoot and Sambhal, and to furnish information on the same.

234. In terms of the directions issued in para 100.6, the High Court is directed to ensure compliance of the same and furnish information.

235. In terms of the directions issued in para 100.7, the High Court is directed to ensure compliance with respect to consultation with the State Government for constitution of Special Courts and filling vacancies in the existing District Courts, and to furnish information on the steps taken to comply with the same.

236. In terms of the directions issued in paras 100.8 and 100.9, it is noted that despite the identification of undertrial prisoners, sufficient steps have not been taken to ensure compliance by filing applications on their behalf under Section 440 CrPC, in most districts. The High Court is directed to ensure compliance and furnish information on the same.

237. In terms of the directions issued in para 100.11, the High Court is directed to furnish complete information regarding the compliance of the directions in all districts and to take steps for compliance.

238. The High Court is directed to identify judicial officers passing orders in non-conformity with the directions issued by this Court in Satender Kumar Antil1, in terms of the order dated 2-5-20236 of this Court, and to provide details as to the actions taken against erring officers.

239. To furnish information on whether the directions of Satender Kumar Antil1 is being applied to petitions under Section 438 CrPC or not."

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33.9 Further, in the course of the same proceedings, the Supreme Court, by order dated 6.8.202421, issued the following directions, the relevant extracts whereof are reproduced hereinbelow:

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"State of Uttar Pradesh — Directions to be complied with

79. The State must provide a clarification and details with respect to the instances of non-compliances of para 100.2 of Satender Kumar Antil case1 by police officers in District Farukkhabad (which is based on the data provided by the High Court of Allahabad) and provide details of action taken against the said erring officers as mandated by para 100.2.

80. The State must ensure compliance of para 100.7 of Satender Kumar Antil v. CBI1.

81. The State must ensure compliance of paras 259 and 260 of the order dated 13-2-20245 passed by this Court and implement the SOP (Constitution of an "Empowered Committee" and an "Oversight Committee") to help poor prisoners.

High Court of Allahabad — Directions to be complied with

82. The High Court must provide data, in conformity of orders dated 3-2-20232 & 13-2-20245 identifying any judicial officers who are passing orders in non-conformity with the directions issued by this Court in Satender Kumar Antil v. CBI1 and to provide details as to the actions taken against such erring officers, if any.

83. The High Court must provide data in order to show compliance with paras 100.5, 100.6, 100.8, 100.9, 100.11 of Satender Kumar Antil case 1.

84. The High Court must provide clarification and an explanation with respect to non-compliance of para 100.5 of Satender Kumar Antil1 case by the Special Judge, Anti-Corruption, CBI-5, Lucknow in orders dated 24-7-2024 arising out of [Anticipatory Bail Application No. 5384 of 2024 & Anticipatory Bail Application No. 5393 of 2024 in Sessions Case No. 1117 of 2024 [RC No. 03(A)/2022.

85. The High Court must provide data indicating whether the District & Sessions Judges are complying with the direction to apply principles of Satender Kumar Antil v. CBI1 to applications seeking anticipatory bail under Section 438 CrPC."

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33.10 Further, in the course of the same proceedings, the Supreme Court, by order dated 21.1.202522, issued the following directions, the relevant extracts whereof are reproduced hereinbelow:

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"11 (d) All the High Courts must hold meetings of their respective Committees for "Ensuring the Implementations of the Decisions of the Apex Court" on a monthly basis, in order to ensure compliance of both the past and future directions issued by this Court at all levels, and to also ensure that monthly compliance reports are being submitted by the concerned authorities."

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34. In one such instance, the Supreme Court directed the learned District Judge, Lucknow, to undergo judicial training, observing that the subordinate judiciary was not following the directions laid down in *Satender Kumar Antil (supra).* This direction underscores the Supreme Court's concern regarding the routine and mechanical insistence on custody or anticipatory bail, despite the absence of arrest during investigation- a practice inconsistent with the constitutional mandate of safeguarding personal liberty. The Court reiterated that unnecessary incarceration and procedural rigidity violate the fundamental rights enshrined under Article 21 of the constitution, and that bail, not jail, remains the governing norm unless custodial interrogation is warranted.

35. The trajectory of anticipatory bail jurisprudence, from *Gurbaksh Singh Sibbia (supra) to Satender Kumar Antil (supra),* represents a mature constitutional evolution toward affirming personal liberty and rationalising procedural rigour. In an age where arrests are increasingly recognised as tools of oppression when misused, the courts have correctly shifted

the focus to appearance and cooperation, rather than mechanical incarceration.

36. The rule of law rests on the supremacy of law and equality before it, with the Supreme Court as its final interpreter whose judgments bind all subordinate courts under Article 141 of the Constitution. Disregard of its directives- particularly those safeguarding personal liberty in *Sidharth (supra) and Satender Kumar Antil (supra)*- undermines constitutional governance and fosters judicial impropriety. Despite the Supreme Court's order dated 3.2.2023 directing the incorporation of these rulings into the curricula of all State Judicial Academies and the National Judicial Academy, repeated violations persisted, prompting further orders on 21.3.2023 and 2.5.2023, including a direction to the District Judge, Lucknow, for skill- upgradation training at the Judicial Training and Research Institute.

37. These are not isolated incidents. This Court routinely encounters cases where trial courts disregard the principles laid down in *Sidharth (supra) and Satender Kumar Antil (supra)*. From the date of the *Sidharth (supra)* judgment i.e. dated 16.8.2021 until the skill-enhancement directives to learned District Judge, Lucknow by order dated 2.5.2023- spanning nearly two years- there has been little change in the approach of the subordinate judiciary, underscoring the urgent need for stronger enforcement and accountability. This, therefore, warrants the intervention of this Court. High Courts, vested with inherent powers under Section 528 of the BNSS, 2023 read with Articles 226 and 227 of the Constitution, are empowered to issue structured and binding guidelines to ensure uniform adherence to Supreme Court judgements to meet the ends of justice. As affirmed in *Jasbir Singh v. State of Punjab26*, persistent defiance warrants supervisory intervention. The Supreme Court affirmed that continued defiance of binding pronouncements warrants supervisory action. Issuing structured, uniform guidelines to ensure implementation at the trial court level is therefore both legitimate and necessary. When exercised judiciously and transparently, these powers preserve judicial integrity, ensure accountability, and uphold the rule of law.

DIRECTIONS

38. Based on the foregoing deliberations, and to give effect to the constitutional guarantees under Article 21 of the Constitution of India, this Court, in exercise of the powers vested in it under Article 227 of the Constitution and Section 528 of the BNSS, and to secure the ends of justice as well as to implement the directions issued in *Satender Kumar Antil (supra),* hereby directs as follows:

(i) All District Judges shall ensure that, in cases where the charge-sheet has been filed without arrest- whether because custodial interrogation was not effected during investigation by Investigating Officer, or the accused had secured anticipatory bail/protective orders under Article 226 of the Constitution or Section 528 of the BNSS and duly cooperated during investigation- the trial court shall not remand the accused to judicial custody upon appearance pursuant to summons, nor insist upon filing of regular or anticipatory bail applications. The accused shall be permitted to appear and furnish a personal bond at the first instance, in terms of *Musheer Alam (supra)*

and *Satender Kumar Antil (supra)5.* The requirement of surety under Section 91 BNSS may be considered subsequently at the court's discretion to ensure appearance of the accused.

(ii). At the stage of proceedings under Sections 88, 170, 204, and 209 Cr.P.C. (corresponding sections 91, 190, 227 and 232 of BNSS), the trial court- whether presided over by a District Judge, Additional District and Sessions Judge, or Magistrate- shall inform the accused of his right to furnish a personal bond at the first instance, and may require surety subsequently, if necessary27.

(iii). Immediately after appearance of accused in response to summons, the court shall comply with Sections 230 and 231 of BNSS, 2023, committing the case to the court of session when exclusively triable by it, and proceed to the next trial stage without unnecessary delay.

(iv). For the sake of clarity, when the trial court encounters such anticipatory bail or protective orders under Article 226 or Section 528 BNSS specifying protection till the filing of the charge-sheet, or direct that *"no coercive action"/"stay on arrest shall operate until filing of charge sheet",* these protections shall be deemed to continue until the conclusion of trial, in line with *Gurbaksh Singh Sibbia (supra), Sushila Aggarwal (supra), Sidharth (supra), Satender Kumar Antil (supra), and Musheer Alam (supra)* unless supported by with cogent reasons, making out an exceptional case. This direction aligns with the consistent position adopted by the Supreme Court, beginning with *Gurbaksh Singh Sibbia (supra), affirmed in Sushila Aggarwal (supra),* clarified in *Sidharth (supra), and reiterated in Satender Kumar Antil (supra) and Musheer Alam (supra).* A reference may be invited to paragraphs 43, 44, 46 and 47 of the order dated 11.7.2022; paragraph no.3 of order dated 7.10.2021; paragraph no.6 of order dated 16.12.2021; paragraph no.4, 5 and 6 of order dated 21.3.2023; paragraph nos.7(ii) of order dated 2.5.2023; paragraph nos.229 to 239 of the order dated 13.2.2024; paragraph nos.79 to 85 of the order dated 6.8.2024 passed in *Satender Kumar Antil v. CBI, [all the orders mentioned hereinabove have been passed by Supreme Court in SLP (Crl.) No.5191 of 2021].*

(v). The Joint Director (Prosecution) in each district shall maintain detailed records of all such cases where trial courts remanded accused persons to custody, despite charge-sheets being filed without prior arrest, contrary to the Supreme Court directives in *Arnesh Kumar (supra), Sidharth (supra), Satender Kumar Antil (supra), and observation made in Musheer Alam (supra).*

(vi). All Jail Superintendents shall maintain corresponding records of such cases. The record shall be maintained in a register documenting cases along with a *remand order* where an accused has been sent to jail by the trial court despite not being arrested during the investigation and the judicial remand is contrary to the judgments mentioned in preceding paragraph.

(vii). The Additional Director General of Police (Prosecution), Directorate of Prosecution, Lucknow, shall compile an annual, centralised record of all such instances, based on data from Joint Directors (Prosecution), and Jail Superintendents. This record shall be reviewed periodically, submitted to higher authorities, including the Registrar General of the High Court. It shall be used to assess the conduct of Judicial and Prosecuting Officers. The Directorate of Prosecution shall promote compliance with binding

directions, protect the constitutional right to liberty, and preserve the integrity of the criminal justice system. The objective is to establish an additional layer of oversight at the zonal and regional levels, complementing the centralised data maintained by the Directorate of Prosecution.

(viii). The Director, JTRI, Lucknow, shall ensure sustained training programmes for judicial officers to secure compliance with this order.

(ix). The Secretary, District Legal Services Authority, in coordination with District Court Bar Associations, shall conduct regular legal awareness camps to educate and sensitise advocates on these directions.

(x). District Judges shall submit monthly reports to the High Court containing: (a) the number of cases in which judicial remand was ordered despite no prior arrest; (b) feedback on judicial training and compliance with these directions; and (c) details of legal awareness camps conducted. A reference is invited to paragraph 11(d) of the order dated 21.1.2025 passed in Satender Kumar Antil v. CBI22.

(xi). It is noted that *Sidharth (supra)* was delivered on 16.08.2021 and reinforced in *Satender Kumar Antil (supra)* by order dated 11.7.2022. Despite this, violations persisted by the learned trial courts, leading the Supreme Court to direct skill enhancement training for a District Judge nearly a year after *Satender Kumar Antil* and two years after *Sidharth*. The Supreme Court also expressed concern that judges in other districts of Uttar Pradesh remained unaware or indifferent to these directions, therefore, it can safely be observed that the long-standing practice of District Judges merely endorsing 'seen' on the cover page of circulation letters for judgments has lost its efficacy. Therefore, the learned District Judges shall endorse: *"Read, understood, and discussed with fellow judges of the district",* and, after deliberating on this judgment with their fellow judges, submit a report to this effect to the Registrar General of this Court immediately upon receipt of a copy of this order.

39. The learned *Amicus Curiae* has also drawn attention to a related issue, namely, the difficulty encountered by litigants in furnishing two sureties for each case. This requirement, invariably followed in all districts pursuant to various circulars issued by this Court, often involves substantial surety amounts and, as such, may obstruct the course of justice and create impediments in the seamless compliance with the aforesaid directions.

39.1 Due to the unavailability of sureties- especially for litigants residing outside the district or even outside the State- many remain languishing in jail for extended periods, sometimes from several months to years. The Supreme Court has consistently held that an accused should not be denied release on bail solely due to the non-availability of sureties, as such a situation, particularly when the accused has spent even a single day in custody after the grant of bail, amounts to a travesty of justice and frustrates the very purpose of bail.

40. To understand the rationale behind the district court's consistent requirement for two sureties and with bail bond commensurate the gravity of offence, it is essential to trace its origins to certain circulars issued by the High Court. A brief review of these circulars would provide clarity and facilitate a better understanding of the practice.

40.1 In continuation of the earlier directions, Circular Letter No. 3/VIIb-47 dated 17 January 1972 was issued regarding the acceptance of surety bonds. It directed Presiding Officers to exercise judicial discretion, whereby a surety was required to file a detailed affidavit of movable and immovable assets, and, if found reliable, the bond could be accepted without reference to the Tehsil. Where such reference was considered necessary, safeguards against corruption were to be observed, and reports were to be assessed on their merits without undue influence. Strict action was also mandated in cases involving false affidavits or incorrect Tehsil reports.

40.2 Thereafter, a Circular Letter No. 24/VIIb-47 dated 25 February, 1976 was reiterated and expanded these instructions, requiring affidavits from sureties detailing property, value, and previous suretyship; dispensing with further verification where an advocate vouched for the surety thereby discontinuing the practice of sending bonds to the Tehsil for verification.

40.3 Subsequently, a Circular No. 58/98 dated 5th November 1998, in partial modification of the earlier Circular dated 20th October 1998, was issued mandated strict compliance in serious offences such as murder, dacoity, rape, and NDPS cases, with high surety amounts proportionate to the gravity of the offence- ordinarily secured by two sureties of the like amount- along with directions for address verification, submission of photographs, and production of sale deeds.

40.4 Similarly, a Circular No. 44/98 was again issued directing that in such serious offences, the surety bond should generally be fixed at Rs.1 lakh, covered by four sureties of Rs.25,000 each, together with procedural safeguards. Further, a Circular Letter No. 3/Admin.(G) dated 16 February, 2009 was again issued instructing subordinate judicial officers to normally require two sureties, with bond amounts proportionate to the offence's seriousness, particularly in murder, dacoity, rape, and NDPS cases. The present Circular was based upon the decision passed in ***Shiv Shyam Pandey v. State of U.P. and Others28,*** which examined the relevance of previous circulars mandating requirement of four sureties of Rs.25000/- each in light of the Supreme Court judgment passed in ***Motiram v. State of Madhya Pradesh29.***

40.5 While examining the requirement of four sureties, the Supreme Court considered the opinion of a Committee comprising judges, lawyers, Members of Parliament, and legal experts, and concluded that release on bail includes release on the accused's own bond. The Court observed that judicial discretion must be exercised judiciously in cases where the accused is too poor to procure sureties, as insisting on bail with sureties in such circumstances would serve no purpose other than to keep the accused in custody, thereby causing consequent handicaps in the preparation of his defence.

41. A brief analysis of the numerous circulars (supra) issued by this Court reveals that, as early as 1972, provision existed for the acceptance of surety bonds at the discretion of the Presiding Officer. Such discretion was to be exercised based on a detailed affidavit furnished by the sureties, disclosing their movable and immovable assets, and subject, where necessary, to verification from the Tehsil. Subsequently, by Circular

dated 25.02.1976 (supra), the requirement of Tehsil verification for surety bonds was formally dispensed with. In the years that followed, as reflected in the various circulars referenced above, the conditions for the release of an accused on surety became progressively more stringent year after year. However, the Supreme Court, in the light of Article 21 of the Constitution of India, continued to dilute the rigour of such conditions29.

42. In 1976, the High Court, in its considered wisdom, dispensed with the requirement of furnishing surety for the purpose of giving effect to bail orders. In the present day, i.e., in the year 2025, with significant advancements in surveillance mechanisms and other modes enabling law enforcement agencies to efficiently track and monitor the movements of an accused, the necessity of imposing stringent conditions for release from custody warrants reconsideration. It is, therefore, imperative to examine whether the continuance of such conditions is in consonance with the letter and spirit of Article 21 of the Constitution, which guarantees the right to personal liberty.

43. A 3-Judge Bench of the Supreme Court in *Ramchandra Thangappan Aachari v. State of Maharashtra30* held that it would amount to a travesty of justice if a petitioner were unable to avail the benefit of a bail order merely due to the inability to furnish a local surety. Such a requirement would infringe the fundamental rights guaranteed under Article 21 of the Constitution, especially where a person continues to remain in custody despite having a bail order in his favour. The court emphasised that an applicant's fundamental right to personal liberty cannot be curtailed on account of poverty or the inability to arrange surety/multiple sureties. In this context, the court directed the release of a POCSO convict who had remained in custody solely due to an inability to furnish a local surety. The Court underscored the need for the justice system to be sensitive to the plight of indigent convicts who are financially incapable of meeting onerous bail conditions.

44. Similarly, in *Girish Gandhi v. State of U.P. and Others31, the Supreme Court, while relying on Motiram and Others v. State of Madhya Pradesh (supra), In Re: Policy Strategy for Grant of Bail32*, and Hani Nishad @ Mohd. Imran @ Vicky v. State of U.P.33, reaffirmed and strengthened the principles laid down in *Satender Kumar Antil v. CBI (supra),* emphasising that imposing bail conditions which are impossible to comply with ultimately defeats the very purpose of the bail order.

44.1 In a recent matter, the Division Bench of this Court, while adjudicating Criminal Misc. Modification Application No. 13 of 2023, noted that the convict had been granted bail on 30.11.2017 subject to the production of two sureties to the satisfaction of the trial court. However, as the accused was unable to furnish the sureties as directed, he continued to remain in custody. Pursuant to the directions of the Hon'ble Supreme Court in In *Re: Policy Strategy for Grant of Bail (supra),* dated 19.05.2023, the Superintendent of Jail, through the Legal Aid Counsel, moved an application before this court seeking modification of the bail conditions. Resultantly, by the intervention of this court, the accused was released on 15.09.2023 upon furnishing a personal bond- after an unwarranted delay of more

than five and a half years. This instance constitutes a glaring violation of Article 21 of the constitution and runs contrary to the very essence and object of granting bail.

44.2 In another case, a Division Bench of this Court, while adjudicating Application No.7 of 2022 in Criminal Appeal No.17971 of 2003 seeking the release of the appellant on the ground that, although the convict had been granted bail by order dated 4.12.2003, he could not be released due to non-furnishing of sureties- a pre-requisite condition imposed by the Court. A report was called from the Jail Superintendent, Central Jail, Naini, Prayagraj. The report indicated that the convict's continued incarceration was solely due to the non-furnishing of sureties. Following the intervention of this Court, the convict was released in July 2022 on furnishing his personal bond- nearly 18 years after the bail order had been passed.

45. As rightly observed in *Shiv Shyam Pandey (supra),* and in subsequent sting of judgments of the Supreme Court referred to hereinabove, the present matter in question reflects misuse of authority by both the police and the Magistrate. In district courts across the State, the routine and indiscriminate imposition of a requirement to furnish two sureties- often with bond amounts proportionate to the gravity of the alleged offence- has become an onerous burden, not only upon the accused but also upon the justice delivery system as a whole. Alarmingly, a parallel network has emerged in district courts involving fake sureties and forged surety bonds, often in connivance with local police personnel.

FURTHER DIRECTIONS

46. Accordingly, it is hereby directed that the mandatory requirement of two sureties are dispensed with, and henceforth, (i) the accused(s)/convict(s), as the case may be, shall be released on a ***"single surety",*** subject to the satisfaction of the Magistrate or the court concerned– the satisfaction shall drive from the socio-economic condition of the accused- and that the surety bond amount be fixed in accordance with the financial strength of the accused. In case, the accused(s) is unable to produce sound surety within seven days from the date of grant of bail, it would be the duty of the Superintendent of Jail to inform the Secretary, DLSA who may depute from para legal volunteer or jail visiting advocate to interact with the prisoner and assist the prisoner in all ways possible for his release, besides other directions contained in order dated 31.1.2023 passed in ***In Re: Policy Strategy for Grant of Bail (supra), and (ii)*** if the accused has been booked in multiple cases (FIRs) even across many states, the court shall forthwith release the accused -if secures bail in all cases- in the light of ***Girish Gandhi v. State of U.P. and Others (supra).***

47. In view of the aforesaid deliberations, the Registrar General of this Court is directed to place a copy of this order before Hon'ble the Chief Justice, with a request to consider issuing fresh guidelines, in supersession of Circular No. 44/98 dated 20.8.1998 and Circular No. 4258/Admin.'G-II' dated 17.4.2020, as His Lordship may deem fit and appropriate, for directing the subordinate courts on the verification of sureties and bail bonds. *The aforesaid circulars have lost their relevance in light of the directions issued by the Supreme Court in In Re: Policy*

Strategy for Grant of Bail (supra) and other judgments discussed hereinabove.

48. The court places on record its sincere appreciation for the valuable assistance rendered by Shri Satyaveer Singh, learned *Amicus Curiae.*

49. Reverting to the merits of the present case, it stands admitted that the charge sheet has been filed without the arrest of the applicant. Learned counsel for the applicant has confined his submission to a limited prayer- that the trial court be directed not to remand the applicant to judicial custody in the absence of anticipatory bail. Upon consideration, this Court observes as follows:

49.1 As regards the merits of the present case, I find force in the arguments of learned A.G.A. that during the spot inspection conducted at the applicant's premises by the authorised representative of SGS IPR Consultancy- the complainant- a substantial quantity of counterfeit Asian Paints products was recovered, indicating that the applicant was deriving significant illegal profit. As regards the applicant's knowledge and intention to earn such profit, these matters are to be examined during trial and can only be determined after the prosecution witness has deposed. The applicant shall be at liberty to raise all relevant contentions at the stage of framing of charge, and the trial court shall consider the same in accordance with law.

50. Needless to state, the applicant shall appear before the trial court on the next date of hearing and may directly furnish a bail bond, subject to the satisfaction of the trial court. There is no requirement for the applicant to file a separate bail application; the production of the bail bond alone shall suffice. Non-bailable warrant, if issued before or during the pendency of this application, shall stand ***set aside.***

51. The observation made hereinabove in para 49.1 shall not affect the merits of the case and has been made for the disposal of the present case.

52. The Registrar (Compliance) is directed to forthwith transmit a copy of this order to all the District Judges, who shall, in turn, circulate the same to all Judicial Officers of the District Courts; to the Director General of Police, who shall circulate it to all Commissioners of Police, Senior Superintendents of Police, and Superintendents of Police; to the Additional Director General (Prosecution), who shall circulate it to all Joint Directors in the districts; and to the Director, Judicial Training & Research Institute, Lucknow, for record and ensuring effective compliance.

53. Accordingly, with the above observations and directions, the present application is **disposed of.**

(2025) 8 ILRA 120

ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 25.08.2025

BEFORE

THE HON'BLE SHREE PRAKASH SINGH, J.

Application U/S 482 No. 6937 of 2025

Mohd. Abdul Aleem Khan ...Applicant
Versus
State of U.P. ...Opposite Party

Counsel for the Applicant:

Nadeem Murtaza, Suruchi Tripathi, Wali Nawaz Khan

Counsel for the Opposite Party:
G.A.

Issue for consideration

Pertains to sec 19 of the Act, 1988; whether the sanction is deemed sanction or not

Headnotes

Prevention of Corruption Act, 1988 (as amended by Act of 2018)-sec.19; Code of Criminal Procedure-sec.197-The sanction granted by the State -Government was declared non est -the sanction order was quashed -and it was opened to the applicant that in case any sanction is granted by the Government of India-then the same can be agitated before this Court-Court below passed the impugned order for further orders- for taking decision with respect to deemed sanction-there is no provision with respect to the deemed sanction of prosecution u/s 19-impugned order set aside-**Application allowed.** (E-9)

Held:

The provision of Section 19 of the Act, 1988 is para materia to the provision of section 197 Cr.P.C. to the effect and meaning of that there is no provision of 'deemed sanction'. More-so, Section 197 of Cr.P.C. is liberal than Section 19 of the Act, 1988, on the pretext that the provisions of Section 197 of Cr.P.C. opens an exception regarding an accused who was deployed, under some official duty.

Case Law Cited

1.Dr. Subramanian Swamy Vs. Dr. Manmohan Singh reported in [AIR 2012 SC 1185]
2. Suneeti Toteja Vs. State of U.P. and Others, reported in [AIR 2025 SC 1308]
3. Shri Khereshwar Mahadev VA Dauji Maharaj Samiti Vs. State of Uttar Pradesh and Others reported in [2025 SCC OnLine SC 774]
4. Neeraj Garg Vs. Sarita Rani and Others reported in [(2021) 9 SCC 92]

List of Acts

1. Prevention of Corruption Act, 1988 (as amended by Act of 2018)
2.Code of Criminal Procedure

List of Keywords

Sanction of prosecution, 'deemed sanction' cognizance cannot be taken

Appearances of parties

Counsel for Applicant(s) : Nadeem Murtaza, Suruchi Tripathi, Wali Nawaz Khan
Counsel for Opposite Party(s): G.A.

(Delivered by Hon'ble Shree Prakash Singh, J.)

1. Heard Sri Nadeem Murtaza, Advocate assisted by Sri Wali Nawaz Khan, Ms. Suruchi Tripathi and Sri Aishwarya Pratap Singh, learned counsels for the applicant and Sri Sushil Pandey and Sri Nirmal Kumar Pandey learned Additional Government Advocate, for the State.

2. The instant application under Section 528 BNSS/482 Cr.P.C. has been filed by the applicant with the prayer to quash the impugned order dated 25.07.2025, passed by learned Special Judge (Prevention of Corruption Act), Court no. 6, Lucknow, in Sessions Case No. 590 of 2023 (State v. Mohd. Abdul Aleem Khan), arising out of Case Crime No. 1262/2019, under Section 13(1)(b) r/w 13(2) of the Prevention of Corruption Act, 1988 (as amended by Act of 2018), Police Station Gomti Nagar, District Lucknow. Further prayer is that the scant observations made in the impugned order dated 25.07.2025, against the learned Senior Advocate, representing the applicant, before the learned trial court may be deleted, as well as entire proceedings of aforesaid sessions Case may also be quashed.

3. Briefly stated factual matrix of the case is that the applicant joined as a Pool Officer and was selected in the Provincial

Civil Services and thereafter promoted as an Officer in Indian Administrative Services and he retired from services on 30.11.2009. On 19th of February, 2015, an enquiry was contemplated by the U.P. Vigilance Establishment, Lucknow, thereafter, the applicant submitted the proof of income, assets and expenditure in respect with him, as well as his wife, the son, daughter-in-law and his 2 daughters. Subsequently, an FIR was lodged on 24th of October, 2019 under Section 13(2) read with Section 13(1)(b) of the Prevention of Corruption Act, 1988 (hereinafter referred as 'Act of 1988'), with the Police Station Gomti Nagar, District Lucknow. Whereafter, the investigation commenced and the Competent Authority, in violation of mandatory provisions, under Sections 17 and 17-A of the Act 1988, proceeded with the matter. On 20th of January, 2023, the sanction for prosecution was accorded on behalf of Her Excellency, the Governor of Uttar Pradesh and the chargesheet was prepared on 18th of March, 2023. Such sanction granted by the Authority was assailed before this Court by filing an Application u/s 482 Cr.P.C. No. 10429 of 2024, wherein an order was passed on 18th of December, 2024, which is reproduced as under:

"1. Heard Sri Nandit Kumar Srivastava, Senior Advocate assisted by Ms. Suruchi Tripathi, Advocate, Sri Tanmay Krishna, Sri Ujjwal Maurya and Ms. Shahla Zubair, Advocate, learned counsel for the applicant and Sri Rao Narendra Singh, learned A.G.A.

2. The instant application has been filed by the applicant with a prayer to quash the charge-sheet dated 18.03.2023 and cognizance order dated 23.03.2023 as well as discharge rejection order dated 07.11.2024, and to hold the sanction order dated 20.01.2023.

3. On 16.12.2024, following order was passed:-

"1. Heard Sri Nandit Kumar Srivastava, Senior Advocate assisted by Ms. Suruchi Tripathi, Advocate, Sri Tanmay Krishna, Sri Ujjwal Maurya and Ms. Shahla Zubair, Advocate, counsel for the applicant, Sri Rao Narendra Singh, learned A.G.A. and Sri Raj Kumar Singh, Senior Standing Counsel for Union of India

2. On 12.12.2024 following order was passed:-

"1. Heard Sri Nandit Kumar Srivastava, Senior Advocate assisted by Ms. Suruchi Tripathi, Advocate, Sri Ujjwal Maurya and Ms. Shahla Zubair, Advocate, counsel for the applicant, Sri Rao Narendra Singh, learned A.G.A. and Sri Raj Kumar Singh, Senior Standing Counsel for Union of India.

2. Supplementary affidavit filed by learned counsel for the applicant is taken on record.

3. On 3.12.2024, following order was passed:-

1. On 28.11.2024 following order was passed:-

"1. Heard Sri Nandit Srivastava, Senior Advocate assisted by Ms. Suruchi Tripathi, Advocate & Ms. Shahla Zubair, Advocate, learned counsel for the applicant and Sri Rao Narendra Singh, learned A.G.A. for the State.

2. The present application under Section 482 Cr.P.C. is filed with the prayer to quash the proceeding of Sessions Trial (Criminal Case) No.590 of 2023 'State Vs. Mohd. Aleem Khan', under Section 13(1)(b) read with Section 13(2) of Prevention of Corruption Case, arisen out of F.I.R. No.1262 of 2019, Police Station Gomti Nagar, District Lucknow.

3. Learned counsel for the applicant submits that applicant is a retired officer of Indian Administrative Services Cadre and prosecution in question was initiated in the most mechanical manner without mentioning the check period for inquiry with the allegation of disproportionate asset. He also submits that inquiry was conducted and F.I.R. was lodged, and thereafter, comprehensive reply was given but same was not considered and charge sheet was filed by the Investigating Officer.

4. It was obligatory on the part of the Investigating Officer to obtain sanction from the appointing authority, i.e., His Excellency, President of India but in the present case the sanction has been given by the State Government, which is not permissible in the eye of law.

5. Learned counsel for the applicant submits that sanction was granted by the State Government on the advice of the Department of Justice, Government of U.P.

6. List this case on 3.12.2024 at 11:30 A.M.

7. On the next date of listing, responsible officer of appointment department as well as Department of Law, State of U.P. shall appear before this Court and explain that whether for prosecution of a officer belongs to Indian Administrative Services Cadre, sanction is necessary from the President of India or Governor of State.

8. It is open to the applicant to make request before the trial court for deferring of the proceeding till the next date."

2. In pursuance of aforesaid order, Mr. Aurnesh Kumar Dwivedi, Joint Secretary, Department of Personnel and Appointment and Mr. Manmeet Suri, Special Secretary, Department of Law, Government of U.P. are present before this Court. Relevant record has been placed by them. They submitted that it is bounden duty of the Investigating Officer to obtain sanction from the Central Government/appointing authority for prosecuting the officer who belongs to All India Service Cadre.

It has been informed that in the present case prior to 20.01.2023 three letters dated 07.12.2021, 04.02.2022 and 03.03.2022 were written to the Central Government for grant of sanction but no reply was given by the Under Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Government of India. Thereafter, on 20.01.2023 the Investigating Officer was granted permission to submit charge sheet against the applicant for the alleged offence under Section 13 (1) (b) read with Section 13 (2) of Prevention of Corruption Act as amended in the year 2018.

Mr. Aurnesh Kumar Dwivedi has conceded the fact that Under Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Government of India informed vide letter No.107/14/2022-AVD.I/C.2 dated 23.06.2023 in response to letter No. 612/2-5-2023-22/(24)/2019 dated 19.05.2023 that in the case related to Babu Ram IAS (retired) for grant of sanction to prosecute him, the guidelines outlined at para 4 of DOP&T letter no.107/8/99-AVD-I dated 27.10.1999 regarding sanction for prosecution against a retired IAS Officer has been superseded by the Prevention of Corruption Act, 1988 as amended in the year 2018 and observed that Members of All India cadre who have ceased to hold the office during which the offence is alleged to have been committed or who has ceased to hold the office during which the offence is alleged to have been committed

and is holding an office other than the office during which the offence is alleged to have been committed, sanction is necessary from the Government of India. Thereafter all the matters of the officials belong to All India Service Cadre are being referred to the Central Government for proper sanction.

3. List this case on 12.12.2024.

4. By the next date of listing, Mr Raj Kumar Singh, learned counsel appearing for Union of India shall seek written instructions from the Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Government of India that why the response to the letters dated 07.12.2021, 04.02.2022 and 03.03.2022 has not been given related to the prosecution sanction of the applicant.

5. Mr. Aurnesh Kumar Dwivedi, Joint Secretary, Department of Personnel and Appointment shall again appear along with relevant record before this Court.

6. Mr. Manmeet Suri, Special Secretary, Department of Law, Government of U.P. need not appear unless called for.

7. It is open to the applicant to move deferment application before the court concerned. In case any such application is filed, the proceedings shall be deferred by the court below till decision of the present case.

4. Sri Rajkumar Singh, Senior Standing Counsel for Union of India placed a letter dated 10.12.2024 written by Mr. Pijush Mohanta, Under Secretary, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, Govt. of India and informed that never any request for grant of prosecution sanction was received from the State Government. He also informed that in pursuance of the letter dated 7.12.2021 issued by the Government of U.P., reply was given through a letter dated 5.5.2022.

5. List this case on 16.12.2024 at 11:30 A.M."

6. On the next date, Principal Secretary, Department of Appointment, Government of U.P. shall appear before this Court and explain the procedure to accord the sanction for prosecution in relation to the officials belongs to All India Cadre."

3. In pursuance of earlier order, Mr. Desh Raj, Principal Secretary, Department of Appointment, Government of U.P is present.

4. Mr Raj Kumar Singh, learned counsel appearing for Union of India has placed a policy for grant of sanction in respect of public servant belongs to All India Cadre dated 18.10.2024, which is taken on record.

5. List this case on 18.12.2024 at 11.30 a.m.

6. By the next date, the Principal Secretary shall file his personal affidavit explaining the manner for according the sanction for prosecution of officials belong to All India Cadre under the provision of P.C. Act.

7. The officer present today need not appear unless called for."

4. In pursuance of aforesaid order, counter affidavit filed by Sri Rao Narendra Singh, learned A.G.A. duly signed by Mr. M. Devraj, Principal Secretary, Department of Personnel and Appointment, Government of U.P., Lucknow is taken on record.

5. Having perused paragraph nos. 13 and 15 of the aforesaid counter affidavit, it is admitted by the Principal Secretary, Department of Personnel and Appointment, Government of U.P., Lucknow that only Government of India is competent authority to give sanction for

prosecution in relation to the officials who belong to All India Service Cadre. However, the sanction is granted by State Government in the present case.

6. Considering the contents of aforesaid counter affidavit, it is evident that the sanction granted by the State Government is non est. Therefore, this application is allowed and the sanction order dated 20.01.2023 is hereby quashed.

7. However, it is open to the applicant that in case any sanction is granted by Government of India, then same can be agitated before this Court."

4. Vide the aforesaid order, the sanction granted by the State Government was declared non est and the sanction order dated 20.01.2023 was quashed and it was opened to the applicant that in case any sanction is granted by the Government of India, then the same can be agitated before this Court.

5. On 25th of July, 2025 the impugned order was passed by the learned trial court fixing a date on 24th of October, 2025, for further orders, for taking decision with respect to deemed sanction. Being aggrieved, the instant application is instituted.

6. The provision of sanction for prosecution under the Act 1988 is envisaged u/s 19. Section 19 of the Act reads as under:

"19. Previous sanction necessary for prosecution.

(1) No Court shall take cognizance of an offence punishable under [sections 7, 11, 13 and 15] [Substituted 'sections 7, 10, 11, 13 and 15' by Act No. 16 of 2018, dated 26.7.2018.] alleged to have been committed by a public servant, except with the previous sanction,

(a) in the case of a person [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] [Substituted 'who is employed' by Act No. 16 of 2018, dated 26.7.2018.] in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] [Substituted 'who is employed' by Act No. 16 of 2018, dated 26.7.2018.] in connection with the affairs of a State and is not removable from his office save by or with sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.[Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless-

(i) such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and

(ii) the court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding:Provided further that in the case of request from the person other than a police officer or an

officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt:

Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month:Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, presecribe such guidelines as it considers necessary.

Explanation. - For the purposes of sub-section (1), the expression "public servant" includes such person-(a)who has ceased to hold the office during which the offence is alleged to have been committed; or(b)who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed.]

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section

(1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section

(1), unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby;

(b) no Court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no Court shall stay the proceedings under this Act on any other ground and no Court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.Explanation. For the purposes of this section,

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

7. Having at glance, the aforesaid, it is apparent that there is no provision with respect to the deemed sanction of prosecution. The fact remains that the prosecution sanction, granted earlier vide order dated 20th of January, 2023, has already been quashed and it was opened to the applicant, to agitate any such order of sanction of prosecution before this Court, whereas subsequently, Her Excellency vide order dated 12.03.2025, has cancelled the order of sanction of prosecution dated 20th of January, 2023 and as on date, there is no order regarding the sanction of prosecution, against the applicant, under Section 19 of the Act, 1988.

8. I have also noticed that in Paragraph 4, the learned trial court has considered the ratio of judgment rendered in the case of **Dr. Subramanian Swamy Vs. Dr. Manmohan Singh** reported in **[AIR 2012 SC 1185]**, and the operative part/ instructions are reproduced, herein under :-

"(a) All proposals for sanction placed before any sanctioning authority empowered to grant sanction for prosecution of a public servant under Section 19 of the PC Act must be decided within a period of three months of the receipt of the proposal by the authority concerned.

(b) Where consultation is required with the Attorney General or the Solicitor General or the Advocate General of the State, as the case may be, and the same is not possible within the three months mentioned in clause (a) above, an extension of one month period may be allowed, but the request for consultation is to be sent in writing within the three months mentioned in clause (a) above. A copy of the said request will be sent to the prosecuting agency or the private complainant to intimate them about the extension of the time-limit.

(c) At the end of the extended period of time-limit, if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution, and the prosecuting agency or the private complainant will proceed to file the charge-sheet/complaint in the court to commence prosecution within 15 days of the expiry of the aforementioned time-limit."

9. While reading the abovenoted instructions/part of consideration, it is abundantly clear that, these are not the ratio of judgment drawn in the abovenoted case but those are in the form of directions/instructions, framed to be considered by the Parliament, therefore, the findings which are based on the assumption of ratio in judgment of **Dr. Subramanian Swamy (supra)**, is erroneous, on it's face.

10. In the case of **Suneeti Toteja Vs. State of U.P. and Others**, reported in **[AIR 2025 SC 1308]** the ratios are drawn in Paragraph nos. 30 to 32, which read as under:

"30. The argument advanced by the respondent-State and the complainant with respect to "deemed sanction" is also not tenable. Section 197 of Code of Criminal Procedure does not envisage a concept of deemed sanction. The chargesheet, as well as the counter affidavit of the respondent-State, have relied upon the judgment of this Court in Vineet Narain to contend that lack of grant of sanction by the concerned authority within relevant time would amount to deemed sanction for prosecution. However, a perusal of the said judgment reveals that it did not deal with Section 197 Code of Criminal Procedure and rather it dealt with the investigation

powers and procedures of Central Bureau of Investigation and Central Vigilance Commission. While it did mention that the time limits for grant of sanction for prosecution must be strictly adhered to, there is no observation to the effect that lack of grant of sanction for prosecution within the time limit would amount to deemed sanction for prosecution.

31. Similarly, learned counsel for the complainant had placed reliance on the judgment of this Court in Subramanian Swamy to lend credence to the argument of deemed sanction for prosecution. However, even the said judgment does not in any manner lay down the notion of deemed sanction. First, the said judgment dealt primarily with the Prevention of Corruption Act,1988 and the sanction for prosecution under that Act. Secondly, G.S. Singhvi, J. while penning his separate but concurring opinion in the said judgment, had given some guidelines for the consideration of the Parliament, one of which is to the effect that at the end of the extended period of time limit, if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution, and the prosecuting agency or the private complainant will proceed to file the chargesheet/complaint in the court to commence prosecution within fifteen days of the expiry of the aforementioned time limit. However, such a proposition has not yet been statutorily incorporated by the Parliament and in such a scenario, this Court cannot read such a mandate into the statute when it does not exist.

32. Therefore, we are of the opinion that the learned Magistrate was not right in taking cognizance of the offence against the appellant herein without there being a sanction for prosecution granted by the competent authority. Further, the High Court erred in not considering the fact that the sanction for prosecution was not granted by the competent authority under Section 197 of the Code of Criminal Procedure and eventually the sanction was expressly denied by the competent authority with respect to the allegations against the appellant. The necessary sanction not having been granted has vitiated the very initiation of the criminal proceeding against the appellant herein. Consequently, the chargesheet, the summoning order and the consequent steps, if any, taken by the trial court pursuant to the same are liable to be quashed qua the appellant herein and are thus quashed.

The appeal is therefore allowed in the aforesaid terms."

11. In this matter, considering the provisions of Section 197 of Code of Criminal Procedure as well as Section 19 of the Act 1988, the Hon'ble Apex Court held that without there being sanction for prosecution, granted by the Competent Authority, the cognizance cannot be taken and, further, there can be no 'deemed sanction' of prosecution, in respect with the provisions of Section 19 of the Act, 1988.

12. Learned counsel appearing for the State could not dispute the settled legal proposition of law as well as the applicability of law as provided under Section 19 of the Act, 1988, in it?s right terms and intent.

13. It is culled out that the impugned order was passed while fixing the date on 24th of October, 2025, for further orders/deemed sanction. The fact remains that the order of sanction dated 20.01.2023 passed by Her Excellency, has already been quashed vide order of this Court dated 18.12.2024 and in compliance thereof, the

order of sanction dated 20.01.2023 has formally been cancelled on 12.03.2025 and as a result, there is no sanction of prosecution against the applicant, as of now. This Court has also examined the law rendered in the case of **Dr. Subramanian Swamy (supra)** which is considered by the learned trial court in the impugned order. From bare reading, which is quoted in the impugned order, itself enough to show that the same is for direction to the Parliament to take note of the aforesaid points and to proceed for promulgating the law in respect thereoff and that is not a guideline framed by the learned Apex Court, to be followed as law precedent and, therefore, the learned trial court has not rightly considered the ratio of judgment rendered, in the present case.

14. Further, the provisions of Section 19 of the Act, 1988 do not contains the provision, regarding deemed sanction of prosecution, meaning thereby that there was no intent of legislature so as to prescribe any provision for grant of 'deemed sanction'.

15. It is trite law that if a law requiring a particular thing to be done in a particular manner, the same shall be done in that manner alone and not otherwise. The Hon'ble Apex Court has reiterated this ratio in the case of **Shri Khereshwar Mahadev VA Dauji Maharaj Samiti Vs. State of Uttar Pradesh and Others reported in [2025 SCC OnLine SC 774]**.

16. In fact, it is long settled law that the Court cannot proceed with an assumption that the legislature has committed error or mistake while promulgating a statute, where the language of the statute is plain and unambiguous and, therefore the Court cannot add or subtract any meaning or word otherwise than the law is enacted with the particular intent of the wisdom of the legislature.

17. The provision of Section 19 of the Act, 1988 is para materia to the provision of section 197 Cr.P.C. to the effect and meaning of that there is no provision of 'deemed sanction'. More-so, Section 197 of Cr.P.C. is liberal than Section 19 of the Act, 1988, on the pretext that the provisions of Section 197 of Cr.P.C. opens an exception regarding an accused who was deployed, under some official duty. Having at a glance of the judgment of the Apex Court in the case of **Suneeti Toteja (supra)**, this court noticed that the issue with respect to deemed sanction has been dealt with, which says that the necessary sanction not having been granted, vitiates the very initiation of the criminal proceeding against the accused.

18. Departing from this order, it is noticed that learned trial court, while passing the impugned order, has made some adverse remarks against the Senior Lawyer, though, the same seems to be harsh. There are repeated adversarial remarks of the learned trial court whereas the Hon'ble Apex Court is aware of this kind of remarks and, therefore, held in Para nos. 9 and 15 of judgment rendered in the case of **Neeraj Garg Vs. Sarita Rani and Others reported in [(2021) 9 SCC 92]**, which is reproduced herein under:

"9. To press home the argument that the offending remarks against the counsel are unmerited, and do not meet the required parameters, the learned Sr. Counsel has cited State of U.P. vs. Mohammad Naim where Justice S.K. Das laid down the following tests to be applied while dealing with the question of

expunction of disparaging remarks against a person whose conduct comes in for consideration before a Court of law. Those tests are:

(a) Whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself;

(b) Whether there is evidence on record bearing on that conduct justifying the remarks; and

(c) Whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct.

15. While it is of fundamental importance in the realm of administration of justice to allow the judges to discharge their functions freely and fearlessly and without interference by anyone, it is equally important for the judges to be exercising restraint and avoid unnecessary remarks on the conduct of the counsel which may have no bearing on the adjudication of the dispute before the Court."

19. It is apparent observation of the Apex Court that offending remarks against the counsels, are un-warranted and don't touched upon the required parameters .

20. Needless to say that the learned trial court has made some adverse remarks against Senior Counsel, though such remarks were not required under the facts and circumstances of the present case.

21. For the forgoing reasons and discussions, this court finds merit in the application, thus, the impugned order dated 25.07.2025 passed by learned Special Judge (Prevention of Corruption Act), Court no. 6, Lucknow, in Sessions Case No. 590 of 2023 (State v. Mohd. Abdul Aleem Khan), arising out of Case Crime No. 1262/2019, under Section 13(1)(b) r/w 13(2) of the Prevention of Corruption Act, 1988 (as amended by Act of 2018), Police Station Gomti Nagar, District Lucknow, is hereby set aside.

22. The instant application is **allowed** accordingly.

23. Liberty is granted to the trial court concerned to revive the proceedings, if sanction for prosecution is granted by the appropriate Government, in accordance with law.

(2025) 8 ILRA 130
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 06.08.2025

BEFORE

THE HON'BLE ANISH KUMAR GUPTA, J.

Application U/S 482 No. 10217 of 2017

Ankur & Ors. ...Applicants
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicants:
Pawan Singh Pundir

Counsel for the Opposite Parties:
G.A., Om Prakash Tiwari

Issue for consideration

Whether proceedings under SC/ST Act be quashed under settlement or not.

Headnotes

Allegations in the FIR- do not relate to a private dispute between the parties -affect the society at large.-Application seek withdrawal of the proceedings and alleging therein that no such incident has taken place- this gives a reasonable apprehension to the Court- that the witnesses have either been win over or have been put under some kind of fear -which compelled them

to move such application in the instant case- though the parties have entered into the settlement- the proceedings cannot be quashed, which are affecting the society at large and do not relate to a private dispute between the parties. **Application dismissed.** (E-9)

Case Law Cited

1. State of M.P. vs. Laxmi Narayan and Others, 2019 (5) SCC 688
2. Narinder Singh vs. State of Punjab, 2014 (6) SCC 466
3. Parbatbhai Aahir vs. State of Gujarat, (2017) 9 SCC 641
4. Shiji vs. Radhika, (2011) 10 SCC 705

List of Acts

SC/ST Act
Indian Penal Code

List of Keywords

Private dispute; affect the society at large; withdrawal of the proceedings; witnesses have either been win over; parties have entered into the settlement.

Appearances of parties

Counsel for Applicant :- Pawan Singh Pundir,
Counsel for Opposite Party :- G.A.,Om Prakash Tiwari
Counsel for Applicant :- Pawan Singh Pundir
Counsel for Opposite Party :- G.A.,Om Prakash Tiwari

(Delivered by Hon'ble Anish Kumar Gupta, J.)

1. Heard Sri Rajiv Kumar, learned counsel for the applicants, Sri Vijay Kumar, Advocate holding brief of Sri Awadh Pratap Singh Sisodiya, learned counsel for opposite party no.2 and Sri Rizwan Ahmad, learned AGA for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the charge sheet dated 05.09.2024 as well as the entire proceeding of Case No. 9894/IX arising out of Case Crime No. 403 of 2016 (Stte of U.P. vs. Abhishek and others), under Sections 323, 452, 504 and 506 IPC & 3 (1) (10) of SC/ST Act, P.S. Jhinjhana, District Shamli, pending in the court of Chief Judicial Magistrate, Muzaffarnagar.

3. During the pendency of the proceeding before the trial court in the instant case, the parties have settled their disputes amicably. The compromise was also executed. The aforesaid facts of settlement of dispute and execution of compromise has been admitted by learned counsel for opposite party no.2 by filing the counter affidavit in the instant case. This Court vide order dated 06.04.2017 had directed the parties to appear before the trial court for verification of the compromise. In terms of the aforesaid order, the compromise executed between the parties was duly verified by the trial court concerned vide order dated 29.06.2017. The certified copy of the said order has been annexed along with the supplementary affidavit dated 20.12.2017 filed by the applicants.

4. In view of the aforesaid facts, since the instant case involved the provisions of SC/ST Act, this Court passed the following order on 04.07.2025:

"1. Learned counsel for the opposite party no. 2 is directed to verify that any amount was received by the opposite party no. 2 from the Social Welfare Officer. If any such amount has been received by the opposite party no. 2, the same is directed to be refunded to the Social Welfare Officer, in view of the compromise.

2. Put up this matter on 22.7.2025."

5. Pursuant to the aforesaid order, another supplementary affidavit has been

filed by learned counsel for the opposite party no.2 on 22.07.2025. In pursuant to the aforesaid order the opposite party no.2 has deposited an amount of Rs. 75,000/-, which was received by opposite party no.2 from the office of District Social Welfare Officer, Shamli. In this regard, the copy has already been produced by the District Social Welfare Officer, Shamli. Thus, on the basis of the aforesaid compromise arrived at between the parties, learned counsel for the applicants as well as counsel for the opposite party no.2 seek quashing of the entire proceeding of the instant case.

6. Per contra, learned AGA has raised objection that in the instant case, the offence alleged in the FIR is not a dispute of private nature, rather it affects the society at large. Therefore, the proceeding of the instant case cannot be quashed on the basis of compromise arrived at between the parties. In support of his submission, learned AGA has relied upon the judgments of Apex Court in **State of M.P. vs. Laxmi Narayan and Others, 2019 (5) SCC 688.**

7. In the rejoinder, learned counsel for the applicants submits that the applicants and the opposite party no.2 are the neighbours and due to the trivial dispute between them, the instant case was lodged against the applicants herein by exonerating the facts of the actual dispute between the parties. Therefore, learned counsel for the applicants submits that the nature of dispute between the parties was a private, thus the compromise executed between the parties can be relied upon for quashing of the proceeding.

8. Learned counsel for the opposite party no.2 also submits that since the victim, the daughter of opposite party no.2 herein has already been married and she is residing happily in the matrimonial home and if the instant criminal proceedings are continued against opposite party no.2, that will not only be stigmatic against the daughter of opposite party no.2 but the serious consequences will be there in the matrimonial life of the daughter of opposite party no.2.

9. Having heard the rival submissions made by learned counsel for the parties, this Court has carefully gone through the record of the case. In the instant case, an FIR was lodged by the opposite party no.2 alleging therein that the opposite party no.2 is *Chamar* by caste and she had gone outside her house. In the house, the daughter of the opposite party no.2 was alone. On 30.05.2016, in the evening around 6:00 P.M., in the absence of the opposite party no.2 having found the daughters of the opposite party no.2 alone and neighbours Abhishek son of Rampal, Sonu and Monu sons of Jayveer, Rishipal son of Sita, Ankur son of Chandraveer, Tanju and Sanjiv sons of Jagbeer, Gullu son of Narendra, who are Jats by caste forcefully pulled the younger daughter of the opposite party no.2 in a room and tried to molest her. When it was objected by her then they had beaten up the daughter of the opposite party no.2 saying that she cannot do anything against them as the police is with them and they would lodge a false case against them. They also pelted stones in the house of the opposite party no.2 and the younger daughter of the opposite party no.2, who is aged about 18 years sustained injury by the brick and became unconscious. The other daughters of the opposite party no.2 made a hue and cry, then the villagers gathered there and saved the daughter of the opposite party

no.2. The aforesaid persons while going away also threatened that whenever they would get a chance, they would kill her. It is further alleged in the FIR that on 31.05.2016, a complaint was made to the SHO concerned and when no action was taken, the opposite party no.2 approached the District Magistrate and thereafter the instant FIR was registered. The matter was investigated by the police and thereupon the charge sheet was filed against the applicants herein for the offence under Sections 323, 452. 504 and 506 IPC and 3(1) (10) of SC/ST Act. Thereupon the applicants herein were summoned for the aforesaid offences.

10. During the pendency of the aforesaid case before the trial court concerned, the parties have settled their disputes amicably and a compromise was executed. Thereupon the opposite party no.2 along with her daughter moved an application before the trial court concerned on 28.03.2017 supported by the affidavits alleging therein that no such incident has happened with the opposite party no.2 or her daughter. They do not want to falsely implicate any person. In the affidavits, the opposite party no.2 as well as her daughter they have categorically denied the incident in toto and alleged that the injury was sustained by the opposite party no.2 due to slip of her feet while going towards Talab carrying dung on a basket. Thereupon the false FIR was lodged. No such incident as alleged in the FIR has taken place nor any incident of insult to her caste was made by the applicants and they do not want any action against them. The copy of the aforesaid compromise and application has been annexed along with the counter affidavit filed by the opposite party no.2 dated 05.04.2017. On the basis of the aforesaid compromise, application moved by the opposite party no.2, this Court has directed the parties to appear before the trial court concerned for verification of compromise vide order dated 06.04.2017 as already noted. The aforesaid compromise was duly verified by the trial court in presence of the parties vide order dated 29.06.2017. Certified copy of the said order has been annexed along with the supplementary affidavit dated 20.12.2017 filed by the applicants.

11. In State of **M.P. vs. Laxmi Narayan and Others** (supra), the Apex Court has held as under:

" 15.1. that the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

15.2. such power is not to be exercised in those prosecutions which involved 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;

15.3. similarly, such power is not to be exercised for the offences under the special statutes 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;

15.4 . offences under Section 307 IPC and the Arms Act etc. would fall in the

category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. 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 framing 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. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

15.5. while ***exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impart on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc."***

12. In **Gian Singh Vs State of Punjab, (2012) 10 SCC 303,** the Apex Court has held as under:

"61.The position that emerges from the above discussion can be summarised 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 plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. ***In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and 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 serious impact on society.*** *Similarly, any compromise between the victim and offender in relation to the*

offences under special statutes like 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 pre-dominatingly civil flavour stand on 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, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put 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 would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."***

13. In **Narinder Singh vs. State of Punjab, 2014 (6) SCC 466**, the Apex Court has held as under:

"29. 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:

29.1. 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.

29.2. 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.

29.3. ***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.

29.4. ***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.***

29.5. 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.***

29.6. 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 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.

29.7. 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."*

14. In **Parbatbhai Aahir vs. State of Gujarat, (2017) 9 SCC 641**, the Apex Court has held as under:

"(1) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

(2) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(5) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

*(6) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled****, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;***

(7) As distinguished from serious offences, there may be criminal cases which ***have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;***

(8) Criminal cases involving offences ***which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;***

(9) ***In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction***

is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(10) There is yet an exception to the principle set out in propositions (8) and (9) above. ***Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."***

15. In **Shiji vs. Radhika, (2011) 10 SCC 705**, the Apex Court has held as under:

"19. That being so, continuance of the prosecution where the complainant is not ready to support the allegations.....will be a futile exercise that will serve no purpose."

18.Having said so, we must hasten to add that the plenitude of the power under Section 48 Cr.P.C. by itself, ***makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law.*** *It is neither necessary nor proper for us to enumerate the situations in which the exercise of power under Section 482 may be justified. All that we need to say is* ***that the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law. The High court may be justified in declining interference if it is called upon to appreciate evidence for it cannot assume the role of an appellate court while dealing with a petition under Section 482 of the Criminal Procedure Code. Subject to the above, the High Court will have to consider the facts and circumstances of each case to determine whether it is a fit case in which the inherent powers may be invoked."***

16. Thus from the aforesaid judgments for the purposes of quashing of the proceedings involving the non-compoundable offences on the basis of compromise, the following are the basic requirements :

(a) That the dispute is of a private nature. It may be a commercial dispute, financial dispute, matrimonial dispute or a family dispute.

(b) The dispute does not affect the society at large meaning thereby the allegations as made in the case do not affect the society at large. .

17. Only on those circumstances, the proceedings can be quashed on the basis of compromise arrived at between the parties. If the allegations may affect the society at large, the proceedings involving non-compoundable offences cannot be fittingly quashed on the basis of compromise, even though the victim or victim's family and the offender have settled the dispute, which is not the intent of law nor it can be.

18. From perusal of the allegations as made in the instant FIR, it is apparent that those allegations do not relate to a

private dispute between the parties rather the allegations which affect the society at large. While moving the application seeking withdrawal of the proceedings and alleging therein that no such incident has taken place, this gives a reasonable apprehension to the Court that the witnesses have either been win over or have been put under some kind of fear which compelled them to move such application in the instant case.

18. In view thereof, though the parties have entered into the settlement, in the considered opinion of this Court on the basis of such settlement as is being alleged, the proceedings cannot be quashed, which are affecting the society at large and do not relate to a private dispute between the parties. Thus the prayer for quashing of the proceedings on the basis of the said compromise is hereby rejected. Since the proceedings are pending before the trial court since long and due to the interim orders granted by this Court in favour of the applicants, therefore, the trial court is directed to proceed in the matter as expeditiously as possible.

19. The instant application is, accordingly, **dismissed.** Interim order, granted to the applicants herein, is hereby vacated.

(2025) 8 ILRA 139
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 12.08.2025

BEFORE

THE HON'BLE VINOD DIWAKAR, J.

Application U/S 482 No. 35994 of 2024

Sattar Ahmad & Ors. ...Applicants
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicants:
Vinod Singh

Counsel for the Opposite Parties:
G.A.

Issue for consideration

Whether the police is empowered to register an FIR on the basis of a complaint submitted by the "aggrieved person", carry out investigation, and thereafter submit a charge-sheet under Section 31 of the Act, 2005.

Headnotes

Protection of Women from Domestic Violence Act, 2005-sec. 31; Code of Criminal procedure-sec. 2(d)- Section 2(d) of the Code of Criminal Procedure, 1973 explicitly stipulates that a "complaint" does not include a police report- consequently, a police report submitted after investigation under the Domestic Violence Act, 2005 cannot be treated as a 'complaint' for the purpose of taking cognizance under the Act, 2005-if the police report itself lacks legal foundation- it cannot form the basis for taking cognizance and treating it as a complaint amounts to a legal error- **Application allowed.**

Held:

Therefore, in the absence of a prior protection order duly passed by the Magistrate, the police is not empowered per se to register an FIR under Section 31 of the Act. The procedural mandate of the Act requires that the process be initiated through the civil mechanism envisaged under Sections 12 to 23 of the Act, and only upon breach of such an order does criminal liability under Section 31 of the Act, 2005 arise. (E-9)

Case Law Cited

1. V.D. Bhanot v. Savita Bhanot, (2012) 3 SCC 183
2. Inderjit Singh Grewal v. State of Punjab, (2011) 12 SCC 588

List of Acts

1. Protection of Women from Domestic Violence Act, 2005
2. Code of Criminal Procedure, 1973

List of Keywords

"complaint"; police report

Appearances of parties

Counsel for Applicant : Vinod Singh, Counsel for Opposite Party : G.A.

(Delivered by Hon'ble Vionod Diwakar, J.)

1. Heard Shri Vinod Singh, learned counsel for the applicants, Shri Vibhav Anand Singh, learned A.G.A. for the State, and perused the material available on record.

2. The present application has been filed seeking quashing of the entire proceedings arising out of Case Crime No. 494 of 2013, under Section 31 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the Act, 2005'), registered at Police Station Swar, District Rampur, which is presently pending before the Court of Ist Additional Chief Judicial Magistrate, Rampur.

3. The principal question for adjudication in this application is whether the police is empowered to register an FIR on the basis of a complaint submitted by the *"aggrieved person",* carry out investigation, and thereafter submit a charge-sheet under Section 31 of the Act, 2005.

4. Learned counsel for the applicants contends that the registration of an FIR under Section 31 of the Act, 2005, is legally impermissible, thereby rendering all subsequent proceedings arising therefrom void ab initio. It is further submitted that the procedure adopted by the then learned Additional Chief Judicial Magistrate in the present case has not been in conformity with the settled principles of criminal jurisprudence and appears to be procedurally flawed. Apart from other submissions on merits, learned counsel for the applicants also submits that the present application has been filed on the basis of a compromise arrived at between the parties.

5. This Court, by order dated 21.01.2025, directed the then Station House Officer (SHO), the Investigating Officer (I.O.), and the officer who had forwarded the charge-sheet to the Court to remain present virtually through video conferencing on the next date of hearing to explain the reasons for filing the charge-sheet under Section 31 of the Act, 2005.

6. In compliance with the aforesaid order, Sub-Inspector Shri Javed Ali appeared virtually and submitted that he was not fully conversant with the applicable legal provisions at the relevant time, as he had joined the service only a month prior to the completion of the investigation. Circle Officer Shri Ravi Shankar, who had forwarded the charge-sheet, submitted that he had assumed the charge merely a day before filing of the charge-sheet and, therefore, sought leniency for the procedural lapse. A similar explanation was tendered by the then Station House Officer (S.H.O.). Upon due consideration of their submissions and the circumstances on record, their personal appearance was exempted. The concerned officers were accordingly let off with a stern warning and were duly sensitized to exercise greater caution, legal awareness, and diligence in the discharge of their official duties in the future.

7. By order dated 18.02.2025, this Court had called for an explanation from the then learned Magistrate, through the Registrar General of this Court, who had

taken cognizance on the basis of a police report filed for an offence under Section 31 of the Act, 2005. Upon perusal of the office report dated 03.03.2025, it transpires that the said Judicial Officer is presently posted as Additional District and Sessions Judge, Ghaziabad.

8. In compliance with the order dated 04.03.2024, the learned Additional District & Sessions Judge, Ghaziabad, submitted a report stating that, while serving as the ACJM, Rampur, cognizance was taken against the applicants on 26.07.2016 in a case arising out of FIR No. 494 of 2013, registered under Section 31 of the Domestic Violence Act at Police Station Swar, District Rampur. The report further mentions that cognizance under Section 31 of the Act, 2005 was taken by invoking Section 2(d) of the Cr.P.C., which defines a *"complaint,"* and thereby treating the police report as a *"complaint."*

9. In order to assist the Court in arriving at a just and legally sound conclusion, learned Senior Advocate Shri Mangla Prasad Rai, has graciously consented to render his assistance. Accordingly, he was appointed as *Amicus Curiae* to assist the Court in examining the legal issues involved.

10. Shri Mangla Prasad Rai, learned *Amicus Curiae*, submitted that under Section 154(1) of the Cr.P.C., the police is empowered to register an FIR, investigate the matter, and, upon submission of the charge-sheet, the Magistrate may take cognizance of offences, except in those categories of cases where there exists an explicit bar on the Court to take cognizance unless a complaint is made by the appropriate authority or by a person duly authorized by the central or state government. In the present case, it was submitted that the learned ACJM could have taken cognizance only on an application filed before the Court under Section 12 of the Act, 2005, by the *"aggrieved person"*, and not on the police report, expressly barred by Section 2(d) CrPC.

11. He further submitted that an *"aggrieved person"* may file a complaint before a service provider, a police officer, or a Magistrate, and the respective duties of these authorities are set out under Section 5 of the Act, 2005. However, the learned Amicus Curiae emphasized that the offence under Section 31 of the Act, 2005, stands on a distinct footing, and the police is empowered to register an FIR only in instances involving a breach of a protection order.

11.1 In this context, the learned Amicus Curiae further contented that Section 2(a) of the Act, 2005 defines an *"aggrieved person"* as any woman who is, or has been, in a domestic relationship with the respondent and claims to have suffered domestic violence by the respondent. Section 2(d) of the Code of Criminal Procedure defines a *"complaint"* as any allegation made orally or in writing to a Magistrate with the intention of initiating action under the Code, excluding a police report. Rule 2(b) of the Domestic Violence Rules, 2006, defines a *"complaint"* as any allegation, either oral or written, made by any person to the Protection Officer. Collectively, these provisions distinguish between who can seek protection under the Act, 2005 and the formal modes of initiating legal action, either before a Magistrate or a Protection Officer.

12. As per Section 4 of the Act, 2005 any person who has reason to believe that an act of domestic violence has been,

or is being, or is likely to be committed, may give information about it to the concerned Protection Officer. And thereafter the Protection Officer would assist the Magistrate and to the *"aggrieved person"* either by approaching to the Magistrate by way of filing an application or by preparing the "incident report" and forwarding the same to the Magistrate and a Police Officer, Protection Officer, Service Provider or Magistrate who has received a complaint of domestic violence or person at the place of incident of domestic violence or when the incident of domestic violence reported to him, shall inform to the *"aggrieved person"* about his legal rights to approach to the Magistrate by way of filing an application under Section 12 of the Act, 2005, or to the police for registration of FIR under Indian Penal Code or other Special Act, like Dowry Prohibition Act etc.

13. The Protection of Women from Domestic Violence Act, 2005, is a significant piece of beneficial social welfare legislation enacted to provide effective protection to women who are victims of violence within domestic relationships. The Act adopts a comprehensive definition of *'domestic violence'*, encompassing physical, sexual, verbal, emotional, and economic abuse.

14. Notably, the Act, 2005 does not contain any specific provision empowering the police to register a First Information Report (FIR) solely under its provisions. Instead, where the acts complained of amount to cognizable offences under penal law—such as cruelty, assault, criminal intimidation, or dowry-related harassment—an FIR can be registered under the relevant provisions of the IPC, and investigated accordingly, except in instances invoking breach of protection order.

15. The Supreme Court in ***V.D. Bhanot v. Savita Bhanot1*** has held that that the civil remedies provided under the Domestic Violence Act coexist with criminal remedies available under general penal law. Further, the Supreme Court ***in Inderjit Singh Grewal v. State of Punjab2*** clarified that the Domestic Violence Act primarily envisages civil reliefs and does not, by itself, create criminal liability unless read with corresponding provisions of the IPC. Thus, while the Act provides a civil adjudicatory framework, criminal prosecution for acts constituting domestic violence must be pursued under the substantive provisions of the IPC or other applicable criminal statutes.

16. Section 31 of the Protection of Women from Domestic Violence Act, 2005, provides that any breach of a protection order or an interim protection order by the respondent shall constitute a cognizable and non bailable-offence, punishable with imprisonment of either description for a term which may extend to one year, or with a fine which may extend to twenty thousand rupees, or both. The underlying object of this provision is to ensure the effective enforcement of "protection orders" and to deter any act of non-compliance by the respondent.

17. Sub-section (2) of Section 31 of the Protection of Women from Domestic Violence Act, 2005, provides that, as far as practicable, the offence of breach of a protection order under sub-section (1) shall be tried by the same Magistrate who originally passed the said order. Crucially, an offence under Section 31 arises only upon the violation of a *"protection order"*

or *"interim protection"* order duly issued by the Magistrate. It is only such a breach that is treated as a cognizable offence under the Act. In the absence of such an order, no cognizable offence under Section 31 can be said to exist.

18. Therefore, in the absence of a prior protection order duly passed by the Magistrate, the police is not empowered *per se* to register an FIR under Section 31 of the Act. The procedural mandate of the Act requires that the process be initiated through the civil mechanism envisaged under Sections 12 to 23 of the Act, and only upon breach of such an order does criminal liability under Section 31 of the Act, 2005 arise.

19. The explanation furnished by the then Additional Chief Judicial Magistrate, Rampur, is found to be legally untenable. Section 2(d) of the Code of Criminal Procedure, 1973, explicitly stipulates that a "complaint" does not include a police report. Consequently, a police report submitted after investigation under the Domestic Violence Act, 2005 cannot be treated as a 'complaint' for the purpose of taking cognizance under the Act, 2005. If the police report itself lacks legal foundation, it cannot form the basis for taking cognizance and treating it as a complaint amounts to a legal error. Therefore, the explanation offered by the learned Additional District and Sessions Judge is legally flawed and without merit. He has accordingly been cautioned and warned to exercise due care and apply proper judicial mind in future while discharging judicial functions. Mere submission of an explanation cannot validate a legal or procedural illegality.

20. In view of the aforesaid facts and circumstances, charge-sheet No. 47 of 2014 dated 14.2.2014, the cognizance order dated 26.7.2016, as well as the entire proceedings of Case No. 1660 of 2016, *State v. Sattar Ahmad & Ors,* arising out of Case Crime No. 494 of 2013 under Section 31 of the Protection of Women from Domestic Violence Act, 2005, registered at P.S. Swar, District Rampur, and pending before the Court of the Ist Additional Chief Judicial Magistrate, Rampur, are hereby quashed. Accordingly, the application stands allowed.

21. Parting with the case, this Court finds it necessary to issue a detailed order due to the erroneous justification provided by the learned District and Sessions Judge for taking cognizance under Section 2(d) of the Cr.P.C. in a matter that, by law, can only be tried as a complaint case after the *"aggrieved person"* files an application under Section 12 of the Domestic Violence Act, 2005—a basic and routine judicial exercise carried out by the learned Magistrates. While this Court acknowledges the overburdened nature of Magistrates' Courts, had the learned Additional District and Sessions Judge's explanation been based on a simple mistake of fact or oversight, this Court would have refrained from issuing a detailed order. However, the erroneous explanation provided by a senior member of the District Judiciary necessitates a thorough review, thereby prompting this Court to pass the present detailed order.

22. Registrar (Compliance) is hereby directed to forward a copy of this order to the then ACJM, Rampur, who had passed the impugned order and is presently posted as Additional District and Sessions Judge, Ghaziabad.

(2025) 8 ILRA 144
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 05.08.2025

BEFORE

THE HON'BLE SANJAY KUMAR PACHORI, J.

Application U/S 482 No. 40906 of 2022

Taj Karan Meena ...Applicant
Versus
Union of India & Anr. ...Opposite Parties

Counsel for the Applicants:
Mithilesh Kumar Shukla,Shiv Sagar Singh,Sudhir Kumar Shukla

Counsel for the Opposite Parties:
A.G.A.,Nand Lal

Issue for consideration
Matter pertains to criminal proceedings if accused exonerated in disciplinary proceedings.

Headnotes
If an accused has been exonerated and held innocent in the disciplinary proceedings - the criminal prosecution premised on the same/ identical set of allegations cannot be permitted to continue-the allegations against the applicant has already been tested during the disciplinary proceedings- no pre- summoning evidence with regard to offence, as alleged against the applicant- **Application allowed.** (E-9)

Case Law Cited

1. P.S. Rajya vs. State of Bihar, 1996 9 SCC 1
2. Jagdish Singh @ Jagdish Kumar Singh vs. State of U.P. and Another, 2024 0 Supreme (All) 1358
3. Suneeti Toteja vs. State of U.P. and Another, 2025 LawSuit (SC) 276
4. Illias Vs. The Collector of Customs, Madras 1968 0 Supreme (SC) 305
5. Ranjit Singh Vs. State of Madhya Pradesh 1973 0 Supreme (MP) 62
6. Badri Vishal Vs. State of Madhya Pradesh 1969 0 Supreme (MP) 117
7. State of Haryana and others Vs. Bhajan Lal and others (1992 Supp.(1) SCC 335)
8. Ashoo Surendranath Tewari Vs. Deputy Superintendent of Police, EOW, CBI and Another, (2020) 9 SCC 636;
9. Radheshyam Kejriwal Vs. State of West Bengal, (2011) 3 SCC 581
10. J. Sekar Alias Sekar Reddy Vs. Directorate of Enforcement (2022) 7 SCC 370

List of Acts
1. Railway Property (Unlawful Possession) Act, 1966
2. Code of Criminal Procedure, 1973

List of Keywords
Cognizance/summoning order; exonerated in the Departmental enquiry; pre-summoning evidence; preponderance of probability; standard of proof required to establish the guilt is far higher than the standard of proof required to establish the guilt in departmental proceedings;

Appearances of parties
Petitioner Counsels-Mithilesh Kumar Shukla, Shiv Sagar Singh, Sudhir Kumar Shukla, Respondent Counsels-A.G.A., Nand Lal

(Delivered by Hon'ble Sanjay Kumar Pachori, J.)

1. Present application under Section 482 of Code of Criminal Procedure (hereinafter referred to as "Cr.P.C." has been filed with a prayer to quash the entire proceedings of Criminal Case No. 252 of 2022, arising out of Case Crime No. 17 of 2021, under Section 3/4 of Railway Property (Unlawful Possession) Act, 1966, Police Station R.P.F. Ghaziabad, District Ghaziabad, as well as cognizance/summoning order dated 8.2.2022, pending in the court of Additional Chief Judicial Magistrate, (N.R.), Ghaziabad.

2. Brief facts of the case are that complaint dated 10.10.2021 has been filed

and registered as aforesaid case crime, for theft of three old transformer from E.M.U. Car Shade, Ghaziabad, on 9.10.2021. One stolen transformer has been recovered from the shop of co-accused Alimuddin Kabadi and two other old transformers were recovered from the shop of another co-accused Noor Mohd. Kabadi. As per recovery memo dated 13.10.2021, there is no allegation levelled against the applicant for commission of aforesaid offence. As per pre-summoning evidence, applicant has been implicated as he allowed the accused persons for the purpose of loading of garbage and cleaning grass at the place of occurrence prior to the incident. The applicant was posted as Chief Health Inspector, Northern Railway Zone, EMU Car Shade Ghaziabad and was assigned additional duty for looking after the cleaning and sanitization. There is a contract dated 23.4.2012 of cleaning work of EMU Car Shade Ghaziabad premises with a private contractor which was valid up to 30.9.2021.

3. Learned counsel for the applicant submits that except the confessional statement of the present applicant recorded by the Inspector of Railway Police, there is no other pre-summoning evidence against the applicant. It is further submitted that the applicant was exonerated in the Departmental enquiry dated 07.12.2021, wherein it has been observed and found that the present applicant was not present at the place of incident at the relevant point of time, but he was working in the Administrative Block to prepare details of Covid vaccination work as per the orders of his Superior officer.

4. In support of his submission, learned counsel for the applicant relied upon the following judgments:-

(a) **P.S. Rajya vs. State of Bihar, 1996 9 SCC 1,**

(b) **Jagdish Singh @ Jagdish Kumar Singh vs. State of U.P. and Another, 2024 0 Supreme (All) 1358,**

(c) **Suneeti Toteja vs. State of U.P. and Another, 2025 LawSuit (SC) 276,**

5. Learned counsel for the opposite party no. 2 has not denied the fact that applicant was exonerated in departmental enquiry with regard to same charges. It is further submitted that as per provision of Section 8(1) of Railway Property (Unlawful Possession) Act, 1966, statement of the applicant recorded by the Inspector of Railway Police is admissible in evidence against the applicant. But he admitted that except the aforesaid confessional statement, there is no other pre-summoning evidence against the applicant.

6. In support of his submission, learned counsel for the opposite party no. 2 relied upon the following judgments:-

(i) Illias Vs. The Collector of Customs, Madras 1968 0 Supreme (SC) 305;

(ii) Ranjit Singh Vs. State of Madhya Pradesh 1973 0 Supreme (MP) 62;

(iii) Badri Vishal Vs. State of Madhya Pradesh 1969 0 Supreme (MP) 117;

7. Heard Sri Mithilesh Kumar Shukla, learned counsel for the applicant, Sri Nand Lal, learned counsel for the Union of India and learned A.G.A. for the State and perused the material available on record..

8. After perusal of material available on record, following material facts have been emerged that;

(i) Theft property has been recovered from the shop of co-accused Islamuddin and Noor Mohd.

(ii) At the time of incident applicant was present in Administrative Block to prepare details of Covid vaccination work as per the order of his superior officer.

(iii) As per conclusion of the departmental inquiry, the applicant has been exonerated from the same charge as alleged in the present case.

(iv) Inspector of Railway Police recorded the confessional statement of the applicant with regard to the incident, in which the applicant stated that he was not present during the day hours at the place of incident, but he was present at Administrative Block.

(v) In inquiry which has been initiated against the applicant by department it has been established that the applicant was present at Administrative Block to prepare details of Covid Vaccination work as per orders of his superior officer at relevant point of time and he was not present at the place of incident and due to this reason, the applicant was exonerated in departmental enquiry for same incident.

9. Before considering the argument advanced by both the parties, it is relevant to re-visit of Section 3 which are reproduced as under: Sections 3, 4 and 8(1) of Railway Property (Unlawful Possession) Act, 1966, which are reproduced as under:-

3. Penalty for theft, dishonest misappropriation or unlawful possession of railway property. *Whoever commits theft, or dishonestly misappropriates or is found, or is proved to have been, in possession of any railway property reasonably suspected of having been stolen or unlawfully obtained shall, unless he proves that the railway property came into his possession lawfully, be punishable—*

(a) for the first offence, with imprisonment for a term which may extend to five years, or with fine, or with both and in the absence of special and adequate reasons to be mentioned in the judgment of the court, such imprisonment shall not be less than one year and such fine shall not be less than one thousand rupees;

(b) for the second or a subsequent offence, with imprisonment for a term which may extend to five years and also with fine and in the absence of special and adequate reasons to be mentioned in the judgment of the court, such imprisonment shall not be less than two years and such fine shall not be less than two thousand rupees.

Explanation.--For the purposes of this section, "theft" and "dishonest misappropriation" shall have the same meanings as assigned to them respectively in section 378 and section 403 of the Indian Penal Code (45 of 1860).

4. Punishment for abetment, conspiracy or connivance at offences:- *Whoever abets or conspires in the commission of an offence punishable under this Act, or any owner or occupier of land or building, or any agent of such owner or occupier in charge of the management of that land or building, who wilfully connives at an offence against the provisions of this Act, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.*

Explanation- For the purposes of this section, the words "abet" and "conspire" shall have the same meanings as assigned to them respectively in sections 107 and 120A of the Indian Penal Code.

*8***. Inquiry how to be made***.—(1) When an officer of the Force receives*

information about the commission of an offence punishable under this Act, or when any person is arrested] by an officer of the Force for an offence punishable under this Act or is forwarded to him under section 7, he shall proceed to inquire into the charge against such person.

(2) For this purpose the officer of the Force may exercise the same powers and shall be subject to the same provisions as the officer incharge of a police-station may exercise and is subject to under the Code of Criminal Procedure, 1898 (5 of 1898), when investigating a cognizable case:

Provided that—

(a) if the officer of the Force is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate;

(b) if it appears to the officer of the Force that there is not sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties as the officer of the Force may direct, to appear, if and when so required before the Magistrate having jurisdiction, and shall make a full report of all the particulars of the case to his official superior.

10. In State of **Haryana and others Vs. Bhajan Lal and others (1992 Supp.(1) SCC 335)** the Supreme Court after considering all earlier decisions has given guildelines relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 of Code of Criminal Procedure for quashing an F.I.R. or a complaint, wherein it has been observed as under;

"In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prime facie constitute any offence or make out a case against the accused.

(2) Where the allegation in the first information report and other materials, if any, accompanying the FIR donot disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the ode except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the un-controverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a

magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private an personal grudge.

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an- arbitrary jurisdiction on the court to act according to its whim or caprice."

11. It is settled position of law that if an accused has been exonerated and held innocent in the disciplinary proceedings after the allegations have been found to be unsustainable, then the criminal prosecution premised on the same/ identical set of allegations cannot be permitted to continue. The reasoning for this conclusion/ proposition is that the standard of proceedings in criminal cases is beyond reasonable doubt which is far higher than preponderance of probability, the standard of proof required in disciplinary proceedings. When the same witnesses could not be able to prove/ establish the same/ identical charges in the disciplinary proceeding, there is no purpose in prosecuting the criminal proceedings where the standard of proof required to establish the guilt is far higher than the standard of proof required to establish the guilt in departmental proceedings**. [Ashoo Surendranath Tewari Vs. Deputy Superintendent of Police, EOW, CBI and Another, (2020) 9 SCC 636; P.S. Rajya vs. State of Bihar, 1996 9 SCC 1; Radheshyam Kejriwal Vs. State of West Bengal, (2011) 3 SCC 581; J. Sekar Alias Sekar Reddy Vs. Directorate of Enforcement (2022) 7 SCC 370].**

12. In view of the facts and circumstances of the case, the charges levelled against the applicant in the present case as well as departmental inquiry are same and the applicant has been exonerated in departmental inquiry on the basis of same charges and the reliability and genuineness of the allegations against the applicant has already been tested during the disciplinary proceedings. I am of the considered view that there is no pre-summoning evidence with regard to offence, as alleged against the applicant, hence, this application is liable to be allowed.

13. The present application under Section 482 of Cr.P.C. is **allowed** and the proceedings of Criminal Case No. 252 of 2022, arising out of Case Crime No. 17 of

2021, under Section 3/4 of Railway Property (Unlawful Possession) Act, 1966, Police Station R.P.F. Ghaziabad, District Ghaziabad, as well as cognizance/summoning order dated 8.2.2022, against the applicant Tej Karan Meena, pending in the court of Additional Chief Judicial Magistrate, (N.R.), Ghaziabad are, hereby, quashed.

14. Registrar Compliance is directed to send the copy of the order to the trial Court immediately.

(2025) 8 ILRA 149
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 06.08.2025

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No. 9579 of 2025

Md. Tarique ...Petitioner
Versus
Union Of India & Ors. ...Respondents

Counsel for the Petitioner:
Siddharth Khare, Sr. Advocate

Counsel for the Respondents:
A.S.G.I., Gyan Prakash Shrivastava

ISSUE FOR CONSIDERATION

Whether the punishment of dismissal (modified to removal) imposed upon a Bank Manager for sanctioning and disbursing CKCC / loan accounts with serious procedural lapses and abuse of lending powers, without following mandatory lending norms, and committing repeated dereliction of duty, warrants interference under Article 226.

HEADNOTE

Service Law – Bank Officer – Departmental Inquiry – Procedural Irregularities in Loan Sanction – Abuse of Lending Powers – Rule 6(17) of Regulations, 1976 not mandatory – Writ dismissed.

Held :

Petitioner was charged with 58 charges relating to 413 CKCC loan accounts involving serious irregularities including excess sanction and disbursement of CKCC limits, enhancement of limits without justification or supporting documents, avoiding multilayer sanctioning, and manipulating limits in CBS. Inquiry Officer conducted proceedings on multiple dates; petitioner was supplied with all documents, permitted to cross-examine management witnesses and submit 637 documents. Disciplinary Authority considered each charge independently, along with documents, defence submissions and findings of the Inquiry Officer before concluding misconduct. Even though no allegation of fraud or loss was proved, actual loss is not necessary; dereliction of duties and failure to follow mandatory procedure is sufficient to sustain penalty. Rule 6(17) of the Central Bank of India Officer Employees (Discipline and Appeal) Regulations, 1976 is not mandatory; since petitioner received full opportunity and did not request oral examination, non-recording of his statement does not vitiate proceedings. Writ petition dismissed. (Paras 27–30, 36, 37) (E-5)

CASE LAW CITED

Union of India and others vs. Mohd. Ramzan Khan, 1991 (1) SCC 588; Moni Shanker vs. Union of India and another, 2008 (3) SCC 484; Union Bank of India vs. Bishwanath Bhattacharjee, 2022 (13) SCC 329; Ram Avtar vs. Chairman and MD and others, Writ Petition No. 57592/2005; Apparel Export Promotion Council vs. A.K. Chopra, AIR 1999 SC 625; SBI vs. Bela Bagchi and others, Civil Appeal No. 5364 of 2005; Tara Chand Vyas vs. Chairman and Disciplinary Authority and others, 1997 SC 357; UPSRTC vs. Suresh Chand Sharma, 2010 (6) …; Union of India vs. Managobinda Samantaray, Civil Appeal No. 1622-1623/2022; Union of India and others vs. Const. Sunil Kumar, Civil Appeal No. 219/2023; Union of India vs. P. Gunasekaran; B.C. Chaturvedi vs. Union of India, (1995) 6 SCC 749

List of Acts

Central Bank of India Officer Employees (Discipline and Appeal) Regulations, 1976; Constitution of India

List of Keywords

Bank Officer; Departmental Proceedings; Procedural Lapse; CKCC loans; Abuse of Lending Power; Inquiry Officer; Natural Justice; Disproportionate Punishment; Rule 6(17); Removal from Service.

CASE ARISING FROM

Penalty order dated 08.11.2023 (dismissal); Appellate order dated 03.07.2024 (penalty modified to removal); Review order dated 05.03.2025 (review rejected)

Appearances for Parties

Advs For Petitioner: Sri Siddharth Khare

Advs For Respondents: A.S.G.I.; Sri Gyan Prakash Shrivastava

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. Petitioner was appointed as Probationary Officer in Central Bank of India on basis of a selection proceedings conducted by Institute of Banking Personnel Selection (IBPS). He was granted appointment as Assistant Manager (Scale-1) and posted at Lucknow Zone in July, 2013. He was promoted as Officer Middle Management Grade (Scale-II) in April, 2016 and granted posting at Ahmedabad Zone and after working there till July, 2019, on his own request, he was transferred back to Lucknow Zone and posted as Manager (Scale-II Officer) at Branch Office Padleganj under Gorakhpur Region on 25.07.2019. Within few days, he was transferred and posted as Branch Manager at Branch Office Ramkola under Gorakhpur Region on 29.07.2019. In September, 2021, he was transferred to Lead Bank Office, Padrauna, Kushinagar where he lastly worked. An Internal Audit was conducted by Regional Branch Manager of Ramkola Branch where petitioner has worked as Branch Manager from 29.07.2019 to 22.09.2021 and a Regional Branch Internal Audit report was submitted in September, 2020, wherein number of objections were pointed out and according to petitioner, objections were rectified also and a compliance report was submitted by one Dharmendra Pandey on 03.03.2021.

2. Subsequently, a Checking Report of Audit Compliance of RBIA was obtained from one Ratnesh Ranjan, then posted as Senior Manager at Branch Office Padrauna, however, he has submitted an adverse report on 28.10.2021, that level of compliance was found unsatisfactory.

3. In pursuance of above reports, petitioner was served with a memo dated 02.11.2021 and an explanation was sought within a period of 7 days explaining the act of omission and commission mentioned therein as well as why disciplinary action be not initiated against him.

4. In response to above referred memo, petitioner has submitted a detailed reply dated 27.11.2021, however, it was not found satisfactory and Regional Manager proceeded to issue a Memorandum dated 27.01.2023 instituting a departmental proceedings against him with regard to Articles of Charge specified in Annexure-1 and 2 of said Memorandum. Annexure-1 levelled 58 charges against the petitioner based on Statement of Imputation of Misconduct specified with regard to each of said charge in Annexure-2. It was accompanied by list of Management documents and witnesses also.

5. On same day, Regional Manager appointed Mr. Ratnesh Ranjan, Senior Manager, Branch Office Padrauna as Inquiry Officer. Inquiry was conducted between 31.03.2023 to 13.07.2023 on various dates. Preliminary proceedings were conducted between 31.01.2023 and 05.03.2023 and between 06.03.2023 and 25.05.2023. Presenting Officer produced total number of 1403 documents. Between 26.05.2023 and 15.06.2023, oral testimony of Ashutosh Vikram, Branch Manager, Ramkola Branch was concluded. The petitioner was provided a chance to cross examine him. The petitioner has presented total number of 637 documents. Proceedings were conducted on 05.07.2023, 06.07.2023, 07.07.2023, 10.07.2023, 11.07.2023, 12.07.2023 and 13.07.2023 and after cross examination, Presenting Officer as well as petitioner were granted 15 days' time to submit defence brief of prosecution/defence.

6. According to petitioner, he was not examined i.e. his statement was not recorded though he has submitted a very detailed defence brief in written.

7. The Inquiry Officer after closing of inquiry proceedings submitted an Inquiry Report and served upon the petitioner with a covering letter dated 08.09.2023. The petitioner has submitted a very detail objection dated 29.09.2023 to Inquiry Report. On 08.11.2023, an order was passed by A.G.M., Stressed Assets Management/Disciplinary Authority inflicting a penalty of dismissal from service against the petitioner constituting disqualification for future employment in terms of Regulation 4(j) of Central Bank of India Officer Employees (Discipline and Appeal) "Regulations, 1976" (hereinafter referred to as "Regulations, 1976").

8. Petitioner being aggrieved by above referred order dated 08.11.2023 has submitted an Appeal before the Appellate Authority, which was dismissed by an order dated 03.07.2024 though penalty of dismissal from service with a disqualification for failure employment was substituted by a penalty of removal from service.

9. Petitioner being aggrieved by said order filed a Review Petition under Regulation 18 of "Regulations, 1976" before General Manager, Central Bank of India, Central Office, Mumbai, however, it was rejected vide order dated 05.03.2025.

10. Aforesaid orders dated 08.11.2023, 03.07.2024 and 05.03.2025 are impugned in this writ petition.

11. With consent of learned advocates for rival parties, this writ petition was finally heard without exchange of pleadings since petitioner has filed all relevant documents along with the writ petition which is running into about 1400 pages (Volume I to VII).

12. Sri Ashok Khare, learned Senior Advocate assisted by Sri Aditendra Singh, learned counsel for petitioner and Sri Gyan Prakash Srivastava, learned counsel for respondent-bank have filed their written submissions reiterating their oral arguments presented at length.

13. Petitioner was charged with 58 charges. Charges No. 48, 49, 50, 52, 53, 54, 55 and 56 were related as many as 413 CKCC loan accounts wherein serious irregularities were committed. For reference, aforesaid charges are quoted below :-

"Charge No.48

Mr. Md. Tarique had sanctioned & disbursed 54 CKCC limits in excess of actual land holding of borrower. He had manually prepared process notes in loan files where he had considered higher land holding for evaluating CKCC limits. Thus, he had abuses his lending powers as a Branch Manager, done reckless financing, concealed the facts from Higher Authorities & Violate the Loan Policy.

Charge No.49

Mr. Md. Tarique had sanctioned & disbursed 50 CKCC accounts to borrowers who had availed limits with other financial institution (case of double finance) which were reflected in Khatauni/CIC reports. Thus, he did not follow the norms of lending and did uot carry out proper due diligence and KYC of the borrower and abuses his lending powers.

Charges No.50

Mr. Md. Tarique has sanctioned & disbursed 109 CXCC loan accounts where limit fed in CBS in excess of actual sanction (Limit manipulated in CBS). Thus, he did not adhere to the prescribed lending norms with regard to processing a the proposals and abuses his lending powers.

Charge No.52

Mr. Md. Tarique has sartctioned & disbursed 174 CKCC loan accounts where multilayer approach (Joan sanctioned by single-handedly) while processing and sanctioning not followed. Thus, bu did not adhere to the prescribed lending norms with regard to processing and sanctioning of the proposals and abuses his lending powers.

Charge No.53

Mr. Md. Tarique has sanctioned & disbursed 17 CKCC loan accounts where limits were enhanced several times in a financial year, without any cause & justification. Thus, he had abuses his lending powers, concealed the facts from higher authorities & violated the Loan Policy while processing and sanctioning of the CKCC loan proposals.

Charge No.54

Mr. Md. Tarique has sanctioned & disbursed 17 personal & pension loan accounts where loan amount sanctioned in excess of eligibility of borrower. Thus, he had abuses his lending powers, concealed the facts from higher authorities & violated the Loan Policy while processing and sanctioning of the loan proposals.

Charge No.55

Mr. Md. Tarique has sanctioned & enhanced 16 MSME Loan accounts despite of withholding his lending powers by Regional Office, Gorakhpur vide its letter no. RO/Credit/2019-20/802 dated 19.03.2020. Thus, he had not obeyed and failed to carry out the written order of the competent authority and abused his lending powers.

Charge No.56

Mr. Md. Tarique has sanctioned/enhanced/disbursed 26 CKCC accounts more than 175% without informing Regional Office and not created Bank's charge over Khatauni. He had violated the instruction of CO given in letter no. CO: ARD-FI:GM:2020-21-234 D24.08.2021. Thus, he had not obeyed and failed to carry out the written order of the higher authority and abuses his lending powers."

14. Learned Senior Advocate by referring written submissions has vehemently submitted that in the entire inquiry report and order of Disciplinary Authority has not alleged any fraud or there was no allegation of fabricating documents or that loan sanction or limit was increased was contrary to law. There was no

allegation against the petitioner of ulterior motive or he has done any unlawful act which has caused loss to respondent-bank. Even on proved misconduct, since there was no proof of loss to bank, the punishment order of removal from service was unwarranted and shockingly disproportionate also.

15. Learned Senior Advocate also submitted that total number of accounts involved are 513, however, number of accounts were repeated on more than one occasion, therefore, actual figure was much lesser.

16. A compliance report was submitted by Ratnesh Ranjan, Senior Manager, Branch Office Padrauna who has conducted Audit Compliance Report, however, he has submitted adverse report dated 28.01.2021 and despite he was author of adverse report, still he was appointed as the Inquiry Officer to conduct inquiry which was absolutely illegal since he has to prove his adverse report and he could not go against his own findings. Entire proceedings were, therefore, suffered with malafides and petitioner was highly prejudiced.

17. Learned Senior Advocate has further submitted that petitioner has filed a detailed reply to inquiry report, however, same was no considered in its entirety. His detailed defence brief was also not considered as not been effectively mentioned in the impugned order.

18. Learned Senior Advocate has also referred pleadings of Writ Petition and written submissions. He has also referred Regulation 6(17) of "Regulations, 1976" that petitioner was not orally examined during course of inquiry proceedings which was mandatory. For reference, said Regulation is quoted below :-

"6 (17). The inquiring may after the officer employee closed his evidence and shall if the officer employee is not getting himself examined, generally questioning on the circumstances appearing against him in the evidence for purposes of enabling the officer employee to explain any circumstances appearing in the evidence against him."

19. Learned Senior Advocate has placed reliance upon following judgments given more force to his arguments.

"1. Union of India and others vs. Mohd. Ramzan Khan, 1991 (1) SCC 588;

2. Moni Shanker vs. Union of India and another, 2008 (3) SCC 484;

3. Union Bank of India vs. Bishwanath Bhattacharjee, 2022 (13) SCC 329"

20. Per contra, learned counsel for respondents-Bank has vehemently opposed above submissions and referred written submissions and pleadings that there was no violation of principles of natural justice. Inquiry was conducted in strict adherence to Rules and procedures provided in "Regulations, 1976". The petitioner was afforded full opportunity to present his defence and to submit all documents in defence as well as to cross-examine the Management witnesses, which he has availed effectively. No allegation of procedural violation or arbitrariness was raised during inquiry. Allegations were proved on basis of documents, that there were repeated procedural lapse. There were financial irregularities and there were failure in compliance of Internal Control Mechanisms. Dereliction on part of

petitioner in discharging his duties and responsibilities was proved. He was negligent in sanctioning; processing and disbursing credit facilities to various customers which may cause higher financial and operational risk. The act of petitioner was highly prejudicial to interest of the bank.

21. Learned counsel has also submitted that there were clear cut procedural lapse. The petitioner has facilitated diversion of public funds, violating the trust and confidence reposed by the bank in him. Loans were sanctioned and disbursed without following due diligence. Nature of irregularities were not mere procedural but it was systematic failure to exercise due diligence and lapses led to severe risk exposure. Charges were proved beyond the preponderance of probabilities based on the documents and evidences. The petitioner has not raised question on impartiality of the Inquiry Officer during proceedings. On basis of proved charges, punishment is not shockingly disproportionate.

22. Learned counsel for respondents-Bank has placed reliance upon following judgments to support Bank's case :-

"1. Ram Avtar vs. Chairman and MD and others, Writ Petition No. 57592/2005

2. Apparel Export Promotion Council vs. A.K. Chopra, AIR 1999 SC 625

3. SBI vs. Bela Bagchi and others, Civil Appeal No. 5364 of 2005

4. Tara Chand Vyas vs. Chairman and Disciplinary Authority and others, 1997 SC 357

5. UPSRTC vs. Suresh Chand Sharma, 2010 (6) ....

6. Union of India vs. Managobinda Samantaray, Civil Appeal No. 1622-1623/2022

7. Union of India and others vs. Const. Sunil Kumar, Civil Appeal No. 219/2023

8. Union of India vs. P. Gunasekaran

9. B.C. Chaturvedi vs. Union of India, (1995) 6 SCC 749"

23. Heard learned counsel for parties and perused the records.

24. Before adverting to rival submissions, Court takes note of paragraphs 12 and 13 of a judgment passed by Supreme Court in **Boloram Bordoloi vs. Lakhimi Gaolia Bank and others, (2021) 3 SCC 806** which are quoted below :-

"12. Even, the last submission of the learned counsel for the appellant that the punishment imposed is disproportionate to the gravity of charges, also cannot be accepted. The charges framed against the appellant in the departmental enquiry are serious and grave. If we look at the response, in his letter dated 16-8-2005, to the show-cause notice issued by the disciplinary authority, it is clear that he has virtually admitted the charges, however, tried to explain that such lapses occurred due to work pressure. Further he went to the extent of saying — he is ready to bear the loss suffered by the Bank on account of his lapses.

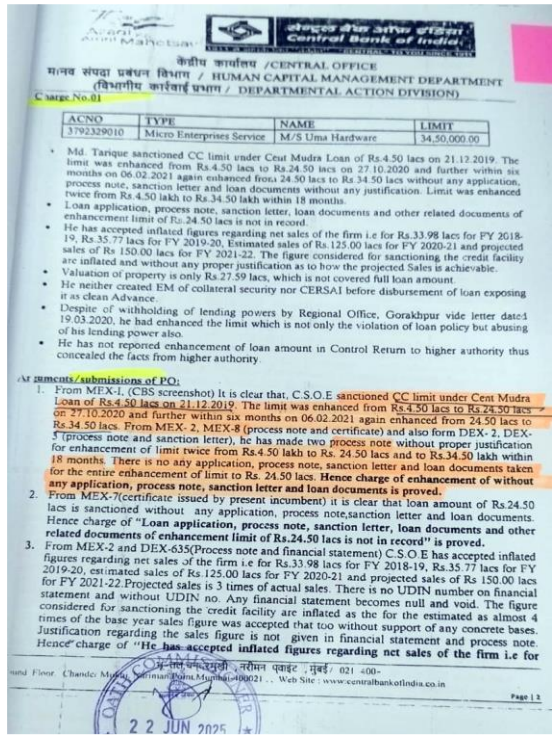
13. The Manager of a bank plays a vital role in managing the affairs of the bank. A bank officer/employee deals with the public money. The nature of his work demands vigilance with the in-built requirement to act carefully. If an officer/employee of the bank is allowed to

act beyond his authority, the discipline of the bank will disappear. When the procedural guidelines are issued for grant of loans, officers/employees are required to follow the same meticulously and any deviation will lead to erosion of public trust on the banks. If the Manager of a bank indulges in such misconduct, which is evident from the charge memo dated 18-6-2004 and the findings of the enquiry officer, it indicates that such charges are grave and serious. In spite of proved misconduct on such serious charges, disciplinary authority itself was liberal in imposing the punishment of compulsory retirement. In that view of the matter, it cannot be said that the punishment imposed in the disciplinary proceedings on the appellant, is disproportionate to the gravity of charges. As such, this submission of the learned counsel for the appellant also cannot be accepted."

25. Court has already observed on basis of material that due process was followed in disciplinary proceedings conducted against the petitioner. The procedure for imposing major penalty as prescribed under Regulation 6 of "Regulations, 1976" that inquiry was conducted by an Inquiry Officer. Charge sheet was submitted against the petitioner together with statement of allegations and list of documents and list of witnesses were also provided. The petitioner has submitted his reply within a specified period. On basis of oral and documentary evidence, Inquiry Officer has submitted his inquiry report, therefore, referred procedure was complied with substantially.

26. So far as Rule 6(17) of "Regulations, 1976" is concerned, it is not mandatory in nature and since petitioner has already provided ample opportunities for submitting his case, opportunity to cross examine the witnesses, therefore, there was no mandatory requirement to record his statement if he does not want to record his statement. The purpose of statement to ask question on circumstances against the delinquent, which was satisfied since entire documentary evidence was supplied to the petitioner, therefore, the object was satisfied. Otherwise also, petitioner has not asked to exercise provisions of Regulation 6(17), therefore, in given circumstances, it could not be a case that if such procedure was not substantially followed, entire inquiry would be vitiated.

27. As already referred above, impugned order is running into many pages, as each charge was dealt with independently referring details of charge, argument/submission of P.O., argument/submission of defence/CSOE, findings of I.A. and findings of Disciplinary Authority. For reference, scanned images of details mentioned in regard to Charge No.1 are quoted below :-.



Central Bank of India

केंद्रीय कार्यालय /CENTRAL OFFICE
मानव संपदा प्रबंधन विभाग / HUMAN CAPITAL MANAGEMENT DEPARTMENT
(विभागीय कार्रवाई प्रभाग / DEPARTMENTAL ACTION DIVISION)

Charge No.01

ACNO	TYPE	NAME	LIMIT
3792329010	Micro Enterprises Service	M/S Uma Hardware	34,50,000.00

- Md. Tarique sanctioned CC limit under Cent Mudra Loan of Rs.4.50 lacs on 21.12.2019. The limit was enhanced from Rs.4.50 lacs to Rs.24.50 lacs on 27.10.2020 and further within six months on 06.02.2021 again enhanced from 24.50 lacs to Rs.34.50 lacs without any application, process note, sanction letter and loan documents without any justification. Limit was enhanced twice from Rs.4.50 lakh to Rs.34.50 lakh within 18 months.
- Loan application, process note, sanction letter, loan documents and other related documents of enhancement limit of Rs. 24.50 lacs is not in record.
- He has accepted inflated figures regarding net sales of the firm i.e for Rs.33.98 lacs for FY 2018-19, Rs.35.77 lacs for FY 2019-20, Estimated sales of Rs.125.00 lacs for FY 2020-21 and projected sales of Rs 150.00 lacs for FY 2021-22. The figure considered for sanctioning the credit facility are inflated and without any proper justification as to how the projected Sales is achievable.
- Valuation of property is only Rs.27.59 lacs, which is not covered full loan amount.
- He neither created EM of collateral security nor CERSAI before disbursement of loan exposing it as clean Advance.
- Despite of withholding of lending powers by Regional Office, Gorakhpur vide letter dated 19.03.2020, he had enhanced the limit which is not only the violation of loan policy but abusing of his lending power also.
- He has not reported enhancement of loan amount in Control Return to higher authority thus concealed the facts from higher authority.

Arguments/submissions of PO:

1. From MEX-1, (CBS screenshot) It is clear that, C.S.O.E sanctioned CC limit under Cent Mudra Loan of Rs.4.50 lacs on 21.12.2019. The limit was enhanced from Rs.4.50 lacs to Rs.24.50 lacs on 27.10.2020 and further within six months on 06.02.2021 again enhanced from 24.50 lacs to Rs.34.50 lacs. From MEX- 2, MEX-8 (process note and certificate) and also form DEX- 2, DEX-5 (process note and sanction letter), he has made two process note without proper justification for enhancement of limit twice from Rs.4.50 lakh to Rs. 24.50 lacs and to Rs.34.50 lakh within 18 months. There is no any application, process note, sanction letter and loan documents taken for the entire enhancement of limit to Rs. 24.50 lacs. **Hence charge of enhancement of without any application, process note, sanction letter and loan documents is proved.**
2. From MEX-7(certificate issued by present incumbent) it is clear that loan amount of Rs.24.50 lacs is sanctioned without any application, process note,sanction letter and loan documents. Hence charge of "**Loan application, process note, sanction letter, loan documents and other related documents of enhancement limit of Rs.24.50 lacs is not in record" is proved.**
3. From MEX-2 and DEX-635(Process note and financial statement) C.S.O.E has accepted inflated figures regarding net sales of the firm i.e for Rs.33.98 lacs for FY 2018-19, Rs.35.77 lacs for FY 2019-20, estimated sales of Rs.125.00 lacs for FY 2020-21 and projected sales of Rs 150.00 lacs for FY 2021-22.Projected sales is 3 times of actual sales. There is no UDIN number on financial statement and without UDIN no. Any financial statement becomes null and void. The figure considered for sanctioning the credit facility are inflated as the for the estimated as almost 4 times of the base year sales figure was accepted that too without support of any concrete bases. Justification regarding the sales figure is not given in financial statement and process note. Hence charge of "**He has accepted inflated figures regarding net sales of the firm i.e for**

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22 JUN 2025

Azadi Ka Amrit Mahotsav

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Rs.33.98 lacs for FY 2018-19, Rs.35.77 lacs for FY 2019-20, estimated sales of Rs.125.00 lacs for FY 2020-21 and projected sales of Rs 150.00 lacs for FY 2021-22. The figure considered for sanctioning the credit facility is inflated and without any proper justification as to how the projected Sales is achievable" is proved.

4 From MEX-6, MEX-2, DEX-2 and DEX-3, DEX-8(valuation report, process note, sanction letter, LIC policy) ,it is clear that Valuation of property is only Rs.27.59 lacs, and market value is Rs 30.66 lacs. In the process note and sanction letter, collateral security accepted to secure the exposure is only mentioned property's having RV Rs.27.59 lacs and mentioned LIC value is nil that too without any specific Policy no, hence total security accepted is Rs.27.59 lacs which is not sufficient enough to cover the full loan amount Rs. 34.50 Lacs. Hence charge of **"Valuation of property is only Rs.27.59 lacs, which is not covered full loan amount" is proved.**

5 From MEX-1, MEX-5, MEX-9(CBS limit amendment detail, copy of EM, Mail for cersai) and from DEX-10(Mail for cersai) it is clear that limit of Rs. 24.50 lacs was fed in the CBS on 27.10.2020 for which no EM record was created. Limit of Rs.34.50 lacs was fed in CBS on dt.06/02/2021 done but EM for created on dt 22/09/2021 which is more than 7 months. For the CERSAI mail was send on dt 06/10/2021. **Hence the charge that He neither created EM of collateral security nor CERSAI before disbursement is proved.**

6. From MEX-69 it is clear the lending power of C.S.O.E has been withhold vide letter no RO/CREDIT/2019-20/802 dt 19/03/2020 with his acknowledgement, The limit of said account was amended on 27.10.2020 & 06.02.2021 which clearly emphasis the fact that Despite of withholding of lending powers by Regional Office, Gorakhpur , he had enhanced the limit on number of times. **Hence charge of "Despite of withholding of lending powers by Regional Office, Gorakhpur vide letter dated 19.03.2020, he had enhanced the limit which is not only the violation of loan policy but abusing of his lending power" is proved.**

7. From MEX- 3 and MEX-4(control return) it is clear that C.S.O.E has not reported enhancement of loan amount from Rs.4.50 lacs to Rs.24.50 lacs on 27.10.2020 and further within six month on 06.02.2021 from 24.50 lacs to Rs.34.50 lacs in Control Return. Hence charge of **"He has not reported enhancement of loan amount in Control Return to higher authority thus concealed the facts from higher authority" is proved.**

Submissions of Defense/CSOE:

1. For the CC limit in question and to substantiate this part of the charge, the learned PO has submitted MEx- 1, which is CBS screenshot of enhancement of the said limit, MEx- 2 (Process note for enhancement), MEx- 8 (Certificate from incumbent BM certifying that Justification for enhancement not held on record). Whereas as a matter of fact it is clearly established by DEx-1 , DEx-2, DEx-3, DEx-5 & DEx-635 & DEX-636 (actual balance sheet as on 31.03.2020 estimated as on 31.03.2021 & projected as on 31.03.2022 with P & L and ITR for AY- 2019-20 & for AY-2020-21and GSTIN) that the loan limit was enhanced to Rs.3450000/- after obtaining application dated 08/09/2020 for the enhancement of limit to Rs 35.00 lakh and its processing as evident from Process Note, which was duly recommended by the recommending officer Mr. Mukti Nath, Assistant Manager under his signature and sanctioned by the sanctioning authority and the sanction letter dated 26.10.2020 duly acknowledged by the borrower Mr. Mritunjay Singh – Proprietor of M/s Uma Hardware, which is in commensuration with turnover achieved of Rs. 1,64,57,119.99 from 01.04.2020 to 30/04/2021 and 1,48,16,264.27 from 01/05/2021 to 30/09/2021 in the account, which has also been confirmed by the MW-1 in his reply to DQ 717. MEx-1 establishes the fact that the CC limit of Rs.3450000/- was fed on 06/02/2021 after a time period of about 14 months from the initial sanction of Rs.450000/- on 21/12/2019 and the said CC limit of Rs.3450000/- has been renewed /reviewed on 14/03/2022 as in as evident from

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High Court, Allahabad

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MEx-1 which has also been confirmed by MW- 1 in his reply to DQ. DQ 719. DEX-7 establishes the fact the end use of funds has been ascertained by the CSOE which is also confirmed by MW-1 in his reply to DQ 722. Thus, MEX 8 stands negated through the justification based on documentary evidences submitted in Defence. Hence it is clearly proved based on the above given facts and circumstances that application (DEX 1), revised process note (DEX2) against MEX 2, sanction letter dated 26.10.2020 (DEX-3) and loan documents (DEX-4) along with the justification were kept in record. Hence this part of the charge is not proved.

2. Our learned PO had tried to substantiate this part of charge by submitting MEx- 7 which is a Certificate from incumbent BM that 'Loan documents for CC limit of Rs 24.50 lakh is not held in record'. Whereas on contrary DEx-4 has clearly established the fact that the required loan documents for the Cash Credit Limit of Rs. 3450000/-sanctioned on 26.10.2020 were duly got executed from the borrower and the guarantors respectively on 26.10.2020, which has also been confirmed by MW-1 (incumbent BM) in his reply to DQ. 718. DEx-1 to DEx-4 along with MEx-1 clearly proves that though the enhancement of the above said loan limit to Rs.3450000/- was sanctioned on 26.10.2020 for which the valid and enforceable loan documents for Rs.3450000/- were already obtained, those which were executed by the borrower and guarantors respectively on 26.10.2020 but the loan limit for Rs.2450000/- was fed in on 27.10.2020 instead of Rs.3450000/- as evident from MEx-1 and since the loan documents dated 26.10.2020 for the loan limit of Rs.3450000/- were already with the branch, loan documents for Rs. 2450000/- were not needed, thus not taken. This fact has also been confirmed by the MW-1 in his reply to DQ 719. Hence MEX-7 stand negated based on the above-mentioned documentary evidences and confirmation by the MW-1. Therefore, this part of the charge is not proved at all.

3. Figures are not inflated as can be seen in document listed as DEx-635 (CBS Screenshot of CC account No 3792329010 (Mr Mritunjay Singh, Prop: M/s Uma Hardware) reflecting Turnover in the account, DEx- 636 (B/S, PL) which is in commensuration with turnover achieved of Rs. 16457119.99 from 01.04.2020 to 30/04/2021 and 14815264.27 from 01/05/2021 to 30/09/2021 in the account. Justification for achievement of sales is substantiated by the actual turnover in the account itself, which has also been confirmed by the MW-1 in his reply to DQ- 717.

4. For the said charge MEx- 6, MEx-5, DEx-9, DEx-8 & DEx- 6 clearly proves that the above said CC limit is duly secured with the EM of Residential House property, which is of market value of Rs.30.66 lakh, Realizable Value of Rs. 2759400/- as per valuation of the Bank's Panel Valuer and LIC policies duly assigned in favour of the Bank/branch and Hypothecation of stock and in accordance with the value of stock being primary security and Collateral in the form of EM of house property and LIC policies assigned are of more value than the limit sanctioned, which has also been confirmed by the MW-1 in his reply to DQ 721. Thus, the securities taken were of more than value of the loan amount. Hence this part of charge is not proved at all.

5. For this part of charge, our learned PO has submitted MEx- 5 which clearly proves that it's an Extension of EM and the above said CC limit is duly secured with the EM of Residential House property, which is of market value of Rs.30.66 lakh, Realizable Value of Rs. 2759400/- as per valuation of the Bank's Panel Valuer. It is to be noted that the EM of Housing Loan was since continued and right of general lien was in existence, which has been also been confirmed by MW-1 in his reply to DQ 721. Besides this, the Asset ID 20056827453 and Security ID 400056474843 has been registered for the EM of the House property (Extension of EM) in the CERSAI for above CC A/c of Mritunjay Singh, which has been communicated through this Centmail by the RO. Hence the charge that the loan was 'exposed' as clean advance is not proved at all.

6. Lending power was withheld for Fresh sanction whereas it was a case of renewal with enhancement.

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High Court, Allahabad

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7. Ref MEx- 68 which proves that the Fresh sanction of M/s Uma Hardware was reported in Control Return.

IA findings:

1. After going through the documents produced by both PO & AO IA is of the observation that Charge of "Md. Tarique sanctioned CC limit under Cent Mudra Loan of Rs 4.50 lacs on 21.12.2019. The limit was enhanced from Rs.4.50 lacs to Rs.24.50 lacs on 27.10.2020 and further within six months on 06.02.2021 again enhanced from 24.50 lacs to Rs.34.50 lacs without any application, process note, sanction letter and loan documents without any justification. Limit was enhanced twice from Rs.4.50 lakh to Rs.34.50 lakh within 18 months is proved
2. Loan application, process note, sanction letter, loan documents and other related documents of enhancement limit of Rs.24.50 lacs as confirmed by PO and AO was not obtained, hence the charge of Loan application, process note, sanction letter, loan documents and other related documents of enhancement limit of Rs.24.50 lacs is not in record" is proved.
3. As the financial statement accepted by the CSOE does not hold any relevance as documents without UDIN no does not hold any sanctitiy. Even no justification regarding estimated sales figure was highlighted or any comment was marked while considering the proposal. Hence Charge "He has accepted inflated figures regarding net sales of the firm i.e for Rs.33.98 lacs for FY 2018-19, Rs.35.77 lacs for FY 2019-20. Estimated sales of Rs.125.00 lacs for FY 2020-21 and projected sales of Rs 150.00 lacs for FY 2021-22. The figures considered for sanctioning the credit facility are inflated and without any proper justification as to how the projected Sales is achievable." Is proved
4. As per DEX 2 which is sanction letter in which the detail of the collateral security is only that of Residential property having market value of Rs.30.66 lakh, Realizable Value of Rs. 2759400/- as per valuation of the Bank's Panel Valuer against the total exposure of Rs. 34.50 Lacs. Hence charge of "of property is only Rs.27.59 lacs, which is not covered full loan amount." is proved.
5. As per documents available and produced by the both sides and statement thereof IA is of the opinion that EM to secure the credit facility in the nature of CCOD was created well after the disbursal of limit facility. Even CERSAI was not created/modified before disbursal. Hence Charge of "He neither created EM of collateral security nor CERSAI before disbursement of loan exposing it as clean Advance." is proved.
6. As enhancement was done by the CSOE despite withholdings the lending power, Hence charge is proved.
7. None of the enhancement was reported in control return by the CSOE, hence charge is proved. All these circumstances lead to conclusion that the charge against C.S.O.E is proved.

28. So far as Charge No. 52 is concerned, it is in regard to irregularities committed by petitioner in 170 accounts. The charge is running into 90 pages and for reference, scanned images of relevant part of Charge No. 52 showing 174 accounts where irregularities were committed as well as trial conclusions are pasted below :-

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Charge No.52

Mr. Md. Tarique has sanctioned & disbursed below mentioned 174 CKCC loan accounts where multilayer approach (loan sanctioned by single handedly) while processing and sanctioning not followed. Thus, he did not adhere to the prescribed lending norms with regard to processing and sanctioning of the proposals and abuses his lending powers:

SRNO	ACNO.	NAME	LIMIT	BAL OS
1	3345695147	Mr. BHAGAWAN SINGH	170000.00	-171667.000
2	3639181081	Mr. Saklain .	158000.00	-164010.000
3	2277212392	Mr. KAILASH CHAND YADAV	141000.00	-85758.000
4	2277221000	Mr. SHRAWAN YADAV	147000.00	-156172.100
5	3164945309	Mr. MAHESH S/O RAMBALI	147000.00	-153581.860
6	2277223461	RAMCHANDER .	142000.00	-159957.770
7	3645265384	Mr. BALIS S O KHUNKHUN	139000.00	-159322.000
8	3675528384	Mr. SHAILENDRA GUPTA S O	121000.00	-138777.000
9	3656137585	Mr. AWADH kumar TIWARI	134000.00	-147387.000
10	3089003825	Mr. AMAL YADAV	128000.00	-146094.000
11	3623326761	Mr. FAGU SO BANSHI	128000.00	-142943.000
12	4051725916	Mr. RADHESHYAM .	140000.00	-148317.000
13	3686638010	Mr. GopichandKushwaha	250000.00	-247651.000
14	2277239017	Mr. DEVRAJ S/O KODAI	132000.00	-137699.570
15	3619102217	Mr. VIRENDRA .	126000.00	-136992.000
16	3653921438	Shri AVID ALI	132000.00	-140677.000
17	2277139330	Mr. CHEDI S/O CHOUTHI	124000.00	-133676.000
18	2277155444	Mr. RAM AUTAR .	99000.00	-102746.000
19	3661782187	Mr. SHRI NARAYAN YADAV	123000.00	-120125.000
20	3677105843	Mrs. SANGEETA DEVI .	121000.00	-132590.000
21	3170164938	Mr. DEVINANDAN PASI	133000.00	-140415.000
22	3678890239	Mr. RAJMAN S/O RAMLAL	206000.00	-163290.000
23	3658618144	Mr. SHRIKANT SO RAM PATI	118000.00	-131311.000
24	2277137060	Mr. YOGENDAR .	115000.00	-125139.000
25	2277186755	Mr. RAMVILASH S.O RAMNATH	119000.00	-125091.000
26	2277222037	Mr. RAMA S/O BALLI	113000.00	-120853.400
27	2277134922	Mr. RAMANAND .	113000.00	-122615.000
28	2277135096	Mr. LIYAKAT ALI	115000.00	-123870.900
29	3488628948	Mrs. SIRJAVATI	115000.00	-121066.000
30	2277209220	Mr. EHOLA	114000.00	-122788.000
31	2277138961	Mr. SHIVPRATAP	110000.00	-121893.900

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		CHAUBEY		
32	2277232114	Mrs. SHRI MATI DEVI	105000.00	-113521.800
33	2277134740	Mr. RADHESHYAM S/O KALICH	106000.00	2171.710
34	2277135700	Mr. LALLAN PRASAD	98000.00	-98973.000
35	3133095048	Mr. MRITUNJAY KUMAR PANDE	157000.00	-164709.370
36	2277188913	Mr. RAJBALABH RAO	99000.00	-104164.000
37	3633030853	Mr. Kalicharan .	73000.00	-81464.000
38	2277138166	Mr. DWARIKA S/O RAMLAL	71000.00	-78721.000
39	2277195114	MITHU .	70000.00	-73193.400
40	2277134648	Mr. JAIKISHUN .	61000.00	-60461.000
41	2277135278	Mrs. HUSHAN . TARA	132000.00	-138832.100
42	2277207041	Mr. SURESH .	158000.00	-167625.860
43	3453552513	Mr. NANDLAL .	123000.00	-131017.000
44	2277135574	DINESHWAR GO RAO	569000.00	-4807.690
45	4030691048	Mr. RAMDARASH S O JIUT	123000.00	-129607.000
46	2277184544	Mr. SURENDRA SINGH	400000.00	-371430.740
47	3571839498	Mrs. DULARI W/O KEDAR	290000.00	-305217.000
48	3682545902	Mr. DINANATH SINGH	147000.00	-165593.000
49	4051065298	Mr. NIJAMUDDIN ANSARI S	149000.00	-159514.000
50	4030655703	Mr. ABID S O DADADMARI	140000.00	-3409.000
51	3620660802	Mr. RAMDARASH KUSHWAHA	665000.00	-664139.000
52	3135785370	Mr. JAISHANKAR MANI TRIPA	566144.00	-480804.200
53	4052484139	Mr. HARIDWAR S/O MOHAN	379000.00	-346873.000
54	2277136758	Mr. FEKU S O TAPAI	276000.00	-289566.100
55	3097610321	Mr. SUNIL SINGH	263000.00	-296144.690
56	3558369471	Mr. NANDLAL KUSHWAHA	290500.00	-290301.000
57	2277200759	Mr. OM PRAKASH	271000.00	-242813.600
58	3165901585	Mr. SUNIL RAY	264000.00	-266642.000
59	2277137264	Mr. BHULAE GUPTA	251000.00	-201490.000
60	3170809560	Mr. RAMNIWASH CHAURASIYA	194000.00	-248596.000
61	2277211706	Mr. RAMCHANDER .	242000.00	-238180.000
62	2277218350	ISHAK .	254000.00	-234888.000
63	2277186405	Mr. SURESH .	267000.00	-223579.400
64	3613869713	Mr. UMESH CHAND	220000.00	-219576.600
65	2277183936	Mr. SUDAMA S/O MAHAVIR	199100.00	-207202.200

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66	2277200726	Mr. SATYA PRAKASH .	197200.00	-206340.000
67	3555554659	Mr. MAHANGU .	239694.00	-204556.000
68	4053272010	Mr. AJAY KUMAR DIXIT	193000.00	-201136.000
69	3187451426	Mr. ANIL KUMAR SINGH	163000.00	-200854.000
70	2277138778	Mr. JALALUDDIN ANSARI	187000.00	-192522.100
71	4053159016	Mr. RAMJIT SO GAYA	185000.00	-192278.000
72	2277236742	Mr. JAI PRAKASH SINGH	173000.00	-180610.600
73	2277137037	Mr. KANHIYA LAL	183000.00	-188812.000
74	3605251345	Mr. SRINIWASH SINGH S O	181000.00	-187075.000
75	2277172334	Mr. SRIRAM .	170000.00	-172760.290
76	2277190240	Mr. GIRJASHANKAR TIWARI	194393.00	-175268.130
77	4052370867	Mr. HANSHNATH S O VIRBAH	166000.00	-172862.000
78	2277136431	Mr. SHIV PRASAD S O PALTU	153000.00	-152160.350
79	4019399221	Mr. AJAY KUNWAR SINGH	156000.00	-163093.000
80	3407335311	Mr. ABID .	139000.00	-163745.000
81	2277218145	Mr. ALLAUDDIN .	149600.00	-155045.100
82	3139221397	Mr. INDRJIT S/O UDAI	145000.00	-146566.000
83	3362941127	Mr. KOLAI .	123000.00	-143819.400
84	3196987443	Mr. BINDU KUMAR MISRA	131000.00	-127401.000
85	2277237269	Mr. RAJENDRA YADAV	128000.00	-125005.000
86	3355764915	Mr. RAMASHISH S/O DHARIKS	105000.00	-120536.000
87	3181589085	Mr. MUKHLAL S O MAHATAM	112000.00	-117035.250
88	3184203317	Mr. KAMAL KISHOR	100000.00	-115088.000
89	3650851982	Mr. RAJESH KUMAR KUSHWAHA	131000.00	-115264.000
90	3194219122	Mrs. HORILA DEVI	100000.00	-109381.100
91	3670954021	Mr. SHREE RAM S O AMBIKA	95000.00	-112562.000
92	3645773272	Mr. RAMPRATAP TIWARI	112000.00	-116711.000
93	2277153504	SAMUJHAWAN S/O LATE FAUD	117000.00	-110024.000
94	3646444395	Mr. RAMASHREY KUSHWAHA	124000.00	-106466.000
95	2277225742	Mr. LAKSHMI GUPTA	88500.00	-91493.000
96	3124394833	Mr. RAHARI S/O SACHAN	85000.00	-90702.000
97	3646434669	Mr. KAMALA GUPTA	95000.00	-91645.000
98	3645920751	Mr. BASMATI DEVI	76000.00	-75781.000

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99	3179467436	Mr. SRIRAM DUSADH	74000.00	-83903.000
100	3665415689	Mr. RUDAL PRASAD	71000.00	-84050.000
101	3684641412	Mr. BHRIGURASHAN YADAV	73000.00	-73776.000
102	2277219625	Mr. RAMDAYAL GUPTA	81000.00	-82443.000
103	3644381684	Mr. NURSALAM .	133000.00	-81612.000
104	3655030711	Mr. BHAN PRATAP KUSHWAHA	67000.00	-74935.000
105	2277222515	Mr. SHAMBHU KUSHWAHA S O	66000.00	-67848.520
106	3666233175	Mr. RAMRAKSHA .	93000.00	-72623.000
107	2277185707	Mr. BANSHI YADAV	60000.00	-68405.000
108	3139837155	Mr. PRABHU NATH KUSHAWAHA	67000.00	-67726.000
109	4023100341	Mr. GANGA PRASAD .	74167.00	-66614.000
110	3469539458	Mr. HARI S/O SABRU	62000.00	-64585.000
111	3195577914	Mr. YOGENDRA .	62000.00	-63208.000
112	3665854310	Mr. JAIPRAKASH PRAJPATI S	51000.00	-62735.000
113	3185812329	Mrs. MURTI . .	59000.00	-61672.000
114	2277217141	Mr. RAMPRAVESH KOHAR	52000.00	-61745.000
115	2277218281	Mr. JAI NARAYAN	67000.00	-61042.000
116	3187453183	Mr. AKHILESH S/O VISHVNAT	57000.00	-56994.000
117	2277174080	Mr. RAMCHANDAR CHAMAR	55000.00	-53391.000
118	3626601091	Mr. SUKAI PRASAD	85000.00	-51024.000
119	3135544561	Mr. INDRASEN SHARMA	39000.00	-42388.000
120	3670258808	Mr. Amin Amin	42930.00	-44753.000
121	2277134081	Mr. SHIV S/O TRIVENI	38000.00	-39697.000
122	2277223926	Mr. RAMNARAYAN .	79000.00	-39256.000
123	3140013789	Mr. RAJBALI S/O LALMUNI	34000.00	-33436.000
124	3622112561	Mrs. SUMITRA DEVI W/O PR	29000.00	-28096.000
125	3481662421	Mr. ANIRUDDH .	48000.00	81.000
126	3613895857	Mr. AKLU YADAV	426000.00	-509114.000
127	3677445994	Mr. SHRI RAM SINGH	454000.00	-484211.000
128	2277157962	DEVENDER RAO S/O LATE NA	359000.00	-377404.400
129	4022330808	Mr. MARKANDEY SHAHI S O	328757.00	-342588.000
130	3579177434	Mr. ANIL GOVIND RAO S/O S	276000.00	-306974.000
131	3223159477	Mr. DURGESHWAR RAI .	276000.00	-301301.000
132	2277137059	Mr. VAIDH NATH URF	298000.00	-294504.600

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		HEMCHA		
133	2277136497	RAJENDAR YADAV	249000.00	-270570.000
134	3579177478	Mr. ADITYA KUMAR GOVIND S	235250.00	-235134.000
135	3356324871	Mr. MAHENDRA KUSHWAHA	224000.00	-237739.940
136	3190722935	Mr. VINOD KUMAR RAO	219000.00	-231869.000
137	3195513586	Mr. OMPRAKASH .	206000.00	-221165.000
138	2277133510	Mr. JALIM SO SAHADAT	204000.00	-218098.000
139	3125225161	Mr. SHIV LAL YADAV	200000.00	-225482.000
140	3674967071	Mr. KESHAVPRATAP GOVIND R	204000.00	-216770.000
141	2277137275	RAM PRATAP SINGH	196000.00	-213201.270
142	3383379272	Mr. MUNDRIKA .	188000.00	-196555.570
143	3584902648	Mr. VIRENDRA .	183000.00	-204710.000
144	3184582837	Mr. SANJAY GOVIND RAO	184000.00	-201015.000
145	2277223766	KHAGENDER SINGH	185000.00	-201142.660
146	3323431247	Mr. DHIRAJ .	186500.00	-198656.000
147	2277138597	Mr. SATHAI .	185000.00	-190245.400
148	4045253610	Mr. NARVADA S O MANGAL	186000.00	-198104.000
149	3469170922	Mr. RAJMANGAL .	200000.00	-195319.000
150	4024665834	Mr. GARUN S/O PARAS	191664.00	-193129.000
151	3148073286	Mr. RAMBADAN RAO	182600.00	-192529.000
152	3259560466	Mr. SUBHASH O RAO	174000.00	-190521.440
153	3683297649	Mrs. SANGAM DEVI	174000.00	-186189.000
154	3328619927	Mr. BAIRISHTAR SINGH S/O	150000.00	-169559.000
155	2277161876	KASHINARESH .	148000.00	-160527.690
156	2277133554	Mr. RAJESHWAR GOVIND RAO	147000.00	-157692.000
157	3368723373	Mr. AMARCHAND .	143000.00	-155916.860
158	3297889349	Mrs. REVATI DEVI W/O KAN	146500.00	-139809.000
159	2277134434	NAGINA .	138600.00	-137363.100
160	2277225946	UMASHARAN .	139000.00	-149058.760
161	3679416799	Mr. LAL JI S/O BANSHI	138000.00	-104000.000
162	3686592404	Mr. SRI PRASAD GUPTA	138000.00	-146789.000
163	2277136612	Mr. JAGDISH YADAV	200000.00	-241524.970
164	3322251459	Mr. JAGDISH .	160000.00	-115218.000
165	3188614142	Mr. BED PRAKASH	104000.00	-108886.000
166	3297899108	Mr. GOURISANKAR SINGH S/O	143000.00	-101230.000
167	3306901521	Mr. RAMESH RAO	290000.00	-285457.290
168	4063317381	Mr. PARASNATH S/O SAMPAT	107000.00	-112498.000

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169	4062909286	Mr. SITARAM .	103000.00	-108797.000
170	4056754374	Mr. YOGENDRA .	185000.00	-196501.000
171	4056754249	Mr. FOOLBADAN .	198000.00	-210556.000
172	4056354161	Mr. SANTOSH KUSHWAHA	123000.00	-129352.000
173	4055964803	Mr. MAINUDIN .	107000.00	-112988.000
174	4055058572	Mr. VISHAMBHAR PANDEY S	359000.00	-359292.000

1	3345695147	Mr. BHAGAWAN SINGH	170000.00	-171667.000

Arguments/submissions of PO:From MEX- 960-2/2 (certificate) it is clear that process note and sanction letter of Rs.1.70 lacs is not in record only old document (MEX-956) is in record. After going through all the document it seems that process note not made and only limit feed up in CBS. Hence charge of "Mr. Md. Tarique has sanctioned & disbursed CKCC loan accounts where multilayer approach (loan sanctioned by single handedly) while processing and sanctioning not followed. **Thus, he did not adhere to the prescribed lending norms with regard to processing and sanctioning of the proposals and abuses his lending powers" is proved.**

Arguments/submissions of Defense/CSOE: The CKCC limit in question was not sanctioned during the tenure of CSOE (since Sanctioned on 04.06.2014, Ref: MEX 956 to 958) but it was renewed during the tenure of CSOE. Relevant documents of renewal could not be discovered during discovery of documents. However, mention of "Process note already signed by Processing officer, Mr Muktinath, PF: 88175 and Sanctioning authority CSOE is there in the reply to Special Audit (MEX 1402, CKCC Observation, Annexure B, Sr. No 13) which was replied to by the incumbent Branch Manager of that period. Hence, it clearly indicates that the documents (Process Note signed by two officers) were there in record at the time of renewal during the tenure of CSOE. Moreover, the CKCC is in question is related to Paternal Uncle of Business Correspondent of Central Bank of India, Morwan Branch and Hence, signatures on renewal papers can be taken without any issue. Thus it is clearly proved that the multilayer approach was duly followed in the renewal. Thus this part of the charge is not proved at all.

IA findings: **As defense side could not produce evidence pertaining to material presence of any of the documents in support of their statement, Moreover, analyzing the situation it appears that CSOE has fed limit without assessing it properly/preparing process note, Hence charge that multilayer approach was not adhered is proved.**

2	3639181081	Mr. Saklain .	158000.00	-164010.000

Arguments/submissions of PO: From MEX- 959 (Memorandum of sanction cum process note) it is clear that there is no signature of any of the recommending officer on the documents. Hence charge of "Mr. Md. Tarique has sanctioned & disbursed CKCC loan accounts where multilayer approach (loan sanctioned by single handedly) while processing and sanctioning not followed. **Thus, he did not adhere to the prescribed lending norms with regard to processing and sanctioning of the proposals and abuses his lending powers" is proved.**

Arguments/submissions of Defense/CSOE: The CKCC limit in question was duly processed and appraised on the Process Note / Memorandum for Sanction of Crop Loans (DEx- 388) by two officers, recommending officer and CSOE but the signature of processing officer was left inadvertently as evident

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29. Court also takes note of summary of charges and its outcome as well as conclusion of Disciplinary Authority and for reference, scanned images of same are pasted below :-

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Summary of the Charges:

Charge No	Proved/Not Proved	Charge No.	Proved/Not Proved
1	Proved	30	Proved
2	Proved	31	Proved
3	Proved	32	Proved
4	Proved	33	Proved
5	Proved	34	Not Proved
6	Proved	35	Partly Proved
7	Proved	36	Proved
8	Proved	37	Not Proved
9	Proved	38	Partly Proved
10	Proved	39	Proved
11	Proved	40	Not Proved
12	Proved	41	Proved
13	Partly Proved	42	Partly Proved
14	Partly Proved	43	Not Proved
15	Proved	44	Not Proved
16	Proved	45	Proved
17	Proved	46	Not Proved
18	Proved	47	Partly Proved
19	Proved	48	Proved
20	Proved	49	Partly Proved
21	Proved	50	Partly Proved
22	Proved	51	Partly Proved
23	Proved	52	Partly Proved
24	Proved	53	Proved
25	Proved	54	Proved
26	Proved	55	Proved
27	Proved	56	Partly Proved
28	Proved	57	Partly Proved
29	Proved	58	Proved

My Conclusion:

1. Out of 58 Charges levelled against the CSOE, 40 Charges are proved and 12 Charges are partly proved and 6 Charges are not proved.
2. On perusal of EPP/ special audit report/other relavant documents, it is observed that CSOE maintained/showed utter negligence while sanctioning/enhanceing the loans.
3. Even withheld of lending power of the CSOE, he sanctioned/enhanced the loans the loans for which CSOE/defence argued that lending power was withheld for fresh sanction whereas it was a case of renewal with enhancement but vide RO letter dated 19/03/2020 mentioned as under

"We have come to understand that advances portfolio of the branch is general and sanctioning of fresh loans & advances are not being managed properly as [illegible] balance we have been provided alerts for reckless financing/disbursement in numbers of borrowal accounts and bank interest appears to be at jeopardy. In the aforesaid circumstance you are hereby advised not to exercise your lending powers in favour of any

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22 JUN 2025

Azadi Ka Amrit Mahotsav

सेन्ट्रल बैंक ऑफ़ इंडिया
Central Bank of India

केंद्रीय कार्यालय /CENTRAL OFFICE

मानव संपदा प्रबंधन विभाग / HUMAN CAPITAL MANAGEMENT DEPARTMENT
(विभागीय कार्रवाई प्रभाग / DEPARTMENTAL ACTION DIVISION)

applicant excepting Demand loans against securities till further order".

Based on above, it evident that the Charge is proved levelled against the CSOE.

4. In many enhancements, CSOE has not reported the same in control return for which Defense/CSOE argued that fresh sanctions reported which is not acceptable

5. The loans were enhanced without having application/process note/any other loan documents/proper justification and on observing from the floor of enquiry and relavant documents, complete set of loan documents are not available

6. For Creation of Charge, most of loans Charge was created on Khatauni but not register office

7. On observing the latest likely loss statement, most of the account are CKCC and are in standard position.

Therefore, in view of the above, considering the all facts, records and gravity of the proven charges, undersigned as a Disciplinary Authority, award the following consolidated penalty to the CSOE;

"Dismissal which shall ordinarily be a disqualification for future employment" in terms of Regulation 4(j) of Central Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976 as amended up to date.

It is ordered accordingly.

Note 1:
Appeal if any, under Regulation 17 of Central Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976 may be filed within 45 days from the date of receipt of the order.

Note 2:
Review if any, Under Regulation 18 of Central Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976 may be filed within Six months from the date of receipt of the order.

(C. Dutta)
Disciplinary Authority/
Assistant General Manager
Stressed Assets Management, CO

To
Mr. Md.Tarique,
Employee No. 126856,
Manager (Scale-II),
Lead Bank Office, Padrauna under Gorakhpur Region

Mohd. Atif
Advocate
Reg. No. U.P. 10775/202
OATH COMMISSIONER
High Court Allahabad
No.....
Date.....

22 JUN 2025

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30. Aforesaid details are discussions on few charges and from bare reading of it, Court can easily conclude that Disciplinary Authority has taken pain to consider each charge in detail, documents submitted in order to prove charge, submissions and defence of petitioner, findings of inquiry officer and thereafter gave his own reasoned findings.

31. As referred above, in regard to Charge No.1, petitioner has sanctioned CC Limit under Cent Mudra Loan of Rs. 4.50 Lacs on 21.12.2019. Said limit was enhanced from Rs. 4.50 Lacs to Rs. 24.50 Lacs on 27.10.2020 i.e. within 10 months and within further six months, on 06.02.2021, it was again enhanced from Rs. 24.50 Lacs to 34.50 Lacs. Aforesaid enhancement was done without proper decision justification for enhancement of limit from 4.5 Lacs to 24.50 Lacs and further to 34.50 Lacs. It was enhanced without any application, process note, sanction letter and loan documents i.e. absolutely contrary to prescribed procedure. All required documents for sanctioning loan were also not found. Net sale of companies were also not verified. CE RSAI was also not modified. It was a clear example of misconduct and dereliction of duties. Similar irregularities were committed in other about 50 loan accounts being part of the charge sheet.

32. Court also takes note of Charge No. 52 which is in regard to 174 CKCC Loan Accounts wherein petitioner has sanctioned loan avoiding multilayer approach (loan sanctioned by single handedly), as such due process was not followed. Petitioner did not adhere to prescribed lending norms with regard to processing and abused his lending powers. Process note, memo of sanction of credit loan was to be done by 2 Officers but it was done by petitioner himself as well as signature of Processing Officer was conspicuously left.

33. The Charge No. 50 was about irregularities committed in 109 CKCC loan

accounts where limit was enhanced in CBC in excess of actual sanction (limit manipulated in CBC) without following due process.

34. Aforesaid details are sufficient that petitioner has repeatedly committed dereliction of duties and proceeded contrary to prescribed procedure for sanctioning loan, enhancing limit or other connected proceedings. Explanations given by the petitioner were duly considered and vague submissions that he was new to said responsibility was rightly rejected. Therefore, as observed in **Boloram Bordoloi (supra)** as well as in **State of Rajasthan vs. Bhupendra Singh, 2024:INSC:592 : 2024 SCC Online SC 1908** that once there is no error in decision making process, outcome of Disciplinary Authority may not be interfered. Para 29 and 30 of Bhupendra Singh (supra) being relevant for present case are mentioned below :-

"29. Evidently, while reappraisal of facts and evidence is not impermissible by the High Court, the infirmity in the underlying order has to be greater than ordinary. It is not the respondent's case that due to omissions by the appellants in substantive and/or procedural compliances, prejudice has ensued to him. Let us examine the aspect independently too. The facts reveal that an earlier removal order was quashed, and a copy of the Enquiry Report alongwith the RPSC's opinion was supplied to the respondent. The respondent, thereafter, received an opportunity to submit a written representation, which he availed of. Further, he was afforded an opportunity of hearing as well. In this view, we are unable to find any violation of the principles of natural justice.

30. Before the Enquiry Officer, 13 witnesses and 75 documents were exhibited on behalf of the Authority. 3 witnesses deposed in defence of the delinquent employee-respondent. Considering the evidence on record, the Enquiry Officer by his report held certain charges levelled against the respondent to have been proved in full/part. Subsequently, a fresh Removal Order was passed, agreeing with the conclusions drawn by the enquiry officer. This Removal Order cannot be said to be based on 'no evidence'. On perusal thereof, we find that the Removal Order is reasoned as on the aspects where the Disciplinary Authority disagreed with the Enquiry Officer's report, reasons therefore have been assigned. On the areas of agreement, the Removal Order bears discussion on the relevant evidence."

35. Last argument of quantum of punishment is also liable to be rejected since petitioner has committed various irregularities and was punished after a due process. Punishment was already reduced from dismissal from service to removal from service which does not require any further interference.

36. Court also takes note that no loss or allegation of fraud was levelled against the petitioner, however, it would not favour case of petitioner since in such cases, actual loss is not necessary. Once prescribed procedure for disciplinary proceedings were followed and it was found that petitioner was failed to being diligent towards his duties and evidence was sufficient to prove charges against him, no interference is warranted.

37. Considering overall facts and circumstances of the case, Court does not find any ground to interfere with impugned

orders. Accordingly, writ petition lacks merit, hence, **dismissed**.

(2025) 8 ILRA 163
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 14.08.2025

BEFORE

THE HON'BLE AJIT KUMAR, J.

Writ A No. 19158 of 2024

Anand Swaroop Dohre ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Archana Singh, Bramh Narayan Singh

Counsel for the Respondents:
C.S.C.

Issues for consideration

(a) Whether the post retirement dues of an employee serving under the government can be withheld without there being any permission to institute disciplinary proceedings under Article 351-A of Civil Service Regulations and

(b) Whether in contemplation of permission, gratuity and pension amounts can be withheld taking recourse to the provisions contained under Article 351-AA r/w 919 A of the Civil Service Regulations? (Para 7)

Headnotes

A. Service Law – U.P. Police Officer of Subordinate Rank (Punishment and Appeal) Rules, 1991: Regulations 14(1); Civil Service Regulations: Section 351-AA r/w 919 AA - No provision is there that may empower disciplinary authority to issue charge sheet to a retired employee on its own.

Regular enquiry means enquiry after the issuance of charge sheet to the police officer. So the three elements become relevant (i) the police officer must be a serving officer. (ii) The officer to issue charge sheet must not be incompetent within the meaning of Rule 13 and (iii) The officer competent must be of a higher rank.

The enquiry contemplated is a regular oral enquiry to be held like in any other department of a government establishment. A detailed procedure is laid down and that also does not refer to any preliminary fact finding enquiry. It is, therefore, clear that the preliminary fact finding enquiry is held by the department only in order to find a prima facie case to form a view that charges are made out and to substantiate and prove, then a regular domestic enquiry is liable to be held and also to find out whether the delinquent employee is guilty of alleged misconduct or misappropriation of public money as the case may be. Hence a preliminary fact finding enquiry is not part and parcel of any enquiry contemplated and prescribed for under the relevant Rules. Therefore, charge-sheet issued to an employee, after attaining the age of superannuation, would be invalid for want of proper sanction. (Para 11)

B. Government reserves its right to withhold post retirement dues, etc permanently or for a time being or in part, either for an employee being found guilty of misconduct or for his conviction in the criminal case or for loss of public money. The proviso to the said rules becomes very relevant which provides for holding enquiry if not instituted either before retirement or after even during re-employment, if any, only with the prior sanction of the Governor. (Para 13)

It is a settled legal proposition that the enquiry only gets initiated with the issuance of the charge sheet and issuance of charge-sheet without the sanction of Governor becomes bad for being *de hors* the procedure prescribed. The authority which may be competent is not vested with any right to issue a charge sheet to a government servant or police officers who has already retired and is no more member of service without having prior sanction from the Governor or competent authority parallel to the Governor which the rules may permit or which the State may delegate upon a public sector authority or Corporation etc. Hence, the charge-sheet issued

to the petitioner on 01.05.2024 was void ab initio. (Para 14)

Therefore, the respondents would have been justified in withholding pension and gratuity even after the issuance of the pension payment order and gratuity payment order provided there was a lawfully instituted enquiry pending against the petitioner. It is admitted to the respondents that there is no judicial proceedings or any proceedings by virtue of an order of administrative tribunal pending against the petitioner. It is only pursuant to an illegal charge sheet issued on 01.05.2024 that on 22.04.2024 the Assistant Accounts Officer of the Police Headquarter of the Department of Finance Controller came to pass an order for withholding pension and gratuity which is absolutely illegal order in view of the findings arrived above that there was no prior sanction by the Governor to institute disciplinary proceedings against the petitioner which has resulted in holding chargesheet to be null and void. The entire instructions is silent as to whether any letter has been written to the State Government seeking prior approval from the Governor. The respondents are held to be unjustified in withholding pension and gratuity of the petitioner. (Para 15 to 18)

Writ petition allowed. (E-4)

List of Acts

Civil Service Regulations; U.P. Police Officer of Subordinate Rank (Punishment and Appeal) Rules, 1991.

List of Keywords

Service Law; pension; gratuity; post retirement dues.

Appearances of parties

Counsel for the Petitioner(s): Archana Singh, Bramh Narayan Singh
Counsel for the Respondent(s): C.S.C.

(Delivered by Hon'ble Ajit Kumar, J.)

1. Heard Shri Bramh Narayan Singh, learned counsel appearing for petitioner and learned Standing Counsel representing State respondents.

2. By means of this petition filed under Article 226 of the Constitution petitioner has prayed for a writ of certiorari for quashing the order dated 22.04.2024 passed by the Finance Controller, U.P. Police Headquarter, Lucknow directing for withholding of the pension payment order/ gratuity payment order in contemplation of a permission to be granted by the Hon'ble Governor in exercise of power vested under Article 351-A of the Civil Service Regulations.

3. It is argued by learned counsel for petitioner that there is no such law which permits respondents to issue charge sheet to a retired employee without seeking permission from the Governor within the meaning of Article 351-A of the Civil Service Regulations, and hence, the charge-sheet itself is null and void. He submits that petitioner got superannuated on 30.01.2024 and charge-sheet came to be issued on 01.05.2024, which therefore, was per se bad as the government rules do not provide for institution of any disciplinary enquiry against an employee who has attained the age of superannuation except with the prior approval of the Governor. It is, therefore, contended that in the event rules provides for prior approval, any order without seeking prior approval is liable to be held null and void for want of lawful authority.

4. Learned Standing Counsel who has obtained instructions in the matter has placed the same before the Court today, a copy of which is also supplied to the learned counsel for petitioner.

5. From the instructions that have been furnished to the Court, it clearly transpires

that the petitioner was issued with the charge-sheet on 01.05.2024 levelling charges to set into motion the disciplinary proceedings taking recourse to the provisions as contained under Regulations 14 (1) of the U.P. Police Officer of Subordinate Rank (Punishment and Appeal) Rules, 1991 and I further notice that subsequently a letter is written on 22.04.2024 to the Assistant Police Commissioner, Commissionerate, Headquarter Agra for taking necessary steps to process the papers for permission under Article 351-A of the the Civil Service Regulations to withhold the gratuity and pension as per regulation 351-AA with 919-A of the Civil Service Regulations.

6. It is contended by learned Standing Counsel that on the date when petitioner attained the age of superannuation a preliminary fact finding enquiry was underway and hence in continuation thereof, a charge sheet has come to be issued and hence, the charge-sheet cannot be invalidated, inasmuch as, he submits, an inquiry officer also came to be appointed on 31.01.2024 the last day of the service of the petitioner.

7. Having heard learned counsel for the parties and having perused the records, the question that arises for consideration of the Court is as to whether the post retirement dues of an employee serving under the government can be withheld without there being any permission to institute disciplinary proceedings under Article 351-A of the Civil Service Regulations and whether in contemplation of permission, gratuity and pension amounts can be withheld taking recourse to the provisions contained under Article 351-AA read-with 919 A of the Civil Service Regulations.

8. The impugned action is sought to be defended by the learned Standing Counsel on the ground that a preliminary fact finding enquiry was already pending against the petitioner on the date of his retirement hence, appointment of inquiry officer and issuance of charge sheet would be taken as sequel to the same and, therefore, in anticipation of permission under Article 351-A of the Civil Service Regulations, approval can be granted for withholding pension and gratuity and such exercise of power would be void within the meaning of Section 351-AA read with 919 AA of the Civil Service Regulations. Petitioner's ground for challenge is institution of any disciplinary proceeding can be only with the issuance of charge sheet and once the employee has attained the age of superannuation, no charge-sheet can be issued in anticipation of permission. It has been argued that the charge-sheet could have only been issued only after prior sanction was accorded.

9. In order to test the rival submissions to find answers to the questions framed above, I now proceed to examine the relevant provisions contained under the U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991. The U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 exhaustively lays down not only the punishments that can be imposed but also the procedure to be followed in the matter of disciplinary proceedings. Rule 2 of those rules clearly provide that these rule shall apply to all the police officers of subordinate ranks below the rank of Deputy Superintendent of Police, meaning thereby the rules are made applicable only to those who are in service and not those who have retired. Rule 3 provides for definition and rule 3(g) defines Police Officers as "Police

Officers of the Subordinate Rank below the rank of Deputy Superintendent of Police". Any prudent man would conclude that the police officer means a working officer and not a retired officer because a retired officer does not remain police officer for no more being member of police establishment. Rule 5 provides for procedure for award of punishment by holding an enquiry as per rule 14(1) against the police officer. Rule 6 provides for place of enquiry and rule 7 provides for power of punishment vested as against certain officers. Rule 13 provides officer who are not competent to conduct disciplinary proceedings while Rule 14 (1) lays down the procedure. Rule 14 (1) becomes relevant, hence, for the purposes of this case is being reproduced hereunder:

"14. Procedure for conducting departmental proceedings. (1) Subject to the provisions contained in these Rules the departmental proceedings in the case referred to in sub-rule (1) of Rule 5 against the Police Officers may be conducted in accordance with the procedure laid down in Appendix I".

10. Upon a plain reading aforesaid provisions, I do not find from any of the words and expression used therein which may entitled police to hold a preliminary fact finding enquiry as a part of disciplinary enquiry so as to justify an action based thereupon. It only refers to the regular enquiry to be held as per appendix-1 which is reproduced hereunder:

PROCEDURE RELATING TO THE CONDUCT OF DEPARTMENTAL PROCEEDINGS AGAINST POLICE OFFICER

[See Rule 14(1)]

Upon institution of a formal enquiry such Police Officer against whom the inquiry has been instituted shall be informed in writing of the grounds on which was proposed to take action and shall be afforded an adequate opportunity of defending itself. The grounds on which it is proposed to take action shall be used in the form of a definite charge or charges as in Form 1 appended to these Rules which shall be communicated to the charge Police Officer and which shall be so clear and precise as to given sufficient indication to the charges Police Officer, of the facts and circumstances against him. He shall be required, within a reasonable time, to put in, a written statement of his defence and to state, whether he desires to be heard in person. If he so desires, or it the Inquiry officer so direct an oral enquiry shall be held in respect of such of the allegation as are not admitted. At that enquiry such oral evidence will be recorded as the Inquiry Officer considers necessary. The charge Police Officer shall be entitled to cross-examine the witnesses to give evidence in person and to have such witnesses called as he may wish:
Provided that the inquiry officer may for sufficient reasons to be recorded in writing refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the finding and the ground thereof. The inquiry officer may also separately from these proceedings make his own recommendation regarding the punishment to be imposed on the charged Police Officer."

11. Regular enquiry means enquiry after the issuance of charge sheet to the police officer. So the three elements become relevant (i) the police officer must be a serving officer. (ii) The officer to issue charge sheet must not be incompetent

within the meaning of Rule 13 and (iii) The officer competent must be of a higher rank. Now coming to the appendix-1 of the Regulation, I find that the enquiry contemplated is a regular oral enquiry to be held like in any other department of a government establishment. A detailed procedure is laid down and that also does not refer to any preliminary fact finding enquiry. It is, therefore, clear that the preliminary fact finding enquiry is held by the department only in order to find a prima facie case to form a view that charges are made out and to substantiate and prove, then a regular domestic enquiry is liable to be held and also to find out whether the delinquent employee is guilty of alleged misconduct or misappropriation of public money as the case may be. Hence a preliminary fact finding enquiry is not part and parcel of any enquiry contemplated and prescribed for under the relevant Rules. Therefore, the argument advanced by learned Standing Counsel that issuance of charge-sheet, may be after attaining the age of superannuation to an employee, would be valid and will not get invalidated for want of proper sanction, is a highly misplaced and deserves to be rejected. No such provision is there that may empower disciplinary authority to issue charge sheet to a retired employee on its own.

12. Now coming to the question whether even after retirement such charge-sheet could have been issued and post retirement dues could have been withheld in anticipation of approval of the Governor. In order to appreciate this I proceed to examine the relevant provisions contained under the Civil Service Regulation 351-A which is reproduced hereunder:

"351-A. The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused Government, if the pensioner is found in departmental or Judicial proceedings to have been guilty of grave misconduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement: Provided that-- (a) Such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment- (i) shall not be instituted save with the sanction of the Governor. (ii) shall be in respect of an event which took place not more than four years, before the institution of such proceeding; and (iii) shall be conducted by such authority and in such place or places as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made. (b) Judicial proceedings, if not instituted while the officer was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and (c) the Public Service Commission, U.P. shall be consulted before final orders are passed. [Provided further that of the order passed by the Governor relates to a cash dealt with under the Uttar Pradesh Disciplinary Proceedings, (Administrative Tribunal) Rules, 1947, it shall not be necessary to consult Public Service Commission]. Explanation- for the purposes of this article- (a) Departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him or, if the officer has been placed under suspension from and earlier date, on such date, and (b)

judicial proceedings shall be deemed to have been instituted: (i) in the case of criminal proceedings, on the date on which complaint is made, or a charge-sheet is submitted, to a criminal court; and (ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made to a Civil court. Note--As soon as proceedings of the nature referred to in this article are instituted the authority which institutes such proceedings shall without delay intimate the fact to the Audit Officer concerned. "

13. Upon a bare reading of the aforesaid regulation, it is clear that government reserves its right to withhold post retirement dues, etc permanently or for a time being or in part, either for an employee being found guilty of misconduct or for his conviction in the criminal case or for loss of public money. The proviso to the said rules becomes very relevant which provides for holding enquiry if not instituted either before retirement or after even during re-employment, if any, only with the prior sanction of the Governor. It therefore, becomes apparently clear that any initiation or institution of enquiry will be only with the prior sanction of the Governor.

14 It is a settled legal proposition that the enquiry only gets initiated with the issuance of the charge sheet and issuance of charge-sheet without the sanction of Governor becomes bad for being de hors the procedure prescribed. The authority which may be competent is not vested with any right to issue a charge sheet to a government servant or police officers who has already retired and is no more member of service without having prior sanction from the Governor or competent authority parallel to the Governor which the rules may permit or which the State may delegate upon a public sector authority or Corporation etc. Hence, on this analogy also as discussed above, the charge-sheet issued to the petitioner on 01.05.2024 was void ab initio.

15. Now the power that is vested under Regulations 351-AA and 919-A if read together, respondent State Government is permitted to withhold pension and gratuity, provided of course, after the age of superannuation a departmental or judicial proceedings or any enquiry before the tribunal is pending. Articles 351-AA and 919-A of the Civil Service Regulations are reproduced hereunder:

351-AA. In the case of a Government Servant who retires on attaining the age of superannuation or otherwise and against whom any departmental or Judicial proceedings or any enquiry by Administrative Tribunal is pending on the date of retirement or is to be instituted after retirement a provisional pension as provided in Article 919-A may be sanctioned?

[919-A (1) In case referred to in Article 351-AA the Head of Department authorise the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement of the Government servant or if he was under suspension on the date and retirement upto the date immediately preceding on the date on which he was placed under suspension.

(2) The provisional pension shall be authorised for the period commencing from the date of retirement upto and including the date on which after conclusion of departmental or judicial

proceeding or the enquiry by the administrative Tribunal; as the case may be, final orders are passed by the competent authority.

(3) No death-cum-retirement gratuity shall be paid to the Government servant until the conclusion of the departmental proceedings or the enquiry by the Administrative Tribunal and issue of final orders thereon.

(4) Payment of provisional pension made under clause (1) above shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of the proceedings or enquiry referred to in clause (3) but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or withheld either permanently or for specified period.?

(emphasis added)

16. In view of the above, therefore, the respondents would have been justified in withholding pension and gratuity even after the issuance of the pension payment order and gratuity payment order provided there was a lawfully instituted enquiry pending against the petitioner. It is admitted to the respondents that there is no judicial proceedings or any proceedings by virtue of an order of administrative tribunal pending against the petitioner. It is only pursuant to an illegal charge sheet issued on 01.05.2024 that on 22.04.2024 the Assistant Accounts Officer of the Police Headquarter of the Department of Finance Controller came to pass an order for withholding pension and gratuity which according to me, is absolutely illegal order in view of the findings arrived above that there was no prior sanction by the Governor to institute disciplinary proceedings against the petitioner which has resulted in holding charge-sheet to be null and void. The entire instructions is silent as to whether any letter has been written to the State Government seeking prior approval from the Governor.

17. In view of the above, the respondents are held to be unjustified in withholding pension and gratuity of the petitioner.

18. Thus this writ petition succeeds and is allowed. The order passed dated 22.04.2024 at the behest of Finance Controller U.P. Police Headquarter, Lucknow directing for withholding of pension and gratuity of the petitioner is hereby quashed.

19. Respondents are directed to immediately release the entire post retirement dues including gratuity without any deduction within a maximum period of six weeks from the production of certified copy of this order failing which they shall be liable to pay interest at the rate of 12% from the date of his retirement till the actual payment is made.

(2025) 8 ILRA 169
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 27.08.2025

BEFORE

THE HON'BLE AJIT KUMAR, J.

Writ A No. 19283 of 2023

Abhinav Tiwari ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Rajesh Kumar, Shree Prakash Giri

Counsel for the Respondents:
Diptiman Singh, Ashok Srivastava, Avneesh Tripathi, C.S.C., Dhananjay Awasthi M.N. Singh, Rahul Jain

Issues for consideration

(a) Whether the status of the qualification of Post Graduate Diploma in Computer Application (in short 'PGDCA') issued by the autonomous constituent institute of University of Allahabad namely the Ewing Christian College, Allahabad, to be treated as equivalent to 'O' level certificate issued by the DOEACC Society? (Para 2, 15)

(b) Whether in the face of the fact that selections have taken place taking the legal position as then stood qua 2017 advertisement as obviously the State Government's letter is subsequent one, should it be equitable and in the interest of justice to direct the Commission to re-draw the merit list taking into consideration the PGDCA certificate issued by the concerned Universities recognized under the Government letter? (Para 15)

Headnotes

A. Service Law – Qualification – Appointment - The recruitment policy falls within the sole domain of employer to formulate bearing in mind the nature of functions and duties attached to a particular post and in the absence of any such decision by the State Government, the Court clarifies that it cannot adopt the role of State Government and therefore, should desist from applying any such qualification as equivalent one and therefore, the issue should be left to the assessment of employer alone. The Rules become dominant factor in determining the equivalence. (Para 16)

In respect of equivalence qua a certificate can only arise where the Rules in question do permit equivalent degree/ certificate as conferring eligibility upon a candidate to participate in selection process. It is for the State Government to formulate a recruitment policy and lay down the Rules qua academic qualification, equivalent qualification and other eligibility criteria. (Para 17, 18)

For the post of ARO the rules do provide so also advertisement that one must possess 'O' level certified issued by DOEACC Society or equivalent qualification or certificate. (Para 19)

The question of equivalence, therefore, fell absolutely within the authority of the State Government. The State Government in the present case clarified its stand that the 'O' level certificate issued by certain Universities that included University of Allahabad to be equivalent to PGDCA certificate required under the relevant recruitment rules. This being the legal position emerging out of the circular letter issued by the State Government dated 20.10.2022, it does not lie within the authority of the UPPSC to take a contrary stand. (Para 20, 21)

B. Since it lies in the domain of the State Government to clarify its position regarding equivalence of qualification, more especially when the rules and the advertisement did provide for equivalent qualification to be applicable, there is nothing wrong or otherwise illegal if this clarification issued by the State Government is made applicable to the selection underway/ stage of preparation of final select list. It is true that rules of the game cannot be changed once the advertisement has given selection process effect to and there may be circumstances where many candidates may be possessing such qualification may not have applied but a clarificatory stand by the State Government can always be taken during continuance of selection process. (Para 25)

The Government has clarified its position regarding equivalence vide letter dated 20.10.2025 in terms of 2016 selection which is quite apparent vide clause 4. (Para 24)

Writ petition allowed. (E-4)

Case Law Cited

Vikas & 80 Others Vs. State of U.P. & 2 Others, and other connected matters, 2021 (9) ADJ 59 (Para 12)

List of Acts

UGC Guidelines 2012-17; State Government Circular letter dated 20.10.2023;.

List of Keywords

Service Law; appointment; equivalent qualification.

Appearances of parties

Counsel for the Petitioner(s): Rajesh Kumar, Shree Prakash Giri

Counsel for the Respondent(s): Diptiman Singh, Ashok Srivastava, Avneesh Tripathi, C.S.C., Dhananjay Awasthi, M.N. Singh, Rahul Jain

(Delivered by Hon'ble Ajit Kumar, J.)

1. Heard Sri Rajesh Kumar and Sri Shree Prakash Giri, learned counsel for the petitioner, Sri G.K. Singh, learned Senior Advocate assisted by Sri Avneesh Tripathi, learned counsel for the U.P. Public Service Commission, Sri Ashok Srivastava, learned counsel for respondent no. 6, Sri Rahul Jain, learned counsel appearing for University Grants Commission, Sri Diptiman Singh, learned counsel for the University of Allahabad and Sri P.K. Srivastava, learned Additional Chief Standing Counsel.

2. The controversy in the present case centres around the status of the qualification of Post Graduate Diploma in Computer Application (in short 'PGDCA') issued by the autonomous constituent institute of University of Allahabad namely the Ewing Christian College, Allahabad, whether to be treated as equivalent to 'O' level certificate issued by the DOEACC Society. The controversy arose on account of a fact that petitioner applied against the post of Review Officer and Assistant Review Officer in U.P. Secretariat with requisite qualification presenting certificate of Post Graduate Diploma in Computer Application issued by the said institute. The candidature was not being accorded due consideration at the stage of preparation of final select list on the ground that such certificate cannot be treated as equivalent to the 'O' Level certificate issued by the DOEACC Society.

3. After the exchange of pleadings by the respective parties, specially the Uttar Pradesh Public Service Commission (in short 'UPPSC'), this court asked from the University Grants Commission (in short 'UGC') under its order dated 20.05.2025 as to whether the UGC permitted a recognized autonomous institute of a University to grant such PGDCA certificate.

4. On the last date Sri Rahul Jain, learned counsel appearing for UGC had clarified the stand of the UGC on the issue by referring to clause 10 of the UGC Guidelines 2012-17 which permitted such autonomous college/ institute to start Diploma courses both Under Graduate and Post Graduate level or even certificate courses without prior approval of the University concerned.

5. Thus, according to Sri Jain, the ECC which is an autonomous constituent institute of University of Allahabad was fully justified in running PGDCA course and issuing certificate in respect thereof. The Court was then to consider as to whether such certificate can be taken to be equivalent to 'O' level certificate or not and referring to the advertisement and clause given therein providing for 'O' level certificate or equivalent certificate issued by a recognized University, the Court was prima facie satisfied that ECC being autonomous constituent institute of University of Allahabad, the PGDCA certificate was liable to be taken as equivalent to 'O' level certificate issued by the DOEACC Society.

6. In the circumstances, while the Court was proceeding to pass final order,

Sri Avneesh Tripathi, learned counsel appearing for UPPSC had prayed for adjournment on the ground that Sri G.K. Singh, learned Senior Advocate appearing in this case. Matter was accordingly adjourned for today by passing a detailed order on 22.08.2025 which is reproduced hereunder:

"Heard Shri Shree Prakssh Giri, learned counsel for petitioner, Shri Rahul Jain, learned counsel for University Grants Commission, Shri Avneesh Tripathi, learned counsel for Public Service Commission, Shri Ashok Srivastava, learned counsel for respondent No. 6 and Shri Diptiman Singh, learned counsel for respondent No. 7.

The dispute is with regard to the status of certificate of post-graduate diploma in computer application issued by autonomous institute, namely, Ewing Christian College, Centre for Computer Science and whether this certificate is a qualification recognized equivalent to one required under the advertisement issued by Public Service Commission on 27.09.2016 for the post of Review Officer (Accounts)/ Assistant Review Officer in the U.P. Secretariat which required 'O' Level certificate in computer application from an institute recognized by the Government.

From the perusal of the advertisement it clearly transpires that as far as the post of Assistant Review Officer in U.P. Secretariat is concerned a candidate is required to possess bachelor's degree from a University established by law in India or qualification recognized by government equivalent thereto and having 'O' Level certificate issued by DOEACC Society or qualification equivalent thereto and must possess minimum speed of 25 words per minute in Hindi typewriting. A note appended thereto provides for preference to be given to candidate knowing English Typewriting also.

The dispute was only with regard to the petitioner's qualification having post-graduate diploma in computer application whether to be an equivalent qualification to 'O' Level certificate or not since petitioner possessed the post-graduate diploma certificate in computer application from an autonomous institute namely the Computer Centre of Ewing Christian College, Allahabad.

The counsel appearing for University Grants Commission was directed to obtain instructions as to whether this above institution was listed for the purposes of grant of certificate. Shri Rahul Jain, learned Advocate appearing for University Grants Commission submits that as per his instructions there is no such list available with the respondents but the University Grants Commission has recognized this autonomous institute which is Ewing Christian College and as per clause 10 of the 2012-17 guidelines meant for autonomous colleges such autonomous colleges are entitled to start diploma courses both under-graduate and post-graduate or even certificate courses without the prior approval of the University. The diploma certificate was, however required to be issued under seal of the college.

I find that the post-graduate diploma certificate obtained by the petitioner under the seal of the college namely Ewing Christian College Centre for Computer Science, an autonomous college of Allahabad University running Centre for Computer Science.

Shri Avneesh Tripathi, learned Advocate appearing for Public Service Commission seeks 48 hours time to come back with fresh instructions from the

Commission about the certificate appended as annexure No. 2 to the petition.

List this matter on 27.08.2025."

7. Having heard learned counsel for the respective parties and having perused the records, I proceed to examine the matter as to whether PGDCA certificate issued by the autonomous constituent institute of University of Allahabad namely ECC, can be taken at par with/ equivalent to 'O' level certificate issued by the DOEACC Society which a candidate is required to possess for the purposes of selection and appointment on the post in question under the advertisement.

8. While Mr. Giri and Mr. Shukla appearing for the petitioner have reiterated their previous arguments, today in support of their arguments have taken the Court towards the stand of the State Government vide circular letter dated 20.10.2023 in which for the post of ARO (Accounts) certain certificates issued by certain Universities have taken to be equivalent to 'O' level certificate. For ready reference, clause 4 of the circular letter is reproduced hereunder:

4 सहायक समीक्षा अधिकारी (लेखा) के ऐसे अभ्यार्थियो की संख्या जिनके पास 'ओ' लेवल कम्प्यूटर के स्थान पर अन्य समक्ष प्रमाण पत्र है। 2016 एवं 2017 का अलग-अलग विवरण।	चयन वर्ष 2016 में 'ओ' लेवल के समक्ष अर्हता प्रमाण-पत्र प्राप्त करने वाले उत्तर प्रदेश शासन में सहायक समीक्षा अधिकारी (लेखा) के पद पर कार्यभार ग्रहण करने वाले अभ्यर्थियों की संख्या-10 है। 1- विलियम कैरी यूनिवर्सिटी, शिलांग, मेघालय। 2- हिमालयन यूनिवर्सिटी ईटानगर अरूणालय प्रदेश। 3- अरूणाचल यूनिवर्सिटी आफ स्टडीज, अरूणाचल प्रदेश। 4- यूनिवर्सिटी आफ इलाहाबाद। 5- माखनलाल चतुर्वेदी, राष्ट्रीय पत्रकारिता एवं संचार विश्वविद्यालय भोपाल। 6- सेंटर आफ कम्प्यूटर इजुकेशन इंस्टीट्यूट आफ प्रोफेशनल स्टडीज यूनिवर्सिटी आफ इलाहाबाद। 7- डा० सी०वी० रमन यूनिवर्सिटी, बिलासपुर, (सी०जी०) 8- क्लोरेक्स टीचर्स यूनिवर्सिटी, अहमदाबाद गुजरात। 9- महात्मा ज्योतिबा फुले रूहेलखण्ड विश्वविद्यालय। 10- महार्षि महेश योगी विधिक विश्वविद्यालय, मध्य प्रदेश।

9. Learned Advocates have also drawn the attention of the Court towards the report of a three member Committee constituted by UPPSC to assess and appreciate the claim set up by the candidates for the PGDCA certificate to be taken at par with the 'O' level certificate and it came out with an opinion that the PGDCA accorded by various Universities and Organizations is liable to be taken as equivalent to 'O' level certificate issued by the National Institute of Electronics & Information Technology (in short 'NIELIT'). It is worth mentioning here that NIELIT is no new body but a new name of DOEACC Society. Para 7 of the recommendations made by the Committee constituted by the UPPSC is reproduced hereunder:

"Post Graduate Diploma in Computer Application (PGDCA)/ Diploma in Computer Application (DCA) accorded

by various Universities and organizations/ any other diploma in Computer Application/ Computer Science/ IT will be considered as equivalent to 'O' level of NIELIT provided

(i) The course is minimum one year and maximum two years duration.

(ii) The course structure must contain practical / internship/ training/ project work.

(iii) The course certificates must have been issued by a recognized University established by UGC/ state government/ central government or any organization of state/ central government.

(iv) If any certificate has been issued by any affiliated/ associate/ constituent college/ center of the University without the endorsement of the competent authority of the University, it will be rejected."

10. Sri Giri has also argued and vehemently so that the right to determine a qualification as an equivalent qualification which is prescribed under the Rules, lies solely within the domain of State Government, the chief employer and not the recommending body namely the UPPSC.

11. Under the circumstances, therefore, the UPPSC is not justified to question the decision taken by the State Government, nor in any manner can constitute a committee to examine a particular qualification to be considered as equivalent to the one prescribed under the Rules or not. It is argued that in all such circumstances when there is a doubt created in the matter of qualification to be treated as equivalent to the one prescribed under the Rules, it is required for the UPPSC to refer the matter to the State Government to either come with an opinion straightway by taking it from the department concerned or to constitute a committee to assess and appreciate the controversy so as to give a formal opinion in the matter.

12. Meeting the submissions so advanced by learned Advocate appearing for the petitioner, Sri G.K. Singh, learned Senior Advocate has relied upon the decision of coordinate bench of this Court in the matter of **Vikas & 80 Others v. State of U.P. & 2 Others, and other connected matters, 2021 (9) ADJ 59** and has placed summation part of the judgment as contained in para 54 thereof. Para 54 of the judgment is reproduced hereunder:

"In view of the aforesaid discussion the Court records the following conclusions:-

A. The prescription of a qualification is a matter of recruitment policy which stands reserved for the employer to formulate bearing in mind the nature of functions and duties attached to a particular post. Courts must recognise the secondary function that they are expected to perform in this regard restricting the scrutiny of review to whether the qualifications as prescribed can be said to be arbitrary or irrational.

B. It is not the function of the Court to adjudge or evaluate the suitability or desirability of a particular qualification that may be prescribed. Here too, the Courts must exercise due restraint and desist from treading down this path since these issues must be left to the fair judgment and assessment of the employer and the experts in the field.

C. The issue of an equivalent qualification being accepted would only arise where the rules do envisage and provide that such a qualification would

also be liable to be considered. In the absence of an express stipulation in that respect being provisioned for in the relevant rules, no occasion would arise for the Court to examine that question.

D. The Court reiterates the position as enunciated in Asheesh Kumar that a contention with respect to equivalence can only arise where the rules in question do permit an equivalent degree as conferring eligibility upon a candidate to participate in the selection process.

E. Zahoor Ahmad Rather is a binding authority for the proposition that equivalence of qualifications is not a matter which should be determined in exercise of the power of judicial review. The Supreme Court went on to observe that the question of whether a particular qualification is to be regarded as equivalent is a matter for the recruiting authority to determine. The Court also bears in mind the decision in Sandeep Shriram Warade where the Supreme Court in more categorical terms held that questions of equivalence would fall outside the domain of judicial review.

F. Deepak Singh lays emphasis on the fact that the qualifications which are specifically provided for alone would determine the eligibility of a particular candidate. It further held that where the rules do not envisage or permit candidates holding a better qualification specifically, they must be viewed as being excluded from consideration. Deepak Singh thus clarifies the legal position that merely because a candidate perceives that a qualification held by him is superior or better, that alone would not entitle him to be considered as eligible unless the rules of selection so ordain or provide for a higher qualification being accepted.

G. It would neither be permissible to expand upon the prescribed qualification nor should the Court substitute its own view to hold a higher qualification to be equivalent to that which has been prescribed.

H. Absent a stipulation in the Rules which govern the selection in question, it would be impermissible to recognise the petitioners as being eligible to apply or participate in the selection process. Those Rules do not envisage equivalence being accorded to what may be perceived to be a "higher" or "better" qualification. Absent such a provision being statutorily engrafted, the Court finds no justification to expand the field of eligibility in the exercise of its powers of judicial review.

I. The letter of 20 July 2021 merely elicits the views of the respondents for the consideration of the Commission. In fact, as is evident from a careful reading of the concluding part of that communication, the State had forwarded its views solely for the purposes of inviting the "advise" and "suggestions" of the Commission. That communication neither represents nor is it capable of being interpreted as constituting a definitive opinion of the State and its desire for the same being accepted and acted upon by the Commission.

J. The communication of 9 June 2020 must be understood and appreciated in the backdrop of the relevant Rules which envisaged preference being accorded to qualifications higher or better than the O level certificate. The aforesaid position is evident from a conjoint reading of Rules 10 and 11 thereof. The Rules which apply to the present recruitment carry no provision like Rule 11. In view of the aforesaid, the Court is of the considered opinion that the aforesaid communication also does not advance the case of the petitioners here.

K. The obligation to lay down an unambiguous selection criterion which

flows from and forms the essence of the rights conferred by Articles 14 and 16 of the Constitution, would necessarily include a duty being recognised as bearing upon the selecting and recruiting body to predetermine and formulate a well-defined criterion of eligibility. This facet which forms an integral part of any selection process cannot be postponed for determination after the selection process has commenced.

L. The statement of the law in Prashant Kumar Jaiswal and Mukul Kumar Tyagi clearly warrants the recordal of the conclusion that the issue of equivalence must necessarily be predetermined and cannot be left to the vagaries of the recruiting or selecting body taking a decision in that regard either after the commencement of the selection or not taking a view on that question at all."

13. After referring to the ratio laid down in the judgment vide para 54, Sri Tripathi has referred to the final directives issued under para 56 and 57 and submitted that the State Government was in fact directed to take a stand in the matter so as to remove the confusion and doubt.

14. The sheet anchor argument advanced by learned counsel appearing for the UPPSC is that once the petitions filed by the candidates were dismissed by this Court, the legal position stood intact and since the subsequent selections pursuant to the advertisement issued in 2017 have been finalized in terms of the legal position that stood then, it would not be appropriate and equitable at this stage to re-open the merit list of 2016 selection which has been finalized though subsequent to 2017 selection. Thus, it is argued that the clarification made by the State Government should be taken as prospective one for future selection and not the selection in question.

15. Having heard learned counsel for the respective parties and having perused the records, two questions arise for consideration of this Court:

(a) Whether UPPSC is justified in taking stand contrary to what has already been taken by the State Government in clarifying the position of equivalence qua PGDCA viz-a-viz 'O' level certificate issued by the DOEACC?

(b) Whether in the face of the fact that selections have taken place taking the legal position as then stood qua 2017 advertisement as obviously the State Government's letter is subsequent one, should it be equitable and in the interest of justice to direct the Commission to re-draw the merit list taking into consideration the PGDCA certificate issued by the concerned Universities recognized under the Government letter?

16. Coming to the first question, I would like here to refer para 54(A) of the judgment cited by Sri Tripathi. Paragraph no. 54(A) in a quite unequivocal terms and very categorically holds that the recruitment policy falls within the sole domain of employer to formulate bearing in mind the nature of functions and duties attached to a particular post and in the absence of any such decision by the State Government, vide paragraph no.54(B), the Court clarifies that it cannot adopt the role of State Government and therefore, should desist from applying any such qualification as equivalent one and therefore, the issue should be left to the assessment of employer alone. The Court further vide para 54(C) provided that the Rules become dominant factor in determining the

equivalence and reading down this paragraph with para 54(A), it is for the State Government now to provide for the same.

17. It is in these very lines of the legal principles laid down under the authority of this Court and Supreme Court that the Court in the case of Ashish Kumar this Court reiterated that in respect of equivalence qua a certificate can only arise where the Rules in question do permit equivalent degree/ certificate as conferring eligibility upon a candidate to participate in selection process.

18. The ratio of the judgment, therefore, is very obvious that it is for the State Government to formulate a recruitment policy and lay down the Rules qua academic qualification, equivalent qualification and other eligibility criteria.

19. Coming to the Rules in question, I find that for the post of ARO the rules do provide so also advertisement that one must possess 'O' level certified issued by DOEACC Society or equivalent qualification or certificate.

20. The question of equivalence, therefore, which was germane to the issue, fell absolutely within the authority of the State Government. The State Government in the present case clarified its stand that the 'O' level certificate issued by certain Universities that included University of Allahabad to be equivalent to PGDCA certificate required under the relevant recruitment rules. It is not doubted by either of the parties that the degree and certificate is issued by the University of Allahabad to which ECC, Prayagraj is a constituent institute, and therefore, such cases where the Post Graduate Diploma courses are being run by such a institute under the aegis of University of Allahabad as its constituent institute/ college, then such certificate issued would value equivalent to the one like 'O' level certificate prescribed under the Rules for the purpose of recruitment.

21. This being the legal position emerging out of the circular letter issued by the State Government dated 20.10.2022 which is being reproduced hereinabove, in my considered view it does not lie within the authority of the UPPSC to take a contrary stand. Interestingly, neither the UPPSC has doubted the stand if the State Government, nor it has questioned its own committee's stand vide its opinion dated 10.12.2019 that the PGDCA will be considered as equivalent to 'O' level certificate issued by NIELIT erstwhile DOEACC, nor learned Senior counsel for the UPPSC could demonstrate before the Court any contrary stand taken by the State Government, nor could place any judgment which may provide that even if the State Government has provided for correction or clarification in respect of requisite qualification, that should not be adopted in the process of selection which is still underway.

22. In the circumstances, therefore, the first question stands answered in favour of the petitioner.

23. In so far as the second question is concerned, that relates to the argument that once the selection process has already reached to final stage and pursuant to subsequent advertisement issued in 2017, the selection has already been carried out in terms of the legal position qua qualification as it stood then prior to 20.10.2023 and hence in respect of the selection which is

being finalized qua earlier advertisement, the status quo as to qualification as was then existing, should not be changed.

24. Thus, argument advanced by learned Senior Advocate in support of above question is to be rejected only. I find that the Government has clarified its position regarding equivalence vide letter dated 20.10.2025 in terms of 2016 selection which is quite apparent vide clause 4 which is reproduced hereinabove.

25. It is true that rules of the game cannot be changed once the advertisement has given selection process effect to and there may be circumstances where many candidates may be possessing such qualification may not have applied but in my considered view as I have already held in the judgment that a clarificatory stand by the State Government can always be taken during continuance of selection process. Since it lies in the domain of the State Government to clarify its position regarding equivalence of qualification, more especially when the rules and the advertisement did provide for equivalent qualification to be applicable, I do not see anything wrong or otherwise illegal if this clarification issued by the State Government is made applicable to the selection underway/ stage of preparation of final select list.

26. In view of the above, the second question also stands answered in favour of the petitioner.

27. In view of the above, writ petition succeeds and is accordingly **allowed**.

28. Writ of mandamus is issued to the U.P. State Public Service Commission to treat petitioner's candidature on merit considering his PGDCA certificate as equivalent to the 'O' level certificate required under the advertisement and under the relevant service rules for the post of ARO (Accounts) in respect of the selection pursuant to the advertisement dated 19.07.2016.

(2025) 8 ILRA 178
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 11.08.2025

BEFORE

THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Writ A No. 47749 of 2016

Smt. Shiv Kumari ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Girjesh Mishra, Pradeep Kumar, Rajesh Kumar

Counsel for the Respondents:
C.S.C., Nisheeth Yadav, Sudarshan Singh

ISSUE FOR CONSIDERATION

Whether a contractual appointee engaged under Kasturba Gandhi Awasiya Balika Vidyalaya (Sarva Shiksha Abhiyan) has any vested right to seek renewal/continuation of service after expiry of the contractual term, and whether non-renewal can be challenged on the ground of arbitrariness or violation of Article 14.

HEADNOTE

Service Law – Contractual Appointment – No Right to Renewal – Contract ends by efflux of time – Legitimate expectation not applicable – Renewal is discretion of employer – No vested or fundamental right to seek continuation – Petition dismissed.

Held :

Appointment of the petitioner was made for one session which was to be renewed every year on

the basis of her work and conduct. It is a settled law that a contractual appointee holds no vested right to seek renewal or regularization after expiry of the term. Once the contractual period expires, the appointment automatically comes to an end, and the employee cannot claim extension as a matter of right. A contractual appointee has no legal or vested right to seek renewal or continuation unless the contract itself provides for it. The principle of legitimate expectation does not apply to contractual appointments unless there is a clear promise of renewal in the contract. Petition dismissed. *(Paras 14–20) (E-5)*

CASE LAW CITED

Director, Institute of Management Development v. Pushpa Srivastava, (1992) 4 SCC 33; *State of Haryana v. Piara Singh*, (1992) 4 SCC 118; *State of U.P. v. Kaushal Kishore Shukla*, (1991) 1 SCC 691; *Karnataka State Private College Stop-Gap Lecturers Assn. v. State of Karnataka*, (1992) Supp (2) SCC 29

List of Acts

Constitution of India

List of Keywords

Contractual Appointment; No Vested Right; Efflux of Time; Non-renewal; Legitimate Expectation; Article 14; Renewal Discretion; Sarva Shiksha Abhiyan; Kasturba Gandhi Awasiya Balika Vidyalaya; Contract Terms.

CASE ARISING FROM

Order dated 13.07.2016 passed by District Basic Shiksha Adhikari, Varanasi

Appearances for Parties

Advs For Petitioner: Girjesh Mishra; Pradeep Kumar; Rajesh Kumar

Advs For Respondents: C.S.C.; Nisheeth Yadav; Sudarshan Singh

(Delivered by Hon'ble Mrs.Manju Rani Chauhan, J.)

1. Heard learned counsel for petitioner and Mr. Ashish Kumar Nagvanshi, learned Standing Counsel for State respondents.

2. The present petition has been filed on behalf of the petitioner for quashing of the impugned order dated 13.07.2016 passed by the District Basic Shiksha Adhikari, Varanasi with a prayer that the petitioner may be permitted to continue to the post of Hindi/Sanskrit Teacher at Kasturba Gandhi Awasiya Balika Vidyalaya, Bhikaripur Arazi Line, Varanasi, and be paid the honorarium from June 2016 with a further prayer to decide the representation of the petitioner dated 21.07.2016.

3. Learned counsel for the petitioner submits that the petitioner applied for the post of part-time teacher on contractual basis for teaching in Institution namely, Kasturba Gandhi Awasiya Balika Vidyalaya, Bhikaripur Arazi Line, Varanasi, which is run under the Sarva Shiksha Abhiyan Scheme. Pursuant to the advertisement, dated 06.09.2008, after facing interview on 09.11.2008, she was appointed to teach Hindi/Sanskrit in the said institution. The aforesaid fact is evident from the selection list, dated 31.12.2008.

4. He further submits that the petitioner's contractual services were renewed up to the year 2015-2016 by order dated 15.07.2015 and as she belongs to scheduled caste category, therefore, she was appointed under the said category, however, she was being harassed by the other staff members of the said institution. He next submits that she moved a representation before Senior Superintendent of Police, Varanasi on 25.11.2014 and before the District Magistrate on 23.08.2010 but nothing was done on the aforesaid complaints and harassment of the petitioner continued after which she again moved a representation

before District Basic Education Officer, Varanasi, in the year 2016.

5. Learned counsel for the petitioner submits that the impugned order has been passed in an illegal and arbitrary manner on the ground that the work and conduct of the petitioner was not satisfactory and two teachers were teaching Hindi/Sanskrit in the said institution. He further submits that the petitioner, belonging to scheduled caste category, was being harassed by the other staff members, therefore, the complaints were made on behalf of the petitioner, however, on being annoyed by her complaints, the impugned order, dated 13.07.2016 has been passed without giving any opportunity of hearing to her, prior to passing of the impugned order.

6. Learned counsel for the petitioner submits that though the petitioner had worked satisfactorily and the period of the other contractual employees have been extended/renewed, therefore, she is also entitled for renewal. He further submits that non renewal of the contractual appointment amounts to arbitrariness and violation of Article 14 of Constitution of India. Therefore, the impugned order may be quashed.

7. Learned Standing Counsel submits that the appointment of the petitioner was purely on contractual basis and no documents have been annexed to show that her services were renewed for the period from 2008 till 2015. As regards the complaint, the same has not been received in the office of respondents, as it only bears signatures of the petitioner, as well as the same has not been sent through registered post and has been filed in the petition for the sake of making a counter claim.

8. He further submits that no relief can be granted to the petitioner, as prayed. Placing certain facts, the counsel submits that under the scheme of Sarva Shiksha Abhiyaan in the development area Arazi Line, District Varanasi, Institution in the name of Kasturba Gandhi Avasiya Balika Vidyalaya, Arazi Line (hereinafter referred to as Institution) is instituted and maintained. In the aforesaid institution, the petitioner as well as one Smt. Sarita Arya were placed as full time teachers in the subjects of Hindi/Sanskrit. The appointments were made in view of the provisions of the Government Order, dated 30.06.2015 wherein it was clearly mentioned that one teacher for the subject Hindi/Sanskrit was to be appointed. On account of the aforesaid fact, there being two teachers, the petitioner as well one Smt. Sarita Arya who were teaching Hindi/Sanskrit in the institution, it was practically difficult to appoint a teacher for the post of sports and physical education.

9. He further contends that in view of Government Order dated 30.06.2015, there is a provision for evaluating the work and conduct of staff/employee who are working in the institution. Accordingly, the work of the Block Education Officer and Warden is to be evaluated by District Basic Education Officer and that of other employees by the Warden. In respect of the staff of the institution the work and conduct were evaluated by the Block Education officer and by one institution known as Shiksha Prasarni Samiti, Sikhdi, Ghazipur, wherein the work and conduct of the petitioner was not up to the mark, on account of which the District Level Committee did not renew the contract of the petitioner and rejected the same. Several complaints were received in the institution mentioning that the petitioner is a lady of ill temperament and

she enters into fight with her colleagues. Though the aforesaid complaints were not looked into by the respondents but have been mentioned to show the conduct of the petitioner.

10. He further contends that one Smt. Sarita Arya who was also working as teacher of Hindi/Sanskrit on contractual basis in terms of the relevant Government order, her renewal was not done in the year 2010, therefore, she filed writ petition pursuant to which her contract has been renewed. Her appointment was made as full time teacher, as is evident from her appointment letter, which has not been disputed by the petitioner. The continuation of respondent no. 6 Smt. Sarita Arya was in the light of guidelines issued by the office of State Project Department and after due consideration of her work and conduct the contract was renewed. The petitioner has placed totally misconceived facts before this Court to seek renewal of her appointment as teacher in the scheme which is governed by the Government Order dated 30.06.2015. Even otherwise, the post is contractual in nature, therefore, the petitioner cannot claim any right for appointment or renewal in violation of the conditions, as mentioned in the Government Order dated 30.06.2015 wherein the terms and conditions of the contract have been mentioned as follows:-

"सेवा अनुबन्ध

शैक्षिक सत्र में कस्तूरबा गांधी बालिका विद्यालय में कार्यरत शैक्षणिक एवं शिक्षणेत्तर कर्मियों का सेवा अनुबन्ध 11 माह 29 दिन के लिए किया जायेगा। तात्पर्य यह है कि प्रति वर्ष नया सेवा अनुबन्ध किया जायेगा।

कार्यरत शिक्षकों/शिक्षणेत्तर कर्मचारियों के कार्य एवं व्यवहार का वार्षिक मूल्यांकन वार्डन द्वारा किया जायेगा तथा वार्डन के कार्य एवं आचरण का वार्षिक मूल्यांकन जनपदीय संचालन समिति के सदस्य सचिव द्वारा किया जायेगा। स्वंयसेवी संस्था/महिला समाख्या द्वारा संचालित विद्यालयों में कार्यरत वार्डन के कार्य एवं आचरण का वार्षिक मूल्यांकन संस्था के अधिकृत पदाधिकारी द्वारा किया जायेगा एवं आख्या सदस्य सचिव, जनपदीय चयन समिति के माध्यम से जिलाधिकारी के अनुमोदनार्थ प्रस्तुत की जायेगी।

यदि कार्यरत वार्डन / शिक्षकों/ शिक्षणेत्तर कर्मियों का कार्य एवं व्यवहार सन्तोषजनक पाया जाता है तो अगले सत्र के लिए उनका पुनः सेवा अनुबन्ध जिलाधिकारी के अनुमोदनोपरान्त किया जायेगा।

किसी कर्मी की सेवाएं सन्तोषजनक नहीं पाये जाने की दशा में मूल्यांकनकर्ता अधिकारी द्वारा सम्बन्धित कर्मी को अपना पक्ष प्रस्तुत करने का पर्याप्त अवसर उपलब्ध कराने के उपरान्त प्राप्त उत्तर के आधार पर पत्रावली में उन परिस्थितियों का साक्ष्य सहित स्पष्ट आकलन किया जायेगा तथा यदि संविदा का पुनः अनुबन्ध नहीं किया जाना है तो युक्तियुक्त प्रस्ताव जिलाधिकारी के समक्ष प्रस्तुत किया जायेगा।

सेवा अनुबन्ध में यह प्राविधान भी किया जाये कि यदि उनकी सेवायें अनुपयुक्त पायी जाती हैं तो उन्हें एक माह का नोटिस देकर सेवा अनुबन्ध को समाप्त कर दिया जायेगा। गम्भीर परिस्थितियों / वित्तीय अनियमितता / गम्भीर अनुशासनहीनता की स्थिति में बिना कोई नोटिस के यदि सेवा अनुबन्ध समाप्त करने की आवश्यकता प्रतीत होती है तो जिला बेसिक शिक्षा अधिकारी द्वारा पुष्ट प्रमाणों सहित कार्यवाही हेतु प्रस्ताव जिलाधिकारी के अनुमोदनार्थ प्रस्तुत किया जायेगा। उक्त समस्त कार्यवाही जिलाधिकारी की अनुमति से की जायेगी।

कस्तूरबा गांधी बालिका विद्यालय में चयनित शैक्षणिक एवं शिक्षणेत्तर कर्मियों से प्रति वर्ष सेवा अनुबन्ध पत्र भराया जायेगा। सेवा अनुबन्ध समाप्त होने पर एक दिन का अन्तराल देकर कार्य के मूल्यांकन के अधार पर संतोषजनक सेवा होने पर अगला नया सेवा अनुबन्ध 11 माह 29 / दिन के लिए किया जायेगा।

वर्ष 2015-16 का शैक्षिक सत्र अप्रैल 2015 से प्रारम्भ किया गया है अतः सेवा अनुबन्ध इस प्रकार से किया जाये कि अनुबन्ध की अवधि मार्च तक पूर्ण हो जाये। फलतः एक शैक्षिक सत्र में कुछ माह कम होंगे परन्तु आगामी अनुबन्ध किये जाने पर यह अवधि 11 माह 29 दिन रहेगी।

सामान्य तौर पर एक कस्तूरबा गांधी बालिका विद्यालय के कर्मी का स्थानान्तरण किसी दूसरे कस्तूरबा गांधी बालिका विद्यालय में नहीं किया जायेगा। अपरिहार्य एवं अपवादजनक स्थिति में पदरिक्त होने की दशा में ही किसी कर्मी का स्थानान्तरण किया जायेगा तथा इसके लिए जिला बेसिक शिक्षा अधिकारी द्वारा पुष्ट प्रमाणों सहित कार्यवाही हेतु प्रस्ताव विचारार्थ जनपदीय चयन समिति के समक्ष प्रस्तुत किया जायेगा। जनपदीय चयन समिति की संस्तुति के उपरान्त जिलाधिकारी को अनुमति के उक्त स्थानान्तरण की कार्यवाही की जायेगी।"

11. From the aforesaid it is clear that appointment of the petitioner was made for one session which was to be renewed every year on the basis of her work and conduct. The petitioner has not placed anything in the rejoinder affidavit to dispute the the aforesaid submissions as advanced by counsel for respondents.

12. Learned Standing Counsel submits that the appointment of the petitioner was purely contractual, limited to a fixed period, and governed entirely by the terms of the agreement/Government order. Upon expiry of the term, the petitioner has no right, much less a fundamental right, to seek continuation. He has placed reliance upon the judgements of Apex Court passed in case of **Director, Institute of Management Development v. Pushpa Srivastava, (1992) 4 SCC 33, and State of Haryana v. Piara Singh, (1992) 4 SCC 118**.

13. Heard learned counsel for the parties.

14. It is a settled law that a contractual appointee holds no vested right to seek

renewal or regularization after expiry of the term. Once the contractual period expires, the appointment automatically comes to an end, and the employee cannot claim extension as a matter of right. The Apex Court in the case of **Pushpa Srivastava (supra)**, has categorically held that when an appointment is contractual and for a specific term, it comes to an end on expiry of the term, and the employee cannot claim continuation. Similarly, in **State of Haryana v. Piara Singh, 1992 4 SCC 118**, it was observed that temporary, ad hoc, or contractual employees cannot claim regularization or renewal as of right.

15. In the present case, the contract of the petitioner expired by efflux of time. There is no clause in the agreement/Government order guaranteeing renewal. The claim of legitimate expectation is also misconceived in absence of any promise for extension. Unless arbitrariness or mala fides are shown, which is not the case here as after seeing conduct and work of the petitioner order impugned has been passed. The Court cannot issue a mandamus for renewal of a purely contractual engagement.

16. This Court finds that contractual appointee has no vested right to renewal or regularization. A contractual appointee holds the post only for the period specified in the contract. On expiry of the contractual term, the appointment automatically comes to an end by efflux of time. Such an appointee has no legal or vested right to seek renewal or continuation unless the contract itself provides for it.

17. Reference has been made in the following Apex Court judgements:-

*(i). The Apex Court in the case **State of Haryana vs. Piara Singh. (1992) 4 SCC 118**, held that a temporary or contractual appointee cannot claim regularization as a matter of right.*

*(ii). In the case of **Director, Institute of Management Development vs. Pushpa Srivastava, (1992) 4 SCC 33**, the Apex Court held that a contractual appointee has no right to claim extension or regularization after the term of the contract.*

18. The principle of "legitimate expectation" does not apply to contractual appointments unless there is a clear promise of renewal in the contract itself.

*(i). The Supreme Court has stated in the case of **State of U.P. vs. Kaushal Kishore Shukla, (1991) 1 SCC 691**, that where the appointment is contractual and for a fixed period, there is no right of renewal or continuation.*

19. The terms of the contract specifically provide for automatic renewal on fulfilment of certain conditions. Non-renewal is found to be arbitrary, discriminatory, or violative of Article 14 of the Constitution (for example, if similarly situated contractual employees are renewed and one is singled out without valid reason), which is not the case of the petitioner.

*(i). The Apex Court in the case of **Karnataka State Private College Stop-Gap Lecturers Association vs. State of Karnataka, (1992) Supp (2) SCC 29**, stated that though appointment was contractual in nature, if the State acts arbitrarily in renewal, it may invite judicial review.*

20. Be that as it may, a person appointed on contract basis has no enforceable right to claim renewal or continuation of service beyond the stipulated period. Once the contractual term ends, the appointment automatically lapses. Renewal or reappointment is entirely at the discretion of the employer, unless arbitrariness or discrimination is demonstrated."

21. In view of above submissions and the settled position of law, the instant petition is devoid of merit and is **dismissed**, accordingly.

(2025) 8 ILRA 184
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 29.08.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ A No. 50769 of 2013

Devendra Kumar Sharma ...Petitioner
Versus
The General Manager Punjab National Bank & Ors. ...Respondents

Counsel for the Petitioner:
Nasiruzzaman

Counsel for the Respondents:
N.K. Pandey, Sudha Pandey

ISSUE FOR CONSIDERATION

Whether dismissal of a Bank employee for transferring ₹12,000/- from a customer's account without authority, and receiving the amount through another employee's account, constitutes gross misconduct under Para 5(j) of the Bipartite Settlement, and whether the punishment of dismissal is shockingly disproportionate so as to warrant interference under Article 226.

HEADNOTE

Service Law – Bank employee – Departmental Inquiry – Gross Misconduct – Financial Integrity – No re-appreciation of evidence in writ jurisdiction – Dismissal – Not shockingly disproportionate – Writ dismissed.

Held : Inquiry records shows debit of customer's account by petitioner without any debit authority and transfer of the amount to another employee's account, who withdrew it and paid to the petitioner. Mobin Khan (complainant) denied signing or authorizing the debit voucher. Inquiry Officer, Disciplinary Authority and Appellate Authority concurrently found petitioner guilty. In writ jurisdiction court cannot re-appreciate evidence or act as appellate court. Financial misconduct in banking service constitutes gross misconduct under Para 5(j) of Bipartite Settlement. Bank employees are custodians of public money and are held to the highest standards of probity. Punishment of dismissal cannot be said to be shockingly disproportionate. Writ petition dismissed; (Paras 32, 35, 36, 37, 38, 39) (E-5)

CASE LAW CITED

Indian Oil Corporation v. Ajit Kumar Singh, (2023) 19 SCC 102; Union of India v. Managobinda Samantaray, 2022 SCC OnLine SC 284; Tara Chand Vyas v. Chairman & Disciplinary Authority, (1997) 4 SCC 565; State Bank of India v. T.J. Paul, (1999) 4 SCC 759; United Commercial Bank v. P.C. Kakkar, (2003) 4 SCC 364; Administrator, U.T. of Dadra & Nagar Haveli v. Gulabhia M. Lad, (2010) 5 SCC 775; State Bank of Mysore v. M.C. Krishnappa, (2011) 7 SCC 325

List of Acts

Constitution of India

List of Keywords

Bank employee; Gross Misconduct; Debit voucher; Passing entries without authority; Financial Integrity; Transfer of customer money; No re-appreciation of evidence; Judicial Review; Disproportionate punishment; Custodian of public funds.

CASE ARISING FROM

Order of dismissal dated 20.05.2013, and rejection of departmental appeal, pursuant to charge-sheet dated 12.06.2012.

Appearances for Parties

Advs For Petitioner: Mr. Nasiruzzaman, Advocate

Advs For Respondents: Mr. N.K. Pandey; Ms. Sudha Pandey

(Delivered by Hon'ble J.J. Munir, J.)

1. The petitioner, an Ex-Head Cashier with the Punjab National Bank, is aggrieved by the order of his dismissal from service dated 20.05.2013, passed after holding disciplinary proceedings. The order aforesaid has been made by the Assistant Regional Manager, Disciplinary Action Cell, Circle Office Bulandshahr. The petitioner is also aggrieved by the order of the Circle Head, Punjab National Bank, Circle Office Bulandshahr, dismissing his appeal preferred from the order of the Disciplinary Authority. By this writ petition, the petitioner challenges both these orders.

2. The petitioner was appointed Agril.-Clerk-cum-Godown Keeper with the New Bank of India on 01.08.1988. He was selected by direct recruitment held by the Banking Service Regulation Board, Delhi. He joined duty at the Malout Branch of the New Bank of India, District Faridkot on 31.08.1988. On 04.09.1993, the New Bank of India merged with the Punjab National Bank (for short, 'the Bank') and since then, the petitioner became an employee of the Bank. He says that he served the Bank very sincerely and faithfully. In the year 2012, he was posted as the Head Cashier with the Anoopshahr Branch of the Bank in the district of Bulandshahr.

3. On 09.03.2012, one Mobin Khan, a customer of the Bank, addressed a letter to the Branch Manager, Anoopshahr Branch of the Bank, saying that he was an account holder of the Bank's Malakpur Branch. His account number was 3662000/00013691. He said that a sum of Rs.12,000/- was debited from his account, regarding which he received a message on his mobile phone at 10.21 a.m. Mobin Khan went on to say that he had not issued any cheque or signed a withdrawal form or transfer voucher for the said sum of money, authorizing the debit. He was surprised that his account was debited with the said sum of money. Mobin Khan says that he contacted the Bank's Toll Free Helpline number and was informed by the Circle Officer, Bulandshahr that the debit of Rs.12,000/- from his account had been made at the Anoopshahr Branch of the Bank. He requested refund of the lost money and action against the concerned officer.

4. The petitioner says that Mobin owed him a sum of Rs.12,000/-, which he had taken in loan from him. He came up to the Anoopshahr Branch on 17.03.2012, when the petitioner demanded his money. Mobin Khan, according to the petitioner, said that the petitioner could take the money by transferring the same in his own account from Mobin Khan's. The petitioner then gave the account number of a Peon with the Bank, Kapil Kumar, bearing No. 0031001700019736. Mobin Khan filled up the transfer form and also made a written request for transfer of the money on the transfer voucher, duly signed by him. After the transfer voucher was received, the petitioner sent it for verification to the Authorized Officer of the Bank. The money was then transferred. The petitioner emphasized that the Verifying Authority gave his statement on 25.04.2013 to the

Disciplinary Authority, regarding the verification done by him.

5. After receipt of Mobin Khan's complaint, the Chief Manager asked the petitioner regarding the incident, requiring him to file his reply. The petitioner filed a reply before the Chief Manager on 18.04.2012. The petitioner was issued with a charge-sheet dated 12.06.2012. A corrigendum to the charge-sheet was issued on 07.08.2012. An Inquiry Officer, to wit, C.B. Pandey, a Senior Manager, posted at Branch Officer Jahangirabad was appointed. The petitioner, after receipt of the charge-sheet, including the corrigendum thereof, filed his reply before the Inquiry Officer on 23.10.2012. The petitioner says that the Presenting Officer filed his brief before the Inquiry Officer on 27.11.2012 and the Inquiry Officer submitted his report dated 01.12.2012 to the Disciplinary Authority. The Disciplinary Authority issued a show cause notice to the petitioner on 12.04.2013, granting him opportunity of personal hearing on 25.04.2013 at 3.00 p.m. at the Circle Office of the Bank at Bulandshahr. After issue of the show cause notice, the petitioner appeared before the Disciplinary Authority in person on 16.05.2013. The Disciplinary Authority passed his order dated 20.05.2013, dismissing the petitioner from service. The petitioner carried an appeal to the Appellate Authority on 18.06.2013. The Appellate Authority dismissed the appeal on 14.08.2013, in a very casual manner, as the petitioner pleads.

6. Disillusioned with both these orders, the instant writ petition has been instituted by the petitioner.

7. A notice of motion was issued on 18.07.2013. A counter affidavit was filed on behalf of the Bank on 27.03.2014, to which a rejoinder was put in on 07.07.2014. The petitioner filed two supplementary affidavits: one dated 03.08.2013, and the other dated 11.10.2018. A supplementary counter affidavit was filed on behalf of the Bank on 17.04.2015.

8. The petition drifted at the admission stage from the year 2013 until 03.12.2024, when it was admitted to hearing, which proceeded forthwith. The original records of the inquiry were summoned from the Assistant General Manager of the Bank at Bulandshahr. The matter was extensively heard on 10.12.2024, when the original records of the inquiry were produced before the Court. It was heard on various dates and the records of the inquiry perused. Judgment was reserved.

9. Heard Mr. Nasiruzzaman, learned Counsel for the petitioner and Mr. N.K. Pandey along with Ms. Sudha Pandey, learned Counsel appearing on behalf of the respondents.

10. It has been submitted by Mr. Nasiruzzaman, learned Counsel for the petitioner, that a perusal of the original records of inquiry shows that proceedings of the inquiry were recorded in a notebook with the ink and paper, both appearing fresh, though the time of record dates back to the year 2012. It creates doubt about the authenticity of these proceedings. It is next submitted that on page No.30 of the proceedings of inquiry, the statement of Mobin Khan, a management witness, who is the complainant, has been recorded. The learned Counsel for the petitioner points out that a question was put to him, whether he had some personal dealings with the petitioner. In reply, it was said by Mobin

Khan that he had purchased an old tanker (milk van) from the petitioner. Rs.25,000/- of the sale consideration was paid through CA and the balance in cash. It is pointed out that on page No.32 of this witness's testimony, a question was asked of him, whether consideration was paid for the tanker through cheque, to which the witness said that he did not exactly recall whether it was paid through a voucher or cheque. The witness appeared confused.

11. It is next said that Mobin Khan had said during his cross-examination further, that the petitioner had come along with Chaudhary Satendra Singh, Pramod Sharma and Jitendra Pal Singh to Mobin Khan's residence in Delhi to apologize for his misconduct. It is submitted by the learned Counsel for the petitioner that Chaudhary Satendra Singh, Pramod Sharma and Jitendra Pal Singh were examined as defence witnesses and they denied the factum of their visit to the complainant's home. They said of Mobin Khan that he was a shabby character. It is next pointed out that the testimony of Durga Prasad, who was an Assistant Manager at the Anoopshahr Branch of the Bank at the relevant time, was recorded too. He appeared as a defence witness. His testimony is recorded at page No.54 of the proceedings of inquiry. In his testimony, Durga Prasad has given the correct story of the incident, according to the learned Counsel for the petitioner. This witness, according to learned Counsel, says that Mobin Khan had come to the Branch on 17.03.2012 and requested transfer of a sum of Rs.12,000/- in Kapil Sharma's favour, since he did not have his cheque-book on him. It was transferred on the basis of a transfer voucher on Mobin's application, scripted on the back of another voucher with a request to transfer the specified sum of money.

12. The Court's attention has been drawn to a copy of the application and the voucher annexed to the application. It is submitted that at no stage of the inquiry, Mobin Khan's signatures were scrutinized or examined. He was a regular visitor to the Bank. He would be there almost everyday. The learned Counsel for the petitioner submits that in order to avoid controversy, the petitioner transferred the sum of Rs.12,000/- in favour of Mobin Khan. It is next argued that the conduct of the petitioner is fair and free from blemish. The petitioner's involvement, if at all there, makes Durga Prasad equally responsible. But, he has not at all been proceeded with against, a fact which shows the Bank's prejudice against the petitioner.

13. It is next argued that reference to some earlier misconduct or omission on the petitioner's part, without the support of any document or mention thereof in the impugned order, is irrelevant. It is also argued that assuming that in the past, the petitioner had committed some misconduct, the same is not the subject matter of the present inquiry. The inquiry proceedings are castigated as mala fide.

14. It is next argued that the service conditions of the petitioner are governed between him and the Bank in terms of the bipartite settlement of 2002. According to the bipartite settlement, there are two kinds of misconduct, defined as gross misconduct and minor misconduct. Under Paragraph 5 of the bipartite settlement, gross misconduct is defined as one that is specified in Clauses (a) to (u) of Paragraph 5. The punishment for gross misconduct is

specified in Paragraphs 6(a) to 6(u). So far as the petitioner is concerned, he has been punished under Paragraph 6(a) with dismissal without notice for an act of gross misconduct covered, according to the Bank, under Clause (j) of Paragraph 5 of the bipartite settlement. The learned Counsel for the petitioner has invited the Court's attention to the terms of the misconduct as specified in Paragraph 5(j) of the bipartite settlement.

15. It is next pointed out that minor misconduct has been defined in Paragraph 7 as acts or omissions specified in Clauses (a) to (m) of Paragraph 7. The punishments for minor misconduct is provided under Paragraph 8 and its various clauses. It is submitted by the learned Counsel for the petitioner that the petitioner's misconduct has anyhow been resolved with the payment of Rs.12,000/-. He submits that the act or omission attributed to the petitioner does not fall under any of the Clauses (a) to (u) of Paragraph 5 of the bipartite settlement, particularly Clause (j). According to the learned Counsel for the petitioner, the misconduct, if any, is minor. The petitioner's dismissal from service is, therefore, in the submission of the learned Counsel, bad in law.

16. The next submission advanced on behalf of the petitioner is that the sum of money involved is a meager Rs.12,000/-. Therefore, action, if at all required to be taken, would be one in terms of Paragraph 7 of the bipartite settlement, punishable under Paragraph 8. It is pointed out that no serious loss has been occasioned to the Bank on account of the misconduct attributed to the petitioner. The act is in no way prejudicial to the Bank's interest. There was no gross negligence involved on the petitioner's part, likely to involve the Bank in a serious loss. Therefore, according to the learned Counsel for the petitioner, the misconduct, if any, attributed to the petitioner, does not constitute gross misconduct.

17. It is in the last submitted by the learned Counsel for the petitioner that the punishment awarded is shockingly disproportionate. The misconduct alleges a transaction involving a sum of Rs.12,000/-. The said sum of money has been paid to the complainant. The petitioner has been out of service for about 11 years and is to retire in the month of March, 2025. The punishment awarded, according to the learned Counsel, is severe and shockingly harsh.

18. Mr. N.K. Pandey along with Ms. Sudha Pandey, learned Counsel, appearing on behalf of the respondent Bank, submits that the learned Counsel for the petitioner had initially made out a case of procedural irregularity in holding the inquiry and further that the Disciplinary Authority had not considered the documentary evidence on record, besides the testimony of witnesses, particularly, Durga Prasad, DW-1 and Mobin Khan, MW-1, properly. However, upon perusing the proceedings of inquiry, the learned Counsel for the petitioner did not press this point further. The other point, which, according to Mr. Pandey, was argued by the learned Counsel for the petitioner, was that the punishment of dismissal without notice, which falls under Paragraph 6(a) read with Paragraph 5(j) of the bipartite settlement dated 10.04.2002 is disproportionate. It is argued by Mr. Pandey that a perusal of page No.56 of the inquiry proceedings shows that the defence witness, Durga Prasad (DW-1), in answer to a question put to him, said that he had not taken the complainant's signatures on the letter of authority and also

said that none of the officers of the Bank allow inter-sol payment through vouchers.

19. It is next pointed out that Mobin Khan (MW-2) said, testifying at the inquiry recorded at pages 32, 35 and 36 of the inquiry proceedings, that he had neither signed the transfer voucher nor went to the Anoopshahr Branch of the Bank on 17.03.2012. Learned Counsel for the respondents points out further that Bank Circular No. 19/2010 dated 15.03.2010, relating to transfer transactions in customer accounts (as mentioned in the inquiry report dated 01.12.2012) clearly says that transfer vouchers are meant for Branch use alone and these are not instruments for use by customers in order to carry out transactions in their account. Therefore, in the present case, the transfer voucher of Malakpur Branch, that was used for a transaction done at Anoopshahr Branch of the Bank, was contrary to the circular aforesaid. The learned Counsel for the respondents submits that the petitioner's act constitutes a gross misconduct under Paragraph 5(j) of the bipartite settlement and he has been rightfully punished under Paragraph 6(a). The learned Counsel for the respondents also points out that the petitioner had filed an incorrect copy of the bipartite settlement dated 10.04.2002, wherein Paragraph 5(j) is incorrectly mentioned. According to him, the petitioner has tried to mislead this Court and has not come with clean hands, a fact evident from a copy of the bipartite settlement filed on behalf of the petitioner.

20. It is next submitted by learned Counsel for the respondents that the petitioner's conduct has been blameworthy in the past as well, as he was charge-sheeted earlier vide charge-sheet dated 02.05.2011 and punished by the Disciplinary Authority by an order dated 12.06.2012. A second charge-sheet dated 30.03.2012, that was issued to the petitioner, was kept in abeyance, whereas the third charge-sheet, that is subject matter of the present petition, issued on 12.06.2012, led to the imposition of the punishment of dismissal without notice, vide order dated 20.05.2013. The learned Counsel for the respondents submits that in these circumstances, the punishment awarded to the petitioner cannot be said to be unreasonable or shockingly disproportionate. The misconduct committed by the petitioner is a serious one in Bank employment. An employee found guilty of fraudulent withdrawals, deriving pecuniary gain for himself, has to be awarded a major penalty. It is argued that the impugned orders are perfectly valid and the past conduct of the petitioner has to be considered. The nature of duties assigned to the petitioner and the responsibilities attached, require a high degree of probity and discipline to be maintained.

21. It is next argued by the learned Counsel for the respondents that quantum of punishment is the discretionary domain of the employer, who is the primary decision maker. This discretionary power is open to judicial review, if the punishment awarded is shockingly disproportionate to the misconduct established. It is submitted that this Court in the exercise of our writ jurisdiction cannot sit in appeal over the quantum of punishment. The learned Counsel for the respondents has placed reliance upon the authority of the Supreme Court in **Union of India and others v. Managobinda Samantaray, 2022 SCC OnLine SC 284.**

22. It is then submitted that the principle is well settled that employees of

public sector banks, who are custodians of public money, should be held to higher standards of ethics and probity. Any financial misconduct or irregularity should be dealt with strictly. In this connection, learned Counsel for the respondents has referred to **Tara Chand Vyas v. Chairman & Disciplinary Authority and others, (1997) 4 SCC 565.**

23. Also pressed in aid of their submission by the Bank are the authorities of the Supreme Court in **State Bank of India and others v. T.J. Paul, (1999) 4 SCC 759; Chairman and Managing Director, United Commercial Bank and others v. P.C. Kakkar, (2003) 4 SCC 364; Administrator, Union Territory of Dadra & Nagar Haveli v. Gulabhia M. Lad, (2010) 5 SCC 775; and, State Bank of Mysore and others v. M.C. Krishnappa, (2011) 7 SCC 325.**

24. It is well settled for a proposition of law that a challenge to disciplinary proceedings is generally confined to the decision making process by the Disciplinary Authority and not the decision itself. Mr. Nasiruzzaman, learned Counsel for the petitioner, has endeavoured hard to invite us to enter the thicket of evidence and re-examine it on points that really borders on re-appreciation of evidence. We are not a Court of appeal from the orders of the Disciplinary Authority and the Appellate Authority. We can interfere only if irrelevant evidence has been considered to reach the finding of guilt or relevant evidence ignored. There are other grounds of limited scope available, such as the conclusions drawn by the Disciplinary Authority being perverse. It is true that mala fides on the Disciplinary Authority′s part would vitiate the findings, but mala fides may be of fact or law. So far as legal malice is concerned, there is no such breach in the procedure of inquiry, where constructive malice may be imputed. So far as mala fides in fact are concerned, it is not an inference to be drawn merely from the adverse conclusions recorded by the Disciplinary Authority, on the basis of testimony, that may reasonably be understood that way. This is precisely the case with the Inquiry Officer, the Disciplinary Authority and the Appellate Authority in finding the petitioner guilty.

25. The charge against the petitioner reads (as amended by the corrigendum to the charge-sheet dated 07.08.2012):

While working at BO: Anoopshahar Distt Bulandshahr from 21.11.2009 to till date You are alleged to have committed the following serious lapses:

On 17.03.2012 You have debited the Account No.3662000100013691 of BO:Malakpur in the name of Shri Mobin Khan for Rs. 12000/- twelve thousand only maintained at BO Malakpur without any debit authority letter and credited to account No.0031001700019734 of Shri Kapil Kumar, Peon BO: Anoopshahar through Transfer vouchers though Shri Mobin Khan maintaining cheque book facilities in the above Saving Account. Both entries were entered and passed by you and related vouchers were passed by you under your signature. You have told to Shri Kapil Kumar that my known person has sent this money so give me. Subsequently the amount of Rs. 12000/- withdrawn by Shri Kapil Kumar and paid to you.

On 17.03.2012 You have debited the Account No 3662000100013691 of BO:Malakpur in the name of Shri Mobin Khan for Rs. 12000/- twelve thousand only maintained at BO:Malakpur without any

debit authority letter and credited to account No.0031001700019734 of Shri Kapil Kumar, Account holder BO: Anoopshahar through Transfer vouchers though Shri Mobin Knan maintaining cheque book facilities in the above Saving Account. Both entries were entered and passed by you and related vouchers were passed by you under your signature. You have told to Shri Kapil Kumar that my known person has sent this money so give me. Subsequently the amount of Rs. 12000/- withdrawn by Shri Kapil Kumar and paid to you.

When the account holder Shri Mobin Khan made a complaint on 19.03.12 that his account has been wrongly debited from BO: Anoopshhar after that you have deposited cash Rs.12000/- on 21.03.2012 in the account No.3662000100013691

Your above act are prejudicial to the interest of the bank and it is a Gross Misconduct as per Para 5(j) of Bi-Partite Settlement dated 10.04.2002 as amended up to date.

26. In order to prove this charge, the management relied on seven management documents marked ME-1 to ME-7 and three management witnesses, M1, M2 and M3, which included the complainant. The petitioner relied upon six documents in defence, besides seven defence witnesses.

27. The Inquiry Officer reached his conclusions mostly on basis of the fact that Mobin Khan's bank account maintained with the Malakpur Branch of the Bank was debited by the petitioner on 17.03.2012 with a sum of Rs.12,000/-, without a debit authority from the customer, and the debited sum of money was credited to the account of Kapil Kumar, a Peon at the Anoopshahr Branch, through a transfer voucher. This was more or less the charge also. The Inquiry Officer has noted the fact that the debit and credit entries were made by the petitioner without any letter of authority and verification by the authorized official or a posting in the customer's passbook, which is mandatory as per guidelines.

28. Now, so far as posting in the passbook is concerned, in contemporary practice, whatever the rules might say, passbooks are seldom posted. But, the most crucial finding by the Inquiry Officer is that the signature on the debit voucher by Mobin Khan had not been verified by the Authorized Officials (Inspection and Control Division). The Inquiry Officer has then noted that since the voucher was from another branch, the petitioner went to an officer of that branch, Durga Prasad, along with the complainant, Mobin Khan and Khan wrote his consent on the backside of the voucher, which he signed in the presence of Durga Prasad. Durga Prasad's testimony as a defence witness has been remarked by the Inquiry Officer to be contradictory. The last part of the Inquiry Officer's finding is rather confounding. On the basis of these remarks, he has held the charge against the petitioner proved.

29. From the order of the Disciplinary Authority, the concluding remarks of the Inquiry Officer about the contradiction have been clarified in that, that whereas according to the petitioner, he took Mobin Khan on 15.03.2012 to Durga Prasad with a signed voucher and a consent on its reverse, Durga Prasad, while testifying as a defence witness, said that Mobin Khan visited the Branch on 17.03.2012 and signed the voucher in his presence. He has scripted an application on the reverse of the voucher authorizing the transaction. It is this contradiction, which has been regarded

as material to hold the charge proved by the Inquiry Officer, and, more than that by the Disciplinary Authority. The finding has been affirmed in departmental appeal.

30. What is most crucial is whether Mobin Khan signed the debit voucher and endorsed on its reverse his authority to make the debit. We notice that in his testimony at the inquiry, particularly his cross-examination, Mobin Khan has stoutly denied ever having signed the debit voucher or authorizing the transaction. He denied visiting the Bank at any time or signing the debit voucher or writing an authorization on its reverse. He has consistently complained about the illegal withdrawal of money from his account. The voucher, that was used in the transaction, was from the Malakpur Branch while the debit and credit posting was done at Anoopshahr. The conclusion, therefore, drawn by the Inquiry Officer, the Disciplinary Authority and the Appellate Authority, that the complainant Mobin Khan never authorized the debit of Rs.12,000/- from his bank account, is reasonable and also that this debit was made by the petitioner himself from Mobin Khan's bank account and credited to the account of Kapil Kumar.

31. Kapil Kumar in his testimony has said that the petitioner had told him ahead of the event that he was to receive a remittance from some relative, which would be credited to Kapil Kumar's account. Kapil Kumar was told by the petitioner that when Kumar received the remittance, he should withdraw and pay it to the petitioner. In his testimony, Kapil Kumar has said that he received a sum of Rs.12,000/- in his bank account, which he withdrew and paid to the petitioner. It is the twin facts of the debit authority relating to Mobin Khan's account, not being authorized or signed by him and the money transferred ultimately making its way via Kapil Kumar's account into the petitioner's hands, that have apparently become clinchers against the petitioner. It is a very plausible view of the evidence taken by the Departmental Authorities, and even if there is some illegality about it or a better view is possible, it is not our province, sitting in secondary review, to substitute our own wisdom for that of the primary decision maker, the Departmental Authorities.

32. The legal position in this regard is exposited in Indian Oil Corporation and others v. Ajit Kumar Singh and another, (2023) 19 SCC 102, where it is remarked:

"10. The facts of the case leading to the issuance of charge-sheet, initiation of departmental inquiry, the report of the enquiry officer and the punishment inflicted upon Respondent 1 have already been narrated in the preceding paragraphs. It is not in dispute that during the course of inquiry, fair opportunity of hearing was afforded to Respondent 1 at every stage. This was even found by the learned Single Judge while dismissing the writ petition challenging the punishment inflicted upon him. The judgment [Ajit Kumar Singh v. Union of India, 2019 SCC OnLine Pat 3395] passed by the Division Bench of the High Court shows that matter was dealt with in a manner as if it was the first stage of the case, namely, the inquiry was being conducted and enquiry report was being prepared, which is not the scope in judicial review.

12. If the facts of the case are examined in the light of the settled principles of law in scope of judicial review, we find that the Division Bench of the High Court proceeded to reappreciate

the entire evidence as if conviction in a criminal trial was being re-examined by the next higher court.....″

33. The submissions of the learned Counsel for the petitioner, where he has attempted to discredit the findings recorded by the Inquiry Officer, the Disciplinary Authority and the Appellate Authority by pointing out, as he says, glaring discrepancies in evidence if accepted, would take us into the forbidden territory of re-appreciating evidence. In the jurisdiction that we exercise, we cannot sit as a Court of appeal, re-appreciate evidence and record a finding in the fashion of a Court of first appeal, different from that of the Departmental Authorities. There is no manifest illegality or a fundamental flaw in procedure pointed out by the petitioner in the impugned proceedings, that may vitiate the conclusions drawn by the respondents. It is trite law that the kind of review, that is done in a writ petition, is more concerned with the fairness and legality of procedure employed in reaching the decision by primary decision maker, rather than the validity of the decision itself.

34. So far as the objection advanced on behalf of the petitioner that his past conduct had been taken into consideration, which was irrelevant, we think that even if for a principle that were correct, here looking to the charge by itself, the conclusion drawn by the respondents cannot be condemned as perverse, or one vitiated by extraneous or irrelevant considerations. The next submission is that the conduct attributed to him would be minor misconduct as enumerated in Paragraph 7, Clauses (a) to (m) of the bipartite settlement and not gross misconduct contemplated under Clauses (a) to (u) of Paragraph 5. Paragraphs 5 and 7 of the bipartite settlement read:

5. By the expression "gross misconduct" shall be meant any of the following acts and omissions on the part of an employee:

(a) engaging in any trade or business outside the scope of his duties except with the written permission of the bank;

(b) unauthorised disclosure of information regarding the affairs of the bank or any of its customers or any other person connected with the business of the bank which is confidential or the disclosure of which is likely to be prejudicial to the interests of the bank;

(c) drunkenness or riotous or disorderly or indecent behavior on the premises of the bank;

(d) willful damage or attempt to cause damage to the property of the bank or any of its customers;

(e) willful insubordination or disobedience of any lawful and reasonable order of the management or of a superior;

(f) habitual doing of any act which amounts to "minor misconduct" as defined below, "habitual" meaning a course of action taken or persisted in, notwithstanding that at least on three previous occasions censure or warnings have been administered or an adverse remark has been entered against him;

(g) willful slowing down in performance of work;

(h) gambling or betting on the premises of the bank;

(i) speculation in stocks, shares, securities or any commodity whether on his account or that of any other persons;

(j) doing any act prejudicial to the interest of the bank or gross negligence

or negligence involving or likely to involve the bank in serious loss;

(k) giving or taking a bribe or illegal gratification from a customer or an employee of the bank;

(l) abetment or instigation of any of the acts or omissions above-mentioned;

(m) Knowingly making a false statement in any document pertaining to or in connection with his employment in the bank;

(n) Resorting to unfair practice of any nature whatsoever in any examination conducted by the Indian Institute of Bankers or by or on behalf of the bank and where the employee is caught in the act of resorting to such unfair practice and a report to that effect has been received by the bank from the concerned authority;

(o) Resorting to unfair practice of any nature whatsoever in any examination conducted by the Indian Institute of Bankers or by or on behalf of the bank in cases, not covered by the above Sub-Clause(n) and where a report to that effect has been received by the bank from the concerned authority and the employee does not accept the charge;

(p) Remaining unauthorisedly absent without intimation continuously for a period exceeding 30 days;

(q) Misbehaviour towards customers arising out of bank's business;

(r) Contesting election for parliament/ legislative assembly/ legislative council/local bodies/municipal corporation/ panchayat, without explicit written permission of the bank;

(s) Conviction by a criminal Court of Law for an offence involving moral turpitude;

(t) indulging in any act of 'sexual harassment' of any woman at her workplace;

Note: Sexual harassment shall include such unwelcome sexually determined behaviour (whether directly or otherwise) as

(a) physical contact and advances;

(b) demand or request for sexual favours;

(c) sexually coloured remarks;

(d) showing pornography; or

(e) any other unwelcome physical verbal or non-verbal conduct of a sexual nature:

(u) (For State Bank of India)

the giving or taking or abetting the giving or taking of dowry or demanding, directly or indirectly from a parents or guardians of a bride or bridegroom, as the case may be, any dowry.

Explanation - For the purpose of sub-clause (u) the word 'dowry' has the same meaning as in the "Dowry Prohibition Act, 1961"

7. By the expression "minor misconduct" shall be meant any of the following acts and omissions on the part of an employee:

(a) absence without leave or overstaying sanctioned leave without sufficient grounds;

(b) unpunctual or irregular attendance;

(c) neglect of work, negligence in performing duties;

(d) breach of any rule of business of the bank or instruction for the running of any department;

(e) committing nuisance on the premises of the bank;

(f) entering or leaving the premises of the bank except by an entrance provided for the purpose;

(g) attempt to collect or collecting moneys within the premises of

the bank without the previous permission of the management or except as allowed by any rule or law for the time being in force;

(h) holding or attempting to hold or attending any meeting or the premises of the bank without the previous permission of the management or except in accordance with the provisions of any rule or law for the time being in force;

(i) canvassing for union membership or collection of union dues or subscriptions within the premises of the bank without the previous permission of the management or except in accordance with the provisions of any rule or law for the time being in force;

(j) failing to show proper consideration, courtesy or attention towards officers, customers or other employees of the bank, unseemly or unsatisfactory behavior while on duty;

(k) marked disregard of ordinary requirements of decency and cleanliness, in person or dress;

(l) incurring debts to an extent considered by the management as excessive;

(m) resorting to unfair practice of any nature whatsoever in any examination conducted by the Indian Institute of Bankers or by or on behalf of the bank in cases not covered by sub-clause (n) under 'Gross Misconduct' and where a report to that effect has been received by the bank from the concerned authority and the employee accepts the charge;

(n) refusal to attend training programmes without assigning sufficient and valid reasons;

(o) Not wearing, while on duty, identity card issued by the bank;

(p) Not wearing, while on duty, the uniforms supplied by the bank, in clean condition.

35. The petitioner has been held guilty of violating Clause (j) of Paragraph 5 of the bipartite settlement, which defines gross misconduct. The action of the petitioner, in illegally transferring moneys of a customer to another's account and securing it from the other customer for himself, is certainly an act that is gross misconduct in banking services. The financial uprightness and integrity of a bank employee are the most important of all virtues. Any violation, that may show financial dishonesty in banking service, is regarded as serious misconduct. It is certainly gross misconduct. The submissions to the contrary advanced by the learned Counsel for the petitioner on this ground cannot be accepted.

36. This takes us to the last point advanced on behalf of the petitioner and that is that the punishment awarded is shockingly disproportionate. As already remarked, in banking service, financial integrity of an employee cannot be compromised. Banks deal with public funds and a man, who cannot be trusted with money of others, cannot be part of a bank in any capacity. In this connection, reference may be made to **Gulabhia M. Lad** (supra), where it has been held:

14. The legal position is fairly well settled that while exercising the power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the disciplinary authority, and/or on appeal the appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the court/tribunal. The exercise of discretion in imposition of punishment by the disciplinary authority or appellate authority is dependent on host of

factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the court or a tribunal would not substitute its opinion on reappraisal of facts.

37. Also in point is the holding of the Supreme Court in **M.C. Krishnappa** (supra), where it was observed:

8. We are unable to agree with the view taken by the High Court. It is well settled that punishment is primarily a function of the management and the courts rarely interfere with the quantum of punishment. (See UT of Dadra & Nagar Haveli v. Gulabhia M. Lad [(2010) 5 SCC 775 : (2010) 2 SCC (L&S) 101] , SCC paras 9 and 14).

9. In this case the proven charge against the respondent was of financial irregularities and of making fraudulent withdrawals deriving pecuniary gain for himself. In a bank an offence of this kind is one of the most serious offences and the disciplinary authority had passed an order of removal against the respondent. In the facts of the case even that punishment could not be said to be unreasonable or unduly harsh. The reviewing authority modified the order of punishment and gave him a lighter punishment instead. At that time the respondent accepted it without ado. In those facts we fail to see any scope for interference with the punishment on a purely subjective view taken by the High Court.

38. Again, in **Managobinda Samantaray** (supra), it has been held by the Supreme Court:

9. ..... In the present case, the procedure requiring issue of show-cause notice and compliance with the principles of natural justice is made. Quantum of punishment is within the discretionary domain and the sole power of the decision-making authority once the charge of misconduct stands proved. Such discretionary power is exposed to judicial interference if exercised in a manner which is grossly disproportionate to the fault, as the constitutional courts while exercising the power of judicial review do not assume the role of the appellate authority. Writ jurisdiction is circumscribed by limits of correcting errors of law, procedural error leading to manifest injustice or violation of principles of natural justice [B.C. Chaturvedi v. Union of India,(1995) 6 SCC 749]. The decision are also disturbed when it is found to be ailing with perversity [Pravin Kumar v. Union of India, (2020) 9 SCC 471]. On the question of quantum of punishment, the court exercising the power of judicial review can examine whether the authority has been a reasonable employer and has taken into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and excluded irrelevant matters [Chairman-cum-Managing Director, Coal India Ltd. v. Mukul Kumar Choudhuri, (2009) 15 SCC 620]. In the context of quantum of punishment these aspects are examined to consider whether there is any error in decision making process. On merits of the quantum of punishment imposed, the courts would not interfere unless the exercise of discretion in awarding punishment is perverse in the sense the punishment imposed is grossly disproportionate.

39. Particularly in the context of officers of the bank and testing the plea, if the punishment was shockingly

disproportionate, it was observed by the Supreme Court in **P.C. Kakkar** (supra):

14. A bank officer is required to exercise higher standards of honesty and integrity. He deals with the money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik [(1996) 9 SCC 69 : 1996 SCC (L&S) 1194] it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court.

40. As already noticed by us, the basic facts that have been established and believed by the respondents on a reasonable view of the evidence are that without the signature or authority of Mobin Khan, a sum of Rs.12,000/- was transferred at the behest and management of the petitioner into the account of Kapil Kumar. Later, this sum of money was withdrawn and paid to the petitioner. The way the evidence appears, where the complainant and Kapil Kumar were both examined as management witnesses, the respondents in accepting both the above noted facts to be proved, is a reasonable view of the evidence. Now, on this kind of evidence and the conclusion of guilt reached by the respondents, the penalty awarded to the petitioner, who is a bank officer, cannot be regarded by any standards to be shockingly disproportionate. Financial irregularity in the bank establishment is a taboo and once established, the authority is consistent that dismissal from service is a punishment that is just and condign.

41. In the entirety of circumstances, we are not inclined to interfere with the orders impugned.

42. This writ petition fails and is **dismissed**.

43. There shall be no order as to costs.

44. Let the original records produced by the Bank be returned to Mr. N.K. Pandey, learned Counsel for their onward and safe transmission to the respondents.

(2025) 8 ILRA 197
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 25.08.2025

BEFORE

THE HON'BLE RAJAN ROY, J.
THE HON'BLE ALOK MATHUR, J.
THE HON'BLE SAURABH LAVANIA, J.

Writ C No. 905 of 2025

Brij Mohan ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Satish Kumar Sharma, Anurag Shukla, Apoorva Tewari

Counsel for the Respondents:
C.S.C.

Issue for Consideration

The petitioner a Gram Pradhan challenged actions under the U.P. Panchayat Raj Act,1947 and Rules,1997, including the cessation of his financial and administrative powers pending the removal inquiry-He claimed for his right to receive the preliminary inquiry report and to object to the complaint's validity.

Headnotes

A. Civil law- Constitution of India-Article 226-Allahabad High Court Rules, -Chapter V Rule 6(Reference to Larger Bench)-Precedent(Stare Decisis)-The judgment reaffirms the parameters within which a smaller Bench can refer the correctness of a larger Bench's decision for reconsideration.

B. U.P. Panchayat Raj Act,1947-S.95(1)(g) read with U.P. Panchayat Raj (Removal of Pradhan, Up-Pradhan, and Members Enquiry Rules, 1997)- The court declined to reconsider Full bench decision in Vivekanand Yadav (2011) Case which held that a Gram Pradhan is not entitled to raise any objection regarding the complaint in terms of Rule 3 of the 1997 Rules-The Bench found that the rulings in Vivkekanand's case and Hafiz Ataullah Ansari Case regarding the extent of natural justice appear to be in conflict with the principles laid down in subsequent decision of the Hon'ble Supreme court, Particularly Natwar Singh Case and T. Takano-The matter referred to larger Bench.

Held

The court held that the Full Bench in Vivekanand Yadav Case had already dealt with the issue in a reasoned manner, in line with judicial discipline and precedent, a reference to reconsider a larger Bench's decision cannot be made merely on a "veiled doubt" or casually-The Bench reiterated that cessation of an elected official's powers results in serious consequences and irreparable loss, warranting a high degree of adherence to natural justice principles- The Three Judge Bench partially accepted and partially declined the reference, ultimately submitting one key legal question to the Hon'ble Chief Justice for the constitution of a larger Bench.(Para 19 to 52) (E-6)

Case law Cited

Central Board Of Dawoodi Bohra Community Vs St. of Mah.(2005) 2 SCC 673,Mineral Area Development Authority & Anr. Vs Steel Authority of India & Anr(2024) 10 SCC 1,Rana Pratap Singh Vs St. of U.P. (1996) ALJ 301, Pritam Kaur Vs Surjit Singh AIR (1984) P&H 113,Natraj Chhabigirh Sigra Vs St.of U.P. (1996) All 375, Ambika Prasad Mishra Vs St. of U.P., Ravi Yashwant Bhoir Vs The Collector, Distt Raigad & Ors (2012) 2 SCC 407,Deepak Anand Patil Vs The St. of Mah. & Ors(2023) LiveLaw (SC) 30,T. Takano Vs SEBI(2022) 8 SCC 162,Vivekanand Yadav (supra) Hafiz Attaullah Ansari Vs St. of U.P. & Anr. (2011)3 ALJ 412,Tarlochan Dev Sharma Vs St. of Punj. AIR (2010) SC 3450, Sharad kailash Mittal Vs St. of M.P., Sahara India (Firm) Vs CIT (2008) 14 SCC 151, Smt. Sonia Vs St. of U.P. (2013)5 ADJ 559,Natwar Singh Vs ED (2010)13 SCC 255-referred to.

List of Acts

U.P. Panchayat Raj Act,1947-S.95(1)(g), U.P. Panchayat Raj (Removal of Pradhan, Up-Pradhan, and Members Enquiry Rules, 1997.

List of Keywords

U.P. Panchayat Raj Act,1947-S.95(1)(g), U.P. Panchayat Raj (Removal of Pradhan, Up-Pradhan, and Members Enquiry Rules, 1997,Reference to a Larger Bench, Stare Decisis/Binding Precedent, Principles of Natural justice, Per Incuriam, Quasi-Judicial, Judicial Discipline, Civil Consequences, Show Cause Notice, Vivekanand Yadav, Hafiz Ataullah Ansari.

Case Arising From

CIVIL JURISDICTION: WRIT-C No. – 905 of 2025

From the Judgment and Order dated 25.08.2025 of the High Court of Judicature at Allahabad.

Brij Mohan Vs. State of U.P. Thru.Prin. Secy.Panchayati Raj Lko & 2 Ors.

Appearances for Parties

Advs. for Petitioner:
Satish Kumar Sharma, Anurag Shukla, Apoorva Tewari
Adv. for Respondent:
C.S.C.,

(Delivered by Hon'ble Rajan Roy, J.)

(1) Heard Sri Apoorva Tewari, learned Amicus, Sri Anurag Shukla, learned counsel for the petitioner and Sri Manish Mishra, learned Standing Counsel appearing for the State of U.P.

(2) A learned Single Judge of this Court vide his order dated 18.02.2025 passed in Writ-C no.905 of 2025 requested Hon'ble the Chief Justice of this Court to constitute a larger Bench to reconsider the judgment in the case of **'Vivekanand Yadav vs. State of U.P. & Anr.'** reported in 2011 (29) LCD 221 in so far as it held that there was no necessity of supplying the preliminary inquiry report to the Gram Pradhan under Section 95(1)(g) of the U.P. Panchayat Raj Act, 1947 read with UP Panchayat Raj (Removal of Pradhan, Up-Pradhan, and Members) Enquiry Rules, 1997 (in short 'the Rules, 1997').

(3) Chapter V Rule 6 of the Allahabad High Court Rules, 1952 framed under Article 225 of the Constitution of India contains provisions for reference. It reads as under:-

"6. Reference to a larger Bench:- The Chief Justice may constitute a Bench of two or more Judges to decide a case or any question of law formulated by a Bench hearing a case. In the latter event the decision of such Bench on the question so formulated shall be returned to the Bench hearing the case and that Bench shall follow that decision on such question and dispose of the case after deciding the remaining questions, if any, arising therein."

(4) Chapter V Rule 2, proviso (b) of the Rules, 1952 reads as under:-

"a Judge may, if he thinks fit, refer a case which may be heard by a Judge sitting alone or any question of law arising therein for decision to a larger Bench."

(5) Vide our order dated 25.03.2025, we had observed that the legal position which permits learned Single Judge to refer correctness of judgment of a larger Bench for consideration, is not in doubt in view of **'Central Board of Dawoodi Bohra Community versus State of Maharashtra'** reported in (2005) 2 SCC 673 but we wanted to know the grounds on which this could be done. We had appointed Sri Aporva Tewari, Advocate as Amicus Curiae to assist us on this issue as also other issues involved.

(6) We may in this context refer to a recent decision of Hon'ble the Supreme Court rendered **in 'Mineral Area Development Authority & Anr. vs. Steel Authority of India & Anr.'** reported in (2024) 10 SCC 1 which was a case where a Division Bench of Hon'ble the Supreme Court doubted the correctness of a seven judge Bench and in that context, it was observed by the seven Judge Bench in **Mineral Area Development Authority (supra)** - 'No doubt, at the Highest Court, one cannot really be bogged down by the Bench strength nor does the doctrine of stare decisive would apply strictly to this Court when a judgment of a larger Bench is

questioned by a Bench of similar or smaller strength. But for that, there must be present a flagrant violation of law, a patent error or a blatantly erroneous approach in the matter so as to enable a Bench of a similar or smaller strength to doubt the correctness or otherwise of the decision of a larger Bench. There could also be a situation where a judgment is per incuriam or the doctrine of sub silentio would apply'.

(7) We may also refer to a Full Bench decision of this Court in the case of **'Rana Pratap Singh vs. State of U.P.'** reported in (1996) ALJ 301, a Full Bench decision of Punjab and Haryana High Court in the case of **'Pritam Kaur vs. Surjit Singh'** reported in AIR (1984) P&H 113 and another Full Bench decision of this Court in the case of **'Natraj Chhabigirh Sigra vs. State of U.P.'** reported in AIR (1996) All 375.

(8) Para no.12 of decision in **Pritam Kaur (supra)** reads as under:-

"12. From the above, it would follow as a settled principle that the law specifically laid down by the Full Bench is binding upon the High Court within which it is rendered and any and every veiled doubt with regard thereto does not justify the reconsideration thereof by a larger Bench and thus put the law in a ferment afresh. The ratios of the Full Benches are and should be rested on surer foundations and are not to be blown away by every side wind. It is only within the narrowest field that a judgment of a larger Bench can be questioned for re-consideration., One of the obvious reasons is, where it is unequivocally manifest that its ratio has been impliedly overruled or whittled down by a subsequent judgment of the superior Court or a larger Bench of the same Court. Secondly, where it can be held with certainty that a co-equal Bench has laid the law directly contrary to the same. And, thirdly, where it can be conclusively said that the judgemnt of the larger Bench was rendered per incuriamby altogether failing to take notice of a clear-cut statutory provision or an earlier binding precedent. It is normally within these constricted parameters that a similar Bench may suggest a reconsideration of the earlier view and not otherwise. However, it is best in these matters to be neither dogmatic nor exhaustive, yet the aforesaid categories are admittedly the well-accepted ones in which an otherwise binding precedent may be suggested for reconsideration."

(9) A Full Bench decision of this Court in the case of **Natraj Chhabigrih (supra)** had the occasion to consider this issue as also the Full Bench decision in **Pritam Kaur (supra)** and it held as under :-

"38. In substance Rana Pratap Singh's case (1995 All CJ 200) (supra) adopts reasoning and the parameters as laid down in the case of Pritam Kaur (AIR 1984 Punj & Har 113), which is quoted in paragraph 15 of the judgment. The parameters, as laid down, are as following:

(a) On every veilded doubt with regard to the law laid down by a Full Bench does not justify reconsideration by a larger Bench;

(b) Where it is unequivocally manifest that the ratio of Full Bench has been impliedly or directly overruled by the superior Court or larger Bench of the same Court, reference could be made;

(c) Where co-equal Bench has laid down law directly contrary to each other, reference could be made;

(d) The judgment of a larger Bench is rendered, by failing to take note of a clear-cut statutory provision or earlier binding judicial precedent, reference could be made."

(10) It further held that parameters laid down in **Pritam Kaur (supra)** were not not exhaustive but illustrative as was evident from the observations made in **Pritam Kaur (supra)** itself. It observed that the said decision lays down principles as a guidance to learned Judges in making reference with special references to the law laid down by the Full Benches. It is more as a guidance and caution in exercising such power. Of course, it has not approved reference by a learned Single Judge to a larger Bench based merely on his veiled doubt of a settled law. Thus, as understood by the Full Bench in **Natraj Chhabigrih (supra)** the ratio of the judgment in **Pritam Kaur (supra)** was that on any veiled doubts reference cannot be made but it could be based on few illustrated and other grounds which could be culled out in the facts and circumstances of each case confining within judicial discipline. In this context, it referred to the words of Black Stone: para no.40

It is an established rule to abide by former precedents when the same points come again into litigation, as well to keep the scale of justice even and steady and not likely to waver with every Judge's new opinion, as also because the law in that case being solemnly declared and determined, what before was uncertain is now become a permanent rule, which it is not in the breath of any subsequent Judge to alter or vary according to his private sentiments.

(11) It also took note of the decision of Hon'ble the Supreme Court reported in (1980) 3 SCC 719 **'Ambika Prasad Mishra vs. State of U.P.'** that every new discovery or argumentative novelty cannot undo or compel reconsideration of a judicial precedent.

(12) Thus, sum and substance of the above discussion is that Learned Single Judge cannot refer a decision rendered by a larger Bench for reconsideration merely on a veiled doubt or casually. There have to be strong grounds for such reference some of which have been referred in the decisions cited above such as conflict with another judgment of co-equal strength; overruling of such Full Bench decision impliedly or directly by the superior court or larger Bench of the same court; the judgment of the larger bench has been rendered in ignorance of a clear cut statutory provision or earlier judicial binding precedent.

(13) A Full Bench is bound by decision of Co-ordinate Bench unless it disagrees with it in which case it can refer it for consideration by a larger Bench. The grounds for reference would be similar to what has been discussed hereinabove with reference to Full Bench decisions of this Court and the Punjab & Haryana High Court and Hon'ble the Supreme Court. The observations contained in the judgments discussed above and the law elucidated therein also act as a guiding principle for a full Bench to refer correctness of another Full Bench or for that matter a Bench of co-equal strength to refer an earlier decision of equal strength.

(14) We have gone through the reference order passed by learned Single Judge dated 18.02.2025. Learned Single Judge after going through the Full Bench decision in **Vivekanand Yadav (supra)** and the provisions of the U.P. Panchayat

Raj Act, 1947 read with the UP Panchayat Raj (Removal of Pradhan, Up-Pradhan, and Members) Enquiry Rules, 1997 framed therein, has doubted the conclusions recorded by it, firstly, that there is no necessity to provide a copy of the preliminary inquiry report before ceasing the financial and administrative powers of a Gram Pradhan at the time of initiation of regular inquiry and secondly that there was no right of the Pradhan to object whether the complaint is in accordance with Rule 3 of the Rules, 1997.

(15) In this context, learned Single Judge observed that there was no argument advanced before the Full Bench with regard to furnishing of the preliminary inquiry report, therefore, the observation of the Full Bench in **Vivekanand Yadav (supra)** on this issue appears to be "obiter". With respect, we have gone through the Full Bench decision in **Vivekanand Yadav (supra)** conjointly with the Full Bench decision in **Hafiz Attaullah Ansari (supra)** and we find that an issue was framed as to the extent of application of principles of natural justice and the same has been considered by the Full Bench in the light of provisions of Act, the Rules and the object sought to be achieved by the same, reasons have been given in support of the conclusions arrived at, therefore, it cannot be said that the observations are an obiter. We cannot approve of this observation by learned Single Judge.

(16) However, we find that thereafter the learned Single Judge has referred to another Full Bench decision in the case **'Shamim versus State of U.P. and others'** reported in AIR 2018 Allahabad 196, a Five Judges decision in **'Paras Jain Versus State of U.P. and others'** reported in AIR 2016 ALLAHABAD 59, a decision of Hon'ble the Supreme Court in **'Ravi Yashwant Bhoir vs The Collector, District Raigad & Ors'** reported in (2012) 2 SCC 407 as also a Supreme Court decision in the case of **'Deepak Anand Patil versus The State of Maharashtra & others'** 2023 LiveLaw (SC) 30 and the decision of Hon'ble the Supreme Court in the case of **'T. Takano v Securities and Exchange Board of India'** reported in (2022) 8 SCC 162, based on which, learned Single Judge has formed a prima facie opinion that although preliminary inquiry report, in itself, if used for forming an opinion as to whether further action is to be taken or not, does not require supply of the same to the person against whom the same is held, however, when the said preliminary inquiry report is proposed to be used against that person for any adverse action against him, it is essentially to be supplied.

(17) He has further observed that it also emerges as an upshot of the decisions referred above that the powers exercised by the District Magistrate are quasi-judicial and the ceasing of financial powers is an order replete with serious consequences and has a direct impact on the ability of Pradhan to effectively discharge the function of the elected office. He has then referred the matter relying upon the decision of Hon'ble the Supreme Court in the case of **Central Board of Dawoodi Bohra Community (supra).**

(18) We now proceed to consider the issues involved.

(19) We may, first of all, refer to a reference made in the order dated 18.02.2025 passed by the learned Single Judge requesting reconsideration of the opinion expressed by the Full Bench in **Vivekanand Yadav's case (supra)** that the

gram pradhan is not entitled to raise any objection regarding the complaint or report in terms of Rule 3 of the Rules, 1997. With utmost respect, the reasoning given therein cannot be the basis for any such reference in view of the law already discussed hereinabove. The judgment of the Full Bench in **Vivekanand Yadav (supra)** deals with this issue with due and proper application of mind and gives reasons in support thereof. Therefore, it was not open for the learned Single Judge to refer this issue merely because in his opinion another view was possible. The opinion expressed by a larger bench has to be followed by benches of lesser strength unless or until any of the grounds mentioned in the earlier discussion are available or there are analogous grounds of a very strong and fundamental nature requiring a reference. We, therefore, do not deem it necessary to consider the said request as, in our opinion the Full Bench in **Vivekanand Yadav (supra)** has dealt with the same in a reasoned manner

(20) As regards the other issue, there are rules known as 'UP Panchayat Raj (Removal of Pradhan, Up-Pradhan, and Members) Enquiry Rules, 1997' which have been made under Section 110 read with clause (g) of sub-Section (1) of Section 95 of the U.P. Panchayat Raj Act, 1947 which lay down the procedure for holding the inquiry as referred in the proviso to Section 95(1)(g). On a reading of the said Rules, it is evident that it speaks of a preliminary inquiry under Rule (4) based on which a decision is taken under Rule 5 as to whether a final inquiry envisaged under Rule 6 thereof and the proviso to Section 95(1)(g) is to be conducted for the purposes of removal of Gram Pradhan or not. Once a decision is taken in terms of the aforesaid that a final inquiry is required to be conducted then, if necessary, a decision is to be taken as to whether financial and administrative powers are required to be seized or not. Such cessation is not automatic but depending upon facts of a case. Rule 6 lays down the detailed procedure for holding final inquiry but we are not concerned with it in this case.

(21) The provision for cessation of financial and administrative powers of Gram Pradhan is an interim measure where, in an inquiry, a Pradhan is prima facie found to have committed financial and other irregularities. This provision is contained in the proviso to Section 95(1)(g). The proviso by itself does not speak of any opportunity of hearing required to be given to the Gram Pradhan before such cessation of powers, however, by judicial pronouncements right from the decision in **Vivekanand Yadav (supra)** and **'Hafiz Attaullah Ansari vs. State of U.P. & Anr.'** reported in 2011 (3) ALJ 412 as also Five Judges' decision in **Paras Jain (supra)**, it has been held that principle of natural justice has to be read into the said proviso and a show cause notice is necessarily to be given to the Gram Pradhan before seizing his financial and administrative powers. It is also the law that in every case where an inquiry is instituted in terms of Section 95(1)(g) and the rules made in relation thereunder for removal of Gram Pradhan, cessation of financial and administrative powers is not necessary.

(22) We may in this context refer to the decision of Full Bench in Vivekanand Yadav (supra), correctness of which is an issue in these proceedings. It is question nos.(v) to (vii) which were considered by

the Full Bench in **Vivekanand Yadav (supra)** which are as under:-

"(v) In case the answer to the first point is in the negative then, whether a pradhan is entitled to be associated in the preliminary enquiry on the ground that principles of natural justice are applicable to it;

(vi) ***In case a pradhan is entitled to be associated or given opportunity then what is the extent of his rights;***

(vii) Whether a pradhan is entitled to an opportunity before the order ceasing the financial and administrative powers is passed against him under the proviso to section 95(1)(g)."

(23) These questions were answered by the Full Bench in Paragraph nos.64 to 72 and para no.107(c) which read as under:-

"5th to 7th POINT: PRELIMINARY ENQUIRY-- NOT ENTITLED TO PARTICIAPTE

64. In the Hafiz case, one of the question was regarding providing opportunity before ceasing financial and administrative power of a president during his removal proceeding under the Municipalities Act. Though the words of the Municipalities Act are different but the same reasoning applies here.

65. The Municipalities Act contemplates cessation of power on notices being issued, fulfilling the conditions under proviso to section 42(2) of the Municipalities Act. Apart from other conditions, one of the conditions is that the State Government should have reason to believe that the allegation against the president are not groundless and he is prima facie guilty of the charges. In Hafiz case, we have held that the belief of the State Government or satisfaction has to based on the material. The basic question involved there was:

Should the President be involved while collecting the material;

Is the president entitled to any opportunity before ceasing his financial and administrative powers.

66. The aforesaid questions are also involved in these cases as well. It is for this reason that these questions, in connection of pradhan of a gram panchayat, were also considered in the Hafiz case. It is held there that:

'It is not necessary to involve a head of a local body in the process of collecting material or in the preliminary inquiry. However, it is necessary to ask and consider his explanation, or point of view or version regarding charges before issuing notice under the relevant provisos under the different enactments'. {see 6th and 7th POINT:

PRESIDENT'S EXPLANATION SHOULD BE SEEN (paragraph 132)}.

67. In these cases, there was an additional argument for opportunity being given namely applicability of proviso to section 95(1) to the proviso to section 95(1)(g). However, we have negated it, while deciding the first point.

68. ***In view of our decision and reasons detailed in the Hafiz case, a pradhan is neither entitled to be associated in the preliminary enquiry nor is he entitled to get the copy of the preliminary enquiry report--his only right is to have his explanation or point of view or version to the charges considered before the order for ceasing his financial and administrative power is passed.***

69. In the cases, cited before us from the petitioners' side (see below)4, it was held that association of the head of the local body in the preliminary inquiry was

necessary. With due respect, we do not agree with them.

70. In the other set of cases, cited from the respondents side (see below)5, contrary view was taken that no opportunity--even asking explanation or point of view to the charges--was necessary before ceasing financial and administrative powers. With due respect, they require modification.

71. It is not only necessary that the explanation or point of view or the version of the affected pradhan should be obtained but should also be considered before being prima facie satisfied of his being guilty of financial and other irregularities and ceasing his powers. Of course the consideration of the explanation does not have to be a detailed one. There should be indication that mind has been applied. This has also been explained in the Hafiz case. Nevertheless, we would like to clarify it.

72. In the first and the third WPs, the explanations of the affected pradhans were not only asked but were also considered. There has been application of mind. The order in these two WPs cannot be faulted on the grounds that:

The copy of the preliminary report was not given to them;

The explanation was not asked from them;

Their explanation was not considered.

Some of these points are applicable in the other WPs but we have not examined them; we leave them to be considered by the bench concerned

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107 (c) A pradhan is neither entitled to be associated in the preliminary enquiry nor is entitled to the copy of the preliminary report. However, before an order ceasing the financial and administrative power is passed, his explanation or point of view or the version to the charges should be obtained and considered."

(24) From a reading of the above extract from the judgment in **Vivekanand Yadav (supra)**, we find that the Full Bench has relied heavily on a judgment rendered almost simultaneously in the case of **Hafiz Attaullah Ansari (supra)** although it was a case pertaining to cessation of powers of president of municipality, therefore, the observations and ratio contained in the latter judgment have to be read into the judgment in **Vivekanand Yadav (supra)** so as to have a correct understanding of the answer to question nos. (v) to (vii) referred hereinabove.

(25) Relevant paragraphs of **Hafiz Attaullah Ansari (supra)** by which question nos.(vi) and (vii) framed by the said Full Bench have been answered and which also contain the answer/ ratio in respect of question No.(v) to (vii) in **Vivekanand Yadav (supra)** are paragraph nos.86 to 132 and 133(b) which read as under:

"6th and 7th POINT: PRESIDENT'S EXPLANATION SHOULD BE SEEN

Not Necessary to Involve in Collection of Material/Evidence

86. Section 48 (2-A) inserted by UP Act No. 6 of 2004 was to effect that whether a president is prima facie guilty or not was to be found out by an enquiry. In fact, it was in the nature of fact finding or preliminary enquiry. This was similar to the provisions in the Rural-Areas Enactments. However, section 48 (2-A) as inserted by UP Act No. 6 of 2004 was

deleted and the present proviso to section 48 (1) has been inserted.

87. Section 48 (2-A) as inserted by UP Act No. 6 of 2004 and proviso inserted in its place by UP Act No. 2 of 2005 broadly provide cessation of the financial and administrative powers of the president till completion of the final inquiry for removal of the president under section 48 of the Municipalities Act, but there is some difference:

Under sub-section 2-A of section 48 this could be done on his being prima facie found to be guilty on the basis of an enquiry (preliminary or fact finding) held by such person and in such manner as might have been prescribed;

However, under the existing proviso, the State Government should have reasons to believe that the allegations do not appear to be groundless and the president is prima faciguilty.

88. The words, requiring holding of a preliminary enquiry by such person, in such a manner as prescribed, are no longer there. Nonetheless the State Government can only have reasons to believe not merely on the basis of any complaint but on the relevant material. The material has to be collected. It can be done by adopting any one of the following methods:

It could be done by a fact finding inquiry or preliminary inquiry: such an inquiry can still be done as it is not prohibited under the proviso; or

The State Government could collect the material itself; or

The material could be supplied to it by someone; or

The State Government could come into possession of it by any other means.

89. Nevertheless, irrespective of how the relevant material comes in the hands of the State Government, the question is, in absence of any specific provision,

Should the president be associated with its collection;

Should the principles of natural justice be read into it?

90. The position for removal of pradhan of a gram panchayat under section 95(1)(g) is similar to the president of a municipality except instead of reason to believe there is provision for the preliminary enquiry. Both are heads of the local bodies. In the Vivekanand Yadav case, we have held that proviso to section 95 (1) providing reasonable opportunity in removal proceeding is not applicable to proviso under section 95(1)(g) providing preliminary enquiry. There is neither any specific provision for providing opportunity in the preliminary enquiry, nor before passing order ceasing the right to exercise financial and administrative powers. The only question there, like this case, is,

Whether, the opportunity should be provided to the pradhan as adverse order is being passed.

This question is common in the both cases and is being dealt with in this decision.

If Exonerated Loss is Irreparable

91. The Counsel for the respondents submitted that:

(i) The present proceeding is akin to,

Suspension of a Government employee in the departmental proceeding; or

Suspension of a licence during cancellation proceeding; or

Proceeding to start reassessment in a taxing statute; and

In the aforesaid instances, the person effected is not afforded any opportunity at the stage of issuing notice;

(ii) The words reasons to believe are quite common in taxing statute where proceeding for reassessment can be undertaken if the authority has reason to believe. In such a situation, the only requirement is that there should be material to take such action. There is no necessity to provide opportunity before issuing show cause notice.

92. The institutions of Local Self Government be it for the rural area or for the urban area have become part of the Constitution. We have mentioned their transition under the heading HISTORICAL BACKGROUND. They are no longer statutory but, after 73rd and 74th constitutional amendments, have acquired the Constitutional status.

93. Under our Constitution, a head of local body is entitled to continue for his entire term unless he is unseated in an election petition. However, as there is no provision that he cannot be removed even if he is guilty of misconduct, a law can always be enacted to provide his,

Removal on his committing irregularities; or

Suspension or cessation of financial and administrative powers during pendency of removal proceeding

This has been done so far as head of local bodies of smaller urban areas and rural areas are concerned. However, in the bigger urban area (Municipal Corporation) removal cannot be done by any inquiry: it can be done only on a motion of no confidence.

94. A head of a local body is an elected person; he is not a Government servant: it would be improper to compare these proceeding with the departmental proceeding in service jurisprudence. We are not alone in saying this but are in company of the Supreme Court and another Full Bench of our Court (see below) [See SDO Faizabad v. S.N. Singh, (1969) 1 SCC 825 : AIR 1970 SC 140 (paragraph 5); Swami Prasad v. Hargovind Saha, AIR 1970 Alld 251 (FB) (paragraph 13).] .

95. The office of a local body is an elected office of a constitutional democratic institution. He is not merely head of a society or an organisation. He is entitled to hold office for the term that he was elected. It is not only his right but also that of his constituency or the electoral college that he represents. The curtailment of his rights is a serious matter. Here also, we are in company of the Supreme Court (see below) [See Tarlochan Dev Sharma v. State of Punjab, (2001) 6 SCC 260 (paragraph 7) and Sharad Kailash Mittal v. State of M.P., 2010 SCC 319 (paragraph 27) : 2010 (86) AIC 246 : 2010 (78) ALR 27 (Sum.), where the observations of the earlier case were approved.]

96. These proceedings are also not like reassessment proceedings under taxing statutes: they are incomparable. The present proceedings are more serious. There is also fundamental difference between service or taxing or other proceeding cited by the respondents on one and this proceeding on the other hand:

In service jurisprudence if an employee is suspended and later on is exonerated then he gets his salary and is reinstated with all consequential benefits;

Normally, whenever a license is granted, it is renewed from year to year. In case it is suspended during cancellation proceeding, then after dropping of the cancellation proceeding, the license is renewed. The license holder continues to enjoy privilege year to year as it is not for a fixed term;

In case the license is for the fixed period then it is not unusual to extend the

same for the period the licensee could not work;

In taxing statutes, normally no final decision is taken by start of the reassessment proceeding: it is merely initiation of the proceeding. Whether any higher tax is to be imposed or not, is to be decided thereafter in the proceeding.

However, this is not the case here.

97. A head of a local body is elected for a limited term. His term comes to end after five years. If during the removal proceeding, he is denuded from exercising financial and administrative powers then even if he is exonerated in the enquiry, the time spent during enquiry is lost: he does not get his period extended.

98. The situation in case of a head of a local body is much more drastic than the instances cited by the Counsel for the respondent. There is no such irreparable loss: the law or principles applicable there cannot apply to a head of a local body who is deprived of exercising financial and administrative powers.

99. The case here, is an example. The facts of this case are as follows:

The petitioner submitted his reply to the notice dated 20.11.2007 by the SDM on 28.11.2007;

He also submitted his reply to the show cause notice dated 24.10.2008 by the State Government on 8.11.2008;

Both replies were submitted without any delay;

There is no interim order prohibiting the State from deciding the proceeding; yet

About two years have elapsed, since submission of the reply to the State Government, the proceeding have not been finalised.

100. Had the Court not stayed that part of the order ceasing the petitioner's right to exercise financial and administrative powers then the petitioner would have been deprived to exercise it.

101. We would like to point out that there is no order restraining the State Government from completing the removal proceeding. Yet, it has not been finalised. We had asked the Additional Advocate General the reason as to why the State Government had not yet concluded the proceeding but there was no reply from his side: his silence was more eloquent than his submissions.

Natural Justice May Apply at Interim Stage

102. There is no specific provision of affording opportunity before issuing notice under proviso to section 48 (2) of the Municipalities Act. In the Vivekanand Yadav case, we have held the position to be same under proviso to the relevant sections of the Rural-Areas Enactments. Nevertheless:

Do the principles of natural justice apply to the situation as loss is irreparable;

In case they do apply then, what is their extent?

103. The Counsel for the respondent submitted that:

The show cause notice under proviso to section 48(2) of the Municipalities Act or the proviso to the relevant sections of the Rural-Areas Enactments and the cessation of right to exercise financial and administrative powers is merely a step in the finalisation of removal proceeding;

There is no question of affording any opportunity to a head of a local body at the stage of issuing notice. Their case would be seen in the final inquiry, where the question of their removal is to be considered and the reasonable opportunity would be afforded at that time;

The principles of natural justice do not apply at this stage;

104. The cessation of exercise of financial and administrative power is a step in finalisation of removal proceeding but this does not mean that principles of natural justice would not apply. Depending on the circumstances, the order in a step to finalisation of a proceedings may also attract principles of natural justice. The principles of natural justice apply at interim stage too; it depends on the consequences.

105. Section 142 (2-A) of the Income Tax Act, 1961 (the Income Tax Act) empowers an assessing officer to order a special audit under specified conditions. The order of special audit is a step in the assessment proceeding. A question arose whether the assesse should be heard before passing the order or not. Yet the Supreme Court in Rajesh Kumar v. Dy CIT[(2007) 2 SCC 181.] (The Rajesh Kumar case) held that opportunity should be given.

106. The law laid down by the Rajesh Kumar case was doubted and matter was referred to the Larger Bench. The Supreme Court in Sahara India (Firm) v. CIT [(2008) 14 SCC 151.] (the Sahara case) approved the same. The Court in the Sahara case noticed the objection of the Income Tax Department (paragraph 28) as follows:

The order of special audit is only a step towards assessment and being in the nature of an inquiry before assessment, is purely an administrative act giving rise to no [adverse] civil consequence and, therefore, at that stage a pre-decisional hearing is not required.

107. Nevertheless, it was rejected by the Supreme Court observing:

The growth of the administrative law, the old distinction between a judicial act and an administrative act has withered away. Therefore, it hardly needs reiteration that even a purely administrative order which entails civil consequences, must be consistent with the rules of natural justice.

The expression civil consequences encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. Anything which affects a citizen in his civil life comes under its wide umbrella

We are also unable to persuade ourselves to agree with the proposition canvassed by learned Counsel for the Revenue that since a post-decisional hearing in terms of sub-section (3) of section 142 is contemplated, the requirement of natural justice is fully met.

It is well settled that the principle audi alteram partem can be excluded only when a statute contemplates a post-decisional hearing amounting to a full review of the original order on merit.

108. In the case, where a head of a local body is deprived to exercise financial and administrative power, and ultimately the proceeding for removal are dropped then in such an event his loss can never be compensated. A post decisional hearing cannot cure the harm/damage done to him.

109. In some of the cases cited before us, these proceedings have been placed on the same footing as departmental proceeding and this has been compared as suspension during departmental proceeding or suspension during cancellation of licence proceeding. In some cases, the principles of natural justice have been made inapplicable on the ground that they are a step in the final proceedings. With due respect, we are unable to agree with them. In our opinion, the Imran case and the Rekha case mentioned in the referring order do require reconsideration.

110. This brings up the question, as to what extent do the principles of natural justice affording opportunity should apply?

Natural Justice - Not a Rule of Thumb

111. It has been held that the principles of natural justice are not rigid rules but vary according to the circumstance:

Lord Denning [This was in R v. Gaming Board, 1970 (2) All ER 528. This in turn was based on off quoted dictum of Tucker LJ in Russell v. Duke of Norfolk, 1964 (1) All ER 109 and Durayappah v. Fernando, 1967 (2) All ER 152.] remarked,

It is not possible to lay down rigid rules as to when the principles of natural justice are to apply; nor as to their scope and their extent. Everything depends on the subject matter.

Halsbury's laws of England 4th edition volume 1 (paragraph 74) states,

The presumption in favour of importing the rule [Audi alteram partem] may be partly or wholly displaced: where it is impracticable to give prior notice or an opportunity to be heard; or where an adequate substitute for a prior hearing is available.

So does the Garner's Administrative Law (page 256),

The question that needs to be considered is not the very general one what does audi alteram partem require?, but rather what in particular situations may audi alteram partem be held to require? To predict the operation of the audi alteram partem principle requires judgment of context rather than mere knowledge of black-letter rules.

112. The proposition that the principles of natural justice are not carved on stone and are flexible is part of our jurisprudence too. The Supreme Court observes:

The applicability of the principles of natural justice is not a rule of thumb or a straitjacket formula as an abstract proposition law. (Maharashtra State Board of HS Education v. S. Gandhi [(1991) 2 SCC 716 (22).]).

[They] are not rigid rules [but] are flexible and their application depends upon the setting. (RS Dass v. Union of India [1986 Supp SCC 617 : AIR 1987 SC 593 (24).] and Sarat Kumar Das v. Biswajit Patnaik [1995 (Supp) 1 SCC 434 (11).])

What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case. (AK Karipak v. Union of India [(1969) 2 SCC 262 : AIR 1970 SC 150.])

113. The question to what extent do the principles of natural justice apply require consideration of fairness.

Fairness the Ultimate Aim of Jurisprudence

114. It is often said that laws themselves are neither good nor bad: it is the people executing them make it good or bad. Lord Acton said it in his own way,

Power tends to corrupt and absolute power corrupts absolutely'.

115. Article 14 of the Constitution is antithesis of arbitrary exercise of power. It strikes at its root cause. This brings up the question regarding fairness: the ultimate aim of every jurisprudence.

116. While interpreting a statute, many have emphasised it, in their own way.

The Courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness. (Lloyd v. Mc Mahaon [(1987) A.C. 625, 702-3.])

The test today of whether to supplement statutory procedure is no longer whether the statutory procedure alone could result in manifest unfairness. The preferable view is that fairness tout Court [French words meaning without nothing added or simply] must be attained Under either test factors likely to be relevant [are]: the comprehensiveness of the Code, the degree of deviation from the statutory procedure required, and the overall fairness of the procedures to the individual concerned. (Judicial Review of Administrative Action- De Smith Vth Ed. 409)

If it can be demonstrated that the procedure followed has represented a genuine attempt, reasonable in all the circumstances, it is unlikely the Court will intervene through judicial review and to strike [it] down (Waite Jin R v. Norfolk Country Council [ex P M (1989) 2 All ER 359 at 367.]).

117. The Courts have evolved different principles to ensure fairness. May it be: the promissory estoppel, or the legitimate expectation, or the principles of the natural justice, or the Wednesbury principle, or any other ground (bad faith, irrelevant consideration, acting under dictation etc.) on which judicial review is permissible. These are different tools to ensure that the proceeding and the end result is fair. These tools, or principles will (if not already) merge into one - fairness. The World of Physics has yet to find its Theory of Everything (TOE) but the jurisprudence has already found its TOE, its ultimate aim, in fairness. It is on this yardstick that every action is to be judged.

118. To sum up, the relevant question is, But, is it fair If, the procedure is fair, the end result is fair; then it is not only sufficient compliance of the principles of natural justice but is an end of the matter. Fairness, and not the blind application of the principles of natural justice, is the end result. Let's consider what is fair in the case of cessation of financial and administrative powers of a head of a local body.

Fairness Reference to Head of a Local Body

119. The issuance of notice satisfying conditions under relevant proviso dealing with the heads of the different local bodies result into ceasing of right to exercise the financial and administrative powers, till they are exonerated of the charges mentioned in the show cause notice.

120. The main enquiry is for removal of the head of the local body. That is yet to be conducted. It is only on the basis of the main inquiry where reasonable opportunity is to be given that the heads of different local bodies can be removed. In case full length opportunity is afforded at the stage of issuing notice then what is the point in conducting the final enquiry at the later stage and giving similar opportunity. That would be futile exercise.

121. The reasons for depriving a president from exercising financial and administrative functions were mentioned in Statement of Objects and Reasons of UP Act No. 6 of 2004 by which section 48 (2-A) was introduced. It indicated that:

Most of the Presidents used to delay the proceedings by not replying the show-cause notice in time and they continue to misuse their financial powers. It has, therefore, been decided to amend the said Act to cease the financial powers of such President or a Vice-President during the pendency of the inquiry and his financial powers and functions will be exercised and performed by the District Magistrate until he is exonerated of the charges.

This sub-section was deleted and re-introduced as proviso to section 48(2) by UP Act 2 of 2005 in the slightly modified form.

122. In the Rural-Areas Enactments, no object and reason is mentioned for the relevant provisios but the aforesaid reason appears to be the ground for the same.

123. The reason to deprive the heads of the local bodies from exercising financial and administrative function is that they used to delay the proceeding and abuse the powers during the inquiry. This may be correct. The facts in the present case may not negate the general trend as stated in the aforesaid object and reason.

124. Considering the object and reason, there is no justification to involve the heads of the local bodies at every step of collection of material or in the preliminary enquiry. The principles of natural justice or the yardstick of fairness would be met if the explanation of the effected head of the local body or his point of view or version is considered before recording the satisfaction or finding of prima facie guilt before issuing notice and passing order for ceasing financial and administrative powers.

125. Affording opportunity to submit explanation of the head or considering it, is not to be as detailed as in the regular inquiry or to the extent of permitting cross-examination of any witness, who might be examined in the preliminary enquiry. It is in the sense of getting his point of view or version to the charges before being so satisfied. But what is the point in affording the opportunity if the explanation is not considered. It has to be considered too: there has to be application of mind.

126. In our opinion, getting explanation or point of view or version of a head of a local body regarding charges and considering them before issuing show cause notice under relevant provisos, not only strikes at the arbitrary exercise of power but brings about fairness in the procedure; in the circumstances, it is also sufficient compliance of the principles of natural justice.

127. However, it will depend from case to case, whether the opportunity to submit explanation or point of view or version has been given in a particular case or not: this will depend on the facts of each case. We would like to explain it, with reference to the facts of this case.

128. In the present case, there is only one charge. The SDM had asked the president to submit his explanation to it. In this case, the requirement of getting explanation of the petitioner has been met. The impugned notice/order cannot be invalidated on this ground. However, we wish to clarify that we have not examined the question the petitioner's explanation was considered or not.

129. The Counsel for the petitioner submitted that:

The decision to issue notice and to cease the financial and administrative powers was taken by the State Government on the basis of the letter of the SDM and the DM;

These letters were not given to him;

The explanation the petitioner ought to have been taken after the copies of the aforesaid letters were given to him.

130. The petitioner was asked to give his explanation regarding his conduct in giving out theka for Rs. 36,000 on 8.6.2007. He has given his reply in detail about the same. The letters of the S.D.M. and D.M. are also in respect of the same incident. It is in respect of this incident that the report of the EO was sought by the

S.D.M. These letters are merely material for considering whether there is any reason to believe that the petitioner was prima facie guilty or not. It was not necessary to hand over the aforementioned letters at the stage of asking his explanation or point of view to the allegation. These copies would be given to him at the stage of final enquiry where reasonable opportunity has to be afforded to the petitioner.

131. In case these letters were not supplied to the petitioner then he can ask for the same and they must be given to him as without handing them over it cannot be said that reasonable opportunity was afforded as contemplated in section 48(2) of the Municipalities Act. However, the show cause notice issued by the State Government cannot be invalidated on the ground that these letters were not given to the petitioner before issuing notice to him or requiring him to submit his point of view.

132. In our opinion,

It is not necessary to involve a head of a local body in the process of collecting material or in the preliminary inquiry or supply them copy of preliminary report. However, it is necessary to ask and consider his explanation, or point of view or version regarding charges before issuing notice under the relevant provisos under the different enactments;

In this case, the explanation of the petitioner to the charges was asked for. The order cannot be invalidated on this ground. However, the second aspect whether his explanation was considered or not was not examined by us. It may, along with other submissions of the petitioner, be examined by the appropriate bench.

...

...

CONCLUSIONS

133 (b) The following conditions must be satisfied before cessation of financial and administrative powers of a president of a Municipality can take place:

(i) The explanation or point of view or the version of the affected president should be obtained regarding charges and should be considered before recording satisfaction and issuing notice/order under proviso to section 48(2) of the Municipalities Act;

(ii) The State Government should be objectively satisfied on the basis of relevant material that:

The allegations do not appear to be groundless; and

The president is prima facie guilty of any of the grounds under section 48(2) of the Municipalities Act.

(iii) The show cause notice must contain the charges against the president;

(iv) The show cause notice should also indicate the material on which the objective satisfaction for reason to believe is based as well as the evidence by which charges against the President are to be proved. Though in most of the cases they may be the same."

(26) The Full Bench in **Hafiz Attaullah Ansari (supra)** was conscious of the fact, firstly, that an order of cessation of financial and administrative powers is an order adverse to the holder of an elected office. Secondly, if exonerated (ultimately), the loss resulting from such cessation would be irreparable. It was also conscious of the fact that office of local body is an elected office of constitutional, democratic institution. He is not merely head of a society or an organization. He is entitled to hold office for the term that he was elected. It is not only his right but also that of his constituency or the electoral college that he represents. The curtailment of his rights is a

serious matter and in this context, its opinion was in sync with the decisions of Hon'ble the Supreme Court referred by it and reported in AIR (2001) SC 2524 (paragraph 7) **'Tarlochan Dev Sharma v. State of Punjab'** and AIR (2010) SC 3450 (paragraph 27) **'Sharad Kailash Mittal v. State of M.P.'**

(27) It also observed that a head of a local body is elected for a limited term. His term comes to end after five years. If during the removal proceeding, he is denuded from exercising financial and administrative powers then even if he is exonerated in the enquiry, the time spent during enquiry is lost; he does not get his period extended. The loss is thus irreparable. It was also of the opinion that principles of natural justice applied at the interim state also i.e. a stage of cessation of administrative and financial powers depending upon the circumstances and the consequences which may follow. It referred to the decision of Hon'ble the Supreme Court in **'Sahara India (Firm) v. CIT'** reported in (2008) 14 SCC 151 wherein it was observed that the growth of the administrative law, the old distinction between a judicial act and an administrative act has withered away. Therefore, it hardly needs reiteration that even a purely administrative order which entails civil consequences, must be consistent with the rules of natural justice.

(28) The Full Bench in **Hafiz Attaullah Ansari (supra)** then observed that in the case, where a head of a local body is deprived to exercise financial and administrative power, and ultimately the proceeding for removal are dropped then in such an event his loss can never be compensated. A post decisional hearing cannot cure the harm/damage done to him. Thus, it clearly held that principles of natural justice did apply even at that stage.

(29) The next question considered by it was the extent to which the principles of natural justice should apply and in that context, it considered the concept of fairness. It referred to various authorities and then summed up the legal position by saying:-

"118. To sum up, the relevant question is, But, is it fair If, the procedure is fair, the end result is fair; then it is not only sufficient compliance of the principles of natural justice but is an end of the matter. Fairness, and not the blind application of the principles of natural justice, is the end result. Let's consider what is fair in the case of cessation of financial and administrative powers of a head of a local body."

(30) It noticed in para no.119 that issuance of notice satisfying conditions under relevant proviso dealing with the heads of the different local bodies result into ceasing of right to exercise the financial and administrative powers, till they are exonerated of the charges mentioned in the show cause notice. However in para no.**120**, it observed that:-

"120. The main enquiry is for removal of the head of the local body. That is yet to be conducted. It is only on the basis of the main inquiry where reasonable opportunity is to be given that the heads of different local bodies can be removed. In case full length opportunity is afforded at the stage of issuing notice then what is the point in conducting the final enquiry at the later stage and giving similar opportunity. That would be futile exercise."

(31) In para nos.121 to 123, it referred to the statement of objects and reasons as to why a provision for cessation of administrative and financial powers was introduced which was because they use to delay the proceedings and abuse the powers during the inquiry. Ultimately, in para no.124, it was observed that considering the object and reason, there is no justification to involve the heads of the local bodies at every step of collection of material or in the preliminary enquiry. The principles of natural justice or the yardstick of fairness would be met if the explanation of the effected head of the local body or his point of view or version is considered before recording the satisfaction or finding of prima facie guilt before issuing notice and passing order for ceasing financial and administrative powers. Affording opportunity to submit explanation of the head or considering it, is not to be as detailed as in the regular inquiry or to the extent of permitting cross-examination of any witness, who might be examined in the preliminary enquiry. It is in the sense of getting his point of view or version to the charges before being so satisfied. The explanation has to be considered and there has to be application of mind in this regard which will strike at arbitrary exercise of power and bring about fairness in the procedure and will amount to sufficient compliance of principles of natural justice.

(32) In para no.133(b)(iv) it observed that the show cause notice should also indicate the material on which the objective satisfaction for reason to believe is based as well as the evidence by which charges against the President are to be proved. Though in most of the cases they may be the same.

(33) Thus, on a conjoint reading of Full Bench decision in **Vivekanand Yadav (supra)** and **Hafiz Attaullah Ansari (supra)**, what comes out is that for cessation of financial and administrative powers of a Gram Pradhan or a Chairperson of a municipality, it is not necessary to furnish the material/ preliminary inquiry report along with the show cause notice though the material and evidence has to be indicated in the show cause notice so as to enable the elected office holder to respond to it, before cessation of his powers.

(34) Although, in neither of the Full Bench decisions, it has been specifically held that exercise of power to seize administrative and financial powers of a gram pradhan or chairperson of a municipality, is a quasi-judicial power, nevertheless, the adverse and civil consequences flowing from it have been taken into consideration and that is why principle of natural justice have been applied and its extent defined, therefore, in both the Full Bench decisions, application of principle of natural justice has been held to be mandatory but its extent has been defined.

(35) The question is as to whether Full Bench in **Vivekanand Yadav (supra)** read with **Hafiz Attaullah Ansari (supra)** was correct in depriving the Gram Pradhan from being furnished a copy of preliminary inquiry report/ material which is the basis for issuance of show cause notice proposing cessation of his financial and administrative powers, would it be sufficient compliance of principles of natural justice, even assuming that it is an interim stage and final inquiry is yet to be held, especially considering the fact that in both the Full Bench decisions referred hereinabove as also the other decisions, serious consequences and irreparable loss

which may ensue from such cessation have been undisputedly emphasized in all these decisions.

(36) The Full Bench in **Shamim (supra)** was considering the correctness of a Division Bench judgment rendered in a case of **'Smt. Sonia v. State of U.P'** reported in 2013 (5) ADJ 559 wherein it had been held that the district magistrate exercising the power under the proviso to Section 95(1)(g) of the Act, 1947 was a tribunal, therefore, an appeal was not maintainable under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952. The Full Bench in **Shamim (supra)** endorsed the opinion rendered by Division Bench in **Smt. Sonia (supra)** and held that the powers exercised for the said purpose were quasi-judicial in nature and therefore, the authority exercising the power was a tribunal. In this context, it also referred to the judgment of **Vivekanand Yadav (supra)** but did not doubt its correctness or expressed any dissent rather it followed the observations made in **Vivekanand Yadav (supra)** case that as the order was adverse to the Gram Pradhan and had civil consequences and also considering the fact that the Gram Pradhan was an elected person, therefore, cessation of his financial and administrative powers had serious consequences on his functioning as Gram Pradhan as such principle of natural justice is applicable.

(37) The Full Bench in **Shamim (supra)** did not specifically consider the issue as to whether preliminary inquiry report was required to be furnished to the gram pradhan before ceasing his administrative and financial powers nor did it consider the extent of application of principle of natural justice.

(38) As regards the decision of Five Judges Bench in **Paras Jain Versus (supra)**, the question referred therein was as to whether in view of the language used in the proviso to Article 95(1)(g) of the U.P. Panchayat Raj Act, 1947, once a decision is taken to initiate proceedings for holding a regular inquiry for removal of gram pradhan, the cessation of his financial and administrative powers is automatic or it requires adherence to principles of natural justice and the observations made by five Judges Bench in **Paras Jain (supra)** have to be considered in the light of the said question. **Paras Jain (supra)** has held that the principle of natural justice would be attracted. The extent of application of natural justice was not dealt with in **Paras Jain (supra)**.

(39) The serious consequences which flow from removal of a Pradhan as also from cessation of his financial and administrative powers have been emphasized by Hon'ble the Supreme Court of India in **Ravi Yashwant Bhoir (supra)**, as also by the Five Judges decision of this Court in the case of **Paras Jain (supra)**, Full Bench decision in **Vivekanand Yadav (supra)** and **Hafiz Attaullah Ansari (supra)**.

(40) **Ravi Yashwant Bhoir (supra)** was a case of removal based on a final adjudication and not a case of cessation of financial and administrative powers. Nevertheless, the Supreme Court emphasized the higher pedestal on which an elected official in a local self government stands vis-a-vis a government servant in matters of removal and observed that removal of a duly elected member on the basis of proved misconduct is a quasi-judicial proceedings in nature, therefore, principle of natural justice is required to be

given full play and strict compliance should be ensured even in the absence of any provision provided for the same.

(41) The Five Judges decision in **Paras Jain (supra)** also dealt with the application of principle of natural justice in the matter of cessation of financial and administrative power of Chairman of a municipality under Section 48 but it did not dwell upon the extent of such application. However, it did emphasize the importance, role and position of elected heads of local self government under part IXA of the Constitution of India. It held that an opportunity of being heard, consistent with the principles of natural justice, before there is cessation of financial and administrative powers of the President does not stand excluded by the provision of Section 48(2) of the Municipality Act, 1916. As a matter textual interpretation, the requirement of complying with the principles of natural justice is an integral element of the proviso to Section 48(2). The requirements of natural justice would warrant the grant of an opportunity to the elected head of a municipality to respond to the notice issued by the State indicating the basis for the formation of a reason to believe that the charges do not appear to be groundless and that the President is prima facie guilty on any of the grounds mentioned in sub-section (2) of Section 48. The period of notice can be suitably molded to deal with the exigencies of the situation.

(42) Paras Jain (supra), however, did not deal with the question as to whether the material or preliminary inquiry report which is the basis for the show cause notice and is relied upon should be furnished to the President of the Municipality.

(43) We may in this context refer to a judgment of Hon'ble the Supreme Court rendered in the case of **'Natwar Singh v Director of Enforcement'** reported in (2010) 13 SCC 255. It was a case where notice was issued under Rule 4 of Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 requiring the litigant to show cause as to why inquiry should not be held against him under the said Rules read with Section 13 of the Foreign Exchange Management Act, 1999 for imposition of penalty etc by the adjudicating authority. In that context, the extent of application of principle of natural justice was considered by Hon'ble the Supreme Court. In the said case, sub-rule(2) of Rule 4 itself provided that every notice under sub-rule (1) to any such person shall indicate the nature of contravention alleged to have been committed by him. Hon'ble the Supreme Court considered the rival contentions, the provisions of the Act and the Rules and the law on the subject of natural justice in such matters, its application and extent. It opined as under:-

"Principles of natural justice: statutory requirement and fair hearing

25. It is true that Rule 4 does not require the adjudicating authority to supply copies of any documents along with the show-cause notice. The Rule does not require the adjudicating authority even to furnish any list of documents upon which reliance has been placed by it to set the law in motion. Does it mean that the adjudicating authority is not required to furnish the list of documents and copies thereof upon which reliance has been placed by it to issue notice of show cause to a person against whom a complaint has been made by the authorised officer? Whether the principles of natural justice

and doctrine of fairness require supply of documents upon which reliance has been placed at the stage of show-cause notice?

It is not possible to lay down rigid rules as to when the principles of natural justice are to apply: nor as to their scope and extent. Everything depends on the subject-matter: [see R. v. Gaming Board for Great Britain, ex p Benaim and Khaida [(1970) 2 QB 417 : (1970) 2 WLR 1009 : (1970) 2 All ER 528 (CA)] at QB p. 430 C], observed Lord Denning, M.R.

Their application, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject-matter of the case. [Ed.: See Administrative Law by Wade & Forsyth, 8th Edn. at p. 491, Line 4 from the bottom.]

26. Even in the application of the doctrine of fair play there must be real flexibility. There must also have been caused some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with and so forth. Can the courts supplement the statutory procedures with requirements over and above those specified? In order to ensure a fair hearing, courts can insist and require additional steps as long as such steps would not frustrate the apparent purpose of the legislation.

27. In Lloyd v.McMahon [1987 AC 625 : (1987) 2 WLR 821 : (1987) 1 All ER 1118 (HL)] , Lord Bridge observed: (AC pp. 702 H-703 B)

My Lords, the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness.

28. As Lord Reid said in Wiseman v. Borneman [1971 AC 297 : (1969) 3 WLR 706 : (1969) 3 All ER 275 (HL)] : (AC p. 308 C)

For a long time the courts have, without objection from Parliament, supplemented procedure laid down in legislation where they have found that to be necessary for this purpose.

29. It is thus clear that the extent of applicability of the principles of natural justice depends upon the nature of inquiry, the consequences that may visit a person after such inquiry from out of the decision pursuant to such inquiry.

30. The right to fair hearing is a guaranteed right. Every person before an authority exercising the adjudicatory powers has a right to know the evidence to be used against him. This principle is firmly established and recognised by this Court in Dhakeswari Cotton Mills Ltd. v. CIT [AIR 1955 SC 65 : (1955) 1 SCR 941] . However, disclosure not necessarily involves supply of the material. A person may be allowed to inspect the file and take notes. Whatever mode is used, the fundamental principle remains that nothing

should be used against the person which has not been brought to his notice. If relevant material is not disclosed to a party, there is prima facie unfairness irrespective of whether the material in question arose before, during or after the hearing. The law is fairly well settled if prejudicial allegations are to be made against a person, he must be given particulars of that before hearing so that he can prepare his defence. However, there are various exceptions to this general rule where disclosure of evidential material might inflict serious harm on the person directly concerned or other persons or where disclosure would be breach of confidence or might be injurious to the public interest because it would involve the revelation of official secrets, inhibit frankness of comment and the detection of crime, might make it impossible to obtain certain clauses of essential information at all in the future (see R. v. Secy. of State for Home Deptt., ex p H [1995 QB 43 : (1994) 3 WLR 1110 : (1995) 1 All ER 479 (CA)]).

31. The concept of fairness may require the adjudicating authority to furnish copies of those documents upon which reliance has been placed by him to issue show-cause notice requiring the noticee to explain as to why an inquiry under Section 16 of the Act should not be initiated. To this extent, the principles of natural justice and concept of fairness are required to be read into Rule 4(1) of the Rules. Fair procedure and the principles of natural justice are in-built into the Rules. A noticee is always entitled to satisfy the adjudicating authority that those very documents upon which reliance has been placed do not make out even a prima facie case requiring any further inquiry. In such view of the matter, we hold that all such documents relied on by the authority are required to be furnished to the noticee enabling him to show a proper cause as to why an inquiry should not be held against him though the Rules do not provide for the same. Such a fair reading of the provision would not amount to supplanting the procedure laid down and would in no manner frustrate the apparent purpose of the statute."

(44) It clearly held that the concept of fairness may require the Adjudicating Authority to furnish copies of those documents upon which reliance has been placed by him to issue show cause notice requiring the noticee to explain as to why an inquiry under Section 16 of the Act should not be initiated. To this extent, the principles of natural justice and concept of fairness were required to be read into rule 4(1) of the Rules. Fair procedures and principle of natural justice are inbuilt into the rules.

(45) It further held that a noticee is always entitled to satisfy the Adjudicating Authority that those very documents upon which reliance has been placed do not make out even a prima facie case requiring any further inquiry. In such view of the matter, it held that all such documents relied on by the Authority are required to be furnished to the noticee enabling him to show a proper cause as to why an inquiry should not be held against him though the Rules do not provide for the same. Such a fair reading of the provision would not amount to supplanting the procedure laid down and would in no manner frustrate the apparent purpose of the statute.

(46) Having held as above, it further went on to hold that at the aforesaid preliminary stage, the adjudicating authority was not bound to furnish copies of all the documents in its possession to a

noticee which had not been relied upon by him in the show cause notice.

(47) Thus, the ratio of the said judgment is that even at the preliminary stage where a decision is to be taken as to whether an inquiry should be initiated or not, under the Rules, 2000 aforesaid, if any material is relied in the show cause notice issued for the said purpose then it should be supplied/ furnished to the noticee but if it is not relied in the show cause notice then it need not be furnished though such documents may be required to be furnished at the time of final adjudication. This is how the judgment in **Natwar Singh (supra)** has been understood by a subsequent judgment of Hon'ble the Supreme Court rendered in the case of **T. Takano (supra)** (para no.42).

(48) In view of the aforesaid discussion and the decision of Hon'ble the Supreme Court in **Natwar Singh (supra)** as also in **T. Takano (supra)** and also considering the fact that cessation of financial and administrative powers of an elected office holder has serious consequences and may in a given case result in irreparable loss if ultimately he is exonerated in the final inquiry, an aspect which has been emphasized by Hon'ble the Supreme Court in the case of **Ravi Yashwant Bhoir (supra)** and the five Judges decision in **Paras Jain (supra)** as also the Full Bench decision in **Vivekanand Yadav (supra)** and **Hafiz Attaullah Ansari (supra)** and also as such elected office bearer is not to be associated in the preliminary inquiry which means that the preliminary inquiry report, which could be the basis for issuance of a show cause notice under the proviso to Section 95(1)(g), would be prepared behind his back, then, an important question arises as to why, instead of furnishing the said material which is the basis for a proposed adverse action having serious civil consequences against him, the show cause notice is required only to indicate the charges/ material / evidence against him as per the Full Bench in **Vivekanand Yadav (supra)** read with the decision in Hafiz **Attaullah Ansari (supra)**? In view of the judgment in Natwar Singh (supra) such material needs to be given to the elected office holder.

(49) Mere giving of the preliminary inquiry report need not necessarily lead to a situation where even at the interim stage, a final inquiry would be held, as for that a detailed procedure is separately provided in Rule 6 of the Rules, 1997 which is not attracted at this stage. The evidence which is mentioned in the preliminary inquiry report need not be furnished at that stage but the preliminary inquiry report or in its absence the material which is the basis for the show cause, prima facie, is required to be furnished in view of **Natwar Singh (supra)** and, not doing so, would not be in keeping with the principles of natural justice which are applicable even at the interim stage, especially considering the fact that it is not only a case of initiation of inquiry for removal but a case where administrative and financial power of an elected office holder could be seized. The ratio of Full Bench decision in **Vivekanand Yadav (supra)** and **Hafiz Attaullah Ansari (supra)** on the questions involved herein appear to be in conflict with the decision of Hon'ble the Supreme Court in the case of **Natwar Singh (supra)** and **T. Takano (supra)** on the question of extent of application of principle of natural justice.

(50) Considering the grounds on which such reference can be made as

discussed in the earlier part of the judgment, and in view of the decisions of Hon'ble the Supreme Court in **Natwar Singh (supra)** and **T. Takano (supra)**, and the discussions made hererinabove, we are of the opinion that a larger Bench of this Court needs to consider the following question:-

(i) Whether the Full Bench decisions in Vivekanand Yadav (supra) and Hafiz Attaullah Ansari (supra) have been correctly decided on the point of requirement of furnishing preliminary inquiry report/ material, which is relied upon in the show cause notice for cessation of financial and administrative powers of a gram pradhan or chairperson of municipality, in view of decisions of Hon'ble the Supreme Court in Natwar Singh (supra) and T. Takano (supra) as also the decision in Ravi Yashwant Bhoir (supra) ?

(51) However, in view of the discussion already made in the earlier paragraphs, we see no reason to refer the opinion expressed by the Full Bench in **Vivekanand Yadav's** case **(supra)** to the effect that the Gram Pradhan is not entitled to raise any objections regarding the complaint or report in terms of Rule 3 of the Rules, 1997.

(52) Let the records be placed before Hon'ble the Chief Justice for constituting a larger Bench of such strength as he deems proper for considering the question referred above.

(53) Interim order, if any, shall continue till the next date of listing.

(2025) 8 ILRA 221
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 20.08.2025

BEFORE

THE HON'BLE SARAL SRIVASTAVA, J.
THE HON'BLE ARUN KUMAR SINGH DESHWAL, J.

Writ C No. 1860 of 2020

Rahul Panwar ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Ashish Malhotra

Counsel for the Respondents:
C.S.C.

Issue for Consideration

The petitioner was the highest bidder for a mining lease in Saharanpur-He deposited 25% of the security and 25% of the first installment of the royalty-He obtained an Environmental Clearance Certificate which was challenged by one Sunil Kumar before the NGT-The competent authority revoked the original EC due to defects and non-compliance with due procedure-The respondent no. 3 cancelled the Letter of Intent and imposed penalty of Rs. 10,38,46,500/- by order dated 08.02.2019.

Headnotes

Civil law-Constitution of India,1950-Article 226-U.P. Minor Minerals (Concession) Rules,1963-Rule 29-The court emphasized that the security can be forfeited only if the failure to execute the lease deed is "due to fault on the part of the bidder" a condition the respondent failed to establish-The defect in the EC Certificate was the fault of the issuing Authority (SEIAA), not the petitioner-The petitioner could not execute the lease deed without "valid, clean environmental certificate-Petition allowed.

Held

The court concluded that the forfeiture of the security and installment money was illegal and arbitrary and could not be sustained in law-The court found that the lease deed could not be executed because the mandatory Environmental

clearance certificate granted to the petitioner was defective and under a cloud, as its validity was challenged before NGT-The court directed the respondent no.3 to refund the forfeited amount-Furthermore, the court ordered that the petitioner be compensated with 6% simple interest on the refunded amount from the date it was forfeited until the date of its payment.(Para 25 to 41) (E-6)

List of Acts

U.P. Minor Minerals (Concession) Rules, 1963

List of Keywords

U.P. Minor Minerals (Concession) Rules,1963, Rule 29, Forfeiture of Security, First Instalment, Amount Forfeited, Mining Lease/E-tender, Saharanpur, Environmental Clearance Certificate, National Green Tribunal, Execution of Lease Deed, SEIAA, Fault of Bidder, Refund.

Case Arising From

CIVIL JURISDICTION: WRIT-C No. – 1860 of 2020

From the Judgment and Order dated 20.08.2025 of the High Court of Judicature at Allahabad.

Rahul Panwar Vs. State of U.P. & 2 Ors.

Appearances for Parties

Adv. for Petitioner:

Ashish Malhotra

Adv. for Respondent:

C.S.C.

(Delivered by Hon'ble Saral Srivastava, J.
&
Hon'ble Arun Kumar Singh Deshwal, J.)

1. Heard learned counsel for the petitioner and Sri Rajeshwar Tripathi, learned Additional Chief Standing Counsel-II for State-respondents.

2. The petitioner, by means of the present writ petition, has assailed the order dated 08.02.2019 passed by the respondent no.3-District Magistrate, Saharanpur to the extent of forfeiting 25% of the security and 25% of the first installment amounting to Rs 10,38,46,500/-.

3. The facts, in brief, are that an advertisement was issued by respondent no.1 for E-tender-cum-E-auction for the grant of mining lease in district Saharanpur on 14.08.2017 on Gata No.3, Plot No.3, area 8.05 hectares, i.e., 138462 cubic square meters in Tehsil-Behat situated at Yamuna River, Village Rehna, District Saharanpur. The petitioner participated in the E-tender process and was selected as the highest bidder. The letter of intent was issued to the petitioner on 15.03.2018. As per the terms and conditions of the letter of intent, the petitioner deposited 25% of the security and 25% of the first installment of the royalty with the treasury through Challan No.Z-23 on 26.03.2018. The petitioner was issued an environmental clearance certificate on 22.11.2018. The petitioner, thereafter, submitted the environmental clearance certificate dated 22.11.2018 to the department.

4. It appears that the environmental clearance certificate granted to the petitioner was challenged by one Sunil Kumar in an Appeal No.258 of 2018 before the National Green Tribunal, Principal Bench, New Delhi. In the said appeal, the National Green Tribunal on 13.12.2018 passed the following order:-

"ORDER

Challenge in this appeal is to the order of Environmental clearance dated 22.11.2018 passed by the State Level Environment Impact Assessment Authority, Uttar Pradesh.

The case of the appellant is that no public consultation was held in terms of judgment of this Tribunal dated 13.09.2018 in Satendra Pandey vs. Ministry of

Environment, Forest and Climate Change & Anr, O.A No. 186 of 2016. No replenishment study has been conducted. The District Survey Report has not been prepared in accordance with law. The appellant also states that the mining site is an Eco-Sensitive Zone of the Kalesar National Park.

To consider the matter further, we consider it is necessary to have the response from the respondent no.2, Uttar Pradesh State Environment Impact Assessment Authority and respondent no.4, District Environment Impact Assessment Authority, Saharanpur, within one month from the receipt of copy of this order.

The appellant is also at liberty to furnish a set of papers to respondent nos.2 & 4 and file a proof of service, to enable them to furnish response to this Tribunal. It is made clear that if the respondent nos.2 & 4 are satisfied that the clearance has been given illegally, it will be open to them to take further remedial steps in accordance with law.

List again on 12.02.2019."

5. Under Rule 29 of U.P. Minor Minerals (Concession) Rules, 1963, amended on 14.08.2017 by Uttar Pradesh Minor Minerals (Concession) (Forty Third Amendment) Rules, 2017, a bidder was to produce an approved mining plan and a clean environment clearance certificate prescribed as per rules. Thereafter, the lease deed is to be executed.

6. The petitioner did not execute the lease deed which led the respondent no.3 to issue notice dated 14.12.2018 directing the petitioner to deposit Rs.2,53,39,740/- towards stamp duty and District Mineral Fund (DMF) etc. and get the lease deed executed, and in case, the aforesaid deposit is not made, an ex-parte proceedings may be initiated for cancelling the letter of intent, forfeiting security deposit and black-listing the name of petitioner for five years.

7. The petitioner in response to the aforesaid notice submitted his reply on 17.12.2018 which has been referred to by the Mineral Officer, Saharanpur in his letter dated 26.12.2018 wherein the Mineral Officer noted that the petitioner has stated in his objection that the information may be provided to the petitioner as to whether any proceeding in respect to the allotment of mines and minerals lease is pending before the Apex Court or before the National Green Tribunal, New Delhi. The said letter further recites that the petitioner, in his objection, has also stated that he had come to know that some proceeding in respect to land allotted to the petitioner for mining is pending, and whether the pendency of the proceeding would affect the mining operation of the petitioner.

8. The Mineral Officer in the said letter has further stated that the stay order operating in respect to mining in the area of village Rehna has been lifted, and there is no stay order by any of the Courts or National Green Tribunal in respect to the land allotted to the petitioner.

9. Thereafter, the petitioner again submitted a reply on 05.01.2019 stating therein that the State Government cannot execute the lease deed without conducting replenishment study, therefore, an information may be provided to the petitioner as to whether any replenishment study has been conducted by the State Government by any authorised agency, and if there is any such report, the same may be provided to the petitioner so that he may file the same before the Court. In the reply, the petitioner has also stated that the

environmental clearance certificate has been challenged by one Sunil Kumar before the National Green Tribunal, New Delhi.

10. The record further reveals that the petitioner has approached this Court by filing Writ-C No.5098 of 2019, wherein he has assailed the notice dated 11.01.2019.

11. It has also come on record that the National Green Tribunal, New Delhi, in Appeal No.258 of 2018, passed the following order on 29.03.2019:-

"ORDER

Issue for consideration is compliance of the order of this Tribunal dated 13.9.2018 requiring preparation of District Survey Report before issuance of the leases and recall of leases granted in violation of the said order.

Vide order dated 13.12.2018, a report was sought from the Uttar Pradesh State Environment Impact Assessment Authority which has been filed on 12.03.2019 accepting that the leases in question are hit by the order of this Tribunal dated 13.09.2018 in Satendra Pandey Vs. Ministry of Environment, Forest and Climate Change & Anr., O.A. No.186/2016.

Learned Counsel for the State of Uttar Pradesh fairly states that appropriate remedial action will be now taken within one month to recall the Environmental Clearance granted in violation of order of this Tribunal dated 13.9.2018. An appropriate order will be passed in the matter.

In view of above, if the Environmental Clearance is being acted upon, the same may not be acted upon till an appropriate order is passed by the concerned authority.

The application is disposed of."

12. Thereafter, the respondent no.3, by order dated 08.02.2019, cancelled the letter of intent of the petitioner and further imposed penalty of Rs 10,38,46,500/- against the petitioner. The order dated 08.02.2019 is impugned in the present petition.

13. A counter affidavit has been filed by the State Government contending inter-alia that before the notice dated 14.12.2018, a notice dated 03.12.2018 was issued to the petitioner by which he was asked to get the lease deed executed by depositing stamp duty and after complying with the other formalities. It is also stated that since the petitioner did not take any action, therefore, the final notice dated 11.01.2019 was issued. It is stated that in pursuance of the said notice, the petitioner has not deposited the stamp duty nor has paid other dues; therefore, the District Magistrate, Saharanpur, has passed the impugned order dated 08.02.2019.

14. The respondent has further stated that the petitioner vide letter dated 17.12.2018 has sought certain information which has been supplied to the petitioner by the respondent by letter dated 26.12.2018, specifically stating that no interim order/stay order has been granted by the National Green Tribunal. The respondent further stated that despite specific information being supplied to the petitioner, he neither deposited the stamp duty nor executed the lease deed. This shows that the petitioner was not willing to execute the lease deed, and his intention was to get the proposed mining area in abeyance, and this action of the petitioner has caused loss of revenue to the State Government.

15. It is further stated that under Rule 60(1) of U.P. Minor Minerals (Concession) Rules, 1963, it is provided that if, within a period of one month from the date of issuance of the environmental clearance certificate, the lease deed is not executed, then the security money and first installment shall be forfeited.

16. A rejoinder affidavit has been filed by the petitioner denying the averments made in the counter affidavit.

17. The petitioner alongwith rejoinder affidavit has filed reply of the State Level Environment Impact Assessment Authority, Uttar Pradesh in Execution Application No.19 of 2020 in Appeal No.258 of 2018 before the National Green Tribunal, New Delhi in which it has been categorically stated in paragraph no.6 that in compliance of the order dated 29.03.2019, a Joint Committee took remedial action and revoked the original EC. Dated 22.11.2018, issued in favour of the petitioner. In the said paragraph, it is stated that the order dated 29.03.2019 stands complied with.

18. Challenging the aforesaid order, learned counsel for the petitioner has contended that in the instant case, the environmental clearance certificate was issued by the authority, namely, State Environment Impact Assessment Authority (SEIAA), which is a special agency constituted for granting environmental clearance certificates. It is submitted that the petitioner has obtained an environmental clearance certificate on 22.11.2018, which was assailed by one Sunil Kumar before the National Green Tribunal, New Delhi, in Appeal No.258 of 2018. It is contended that without having environmental clearance certificate, the petitioner could not carryout any mining operation and could not execute the lease deed in view of Rule 29 of amended Rules of 1963, and in such view of the fact, there was no fault on the part of the petitioner in not getting the lease deed executed as per the directions given by the respondent no.3.

19. It is contended that the defect in granting environmental clearance certificate was not because of the fault of the petitioner, but it was the fault of the authority namely State Environment Impact Assessment Authority which had granted environmental clearance certificate to the petitioner without following due procedure of law which led the National Green Tribunal to pass an order the order dated 13.12.2018, extracted above, directing the authority concerned to verify if the environmental clearance certificate had been granted to the petitioner illegally, it is open to the authority to take further remedial measures in accordance with law.

20. It is further submitted that since no remedial steps were taken, therefore, the National Green Tribunal passed an interim order restraining the parties from acting upon environmental clearance till an appropriate order is passed by the concerned authority.

21. It is further submitted that it is evident from paragraph no.6 of the reply filed by the State Level Environment Impact Assessment Authority that the environmental clearance certificate was cancelled by the competent authority. Accordingly, it is submitted that once the validity/legality of the environmental clearance certificate was sub-judice before the Court, the petitioner could not get any lease deed executed in view of Rule 29 of amended Rules of 1963 and thus, the

petitioner could not be faulted for non-executing the lease deed, and since, there was no fault on the part of the petitioner in executing the lease deed, the respondent no.3 has erred in law in forfeiting 25% of the security and 25% of the first installment.

22. It is further contended that even the impugned order has been passed without considering the effect of Rule 29 of the amended Rules of 1963, which specifically states that the security can be forfeited only if the bidder is at fault in not getting the lease deed executed. Accordingly, it is submitted that the order passed by the respondent no.3 forfeiting 25% of the security and 25% of the first installment is illegal inasmuch as no finding has been returned by the respondent no.3 that fault was on the part of the petitioner in not executing the lease deed.

23. Per contra, learned Additional Chief Standing Counsel-II would contend that in the instant case, the letter of intent was given to the petitioner, and the petitioner was asked to comply with the requirement vis-a-vis depositing the stamp duty and other dues which the petitioner is liable to pay for execution of the lease deed. It is submitted that on the date the letter of intent was issued, there was no interim order operating against the environmental clearance certificate, and in such view of the fact, the petitioner was at fault in not getting the lease deed executed and forfeiture of security by the respondent no.3 is in compliance of Rule 29 of amended Rules of 1963, therefore, there is no illegality in the impugned order. He further submits that if the petitioner had executed the lease deed, he could easily carry out the mining operation till any order had been passed by the National Green Tribunal staying the environmental clearance certificate.

24. He further submits that if there was any injunction order passed by the National Green Tribunal or any competent Court staying the effect of environmental clearance certificate, the State Government would not have charged any royalty for the period for which mining operation could not be conducted by the petitioner for not having environmental clearance certificate, and thereafter, the defect in environmental clearance could be removed and the mining operation could be re-started. Accordingly, it is submitted that the conduct of the petitioner reflects that he was not at all interested in carrying out the mining operation, which was detrimental to the interest of the Revenue Department, as the action of the respondent has caused loss of revenue to the State Government.

25. We have considered the rival submissions of the parties and perused the record.

26. Before proceeding to deal with the contention of the parties, it would be apt to reproduce Rule 29 of the amended Rules of 1963:-

*"29. **Execution of lease deed** (1). The successful bidder/tenderer after receiving letter of intent of concerned e-tender/e-auction/e-tender cum e-auction shall produce, approved Mining Plan and Clean Environment Certificate prescribed as per rule, and a lease deed concerning the same will be executed in form MM-6 or in similar format. The registration of the said executed lease deed will be registered within three months period. The period of lease will be counted from the date of execution of the concerned lease deed. If*

due to fault on the part of lease holder, registration of the said executed lease deed is not registered within three months, then the said lease deed will be treated as null and void and the amount of security will be seized by the District Magistrate.

(2). Omitted.

(3). A copy of the lease deed together with the map of the area shall be sent by the District Officer or the Committee, as the case may be, to the Director, Geology and Mining, Uttar Pradesh, within fifteen days from the date of execution thereof."

27. Rule 29(1) provides that the successful bidder, after receiving the letter of intent, shall produce the approved mining plan and clean environmental certificate as per the rules and execute a lease deed in terms of MM-6 or in a similar format. The said rule further provides for registration of the lease deed within three months. The period of lease will be counted from the date of execution of the lease deed. The said rule confers power upon the authority to forfeit the security of the bidder in the event the lease deed is not registered within three months due to the fault of the bidder. Therefore, in order to forfeit the security, the respondent authority has to establish that there was fault on the part of the bidder in not getting the lease deed registered despite complying with all formalities required for the execution of the lease deed.

28. In the instant case, the petitioner was a successful bidder and was issued a letter of intent on 15.03.2018. The petitioner obtained environmental clearance certificate from the department namely, State Environment Impact Assessment Authority on 22.11.2018 which was assailed by one Sunil Kumar before the National Green Tribunal in Appeal No.258 of 2018, and while taking cognizance on the appeal of Sunil Kumar challenging the environmental clearance certificate, the National Green Tribunal granted liberty by order dated 13.12.2018 to the competent authority to take remedial measures in accordance with law, if environmental clearance certificate has been granted to the petitioner illegally.

29. At this stage, it is pertinent to note that the petitioner has to apply for the grant of an environmental clearance certificate, but the issuance of an environmental clearance certificate is within the domain of the SEIAA, and the petitioner has no role whatsoever in the issuance of an environmental clearance certificate. If any defect or infirmity is found in the environmental clearance certificate, the petitioner cannot be faulted for the defect or infirmity in the environmental clearance certificate, and the fault is solely of the department that is competent to issue such a certificate.

30. In the instant case, the environmental clearance certificate was assailed by one Sunil Kumar, on which the National Green Tribunal has taken cognizance and passed an order dated 13.12.2018, which has already been extracted. When the State Government did not take any action, the National Green Tribunal passed an order of injunction on 29.03.2019 restraining the concerned authority not to act upon the environmental clearance certificate if the environmental clearance certificate has been acted upon.

31. From the aforesaid fact, it is clear that the veracity or legality of the environmental clearance certificate was under a cloud as it was challenged before the National Green Tribunal.

32. It is also established on record that an environmental clearance certificate was not issued in accordance with the procedure provided, and there were several defects in the environmental clearance certificate, which led the competent authority to recall the environmental clearance certificate granted to the petitioner, which is evident from paragraph 6 of the reply filed by the competent authority in Execution Application No.19 of 2020.

33. The lease deed could not be executed for the defect in the environmental clearance certificate, which was assailed before the National Green Tribunal. So the aforesaid fact clearly discloses that the petitioner was not at fault in not getting the lease deed executed.

34. No man of prudence would make a huge amount in any venture from which he is not going to reap any benefit, and it is certain that the investment will doom.

35. In the instant case, even Rule 29 of amended Rules of 1963 says that the successful bidder after obtaining letter of intent of concerned tender has to produce clean environmental certificate which means environmental clearance certificate has been issued by the competent authority after following due procedure and is not under scrutiny before any Court of law on the ground that it has not issued as per the procedure prescribed for issuing the said certificate.

36. In view of Rule 29 of the amended Rules of 1963, no lease deed could be executed in the absence of a valid environmental clearance certificate. As has been held above, the clean environmental certificate is to be issued by the competent authority, and in the issuance of which, the petitioner has no role, and if there was any defect in the environmental clearance certificate, the fault is of the concerned department authorised to issue the clean environmental certificate, for which the petitioner cannot be penalised.

37. In view of the aforesaid fact, we are of the view that the petitioner was not at fault in not getting the lease deed executed in compliance with the directions issued by the respondent no.3, as he was prohibited under Rule 29 of the amended Rules of 1963 to execute any lease deed till he possesses a valid, clean environmental certificate.

38. The respondent no.3 while passing the impugned order has failed to consider the aforesaid aspect of the matter and also failed to consider Rule 29 of amended Rules of 1963 in correct perspective that the 25% security amount and 25% of first installment can be forfeited if there is fault of the successful bidder in not executing the lease deed and getting it registered within three months.

39. In view of the discussions made above, we conclude that the forfeiture of 25% of the security as well as 25% of the first installment of the petitioner by the respondent no.3 is illegal and arbitrary and cannot be sustained in law. Accordingly, we set aside the impugned order dated 08.02.2019 to the extent it forfeits 25% of the security and 25% of the first installment of the petitioner. We further direct the respondent no.3 to refund the amount of Rs . 10,38,46,500/- deposited by the petitioner towards security and the first installment.

40. We further find that 25% of the security and 25% of the first installment have been illegally forfeited by the

respondent no.3, due to which the petitioner has suffered financial loss. Thus, in view of the aforesaid fact, we compensate him by awarding 6% simple interest on the aforesaid amount from the date it was forfeited till the date of its payment.

41. Thus, for the reasons given above, the writ petition is ***allowed*** with no order as to costs.

(2025) 8 ILRA 229
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 07.08.2025

BEFORE

THE HON'BLE PANKAJ BHATIA, J.

Writ C No. 7585 of 2025

Maaz Ahmad ...Petitioner
Versus
U.O.I. & Ors. ...Respondents

Counsel for the Petitioner:
Diwakar Singh Gautam, Rejeiu Kumar Tripathi

Counsel for the Respondents:
A.S.G.I., C.S.C., Gyanendra Kumar Srivastava, Shahsank Bhasin, Syed Mohammad Haidev Rizv

Issue for Consideration

The petitioner , a person with a specified locomotor disability assessed at 70% permanent disability by the CMO, Bahraich, had been issued a Unique Disability ID(UDID)-He sought reservation benefits for "persons with Benchmark disability (PwBD) in the U.P. NEET UG 2025 counseling-The benefit was denied because Medical Institute, BHU re-assessed his disability at 31%, which is less than the 40% threshold required for benchmark disability status under section 2(r) of the Rights of Persons with Disabilities Act,2016.

Headnotes

Civil law-Constitution of India, 1950-Article 226-Rights of Persons with Disabilities Act,2016-S. 2(r), Rule 18,19-The court emphasized that the designated center's role under the National Medical Council is to assess the 'functional disability'-Whether the candidate can functionally undergo the studies and rigors of the course-It is not authorized to reassess or supersede the percentage of disability reflected in the UDID Card-Petition allowed.

Held

The court held that the UDID Card, which reflected a disability of 70% and established the petitioner as a person with benchmark disability must prevail for the grant of reservation-A certificate issued under the statute and rules cannot be overridden by an assessment from an authority not specified under the Act-Thus, the petitioner is entitled to register for NEET Examination/counseling with the benefit of reservation for PwBD.(Para 10 to 29) (E-6)

Case law Cited

Vishal Gupta Vs UOI & Ors, CMWP No. 1093 of 2022, Omkar Ramchandra Gond Vs UOI (2024) SCC OnLine SC 2860,Purswani Ashutosh Vs UOI (2019) 14 SCC 422, Anmol Son of Subhash Chander, Vs UOI & Ors (2023): RJ- JP: 39699-DB-referred to.

List of Acts

Rights of Persons with Disabilities Act,2016

List of Keywords

Rights of Persons with Disabilities Act,2016, NEET Examination, Benchmark disability, PwBD, reservation, UDID Card, specified locomotor disability, National Medical Council, functional disability, DGME.

Case Arising From

CIVIL JURISDICTION: WRIT-C No. – 7585 of 2025
From the Judgment and Order dated 0708.2025 of the High Court of Judicature at Allahabad.

Maaz Ahmad Vs. U.O.I. Thru. Secy. Ministry of Health and family welfare Nirman Bhawan New Delhi & 8 Ors.

Appearances for Parties

Advs. for Petitioner(s):
Diwakar Singh Gautam , Rajeiu Kumar Tripathi
Advs. for Respondent(s):
A.S.G.I.,C.S.C., Gyanendra Kumar Srivastava, Shashank Bhasin, Syed Mohammad Haider Rizv.

(Delivered by Hon'ble Pankaj Bhatia, J.)

1. Heard Shri Rajeiu Kumar Tripathi and Shri Diwakar Singh Gautam learned counsel(s) for the petitioner and Shri S.B. Pandey, learned Senior Advocate and D.S.G.I. assisted by Shri Anand Dwivedi, learned counsel for respondent nos.1 to 4; Shri Gyanendra Kumar Srivastava, learned counsel for respondent no.5; Shri Manish Kumar Srivastava, learned counsel for respondent no.6 and Shri Vikas Rai, learned counsel for respondent no.7.

2. Present petition has been filed by the petitioner who is suffering from benchmark disability as defined under the provisions of the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as "Act"). The claim of the petitioner is that the petitioner is suffering from benchmark disability as defined under Section 2(r) of the Act which is quoted hereinbelow:

*"2. **Definitions**.—In this Act, unless the context otherwise requires,—*

...

(r) "person with benchmark disability" means a person with not less than forty per cent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;"

3. It is argued that the present petitioner also belongs to Other Backward Class, for which, a certificate was granted to the petitioner. It is stated that the petitioner after qualifying the CBSE Class-XII examination approached the Chief Medical Officer, Bahraich, an Authority designated under Section 57 of the Act and also empowered from the Department of Empowerment of Persons with Disabilities under the Ministry of Social Justice and Empowerment, Govt. of India, in whose case, the locomotor disability was assessed with 70% permanent disability in relation to body and leg of the petitioner. The said certificate is on record as Annexrue No.4. It is also stated that the petitioner was issued a Unique Disability ID (for short 'UDID') on 07.07.2023 by the Competent Authority. The petitioner, desirous of appearing in the NEET examination, held by the NTA, applied in terms of public notice dated 07.02.2025 and filled the necessary information as contained in the information bulletin. The petitioner claimed the benefit of reservation which flow in favour of 'persons with benchmark disability' (hereinafter referred to as "PwBD").

4. It is claimed that after the petitioner appeared in the examination, he obtained All India Rank 997 in the category of PwBD. It is stated that after having qualified the NEET Examination with the rank as mentioned herein above, the petitioner was to appear in the first round of counseling/registration for U.P. NEET UG 2025 wherein, the commencement of online registration was mentioned as from 18.07.2025 upto 28.07.2025. In the said bulletin issued in the Chapter 3 titled as reservation, bullet point no.4 after Para 'Kha', it was mentioned that the disability certificate shall be accepted which has been issued by the centres designated by Director General of Health Services (DGHS), Ministry of Health and Family

Welfare, New Delhi as per its guidelines and prescribed format. In the said brochure which has been filed as Annexure No.13, Enclosure No.V contains the list of centres which are empowered to issue disability certificates as per the NMC norms to the persons suffering from the disability as prescribed under the Act. It is stated that when the petitioner appeared before the Medical Institute, BHU, which is notified under the Brochure, he filed an application and appeared before the Three Member Team which granted a medical certificate showing his disability assessed at 31% disability, however, he was declared qualified to undertake medical studies in the funcational disability test. It is argued that as the benefit of the disability assessed by the Centre notified in the scheme was less than 40%, he would naturally not be entitled to the benefit of reservation accorded to the students suffering from benchmark disability which is more than 40%.

5. In the light of the said, the said medical certificate has been challenged alongwith a prayer that the petitioner having been issued a UDID demonstrating that the disability suffered by the petitioner is more than 40%, the benefit of reservation cannot be denied to him. It is further argued that the assessment of the medical done by the BHU, a centre notified by the NMC, was done by three doctors of the Neurology Department as is evident from the certificate itself, thus, the said certificate has been assailed as having not been issued in terms of Notification Dated 12.03.2024 issued by the Ministry of Social Justice and Empowerment.

6. Learned counsel or the petitioner further argues that all these aspects were adequately considered by the Hon'ble Supreme Court in the case of ***Om Rathod v. Director General of Health Services and Ors.; 2024 SCC OnLine SC 3130*** to argue that the benefit which are extendable to the persons who are suffering from benchmark disability flow by virtue of the provisions the Act and the manner of assessing the disability is prescribed in the Act, the notification issued by the Ministry of Health in terms of the directions given by the Hon'ble Supreme Court in the case of ***Om Rathore (Supra).***

7. He argues that the manner in which the disability has been assessed by the Agency notified by the National Medical Council, the UDID issued to the petitioner is rendered useless and in fact amounts to superseding the UDID issued by the petitioner which is neither prescribed nor can be done. He, thus, prays that the petitioner may be permitted to undergo and register for counseling with the respondent. It is stated that the date for registration for counseling has been extended up to 11.08.2025 starting from 08.08.2025.

8. Learned counsel for the respondent fairly states that the guidelines with regard to the assessment of the persons claiming the benefit of benchmark disability were incorporated and in the guidelines issued, it was provided that the certificate can be issued by the designated agencies. It is argued that in terms of the guidelines issued, the respondents are bound by the same and as the certificate issued by the Centre, which is designated, demonstrates the benchmark disability suffered by the petitioner to be less than 40%, the benefit cannot be granted to the petitioner and he cannot be permitted to register as a student suffering from benchmark disability.

9. My attention is also drawn to the guidelines on assessment method for granting admission in MBBS Course to PwBD Candidates for the Assessment Year 2025 – 26; the said was produced before the Hon'ble Supreme Court in ***Writ Petition (Civil) No.1093 of 2022 (Vishal Gupta v. Union of India & Ors.)*** which petition has been disposed off. The order passed by the Supreme Court is extracted herein below:

"1. Pursuant to the directions issued by this Court from time to time, the National Medical Commission has on 19.07.2025 notified Interim Guidelines On Assessment Method for Granting Admission In MBBS Course To PwBD Candidates For AY 2025-2026. The relevant portion is extracted herein below for ready reference:

"INTERIM GUIDELINES ON ASSESSMENT METHOD FOR GRANTING ADMISSION IN MBBS COURSE TO PwBD CANDIDATES FOR AY 2025-26

PREAMBLE:

In pursuit of equitable and inclusive medical education, the National Medical Commission (NMC) remains steadfast in its commitment to ensuring fair access to medical courses for all eligible candidates, including Persons with Disabilities (PwD). In alignment with the provisions of the Rights of Persons with Disabilities Act, 2016, and the Graduate Medical Education Regulations, this interim report outlines the foundational framework and preparatory measures for facilitating the admission of PwBD candidates in MBBS Course.

This report serves as a step towards strengthening existing mechanisms, identifying challenges, and proposing recommendations for creating an enabling environment that upholds the principles of dignity, non-discrimination, and equal opportunity. It focuses on key aspects such as assessment of disability, eligibility criteria, reasonable accommodations, accessibility standards, and institutional readiness.

The NMC acknowledges the valuable contribution of a diverse medical workforce and envisions a system where every aspiring student, irrespective of physical or cognitive ability, is empowered to pursue a career in medicine and serve society with competence and compassion.

1. Introduction

In alignment with the Rights of Persons with Disabilities (RPwD) Act, 2016, and subsequent notifications, particularly the directive issued by the Ministry of Social Justice and Empowerment (MoSJE) on 12.03.2024, which underscores the principles of inclusive education and reasonable accommodation, and the landmark judgment of the Hon'ble Supreme Court dated 25.10.2024 in Om Rathod vs Union of India & Others (SLP (C) No. 21942 of 2024), a significant shift has been initiated in the national approach toward disability inclusion in higher education.

xxxx xxxx xxxx

xxxx xxxx xxxx

9. Decision Taken

The expert panel unanimously agreed on the following for MBBS admissions under the PwBD category for AY 2025-26:

PwBD candidates must submit:

A valid UDID card issued by a designated medical authority under MoSJE.

Self-Certified affidavits in the format provided under Schedule -I.

The candidate will have to approach the designated medical board for verification of their self-certified affidavit.

Designated Medical Boards (16 designated medical boards) are required to undertake following duties:

• The competencies mentioned in the appendix under Schedule-I are basic & mandatory. The candidates, to the satisfaction of the designated medical board, may demonstrate the competencies that have been declared by him/her. If the board finds the declared competencies unsubstantiated based on the candidate's performance, it must issue a reasoned decision declaring him/her ineligible to pursue medical course.

• If the candidate while self-declaring the essential competencies mentions one or more competencies in negative or is not able to demonstrate one or more of the listed essential competencies, the board shall see if he/she is able to compensate such deficits, by other alternative functionalities; and may take a holistic view regarding his capability to pursue MBBS course.

• The designated medical boards may utilize standardized tests and tools to evaluate the abilities of the candidates, as per their declaration, instead of focusing on the disabilities.

• All decisions of the designated medical board(s) shall be in the form speaking orders.

• Admissions will be processed by the counseling authority, based on NEET 2025 scores, institutional preferences, and verification of required documents by the concerned designated medical board(s). Medical colleges will provide accommodations accordingly."

2. Learned counsel for the petitioner submits that the present Writ Petition can be disposed of in terms of the interim guidelines and the petitioner can avail the benefit arising out of that guidelines.

3. The Writ Petition is disposed of in terms of the above observation.

4. Pending application(s), if any, shall stand disposed of."

10. In the light of the arguments as raised and recorded above, it is to be considered by this Court as to whether the petitioner would be entitled to take the benefit of reservation extendable to persons with benchmark disability as defined under the Act on the basis of UDID Card issued to the petitioner or the said benefit can be denied on the basis of medical assessment done by the designated agency in terms of the circular issued by the National Medical Council.

11. All these aspects were considered by the Supreme Court extensively in the case of ***Om Rathord (supra).*** The Court had also taken into consideration the facts and the developments leading to the enactment of the Act. The Court had also noticed that the persons who were claiming the rights and reservation granted to persons with disability was no more a charity and was a right entrenched under the Act. The Court had noticed the form which was required to be filled by the persons for claiming the benefit of benchmark disability. Para 22 & Para 23 of the judgment read as under:

"22. From promoting self-rejection of disabled medical aspirants to assuming that their accommodations would lower the standard of competence and would regardless be fruitless - the guidelines have charted their way into disrepute. Vitally, the resistance to alter the standard in a framework that has historically effaced a marginalised group - namely disabled persons other than in the capacity of a patient - is antithetical to any

rights based approach to disability law. Many other issues of critical importance arise from these guidelines which are not germane to evaluate the case before us but may be open for an appropriate proceeding.7 The current guidelines allow persons with more than eight percent locomotor disability to be admitted to MBBS course on a case by case basis after a functional competency to see whether their disability can be 'brought below 80%.' Before proceeding to analyse this guideline, it is essential that we clarify the phrase 'brought below 80%'.

23. The intention of the guideline in using the term 'brought below 80%' is ostensibly to mean that the functional assessment shall evaluate if the person with disability can perform the tasks which they are expected to perform as a student and a practitioner. The assumption in using the phrase 'below 80%' defeats the purpose of the guideline which is to allow candidates into the MBBS course on a case by case basis. Bodies are not biological parts put together - each to serve a pre-determined role. They are alive - with thoughts, feelings, dreams and aspirations. All bodies - abled and disabled - are guaranteed dignity under the Constitution. A person with disability has to navigate the rigours of a society which was modelled on the premise of their absence. The disability of a person is a reflection on the inaccessibility of the society and not a comment upon the individual. A person does not overcome disability but learns to navigate life with it. Disability is not a thing to be overcome or brought down, but an attribute to be acknowledged and accommodated. The use of the term 'brought below 80%,' as well intentioned as it may be, fails at this foundational premise. One cannot assume that all persons with more than 80% locomotor disability are incompetent to pursue medicine when their functional abilities have not been assessed. The medical model of disability apparent in the phrase must give way to a social model of disability which takes into account the variety of experiences and outcomes which persons with disabilities have when they interact with different kinds of societies and accommodations."

12. The Court also noticed the Act which harmonizes the constitutional promise of full citizenship with action in Para 26, which reads as under:

"26. The Act harmonises the Constitutional promise of full citizenship with action - by creating a framework in which persons with disabilities may translate their rights into remedies. To establish a bed of rights, Section 2 of the Act defines and acknowledges barriers, discrimination, inclusive education and reasonable accommodation. Section 3 of the Act affords the right to equality and non-discrimination for persons with disabilities. The requirement of assessing the functional competence of a medical aspirant with over eighty percent locomotor disability recognises that assessment must be done on a case to case basis. The method of assessment by designated Disability Assessment Boards must therefore reflect the approach and intent of the legal framework within which the Boards operate. An assessment for functional competency entails an analysis of the skill set which a person with disability must learn in order to compete and pursue the medical course. This is a marked difference from requiring a specific manner which a candidate must use to achieve the outcome. For example, a functional competency model would require a candidate to effectively

communicate with patients but would not require them to have speech or intact hands. By focusing on the end points, the approach avoids any ableism to seep into the assessment and avoids reifying that there is one and only one manner to achieve desired outcomes."

13. The Court also noticed the observation of the Supreme Court in another case of ***Omkar Ramchandra Gond v. Union of India; 2024 SCC OnLine SC 2860*** to the following effect:

"28. Justice KV Viswanathan speaking for this Court in Omkar Gond (supra) has applied a purposive interpretation to the guidelines (Appendix "H-1") in the context of a medical aspirant with dialectic incapacity. This Court held that the principle of reasonable accommodation in Section 2(y) of the RPWD Act read with Article 41 of the Constitution necessarily means that (i) a person cannot be disqualified merely on the basis of a benchmark quantification. Such a criteria would be unconstitutional for being overbroad; (ii) the Disability Assessment Board must not act as monotonous automations looking at the quantified disability and disqualifying candidates. The Board must examine if the candidate can pursue the course with their disability; and (iii) in doing so, the Board is not merely obliged to provide assistive devices and other substances which will help the candidate. The true role of the Board is to assess the competence of a candidate."

14. The Court also noticed the other judgments of the Supreme Court passed in the context of the Act. The Court also noticed the other judgment of the Supreme Court in the case of ***Purswani Ashutosh v. Union of India; (2019) 14 SCC 422*** and recorded as under:

"35. In Purswani Ashutosh v. Union of India,19 this Court was deciding if a medical aspirant who had appeared for the NEET UG Exam 2018 was eligible for the reservation earmarked for persons with disabilities. Despite having low vision impairment - the Medical Board had opined that the petitioner in that case was ineligible for reservation. While rejecting the opinion of the committee, this Court held that a medical board cannot be allowed to override the statutory mandate of providing reservation to persons with disabilities. No committee has primacy over the law. We must emphasize that the opinions of medical boards and committees are not only required to adhere to legal standards but must also embody core principles of the rule of law within their processes. This Court, following a consistent line of precedent, has underscored the need for reasoned and transparent decisions by such boards, given the profound impact these opinions have on the life trajectory of individuals before them."

And the Court while interpreting the appendix interpreted the same as under:

"37. Appendix "H-1" stipulates that assessments, particularly for individuals with locomotor disabilities exceeding 80%, should focus on evaluating functional competence. This functional competency test serves two critical purposes. First, it emphasizes the abilities of the person with a disability, assessing their capability rather than their limitations. Second, it mandates an evaluation rooted in practical relevance, aligning the candidate's abilities with the functional requirements of the MBBS curriculum. Mere quantification of

disability is insufficient and fails to address the necessary criteria, a position this Court has consistently upheld as unsatisfactory in such cases."

15. The Court also observed as under:

"39. Courts are not expert bodies in matters of medicine. The competent authority to adjudge the eligibility of a person to pursue a medical course is the Disability Assessment Board. However, courts have the jurisdiction to ensure that the manner in which the Board proceeds and functions is in compliance with established principles of law. Ultimately, the Court will have to rely on the opinion of the Board to adjudicate the legal remedies of a person with disability. The interference of Courts is not to supplant its opinion for that of the experts but to ensure that a holistic evaluation of competence is conducted and that no person's career is set at naught with the stroke of a pen."

16. The Supreme Court also noticed as under:

"53. We have noted above that Disability Assessment Boards must comply with rule of law principles by injecting transparency, fairness and consistency in their approach. The Boards must further elaborate on the reasons for the outcome of their assessment, in particular when they opine that the candidate is ineligible. The Disability Assessment Boards must focus on the functional competence of persons with disabilities and not merely quantify the disability. The quantification of disability is a task in need of a purpose within the human rights based model of disability. The functional competency approach to assessment for a medical course is globally recognised. To enable members of the Assessment Boards in effectively applying the functional competency test, they must be adequately trained by professionals and persons with disabilities or persons who have worked on disability justice. These trainings must be with a view to enhance the understanding of the Board members in assessing persons with disabilities and must not pathologize or problematize them.

54. The disability of a person is quantified at the time of availing a Unique Disability ID Card.27 The quantification of disability is moot at the point of admission to educational courses since the eligibility for a person to benefit from reservation may be evaluated using the quantification in the UDID Card. If a person with disability wants to have themself re-assessed so as to verify whether their disability falls within the prescribed parameters for reservation - they may choose to do so by updating their UDID Cards. The role of the Disability Assessment Boards must be tailored (with a functional competency approach) only for the course which the candidate seeks to pursue."

17. The Supreme Court had also given the directions for disability assessment course in Para 57, which is as under:

"57. The provision of an audit trail to assess whether a given accommodation required by a student with disability places an undue burden on the institution is a vital safeguard for transparency and fairness. Dr Satendra Singh in his report dated 20 October 2024 has made suggestions to (i) rename the Disability Assessment Boards as Ability Assessment Boards to align them better

with their intended purpose; (ii) include a doctor with disability or who is well conversant with disability rights in such Boards; (iii) use a human rights model of disability for assessment; (iv) issue guidance on clinical accommodations; (v) train the Boards in carrying out the disability competency assessment; and (vi) use the Enabling Units to serve as a contact point for clinical accommodations. As far as the inclusion of doctors with disabilities in the Disability Assessment Boards is concerned - the first respondent has issued a circular on 24 March 2022 mandating such inclusion. This direction shall be complied with by all Boards."

18. Ultimately, the following conclusions were recorded by the Supreme Court in Para 59 & Para 60, which read as under:

"59. Our conclusions in light of this case are formulated in the following terms:

a. The impugned judgment of the Nagpur bench of the High Court of Judicature at Bombay is set aside and the report of the Disability Assessment Board of AIIMS, Nagpur dated 13 August 2024 is quashed for failing to apply the statutory and regulatory standards applicable to the assessment of a person with disability;

b. A supernumerary seat shall be created at the AIIMS, Nagpur and the seat shall be allocated to the appellant, provided that he has not already secured a seat at a college of his choosing;

c. The college shall be given the report dated 20 October 2024 which makes suggestions as to the accommodations which may be extended to the appellant to successfully pursue the MBBS course;

d. The appellant shall be protected from victimisation;

e. The judgment shall apply in rem.

60. We further conclude as follows:

a. The second respondent shall issue fresh guidelines for admitting persons with disabilities into medical courses. The committee formulating the guidelines must include experts with disability or persons who have worked on disability justice. The guidelines shall comply with the judgments of this Court and contemporary advancements in disability justice;

b. The Disability Assessment Boards shall eschew from a benchmark model to test the functional competence of medical aspirants with disability. The second respondent shall issue appropriate guidelines in this regard;

a. The Disability Assessment Boards shall include a doctor or health professional with disability as per the directions of the first respondent dated 24 March 2022;

b. The conduct of the Disability Assessment Boards shall be fair, transparent and in compliance with principles of the rule of law. Attention must be paid to ensure that candidates appearing before the Board do not feel uncomfortable on account of physical or attitudinal barriers;

c. Reasonable accommodation is a gateway right to avail all other fundamental, human and legal rights for persons with disabilities. Non-availability of reasonable accommodation amounts to discrimination and violates substantive equality of persons with disabilities;

d. The inclusion of persons with disability in the medical profession would enhance the quality of healthcare and meet the preambular virtue of fraternity and the guarantees in Articles 21, 19, 14 and 15 of the Constitution;

e. Applicants to the NEET examination must be informed about the compliance of accessibility norms and provisions of reasonable accommodation available at colleges. The respondents shall issue appropriate directions to create a database with relevant information on accessibility and reasonable accommodation; and

f. Enabling Units at medical colleges shall act as points of contact for persons with disability desirous of accessing clinical accommodations."

19. My attention is also draws to another judgment of Rajasthan High Court in the case of ***Anmol Son of Subhash Chander, v. Union of India & Ors.; 2023:RJ-JP:39699-DB*** wherein the Division Bench of the Rajasthan High Court dealt with almost a similar issue and observed as under:

"34. Before proceeding to deal with the various aspects of challenge to the correctness and validity of the aforesaid certificates issued by the respective disabilities Assessment Boards in favour of appellants, it would be profitable to refer to the observations made by Hon'ble Supreme Court in the case of Vidhi Himmat Katariya & Ors. vs State of Gujarat & Ors., delineating the scope and limitations of judicial review as below:

"8. Now so far as the submission on behalfofthe petitioners that while denying admission to the petitioners the State Government and/or authorities have not considered the relevant parameters and have not considered that the respective petitioners are able to perform well is concerned, it is required to be noted that in the present case all the expert bodies including the Medical Board, Medical Appellate Board and even the Medical Board of AIIMS, New Delhi consisting of the experts have opined against the petitioners and their cases are considered in light of the relevant essential eligibility criteria as mentioned as Appendix 'H' - 'Both hands intact, with intact sensation, sufficient strength and range of motion'. Therefore, when the experts in the field have opined against the petitioners, the Court would not be justified in sitting over as an appellate authority against the opinion formed by the experts- in the present case, the Medical Board, Medical Appellate Board and the Medical Board of AIIMS, New Delhi, more particularly when there are no allegations of mala fides."

40. Learned counsel appearing for the appellant-Anmol assailed the correctness of the certificate issued by the Assessment Board mainly on the basis that the certificate of disability did not contain any observation and medical opinion in respect of the locomotor disability in regard to "both hands intact with intact sensation, sufficient strength and range of motion". Therefore, it is submitted that inference only from the conclusion remarks and reasons could not be drawn and that the experts must properly examine the appellants in respect of locomotor disability with regard to the aforesaid aspect of requirement of both hands intact with intact sensation, sufficient strength and range of motion.

We are unable to accept this submission. The certificate of disability issued in respect of the appellant is based on the examination of the appellant-Anmol by as many as three experts. Theopinion making process need not be detailed nor is the requirement of law. In compliance of the directions issued by this Court, respondent-Union of India has produced before us the papers containingexamination of appellant-Anmol

which contained various observations, which culminated in the issuance of certificate. The experts made several observations in those examination papers and then concluded that the appellant is not eligible to pursue the medical course. The total percentage of disability has also been foundto be 81%. The x-ray report has also been attached.

Reference has been made to various provisions contained in the Rights of Persons with Disability Rules, 2017 particularly Rule2(a), 2(b), 2(c), Rules of 2017, Rules of 2018 and various formats referable to these Rules to submit that the certificate is not strictly in accordance with the prescription given in this form. In our opinion, once the opinion of the experts that the appellant-Anmol is not eligible on account of the remarks contained in certificate which itself is based on medical examination of body of experts, the decision of the respondents to hold Anmol ineligible cannot be faulted on such grounds."

20. In addition to the law as explained, from perusal of the Act, it is clear that the rights and entitlements of the persons suffering from disability and persons with benchmark disability flow in their favour by virtue of Chapter II. Special provisions for persons with benchmark disability have been prescribed in Chapter VI which also include reservation in terms of the mandate of Section 34. Chapter IX of the said Act prescribes for registration of institutions for persons with disabilities and grants to such institutions. Chapter X of the said Act prescribes for certification of specified disabilities. It prescribes for the guidelines for assessment, designation of the certifying authorities, procedure for certification and appeal against the decision of the certifying authority.

21. Rule 17 and Rule 18 prescribe for manner of applying for disability certificate and the issuance of a disability certificate which after amendment in the year 2024 read as under:

***"17. Application for disability certificate and UDID Card**.- (1) Any person with specified disability may apply in Form -IV for a disability certificate/ Unique Disability Identity (UDID) Card and submit the application through UDID Portal to:*

(a) a medical authority or any other notified competent medical authority to issue such a certificate in the district of residence of the applicant as mentioned in the proof of residence in the application; or

(b) the concerned medical authority in a hospital where he may be undergoing or may have undergone treatment in connection with his disability:

Provided that where a person with disability is a minor or suffering from intellectual disability or any other Disability which renders him unfit or unable to make such an application himself, the application on his behalf may be made by his legal guardian or by any organisation registered under the Act having the minor under its care.

(2) The application shall be accompanied by –

(a) proof of identity;

(b) a recent photograph not older than six months;

(c) proof of residence;

(d) aadhaar number or aadhaar enrolment number.

***Note:** if an Aadhaar Card is submitted as proof of identity, no additional documents will be required for address proof in case Aadhaar has the same residential address"*

In the said rules, for rule 18, the following rule shall be substituted, namely:-

"18. Issue of disability certificate/ UDID Card.- *(1) On receipt of an application under rule 17, the medical authority or any other notified competent medical authority shall verify the information as provided by the applicant and shall assess the disability in terms of the relevant guidelines issued by the Central Government and after satisfying himself that the applicant is a person with disability, issue a disability certificate in Form-V and Form-VI and one of the three types of colour-coded UDID card in form VII in his favour, as the case may be. One of the three types of colour- coded UDID Card shall be issued based on the severity of the disability-*

a. White Band Card: When the disability percentage of a Person with Disability is below forty percent.

b. Yellow Band Card: When the disability percentage of a Person with Disability is forty percent or above but below eighty percent.

c. Blue Band Card: When the disability percentage of a Person with Disability is eighty percent or above."

22. Rule 19 of the said Rules prescribes that a person to whom a certificate is issued under Rule 18 shall be entitled for all the facilities, concessions and benefits admissible for persons under the scheme of the Government and of Non-Government Organization. Thus, the certificate once issued is valid for claiming the benefits as flow in pursuance to the prescriptions contained in the Act and the various statutes.

23. The said once issued under the statute and the rules framed cannot be overridden by any assessment done by any authority which is not an authority specified under the Act and the Rules.

24. In the present case, the disability of the petitioner has been reassessed by the designated centre in terms of the guidelines prescribed by the National Medical Council. The said guidelines itself appear to be in variance with the interim guidelines for assessment method as were produced before the Supreme Court which led to the disposal of ***Writ Petition (Civil) No.1093 of 2022 (supra).***

25. Irrespective of the said fact, the only function which can be assigned to the authorities designated in terms of the guidelines issued by the National Medical Commission Act can be to assess the 'functional disability' for which the candidate would have to undergo test to form a view as to whether the person who has applied for NEET Examination is functionally able to undergo the studies and the rigours of the course. The same does not authorize the designated agency to reassess the disability suffered by the candidate in terms of the certificate issued by the UDID Authority.

26. In the present case, even the certificate issued by the authority designated under the NMC Act certifies that the petitioner is not suffering from any functional disability to undergo MBBS Course, however, the same assesses the disability of 31% and thus, which is less than 40% which is prescribed for claiming the benefit which flow in favour of the person with benchmark disability defined under Section 2(r) of the Act.

27. Considering the fact that the petitioner qualified in the functional disability test and has been found suitable

for undergoing medical studies, the disability certificate issued by the authority and reflected in the UDID would prevail for the benefit of grant of reservation. The functional disability test of the petitioner has been certified by the authority designated under the NMC Act, thus, this Court has no hesitation in holding that the petitioner would be entitled to register for NEET Examination which are opened from 08.08.2025 to 11.08.2025 and the petitioner would be extended the benefit of reservation to which he is entitled in accordance with law.

28. Learned counsel for the DGME/respondent no.4 is directed to ensure that the petitioner is able to upload his candidature for claiming the benefit in terms of the directions issued by this Court.

29. Present petition stands ***allowed*** in above terms.

(2025) 8 ILRA 241
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 11.08.2025

BEFORE

THE HON'BLE MAHESH CHANDRA TRIPATHI, J.
THE HON'BLE ASHUTOSH SRIVASTAVA, J.

Writ C No. 11731 of 1982

The U.P. State Electricity Board ...Petitioner
Versus
The Special Officer Electricity & Anr. ...Respondents

Counsel for the Petitioner:
B.P. Singh, Baleshwar Chaturvedi, H.P. Dubey, L.K. Singh, Naresh Chandra Rajvanshi (Sr. Advocate), Sudhir Chandra, V.K. Singh

Counsel for the Respondents:
Abhishek Mishra, Amrit Lal Yadav, Ratnakar Bharti, S.C.

Issue for Consideration

The Petitioner, The U.P. State Electricity Board (UPSEB) filed petition challenging specific items within the Special Officer's Award-The Special Officer determined that a sum of Rs. 63,41,886/- was payable by the UPSEB to the Ex-Licensee (M/s Agra Electricity Supply Company Ltd.), along with future interest.

Headnotes

Civil law-Constitution of India, 1950-Article 226-Indian Electricity Act,1910 (Amendment 1975)-Section 7-A-Special Officer's reasoning to be in line with the Supreme court's ratio in Pilibhit Electric Supply Co.(P) Ltd-The Special Officer had rightly excluded works constructed at the cost of local bodies for street lighting and work paid for by consumers while determining the book value of all completed works-The deduction of depreciation on these works by the Special Officer was upheld-Petition dismissed.

Held

The court found that the Special Officers conclusion-that the cost of spare parts was properly accounted for-was not in violation of section 7-A(2)-Revenue collected by the board on behalf of the Ex-Licensee, not an advance from the Board and was outside the ambit of section 7-A(5)(a)-The court upheld the Special Officer's finding that the amount of Rs. 8,75,393.59 had already been credited to the consumer contribution account, and since the entire consumer contribution was already excluded from the book value of assets, no separate deduction was due-No amount of gratuity was due or paid on the date of take over, and there is no provision for proportionate deduction of gratuity under the Payment of Gratuity Act, thus the claim was not covered under section 7-A(5(C)-The court upheld the Special Officer's rejection of the deduction, as the Special Officer had found that the Ex Licensee had been utilizing the Development Reserve in the creation of Capital Assets of their

undertaking, and no amount remained in balance on the date of takeover, which is in consonance with Apex Court rulings-The court directed the petitioner(UPSEB) to pay the amount of interest due on the principal amount as provided under the Act,1910, within a period of 6 months.(Para 10 to 35) (E-6)

Case law Cited

Pilibhit Electric Supply Co. (P). Ltd. & Anr. Vs Special Officer Electricity & Anr. 1996 (ii) SCC 288,Saharanpur Electric Supply Co. Ltd. & Anr. Vs St. of U.P. & Ors (2006) 6 ADJ 670,M/s Farrukhabad Electric Supply Co. Ltd. Power House Fatehgarh & Ors Vs U.P. St. Electricity Board Shakti Bhawan, Lko. & Ors (CMWP) No. 146 1978 decided on 23.05.2008,Saduruddin Vs UOI AIR (1981) SC 1257, Anand Behari Vs RSRTC 1991 (1) SCC 731, Tinsukhia Electric Supply Co. Ltd.Vs. St. of Assam AIR (1990) SC 123:1989(3) SCC 709,U.P. St. Electricity Board Vs Upper Jamuna Valley Electric Supply Co. Ltd. AIR 2000 SC 2736-referred to.

List of Acts

Indian Electricity Act, 1910

List of Keywords

Indian Electricity Act,1910, Award, Special Officer, Ex-Licensee, Purchase Price, Book Value, Depreciation, Sixth Schedule, UPSEB, M/s Agra Electricity Supply Company Ltd, Stores and Spare Parts, Development Reserves, Employees claim, Gratuity, Assets, Take over.

Case Arising From

CIVIL JURISDICTION: WRIT-C No. – 11731 of 1982

From the Judgment and Order dated 11.08.2025 of the High Court of Judicature at Allahabad.

The U.P. State Electricity Board Shakti Bhawan Lucknow Vs. The Special Officer Electricity & Anr

Appearances for Parties

Advs. for Petitioner:

B.P. Singh, Baleshwar Chaturvedi, H.P. Dubey, L.K. Singh, Naresh Chandra Rajvanshi (Senior Advocate) Sudhir Chandra, V.K. Singh

Advs. for Respondent:

Abhishek Mishra, Amrit Lal Yadav, Ratnakar Bharti, S.C.

(Delivered by Hon'ble Ashutosh Srivastava, J.)

1. The instant writ petition has been filed questioning the Award dated 12.07.1982 rendered by the Special Officer (Electricity) appointed under Section 7-A(6) of the Indian Electricity Act, 1910 as amended vide U. P. Amendment and Validation Act, 1975 determining the net amount payable to the Ex-Licensee, M/s Agra Electricity Supply Company Ltd. (Respondent No. 2) under Section 7-A of the Indian Electricity Act, 1910 as a result of purchase of the electrical undertaking by the petitioner, The U. P. State Electricity Board (UPSEB). The relief claimed in the writ petition is being reproduced hereunder:-

a) Quashing the Award of the Special Officer dated 12th of July, 1982 (Annexure-1);

b) Granting such other and further relief as this Hon'ble Court may deem just and proper in the circumstances of the case;

c) Awarding costs of this petition.

2. The facts giving rise to the controversy involved in the instant writ petition briefly stated are that the Indian Electricity Act, 1910 was enacted as a result of the experience gained by the Government of India after enactment of the Indian Electricity Act, 1903 and the recommendations made by the Committee constituted in this regard to consider the technical and financial aspect of the matter. Section 3 of the Act of 1910 empowered the State Government to grant license to any person to supply energy in any specified area on an application made in the prescribed form and on the payment of

prescribed fee and for laying down electric supply lines for the conveyance and transmission of energy. A license cited as "The Agra City & Cantonment Licensee, 1923" was granted to the M/s Martin and Company, 6 & 7, Clive Street Calcutta for supply of electric energy in respect of the area contained within the Municipal Cantt. Limits of Agra. The License was published in the Government, United Provinces, Public Works Department, Buildings and Roads Branch Notification No. 2813W/137-1923 dated 18/12/2023. The said license was transferred to "M/s Agra Electric Supply Company Ltd." (Ex-Licensee) in accordance with the Government Notification No. 2263C/ 137W 23 dated 04.10.1924.

3. Clause 9 of the License conferred an option of purchase of the Electrical undertaking by the UPSEB after a period of 50 years from the date of the Notification of the License. The option of purchase as provided under the License was exercised on the expiry of the 50 years and, accordingly, the Agra Electric Supply Undertaking of the Ex-Licensee was taken over by the petitioner UPSEB at midnight on 17/18.12.1973.

4. On 4th February, 1975 the State Government promulgated the Indian Electricity (Uttar Pradesh Amendment and Validation) ordinance 1975 which subsequently became the U. P. Act No. 16 of 1975. The provisions of the U. P. Act No. 16 of 1975 applied to all licensees in respect of their undertakings sold after September 5, 1959 under Section 5 or Section 6 of the Indian Electricity Act, 1910 and the purchase price in respect whereof was not determined prior to the commencement of the Indian Electricity (U. P.) Amendment and Validation Act, 1975.

5. The State Government vide its Notification No. 7299-ELC/75-23-P-4 dated 31.08.1975 appointed one Sri R. K. Satsangi, as the Special Officer for determining the net amount payable under Section 7-A of the Indian Electricity Act, 1910 (as amended for its application to the State of U. P.). Subsequently, one Sri Sher Singh was appointed as the Special officer vide Notification No. 128-P-3/78-23 dated 09.01.1978 and No. 2083-P-3/79. Finally one Sri P. N. Agarwal was appointed as the Special Officer (Electricity) vide Notification No. 3317-P-3/80-23 dated 14.07.1980 and Notification No. 4317-P-3/81-23 dated 14.07.1981. The Ex-Licensee was requested to intimate the details of book value of all the assets including stores, plants and equipments as enumerated in sub-Section (2) and (4) of Section 7-A of the Electricity Act, 1910 taken over by the State Electricity Board i.e. the petitioner herein. The Ex-Licensee was also requested to intimate the details of deductions which the State Electricity Board was entitled to make under sub-section (5) of the Section 7-A. The State Electricity Board/Petitioner herein was also requested to furnish the information of assets and stores as taken over along with the claims for deductions under Section 7-A (as amended) of the Indian Electricity Act, 1910. The UPSEB authorised the Superintending Engineer, Agra Electric Supply undertaking Agra to furnish various information to the Special Officer on behalf of the UPSEB in respect of taken over licensee Agra Electric Supply Co. Ltd. The Chief Electrical Inspector to Government of U. P. was requested to intimate the amount outstanding from the Ex-Licensee on account of Government Loan Electricity Duty, and any other dues of the Government along with the amount of interest due thereon. The Chief Electrical

Inspector was also requested to furnish copy of the working sheet and the audit reports upto the date of take over of the undertaking.

6. The Ex-Licensee vide their Letter No. CE/AG/44(S)/360 dated 19.11.1975 submitted on statement showing details of the amount payable to them and the deductions which were to be made under Section 7-A of the Indian Electricity Act, 1910 (as amended). The Ex-Licensee also submitted revised statements of claims vide their letters dated 22.07.1980 and 14.11.1980. The Ex-Licensee subsequently furnished all the information and participated in the meeting held for finalising the amount payable under Section 7A of the Indian Electricity Act, 1910 (as amended).

7. The Special Officer (Electricity) processed the information provided to him strictly in accordance with the provisions of the Section 7-A of the Indian Electricity Act, 1910 (as amended for its application to the State of U. P.) and after affording full opportunity to both the parties and after going through the detailed arguments submitted by them and examining the relevant records and the provisions of the Act, rendered the impugned order and award dated 12.07.1982 determined that a sum of Rs. 63,41,886.26 was payable by the UPSEB/Petitioner to the Ex-Licensee together with future interest.

8. The petitioner by means of the instant writ petition did not challenge the validity of the entire award of the Special Officer (Electricity) but confined its challenge to the following items:-

A. Disallowing the claim of the petitioner on account of depreciation on works constructed at the cost of local bodies for street lighting and works paid for by the consumer amounting to Rs. 20,98,226/-.

B. Wrongly allowing the value of stores and spare parts taken over amounting to Rs. 83,243/-.

C. Wrongly disallowing deductions of Rs. 2,50,000/- paid by the Board to the ex-license in advance out of collections made from consumers.

D. Claim on account of Railway siding amounting to Rs. 31,595.69.

E. Initial payment received from consumers amounting to Rs. 8,75,393.59.

F. Employees claims amounting to Rs. 14,50,980.35 in respect of gratuity, overtime, unavailed leave, Supreme Court awards etc.

G. Wrongly disallowing the deductions of amount of Development reserves amounting to Rs. 19,95,398/-.

9. Sri Rakesh Pande, learned Senior Counsel assisted by Sri Abhishek Mishra, learned counsel, who has put in appearance on behalf of Agra Electric Supply Company Ltd., "Martin Burn House", 12 Mission Row, Calcutta (West Bengal) (Respondent No. 2) in opposition to the writ petition submits that the Special Officer (Electricity) while determining the amount payable (purchase price) to the Ex-Licensee in exercise of his powers has extensively dealt with the provisions of Section 7-A of the Indian Electricity Act, 1910 (amended) and applicable to the State of U. P. The amount so arrived at is wholly just, legal and has been arrived at in a proper manner. The Special Officer (Electricity) has recorded findings of fact and given adequate reasons for recording the said findings of fact. The award is wholly reasoned rendered after hearing the

parties and on an objective determination of the amount payable in accordance with Section 7-A of the Act.

A. Depreciation on Works Constructed at the cost of Local Bodies for Street Lighting and Works paid for by the Consumer

10. Sri C. B. Yadav, learned Senior Counsel appearing for the petitioner submits that the Special Officer (Electricity) while rendering the Award dated 12.07.1982 manifestly erred in disallowing the claim of the petitioner as regards depreciation on works constructed at the cost of local bodies paid for by the consumers which worked out to Rs. 20,98,226/- as the same was in contravention of the the express provision of Section 7-A (2) of the Indian Electricity Act, 1910. Learned counsel while inviting the attention of the Court to Section 7-A(2)(i) of the Act and to the definition of depreciation, submits that the Special Officer (Electricity) on an erroneous interpretation of the provisions referred to above held that the book value of the works constructed at the cost of local bodies for street lighting and work paid for by the consumers were liable to be excluded and the depreciation was required to be computed on works other than those paid by the local bodies and consumers. According to Sri C. B. Yadav, the depreciation was liable to be computed on the book value of the entire assets as reflected in the audited account of the Ex-Licensee including those created at the cost of local bodies and consumers. He further submit that the depreciation is provided for the purposes of replacement of assets when they have outlived their utility. The procedure of providing the depreciation has been laid down in para IV of the Sixth Schedule and Seventh Schedule to the Electricity (Supply) Act, 1948. The depreciation is set aside every year from the revenue earned from the consumers by the sale of electrical energy and retained in the form of reserves by the undertaking for replacing the units as and when required. The depreciation cannot be treated as profit of the Ex-Licensee so as to be disallowed as has been done in the case at hand by the Special Officer (Electricity) while determining the amount payable under Section 7-A of the Indian Electricity Act, 1910 (as amended).

11. The Apex Court in the case of ***Pilibhit Electric Supply Co. (P) Ltd. and another Vs. Special Officer (Electricity) and another reported in 1996 (ii) SCC 288*** while dealing with a similar issue regarding depreciation in Para 11 laid as under:-

In order to appreciate the rival contentions on this claim it is necessary to refer to the relevant provisions of the Sixth Schedule that applied in 1975 when the appellant's undertaking was acquired with effect from 1st December 1975. The relevant provisions for depreciation are found in paragraphs VI to XII of the Sixth Schedule as applicable at the relevant time.

They read as under:

"VI. (i) There shall be allowed in each year in respect of depreciation of fixed assets employed in the business of electricity supply such an amount as would, if set aside annually throughout the prescribed period and accumulated at compound interest at 4 per centum per annum, produce by the end of the prescribed period an amount equal to 90 per cent of the original cast of the asset after taking into account the sums already written off or set aside in the books of the undertaking. Annual interest on the

accumulated balance will be allowed as an expense from revenue as well as the annual incremental deposit:

Provided that, within 3 months from the date upon which these principles are enacted, a licensee may elect to adopt the straight line method of depreciation accounting in lieu of the compound interest method above prescribed.

Straight-line method of depreciation accounting means the method whereby an allowance is made in each year in respect of depreciation of fixed assets employed in the business of such an amount as is arrived at by dividing ninety percent of the original cost of the asset by the prescribed method in respect of such asset.'

(2) The year in which any asset becomes available for use in the business and the relative cost thereof shall, in the absence of satisfactory record, be determined by the State Government. All sums credited to depreciation account shall be invested only in the business of electricity supply of the undertaking or where it is not practicable to so invest them in investments approved by the State Government.

(3) Any sums invested in investments approved by the State Government under sub-paragraph (2) shall, as soon as practicable, be utilized in the business of electricity supply of the undertaking and if such sums are not so utilized they shall not form part of the capital base under clause (d) of sub-paragraph (1) of paragraph XVII.

VII. (1) Where any fixed asset ceases to be available for use through obsolescence, inadequacy, superfluity or for any other reason, it shall be described in the books of the licensee as no longer in use and no further depreciation in respect thereof shall be allowed as a charge against revenue.

(2) The written down cost of such fixed asset shall be charged against the Contingencies Reserve :

Provided that where the accumulations in the Contingencies Reserve are not sufficient to permit the charging of the entire written down cost of the asset, the excess amount may, be included in the capital base for the purpose of clause (a) of sub-paragraph (1) of paragraph XVII.

(3) The amount for which any such fixed asset is sold or the amount of its scrap value when actually realised shall be credited to the Contingencies Reserve.

VIII. When any asset has been written down in the books of the undertaking to 10 percent, or less of its original cost, no further depreciation shall be allowed in respect of that asset.

IX. When any fixed asset is sold for an amount exceeding its written down cost the excess after deducting all taxes payable thereon shall be credited to the Contingencies Reserve.

X. Except with the previous consent of the State Government, no sums shall be carried forward to a reserve and no dividends in excess of 3 percent shall be paid on share capital and no other distribution of profits shall be made to the shareholders in respect of any year of account so long as any of the following sums remain to be written off in the books of the undertaking, namely:-

(i) normal depreciation due for that year of account calculated in accordance with the provisions of paragraph VI;

(ii) equated instalment in respect of arrears of depreciation, computed in accordance with the provisions of paragraph XI, for that year of account;

(iii) arrears, if any, in respect of normal depreciation referred to in clause

(i), accumulated after the date of application of the provisions of the Sixth Schedule to the licensee;

(iv) arrears, if any, in respect of equated instalments referred to in clause (ii).

XI. Arrears of depreciation calculated in accordance with paragraph VI may be written off by equated payments over the remainder of the prescribed period and the amount so set aside in the books of the undertaking may be taken into account in any year as a special appropriation for purposes of assessing the clear profit.

XII. Where contributions are made by consumers towards the cost of construction of service lines constructed after the date on which this Act comes into force only the net cost of such service lines after deducting such contributions shall be included in the cost of fixed assets for the purposes of arriving at the capital base :

Provided that for the purposes of depreciation under paragraph VI, the total original cost of construction of the service lines shall be taken into account."

It is, of course, true that as mentioned in paragraph XII of the Sixth Schedules while considering the question of total capital base which includes the assets consisting of service lines for installation of which contributions are made by consumer towards the construction of such service lines, the net cost of such service lines after deducting such contributions has to be included in the costs of such fixed assets. It i also true that, however, for computing the depreciation as per paragraph VI on such assets, wherein consumers have contributed towards their acquisition, the total original cost of construction of the service lines had to be taken into account. The Special Officer has applied paragraph XII whole had while deducting the depreciation from the book value of all completed works which are acquired from the licensee as per Section 7-A(2) (i). In our view the said approach of the Special Officer is ex facie unjustified. The reasons are obvious. Paragraph XII of the Sixth Schedule to the Supply Act deals with a special type of asset, namely, service lines which are installed by the licensee wherein the consumers have contributed towards the cost of construction of such service lines. For this type of assets, in computing the capital base of the licensee, the contribution by the consumers has to be excluded but for computing depreciation under paragraph VI for such assets, namely, the service lines, the total original cost of construction of service lines has to be taken into account which may include the cost of construction of service lines incurred by the licensee as well as the other part of the component of the cost of construction of service lines which has come from the pockets of the consumers. But entire paragraph XII deals with only one type of assets, namely, service lines construction cost of which is wholly or partially borne by the consumers. Paragraph VI of Schedule VI, however, is general in nature and covers all types of fixed assets and the method of computation of depreciation on these fixed assets. It is axiomatic that fixed assets employed in the business of electricity supply may consist of those assets which are wholly acquired at the cost of the licensee and may also include assets like service lines which may partly be acquired and installed at the cost of the licensee and partly out of contribution of the consumers who would be interested in getting electrical supply at their own premises and for that purpose they may be willing and may be made to pay contribution towards extension of service lines to their premises. Therefore, reference to service lines in paragraph XII

of Schedule VI is with a view to finding out as to how depreciation has to be computed for such a special type of asset, namely service lines wherein consumers have also contributed towards their installation. Consequently on a conjoint reading of paragraph VI and paragraph XII of Sixth Schedule the depreciation on such service lines installed by drawing upon the contributions from the consumers is required to include the total original cost of construction of such service lines and that would necessarily include the component of the amount of cost contributed by the consumers. However that has nothing to do with the computation of depreciation on the assets which are acquired by the acquiring authority under Section 6-A read with Section 7-A(2)(i). It is now well settled that service lines whose installation had been paid for by the consumers are not to be compensated for and they vest in the acquiring authority under Section 6-A read with Section 7-A free of cost of payment of compensation to the licensee. The logic underlying this settled legal position is that as the licensee had not spent from his pocket for installing such an asset, he was not required to be compensated for that part of the asset which was paid for by consumers. A mere look at Section 7-A(2)(i) shows that the gross amount payable to such licensee for acquiring his assets amongst others has to consist of an amount of the book value of all completed works in the beneficial use pertaining to the undertaking. While computing such book value of acquired assets the works paid for by the consumers have to be ignored and omitted from consideration. Therefore, the amount of book value computed as per Section 7-A(2)(i) will consist of only those works which are for beneficial use of the undertaking which was installed and acquired by the licensee at its own cost. Having computed this amount the next question survives about deducting the depreciation on such acquired assets. That would naturally imply deduction of depreciation on such assets from the amount so computed being the book value of the completed works installed and acquired at the cost of the licensee. If these are the assets whose book value has to be computed as per Section 7-A(2)(i) the question of deduction from that amount would necessarily imply deduction of depreciation on these very assets. In other words the field is clearly earmarked both for computation of the book value of the concerned assets as also fro deduction of depreciation on such assets as enjoined by the second part of Section 7-A(2)(i) itself. It is axiomatic that before any depreciation is deducted from the computed book value of an asset it should be for the same asset whose book value has been ascertained and from that value depreciation is to be deducted. It cannot be that for computing the book value of licensee's assets only self-financed assets are to be taken into consideration and not the works paid for by the consumers but while deducting from this very amount of book value the depreciation is to be deducted qua not only the assets whose book value is computed but also qua the assets belonging to somebody else like the consumers who have paid for the works. This would on the face of it be very anomalous and unfair. It is also pertinent to note that from the book value of the assets which were financed by the licensee as computed as per Section 7-A(2)(i) when a question arises about deducting the depreciation, only the calculation of such depreciation on the concerned asset is to be done in accordance with Sixth Schedule because the words advisedly used by the Legislature in Section 7-A(2)(i) in this connection are

less depreciation calculated in accordance with the Sixth Schedule read with the Seventh Schedule. Therefore, only the method of calculation of depreciation has to be applied by way of reference to the Sixth Schedule. But the type of asset for which depreciation has to be computed is not to be gathered from the Sixth Schedule. It has to be gathered from the very first part of Section 7-A(2)(i), namely, only self-financed fixed assets whose book value is to be computed by the Special Officer for payment to the licensee and from that amount depreciation is to be deducted which would necessarily mean depreciation on the very same asset which has undergone the book valuation as per Section 7-A(2)(i). If for calculating the book value of such assets the works paid for by the consumers are to be excluded they necessarily cannot be included for the purpose of ascertaining deductible depreciation on such assets. Consequently reference to paragraph XII Schedule VI would be totally out of picture and redundant so far as the scheme of Section 7-A sub-section (2)(i) is concerned. It may be that the licensee might have obtained benefit of such depreciation on consumer paid assets under Income Tax Act or any other statutory provision but that is totally irrelevant for deciding the question whether the deduction of depreciation on the concerned assets whose book value is to be computed as per Section 7-A(2)(i), paragraph XII of Sixth Schedule could at all be pressed in service. It is, therefore, not possible to agree with the submission of learned senior counsel for the respondents and also the learned counsel who appeared for the State of U.P. that for the purpose of deducting the depreciation the assets which are not included in computing the book value as per Section 7-A(2)(i), namely, the consumer-financed assets also could be taken into consideration. In our view the Special Officer was patently in error when he computed the depreciation on the assets under Section 7-A(2)(i) by adding the amount of depreciation on the service lines which were paid for by the consumers. Reference to paragraph XII of Sixth Schedule in this connection was wrongly made and the said paragraph was wrongly pressed in service by the Special Officer. In this connection it has also to be kept in view that the amount of Rs.2,48,718/- being the depreciation amount on the works constructed at the cost of consumers was not disputed by the Board and the only contention of the Board before Special Officer was that as per paragraph XII of Sixth Schedule the said amount of depreciation was also to be deducted from the book value of the assets acquired by the Board under Section 6-A read with Section 7-A. As the reliance placed on paragraph XII of Sixth Schedule by the Special Officer is found by us to be unjustified and as the amount of depreciation deducted from the book value on this score is undisputedly Rs.2,48,718,81 this amount of depreciation deducted from the book value on this score is undisputedly Rs.2,48,718.81 this amount must be treated to have been wrongly deducted from the book value by way of depreciation on consumer-financed assets, namely, service lines.

12. The above view expressed by their Lordships of the Apex Court in **Pilibhit Electric Supply Co. (P) Ltd. (supra)** was followed by this Court in ***Saharanpur Electric Supply Company Ltd. and another vs. State of U. P. & others*** reported in **2006 (6) ADJ 670** and also in the case of ***M/s Farrukhabad Electric Supply Co. Ltd. Power House Fatehgarh and others vs. U. P. State Electricity Board Shakti Bhawan,***

Lucknow and others (Civil Misc. Writ Petition No. l46 of 1978 decided on 23.05.2008.

13. In the instant case, the Special Officer (Electricity) has duly considered the rival submissions of the petitioner (U. P. State Electricity Board) and the Ex-Licensee, M/s Agra Electric Supply Undertakings and has held that the provisions of Section 7-A(2) (i) requires the exclusion of all works constructed at the cost of local bodies for street lighting and the work paid for by the consumers while determining the book value of all completed works in beneficial use pertaining to the undertaking taken over by the Board, irrespective of the period when they were constructed. The Special Officer after going through the details of the arguments submitted by the Ex-Licensee and the Petitioner/Board and considering the provisions of the Act has held that the book value of all the completed works in beneficial use pertaining to the undertaking taken over by the SEB (excluding works constructed at the cost of local bodies for street lighting and works paid for by consumers less the amount of depreciation calculated in accordance with the 6th Schedule read with the 7th Schedule to the Electricity (Supply) Act, 1948 is to be taken. The Special Officer (Electricity) has determined the amount of depreciation on works constructed at the cost of local bodies for street lighting and works paid for by the consumers as Rs. 20,98,226/- and has accordingly deducted the same from the total depreciation on all completed works pertaining to the undertaking and taken over by the Board i.e. Rs. 1,59,88,944/-.

14. Having gone through the reasoning of the Special Officer (Electricity) while dealing with the issue of depreciation and disallowing the claim of the Petitioner/Board on account of depreciation on works constructed at the cost of Local Bodies for street lighting and works paid for by the consumers amounting to Rs. 20,98,226/- we find that the same is in consonance with the ratio of the law laid down by the Apex Court in **Pilibhit Electric Supply Co. (Pvt.) Ltd., and another (supra)** followed by this Court in **Saharanpur Electric Supply Company Ltd., (supra)** and in the case of M**/s Farrukhabad Electric Supply Co. Ltd., (supra)** and calls for no interference by this Court.

B. Stores and Spare Parts

15. Sri C. B. Yadav, learned Senior Counsel assisted by Sri Baleshwar Chaturvedi, learned counsel next contended that the Special Officer (Electricity) while rendering the Award dated 12.07.1982 committed manifest error in allowing the value of Stores and Spare Parts taken over amounting to Rs. 83,243/-. Sri C. B. Yadav, learned Senior Counsel submits that once the calculation has been made on the basis of Book Value which excludes stores and spare parts along with Plant and Machinery, the finding that spare parts have to be paid for separately is misconceived and the award of the Special Officer (Electricity) is vitiated on this score.

16. The parties are at common ground that the book value of all stores, including spare parts taken over and in the case of used stores and spare parts if taken over, such sums is to be decided by the Special Officer (Electricity) as per Section 7-A (2) (iii) of the India Electricity Act, 1910 (as amended). The Special Officer

(Electricity) in his Award has elaborately dealt with the issue and arrived at a conclusion that the cost of spare part as appearing in List (C) was prepared by the Board after physical verification of stores. Some of the items appearing in the Bills produced by the Ex-licensee have been duly accounted for in the Stores Account. There is no such record produced by the Board by which it can be established that remaining items of the Bills produced by the Ex-Licensee have not been debited to the Stores Account or to prove that cost of these items have been debited to Capital Account. Sri Yadav has been unable to impress upon us that the conclusion drawn by the Special Officer (Electricity) is factually incorrect or in violation of the Section 7-A (2) (iii) of the Indian Electricity Act, 1910. The findings returned by the Special Officer (Electricity), in this regard calls for no interference.

C. Amount, if any, already paid in advance

Sri C. B. Yadav, learned Senior Counsel in furtherance of the challenge to the Award dated 12.07.1982 submits that the Special Officer (Electricity) grossly erred in disallowing deductions of Rs. 2,50,000/-paid by the Board to the Ex-Licensee in advance out of collections made from consumers. It is not in dispute that the amount of Rs. 2,50,000/- is reflective of the revenue realised by the Board on behalf of the Ex-Licensee. Sri Yadav has argued that the said sum was included in the total sum of Rs. 34,10,54,072/- as per the calculation at Page 63 of the Award. Admittedly, the amount is not an advance received from the Board by the Ex-Licensee and the Special Officer (Electricity) has rightly arrived at the conclusion that it was not advance from the Board but the amount collected by the Board on behalf of the Ex-Licensee and, therefore, outside the ambit of Section 7-A (5) (a) of the Act. The submissions of Sri C. B. Yadav, do not merit considerations and is hereby rejected.

D. Claim on Account of Railway Siding Charges

17. Sri C. B. Yadav, learned Senior Counsel appearing for the petitioner has fairly submitted that he does not wish to press this issue. Since, the issue is not being pressed on behalf of the petitioner, we refrain from conveying our observations. As a result, the findings/conclusion of the Special Officer (Electricity) on the issue is upheld.

E. Initial Payment received from Bulk Supply Consumers

19. Sri C. B. Yadav, learned Senior Counsel for the petitioner submits that an amount of Rs. 13,22,996.80 as advance from 38 Bulk Supply Consumers with the agreement that the same would be refunded by adjustment in 240 instalments upto the date of the take over had been taken but only a sum of Rs. 4,47,603.21 was adjusted by the Ex-Licensee, thus leaving a balance of Rs. 8,75,393.59 to be refunded to the consumers. This claim was disallowed by the Special Officer by returning a finding that the Ex-Licensee had credited this amount towards the consumers contribution towards service line. The consumers contribution towards service lines formed a separate head of deduction already allowed, this amount of 8,75,393.59 could not be allowed again and the award of the Special Officer (Electricity) suffers from patent illegality in this regard as this amount was

liable to be deducted from the amount payable to the Ex-Licensee.

20. Prima-facie, we find the submissions of Sri C. B. Yadav, learned Senior Counsel to be attractive but, however, on the perusal of the record we find that the amount of Rs. 8,75,393.50 is referable to 38 consumers to whom the Board has been refunding in monthly instalments. It is verified from the records of the Ex-Licensee that the amount received as advance from Bulk Consumers have been credited to consumer contribution account and adjustment for amount refunded in instalments has also been made in the accounts. The entire amount of consumer contribution has already been excluded from the book value of assets. The Special Officer (Electricity) has returned a finding that no amount is to be deducted separately on this account. The Special Officer has recorded findings of fact in this regard which calls for no interference.

F. Employees Claims amounting to Rs. 14,50,980.35 in respect of Gratuity, Overtime, Unavailed Leave, Supreme Court Award etc.

21. Sri C. B. Yadav, learned Senior Counsel for the petitioner submits that the Special Officer (Electricity) while rendering the Award dated 12.07.1982 disallowed a sum of Rs. 10,95,431.50 towards gratuity in respect of workers, a sum of Rs. 2,29,538/- towards gratuity in respect of Agreemental Staff, a sum of Rs. 48,622.67 towards Agreemental Staff refused/unavailed leave, a sum of Rs. 38,000/- towards Railway fare activities, a sum of Rs. 36,173.68 towards Supreme Court Awards and a sum of Rs. 3,250.50 towards claim of overtime pertaining to Ex-Licensee period totalling Rs.14,50,980.35.

22. Sri Yadav vehemently submits that the amount towards gratuity has been disallowed on the ground that no gratuity was due for payment to the taken over employee on the date of their take over. It is argued that the gratuity is payable to an employee on the termination of his employment after he has rendered continuous service of not less than 5 years, on his superannuation, retirement or resignation, death or disablement due to accident at the rate of 15 days wages based on the rate of wages last drawn by the employee concerned. The onus lies on the employer. It is argued that the Ex-Licensee was liable to pay gratuity at the rate of wages that were being drawn by the employee taken over by the Board on the date of vesting/taking over. It is argued that the share of the Ex-Licensee towards gratuity of the employees up to the date of taken over was the liability of the Ex-Licensee and even though was a differed liability the same was owed to the Board and as such was not liable to be disallowed. Likewise it is argued that the Special Officer (Electricity) manifestly erred in law in disallowing the claim of the Board towards agreemental/staff refused/unavailed leave on the ground that no such amount was actually paid by the Board and could not be included under Section 7-A(5)(c) of the Act.

23. In **Saduruddin Vs. Union of India** reported in **AIR 1981 SC 1257** the Apex Court has held that an employee shall be entitled to gratuity from the Transferee undertaking if there is continuity of service.

24. In **Anand Behari Vs. RSRTC** reported in **1991(1) SCC 731** the Apex

Court held that when services are transferred to a new entity without break, gratuity must include the entire period of past service.

25. In our opinion, gratuity is a one time lump-sum payment made by an employer to an employee as a token of appreciation for long and meritorious service, usually payable on retirement, resignation (after qualifying service), death or disablement. It is not a periodic payment such as salary or pension. In the case at hand, we find that no material was placed before the Special Officer (Electricity) to establish the fact that amount towards gratuity was due or paid. The situation for payment of gratuity as has been stated earlier would arise only on the retirement, resignation, death or disablement.

26. We have carefully gone through the reasoning of the Special Officer (Electricity) in disallowing the claim of the Board in respect of the above-mentioned heads and find that the reasoning adopted is in consonance with the law and calls for no interference by this Court. The Special Officer (Electricity) has recorded categorical findings that neither any amount of gratuity was due for payment to the taken over employees of the Ex-Licensee on the date taking over of the undertaking nor the amount was paid over to the employees/officers and further that there is no provision for proportionate deduction of gratuity under the payment of gratuity Act and hence the claim is not covered under Section 7-A(5)(C) of the Indian Electricity Act, 1910. Likewise, the Special Officer (Electricity) has recorded finding of fact taking into consideration the decision of the Apex Court rendered in Civil Appeals No. 1567 of 1968, 585-1026 and 1027-1032 of 1969, to the effect that no amount on account of unavailed/refused leave and travel facility has been paid by the Board to the taken over employees and consequently, the same cannot be considered under Section 7-A(5)(C) of the Indian Electricity Act, 1910 (as applicable to the State of U. P.).

G. <u>Disallowing Deductions of Amount of Development Reserves</u>

27. Lastly, Sri C. B. Yadav, learned Senior Counsel submits that the Special Officer (Electricity) committed manifest error of law in deductions towards development reserves amounting to Rs. 19,95,398/-. It is argued that the Special Officer (Electricity) has wrongly disallowed the claim of the Petitioner/Board towards Development Reserve under Section 7-A(5)(h) of the Indian Electricity Act, 1910 (as amended and applicable to U. P.) inasmuch as clause V(A) provides that where the undertaking is purchased by the Board or the State Government, the amount of Development Reserve may be deducted from the price payable to the licensee. Sub-section 5(h) of Section 7-A of the Act also provides that the unpaid amount of the Development Reserve at the instance of the Licensee to the purchaser shall be a deduction on the gross amount payable. It is further argued that the accounts of the Ex-Licensee upto the date of vesting showed a Development Reserve of Rs. 19,95,398 and since the said sum was not paid by the Ex-Licensee to the Board (Purchaser) the Board was entitled to deduct the said amount from the gross amount payable to the Ex-Licensee. It is further argued that the Special Officer (Electricity) misconstruing and miss-interpreting the decision of Apex Court dated 01.05.1973 rendered in Civil Appeal No. 1201 of 1967 has disallowed the claim

of the petitioner has resulted in double benefit to the Ex-Licensee to the tune of Rs. 19,95,398/-

28. From the perusal of the Award of the Special Officer (Electricity) rendered on 12.07.1982, we find that the Special Officer after due consideration of the respective arguments of the Board and the Ex-Licensee has returned a finding as under:-

"After going through the details of the arguments submitted by the Board and the ex-licensee, and the provisions of the Act, I hold that the amount of Development Reserve to be deducted under Sec. 7-A(5)(h) of the Indian Electricity Act, 1910 (as amended for its application to Uttar Pradesh) is the amount remaining in balance with the licensee and no deduction is to be made in respect of the amount utilised in the business of Electricity Supply Undertaking. A statement showing the utilisation of Development Reserve in the business of the undertaking submitted by the ex-licensee was checked from the accounts of the ex-licensee and a statement showing year-wise position after including the amount of consumers security deposit was prepared and it is observed that the ex-licensee had been utilising the amount of Development Reserve in the creation of capital assets of their undertaking and there was no amount remaining in balance on the date of take over of the undertaking. Therefore, no amount is deductible on account of Development Reserve from the gross amount payable to the ex-licensee. Thus, a sum of Rs. 17,44,369/- as per details given is deductible under Sec.7-A(5)(h) of the Indian Electricity Act, 1910 (as amended) from the gross amount payable to the ex-licensee.

(1) Tariffs & Development Control Reserve Nil

(2) Contingencies Reserve Rs. 17,44,369/-

(3) Development Reserve Nil

Total Rs. 17,44,369/-

(Rupees Seventeen Lacs Forty Four Thousand Three Hundred Sixty Nine only).

29. The issue as regards Development reserve was dealt with by the Apex Court in ***Tinsukhia Electric Supply Co. Ltd., versus State of Assam*** reported in ***AIR 1990 SC 123, 1989 (3) SCC 709.*** Their Lordships of the Apex Court read the statutory provisions in the manner that if any part of the reserve is invested in "Fixed Asserts" and the reserves in the form of "Fixed Assets" are taken over pursuant to the acquisition what remains to be accounted for by the licensee is only the amount remains balance in the concerned accounts. Meaning thereby, in case the amount under the "Development Reserve" having already been invested in the form of fixed assets that is already transferred to the Board and in case the amount is not invested and remained with the Ex-Licensee, the same has to be transferred by it.

30. Further, the ***Apex Court in U. P. State Electricity Board versus Upper Jamuna Valley Electric Supply Co. Ltd.***, reported in ***AIR 2000 SC 2736*** has observed that the "Development Reverse" is available for investment in the business of electricity supply of the undertaking.

31. The Special Officer (Electricity) has recorded categorical

finding of fact that the ex-licensee had been utilizing the amount of Development Reserve in the creation of Capital Assets of their undertaking and there was no amount remaining in balance on the date of take over of the undertaking.

32.In our view, the Special Officer (Electricity) has rightly rejected the claim of the petitioner and disallowed the deductions of the amount of Development Reserve. The conclusion of the Special Officer (Electricity) is in consonance with the law laid down by the Apex Court. We thus do not find any error in the view taken by the Special Officer (Electricity) and the findings recorded is accordingly sustained.

33. In view of the above, the limited challenge to the Award dated 12.07.1982 rendered by the Special Officer (Electricity) appointed under Section 7-A(6) of the Indian Electricity Act, 1910 (as amended and applicable to the State of U. P.) determining the purchase price payable to the Ex-Licensee, M/s Agra Electricity Supply Company Ltd., fails. The writ petition is devoid of merits and is, accordingly, **dismissed. Consign to records.**

34. Before parting, we deem it appropriate to bring on record the statement of fact made at the Bar that the principal amount under the Award dated 12.07.1982 had been deposited by the petitioner on 17.09.1991 before the Calcutta High Court in Liquidation proceedings and the same was also released to the Ex-Licensee, M/s Agra Electricity Supply Company Ltd. (Respondent No. 2) against the bank guarantee. However, the interest on the said amount remains to be paid. Since, we have upheld the award without making any modifications to the same, we direct the petitioner to pay the amount of interest due thereon, as provided under the Indian Electricity Act, 1910 within a period of 6 months from the date of production of a certified copy of the order before the authority concerned.

35. There shall, however, be no order as to costs.

In Ref.: Civil Misc. Recall Application No. 18 of 2023

1. Heard Sri Rakesh Pande, learned Senior Advocate assisted by Sri Abhishek Mishra, learned counsel for the Respondent No. 2/applicant and Sri C. B. Yadav, learned Senior Counsel assisted by Sri Baleshwar Chaturvedi, learned counsel for the petitioner on the civil misc. recall application.

2. The recall application has been filed seeking recall of the order dated 24.05.2019 passed by this Court whereby the delay has been condoned and the order dated 07.12.2009 dismissing the writ petition for non prosecution has been recalled. The writ petition has been restored to its original number and directed to be listed before appropriate Bench.

3. Sri Rakesh Pande, learned Senior Advocate has vehemently argued that the writ petition was filed by the U. P. State Electricity Board, Shakti Bhawan, 14 Ashoka Marg, Lucknow, assailing the award of the Special Officer (Electricity) appointed under Section 7-A (6) of the Indian Electricity Act, 1910 as amended vide U. P. Amendment and Validation Act, 1975 determining the net amount payable to the ex-licensee-applicant herein.

4. The writ petition was dismissed for non prosecution vide order dated

07.12.2009. The U. P. State Electricity Board ceased to exist after coming into force of the Electricity Act, 2003 and constitution of the U. P. Power Corporation Limited in the year 2003 itself. The U. P. Power Corporation Limited chose not to get itself impleaded and the said application came to be filed only in September, 2023.

5. It is argued that the restoration of the writ petition dismissed for non prosecution on 7.12.2009 was sought by a restoration application being preferred by the U. P. Electricity Board even without U. P. Power Corporation Limited or the Dakshinanchal Vidyut Vitran Nigam Limited being impleaded as petitioners in the writ petition.

6. It is thus sought to be argued that the order dated 24.05.2019 could not have been passed and the recall application is liable to be allowed and the writ petition would be deemed to have been dismissed for default in view of the order dated 07.12.2009.

7. We have heard learned counsel for the parties and have also gone through the affidavits exchanged between the parties in respect of the recall application.

8. Having gone through the respective pleadings, we are of the opinion that the recall is being sought on hyper technical grounds and issue involved in the writ petition is liable to be adjudicated on merits. We also find from the records that the impleadment of the U. P. Power Corporation Limited as well as Dakshinanchal Vidyut Vitran Nigam Limited was allowed by this Court vide order dated 18.10.2024.

9. In view of above, we do not find any merit in the recall application. The same is accordingly**, rejected.**

(2025) 8 ILRA 256
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 11.08.2025

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE PRAVEEN KUMAR GIRI, J.

Writ C No. 21492 of 2025

Axis Bank Ltd. ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Arpita Tarmali, Sanjay Kumar Gupta

Counsel for the Respondents:
C.S.C.

Issue for Consideration

Issue pertains to whether, after order u/s 14 of SARFAESI Act, 2002 has been passed directing delivery of possession of secured asset to secured creditor, the Sub-Divisional Magistrate can withhold execution of such order on the ground that tenant of borrower has obtained stay order from Civil Court, particularly when said order has been passed without impleading secured creditor and in view of statutory bar u/s 34 of SARFAESI Act.

Headnotes

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - ss.14, 17, 34 - Transfer of Property Act, 1882 - s.65A - Petitioner, filed present writ petition u/a 226 of Constitution of India seeking direction to Sub-Divisional Magistrate to take physical possession of secured asset being land comprised in Khasra No. 373 measuring 12,590 square metres, in pursuance of order dated 17.02.2025 passed u/s 14 of SARFAESI Act, 2002 - Despite such order, possession was not handed over to Bank, as purported tenant

of borrower had instituted a civil suit and obtained order of status quo/stay from Civil Court, without impleading petitioner Bank - State authorities contended that lease was created after mortgage was effected in favour of Bank - Petitioner argued that civil court's order was non est in law, being barred by Section 34 of SARFAESI Act and relied upon precedents - Controversy centered on whether civil court's order could legally restrain delivery of possession to secured creditor pursuant to order passed u/s 14 of SARFAESI Act.

Held: It is evident from cited judgments that any tenancy created during pendency of a mortgage without the secured creditor's permission is governed by Section 65A of Transfer of Property Act, and compliance with its conditions must be determined exclusively by Debts Recovery Tribunal - Tenant claiming such rights must file application u/s 17 before DRT - Once an order is passed under Section 14, the authorities must act in accordance with it and the provisions of the Act; any attempt by borrowers to evade their liability cannot be entertained - In the instant case, borrowers, after availing the loan, executed a registered lease deed without bank's knowledge - In such circumstances, it was incumbent upon tenant to approach DRT for appropriate relief - However, tenant procured order of status quo / stay from Civil Court by suppressing material facts, including mortgage of property by borrower without reference to secured creditor, that is, petitioner bank - Learned counsel for respondent No. 5 submits that application u/s 17 has been filed before DRT seeking stay of proceedings initiated u/s 14 of Act - Thus, authorities are directed to act in accordance with Supreme Court's judgment in ***Bajarang Shyamsunder Agarwal (infra)*** and hand over possession to petitioner bank - Order obtained by tenant, without impleading petitioner bank, is non est in law being in contravention of Section 34 of Act. [Paras 7 to 12] (E-13)

Case Law Cited

M/S Trilokchand Fabrication Pvt. Ltd. v. State of U.P. and Others **passed in Writ-C No. 39914 of 2023 on 11.01.2024;** Bajarang Shyamsunder Agarwal v. Central Bank of India and another**; (2019) 9 SCC 94 - referred to**

List of Acts

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; Transfer of Property Act, 1882

List of Keywords

Article 226 of Constitution of India; Mandamus**;** Physical possession**;** Secured asset; Order u/s 14 of SARFAESI Act; Sub-Divisional Magistrate (SDM)**;** Secured creditor**;** Borrower**;** Mortgage of property**;** Tenant of the borrower**;** Civil suit; Civil Court**;** Stay order**;** Non-est in law**;** Bar u/s 34 of SARFAESI Act**;** Registered instrument**;** Tenancy**;** Transfer of Property Act**;** Debts Recovery Tribunal**;** Legal impediment**;** Suppression of material facts**;** Registered lease executed after mortgage; Possession to be delivered to petitioner bank; Stay from DRT.

Case Arising From

ORIGINAL JURISDICTION: Writ C No. 21492 of 2025

From the Judgment and Order dated 17.02.2025 of Sub - Divisional Magistrate, Dhoulana, District- Hapur

Appearances for Parties

Advs. for the Petitoner:
Arpita Tarmali, Sanjay Kumar Gupta

Adv. for the Respondent:
C.S.C.

(Delivered by Hon'ble Shekhar B. Saraf, J.)

1. Heard learned counsel appearing on behalf of the parties.

2. This is a writ petition under Article 226 of the Constitution of India wherein the writ petitioner has made the following prayer:

"(i) Issue a writ, order or direction in the nature of Mandamus

commanding to respondent no. 3 (Sub-Divisional Magistrate (SDM), Dhoulana, District- Hapur) to take physical possession of the property in question i.e. All that part and Parcel of Land/property Khasra No. 373, Situated at Village-Ravali, Pargana & Tehsil- Dhaulana, District- Hapur having Area 12590 Sq. Mt in pursuance to order dated 17.02.2025 passed by respondent no. 3 as subordinate of respondent no. 2 under section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002) and forwarded to petitioner Bank."

3. Learned counsel appearing on behalf of the petitioner bank submits that in spite of an order dated 17.02.2025 passed under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the Act'), physical possession of the property has not been provided to the petitioner.

4. Learned counsel appearing on behalf of the State submits that the borrowers have created a mortgage of the property after grant of the loan to them. He further submits that a tenant of the borrowers has filed a suit and obtained a stay order from the Civil Court without making the petitioner bank a party in the said suit.

5. Learned counsel appearing on behalf of the petitioner submits that the order passed by the Civil Court is non-est in law as the same is barred by Section 34 of the Act. Learned counsel further relies on the judgment of a coordinate Bench [authored by one of us (Shekhar B. Saraf, J.)] in **M/S Trilokchand Fabrication Pvt. Ltd. vs. State of U.P. and Others** passed in Writ-C No. 39914 of 2023 on 11.01.2024. He relies specifically on the summary at paragraph No.40 of the said judgment, which is delineated below:

"40. We have outlined the principles emerging from the aforesaid discussion below:

a) As mandated by Section 107 of the TPA 1882 and Section 17 of the IRA, 1908, the lease of an immovable property, beyond the period of one year can only be created by a registered instrument. An oral agreement, accompanied by the delivery of possession cannot create a lease beyond the prescribed period under Section 107 of the TPA 1882. An unregistered lease, cannot be taken into consideration by the courts, given the bar placed under Section 49 of the IRA, 1908.

b) A tenancy where no period has been fixed, or a tenancy which is deemed to be a month-to-month tenancy, cannot entitle a tenant to seek possession of a secured asset beyond a period of one year when proceedings have been initiated under Section 14 of the SARFAESI Act.

c) If a tenant intends to claim the possession of a secured asset when proceedings have been initiated under Section 14 of the SARFAESI Act it must necessarily be done by way of a registered instrument executed in his favour.

d) When a tenant becomes aware, that proceedings have been initiated under Section 14 of the SARFAESI Act he can either approach the concerned officer authorised by the DM/CMM to take possession of the secured asset, or surrender the possession of the secured asset. The authorised officer, in a case where, the tenant, resists surrendering the possession of a secured asset, will file an application accompanied by an affidavit containing the necessary details before the

DM/CMM. The DM/CMM on receipt of such an application, will determine the rights of the tenant in accordance with the law. If the DM/CMM comes to the conclusion that the tenant has a valid lease entitling him to possession of the secured asset, he will not pass an order delivering the possession of the secured asset to the creditor.

e) Even if a tenant approaches the DRT, under Section 17 of the SARFAESI Act, the DRT cannot restore possession of the secured asset to the tenant. The DRT is only empowered to restore possession of the secured asset to the borrower, and not anyone else.

f) Section 34 of the SARFAESI Act, read in conjunction with Section 9 of the CPC 1908 places a bar on the institution of civil suits regarding matters which a DRT or Appellate Tribunal has been empowered to deal with under the SARFAESI Act. Furthermore, no civil court, can entertain a suit or proceeding, if an aggrieved person has grievance against any measures taken under Section 13(4) of the SARFAESI Act.

g) The availability of an alternative efficacious remedy would normally act as a bar against entertaining a writ petitioner. Nevertheless, under certain exceptional circumstances, a writ petition can be entertained even if an alternative efficacious remedy is available. These circumstances being – a) where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed; b) violation of the principles of natural justice; and c) where the vires of an Act is challenged.

h) The writ of certiorari can only be exercised under extremely limited circumstances and not every error of law would warrant the issuance of the writ of certiorari. However, where a lower court/tribunal has failed to exercise its jurisdiction, the same would call for issuance of the writ of certiorari by the High Court."

6. Reliance has been further placed upon paragraphs 19, 20, 23 and 25 of the judgment of the Hon'ble Supreme Court in **Bajarang Shyamsunder Agarwal vs. Central Bank of India and another;** (2019) 9 SCC 94 that are delineated below:

"19. The Court further held that if the Chief Metropolitan Magistrate / District Magistrate is satisfied that a valid lease is created before the mortgage and the lease has not been determined in accordance with Section 111 of the T.P. Act, then he cannot pass an order for delivery of possession of the secured asset to the secured creditor. In case, he comes to the conclusion that there is no valid lease either before the creation of mortgage or after the creation of the mortgage satisfying the requirements of Section 65A of the T.P. Act or even though there is a valid lease the same stands determined in accordance with Section 111 of the T.P. Act, he can pass an order for delivery of possession of the secured asset to the secured creditor.

20. This Court also recognised the inconsistency between Section 13(13) of the SARFAESI Act and Section 65A of the Transfer of Property Act. While Section 13(13) of SARFAESI prohibits a borrower from leasing out any of the secured assets after receipt of a notice under Section 13(2) without the prior written consent of the secured creditor, Section 65A of the T.P. Act enables the borrower/mortgagor to lease out the property. This inconsistency

was resolved by holding that the SARFAESI Act will override the provisions of the T.P. Act.

23. After examining the legal and constitutional position, the Court held that while the SARFAESI Act has a laudable objective of providing a smooth and efficient recovery procedure, it cannot override the objective of Rent Acts to control the rate of rent and provide protection to tenants against arbitrary and unreasonable evictions. To resolve this conflict, this Court held that-

a) The provisions of the SARFAESI Act cannot be used to override the provisions of the Rent Act. The landlord cannot be permitted to do indirectly what he has been barred from doing under the Rent Act.

b) While a yearly tenancy requires to be registered, oral tenancy can still be proved by showing that the tenant has been in occupation of the premises before the Magistrate under Section 14 of the SARFAESI Act.

c) The non-registration of the tenancy deed cannot be used against the tenant. For leasehold rights being created after the property has been mortgaged to the bank, the consent of the creditor needs to be taken.

d) Even though Section 35 of the SARFAESI Act has a non obstante clause, it will not override the statutory rights of the tenants under the Rent Control Act. The non obstante clause under Section 35 of the SARFAESI Act only applies to laws operating in the same field.

25. In our view, the objective of SARFAESI Act, coupled with the T.P. Act and the Rent Act are required to be reconciled herein in the following manner:

a) If a valid tenancy under law is in existence even prior to the creation of the mortgage, the tenant's possession cannot be disturbed by the secured creditor by taking possession of the property. The lease has to be determined in accordance with Section 111 of the TP Act for determination of leases. As the existence of a prior existing lease inevitably affects the risk undertaken by the bank while providing the loan, it is expected of Banks/Creditors to have conducted a standard due diligence in this regard. Where the bank has proceeded to accept such a property as mortgage, it will be presumed that it has consented to the risk that comes as a consequence of the existing tenancy. In such a situation, the rights of a rightful tenant cannot be compromised under the SARFAESI Act proceedings.

b) If a tenancy under law comes into existence after the creation of a mortgage, but prior to the issuance of notice under Section 13(2) of the SARFAESI Act, it has to satisfy the conditions of Section 65A of the T.P. Act.

c) In any case, if any of the tenants claim that he is entitled to possession of a secured asset for a term of more than a year, it has to be supported by the execution of a registered instrument. In the absence of a registered instrument, if the tenant relies on an unregistered instrument or an oral agreement accompanied by delivery of possession, the tenant is not entitled to possession of the secured asset for more than the period prescribed under Section 107 of the T.P. Act. "

7. From a reading of the above judgments, it is clear that tenancy that has been created during the pendency of the mortgage without permission of the secured creditor, that is, the bank would be subject to the condition of Section 65A of the Transfer of Property Act and whether these conditions are satisfied will have to be

decided by the Debts Recovery Tribunal (hereinafter referred to as 'the DRT') only. A tenant is required to move an application under Section 17 before the DRT for asserting his rights under such a registered document.

8. In our view, once an order has been passed under Section 14, the authorities are required to act in pursuance of the same and as per the provisions of the Act. The mechanism used by the borrowers to wiggle out of their liability cannot be countenanced by us.

9. In the present case, it is patently clear that the loan was taken by the borrowers, and subsequently, the registered lease deed was executed by the borrower, without the knowledge of the bank. In such a case, it was for the tenant to approach the DRT and obtain necessary orders therein. However, the tenant in the present case has obtained an order of status quo/stay from the Civil Court by alleged suppression of material facts including mortgage of the property by the borrower without reference to the secured creditor, that is, the petitioner bank.

10. Learned counsel appearing on behalf of respondent No.5 submits that he has recently made an application under Section 17 before the DRT for stay of the proceedings being carried out under Section 14 of the Act.

11. In light of the above discussions, we are of the view that the authorities should act in accordance with the judgment of the Hon'ble Supreme Court in **Bajarang Shyamsunder Agarwal** (supra) and give possession to the petitioner bank.

12. We make it clear that order obtained by the tenant, wherein the petitioner bank has not been made a party is, in a manner of speaking, non-est in law as it contravenes the provision of Section 34 of the Act.

13. In light of the same, the authorities are directed to act in accordance with law and give possession to the petitioner bank within a period of eight weeks from date if there is no other legal impediment.

14. We make it clear that in the event respondent No.5 obtains an order of stay from the DRT, the authorities shall comply with such stay, if granted.

15. With the above directions, the writ petition is disposed of.

(2025) 8 ILRA 261
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.08.2025

BEFORE

THE HON'BLE PRAKASH PADIA, J.

Writ C No. 33964 of 2023

Pheasant Infrastructure Pvt. Ltd. ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Nikhil Agrawal, Sanjay Kumar Mishra

Counsel for the Respondents:
Amit Manohar, Ravi Prakash Pandey

Issue for Consideration

Issue pertains to whether, after the order of cancellation of petitioner's sanctioned map dated 05.10.2012 had been set aside by Commissioner, Meerut Division on 08.07.2019, thereby reviving sanction originally granted on

28.11.2006, Ghaziabad Development Authority and Principal Secretary (Housing and Urban Development) were legally justified in refusing to release petitioner's approved map on the ground that Master Plan 2021 had since come into effect and land use altered to community facility and road, instead of residential use.

Headnotes

U.P. Urban Planning and Development Act, 1973 - ss. 9, 41(3) - U.P. Zamindari Abolition and Land Reforms Act, 1950 - s. 161 - Petitioner, a company engaged in real estate development, submitted a group housing map in respect of land situated in Village Noor Nagar, Ghaziabad, which was duly approved by Technical Committee of GDA on 28.11.2006, subject to fulfillment of certain formalities, including deposit of requisite charges and compliance with Government Order dated 25.01.1996 regarding partial Gram Sabha land - Petitioner duly complied with all stipulated conditions, deposited required amounts, and obtained necessary No Objection Certificates from various departments, however, despite completion of all formalities, GDA failed to release map and subsequently, by order dated 05.10.2012, cancelled same without issuing any notice or communication to petitioner - In appeal, said order set aside by Commissioner, Meerut Division on 08.07.2019, who directed reconsideration of petitioner's case, holding that all formalities had been completed by 2009 - In disregard of this direction, Vice-Chairman, GDA, by order dated 22.11.2019, again rejected map on the ground that under Master Plan 2021, land use had been changed from residential to community facility and road - Petitioner's revision u/s 41(3) of Act, 1973 was dismissed by Principal Secretary (Housing and Urban Development) on 23.05.2023, leading to instant writ petition challenging said orders as arbitrary, contrary to Commissioner's order and violative of settled principles of law.

Held:

Order dated 05.10.2012 cancelling map sanction solely on ground of expiry of time, without recording any deficiency in compliance with letter dated 28.11.2006, was set aside by Commissioner in appeal with direction to complete any remaining formalities and take a fresh decision, which has attained finality between parties - The order clearly indicates that map was submitted in 2006 and all requisite formalities, including payment and submission of bank guarantee were completed by 2009 - Accordingly, Development Authority was under legal obligation to issue map in terms of letter dated 28.11.2006 - A perusal of Commissioner's order dated 08.07.2019 reveals that Development Authority was required to examine only compliance with conditions of letter dated 28.11.2006, and that till cancellation of said order, neither Master Plan 2021 had been approved nor was order dated 05.10.2012 passed on ground of change of land use - Thus, order of Vice Chairman dated 22.11.2019 is contrary to directions issued by Commissioner in its order dated 8.7.2019 - The order dated 23.05.2023 has been passed by respondent no. 1 on the grounds that formalities under letter dated 28.11.2006 were incomplete and that, as per Master Plan 2021, map could not be sanctioned in view of existing land use - While passing orders dated 22.11.2019 and 23.05.2023, Vice Chairman and respondent no. 1 failed to consider effect of Commissioner's setting aside of order dated 05.10.2012 and overlooked that, in similar circumstances, State Government by order dated 14.12.2018 had permitted sanction contrary to Master Plan 2021, holding that completion of formalities prior to its enforcement rendered change of land use no ground for rejection - The order dated 22.11.2019 passed by Vice Chairman is contrary to law, having been based on land use under Master Plan 2021, despite map sanction standing revived after setting aside order dated 05.10.2012, as sanction preceded the enforcement of Master Plan 2021, order dated 22.11.2019 is hereby quashed - The order dated 23.05.2023 passed by respondent no. 1 is unsustainable, being based on erroneous assumption that map was filed after approval of Master Plan 2021, whereas it had been sanctioned earlier on 28.11.2006 - Plea regarding absence of exchange u/s 161 of Act, 1950 is contrary to respondents' own admissions and Government Order dated

25.01.1996 - Hence, order dated 23.05.2023 is quashed. [Paras 27 to 31] (E-13)

Case Law Cited

State of Punjab v. Amar Singh Harika reported in **1966 AIR Supreme Court 1313;** Mahendra Singh Gill and Another v. Chief Election Commissioner, New Delhi reported in **AIR 1978 SC 851 - referred to**

List of Acts

U.P. Zamindari Abolition and Land Reforms Act, 1950; U.P. Urban Planning and Development Act, 1973

List of Keywords

Article 226 of Constitution of India; Mandamus; Release the maps; Certiorari; Technical Committee; Sanction of map / Approval of map; Master Plan 2021; Land use / Change of land use; Community facility and road; No Objection Certificate; Group housing project; Compliance of conditions; Formalities completed; Gram Sabha land / Exchange of land; Non est order; Recommendation of Technical Committee; Remand for reconsideration; Un-communicated order not valid in law; Opportunity of hearing; Rejection of map contrary to directions; Arbitrariness and biased action; Revival of sanction; Effect of setting aside of cancellation order; Fresh grounds in counter affidavit; Supplementing reasons by affidavit impermissible; Ghaziabad Development Authority; Government Order; No notice for cancellation of map.

Case Arising From

ORIGINAL JURISDICTION: Writ C No. 33964 of 2023

From the Order dated 23.5.2023 and 22.11.2019 of Respondent no. 1/Secretary Housing & Urban Development, Government of U.P., Lucknow and Ghaziabad Development Authority, Ghaziabad

Appearances for Parties

Advs. for the Petitoner:
Nikhil Agrawal, Sanjay Kumar Mishra

Adv. for the Respondent:
Amit Manohar, Ravi Prakash Pandey

(Delivered by Hon'ble Prakash Padia, J.)

1. Heard Sri Nikhil Agarwal, learned counsel along with Sanjay Kumar Mishra, learned counsel for the petitioner, learned Standing Counsel appearing on behalf of State-respondent and Sri Amit Manohar, learned counsel for the respondent nos. 2, 3 and 4/Ghaziabad Development Authority, Ghaziabad.

2. The petitioner has preferred the present petition inter alia with the following prayer:-

"i. to issue a suitable writ or direction in the nature of certiorari quashing the impugned orders dated 23.05.2023 passed by the Principal Secretary, Housing (enclosed as Annexure no.3);

ii. issue a suitable writ or direction in the nature of mandamus directing the Respondent no.1 to re-consider the matter in revision and decide afresh considering each and every aspect of the matter regarding map release of the petitioner, in terms of Kamlesh Garg and another vs State of U.P. (WRIT - C No. 65099 of 2015);

iii. to issue a suitable writ or direction in the nature of certiorari quashing the impugned orders dated 05.10.2012 and 22.11.2019 passed by the Ghaziabad Development Authority (enclosed as Annexure no.1 & 2);

iv. issue a suitable writ or direction in the nature of mandamus directing the Ghaziabad Development Authority to release the maps of the Petitioner company;

v. issue any suitable, order or direction as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case to meet the ends of justice.

vi. award the cost of the petition in favour of the Petitioner."

3. Pleadings have already been exchanged between the parties. With the consent of counsel for the parties, the present petition is disposed of finally at the admissision stage itself.

4. Facts in brief as contained in the writ petition are that the petitioner company is incorporated under the provisions of Companies Act, 1956, having its registered office at 5140-41/34, Chaudhary Market, 1st Floor, Preet-Wali-Gali, Dori Mandi, Sadar Bazar, District Ghaziabad and is engaged in business of Real Estate. The petitioner company has submitted a map for group housing over khasra no. 915M, 921, 923M, 924M, 925M, 926M, 927M, 928M, 929M, 930M, 937M, 939M & 945M situated at Village Noor Nagar, Pargana Loni, District Ghaziabad. The aforesaid map submitted by the petitioner for group housing was approved by the Technical Committee for construction of group housing vide order dated 28.11.2006. Certain conditions were required to be fulfilled by the petitioner. One of the relevant condition was that the land equal to land of Gram Samaj, Chak Road and Nali has to be left in one side of project and the permission for the same has to be obtained by the District Magistrate. The Principal Secretary, (Housing) has issued a Government Order dated 25.1.1996, notified that where there are partial Gram Samaj land, falling within the layout of the project/plan, equal size of land ought to be kept aside for the purpose of community facility and in case it is not possible the value of concern partial land be deposited in the office of District Magistrate and with the said condition, layout plan be passed. Copy of the Government Order dated 25.1.1996 has been appended as Annexure-5 to the writ petition.

5. It is further stated in paragraph 11 of the writ petition that various projects have been approved/sanctioned on the basis of aforesaid Government Order dated 25.1.1996 and a list of projects which has been approved on the basis of aforesaid government order has been appended as annexure-6 to the writ petition.

6. It is stated in paragraph 12 of the writ petition that on 28.11.2006, the petitioner received approval of map from the Technical Committee for construction of Group Housing subject to completion of formalities. One of the condition mentioned in the aforesaid letter to deposit a sum of Rs.2,92,06,044/- as change of land use. . The petitioner vide letter dated 29.11.2006 requested the Development Authority to waive the charges for change of use of land, in view of the Government Order No. 4988/832006 dated 18.10.2006. The respondent Development Authority, considering the said application of the petitioner and by letter dated 15.12.2006 informed the petitioner that the charges of change of land use has been waived by the Development Authority. Copy of letter written by the Assistant Engineer, Ghaziabad Development Authority is appended as Annexure No. 9 to the writ petition.

7. It is further stated that the petitioner has deposited bank draft of Rs. 2,10,95,598/- being the charges, as

mentioned in the sanction letter dated 28.11.2006, except the charges of change of land use. The petitioner has further deposited bank guarantee of Rs. 2,56,80,457/- of Cooperative Bank.

8. It is further stated that the Nagar Nigam, Ghaziabad has granted no objection vide no objection certificate in favour of the petitioner dated 16.01.2007. The National Highway Authority of India has also issued NOC in favour of the petitioner. Apart from the same the Fire Department vide letter dated 6.8.2008 and the Ministry of Defence vide letter dated 22.9.2008 also has submitted the No Objection Certificate in favour of the petitioner.

9. The respondent Development Authority issued a letter dated 10.1.2009, asking the petitioner to complete the formalities within one week, failing which, map will be rejected. The petitioner replied the aforesaid letter vide letter dated 29.1.2009, intimating that all the formalities have been completed, but the map was not released. The petitioner again wrote a letter dated 28.2.2009 in which again request was made to release of map. In the aforesaid letter it is again stated by the petitioner that in response to the letter of the Development Authority, the petitioner has already explained that all the formalities have been completed and as such a request has been made to release the map. It is further stated that the petitioner, after completing all the formalities, has continuously and regularly prayed the Development Authority to release the map, but the map was not released.

10. Despite the aforesaid fact that all the formalities were completed map was not released in view of fact that the Master Plan-2021 was approved by the Ghaziabad Development Authority. In the Master Plan 2021 the land use of khasra numbers belonging to the petitioner company had been marked for community facility and road instead of residential use.

11. Despite representations made by the petitioner to the Chairman, Ghaziabad Development Authority, Principal Secretary Housing Development for release of map, nothing was done and finally the petitioner moved a representation/grievances before Hon'ble the Chief Minister. which was forwarded by his office to the Development Authority. The petitioner thereafter, moved a representation before the Vice-Chairman, Ghaziabad Development Authority and Special Secretary of Housing and Urban Planning, stating therein that the petitioner company has completed all the formalities within time but the map is not being released in his favour. In reply to the aforesaid letter dated 10.4.2018, the petitioner was informed vide letter dated 28.5.2018 that due to non-compliance of condition, sanction of map of the petitioner company has been cancelled on 5.10.2012 and for the first time, the order dated 5.10.2012 was provided to the petitioner alongwith aforesaid letter.

12. The petitioner being aggrieved with the order of cancellation of map dated 5.10.2022, preferred an appeal before the Commissioner, Meerut Division Meerut. The Commissioner. Meerut Division, Meerut, vide order dated 8.7.2019 has set aside the order dated 5.10.2012 and further remanded the matter to the Vice-Chairman of Ghaziabad Development Authority with the finding that the petitioner has submitted map till 2006 and all the formalities were completed by the petitioner in the year 2009, as such, the case of the petitioner for

grant of approval with regard to the map of the petitioner be re-considered. The operative portion of the order passed by the Vice-Chairman, Ghaziabad Development Authority reads as follows:-

"आदेश

अपील आंशिक रूप से स्वीकार की जाती है। प्राधिकरण द्वारा पारित आक्षेपित आदेश दिनांक 05.10.2012 निरस्त किया जाता है। प्रकरण उपाध्यक्ष, गाजियाबाद विकास प्राधिकरण को इस निर्देश के साथ प्रतिप्रेषित किया जाता है कि क्योंकि अपीलार्थी द्वारा प्रश्नगत मानचित्र वर्ष 2006 में प्राधिकरण के समक्ष प्रस्तुत किया गया था तथा उसके उपरान्त प्राधिकरण के निर्देशानुसार वर्ष 2009 तके औपचारिकतायें पूर्ण कर आवश्यक धनराशि व बैंक गारन्टी आदि भी प्राधिकरण के समक्ष प्रस्तुत की गयी है। इसलिये अपीलार्थी के प्रश्नगत मानचित्र का पुनः परीक्षण कर नियमानुसार औपचारिकतायें पूर्ण कराकर अपीलार्थी के मानचित्र के सम्बन्ध में पुनः निर्णय पारित किया जायें। आदेश की सत्यापित प्रति सहित उपाध्यक्ष गाजियाबाद विकास प्राधिकरण की पत्रावली अनुपालनार्थ प्रेषित की जाये। आवश्यक कार्यवाही उपरान्त इस न्यायालय को पत्रावली अभिलेखागार में संचित की जाये।

दिनांक 08.07.2019

ह०अ०

(अनीता सी० मेश्राम)

आयुक्त

मेरठ मण्डल, मेरठ।

यह आदेश मेरे द्वारा आज दिनांक 08.07.2019 को खुले न्यायालय में हस्ताक्षरित कर उद्घोषित किया गया।

ह०अ०

(अनीता सी० मेश्राम)

आयुक्त

मेरठ मण्डल, मेरठ।"

13. The Vice Chairman of the Ghaziabad Development Authority vide order dated 22.11.2019 denied the approval to the map of the petitioner on the ground that khasra nos. 915, 945, 946, 939, 937, 921, 923 to 930 situated at Village Noor Nagar are under Master Plan 2021, Zone-1 and the use of aforesaid khasra is community facility, whereas the map submitted by the petitioner is for group housing, as such, unless and until the proposal by the petitioner for change of land use is submitted before the Development Authority, the map cannot be sanctioned and in case the map for the use of land for community facility is submitted, the same may be considered.

14. Being aggrieved with the aforesaid order dated 22.11.2019, the petitioner preferred a revision as provided section 41(3) of U.P. Urban Planning and Development Act, 1973 before the Principal Secretary, Housing and Urban Development, Civil Secretariat, Vidhan Sbhabha Marg, Lucknow. The aforesaid revision filed by the petitioner has been rejected by the Respondent no. 1/Secretary Housing & Urban Development vide order dated 23.5.2023. Aggrieved against the aforesaid the petitioner has preferred the present petition.

15. The petitioner has claimed parity with case of Kamlesh Garg in his appeal. It was specifically stated in the appeal that in case of Kamlesh Garg, the State Government by order dated 14.12.2016 has granted permission on the ground that her case for grant of permission was pending prior to enforcement of Master Plan 2021 and she has partly complied with the terms and conditions of sanction of map, as such, she is entitled for sanction of map as per land use, which was applicabie prior to Master Plan 2021.

16. In the counter affidavit filed by the respondents it is stated that the letter of Technical Committee dated 28.11.2006 was recommendation of the Technical Committee to complete the formalities. It is also stated that it was not an order for sanction of map, as applied for by the petitioner firm.

17. A new case has been set up in the counter affidavit, stating therein that the

petitioner firm has completely failed to obtain necessary order for exchange of land of Gram Sabha under section 161 of The U.P. Zamindari Abolition and Land Reforms Act, 1950 from the District Magistrate, Ghaziabad as per letter dated 16.1.2007, as such, recommendation of Technical Committee was cancelled in the year 2012.

18. It is further stated that the Ghaziabad Development Authority has prepared its Zonal Development Plan 2021 under section 9 of the U.P. Urban Planning & Development Act, 1973 and has invited objection from the public against the proposed plan. Various objections were filed and after considering these objections/suggestion by the Technical Committee, so empowered, the zonal plan was approved and pending application for sanction of map found in accordance with the Master Plan 2021 were included in the plan.

19. It is further stated in the counter affidavit that the map applied for group housing was not found in consonance with Master Plan 2021 Zone-1, as the land was marked for zonal road and community service and therefore, map was rejected. In view of the aforesaid averment, the contention of learned counsel for the respondents is that as the petitioner has not fulfilled the conditions mentioned in the letter dated 28.11.2006, his map was rightly cancelled and in view of the Master Plan 2021, the petitioner's map cannot be sanctioned.

20. It is argued by the learned counsel for the petitioner that the order dated 5.10.2012 was passed without giving any notice or opportunity of hearing to the petitioner and the said order was even not communicated to the petitioner within time. The said order was communicated to the petitioner with information/order dated 28.5.2018. Referring to the aforesaid order, the learned counsel for the petitioner submits the arbitrariness and biased action of the Development Authority reflect in the said order. In the said order, it is clearly mentioned that the map was sanctioned by the Development Authority, but was not issued and time period is over as such, there is no justification of approval. The said order also contains recital that no notice for cancellation of map is required and even there is no need to inform the petitioner about cancellation. The said order reads as under:

"उपाध्यक्ष

कृपया पूर्व आख्या पृष्ठ पर विधि सहायक कार्यालय आख्या का अवलोकन करने का कष्ट करें, जिससे प्रमाणित है कि प्राधिकरण द्वारा मानचित्र स्वीकृत किया गया था, परन्तु निर्गत नहीं किया गया और समयावधि समाप्त हो चुकी है। अब उक्त स्वीकृति का कोई विधिक औचित्य नहीं है। मानचित्र स्वीकृति का पालन न करने के कारण मानचित्र आरम्भ से ही निरस्त होने योग्य है। निरस्तीकरण हेतु कोई नोटिस भेजने की विधिक राय के अनुसार कोई आवश्यकता नहीं है और न ही निरस्तीकरण उपरान्त कोई सूचना भेजनी आवश्यक है। उचित होगा कि अधिशासी अभियन्ता-1 (प्रवर्तन) के माध्यम से यह सत्यापन करा लिया जाये कि स्थल पर स्वीकृति के क्रम में कोई निर्माण तो नहीं है, यदि निर्माण है तो उसके विषय में अधिनियम का सुसंगत धाराओं के अन्तर्गत कार्यवाही की जाये। कृपया अनुमोदन प्रदान करने का कष्ट करें।

ह०अ०
05/10/12
(आर०के० सिंह)
सचिव "

21. It is further argued by the learned counsel for the petitioner that the said order was not communicated to the petitioner till 2018 and this fact is admitted by the respondents. The learned counsel for the petitioner argued that un-communicated order is not an order in the eyes of law. For

the said proposition, the learned counsel for the petitioner has relied upon the judgment and order of the Hon'ble Apex Court passed in the case of ***State of Punjab Vs. Amar Singh Harika reported in 1966 AIR Supreme Court 1313*** in which the Hon'ble Apex Court specifically stated that mere passing of an order is not effective unless it is published and communicated to the officer concerned. The relevant portion of paragraph 11 of the said judgment quoted hereinbelow:-

"We are, therefore, reluctant to hold that an order of dismissal passed by an appropriate authority and kept on its file without communicating it to the officer concerned or otherwise publishing it will take effect as from the date on which the order is actually written out by the said authority; such an order can only be effective after it is communicated to the officer concerned or is otherwise published."

22. Thus, it is argued by the learned counsel for the petitioner that when the order of cancellation of map was passed, Master Plan 2021 was not in existence. The zonal plan has been approved and implemented from 3.2.2015. Thus, cancellation order being illegal and having been set aside by the Commissioner in appeal filed by the petitioner, sanction of map by order dated 28.11.2006 was revived and thus, on the date of approval of Master Plan 2021, map of the petitioner stands sanctioned.

23. Heard counsel for the parties and perused the record.

24. From perusal of records it appears that in compliance of the order passed by the Commissioner in the appeal, the Development Authority was under obligation to consider that the formalities, as required by letter dated 28.11.2006 had been completed or not and in case, the formalities, as mentioned in the order are completed, the authority was required to release the map, but the Development Authority, wholly illegally, carved out a new case to reject the sanction of map, i.e. land use under Master Plan 2021, which is contrary to the directions issued by the Commissioner in the appeal.

24A. The State Government, while passing the impugned order, has not at all considered this aspect of the matter that the order of cancellation dated 5.10.2012 having being set aside by the Commissioner, the order dated 28.11.2006 stands revived and on the date of approval of master plan 2021, the map of the petitioner stands sanctioned as all the conditions of order dated 28.11.2006 were fulfilled.

25. In the counter affidavit, a new case is being carved out for rejecting the claim of the petitioner that no order of exchange of land, as provided under section 161 of The U.P. Zamindari Abolition and Land Reforms Act, 1950 was passed by the District Magistrate, Ghaziabad, but in view of the government order dated 25.1.1996, there was no requirement of any order under section 161 of the Act, 1950 and the only requirement was to provide consolidated land equal to the land of Gram Sabha, chak road or Nali in the layout plan. Moreover, in view of the law laid down by the Hon'ble Apex Court in case of ***Mahendra Singh Gill and Another Vs. Chief Election Commissioner, New Delhi reported in AIR 1978 SC 851,*** the reasons cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.

Paragraph 8 of the aforesaid judgment reads as follows:-

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out."

26. Moreover, in the counter affidavit, in paragraphs 30 & 33, the respondents have clearly admitted that all the formalities mentioned in the letter dated 28.11.2006 were completed by the petitioner. The relevant paragraphs 30 & 33 are reproduced below:

"30. That the contents of paragraph no. 37 of the writ petition are not admitted hence denied. In reply thereof, it is submitted that while passing the order dated 28.11.2006 the terms and conditions prescribed therein was honored by the present petitioner.

33. That the contents of paragraph no. 40 and 41 of the writ petition are not admitted hence denied. In reply thereof, it is submitted that while passing the order dated 28.11.2006 the terms and conditions prescribed therein was honored by the present petitioner."

27. Having considered the arguments of counsel for the parties and from perusal of record, the Court finds that the order dated 5.10.2012, cancelling the sanction of map was passed only on the ground that the time for issuance of map is over. In the said order, it is nowhere mentioned that the petitioner has not completed the formalities, as mentioned in the letter dated 28.11.2006. The said order has been set aside by the Commissioner in appeal, with a direction that if any formalities remains, the same be fulfilled and a fresh decision be taken. The said order of Commissioner is final between the parties. This order clearly refers that the map was submitted in 2006 and all the formalities were completed upto year 2009, including payment of requisite amount and submission of bank guarantee. In view of the aforesaid findings, the Development Authority was under legal obligation to consider the issuance of map as per letter dated 28.11.2006. From the perusal of the order of Commissioner dated 8.7.2019, it is clear that the Development Authority was required to consider only compliance of conditions of letter dated 28.11.2006, admittedly till the time of cancellation of order dated 28.11.2006, neither master plan 2021 was approved nor the order dated 5.10.2012 was passed on the ground of change of land use. Thus, the order of Vice Chairman dated 22.11.2019 is contrary to the directions issued by the Commissioner in its order dated 8.7.2019.

28. The order dated 23.5.2023 has been passed by the respondent no. 1 only on the ground that the formalities as per letter dated 28.11.2006 were not completed and as per the present use of land as per master plan 2021, the map could not sanctioned.

29. The Vice Chairman of Development Authority, while passing the order dated 22.11.2019 as well as the respondent no. 1, while passing the order dated 23.5.2023 has not at all considered the effect of setting aside of the order dated 5.10.2012 by the Commissioner and has

also not considered that in similar circumstances, the State Government itself by an order dated 14.12.2018 has granted permission contrary to the master plan 2021 to Kamlesh Garg on the ground that prior to passing of master plan 2021, the formalities for sanction of map were completed, as such, change of land use in master plan 2021 cannot be basis for rejection of map.

30. The order of Vice Chairman dated 22.11.2019 is contrary to law, as the Vice Chairman while passing the aforesaid order has proceeded on the basis of land use in Master Plan 2021, whereas the sanction of map of petitioner stands revived, after setting aside the order dated 5.10.2012 and as the sanction was prior to enforcement of Master Plan 2021, the order passed by the Vice-Chairman dated 22.11.2019 is hereby quashed.

31. The order passed by the respondent no. 1 under section 43(1) of U.P. Urban Planning and Development Act, 1973 also proceeded on the presumption that the permission has to be considered as the map was filed for sanction after approval of Master Plan 2021, whereas the map of the petitioner was sanctioned by letter dated 28.11.2006 as per the then use of land. The contention of the respondents that no exchange as provided under section 161 of The U.P. Zamindari Abolition and Land Reforms Act, 1950 was made, is contrary to the own admission of the respondent in paragraphs 30 & 33 of the counter affidavit as well as contrary to the Government Order dated 25.1.1996. Since the order dated 28.11.2006 was revived after setting aside of cancellation, the order of respondent no. 1 dated 23.5.2023 is quashed.

32. As the order of cancellation of map dated 5.10.2012 has already been set aside by the order dated 08.07.2019 passed by the Commissioner, the same is not required to be quashed as it is a non-est order.

33. The writ petition is **allowed.** A Mandamus is issued to Respondent no. 2/Vice Chairman, Ghaziabad Development Authority, Ghaziabad to release the map of the petitioner from Group Housing which has already been sanctioned vide letter deted 28.11.2006 within a period of four weeks from the date of production of certified copy of this order.

34. No order as to costs.

(2025) 8 ILRA 270
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 19.08.2025

BEFORE

THE HON'BLE SARAL SRIVASTAVA, J.
THE HON'BLE ARUN KUMAR SINGH DESHWAL, J.

Writ C No. 52412 of 2016

Shiv Prasad Gupta ...Petitioner
Versus
Hindustan Petroleum Corportation Ltd. & Ors. ...Respondents

Counsel for the Petitioner:
Akanksha Sharma, Manish Goyal (Senior Adv.)

Counsel for the Respondents:
Komal Mehrotra, S.C., Vikas Budhwar

Issue for Consideration

Matter pertains to whether order dated 05.07.2016 passed by Chief Regional Manager, Hindustan Petroleum Corporation Limited,

Gorakhpur cancelling petitioner's letter of intent for LPG distributorship was legally sustainable, in view of allegation that, on date of submission of application form, petitioner did not possess requisite extent of land prescribed in advertisement and had failed to disclose co-ownership of said land with his father and brothers, or whether such deficiency was curable irregularity under Clauses 1.23 (C) and 16.4 of Unified Guidelines for Selection of LPG Distributorships, entitling petitioner to retention of allotment.

Headnotes

Petitioner in pursuance of advertisement dated 16.04.2012 issued by Hindustan Petroleum Corporation Limited for award of LPG distributorship submitted his application on 15.05.2012, offering land bearing Gata No. 10, Khata No. 300 for establishment of distributorship, asserting himself as its sole owner - Upon selection through lottery on 24.01.2013, a Letter of Intent was issued in his favour on 28.02.2014 - Subsequently, on receipt of complaint regarding ownership of offered land, inquiry conducted by Sub-Divisional Magistrate revealed that, on the date of submission of application, petitioner was only a co-sharer to the extent of 1/9 in said plot, with the remaining shares held by his father and brothers, from whom he later acquired additional portions by sale deed dated 09.02.2013, after the last date of submission of applications - Treating such acquisition as post facto and observing that petitioner had furnished incorrect information by declaring sole ownership, then Chief Regional Manager, HPCL, by order dated 05.07.2016, cancelled Letter of Intent, leading to filing of instant writ petition challenging the said cancellation.

Held: In the instant case, petitioner neither disclosed names of his father and brothers nor submitted notarized affidavit as required under Appendix C - Record shows that he purchased the shares of his brothers, through a sale deed dated 09.02.2013, executed after submission of application form, and his name was thereafter entered in revenue records - It is thus evident that, on the date of application, offered land was not owned by petitioner, and he became eligible only after acquiring his family's shares - Petitioner is bound by his undertaking and affidavit affirming truthfulness of information furnished - He failed to disclose ownership details of property, amounting to concealment of information in application form rather than a mere deficiency in its submission - On the date of application, petitioner did not possess the requisite land or any alternate land for establishing LPG distributorship, hence, Clause 16.4 of guidelines has no application - If applicant fails to meet land criteria, alternative land may be offered only during FVC process as per Clause 16.4 - Petitioner neither disclosed the date of FVC process nor pleaded possession of compliant alternative land, hence, he cannot claim benefit of Clause 16.4 - [Paras 24, 26, 31, 32] (E-13)

Case Law Cited

Rahul Singh v. India Oil Corporation Ltd. and Others passed in **Writ-C No.7354 of 2024; - distinguished**

List of Acts

Nil

List of Keywords

Letter of Intent; Order dated 05.07.2016; LPG Distributorship; Sub-Divisional Magistrate ; Advertisement / Corrigendum; Application Form; Ownership of Property / Land Ownership; Relationship with applicant; Declaration; Co-sharer/ Co-owners; Inspection / Inquiry / Report; Sale Deed / Mutation; Revenue records; Prescribed Area / Required Land / Eligibility Criteria; Cancellation / Withdraw / Terminate; Clause 1.23 (sub-clause C); Clause 16.4 of Guidelines; Unified Guidelines for Selection of LPG Distributorship; Field Verification of Credentials (FVC); Alternative Land ;Consent of Family Members/Family Unit; False Disclosure/Concealment of Information; Deficiency in Submitting the Application Form; Eligibility Criteria Not Fulfilled / Non-fulfilment of Condition; Undertaking / Averments / Information Found Untrue or Incorrect; Withdraw the Letter of Intent or Terminate the

Distributorship; Concealment of Information; No Alternative Land Offered / Alternative Land to be Considered; Benefit of Clause 16.4 Not Attracted; / FVC Process / Eligibility Verification; Bound by the Declaration / Bound by Undertaking.

Case Arising From

ORIGINAL JURISDICTION: Writ - C No. - 52412 of 2016

From the Order dated 05.07.2016 passed by Chief Regional Manager, Hindustan Petroleum Corporation Limited, Gorakhpur

Appearances for Parties

Advs. for the Petitioner:
Akanksha Sharma, Manish Goyal

Adv. for the Respondent:
Komal Mehrotra, S.C., Vikas Budhwar

(Delivered by Hon'ble Saral Srivastava, J.
&
Hon'ble Arun Kumar Singh Deshwal, J.)

1. Heard Ms. Anjali Gokhlani, learned counsel for the petitioner, and Sri Komal Mehrotra, learned counsel for respondents.

2. The petitioner, by means of the present writ petition, has assailed the order dated 05.07.2016 passed by the Chief Regional Manager, Hindustan Petroleum Corporation Limited, Gorakhpur, whereby the letter of intent issued to the petitioner with respect to the distribution of LPG Cylinders has been cancelled.

3. The facts, in brief, are that the advertisement for setting up LPG distributorship was published by respondent no.2 on 16.04.2012. The petitioner, in pursuance of the said advertisement, submitted an application in the prescribed form on 15.05.2012 with respect to the Village Chaf Jungle Visnnupura, Chhapra, District Kushi Nagar. As per the advertisement, the petitioner was supposed to have a plot of an area of 20M. X 24M. The petitioner, in respect to the details of property in the column of 'ownership' stated his name, and in the column of 'relationship with the applicant', he stated 'self'. The petitioner, along with the form, submitted a Khatauni in respect to Gata No.10, Khata No.300 situated in Village Chaf Jungle Visnnupura, Chhapra, District Kushi Nagar. The lottery with respect to the aforesaid centre for distribution of LPG Cylinder was done on 24.01.2013, in which the petitioner got selected, and accordingly, a letter of intent was issued to the petitioner on 28.02.2014.

4. It appears that a complaint was lodged against the petitioner with regard to the ownership of the plot on which the LPG distributorship was to be established. Accordingly, respondent no.2 got an inspection/inquiry done by the Sub-Divisional Magistrate, Tehsil Tamkuhi Raj, District Kushi Nagar, in respect to the complaint. The report of Sub-Divisional Magistrate dated 22.10.2014 stated that the name of the petitioner is recorded in Gata No.10 Khata No.300, having an area of 0.352 hectares as a co-sharer since before 07.03.2013. The petitioner's share in the said plot is 1/9, i.e., 0.039 hectare. The report further stated that Pramod and Sunil, who are the brothers of the petitioner, executed a sale deed in favour of Shivji on 09.02.2013 in respect to their share in Arazi No.10 to the extent of 0.073 hectare, and the name of the petitioner has been recorded in the revenue record on 07.03.2013.

5. On the strength of the aforesaid report, the respondent no.2 passed an order dated 05.07.2016 stating therein that on the

date of submission of application for establishment of LPG godown, the share of the petitioner in the plot was 390 square meter whereas the required area for setting up the LPG godown was 480 square meter, and since the petitioner has purchased the additional land of 730 square meter on 09.02.2013 after the submission of the application, therefore, the petitioner has submitted fabricated document, and as the petitioner has violated Clause 14 and Clause 8 of the form, therefore, his letter of intent deserves to be cancelled. Consequently, the letter of intent of the petitioner was cancelled, which is impugned in the present writ petition.

6. A counter affidavit has been filed by the respondents contending inter alia that, as per Clause 13 of the selection guidelines, the committee comprising two officers of the respondent company is to scrutinize the application of the petitioner for the award of marks on the basis of the information given in the application form. It is further stated that on conduction of field verification of credentials of the candidate if it is found that there is no variance in the information given in the application form vis-a-vis the actual physical verification then the letter of intent is issued in favour of the candidate, and if the variation is found in the information given in the appendix form vis-a-vis the field verification then the candidature of the candidate is rejected and the security amount is forfeited.

7. It is further alleged that the petitioner intentionally misled the respondent corporation inasmuch as he did not have an adequate piece of land on the last date of submission of the application form.

8. The petitioner has filed a rejoinder affidavit denying the averments made in the counter affidavit.

9. Learned counsel for the petitioner, while challenging the impugned order, has submitted that the letter of intent was issued on 28.02.2014, and before the issuance of the letter of intent, the petitioner owned the required area of plot needed for the setup of LPG distributorship. Accordingly, she submits that the defect in the application form wth regard to not complying with the condition of having the required land stipulated in the advertisement was curable and not a fatal defect on the basis of which letter of intent of the petitioner could be cancelled.

10. She further submits that even otherwise, as per sub-Clause C of Clause 1.23 of unified guidelines for selection of LPG distributorship, the land on which, the distributorship was to be set up was owned by the petitioner alongwith his father and two brothers, and if their share is included with the share of the petitioner, the petitioner was having the required land as per the advertisement for setting up the LPG distributorship.

11. She further contends that it is undisputed that the land on which the LPG distributorship was to be set up was also owned by his father and two brothers and in such an event, the case of the petitioner is covered under sub-Clause C of Clause 1.23 of guidelines and the petitioner was to submit the consent in the form of declaration from the family members on the last date of submission of application as specified either in the advertisement or corrigendum. She submits that in the declaration form, the family members were not disclosed with the application form at the time of submission of the application form, but that is a curable defect, and thus, she submits that the respondents ought to have considered this aspect of the matter while passing the impugned order.

12. She has further placed reliance upon Clause 16.4 of the guidelines to contend that it is also provided in the guidelines that during the Field Verification of Credentials (FVC) in case land mentioned by the applicant for godown or showroom in his application is found not meeting the eligibility conditions/requirements as stipulated in the advertisement/brochure/application form and if the applicant is having any alternate land in his name or members of his family as per the definition of family unit for land of the applicant with date of registration on or before the last date for submission of application as specified either in the advertisement or corrigendum (if any), the same can also be considered.

13. On the strength of the aforesaid clause, she submits that petitioner has acquired the title of the land in respect to the required area during the FVC and Clause 16.4 should be given a liberal interpretation in a sense that if the ownership in respect to the alternative land can be considered then the respondent can also consider the acquisition of title in respect of land over which the establishment of LPG distributorship is proposed. She has also placed reliance upon the judgement of this Court in the case of **Rahul Singh Vs. India Oil Corporation Ltd. and Others** passed in Writ-C No.7354 of 2024.

14. Per contra, learned counsel for the respondents would contend that in the instant case, it is not disputed that the land over which the LPG distributorship was to be established was owned by the petitioner, his father and two brothers and after including the share of the petitioner, his father and two brothers, the condition of requirement of land as provided in the advertisement is fulfilled. It is contended that in the form, there is a specific column with respect to the ownership of the property and relationship with the applicant, and in the column of 'ownership', the petitioner has stated his name, and in the column of 'relationship with the applicant', the petitioner has stated 'self'.

15. He has further submitted that it is evident from the application form that, in case the land belongs to a member of the family unit, a notarized affidavit as per Appendix C has to be filed. He submits that in the instant case, admittedly, a notarized affidavit as per Appendix C of the members of the family unit was not filed. He further submits that the petitioner did not correctly disclose the ownership of the property over which he wanted to set up the LPG distributorship, inasmuch as on the date of submission of the application form, the required land, which was needed for setting up the LPG distributorship, was 20M.X24M. Whereas the share of the petitioner was less than the required area, and only after the inclusion of the share of the father and two brothers of the petitioner, the petitioner could meet the requirement of having the required land as provided in the advertisement for the establishment of LPG distributorship. Accordingly, he submits that in such an event, it was incumbent upon the petitioner to have disclosed the name of all the persons who owned the property, whereas the petitioner has concealed this fact.

16. He further submits that the petitioner is bound by the declaration given in the advertisement with regard to the declaration of fact in the application form and also he is bound by the affidavit submitted by him in the form of Appendix-A referred in Clause-A, and since, it is a

case of non-disclosure of correct information, therefore, it is a case of deficiency in submitting the form and authority has not committed any error in law in rejecting the application form.

17. He further submits that the reliance placed by the learned counsel for the petitioner over Clause 16.4 of the guidelines is misplaced inasmuch as the said clause is applicable where it was found during the FVC process that if the land which was offered by the petitioner does not meet the eligibility condition or requirement as stipulated in the advertisement and if the applicant has alternative land in his name or members of the family unit as per the definition of family unit for land of the applicant with the date of registration on or before the last date for submission of application as specified either in advertisement or corrigendum (if any), the same can be considered.

18. He submits that the instant case is a case of false disclosure of information and not a case where the land offered for the establishment of LPG distributorship did not meet the criteria of the minimum requirement of land stipulated in the advertisement, nor did the petitioner have any alternative land which he could offer in place of the land provided by him.

19. He further submits that the Clause 16.4 would attract only during the FVC process and there is no pleading in the writ petition that during the FVC process the petitioner has provided any alternative land in place of the land which he offered for setting up LPG distributorship complying with the requirement of Clause 16.4 of the guidelines and in the absence of any pleading to this effect the said argument cannot be pressed during the course of hearing as the respondents are not in a position to reply the factual assertions not pleaded in the writ petition during course of argument. Accordingly, he submits that the writ petition lacks merit and deserves to be dismissed.

20. We have considered the rival submissions advanced by learned counsel for the parties and perused the record.

21. The undisputed facts which are borne out from the record are that the petitioner, pursuant to the advertisement dated 16.04.2012, submitted an application on 15.05.2012. The petitioner offered the land, i.e., Gata No.10, Khata No.300, situated in Village Chaf Jungle Visnnupura, Chhapra, District Kushi Nagar, for the establishment of LPG distributorship. From the khatauni enclosed with the writ petition, it is evident that the area of the said Gata is 0.352 hectares, and there are several co-owners of the said Gata. The petitioner's share in the said Gata is 1/9, and the petitioner on his own did not have sufficient land as per the stipulation in the advertisement and only after the inclusion of the share of brothers and father of petitioner, the petitioner could fulfil the eligibility criteria in respect of land needed for the establishment of LPG distributorship as per the stipulation in the advertisement.

22. At this point, it is relevant to reproduce the relevant column of the application form, which required the petitioner to fill in the details of ownership of property:

Provide the following details. In case land belongs to member of Family Unit, attach notorised affidavit as per Appendix-D

Name(s) of the owner of land	Relationship with applicant	Date of registration of sale deed/gift/date of mutation	Address of the location of the land for LPG godown	Khasra No/Survey No	Dimensions of land	
SHIV PRASAD	SELF	5.2.2000	GOSAIPATTI	10+52	Length in metre	Breadth in metre
					35	25

23. The petitioner in the aforesaid column has filled his name as owner of the property offered by him for the proposed LPG distributorship, and in the column 'relationship with the applicant', he stated 'self'. It is also one of the stipulation in the advertisement that in case the land belongs to the family unit or land is owned by the petitioner along with his father or brother or sister as provided in Clause 1.24 of the guidelines, a consent in the form of declaration from the family members was required on the last date of submission of application as specified in the advertisement/corrigendum (if any).

24. Admittedly, in the instant case, the petitioner did not disclose the name of his father and brothers, nor enclosed the notarized affidavit as per Appendix C. It has also come on record that the petitioner purchased the share of his two brothers, namely Pramod and Sunil, by a sale deed dated 09.02.2013, much after the submission of the application form, and thereafter, his name was recorded in the revenue records. So it is evident from the aforesaid fact that on the date of submission of the application form, the land which was offered by the petitioner for the establishment of LPG distributorship was not owned by the petitioner, and it is only after the inclusion of the share of his brothers and father that the petitioner fulfilled the eligibility criteria of the required land.

25. In such view of the fact, it was the duty of the petitioner to have disclosed correctly the details of the owners of the property and should have also disclosed correctly the relationship with the other co-owners in the application form. There is a declaration given by the petitioner in the application form that the information provided in the application form is true and correct. The petitioner was also supposed to give an affidavit in Appendix A stating that the information given in the form is correct. Paragraph 8 of the affidavit provides that a candidate has also to state in the affidavit that if any information/declaration given by him in the application or any document submitted by the candidate in support of application are found to be untrue or incorrect or false, the respondent would be within its right to withdraw the letter of intent or terminate the LPG distributorship (if already appointed) and the candidate would have no claim, whatsoever, against the corporation for such withdrawal or termination. Para 8 of the affidavit in the form Appendix-A is reproduced below:

"That if any information/declaration given by me in my application or in any document submitted by me in support of application for the award of the RGGLV or in this affidavit shall be found to be untrue or incorrect or false, the Indian Oil Corporation/Bharat Petroleum Corporation/Hindustan Petroleum Corporation would be within its rights to withdraw the letter of

intent/terminate the distributorship (if already appointed) and that I would have no claim, whatsoever, against the Corporation for such withdrawal/termination."

26. Thus, the petitioner is bound by the undertaking and averments made by him in the affidavit that the information given by him in the form is true and correct, and there is no concealment. In the instant case, admittedly, the petitioner has not given the details of the owners of the property in the application form, and in view of the aforesaid fact, it is a case of concealment of information while submitting the application form and not a case of deficiency in submitting the application form.

27. So far as the argument of learned counsel for the petitioner that in the instant case, the petitioner is entitled to the benefit of sub-Clause C of Clause 1.23 of the guidelines is concerned, we may note that the said clause could help the petitioner only if the petitioner had disclosed the correct information in the form. Even as per sub-Clause C of Clause 1.23 of the guidelines, the other owners had to submit a consent in the form of declaration from the family members on the date of submission of the application as specified either in the advertisement or corrigendum (if any).

28. In the instant case, admittedly, no consent in the form of declaration of the father and brothers of the petitioner was enclosed along with the application form, and therefore, in such view of the fact, this clause also does not help the petitioner.

29. So far as the reliance placed by the petitioner on Clause 16.4 of the guidelines is concerned, the same is reproduced herein below:

"*During the FVC process, in case land mentioned by the applicant for godown/showroom in his application is found not meeting the eligibility conditions/requirements as stipulated in the advertisement/brochure/application form and if the applicant is having any alternate land in his name/member(s) of the family unit as per the definition of family unit for land of the applicant with date of registration on or before the last date for submission of application as specified either in the advertisement or corrigendum (if any), the same can be considered. However, the same if considered has to be duly verified for its suitability during the FVC. In case at the time of FVC, it is found that the all-weather motorable road providing access to the Godown land is not available or if the candidate expresses his/her inability to ever provide the same, the candidate can offer an alternate land meeting the eligibility criteria. Such alternate land, if considered, has to be duly verified during the FVC for its suitability for providing LPG godown and showroom facility as mentioned hereinabove."*

30. The perusal of the aforesaid clause discloses that this clause applies only when during the FVC process, in case land mentioned by the applicant for godown or showroom does not meet the eligibility condition/requirement as stipulated in the advertisement/application form/brochure and if the applicant has any alternative land in his name or in the name of family members then the same can be considered.

31. In the instant case, on the date of submission of the application form, the applicant did not fulfil the criteria of land

required for the purpose of establishment of LPG distributorship and applicant did not have any alternative land for establishment which he could offer for establishment of LPG distributorship therefore, the Clause 16.4 of the guidelines is not attracted in the present case.

32. In case the applicant did not fulfil the criteria of land for the establishment of a Government showroom, it is only during the FVC process that he could offer an alternative land which meets the criteria mentioned in Clause 16.4. In the instant case, the petitioner has not disclosed the date of the FVC process nor has stated that he has an alternative land meeting the criteria provided in Clause 16.4 of the guidelines. In the absence of any such pleading in the writ petition, the petitioner cannot claim the benefit of Clause 16.4 of the guidelines.

33. So far as argument of petitioner that Clause 16.4 be given liberal interpretation is concerned, we find that said argument in the facts of present case is fallacious and lacks merit for the reason that petitioner has not disclosed in the writ petition the date of FVC process, and further on the date of FVC process, he fulfilled the land criteria as stipulated in the Guidelines. In the absence of any such pleading in the writ petition, no positive finding can be returned regarding the entitlement of the petitioner in respect to the benefit of Clause 16.4 of the guidelines.

34. So far as the judgment relied upon by the learned counsel for the petitioner in the case of **Rahul Singh (supra)** is concerned, the same is not applicable in the facts of the present case inasmuch as the said judgment has been rendered on the basis of the guidelines issued in the year 2023 whereas the petitioner will be governed by the guidelines applicable on the date of application of petitioner, therefore, the said judgment does not come to the rescue of the petitioner.

35. Thus, for the reasons given above, the writ petition is **dismissed** with no order as to cost.

(2025) 8 ILRA 278
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 11.08.2025

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE PRAVEEN KUMAR GIRI, J.

Writ Tax No. 3608 of 2025

Atlantis Intelligence Ltd. ...Petitioner
Versus
Union of India & Ors. ...Respondents

Counsel for the Petitioner:
Mohit Singh

Counsel for the Respondents:
A.S.G.I., C.S.C., Gaurav Mahajan, Saumitra Singh

Issue for Consideration

Matter pertains to whether a writ petition under Article 226 of the Constitution is maintainable against an order under Section 74 of the CGST Act, 2017, after expiry of the statutory appeal period prescribed under Section 107.

Headnotes

Central Goods and Services Tax Act, 2017 – SS. 74, 107, and 169 - Limitation for Appeal - Maintainability - Delay in filing statutory appeal - Condonation of delay beyond prescribed period - Service of the order by registered email is a valid service and the date on which such service is made would count as the date for the purpose of limitation – S. 107(4) of the

Act prescribes a specific period of limitation (three months plus one month on sufficient cause) and thereby excludes S. 5 of the Limitation Act, 1963.
Limitation Act, 1963 – S. 29(2) - Application of S. 5 of the Limitation Act stands excluded by virtue of S. 29(2) where a special statute prescribes its own limitation period.
Constitution of India - Article 226 - Writ jurisdiction - Cannot be invoked to circumvent statutory limitation or appellate procedure - High Court's plenary powers not wider than those under Article 142 - writ petition not maintainable after expiry of statutory limitation period.
Held: The service of the impugned order on the petitioner by registered email on January 31, 2025, was valid service, and the limitation period for filing the statutory appeal commenced from that date - The writ petition was filed on July 3, 2025, which was after the limitation period for filing an appeal under Section 107 of the Act (three months plus a maximum one-month condonable period) had expired - Entertaining the writ petition would amount to allowing the petitioner to circumvent the statutory appellate procedure and undermine the statutory regime - The present case was neither a case of gross violation of natural justice nor patent illegality that would warrant the court's indulgence in its writ jurisdiction to condone the delay - Petition dismissed - No order as to costs - liberty granted to proceed as per law. (Paras 6,14,15,16,17,18) (E-7)

Case Law Cited

Singh Enterprises v. Commissioner of Central Excise, **(2008) 3 SCC 70;** *Commissioner of Customs & Central Excise v. Hongo India Pvt. Ltd.,* **(2009) 5 SCC 791;***Assistant Commissioner (CT) LTU, Kakinada v. Glaxo Smith Kline Consumer Health Care Ltd.,* **(2020) 19 SCC 681;***Malik Khan v. Chief Commissioner of GST & Central Excise,* **(2023) 120 GSTR 66;***M/s Thekedar Pankaj Sharma v. State of Rajasthan,* **2024: RJ-JP:17881-DB;***Addichem Speciality LLP v. Special Commissioner,* **(2025) 140 GSTR 451;***Garg Enterprises v. State of U.P.,* **(2024) 129 GSTR 299**

List of Acts

Central Goods and Services Tax Act, 2017; Limitation Act, 1963; Constitution of India

List of Keywords

Limitation - Statutory Appeal - Writ Jurisdiction - Maintainability - Special Statute - Natural Justice - Delay Condonation - valid service by email - in limine dismissal - self-contained code - statutory remedy - special statute.

Case Arising From

Order-in-Original No. 84/AC/CGST/Div-I/N/2024-25 dated 31.01.2025 passed by the Assistant Commissioner, CGST, Division-I, Noida.

Appearances for Parties

Advs. for the Petitioner:
Mohit Singh, Ms. Anjali Jha Manish
Advs. for the Respondents:
Mr. Gaurav Mahajan, Sr. Standing Counsel (CGST); Mr. Arvind Kumar Mishra, Standing Counsel (State of U.P.); A.S.G.I.; C.S.C.; Saumitra Singh.

(Delivered by Hon'ble Shekhar B. Saraf, J.)

1. Heard Ms. Anjali Jha Manish, learned counsel appearing on behalf of the petitioner, Mr. Gaurav Mahajan, learned Senior Standing Counsel appearing on behalf of the respondent No.2/Assistant Commissioner, CGST and Mr. Arvind Kumar Mishra, learned Standing Counsel for the State-respondent.

2. This is a writ petition under Article 226 of the Constitution of India, wherein the writ petitioner is aggrieved by the impugned order in original dated January 1, 2025 passed by the Assistant Commissioner, CGST, Division -I, NOIDA. The prayers made out in the above writ petition are delineated below:

"A. Issue a writ, order or direction in the nature of certiorari to quash the Order In Original bearing

No.84/AC/CGST/Div-I/N/2024-25 dated January 31, 2025 passed by the learned Assistant Commissioner, CGST, Division-I, Noida; and/or.

B. Issue a writ, order or direction in the nature of certiorari to quash the Show Cause Notice dated 23.02.2022 issued by the Learned Assistant Commissioner, CGST, Division -I Noida and/or

C. Stay the operation of impugned Order in Original bearing No.84/AC/CGST/Div-I/N/2024-25 dated 31.01.2025, passed by the Learned Assistant Commissioner, CGST, Division - I, Noida, during the pendency of the present petition;

D. Interim and ad-interim reliefs in terms of prayer clauses as above;"

3. Upon perusal of the record, it is clear that the impugned order was passed on January 31, 2025, while the writ petition was filed on July 3, 2025. It is to be noted that Section 107 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'Act'), provides for a statutory appeal against the order passed under Section 74 of the Act. The period prescribed therein is three months. By way of sub-section (4) to Section 107 of the Act, if sufficient cause is shown, the period may be extended for a month. As the Act provides for a specific period for filing of appeal and also provides for an extended period, if sufficient cause is shown for condoning the delay in filing of the appeal, Section 29(2) of the Limitation Act, 1963 would be applicable. Section 29(2) of the Limitation Act reads as under:

"29. Savings.—

(1) .....

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law. (3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law. (4) Sections 25 and 26 and the definition of "easement" in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882), may for the time being extend."

Ergo, Section 29(2) clearly excludes the application of Section 5 of the Limitation Act for the purpose of condonation of delay in special statutes.

4. It is admitted by the petitioner that the petitioner was served by registered email on the very same date of passing of the impugned order. However, learned counsel appearing on behalf of petitioner, submits that there was no service made to the petitioner by way of registered post.

5. Upon perusal of Section 169 of the Act, we are of the view that in the event the service is made by way of the registered email, the same would be a good service and limitation would start from that date itself. The petitioner cannot be allowed to take a ground that the other modes of service that have been provided in clauses (a) to (f) of sub-section (1) to Section 169 of the Act have not been followed. If one

were to read that for service to be complete more than one mode as has been prescribed under Section 169 of the Act is required to be followed, the entire purpose of the provision would become absurd. Such a reading is neither plausible nor can be countenanced by us.

6. Accordingly, we are of the view that service of the order by registered email is a valid service and the date on which such service is made would count as the date for the purpose of limitation.

7. The Supreme Court in **Singh Enterprises v. Commissioner of Central Excise,** reported in (2008) 3 SCC 70 has held that under the statute where specific limitation period is prescribed, Section 5 of the Limitation Act, has no applicability. **Singh Enterprises** (supra) categorically states that an appeal is required to be filed by the petitioner within the time frame provided in the special Statute. The relevant paragraph of the judgment is quoted hereinbelow:

"10. Sufficient cause is an expression which is found in various statutes. It essentially means as adequate or enough. There cannot be any straitjacket formula for accepting or rejecting the explanation furnished for delay caused in taking steps. In the instant case, the explanation offered for the abnormal delay of nearly 20 months is that the appellant concern was practically closed after 1998 and it was only opened for some short period. From the application for condonation of delay, it appears that the appellant has categorically accepted that on receipt of order the same was immediately handed over to the consultant for filing an appeal. If that is so, the plea that because of lack of experience in business there was delay does not stand to reason. ITC case [(1998) 8 SCC 610] was rendered taking note of the peculiar background facts of the case. In that case there was no law declared by this Court that even though the statute prescribed a particular period of limitation, this Court can direct condonation. That would render a specific provision providing for limitation rather otiose. In any event, the causes shown for condonation have no acceptable value. In that view of the matter, the appeal deserves to be dismissed which we direct. There will be no order as to costs."

8. The three-judges Bench of the Supreme Court in **Commissioner of Customs and Central Excise v. Hongo India Private Limited and Another,** reported in (2009) 5 SCC 791 while dealing with the issue of condoning the delay beyond the period specified in Section 35-H of the Central Excise Act, 1944 has reiterated the view of **Singh Enterprises** (supra) and has held that time limit prescribed for making reference and appeal to High Court is absolute and unextendable by Court under Section 5 of the Limitation Act. The limitation cannot be extended by applying a liberal interpretation. The relevant paragraph of the judgment is quoted hereinbelow:

"32. As pointed out earlier, the language used in Sections 35, 35-B, 35-EE, 35-G and 35-H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60

days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days."

9. The Supreme Court in **Assistant Commissioner (CT) LTU, Kakinada and Others v. Glaxo Smith Kline Consumer Health Care Ltd.,** reported in (2020) 19 SCC 681, has dealt with the moot question as to whether the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India ought to entertain challenge to the assessment order on the sole ground that the statutory remedy of appeal against the order stood foreclosed by the law of limitation. The Apex Court while dealing with the issue of power of appellate authority to condone delay under Section 31 of the Andhra Pradesh Value Added Tax, 2005 has held that if a complete mechanism is provided for challenging the assessment orders, that mechanism solely has to be followed, neither writ court nor Section 5 of the Limitation Act can condone the delay beyond prescribed statutory period. The relevant paragraphs of the judgment are quoted hereinbelow:

"16. Indubitably, the powers of the High Court under Article 226 of the Constitution are wide, but certainly not wider than the plenary powers bestowed on this Court under Article 142 of the Constitution. Article 142 is a conglomeration and repository of the entire judicial powers under the Constitution, to do complete justice to the parties. Even while exercising that power, this Court is required to bear in mind the legislative intent and not to render the statutory provision otiose. In a recent decision of a three-Judge Bench of this Court in ONGC v. Gujarat Energy Transmission Corpn. Ltd. [ONGC v. Gujarat Energy Transmission Corpn. Ltd., (2017) 5 SCC 42 : (2017) 3 SCC (Civ) 47] , the statutory appeal filed before this Court was barred by 71 days and the maximum time-limit for condoning the delay in terms of Section 125 of the Electricity Act, 2003 was only 60 days. In other words, the appeal was presented beyond the condonable period of 60 days. As a result, this Court could not have condoned the delay of 71 days. Notably, while admitting the appeal, the Court had condoned the delay in filing the appeal. However, at the final hearing of the appeal, an objection regarding appeal being barred by limitation was allowed to be raised being a jurisdictional issue and while dealing with the said objection, the Court referred to the decisions in Singh Enterprises v. CCE [Singh Enterprises v. CCE, (2008) 3 SCC 70] , CCE v. Hongo (India) (P) Ltd. [CCE v. Hongo (India) (P) Ltd., (2009) 5 SCC 791] , Chhattisgarh SEB v. CERC [Chhattisgarh SEB v. CERC, (2010) 5 SCC 23] and Suryachakra Power Corpn. Ltd. v. Electricity Deptt. [Suryachakra Power Corpn. Ltd. v. Electricity Deptt., (2016) 16 SCC 152 : (2017) 5 SCC (Civ) 761] and concluded that Section 5 of the Limitation Act, 1963 cannot be invoked by the Court for maintaining an appeal beyond maximum prescribed period in Section 125 of the Electricity Act.

17. The principle underlying the dictum in this decision would apply proprio vigore to Section 31 of the 2005 Act including to the powers of the High Court under Article 226 of the Constitution.

Notably, in this decision, a submission was canvassed by the assessee that in the peculiar facts of that case (as urged in the present case), the Court may exercise its jurisdiction under Article 142 of the Constitution, so that complete justice can be done. This argument has been considered and plainly rejected in the following words : (ONGC case [ONGC v. Gujarat Energy Transmission Corpn. Ltd., (2017) 5 SCC 42 : (2017) 3 SCC (Civ) 47] , SCC pp. 48-51, paras 12-16)

"12. In A.R. Antulay v. R.S. Nayak [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372] , while explicating and elaborating the principles under Article 142, Sabyasachi Mukharji, J. (as his Lordship then was) opined thus : (SCC p. 656, para 50)

'50. ... The fact that the rule was discretionary did not alter the position. Though Article 142(1) empowers the Supreme Court to pass any order to do complete justice between the parties, the court cannot make an order inconsistent with the fundamental rights guaranteed by Part III of the Constitution. No question of inconsistency between Article 142(1) and Article 32 arose. Gajendragadkar, J., speaking [Prem Chand Garg v. Excise Commr., AIR 1963 SC 996] for the majority of the Judges of this Court said that Article 142(1) did not confer any power on this Court to contravene the provisions of Article 32 of the Constitution. Nor did Article 145 confer power upon this Court to make rules, empowering it to contravene the provisions of the fundamental right. At AIR pp. 1002-03, para 12 : SCR p. 899 of the Reports, Gajendragadkar, J., reiterated that the powers of this Court are no doubt very wide and they are intended and "will always be exercised in the interests of justice". But that is not to say that an order can be made by this Court which is inconsistent with the fundamental rights guaranteed by Part III of the Constitution. It was emphasised that an order which this Court could make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws. The court, therefore, held that it was not possible to hold that Article 142(1) conferred upon this Court powers which could contravene the provisions of Article 32.'

13. The said decision has been clarified by a Constitution Bench in Union Carbide Corpn. v. Union of India [Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584] , wherein M.N. Venkatachaliah, J. (as his Lordship then was) speaking for the majority, ruled that : (SCC pp. 634-35, para 83)

'83. It is necessary to set at rest certain misconceptions in the arguments touching the scope of the powers of this Court under Article 142(1) of the Constitution. These issues are matters of serious public importance. The proposition that a provision in any ordinary law irrespective of the importance of the public policy on which it is founded, operates to limit the powers of the Supreme Court under Article 142(1) is unsound and erroneous. In both Prem Chand Garg v. Excise Commr.[Prem Chand Garg v. Excise Commr., AIR 1963 SC 996] , as well as A.R. Antulay v. R.S. Nayak [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372] , cases the point was one of violation of constitutional provisions and constitutional rights. The observations as to the effect of inconsistency with statutory provisions were really unnecessary in those cases as the decisions in the ultimate

analysis turned on the breach of constitutional rights. We agree with Shri Nariman that the power of the Court under Article 142 insofar as quashing of criminal proceedings are concerned is not exhausted by Section 320 or 321 or 482 CrPC or all of them put together. The power under Article 142 is at an entirely different level and of a different quality. Prohibitions or limitations or provisions contained in ordinary laws cannot, ipso facto, act as prohibitions or limitations on the constitutional powers under Article 142. Such prohibitions or limitations in the statutes might embody and reflect the scheme of a particular law, taking into account the nature and status of the authority or the court on which conferment of powers — limited in some appropriate way — is contemplated. The limitations may not necessarily reflect or be based on any fundamental considerations of public policy. Shri Sorabjee, learned Attorney General, referring to Garg case [Prem Chand Garg v. Excise Commr., AIR 1963 SC 996] , said that limitation on the powers under Article 142 arising from "inconsistency with express statutory provisions of substantive law" must really mean and be understood as some express prohibition contained in any substantive statutory law. He suggested that if the expression "prohibition" is read in place of "provision" that would perhaps convey the appropriate idea. But we think that such prohibition should also be shown to be based on some underlying fundamental and general issues of public policy and not merely incidental to a particular statutory scheme or pattern. It will again be wholly incorrect to say that powers under Article 142 are subject to such express statutory prohibitions. That would convey the idea that statutory provisions override a constitutional provision. Perhaps, the proper way of expressing the idea is that in exercising powers under Article 142 and in assessing the needs of "complete justice" of a cause or matter, the Supreme Court will take note of the express prohibitions in any substantive statutory provision based on some fundamental principles of public policy and regulate the exercise of its power and discretion accordingly. The proposition does not relate to the powers of the Court under Article 142, but only to what is or is not "complete justice" of a cause or matter and in the ultimate analysis of the propriety of the exercise of the power. No question of lack of jurisdiction or of nullity can arise.'

14. In this regard, another Constitution Bench in Supreme Court Bar Assn. v. Union of India [Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409] opined : (SCC pp. 437-38, para 56)

'56. As a matter of fact, the observations on which emphasis has been placed by us from the Union Carbide case [Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584] , A.R. Antulay case [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372] and Delhi Judicial Service Assn. v. State of Gujarat[Delhi Judicial Service Assn. v. State of Gujarat, (1991) 4 SCC 406] , go to show that they do not strictly speaking come into any conflict with the observations of the majority made in Prem Chand Garg case [Prem Chand Garg v. Excise Commr., AIR 1963 SC 996] . It is one thing to say that "prohibitions or limitations in a statute" cannot come in the way of exercise of jurisdiction under Article 142 to do complete justice between the parties in the pending "cause or matter" arising out of that statute, but quite a different thing to say that while exercising jurisdiction under Article 142, this Court can altogether ignore the

substantive provisions of a statute, dealing with the subject and pass orders concerning an issue which can be settled only through a mechanism prescribed in another statute. This Court did not say so in Union Carbide case [Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584] either expressly or by implication and on the contrary it has been held that the Supreme Court will take note of the express provisions of any substantive statutory law and regulate the exercise of its power and discretion accordingly. ...'

15. From the aforesaid decisions, it is clear as crystal that the Constitution Bench in Supreme Court Bar Assn. v. Union of India [Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409] , has ruled that there is no conflict of opinion in Antulay case [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372] or in Union Carbide Corpn. Case [Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584] with the principle set down in Prem Chand Garg v. Excise Commr. [Prem Chand Garg v. Excise Commr., AIR 1963 SC 996] Be it noted, when there is a statutory command by the legislation as regards limitation and there is the postulate that delay can be condoned for a further period not exceeding sixty days, needless to say, it is based on certain underlined, fundamental, general issues of public policy as has been held in Union Carbide Corpn. Case [Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584]. As the pronouncement in Chhattisgarh SEB v. CERC [Chhattisgarh SEB v. CERC, (2010) 5 SCC 23] , lays down quite clearly that the policy behind the Act emphasising on the constitution of a special adjudicatory forum, is meant to expeditiously decide the grievances of a person who may be aggrieved by an order of the adjudicatory officer or by an appropriate Commission. The Act is a special legislation within the meaning of Section 29(2) of the Limitation Act and, therefore, the prescription with regard to the limitation has to be the binding effect and the same has to be followed regard being had to its mandatory nature. To put it in a different way, the prescription of limitation in a case of present nature, when the statute commands that this Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. It is equivalent to Section 3 of the Limitation Act. Therefore, it is uncondonable and it cannot be condoned taking recourse to Article 142 of the Constitution.

16. We had stated earlier that we will be adverting to the passage in Suryachakra Power Corpn. Ltd.v. Electricity Deptt. [Suryachakra Power Corpn. Ltd. v. Electricity Deptt., (2016) 16 SCC 152 : (2017) 5 SCC (Civ) 761] There, the Court had referred to Section 14 of the Limitation Act. It fundamentally relied on M.P. Steel Corpn. v. CCE [M.P. Steel Corpn. v. CCE, (2015) 7 SCC 58 : (2015) 3 SCC (Civ) 510] , wherein the Court after referring to certain authorities, analysed thus : (M.P. Steel Corpn. Case [M.P. Steel Corpn. v. CCE, (2015) 7 SCC 58 : (2015) 3 SCC (Civ) 510] , SCC p. 91, para 43)

'43. ... when a certain period is excluded by applying the principles contained in Section 14, there is no delay to be attributed to the appellant and the limitation period provided by the statute concerned continues to be the stated period and not more than the stated period. We conclude, therefore, that the principle of Section 14 which is a principle based on advancing the cause of justice would certainly apply to exclude time taken in prosecuting proceedings which are bona

fide and with due diligence pursued, which ultimately end without a decision on the merits of the case.'''
(emphasis in original and supplied)

Similarly, in State v. Mushtaq Ahmad [State v. Mushtaq Ahmad, (2016) 1 SCC 315 : (2016) 1 SCC (Cri) 255] , this Court opined that where minimum sentence is provided for an offence then no court can impose lesser punishment on ground of mitigating factors.

18. A priori, we have no hesitation in taking the view that what this Court cannot do in exercise of its plenary powers under Article 142 of the Constitution, it is unfathomable as to how the High Court can take a different approach in the matter in reference to Article 226 of the Constitution. The principle underlying the rejection of such argument by this Court would apply on all fours to the exercise of power by the High Court under Article 226 of the Constitution.

19. We may now revert to the Full Bench decision of the Andhra Pradesh High Court in Electronics Corpn. of India Ltd. [Electronics Corpn. of India Ltd. v. Union of India, 2018 SCC OnLine Hyd 21 : (2018) 361 ELT 22] , which had adopted the view taken by the Full Bench of the Gujarat High Court in Panoli Intermediate (India) (P) Ltd. v. Union of India [Panoli Intermediate (India) (P) Ltd. v. Union of India, 2015 SCC OnLine Guj 570 : AIR 2015 Guj 97] and also of the Karnataka High Court in Phoenix Plasts Co. v. CCE [Phoenix Plasts Co. v. CCE, 2013 SCC OnLine Kar 10432 : (2013) 298 ELT 481] . The logic applied in these decisions proceeds on fallacious premise. For, these decisions are premised on the logic that provision such as Section 31 of the 2005 Act, cannot curtail the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. This approach is faulty. It is not a matter of taking away the jurisdiction of the High Court. In a given case, the assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction — by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and rules of procedure or in violation of principles of natural justice, where no procedure is specified. The High Court may accede to such a challenge and can also non-suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner chooses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the dictum of a three-Judge Bench of this Court in ONGC [ONGC v. Gujarat Energy Transmission Corpn. Ltd., (2017) 5 SCC 42 : (2017) 3 SCC (Civ) 47] In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose.

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22. Suffice it to observe that this decision is on the facts of that case and cannot be cited as a precedent in support of an argument that the High Court is free to entertain the writ petition assailing the

assessment order even if filed beyond the statutory period of maximum 60 days in filing appeal. The remedy of appeal is creature of statute. If the appeal is presented by the assessee beyond the extended statutory limitation period of 60 days in terms of Section 31 of the 2005 Act and is, therefore, not entertained, it is incomprehensible as to how it would become a case of violation of fundamental right, much less statutory or legal right as such.

23. Arguendo, reverting to the factual matrix of the present case, it is noticed that the respondent had asserted that it was not aware about the passing of assessment order dated 21-6-2017 although it is admitted that the same was served on the authorised representative of the respondent on 22-6-2017. The date on which the respondent became aware about the order is not expressly stated either in the application for condonation of delay filed before the appellate authority, the affidavit filed in support of the said application or for that matter, in the memo of writ petition. On the other hand, it is seen that the amount equivalent to 12.5% of the tax amount came to be deposited on 12-9-2017 for and on behalf of respondent, without filing an appeal and without any demur — after the expiry of statutory period of maximum 60 days, prescribed under Section 31 of the 2005 Act. Not only that, the respondent filed a formal application under Rule 60 of the 2005 Rules on 8-5-2018 and pursued the same in appeal, which was rejected on 17-8-2018. Furthermore, the appeal in question against the assessment order came to be filed only on 24-9-2018 without disclosing the date on which the respondent in fact became aware about the existence of the assessment order dated 21-6-2017. On the other hand, in the affidavit of Mr Sreedhar Routh, Site Director of the respondent Company (filed in support of the application for condonation of delay before the appellate authority), it is stated that the Company became aware about the irregularities committed by its erring official (Mr P. Sriram Murthy) in the month of July 2018, which presupposes that the respondent must have become aware about the assessment order, at least in July 2018. In the same affidavit, it is asserted that the respondent Company was not aware about the assessment order, as it was not brought to its notice by the employee concerned due to his negligence. The respondent in the writ petition has averred that the appeal was rejected by the appellate authority on the ground that it had no power to condone the delay beyond 30 days, when in fact, the order examines the cause set out by the respondent and concludes that the same was unsubstantiated by the respondent. That finding has not been examined by the High Court in the impugned judgment and order [Glaxo Smith Kline Consumer Healthcare Ltd. v. CCT, 2018 SCC OnLine Hyd 1985] at all, but the High Court was more impressed by the fact that the respondent was in a position to offer some explanation about the discrepancies in respect of the volume of turnover and that the respondent had already deposited 12.5% of the additional amount in terms of the previous order passed by it. That reason can have no bearing on the justification for non-filing of the appeal within the statutory period. Notably, the respondent had relied on the affidavit of the Site Director and no affidavit of the employee concerned (P. Sriram Murthy, Deputy Manager-Finance) or at least the other employee [Siddhant Belgaonker, Senior Manager (Finance)], who was associated with the erring employee during the relevant period, has been filed in

support of the stand taken in the application for condonation of delay. Pertinently, no finding has been recorded by the High Court that it was a case of violation of principles of natural justice or non-compliance of statutory requirements in any manner. Be that as it may, since the statutory period specified for filing of appeal had expired long back in August 2017 itself and the appeal came to be filed by the respondent only on 24-9-2018, without substantiating the plea about inability to file appeal within the prescribed time, no indulgence could be shown to the respondent at all.

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25. Taking any view of the matter, therefore, the High Court ought not to have entertained the subject writ petition filed by the respondent herein. The same deserved to be rejected at the threshold."

(Emphasis added)

10. The Division Bench of the Rajasthan High Court in **Malik Khan v. Chief Commissioner of GST & Central Excise**, reported in (2023) 120 GSTR 66 also examined a similar situation wherein the assessee had not filed the statutory appeal under Section 107 of the Act and after the expiry of the limitation period prescribed thereunder directly approached the High Court. The Court reiterating the judgment of Supreme Court in **Glaxo Smith Kline Consumer Health Care Limited** (supra) has held that such a writ petition is not maintainable. The relevant paragraphs of the judgment are quoted hereinbelow:

"15. We are of the view that after expiry of the limitation period of filing appeal, the writ petition filed by the petitioner challenging the impugned order is not maintainable. This view of us is getting support from the decision of the honourable Supreme Court rendered in Assistant Commissioner (CT) LTU, Kakinada (supra), which is also relied upon by the counsel for the petitioner.

17. As observed earlier, the petitioner has not filed any statutory appeal before the appellate authority within the limitation period and has directly filed this writ petition before this court after eight months of the expiry of limitation, we are of the view that as per the law laid down by the honourable Supreme Court rendered in Assistant Commissioner (CT) LTU, Kakinada's case (supra), the writ petition filed by the petitioner cannot be entertained as being not maintainable."

11. The Division Bench of Rajasthan High Court in **M/s Thekedar Pankaj Sharma v. State of Rajasthan;** reported in 2024:RJ-JP:17881-DB has also specifically dealt with the identical issue involved in the present writ petition and outrightly rejected the writ petition as not maintainable in view of the judgment of Supreme Court in **Glaxo Smith Kline Consumer Health Care Limited** (supra). The relevant paragraphs of the judgment are quoted hereinbelow:

"2. Though number of grounds have been urged in the writ petition as also before this Court to assail the correctness and validity of aforesaid show cause notice as also order dated 13.03.2023, learned counsel for the respondents, appearing on advance copy, brought to the notice of the Court that after the proceedings under Section 74 of the RGST Act, 2017/ the CGST Act, 2017 were drawn against the petitioner which culminated in order dated 13.03.2023 resulting in levy of tax liability along with interest and penalty, the petitioner did not file any appeal either

within the period of limitation as prescribed under Section 107 of the RGST Act, 2017/ the CGST Act, 2017 or within the maximum period thereafter which could be condoned under the power to condone the delay in filing of the appeal. Therefore, in view of the decision of the Hon'ble Supreme Court in the case of Assistant Commissioner (CT) LTU, Kakinada and Others v. Glaxo Smith Kline Consumer Health Care Ltd. reported in (2020) 19 SCC 681(2020) 19 SCC 681, present writ petition is not maintainable and liable to be dismissed.

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6. Present is a case where the petitioner did not even file appeal and allowed the order passed in assessment proceedings to become final and thereafter approached this Court by filing writ petition seeking to challenge the determination of tax, interest and penalty by the competent authority vide order dated 13.03.2023. Present is not a case where the order under Section 74 of the RGST Act, 2017/ the CGST Act, 2017 levying tax along with interest and penalty was passed without giving any opportunity of hearing to the petitioner. Even according to the petitioner, he was issued show cause notice and thereafter, impugned order was passed. In the writ petition, no plausible explanation has been offered as to why the petitioner did not take recourse to the remedy of statutory appeal. It, therefore, appears that the petitioner consciously did not choose to take recourse to the remedy of appeal as provided under Section 107 of the RGST Act, 2017/the CGST Act, 2017, but waited for the expiry of the period of limitation for filing appeal as also the maximum period of delay which could be condoned in the exercise of powers conferred upon the appellate authority under the provisions of Section 107 of the RGST Act, 2017/ the CGST Act, 2017

7. Having not preferred an appeal, the petition in the present case, in view of the decision of Hon'ble Supreme Court in the case of Glaxo Smith Kline Consumer Health Care Ltd. reported in (2020) 19 SCC 681(supra), is not maintainable."

12. The Division Bench of the Delhi High Court in **Addichem Speciallity LLP v. Special Commissioner,** reported in (2025) 140 GSTR 451 referring to a catena of judgments of the Supreme Court and other High Courts has also held that the plenary power of the High Court cannot in any case exceed the jurisdictional powers under Article 142 of the Constitution of India, and even the Supreme Court cannot extend the period of limitation de hors the provisions contained in any statutory enactment. The court has summarised the precedents in paragraphs 69 and 70 which are quoted hereinbelow:

"69. In summary, the power to condone delay caused in pursuing a statutory remedy would always be dependent upon the statutory provision that governs. The right to seek condonation of delay and invoke the discretionary power inhering in an appellate authority would depend upon whether the statute creates a special and independent regime with respect to limitation or leaves an avenue open for the appellant to invoke the general provisions of the Limitation Act to seek condonation of delay. The facility to seek condonation can be resorted provided the legislation does not construct an independent regime with respect to an appeal being preferred. Once it is found that the legislation incorporates a provision which creates a special period of

limitation and proscribes the same being entertained after a terminal date, the general provisions of the Limitation Act would cease to apply.

70. In view of the forgoing discussion, as it is evident that each of the appeals was filed beyond the prescribed period of limitation provided by sections 107(1) and 107(4) of the CGST Act, the aforesaid writ petitions lack merit and are accordingly dismissed."

13. This Court in **Garg Enterprises v. State of U.P.,** reported in (2024) 129 GSTR 299 penned by one of us has again followed the dictum laid down by Supreme Court in **Singh Enterprises** (supra) and **Hongo India (P) Ltd.** (supra) and held as follows:

"7. The Central Goods and Services tax Act is a special statute and a self-contained code by itself. Section 107 of the Act has an in built mechanism and has impliedly excluded the application of the Limitation Act. It is trite law that section 5 of the Limitation Act, 1963 will apply only if it is extended to the special statute. Section 107 of the Act specifically provides for the limitation and in the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of section 5 of the Limitation Act. Accordingly, one cannot apply section 5 of the Limitation Act, 1963 to the aforesaid provision."

14. Upon a perusal of the umpteen judgements cited above and sifting through the ratios laid down by the Supreme Court and High Courts in the various judgments, one may extract the principles with regard to maintainability of the writ petitions after expiry of the time frame for filing appeal stipulated in the special statute. The said principles are summarised below:

A. An order that this Court could make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution of India, but also be consistent with the substantive provisions of the relevant statutory laws.

B. In exercising powers under Article 226 of the Constitution of India and in assessing the needs of 'complete justice' of a cause or matter, the High Court should take note of the express prohibitions in any substantive statutory provision based on some fundamental principles of public policy and regulate the exercise of its power and discretion accordingly.

C. The prescription of limitation when the statute commands that delay may be condoned to a maximum of one month further would come within the ambit and sweep of the policy of legislation. In such cases, Section 29(2) read with Section 3 of the Limitation Act would apply, and accordingly, the Courts shall have no power to condone the delay of any further period even in writ jurisdiction under Article 226 of the Constitution of India.

D. The principle of Section 14 of the Limitation Act which is a principle based on advancing the cause of justice would certainly apply to exclude time taken in prosecuting proceedings which are bona fide and with due diligence pursued, which ultimately end without a decision on the merits of the case.

15. In the present case, the petitioner has come to this writ Court after the limitation has expired for filing an appeal under Section 107 of the Act. In light of the same, we are of the view that entertaining this writ petition would amount to allowing

the petitioner to circumvent the statutory appellate procedure. In our view, no proper explanation has been provided by the petitioner for non-filing of the appeal within time and/or non-filing of the writ petition within the limitation period.

16. The dictum of the Supreme Court laid down in **Singh Enterprises** (supra), **Hongo India (P) Ltd**. (supra) and **Glaxo Smith Kline Consumer Health Care Ltd.** (supra) has been consistently followed by Supreme Court and various High Courts. In light of the same, this Court is of the view that this Court should not indulge the writ petitioner in condoning the delay as the present case is neither a case of gross violation of principles of natural justice nor patent illegality. Furthermore, writ jurisdiction can certainly not be exercised when invoked to undermine or defeat the application of a statutory regime so as to render the provision of limitation provided in the statute otiose. Ergo, this Court ought not to entertain the present writ petition and the same deserves to be rejected *in limine.*

17. The writ petition, is accordingly, dismissed, with no order as to cost.

18. We make it clear that the petitioner shall be at liberty to proceed in accordance with law and if the petitioner files an appeal, the order passed by this Court and the observations herein shall not affect the decision of the appellate forum.

(2025) 8 ILRA 291
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 12.08.2025

BEFORE

THE HON'BLE VINOD DIWAKAR, J.

Application U/S 482 No. 1808 of 2025

Sudhir Kumar Goyal & Anr. ...Applicants
Versus
State Of U.P. & Ors. ...Opposite Parties

Counsel for the Applicants:
Rajesh Kumar Mishra, Vimlendu Tripathi

Counsel for the Opposite Parties:
G.A.

Issue for Consideration

Matter pertains to the legality of FIR registration and cognizance under S. 138 of the Negotiable Instruments Act, 1881, and framing of charges under SS. 420 & 406 IPC, pending before the Chief Judicial Magistrate. The issue raised was whether FIR registration by police under S. 138 of the N.I. Act is impermissible in law in view of the bar contained in S. 142(a) of the Act.

Headnotes

The Code of criminal procedure, 1973 - Indian Penal Code, 1860 - SS. 420 and 406 - The Negotiable instruments Act, 1981 - S. 138,142 - Cognizance - Complaint by payee or holder mandatory - FIR registration impermissible - Police - Power to investigate under Special Acts - FIR not maintainable where statute provides for complaint procedure only - Magistrate's Duty - Duty to scrutinize FIR and avoid mechanical cognizance - Directions - Issuance of comprehensive instructions for training police and prosecutors.

Held: No case was made out for quashing the charge sheet against the applicant in respect of the offences under SS. 420 and 406 IPC - It is impermissible in law for the police to register an FIR under S.138 of the N.I. Act - Trial court to rehear the applicant afresh at the stage of charge only for SS. 420 & 406 IPC**. -** Impugned cognizance and charge orders dated 03.06.2024 and 18.07.2024**,** insofar as they relate to S.138 of the N.I. Act**,** are quashed **-** Directions issued to the A.D.G. (Prosecution) and A.C.S. (Home) to circulate a list of Special Acts where FIR registration is barred; to train Investigating Officers accordingly - District Judges directed to sensitize Judicial Officers not to take cognizance on police reports under such Special Acts - In 38

Special Acts (referred to in paragraph 17) besides others, the police are not empowered to register an FIR, and if inadvertently done, the same shall be referred to the respective department or to the competent person to deal with the issue involved and subsequent investigation by treating the same as an information or narration of facts - Application partly allowed.(Paras 19.2, 20, 2122,23,24,25,26,27,29) (E-7)

Case Law Cited

N. Harihara Krishnan v. J. Thomas **(2018) 13 SCC 663***; Delhi Race Club (1940) Ltd. v. The State of Uttar Pradesh & Another* **2024 SCC Online SC 2248***; Jayant v. State of Madhya Pradesh* **(2021) 2 SCC 670***; Prashant Kumar Singh v. The State of Jharkhand* **Cr.M.P. No.3501 of 2019***; In Union of India v. Ashok Kumar Sharma* **(2021) 12 SCC 674***; Jeewan Kumar Raut' case* **(2009) 7 SCC 526***; Rasila S Mehta v. Custodian, Nariman Bhawan Mumbai* **(2011)6 SCC 220***; Dr. Aparna Singhal v. State of Haryana* **Criminal Mise. No. M-421 of 2021 (PHC)***; Dr. Anant Ram v. State of Haryana,* **2022 SCC Online P&H 2284***; Dr. Brij Pal Singh v. State of Uttar Pradesh* **2024: AHC:159207**

List of Acts

The Code of criminal procedure, 1973; Indian Penal Code, 1860

Acts where FIR registration impermissible (illustrative list): Negotiable Instruments Act, 1881; Domestic Violence Act, 2005; Mines and Minerals (Development and Regulation) Act, 1957; PC & PNDT Act, 1994; Consumer Protection Act, 2019; Environment (Protection) Act, 1986; Trade Marks Act, 1999; Transplantation of Human Organs and Tissues Act, 1994; Sexual Harassment of Women at Workplace Act, 2013; Water (Prevention and Control of Pollution) Act, 1974; and others - total 38 Special Acts.

Acts where FIR registration permissible: NDPS Act, Arms Act, SC/ST (Prevention of Atrocities) Act, POCSO Act, Prevention of Corruption Act, IT Act, etc.

List of Keywords

Negotiable Instruments Act - FIR registration impermissible - Cognizance - Complaint - Special Acts - Police powers - Magistrate's duty - Prosecution - Sensitization - Directions - Compliance - Bulandshahr - A.D.G. (Prosecution) - S.S.P. - Quashing of cognizance - Judicial mind.

Case Arising From

Criminal Case No. 6627 of 2024, titled *State v. Sudhir Kumar Goyal & Anr.*, arising out of Case Crime No. 18 of 2024, P.S. Kotwali Dehat, District Bulandshahr, under Sections 420, 406 IPC and Section 138 of the N.I. Act, 1881.

Appearances for Parties

Advs. for the Applicants:
Rajesh Kumar Mishra, Vimlendu Tripathi
Advs. for the Opposite Parties:
G.A., **Shri Kuldeep Singh Chauhan** (A.G.A. for the State)

(Delivered by Hon'ble Vinod Diwakar, J.)

1. Heard Shri Vimlendu Tripathi, learned counsel for the applicants, Shri Kuldeep Singh Chauhan, learned A.G.A. for the State, and perused the material available on record.

2. The applicant has challenged the impugned order of framing charge dated 18.7.2024 and cognizance order dated 3.6.2024, passed in Criminal Case No. 6627 of 2024, titled as State v. Sudhir Kumar Goyal and another, arising out of Case Crime No.18 of 2024, under Sections 420, 406 IPC and Section 138 of the Negotiable Instruments Act, 1881, registered at P.S. Kotwali Dehat, District Bulandshahr, which is pending trial before the learned Chief Judicial Magistrate, Bulandshahr.

3. The brief facts of the case are that the informant booked two plots in Radhika Enclave, Meerut Road, Bulandshahr, in January and April 2023, making total payments of Rs.30,33,100/- through cash and cheques issued in favour of Mr. Jai Prakash, and handed over the said cheques

to the applicant Sudhir Kumar Goyal. However, instead of executing the sale deed, the applicant allegedly sold the plots to the third party without knowledge and consent of the complainant. Upon cancellation of the bookings, the applicant issued four refund cheques in favour of the complainant, all of which were dishonoured, on presentation. Thereafter, pursuant to a complaint filed by the opposite party no.2/complainant, the aforesaid FIR has been registered against the applicant under section 138 of N.I. Act-besides other sections of IPC.

4. After registration of FIR, the Investigating Officer conducted a detailed investigation and submitted a charge-sheet against the applicant under Sections 420, 406 IPC, read with Section 138 of N.I. Act. Upon submission of the charge-sheet, the learned Magistrate took cognizance of the offences and issued summon to the applicant by impugned order dated 03.06.2024. Thereafter, by impugned order dated 18.07.2024, the learned trial court, having found sufficient grounds, proceeded to frame charges against the applicant for the aforesaid offences.

5. Shri Vimlendu Tripathi, learned counsel for the applicant submits that the registration of the First Information Report and the consequential proceedings initiated by the police, followed by cognizance order, passed by the Magistrate, are in clear violation of the mandate of Section 142 of the N.I. Act. It is submitted that Section 142 of the N.I. Act prescribes a specific procedure for initiation of proceedings under Section 138 of the N.I. Act, wherein it is categorically provided that no court shall take cognizance of any offence punishable under Section 138 of the N.I. Act except upon a written complaint made by the payee or the holder of the cheque before the Magistrate. Section 142 of N.I. Act is reproduced hereinbelow for ready reference:

"142. Cognizance of offences-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)

(a) No Court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque."

6. It is further submitted that the entire proceedings arising out of the prosecution case are barred by the provisions of Section 142(a) of the N.I. Act, 1881. In support of this contention, learned counsel for the applicant has placed reliance on the judgment of the Supreme Court passed in ***N. Harihara Krishnan v. J. Thomas*** [1]. An excerpt from the said judgment, relevant to the present context, has been reproduced below for ready reference:

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"By the nature of the offence under Section 138 of the Act, the first ingredient constituting the offence is the fact that a person drew a cheque. The identity of the drawer of the cheque is necessarily required to be known to the complainant (payee) and needs investigation and would not normally be in dispute unless the person who is alleged to have drawn a cheque disputes that very fact. The other facts required to be proved for securing the punishment of the person who drew a cheque that eventually got dishonoured is that the payee of the cheque

did in fact comply with each one of the steps contemplated under Section 138 of THE ACT before initiating prosecution. Because it is already held by this Court that failure to comply with any one of the steps contemplated under Section 138 would not provide "cause of action for prosecution". Therefore, in the context of a prosecution under Section 138 the concept of taking cognizance of the offence but not the offender is not appropriate. Unless the complaint contains all the necessary factual allegations constituting each of the ingredients of the offence under Section 138, the Court cannot take cognizance of the offence. Disclosure of the name of the person drawing the cheque is one of the factual allegations which a complaint is required to contain. Otherwise in the absence of any authority of law to investigate the offence under Section 138, there would be no person against whom a Court can proceed. There cannot be a prosecution without an accused. The offence under Section 138 is person specific. Therefore, the Parliament declared under Section 142 that the provisions dealing with taking cognizance contained in the CrPC should give way to the procedure prescribed under Section 142. Hence the opening of non-obstante clause under Section 142. It must also be remembered that under Section 142 does not either contemplate a report to the police or authorise the Court taking cognizance to direct the police to investigate into the complaint."

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7. After hearing Shri Tripathi and upon perusal of the records, this court vide order dated 21.01.2025, directed the Investigating Officer to submit a report detailing the reasons for registering the FIR under Section 138 of the N.I. Act. The court further directed to supply a copy of the paper book to the SSP, Bulandshahr, for his perusal. Additionally, the SSP, Bulandshahr, was directed to appear virtually through video conferencing on the next date of hearing to assist the court in this regard, and on merits of the case has placed reliance upon ***Delhi Race Club (1940) Ltd. v. The State of Uttar Pradesh & Another*[2]**.

8. As the registration of FIR by the police under Section 138 of N.I. Act is impermissible in law and some other Special Acts, which this Court comes across routinely, therefore, this court with the idea to sensitize the police officers about the basics of criminal law with respect to registration of FIR in cognizable offences, vide order dated 06.02.2025, directed the SSP, Bulandshahr, to prepare a detailed and comprehensive report- in consultation with the Additional Director General of Police (Prosecution), Uttar Pradesh, Lucknow, and other concerned stakeholders- of such Special Acts in which registration of FIR by police has been made impermissible and there is a bar on taking cognizance by the Magistrates on the police report under such Special Acts. The report aimed to identify and prepare a list of Acts under which the power of police of registration of FIRs is either statutorily barred or procedurally impermissible, and to provide suggestions for ensuring compliance with the legal framework, thus preventing the use of unwarranted power of police under such Special Acts.

9. In compliance with the order dated 6.2.2025, passed by this court a meeting was convened by the S.S.P. Bulandshahr with the District Level Officer of the 15 department(s) namely; **(i)** District Excise

Officer, Bulandshahr, **(ii)** Drug Inspector, Bulandshahr, **(iii)** Food Inspector, Bulandshahr, **(iv)** Divisional Director, Social Forestry Division, Bulandshahr**, (v)** District Supply Officer, Bulandshahr, **(vi)** Mining Officer, Bulandshahr, **(vii)** District Agriculture Officer, Bulandshahr, **(viii)** Electricity Department, **(ix)** Public Works Department, **(x)** ARTO, **(xi)** Medical Department, Bulandshahr, **(xii)** Animal Husbandry Department, Bulandshahr, **(xiii)** District Government Advocate (Civil) Bulandshahr, **(xiv)** District Government Advocate (Criminal), Bulandshahr, and **(xv)** Joint Director (Prosecution), Bulandshahr.

10. Based on the deliberations held among the aforesaid officers, the SSP, Bulandshahr filed a preliminary report *inter alia* stating that there have been cases where the constitutional courts have explicitly ruled regarding absolute bar on the registration of an FIR under Special Acts which have provision for bar on taking cognizance by the Magistrate except on the filing of a complaint either by the aggrieved person or by the authorized officer of the department. However, there have been instances where the registration of an FIR has been upheld in such cases in which upon registering an FIR, the police officer informed the designated officers of the concerned department or authority under the Special Acts to proceed with as a complaint case. In some cases, an FIR may be registered, but after completing the investigation, the police must submit a report before the concerned department to proceed further in accordance with law by treating the report as an information, upon which the Magistrate may take cognizance. The police report must be handed over to the concerned competent person/authorized officer, as the case may be- which alone is authorized to file the complaint along with the report before the jurisdictional Magistrate. However, for offences under the IPC as well as other Special Acts as may permissible under law, the police can directly register the FIR and consequent thereto file the police report before the court to which the Magistrate may take cognizance[3].

11. It is further submitted by Shri Kuldeep Singh Chauhan, learned A.G.A. that as a result of the said initial inter-departmental coordination meeting, a consolidated list of 28 Special Acts has been compiled, identifying those Acts under which criminal proceedings are to be instituted exclusively by way of a complaint by competent person/authorized officer- as the case may be- before the jurisdictional Magistrate.

11.1 The list of such Special Acts in which the registration of FIR is impermissible, and cognizance of offence could only be taken upon the complaint or the application- as the case may be- filed by the aggrieved person and/or authorized officer by the department, the list *inter alia* includes: **(i)** Protection of Women from Domestic Violence Act, 2005, **(ii)** Negotiable Instruments Act, 1881, **(iii)** Mines and Minerals (Development and Regulation) Act, 1957, **(iv)** Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, **(v)** Consumer Protection Act, 2019, **(vi)** Prevention of Cruelty to Animals Act, 1960, **(vii)** Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, **(viii)** Air (Prevention and Control of Pollution) Act, 1981, **(ix)** Wild Life (Protection) Act, 1972, **(x)** Environment (Protection) Act, 1986, **(xi)** Import and Export (Control) Act, 1947, **(xii)**

Prevention of Food Adulteration Act, 1954, **(xiii)** National Food Security Act, 2013, **(xiv)** Trade Marks Act, 1999, **(xv)** Transplantation of Human Organs and Tissues Act, 1994, **(xvi)** Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, **(xvii)** Water (Prevention and Control of Pollution) Act, 1974, **(xviii)** Cable Television Networks (Regulation) Act, 1995, **(xix)** The Foreign Exchange Management Act, 1999, **(xx)** The Insecticides Act, 1968, **(xxi)** The Notaries Act, 1952, **(xxii)** Insurance Act, 1938, **(xxiii)** Sea Customs Act, 1878 *(repealed, now replaced by the Customs Act, 1962),* **(xxiv)** Antiquities and Art Treasures Act, 1972, **(xxv)** Industrial Disputes Act, 1947, **(xxvi)** Food Safety and Standards Act, 2006, **(xxvii)** Drugs and Cosmetics Act, 1940, and **(xxviii)** Section 215 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). It is made clear that the list is illustrative and not exhaustive.

11.2 It was further submitted that this list is intended to serve as a reference document for the purpose of guiding Investigating Officers and Prosecuting Authorities regarding the appropriate legal procedure under such Special Acts- particularly where registration of FIR is not permissible unless certain pre-conditions such as prior sanction, departmental complaint, or approval from a designated authority, are fulfilled.

11.3 The objective is to prevent inadvertent or unlawful registration of FIRs under Special Acts where such initiation is contrary to the statutory mandate or settled judicial principles, including those laid down by the Supreme Court and High Courts and barred by Special Acts.

11.4 A reliance has been placed on letter dated 27.2.2025 sent by Senior Superintendent of Police, Bulandshahr, whereby the training of Station House Officers/Investigators through workshops shall be made mandatory for upgradation of their professional skill regarding not registering the FIR under the Special Acts mentioned in the list prepared by the department, and to direct the Investigating Officers, in such pending cases in which FIR has been registered under the said Acts, though not permissible, instead of submitting a charge sheet under the Act, a report may be submitted before the concerned department for filing a separate complaint through the designated/ authorised officer.

11.5 Consequently, the Additional Director General (Prosecution), U.P. through the Additional Director (Law), Directorate of Prosecution, U.P., Lucknow issued instructions to various training institutes of the state/all Police Commissioners/ Senior Superintendents of Police/ Superintendents of Police to organize training programs in the above regard and train all Investigating Officers/Police personnel accordingly.

12. On the request of the C.O., Bulandshahr, who had appeared in person on 28.02.2025, a week's time was further granted to finalize a comprehensive list of such Special Acts where the police cannot register FIR straight away, and in such Acts, case can be filed only by the complainant or authorized officer of the department, to have wider consultation with senior most prosecutors of the department in this regard. Accordingly, to facilitate the police, the Additional Director General (Prosecution), was directed to provide a list of the most experienced

prosecutors, who are suitable for conducting the aforesaid exercise, to the Senior Superintendent of Police, Bulandshahr, to his satisfaction.

13. In compliance thereof names of, ***(i)*** Additional Director (Prosecution), Bareilly, ***(ii)*** Joint Director (Prosecution), Moradabad, ***(iii)*** Joint Director (Prosecution), Bulandshahr, ***(iv)*** Senior Prosecution Officer, Dr. Bhimrao Ambedkar Police Academy, Moradabad, and ***(v)*** Prosecution Officer, Shamli were provided by the Directorate of Prosecution, Lucknow. Who, upon wider consultation, prepared a report on 32 Special Acts along with certain sections of BNSS, 2023 in which there is no provision of registration of FIR by police but there is a provision for filing a complaint before the jurisdictional Magistrate by the complainant/authorized officer of the department, as the case may be, a reference is also invited to the detailed discussion about the legal position based on a catena of judgements[4] passed by the Supreme Court as well as various High Courts in this regard, also reflected in the instructions provided by the police.

13.1 The instructions also contained a reference to a judgement passed by this court in ***Dr. Brij Pal Singh v. State of Uttar Pradesh***[5], examined whether the police are empowered to register an FIR and initiate proceedings in cases governed by Special Acts, particularly concerning cases where cognizance by the court of Magistrate are permissible upon complaint only. In this case, the primary issue was whether the police had the authority to investigate and file a police report regarding alleged offences under the PC & PNDT Act without a prior complaint from the appropriate authority. The court held that the cognizance order, FIR, and charge sheet deserved to be quashed, as the Magistrate was not competent to take cognizance of a charge sheet or police report without the requisite complaint from the authorized officer under the PC & PNDT Act. In its observation, the court granted leave to approach the Supreme Court for a final decision on the interplay between the CrPC and the PC & PNDT Act concerning registration of FIR and investigation. The court further observed, which is relevant for the purpose of the issue at hand, as follows:

"2.1 That it agrees with the landmark decision of the Apex Court in Jeewan Kumar Raut, wherein the Apex Court, while dealing with the identical provisions of the Transplantation of Human Organs and Tissues Act, 1994 Act, has taken a categorical view that the police report is inconsequential and the FIR for the offence under the provisions of the TOHO Act cannot be entertained, if any such information is received in writing, it is the duty of the police officer to report it to the Appropriate Authority, under the Act only, who can investigate the matter and file a complaint on conclusion of the investigation. The aforesald view, finds approval in the judgment of Ashok Kumar Sharma", which has dealt with the categorically provisions of Code of Criminal Procedure as well as the special Act.

2.2 That wherever the special law provides that the complaints can be lodged or the prosecution can be initiated only by the specified persons under such special law, the police officers are debarred from registering the FIR and investigating the matter as in almost all the special laws the power to investigate under the Special Acts

has been given to the specified officers under such special laws. Therefore, in the considered opinion of this Court, in view of the Bar created under section 28 of the PC & PNDT Act, for any offence under the Act, no person is authorized to register the FIR Therefore, the registration of the FIR and investigation thereof is categorically barred... Therefore, police officers are debarred from registering the FIR and investigating the matter."

13.2 It is further contained in the written instructions that various constitutional courts have delivered varied judgments, and that is why an inconsistency persists in the practical application of the law as on date. The compilation provided by the police in the form of a letter further elaborates through a comparative analysis chart explaining as to how, on similar issues and laws, different outcomes have been arrived at by various constitutional courts. In some states, FIRs have been permitted to be registered for offences qualified by *"bar in taking cognizance by courts"* under the Cr.P.C. (viz. sections 195, 198 and 199) or Special Laws (a term used in the letter addressed by SSP to denote those special legislations whereunder a distinct provision/clause is provided that contains a *"bar to take cognizance"* clause while in other states, such registration of FIR is impermissible. On certain occasions, to arrive at definitive conclusion, the matter has been referred to the constitutional court as is observed in *Dr. Brij Pal Singh (supra)* of this court, and has been observed later in the *Jayant' case (supra)* of the Supreme Court. However, such references have been limited to the specific legislation in question, without addressing the issue comprehensively for all Acts containing a similar *"bar to take cognizance"* clause. Given the aforesaid discussion, it appears imperative and relevant to establish a final and uniform legal position on the interpretation and application of all such legislation containing similar or identical provisions/clauses. A list of most of such legislations - routinely used- has been prepared by the Directorate of Prosecution for police and prosecutors.

14. The initial compilation placed before the court may be useful for academic reference, for sure a well thought provoking endeavour has been made by the police in collaboration with the Directorate of Prosecution, however, the necessary clarity required by the Station House Officers (SHOs) for the registration of FIRs *vis-a-vis* not registration of FIR under such Special Acts has not been provided therein. It is observed that, had SHO's possessed adequate knowledge in this regard, the instances involving unauthorised registration of FIRs by the police would not have been brought before this court.

15. In compliance with the order dated 06.03.2025, and pursuant to Letter No. Five-1-55-2024/1058/2024 dated 11.03.2025, issued by the Director General (Prosecution), Directorate of Prosecution, Lucknow, again a meeting was convened through video conferencing on 11.03.2025. The meeting involved experienced Prosecutors and District Government Advocates (Criminal) and focused on rather preparation of a comprehensive list of such Special Acts in which there is no provision for registration of First Information Report (FIR) by the police, and where instead the process of filing a complaint has been prescribed, vis-a-vis Special Acts which contain provisions for the registration of an FIR.

16. The following officers participated in the aforementioned meeting: ***(i)***

Additional Director (Prosecution), Ayodhya Region, ***(ii)*** Additional Director (Prosecution), Moradabad Region, Moradabad, ***(iii)*** Additional Director (Prosecution), Bareilly Region, Bareilly, ***(iv)*** Additional Director (Prosecution), Saharanpur Region, Saharanpur, ***(v)*** Joint Director (Prosecution), Moradabad, ***(vi)*** Joint Director (Prosecution), Lucknow Bench, of Allahabad High Court, ***(vii)*** Joint Director (Prosecution), Allahabad, ***(viii)*** Joint Director (Prosecution), Gautam Buddh Nagar, ***(ix)*** Joint Director (Prosecution), Rampur, ***(x)*** District Government Advocate (Criminal), Allahabad, ***(xi)*** District Government Advocate (Criminal), Muzaffarnagar, ***(xii)*** District Government Advocate (Criminal), Meerut, ***(xiii)*** District Government Advocate (Criminal), Kasganj, ***(xiv)*** District Government Advocate (Criminal), Hathras, ***(xv)*** Additional District Government Advocate (Criminal), Bulandshahr, ***(xvi)*** District Government Advocate (Civil), Muzaffarnagar, ***(xvii)*** Spcial Public Prosecutor, Bulandshahr (two participants), ***(xviii)*** Prosecution Officer, Shamli,

17. After detailed deliberation through video conferencing with the above-named officers/Government Advocates nominated by the Additional Director General (Prosecution), it was concluded that the following are the Special Acts amongst others under which there is a procedure to file a complaint before the jurisdictional magistrate by the competent person or the authorised officer by the department - as the case may be, and such Acts includes: **(i)** Domestic Violence (Women Protection) Act, 2005, **(ii)** Negotiable Instruments Act, 1881, **(iii)** Mines and Minerals Act, 1957, **(iv)** Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994, **(v)** Consumer Protection Act, 2019, **(vi)** Prevention of Cruelty to Animals Act, 1871, **(vii)** Child Labour (Prohibition and Regulation) Act, 1986, **(viii)** Air Pollution Prevention and Control Act, **(ix)** Wildlife Protection Act, 1972, **(x)** Environment Protection Act, 1986, **(xi)** The Import and Export (Control) Act, 1947, **(xii)** Prevention of Food Adulteration Act, 1954, **(xiii)** National Food Security Act, 2013, **(xiv)** Trade Marks Act, 1999, **(xv)** Transplantation of Human Organs and Tissues Act, 1994, **(xvi)** Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal Act, 2013, **(xvii)** Water Pollution Prevention and Control Act, 1974, **(xviii)** Cable Television Networks (Regulation) Act, 1995, **(xix)** Foreign Exchange Management Act, 1999, **(xx)** Insecticide Act, 1968, **(xxi)** Notaries Act 1952, **(xxii)** Insurance Act, 1938, **(xxiii)** The Antiquities and art treasures act 1972, **(xxiv)** Industrial Disputes Act, 1947, **(xxv)** Food Safety Act, 2006, **(xxvi)** The Disaster Management Act, 2005, **(xxvii)** The National Medical Commission Act, 2019, **(xxviii)** The Uttar Pradesh Sugarcane (Regulation and Purchase) Act, 1953, **(xxix)** Fire Prevention and Fire Safety Act, 2005, **(xxx)** The Dowry Prohibition Act, 1961, **(xxxi)** Standards of Weights and Meassures Act, 1976.

17.1 Whereas the following are the Special Acts amongst others which contains the provision for registration of FIR by police. Such Special Acts includes; ***(i)*** Narcotic Drugs and Psychotropic Act, ***(ii)*** Arms Act, ***(iii)*** Essential Commodities Act, ***(iv)*** Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1983, ***(v)*** Protection of Children from Sexual Offences Act, ***(vi)*** Juvenile Justice (Care and Protection of Children) Act, ***(vii)*** Explosive Act 1884, ***(viii)*** Explosive

Substances Act 1908, ***(ix)*** Criminal Law Amendment Act 1932, ***(x)*** The Uttar Pradesh Prevention of Cow Slaughter Act 1955, ***(xi)*** The Muslim Women (Protection of Rights on Marriage) Act 2019, ***(xii)*** Prevention of Corruption Act 1988, ***(xiii)*** Information Technology Act 2000, ***(xiv)*** The Uttar Pradesh Control of Goondas Act 1970, ***(xv)*** United Provinces Excise Act, ***(xvi)*** Immoral Traffic (Prevention) 1956, ***(xvii)*** The Cinematograph Act, ***(xviii)*** The Prevention of Cruelty to Animal Act 1960, ***(xix)*** Copyright Act 1957, ***(xx)*** Public Gambling Act 1867, ***(xxi)*** The Prevention of Damage to Public Property Act 1984, ***(xxii)*** The Representation of the People Act 1951, ***(xxiii)*** The Unlawful Activities (Prevention) Act 1967, ***(xxiv)*** The Uttar Pradesh Protection of Trees Act 1976, ***(xxv)*** The Uttar Pradesh Ragging in Educational Institutions Act 2010, ***(xxvi)*** The Uttar Pradesh Public Examination (Prevention of Unfair Means) Act 2024, ***(xxvii)*** The Uttar Pradesh Electric Wire and Transformers (Prevention and Punishment of theft) Act 1976, ***(xxviii)*** The Weapons of Mass Destruction and their Delivery System (Prohibition of Unlawful Activities) Act 2002, ***(xxix)*** Coinage Act 2011, ***(xxx)*** The Religious Institutions (Prevention of Misuse) Act 1988, ***(xxxi)*** The Small Coin (Offences) 1971, ***(xxxii)*** The Dowry Prohibition Act 1961, ***(xxxiii)*** The Drugs and Magic Remedies (Objectionable Advertisement) Act 1954, ***(xxxiv)*** The Prize Chits and Money Orculation Schemes (Banning) Act 1978, ***(xxxv)*** The Places of Worship (Special Provisions) Act 1991, ***(xxxvi)*** Indecent Representation of Women Prohibition Act 1986, ***(xxxvii)*** The Lotteries (Regulation) Act 1998, ***(xxxviii)*** Passport Act 1967, ***(xxxix)*** The Chits Fund Act 1982.

18. It has also been apprised to this court by the learned counsel for the applicant that the Investigating Officer has filed an application under Section 173(8) Cr.P.C. before the learned Chief Judicial Magistrate, Bulandshahr, for seeking further investigation in the FIR No. 663 of 2023 with an ulterior motive to cure the illegality committed by police. Apparently, this Court observes that there is no such *mala fide* on the part of the Police to move such an application for further investigation as has been *prima- facie* reflected, in the given facts. The investigation or further investigation is the sole prerogative of the police and cannot be scuttled under the inherent jurisdiction of this court, abruptly.

19. Reverting to the merits of the case, the prosecution alleges that the informant had booked two plots with the applicant and paid the entire sale consideration. However, instead of executing the sale deed in favour of the complainant, the applicant sold the said plots to a third party without his consent and knowledge. Subsequently, the applicant issued four refund cheques in favour of the complainant with the intention to cheat him, all of which were dishonoured upon presentation.

19.1 Upon perusal of the FIR and the incriminating material annexed with the charge sheet, this Court is of the view that no case has been made out for quashing the charge sheet against the applicant in respect of the offences under Sections 420 and 406 IPC.

19.2 As regards the submission of Shri Vimlendu Tripathi, learned counsel for the applicant, in relation to the offence under Section 138 of the Negotiable Instruments Act, the Court finds legal merit in the contention. Accordingly, based on the above deliberations and the legal

position discussed, the impugned cognizance and order on charge dated 3.6.2024 & 18.7.2024 respectively, passed by the learned Chief Judicial Magistrate, Bulandshahr, is hereby quashed with the direction to the trial court to hear the applicant afresh again at the point of charge with respect to the offences under Sections 420 and 406 IPC, it shall remain open for the applicant to raise all permissible contentions at the stage of framing of charge, whereupon the trial court shall proceed in accordance with law after considering the same. The observations made herein regarding the offences under Sections 420 and 406 IPC shall have no bearing on the proceedings before the trial court. The trial court may issue a fresh cognizance order after due application of judicial mind.

20. In view of the aforesaid, the instant application stands ***partly allowed***.

DIRECTIONS

21. Registrar (Compliance) is hereby directed to forwarded a copy of this order to; ***(i)*** ACS (Home) for his record, reference, and necessary action, ***(ii)*** Additional Director General (Prosecution) to issue *fresh directions* to police through Director General of Police, and all Joint Directors (Prosecution) with a fresh list of such Special Acts as may be prepared, and ***(iii)*** Additional Director General, Dr. Bheem Rao Ambedkar Police Academy, Moradabad for incorporating in the training schedule.

21.1 A copy of the letter dated 27.02.2025, 05.03.2025 and 11.03.2025 issued by SSP Bulandshahr be sent to the Additional Director General (Prosecution), Lucknow, for their record and reference to issue a fresh list, as aforesaid directed.

21.2 A copy of this order be forwarded to the Chief Secretary, Government of Uttar Pradesh, to issue necessary directions to the respective departments in accordance with the terms of this order in consultation with the Directorate of Prosecution, Lucknow.

22. There is yet another dimension to the case at hand, as earlier noted, where the police, as aforesaid discussed, have failed to comply with the basic tenets of criminal jurisprudence- namely, prompt delivery of the FIR to the jurisdictional magistrate, and proper and fair conduct of investigation- the first duty rests upon the learned Magistrate to take note of such illegality or irregularity, and apprise the police accordingly, and, if necessary, summon the Investigating Officer forthwith. This duty arises immediately upon receipt of the FIR, which, as a matter of course, reaches the court within twenty-four hours of registration of FIR.

23. It is, however, noticed with concern that orders taking cognizance are, in many instances, passed mechanically and in routine, without application of judicial mind to the material gathered during investigation. Such casual exercise of jurisdiction defeats the very purpose of judicial scrutiny at the threshold and allows defective proceedings to progress unchecked, thereby necessitating intervention by this Court at a later stage.

24. The Magistrate, being vested with adequate powers and are professionally trained to oversee the investigative process, bears a higher responsibility to ensure that the investigation conforms to law. Failure to discharge this responsibility- by ignoring patent illegalities at the stage of receiving the FIR and mechanically taking

cognizance- inevitably burdens the High Court with avoidable and protracted litigation from the stage of registration of FIR until the framing of charges.

25. In essence, it can be concluded that a copy of FIR is forwarded to the nearest magistrate within 24 hours of the registration of the crime for the perusal of the magistrate; with the idea to bring the occurrence of the offence and subsequent proceedings to the knowledge of the magistrate to check illegality or false implication by the police, if any, but unfortunately the learned magistrate remains *oblivious* of their duty and responsibility in this regard, it unfortunate.

FURTHER DIRECTIONS

26. Therefore, directions are issued forthwith to the following manner.

27. All the learned District Judges to sensitize the learned Judges of the district not to take cognizance on the police report filed in contravention of the provisions of Special Acts referred herein above, or otherwise where there is a specific bar for a court to take cognizance of any offence under the Special Acts except on a complaint made by the officer authorized and/or any person competent to file a complaint before the jurisdictional Magistrate in a manner prescribed by the respective Special Acts. The learned Judges are further required to sensitize that registration of FIR as a serious repercussion in criminal jurisprudence, if the illegality with respect to impermissiblity of registration of FIR is checked at initial stage (within 24 hours of its registration), it would save lot of resources and time of the High Court besides harassment to the aggrieved person.

28. It is pertinent to highlight further aspect of such illegality that the actual accused who commits the crime got scoot free because of the ignorance of the police and Magistrates, and the courts are unnecessarily burdened dealing with misconceived litigation.

29. The court places on record its sincere appreciation for the valuable assistance rendered by Shri Vimlendu Tripathi, learned counsel for the applicant; Shri Kuldeep Singh Chauhan, learned A.G.A. for the State; Shri Dipesh Juneja, Additional Director General (Prosecution); and Shri Shlok Kumar, the SSP, Bulandshahr, who have efficiently done an exhaustive exercise in collaborative efforts with Additional Director General (Prosecution), Uttar Pradesh, along with the Districts head of 15 departments referred herein above in para-9, the five senior most prosecutors of Uttar Pradesh named in letter dated 5.3.2025 and 21 senior Prosecution Officers named in letter dated 11.3.2025 in arriving at a conclusion that in 38 Special Acts (referred herein above in paragraph-17) besides other Special Acts the police are not empowered to register an FIR and if, inadvertently done, the same shall be referred to the respective department or to the competent person to deal with the issue involved and subsequent investigation- if any- in accordance with law by treating the same an information or narration of facts constituting ingredients of such offence as required in given Special Acts.

30. The **Registrar (Compliance)** is further directed to forthwith transmit a copy of this order to all learned District Judges, to be placed before all Judicial Officers for deliberation and to ensure its effective compliance.

(2025) 8 ILRA 303
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 25.08.2025

BEFORE

THE HON'BLE SANJAY KUMAR PACHORI, J.

Application U/S 482 No. 4834 of 2022
&
Application U/S 482 No. 6746 of 2022

Gaurav Sharma ...Applicant
Versus
State Of U.P. & Anr. ...Opposite Parties

Counsel for the Applicant:

Counsel for the Opposite Parties:

Issue for Consideration

Matter pertains to the quashing of proceedings under Section 138 of the Negotiable Instruments Act, 1881 and consideration of the question - "Whether there existed a legally enforceable debt or liability against the applicant on 05.10.2020 and 30.09.2020?"

Headnotes

Criminal Procedure Code, 1973 - S.482 - Inherent jurisdiction - Exercise of - Complaint under S.138 of the NI Act - Quashing of proceedings - When not maintainable - Negotiable Instruments Act, 1881 - S. 138 - Dishonour of Cheque - Cheque issued pursuant to MOU fixing liability "before 31.12.2020" - Presentation of cheque in September/October 2020 - Interpretation of Contract - MOU clauses 1 & 2 fixing liability "before 31.12.2020" cannot be overridden by clause 3 mentioning "31.12.2021" only for calculation of interest - due date for payment was 31.12.2020 - Security Cheques - Even if described as "security", when liability is crystallised and due prior to presentation date, provisions of S.138 N.I. Act are attracted.

Held: The argument on behalf of the applicant is that the due amount is payable on 31.12.2021 and there was no legally enforceable debt or other liability at the time of drawal/issuance of the cheques on 5.10.2020 and 30.9.2020 against the applicant and that the provisions of Section 138 of the N.I. Act would not attract, is misconceived and not sustainable **-** As per terms of **Clause Nos. 1 and 2** of the Memorandum of Understanding dated **04.01.2020**, the applicant had agreed to pay the amounts of **Rs. 58,00,000/-** and **Rs. 38,95,193/-** to the opposite parties **"before 31.12.2020** - **Clause No. 3** of the MOU, which mentions the date **31.12.2021**, relates only to fixation of interest @12% per annum upon the outstanding amount as on **31.12.2020,** and does not alter the due date of payment - Clauses 1 and 2 govern the liability - On the dates when the cheques were drawn and presented, there existed a **legally enforceable debt** within the meaning of **Section 138 of the Negotiable Instruments Act, 1881 -** Both **Applications under Section 482 Cr.P.C.** are **devoid of merit** and stand **dismissed.** (Paras - 2,8,10,11,12,19,20) (E-7)

Case Law Cited

Indus Airways Pvt. Ltd. & Ors. v. Magnum Aviation Pvt. Ltd. & Anr., **(2014) 12 SCC 539**; *Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd.*, **(2016) 10 SCC 458**; *Anil Kumar Sawhney v. Gulshan Rai*, **(1993) 4 SCC 424**; *Sudhir Kumar Bhalla v. Jagdish Chand & Ors.*, **(2008) 7 SCC 137**; *Expeditious Trial of Cases under Section 138 of N.I. Act, 1938 In Re*, **(2021) 16 SCC 116**; *Bansilal S. Kabra v. Global Trade Finance Ltd. & Anr.*, **(2024) SCC Online Bom 416**; *Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel & Anr.*, **2022 LiveLaw (SC) 830**.

List of Acts

Code of Criminal Procedure, 1973; Negotiable Instruments Act, 1881; Arbitration and Conciliation Act, 1996 (referred in MOU Clause 11).

List of Keywords

Memorandum of Understanding (MOU); Legally enforceable debt; legally enforceable liability; quashing of complaint; partnership; Security

cheques; Dishonoured; Insufficient funds; Stop payment; Partnership business; premature presentation; Due date.

Case Arising From

Complaint Case Nos. 113 of 2020 (Ashish Agarwal v. Gaurav Sharma) and 114 of 2020 (Gaurav Sharma v. Ankit Agarwal) under Section 138 N.I. Act, Police Station Tajganj, District Agra, and cognizance/summoning orders dated 22.02.2021 by Additional Chief Judicial Magistrate, Agra.

Appearances for Parties

Advs. for the Applicant:

Sri Manish Tiwary, Senior Advocate

Ms. Shriyanshi Upadhyay, Adv. (holding brief of Sri Aushim Luthra)

Advs. for the Respondents:

Sri V. P. Srivastava, Senior Advocate

Sri Indra Deo Mishra, Ms. Anju Agarwal, for Opposite Party No. 2

Sri Karunakar Singh, A.G.A., for the State.

(Delivered by Hon'ble Sanjay Kumar Pachori, J.)

1. As in both the cases, common questions of fact and law arises between the same parties with regard to same subject matter, therefore, above noted cases are being decided by a common judgment.

Brief facts of Application U/S 482 No. 4834 of 2022

2. The Application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred as "Cr.P.C.") has been filed to quash the entire proceedings of Complaint Case No. 114 of 2020 (Gaurav Sharma Vs. Ankit Agarwal) under Section 138 of Negotiable Instruments Act, (hereinafter referred as "N.I. Act"), Police Station- Tajganj, District Agra, as well as cognizance/summoning order dated 22.02.2021 pending in the court of Additional Chief Judicial Magistrate, Agra.

2(i) Complaint Case No. 114 of 2020 has been filed alleging that the applicant and opposite party no. 2 had been running a partnership business by the name of Bankey Bihari Vidhya Mandir and the opposite party no. 2 decided to end the partnership and withdraw his share, in pursuance thereof, it was decided that a sum of Rs. 38,95,193/- would be paid by the applicant. It is further alleged that a cheque bearing no. 105359 dated 25.9.2020 had been issued by the applicant in favour of the opposite party no. 2 and when the same was placed before the Bank on 05.10.2020, the same was dishonoured on 5.10.2020 due to insufficient funds as well as stop payment by applicant.

2(ii). The opposite party no. 2 informed the applicant regarding the said dishonour of cheque and thereafter one legal notice dated 14.10.2020 had been sent to the applicant by his counsel through registered post and was duly served to the applicant on 17.10.2020, since then no payment was made. Hence, impugned complaint dated 17.11.2020 has been filed against the applicant.

Brief facts of Application U/S 482 No. 6746 of 2022

3. The Application under Section 482 of Cr.P.C. has been filed to quash the entire proceedings of Complaint Case No. 113 of 2020 (Ashish Agarwal Vs. Gaurav Sharma) under Section 138 of N.I. Act, Police Station- Tajganj, District Agra, as well as cognizance/summoning order dated 22.02.2021 pending in the court of Additional Chief Judicial Magistrate, Agra.

3(i). Complaint Case No. 113 of 2020 has been filed alleging that the applicant and opposite party no. 2 had been

running a partnership business by the name of Bankey Bihari Vidhya Mandir and the opposite party no. 2 decided to end the partnership and withdraw his share, in pursuance thereof, it was decided that a sum of Rs. 58,00,000/- would be paid by the applicant. It is further alleged that a cheque bearing no. 105358 dated 25.9.2020 of Rs. 58,00,000/- had been issued by the applicant in favour of the opposite party no. 2 and when the same was placed before the Bank on 30.09.2020, it was dishonoured on 30.9.2020 due to insufficient funds as well as stop payment by applicant.

3(ii). The opposite party no. 2 informed the applicant regarding the said dishonour of cheque and thereafter one legal notice dated 14.10.2020 has been sent to the applicant by his counsel through registered post, which has been duly served to the applicant on 17.10.2020, since then no payment was made. Hence, impugned complaint dated 17.11.2020 has been filed against the applicant.

Arguments on behalf of the applicant

4. earned senior counsel for the applicant submits that the impugned complaints have been filed on the basis of false and frivolous allegations with an ulterior motive and only to harass the present applicant. The impugned cognizance orders have also been passed without considering the facts and circumstances of the case as well as the position of law.

4 (i). It is further submitted that there was no legal debt or other liability existing against the applicant on the date when the cheques in question were drawn. As there was no legal enforceable debt on the date when the cheques in question were drawn, the proceedings under Section 138 N.I. Act against the applicant would not be maintainable and are liable to be quashed.

4(ii). It is further submitted that a Memorandum of Understanding (hereinafter referred as "MOU") had been entered into between the parties on 04.01.2020. A bare perusal of the MOU, the applicant was liable to pay amount of Rs. 58,00,000/- and Rs. 38,95,193/- to the opposite Party No. 2 and the other leaving partners of the firm respectively, sums of money payable on or before 31.12.2021 in this regard, the applicant had delivered signed security cheques of aforesaid amount to the opposite party no. 2.

4(iii). It is further submitted that as per the MOU, the security cheques cannot be drawn prior to the maturing of the debt or liability as on or before 31.12.2021, but the opposite party no. 2 has presented the cheques on 05.10.2020/30.9.2020, much prior to the due date.

4(iv). It is next submitted that as some place of the MOU due date for payment of the aforesaid amount is mentioned as 31.12.2020, in both cases, the presenting of the security cheques for payment on 05.10.2020/30.9.2020 before the bank were premature and no legally enforceable debt or liability existed against the applicant on the date of presentation of cheques in question.

4(v). It is next submitted that the complaints were filed through power of attorney holder namely Onkar Nath Agarwal, who has no knowledge with regard to the transaction and the issuance of cheques in question. Therefore, the

prosecution case suffers from a grave defect and deserves to be quashed.

5. In support of his submission, learned Senior Counsel for the applicant placed reliance upon the following judgments:

1. Indus Airways Private Limited and others Vs. Magnum Aviation Private Limited and Another (2014) 12 SCC 539;

2. Sampelley Satyanarayan Rao Vs. Indian Renewable Energy Development Agency Limited (2016) 10 SCC 458;

3. Anil Kumar Sawhney Vs. Gulshan Rai (1993) 4 SCC 424;

4. Sudhir Kumar Bhalla Vs. Jagdish Chand and Others (2008) 7 SCC 137;

5. Expeditious Trial of Cases under Section 138 of N.I. Act, 1938 In Re (2021) 16 SCC 116;

6. Bansilal S. Kabra Vs. Global Trade Finance Limited & Another (2024) SCC Online Bom 416;

6. Sri V. P. Srivastava, learned Senior Counsel for the opposite party no. 2 has not denied the existence of MOU dated 04.01.2020 and argued that the learned Magistrate, on the basis of the material available on record, after due application of mind, has taken cognizance for offence under Section 138 of the N.I. Act against the petitioners. Since, the applicant failed to pay the amount of the cheques in question within the stipulated time then proceedings under the N.I. Act have been initiated against him. It is further contended that when the cheques were issued and the signatures thereon were admitted, the presumption of a legally enforceable debt would arise in favour of the holder of the cheques.

6(i) It is next submitted that the private opposite party no. 2, his brother Ankit Agarwal, sister Sapna Garg and Saroj Sharma were jointly running a business of Coaching Classes in partnership in the name of Bankey Bihari Vidya Mandir, and in this regard they invested a huge amount as per partnership deed dated 16.11.2015. Subsequently, Smt. Saroj Sharma and the applicant dissolved the said partnership and for returning the invested amount of the opposite party no. 2, a MOU was written on 04.01.2020.

7. Heard Sri Manish Tiwary, learned Senior Advocate assisted by Ms. Shriyanshi Upadhyay, Advocate holding brief of Sri Aushim Luthra, Sri V.P. Srivastava, learned Senior Advocate assisted by Sri Indra Deo Mishra, Ms. Anju Agarwal, learned counsle for the opposite party no. 2 and Sri Karunakar Singh, learned A.G.A. for the State.

8. There is no dispute with regard to issuance of the cheques in question under the signatures of the applicant to the opposite party no. 2. as well as other material facts to filing of the complaints under section 138 of N.I. Act. The core argument, upon which, learned counsel for the petitioner is trying to set up his case is that since there was no legally enforceable debt or other liability at the time of drawal/issuance of the cheques on 5.10.2020 and 30.9.2020, the provisions of Section 138 of the N.I. Act would not attract. After having gone through the material available on record as well as respective submission of both the parties

the following question arose for consideration.

"Whether there existed a legally enforceable debt or liability against the applicant on 5.10.2020 and 30.9.2020?

9. Before considering the real controversy between the parties, it is apposite to mention the MOU reproduced hereinbelow:-

"This MOU is made and concluded at Agra on this 4th day of January 2020 between ***Mr. Gaurav Sharma*** *and* ***Mrs. Saroj Sharma*** *R/O C-174, Sector 49, Noida hereinafter called The First Party (which expression shall be deemed include legal heirs, successors and executors and administrators of the present constituents) of the Part First.*

AND

Mr. Ashish Agarwal, Mr. Ankit Agarwal *and* ***Ms Sapna Garg*** *R/o 2/14, Vibhav Nagar, Agra hereinafter called The Second Party (which expression shall be deemed include legal heirs, successors and executors and administrators of the present constituents) of the Second Part.*

Whereas both the parties have been doing business as partners in a partnership firm under name & style of "Bankey Bihari Vidya Mandir" at Agra since 16.11.2015. Now the Second party has decided to retire as partners in the firm with effect from 31.12.2019 and in order to secure interest/right in the firm and to freeze their liabilities both the parties have agreed to execute this MOU.

Now therefore, it is agreed between all the parties as follows:

1. Second party shall retire as partners from the firm Bankey Bihari Vidya Mandir from the date as may be mutually amongst the parties which shall not be more than one month from the date of this MOU.

2. The first party shall be liable to pay the total partners' capital contribution of second party in the firm before set off or losses of the firm before 31.12.2020. The detail amount as agreed by both the parties is as follows:

a. Ashish Agarwal: Rs 13,70,000/-

b. Ankit Agarwal: Rs. 13,20,000/-

c. Sapna Garg: Rs. 11,45,000/-

d. Misc. Working capital Amount: Rs. 19,65,000/-

Total : Rs 58,00,000/-

3. The first party shall be liable to pay balance of unsecured loan of Second Party or their family members or associate concern outstanding as at 31.12.2019 before 31.12.2020. the detail amount as agreed by both the parties is as follows:

a. Balaji Overseas: Rs. 7,19,240+ Rs. 4,65,000 totals: Rs. 11,84,240/-

b. Bihariji Handloom: Rs. 5,50,000/-

c. Ashish Agarwal HUF: Rs. 5,80,000/-

d. Ankit Agarwal HUF: Rs. 5,80,953/-

e. Lalita Rajpal: Rs. 10,00,000/-

Total Rs. 38,95,193/-

4. In case the first party fails to pay the due amount as mentioned in Point No. 1 and 2 on or before the due date i.e. 31.12.2021 to the second party then the first party shall be liable to pay interest @ 12% p.a. on the outstanding amount as at 31.12.2021.

5. In order to secure the rights of Second party, the first party shall deposit the signed cheques of the outstanding amount to the security with the second party, as per the payments schedule agreed mutually, addendum to that is attached to this MOU.

6. The first party shall be fully liable/ responsible for any liability/ responsibility for the funning of the firm Bankey Bihari Vidya Mandir and its franchisor Vidya Mandir Classes w.e.f. 01.01.2020 and onwards. The second party shall in no way be responsible or held accountable for any actions/deed of the continuing partners from the appointed date i.e. 01.01.2020.

7. The first party should also clear all the dues and outstanding of suppliers and concern persons who supplied material or render services on good will of the second party from time to time.

8. The amount mentioned in clause no. 2, 3 & 7 due to be paid by the first party to second party will also be subject to audit of accounts by auditor of the firm.

9. The second party shall not be entitled to any right/share in the assets of the firm on or after 01.01.2020.

10. That under any circumstances, even if the franchisee centre fails to operate or not able to carry on business operations or dissolution of firm or discontinuation of first party as partners under the ownership of first party then also the amount due to Second party shall remain due to the First party in individual capacity and the liability to pay the amount shall shift to the First party as it was to the firm.

11. It is mutually agreed between the parties, that in the event of any dispute or differences in the matter of interpretation, execution or carrying out the objects and functions under this Agreement, the same shall be referred to a sole arbitrator within two months from the date of any dispute who shall be appointed with joint consent of the parties herein. In the event of the parties failing to agree to a sole arbitrator, each party shall nominate an arbitrator and then arbitrators shall appoint a third arbitrator. The provisions of the Arbitration and Conciliation Act of 1996 shall apply to the proceedings which shall be conducted in English and Hindi and the suits of such proceedings shall be at Agra."

10. Clause 1 and 2 of the MOU are related to fixing the liability against the applicant, wherein the applicant agreed to pay the amount in accordance with the terms of clause no. 1 and 2 as mentioned Rs 58,00,000/- and Rs. 38,95,193/- to the private opposite party no. 2 "before 31.12.2020". There is a clear and specific agreement between the parties with regard to liability of the applicant. The dates of presentation of cheques in question are 5.10.2020 and 30.9.2020 respectively and which are before 31.12.2020.

11. Clause no. 3 of the MOU is related only to fixing interest upon the due amount as payable as per clause no. 1 and 2, wherein the due date of amount payable is "before 31.12.2020", if not paid.

12. The word "on or before 31.12.2021" as mentioned in clause no. 3 having no interpretation that the due amount is payable on or before 31.12.2021. The aforesaid date is fixing liability only for 12% p.a. interest upon the due amount. The tems of Clause No. 3 of the MOU has no overriding effect ove the terms of Clause No. 1 and 2 of the MOU.

13. I have also carefully gone through the judgment cited by learned Senior Counsel for the applicant. In my considered opinion, the facts and circumstances of the **Indus Airways Pvt. Ltd.** (supra) is totally different to the facts and circumstances of the present case. The cheques were issued by way of advance payment for the purchase orders as per terms and conditions of the contract therein was that the entire payment would be given to the supplier in advance as it had to procure the parts from abroad, the purchaser cancelled the purchase order and requested to supplier to return both the cheques.

14. In **Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel & Anr. 2022 LiveLaw (SC) 830,** after taking into consideration, view passed in the case of Indus Airways (supra) the Supreme Court has held that for the commission of any offence under Section 138 of N.I. Act, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation. The relevant observations are reproduced as under:

"14. The judgments from Indus Airways (supra) to Sunil Todi (supra) indicate that much of the analysis on whether post dated cheques issued as security would fall within the purview of Section 138 of the Act hinges on the relevance of time. In Indus Airways (supra), this Court held that for the commission of the offence under Section 138, there must have been a debt on the date of issuance of the cheque. However, later judgments adopt a more nuanced position while discussing the validity of proceedings under Section 138 on the dishonour of post-dated cheques. This Court since Sampelly Satyanarayana Rao (supra) has consistently held that there must be a legally enforceable debt on the date mentioned in the cheque, which is the date of maturity.

16. The judgments of this Court on post-dated cheques when read with the purpose of Section 138 indicate that an offence under the provision arises if the cheque represents a legally enforceable debt on the date of maturity. The offence under Section 138 is tipped by the dishonour of the cheque when it is sought to be encashed. Though a post- dated cheque might be drawn to represent a legally enforceable debt at the time of its drawing, for the offence to be attracted, the cheque must represent a legally enforceable debt at the time of encashment. If there has been a material change in the circumstance such that the sum in the cheque does not represent a legally enforceable debt at the time of maturity or encashment, then the offence under Section 138 is not made out.

15. In **Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Limited, (2016) 10 SCC 458,** it was held that the test for the application of Section 138 is whether there

was a legally enforceable debt on the date mentioned in the cheque. If the answer is in the affirmative, then the provisions of Section 138 would be attracted.

16. Section 138 of the NI Act provides that if the cheque is returned unpaid by the bank for the lack of funds, then the drawee shall be deemed to have committed an offence when the conditions in the provisos have been fulfilled. Proviso (b) to Section 138 further provides that a notice demanding the payment of the 'said amount of money' shall be made by the drawee of the cheque.

17. The facts and circumstances of the judgments cited by Senior Counsel for the applicant are totally different to the facts and circumstances of the present case. The present case is related to interpretation of clause no. 1 and 2 only.

18. After having gone through the entire material on record, following facts emerged:

(i) MOU dated 04.01.2020 has been written between the parties after dissolving the earlier partnership deed dated 16.11.2015 and cheques in question have been issued to the opposite party no. 2 in terms of aforesaid MOU.

(ii) Cheque nos. 105359 and 105358 dated 25.9.2020 each, of Rs. 38,95,193/- and Rs. 58,00,000/-, respectively, were drawn on 5.10.2020 and 30.9.2020 and dishonoured on the same days.

(iii) Legal notices dated 14.10.2020 have been served to the petitioners on 17.10.2020.

(iv) The Complaints have been filed under Section 138 of the N.I. Act on 17.11.2020 against the petitioner.

19. The argument on behalf of the applicant is that the due amount is payable on 31.12.2021 and there was no legally enforceable debt or other liability at the time of drawal/issuance of the cheques on 5.10.2020 and 30.9.2020 against the applicant and that the provisions of Section 138 of the N.I. Act would not attract, is misconceived and not sustainable.

20. After having consideration of the facts, circumstances of the case and keeping in mind the position of law, I am of the considered view that as per terms of clause 1 and 2 of the MOU, the applicant agreed to pay the amount as mentioned Rs 58,00,000/- and Rs. 38,95,193/- to the private opposite party no. 2 "before 31.12.2020". If the applicant fails to pay aforesaid amount to the private opposite party no. 2 till 31.12.2020, the applicant is liable to pay 12% p.a. interest upon the amount as due on 31.12.2020. There was a legally enforceable debt against the applicant on 5.10.2020 and 30.9.2020 respectively. The Applications U/S 482 No. 4834 of 2022 and 6776 of 2022 having no merit, is liable to be dismissed. Accordingly, the Application U/S 482 No. 4834 of 2022 and Application U/S 482 No. 6746 of 2022, are dismissed.

21. Office is directed to keep a certified copy of this order in file of connected case.

22. Interim order, if any, is hereby vacated in both the Applications.

(2025) 8 ILRA 311
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 19.08.2025

BEFORE

THE HON'BLE RAJNISH KUMAR, J.

Application U/S 482 No. 5581 of 2022

Sarfaraj & Ors. ...Applicants
Versus
State Of U.P. & Anr. ...Opposite Parties

Counsel for the Applicants:
Mohammad Ahmad

Counsel for the Opposite Parties:
G.A., Rakesh Kumar Maurya

Issue for consideration

Matter pertains to legality of FIR in civil disputes.

Headnotes

Criminal proceedings for civil disputes- Complaint has been filed only in a counter blast to F.I.R.- an old enmity between the parties on account of a land- civil proceedings are going on- complaint has been filed in a counter blast to the aforesaid F.I.R.- to give color of criminal to a civil dispute- applicants have been summoned- abuse of process of law.

Held:

The provisions of Section 504 and 506 I.P.C. cannot be said to have attracted because it could not be shown that the applicants have any intention to cause alarm to the complainant and what exactly was stated has not been disclosed in the complaint or the statements of the complainant and witnesses. (E-9)

Case Law Cited

1. Lakshan Singh Vs. State of Bihar (Now Jharkhand); (2021) 9 SCC 191
2. Kashiben Chhaganbhai Koli Vs. State of Gujarat; (2008) 17 SCC 100
3. Fiona Shrikhande Vs. State of Maharashtra and Another; (2013) 14 SCC 44
4. Mohd. Wajid Vs. State of U.P.; (2023) 20 SCC 219
5. State of Haryana Vs. Bhajan Lal; Supp (1) SCC 335
6. Mohanbhai Ganeshbhai Lakhani & Ors. Vs. State of Gujarat & Anr., SLP (Crl.) No(s).10982 of 2023
7. Paramjeet Batra Vs. State of Uttarakhand and Others; (2013) 11 SCC 673
8. Rikhab Birani & Anr. Vs. State of Uttar Pradesh & Anr.; (2025) SCC Online SC 823
9. Sharif Ahmad And Another vs State of U.P. and Another; (2024) SCC Online SC 726

List of Acts

Indian Penal Code

List of Keywords

Civil dispute; counter blast to the aforesaid F.I.R.' to give colour of criminal to a civil dispute; summoning order

Appearances of parties

Counsel for Applicant :- Mohammad Ahmad, Counsel for Opposite Party :- G.A.,Rakesh Kumar Maurya

(Delivered by Hon'ble Rajnish Kumar, J.)

1. Heard Sri Mohammad Ahmad, learned counsel for the applicants, learned A.G.A. for the State and Sri Rakesh Kumar Maurya, learned counsel for the respondent No.2.

2. The instant application under Section 482 of Code of Criminal Procedure, 1973 (here-in-after referred as CrPC) has been filed for setting aside the summoning order dated 13.04.2021 passed by learned Additional Civil Judge (Junior Division) / Judicial Magistrate, Raibarelly in Complaint Case No.9/2019 (new Case No.22/2019); *Mohd. Ismayl Khan Vs. Sarfaraj and Others,* under Sections 147, 427, 504, 506 I.P.C., Police Station Jayas, District Amethi pending in the court of learned Fast Track Court / S.D., Raibarelly and the order dated 18.04.2022 passed by

learned Fifth Additional District and Sessions Judge, Raibarelly in Criminal Revision No.12/2022; *Mohd. Jaleel Vs. Mohd. Ismayl Khan and Others* and the order dated 30.07.2022 passed by learned Second Additional Sessions Judge, Raibarelly in Criminal Revision No.139/2022; *Sarfaraj and Others Vs. State of U.P. and another* alongwith the entire criminal proceedings of Complaint Case No.9/2019 (new Case No.22/2019); *Mohd. Ismayl Khan Vs. Sarfaraj and Others,* pending in the court of learned Fast Track Court / S.D., Raibarelly.

3. Learned counsel for the applicants submitted that the complaint has been filed only in a counter blast to F.I.R. lodged by the applicants bearing F.I.R. No.0057 of 2018, under Sections 504, 506 I.P.C. at Police Station Jayas, District Amethi in regard to the incident dated 10.04.2018 by the applicant No.1 against the respondent No.2 and three other persons and to give colour of criminal to a civil dispute between the parties. He further submitted that the applicant No.1 is aged about 101 years of age and at the time of alleged incident in 2018, he was about 96 years of age, therefore, the question of incident as alleged by the respondent No.2 itself is misconceived and not tenable.

4. He further submitted that the impugned orders have been passed without considering the contradictions in the statements of the complainant and the witnesses, in which one of the witness is an accused in the aforesaid F.I.R. lodged by the applicant No.1. He further submitted that the complaint has been filed after about 8 months of the incident after coming to know about the filing of charge sheet against the respondent No.2 and others. He further submitted that the learned revisional court also failed to consider the grounds raised by the applicants and dismissed the revisions, therefore, the applicants are constraint to approach this Court by means of present application under Section 482 CrPC.

5. On the basis of above, learned counsel for the applicants submitted that the instant application under Section 482 CrPC is liable to be allowed and the impugned orders are liable to be set aside alongwith the entire proceedings of the aforesaid criminal case.

6. Per contra learned counsel for the respondent No.2 vehemently opposed the submissions of learned counsel for the applicants and submitted that the impugned orders have been passed after considering the evidence and material on record. He further submitted that the applicant No.1 got his name recorded fraudulently on the land of respondent No.2, in regard to which the civil proceedings are pending and an interim order has been granted by this Court, even then the applicants tried to plough the field of the respondent No.2 and on being confronted, they had committed the crime, for which, the complaint has been filed, in which the applicants have rightly and in accordance with law been summoned. Thus, the submission of learned counsel for the respondent No.2 is that the instant application under Section 482 CrPC has been filed on misconceived and baseless grounds, which is liable to be dismissed.

7. I have considered the submissions of learned counsel for the parties and perused the records.

8. There is no dispute among the learned counsel for the parties that there is

an old enmity between the parties on account of claim of a land bearing Khata No.4999, in regard to which, civil proceedings are going on between the parties. It is also not in dispute that the aforesaid F.I.R. No.0057 of 2018, under Sections 504, 506 I.P.C. at Police Station Jayas, District Amethi was lodged on 11.04.2018 with regard to the incident of 10.04.2018 at about 06:00 in the evening by the applicant No.1; Sarfaraz. It has been alleged in the F.I.R. that the applicant is aged about 88 years and there is a deadly enmity with the accused therein for the last about 35-40 years in regard to land bearing Khata No.4999. The accused named therein came together on 10.04.2018 at about 06:00 in the evening with lathi, danda and gun and started ploughing the land of the complainant. The complainant dialed on No.100, on which the police came on the spot and when the police came, the accused persons ran away. Thereafter, when the police went back, the accused persons came at the door of the applicants, abused them and threatened to kill and thereafter again started ploughing. In the said case, charge sheet was forwarded on 14.04.2018 against the respondent No.2; Mohd. Ismayl, Maksood Alam, Mohd. Ammen and Ashraf.

9. The respondent No.2 after about 9 months filed complaint case No.9/2019 on 04.01.2019 against the applicants under Sections 504, 506, 427 and 147 I.P.C. with regard to the same incident of 10.04.2018 at about 06:00 in the evening alleging therein that there is a dispute between the complainant and the accused with regard to a land and the respondent No.2 is in possession of the land in dispute since 1983 but the applicants have got their names mutated fraudulently, in regard to which the case is pending in the court of Consolidation Officer, Amethi and Deputy Director of Consolidation, Amethi and there is an interim order of the High Court also. It has also been alleged that the respondent No.2 has sown crop of urad on his land. The applicants came on 10.04.2018 at about 06:00 PM with lathi, danda and gun and started ploughing the crop of urad and on being confronted, they abused, threatened and attacked the complainant, therefore, the respondent No.2; complainant ran into his house. It has further been alleged that Ashraf, Rajjak sons of Lalla, Maksood Alam S/o Mustafa, Gazi Gaffar Ali Sher, sons of Sattar, Jabriel S/o Shareef, Ameen S/o Habeeb etc. saved the respondent No.2. It has also been stated in the complaint that on account of ploughing of crop, he suffered loss of about Rs.50,000/-. It has further been alleged that a complaint in this regard was given at the Police Station Jayas, District Amethi on 11.04.2018 but no action was taken by the police, therefore, a complaint was sent to the Superintendent of Police, Amethi, even then no action was taken, therefore, the accused may be summoned and punished.

10. The statement of complainant; Ismayl Khan under Section 200 CrPC was got recorded, in which he stated the aforesaid fact but there is no averment of attack by the applicants. In the statement, he has stated that Sarfaraz, Jameel, Jaleel, Shakeel, Nadeem, Shafeeq and Rashid came with lathi, danda and gun but name of Iftikar has not been stated. It has further been stated that they ploughed his agricultural farm by a tractor and on being confronted, they abused, therefore, the complainant ran and went into his house. He has also stated that he was not beaten but after giving threats, the accused persons went away. Thus, the allegations of attack made in the complaint has not been alleged

in the statement. It has also been stated that the land in dispute is recorded in the name of Mustafa since 1983, whereas in the complaint it has been stated that the respondent No.2 is in possession of the land in dispute. It has also been stated that an application was given on the next date before the Police Station but no proof thereof has been placed on record. It has further been stated that when no action was taken, an application was given about a month back to the Superintendent of Police. Thus, the application to the Superintendent of Police must have been given in the month of January, 2019 in regard to the incident of 10.04.2018.

11. The statements of Maksood Alam S/o Mustak and Gazi S/o Abdul Sattar have been got recorded under Section 202 CrPC. Maksood Alam narrated the above story as told by the complainant but he has not stated that the agricultural field was ploughed by tractor. He has further stated that the incident has been seen by Ashraf, Rajjak, Gazi, Gaffar, Ali Sher, Jabriel, Ameen etc. and they tried to save. He has also stated that if we would have not come, the applicants would have killed the respondent No.2.

12. The respondent No.2; complainant and Maksood Alam are accused in the aforesaid F.I.R. lodged by the applicant No.1 in regard to same incident of 10.04.2018 with similar allegations and charge sheet has been filed against both alongwith others, therefore, he is an interested witness.

13. Gazi S/o Abdul Sattar has supported the version of complaint and stated that he is an eye witness. However, contrary to the statement of the complainant, he stated the name of Iftikar also.

14. The complaint was filed on 04.01.2019. The statement of complainant was recorded on 14.02.2019, the statement of P.W.-1, Maksood Alam was recorded on 16.03.2019 and P.W.-2, Gazi was recorded on 03.05.2019 and it is apparent that the P.W.-2, Gazi has tried to fill up the lacuna in the statement of the complainant as well as P.W.-1, Maksood Alam.

15. Learned trial court, by means of order dated 13.04.2021, summoned the applicants without considering the aforesaid contradictions in the complaint and the statements of the complainant and witnesses. Perusal of the order dated 13.04.2021, contained as Annexure No.7, indicates that the application to the Superintendent of Police may have been given for the first time in the month of December, 2018, which was after about 8 months of incident. Thus, the impugned order dated 13.04.2021 has been passed by the learned trial court without appropriately considering and dealing with the evidence on record.

16. The aforesaid order dated 13.04.2021 was challenged by the applicant No.2; Jaleel S/o Sarfaraj in Criminal Revision No.12/2022, which has been dismissed by the learned Fifth Additional District and Sessions Judge, Raibarelly by means of order dated 18.04.2022 on the ground that the learned trial court has summoned the applicants on the basis of the statements recorded under Section 200 and 202 CrPC. Another revision i.e. Criminal Revision No.139/2022 was filed by the applicant No.1 and the applicant Nos.3 to 8, which has also been dismissed by means of order dated 30.07.2022 holding that there is no need of examining the material available on record in depth at the time of passing of summoning order

and only prima facie case against the respondent is to be seen and the revision filed by the accused Jaleel has already been dismissed and accordingly dismissed the revision. Hence the instant application under Section 482 CrPC has been filed.

17. The applicant No.1; Sarfaraz, though has claimed that he was aged about 101 years in 2022, according to which, presently he must have been aged about 104 years and his date of birth as recorded in his Aadhaar Card is 05.08.1921 but in the F.I.R. lodged by him, he himself stated that he was aged about 88 years. Be that as it may, he must have been more than 90 years of age at the time of alleged incident. It is also noticed that a disability certificate of the applicant No.2; Jaleel has been placed on record alongwith a supplementary affidavit. According to the disability certificate issued on 26.01.2019, he has permanent loco disability of 50%. It has been issued subsequent to the alleged incident. Thus, it has been alleged that the applicant No.1; Sarfaraz and applicant No.2; Jaleel apparently were not in a position to attack and run behind the respondent No.2 in the manner stated.

18. Perusal of complaint and statements of the complainant and the witnesses indicates that no specific role has been assigned to anybody. It has also not been shown either in the complaint or in the statements of the complainant and witnesses as to which of the applicant was having lathi, danda and gun. In the statement of the complainant, he has stated that the applicants ploughed his agricultural field by a tractor, whereas it has not been stated in complaint and statement of other witness. It has also not been disclosed as to who was driving tractor. The witnesses, who appeared as P.W.-1 and P.W.-2, have also nowhere stated that the applicants ploughed the agricultural field of the respondent No.2 by the tractor, therefore, there are material contradictions in the contents of the complaint and the statements of the complainant and witnesses but without considering the same, the applicants have been summoned.

19. Upon considering the aforesaid coupled with the fact that a civil dispute is going on between the parties in regard to land and F.I.R. has been lodged by the applicant No.1 in regard to the incident dated 10.04.2018 at about 06:00 in the evening on the very next day of the incident i.e. 11.04.2018 at 12:39 hours at the Police Station Jayas, District Amethi and no application dated 11.04.2018, as alleged by the respondent No.2, made to the police has been placed on record, it appears that the complaint has been filed in a counter blast to the aforesaid F.I.R. and to give colour of criminal to a civil dispute with the help of accused in the aforesaid F.I.R., which is nothing but an abuse of process of law.

20. The applicants have been summoned under Section 147, 504, 506 and 427 I.P.C.

21. Section 147 I.P.C. provides the punishment for rioting. Rioting has been defined under Section 146 I.P.C. as whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting. In the present case, firstly there is contradiction in regard to the presence of the applicants on the spot and secondly no force or violence could be shown to have taken place because the only allegation is

that the applicants came on the spot and started ploughing the agricultural field of the respondent No.2 and on being confronted, they abused and threatened with dire consequences and attacked but there is no injury report on record and it has also not been alleged that the respondent No.2 had suffered any injury.

22. The Hon'ble Supreme Court, in the case of **Lakshan Singh Vs. State of Bihar (Now Jharkhand); (2021) 9 SCC 191,** has held that once the unlawful assembly is established in prosecution of the common object, each member of the unlawful assembly is guilty for the offence of rioting. The use of force, even though it be the slightest possible character by any one member of the assembly, once established as unlawful constitutes rioting. It is not necessary that force or violence must be by all but the liability accrues to all the members of the unlawful assembly. In the present case, not even a single instance of use of force has been pleaded or deposed or shown even before this Court.

23. Section 427 I.P.C. provides mischief causing damage to the amount of fifty rupees or upwards. It provides that whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Mischief has been defined under Section 425 I.P.C., according to which, whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits “mischief”. As per Explanation 1, it is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not. As per Explanation 2, Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

24. The Hon'ble Supreme Court, in the case of **Kashiben Chhaganbhai Koli Vs. State of Gujarat; (2008) 17 SCC 100,** has held that so far as Section 427 I.P.C. is concerned, the expression "mischief" has been defined in Section 425 I.P.C. to mean an act done with intent to cause or knowing that it is likely to cause wrongful loss or damage to the public or to any person causes the destruction of any property etc. In the instant case the evidence on record clearly establishes that the sugarcane stems in the fields of the claimants were totally destroyed by using a tractor, therefore, Section 427 I.P.C. is clearly established. In the instant case, the allegations have been levelled that on account of ploughing of crop by the applicants, the complainant suffered loss of Rs.50,000/- but the contents of the complaint and the evidence on record does not indicate as discussed above. There is contradiction in regard to the ploughing of crop and no material in support of the averments have been shown or placed on record. It has also not been disclosed as to who was driving the tractor. It is also very strange that if a person suffered a loss of Rs.50,000/-, he would keep mum for about 9 months, particularly when the F.I.R. was lodged by the applicants promptly and on the very next date of the incident.

25. Section 504 I.P.C. provides *'intentional insult with intent to provoke breach of the peace'*. It is provided that whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

26. Section 506 I.P.C. provides *'Punishment for criminal intimidation'*. It provides, whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both and if threat be to cause death or grievous hurt, etc. or to cause the destruction of any property by fire, or to cause an offence punishable with death or [imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

27. Criminal intimidation has been defined under Section 503 I.P.C., according to which, whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

28. The Hon'ble Supreme Court, in the case of **Fiona Shrikhande Vs. State of Maharashtra and Another; (2013) 14 SCC 44,** has held that Section 504 I.P.C. comprises of the following ingredients, viz., (a) intentional insult, (b) the insult must be such as to give provocation to the person insulted, and (c) the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence. It has been further held that there should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant, as such, is not sufficient by itself to warrant a conviction under Section 504 I.P.C. It is not the law that the actual words or language should figure in the complaint. One has to read the complaint as a whole. The relevant paragraphs 12 to 14 are extracted here-in-below:-

"12. *Having noticed the scope of Section 202 Cr.P.C., let us examine whether the ingredients of Section 504 IPC have been made out for the Magistrate to initiate proceedings. Section 504 is extracted for easy reference:*

"504. Intentional insult with intent to provoke breach of the peace.- Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

13. *Section 504 IPC comprises of the following ingredients, viz., (a) intentional insult, (b) the insult must be*

such as to give provocation to the person insulted, and (c) the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The person who intentionally insults intending or knowing it to be likely that it will give provocation to any other person and such provocation will cause to break the public peace or to commit any other offence, in such a situation, the ingredients of Section 504 are satisfied. One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant, as such, is not sufficient by itself to warrant a conviction under Section 504 IPC.

14. *We may also indicate that it is not the law that the actual words or language should figure in the complaint. One has to read the complaint as a whole and, by doing so, if the Magistrate comes to a conclusion, prima facie, that there has been an intentional insult so as to provoke any person to break the public peace or to commit any other offence, that is sufficient to bring the complaint within the ambit of Section 504 IPC. It is not the law that a complainant should verbatim reproduce each word or words capable of provoking the other person to commit any other offence. The background facts, circumstances, the occasion, the manner in which they are used, the person or persons to whom they are addressed, the time, the conduct of the person who has indulged in such actions are all relevant factors to be borne in mind while examining a complaint lodged for initiating proceedings under Section 504 IPC."*

29. The Hon'ble Supreme Court, in the case of **Mohd. Wajid Vs. State of U.P.; (2023) 20 SCC 219,** has held that in judging whether particular abusive language is attracted by Section 504 I.P.C., the court has to find out what, in the ordinary circumstances, would be the effect of the abusive language used and not what the complainant actually did as a result of his peculiar idiosyncrasy or cool temperament or sense of discipline. Mere abuse, discourtesy, rudeness or insolence, may not amount to an intentional insult within the meaning of Section 504 I.P.C., if it does not have the necessary element of being likely to incite the person insulted to commit a breach of the peace of an offence and the other element of the accused intending to provoke the person insulted to commit a breach of the peace or knowing that the person insulted is likely to commit a breach of the peace. Each case of abusive language shall have to be decided in the light of the facts and circumstances of that case and there cannot be a general proposition that no one commits an offence under Section 504 I.P.C. if he merely uses abusive language against the complainant. In regard to Section 506 I.P.C., it has been held that a bare perusal of Section 506 I.P.C. makes it clear that a part of it relates to criminal intimidation. Before an offence of criminal intimidation is made out, it must be established that the accused had an intention to cause alarm to the complainant. The relevant paragraphs 28 to 32 are extracted here-in-below:-

"28. *An offence under Section 503 has following essentials:-*

1) Threatening a person with any injury;

(i) to his person, reputation or property; or

(ii) to the person, or reputation of any one in whom that person is interested.

2) The threat must be with intent;

(i) to cause alarm to that person; or

(ii) to cause that person to do any act which he is not legally bound to do as the means of avoiding the execution of such threat; or

(iii) to cause that person to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat.

29. *Section 504 of the IPC contemplates intentionally insulting a person and thereby provoking such person insulted to breach the peace or intentionally insulting a person knowing it to be likely that the person insulted may be provoked so as to cause a breach of the public peace or to commit any other offence. Mere abuse may not come within the purview of the section. But, the words of abuse in a particular case might amount to an intentional insult provoking the person insulted to commit a breach of the public peace or to commit any other offence. If abusive language is used intentionally and is of such a nature as would in the ordinary course of events lead the person insulted to break the peace or to commit an offence under the law, the case is not taken away from the purview of the Section merely because the insulted person did not actually break the peace or commit any offence having exercised self control or having been subjected to abject terror by the offender.*

30. *In judging whether particular abusive language is attracted by Section 504, IPC, the court has to find out what, in the ordinary circumstances, would be the effect of the abusive language used and not what the complainant actually did as a result of his peculiar idiosyncrasy or cool temperament or sense of discipline. It is the ordinary general nature of the abusive language that is the test for considering whether the abusive language is an intentional insult likely to provoke the person insulted to commit a breach of the peace and not the particular conduct or temperament of the complainant.*

31. *Mere abuse, discourtesy, rudeness or insolence, may not amount to an intentional insult within the meaning of Section 504, IPC if it does not have the necessary element of being likely to incite the person insulted to commit a breach of the peace of an offence and the other element of the accused intending to provoke the person insulted to commit a breach of the peace or knowing that the person insulted is likely to commit a breach of the peace. Each case of abusive language shall have to be decided in the light of the facts and circumstances of that case and there cannot be a general proposition that no one commits an offence under Section 504, IPC if he merely uses abusive language against the complainant. In King Emperor v. Chunnibhai Dayabhai, (1902) 4 Bom LR 78, a Division Bench of the Bombay High Court pointed out that:-*

"To constitute an offence under Section 504, I.P.C. it is sufficient if the insult is of a kind calculated to cause the other party to lose his temper and say or do something violent. Public peace can be broken by angry words as well as deeds." (Emphasis supplied)

32. *A bare perusal of Section 506 of the IPC makes it clear that a part of it*

relates to criminal intimidation. Before an offence of criminal intimidation is made out, it must be established that the accused had an intention to cause alarm to the complainant."

30. In the facts and circumstances of the present case as discussed above, the provisions of Section 504 and 506 I.P.C. cannot be said to have attracted because it could not be shown that the applicants have any intention to cause alarm to the complainant and what exactly was stated has not been disclosed in the complaint or the statements of the complainant and witnesses.

31. In view of above and considering the overall facts and circumstances of the case, this Court is of the view that the learned Magistrate has passed the impugned summoning order without considering the contents of the complaint, statements and as to whether the aforesaid offences are prima facie made out or not, whereas as discussed above they are not prima facie made out.

32. The Hon'ble Supreme Court has laid down certain parameters for quashing of the first information report or the complaint in para 102 in the case of **State of Haryana Vs. Bhajan Lal; Supp (1) SCC 335**, which are extracted here-in-below:-

"102.*...“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and

with a view to spite him due to private and personal grudge."

33. The Hon'ble Supreme Court, in the case of **Mohd. Wajid Vs. State of U.P. (Supra),** has also considered the above parameters and further observed that whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the F.I.R. or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely.

34. The Hon'ble Supreme Court, in the case of **Fiona Shrikhande Vs. State of Maharashtra and Another (Supra)**, has held that the Magistrate has to decide the question purely from the point of view of the complaint, without at all adverting to any defence that the accused may have and the magistrate is not expected to embark upon a detailed discussion of the merits or demerits of the case, but only consider the inherent probabilities apparent on the statement made in the complaint.

35. The Hon'ble Supreme Court, in the case of **Mohanbhai Ganeshbhai Lakhani & Ors. Vs. State of Gujarat & Anr.; Criminal Appeal No(s)..... of 2024 (Arising out of SLP (Crl.) No(s).10982 of 2023),** by means of the judgment and order dated 16.04.2024 has held that while considering a plea for quashing of F.I.R., it will not be just enough for the Court to look into the averments made in the FIR alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines and the Hon'ble Supreme Court found that in the said case dispute between the parties is admittedly a civil dispute, which has been given the colour of criminal case and the civil suit is also pending between the parties.

36. The Hon'ble Supreme Court, in the case of **Paramjeet Batra Vs. State of Uttarakhand and Others; (2013) 11 SCC 673,** has held that while exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. The relevant paragraph 12 is extracted here-in-below:-

"12. *While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil*

remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court."

37. The Hon'ble Supreme Court, in the case of **Rikhab Birani & Anr. Vs. State of Uttar Pradesh & Anr.; (2025) SCC Online SC 823,** has held that the summoning order has to be passed when the complaint or chargesheet discloses an offence and when there is material that supports and constitutes essential ingredients of the offence. The summoning order should not be passed lightly or as a matter of course. The relevant portion of paragraph 20 is extracted here-in-below:-

"20. *.....Further, there has to be a conscious application of mind on these aspects by the Magistrate, as a summoning order has grave consequences of setting criminal proceedings in motion. Though the Magistrate is not required to record detailed reasons, there should be adequate evidence on record to set criminal proceedings into motion. The Magistrate should carefully scrutinize the evidence on record and may even put questions to the complainant/investigating officer etc. to elicit answers to find out the truth about the allegations. The summoning order has to be passed when the complaint or chargesheet discloses an offence and when there is material that supports and constitutes essential ingredients of the offence. The summoning order should not be passed lightly or as a matter of course."*

38. The Hon'ble Supreme Court, in the case of **Sharif Ahmad And Another vs State of U.P. and Another; (2024) SCC Online SC 726,** has cautioned the Courts to check such attempts to make vague and ex facie false assertions.

39. Adverting to the facts of the present case, specific case was set up by the respondent No.2 that there is an old dispute between the respondent No.2 and the applicants in regard to the land and the respondent No.2 is in possession since 1983 and the case before the Consolidation Officer and Deputy Director of Consolidation, Amethi is pending consideration but without considering the same and making any enquiry in regard to the same and only on the basis of the vague allegations made in the subsequent paragraphs, the applicants have been summoned on a complaint filed by the respondent No.2, admittedly who is an advocate by profession. In view of the vague allegations made in the complaint as well as the statements and contradictions in them as discussed above and considering the over all facts and circumstances of the case, this Court is of the view that the impugned orders alongwith the proceedings of the Complaint Case No.9/2019 (new Case No.22/2019); *Mohd. Ismayl Khan Vs. Sarfaraj and Others*, pending in the court of learned Fast Track Court / S.D., Raibarelly, are nothing but abuse of the process of Courts, therefore, liable to be set aside.

40. The present application filed under Section 482 CrPC is **allowed**. The summoning order dated 13.04.2021 passed by learned Additional Civil Judge (Junior Division) / Judicial Magistrate, Raibarelly in Complaint Case No.9/2019 (new Case No.22/2019); *Mohd. Ismayl Khan Vs. Sarfaraj and Others,* under Sections 147, 427, 504, 506 I.P.C., Police Station Jayas, District Amethi, the order dated 18.04.2022 passed by learned Fifth Additional District

and Sessions Judge, Raibarelly in Criminal Revision No.12/2022; *Mohd. Jaleel Vs. Mohd. Ismayl Khan and Others* and the order dated 30.07.2022 passed by learned Second Additional Sessions Judge, Raibarelly in Criminal Revision No.139/2022; *Sarfaraj and Others Vs. State of U.P. and another* are hereby **set aside** alongwith the entire criminal proceedings of Complaint Case No.9/2019 (new Case No.22/2019); *Mohd. Ismayl Khan Vs. Sarfaraj and Others,* pending in the court of learned Fast Track Court / S.D., Raibarelly.

41. Let a copy of this order be communicated to the court concerned forthwith and in any case within a period of two weeks from today.

(2025) 8 ILRA 323
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 08.08.2025

BEFORE

THE HON'BLE SHREE PRAKASH SINGH, J.

Application U/S 482 No. 6409 of 2025

Maniram Pal @ Maniram ...Applicant
Versus
State Of U.P. & Anr. ...Opposite Parties

Counsel for the Applicant:
Sheo Prakash Singh

Counsel for the Opposite Parties:
G.A., Swati Sharma

Issue for consideration

Matter pertains to rejection of the application u/s 311 vide impugned order; opportunity for cross- examination of witnesses.

Headnotes

Code of Criminal procedure, 1973-sec 311-Rejection of the application u/s 311 of Cr.P.C-injured was medically examined-applicant was in jail and the proper opportunity of cross- examination has not been afforded by the learned trial court- admitted position is that PW-2 and the PW- 3 were summoned when the applicant- accused- was produced before the trial court-he instructed his counsel not to argue in the matter -the trial court asked the pairokar to call another counsel- once the next counsel did not appear -opportunity of cross-examination was closed-this cannot be a reason to close the important stage of a trial-applicant was under custody and things were not in control of him -opportunity should be granted. **Application allowed.**

Held:

This court finds that the scope and object of the provision is to enable the court to determine the truth and to discover all relevant facts to arrive at a just decision of the case which in fact is the paramount goal of a trial. The intent of the legislature is very obvious from bare reading of Section 311 of the court as the court can summon and examine or recall and re-examine a person, if evidence appears to be essential for the just decision. In fact, the word 'essential' deliberately finds place in the provision as the court is duty bound to satisfy the essentiality with reasons, meaning thereby that if the court is either passing the order for recall or re-examine any person in evidence or rejecting/ declining such request of either the parties, reason must have to be recorded as the opportunity of cross-examination is one of the most important stage and failing which, certainly prejudice would be caused. (E-9)

Case Law Cited

1. Manju Devi versus State of Rajasthan, [2019] 6 SCC 203

List of Acts

Code of Criminal procedure, 1973

List of Keywords

opportunity of cross-examination of the witness; court can summon and examine or recall and re-examine a person or witness; evidence appears to be essential; just decision of the case; Section 311

Appearances of parties

Counsel for Applicant :- Sheo Prakash Singh,
Counsel for Opposite Party :- G.A.,Swati Sharma

(Delivered by Hon'ble Shree Prakash Singh, J.)

1. Ms. Swati Sharma and Mr. Aman Diwedi, Advocates have put in appearance by filing Vakalatnama for opposite party no.2/ informant and the same is taken on record.

2. Heard Sri Sheo Prakash Singh, learned counsel for the applicant, learned counsel for the opposite party no.2/ informant/ complainant, Sri Sushil Pandey, learned A.G.A. for the State and perused the record.

3. The present application is directed against the impugned order dated 23.06.2025, passed by Additional District and Sessions Judge/ Special Judge, EC Act, Pratapgarh in S.T. No. 115 of 2024, arising out of Case Crime No. 257 of 2020 under Section 307 I.P.C., Police Station Patti, District Pratapgarh. Further prayer is made that one opportunity be provided to the petitioner for cross-examination of witnesses, namely, PW-2 - Ramesh Pal and PW-3 - Dr. Anuj Kumar Chaurasiya, for fair and proper disposal of the case."

4. Briefly stated prosecution story is that the learned counsel for the applicant is that the opposite party no.2/ informant had got lodged the FIR against the petitioner on 24.09.2020, bearing Case Crime No. 257 of 2020, under Section 307 of IPC at Police Station Patti, District Pratapgarh, while instituting an application under Section 156(3) of Cr.P.C. with respect to an alleged incident, which said to have happened on 27.02.2020 at 7:30 P.M. The injured was medically examined on 27.02.2020, and thereafter, the X-ray was also got done but no fracture was seen. The applicant was arrested by the police on 29.08.2023 and he was released on bail on 12.12.2024. The PW-2 was examined on 20.06.2024 and the PW-3/ Doctor, who examined the injured, deposed his testimony on 21.10.2024. During the aforesaid period, the applicant was in jail and the proper opportunity of cross-examination has not been afforded by the learned trial court.

5. Contention put forth by learned counsel for the applicant is that the finding, which is recorded for rejection of the application under Section 311 of Cr.P.C. in the impugned order, is evident that when the applicant was produced from the jail before the Court, during the argument by his counsel, he started shouting and asked his counsel not to argue in the matter and on such instructions, the learned counsel for the applicant stated before the court that he would not further conduct this case, whereas the another finding has also been recorded in the same breath that there was another advocate for the applicant but it is apparent that because of the pairokar did not call him, the opportunity of cross-examining the PW-2 and the PW-3 have been closed. He added that both the reasons assigned by the learned trial court while rejecting the application under Section 311 of Cr.P.C. is baseless and perverse. He submits that the PW-2 and the PW-3 are the important witnesses and closing the opportunity of cross-examination, in such a cursory manner, will cause acute prejudice to the applicant-accused.

6. In support of contention, he has placed reliance on a judgment reported in **[2019] 6 SCC 203, Manju Devi versus**

State of Rajasthan and has referred the relevant paragraphs, which read as under:-

*"14. In **Manju Devi v State of Rajasthan, (2019) 6 SCC 203**, a two-Judge bench of this Court noted that an application under Section 311 could not be rejected on the sole ground that the case had been pending for an inordinate amount of time (ten years there). Rather, it noted that "the length/duration of a case cannot displace the basic requirement of ensuring the just decision after taking all the necessary and material evidence on record. In other words, the age of a case, by itself, cannot be decisive of the matter when a prayer is made for examination of a material witness". Speaking for the Court, Justice Dinesh Maheshwari expounded on the principles underlying Section 311 in the following terms:*

"10. It needs hardly any emphasis that the discretionary powers like those under Section 311 CrPC are essentially intended to ensure that every necessary and appropriate measure is taken by the Court to keep the record straight and to clear any ambiguity insofar as the evidence is concerned as also to ensure that no prejudice is caused to anyone. The principles underlying Section 311 CrPC and amplitude of the powers of the court thereunder have been explained by this Court in several decisions [Vide Mohanlal Shamji Soni v. Union of India, 1991 Supp (1) SCC 271: 1991 SCC (Cri) 595; Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158: 2004 SCC (Cri) 999; Mina Lalita Baruwa v. State of Orissa, (2013) 16 SCC 173: (2014) 6 SCC (Cri) 218; Rajaram Prasad Yadav v. State of Bihar, (2013) 14 SCC 461: (2014) 4 SCC (Cri) 256 and Natasha Singh v. CBI, (2013) 5 SCC 741: (2013) 4 SCC (Cri) 828]. In Natasha Singh v. CBI [Natasha Singh v. CBI, (2013) 5 SCC 741: (2013) 4 SCC (Cri) 828], though the application for examination of witnesses was filed by the accused but, on the principles relating to the exercise of powers under Section 311, this Court observed, inter alia, as under: (SCC pp. 746 & 748-49, paras 8 &15)

"8. Section 311 CrPC empowers the court to summon a material witness, or to examine a person present at "any stage" of "any enquiry", or "trial", or "any other proceedings" under CrPC, or to summon any person as a witness, or to recall and re-examine any person who has already been examined if his evidence appears to it, to be essential to the arrival of a just decision of the case. Undoubtedly, CrPC has conferred a very wide discretionary power upon the court in this respect, but such a discretion is to be exercised judiciously and not arbitrarily. The power of the court in this context is very wide, and in exercise of the same, it may summon any person as a witness at any stage of the trial, or other proceedings. The court is competent to exercise such power even suo motu if no such application has been filed by either of the parties. However, the court must satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case.

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15. The scope and object of the provision is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any

improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 CrPC must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under Section 311 CrPC must therefore, be invoked by the court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection. The very use of words such as "any court", "at any stage", or "or any enquiry, trial or other proceedings", "any person" and "any such person" clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case." (emphasis in original)"

7. Placing reliance upon the aforesaid judgment, he submits that it has been held that an application under Section 311 of Cr.P.C. could not be rejected, for the sole reason that the case had been pending for an inordinate period of time, unless there is some material which could indicate that the application is filed with intent to delay the proceedings of trial as the same cannot displace the basic requirement of ensuring the just decision after taking all the necessary and material evidence on record.

8. The discretionary powers enshrined under Section 311 of Cr.P.C. are essentially intended to ensure that every necessary and appropriate measure is taken by the court to keep the record straight and to clear any ambiguity insofar as the evidence is concerned and also to ensure that no prejudice is caused to anyone. Thus submission is that the order impugned dated 23.06.2025 is against the settled proposition of law, and therefore, the same may be set aside.

9. Per contra, learned counsel appearing for the opposite party no.2/ informant has vehemently opposed the contentions aforesaid and submits that the order impugned itself is enough to show that the applicant was called from the jail, though he himself has instructed his advocate not to argue in the matter. He submits that it is not a case where the opportunity of cross-examination was not afforded to the applicant-accused but he himself has chosen not to cross-examine the witnesses produced by the prosecution. He also submits that this is a dilly dallying practice and the same should be deprecated so that the speedy justice could be ensured to the victim. Therefore, submission is that no interference is warranted and the instant application may be dismissed.

10. Learned A.G.A. for the State has also supported the version of the counsel for the opposite party no.2 and submits that the reason assigned by the learned trial court for not entertaining an application

under Section 311 of Cr.P.C. is justiciable. He added that the reason has been assigned in the impugned order that why the opportunity of cross-examination is being closed, and therefore, the applicant is not entitled for any relief.

11. Having heard learned counsel for the parties and after perusal of the record, it transpires that an application was moved by the applicant under Section 311 of Cr.P.C., which has been rejected vide order impugned dated 23.06.2025.

12. Section 311 of Cr.P.C. reads as under:-

"Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

13. The FIR was lodged on 27.02.2020 and the applicant was arrested by the police on 23.08.2023, whereafter he was released on 12.12.2024 and the admitted position is that on 20.06.2024 and 21.10.2024, the PW-2 and the PW-3 were summoned and the opportunity of cross-examination was afforded to the applicant-accused. From perusal of the finding of the trial court, it transpires that when the applicant-accused was produced before the trial court, he instructed his counsel not to argue in the matter and, under such circumstances, the trial court asked the *pairokar* to call another counsel, but once the next counsel did not appear before the court, the opportunity of cross-examination was closed.

14. The applicant-accused was produced before the trial court from jail and once he had instructed his counsel not to argue in the case, the opportunity of cross-examination was closed but in real sense this can not be a reason so as to close the important stage of a trial, not affording an opportunity of cross-examination. The another finding is that the *pairokar* did not call the another advocate, whose name was printed in Vakalatnama but again it is not understandable that since the applicant was under custody and was brought from jail, therefore, the things were not in control of him thus, an opportunity should have been given by the learned trial court with respect to the appearance of another counsel, or it should have been asked by the learned trial court to the accused that whether he wants another counsel or any amicus in his case, which is also missing apparently from the order impugned.

15. This court finds that the scope and object of the provision is to enable the court to determine the truth and to discover all relevant facts to arrive at a just decision of the case which in fact is the paramount goal of a trial. The intent of the legislature is very obvious from bare reading of Section 311 of the court as the court can summon and examine or recall and re-examine a person, if evidence appears to be essential for the just decision. In fact, the word 'essential' deliberately finds place in the provision as the court is duty bound to satisfy the essentiality with reasons, meaning thereby that if the court is either passing the order for recall or re-examine any person in evidence or rejecting/ declining such request of either the parties, reason must have to be recorded as the opportunity of cross-examination is one of the most important stage and failing which, certainly prejudice would be caused.

16. This court is also aware that the power conferred under Section 311 of Cr.P.C. which could be invoked by the court only in order to meet the ends of justice, for strong and valid reasons as per the settled law, but at the same time, the court while dealing with the application under Section 311 of Cr.P.C., should be cautious enough that while denying any opportunity, no prejudice is caused to anyone. So far as the present case is concerned, the PW-2 and the PW-3 are the important witnesses, and therefore, the opportunity of cross-examination of both the witnesses is must, which is missing in the present case.

17. Hence, without expressing any view on the merits of the trial, the order impugned dated 23.06.2025 passed on an application, under Section 311 of Cr.P.C., by the learned trial court is unsustainable, resultantly, the same is hereby set aside.

18. Consequently, learned trial court is directed to afford the opportunity of cross-examination of both the witnesses, PW-2 and PW-3, by fixing a suitable date. It is provided that if the appellant (accused) does not cooperate or appear before the learned trial court on the date fixed by the learned trial court, liberty is granted to the trial court to proceed in accordance with law.

19. The application is **allowed** accordingly.

(2025) 8 ILRA 328
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 25.08.2025

BEFORE

THE HON'BLE VIKRAM D. CHAUHAN, J.

Application U/S 482 No. 6782 of 2023

Viri Singh & Anr. ...Applicants
Versus
State Of U.P. & Anr. ...Opposite Parties

Counsel for the Applicants:
Uma Datta Tripathi

Counsel for the Opposite Parties:
G.A., Vijay Kumar Mishra

Issue for Consideration

Matter pertains to an application under S.482 of the Code of Criminal Procedure, 1973, filed by the applicants, father-in-law and mother-in-law of the complainant-wife, seeking quashing of the Non-Bailable Warrant issued by the Additional Chief Judicial Magistrate and the entire proceedings of Complaint Case instituted under SS. 498-A, 323, 504, 506 of the Indian Penal Code and SS. 3/4 of the Dowry Prohibition Act; the principal question for consideration being whether continuation of criminal proceedings against the applicants, based solely on general, vague, and omnibus allegations arising out of a matrimonial dispute, amounts to an abuse of the process of court.

Headnotes

Code of Criminal Procedure, 1973 - SS.200, 202, 203, 204, 212, 213, 482 - Indian Penal Code, 1860 – SS. 319, 323, 498-A, 504, 506, Dowry Prohibition Act, 1961 – SS. 3, 4, 7(3) - Quashing of proceedings - Allegations vague and omnibus - Giving and taking dowry - Absence of corroboration - Cruelty - Definition and scope Vague allegations - Abuse of process of law - Intentional insult and criminal intimidation - Ingredients not met - Hurt - No injury proved.

Held: General, vague and omnibus allegations have been made against applicants - No specific role assigned - No particulars of time, place or nature of demand or harassment disclosed - Criminal proceedings against applicants (namely *Viri Singh* and *Smt. Kasturi Devi*) including Non-Bailable Warrant order dated 24.5.2022 are hereby quashed - Application allowed - Court, however, left liberty to proceed with criminal

proceedings against other accused persons, if any, in accordance with law.(Paras 34 to 43) (E-7)

Case Law Cited

State of Haryana v. Bhajan Lal, **1992 Supp (1) SCC 335**; *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*, **(2005) 8 SCC 89**; *Neelu Chopra v. Bharti*, **(2009) 10 SCC 184**; *Achin Gupta v. State of Haryana*, **2024 INSC 369**; *Dara Lakshmi Narayana & Ors. v. State of Telangana & Anr.*, **2024 INSC 953**.

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973; Dowry Prohibition Act, 1961

List of Keywords

Non-Bailable Warrant; Dowry Demand; Vague Allegations; Omnibus Allegations; Cruelty; Harassment; Abuse of Process; Fair Trial; Prudent Person; Summoning Order; Quashing.

Case Arising From

Complaint Case No.22 of 2017 (*Smt. Anju Vs. Anil Kumar and others*), under *Sections 498-A, 323, 504, 506 I.P.C.* and *Sections 3/4 Dowry Prohibition Act*, Police Station Mahila Thana Rakabganj, District Agra.

Appearances for Parties

Advs. for the Applicants:
Uma Datta Tripathi
Advs. for the Respondents:
G.A., Vijay Kumar Mishra

(Delivered by Hon'ble Vikram D. Chauhan, J.)

1. Heard learned counsel for the Applicants, Sri Vijay Kumar Mishra, learned counsel for opposite party no.2 and learned A.G.A. for State.

2. This application under Section 482 Cr.P.C. is preferred by Applicants for quashing the Non-Bailable Warrant dated 24.5.2022 passed by Additional Chief Judicial Magistrate, Court No.10, Agra as well as entire proceeding of Complaint Case No.22 of 2017, Smt. Anju Vs. Anil Kumar and others, under Sections 498-A, 323, 504, 506 I.P.C. and Section 3/4 D.P. Act, Police Station Mahila Thana Rakabganj, District Agra.

3. Learned counsel for opposite party no.2-complainant submits that he does not intend to file any counter affidavit and the matter may be heard on merits. The opportunity of filing counter affidavit is hereby closed.

4. With the consent of learned counsel for parties, the matter is being heard.

5. It is submitted by learned counsel for Applicants that Applicants are father-in-law and mother-in-law of complainant. The Applicants are summoned by order dated 11.9.2017 under Sections 498A, 323, 504, 506 I.P.C. and Section 3/4 Dowry Prohibition Act. A perusal of complaint would go to show that general, vague and omnibus allegations have been made against Applicants, who are family members of husband. One of the allegation in the complaint is that on 21.3.2016, applicants along with husband of opposite party no.2 have demanded dowry of Rs.5 lacs and have abused the opposite party no.2. Such an incident has not been substantiated in the statement of the complaint, recorded under Section 200 Cr.P.C., as in the aforesaid statement general allegation with regard to demand of dowry has been made. Specific allegation of 21.3.2016 (in statement of complainant) pertains to assault being made however, there is no injury report on record.

6. It is further submitted by learned counsel for Applicants that prior to filing of aforesaid complaint, the husband of opposite party no.2 preferred a complaint

before the Superintendent of Police, Agra on 29.3.2016 against the conduct of the wife on the fact that opposite party no.2 has voluntarily left the home on 21.3.2016. After the aforesaid complaint dated 29.3.2016, the matter was referred to the Family Conciliation Centre where the complainant had filed an application dated 26.4.2016 (which is at page 41 of the paper book) wherein there is no allegation against the Applicants and the sole allegation is against the husband. The applicant has been falsely implicated in the present case and the criminal proceedings against the Applicants are bad in law.

7. Learned counsel for opposite party no.2 has opposed the arguments raised by learned counsel for Applicants and submits that the Applicants are not permitting the complainant-opposite party no.2 to reside in the matrimonial home.

8. On a query being made to learned counsel for the opposite party no.2 with regard to the document at page 41 of the paper book, learned counsel for opposite party no.2 submits that the aforesaid application is made before the Family Conciliation Centre by the complainant. There are serious allegation with regard to demand of dowry in the complaint and statement recorded under Section 200 Cr.P.C. and as such the present application is liable to be dismissed.

9. Learned A.G.A. appearing on behalf of the State-respondent submits that in the present case opposite party no.2 has filed a complaint before the court of Additional Chief Judicial Magistrate, Agra as Complaint Case No.22 of 2017 with the allegation that her marriage was solemnized with accused Anil Kumar on 03.03.2014 and her father has given sufficient dowry in his capacity, but in-laws were not satisfied with the same and demanded additional dowry, in the shape of Rs.5 lacs cash and four wheeler vehicle, in this regard they used to torture and harass her and given threats for life and ultimately on 23.8.2015 they have outsted wife from the house after beating her. After registration of complaint, Chief Judicial Magistrate, Agra recorded the statement of opposite party no.2 under Section 200 Cr.P.C. in which she has fully supported the version of complaint and also recorded the statements of witnesses, namely, P.W.1 Rajendra Singh and P.W.2-Kamlesh Kumari under Section 202 Cr.P.C. in which they have also supported the version of complaint. Thereafter, Additional Chief Judicial Magistrate, Agra after considering each and every aspect of the matter has rightly summoned the present applicants and one other accused, namely, Anil Kumar for facing trial under Section 498A, 323, 504, 506 I.P.C. and Section 3/4 Dowry Prohibition Act on 11.9.2017.

10. The opposite party no.2-wife has preferred a complaint before the learned Additional Chief Judicial Magistrate, Agra on 23.1.2017, the same was registered as Complaint Case. No 22 of 2017 (Smt Anju Vs. Anil Kumar and others) under Sections 498A, 323, 504, 506, 406 I.P.C. and Section 3/4 of Dowry Prohibition Act.

11. As per allegation in the above-mentioned complaint preferred by opposite party No. 2-wife against husband-Anil Kumar, Applicant no.1-father-in-law and Applicant no.2-mother-in-law, the marriage between opposite party no. 2 and husband was solemnised on 3.3.2014 according to hindu rites. It is alleged that in the marriage Rs.18 lakhs cash and Rs.2 lakh furniture were given at the time of marriage. It is

also alleged in the complaint that after marriage when the opposite party no.2 reached her matrimonial home then mother-in-law, father-in-law, sister-in-law, brother-in-law and husband used to beat opposite party no.2 and demanded Rs.5 lakhs and four wheeler car so that opposite party no.2 live happily at matrimonial home. On 3.1.2015, son was born out of matrimonial accord. Even after the child was born out of marriage, however, behaviour of husband and his family members did not improve and they used to threaten opposite party no.2 to not inform wife's family members of misbehaviour by husband and his family members. In February 2016, after marriage of sister of opposite party no 2, when opposite party no.2 went to her parents home and informed about misbehaviour of husband and his family members, thereafter father of opposite party no.2 asked the husband about the complaint made by opposite party no. 2. The husband started abusing the father of opposite party no.2 and stated that till the time, demand of dowry is not fulfilled, opposite party no 2 would be harassed. When the father of opposite party no. 2 talked to Applicant no. 1, he started abusing. The sister-in-law and brother-in-law started harassing and on their enticement, Applicants along with husband started harassing the opposite party 2 for dowry.

12. It is also alleged in the complaint that Applicants along with husband used to assault the opposite party No. 2 for dowry and thereafter admitted the opposite party No.2 to the hospital. Thereafter, the conciliation proceedings were held between the parties and opposite party no. 2 started living with husband and his family members and for 14 to 15 days there was normalcy in the relationship, however, sister-in-law and brother-in-law came to house of husband and started abusing and assaulted and demanded ₹ 5 lakh and one car as dowry. The said incident is of March 2016. On 21.3.2016 demand was made for dowry of ₹ 5 lakhs and car by husband, father-in-law, mother-in-law, sister-in-law, husband of sister-in-law and has abused and stated that if demand of dowry is not fulfilled, opposite party no.2 will not be permitted to enter the matrimonial home. It is alleged that on 7.7.2017 complaint was sent to Senior Superintendent of Police, Agra for lodging of First Information Report.

13. The court concerned thereafter has recorded statement of opposite party no.2 under Section 200 Cr.P.C. In the aforesaid statement, it has been alleged that marriage took place on 3.3.2014 and at the time of marriage, father of opposite party No.2 has given ₹ 18 lakh cash and other items, however, husband and his family members were not satisfied and were demanding additional dowry of ₹ 5 lakhs and four wheeler car. It is also stated in aforesaid statement that husband is not ready to keep the wife unless demand is not fulfilled and that the wife is living at her parent's home for one and half years along with child. It is also alleged that on 21.3.2014 opposite party no.2 has been assaulted and has been thrown out of the matrimonial home.

14. The court concerned thereafter has recorded the statement of Rajendra Singh (father of opposite party no. 2, wife) under Section 202 Cr.P.C. The said witness has stated that complainant is his daughter and she was married on 3.3.2014 in accordance with hindu rites with Anil Kumar (Husband). It is stated that at the time of marriage a sum of ₹ 20 lakh was expended. After the marriage, husband, mother-in-

law, sister-in-law and father-in-law used to taunt the complainant for less dowry and demanded ₹ 5 lakhs and four wheeler car otherwise will not keep the complainant at home. During the subsistence of marriage on 3.1.2015 one son was born out of marriage, however, no change in the behaviour of in-laws and husband was found. In February 2016, when the complainant came back to house of witness for the purpose of marriage of younger sister of complainant then all the aforesaid incident were informed to Rajendra Singh. On 2.3.2016 demand for ₹ 5 lakhs and one car was made by accused persons and have assaulted and have thrown the complainant out of the house and threatened of divorce.

15. Thereafter the statement of Smt. Kamlesh Kumar being mother of complainant was recorded. The said witness has stated that the complainant is her daughter and she was married on 3.3.2014 in accordance with hindu rites with Anil Kumar (Husband). After the marriage, husband, mother-in-law, sister-in-law and father-in-law used to taunt the complainant for less dowry and demanded ₹ 5 lakhs and four wheeler otherwise will not keep the complainant at home. In February 2016, when the complainant came back to the house of witness for the purpose of marriage of younger sister of complainant then all the aforesaid incident were informed to Rajendra Singh. On 2.3.2016 demand for ₹ 5 lakhs and one car was made by accused persons and have assaulted and thrown the complainant out of the house.

16. A bare perusal of complaint would go to show that complaint was preferred on 23.1.2017 and the same was registered as Complaint Case No. 22 of 2017 (Smt. Anju Vs Anil Kumar and others). A perusal of para-4 of the aforesaid complaint would go to show that on 7.1.2017 at the first time complaint was made to the Senior Superintendent of Police, Agra, however, no action was taken. Applicants in paragraph 6 of the application under Section 482 Cr.P.C. has specifically alleged that husband on 29.3.2016 has moved an application before the Senior Superintendent of Police, Agra disclosing that present complainant-opposite party no.2 was continuously creating nuisance in the matrimonial home and is threatening the Applicants to implicate in a false case.

17. When the opposite party no.2 came to know about the aforesaid application dated 29.3.2016 of husband, opposite party no.2 is said to have preferred an application dated 26.4.2016 before the Superintendent of Police, Agra (Nodal Officer Parivar Paramarsh Kendra). The aforesaid application dated 26.4.2016 is filed along with present application at page 41 of paper book. A perusal of aforesaid application dated 26.4.2016 of opposite party No. 2 would go to show that no allegation has been made against present Applicants and all the allegations (in application dated 26.4.2016) are directed against husband of complainant. It is further to be noted that in complaint filed by complainant before the court concerned the last allegation is of 21.3.2016. The application dated 26.4.2016 has not been denied by counsel for opposite party no.2. In the application dated 26.4.2016, there is no allegation against Applicants and it has not been explained by counsel for opposite party no. 2 as to why subsequent complaint has been filed before the court concerned, allegations have been made against the present Applicants although the same were not in the application dated 26.4.2016 before police authorities.

18. It is further to be noted that in affidavit filed along with application under Section 482 Cr.P.C. in para 13, it has been specifically stated that Applicants have not assaulted opposite party no. 2 nor have demanded dowry and it has been further alleged that complaint has been filed to implicate the entire family members for fulfilling malafide intentions of complainant of her encroaching upon the money of the family of Applicants. It has also been alleged in the affidavit filed in support of application under Section 482 Cr.P.C. that general role has been assigned to Applicants and that no offence is made out against Applicants.

19. It is to be seen that Applicants are prosecuted under Section 498-A of Indian Penal Code and Section 3/4 of Dowry Prohibition Act. Section 498A of Indian Penal Code provides penal consequences where the husband or relative of husband of a woman subjects such woman to cruelty. The cruelty has been defined in the explanation appended to Section 498A of Indian Penal Code. There are two explanations provided under the aforesaid provision for interpretation of the word "cruelty" provided under the aforesaid section. The explanation (a) provides that the "cruelty" would mean any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical). The explanation (b) provides cruelty would mean harassment of the woman where such harassment is with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure of her or any person related to her to meet such demand.

20. The provisions of Section 498A of Indian Penal Code prescribes as under :-

"498A. Husband or relative of husband of a woman subjecting her to cruelty.*—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 of such a nature as is 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 or is on account of failure by her or any person related to her to meet such demand."

21. In the present case, there is no allegation that the Applicants have offered any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of woman. The counsel for opposite party no. 2 has neither relied upon any grave injury suffered by opposite party no. 2 nor has relied upon any medical report in this respect. It is not in dispute between the parties that no medical practitioner was examined in support of complaint before the court concerned. It is not alleged in the complaint nor any material circumstances

have been shown on behalf of opposite parties that the conduct of Applicants was of such a nature as is likely to drive the wife to commit suicide.

22. It is further to be noted that as per prosecution case, it is alleged that the wife was being subjected to harassment by Applicants and other family members and demanding amount to meet unlawful demand. For the purpose of prosecution under Section 498A of Indian Penal Code, it is imperative that the woman should be subjected to cruelty by the husband or relative of the husband of a woman. As per explanation (b) of the aforesaid section, it is imperative that the harassment of woman should be with a view of coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to the woman to meet such demand.

23. A perusal of complaint would go to show that general and omnibus allegations have been made against family members of husband with regard to demand of dowry. Although in complaint, it has been stated that husband and his family members were demanding dowry of ₹ 5 lakhs and a four wheeler, however, neither the date and nor the time of alleged demand has been disclosed in the complaint. In respect of incident dated 21.3.2016, it is alleged that husband and family members were demanding ₹ 5 lakh and car, however, a perusal of the statement of complainant under Section 200 Cr.P.C would go to show that in respect of alleged incident of 21.3.2016, only allegation of assault has been made and no allegations have been made in the aforesaid statement with regard to demand of dowry. The statement of complainant also does not disclose the details of harassment which has been incurred by Applicants to the wife-complainant in respect of demand for dowry.

24. Criminal law is set in motion by lodging of First Information Report or Complaint. The investigation/prosecution is carried upon to find the truth in allegations. Setting in motion criminal law entails consequences including curtailing of liberty of individual. The criminal law machinery is based on the nature of allegations and the evidence found during investigation/prosecution/enquiry. It is important for prosecution to provide precise details of allegations and evidence to support the prosecution case.

25. Vague, ambiguous and omnibus allegations can violate the right of accused to process of law and fair trial. It is fundamental principle of law that accused be subjected to fair trial. Vague allegation has significant effect on defence by creating uncertainty. Without specific details and evidence, the defence of accused may be prejudiced or the accused may not be able to effectively defend himself.

26. Vague allegation can affect the defence of accused by making it difficult to formulate a targeted defence strategy. Without clear specifics or evidence to address, accused may struggle to refute the allegations or present a compelling counter argument. Lawyers/Advocates typically rely on specific information to prepare their case, such as dates, time, location, and witnesses. Vague allegations lack these crucial details, leaving the defence to speculate or generalize their response, which can weaken their defence in court. The mere suggestion of wrong doing,

without substantiation, can lead to stigma and prejudice against the accused, making it harder for them to receive a fair trial. Moreover, vague allegations may prolong legal proceedings as the defence attempts to gather more information to understand the accusations fully.

27. ***In State of Haryana v. Bhajan Lal, 1992*** **Supp (1) SCC 335** the Supreme Court has has laid down the categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of process of any court or otherwise to secure the ends of justice. One of the categories pointed out in the said judgement is stated in para 102 (5) which is quoted herein below :

"(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused."

28. In law, prudent person is a hypothetical person who in the facts and circumstances would conduct in a reasonable, just and fair manner. In the context of vague allegations at the stage of cognizance or summoning of accused, it is to be examined whether on the basis of the allegations in the complaint or the first information report and the evidence collected during investigation it can be said that a prudent person would come to the conclusion that there is sufficient ground for proceeding against the accused. The insufficiency of ground for proceedings against an accused may also arise when material particulars and details in respect of the alleged offence are absent in prosecution case. The sufficiency of material against an accused is a condition precedent for proceedings against an accused.

29. ***In S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla,*** **(2005) 8 SCC 89** the Supreme Court has laid emphasis that the complaint must contain material to enable the court to make up mind for issuing process.

"5. Section 203 of the Code empowers a Magistrate to dismiss a complaint without even issuing a process. It uses the words "after considering" and "the Magistrate is of opinion that there is no sufficient ground for proceeding". These words suggest that the Magistrate has to apply his mind to a complaint at the initial stage itself and see whether a case is made out against the accused persons before issuing process to them on the basis of the complaint. For applying his mind and forming an opinion as to whether there is sufficient ground for proceeding, a complaint must make out a prima facie case to proceed. This, in other words, means that a complaint must contain material to enable the Magistrate to make up his mind for issuing process. If this were not the requirement, consequences could be far-reaching. If a Magistrate had to issue process in every case, the burden of work before the Magistrate as well as the harassment caused to the respondents to whom process is issued would be tremendous. Even Section 204 of the Code starts with the words "if in the opinion of the Magistrate taking cognizance of an offence there is sufficient ground for proceeding". The words "sufficient ground for proceeding" again suggest that ground should be made out in the complaint for proceeding against the respondent. It is settled law that at the time of issuing of the

process the Magistrate is required to see only the allegations in the complaint and where allegations in the complaint or the charge-sheet do not constitute an offence against a person, the complaint is liable to be dismissed."

30. The question therefore arises what is the material which is required to be before the court to issue process under criminal law. The material facts and particulars to constitute an offence are required to be shown by prosecution before the court proceeds to issue the process. The material facts and particulars are those facts which essentially would be required to constitute an offence. These facts would also include such facts which the law recognises as important facts for proceeding with the trial of the case. These facts are also necessary to bring fairness in the process of trial. In this respect, Sections 212 and 213 of Cr.P.C. (Section 235 & 236 BNSS) also recognises that the charge shall contain particulars of time and place of offence and the particulars of the manner in which the alleged offence was committed.

31. The rule of law requires that accused is visited with specific allegations in criminal prosecution. Specific allegation under criminal law would require that date, time and place of alleged offence is specified (more particularly when the complainant is the victim having personal knowledge), the details of person against whom the offence is committed or the thing in respect of which the offence was committed. The allegations should also describe the manner in which the offence is committed. ***In Neelu Chopra v. Bharti,* (2009) 10 SCC 184** the Hon'ble Supreme Court has emphasised the need for specific and proper allegation in criminal law. In this reference para 9 of the Neelu Chopra Judgement (Supra) is quoted herein below :

"9. *In order to lodge a proper complaint, mere mention of the sections and the language of those sections is not the be all and end all of the matter. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence."*

32. In **Achin Gupta Vs State of Haryana, 2024 INSC 369,** the Supreme Court has laid emphasis that general and sweeping allegation without specific instance is an abuse of process of court. In this reference para 25 of the **Achin Gupta (Supra)** is quoted herebelow :-

"25. If a person is made to face a criminal trial on some general and sweeping allegations without bringing on record any specific instances of criminal conduct, it is nothing but abuse of the process of the court. The court owes a duty to subject the allegations levelled in the complaint to a thorough scrutiny to find out, prima facie, whether there is any grain of truth in the allegations or whether they are made only with the sole object of involving certain individuals in a criminal charge, more particularly when a prosecution arises from a matrimonial dispute"

33. In **Dara Lakshmi Narayana & Others Vs State of Telangana & Another 2024 INSC 953,** the Supreme Court has observed that vague allegation may lead to misuse of legal process. In this respect, para 18 & 28 is quoted herein below:-

"18. A bare perusal of the FIR shows that the allegations made by respondent No.2 are vague and omnibus. Other than claiming that appellant No.1 harassed her and that appellant Nos.2 to 6 instigated him to do so, respondent No.2 has not provided any specific details or described any particular instance of harassment. She has also not mentioned the time, date, place, or manner in which the alleged harassment occurred. Therefore, the FIR lacks concrete and precise allegations.

28. The inclusion of Section 498 of the IPC by way of an amendment was intended to curb cruelty inflicted on a woman by her husband and his family, ensuring swift intervention by the State. However, in recent years, as there have been a notable rise in matrimonial disputes across the country, accompanied by growing discord and tension within the institution of marriage, consequently, there has been a growing tendency to misuse provisions like Section 498 of the IPC as a tool for unleashing personal vendetta against the husband and his family by a wife. Making vague and generalised allegations during matrimonial conflicts, if not scrutinized, will lead to the misuse of legal processes and an encouragement for use of arm twisting tactics by a wife and/or her family. Sometimes, recourse is taken to invoke Section 498 the IPC against the husband and his family in order to seek compliance with the unreasonable demands of a wife. Consequently, this Court, time and again, cautioned against prosecuting the husband and his family in the absence of a clear prima facie case against them."

34. A bare perusal of complaint and statement of opposite party no 2 would go to show that general, vague and omnibus allegations have been made against Applicants. It has not been disclosed in complaint or in statement of opposite party no.2 as to role assigned to Applicants. The complainant or statement of opposite party no.2 before the trial court does not specify the details of harassment including the date and time when the same is meted out to the opposite party no.2-wife. Even the date of demand of dowry and the manner in which demand for dowry is made is not stated. In the statement of opposite party no.2, general and vague allegation with regard to demand of dowry are made. It is further to be noted that although the complainant states that on 21.3.2016 accused persons including Applicants have demanded dowry of ₹ 5 lakhs and four-wheeler car, however, the aforesaid allegation in complaint has not been supported in the statement of opposite party no 2 before the court concerned.

35. Under Section 3 of Dowry Prohibition Act, 1961, receiving and giving of dowry is punishable offence. It is alleged in the complaint that cash and other items were given to accused person at time of marriage, however, no details has been given as to person to whom the aforesaid cash and other items were given and whether the same were in the nature of gifts in the marriage or in the nature of dowry. The vague and omnibus allegations have been made in the complaint with regard to giving of dowry in the marriage. Under Section 3 of Dowry Prohibition Act even giving dowry is an offence, however, Section 7 (3) of Dowry Prohibition Act, 1961 prohibits prosecution of a person who is giving dowry for offence under this Act on the basis of statement made by him. The aforesaid provision has resulted that a person who is taking dowry is being prosecuted, however, a person who is

giving dowry is barred by law from being prosecuted nor any action is being taken against them. The law under Section 3 of Dowry Prohibition Act declares the person giving dowry as offender however, bars prosecution under Section 7(3) of Dowry Prohibition Act.

36. It is admitted to complainant and her father that dowry was given at the time of marriage to the tune of Rs. 18 lakhs in cash, the court concerned summoned the Applicants on the basis of statements of complainant and her father who admit being involved in giving of dowry [in effect has violated the provisions of giving dowry under Section 3 of the Dowry Prohibition Act], then it was necessary that the court concerned while summoning the accused to seek corroborating material and circumstances in respect of taking of dowry by the Applicants. Mere bald allegation by a person, who is giving dowry (complainant) may not be sufficient for a prudent man to believe. In the present case, there is no corroborating material to demonstrate that the cash is given to Applicants as dowry at the time of marriage. Such bald allegation with regard to giving and taking of dowry by a person (complainant or his family members) who has violated the mandate of Section 3 of Dowry Prohibition Act cannot be sole circumstance to prosecute, as no prudent man can rely on the statement of the complainant (Who himself has violated the law) without there being corroborative material or circumstance. It is further to be noted that the date, place, time and the manner in which alleged dowry is said to have been given by complainant or his father has neither been stated in the complaint nor in the statement of complainant. The marriage took place on 3.3.2014 and the complaint has been filed on 21.1.2017, neither in the complaint nor in the statement of complainant it has been explained as to why offence of taking dowry was not reported in the year 2014 itself and why after three years such allegations have been raised against the applicants. The aforesaid is further more significant as in the above-mentioned application dated 26.4.2016 of opposite party no.2-complainant, the complainant has made no allegation with regard to harassment or demand of dowry or receiving of dowry against the Applicants. All the allegations in the application dated 26.4.2016 is directed against the husband and not against the Applicants. In view of aforesaid, general, vague and omnibus allegations have been made against Applicants, (who are family members of husband) as such, the aforesaid allegations cannot be a ground for summoning the Applicants-accused under Sections 498-A of Indian Penal Code and Section 3 of Dowry Prohibition Act.

37. Insofar as the allegations with regard to demand of dowry in violation of Section 4 of Dowry Prohibition Act is concerned, in the statement of opposite party No. 2 except a general and bald allegations with regard to demand of dowry against entire family members of the husband, there is no specific allegation. Even in the statement of complainant, in respect of incident dated 21.3.2016, it is not alleged that on the aforesaid date any demand of dowry was made although in the complaint such allegation existed. Once the complainant in her statement before the court concerned has not supported the allegations in the complaint. In this respect, summoning order could not have been issued in respect of offence under Section 4 of Dowry Prohibition Act, more particularly when it is not alleged that

demand of dowry was made at the place where the parents of the complainant reside.

38. The Applicants has also been summoned under Sections 504 and 506 of Indian Penal Code. The Applicants have put to challenge the summoning under the aforesaid sections on the ground that no offence is made out. The offence under Section 504 of the Indian Penal Code prescribes that whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. The offence under Section 504 I.P.C. requires that there should be intentional insult and thereby giving provocation to any person intending or knowing that such provocation will cause him to break public peace or to commit any offence. In the present case, there are no material circumstances to show that there was any intentional insult which would give provoction to the wife to cause any break of public peace or to commit any offence as such the material ingredient of offence under Section 504 I.P.C. is not made out from the prosecution case. Further, Section 506 provides punishment for offence of criminal intimidation.

39. The offence of criminal intimidation has been drescribed under Section 503 of Indian Penal Code and the same is quoted here in below :-

"503. Criminal intimidation.- *Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.*

Explanation.-A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section."

40. An act of criminal intimidation would occur when a person threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

41. A perusal of the statement of complainant before the court concerned under Section 200 of the Criminal Procedure Code would go to show that there is no allegation of any threatening against the Applicants. Even complainant does not make any specific allegation against Applicants with regard to any threatening and using of abusive language. The complaint does not specify as to what was the language used by Applicants. Further the date, time and place of threatening by Applicants has also not been disclosed in the complaint. It is further to be noted that in above mentioned application dated 26.4.2016 of complainant also there exist no allegation against Applicants by the complainant. Even

otherwise, allegation in the complaint do not constitute an offence under Sections 504 and 506 of the Indian Penal Code. The court concerned erred in issuing summons against Applicants under Sections 504 and 506 of Indian Penal Code.

42. The Applicants have also been summoned under Sections 323 of Indian Penal Code. Section 323 of Indian Penal Code provides for offence of causing hurt. The 'Hurt' has been defined under Section 319 of I.P.C. as whoever causes bodily pain, disease or infirmity to any person is said to cause hurt. The complainant has specifically alleges that the accused has assaulted the complainant and have thrown her out of matrimonial. The statement of complainant before the court concerned alleges general, vague and omnibus allegation against the Applicants with regard to assault and there is no allegation in the complaint nor in the statement of complainant before court concerned of causing any body pain, disease or infirmity to complainant. The counsel for the opposite party no. 2 has not relied upon any medical report nor any doctor is shown to have been examined before the Court concerned with regard to any bodily pain, disease or infirmity. It is further been noted that in the above mentioned application dated 26.4.2016 of complainant also there exist no allegation against Applicants by the complainant in this respect.

43. In view of reasons stated hereinabove, the criminal proceedings against Applicants (namely Viri Singh and Smt. Kasturi Devi) including non bailable warrant order dated 24.5.2022 passed by Additional Chief Judicial Magistrate, Court No.10, Agra is not tenable in law and as such, criminal proceedings (including Non-Bailable Warrant dated 24.5.2022) against Applicants in Complaint Case No.22 of 2017 (Smt. Anju Vs Anil Kumar and others) are hereby quashed in respect of applicant No.1-Viri Singh and applicant No.2-Smt. Kasturi Devi only. The application is allowed. However, the court concerned would be at liberty to proceed with the criminal proceedings against other accused persons, if any, in accordance with law.

(2025) 8 ILRA 340
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 19.08.2025

BEFORE

THE HON'BLE SAURABH SRIVASTAVA, J.

Application U/S 482 No. 40137 of 2024

Bhavlesh & Anr. ...Applicants
Versus
State Of U.P. & Ors. ...Opposite Parties

Counsel for the Applicants:
Jay Prakash Yadav

Counsel for the Opposite Parties:
G.A., Vikesh Kumar Tiwari

Issue for Consideration

Whether, after rejection of the Final Report and allowing of a protest petition, the Special Judge (POCSO Act)/Additional District and Sessions Judge, Ghaziabad, was legally empowered to summon the applicants on the basis of such protest petition itself, or whether the matter could be proceeded with only as a complaint case under SS. 200, 202 Cr.P.C., having regard to the scope of powers under S.33(1) of the POCSO Act, 2012.

Headnotes

Criminal Procedure Code, 1973 - S. 190(1)(b) - Cognizance on police report - Power of Special Judge under POCSO Act - When final report is rejected and protest petition allowed - Special Judge cannot

summon accused directly on protest petition; matter must be treated as complaint case - Protection of Children from Sexual Offences Act, 2012 – S. 33(1) - Scope of Special Court's jurisdiction - Cognizance restricted to two basis: complaint or police report - Where final report rejected, Court must proceed under SS. 200, 202 Cr.P.C. - Summoning order passed on protest petition alone unsustainable.

Held: In absence of a police report, cognizance taken by the learned Special Judge (POCSO Act)/Additional District and Sessions Judge under Section 33(1) of POCSO Act was not maintainable - Only course open was to treat the protest petition as a complaint and then proceed under Sections 200/202 Cr.P.C. for summoning - Impugned summoning order was set aside -Application under Section 482 Cr.P.C. stood allowed - Liberty to the Special Judge to proceed afresh treating the matter as complaint case, based on statements recorded under Sections 200/202 Cr.P.C. (Paras 6 to 9) (E-7)

Case Law Cited

None specifically mentioned.

List of Acts

Code of Criminal Procedure, 1973; Protection of Children from Sexual Offences (POCSO) Act, 2012; **Indian Penal Code, 1860.**

List of Keywords

Final Report - Protest Petition - Cognizance - Complaint Case - Summoning Order - Quashing.

Case Arising From

Criminal Case No. 90 of 2021 (Smt. Laxmi Devi v. Mukesh & Ors.), arising out of Case Crime No. 0626 of 2021, under Sections 328, 354, 504, 506 IPC and Sections 7/8 of the POCSO Act, P.S. Loni Border, District Ghaziabad.

Appearances for Parties

Advs. for the Applicants:
Sri Jay Prakash Yadav
Advs. for the Respondents:
G.A., Sri Vikesh Kumar Tiwari

(Delivered by Hon'ble Saurabh Srivastava, J.)

1. Heard Sri Jay Prakash Yadav, learned counsel for applicants and Sri Sandeep Kumar, learned AGA for State.

2. Present application has been preferred with prayer to quash summoning order dated 05.04.2022 as well as entire proceeding registered as Criminal Case no. 90 of 2021 (Smt. Laxmi Devi vs. Mukesh and others) arising out of Case Crime no. 0626 of 2021 under sections 328, 354, 504, 506 and 7/8 POCSO Act, PS- Loni Border, District Ghaziabad pending in court of learned Special Judge (POCSO Act), Additional District and Sessions Judge, Ghaziabad.

3. Learned counsel for applicants submitted that in present case, in pursuance to FIR bearing Case Crime no. 0626 of 2021 registered at the behest of opposite party no. 2 against applicants and another co-accused, concerned Investigating Officer submitted final report before learned court concerned. Being aggrieved with the final report, opposite party no. 2 preferred protest petition which has been allowed vide impugned order dated 05.04.2022 passed by learned Special Judge (POCSO Act)/Additional District and Sessions Judge, Ghaziabad whereby applicants have been summoned.

4. It is contended by learned counsel for applicants that once final report has been rejected while allowing the protest petition, learned Special Judge (POCSO Act)/Additional District and Sessions Judge, Ghaziabad has no authority to summon the applicants over the protest petition itself and as such impugned order is liable to be quashed and set aside.

5. Per contra, Sri Sandeep Kumar, learned AGA submitted that learned

Special Judge is empowered to take cognizance by way of summoning the accused in pursuance to Section 190(1)(b) of Cr.P.C. since the learned Session Court while exercising power under Section 33(1) of POCSO Act, 2012 is conferred with all the powers available as the original powers as defined under the statue under Section 190 of Cr.P.C. It is also submitted by Sri Sandeep Kumar, learned AGA that while rejecting Final Report preferred at the behest of concerned Investigating Officer, if the documents available during course of investigating has been relied upon by learned Special Court, the power under Section 191(b) can be exercised at the time of rejecting Final Report and accepting protest petition for summoning the accused. In the instant matter, the finding recorded by learned Special Judge for rejecting Final Report and accepting protest petition was only the basis of the statement recorded by the victim under sections 161 and 164 Cr.P.C. and no other evidence has been made the basis of summoning the applicants and for proceeding with the case as State case which directly is in exercise of power under Section 191(b) Cr.P.C.

6. After hearing rival submissions extended by learned counsels for the parties and perusing the records, this Court finds that in absence of any police report which has already been rejected by learned Special Judge(POCSO Act)/Additional District and Sessions Judge, Ghaziabad at the time of accepting the protest petition preferred at the behest of victim, cognizance of offence has been taken up by learned concerned court under Section 33(1) of POCSO Act is not maintainable. For clear consideration of the issue section 33 of POCSO Act is reproduced herein below:

"Section 33 of POCSO Act, 2012 - <u>Procedure and powers of Special Court:</u>

(1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts.

(2) The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child.

(3) The Special Court may, if it considers necessary, permit frequent breaks for the child during the trial.

(4) The Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court.

(5) The Special Court shall ensure that the child is not called repeatedly to testify in the court.

(6) The Special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial.

(7) The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial:

Provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

Explanation.--For the purposes of this sub-section, the identity of the child shall include the identity of the child's family, school, relatives, neighbourhood or any other information by which the identity of the child may be revealed.

(8) In appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.

(9) Subject to the provisions of this Act, a Special Court shall, for the purpose of the trial of any offence under this Act, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, and as far as may be, in accordance with the procedure specified in the Code of Criminal Procedure, 1973 (2 of 1974) for trial before a Court of Session."

7. By plain reading of Section 33(1) of POCSO Act, it specifically deals with the power conferred to the Special Judge, POCSO Act, to take cognizance of offence only on two basis, firstly complaint, secondly on police report. In the instant matter, once the police report in shape of final report submitted by concerned Investigating Officer has been rejected and the protest petition preferred at the behest of informant/victim has been allowed, the scope available before learned Special Judge is only to treat the matter as Complaint Case and the summoning of the applicant might be ensured after consideration of the statements recorded under sections 200, 202 Cr.P.C and as such impugned order dated 05.04.2022 is not sustainable in the eye of law and is hereby set aside.

8. The instant application u/s 482 Cr.P.C. stands **allowed** accordingly.

9. However, it is made clear that this order will not preclude, learned Special Judge(POCSO Act)/Additional District and Sessions Judge, Ghaziabad to proceed against the applicants by way of treating the matter as Complaint Case and the summoning of the applicants shall be dependent upon the free set of judicious conscious of court concerned after recording statements under sections 200/202 Cr.P.C.

(2025) 8 ILRA 343
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 12.08.2025

BEFORE

THE HON'BLE JITENDRA KUMAR SINHA, J.

Application U/S 482 No. 46117 of 2023

Raees @ Kallu & Ors. ...Applicants
Versus
State Of U.P. & Anr. ...Opposite Parties

Counsel for the Applicants:
Rizwan Ahmad

Counsel for the Opposite Parties:
G.A., Shubham Kesarwani

Issue for consideration

Matters pertains to quashing of criminal proceedings on compromise between the parties.

Headnotes

Indian penal Code-sec. 23, 324, 325, 326, 506- Compromise entered between the parties-said compromise has been verified by the learned court concerned- in the interest of justice -impugned proceedings be quashed. **Application allowed.** (E-9)

Case Law Cited

1. State of Madhya Pradesh Vs. Laxmi Narayan and others, AIR 2019 SC 1296

List of Acts

Indian penal Code

List of Keywords

Compromise; verified by the learned court

Appearances of parties

Counsel for Applicant :- Rizwan Ahmad, Counsel for Opposite Party :- G.A.,Shubham Kesarwani

(Delivered by Hon'ble Jitendra Kumar Sinha, J.)

1. Heard Sri Rizwan Ahmad, learned counsel for the applicants, Sri Shubham Kesarwani, learned counsel for the opposite party no.2, Sri V. P. Maurya, learned AGA for the State-opposite party no.1.

2. This application u/s 482 Cr.P.C. has been preferred for quashing of the entire criminal proceeding of the impugned charge sheet dated 14.04.2012 as well as impugned cognizance order dated 30.08.2012 in Case No.1079 of 2012 (State Vs. Raees and others), arising out of Case Crime No.432 of 2011, under sections 323, 324, 325, 326, 506, IPC, Police Station Didauli, District Amroha, pending in the court of the learned Judicial Magistrate, Amroha, on the basis of compromise arrived at between the applicants and opposite party no.2 on 27.07.2023.

3. It is contended by learned counsel for the applicants that the applicants and opposite party no.2 have entered into compromise and the said compromise has been verified by the learned court concerned i.e. Chief Judicial Magistrate, Amroha and the report to the above effect is placed on record. Learned counsel for the applicants prays that in view of the compromise arrived at between the applicants and opposite party no.2, the proceedings of the aforesaid case be quashed.

4. Learned AGA for the State as well as learned counsel for the opposite party no.2 have no objection to the above submissions of learned counsel for the applicants.

5. In view of the fact that matter has been compromise between the applicants and opposite party no.2 and said compromise has been verified by the learned court concerned and taking note of the law laid down by Hon'ble Supreme Court in the case of **State of Madhya Pradesh Vs. Laxmi Narayan and others, AIR 2019 SC 1296** and the facts of the matter, it would be in the interest of justice that the impugned proceedings be quashed.

6. In view of the aforesaid, the entire criminal proceeding of the impugned charge sheet dated 14.04.2012 as well as impugned cognizance order dated 30.08.2012 in Case No.1079 of 2012 (State Vs. Raees and others), arising out of Case Crime No.432 of 2011, under sections 323, 324, 325, 326, 506, IPC, Police Station Didauli, District Amroha, pending in the court of the learned Judicial Magistrate, Amroha, are hereby quashed.

7. The application u/s 482 Cr.P.C. is **allowed**.

(2025) 8 ILRA 345
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 12.08.2025

BEFORE

THE HON'BLE VINOD DIWAKAR, J.

Matters Under Article 227 No. 3880 of 2025

Sudha Agarwal @ Sudha Garg ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Dr. Sudha Garg

Counsel for the Respondents:
G.A., Krishna Dutt Tiwari

Issue for Consideration

Instant petition has been filed with the prayer to direct the trial court to commence the proceedings in Case No.7782 of 2019, arising out of Case Crime No. 379 of 2004, under Sections 498A, 504, 506, 323 IPC, read with Section 3/4 of the Dowry Prohibition Act, Petitioner further seeks a direction for expeditious disposal of the proceedings and the conclusion of Complaint Case No. 4934 of 2019, which is pending before the learned Additional Civil Judge (Junior Division)/ACJM, Moradabad.

Head Notes

The Constitution of India, 1950-Article 227- Petitioner-wife constrained to invoke supervisory jurisdiction of this Hon'ble Court under Article 227 of the Constitution of India, seeking appropriate directions to uphold the rule of law, secure a fair and impartial adjudication in the pending proceedings, and protect her from any form of undue influence, harassment, by the accused or other interested parties - Petition allowed with certain directions to the concerned court.

Held- Petitioner's matrimonial life has been severely disrupted by protracted litigation and continuous interference from her in-laws - Considerable lapse of more than two decades - It is regrettable that the trial court has failed to commence or conduct any effective proceedings in the matter - Prolonged and unexplained inaction by the trial court constitutes not only a denial of timely justice but also a serious erosion of the rule of law and a violation of the petitioner's fundamental right to a fair and expeditious trial - Petitioner was not afforded an opportunity of hearing on any occasion when this Court granted interim stayed the arrest of accused(s) or stayed the trial court proceedings - The conduct of the accused(s), particularly their repeated non-appearance despite multiple opportunities, has resulted in an undue delay in the progress of the trial - While certain delays may be justified under exceptional circumstances, the State cannot absolve itself from the constitutional responsibility of ensuring speedy justice to litigants — a mandate consistently reiterated by the Hon'ble Supreme Court and essential to the very foundation of the rule of law. (E-15)

Case Law Cited

List of Acts

The Constitution of India, 1950-Article 227

List of Keywords

Speedy justice to litigants; Persistent hardship endured by the petitioner; Matrimonial life severely disrupted by protracted litigation; Prevent miscarriage of justice

Case Arising From

Case No.7782 of 2019, arising out of Case Crime No. 379 of 2004, under Sections 498A, 504, 506, 323 IPC, read with Section 3/4 of the Dowry Prohibition Act, Complaint Case No. 4934 of 2019, which is pending before the learned Additional Civil Judge (Junior Division)/ACJM, Moradabad.

Appearances for Parties

Counsel for Petitioner: - Dr. Sudha Garg
Counsel for Respondent: -G.A., Krishna Dutt Tiwari

(Delivered by Hon'ble Vinod Diwakar, J.)

1. Heard the petitioner-wife in person, learned Additional Government Advocate for the State-respondents and perused the material available on record.

2. The instant petition has been filed with the prayer to direct the trial court to commence the proceedings in Case No.7782 of 2019, arising out of Case Crime No. 379 of 2004, under Sections 498A, 504, 506, 323 IPC, read with Section 3/4 of the Dowry Prohibition Act, registered at P.S. Nauchandi, District Meerut, which was subsequently transferred to Moradabad. The petitioner further seeks a direction for expeditious disposal of the proceedings and the conclusion of Complaint Case No. 4934 of 2019, which is pending before the learned Additional Civil Judge (Junior Division)/ACJM, Moradabad.

3. The brief facts of the case are as follows:

3.1 The petitioner-wife claims to had been residing at 388/5, Nehru Nagar, Garh Road, Meerut, and is employed as an Associate Professor and Head of the Department of Zoology at Hindu College, Moradabad. She further claims to have pursued her education at C.C.S. University, Meerut, where she achieved notable academic distinctions, including an M.Sc. (Gold Medal), M.Phil. (First Position), CSIR (JRF) NET, and Ph.D. The petitioner's husband holds a BAMS degree, an MD in Ayurveda, and was stated to be employed as a resident doctor at Dev Bhommi Hospital, Haridwar, before their marriage.

3.2 The petitioner's marriage to Respondent No. 7 was solemnized on 15.01.2003, in accordance with Hindu rites and rituals. The petitioner gave birth of twin children—one son and one daughter. Soon after the marriage, the petitioner alleges that she was subjected to continuous harassment, physical abuses, and mental cruelty by her husband and other family members, all in connection with demands for additional dowry. Due to her failure to meet these unlawful dowry demands, the petitioner-wife was forcibly thrown out from her matrimonial home on 08.08.2004, leaving behind her 7-month-old daughter and the son was retained by the husband.

4. Having no other recourse, the petitioner-wife lodged an FIR on 08.10.2004 which was registered as Case Crime No. 379 of 2004, under Sections under Sections 498A, 504, 506, 323 IPC, read with Section 3/4 of the Dowry Prohibition Act, at P.S. Nauchandi, District Meerut, against her husband and other relatives. Aggrieved by the registration of the FIR, the accused persons filed Miscellaneous Writ Petition No. 8593 of 2004 before this Court, which was disposed of, on the first date of listing, by an order dated 29.10.2004. The relevant portion of the said order is extracted hereunder:

"Having regard to the facts and circumstances of the case, we finally dispose of the writ petition by directing that the petitioners shall not be arrested in Case Crime No. 379 of 2004, under Section 498-A, 323, 504, 506 IPC and Section 3/4 Dowry Prohibition Act, P.S. Nauchandi, District Meerut till the conclusion of the trial provided they pay interim compensation to the victim wife Smt. Sudha Agarwal, respondent no.3 @ Rs. 1500/- per month from today. Such interim compensation from today up to 31.10.2004

shall be deposited in the court of Chief Judicial Magistrate, Meerut by 7th November 2004 and for all subsequent months by 7th day of the following month. The wife Smt. Sudha Agarwal shall be entitled to withdraw the same.

The order for payment of interim compensation is based on the analogy of the decision of Hon'ble Supreme Court in the case of Bodhisattwa Gautam v. Subhra Chakraborty (AIR 1996 SC 922).

In case of failure in payment of interim compensation, the order staying the arrest of the petitioners shall stand vacated automatically."

5. Subsequently, after completing the investigation, the police filed a charge-sheet on 05.12.2004 against ten accused persons. The Additional Chief Judicial Magistrate, Meerut, took cognizance of the case and issued summon to the accused persons. Aggrieved by the summoning order, the accused persons filed an Application U/s 482 Cr.P.C. No. 5010 of 2005, before this Court, wherein vide order dated 31.05.2005, the proceedings, pending before the learned Additional Chief Judicial Magistrate was stayed by this Court till the next date of listing. The order dated 31.5.2005 had been passed on the first date of listing without giving an opportunity of hearing to the petitioner-wife. The relevant portion of the order dated 31.05.2005 has been quoted hereunder:

"It is submitted that the parties have entered into compromise vide annexure-2 of the affidavit.

Issue notice.

Let the compromise be sent to the lower for necessary verification within three weeks and call for the compliance report thereafter.

List thereafter in the next cause list.

Till then further proceedings in Case No. 156 of 2005, under Sections 498-A, 323, 504, 506 IPC and Section ¾ Dowry Prohibition Act, P.S. Nauchandi District Meerut, pending in the Court of A.C.J.M. Meerut shall remain stayed against the applicants only."

6. Pursuant to the order dated 31.05.2005, the petition remained unlisted, neither having been brought forward for hearing by the accused(s) nor sought to be relisted at the instance of the accused(s). As a corollary, the proceedings before the learned trial Court stood stayed for a period of almost five years. Subsequently, the stay earlier granted by this Court was vacated vide order dated 21.09.2010. The relevant extract of the said order is reproduced hereinbelow: :

"Passed over on the illness slip of learned counsel for the applicant.

List this case in the next cause list.

Interim order granted earlier is hereby vacated.

Court concerned be informed immediately."

7. Thereafter, the trial court issued bailable warrants, followed by non-bailable warrants. However, upon receiving an application from the accused(s) for the cancellation of the non-bailable warrants, the court, without affording the petitioner-

wife an opportunity to be heard and relying solely on the version presented by the accused(s), recalled the non-bailable warrants by recording incorrect facts in the order dated 25.07.2011, without recording any reason in support thereof.

8. Furthermore, the Application u/s 482 Cr.P.C. No. 5010 of 2025 was dismissed for want of prosecution by order dated 04.07.2019. The relevant portion of the said order has been extracted hereunder:

"Case called out in the revised list. None has appeared to press this application on behalf of applicants while Sri B.S. Srivastava holding brief of Senior Advocate Sri I.K. Chaturvedi for opposite party no.2 is present.

Order sheet reveals that on 31.5.2005 an order was passed staying the further proceeding which has been vacated on 21.9.2010. Order sheet further reveals that on illness as well as praying for time the case was adjourned on 25.10.2010 and 19.4.2019.

In view of the above, the application under Section 482 Cr.P.C. is dismissed for want of prosecution.

Communicate this order to the court concerned immediately."

9. Meanwhile, the proceedings arising out of Case Crime No. 379 of 2004 have been transferred from Meerut to Moradabad. And since 2019, no effective proceedings have been undertaken by the trial court, even the trial has not reached to the stage of Section 230 BNSS (supply to accused of copy of police report and other documents), in last 21 years.

10. The petitioner-wife appeared in person and argued that the accused(s) are influential persons who have been obstructing the fair and timely administration of justice on multiple fake and engineered grounds. The petitioner-wife has been seeking justice for the last 21 years, yet the proceedings before the trial court have not even commenced. Initially, for a period of 15 years, the proceedings could not take place due to the stay order granted by this Court. Subsequently, the trial court showed no interest in advancing the matter. Furthermore, as per the order dated 29.10.2004, the stay on the arrest of the accused(s) was granted till the conclusion of the trial. However, the petitioner-wife contends that the accused(s) have shown a blatant disregard for the law.

10.1 The petitioner-wife has also instituted a separate Complaint Case No. 4934 of 2019, which remain pending with inordinate delay, in the proceeding before the Court of Additional Civil Judge (Junior Division)/ ACJM, Moradabad. The accused(s) have consistently submitted fictitious applications for personal exemption before the trial court to delay the proceeding, which have been allowed by the court without recording any reasons. The accused (s) have also persistently exerted pressure on the petitioner-wife to compromise and withdraw all criminal cases, and to agree to an unconditional divorce.

10.2 The petitioner-wife further submits that one of the accused(s), Shri Ramesh Agarwal (since died), was *Peshkar* of the District Judge, Moradabad, and had misused his official position by exerting undue influence to obstruct the fair and impartial conduct of proceedings before the trial court. It is pertinent to note that his

two sons, Shri Sachin Agarwal and Shri Anil Agarwal, are also employed as *Peshkars* in the District Court, Moradabad, while his daughter-in-law, Smt. Babita Agarwal, has been serving in the Consumer Court, Moradabad. Additionally, it is brought on record that the grandson of the said late Shri Ramesh Agarwal, Shri Anshul Agarwal, is a practising Advocate at the District Court, Moradabad, and has been representing the accused(s) as learned counsel in the present matter. In these circumstances, there arises a reasonable apprehension that the accused(s) may exert influence over the proceedings of the Court, thereby posing a potential risk to the integrity and impartiality of the judicial process.

10.3 Furthermore, the accused Sandeep Agarwal receives continued support from another maternal uncle, accused Balesh Agarwal, who is the proprietor of Nand Gas Agency (Hindustan Petroleum) in Moradabad and has previously served as the Nagar Adhyaksh of the ruling party. Given his political and social influence, he has been exerting pressure on the petitioner.

10.4 The petitioner-wife moved an application under Section 12 of the Protection of Women from the Domestic Violence Act, 2005, in the year 2010, which was erroneously dismissed in 2016. This highlights the undue delay of six years in deciding an application filed under the Domestic Violence Act because of the influence of the accused(s) in the District Court, she apprehends.

10.5 The petitioner-wife further submits that she is facing significant challenges in her professional life, as the charge of officiating principal has been entrusted to the teachers who are well known to the accused Sandeep Agarwal and his family, and who hold a clear bias against the petitioner-wife. Despite her 14 years of service, the petitioner-wife was unfairly penalized through a wrongful demotion in seniority, with malicious intent to hinder her prospects of becoming the Head of the Department. However, her seniority was subsequently restored by orders of the Vice-Chancellor and the Chancellor.

10.6 In furtherance of a motivated and influenced conspiracy, the college management proceeded to suspend and terminate the petitioner-wife in 2019. Although the Division Bench of this Court quashed the entire disciplinary proceedings and reinstated the petitioner-wife with all consequential benefits, compliance with the order had to be enforced through contempt proceedings initiated against the college management and the principal.

10.7 The matter is presently under consideration before the Hon'ble Supreme Court, as the college management has challenged the orders of this Court before the Supreme Court.

10.8 Finally, given the aforesaid circumstances, the petitioner-wife contented that she has been constrained to invoke the supervisory jurisdiction of this Hon’ble Court under Article 227 of the Constitution of India, seeking appropriate directions to uphold the rule of law, secure a fair and impartial adjudication in the pending proceedings, and protect her from any form of undue influence, harassment, by the accused or other interested parties.

11. After hearing the petitioner-wife in person, this Court is persuaded by the facts

on record, which clearly establish a persistent hardship endured by the petitioner-wife since the solemnization of her marriage. Notwithstanding her exemplary academic qualifications and distinguished career as an Assistant Professor, officiating Principal, and Head of Department—positions that provide her with a respectable income and enable her to maintain a dignified standard of living—the petitioner's matrimonial life has been severely disrupted by protracted litigation and continuous interference from her in-laws. The cumulative impact of these adversities has rendered her personal life intolerable and unsustainable. Considering these circumstances, the matter demands the immediate attention and intervention of this Court to safeguard the petitioner's legal and constitutional rights and to ensure the administration of justice.

11.1 The petitioner was separated from her matrimonial home on 08.08.2004, under forced circumstances, following which she lodged the First Information Report (FIR) in the same year, seeking redressal for the grievances suffered. Notwithstanding the considerable lapse of more than ***two decades*** since the FIR was registered, it is regrettable that the trial court has failed to commence or conduct any effective proceedings in the matter. This prolonged and unexplained inaction by the trial court constitutes not only a denial of timely justice but also a serious erosion of the rule of law and a violation of the petitioner's fundamental right to a fair and expeditious trial. Such ***judicial inertia*** demands the urgent intervention of this Hon'ble Court to safeguard the petitioner's constitutional and legal rights, ensure the proper administration of justice, and prevent any further miscarriage of justice.

11.2 Upon perusal of the order dated 31.05.2005 and other orders, as extracted above, it is evident that the petitioner-wife was not afforded an opportunity of hearing on any occasion when this Court granted interim stayed the arrest of accused(s) or stayed the trial court proceedings. Furthermore, despite both petitions being listed before this Court since 2004, no effective proceeding has been taken place till the petition dismissed for want of prosecution because of non-appearance of the accused(s). The record suggests that the trial has not progressed an inch further since filing of the charge-sheet. The accused(s) are not appearing before the trial Court taking shield of the order dated 29.10.2004, in which the accused(s) arrest has been stayed till the conclusion of the trial. As the interim order dated 29.10.2004 has been vacated by this court on 21.09.2010 with the direction to inform the trial court forthwith about the fate of order dated 29.10.2004. The trial court is at liberty to proceed with the trial in accordance with law.

11.3 The trial court record suggests that the accused(s) have filed personal exemption application consistently and failed to appear on ***35 times***, thereby exacerbating the petitioner's hardship and distress.

11.4 One of the cardinal principles of criminal jurisprudence is the right to a free, fair, and expeditious trial. When this right is not upheld, litigants inevitably lose faith in the judicial process. If the trial court continues to grant exemptions to the witnesses without justifiable reason, and fails to compel their attendance, the integrity of the trial process itself may be compromised.

12. Having considered the submissions advanced by the petitioner-wife and upon careful perusal of the record, this Court is of the considered view that the conduct of the accused(s), particularly their repeated non-appearance despite multiple opportunities, has resulted in an undue delay in the progress of the trial. In view of the same, and to ensure the effective administration of justice and timely conclusion of the trial, this Court directs that:

(i) The accused persons in both the cases referred in prayer clause are directed to appear before the learned trial court on the next date fixed, and thereafter on all successive dates. In the event of their failure to appear without sufficient and justifiable cause, the trial court shall record detailed reasons while considering any application for personal exemption. Further, the court shall maintain a record in each subsequent order indicating the number of times such personal exemption applications have been filed and the grounds mentioned therein. If the accused(s) fail to appear without valid cause, their bail bonds shall be forfeited, non-bailable warrants shall be issued for their arrest, and they shall be taken into custody and produced before the trial court to face trial without any further delay.

(ii) The learned trial court is further directed to proceed with the trial on a day-to-day basis, and/or weekly-basis by recording reasons, without granting any unnecessary adjournments to either party. The trial must be concluded expeditiously, keeping in view the prolonged pendency of the case for the past 21 years, and the fact that it has not yet reached even the stage of framing of charge.

(iii) Miscellaneous application, if any, filed by the accused(s), shall be disposed of in a time-bound manner, without wasting even a day's time.

(iv) The Joint Director (Prosecution), Moradabad, is directed to ensure that there is no delay — preferably not exceeding two days — in filing a reply to any miscellaneous application submitted by the accused(s). The prosecution shall also ensure that all prosecution witnesses are produced before the Court promptly, with an endeavour to produce all of them in a single session.

(v) The trial court shall ensure that the chief examination of prosecution witnesses is conducted on the very day of their appearance before the court. It shall further ensure that no unwarranted adjournments are granted to the accused(s) for cross-examination of the witnesses. In the event of non-appearance of the defence counsel, the trial court may engage a learned counsel from the District Legal Services Authority (DLSA) to conduct the cross-examination. It is the duty of the trial court to inform the accused(s) that in case their counsel fails to appear on the given date, the legal assistance from panel counsel of the DLSA shall be fortwith provided to the accused (s).

(vi) The Senior Superintendent of Police (S.S.P.), Moradabad, is hereby directed to ensure prompt and effective service of summons and execution of bailable or non-bailable warrants issued by the learned trial court against any or all accused persons. The S.S.P. shall ensure that such processes are executed without delay or procedural lapse, and a compliance report to this effect shall be filed before the trial court by an officer not below the rank

of Circle Officer (C.O.), who shall be personally accountable for overseeing the service and execution of the process.

(vii) The S.S.P., Moradabad, shall also ensure that the accused(s) do not attempt to extend any undue influence, threat, or coercion upon the complainant or prosecution witnesses in furtherance of any ulterior motive.

(viii) In view of the fact that one of the co-accused served as *Peshkar* to the learned District Judge, Moradabad for a considerable period, and his two sons are presently working as *Peshkars* in the same District Court, with another son of one of the accused being a practicing advocate in the District Court, Moradabad, the trial shall be conducted ***in-camera*** to ensure an unbiased and fair proceeding.

13. In view of the aforesaid directions, the instant writ petition stands ***allowed***.

14. The Registrar (Compliance) is directed to communicate a copy of this order to the learned trial court concerned through the learned District Judge, Moradabad, and also to the Senior Superintendent of Police, Moradabad, and the Joint Director (Prosecution), Moradabad, for strict and immediate compliance.

15. It is clarified that the directions issued herein are based on the peculiar and pressing facts and circumstances discussed above and shall not be treated as a precedent in other pending matters. This court is fully conscious of the workload faced by the trial courts. However, the fact remains that the FIR in this case was lodged in the year 2004 and the charge-sheet was submitted within the same year. Yet, to date, the trial has not progressed even to the stage of framing of charges. While certain delays may be justified under exceptional circumstances, the State cannot absolve itself from the constitutional responsibility of ensuring speedy justice to litigants — a mandate consistently reiterated by the Hon'ble Supreme Court and essential to the very foundation of the rule of law.

(2025) 8 ILRA 352
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 01.08.2025

BEFORE

THE HON'BLE MANISH KUMAR NIGAM, J.

Matters Under Article 227 No. 8236 of 2025

Abujar Lari ...Petitioner
Versus
Rampati & Ors. ...Respondents

Counsel for the Petitioner:
Ashwani Kumar Pathak

Counsel for the Respondents:

Issue for Consideration

Whether the provisions of Order XLI Rule 27 will not apply in an appeal filed under Order XLIII Rule 1(r) of C.P.C.

Head Notes

The Constitution of India, 1950-Article 227 - The Code of Civil Procedure, 1908-Order XLI Rule 27, XLIII Rule 1(r) - No impediment in accepting the documents at appellate stage - Rules of procedure to advance justice - Party may not be in a position to produce the relevant material - Refusal to entertain such a material produced at the stage of an appeal would certainly result in denial of justice-Purpose of an Appeal is to see that the party entitled to the relief should be granted the relief .

Held- Appellate Court will be justified in interfering with the exercise of the discretionary order if the said order was made ignoring relevant facts - Party is entitled to place before the appellate Court the relevant evidence to bring to the notice of the Court the relevant facts - The Court itself may act upon the relevant evidence produced before it if such an evidence clinchingly concludes the issue - If there is any dispute about the material placed before the Court or the material placed before the Court will have to be appreciated with other materials, already on record, it would be a proper exercise of the appellate power to send back the matter to the trial Court, so that the trial Court may exercise its discretion on the entire material on record including the fresh material that is placed at the stage of appeal - No impediment in accepting the documents at appellate stage while hearing an appeal against an injunction order - Petition dismissed.**(Para 28, 30 & 31)** (E-15)

Case Law Cited

Sangram Singh versus Election Tribunal Kotah AIR 1955 SCC425;Chinnammal and other versus Arumugham (1990) 1 SCC 513;Ghanshyam Das versus Union of India (1984) 3 SCC 46;Sukhveer Singh versus Brijpal Singh (1997) 2 SCC 200;Salem Advocate Bar Association versus Union of India reported in AIR 2005 SCC 3353;Dr. Chandra Deo Tyagi Vs. Additional District Judge, Court No. 1, Meerut and others in Writ C No. 34529 of 2006 decided on 10.07.2020;Mool Chand Vs. Trilok Chand and others MANU/UP/0145/2001;Smt. Malti Devi and Another Vs. State of U.P. and another in Matters Under Article 227 No. 4312 of 2018 decided on 09.10.2018;Patel Enterprises Vs. M.P. Ahuja ILR 1992 KARNATAKA 3772 (MANU/KA/0467/1992)

List of Acts

The Constitution of India, 1950; The Code of Civil Procedure, 1908

List of Keywords

Contingencies under which additional evidence can be admitted; Additional evidence adduced at appellate stage; Rules of procedure understood in a manner to advance Justice and not to deny a person appropriate relief; No impediment in accepting the documents at appellate stage

Case Arising From

Order dated 15.07.2025 passed by Additional District and Sessions Judge/ F.T.C. I, District Deoria in Misc. Appeal No. 9 of 2025 allowing the Application No. 29 C filed by appellant before the court below to take on record the documents annexed along with Paper No. 29-C in appeal.

Appearances for Parties

Counsel for Petitioner :- Ashwani Kumar Pathak

(Delivered by Hon'ble Manish Kumar Nigam, J.)

1. This petition has been filed challenging the order dated 15.07.2025 passed by Additional District and Sessions Judge/ F.T.C. I, District- Deoria in Misc. Appeal No. 9 of 2025 allowing the Application No. 29 C filed by appellant before the court below to take on record the documents annexed along with Paper No. 29-C in appeal.

2. Facts in brief are that plaintiff-respondents first set instituted original Suit No. 54 of 2024 for the relief of permanent prohibitory injunction restraining the defendants from interfering with the possession of the plaintiff-respondents of the property in dispute described in the plaint. Along with the suit, plaintiff-respondents also filed an application for interim injunction under Order XXXIX Rule 1 and 2 C.P.C. being application No. 6C. The said application filed by the plaintiff-respondents was rejected by the trial court i.e. Civil Judge (Senior Division) Court No. 18, Deoria by order dated 18.01.2025. Being aggrieved, plaintiff-respondents filed Misc. appeal No. 9 of 2025 under Order XLIII Rule 1(r) of C.P.C. (Rampati and others Vs. Abujar Lari and others). During the pendency of the appeal, plaintiff-respondents filed an application (paper No. 29 C) dated

27.03.2025 along with an affidavit before the lower appellate court in Misc. Appeal No. 9 of 2025 under Order XLI Rule 27 for filing additional evidence in the miscellaneous appeal. The petitioner who was the respondent in the appeal filed his detailed objections to the application Paper No. 29C filed by the plaintiff-respondents. The lower appellate court by judgment and order dated 15.07.2025 allowed the application filed by the plaintiff-respondents under Order XLI Rule 27 of C.P.C. and permitted the documents annexed along with the application to be taken on record in miscellaneous appeal. Hence the present writ petition.

3. Contention of learned counsel for the petitioner is that the order passed by the lower appellate court is erroneous. The provisions of Order XLI Rule 27 will not apply in an appeal filed under Order XLIII Rule 1(r) of C.P.C. It has been contended by counsel for the petitioner that the provisions of Order XLI applies only to the appeals filed against the decree and not in the appeals filed against the orders. It has also been submitted by counsel for the petitioner that even otherwise the Order XLI Rule 27 of C.P.C. contemplates three contingencies under which additional evidence can be admitted by the court of appeal and in present case, no such contingency as contemplated under Order XLI Rule 27 of C.P.C. exists and therefore, the lower appellate court has erred in law in allowing the application Paper No. 29C. Learned counsel for the petitioner further contended that in interlocutory proceedings for interim injunction, the trial court on the material placed before it must be in position to entertain a tentative opinion that the plaintiff has shown prima facie case on the date of the suit and that the appellate court in such cases should examine only two questions, one whether the opinion of the trial court is fairly possible on the material placed before it and two, whether on that finding the trial court may be said to have exercise its discretion properly in all the circumstances of a case in granting or refusing to grant injunction. There can be no question of additional evidence being adduced at the appellate stage.

4. *Per contra*, learned counsel appearing for the respondents contended that in view of sub-Rule (2) of Order XLIII, the procedure prescribed under Order XLI shall apply to appeals from orders. It has been further submitted by counsel for the plaintiff-respondents that court below has rightly allowed the application filed by the plaintiff-respondents for adducing additional evidence as the same was within the parameters prescribed by Rule 27 of Order XLI and no illegality has been committed in allowing the application.

5. Before considering the rival submissions it would be appropriate to look into the provisions as contained in the C.P.C. in this regard.

6. It is appropriate to reproduce Sections 107, 108, 2(16), (18) and Order XLIII Rule 1 (r), 2 of C.P.C. as under:-

"Section 107. Powers of appellate Court-(1) Subject to such conditions and limitations as may be prescribed, an appellate Court shall have power-

(a) to determine a case finally;

(b) to remand a case;

(c) to frame issues and refer them for trial;

(d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein."

"Section108. Procedure in appeals from appellate decrees and orders .-The provisions of this Part relating to appeals from original decrees shall, so far as may be, apply to appeals-

(a) from appellate decrees, and

(b) from orders made under this Code or under any special or local law in which a different procedure is not provided."

"Section 2(16) "prescribed" means prescribed by rules;"

"Section 2(18) "rules" means rules and forms contained in the First Schedule or made under section 122 or section 125;"

"Order 43 Rule 1(r) an order under rule 1, rule 2 [rule 2A], rule 4 or rule 10 of Order XXXIX;

"Order 43 Rule 2. Procedure. - The rules of Order XLI shall apply, so far as may be, to appeals from orders."

7. Section 104 C.P.C. provides for filing appeal against the orders of the nature as mentioned under clauses (ff), (ffa), (g), (h), (i) as well as under Order XLIII Rule 1 Clause (a) to (w). An appeal against an order passed under Rules 1, 2, 2A, 4 or 10 of Order 39 is provided by clause (r) of Order 43 Rule 1 C.P.C.

8. Section 107 C.P.C. provides that subject to such conditions and limitations as may be prescribed, an appellate court shall have power, (a) to determine a case finally; (b) to remand a case (c) to frame issues and refer them for trial; (d) to take additional evidence or to require such evidence to be taken. Further, subject to the above, the appellate court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Code of Civil Procedure on courts of original jurisdiction in respect of suits instituted before those courts.

9. As such, Section 107(1) (d) C.P.C. specifically provides that the appellate court shall have power to take additional evidence or to require such evidence to be taken. The power, is, however, subject to such conditions and limitations as may be prescribed.

10. Section 2(16) C.P.C., the definition clause, provides that in this Act, unless there is anything repugnant in the subject or context "Prescribed' means, prescribed by rules, and "Rules' have been defined under Clause (18) of Section 2, which means rules and forms contained in the first schedule or made under Section 122 or Section 125. The first schedule contains the orders and the rules thereunder. Order XLI C.P.C. lays down the procedure with respect to appeals from original decrees. Its Rule 27, provides for production of additional evidence in appellate court, and according to this rule, the parties to an appeal shall not be entitled to produce additional evidence, whether

oral or documentary in the appellate court; but if the condition as provided by Clause (a), (aa), (b), (c) of Sub rule (1) are satisfied the appellate court may allow such evidence or document to be produced or witness to be examined. Where additional evidence is allowed to be produced, the appellate court shall have to record the reasons for its admission.

11. Section 108 C.P.C. provides for the procedure to be followed in appeals from appellate decrees or orders. As per this Section, the provisions of Part VII relating to appeals from original decrees shall, so far as may be, apply to appeals (a) from appellate decrees; and (b) from order made under the Code or under any special or local law, in which, a different procedure is not provided. Section 107 C.P.C. which provides for the powers of the appellate court falls in part VII.

12. Order XLIII Rule 2 C.P.C. also provides that the rules of Order XLI shall apply, so far as may be, to appeals from orders.

13. The Allahabad High Court amendment, inserts "and Order 41-A" in Rule 2 of Order 41 between the words "the rules of order 41" and "shall apply". Order 41-A, inserted by the High Court Amendment, applies to appeals from original decrees in the High Court. The same shall apply to Appeals from Orders filed in the High Court. The present case relates to the appeal before the appellate court, below, and not before the High Court, and as such, Order XLI A is not relevant for the present controversy.

14. From a conjoint and bare reading of Section 108 & Order XLIII Rule 2 C.P.C. it is clear that Order XLI shall apply to the appeals before the appellate court arising from orders under Section 104 read with Order XLIII Rule 1 C.P.C. or from orders made under any special or local law in which a different procedure is not provided.

15. Order XLI Rule 27 of C.P.C. provides for filing of additional evidence before the appellate court by the appellant. Rule 27 of Order XLI is quoted as under:

"27. Production of additional evidence in Appellate Court.—(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if —

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

1[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate

Court, the Court shall record the reason for its admission."

16. In the case of **Sangram Singh versus Election Tribunal Kotah AIR 1955 SCC425,** the Hon'ble Supreme Court, has held that the Code of Procedure must be regarded as such. It is "procedure", something designed to facilitate justice and further its end. Not a penal indictment for punishment and penalties. Not a thing designed to trip people up. Too technical construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against, provided always that justice is done to both sides lest, the very means designed for furtherance of justice. It has also been held that our laws of procedure are grounded on a principle of natural justice. The relevant paragraph nos. 16 and 17 of the case of Sangram Singh (supra) are being reproduced as under:-

"16. Now a code of procedure must be regarded as such. It is "procedure', something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to "both' sides) lest the very means designed for the furtherance of justice be used to frustrate it."

"17 Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle."

17. In **Chinnammal and other versus Arumugham (1990) 1 SCC 513** the Hon'ble Supreme Court has held that the Code of Civil Procedure is body of procedural laws designed to facilitate justice and it should not be treated as enactment providing for punishment and penalties. The laws of procedure should be so construed as to render justice wherever reasonably possible. Paragraph nos. 16 and 17 of the aforesaid judgment are being reproduced as under:-

"16.This is also the principle underlying Section 144 of the CPC. It is the duty of all the Courts as observed by the Privy Council "as aggregate of those tribunals" to take care that no act of the court in the course of the whole of the proceedings does an injury to the suitors in the Court. The above passage was quoted in the majority judgment of this Court in A.R. Amtulay v. R.S. Nayak and Ors., MANU/SC/0002/1988MANU/SC/0002/1988 : 1988CriLJ1661 . Mukherjee, J., as he then was, after referring to the said observation of Lord Cairns, said (at 672):

No man should suffer because of the mistake of the Court. No man should suffer a wrong by technical procedure of irregularities. Rules or procedures are the handmaids of justice and not the mistress of the justice. Ex debito justitiae, we must do

justice to him. If a man has been wronged so long as it lies within the human machinery of administration of justice that wrong must be remedied.

17. It is well to remember that the CPC is a body of procedural law designed to facilitate justice and it should not be treated as an enactment providing for punishments and penalties. The laws of procedure should be so construed as to render justice wherever reasonably possible. It is in our opinion, not unreasonable to demand restitution from a person who has purchased the property in court auction being aware of the pending appeal against the decree."

18. In the case of **Ghanshyam Das versus Union of India (1984) 3 SCC 46,** the Hon'ble Supreme Court has held that our laws of procedure are based on the principle that as far as possible no proceedings in a court of law should be allowed to be defeated on their technicalities. In the case of **Sukhveer Singh versus Brijpal Singh (1997) 2 SCC 200** it was held that procedure is the handmaid to substantial rights.

19. In the case of **Salem Advocate Bar Association versus Union of India reported in AIR 2005 SCC 3353,** the Hon'ble Supreme Court has held that the rule and procedure are handmaid of justice and not its mistress. It is relevant to reproduce Paragraph 21 of the report as under:-

"21. The use of the word "shall' in Order VII Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory. We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word "shall' is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are hand-maid of justice and not its mistress. In the present context, the strict interpretation would defeat justice."

20. This Court in case of **Dr. Chandra Deo Tyagi Vs. Additional District Judge, Court No. 1, Meerut** and others in Writ C No. 34529 of 2006 decided on 10.07.2020 has held in paragraph No. 44 as under:-

"44. Thus, it is settled in law that the procedure is something designed to facilitate justice. The procedural laws are not treated as an enactment providing for punishments or penalties. They are the handmaid of justice and are to be construed in a way to promote justice and not to frustrate it. Any strict interpretation which defeats justice is to be avoided in the light of this object. The applicability of Order 41 Rule 27 to appeals from orders is to be considered to advance justice and the expression "so far as may be' is to be construed liberally, keeping in view, the object of Rule 27 which is to enable the appellate court to pronounce a satisfactory judgment, if in its judicial discretion the proposed additional evidence is required for pronouncing a satisfactory judgment. The applicability of Order 41 Rule 27 C.P.C. cannot be restricted to the appeals

from decrees. The appellate court has to pronounce satisfactory judgment in appeal from orders as well. If it requires the additional evidence to enable it to pronounce a satisfactory judgment it has power & jurisdiction to take additional evidence in appeal from order as well, and particularly when there is no interdict in C.P.C. This Court therefore, holds that Order 41 Rule 27 C.P.C. applies to the Appeal filed under Section 108 r/w Order 43 Rule 1 (r) C.P.C."

21. This Court in case of **Mool Chand Vs. Trilok Chand and others reported in MANU/UP/0145/2001** held that even if the provisions of Order XLI Rule 27 are not applicable in a revisional proceeding, the revisional court is empowered to permit additional evidence in the interest of justice. Paragraph No. 10 of the judgment in case of Mool Chand Vs. Trilok Chand(supra) is quoted as under:-

"10. The settled legal position therefore, is that provisions of Order XLI Rule 27 C.P.C cannot be pressed into service in a revision under Section 25 of Provincial Small Cause Courts Act, but if it appears that additional evidence is essential for doing justice between the parties, the revisional Court may entertain additional evidence in the exercise of inherent powers of the Court."

22. This Court in case of Smt. Malti Devi and Another Vs. State of U.P. and another in Matters Under Article 227 No. 4312 of 2018 decided on 09.10.2018 has held as under:-

"The situation in the present case, however, is otherwise. The present petition arises out of an order passed by the First Appellate Court in miscellaneous appeal filed under Order 43 Rule 1 (r) C.P.C. against the injunction order passed under Order 39 Rule 1 and 2 C.P.C. At the stage of injunction, there is no adjudication of rights of the parties on evidence. The injunction matter is decided on three principles of prima facie case, balance of convenience and irreparable loss so as to protect the suit property and preserve the same as it was on the date of bringing the suit. The jurisdiction of the Appellate Court while deciding the miscellaneous appeal is limited to the extent to examine the validity of order enumerated in Clause (r) of Order 43 Rule 1 C.P.C. The challenge is only regarding the grant of interim protection and, as such, the Appellate Court was not exercising the jurisdiction or power of a Court of regular appeal. Evidence have not been led by the parties as yet in the pending trial. The Trial Court had proceeded to grant a temporary injunction in favour of the plaintiff having recorded a finding of her long possession over the disputed land and directed the parties to maintain status quo with regard to the disputed property. In the miscellaneous appeal filed by the respondents, the plaintiff sought to bring the document i.e. extract of a Municipal Register so as to prove that her name was also recorded in the relevant records. The question as to whether the plaintiff is owner of the suit property or has a right to get permanent injunction against the respondents/defendants is not subject matter of miscellaneous appeal. The injunction though interferes with the substantive rights of the parties but its life is short. In appeal filed against the injunction order, the Appellate Court has to see the correctness of the injunction order. In case any evidence is brought on record in the shape of affidavit in miscellaneous appeal, at the most, the same may throw light on the right of the plaintiff to get

temporary injunction but it does not determine the substantive right of the parties, at that stage as both the parties will still be having right to lead their evidences.

In the opinion of the Court, in such situation, strict compliance of Order 41 Rule 27 C.P.C. should not have been invoked. No prejudice would be caused to any of the parties by bringing the said evidence on record as the same is only for the purpose of injunction matter and not for disposal of the suit. Being the Appellate Court, it would not be necessary to remit the matter for fresh consideration inasmuch as, it can consider the said evidence by giving other party an opportunity to rebut it and further can decide the injunction matter after making necessary enquiry within the scope of Order 39 Rule 1 and 2 C.P.C. In all eventuality, in case the evidence sought to be filed by the plaintiff is allowed to be brought on record of the miscellaneous appeal, the interest of justice would be sub-served and not hindered.

In any case, three conditions as laid down in Order 41 Rule 27 C.P.C. for bringing the additional evidence on record as discussed above, are not attracted in a miscellaneous appeal which is filed against the temporary injunction order. The question of due diligence does not arise inasmuch as, the stage of bringing evidence by the parties has yet not reached. There is no trial nor there is any adjudication of substantive rights of the parties at the stage of temporary injunction.

For the aforesaid, the requirement of Order 41 Rule 27 C.P.C. should not have been insisted by the First Appellate Court in deciding the application moved by the plaintiff to bring the Municipal Assessment Extract on record of miscellaneous appeal under Order 43 Rule 1 (r) C.P.C. The order impugned dated 24.5.2018 passed by the Additional District Judge, Court No.7, Etawah is, therefore, suffers from manifest illegality. The First Appellate Court is directed to accept the evidence brought by the plaintiff on record vide application 16-Ga and decide the miscellaneous appeal after giving opportunity to the appellants to rebut the said document."

23. The view taken by this Court in case of Smt. Malti Devi Vs. State of U.P. (supra) is further fortified in view of provisions of C.P.C. particularly Rule 14 of Order VII read with Order XIII Rule 1 of C.P.C., which are quoted as under:-

"14. Production of document on which plaintiff sues or relies. (1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him, and shall at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered according, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in the rule shall apply to document produced for the cross-examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory."

Order XIII

1. Original documents to be produced at or before the settlement of issues--The parties or their pleader shall produce,on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed along with plaint or written statement.

(2) The Court shall receive the documents so produced :

Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

(3) Nothing in sub-rule (1) shall apply to documents, —

(a) produced for the cross-examination of the witness of the other party, or

(b) handed over to a witness merely to refresh his memory.]"

24. Normally, the application for interim injunction is decided prior to filing of the written statement and settlement of issues. As per Rule 14 of Order VII, where the plaintiff sues upon a document or relies upon a document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him, and shall at the same time deliver the document and a copy thereof, to be filed with the plaint. Under sub-Rule (3) of Rule 14 of Order VII, the document which ought to be produced by the plaintiff along with the plaint or to be entered into the list to be added or annexed to the plaint but not produced or entered accordingly, can be filed and received in evidence with the leave of the court at the hearing of the suit. Order XIII Rule 1 also provides that original documents can be produced at or before the settlement of issues, copy of which has been filed along with the plaint or written statement. In most of the cases, the application for interim injunction/ appeal against an order passed on interim injunction, are decided prior to the stage of leading evidence in the suit and the application for interim relief is normally, decided on the basis of affidavits and the documents filed by the parties.

25. In case of **Patel Enterprises Vs. M.P. Ahuja** reported in **ILR 1992 KARNATAKA 3772 (MANU/KA/0467/1992),** the Karnataka High Court held that the party is entitled to place before the appellate Court the relevant evidence to bring to the notice of the Court the relevant facts. In an appropriate case, the Court itself may act upon the relevant evidence produced before it if such an evidence clinchingly concludes the issue. However, if there is any dispute about the material placed before the Court or the material placed before the Court will have to be appreciated with other materials, already on record, it would be a proper exercise of the appellate power to send back the matter to the trial Court, so that the trial Court may exercise its discretion on the entire material on record including the fresh material that is placed at the stage of appeal.

26. So far as contention of counsel for the petitioner that the appellate court should confine to the material placed

before the trial court while deciding the interim injunction as only thing has to be seen by the appellate court as to whether the opinion of trial court is fairly possible in the material placed before it and whether on that finding the court below may be said to have exercise its discretion properly. Therefore, there is no question of adducing evidence at the appellate stage is erroneous.

27. The principle behind the above propositions seems to be that in the appeal against an order of temporary injunction, the appellate court has to confine its attention to the material placed before the trial Court and the nature of the order being discretionary, normally the appellate court could not interfere with such an order. If the discretion is exercised unreasonably and not in a judicial manner, only then the appellate court should interfere with the exercise of the discretion of the trial Court.

28. It is correct that appellate court normally decides the correctness of the decision rendered by the trial Court and the normal rule is to confine the attention to the material produced by the parties before the original Court. But, these are all Rules of procedure and will have to be understood in a manner so as to advance Justice and not to deny a person from getting an appropriate relief. There may be several instances where due to unforeseen reasons, a party may not be in a position to produce the relevant material, in such a situation, refusal to entertain such a material produced at the stage of an appeal would certainly result in denial of Justice to the party entitled to the relief. The appeal against an order of temporary injunction is governed by the provisions of Order XLIII of the Code. Rule 2 states that "the rules of Order XLI shall apply so far as may be to appeals from orders". In other words, the provisions of Order XLI, which includes provision governing the production of additional evidence, could be attracted to the appeals filed under Order XLIII Rule 1 so far as may be. The words 'so far as may be' vest in the Appellate Court an appropriate power to consider the entertaining of an application for additional evidence. The facts and circumstances of a particular case will have to be examined, so that the Court can find out whether ultimately the discretion exercised by the trial Court should be upheld or not. The purpose of an Appeal is to see that the party entitled to the relief should be granted the relief.

29. Ordinarily, an application for grant of interim injunction is decided on the basis of affidavits and the material documents produced by the parties without waiting for evidence to come in regular manner therefore, any relevant document which may have been left out from production initially can be brought on record subsequently with the leave of the court provided, it is found to be material for the purpose of effective adjudication of the injunction matter. Such material can also be produced in a miscellaneous appeal preferred against the order of the trial court refusing or allowing interim injunction.

30. From the above observations, it is clear that the appellate Court will be justified in interfering with the exercise of the discretionary order if the said order was made ignoring relevant facts. The relevant facts may be before the trial Court or for reasons beyond the control of the party, relevant facts may not be placed before the trial Court. The real question is whether those facts justified the making of a particular discretionary order. It is in these circumstances it has to be held that the

party is entitled to place before the appellate Court the relevant evidence to bring to the notice of the Court the relevant facts. In an appropriate case, the Court itself may act upon the relevant evidence produced before it if such an evidence clinchingly concludes the issue. However, if there is any dispute about the material placed before the Court or the material placed before the Court will have to be appreciated with other materials, already on record, it would be a proper exercise of the appellate power to send back the matter to the trial Court, so that the trial Court may exercise its discretion on the entire material on record including the fresh material that is placed at the stage of appeal.

31. According to Order VII Rule 14, the plaintiff and the defendant have to file the documents or at least list of documents along with the plaint and written statement, but in case, the same is not filed along with the plaint, the same can be filed with the leave of the Court. Normally, hearing of an application for interim injunction or an appeal arising out from an order deciding the injunction application, preceeds the stage of leading evidence in the suit, therefore, in my view there is no impediment in accepting the documents at appellate stage while hearing an appeal against an injunction order.

32. Strict adherence to the provisions of Order XLI Rule 27 is also not required as the stage of leading evidence is normally not over at the time of consideration of application of interim injunction or an appeal arising from the order passed on injunction application. Further when the documents sought to be filed during miscellaneous appeal can be filed before the trial court as the stage of filing evidence which has yet not arrived, the same can also be filed during miscellaneous appeal. Rule 27 of Order XLI of C.P.C. contemplates the situations when for reasons mentioned in Rule 27, a party is not able to file the evidence/ documents during the pendency of suit and if such contingency exists the appellate court is empowered to permit the party to lead evidence even after decision of the suit. Even in cases where the contingencies mentioned in sub-Rule (1)(a)(aa) of Rule 27 are absent, the appellate court can permit the evidence to be filed, in case, the appellate court requires the document to enable the court to pronounce judgment or for any other substantial cause. When such power can be exercised by appellate court even after decision of the suit, in my view there is no impediment for appellate court to exercise such power during pendency of the suit as there is no prohibition in the C.P.C. for the same. My view is also in consonance with the law laid down by this Court in case of Smt. Malti Devi Vs. State of U.P. and another (supra).

33. In the present case also, some of the documents sought by the appellant to be produced before the appellate court were the documents which are in existence prior to decision of injunction application and some of the documents came in existence after the decision of the interim injunction.

34. The court below has also recorded a finding that whether those documents are relevant or irrelevant will be considered at the time of deciding the appeal on merits.

35. In my view, no illegality has been committed by the court below in accepting the evidence filed by the appellant along with application 29-C. Consequently, the petition fails and is dismissed.

(2025) 8 ILRA 364
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 27.08.2025

BEFORE

THE HON'BLE RAJNISH KUMAR, J.

Matters Under Article 227 No. 8432 of 2021

Bhagwan Devi & Anr. ...Petitioners
Versus
State Of U.P. & Anr. ...Respondents

Counsel for the Petitioners:
Sushil Kumar Singh, Vijai Kumar Tripathi

Counsel for the Respondents:
C.S.C., Abhishek Pandey, Nuzhat Ali Siddiqui, Shrawan Kumar

Issue for Consideration

Whether a civil dispute between the petitioners and the respondent No.2 has been converted into criminal - During pendency of the civil suit, criminal proceedings could not have been initiated.

Head Notes

The Constitution of India, 1950-Article 227 - The Code of Criminal Procedure, 1973- Section 239 - Civil dispute between the petitioners and the respondent No has been converted into criminal - Petitioners claiming themselves to be the wife and the daughter of Late Santram ot their names mutated in revenue records - Name of petitioners could also not have been recorded in his family register legally but the petitioners knowingly got their names recorded showing them wife and daughter respectively - Alleged offences are prima facie made out - Petition dismissed.

Held- Petitioners are claiming themselves to be the wife and the daughter of Late Santram, got their names recorded in Family Register and also got a forged sale deed prepared and executed fraudulently from Late Santram - As per Hindu law, during subsistence of first marriage and lifetime of the first wife, a person cannot solemnize second marriage and accordingly a lady can not marry, therefore, even if married, the second wife cannot be legally wedded wife and her daughter, the daughter of the person to whom she marries. The name of petitioners could also not have been recorded in his family register legally but the petitioners knowingly got their names recorded showing them wife and daughter respectively - Allegations and the material placed on record by the prosecution, considering which the cognizance has been taken rejecting the final report and the petitioners have been summoned, have even not been disputed or specifically denied, considering which the alleged offences are prima facie made out - No illegality or error in the impugned orders. **(Para 32, 33, 36 & 37)** (E-15)

Case Law Cited

Naresh Kumar & Another Vs. The State of Karnataka & Another; (2024) SCC Online SC 268; Jit Vinayak Arolkar Vs. State of Goa & Others; (2025) SCC Online SC 31 ; Vishnu Kumar Shukla and Another Vs. The State of Uttar Pradesh and Another; 2023 LiveLaw (SC) 1019;State of Rajasthan Vs. Fatehkaran Mehdu; (2017) 3 SCC 198;Radhey Shyam & Another Vs. Chhabi Nath and Others; 2015 LawSuit(SC) 190;Asian Resurfacing of Road Agency P. Ltd. vs Central Bureau of Investigation; (2018) 16 SCC 299;Kathyayini v. Sidharth P.S. Reddy & Others; (2025) SCC Online SC 1428;Paramjeet Batra Vs. State of Uttarakhand; (2013) 11 SCC 673;State of Tamil Nadu Vs. R. Soundirarasu and Others; (2023) 6 SCC 768;State of Karnataka Vs. M.R. Hiremath; (2019) 7 SCC 515

List of Acts

The Constitution of India, 1950- The Code of Criminal Procedure, 1973

List of Keywords

During pendency of civil suit, criminal proceedings initiated; Civil and criminal proceedings simultaneously; Complaint disclosing civil transactions may also have a criminal texture; Word 'groundless' used in Section 239 of the CrPC; Materials placed not

sufficient to make out a prima facie case; Alleged offences prima facie made out

Case Arising From

Judgment and order dated 08.03.2021 passed by learned Sessions Judge, Ambedkar Nagar in Criminal Revision No.45 of 2020 (Bhagwan Devi and Another Vs. State of U.P. and Another) and the order dated 19.02.2020 passed by learned Chief Judicial Magistrate, Ambedkar Nagar in Criminal Case No.4610 of 2019 (State Vs. Bhagwan Devi and Another) arising out of Case Crime No.258/2016, under Sections 419, 420, 467, 468 and 471 I.P.C., Police Station Kotwali Tanda, District Ambedkar Nagar

Appearances for Parties

Counsel for Petitioner :- Sushil Kumar Singh,Vijai Kumar Tripathi Counsel for Respondent :- C.S.C., Abhishek Pandey, Nuzhat Ali Siddiqui, Shrawan Kumar

(Delivered by Hon'ble Rajnish Kumar, J.)

1. Heard, Sri Sushil Kumar Singh, learned counsel for the petitioners, Sri Shrawan Kumar, learned counsel for the respondent no.2 and learned A.G.A. for the State.

2. The instant petition under Article 227 of the Constitution of India has been filed for setting aside the judgment and order dated 08.03.2021 passed by learned Sessions Judge, Ambedkar Nagar in Criminal Revision No.45 of 2020 (Bhagwan Devi and Another Vs. State of U.P. and Another) and the order dated 19.02.2020 passed by learned Chief Judicial Magistrate, Ambedkar Nagar in Criminal Case No.4610 of 2019 (State Vs. Bhagwan Devi and Another) arising out of Case Crime No.258/2016, under Sections 419, 420, 467, 468 and 471 I.P.C., Police Station Kotwali Tanda, District Ambedkar Nagar, by means of which, application under Section 239 of the Code of Criminal Procedure, 1973 (here-in-after referred as CrPC) filed by the petitioners has been dismissed.

3. Learned counsel for the petitioners submitted that a civil dispute between the petitioners and the respondent No.2 has been converted into criminal. The respondent No.2 had already filed a suit for cancellation of will executed in favour of the petitioner No.1 by the husband of the petitioner No.1 and the respondent No.2, which is pending before a civil court, thus, during pendency of the civil suit, criminal proceedings could not have been initiated.

4. He further submitted that on the basis of registered will executed in favour of the petitioner No.1, the name of the petitioner No.1 has been mutated in the revenue records. He further submitted that while filing application for lodging of F.I.R. and also in the F.I.R., there is material concealment as the fact of filing of the civil suit and the mutation in favour of the petitioner No.1 have not been disclosed, otherwise the version of the respondent No.2 is identical in both i.e. in the civil suit as well as the F.I.R.

5. He further submitted that the mutation in favour of the petitioner No.1 was made after affording opportunity and recording the statements of the witnesses of the will. The order passed in the mutation proceedings has not been challenged. It has further been submitted that the will is only with regard to the agricultural properties situated at Tanda, District Ambedkar Nagar and Late Santram gave the properties of Delhi to the respondent No.2. He further submitted that the application for discharge filed by the petitioners was dismissed by the learned trial court without considering the grounds taken in the application. The

learned revisional court also dismissed the revision without considering the grounds raised by the petitioners, hence, the present petition has been filed challenging the orders passed by the learned trial court as well as the learned revisional court. He further submitted that the impugned orders alongwith the proceedings of the criminal case are liable to be set aside.

6. Learned counsel for the petitioners has relied upon judgments passed by the Hon'ble Supreme Court of India in the cases of **Naresh Kumar & Another Vs. The State of Karnataka & Another; (2024) SCC Online SC 268, Jit Vinayak Arolkar Vs. State of Goa & Others; (2025) SCC Online SC 31 and Vishnu Kumar Shukla and Another Vs. The State of Uttar Pradesh and Another; 2023 LiveLaw (SC) 1019.**

7. Per contra, learned counsel for the respondent No.2 submitted that this petition under Article 227 of the Constitution of India, challenging the orders passed by the learned courts below, is not maintainable. He further submitted that the impugned orders have been passed rightly and in accordance with law, therefore, nothing could be pointed out against the impugned orders.

8. He further submitted that the registration of will deed is not impediment in lodging of the F.I.R. in regard to the criminal act of the accuseds i.e. the petitioners. He also submitted that second wife is not recognized in the Hindu Law, therefore, the names of the petitioners could not have been mutated in the revenue records. He further submitted that the will does not disclose any act of the respondent No.2. He further submitted that no ground for discharge of the petitioners is made out and there is sufficient material on record placed by the prosecution to frame charges against the petitioners. Thus, the impugned orders have rightly been passed and this petition has been filed on misconceived and baseless grounds, which is liable to be dismissed.

9. He has relied upon judgments passed by the Hon'ble Supreme Court of India in the cases of **Radhey Shyam & Another Vs. Chhabi Nath and Others; 2015 LawSuit(SC) 190 and State of Rajasthan Vs. Fatehkaran Mehdu; (2017) 3 SCC 198.**

10. Learned A.G.A. for the State also vehemently opposed the submissions of learned counsel for the petitioners and he submitted that the impugned orders have rightly been passed in accordance with law and there is no illegality or infirmity in the same, which may call for any interference by this Court. The petition is misconceived and lacks merit, therefore, it is liable to be dismissed.

11. I have considered the submissions of learned counsel for the parties and perused the record.

12. The respondent No.2 moved an application under Section 156(3) CrPC for lodging of the F.I.R. against the petitioners on 07.10.2015 and in pursuance of the order passed by the learned Chief Judicial Magistrate, Ambedkar Nagar, the F.I.R. vide Case Crime No.258/2016, under Sections 419, 420, 467, 468 and 471 I.P.C. was lodged on 10.11.2016 at Police Station Kotwali Tanda, District Ambedkar Nagar. The F.I.R. has been lodged alleging therein that the complainant; Kamla Devi W/o Late Santram is resident of Village Ajmeri Badshahpur, Police Station Kotwali Tanda,

District Ambedkar Nagar and also a wedded wife of Santram. Santram and Kamla Devi have a son, namely, Rohit and a daughter, namely, Deepa. The husband of the complainant, namely, Santram was working on the post of Deputy Secretary in Vigilance Commission and was posted at Delhi. Bhagwan Devi W/o Premchand and Sangeeta D/o Premchand by playing fraud, making conspiracy and with intention to usurp the properties of crores of husband of the complainant, namely, Santram, got their names recorded in Family Register on 11.12.2008 and also got a forged sale deed prepared and executed fraudulently from Late Santram on 01.11.2008 in the name of Bhagwan Devi in Tehsil Tanda. Bhagwan Devi and Sangeeta, who are the ladies and conspirators by nature, have done similar incident with Sanjay S/o Premchand, who is son of Bhagwan Devi. The complainant; Kamla Devi came to know about it when they started making possession at their house situated at Village Ajmeri Badshahpur, Police Station Tanda Kotwali. Then she ran to the Police Station Tanda Kotwali and gave an application but, the Incharge of the Police Station Tanda Kotwali in collusion with the Bhagwan Devi, had not taken any action, therefore, she moved an application before the Superintendent of Police, Ambedkar Nagar but there also no action was taken, therefore, she was constrained to move the application under Section 156(3) CrPC.

13. The police, after investigation, in pursuance to the aforesaid F.I.R., filed a final report dated 06.02.2017 recording that on the basis of statements and documentary evidence, no offence is made out and from the statements of witnesses, it has come to light that husband of the complainant, Late Santram had executed and got registered a sale deed in favour of his second wife, namely, Bhagwan Devi in his life time and in peshbandi, a false case has been lodged against the respondent.

14. The respondent No.2 moved a protest petition alleging therein that the final report has been filed without recording any statement and considering the evidences made available by her. The learned Magistrate allowed the protest petition by means of order dated 10.02.2018 and rejected the final report No.05/2017 and took cognizance and held that the case shall go on as a State Case and, accordingly, issued the summons. The order dated 10.02.2018 was challenged by the petitioners in Criminal Revision No.37 of 2019, which was dismissed by means of order dated 02.11.2019 by the learned Sessions Judge, Ambedkar Nagar upholding the order dated 10.02.2018 passed by the learned trial court. Consequently, the petitioners approached this Court by means of application under Section 482/378/407 No.154 of 2020 (Smt. Bhagwan Devi and Another Vs. State of U.P. and Another), but, after arguing at some length, learned counsel for the petitioners got the petition disposed of with liberty to move an application for discharge before the concerned court. In pursuance of the said order, an application under Section 239 CrPC was moved by the petitioners before the learned Chief Judicial Magistrate, Ambedkar Nagar on 18.01.2020, which was dismissed by means of order dated 19.02.2020. The said order was challenged by the petitioners in Criminal Revision No.45 of 2020. The criminal revision has also been dismissed by means of an order dated 08.03.2021. Hence, this petition has been filed challenging both the orders.

15. An objection has been raised by learned counsel for the respondent No.2 that this petition under Article 227 of the

Constitution of India is not maintainable. In this regard, he has relied on the judgment of the Hon'ble Supreme Court rendered in the case of **Radhey Shyam & Another Vs. Chhabi Nath and Others (Supra).** The Hon'ble Supreme Court in the said judgment upon reference by two Hon'ble Judges has answered that the judicial orders of civil court are not amenable to writ jurisdiction under Article 226 of the Constitution of India and jurisdiction under Article 227 is distinct from jurisdiction under Article 226 of the Constitution of India. One of the point for reference was that under Article 227 of the Constitution, the High Court does not issue a writ of certiorari. Article 227 of the Constitution vests the High Courts with a power of superintendence, which is to be very sparingly exercised to keep tribunals and courts within the bounds of their authority. Under Article 227, orders of both civil and criminal courts can be examined only in very exceptional cases, when manifest miscarriage of justice has been occasioned. Such power, however, is not to be exercised to correct a mistake of fact and of law.

16. In view of above while referring the matter, the Hon'ble Division Bench of the Hon'ble Supreme Court had observed that under Article 227 of the Constitution of India, orders of both civil and criminal courts can be examined only in very exceptional cases when manifest miscarriage of justice has been occasioned.

17. The inherent powers under Section 482 CrPC can be exercised by this Court to do right and to undo wrong in course of administration of justice. The power of superintendence under Article 227 of the Constitution of India has been vested in the High Court, which can be brought into play at any time, if the High Court considers it necessary to drop on the same and this Court can interfere when an error of law is apparent on the face of its record, which has resulted in gross injustice. Thus, both the powers can be exercised by this Court in the interest of justice to undo the wrong or illegality.

18. The Hon'ble Supreme Court, in the case of **Asian Resurfacing of Road Agency P. Ltd. vs Central Bureau of Investigation; (2018) 16 SCC 299,** has held that order framing charge may not be held to be purely interlocutory order and can in given situation be interfered under Section 397(2) or 482 CrPC or Article 227 of the Constitution of India, which is a constitutional provision.

19. By means of the impugned order passed by the learned trial court, while rejecting the application for discharge, it decided to frame the charge and fixed the case for framing the charge and the revisional court dismissed the revision upholding the same. Thus, in view of the aforesaid reports of the Hon'ble Supreme Court of India, the present petition under Article 227 of the Constitution of India cannot be said to be not maintainable only because a remedy under Section 482 CrPC is available, when under Article 227 of the Constitution of India, this Court can exercise powers in civil and criminal both and in each provision, this Court is exercising the inherent jurisdiction over the district courts and power of superintendence over the courts and tribunals etc., respectively to correct the wrong done by it. It is also to be noticed that this petition was filed in the year 2021 and entertained and an interim order was granted by this Court by means of order dated 15.06.2021, therefore, merely on this

ground, this Court does not deem it appropriate to dismiss the petition at this stage after exchange of affidavits as both the powers are to be exercised by this Court.

20. The main argument of learned counsel for the petitioners is that a civil dispute has been converted into criminal. However, every proceedings of criminal case cannot be set aside on account of a civil dispute between the parties as there is no bar against the prosecution if the offences punishable under criminal law are made out against the party/parties to the civil suit and also there is no bar of continuance of both the proceedings simultaneously. The Hon'ble Supreme Court, in a recent judgment in the case of **Kathyayini v. Sidharth P.S. Reddy & Others; (2025) SCC Online SC 1428,** has held that no such bar exists against the prosecution if the offences punishable under criminal law are made out against the parties to the civil suit and pendency of civil proceedings on the same subject matter, involving the same parties is not a justification to quash the criminal proceedings, if a prima facie case exists against the accused persons. The relevant paragraphs 19 to 23 are extracted here-in-below:-

"19. *We now come to the issue of bar against prosecution during the pendency of a civil suit. We hereby hold that no such bar exists against prosecution if the offences punishable under criminal law are made out against the parties to the civil suit. Learned senior counsel Dr. Menaka Guruswamy has rightly placed the relevant judicial precedents to support the above submission. In the case of K. Jagadish v. Udaya Kumar G.S. and another3, this Court has reviewed its precedents which clarify the position. The relevant paragraph from the above judgment is extracted below:*

"8. It is thus well settled that in certain cases the very same set of facts may give rise to remedies in civil as well as in criminal proceedings and even if a civil remedy is availed by a party, he is not precluded from setting in motion the proceedings in criminal law."

20. *In Pratibha Rani v. Suraj Kumar and another4, this Court summed up the distinction between the two remedies as under :*

"21. ... There are a large number of cases where criminal law and civil law can run side by side. The two remedies are not mutually exclusive but clearly coextensive and essentially differ in their content and consequence. The object of the criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrongdoer in cases like arson, accidents, etc. It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import. It is not at all intelligible to us to take the stand that if the husband dishonestly misappropriates the stridhan property of his wife, though kept in his custody, that would bar prosecution under Section 406 IPC or render the ingredients of Section 405 IPC nugatory or abortive. To say that because the stridhan of a married woman is kept in the custody of her husband, no action against him can be

taken as no offence is committed is to override and distort the real intent of the law."

21. *The aforesaid view was reiterated in Kamaladevi Agarwal v. State of W.B. and others5,*

"17. In view of the preponderance of authorities to the contrary, we are satisfied that the High Court was not justified in quashing the proceedings initiated by the appellant against the respondents. We are also not impressed by the argument that as the civil suit was pending in the High Court, the Magistrate was not justified to proceed with the criminal case either in law or on the basis of propriety. Criminal cases have to be proceeded with in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of a civil action in a different court even though higher in status and authority, cannot be made a basis for quashing of the proceedings."

22. *After surveying the abovementioned cases, this Court in K. Jagadish (supra) set aside the holding of High Court to quash the criminal proceedings and held that criminal proceedings shall continue to its logical end.*

23. *The above precedents set by this Court make it crystal clear that pendency of civil proceedings on the same subject matter, involving the same parties is no justification to quash the criminal proceedings if a prima facie case exists against the accused persons. In present case certainly such prima facie case exists against the respondents. Considering the long chain of events from creation of family tree excluding the daughters of K.G.Yellappa Reddy, partition deed among only the sons and grandsons of K.G.Yellappa Reddy, distribution of compensation award among the respondents is sufficient to conclude that there was active effort by respondents to reap off the benefits from the land in question. Further, the alleged threat to appellant and her sisters on revelation of the above chain of events further affirms the motive of respondents. All the above factors suggest that a criminal trial is necessary to ensure justice to the appellant."*

21. The Hon'ble Supreme Court, in the case of **Naresh Kumar & Another Vs. The State of Karnataka and Another (Supra),** relied by learned counsel for the petitioners, relying on a judgment rendered in the case of **Paramjeet Batra Vs. State of Uttarakhand; (2013) 11 SCC 673,** in which it has been held that the complaint disclosing civil transactions may also have a criminal texture, but the High Court must see whether a dispute, which is essentially of a civil nature, is given a cloak of criminal offence, found that the dispute between the parties was not only essentially of a civil nature but in the said case the dispute itself was settled later by the parties.

22. The Hon'ble Supreme Court, in the case of **Jit Vinayak Arolkar Vs. State of Goa & Others (Supra),** found that taking the complaint as correct, the offence of cheating under Section 415 of IPC was not made out against the appellant. Moreover, the complaint was filed by the 4th respondent for the first time after a time gap of two years from the date of institution of the civil suits and the complaint is suppressed with the fact that

civil suits were already filed, in which applications for temporary injunction were made. When there was a dispute over the title, the act of the 4th respondent of setting in motion criminal law two years after the date of filing of the suits amounts to nothing but abuse of the process of law.

23. In view of above, the criminal proceedings in a case cannot be allowed to be continued and liable to be quashed if the dispute is essentially purely civil in nature and no criminal offence is made out against the accused and in case in an essentially civil dispute, the civil proceedings have been instituted and pending and if the same are not disclosed, while instituting the criminal proceedings, but it has to be seen on the fact and circumstances of each and every case and merely because there is a civil dispute and the civil proceedings are pending, the criminal prosecution cannot be quashed.

24. The Hon'ble Supreme Court, in the case of **Vishnu Kumar Shukla and Another Vs. The State of Uttar Pradesh and Another (Supra),** has held that the protection against vexatious and unwanted prosecution and from being unnecessarily dragged through a trial by melting a criminal proceeding into oblivion, either through quashing an FIR/Complaint or by allowing an appeal against an order rejecting discharge or by any other legally permissible route, as the circumstances may be, in the deserving case, is a duty cast on the High Courts.

25. Adverting to the facts of the present case, the F.I.R. has been lodged on 10.11.2016 alleging therein that after death of the husband of the respondent No.2, when the petitioners started making possession on her house then she came to know about the inclusion of names of the petitioners in the Family Register on 11.12.2008 and execution of the will on 01.11.2008 in favour of the petitioner No.1, whereas the petitioner No.1 is wife of one Premchand and the petitioner No.2 is daughter of Premchand and petitioner No.1 had also played fraud with her son at Delhi. A suit for cancellation of sale deed has also been filed by the petitioners in the court of Civil Judge (Junior Division), Ambedkar Nagar on 23.09.2015.

26. So far as the plea of learned counsel for the petitioners that while lodging the F.I.R., the fact of filing of civil suit for cancellation of sale deed has not been disclosed is concerned, the respondent No.2 has disclosed in counter affidavit that when it came to the knowledge of respondent No.2 that a fraud has been committed against her by preparing forge document in the name of her husband Late Santram by petitioner No.1, she made a complaint to the police authorities in this regard and when she failed to get registered her F.I.R. against the petitioners, then she made the application under Section 156(3) CrPC for lodging F.I.R. and consequently the F.I.R. was registered against the petitioners. It has been further stated that she was also advised to file Regular Suit No.461/2015 in the court of learned Civil Judge (J.D.), Tanda, Ambedkar Nagar for cancellation of alleged will deed, as the deed is forged one. The F.I.R. also discloses that the respondent No.2 firstly approached to the police station for lodging of the F.I.R. but the F.I.R. was not lodged, therefore, she preferred an application before the Superintendent of Police, Ambedkar Nagar but no action was taken, therefore, she was constrained to approach the court for lodging the F.I.R. on 07.10.2015. Thus, it is apparent that the

respondent No.2 had taken action for instituting both the proceedings simultaneously. However, since it took some time in approaching the concerned police station and Superintendent of Police, Ambedkar Nagar, the application for F.I.R. could be moved after filing of the suit for cancellation of will deed. Thus, the reason for delay in lodging the F.I.R. after filing of the civil suit and it's non disclosure has been explained. Even otherwise, the present petition has been filed challenging the order passed on application for discharge moved by the petitioners and the revisional order, by means of which, the order passed on the application for discharge has been upheld.

27. The petitioners had earlier approached this Court by means of the application under Section 482 CrPC seeking quashing of entire proceedings arising out of Case Crime No.0258 of 2016, under Sections 419, 420, 467, 468 and 471 I.P.C. registered at Police Station Tanda, District Ambedkar Nagar as well as the order dated 10.02.2018 passed by learned Civil Judge (J.D.)/Judicial Magistrate, Ambedkar Nagar, the order dated 02.11.2019 passed by learned Sessions Judge, Ambedkar Nagar as well as the order dated 25.11.2019 passed by learned Chief Judicial Magistrate, Ambedkar Nagar, issuing bailable warrant against the petitioners, however, after arguing at some length, learned counsel for the petitioners themselves got the petition disposed of with liberty to file an application before the trial court concerned in conformity with the provisions of CrPC, which was directed to be considered and decided by the learned trial court. Thus, the challenge to the same orders as well as the entire criminal proceedings on the aforesaid grounds was not pressed and the application was got disposed of by the petitioners with liberty to file appropriate remedy under the provisions of CrPC and, thereafter, the petitioners moved an application for discharge under Section 239 CrPC on 18.01.2020 and in this petition the order passed thereon and the revision challenging the order passed on the said application has been challenged, therefore, in this petition, this Court has to see as to whether any illegality or error has been committed by the trial court or the revisional court in passing the impugned orders while considering the application for discharge and the revision filed by the petitioners and failed to discharge the petitioners, despite they are entitled to be discharged or not, for which the yardsticks have been provided in CrPC itself.

28. Section 239 CrPC provides as to when an accused shall be discharged, which is extracted here-in-below:-

"239. When accused shall be discharged:-*If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."*

29. According to the aforesaid Section 239 CrPC, if the magistrate upon considering the police report and the documents sent with the same under Section 173 CrPC and making such examination, if any, of the accused as he thinks necessary and after giving opportunity of being heard to the prosecution as well as to the accused,

considers the charge against the accused to be groundless, he shall discharge the accused by passing a reasoned order. Thus, it has to be considered as to whether, on the basis of material placed before the Magistrate by the prosecution, the charge against the accused i.e. the petitioners in the instant case is groundless and not on the basis of any plea, material or evidence of the accused, which can be considered only during investigation or trial after evidence.

30. The Hon'ble Supreme Court, in the case of **State of Tamil Nadu Vs. R. Soundirarasu and Others; (2023) 6 SCC 768,** has held that Section 239 CrPC lays down that if the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused and the word 'groundless' used in Section 239 of the CrPC means that the materials placed before the Court do not make out or are not sufficient to make out a prima facie case against the accused and it has further been held that the exercise at this stage is to be confined to considering the police report and the documents to decide whether the allegations against the accused can be said to be "groundless". The relevant paragraphs 62, 63, 64, 67, 68, 75, 76 and 77 are extracted here-in-below:-

*"**62**. Section 239 of the CrPC lays down that if the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused. The word 'groundless', in our opinion, means that there must be no ground for presuming that the accused has committed the offence. The word 'groundless' used in Section 239 of the CrPC means that the materials placed before the Court do not make out or are not sufficient to make out a prima facie case against the accused.*

***63.** The learned author Shri Sarkar in his Criminal P.C., 5th Edition, on page 427, has opined as:-*

"The provision is the same as in S. 227, the only difference being that the Magistrate may examine the accused, if necessary, of also S. 245. The Magistrate shall discharge the accused recording reasons, if after (i) considering the police report and documents mentioned in S. 173; (ii) examining the accused, if necessary and (iii) hearing the arguments of both sides he thinks the charge against him to be groundless, i.e., either there is no legal evidence or that the facts do not make out any offence at all."

***64.** In short, it means that if no prima facie case regarding the commission of any offence is made out, it would amount to a charge being groundless.*

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***67.** Thus the word 'groundless', as interpreted by this Court, means that there is no ground for presuming that the accused has committed an offence.*

***68.** This Court has again dealt with this aspect of the matter in Superintendent and Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja, AIR 1980 SC 52. This Court has stated in the said case as:-*

"At this stage, even a very strong suspicion found upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of

the factual ingredients constituting the offence alleged, may justify the framing of charges against the accused in respect of the commission of that offence."

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75. *The ambit and scope of exercise of power under Sections 239 and 240 of the CrPC, are therefore fairly well settled. The obligation to discharge the accused under Section 239 arises when the Magistrate considers the charge against the accused to be "groundless". The Section mandates that the Magistrate shall discharge the accused recording reasons, if after (i) considering the police report and the documents sent with it under Section 173, (ii) examining the accused, if necessary, and (iii) giving the prosecution and the accused an opportunity of being heard, he considers the charge against the accused to be groundless, i.e., either there is no legal evidence or that the facts are such that no offence is made out at all. No detailed evaluation of the materials or meticulous consideration of the possible defences need be undertaken at this stage nor any exercise of weighing materials in golden scales is to be undertaken at this stage - the only consideration at the stage of Section 239/240 is as to whether the allegation/charge is groundless.*

76. *This would not be the stage for weighing the pros and cons of all the implications of the materials, nor for sifting the materials placed by the prosecution- the exercise at this stage is to be confined to considering the police report and the documents to decide whether the allegations against the accused can be said to be "groundless".*

77. *The word "ground" according to the Black's Law Dictionary connotes foundation or basis, and in the context of prosecution in a criminal case, it would be held to mean the basis for charging the accused or foundation for the admissibility of evidence. Seen in the context, the word "groundless" would connote no basis or foundation in evidence. The test which may, therefore, be applied for determining whether the charge should be considered groundless is that where the materials are such that even if unrebutted, would make out no case whatsoever.*

31. The Hon'ble Supreme Court, in the case of **State of Karnataka Vs. M.R. Hiremath; (2019) 7 SCC 515,** has held that it is a settled principle of law that at the stage of considering an application for discharge, the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. The relevant paragraph 25 is extracted here-in-below:-

*"**25.** The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 of the CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In the State of Tamil Nadu v N Suresh Rajan10, adverting to the earlier decisions on the subject; this Court held :*

"29…At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

32. The allegations in the F.I.R. are that the respondent No.2 is the wedded wife of Late Santram and they had a son, namely, Rohit and a daughter, namely, Deepa. The petitioner No.1; Bhagwan Devi, who is wife of Premchand and the petitioner No.2; Sangeeta, who is daughter of Premchand, to usurp the properties of her husband, Late Santram, fraudulently showing wife and daughter respectively of Late Santram, got their names recorded in the parivar register on 11.12.2008 and also got a will deed executed in the name of petitioner No.1; Bhagwan Devi on 01.11.2008. As per findings recorded by the learned trial court, the petitioner No.1 has placed on record a copy of family register, in which, Bhagwan Devi has been shown as wife of Santram and Sangeeta as daughter of Santram. In the said family register, the respondent No.2; Smt. Kamla Devi has also been shown as wife at first and Rohit and Deepa as son and daughter respectively. The respondent No.2 has placed on record a copy of voter list showing Bhagwan Devi as wife of Premchand, which has not been filed before this Court by the petitioners. Thus, as per the documents placed on record, the petitioner No.1; Bhagwan Devi is wife of Late Premchand and the petitioner No.2; Sangeeta is daughter of Late Premchand. This fact has not been disputed by the petitioners even in this petition, but they are claiming themselves to be the wife and the daughter of Late Santram respectively. It has also not been disputed in the application filed under Section 239 CrPC before the trial court, a copy of which has been placed on record of this petition as annexure No.8. It has also not been disclosed as to when the petitioner No.1 got married to Late Santram and whether, if married, the marriage was solemnized during lifetime of Late Premchand or thereafter or after divorce. It has also not been disclosed that as to how the petitioner No.2; Sangeeta can be shown the daughter of Late Santram without valid adoption.

33. As pleaded in the application for discharge, the names of the petitioners were got recorded in the family register in the year 2008 and no objection was raised by the respondent No.2, but it has not been disclosed as to whether the respondent No.2, who was residing in Delhi, admittedly on the alleged date of incident and even thereafter had any knowledge of the recording of names of the petitioners in the family register of Late Santram and any opportunity was afforded to them. It has specifically been stated in paragraph 8 of the application for discharge that Late Santram was married in his childhood in Village Bhitaura, Police Station Jalalpur, District Ambedkar Nagar and the respondent No.2; Kamla Devi also lived as second wife of Late Santram but since they had differences, therefore, she left him and was living with somebody else in Delhi, thereafter, the Late Santram married to Bhagwan Devi and took Sangeeta in adoption and got their names recorded in the family register. Though in paragraph 6, it has been mentioned that Late Santram has got names recorded in the family register but no document in this regard has been placed on record and it has also not been disclosed as to when he married to the petitioner No.1; Bhagwan Devi and when and how he adopted Sangeeta as his daughter and whether adoption was made in accordance with law or not. Whereas, as per Hindu law, during subsistence of first marriage and lifetime of the first wife, a person cannot solemnize second marriage and accordingly a lady can not marry, therefore, even if married, the second wife cannot be legally wedded wife and her daughter, the daughter of the person to whom she marries. Thus, the name of petitioners No.1 and 2 could also not have been recorded in his family register legally but the petitioners knowingly got their names recorded showing them wife and daughter respectively.

34. A plea has also been taken that Late Santram executed a registered sale deed of a house on 08.06.2010 in Tehsil Tanda in favour of petitioner No.1; Bhagwan Devi. It also creates doubt about entry of names in family register by him and execution of will by Late Santram in favour of Bhagwan Devi on 01.11.2008 because if a will was already executed in favour of Bhagwan Devi regarding his properties, the question of execution of sale deed of a house in favour of the petitioner No.1; Bhagwan Devi was not required paying stamp duty on the same.

35. It has also been pleaded in the counter affidavit filed before this Court that Late Santram never executed any will deed to any person, introducing the petitioner No.1 as second wife of Late Santram. Thus, the petitioners are not only trying to grab the property of Late Santram with conspiracy but also maligning the character of Late Santram i.e. husband of respondent No.2. It has also been stated that the name of respondent No.2 is recorded in the service book of Late Santram as his wife and, accordingly, she is getting pension after death of her husband Late Santram. These averments in the counter affidavit have not been specifically denied by the petitioners in the rejoinder affidavit. It is also apparent from the rejoinder affidavit that the paragraphs 18 onwards of the counter affidavit have not been replied.

36. It is also apparent that the allegations and the material placed on record by the prosecution, considering which the cognizance has been taken rejecting the final report and the petitioners have been summoned, have even not been

disputed or specifically denied, considering which the alleged offences are prima facie made out.

37. The learned trial court as well as the learned revisional court have passed the impugned orders in accordance with law after considering the grounds of the petitioners and the material placed on record by the prosecution. This Court does not find any illegality or error in the impugned orders, which may call for any interference by this Court. This petition is misconceived and lacks merit.

38. The petition is, accordingly, **dismissed**.

(2025) 8 ILRA 377
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.08.2025

BEFORE

THE HON'BLE MANISH KUMAR NIGAM, J.

Matters Under Article 227 No. 8704 of 2025

Ankit Suman ...Petitioner
Versus
State Of U.P. & Anr. ...Respondents

Counsel for the Petitioner:
Javed Habib, Mohammad Abdullah Rawaha

Counsel for the Respondents:
C.S.C.

Issue for Consideration

Whether in view of the provisions of Section 24 of the Hindu Marriage Act, 1955, maintenance can only be granted pendente lite the proceedings.

If the proceedings of divorce were stayed by this Court, the respondent was not entitled for maintenance for the period for which the proceedings remained stayed

Head Notes

The Constitution of India, 1950-Article 227 - The Hindu Marriage Act, 1955-Sections 13 & 24 - An order under Section 24 of the Hindu Marriage Act, 1955 has been passed finally by the Hon'ble Supreme Court by judgment and order dated 29.11.2022 which has neither been recalled nor been set aside and therefore, the liability to make payment in terms of the order continues unless the same is set aside, varied or modified by the Hon'ble Supreme Court - Mere stay of proceedings by this Court will not amount to termination of the proceedings - Wife entitled for maintenance during the continuance of transfer proceedings - Petitioner not be absolved from liability to pay the maintenance amount merely, because the proceedings of matrimonial case has been stayed - Petition dismissed.(Para 19, 20, 21 & 22) (E-15)

Case Law Cited

Amrit Lal Nehru Vs. Usha Nehru AIR 1982 J&K 98; Vinod Kumar Kejriwal Vs. Usha Kumar Kejriwal 1993 (1) CCC 69; Surendra Kumar Asthana Vs. Kamlesh Asthana AIR 1974 All 110; Dharambir Singh Vs. Smt. Manjit Kaur 1979 HLR 305; Yogeshwar Prasad Vs. Jyoti Rani Prasad AIR 1981 Delhi 99; Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI CINOD Secretariat, Madras (1992) 3 SCC 1;

List of Acts

The Constitution of India, 1950; The Hindu Marriage Act, 1955

List of Keywords

Maintenance pendente lite; Doctrine of alimony; Maintenance allowance; Pendente lite and expenses; No independent income; Necessary expenses of the proceedings; Financial assistance to avoid starvation or destitution; Wife entitled for maintenance during the continuance of transfer proceedings; Petitioner not be absolved from liability to pay maintenance

Case Arising From

Order dated 06.05.2025 passed by Additional Principal Judge Family Court, Pilibhit in

Execution Case No. 9 of 2022 (Smt. Neeraj Saini Vs. Ankit Suman).

Appearances for Parties

Counsel for Petitioner :- Javed Habib,Mohammad Abdullah Rawaha
Counsel for Respondent :- C.S.C.

(Delivered by Hon'ble Manish Kumar Nigam, J.)

1. This petition has been filed to set aside the order dated 06.05.2025 passed by Additional Principal Judge Family Court, Pilibhit in Execution Case No. 9 of 2022 (Smt. Neeraj Saini Vs. Ankit Suman).

2. Brief facts of the case are that the husband-petitioner filed a petition on 20.07.2018 seeking divorce from his wife-respondent No. 2 before the Judge, Family Court under Section 13 of the Hindu Marriage Act, 1955. The aforesaid case was numbered as Case No. 286 of 2018. The respondent-wife appeared and filed written statement denying the allegations made by the petitioner. During pendency of this petition, an application under Section 24 of the Hindu Marriage Act, 1955 was filed by respondent No. 2 on 26.03.2019 to which the petitioner filed objections on 01.10.2019. The said application under Section 24 of the Hindu Marriage Act was decided by the order dated 30.10.2020 dismissing the application filed by the wife-respondent No.2. The order dated 30.10.2020 was challenged by the wife-respondent No. 2 by filing First Appeal No. 722 of 2021 before this Court. The judgment and order dated 30.10.2020 passed by Additional Principal Judge, Family Court, Pilibhit was set aside and the application filed by respondent No. 2 under Section 24 of the Hindu Marriage Act was allowed on 18.11.2021 by this Court and awarded a sum of Rs. 10,000/- per month to the wife and Rs. 10,000/- to the minor daughter payable with effect from date of application. It was further directed that the arrears of maintenance shall be paid to the wife within a period of two months. The wife was held to be entitled for the cost of litigation incurred by her both before this Court and the Family Court and a lump sum Rs. 30,000/- was directed towards cost of litigation which was to be paid within one month from the date of judgment. Order passed by this Court dated 18.11.2021 was challenged by the petitioner before Supreme Court and the Supreme Court by its order dated 29.11.2022 directed for payment of maintenance of Rs. 10,000/- to wife and Rs. 5,000/- per month to the minor daughter. Respondent No. 2 filed execution case No. 9 of 2022 for executing the order passed under Section 24 of the Hindu Marriage Act before the Additional Principal Judge, Family Court Pilibhit. An application Paper No. 45 Ga was filed by the wife-respondent No. 2 with the averment that till 26.08.2024, the petitioner was liable to pay Rs. 2,50,000/- to respondent No. 2 which was not paid by the petitioner and respondent No. 2 prayed that the said amount be recovered from the petitioner. By order dated 11.09.2024, recovery warrant was issued against the petitioner and therefore, the impugned order dated 06.05.2025 was passed by the Additional Family Court, Pilibhit issuing recovery against the petitioner.

3. Contention of learned counsel for the petitioner is that in view of the provisions of Section 24 of the Hindu Marriage Act, 1955, maintenance can only be granted pendente lite the proceedings. It has been further submitted by counsel for the petitioner that the respondent-wife has filed a petition before this Court for

transferring the divorce petition from Pilibhit to Bareilly and this Court has stayed the further proceedings of divorce petition until further orders of the Court on 18.09.2023. He further submitted that the moment proceedings of divorce were stayed by this Court, the respondent was not entitled for maintenance for the period for which the proceedings remained stayed.

4. It has been further contended by counsel for the petitioner that since the proceedings of the matrimonial case filed by the petitioner under Section 13 of the Hindu Marriage Act, 1955 has been stayed by this Court in a transfer petition filed by respondent-wife, the proceedings for divorce can not be considered as pending and therefore, the respondent No. 2 is not entitled for maintenance amount during the period the proceedings of the matrimonial case are stayed. It has been further submitted by counsel for the petitioner that on the one hand, respondent has got the proceedings of the matrimonial case stayed by filing a transfer petition before this Court, on the other hand, the respondent is claiming maintenance for the period for which the proceedings are stayed and pressing for recovery of the same. It has also been contended by counsel for the petitioner that the court below without looking into these facts has erroneously directed for issuance of recovery warrant against the petitioner .

5. Before considering the submissions of the petitioner, it would be relevant to look into the provisions of Section 24 of the Hindu Marriage Act, 1955. Section 24 of the Hindu Marriage Act, 1955 is quoted as under:

"24. Maintenance pendente lite and expenses of proceedings.-Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable:Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be."

6. From the bare reading of Section 24 of the Hindu Marriage Act, 1955, it is apparent that if the party to the matrimonial proceedings does not possess independent income sufficient for his or her support (maintenance) during litigation and the expenses of the proceedings, then the Court can on his or her application, order the respondent to pay the applicant for the expenses of the proceedings and for per month allowance 'during the proceedings'. The object of this provision is that a financially weak party to a matrimonial proceedings may not become unprovided for and may not be handicap in presenting his or her case in defending his or her legal rights. The rich party cannot be allowed by law to have an upper hand simply by the strength of his purse. Money cannot be determinant of the merit of a case. Not only the party against whom a petition is instituted in a court may claim maintenance pendente lite and the expense of litigation but also a party who has instituted the litigation can also claim the cost of

litigation and maintenance pendente lite in case, he or she does not possess independent income sufficient for his or her support (maintenance) during litigation and the expenses of the proceedings.

7. At the very outset, it may be pointed out that the doctrine of alimony and the maintenance allowance due to the wife from her husband finds its root in the economic and social conditions under which normally most of the married woman have to live and depend upon the income of their husband, who holds the position like that of a guardian of his wife. The provision for allowance is intended to secure justice to the wife who has no independent income sufficient for her support and necessary expenses of the proceeding while prosecuting or defending any proceedings under the matrimonial law. It is on this principle that the law relating to the matrimonial causes provides for rules for payment of maintenance pendente lite and expenses of the proceedings by the husband to the wife. These are the principles which have been incorporated in Section 24 of the Act which further lays down that any order for pendente lite maintenance and expenses for the proceedings can be made not only in favour of the wife but also in favour of the husband who has no independent income sufficient for his/her support and necessary expenses of the proceedings. Thus, the very object and purpose of the provisions contained in Section 24 is to provide immediate relief to the wife or the husband, as the case may be, in any proceedings initiated under the Hindu Marriage Act.

8. In Hindu Marriage Act, 1955 this salutary provision of Section 24 of Hindu Marriage Act, 1955 was provided to provide financial assistance to the wife whom the husband has driven to litigation or vice versa in order to avoid starvation or destitution, monthly maintenance was provided.

9. This departure from the general law by which wives who, in most of cases, were not in a happy financial position were to be supported during the litigation. In this background the word 'during the proceedings' under Section 24 of the Hindu Marriage Act, 1955 are of great consequence.

10. This term would cover the proceedings from the start till end to at least from the date the application is made till the termination of proceedings in the Court.

11. The Full Bench of Jammu and Kashmir High Court in case of **Amrit Lal Nehru Vs. Usha Nehru** reported in **AIR 1982 J&K 98** considered the date of commencement of proceedings and termination of the proceedings in terms of Section 30 of the Jammu and Kashmir Hindu Marriage Act, 1980. Section 30 of Jammu and Kashmir Hindu Marriage Act, 1980 is the facsimile of Section 24 of the Hindu Marriage Act, 1955 which reads as under:

"30. Maintenance pendente lite and expenses of proceedings.-- Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to petitioner the expenses of the proceeding, and, monthly during the proceeding such, sum as, having

regard to the petitioner's own income and the income of the respondent it may seem to the Court to be reasonable."

12. In paragraph Nos. 11 and 12 of the judgment of the Full Bench in case of Amrit Lal Nehru Vs. Usha Nehru (supra), the High Court of Jammu and Kashmir has held as under:-

"11. There is no warrant for the proposition that proceeding in a suit commences only from the stage contemplated by Order 13. On the other hand, it commences with the filing of the plaint. On the plaint being filed, summons is issued to the defendant, who on its service appears in the Court and files his written statement. After the parties have filed their pleadings, the Court for the first time proceeds to apply its mind to the controversy raised in the suit. This controversy is then reduced to the form of distinct issues, which are framed by the Court, not only from the allegations made by them in their pleadings, but also from the allegations made by the parties on oath, and the contents of the documents produced by them. That is one of the reasons why production of documents in terms of Order 13 is insisted on or before this stage, which is called first hearing; the other reason being preventing production of fabricated documents. Then comes the next stage in the proceeding. The parties are asked to lead evidence in support of their respective cases. After they have led it, the Court proceeds to hear arguments and give its judgment in the case. This is the last stage in the proceeding, and the last hearing in the suit. It is, therefore, obvious that proceeding in a suit does not commence on the first hearing, rather the first hearing is one of the various stages in that proceeding, which starts as soon as the plaint is filed in the Court. This interpretation also accords with the definition of the word proceeding given in Black's Law Dictionary, wherein it has been defined as: "regular and orderly progress in form of law including all possible steps in an action from its commencement to the execution of judgment" (Blacks' Law Dictionary, Revised Fourth Edition 1968).

12. That apart, the word proceeding in Section 30 has to be given the same meaning, even keeping in view its intent and scope. The object behind the enactment is obviously twofold; firstly, to prevent vagrancy resulting from strained relations between the husband and wife; and secondly, to ensure that the indigent litigating spouse is not handicapped in defending or prosecuting the case due to want of money. That is why Courts have always insisted that whenever an application is made under Section 30, it must be disposed of before any further steps are taken in the main case. They have been gone to the extent of holding that the Court in exercise of its inherent powers should stay further proceedings in the main petition till the order passed by it granting maintenance pendente lite or litigation expenses is complied with by the opposite party."

13. In case of **Vinod Kumar Kejriwal Vs. Usha Kumar Kejriwal** reported in **1993 (1) CCC 69,** the Bombay High Court has considered whether during the pendency of an application under Order IX Rule 4 of C.P.C. for restoring the divorce petition, which was dismissed for default, the wife can claim maintenance under Section 24 of the Hindu Marriage Act, 1955. Contention raised before the Bombay High Court was that Section 24 of the

Hindu Marriage Act, 1955 contemplates the pending proceedings. Petition for divorce was dismissed on 28.11.1985, the application for restoration was filed on 04.12.1985 and therefore, there was no proceedings before any Court in which the application under Section 24 of the Hindu Marriage Act could be entertained. Rejecting the contention as made before the Bombay High Court, the High Court held in paragraph No. 18 that even during pendency of an application under Order IX Rule 4 of C.P.C. for restoring the divorce petition which was dismissed in default, an application for maintenance under Section 24 of the Hindu Marriage Act, 1955 will be maintainable. Paragraph No. 18 of the judgment in case of Vinod Kumar Kejriwal Vs. Usha Kumar Kejriwal (supra) is quoted as under:-

"18. In the first place, I have no doubt that the proceedings under section 24 of the Hindu Marriage Act can be initiated even during the pendency of the application either under Rule 13 of Order 9 or Rule 9 of Order 9 or Rule 4 of Order 9 of the Code of Civil Procedure, in the case of Ramesh v. Savita (supra)1 this Court was dealing with the question as to whether pending the application under Rule 13 of Order 9 the wife could maintain an application under section 24 of the Hindu Marriage Act. The learned Chief Justice answered the question in the affirmative. Applying the same ratio and bearing in mind the object of the provisions contained in section 24 of the Hindu Marriage Act. I have no hesitation in holding that even pending the application made by the husband under Order 9, Rule 4 of the Code of Civil Procedure, the wife can initiate proceedings under section 24 of the Hindu Marriage Act. It should be borne in mind that, in general, the husband is bound to defray the wife's costs of the proceedings under the Act and to provide her with the maintenance and support pending disposal of the proceedings. Having regard to the object that is sought to be achieved by making provision for awarding maintenance pendente lite and for making provision for payment of expenses of proceedings, the expression "proceedings under the Act" appearing in section 24 cannot be given a narrow and restrictive meaning.

Secondly, in the case of Ramesh Dev Anand v. Smt. Devinder Kaur (supra)2 it has been clearly held as under:

"In the view that proceedings under Order 9, Rule 9 of the Code for restoration are proceedings under the Act, it can safely be held that proceedings for setting aside the ex-parte decree are also proceedings under the Act."

I am in agreement with the view expressed in the said decision.

Thirdly, a reference may usefully be made in this behalf to the provisions of section 21 of the Hindu Marriage Act which states that subject to other provisions contained in this Act, and to such rules as the High Court may make in this behalf, all proceedings under this Act, shall be regulated, as far as may be by the Code of Civil Procedure, 1908. The Punjab and Haryana High Court had also an occasion to consider a somewhat similar question in the case of Madan Lal v. Meena (supra). Though the question which directly arose there was one of granting relief to the wife under section 24 pending an application under Order 9, Rule 13 for setting aside the ex-parte decree, referring to the object and the rationale of the

provisions of section 24 of the Hindu Marriage Act, it was held that to obviate against the financial handicap of a party to the litigation, the provisions of section 24 of the Act can be invoked even during the pendency of the application under Order 9, Rule 13 of the Code of Civil Procedure. Thus, having regard to the object of section 24 of the Hindu Marriage Act, and having regard to the ratio of the above mentioned 3 cases, viz. (i) the decision of this Court reported in MANU/MH/0322/1985: 3 M.C. Page 74, (ii) MANU/DE/0395/1984: A.I.R. 1985 Delhi 40, and (iii) MANU/PH/0169/1988: A.I.R. 1988 (P & H) 31, I am of the view that the provisions of section 24 can be invoked by the spouse even during the pendency of an application under Order 9, rule 4 of the Code of Civil Procedure. In the facts of this case, therefore, the wife is entitled to initiate proceedings under section 24 of the Act even during the pendency of the husband's application for restoration of his petition which was dismissed on 28th November, 1985."

14. In case of **Surendra Kumar Asthana Vs. Kamlesh Asthana** reported in **AIR 1974 All 110,** an objection was raised before this Court interpreting the words ' in any proceedings under this Act' that a revision application under Section 115 of C.P.C. will not be a proceedings under the Act. The said contention was not accepted by this Court and this Court held in paragraph No. 9 of the judgment in case of Surendra Kumar Asthana Vs. Kamlesh Asthana (supra) that Court can grant relief on an application under Section 24 even in a revision filed under Section 115 of C.P.C against an order passed in proceedings under the Hindu Marriage Act, 1955. Paragraph No. 9 of the judgment in case of Surendra Kumar Asthana Vs. Kamlesh Asthana is quoted as under:

"9. The second objection is based on the use of the words "in any proceeding under this Act" and it is contended that a revision application under Section 115, Civil Procedure Code, is not a proceeding under the Act. It is to be noticed that the Act does not directly provide for an appeal or a revision from orders passed in proceedings under it. Section 21 of the Act provides that subject to the other provisions contained in the Act and of the rules made by the High Court all proceedings under the Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908. Section 28 provides that all decrees and orders made by the court in any proceeding under this Act shall be enforced in like manner" as the decrees and orders of the court made in the exercise of its original civil jurisdiction are enforced, and may be appealed from under any law for the time being in force. Appeals from decrees and orders made under the Act lie under the Code of Civil Procedure. Likewise, revisions also lie against orders made in proceedings under the Act under the Code of Civil Procedure. It is not disputed and there is good authority for the same that relief under Section 24 can be granted in an appeal from a decree or order passed under the Act. I can see no reason why then relief under Section 24 cannot be granted in a revision against an order passed in a proceeding under the Act. The words "in any proceeding under this Act" have been used in a wider sense to include all proceedings arising out of orders passed in petitions filed under the Act. To hold otherwise would defeat the very purpose of Section 24. In my opinion, it is competent for this Court to grant relief on an application under Section 24 even in a revision filed under Section 115, Civil Procedure Code, against an order passed in proceedings under the Act. The second

objection raised by Sri K. C. Saxena is also without force."

15. In case of Surendra Kumar Asthana Vs. Kamlesh Asthana (supra) this court has gone to the extent of holding even in cases where plea as to jurisdiction of the court is raised, the relief under Section 24 of the Hindu Marriage Act can be granted before considering the question of jurisdiction. Paragraph Nos. 6 and 8 of the judgment in case of Surendra Kumar Asthana Vs. Kamlesh Asthana (supra) are quoted as under:

"6. The grant of relief under Section 24 is not dependent either on the merits of the petition or on the decision of any particular issue or issues in the case or upon the ultimate success or failure of the petition. The reason behind the rule in Section 24 for payment of pendente lite maintenance is that, where marriage is admitted, it is the duty of the affluent spouse to maintain the indigent spouse. This duty is unaffected by the pleas raised in the petition even if the plea be to the jurisdiction of the court. If on the face of the petition it is maintainable and the court has jurisdiction to entertain it, then the court has also the power to grant relief under Section 24 even if an objection to the jurisdiction is raised and even before such an objection is decided. Such an objection will be an issue in the case. Likewise, the reason for the provision for payment of expenses is that a wife or a husband, who has no independent income sufficient to meet the necessary expenses of the proceeding, may not be handicapped. Such a spouse should not be left without means of putting her or his case fairly before the Court. It can be no defence to the claim for expenses that a question of jurisdiction has been raised. Expenses can be awarded even before the question of jurisdiction is decided.

8. Therefore, even where a question of jurisdiction has been raised, the court has, before deciding that question, power to grant relief under Section 24 of the Hindu Marriage Act provided that, on the averments made in the petition, the petition is maintainable and the court, prima facie, has jurisdiction to entertain it. Though the court has this power, it has a discretion under Section 24 till the question of jurisdiction is decided. It would, however, be desirable to allow expenses to the needy spouse to fight out the issue of jurisdiction also, even where the court thinks that the question of pendente lite maintenance should be decided after the issue of jurisdiction has been decided. The first objection raised by Sri K. C. Saxena does not stand in the way of granting relief to the wife in this case under Section 24."

16. In case of **Dharambir Singh Vs. Smt. Manjit Kaur** reported in **1979 HLR 305**, the Punjab and Haryana High Court held that a petition under Section 24 of the Hindu Marriage Act will be maintainable even in case where an ex-parte order under Section 24 of the Hindu Marriage Act is sought to be recalled by the other party, which is pending. Paragraph Nos. 1 and 2 of the judgment in case of Dharambir Singh Vs. Smt. Manjit Kaur (supra) is quoted as under:-

"1. The respondent filed a petition under section 10 of the Hindu Marriage Act (hereinafter to be called the Act) for judicial separation against her husband (the petitioner). During the pendency of this petition she filed an application under section 24 of the Act for the grant of expenses of the litigation and

also maintenance pendente lite. The trial Court allowed this application and granted expenses and maintenance by ex-parte order dated 29th November, 1974. By this order an amount of Rs 100/- was allowed as litigation expense and Rs. 150/- as maintenance pendente lite. The present petitioner move the trial Court for setting aside this ex-parte order, the proceedings in which are still pending. The respondent filed another application undo section 24 of the Act for litigation expenses as well as maintenance in these subsequent proceedings. The petitioner raised the preliminary objection that the second application under section 24 of the Act was not maintainable. This objection did not find favour with the trial Court an it was held that the second application was also maintainable. It is this order which has been challenged in the present revision petition.

2. It has been contended by the learned counsel for the petitioner that section 24 of the Act contemplates only one application during the pendency of the main petition under the provisions of the Act and the second application under this provision was not maintainable. A close perusal of section 24 of the Act, however, shows that any of the parties who has no independent income to maintain herself or himself and to meet the necessary expenses of the proceedings, has the right to claim litigation expenses and interim maintenance "in any proceedings" under this Act. The provision is clear and includes all proceedings arising out of or in any manner linked with the main petition. Clearly the proceedings arising out of the application by the husband to get the ex-parte order under section 24 set aside are linked with the main petition. The argument that the second application does not come within the ambit of the provision is not at all tenable. "

17. In case of **Yogeshwar Prasad Vs. Jyoti Rani Prasad** reported in **AIR 1981 Delhi 99**, the Delhi High Court held that during pendency of the proceedings under Section 25 of the Hindu Marriage Act, 1955, the application under Section 24 of the Hindu Marriage Act can be filed filed and entertained. Paragraph Nos. 4 and 5 in case of Yogendra Prasad Vs. Jyoti Rani Prasad (supra) is quoted as under:-

"(4) The next contentions of the learned counsel for the petitioner are that an interim maintenance under Section 24 of the Act can be granted only in a proceeding under the Act. The Act envisages two periods in the proceedings; (1) duration of the main petition and (2) the period after a decision of the main E petition. Section 24 relates to the first period while Section 25 relates to the second period. That is why Section 24 precedes Section 25. The Act itself treats these periods differently. It is further evident by the selective use of the word 'petition' in relation to the main reliefs and use of 'application' in relation to the rest. That is because the application under Section 25 of the Act is merely ancillary and incidental to the main petition as held in Patel Dharamshi Premji v. Bai Sakar Kanji MANU/GJ/0082/1968: AIR1968Guj150. There is therefore, no justification for treating it as a proceeding under the Act which is a proceeding initiated on a petition for any of the main reliefs of restitution of conjugal rights, judicial separation, dissolution and annulment. Section 24 applies only when the main petition is pending. The incidental and ancillary provisions in Section 25 had to be made because if this were not done, then no maintenance could be claimed

except whatever could be claimed under Section 125 Criminal Procedure Code and Section 18 of the Hindu Adoption and Maintenance Act, 1956. It is Therefore urged that there is a compelling reason for interpreting 'husband and wife' in Section 25 so as to include ex-spouses but there is no such compulsion in respect of Section 24. If the legislature wanted to apply these provisions to former spouses, there was nothing to prevent it from making it specifically clear. The precise argument is that Section 24 is not applicable because the application under Section 25 is not a proceeding under the Act between a husband and a wife.

(5) After careful consideration, I feel, I must up bold the view of the learned Additional District Judge that 'any proceedings under this Act' appearing in Section 24 will cover the proceedings under Section 25 thereof. Section 25 contemplates that an order for permanent alimony can be made at the time of the passing of any decree under the Act or any time thereafter. Now, if a spouse has to make an application after any decree under the Act has been passed and has no sufficient means of his own, such spouse has to be provided for prosecuting the application for permanent alimony when the other spouses opposes any grant thereof. Any other construction will be narrow and will lead to frustration of the provisions. This is so obvious that no precedent need be cited. Yet there is an authority for this view: See Mahinder Singh v. Om Piari 1975 Rlr (Note 4(3). If it is conceded that the application under Section 25 even in case of dissolution or annulment of marriage can be deemed to be a proceeding between a wife and a husband, as it should, there is no scope for argument that it is not such a proceeding within the meaning of Section 24. In Patel Dharamshi Premji (supra) it was held (vide para 3, page 153, Col. 2, penultimate sentence of the report) that the application under Section 25 is an application in the main proceeding for claiming an incidental relief consequent upon granting of the substantive relief by the Court. That provides a complete answer to the argument of the petitioner. To my mind Section 25 is a continuation of the main proceedings. Placement or numbering of the sections or the description of one sent of documents as petitions and the other set as applications can not alter this position. This has been done to avoid any avoidable confusion. I also do not see any reason why Section 24 be restricted to the period between institution of a petition and its termination when it is widely worded. There is no doubt that proceedings under Section 25 are proceedings under the Act and will be included in 'any proceeding' under the Act. The purpose of using the words husband' or 'wife' is to identify the position occupied by the parties in the main proceedings, and not to exclude ex-spouses."

18. Thus, from the case laws as referred above, it is evident that the proceedings under Section 24 of the Hindu Marriage Act, 1955 are maintainable during the pendency of the proceedings as contemplated under the Hindu Marriage Act, 1955 and the liability to pay the amount will not come to an end merely because the proceedings are pending at the revisional stage, appellate stage or even in cases where the proceedings have been dismissed for want of prosecution and the restoration of the same is pending.

19. Coming to the facts of the present case, an order under Section 24 of the

Hindu Marriage Act, 1955 has been passed finally by the Hon'ble Supreme Court by judgment and order dated 29.11.2022. The said order has neither been recalled nor been set aside and therefore, the liability to make payment in terms of the order continues unless the same is set aside, varied or modified by the Hon'ble Supreme Court .

20. So far as contention of learned counsel for the petitioner that the proceeding of the matrimonial case filed by the petitioner was got stayed by respondent No. 2 by filing a transfer petition before this Court therefore, during the period for which the proceedings are stayed, petitioner will not be liable to make payment of maintenance under Section 24 of the Hindu Marriage Act, 1955, is wholly misconceived for two reasons, firstly, mere stay of proceedings by this Court will not amount to termination of the proceedings. In this regard, Supreme Court in case of **Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI CINOD Secretariat, Madras,** reported in **(1992) 3 SCC 1,** has held that a distinction has to be made between quashing of an order and staying of an operation of an order. Quashing of an order results in restoration of the position as it stood on the date of passing of the order which has been quashed. The staying of operation of an order does not, however, lead to such result. It only means that order which has been stayed would not operate from the date of passing of the stay order and it does not mean that the said order has been wiped out from existence. Therefore, mere staying the proceedings of the matrimonial case by this Court will not amount that the matrimonial proceedings came to an end, absolving the petitioner of his liability to pay the maintenance amount from the date of stay of proceedings.

21. Secondly, even the proceedings for transfer of matrimonial case from Pilibhit to Bareilly would amount to the proceedings contemplated under Hindu Marriage Act, 1955 in view of judgment of this Court in case of Surendra Kumar Asthana Vs. Kamlesh Asthana (supra) and therefore, the wife is entitled for maintenance during the continuance of transfer proceedings.

22. In my view, the contentions raised by counsel for the petitioner are of no avail and the petitioner will not be absolved from his liability to pay the maintenance amount merely, because the proceedings of matrimonial case has been stayed.

23. No illegality has been committed by the court below in directing for recovery of the said amount. The petition lacks merit and is dismissed.

(2025) 8 ILRA 387
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 26.08.2025

BEFORE

THE HON'BLE MANISH KUMAR NIGAM, J.

Matters Under Article 227 No. 9347 of 2025

Sunil Dubey ...Petitioner
Versus
Minakshi ...Respondent

Counsel for the Petitioner:
Chandan Kumar Chaturvedi

Counsel for the Respondent:

Issue for Consideration

Petitioner filed an application Paper No. 13- Ka with the prayer that the Registration Certificate is not available with the parties and there is no compulsory requirement for getting the marriage registered under the Hindu Marriage Act, 1955. The said application was also supported by the opposite party. The court below by order dated 31.07.2025 has rejected the application filed by the petitioner on the ground that as per Rule 3(a) of Hindu Marriage and Divorce Rules, 1956 dated 18.09.1956, (hereinafter referred as "Rules, 1956") it is mandatory that in every proceeding under the Hindu Marriage Act, 1955 marriage certificate should be annexed along with the proceedings, therefore, even though there is no objection by the other side, since the filing of marriage certificate is mandatory as per Rule 3(a) of Rules, 1956, the same can not be exempted and the application of the petitioner was rejected

Head Notes

The Constitution of India, 1950-Article 227, The Hindu Marriage Act, 1955 - Section 13 (B), The Hindu Marriage and Divorce Rules, 1956- Rule 3(a) - Registration certificate is only an evidence to prove the marriage and absence of registration of marriage will not invalidate the marriage in view of sub Section 5 of Section 8 of the Hindu Marriage Act, 1955 - Insistence for filing the registration certificate is uncalled for - Petition Allowed.

Held- That insistence by the Principal Judge, Family Court for filing the marriage certificate is wholly uncalled for and therefore, the order passed by the court below is liable to be set aside **(Para 25)** (E-15)

Case Law Cited

Malati Dasi Vs. Japa Hari Pal and Ors MANU/WB/0363/1989;R. Anita Marginic Vs. R. Annadurai 1992(1) HLR 509;P. Kamakshi alias Kala Jacob Vs. P. Devaki and others 2000(2) MLJ 564;Varindra Singh and another Vs. State of Rajasthan 2005 (2) HLR 544;Seema (SMT) Vs. Ashwani Kumar (2006) 2 SCC 578;Dolly Rani Vs. Manish Kumar Chanchal 2024 LawSuit (SC) 387;Maharaj Singh Vs. State of U.P. and another in Application U/S 482 No. 38746 of 2024 decided on 8.04.2025;Sangram Singh versus Election Tribunal Kotah AIR 1955 SCC425;Chinnammal and other versus Arumugham (1990) 1 SCC 513;Ghanshyam Das versus Union of India (1984) 3 SCC 46;Sukhveer Singh versus Brijpal Singh (1997) 2 SCC 200;Salem Advocate Bar Association versus Union of India reported in AIR 2005 SCC 3353

List of Acts

The Constitution of India, 1950, The Hindu Marriage Act, 1955, The Hindu Marriage and Divorce Rules, 1956- Rule 3(a)

List of Keywords

Absence of registration of marriage will not invalidate the marriage; Insistence for registration certificate is uncalled for; Registration of marriage; only an evidence to prove the marriage; No dispute regarding factum of marriage; Body of procedural laws designed to facilitate justice; Rule and procedure are handmaid of justice and not its mistress

Case Arising From

Order dated 31.07.2025 passed by Additional Principal Judge, Family Court, Court No. 1, Azamgarh in Case No. 1138 of 2024 (Sunil Dubey Vs. Minakshi)

Appearances for Parties

Counsel for Petitioner :- Chandan Kumar Chaturvedi

(Delivered by Hon'ble Manish Kumar Nigam, J.)

1. This petition has been filed challenging the order dated 31.07.2025 passed by Additional Principal Judge, Family Court, Court No. 1, Azamgarh in Case No. 1138 of 2024 (Sunil Dubey Vs. Minakshi) by which an application filed by the petitioner Paper No. 13-Ka for waiving off the filing of registration certificate of the marriage before the court has been rejected by the court below.

2. Brief facts of the case are that husband-petitioner and defendant-wife filed an application under Section 13 (B) of the Hindu Marriage Act, 1955 for divorce by mutual consent on 23.10.2024 which was registered as Case No. 1338 of 2024. During the pendency of the petition, learned Family Court Judge by order dated 04.07.2025 fixed 29.07.2025 for filing of marriage certificate. The petitioner filed an application Paper No. 13-Ka with the prayer that the Registration Certificate is not available with the parties and there is no compulsory requirement for getting the marriage registered under the Hindu Marriage Act, 1955 (hereinafter referred as "Act, 1955") therefore, the petitioner may be exempted from filing the marriage certificate. The said application was also supported by the opposite party. The court below by order dated 31.07.2025 has rejected the application filed by the petitioner on the ground that as per Rule 3(a) of Hindu Marriage and Divorce Rules, 1956 dated 18.09.1956, (hereinafter referred as "Rules, 1956") it is mandatory that in every proceeding under the Hindu Marriage Act, 1955 marriage certificate should be annexed along with the proceedings, therefore, even though there is no objection by the other side, since the filing of marriage certificate is mandatory as per Rule 3(a) of Rules, 1956, the same can not be exempted and the application of the petitioner was rejected. Hence the present petition.

3. Learned counsel for the petitioner contended that Section 8 of the Hindu Marriage Act, 1955 provides for registration of marriage but the marriage is not invalidated for want of registration of marriage and it has been further submitted by the counsel for the petitioner that since the marriage of the petitioner was solemnized on 27.06.2010, therefore, the provisions of Uttar Pradesh Marriage Registration Rules, 2017 (hereinafter referred as "Rules, 2017") will not apply to marriage solemnized before the commencement of the Rules and even otherwise, as per Rule 6 of Rules, 2017, the marriage will not be illegal for want of registration.

4. Since there is no objection by the other side to the application filed by the petitioner and the petition is arising out of proceedings under Section 13(B) of the Hindu Marriage Act, 1955 this petition is being disposed of at the admission stage itself without issuing notice to the opposite party as there is no factual dispute in the petition.

5. Before considering the submission of learned counsel for the petitioner, it would be appropriate to consider the provisions of Section 8 of the Hindu Marriage Act, 1955 which is quoted as under:-

"Section 8 in The Hindu Marriage Act, 1955

8. Registration of Hindu marriages.-

(1)For the purpose of facilitating the proof of Hindu marriages, the State Government may make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner and subject to such conditions as may be prescribed in a Hindu Marriage Register kept for the purpose.

(2)Notwithstanding anything contained in sub-section (1), the State Government may, if it is of opinion that it is

necessary or expedient so to do, provide that the entering of the particulars referred to in sub-section (1) shall be compulsory in the State or in any part thereof, whether in all cases or in such cases as may be specified, and where any such direction has been issued, any person contravening any rule made in this behalf shall be punishable with fine which may extend to twenty-five rupees.

(3)All rules made under this section shall be laid before the State Legislature, as soon as may be, after they are made.

(4)The Hindu Marriage Register shall at all reasonable times be open for inspection, and shall be admissible as evidence of the statements therein contained and certified extracts therefrom shall, on application, be given by the Registrar on payment to him of the prescribed fee.

(5)Notwithstanding anything contained in this section, the validity of any Hindu marriage shall in no way be affected by the omission to make the entry."

6. There was no requirement of registration of the Hindu marriage before the commencement of Hindu Marriage Act, 1955. Generally, Hindus do not get their marriages registered unlike adoption, transfer of property and partition. The Hindu Marriage Act, 1955 does not contain the rules of registration and the State Government has been authorized to make the rules. The State Government has promulgated Uttar Pradesh Marriage Registration Rules, 2017 in exercise of powers under Article 154 read with Article 162 of the Constitution of India. Rule 6(1) of the Rules, 2017 provides that after the commencement of the Rules, any marriage solemnized where one of the parties is permanent resident of State of U.P. or where the marriage has been solemnized within the limits of State of U.P., the registration will be mandatory. Sub-rule (2) of Rule 6 provides, in case, the marriages which are not being registered can be registered after commencement of these Rules in accordance with the procedure prescribed by Rule 7 of Rules, 2017. It further provides that any marriage solemnized prior to commencement of this Rule or after the commencement of this Rule will not be illegal for want of registration. Rule 6 of Uttar Pradesh Marriage Registration Rules, 2017is quoted as under:-

"(1) इस नियमावली के प्रारम्भ होने के पश्चात, सम्पन्न प्रत्येक विवाह या पुनर्विवाह, जहाँ विवाह के पक्षकारों में से कोई एक उत्तर प्रदेश राज्य का स्थायी निवासी हो अथवा विवाह उत्तर प्रदेश राज्य की सीमा के अन्दर सम्पन्न हुआ हो, का पंजीकरण कराया जाना अनिवार्य होगा।

परन्तु यह कि ऐसे विवाह जिनका पंजीकरण भारत के किसी राज्य में प्रवृत्त विवाह पंजीकरण अधिनियम /नियमावली के अधीन किया गया है इस नियमावली के लागू होने के पश्चात इस नियमावली के अन्तर्गत पंजीकृत माने जायेंगे।

(2) ऐसे विवाह जिनका पंजीकरण अभी तक नहीं कराया गया है, इस नियमावली के लागू होने के पश्चात नियम 7 में विहित रीति से कराया जा सकता है। इस नियमावली के लागू होने के पूर्व अथवा पश्चात सम्पन्न विवाह मात्र इस कारण से अविधिमान्य नहीं होगा कि ऐसा विवाह इस नियमावली के अन्तर्गत पंजीकृत नहीं कराया गया है।"

7. When a Hindu marriage is solemnized in accordance with the provisions of Hindu Marriage Act, 1955, in order to facilitate proof of such marriage by

Section 8(1) of the Act, 1955, the State Governments are empowered to make rules for registration of such marriage. Such Rules may provide for keeping over Hindu Marriage Register wherein parties may record the particulars of their marriage in such manner and subject to such condition as may be prescribed. The purpose of registration is only to furnish a convenient evidence of marriage.

8. Sub-section (4) of Section 8 of Act, 1955 provides that Hindu Marriage Register will be admitted as evidence. Sub-section (2) of Section 8 of Act, 1955 provides if the State Government deems it proper, it can make registration compulsory. The violation of this requirement, however, would not affect the validity of marriage.

9. By sub-Section (5) of Section 8 of Act, 1955, it is provided that omission to make an entry in pursuance of the provisions of this Section does not, however, affect the validity of marriage. Thus, notwithstanding any Rules made in pursuance of the provisions in sub-Section (1) to (4) of Section 8 of Act, 1955 and due to failure to make entry of the marriage in the register, the validity of marriage is not affected. In view of this Section, even where the State Government makes rules for compulsory registration of marriage, there cannot be a Rule declaring marriage invalid for want of registration. Even the sub-Rule (2) of Rule 6 of Rules, 2017 provides that marriage will not be invalid for non-registration of marriage.

10. In case of **Malati Dasi Vs. Japa Hari Pal and Ors** reported in **MANU/WB/0363/1989**, Calcutta High Court in paragraph No. 10 of the judgment has held as under:-

"10. Mr. Sengupta's second contention that since the marriage has been registered under Section 8 of the Hindu Marriage Act the Certificate Ext. 2 has conclusively proved the second marriage in this case. The provision for registration of a Hindu Marriage was made to provide a separate mode of proving the marriage. We have already indicated that even if the accused admits a second marriage that may not be sufficient to warrant, a conviction under Section 494 I.P.C. It has to be established in evidence that the second marriage during the subsistence of the first marriage has been solemnized as contemplated by law. If admission is insufficient to prove the second marriage only a certificate of marriage issued by the Marriage Registrar under Section 8 of the Hindu Marriage Act cannot sufficiently establish the marriage to warrant a conviction under Section 494 I.P.C. Ext. 2 will indicate that the marriage was registered at the instance of the accused. At best it can be construed as his admission or marriage with Malati. But whether it was a marriage solemnized properly would not be proved by that certificate alone."

11. In case of **R. Anita Marginic Vs. R. Annadurai** reported in **1992(1) HLR 509**, High Court of Madras had held in paragraph No. 10 of the judgment as under:-

"10. When the factum of marriage is disputed, evidence regarding performance of marriage according to Hindu rites must be brought on record to show that there had been a valid marriage. The registration is not the sole proof of marriage in order to become a valid marriage. Reference can be usefully made to the decision of the Calcutta High Court, reported in Mousumi Chakraborty v.

Subrata Guha Royd (1991) 2 CCC 401. In the said decision a Division Bench of the Calcutta High Court has held as follows:

In this particular case, the appellant had filed a suit stating that there had been no marriage at all between her and the respondent. On the contrary, the respondent claimed that there was a valid marriage. It is well settled principle that the burden of proof lies upon the party who substantially asserts the affirmative of the issue. The evidential burden in matrimonial case is that the burden is on the proponent, or in other words, the party who claims that there was a valid marriage, has to prove that marriage. The question is whether the production of marriage registration certificate raises a presumption and even if a presumption is there, whether the same could be rebutted. Section 8 of the Hindu Marriage Act, 1955 provides Hindu Marriages registration has been introduced for the purpose of facilitating the proof of Hindu Marriage. The registration is not the sole proof of marriage in order to become a valid marriage. Section 7 of the said Act provides that the validity of a marriage will depend on observance of "customary rites and ceremonies."

12. In case of **P. Kamakshi alias Kala Jacob Vs. P. Devaki and others** reported in **2000(2) MLJ 564**, Madras High Court in paragraph No. 34 of the judgment has held as under:-

"34. Merely because a marriage has not been registered under Hindu Marriage Act, it does not follow that in fact marriage has not taken place. To register the marriage is only for the purpose of evidence to prove the fact of marriage which has already taken place. An omission to register marriage will not invalidate marriage if in fact a marriage ceremony was performed. I take guidance to have the above view in view of the decision reported in Janaki Amma v. Rama Warier, 1985 K.L.T. 283, where learned Judge held omission to register marriage under Kerala Nair Act does not render a marriage invalid."

13. In case of **Varindra Singh and another Vs. State of Rajasthan** reported in **2005 (2) HLR 544**, Rajasthan High Court in paragraph No. 22 of the judgment has held as under:-

"22. Apart from the above, it will be worthwhile to mention here that Section 8 of the Act of 1955 only provides that for the purpose of facilitating the proof of Hindu marriage, the State Government may make rules providing the parties to any such marriage may have the particulars in relation to there marriage entered in such manner and subject to such conditions as may be prescribed. Therefore, the certificate itself is not a conclusive proof of the marriage and as per Sub-section 1 of the Section 8 itself, it is only a certificate of "facilitating the proof of Hindu Marriages."

14. The Supreme Court in case of **Seema (SMT) Vs. Ashwani Kumar** reported in **(2006) 2 SCC 578**, in paragraph Nos. 15 and 16 of the judgment has held as under:-

"15. As is evident from narration of facts though most of the States have framed rules regarding registration of marriages, registration of marriage is not compulsory in several States. If the record of marriage is kept, to a large extent, the dispute concerning solemnization of

marriages between two persons is avoided. As rightly contended by the National Commission, in most cases non registration of marriages affects the women to a great measure. If the marriage is registered it also provides evidence of the marriage having taken place and would provide a rebuttable presumption of the marriage having taken place. Though, the registration itself cannot be a proof of valid marriage per se, and would not be the determinative factor regarding validity of a marriage, yet it has a great evidentiary value in the matters of custody of children, right of children born from the wedlock of the two persons whose marriage is registered and the age of parties to the marriage. That being so, it would be in the interest of the society if marriages are made compulsorily registrable. The legislative intent in enacting Section 8 of the Hindu Act is apparent from the use of the expression "for the purpose of facilitating the proof of Hindu Marriages".

16. As a natural consequence, the effect of non registration would be that the presumption which is available from registration of marriages would be denied to a person whose marriage is not registered."

15. The Supreme Court in case of **Dolly Rani Vs. Manish Kumar Chanchal** reported in **2024 LawSuit (SC) 387** has held in paragraph No. 19 as under:-

"19. Under Section 8 of the Act, it is open for two Hindus married under the provisions of the Act to have their marriage registered provided they fulfil the conditions laid down therein regarding performance of requisite ceremonies. It is only when the marriage is solemnised in accordance with Section 7, there can be a marriage registered under Section 8. The State Governments have the power to make rules relating to the registration of marriages between two Hindus solemnised by way of requisite ceremonies. The advantage of registration is that it facilitates proof of factum of marriage in a disputed case. But if there has been no marriage in accordance with Section 7, the registration would not confer legitimacy to the marriage. We find that the registration of Hindu marriages under the said provision is only to facilitate the proof of a Hindu marriage but for that, there has to be a Hindu marriage in accordance with Section 7 of the Act inasmuch as there must be a marriage ceremony which has taken place between the parties in accordance with the said provision. Although the parties may have complied with the requisite conditions for a valid Hindu marriage as per Section 5 of the Act in the absence of there being a Hindu marriage in accordance with Section 7 of the Act, i.e., solemnization of such a marriage, there would be no Hindu marriage in the eye of law. In the absence of there being a valid Hindu marriage, the Marriage Registration Officer cannot register such a marriage under the provisions of Section 8 of the Act. Therefore, if a certificate is issued stating that the couple had undergone marriage and if the marriage ceremony had not been performed in accordance with Section 7 of the Act, then the registration of such marriage under Section 8 would not confer any legitimacy to such a marriage. The registration of a marriage under Section 8 of the Act is only to confirm that the parties have undergone a valid marriage ceremony in accordance with Section 7 of the Act. In other words, a certificate of marriage is a proof of validity of Hindu marriage only when such a marriage has taken place and not in a case where there is no marriage ceremony performed at all."

16. This Court in case of **Maharaj Singh Vs. State of U.P. and another** in **Application U/S 482 No. 38746 of 2024** decided on 8.04.2025 has held as under in paragraph No. 8 of the judgment as under:-

"8. The Apex Court in the case of Seema Vs. Ashwini Kumar, (2006) 2 SCC 578 directed to all the State Governments that marriage of all persons who are citizens of India should be compulsorily registrable irrespective of their religion and in pursuance of the direction of the Apex Court in the case of Seema Vs. Ashwini Kumar (supra) U.P. Registration of Marriage Rules 2017 were framed by the Governor of U.P. in exercise of his power under Article 154 r.w.s. 162 of the Constitution of India. As per the Marriage Registration Rules 2017, registration of marriage has been made compulsory irrespective of the religion of the parties to the marriage, and there is also a provision for issuing a marriage registration certificate. The above marriage certificate facilitates prima facie proof of factum of marriage. However, it is subject to the condition that the marriage registration certificate should be obtained after performing a valid marriage in accordance with the law. Therefore if the marriage between two Hindus was not performed in accordance with the procedure mentioned in section-7 of the Hindu Marriage Act, even then, the marriage registration certificate issued under the Rules of 2017 will not be a substantive proof of marriage."

17. Thus, from the laws as laid down by various High Courts including this Court as well as the Supreme Court, it is settled that registration certificate is only an evidence to prove the marriage and absence of registration of marriage will not invalidate the marriage in view of sub-Section 5 of Section 8 of the Hindu Marriage Act, 1955.

18. Coming to the facts of the present case, the petition for divorce has been filed under Section 13(B) of the Hindu Marriage Act, 1955 seeking divorce by mutual consent. There is no dispute between the parties regarding factum of marriage, rather the same is admitted. The insistence of the court below for filing the registration certificate relying upon sub-Rule 3(a) of the Hindu Marriage Divorce Rules, 1956 dated 18.09.1956 is uncalled for.

19. In the case of **Sangram Singh versus Election Tribunal Kotah AIR 1955 SCC425,** the Hon'ble Supreme Court, has held that the Code of Procedure must be regarded as such. It is "procedure", something designed to facilitate justice and further its end. Not a penal indictment for punishment and penalties. Not a thing designed to trip people up. Too technical construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against, provided always that justice is done to both sides lest, the very means designed for furtherance of justice. It has also been held that our laws of procedure are grounded on a principle of natural justice. The relevant paragraph nos. 16 and 17 of the case of Sangram Singh (supra) are being reproduced as under:-

"16. Now a code of procedure must be regarded as such. It is "procedure', something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of

interpretation should therefore be guarded against (provided always that justice is done to "both' sides) lest the very means designed for the furtherance of justice be used to frustrate it."

"17 Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle."

20. In **Chinnammal and other versus Arumugham (1990) 1 SCC 513** the Hon'ble Supreme Court has held that the Code of Civil Procedure is body of procedural laws designed to facilitate justice and it should not be treated as enactment providing for punishment and penalties. The laws of procedure should be so construed as to render justice wherever reasonably possible. Paragraph nos. 16 and 17 of the aforesaid judgment are being reproduced as under:-

"16.This is also the principle underlying Section 144 of the CPC. It is the duty of all the Courts as observed by the Privy Council "as aggregate of those tribunals" to take care that no act of the court in the course of the whole of the proceedings does an injury to the suitors in the Court. The above passage was quoted in the majority judgment of this Court in A.R. Amtulay v. R.S. Nayak and Ors., MANU/SC/0002/1988MANU/SC/0002/1988 : 1988CriLJ1661 . Mukherjee, J., as he then was, after referring to the said observation of Lord Cairns, said (at 672):

No man should suffer because of the mistake of the Court. No man should suffer a wrong by technical procedure of irregularities. Rules or procedures are the handmaids of justice and not the mistress of the justice. Ex debito justitiae, we must do justice to him. If a man has been wronged so long as it lies within the human machinery of administration of justice that wrong must be remedied.

17. It is well to remember that the CPC is a body of procedural law designed to facilitate justice and it should not be treated as an enactment providing for punishments and penalties. The laws of procedure should be so construed as to render justice wherever reasonably possible. It is in our opinion, not unreasonable to demand restitution from a person who has purchased the property in court auction being aware of the pending appeal against the decree."

21. In the case of **Ghanshyam Das versus Union of India (1984) 3 SCC 46,** the Hon'ble Supreme Court has held that our laws of procedure are based on the principle that as far as possible no proceedings in a court of law should be allowed to be defeated on their technicalities. In the case of **Sukhveer Singh versus Brijpal Singh (1997) 2 SCC 200** it was held that procedure is the handmaid to substantial rights.

22. In the case of **Salem Advocate Bar Association versus Union of India**

reported in AIR 2005 SCC 3353, the Hon'ble Supreme Court has held that the rule and procedure are handmaid of justice and not its mistress. It is relevant to reproduce Paragraph 21 of the report as under:-

"21. The use of the word "shall' in Order VII Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory. We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word "shall' is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are hand-maid of justice and not its mistress. In the present context, the strict interpretation would defeat justice."

23. Rule 3(a) of the Hindu Marriage and Divorce Rules, 1956 dated 18.09.1956 framed by the High Court of Judicature at Allahabad is quoted as under:

"3. Petition- (a) Every petition under the Act shall be accompanied by a certified extract from the Hindu Marriage Register maintained under section 8 of the Act, where the marriage has been registered under this Act.

b...."

24. Even the sub-Rule (a) of Rule 3 of Rules, 1956 provides that the petition under Hindu Marriage Act shall be accompanied by a certified extract from Hindu Marriage Register maintained under Section 8 of the Act where the marriage has been registered under this Act. The requirement of filing registration certificate is only in cases where the marriage is registered under Section 8 of Act. Admittedly, in the present case, the marriage which was solemnized in the year 2010 is not registered and therefore, there is no necessity of filing registration certificate.

25. In view of the laws laid down by the Supreme Court and also in view of sub-Rule (a) of Rule 3 of Rules, 1956, I am of the view that insistence by the Principal Judge, Family Court for filing the marriage certificate is wholly uncalled for and therefore, the order passed by the court below is liable to be set aside.

26. Accordingly, the petition is allowed and order dated 31.07.2025 is set aside.

27. Since the petition for mutual divorce is pending since 2024, Additional Principal Judge, Family Court, Court No. 1, Azamgarh is directed to consider and decide the aforesaid pending proceeding, in accordance with law, expeditiously, after giving opportunity of hearing to the parties concerned as well as an opportunity to lead evidence in support of their case and without granting unnecessary adjournments to either of the parties provided that there is no other legal impediment, keeping in view the

statutory mandate of Section 21-B of the Hindu Marriage Act.

(2025) 8 ILRA 397
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 05.08.2025

BEFORE

THE HON'BLE JASPREET SINGH, J.

Civil Misc. Arbitration Application No. 61 of 2021

Bhookan Saran ...Applicant
Versus
Hindustan Petroleum Corp. Ltd. Thru. Chairman And M.D. & Anr. ...Respondents

Counsel for the Applicant:
Archit Mehrotra, Agendra Sinha, Manish Pandey, Nikhil Mishra

Counsel for the Respondents:
Vikas Budhwar, Shikhar Anand

ISSUE FOR CONSIDERATION

Whether the petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking appointment of an arbitrator, is maintainable despite a delay of over nine years from the date of cause of action.

HEADNOTES

Civil Law – Arbitration and Conciliation Act, 1996 - Section – 11(6), - Limitation Act, 1963 - Section – 5- Application under Section 11(6) of the Act, 1996 - Applicant is a dealership firm – running dealership of HPCL – dealership dispute - HPCL terminated the dealership – as agreement, petitioner invoked arbitration clause - but failed to respond to HPCL's proposed arbitrator due to personal reasons, including his wife's illness and death - Nearly eight years later, again sought appointment of an arbitrator - but HPCL rejected requests as time-barred – Application under Section 11(6) of the Act, 1996 filed - initially application was dismissed for non-prosecution - but later restored after condonation of delay, as well as after substitution of legal heirs of the applicant - Court finds that, the Application is barred by limitation and the petitioner has been unable to explain the cause for delay of over nine years and the ground shown does not fall within the exceptional circumstances, which may persuade this court to entertain the petition – held – in the light of decision of Apex Court in case of 'HPCL Bio-Fuels Ltd. v. Shahaji Bhanudas Bhad' no case for interference is made out – hence, petition is dismissed as barred by limitation. (Para – 25, 27)

Application Dismissed. (E-11)

CASE LAW CITED

HPCL Bio-Fuels Ltd. v. Shahaji Bhanudas Bhad, 2024 SCC OnLine SC 3190; Geo Miller and Company Private Limited v. Chairman, Rajasthan Vidyut Utpadan Nigam, (2020) 14 SCC 643; Secunderabad Cantonment Board v. B. Ramachandraiah and others, (2021) 5 SCC 705; B and T AG v. Ministry of Defence, 2023 SCC OnLine SC 657; H. Guruswamy & Ors. v. A. Krishnaiah, 2025 SCC OnLine SC 54; Thirunagalingam v. Lingeswaran, 2025 SCC OnLine SC 1093.

LIST OF ACTS

Arbitration and Conciliation Act, 1996, Limitation Act, 1963.

LIST OF KEYWORDS

Arbitration – Dismissed for Non-prosecution - Limitation – Delay Condonation – Substitution – Dealership – termination - Exceptional circumstances - Cause of action – barred by limitation.

CASE ARISING FROM

Termination of dealership agreement dated 09.01.1991 between Bhookan Saran (petitioner) and Hindustan Petroleum Corporation Ltd. (respondent), followed by invocation of arbitration clause and subsequent delay in pursuing arbitration.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Agendra Sinha.
Counsel for Respondent(s): Shri Shikhar Anand.

(Delivered by Hon'ble Jaspreet Singh, J.)

1. Heard Shri Agendra Sinha, learned counsel for the petitioner and Shri Shikhar Anand, learned counsel appearing for the respondent.

2. At the outset, it may be noticed that the instant petition under Section 11(6) of the Arbitration & Conciliation Act of 1996 (hereinafter referred to Act of 1996) was dismissed for want of prosecution by means of order dated 26.09.2023.

3. The petitioner has moved an application for recall of the said order alongwith an application seeking condonation of delay. While the said application was pending the petitioner has moved another application for substitution informing that the sole petitioner Bhookan Saran expired and his legal heirs are to be brought on record.

4. The Court has considered the application for recall as well as the application seeking condonation of delay in doing so and finds that the cause shown is sufficient. Accordingly the application for recall as well as the application seeking condonation of delay are allowed. The order dated 26.09.2023 is recalled. The petition stands restored after codonation of delay.

5. The Court has thereafter considered the application for substitution alongwith the application seeking condonation for delay and the ground shown therein is found sufficient. Accordingly, the application for condonation of delay and substitution are allowed. Learned counsel for the appellant shall carry out the necessary amendment and file an amended memo of the parties with the office of the Court in e-format within a week. It is also made clear that the office shall ensure carrying out the amendment before issuing the certified copy of this order.

On merits

6. Shri Agendra Sinha, learned counsel appearing for the petitioner submitted that the parties had entered in a dealership agreement dated 09.01.1991. The said agreement in clause 68 contained a dispute resolution mechanism. It was provided that in case of any dispute between the parties, the same shall be referred to the Sole Arbitration of Managing Director of the Corporation or some other officer of the Corporation, who may be nominated by the Managing Director to Act as the Sole Arbitrator.

7. In the aforesaid backdrop, it was stated that the petitioner was running his dealership under the name and style of M/s Kumar Filling Station. Certain disputed accrued between the parties arising out of the said agreement. As a consequence, the respondent issued a show cause to the petitioner dated 13.07.2010. The petitioner furnished his reply to the said show cause on 07.10.2010 wherein all the allegations made against the petitioner were disputed.

8. The respondent considering the reply of the petitioner issued a termination letter dated 09.05.2011 citing infringement of clauses 9, 44, 46, 47(ii) and 58 of the dealership agreement.

9. The petitioner being aggrieved against the unilateral termination of the dealership invoked the arbitration clause. In reply to the same, the respondent issued a letter dated 31.10.2011 proposing the name of a retired officer of HPCL as the Arbitrator and requested the petitioner to give is consent.

10. It appears to be the watershed moment in the litigation as the petitioner states that he did not give his consent in response to the letter issued by the respondent dated 31.10.2011 on the ground that his wife Hosiyari Devi fell seriously ill and on account of her illness the petitioner could not peruse the matter. Later his wife expired on account of prolonged illness and thereafter the petitioner sent a letter to the respondent on 25.09.2019 seeking appointment of an Arbitrator which was rejected by the respondent by means of their letter dated 20.03.2020 stating that the claims of the petitioner were barred by limitation.

11. It is further stated that thereafter on account of COVID-19 Pandemic, the courts remained shut and once again the petitioner vide letter dated 23.11.2020 sent another letter to the respondent seeking appointment of a Sole Arbitrator which too was dismissed vide letter dated 11.01.2021 citing the earlier ground that it was barred by limitation.

12. It is in the aforesaid backdrop that the petitioner has filed the instant petition under Section 11(6) of the Act of 1996 and in support of his submissions, learned counsel for the petitioner has relied upon the decision of the Apex Court in ***HPCL Bio-Fuels Ltd. v. Shahaji Bhanudas Bhad, 2024 SCC OnLine SC 3190.***

13. Learned counsel for the respondent, HPCL Shri Shikhar Anand has vehemently opposed the aforesaid submissions and stated that once the dealership of the petitioner was terminated on 09.05.2011, the cause of action accrued to the petitioner. Once the cause of action had accrued and the time began to run then the same would not stop.

14. It is urged that the petitioner had invoked the arbitration clause by means of his letter and the respondent accepted the same and proposed the name of a retired officer of the HPCL. However, the petitioner did not give his consent.

15. It is further submitted that thereafter the petitioner remained silent from 2011 and only in 2019 i.e. after eight years, he moved another letter with the request to appoint an Arbitrator which was rejected by the respondent on 20.03.2020. In the aforesaid circumstances where the petitioner was aware that the respondent had taken a stand that the claims of the petitioner were barred yet again he kept quite for few months and then again by means of his letter dated 23.11.2020 sought the same relief of appointment of an Arbitrator which was again rejected on 11.01.2021 and thereafter the petitioner had approached this Court by means of the instant petition which is not maintainable as the same is barred by limitation.

16. Learned counsel for the respondent has relied upon the decision of the Apex Court in ***Geo Miller and Company Private Limited v. Chairman, Rajasthan Vidyut Utpadan Nigam, (2020) 14 SCC 643, Secunderabad Cantonment Board v. B. Ramachandraiah and others, (2021) 5 SCC 705 and B and T AG v. Ministry of Defence, 2023 SCC OnLine SC 657.***

17. The Court has heard the learned counsel for the parties and also perused the material on record.

18. The issue before this Court is whether the petition under Section 11(6) of the Act of 1996 dated 28.07.2021 could be entertained in the given facts and circumstances relating to a cause of action

which accrued to the petitioner on 09.05.2011 when his dealership agreement was terminated.

19. Considering the submissions of the learned counsel for the parties and from the perusal of the material on record, it is not disputed that the dealership agreement was entered between the parties which contained in an arbitration clause. It is also not disputed that the said dealership was terminated vide letter dated 09.05.2011. It is also not disputed that the petitioner had invoked the arbitration clause and in furtherance thereof the respondent vide their letter dated 31.10.2011 had proposed the name of a retired officer of the Corporation to act as a Sole Arbitrator and the consent of the petitioner was sought and admittedly the petitioner did not respond to the said letter.

20. In the aforesaid admitted backdrop, the contention of the petitioner is that he could not give his consent as his wife fell seriously ill in the year 2011. In this context, the petitioner has filed several photocopies of documents cumulatively as annexure no.10. The said documents at running page 72 indicate that it relates to year 1997, similarly, the document page no.73 of the year 1996. Certain pathological reports brought on record are also of the year 1996 (running page 76 to 77). Certain other documents have been brought on record which relate to the year February 2015 onwards, then there are certain documents relating to the year 2017. Few documents have been brought on record relating to August 2020.

21. The fact remains that neither in the pleading it has been indicated as to what disease or illness inflicted the wife of the petitioner and how he was handicapped from continuing the proceedings. Apparently, the documents relate to the year 1996-97 which have no relevance at all to the cause of action accruing in the year 2011. There are no documents of the year 2011 which can indicate that the wife of the petitioner fell seriously ill. It appears that deliberate attempt has been made to introduce the document with an intend to cover a span of nine years. This Court upon examining the said documents and the contention of the petitioner is unable to accept the explanation as offered for seeking condonation of delay of more than nine years.

22. It is now too well settled to be disputed that it is not the length of delay which is material rather it is the sufficiency of cause which is important. Even a short delay if not adequately explained can be fatal whereas even if the delay is huge but adequately explained then the same can also be condoned. It is also to be kept in mind that even though the concept of sufficient cause may be liberally construed yet it has to be borne in mind that it may not work injustice to the other side as condonation of delay is not an act of generosity. In ***H. Guruswamy & Ors. v. A. Krishnaiah, 2025 SCC OnLine SC 54*** the Apex Court had the occasion to consider the issue of condonation of delay and it held as under:-

"13. We are at our wits end to understand why the High Court overlooked all the aforesaid aspects. What was the good reason for the High Court to ignore all this? Time and again, the Supreme Court has reminded the District judiciary as well the High courts that the concepts such as "liberal approach", "Justice oriented approach", "substantial justice" should not be employed to frustrate or jettison the substantial law of limitation.

14. We are constrained to observe that the High Court has exhibited complete absence of judicial conscience and restraints, which a judge is expected to maintain while adjudicating a lis between the parties.

15. The rules of limitation are not meant to destroy the rights of parties. They are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly.

16. The length of the delay is definitely a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the respondents herein, it appears that they want to fix their own period of limitation for the purpose of instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

17. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. No court should keep the 'Sword of Damocles' hanging over the head of a litigant for an indefinite period of time."

23. Recently, the Apex Court in ***Thirunagalingam v. Lingeswaran, 2025 SCC OnLine SC 1093*** held as under :-

"31. It is a well-settled law that while considering the plea for condonation of delay, the first and foremost duty of the court is to first ascertain the bona fides of the explanation offered by the party seeking condonation rather than starting with the merits of the main matter. Only when sufficient cause or reasons given for the delay by the litigant and the opposition of the other side is equally balanced or stand on equal footing, the court may consider the merits of the main matter for the purpose of condoning the delay.

32. Further, this Court has repeatedly emphasised in several cases that delay should not be condoned merely as an act of generosity. The pursuit of substantial justice must not come at the cost of causing prejudice to the opposing party. In the present case, the respondents/defendants have failed to demonstrate reasonable grounds of delay in pursuing the matter, and this crucial requirement for condoning the delay remains unmet."

24. In the aforesaid backdrop, now if the decision of the Apex Court in **HPCL Bio-Fuels Ltd.** (supra) is seen, it would reveal that the Apex Court in para 117 has held as under:-

"117. As discussed in the foregoing parts of this judgment, the period

of limitation to file an application under Section 11(6) of the Act, 1996 is governed as provided in Article 137 of the Schedule to the Limitation Act, that is, three years. We have observed that the benefit available under Section 14 of the Limitation Act will also be available in respect of applications made under Section 11(6) of the Act, 1996. Thus, in the absence of any specific statutory exclusion, there is no good reason to hold that the benefit under Section 5 of the Limitation Act cannot be availed for the purpose of condonation of delay caused in filing a Section 11(6) application."

However, after considering the various decisions of the Apex Court on the aforesaid point, it laid the ratio in paras 123 and 124 as under:-

"123. The primary intent behind Section 5 of the Limitation Act is not to permit litigants to exploit procedural loopholes and continue with the legal proceedings in multiple forums. Rather, it aims to provide a safeguard for genuinely deserving applicants who might have missed a deadline due to unavoidable circumstances. This provision reflects the intent of the legislature to balance the principles of justice and fairness, ensuring that procedural delays do not hinder the pursuit of substantive justice. Section 5 of the Limitation Act embodies the principle that genuine delay should not be a bar access to justice, thus allowing flexibility in the interest of equity, while simultaneously deterring abuse of this leniency to prolong litigation unnecessarily.

124. The legislative intent of expeditious dispute resolution under the Act, 1996 must also be kept in mind by the courts while considering an application for condonation of delay in the filing of an application for appointment of arbitrator under Section 11(6). Thus, the court should exercise its discretion under Section 5 of the Limitation Act only in exceptional cases where a very strong case is made by the applicant for the condonation of delay in filing a Section 11(6) application."

25. Thus, it is clear that the scheme of the Arbitration & Conciliation Act of 1996 is such that the Court while examining its powers to condone the delay can do so only in exceptional cases, where a strong case is made out for condonation of delay in filing an application under Section 11(6) of the Act of 1996. Needless to say in light of the averments which have been made in the petition i.e. paras 15 to 20, this Court does not find that cause for delay of nine years has been adequately explained.

26. Insofar as the decision cited by the learned counsel for the respondents are concerned, suffice to state that the Apex Court in B and T AG (supra) has considered the other decisions as cited by the respondent hence, it will be appropriate to consider the relevant paras of B and T AG (supra) which notices the law on the subject.

"31. Since a petition under Section 11(6) of the 1996 Act for seeking appointment of Arbitral Tribunal is required to be filed before the High Court or the Supreme Court, as the case may be, Article 137 of the Schedule to the 1963 Act would apply.

32. Article 137 reads thus:

"Description of suit	*Period of limitation*	*Time from when period begins to*

		run
137. Any other application for which no period of limitation is provided elsewhere in this Division.	*Three years.*	*When the right to apply accrues."*

33. A plain reading of the aforesaid Article would indicate that the period of limitation in cases covered by Article 137 is three years and the said period would begin to run when the right to apply accrues.

34. The starting point of limitation under Article 137 according to third column of the Article is the date when "the right to apply arises". This being a residuary Article to be adopted to different classes of applications, the expression "the right to apply" is an expression of a broad common law principle and should be interpreted according to the circumstances of each case. "The right to apply" has been interpreted to mean "the right to apply first arises". (See : Merla Ramanna v. Nallaparaju [Merla Ramanna v. Nallaparaju, 1955 SCC OnLine SC 116 : (1955) 2 SCR 938 : AIR 1956 SC 87] .)

35. Further, it would be necessary to refer to Section 9 of the 1963 Act which reads thus:

"9. Continuous running of time.—Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it:

Provided that, where letters of administration to the estate of a creditor have been granted to his debtor, the running of the period of limitation for a suit to recover the debt shall be suspended while the administration continues."

(emphasis supplied)

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48. In BSNL v. Nortel Networks (India) (P) Ltd. [BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738 : (2021) 3 SCC (Civ) 352] , this Court undertook a comprehensive analysis of the relevant provisions and held that in cases where claims are ex facie time-barred, the Court may refuse to make reference under Section 11 of the 1996 Act. This decision assumes importance and we should look into the same in little details. The appellant BSNL issued a tender notification inviting bids for planning, engineering, supply, insulation, testing and commissioning of GSM based cellular mobile network in the Southern region. The respondent company was awarded the purchase order. On completion of the project, the appellant withheld an amount of Rs 99.70 crores towards the liquidated damages and other levies. The respondent raised a claim on 13-5-2014 for payment of the abovesaid amount from the appellant who rejected the claim on 4-8-2014.

49. The respondent in Nortel Networks [BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738 : (2021) 3 SCC (Civ) 352] , after a period of over 5.5 years invoked the arbitration clause and requested for the appointment of an independent arbitrator on 29-4-2020. It was also contended that the dispute of withholding the said amount, would fall

within the ambit of arbitrable disputes under the agreement. The appellant on 9-6-2020 replied that the request for appointment of an arbitrator could not be entertained since the case had already been closed and the notice invoking arbitration was time-barred.

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58. In Secunderabad Cantonment Board v. B. Ramachandraiah & Sons [Secunderabad Cantonment Board v. B. Ramachandraiah & Sons, (2021) 5 SCC 705 : (2021) 3 SCC (Civ) 335] , while taking note of both Nortel Networks case [BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738 : (2021) 3 SCC (Civ) 352] and Geo Miller [Geo Miller & Co. (P) Ltd. v. Rajasthan Vidyut Utpadan Nigam Ltd., (2020) 14 SCC 643] , it is held as under : (Secunderabad Cantonment Board case [Secunderabad Cantonment Board v. B. Ramachandraiah & Sons, (2021) 5 SCC 705 : (2021) 3 SCC (Civ) 335] , SCC pp. 722-23, para 19)

"19. Applying the aforesaid judgments to the facts of this case, so far as the applicability of Article 137 of the Limitation Act to the applications under Section 11 of the Arbitration Act is concerned, it is clear that the demand for arbitration in the present case was made by the letter dated 7-11-2006. This demand was reiterated by a letter dated 13-1-2007, which letter itself informed the appellant that appointment of an arbitrator would have to be made within 30 days. At the very latest, therefore, on the facts of this case, time began to run on and from 12-2-2007. The appellant's laconic letter dated 23-1-2007, which stated that the matter was under consideration, was within the 30-day period. On and from 12-2-2007, when no arbitrator was appointed, the cause of action for appointment of an arbitrator accrued to the respondent and time began running from that day. Obviously, once time has started running, any final rejection by the appellant by its letter dated 10-11-2010 would not give any fresh start to a limitation period which has already begun running, following the mandate of Section 9 of the Limitation Act. This being the case, the High Court was clearly in error in stating that since the applications under Section 11 of the Arbitration Act were filed on 6-11-2013, they were within the limitation period of three years starting from 10-11-2020. On this count, the applications under Section 11 of the Arbitration Act, themselves being hopelessly time-barred, no arbitrator could have been appointed by the High Court."

(emphasis supplied)

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67. In Law of Arbitration by Justice Bachawat at p. 549, commenting on Section 37, it is stated that subject to the 1963 Act, every arbitration must be commenced within the prescribed period. Just as in the case of actions the claim is not to be brought after the expiration of a specified number of years from the date when the cause of action accrues, so in the case of arbitrations the claim is not to be put forward after the expiration of a specified number of years from the date when the claim accrues. For the purpose of Section 37(1) "action" and "cause of arbitration" should be construed as arbitration and cause of arbitration. The cause of arbitration arises when the claimant becomes entitled to raise the question, that is, when the claimant acquires the right to require arbitration. An

application under Section 11 of the 1996 Act is governed by Article 137 of the Schedule to the 1963 Act and must be made within 3 years from the date when the right to apply first accrues. There is no right to apply until there is a clear and unequivocal denial of that right by the respondent. It must, therefore, be clear that the claim for arbitration must be raised as soon as the cause for arbitration arises as in the case of cause of action arisen in a civil action.

68. Whether any particular facts constitute a cause of action has to be determined with reference to the facts of each case and with reference to, the substance, rather than the form of the action. If an infringement of a right happens at a particular time, the whole cause of action will be said to have arisen then and there. In such a case, it is not open to a party to sit tight and not to file an application for settlement of dispute of his right, which had been infringed, within the time provided by the Limitation Act, and, allow his right to be extinguished by lapse of time, and thereafter, to wait for another cause of action and then file an application under Section 11 of the 1996 Act for establishment of his right which was not then alive, and, which had been long extinguished because, in such a case, such an application would mean an application for revival of a right, which had long been extinguished under the 1963 Act and is, therefore, dead for all purposes. Such proceedings would not be maintainable and would obviously be met by the plea of limitation under Article 137 of the 1963 Act.

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75. The observations made by this Court in Panchu Gopal [Panchu Gopal Bose v. Port of Calcutta, (1993) 4 SCC 338] in paras 10, 11, 12, 13, 14 and 15 respectively, are also relevant. The observations read as under : (SCC pp. 345-47, paras 10-15)

"10. In West Riding County Council v. Huddersfield Corpn. [West Riding County Council v. Huddersfield Corpn., (1957) 1 QB 540 : (1957) 2 WLR 428 : (1957) 1 All ER 669] the Queen's Bench Division, Lord Goddard, C.J. (as he then was) held that the Limitation Act applies to arbitrations as it applies to actions in the High Court and the making, after a claim has become statute-barred, of a submission of it to arbitration, does not prevent the statute of limitation being pleaded. Russel on Arbitration, 19th Edn., reiterates the above proposition. At p. 4 it was further stated that the parties to an arbitration agreement may provide therein, if they wish, that an arbitration must be commenced within a shorter period than that allowed by statute; but the court then has power to enlarge the time so agreed. The period of limitation for commencing an arbitration runs from the date on which the cause of arbitration accrued, that is to say, from the date when the claimant first acquired either a right of action or a right to require that an arbitration takes place upon the dispute concerned.

11. Therefore, the period of limitation for the commencement of an arbitration runs from the date on which, had there been no arbitration clause, the cause of action would have accrued. Just as in the case of actions the claim is not to be brought after the expiration of a specified number of years from the date on which the cause of action accrued, so in the case of arbitrations, the claim is not to be put forward after the expiration of the

specified number of years from the date when the claim accrued.

12. In Russell on Arbitration, at pp. 72 and 73 it is stated thus:

'Disputes under a contract may also be removed, in effect, from the jurisdiction of the court, by including an arbitration clause in the contract, providing that any arbitration under it must be commenced within a certain time or not at all, and going on to provide that if an arbitration is not so commenced the claim concerned shall be barred. Such provisions are not necessarily found together. Thus the contract may limit the time for arbitration without barring the claim depriving a party who is out of time of his right to claim arbitration but leaving open a right of action in the courts. Or it may make compliance with a time-limit a condition of any claim without limiting the operation of the arbitration clause, leaving a party who is out of time with the right to claim arbitration but so that it is a defence in the arbitration that the claim is out of time and barred. Nor, since the provisions concerned are essentially separate, is there anything to prevent the party relying on the limitation clause waiving his objection to arbitration whilst still relying on the clause as barring the claim.'

At p. 80 it is stated thus:

'An extension of time is not automatic and it is only granted if "undue hardship" would otherwise be caused. Not all hardship, however, is "undue hardship"; it may be proper that hardship caused to a party by his own default should be borne by him, and not transferred to the other party by allowing a claim to be reopened after it has become barred. The mere fact that a claim was barred could not be held to be "undue hardship".'

13. The Law of Arbitration by Justice Bachawat in Chapter 37 at p. 549 it is stated that just as in the case of actions the claim is not to be brought after the expiration of a specified number of years from the date when the claim accrues, so also in the case of arbitrations, the claim is not to be put forward after the expiration of a specified number of years from the date when the claim accrues. For the purpose of Section 37(1) "action" and "cause of action" in the Limitation Act should be construed as arbitration and cause of arbitration. The cause of arbitration, therefore, arises when the claimant becomes entitled to raise the question i.e. when the claimant acquires the right to require arbitration. The limitation would run from the date when cause of arbitration would have accrued, but for the agreement.

14. Arbitration implies to charter out timeous commencement of arbitration availing the arbitral agreement, as soon as difference or dispute has arisen. Delay defeats justice and equity aid the promptitude and resultant consequences. Defaulting party should bear the hardship and should not transmit the hardship to the other party, after the claim in the cause of arbitration was allowed to be barred. The question, therefore, as posed earlier is whether the court would be justified to permit a contracting party to rescind the contract or the court can revoke the authority to refer the disputes or differences to arbitration. Justice Bachawat in his Law of Arbitration, at p. 552 stated that 'in an appropriate case leave should be given to revoke the authority of the arbitrator'. It was also stated that an ordinary submission without special

stipulation limiting or conditioning the functions of the arbitrator carried with it the implication that the arbitrator should give effect to all legal defences such as that of limitation. Accordingly the arbitrator was entitled and bound to apply the law of limitation. Section 3 of the Limitation Act applied by way of analogy to arbitration proceedings, and like interpretation was given to Section 14 of the Limitation Act. The proceedings before the arbitration are like civil proceedings before the court within the meaning of Section 14 of the Limitation Act. By consent the parties have substituted the arbitrator for a court of law to arbiter their disputes or differences. It is, therefore, open to the parties to plead in the proceedings before him of limitation as a defence.

15. In Mustiu and Boyd's Commercial Arbitration (1982 Edn.) under the heading "Hopeless Claim" in Chapter 31 at p. 436 it is stated thus:

'There is undoubtedly no jurisdiction to interfere by way of injunction to prevent the respondent from being harassed by a claim which can never lead to valid award for example in cases where claim is brought in respect of the alleged arbitration agreement which does not really exist or which has ceased to exist. So also where the dispute lies outside the scope of arbitration agreement.' "

(emphasis supplied)

27. Considering the consistent dictum of the Apex Court as noticed hereinabove, this Court is of the clear view that the petitioner has been unable to explain the cause for delay of over nine years and the ground shown does not fall within the exceptional circumstances, which may persuade this Court to entertain the petition. Even if Section 5 of the Limitation Act is considered as suggested by the learned counsel for the petitioner yet in light of paras 123 and 124 of HPCL Bio-Fuels Ltd. (supra) no case for interference is made out, hence, the said decision does not come to the aid of the petitioner.

28. For the aforesaid reasons, the petition is **dismissed** as barred by limitation. There shall be no order as to costs.

(2025) 8 ILRA 407
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 27.08.2025

BEFORE

THE HON'BLE DR. GAUTAM CHOWDHARY, J.

Criminal Misc. Anticipatory Bail Application U/S 438 CR.P.C. No. 8077 of 2024

Pradeep Mishra ...Applicant
Versus
State of U.P. ...Opposite Party

Counsel for the Applicant:
Kartikey Mishra, Nitin Sharma, Sarvesh

Counsel for the Opposite Party:
G.A., Manish Singh, Sushma Singh

ISSUE FOR CONSIDERATION

Whether the applicant, against whom proceedings under Section 82 Cr.P.C. have been initiated and who is alleged to be absconding, is entitled to anticipatory bail?

HEADNOTES

Civil Law – Code of Criminal Procedure, 1973 - Section - 82, 83, 438 - Indian Penal Code, 1860 - Section - 420, 467, 468, 471, 120-B - Anticipatory Bail Application - filed under Section 482 B.N.S.S. (equivalent to Section 438 Cr.P.C.) by the applicant - in a

complaint case involving a non-bailable offence, seeking protection from arrest upon issuance of a summons - State counsel raised a preliminary objection - anticipatory bail is not maintainable merely on the issuance of a summons in a complaint case, as there is no apprehension of arrest by police without a warrant – court finds that - the applicant was summoned by the Magistrate in a complaint case - No bailable or non-bailable warrant had been issued at the time of filing the anticipatory bail application – court also observed that - 'Arrest' under Section 482 B.N.S.S. refers to police arrest without warrant, not judicial custody - Mere issuance of a summons or bailable warrant does not constitute a reasonable apprehension of arrest - Anticipatory bail is not meant to protect against court-directed custody - In cases where a non-bailable warrant or proclamation is issued, anticipatory bail is generally not maintainable, except in exceptional circumstances - The precedents cited by the applicant were found inconsistent with the Constitution Bench judgment in *Gurbaksh Singh Sibbia* and other binding rulings – held - Anticipatory bail is not maintainable in a complaint case where only a summons has been issued, even if the offence alleged is non-bailable, as there is no imminent threat of arrest by police without a warrant – consequently, the anticipatory bail application was rejected - However, the applicant was granted liberty to file a regular bail application before the trial court within 15 days, which shall be considered in accordance with law. (Para – 6, 7, 8)
Application Rejected. (E-11)

CASE LAW CITED

Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694) - Madhya Pradesh v. Pradeep Sharma, (2014) 2 SCC 171) - Lavesh v. State (NCT of Delhi), (2012) 8 SCC 730) - Prem Shanker Prasad v. State of Bihar, (2022) 14 SCC 516).

LIST OF ACTS

Code of Criminal Procedure, 1973 - Indian Penal Code, 1860.

LIST OF KEYWORDS

Anticipatory Bail - Non-bailable Offence – Summons - Arrest vs Custody - Reason to Believe - Complaint Case - Bailable Warrant - Non-bailable Warrant – Proclamation - Judicial Custody - Police Arrest - Exceptional Circumstances – liberty – rejection of application.

CASE ARISING FROM

Case Crime No. 56 of 2022 - Police Station: Kotwali, District Kanpur Nagar - Alleged offences under Sections 420, 467, 468, 471, 120-B IPC.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Rakesh Pandey sr. Adv. assisted by Shri Nitin Sharma.
Counsel for Respondent(s): Shri Chandan Singh AGA and Shri Manish Singh.

(Delivered by Hon'ble Dr. Gautam Chowdhary, J.)

1. Heard Sri Rakesh Pandey, learned Senior Counsel assisted by Sri Nitin Sharma, learned counsel for the applicant, Sri Chandan Singh, learned A.G.A., Sri Manish Singh, learned counsel for the informant, for the State and perused the record.

2. The present second anticipatory bail application has been moved on behalf of applicant **Pradeep Mishra**, seeking anticipatory bail in Case Crime no. 56 of 2022, under Sections 420, 467, 468, 471, 120-B I.P.C., Police Station Kotwali District Kanpur Nagar with the prayer that in the event of arrest, applicant may be released on anticipatory bail.The first Criminal Misc. Anticipatory Bail Application u/s 438 Cr.P.C., No. 7090 of 2024 has been dismissed as withdrawn, with the liberty to afresh anticipatory bail vide order dated 24.07.2024 passed by Hon'ble Mr. Justice Vikram D. Chauhan.

3. Learned counsel for the applicant submits that the allegations against the accused persons that on the basis of forged documents, the property of the applicant

are being sold. Learned counsel for the applicant submits that the applicant is a Corporator and is not a beneficiary from the alleged transaction. He further submits that only role assigned to the applicant is that when Form RC9 was prepared concerned Lekhpal had given his report and asked the applicant to verity the signature of his cousin Vipin Mishra and Amit Singh. He further submits that the applicant had verified the signature and has no concerned with the alleged offence. Learned counsel further argued that applicant is innocent and he has an apprehension that he may be arrested in the above-mentioned case, whereas there is no credible evidence against him. It has further been submitted that no coercive process has been issued against the applicant so far. It was also submitted that applicant undertakes to co-operate during investigation and trial and he would appear as and when required by the investigating agency or Court. It has been stated that in case, the applicant is granted anticipatory bail, he shall not misuse the liberty of bail and will co-operate with the investigation and would obey all conditions of bail.

4. Learned A.G.A. and learned counsel for first informant have opposed the application for anticipatory bail. Learned counsel further submits that first anticipatory bail application of the applicant was rejected on 24.07.2024 and prior to it, process under Section 82 Cr.P.C. has been issued against the applicant. Learned counsel further argued that the applicant is absconding and by the efflux of time proclamation under Section 82 Cr.P.C. is running against the applicant, therefore the applicant is not entitled for anticipatory bail.

5. In the matter of **Siddharam Satlingappa Mhetre v. State of Maharashtra**, (2011) 1 SCC 694, it has been held by Hon'ble Supreme Court that while deciding anticipatory bail, Court must consider nature and gravity of accusation, antecedent of accused, possibility of accused to flee from justice and that Court must evaluate entire available material against the accused carefully and that the exact role of the accused has also to be taken into consideration.

6. Further the Hon'ble Apex Court in the matter of ***Madhya Pradesh Vs. Pradeep Sharma reported in 2014 (2) SCC 171*** has held that a person against whom the proclamation has been issued and the proceeding under Sections 82/83 Cr.P.C. have been initiated, is not entitled to the benefit of anticipatory bail. In paragraph no.14 to 16, it has been observed as follows:-

"14. In order to answer the above question, it is desirable to refer to Section 438 of the Code which reads as under:

"438. Direction for grant of bail to person apprehending arrest.— (1) Where any person has reason to believe that he may be arrested on accusation of having committed a nonbailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that court may, after taking into consideration, inter alia, the following factors, namely—

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) the possibility of the applicant to flee from justice; and

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application."

The above provision makes it clear that the power exercisable under Section 438 of the Code is somewhat extraordinary in character and it is to be exercised only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty.

15. In ***Adri Dharan Das v. State of W.B. [(2005) 4 SCC 303]*** this Court considered the scope of Section 438 of the Code as under : (SCC pp. 311-12, para 16)

"16. Section 438 is a procedural provision which is concerned with the personal liberty of an individual who is entitled to plead innocence, since he is not on the date of application for exercise of power under Section 438 of the Code convicted for the offence in respect of which he seeks bail. The applicant must show that he has 'reason to believe' that he may be arrested in a non-bailable offence. Use of the expression 'reason to believe' shows that the belief that the applicant may be arrested must be founded on reasonable grounds. Mere 'fear' is not 'belief' for which reason it is not enough for the applicant to show that he has some sort of vague apprehension that someone is going to make an accusation against him in pursuance of which he may be arrested. Grounds on which the belief of the applicant is based that he may be arrested in non-bailable offence must be capable of being examined. If an application is made to the High Court or the Court of Session, it is for the court concerned to decide whether a case has been made out for granting of the relief sought. The provisions cannot be invoked after arrest of the accused. A blanket order should not be generally passed. It flows from the very language of the section which requires the applicant to show that he has reason to believe that he may be arrested. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. Normally a direction should not issue to the effect that the applicant shall be released on bail 'whenever arrested for whichever offence whatsoever'. Such 'blanket order' should not be passed as it would serve as a blanket to cover or protect any and every kind of allegedly unlawful activity. An order under Section 438 is a device to secure the individual's liberty, it is neither a passport to the commission of crimes nor a shield

against any and all kinds of accusations likely or unlikely. On the facts of the case, considered in the background of the legal position set out above, this does not prima facie appear to be a case where any order in terms of Section 438 of the Code can be passed."

16. Recently, in Lavesh v. State (NCT of Delhi) [(2012) 8 SCC 730] , this Court (of which both of us were parties) considered the scope of granting relief under Section 438 vis-a-vis a person who was declared as an absconder or proclaimed offender in terms of Section 82 of the Code. In para 12, this Court held as under : (SCC p. 733)

"12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as 'absconder'. Normally, when the accused is 'absconding' and declared as a 'proclaimed offender', there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail."

It is clear from the above decision that if anyone is declared as an absconder/proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail."

7. Recently, Hon?ble Apex Court, relying upon decision of *Madhya Pradesh Vs. Pradeep Sharma (supra) as well as Lavesh Vs. State (NCT of Delhi) (supra)* has held in the matter of ***Prem Shanker Prasad Vs. The State of Bihar and another reported in 2022 (14) SCC 516,*** that if any one is declared absconder/proclaimed offender in term of Section 82 Cr.P.C., is not entitled to relief of anticipatory bail even in the business transaction also there may be offences under I.P.C. more particularly Sections 406, 420, 467, 468 etc. what is required to be considered is nature of allegation and accusation and not that nature of accusation arising out of a business transaction.

8. In the instant case, perusal of the record shows that specific allegation has been levelled against the applicant in commission of offence and that the accused-applicant is absconding till date, against whom proclamation under Section 82 Cr.P.C., has also been issued, considering the settled principle of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicant and all attending facts and circumstances of the case, without expressing any opinion on merit of the case, no case for anticipatory bail is made out.

9. The anticipatory bail application is rejected.

(2025) 8 ILRA 411
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 05.08.2025

BEFORE

THE HON'BLE KRISHAN PAHAL, J.

Criminal Misc. Bail Application No. 14940 of 2023

Rana Pratap Singh ...Applicant
Versus
State of U.P. ...Opposite Party

Counsel for the Applicant:
Pradeep Kumar Mishra, Sr. Advocate

Counsel for the Opposite Party:
G.A., Shambhavi Nandan

Issue for Consideration

Matter pertains to whether, in view of applicant's prolonged incarceration and the grounds urged in second bail application, any new and compelling circumstance exists to justify grant of bail u/s 439 Cr.P.C., despite earlier rejection of bail on merits, particularly when prosecution evidence stands substantially concluded, trial is at its conclusive stage, and applicant is alleged to have adopted dilatory tactics during trial.

Headnotes

Penal Code, 1860 - ss. 147, 148, 149, 504, 506, 302, 307, 336/34 - Arms Act, 1959 - s. 27/30 - Constitution of India, 1950 - Article 21 - Code of Criminal Procedure, 1973 - ss. 231(2), 311, 313 - Applicant, who is facing trial for serious offences and presently in judicial custody, moved second bail application u/s 439 Cr.P.C. after his earlier bail plea rejected on merits - It was submitted on behalf of applicant that he has remained incarcerated for considerable period and trial has substantially progressed with major portion of prosecution evidence already recorded, hence, continued detention is no longer justified - Prosecution, opposed relief by asserting that applicant previously sought adjournments on multiple occasions and adopted dilatory tactics, thereby contributing to prolongation of trial proceedings, and no fresh circumstance exists to release him on bail - Accordingly, prayer for bail required to be examined on existence of any new ground, stage of trial, and conduct of applicant.

Held: Trial record reveals that delay was primarily due to the dilatory conduct of applicant's counsel, though part of delay is also attributable to prosecution - As contended by learned counsel for informant and learned A.G.A., prosecution evidence stands concluded, and case is now fixed for recording accused's statement u/s 313 Cr.P.C. signifying that trial is nearing its conclusion - Learned Senior Counsel for applicant submitted that application u/s 231(2) and 311 Cr.P.C. for re-examination of PW-6, was rejected by trial court and is to be challenged before High Court - Though such action may further delay trial, delay cannot be attributed to prosecution - Considering rival submissions, absence of any new ground for bail, near conclusion of trial, dilatory tactics adopted by applicant's counsel and applicant's criminal antecedents including one lodged by jail authorities during trial, thus, no ground to grant bail to applicant - Bail application, being devoid of merit, is hereby rejected. [Paras 24 to 28] (E-13)

Case Law Cited

Union of India v. K.A. Najeeb, **AIR 2021 SC 712;** X v. State of Rajasthan & Anr. **reported in 2024 INSC 909;** Vinod Kumar v. State of Punjab, **2015 (3) SCC 220;** Hussain and Another v. Union of India, **(2017) 5 SCC 702** - **referred to**

List of Acts

Penal Code, 1860; Code of Criminal Procedure, 1973; Arms Act, 1959; Constitution of India, 1950

List of Keywords

Second bail application; Incarceration; Advocate; Article 21; Discharge application; Prosecution evidence is complete; Stage of trial; Delayed primarily due to accused; Fresh / New ground; Dilatory tactics; Rejection on merits; Criminal antecedents; Statement of other witnesses; Charge framed.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Bail Application No. - 14940 of 2023

From Judgment and Order of Special Judge (E.C. Act)/Additional Session Judge, Azamgarh

in Case Crime No.81 of 2019 in Sessions Trial No.237 of 2019

Appearances for Parties

Advs. for the Applicant:
Pradeep Kumar Mishra, Sr. Advocate

Advs. for the Opposite Party:
G.A., Shambhavi Nandan

(Delivered by Hon'ble Krishan Pahal, J.)

1. List has been revised.

2. Heard Sri Amrendra Nath Singh and Sri Vinay Saran, learned Senior counsels assisted by Sri Pradeep Kumar Mishra, learned counsel for applicant and Dr. S.B. Singh, Advocate holding brief of Sri Shambhavi Nandan, learned counsel for the informant as well as Sri Sunil Kumar, learned A.G.A. for the State and perused the material placed on record.

3. The present bail application has been filed by the applicant in Sessions Trial No.237 of 2019, arising out of Case Crime No.81 of 2019, under Sections 147, 148, 149, 504, 506, 302, 307, 336/34 I.P.C. and 27/30 Arms Act, Police Station- Devgaon, District- Azamgarh with the prayer to enlarge him on bail.

4. This is the second bail application on behalf of the applicant. The first bail application was rejected by the Co-ordinate Bench of this Court vide order dated 14.11.2022 passed in Criminal Misc. Bail Application No.55798 of 2019 and the following order was passed:-

"Supplementary affidavit filed today is taken on record.

Before arguing on the bail application, learned counsel for the first informant placed before this court an order dated 07.09.2020 passed by the coordinate bench of this Court, wherein it is mentioned that in presence of both the parties after conclusion of arguments on the bail application, the bail application came to be rejected. Thereafter, on the same day, an application was handed over to the Private Secretary of the Court at about 4.45 p.m. requesting for rehearing the matter citing glitches in the video conferencing. The objection was not raised during the course of the argument. The copy of that application was supplied without serving a copy of the same to the learned A.G.A. or the learned counsel for the first informant, so it was observed by that bench that the practice adopted by the learned counsel for the applicant was objectionable and it was found that as the court had expressed its opinion, it would not be proper for the court to rehear the matter afresh and the matter was fixed for 15th September, 2020 before the appropriate court. It was also noted that the matter shall not be treated as part heard or tied up to the bench.

When I went through the record, it was found that there is no bail order on record. It was admitted by both the counsel that though, the order was dictated to the Private Secretary but it was not typed and before the order being typed the application was moved for rehearing of the matter and on that application the above order dated 07.09.2020 was passed.

Thus, it is clear that the bail application was not disposed of and as the bench has been changed and the bail application is being heard afresh, so the application moved in this regard on 07.09.2020 shall be considered disposed of.

With the consent of learned counsel for the applicant and learned

counsel for the first informant, the bail application of the applicant - Rana Pratap Singh is heard afresh.

The bail application under Section 439 Cr.P.C. has been moved by the applicant - Rana Pratap Singh to enlarge him on bail in Case Crime No. 81 of 2019 under Sections 147, 148, 149, 504, 506, 302, 307, 336/34 I.P.C. and 27/30 Excise Act, Police Station Devgaon, District Azamgarh.

It is submitted by the learned counsel for the applicant that the incident is dated 07.04.2019 at 10.00 am, the FIR has been lodged on the same day at 21.18 hours. This delay of 11 hours is not properly explained. As per FIR the present applicant is said to have fired at Anil Singh, which resulted into his death and the fire of Nitesh Singh is said to have hit Divyanshu, who got injured by that fire. Admittedly, out of nine named accused persons, three persons Veer Bahadur Singh, Durgesh Singh and Pappu Singh have been exonerated during investigation and out of rest accused persons, who have been chargesheeted, except the present applicant, all have been bailed out by the coordinate bench of this Court. So, it is argued that as three accused persons have been exonerated at the stage of investigation, the evidence of the informant was not found reliable by the Investigating Officer. It is also argued that as per site plan, the distance between the house of the parties is 30-35 paces and as per post mortem report, on injury no. 1 blackening is found. If the fire was made from a distance of 30-35 paces the blackening on the wound was not possible. Again, it was a sudden quarrel. There was no intention to cause the death of any person. Maximum the case can be considered under Section 304 IPC. It is further argued that during incarceration period of the applicant lost his one son-in-law who died during Covid. The marriage of his second daughter is fixed on 2nd December, 2022. His criminal history of one case has been well explained that he has been acquitted in that case on 12.04.2022. The statements of the witnesses of fact have been recorded in the trial court. The accused is languishing in jail since 09.04.2019. Hence, prayer for bail is made.

The prayer of bail is opposed by the learned counsel for the first informant. It is submitted by him that the case of the present accused is distinguishable from all the other accused persons, as this is the main assailant, who had made the fire from his licensee gun and the fire hit Anil Singh resulting into his death. This licensee gun has been recovered by the police from the possession of the applicant. The FSL report is available on record. It is pointed out by the learned counsel for the first informant that four empty cartridges which were marked as EC 1, 2, 3 and 4, were found to be discharged from the licensee gun of the present applicant. The statement of the injured Divyanshu is also on record, wherein he has stated that when the construction was in progress in the house of the first informant, the present applicant along with his brother tried to intervene and when the matter was resisted, the present applicant and all the accused persons started abusing and pelting stones. During this period, when all the accused started firing, the present applicant ran towards his house and from his roof top he made a fire from his licensee gun aiming Anil, who fell down on the ground. The injured was taken to the hospital, he was referred for Varanasi and there he was declared brought dead.

Further, the attention of the court is drawn towards the site plan of Original Civil Suit No. 1082 of 1992, Rana Pratap Singh Vs. Shiv Murat and Ram Murat, wherein the pathway between both the houses is shown to be 09 feet wide. It is argued that this mid way of 09 feet with the connivance of the applicant, who happens to be lawyer, is shown in the site plan as 35 paces. Just to create pressure upon the first informant and his family members on 13.05.2019 an FIR No. 133/2019 was lodged against them by the accused Shailendra Pratap Singh. On the basis of judgement of Apex Court in Sadayappan @ Ganesan Vs. State, represented by Inspector of Police, 2019 3 SCC (Cri) 843, it is argued that as the post mortem report and chemical analysis report confirm the gun shot, the ownership of the alleged gun, which was recovered at the instance of the applicant, is not disputed, hence bail application is prayed to be rejected.

It is, however, argued by the learned counsel for the first informant that as per FIR, only single fire is attributed to the present applicant, while as per FSL report, four empty cartridges were produced there. As per post mortem report, total six injuries were found on the person of the deceased including five fire arm entry wounds, so the prosecution cannot take benefit of the FSL report.

From perusal of the record, the case of present applicant appears to be distinguishable from that of the other accused persons as the role of causing death of Anil is attributed to the present applicant only. Out of five fire wounds, as per post mortem report, blackening is found only on one injury, while in the rest fire injuries, no blackening or tattooing is found. As per FSL report, the empty cartridge is found to be fired from the licensee gun of the present applicant. Divyanshu, the injured person, whose presence cannot be denied on the spot, has also confirmed the version of the first information report. The present applicant is the main assailant.

Thus, after perusing the record in the light of submission advanced at the bar, taking overall view of the facts and circumstances of the case, the nature of accusation and the period of detention already undergone without commenting on the merit of the case, I do not find it a fit case for bail.

The bail application is hereby rejected."

ARGUMENTS ON BEHALF OF APPLICANT:

5. The present bail application is being pressed on the new ground of period of incarceration as the applicant is languishing in jail since 9.4.2019, as such, he is incarcerated for about 06 years and 04 months. The fundamental rights of the applicant enshrined under Article 21 of the Constitution of India stand violated.

6. Much reliance has been placed on the judgment of the Supreme Court in the case of **Union of India vs. K.A. Najeeb, AIR 2021 SC 712,** wherein it has been observed as under:-

"We are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period

spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail."

7. The applicant is an advocate and his criminal antecedents have been explained which were minor offences. He is neither a hardened criminal nor a flight risk.

8. The witnesses of fact have already been examined and there is no likelihood of the applicant tampering with evidence. Only the Investigating Officer, PW-9 remains to be cross-examined by the counsel of the applicant.

9. As far as merits of the case are concerned, it is alleged that applicant had fired from a distance of 30-35 paces, as such, the distance must be about 70-75 feet. The postmortem report falsifies the said story of the prosecution as the injury no.1 indicates blackening from which it can be inferred that the distance of firing must be less than 8-10 feet.

10. The Investigating Officer was examined as PW-6 in trial. The opportunity to cross-examine him by several accused persons has been closed by the trial judge. The counsel for the applicant had filed an application to recall the said witness PW-6 by invoking powers U/s 231(2) and 311 Cr.P.C. and the same has been rejected by the trial court vide order dated 4.8.2025.

11. The applicant has to challenge the said order dated 4.8.2025 as the valuable right of the applicant to cross-examine one of the most important witness, who happens to be the Investigating Officer, stands violated.

12. There were three other injured persons in the instant case, namely, Arun, Divyanshu and Shivchand Saroj and the star eye-witnesses have been withheld by the prosecution as they have been discharged by moving an application on 10.3.2022.

13. The applicant is ready to cooperate with trial. In case, the applicant is released on bail, he will not misuse the liberty of bail.

ARGUMENTS ON BEHALF OF INFORMANT:

14. The present bail application has been opposed by learned counsel for the informant on the ground that in the instant case the first charge-sheet was filed on 8.7.2019 against five accused persons including the applicant. The second charge-sheet was filed against two other accused persons. The charge was framed on 8.8.2019 against the accused persons mentioned in the first charge-sheet including the applicant and the charge against the other accused persons mentioned in the second charge-sheet was framed on 4.1.2021.

15. The applicant and other accused persons had repeatedly tried to interfere in the administration of justice as they had adopted every dilatory tactics to get the matter adjourned on one pretext or another. The statement of witnesses could not be completed as the case was adjourned at the behest of counsel of the applicant and other accused persons.

16. The cross-examination of PW-1 was adjourned on 13 occasions and even the statement of other witnesses were also not recorded due to the adjournments at the

behest of counsel of accused persons. The cross-examination of PW-9 was complete on 31.7.2025 and the case was fixed for recording of statement of accused persons U/s 313 Cr.P.C. on 2.8.2025.

17. An application no.158-Kha was moved U/s 231(2) and 311 Cr.P.C. for re-examination of PW-6, Sunil Chandra Tiwari (Investigating Officer). The said application was dismissed by the trial court vide order dated 4.8.2025 and the case has been fixed for recording of statement of accused U/s 313 Cr.P.C. on 6.8.2025, i.e. tomorrow.

18. The applicant is a notorious person with criminal state of mind as he used to threat witnesses and other persons by using his mobile in jail premises and an FIR No.364 of 2022 was instituted against the applicant U/s 42 & 43 of the Prisons Act, 1894 for the reason that applicant used to call several persons from jail, as such, he was transferred from Azamgarh jail to Pilibhit jail. This forced the prosecution to give up their injured witnesses.

19. The prosecution evidence is complete and the witnesses have deposed against the applicant, as such, he is not entitled for bail rather the trial may be expedited stipulating some fixed time period for its disposal.

ARGUMENTS ON BEHALF OF STATE:

20. It is argued by learned A.G.A. that the trial is at its conclusive end and the case is fixed for recording of statement of accused u/s 313 Cr.P.C. and much reliance has been placed on the judgment of the Supreme Court in case of ***X vs. State of Rajasthan & Anr. reported in 2024 INSC 909,*** wherein it has been held that once the trial has commenced, it should be allowed to reach to its final conclusion, which may either result in conviction or acquittal of the accused. The bail should not be normally granted to the accused after the charge has been framed. It should also not be granted by looking into the discrepancies here or there in the deposition.

21. It is further argued by learned A.G.A. that the said arguments regarding distance and blackening of injury no.1 were argued at the time of adjudication of first bail application of the applicant and there is no new ground for granting bail to the applicant.

22. It is also argued that the application for discharging the three injured witnesses as mentioned by learned Senior Counsel for the applicant was also filed by the prosecution well before the disposal of said bail application dated 14.11.2022.

STATUS OF TRIAL:

23. This Court had called for status report of trial from the concerned trial court. The report of Special Judge (E.C. Act)/Additional Session Judge, Azamgarh dated 25.7.2025 indicates as follows:-

(i). The examination-in-chief of PW-1 was recorded on 31.10.2019 and he was partially cross-examined on 17.1.2020. After the committal of another Session Trial No.109 of 2020 and the instant Session Trial No.237 of 2019 were consolidated and de-novo trial was started. As such, examination-in-chief of PW-1 was again recorded on 7.9.2021. The cross-examination of PW-1 by the counsel of the applicant was done on 14.10.2021, 26.10.2021, 28.10.2021, 8.11.2021,

15.11.2021, 23.11.2021, 24.11.2021, 3.12.2021 and it could be concluded on 6.12.2021.

(ii). The statement PW-2 was recorded on 22.2.2022, 23.2.2022 and 24.2.2022.

(iii). The statement of PW-4 was recorded on 9.5.2022 and then on 17.6.2022 and 5.12.2022.

(iv). The statement of PW-6, Sunil Chandra Tiwari (Investigating Officer) was recorded on 26.4.2023, 7.3.2024, 1.4.2024, 24.6.2024, 7.5.2025 and 16.5.2025.

(v). The said report also indicates that the case was fixed for cross-examination of PW-9, Vimlesh Kumar Maurya (Inspector) on 28.7.2025.

CONCLUSION:

24. The aforesaid status report of trial indicates that the trial was delayed primarily due to the dilatory tactics of the counsel for the applicant. Although the delay can be attributed to the prosecution also.

25. As argued by learned counsel for informant and learned A.G.A., the prosecution evidence is complete and the same has been closed. The case is fixed for recording of statement of accused U/s 313 Cr.P.C. on 6.8.2025, which indicates that trial is at its conclusive end.

26. Learned Senior Counsel for the applicant has argued that the application no.158-Kha moved by the applicant U/s 231(2) and 311 Cr.P.C. for re-examination of PW-6, Sunil Chandra Tiwari (Investigating Officer) was rejected by the trial court vide order dated 4.8.2025 and it has to be challenged before this Court. The said act shall further delay the adjudication of trial but the said delay cannot be attributed to the prosecution.

27. After hearing learned counsel for the parties, taking into consideration the rival submissions and the fact that there is no new ground to grant bail to the applicant coupled by the fact that trial is at its conclusive end and dilatory tactics were adopted by the counsel of applicant during trial and the applicant having criminal antecedents to his credit including one filed by the jail authorities against him during trial, I do not find it a fit case for grant of bail to the applicant.

28. The bail application is found devoid of merits and is, accordingly, ***rejected***.

29. However, it is directed that the aforesaid case pending before the trial court be decided expeditiously in view of the principle as has been laid down in the recent judgments of the Supreme Court in the cases of ***Vinod Kumar vs. State of Punjab; 2015 (3) SCC 220 and Hussain and Another vs. Union of India; (2017) 5 SCC 702,*** if there is no legal impediment.

30. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

(2025) 8 ILRA 419
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 29.08.2025

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.
THE HON'BLE SYED QAMAR HASAN RIZVI, J.

Contempt Appeal No. 3 of 2025

Pradeep Kumar Dubey ...Appellant
Versus
Ram Chandra Asthana ...Respondent

Counsel for the Appellant:
Abhinav Narayan Trivedi

Counsel for the Respondent:
Shyam Mohan Pradhan, Abhinav Singh, Pooja Singh, Shashank Singh

Issue for Consideration
The Hon'ble Contempt Court while passing the impugned order dated 14.08.2025 has directed the appellant to appear on 01.09.2025 for orders on sentence without recording any finding that the disobedience, if any, was willful, intentional, knowingly, calculated and not casual, accidental, bona fide or any intentional act or genuine inability or negligent act or with a justifiable excuse

Head Notes
The Contempt of Courts Act, 1971- Sections 12 & 19 - Impugned order though not an order of punishment but it is of such a nature that is tantamount to entail punishment - Date fixed 01.09.2025 for sentence meaning thereby that the punishment has already been made definite - No opportunity afforded to the appellant file his response to the charge framed against him - Impugned order modified to the extent that a week's time be granted to the appellant herein to file response to the charge framed against him and thereafter fix the case for orders. Petition disposed of.

Held- Impugned order dated 14.08.2025 though not an order of punishment but at the same time, it is of such a nature that is tantamount to entail punishment - Perusal of the aforesaid order reflects that the learned Single Judge has fixed 01.09.2025 for sentence meaning thereby that the punishment has already been made definite - The appellant has not been afforded due opportunity to file his response to the charge framed against him, without adverting on the question of maintainability or otherwise on the merits of the case, the impugned order may be modified only to the extent that a week's time be granted to the appellant herein to file response to the charge framed against him and thereafter fix the case for orders. **(Para 9, 10 & 11)** (E-15)

Case Law Cited
Subhash Chandra versus Srikant Goswami Posted Managing Director, Sahkari Gram Vikas Bank Ltd. and Others 2024 SCC OnLine All 5435; Ajay Kumar Bhalla and others versus Prakash Kumar Dixit, 2024 SCC OnLine SC 1874; Midnapore Peoples' Coop. Bank Ltd. and others versus Chunnilal Nanda and others, (2006) 5 SCC 399

List of Acts
The Contempt of Courts Act, 1971

List of Keywords
Orders on sentence; without recording any finding; Disobedience willful, intentional, knowingly; Punishment has already been made definite; No opportunity to file response to the charge framed

Case Arising From
Order dated 14.08.2025 passed by the learned Single Judge in Contempt Application (Civil) No. 656 of 2014 (Ram Chandra Asthana versus Pradeep Kumar Dubey Prin. Secy. U.P. Legislative Assembly Secy).

Appearances for Parties
Counsel for Appellant(s) : Abhinav Narayan Trivedi
Counsel for Respondent(s) : Shyam Mohan Pradhan, Abhinav Singh, Pooja Singh, Shashank Singh

(Delivered by Hon'ble Syed Qamar Hasan Rizvi, J.)

1. Heard Sri Jaideep Narayan Mathur, learned Senior Advocate assisted by Sri Abhinav Narayan Trivedi, learned counsel for the appellant and Sri Abhinav Singh, learned counsel for the respondent.

2. By means of the present appeal filed under Section 19 of the Contempt of Courts Act, 1971, the appellant has assailed the order dated 14.08.2025 passed by the learned Single Judge in Contempt Application (Civil) No. 656 of 2014 (Ram Chandra Asthana versus Pradeep Kumar Dubey Prin. Secy. U.P. Legislative Assembly Secy).

3. Learned Senior Advocate appearing on behalf of the appellant has assailed the impugned order dated 14.08.2025 passed by the learned Single Judge in exercise of power under Section 12 of the Contempt of Courts Act, 1971 on several grounds. His contention is that the contempt jurisdiction is quasi-criminal and requires willful disobedience to be proved beyond reasonable doubt, but in the instant case, the Hon'ble Contempt Court while passing the impugned order dated 14.08.2025 has directed the appellant to appear on 01.09.2025 for orders on sentence without recording any finding that the disobedience, if any, was willful, intentional, knowingly, calculated and not casual, accidental, bona fide or any intentional act or genuine inability or negligent act or with a justifiable excuse. He further contended that the impugned order dated 14.08.2025 and the order dated 15.05.2025 are beyond the jurisdiction of the Hon'ble Contempt Court as it amounts to passing the order deciding the merits of the dispute between the parties and correctness of the order passed in compliance of the judgment passed in the writ petition. He very emphatically argued that it is the settled proposition of law that the court exercising contempt jurisdiction is not entitled to enter into the questions which have not been dealt with and decided in the judgment and order, violation of which is alleged by the contempt applicant.

4. Sri Abhinav Singh, learned counsel appearing on behalf of the respondent has raised preliminary objection regarding maintainability of the present appeal. He submits that Appeal under Section 19 lies as of right from any order or decision of the High Court in exercise of its jurisdiction to punish for contempt. In the instant case, the learned Single Judge has simply framed the charges and has granted opportunity to the appellant herein to file his response. To substantiate his argument, he relied upon the judgment passed by the Hon'ble Apex Court in the case of **Midnapore Peoples' Coop. Bank Ltd. and others versus Chunnilal Nanda and others,** reported in **(2006) 5 SCC 399**, wherein the Hon'ble Supreme Court has been pleased to hold that an appeal under Section 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt that is an order imposing punishment for contempt.

5. For ready reference, paragraph no.11 of the aforesaid judgment is quoted herein-below:-

"11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarized thus :

I. An appeal under Section 19 is maintainable only against an order or decision of the High Court passed in

exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.

II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.

III. In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of 'jurisdiction to punish for contempt' and therefore, not appealable under Section 19 of CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under Section 19 of the Act, can also encompass the incidental or inextricably connected directions.

V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases).

The first point is answered accordingly."

6. Further, to strengthen his argument/objection, he placed reliance on the para no. 18 of the judgment passed by the Hon'ble Supreme Court in the case of **Ajay Kumar Bhalla and others versus Prakash Kumar Dixit,** reported in **2024 SCC OnLine SC 1874.** Paragraph no.18 of the same is quoted herein-below:-

"18 The Division Bench has lost sight of this aspect. The Division Bench, in paragraph 52, noted the submission of the respondent that the judgment of the Single Judge should not be construed as crystallizing any right in favour of the respondent and should only be confined to the question as to whether the appellants herein had committed a willful disobedience of the order of the Division Bench dated 24 December 2019. The Division Bench accepted this submission and observed that "in view of our understanding of the impugned judgment, as noted above, the learned Single Judge has not decided any dispute regarding the rights and obligations of the parties" other than adjudicating on the issue of contempt. The judgment of the Division Bench lost sight of the fact that whether the appeal was maintainable would have to be construed on a plain reading of the judgment of the Single Judge. Two aspects were covered by the judgment of the Single Judge :

Firstly, a finding that the appellants were guilty of contempt of the

order dated 24 December 2019; and Secondly, that the respondent was entitled to promotion to the rank of IG.

The first aspect is not amenable to an appeal under Section 19 at the present stage. The finding that the respondent was entitled to promotion to the rank of IG would be amenable to an appeal in terms of the law laid down by this Court in Midnapore Peoples' Coop. Bank Ltd. (supra), more particularly in paragraph 11(V) which has been extracted above."

7. Precisely, the submission of the learned counsel for the respondent is that the present appeal is directed against an interlocutory order inasmuch as that by the impugned order dated 14.08.2025, the Contempt Court has not punished the appellant but has simply fixed the case for 01.09.2025 for orders on sentence by granting the appellant herein an opportunity to file his response and as such in the light of the law laid down by the Hon'ble Apex Court in the case of **Midnapore Peoples' Coop. Bank Ltd. and Ajay Kumar Bhalla *(supra),*** the present appeal is liable to be dismissed being not maintainable.

8. Confronting the aforesaid objection regarding the maintainability of the instant appeal, Shri J.N. Mathur, learned Senior Advocate submits that the learned Single Judge while passing the impugned order in contempt jurisdiction has exceeded its jurisdiction by entering into the questions which have not been dealt with and decided in the judgment and order, violation of which is alleged by the contempt-applicant and as such the impugned order dated 14.08.2025 is not sustainable being passed by the learned Contempt Court exceeding its jurisdiction. He further submits that by means of the impugned order dated 14.08.2025, the learned Contempt Court by fixing 01.09.2025 as the date for orders on sentence, has deprived the petitioner to defend the charge framed against him and as such, the impugned order is bad in law being against the principles of natural justice. He very categorically submitted that the tenor of the impugned order dated 14.08.2025 is such that the learned Contempt Court without affording a reasonable opportunity of defence to the appellant has taken a definitive action to penalize the appellant herein. In support of his contention, he relied upon the judgment passed by the Division bench of this Court in the case of **Subhash Chandra versus Srikant Goswami Posted Managing Director, Sahkari Gram Vikas Bank Ltd. and Others,** reported in **2024 SCC OnLine All 5435.** He drew the attention of this Court towards the paragraph no. 69 of the aforesaid judgment which is extracted herein-below for ready reference:

"69. The pith and substance of the aforesaid discussion, the legal principles involved and circumstances when an appeal may lie under Section 19 of the Contempt of Courts Act, 1971 and when a Special Appeal may lie from an order passed in contempt jurisdiction can be summarized as under:-

(A) Section 19 (1) of the Contempt of Courts Act can be invoked only when the Contempt Court has exercised its jurisdiction to punish for contempt. The essence of this provision is to provide a remedy against decision where the court has taken a definitive action to penalize a contemnor. This Includes orders that impose fines, imprisonment, or other punitive measures directly related to the contemptuous behavior. Interlocutory orders, which do not entail punishment for

contempt, do not fall within the ambit of Section 19. Such orders may include directions to produce documents, file affidavits, or procedural directives necessary for the continuation of the contempt proceedings. These are routine judicial actions that facilitate the progress of the case but do not constitute a final determination on the issue of contempt. Routine orders passed during the pendency of contempt proceedings are also, excluded from the scope of Section 19. These orders are typically procedural and administrative in nature, ensuring that the proceedings move forward without addressing the substantive issues of the original case or the merits of the contempt.

(B)....."

9. Having heard the learned counsel for the parties and perused the record, this Court finds that the impugned order dated 14.08.2025 though not an order of punishment but at the same time, it is of such a nature that is tantamount to entail punishment. For ready reference, the operative portion of the impugned order dated 14.08.2025 is quoted hereinbelow:-

"13. In view of above facts and discussions, the affidavit of compliance dated 14.07.2025 filed by the respondent is hereby rejected. Following charge is framed against the respondent/contemnor under Section 12 of the Contempt of Courts Act, 1971.

"Why the respondent/contemnor, Mr. Pradeep Kumar Dubey, Principal Secretary, U.P. Legislative Assembly, Secretariat, Lucknow be not punished for willfully flouting the order of the writ Court dated 04.04.2013 passed in Writ Petition (S/S) No. 3340 of 2000, by not giving notional promotion to the applicant on the posts of Section Officer, Under Secretary, Deputy Secretary, Joint Secretary and Special Secretary, those were given to the juniors to the applicant, namely, Radhey Shyam Yadav and Sarvoday Kumar Gupta."

14. List this case on 01.09.2025 for order on sentence.

15. In the meantime, respondent/contemnor may file response.

16. On the next date, respondent/contemnor shall appear before this Court."

10. A bare perusal of the aforesaid order reflects that the learned Single Judge has fixed 01.09.2025 for sentence meaning thereby that the punishment has already been made definite.

11. Taking into consideration the averments made by the learned Senior Advocate that the appellant has not been afforded due opportunity to file his response to the charge framed against him, without adverting on the question of maintainability or otherwise on the merits of the case, the impugned order may be modified only to the extent that a week's time be granted to the appellant herein to file response to the charge framed against him and thereafter fix the case for orders.

12. Accordingly, the appellant hereto, who is respondent/contemnor in the Contempt Application in question, is granted a week's time from today to file his response in terms of the order dated 14.08.2025 (supra) passed by the learned Contempt Court in the Contempt Application. It is expected from the learned

Contempt Court to pass any appropriate order in the Contempt Application considering the explanation/response of the contemnor.

13. The Contempt Application in question would be listed on **08th of September, 2025** for orders.

14. Before parting with, it is made clear that we have neither entered into the merits of the case nor have interfered with the impugned order dated 14.08.2025 (supra) so the learned Contempt Court may pass any appropriate order in the Contempt Application in question.

15. This appeal is hereby ***disposed of*** in limine in terms of the aforesaid order.

16. No order as to cost.

(2025) 8 ILRA 424
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 20.08.2025

BEFORE

THE HON'BLE SHREE PRAKASH SINGH, J.

Criminal Appeal No. 2389 of 2025

Dwarika & Anr. ...Appellants
Versus
State of U.P. ...Respondent

Counsel for the Appellants:
Dinesh Kumar Tripathi, Kalapanath, Vijay Kumar

Counsel for the Respondent:
G.A., Akhilesh Pratap Singh, Pradeep Kumar Singh Vats

Issue for Consideration

The matter pertains to joint trials for offenses arising from the same transaction, where one trial is under a Special Act (SC/ST, Act 1989) and the other is under the Indian Penal Code.

Headnotes

Criminal matter-Code of Criminal Procedure,1973-S. 374(2) r/w S. 389-Indian Penal Code,1860-Ss. 307, 323, 504, 506-SC/ST(Prevention of Atrocities) Act,1989-S. 14-A-Challenge to-Conviction-Maintainability of-Informant raised a preliminary objection to the appeal's maintainability-The outcome of the trial for charges under the Special Act is appealable only under the provisions of the Special Act(Section 14-A of the Act,1989)-The outcome of the trial for charges under the IPC is appealable under the general procedure of the Cr.PC (section 374(2))-The court found the objection to the maintainability of the instant appeal to be ruled out, and the appeal was held to be maintainable.

Held

The court held that the two issues-joint trial for offenses arising from the same transaction and the procedure for challenging the outcome-should not be intermingled-The appeal provisions in Section 14-A of the SC/ST Act,1989, start with a non-obstante clause, providing an exclusive remedy for filing an appeal for those offenses-It is well settled that each case has to be decided on its own merit and the evidence recorded in one case cannot be used in its cross-case-The trial which is concluded for the charges under an special act, will be apeallable in the given provisions in special law and the other outcome of the trial, for the charges under the IPC. is appellable under CrPC-The instant appeal is maintainable.(Para 8 to 20) (E-6)

Case law Cited

Nathi Lal Vs St. of U.P.(1990) SCC (Cri) 638,Nasib Singh Vs St. of Punj. & Anr(2022)2 SCC 89,A.T. Mydeen & Anr Vs Asst. Commr. Customs Dept.(2022) 14 SCC 392,Shailendra Yadav @ Salu Vs St. of U.P. (CRLA No. 2174 of 2024 decided on 24-01-2025)-referred to.

List of Acts

Criminal Procedure Code,1973, Indian Penal Code,1860, SC/ST(Prevention of Atrocities) Act,1989

List of Keywords

SC/SC Act, maintainability, joint trial, Preliminary objection, cross-case, Same transaction.

Case Arising From

CRIMINAL APPELLATE JURISDICTION-CRIMINAL APPEAL No. – 2389 of 2025
From the Judgment and Order dated 20.08.2025 of the High Court of Judicature at Allahabad.
Dwarika & Anr. Vs. State of U.P. Thru. Prin. Secy. Home Lko.

Appearances for Parties

Advs. for Appellant:
Dinesh Kumar Tripathi, Kalapanath, Vijay Kumar
Advs. for Respondent:
G.A., Akhilesh Pratap singh, Pradeep Kumar Singh Vats

(Delivered by Hon'ble Shree Prakash Singh, J.)

1. Heard Sri D.K.Tripathi, learned counsel for the appellants, Dr. V.K.Singh,learned Government Advocate assisted by Sri Shivendra Singh Rathore for the State, Sri Akhilesh Pratap Singh and Sri Pradeep Kumar Singh Vats,learned counsels for the informant.

2. Preliminary objection is raised by the learned counsel for the informant that the instant appeal under section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Code, 1973") readwith section 389 of Cr.P.C. against the Judgment and Order dated 11-07-2025 and the order of punishment/sentence dated 15-07-2025 passed by the learned Special Judge,S.C./S.T. Act (Prevention of Atrocities) Act,1989 (hereinafter referred to as "Act, 1989") in Sessions Trial No. 200 of 2018, under sections 307, 323, 504, 506 of I.P.C., is not maintainable, for the reason that the present matter has been tried alongwith S.C./S.T. No. 108 of 2016, arising out of Case Crime No. 133 of 2016, under sections 302, 307, 325, 304, 506 of I.P.C.and section 3(1)(X) of the S.C./S.T. Act and therefore, the appeal under section 14-A of the Act, 1989, is maintainable and more so, he has filed the appeal under the Act, 1989 for enhancement of the punishment/sentence awarded to the appellants, which is pending consideration.

3. The present appeal is directed against the Judgment and Order dated 11-07-2025 passed in Sessions Trial No. 200 of 2018, under sections 307,302,504,506 of the I.P.C.

4. It is an undisputed fact that the Sessions Trial No. 200 of 2018 and S.C./S.T. No. 108 of 2016 were heard jointly, and the Judgments and Orders, have been pronounced, separately.

5. In S.C./Sessions Trial No. 108, matter is arising out of the offence under the S.C./S.T. Act wherein, the chargesheet was filed and the matter proceeded as per the provisions of Act, 1989, whereas the Sessions Trial No. 200 of 2018, proceeded as per the "Code, 1973".

6. On the basis of the aforesaid facts and circumstances, the following questions enumerated :-

(a) Whether if joint trials of same transaction of an offence concluded and if in one of those comes under the Special Act, whether the appeal of such joint trial shall run as per the provisions prescribed

under the Special Act or the procedure envisaged in "Code, 1973" for filing an appeal against such trial ?

7. Prior to discuss the issue, the provisions of Section 223 of the Code,1973 and 14-A of the Act,1989 are referred as under :-

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

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

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

(c) persons accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;

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

(e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence;

(f) persons accused of offences under sections 411 and 414 of the Indian Penal Code (45 of 1860) or either of those sections in respect of stolen property the possession of which has been transferred by one offence;

(g) persons accused of any offence under Chapter XII of the Indian Penal Code (45 of 1860) relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges:

Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the [Magistrate or Court of Session] may, if such persons by an application in writing, so desire, and 2[if he or it is satisfied] that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together."

14A. Appeals(under Act 1989)- *(1) Notwithstanding anything contained in the Code of Exclusive Special Court, to the High Court both on facts and on law, sentence or order, not being an interlocutory order, of a Special Court or an Criminal Procedure, 1973 (2 of 1974), an appeal shall lie, from any judgment,*

(2) Norwithstanding anything contained in sub-section (3) of section 378 of the Code of Criminal Procedure. 1973 (2 of 1974), an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.

(3) Notwithstanding anything contained in any other law for the time

being in force, every appeal under this section shall be preferred within a period of ninety days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of ninety days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of ninety days:

appeal shall be entertained after the expiry of the Provided further that no period of one hundred and eighty days.

(4) Every appeal preferred under sub-section (1) shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.]"

8. Time and again, the issue regarding the joint trial is dealt with by the various courts of law including the Apex Court and in one of the leading Judgment rendered in the case of **Nathi Lal Vs. State of U.P.,** reported in **1990 SCC (Cri) 638**, it has been dealt with in paragraph no. 2 as follows :-

"2. We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other."

9. The law, which is discussed and enunciated by the Hon'ble Apex Court has become a guideline for joint trial. It is held that the same learned Judge must dispose of the matter by two separate Judgments and the evidence recorded in one particular case, will not be read into another and he would not be influenced by even whatever is argued in the cross case. This indicates that the very basis of constituting the ingredients of an offence stated to have been committed, the separate evidence is required. In the instant matter, there were two separate trials, but, in one of the trial, the matter pertains to the charges under the S.C./S.T. Act and certainly, the separate evidence must have been taken.

10. In the case of **Nasib Singh Vs State of Punjab and Another,** reported in **(2022) 2 SCC 89**, while adopting the ratio of Judgment of **Nathi Lal** (Supra), it has been emphasized that statutory provisions neither renders the joint trial imperative nor does it bar or prohibit separate trial and therefore, the trial court is to determine at the beginning of trial that whether the cross cases are arising out of the same transaction

of crime or not and it is not open at the subsequent stage, while looking into the result of the trial, to take a decision for joint trial of the matter.

11. It is also elaborated that at the stage of appeal against such trial, if such questions are raised, then, the person, who is raising such objection is under obligation to establish the prejudice as having been caused to him as a result of separate trial.

12. Further, Hon'ble Apex Court in the case of **A.T. Mydeen and Another Vs. Assistant Commissioner, Customs Department,** reported in **(2022) 14 SCC 392,** has categorically held that each case has to be decided on it's own merit and sole rule is that both the trials must be conducted simultaneously. Paragraph no. 26 of the said Judgment is extracted as under :-

"26. So far as the law for trial of the cross-cases is concerned, it is fairly well settled that each case has to be decided on its own merit and the evidence recorded in one case cannot be used in its cross-case. Whatever evidence is available on the record of the case only that has to be considered. The only caution is that both the trials should be conducted simultaneously or in case of the appeal, they should be heard simultaneously. However, we are not concerned with cross-cases but are concerned with an eventuality of two separate trials for the commission of the same offence (two complaints for the same offence) for two sets of accused, on account of one of them absconding."

13. This court has also noticed the procedure prescribed under section 4 (2) & 5 of the Cr.P.C., which read as under :-

"4. Trial of offences under the Indian Penal Code and other laws.

(1) ……..

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

5. Saving. Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

14. From a bare reading of the aforesaid provisions, it is abundantly clear that every offence under any other law, shall be investigated, enquired into, tried and otherwise dealt with, according to the same provisions, but, subject to any enactment for time being enforced.

15. The Full Bench of this court in case of **Shailendra Yadav @ Salu Vs State of U.P. (Criminal Appeal No. 2174 of 2024 decided on 24-01-2025)** though dealing with different reference has held in paragraph nos. 44 and 52 of the case, which is an obiter dicta. Eventually, dealing with the aforesaid reference, the court has entered into this question as well that the intent of the legislature in incorporating the clauses (1) (2) of Section 14-A of the "Act,1989", read with the amendment, 2016, suggests that the appeals against all orders, sentence and Judgments are to be

preferred to the High Court on facts as well as on law and must be respected.

16. It is a trite law that every clause of a statute should be construed with reference to the constraint and other explanation of the act as for as possible to make a statute meaningful and it is duty of the court to find out the true intention of legislature to ascertain the purpose of statute while giving it a full meaning to the same.

17. Having at a glance of the provisions of Section 14-A of the Act,1989, it is apparent that the same starts with non-obstante clause, which infact provides the exclusive remedy of filing an appeal notwithstanding any law time being enforced.

18. There are two issues that could not be intermingled; first that the offence arising out of same transaction as a cross case, must be tried together, but, this does not indicate or make it imperative that if in one set of allegations, an special act covers the field, the further provisions provided challenging such outcome of the trials, would come with one of the provision provided in the special act. Infact, the procedure for trial is particularly and exhaustively provided under Cr.P.C. including the appeals against such Judgment and Order passed in such trials and infact,this answers the question that if there are two separate trials, one with respect to charges in an special act and another simply in I.P.C., both can be tried together while taking the separate evidences in both the trials and without being prejudice to each of the evidences placed thereof, but, so far as further challenge of the outcome of those trials are concerned that can be heard jointly, in an appeal, but, in the separate provision prescribed as per the law time being enforced as an special law as well as the procedure prescribed in the Cr.P.C.

19. In view of the foregoing reasons, this court finds that the trial which is concluded for the charges under an special act, will be appellable in the given provisions in special law, and the other outcome of the trial, for the charges under the I.P.C., is appellable under Cr.P.C.

20. Ergo, the objection raised is hereby ruled out. Resultantly, the instant appeal is maintainable.

21. List/put up this matter on 21-08-2025 for hearing, on admission of appeal and on bail application.

(2025) 8 ILRA 429
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.08.2025

BEFORE

THE HON'BLE RAJIV GUPTA, J.
THE HON'BLE HARVIR SINGH, J.

Criminal Appeal No. 4922 of 2018
&
Criminal Appeal U/S 372 CR.P.C. No. 680 of 2022

Dayanand Yadav & Ors. ...Appellants
Versus
State of U.P. ...Respondent

Counsel for the Appellants:
Janardan, Pulak Ganguly, Ravikant Tiwari, Sharad Kumar

Counsel for the Respondent:
G.A., Rajeev Kumar Singh

Issue for Consideration

The issue considered in the judgment is the death of Ram Ratan and whether it was caused by an intentional assault leading to culpable homicide or an accidental motorcycle fall.

Headnotes

A. Criminal law-Indian Penal Code,1860-Ss.302,147,148,323/149, 304 Part II/149,504-Criminal Procedure Code,1973-Section 374(2)-Appeal against Conviction-Conviction u/s 304 Part II upheld against challenge asserting death was accidental and prosecution witnesses were partisan-Trial court finding on culpability confirmed-Sentence of seven years rigorous imprisonment modified and reduced to period already undergone-Fine enhanced to Rs. 50000/- per appellant, payable to victim as compensation.
B. Criminal Procedure Code, 1973-Sectioon 372-Appeal by Victim-Victim's appeal for enhancement of sentence/ challenge to acquittal dismissed.

Held

Prosecution proved common object and assault causing death under 304 II /149 IPC-Eyewitnesses testimonies (PW1-PW2) reliable despite minor contradictions-medical evidence corroborates grievous injuries from blunt force(sticks), not mere accident-No material for Section 302 or acquittal-dispute over tree led to sudden altercation, not premeditation-The Court relied on Devendra Kumar Vs. St. of Chhattisgarh and Sankatha Prasad Vs.St.of UP for converting 302 to 304 (II) in spur of moment cases-No illegality in trial court's quantum-The appellants released forthwith if not required in other cases.(Para 44 to 53) (E-6)

Case law Cited

Vijendra Singh & Anr Vs St. of U.P.(2018)102 ACC 411, Jasbir Vs St. of U.P. (2018)103 ACC 489, Nandu & Ors Vs St. of U.P.(2018)103 ACC 739, Lalchand Dixit & Ors Vs St. of U.P. (2017)99 ACC 691, Krishna Gowda & Ors Vs St. of Kar. (2009) 64 ACC 302, St. of Haryana Vs Krishna 2006 (56) ACC 219, V.N. Rathees Vs St. of Ker. (1997) 35 ACC 841,Devendra Kumar & Ors Vs St. of Chhatt.(2024) 11 S.C.R 523: 2024 INSC 841, Sankath Prasad Vs St. of U.P.(2020) 12 SCC 564, Dattatraya Vs The St. of Mah. AIROnline (2024) SC 196,Shahid Ali Vs The St. of U.P. AIROnline (2024) SC 129, Kariman Vs The St. of Chhatt. AIROnline (2024) SC 422, Devendra Singh Vs The St. of UP AIROnline (2024) SC 598, Hussianbhai Asgarali Lokhandwala Vs The St. of Guj. AIROnline (2024) SC 525-referred to.

List of Acts

Indian Penal Code,1860 and 7 Crl. Law Amendment Act, Criminal Procedure Code,1973

List of Keywords

Ram Ratan Yadav, Prayag Yadav, Dayanand Yadav,

rigorous imprisonment, Postmortem Report, Land Dispute, Prosecution Story, Rudrapur, interested witness, Premeditation, Prosecution story, Chandrashekhar, gorakhpur, Conviction upheld.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: CRIMINAL APPEAL No. – 4922 of 2018
From the Judgment and Order dated 29.08.2025
Dayanand Yadav & 4 Ors Vs. State of U.P.

Appearances for Parties

Advs. for Appellants:
Janardan, Pulak Ganguly, Ravikant Tiwari Sharad Kumar
Advs.for Respondent:
G.A., Rajeev Kumar Singh

(Delivered by Hon'ble Harvir Singh, J.)

1. Both criminal appeals arises out the same impugned judgment and order, as such, they are being heard together and decided by a common judgment and order dated 18.08.2018 passed by learned Additional Session Judge, IV/Special

Judge, E.C. Act, Deoria in Sessions Trial No. 286 of 2014 (State Vs. Dayanand and Others), arising out of Case Crime No. 1154 of 2014, under Sections 147, 148, 323/149, 342, 304/149, 504, 506 of IPC, Police Station Rudrapur, District Deoria, whereby the appellant No. 2 to 6 have been convicted and sentenced to one year rigorous imprisonment and fine of Rs. 2,000/- each and in default of payment of fine each accused to go under two months additional simple imprisonment for offence under section 147 I.PC., one year rigorous imprisonment and fine of Rs. 1,000/- each and in default of payment of fine each accused to go under one month additional simple imprisonment, for offence under section 323/149, IPC, one year rigorous imprisonment and fine of Rs. 1,000/- each and in default of payment of fine each accused to go under one month additional simple imprisonment, for offence under section 342 IPC, 7 years rigorous imprisonment and fine of Rs. 5,000/- each and in default of payment of fine each accsued persons to go under three months additional simple imprisonment, for offence under section 304(ii)/149 IPC and the accused No. 2 to 6 have been acquitted for offence under Sections 148, 504, 506 IPC and 7 Crl. Law Amendment Act. All the sentences shall run concurrently.

2. Heard Sri Sharad Kumar, learned counsel for the surviving accused-appellants, Sri Jitendra Kumar Jaiswal, learned AGA for the State and Sri Rajeev Kumar Singh, learned counsel for the first informant and perused the record.

3. The prosecution story in brief is that, on 11.07.2014 at about 1:00 P.M., the complainant's husband late Ram Ratan was coming to his village from Rudrapur market alongwith complainant and her daughter Smt. Suman Devi on his motorcycle and when they reached near the house of Miya, prior to Jogiya Mod, then the accused persons namely, Dayaram, Vivekanand, Chandrashekhar, Sharnanand, Prayag and some other persons had badly beaten the complainant's husband, as a result of which the complainant's husband has received grievous injuries and immediately he was medically examined in the hospital, situated at Rudrapur, thereafter District Hospital, Deoria and then B.R.D. Medical College Gorakhpur, ultimately he died in the B.R.D. Medical College, Gorakhpur during his treatment.

4. With regard to the above noted incident, the complainant lodged an F.I.R. on 12.07.2014 at about 15:30 hours in Police Station Rudrapur against the accused-appellants No. 2 to 6, which was registered as Case Crime No. 1554 of 2014 under Sections 147, 148, 323, 342, 504, 506, 304 IPC and 7 Criminal Amendment Act.

5. The investigation of the case was entrusted to S.I. Virendra Singh Yadav, the Investigating Officer, who after completion of investigation submitted charge-sheet against the accused-appellants, on which the learned Magistrate has taken cognizance and committed the case to the court of Sessions, the learned Session Judge framed the charge against the accused-appellants, under Sections 147, 148, 323/149, 342, 304/149, 504, 506 I.P.C. and Section 7 Criminal Law Amendment Act by order dated 8.6.2015. The accused persons denied the charges and claimed to be tried.

6. On the basis of the aforesaid Written Complaint Ex. Ka-2, Chik No. Ex. Ka-3, Injury report Ex. Ka-4, Postmortem

Report Ex. Ka-5, Panchayatnama Ex. Ka-6, Report regarding death of deceased to SHO Police Station Gularia Ex. Ka-7, Nakal G.D. Ex. Ka-8, Police Report-13 Ex. Ka-9, Police Form-33 Ex. Ka-10, Photo Nash Ex. Ka-11, Report to C.M.O. Ex. Ka-12, Site Plan Ex. Ka-13 and Charge-sheet Ex. Ka-14 were prepared and the dead body was sent for postmortem to B.R.D. Medical College, Gorakhpur. The postmortem of the dead body of the deceased was conducted by the Medical Officer. After recording the statement of the complainant, the Investigating Officer on her pointing out inspected the place of occurrence and prepared the site plan. After examining the postmortem report and the panchayatnama, Investigating Officer has arrested the accused Prayag Yadav, Chandrashekhar, Dayanand Yadav and Vivekanand Yadav and recorded their statements.

7. After conclusion of prosecution evidence, the statements of the accused were recorded under Section 313 Cr.P.C. The accused in their statements u/s. 313 Cr.P.C. have stated that the prosecution story is false and have expressed ignorance regarding the prosecution documents and have stated, that a false charge-sheet has been filed against them. They further stated that they are absolutely innocent and have been falsely implicated in the present case. In support of their defence the appellants have led the evidence of DW-1 Ramesh Paswan, DW-2 Rajaram Yadav and DW-3 Ramashray who reiterated the defence version.

8. In order to prove its case, the prosecution has examined Smt. Krishna Devi as PW-1, Smt. Suman Yadav as PW-2, Head Constable Ramashish as PW-3, Dr. J.P. Singh as PW-4, Dr. Mahesh Kumar as PW-5 and S.I./Investigating Officer Virendra Singh Yadav as PW-6.

9. Smt. Krishna Devi PW-1/Complainant, wife of late Ram Ratan in her statement has deposed that on 11.07.2014, she along with her daughter Suman and her husband Ram Ratan Yadav were returning home from Rudrapur market on a motorcycle. Her husband was driving the motorcycle, which was registered in his name. At about 1:00 o'clock in the noon, when they reached near the two-room house, which is called *'Waye Miyan Ki Madai',* then Dayanand, Vivekanand sons of Prayag, Chandrashekhar son of Ram Shabd, Saranand son of Ram Shabad, Prayag son of Bhagwan, and some other people were present there. As soon the motorcycle reached near the *Madai*, all the aforementioned accused surrounded us armed with lathi-danda and dragged her husband off the motorcycle and started assaulting him with lathi-danda. The other people present there caught hold the complainant and her daughter. The aforsaid accused kept beating her husband with lathi-danda and when he fell on the ground, Chandrashekhar thrust a piece of wood into her husband's stomach and continue hitting him, as a result of which complainant's husband sustained injuries from lathi-danda on his head, stomach, back, thighs, and hand, resulting in a broken hand and a broken leg bone that was hanging.

10. The complainant's husband was speaking faintly in his injured state. The accused, hurling abuses, fled away saying that they would also kill the complainant. Immediately after the incident, the complainant took her husband to Rudrapur Government Hospital on tempo, where the doctor after giving first aid referred the injured to Deoria. Thereafter, the injured was rushed to the Deoria Hospital from Rudrapur hospital on another vehicle. In Deoria, the injured was provided medical

treatment, administered drips, and after removing his clothes, examined the injuries. Then the injured was referred to Gorakhpur Medical College by the doctors. Thereafter the injured was taken to the Gorakhpur Medical College, where he succumbed to death. Thereafter the dead body of deceased was sent for postmortem examination. The report of the incident was reported to the police by the son of the aunt of the complainant, namely Vijay Pratap on 12.07.2014. The complaint was written on the dictation of the complainant, then he described the same, thereafter the complainant put her signature on the same. The witness identified the written report she wrote, which is document number 5 A/1 in the file, and stated that it is the same report she gave at the police station. The witness identified her signature on the report, which was marked as Exhibit Ka-1.

11. Prior to the post-mortem examination, the inquest of the dead body of the deceased was conducted in the Medical College. After the post-mortem, the dead body of the deceased was buried in the village.

12. The complainant was questioned immediately after filing the report by the Investigating Officer. The Investigating Officer took the complainant to the spot and inspected the scene. The Investigating Officer also came to complainant's village and recorded the statements of the witnesses.

13. The PW-1 in her cross-examination has deposed that the statement, which was given by her in the Court, the same was dictated in the F.I.R. The accused were sitting in Waye Miyan's room and came out from there. After assaulting her husband, when the accused were leaving, they used abusive language and threatened to kill. She further deposed that she did not mention in the FIR about the accused hitting on the head, back, thighs, and arms, she described it in court today. No one, except complainant's husband had any abrasion. The accused pushed them, and they also punched the complainant and her daughter. However she did mention about the accused punching her and her daughter in the FIR, nor did she told the Investigating Officer in her statement, nor did she mention it in her main examination. All three of us were sitting on the same motorcycle. She cannot state the distance of the scene from her home. Dayanand hit the complainant's husband on the head. Neither she did mention this in her FIR, nor she told the Investigating Officer in her statement. There are no houses next to Miyan ki Madai. Besides the accused, there were seven other people with them. All those people did not hit; only five people hit her husband. She never showed the Investigating Officer the motorcycle, on which her husband was carrying us. She don't know about Section 161. She did not mention about the accused hitting on the head in the FIR. She saw her husband's injuries and saw him being beaten; She did not tell the Investigating Officer. The skin on her husband's back was peeled off in several places. She saw the peeled skin, when the doctor in Deoria had taken off his kurta (shirt) and examined him. The skin was peeled in three places. The accused first knocked her husband off the motorcycle and then started hitting him. Vivekanand had a stick in his hand. Chandrashekhar had a lathi (bamboo stick) in his hand. Sarnanand had a stick in his hand. Prayag had a lathi in his hand. Vivekanand first hit her husband on the head with a stick, then he hit him on the

neck. She couldn't count how many times he did hit him. She can't even guess how many times he did hit him. In the FIR, she didn't get it written, which accused had which weapon in their hand. She don't remember, if in her main questioning it was not written, which accused had which weapon in their hand or not. The adjournment application on behalf of the accused is accepted, the cross-examination is adjourned for the next date.

14. The PW-1 in her cross-examination has further deposed that she was present when the inquest and the postmortem of her husband was conducted, thereafter leaving the dead body of her husband, she came to police station and lodged the report. She have got it written correctly in her FIR that "She then brought him to the Medical College Gorakhpur." He died during treatment in a short while. If it is said that her husband's treatment lasted for a while, this is wrong. She is a Hindu, as per custom among us dead bodies are cremated, not buried. Vivekananda and Dayananda beat her husband and broke his leg. She could not see, whose beating broke her husband's hand. She does not remember, which hand of her husband was broken. Chandrashekhar and Sarvananda did beat her husband on the back. She got Sarvananda's name written as Sharananand alias Sarvananda in her complaint. Then she stated that she got Sharananand written. She could not see how many sticks were used on her husband's leg. Her husband was hit with a stick many times on his stomach. Her fields and the accused's fields are adjacent to each other. She further deposed that, there was a dispute between her husband and the accused over a Sheesham tree, situated on the boundary wall. There was no dispute over the Sheesham tree situated on the ridge. She does not know, whether there was any dispute over the ridge or not. There was an injury on the head, but no blood was oozing out. The blood was oozing from the hand and the leg. She could not see any blood oozing out from the body. The skin on the back was blown away and it had turned red, but no blood was oozing from there. The road on which her husband was travelling, was a gravel road. The road on which the incident took place was a gravel road. From there, she cannot tell how far is the crossing. She cannot state the distance of Gojah Suratpur. It is a little far. She cannot state how many sticks were hit by the accused, she cannot even tell how many sticks each of the accused hit. Miya's hut is on the left side of the road. It is incorrect to say that, her husband fell down from the motorcycle on the gravel road and got injured. It is incorrect to say that we reached the spot after receiving the information. The doctor of Rudrapur bandaged her husband's broken hand and leg. She also deposed that she does not know, whether the bandage, the doctor had tied at the time of my husband's death was still there or not. She does not remember, whether the bandages, were tied while taking him from Deoria hospital to Gorakhpur or not. She does not remember, whether her husband was given medical treatment in Gorakhpur or not. He was referred for X-ray. It is incorrect to say that, there was a dispute between her husband and the accused over the Sheesham tree, situated on the boundary of the field. Her husband fell down from the motorcycle and sustained injuries and because of that dispute, the accused were implicated in a false case. This is wrong to say that, I got the Sheesham tree cut after the accused were sent to jail. It is wrong to say that, I did not see any incident. It is wrong to say that at the time, place and in

the manner, I have stated the incident occurred, no incident took place at that place. It is correct to say that, I went to the place of incident with the Investigating Officer.

15. Suman Yadav (PW-2) in her statement has stated that the deceased Ramratan was her father. She had come from her home in Jogia Buzurg a few days ago. The accused are the residents of Prayag Buzurg. Viveka and Dayanand are the sons of Prayag. Prayag and Ramshabd are brothers. Chandrashekhar was the son of accused Ram Shabd. Sharananand was also the son of Ram Shabd. Accused Chandrashekhar and Sharananand are brothers, and they are residents of Jogia Buzurg. She further deposed, that there was a land dispute with the accused. This incident has taken place on the road near Miya's hut on 11.7.14 at around 1:00 O'clock in the noon. PW-2 and her mother Krishna Devi had gone to market on a motorcycle with his father Ramratan. When they were returning from the market, the accused Vivekanand, Dayanand, Sharanand, Chandra Shekhar and Prayag were hiding in Miya's hut and when they reached the place, where they were hiding, then all the accused persons surrounded the motorcycle and pushed it. PW2 and her mother Krishna Devi fell down from the motorcycle. Thereafter all the accused persons started assaulting Ramratan with sticks. PW2 and her mother started crying and shouting, while being caught hold of. Apart from these five, there were some other people, who were holding us. PW2 also deposed that she does not know the other people by name, who were with the accused and can only recognize them by face. They also abused them and threatened them to kill. They assaulted her father Ramratan and broke his hands and legs. They have also given lathi blow in the stomach of her father and felt that he died and left him. Thereafter PW-2 took her father to Rudrapur Hospital in injured condition, where the doctor referred him to District Hospital Deoria. Seeing the serious condition of the injured, the doctor of the District Hospital, Deoria referred him to the Medical College Gorakhpur, but before reaching the Medical College her father succumbed to death. She also deposed that apart from PW2 and her mother, some other people have also seen the incident.

16. PW-2 in her cross examination has deposed that her statement was recorded by the I.O. While giving the statement to the I.O., she told him that "Vivekanand and Dayanand were the sons of Prayag. Prayag and Ram Shabd were brothers. Chandrashekhar is the son of the accused Ram Shabd. Sharananand is the son of Ram Shabd. Accused Chandrashekhar and Sharananand are brothers and residents of Jogia Buzurg." The witness was read out her statement under 161 CrPC and was asked that this fact was not mentioned in her statement, then she stated that she could not give any reason, as to why her statement was not recorded. Rudrapur was located in the East of the place, where the incident took place and the distance was about 4 km. At this stage, counsel for the accused Dayanand Yadav has submitted that PW-2 refused to reply during her cross-examination. Hence, the cross-examination is adjourned to the next date.

17. PW2 in her corss-examination has further deposed that her maternal house would be approximately 1-1/2 km. north of the place of incident and maternal house will be there, if someone take a chak road and goes north on the road a little west of the place, where the incident took place.

That chak road is a RCC road. She did not know, whether the place of incident is in Karauta village or her village Jogia Buzurg and also did not know that Guna village will be behind the road from the place of incident. Miyan's hut, in which the accused were hiding would be in Karauta village or Guna Suratpura, she could not know, whether that would be in Jogia Buzurg. She also deposed that at the time of incident her father's motorcycle had fallen on the middle of the road, her mother and she were standing close to the motorcycle. Her father was not assaulted between the motorcycle and the place, where they were standing, but was beaten at some distance on the road. Seeing the said incident they got panicked. Her Father was being hit towards the east of us, everything was happening side by side, the distance was not measured. There was blood near the spot, it was not spilled. They were hitting with sticks, they were hitting on the stomach with the tip of the stick. It is not that blood fell on the spot and due to panic and hurry, She was unable to tell. She also deposed that, it is incorrect to say that she did not witnessed the incident in panic and hurry and that day gave a wrong statement on that point.

18. PW-2 also deposed that she saw the accused coming out from the Miya's hut which has a cement roof, no one lives there, it was an old ruin, it was not that the accused came from the west side from the back of the hut, rather they came out from inside the hut, She was not giving a false statement on that point also, all the accused came out from inside the hut, there was a door in the hut, there is no gate, first five people came out of the hut and then seven people came out to catch us, it was not that all the twelve accused came out of the hut together, it was also not the point that she was speaking wrong on this point also due to panic and hurry, these seven people did not have any weapons, apart from catching us, these seven did not do anything to us i.e. mother and daughter. She further deposed that on the advice of the five people, who had come out of the shed first, the seven people who came out of the shed and caught us later. All five of them stated that this mother and daughter are screaming a lot, catch them otherwise, we will kill them too. The Investigating Officer had not interrogated me about this, so she did not tell him. That is, whatever the I.O. asked me about the incident, she told that only to him, she did not tell anything about the incident from my side. PW-2 also deposed that on the very day, we left our house at around 11 A.M. At the time of occurrence her younger sister Kiran was at her in-laws house. Prior to the incident, her father had called her, but he did not call my younger sister, there was no special reason, he just called me. He had called me 10 days prior to the incident. No fight or scuffle took place with the opposite party at any point of time between 10 days or before the incident. After leaving home at 11:00 A.M., they did shopping in Rudrapur for about 2 hours, bought clothes, jewellery, vegetables etc. She also deposed that after the incident, they boarded a tempo and went to Rudrapur hospital. They did not go to our Jogia Bujurg after the incident, as there was a police station right next to Rudrapur hospital. They also went to the police station. From the hospital and in the ambulance, there was a police inspector and a constable from the police station, when we talked to them, they stated that first get yourself treated, then the report will be lodged. They stayed in the hospital for about 1/2 hour. When people went to the police station, my father was speaking a little, he was breathing. After the incident,

while going to the medical college, her mother was informing the relatives about the incident through papa's mobile phone. Upon receiving the information, some people reached Deoria and some reached Gorakhpur.

19. It is in correct to say that due to nervousness and hurry, she did not tell the Investigating Officer about the mobile. They reached the medical college at around 8:00 P.M., till then, no policeman from Rudrapur police station had reached there. The hospital must have given the slip to my mother for the medical college, but did not give it to me. She had completed M.A. and B.Ed. till date. She do not know about that referral paper. It is incorrect to say that, her father was admitted to B.R.D. Medical College, Gorakhpur on 11/7/14 at 9:00 P.M. It is incorrect to say that after one hour of treatment in the medical college, her father died at 10:00 P.M. Her mother must have spent the money for her father's medicine and treatment from Rudrapur to the medical college. When the doctor was taking her father for X-Ray in the emergency ward of the medical college, her mother was with him. Oxygen was given through her father's mouth. His neck had rolled to one side. Then she came to know that her father had died. Her mother told her that, while she was going near the stretcher. A dead man was recognized. It must have been around 9:00 P.M. at that time. Her mother was scared and was crying and shouting. That is why, she did not inform the police through mobile. She was educated, but was scared and shouting due to my father's death. That is why she did not inform the police through mobile. Her mother had left the medical college after the post mortem. Her mother left Gorakhpur on the second day of the incident, on the 12th, at around 12:00 PM. Her mother told her that, she had to go to the police station to report the incident. Her mother took the mobile with her. She don't know, if her mother would have informed the police station through mobile, only her mother can explain. While going to the police station from Gorakhpur, my mother did not say that she had informed the police station through mobile. she did not tell my mother that, why are you going to the police station, she should inform the police station through mobile. Her mother did not go to Medical College, Police Station Rudrapur alone, but with relatives. No report was filed between the journey of my mother from medical and Rudrapur. Only her mother will be able to say, where the report was filed. Till date she had not asked her mother, where she filed the report. Till date she did not know, where and at what place she wrote or got the report written, that my mother had handed over in the police station. PW-2 told the inspector that, the incident took place to the east of Giyapur Tiraha, her mother and she had shown the inspector the Giya Tiraha, she had also shown the place, where the incident took place. The inspector only asked, where the incident took place, so we showed him the spot. The inspector did not ask, where the motorcycle had fallen, so she did not show him the place, where the motorcycle had fallen. she showed the inspector the place, where she and her mother saw the incident. she also showed him the path from where the accused came out. When the inspector wrote the statement, she told him that the accused came out from the shed. If the inspector has not written the statement that they were hiding in the shed and came out from there, then she cannot state the reason. She did not give such a statement to the I.O. that during treatment, her father died. If this is written in the statement, she could not tell

the reason. It is incorrect to say that the police inspector has not shown the crime scene.

20. PW-2 further deposed that the road on which the incident took place, was used by government vehicles and four wheelers. At the place where the accident occurred, there was no jaam of passengers or passenger vehicles on both sides. About half an hour after the incident, a tempo arrived. She deposed that the goods, which were purchased in Rudrapur that day, were given to the people, who had come to Rudrapur, who delivered them to their home. Among those goods, there was a set of jewellery, which was also delivered to the home. When the incident happened, they left the motorcycle there and did not hand it over to anyone. The villagers came and took it away. She knew the villagers, very well, who took the motorcycle away. The investigating officer did not ask her anything about the motorcycle. When they returned home, the motorcycle was parked at the door. Even that day, she could not tell, who brought her father's motorcycle from the scene of the incident, whether the person who brought it drove it or someone else brought it with her. PW-2 has further deposed that, it is incorrect to say that her father was driving his motorcycle in an inebriated state and fell down on one side, due to which he sustained injuries and died during treatment in the medical college. It is also incorrect to say that, her father was a person of political influence and used to harass the accused persons over petty matters of the village assembly, but was not successful. It is also incorrect to say that, despite falling from the motorcycle in an inebriated condition, he, in consultation with friends and persons of the village, falsely implicated innocent people, with an intention to wreak vengeance due to enmity. It is also incorrect to say that, she was at her in-laws' place on the date of incident and was not at the place of incident in any manner, she is a witness in this case, only to seek revenge out of enmity. It is also incorrect to say that no incident took place in the manner, as described by her in the statement.

21. Ram Ashish (PW3) in his statement has deposed that on 12.7.2014 he was posted in Police Station Rudrapur, District Deoria in the capacity of Head Constable. On 12.7.14 at 3.30 pm, on the basis of written complaint made by Krishna Devi, he registered the FIR bearing No. 1154/14 under sections 147,148,307,308,323,504,506 IPC & 342,304 IPC and 7 Crl. Law Amendment Act against Dayanand Yadav son of Prayag, Vivekanand son of Prayag, Chandrashekhar son of Ramshabd, Sharananand son of Ramshabd, Prayag s/o Bhagwan residents of Jogiya Buzurg Police Station Rudrapur. The case was got registered on the basis of the written report of Smt. Krishna Devi, wife of late Ramratan, Chick FIR No. 112/14 had been prepared, which was in his writing and signature. After filing the complaint, he prepared the entry of the case in report No. 25 at 15.20 P.M. on 12.7.2014 in his handwriting and put signature on it. The original GD was prepared on 12.7.14, which is marked as Ext. Ka-1. He certified that it was the same, as per the original. Exhibit Ka-2 was put on original FIR and Exhibit Ka-3 on GD. The investigating officer had taken PW3's statement.

22. Dr. J.P. Singh (PW-4), who was posted as Pathologist in District Hospital, Gorakhpur, in his statement has stated that on 11.7.2014, he was on duty as Emergency Medical Officer in District Hospital, Deoria.

At about 6.10 P.M. the injured Ram Ratan Yadav, age 57 years, son of late Jairam Yadav, resident of Jogia Bujurg, Police Station Rudrapur, District Deoria, was brought by his wife Krishna Devi in an injured condition to the District Hospital Emergency. He further deposed that he has examined the injured and found following injuries on his body:-

(1) There was swelling and redness of 6 cm x 4 cm on the left leg 5 cm below the knee.

(2) A lacerated wound 5 cm x 3 cm on the right thigh which was red in colour and 11 cm above the right knee.

(3) A lacerated wound 1 cm x 5 cm on the left foot and its big toe Blood was coming from the finger next to the first finger.

(4) A peeled wound 10 cm x 7 cm on the left side of the abdomen from the waist bone to above the left waist bone was red in colour.

(5) Pain was being felt on the back of the right hand. Due to severe pain in the fingers, the right hand was x-rayed. It was red in colour.

(6) A bluish mark 20 cm x 15 cm on the right arm, which was 1 cm below the right shoulder. X-ray was advised for this injury. It was red in colour. There was swelling and redness in it.

(7) A bluish mark 17 cm x 10 cm with swelling on the left arm which was 5 cm below the shoulder. X-ray was advised for this as well.

(8) Swelling and bluish mark 11 cm x 9 cm on the right side of the back, 2 cm below the rib cage, was red in colour.

The doctor (PW4) has deposed that for injury Nos. 1, 5, 6, 7 the injured was got admitted and advised for X-Ray and thereafter he was referred to Orthopadic surgeon. Injury Nos. 2, 3, 4, 8 were simple in nature, which can be caused by hard and blunt object like lathi-danda. The duration of the injuries seems to be 5 to 6 hours. The injury was verified by taking the left thumb impression of the injured person. All these injuries were written in his writing and signature. On that day, the medico-legal register had been prepared in his presence, by the pharmacist of Sadar Hospital. On which, the examination report of the injuries of Ramratan Yadav was prepared in his writing and signature. The certified photograph of the medical report of the injuries of the Ramratan Yadav is as Ext-Ka10. PW-4 in his cross-examination has deposed that he recorded the medical report of the injured in the register, he did not attach a carbon copy of the same. The fact is that, after recording the medical report, PW4 did not immediately give any copy of the same to the injured or his companion. It was also true that no copy of the injuries recorded in the register had been asked from him till date. He further deposed that, it is incorrect to say that the photocopy was obtained and its entry was made in the register. He further deposed that after examining the injured and looking at his injuries, the report was prepared. The injured are admitted to the hospital, only when the injury was serious. If the injury was not serious, then the injured were treated and then discharged. There was no mention in Ext.Ka-4 that the patient was admitted to the hospital. But he was referred to an Ortho Surgeon. After referral, no report of the ortho surgeon was ever presented to him by the injured or his family members. The process of scab

formation in the injury of abrasion, report or X-ray report or X-ray plate starts after 12 hours. Writing 'Simple in Nature' means that there could not be any danger to the life of the injured. Injuries of blunt object or accidental nature were almost of the same nature. The injured did not have any head injury.

23. Dr. Mahesh Kumar-PW5- Medical Officer Incharge Primary Health Center Khajni, District Gorakhpur in his examination has stated that, on 12.07.2014, he was posted in Khajni as Medical Officer Incharge. On the said date, by the order of Chief Medical Officer, Gorakhpur, he was posted at B.R.D. Medical College, Gorakhpur for conducting post mortem and the post mortem of deceased Ram Ratan Yadav son of late Jairam Yadav, Resident of Jogia Buzurg, Police Station Rudrapur, District Deoria, aged about 57 years started at 4.10 P.M. and ended at 4.30 P.M. The dead body of the said deceased-Ram Ratan Yadav was brought by the Constable Sikander Singh from the Police Station Gulharia, District Gorakhpur and he got the said body identified and the post-mortem of the said body started on 12.07.2014 at 4.10 P.M. The physical structure of the said dead body was of medium height. Stiffness was present in the whole body, the eyes of the deceased were closed and the mouth was half opened. The following injuries were found on the body of the deceased before death.

(1) Scratch whose size is 15 cm. X 8 cm. on the right shoulder joint and on the right forearm below the shoulder joint.

(2) Contusion swelling in right hand index finger. Blood clot was present under the skin and bone was broken.

(3) Swollen bluish mark on right side of forehead measuring 6 cm x 4 cm. On opening the skin, blood clot was present under it. On opening the head, brain fluid and blood clot were found.

(4) Swollen bluish mark was present all around below left knee. On opening it, blood clot was found under the skin and both bones were broken.

24. The death of the deceased was due to coma, caused due to injuries on his body before death. The deceased died on 11.7.2014 at 10:00 P.M. in B.R.D. Medical College, Gorakhpur and the doctor had conducted the autopsy on time, which was in his handwriting and signature, on paper No. 17K/1, was included in the file, which was before the doctor on that day, on which Ex. K-5 was marked. The ante-mortem injuries of the deceased could have been at 1:00 P.M. on 11.7.2014. The ante-mortem injuries of the deceased could have been caused by lathi or stick. The ante-mortem injuries of the deceased were generally sufficient to cause death. A total of 9 documents were sent by the S.H.O. Gulharia, Gorakhpur, alongwith the body of the deceased. Panchayatnama Paper No. 11-K/1 to 11-K/2, two pages memo of B.R.D. Medical College, Gorakhpur Paper No. 9K/1, Carbon copy of arrival memo police station Gulharia dated 12.7.2014 Paper No. 7-K/2, challan destruction Paper No. 12-K/1, report R.I. Paper No. 13-K/1, photo destruction Paper No. 14-K/1, Report C.M.O. Paper No. 15-K/1, specimen stamp was sent, out of which specimen stamp is not in front of him. The rest is in front of him. On which, his signature is there.

25. Dr. Mahesh Kumar-PW-5 in his cross-examination has deposed that while dissecting the body, doctor did not find any

other injury on the body of the deceased apart from the injuries, which he had recorded in the dissection as Exhibit A-5. It was not true, that he was negligent while inspecting the body. The first injury, which he had mentioned in the dissection is not fatal. Injury No. 2 was also not fatal. Injury No. 4 was also not fatal. Doctor did not get the X-ray done of injury No. 3, because he did not consider it necessary. In injury No. 3, he did not find any fracture of the skull bone of the deceased. The witness himself stated that, when the said injury was opened, swelling was found, therefore, it was indicated and when it was opened and examined, hematoma was found in the brain and brain membrane.

26. Despite this, the bones of the deceased's head were not found broken anywhere. When the deceased was brought for post-mortem, there was no bleeding from any injury. Before conducting the post mortem, doctor had filled up all the police forms. The police had given total 9 police forms to the doctor. The specimen stamp, which came with the police forms was not in the trial file at this time. There were a total of 8 enclosures in front of doctor in the file on that day, which he had seen and signed. Nine enclosures were mentioned in front of the doctor, but there are only 8 enclosures on file today. Doctor had received the above mentioned 9 police forms, those were returned to the police personnel, who brought the dead body. There was no mention of the weapon in police form 3. The deceased went into coma due to the injury and he died due to coma. The injuries sustained by the deceased must have been caused by a blunt object, but doctor could not say, which particular weapon must have caused that. Accidental injuries could also be caused by blunt objects. Exhibit A-6 to A-12 were marked respectively.

27. S.S.I. Virendra Singh Yadav-PW6, who was posted at Georgetown Police Station, Allahabad at the time of deposition, deposed that on 12.07.2014, he was posted as the In-charge Station Officer at Police Station Rudrapur. On the said date, based on the written information provided by the complainant Smt. Krishna Devi, wife of the deceased Ram Ratan, resident of Jogia Bujurg, Police Station Rudrapur, FIR No. 1154/14 was registered under Sections 147, 148, 307, 308, 323, 504, 506, 342, 304 IPC and Section 7 Criminal Law Amendment Act, in his presence against the accused Dayanand Yadav, Vivekanand, Chandrashekhar, Sharananand, and Prayag Yadav. S.S.I. Virendra Singh Yadav has further stated that he himself conducted the investigation. During the course of the investigation, he recorded the statement of the informant, the statement of other witnesses, and inspected the scene of the incident based on the complainant's identification. S.S.I. Virendra Singh Yadav had prepared a site map in his own handwriting and signed on it. When shown the site plan marked as Paper No. 16A/1, PW-6 identified it and confirmed that it was the same site plan prepared by him, which he verified and the same was marked as Exhibit A-13. During the investigation, on 16.07.2014, Paper No. II was prepared and signed by S.S.I. Virendra Singh Yadav. It included the postmortem report and the inquest report of the deceased-Ram Ratan. On the same day, the accused Prayag Yadav (son of Bhagwan Yadav), Chandrashekhar (son of Ramshabd), and Dayanand Yadav (son of Prayag Yadav), all Residents of Jogia Bujurg, were arrested and their statements were recorded. On 17.07.2014, Paper No. III was issued, which recorded the arrest and statements of accused Sharananand alias Sarvanand (son of Ramshabd) and

Vivekanand (son of Prayag), both residents of Jogia Bujurg. On the same date, Slip No. III-A was also prepared. Upon further investigation, Sections 307 and 308 IPC were not found to be applicable, the charge was modified and a supplementary Prescription No. IV was issued on 23.07.2014. PW-6 stated that he reviewed the Panchayatnama, the original postmortem report, and the injury report, along with statements of Chandrama Yadav, Brahmadev, Awadhen, and Lal Murat Yadav, all Residents of Jogia Bujurg, as well as the statement of the inquest witness Vijay Pratap Yadav, resident of Saraiya Malaidia, Police Station Badahalganj. S.S.I. Virendra Singh Yadav PW6, also recorded the statement of the Injury Examiner Dr. V.P. Singh, Head Pathologist, on 25.07.2014, he issued Prescription No. V, which included the statement of the inquest examining officer SI Ram Vriksh Ram from Police Station Gulharia, District Gorakhpur, and the statement of Dr. Mahesh Kumar, Medical Officer, Primary Health Centre, Khajni, District Gorakhpur, who conducted the postmortem. Thereafter, Investigating Officer filed Charge Sheet No. 135/14 against all the accused persons, under Sections 147, 148, 323, 504, 342, 304 IPC and 7 Criminal Law Amendment Act. S.S.I. Virendra Singh Yadav affirmed that the charge sheet was prepared by him in his own handwriting and signature. When shown Charge Sheet No. 3A, he confirmed it, as the same and verified it as bearing his writing and signature. It was marked as Exhibit A-14.

28. S.S.I. Virendra Singh Yadav-PW 6, in his cross-examination has deposed that at the time of registration of FIR, only the complainant Krishna Devi and the informant Vijay Pratap Yadav were present at the police station; no one else accompanied them. S.S.I. Virendra Singh Yadav clarified that the FIR writer Ram Ashish Prasad, did not question the complainant or the informant, while preparing the FIR. S.S.I. Virendra Singh Yadav-PW6, further admitted that although he recorded the statement of the informant Vijay Pratap Yadav later, he did not do so on the date of the FIR, as the site inspection and search for the accused were to be carried out. PW-6 conceded that he did not mention this reason in the case diary and could not explain, why it was omitted. S.S.I. Virendra Singh Yadav-PW6, further deposed that during the site inspection, one or two relatives of the complainant were present, but they were not named in the case diary, as he found no reason to mention them. PW-6 noted that the nearest village to the north of the incident site was Miya Bujurg, approximately half a kilometer away, but could not recall its exact direction. S.S.I. Virendra Singh Yadav-PW6 has acknowledged that, while he prepared Exhibit A-13 based upon information from the people present there but he did not remember, whether he inquired about the direction and distance of Village Karauta, nor did he mention the names of the persons, who provided such details. S.S.I. Virendra Singh Yadav-PW6 admitted that the complainant had shown the place of incident, but the marking on the site plan were based upon the input received from the locals. Investigating Officer confirmed that people from Miya Bujurg, were present during the site visit, though he did not recall the west side distance from the incident site. S.S.I. Virendra Singh Yadav-PW6 further stated that he could not identify the village, in which, the incident site fell, as no one inform him about that. PW-6 marked a cornfield near Mian's hut, based on what

locals told him, but PW-6 did not independently verified the hut's exact area or its ownership and he mentioned that, there was an exit gate at the hut, but no grills. S.S.I. Virendra Singh Yadav-PW6 has next testified that, no one had told him that people were sitting inside Mian's hut. The road was said to begin around 20 meters north of the hut, and the incident took place approximately five steps north from where the road started. PW-6 did not attempt to ascertain the distance between the parties, at the time of confrontation, nor did he investigate, where the motorcycle fell or in which direction the accused fled away after the incident. PW-6 did not verify, who lived in Mian's hut, nor did he met or recorded the statements of Sudama Harijan, Ramashray, Nagina Mishra, or Liaqat (son of Samdulli), all of whom were mentioned in the site plan. PW-6 claimed he did not felt its necessity. S.S.I. Virendra Singh Yadav-PW6 has further stated that he found no evidence of oil spillage at the scene and that the motorcycle was not found during the site inspection. PW-6 did not ask the complainant about the motorcycle's location, though he later found it near her house, but he has not mentioned in the case diary and never inspected the motorcycle's condition or documents. S.S.I. Virendra Singh Yadav-PW6 did not attempt to identify, which attacker struck the deceased from which direction or from how much distance. PW-6 made no efforts to investigate who were giving the blows from front, back, or side. No blood stains were found at the alleged site of incident. PW-6 attributed this to more than 24 hours having passed and the road being a busy one. He did not mention in the case diary about the absence of blood or traffic activity at the scene. PW-6 never asked the complainant about the blood-stained clothes, nor were such clothes produced or mentioned. PW-6 did not ask about the weapons used, though it was mentioned that the accused carried lathis, rods, and sharp weapons. S.S.I. Virendra Singh Yadav-PW6 further admitted that witness Suman never told him, that the deceased possessed a mobile phone and he also never asked her about it. He acknowledged that, there was a land dispute between the deceased and the accused, but did not examine the details of land ownership or transactions. PW-6 denied the suggestions that he deliberately misrepresented the facts regarding the location, direction of the place of incident and evidence in order to file a false charge sheet. He also denied that he had falsified details concerning the motorcycle or that the incident did not happen as described.

29. DW-1 Ramesh Paswaan son of Ram Dulare Paswaan, R/o. Jogia Bujurg, Thana Rudrapur, District Deoria, aged about 38 years, profession farming, deposed that he knows Dayanand Yadav, Vivekanand, Prayag Yadav, Chandrashekhar and Sarmanand. These people are from his village. He knew Mrs. Krishna Devi, she is also from his village and her husband's name is Ram Ratan Yadav, he died about four years ago. Her daughter's name is Suman, he knows her too. Suman was married long before the death of his father Ram Ratan Yadav, she lives in her in-laws' house. He never had any fight, quarrel or litigation with Krishna Devi and there has also never been any enmity, quarrel or litigation with the families of Dayanand and Vivekanand.

30. DW-1 Ramesh Paswaan, further deposed that it is true, he has normal relations with both the families. Ram Ratan Yadav has good agricultural land and he used to deal in buying and selling of land.

DW-1 have not seen the place, where Ram Ratan got injured. Some people brought Ram Ratan to his doorstep in a tempo, he was alive at that time. From there, people and his wife took him to Rudrapur hospital for medical treatment. When people brought Ram Ratan home in a tempo, his wife Krishna Devi was also present and took him there in injured condition for medical treatment. Ram Ratan's daughter Suman was not there at that time. When Ram Ratan was brought to their door, many people of the village had gathered there. The people who had brought him to the door in a tempo had told that Ram Ratan was coming on a motorcycle and fell from it and got injured. Ram Ratan was a domineering man and also used to take drugs.

31. DW-1 Ramesh Paswaan, in his cross-examination has deposed that no summons from the court were received by him. Today, he has come to give a statement along with the accused Dayanand and he is giving statement on the instructions of those people and he has come to state what he has seen.

DW-1 Ramesh Paswaan, in his cross-examination has further deposed that, he is not the Pradhan of the village, but his wife is the Pradhan of the village and her name is Sharda Devi. The deceased Ram Ratan has two daughters and a son, whose names are Suman and Kiran respectively and he does not know the name of the son because he lives elsewhere. DW-1 has seen Suman, who used to visit the village after her marriage. Suman must have got married about eight years ago. He further deposed that, when his wife contested the election of Village Pradhan, seven candidates had contested in that election. All the candidates were women and belonged to the same caste. DW-1's wife became the Pradhan of the village after this incident. All the candidates tried to woo the voters. When DW-1 heard about the injury of Ram Ratan, he was at his home at that time.

He does not know at what time Ram Ratan was injured or who did hit him. DW-1 can identify the people who brought Ram Ratan to the house, but he does not know their names. He cannot tell at what time people brought Ram Ratan to the door and what time they reached there. He did not go to the hospital with Ram Ratan. He cannot tell, as to where, people took the deceased Ram Ratan from Rudrapur in his injured state. He saw his daughter Suman for the first time during Ram Ratan's last rites. He does not remember, when he saw Suman before the incident. He did not see Suman after the last rites (Brahmbhoj). Ram Ratan's house is to the east of the house of DW-1. It is at a distance of about 300 meters. The house of the accused is at a distance of about 600 meters to the east of his house.

It is wrong to say that on the day of the incident, Ram Ratan was returning home from Rudrapur on a motorcycle with his wife Krishna Devi and daughter Suman.

It is also incorrect to say that on the day of the incident, Dayanand, Vivekanand, Sharananand and Chandrashekhar stopped the Ram Ratan on the way and assaulted him with sticks etc., injured him, due to which he died.

It is incorrect to say that the family of deceased Ram Ratan opposed him in the Pradhani election, so he has come to testify today.

He does not know, who voted for his wife and who did not. The truth is that all the people are his own.

32. DW-2-Sri Rajaram Yadav deposed in his examination-in-chief that he knew the complainant Smt. Krishna Devi, her husband's name was Ram Ratan, though people used to call him "(SIC Yadav.)." The house of D.W.-2 was located approximately two katthas west of Ram Ratan's house. Conversely, Ram Ratan's house lay two katthas east of his house. DW-2 stated that he knew Dayanand, Vivekanand, Prayag, Chandrashekhar, and Sharananand all of whom belonged to his village. He had no quarrel, dispute or litigation with the appellant-complainant Krishna Devi or her husband Ram Ratan. Similarly, he had no enmity, dispute, or litigation with Dayanand, Vivekanand, Prayag Yadav, Chandrashekhar, and Sharananand. He maintained normal relations with both parties.

33. DW-2-Sri Rajaram Yadav, further deposed in his examination-in-chief that, he knew Ram Ratan's daughters. Ram Ratan had two daughters, both of whom were married and resided at their matrimonial homes. Ram Ratan had been involved in land sale-purchase, during his lifetime. He was described as a domineering man. He died in a road accident, while riding a motorcycle and at that time, the road was gravelly. After the accident, some people brought the injured to his home in an injured condition using a tempo. DW-2 was unable to name those, who brought Ram Ratan home, as he could not recall their names. At that time, Ram Ratan's wife, Krishnavati was present at home, she took him in the same tempo for treatment. His elder daughter, Suman, was not present at the time. The incident had occurred approximately four years earlier.

DW-2-Sri Rajaram Yadav, in his cross-examination has deposed that he lived in Bombay and had been working there for a long time, much prior to the incident. Although Ram Ratan had two daughters, he did not know their names, neither at the time of the incident nor even now. Ram Ratan also had a son, but he did not know his name.

When asked about the surroundings of his house, he responded as follows:

East of his house: There was a khadanja (paved brick path), beyond which stood Ram Ratan Yadav's house.

West: Ram Vachan Yadav's house, his cousin.

North: The house of Mahadev Paswan.

South: The house of Kedar Paswan.

DW-2-Sri Rajaram Yadav, confirmed that his cousin Ram Vachan had two sons, he knew their names. However, he did not know the names of his five daughters. He further stated that he rarely visited the village from Bombay, usually only once, every one or two years. People of his age in the village knew and recognized him, and he knew them in return.

DW-2-Rajaram Yadav, further confirmed that the present case had been filed by Krishnavati Devi. A civil case had previously been filed between him and the appellant's-complainant's family, although it was no longer pending. He next stated that he did not know, whether Krishnavati Devi had filed a criminal case against him, his sons namely, Jitendra and Ram Prakash Yadav, and his wife Vimla Devi.

When asked to DW-2, whether Krishnavati Devi had filed an assault case against you and your sons in the year 2013 at P.S. Rudrapur, he replied that they had been in Bombay at that time. His wife had been beaten with sticks, causing a forehead injury. He stated that they were poor people and he had not taken any retaliatory action due to their economic condition.

34. DW-2-Sri Rajaram Yadav, in his cross-examination has further deposed that he had not committed any act of violence and was not involved in any such incident. Being a labourer, he earned his livelihood through daily wages. He claimed that the opposite party was domineering and had threatened to kill them. He returned to the village upon hearing about the incident, but did not speak to anyone about it. He no longer had any relations with the opposing party.

DW-2 confirmed that he had felt bad upon learning that his wife had been assaulted, but did not take any steps in retaliation. No action had been taken, primarily due to poverty. He further clarified that he was not present at the scene, when the incident involving the deceased Ram Ratan took place, as he was working on his farm at that time. When asked to DW-2, whether any food eatables have been shared with the family of Krishnavati Devi after 2013 incident, he responded that they were poor people and that wealthy individuals generally do not associate with labourers. He asserted that he had no previous association with that family and maintained no relations at present either.

DW-2 acknowledged having social relations with the families of Dayanand, Vivekanand, Chandrashekhar, and Sharananand.

DW-2-Sri Rajaram Yadav, admitted that a civil case had been filed between him and deceased Ram Ratan Yadav, but accepted that he had not disclosed it in his main statement and had intentionally withheld it.

He denied the suggestion that a prior altercation with the complainant's family had motivated him to depose falsely in favour of the accused.

DW-2 further denied having good relations with the accused or any enmity with the complainant, that could have prompted him to give false testimony to protect the accused.

He also denied the suggestion that, he was not present at the place of incident, but had still given false evidence before the court regarding the occurrence.

35. DW-3-Ramashray, deposed in his examination-in-chief that, he knew Krishna Devi, who belonged to his village. He also stated that he knew Dayanand, Vivekanand, Prayag Yadav, Chandrashekhar, and Sharananand all of whom were residents of the same village. He affirmed that he never had any quarrel, altercation or litigation with any of the individuals named above.

He further stated that he knew Ram Ratan, resident of his village, who had passed away. According to DW-3, Ram Ratan had died, while travelling from Rudrapur to the village on a motorcycle, due to large pebbles on the road, he had slipped, fallen and sustained injuries. Thereafter, some individuals had placed Ram Ratan in a tempo and brought him to his house located in Jogia Bujurg. From there, his wife Krishna Devi had taken him to the hospital in Rudrapur for treatment.

At that time, Suman, Ram Ratan's daughter was not present at home, as she was staying at her in-laws' house.

The witness clarified that he had no dispute, quarrel or litigation with Ram Ratan. He also confirmed that he was present, when Ram Ratan was brought home in an injured condition.

DW-3 lastly deposed that Ram Ratan was engaged in farming and was also involved in the business of purchasing and selling of agricultural land.

36. DW-3-Ramashray, in his cross-examination has deposed that his house is located at about ten bigha in the West from the house of Ram Ratan and from the house of Dayanand and others, his house is located at the same distance. He further deposed that he used to visit the house of the accused persons and there was a relationship between them. He also deposed that, he knows Prayag Yadav and Shivlal. Both are the native of his village. On the date of the incident he reached at the door of Ram Ratan at about 3:00-4:00 P.M. and stayed there for about 10-15 minutes. At that point of time Ramratan was lying at the door in injured condition. From there, he went to his house. He further deposed that on the date of incident, when he reached at the door of Ramratan, there was a huge crowd there and the wife of Ramratan was crying and wailing. He did not see the Dayanand and the other accused persons at the door of Ram Ratan. He further deposed that, it is incorrect to say that to save the accused persons he was giving false testimony. It is also incorrect to say that he has not seen the incident, however the deceased has died due to the injuries sustained by him.

37. Learned counsel appearing on behalf of the appellants has submitted that judgment and order dated 18.08.2018 passed by learned Additional Session Judge, IV/Special Judge, E.C. Act, Deoria is illegal and arbitrary and the learned trial court ignored the facts and law as applicable in the facts and circumstances of the present case and has failed to appreciate the evidence on record. He further submitted that learned trial court did not fully appreciate the evidence on record and arrived at a different conclusion, whereby convicting the appellants in an illegal and arbitrary manner. Learned Additional Session Judge, without taking into consideration the factual matrix and the testimony of the witnesses as corroborated during the trial in a coherent, cogent and homogeneous manner, meaning thereby the evidence did not support the prosecution case and the learned Additional Session's Court did not consider and appreciate the same in letter and spirit. However, the inculpatory part of evidence was taking into account, while passing the judgment and sentence against the appellants. He also submitted that the complainant of the case could not remember, as to which hand of her late husband/deceased was fractured, the PW-1 namely Smt. Krishna Devi, complainant of the case, could not remember the correct names of the accused persons and she further stated that there was some dispute between her husband/deceased and accused persons over a '*Shisham'* tree, which was situated at the mid point of fields of complainant and accused persons. She next stated that there was no such dispute in respect of '*Shisham'* tree.

38. Learned counsel for the appellants further submitted that it was a mere incident, where the deceased was going on

a motorcycle and unfortunately the motorcycle met with an accident and as a result of which the deceased had sustained injuries and ultimately, he succumbed to the injuries. He also submitted that the presence of daughter of the deceased has been shown, just to give a colour to the story and as an addition to the number of witnesses. He next argued that, as far as the testimony of PW-2 is concerned, the said witness has been planted in an arbitrary manner, in order to prove a false case of accident into an incident, that she alongwith her mother and deceased (father) were returning from the market by having purchased some household articles, but the PW-2 has failed to disclose as to what articles were purchased by the family of the deceased, but she merely stated that articles those were purchased from the market, were given to someone else, just before lodging of the FIR, as if the deceased's family was anticipating some incident likely to happen on the way. PW-2 has also failed to disclose the place of incident, which was very important for the case of prosecution, as to where and at which place the incident of beating and assaulting of the deceased took place. He has further submitted that, PW-2 in her corroboration stated that she saw the assailants coming out of *'miyajee ki madayee'*. He further submitted that, if someone could be seen, while riding on the motorcycle and coming out of a distance, then in the meantime time, the motorcycle will proceed sufficient distance ahead, by the time, the assailants stopped the vehicle and attacked. Since the speed of the vehicle was much higher then the speed of a person, who were coming out from the hut to catch the vehicle and if the deceased could see any danger or attack by the assailants, then there was a sufficient time to run away with the motorcycle and it is not the case of the prosecution, that the assailants were already standing on the road, where the incident took place. He also argued that PW-2 could easily count the number of assailants first, being 5 in number and thereafter stated that a total 7 persons (in number) came out to catch and assault the deceased, which shows that the motorcycle was not running, but would have been either kept standing or parked, but it is not the case of the prosecution that the motorcycle was either standing or parked at the place of occurrence. Almost, all the witnesses of fact have stated that the motorcycle was stopped by them, therefore, the factual gap between the number of persons being counted and coming out from the hut and chasing the motorcycle would show that, there was no likelihood of any danger or attack by the assailants. The persons sitting on the motorcycle would have run away from the spot.

39. Learned counsel for the accused-appellants further submitted that PW-2 during her cross examination has corroborated that the deceased and her mother have purchased clothes, jewellery and vegetables from the market, but neither the clothes, jewellery, vegetables nor anything was recovered from the place of the incident by the Investigating Officer and no purchase of article was ever produced during the course of trial. Learned counsel for the appellants has further submitted that, it has also been acknowledged during the course of trial, that many people gathered at the place of incident, but none of independent witness was examined during the investigation or thereafter in the trial. He further submitted that the deceased's wife and daughter are the interested witnesses and in the absence of any independent witness in a case, where an incident took place and many people gathered, but none of them had dared to

come forward to corroborate the manner in which the incident took place and therefore, the manner in which the incident has happened is missing from the point of view of an independent corroboration. He further submitted that PW-2 was not aware, as to when and at which police station the report was lodged. He next argued that if the person, who came from Rudrapur and received the goods those were purchased from the market on that day, but none of those persons were made as a witness, even to explain that a particular person received the goods, those were purchased from the market by the deceased and his family. Learned counsel for the appellants submitted that PW-2 further stated that she knew the villagers, who gathered at the place of incident, but surprisingly none of them were made a witness to support the case of prosecution.

40. Learned counsel for the appellants further submitted that as far as medical report is concerned, which was prepared by PW-4 Dr. J.P. Singh, nowhere in the said report, it has been mentioned that any head injury was found on the body of the deceased. He further submits that, so far as the postmortem report is concerned, which was conducted by the PW-5-Dr. Mahesh Kumar, some blood clots were found, in brain and on opening the head, the doctor opined that the cause of death was due to injuries on his body before death and PW-5 further stated that so far as injuries No. 2 and 4 are concerned these were not fatal in nature and as per injury no. 3, PW-5 did not found any skull bone fracture on the dead body of the deceased. Only soft swelling was found in the brain membrane.

41. Learned counsel for the appellants submitted that the accused-appellants have not committed any offence. They are absolutely innocent and have been falsely implicated in the present case. Learned counsel further submits that no such incident has ever happened, as stated by the prosecution side and the prosecution has also failed to prove its case. It was stated in the first information report that, at the time of incident Smt. Krishna Devi, the wife and Suman Devi the daughter of the deceased, who were examined as PW-1 and PW-2 were accompanied with the deceased, but not even a single injury has been sustained either by the PW-1 or PW-2 in the incident, which is very strange. Learned counsel further submits that as per prosecution case, several people gathered at the place of incident, but surprisingly not even a single person was produced by the prosecution before the trial court to record their testimony as independent witness. There is no independent public witness of the incident. Both the eye witnesses namely, Krishna Devi and Suman Devi are the wife and the daughter of the deceased. They are the interested and partisan witnesses, hence their testimony is wholly untrustworthy and unreliable. The place of occurrence, which is mentioned in the site plan, and the labourers, who were doing agricultural work in the fields have not been made as eye witness. The motorcycle, which is said to be driven by the deceased was not shown in the site plan hence, creates a suspicion. The deceased has not received any injury on the vital part of the body. The injuries shown in the postmortem report are suspected one. Learned counsel further submits that all the accused persons are the family members and they have falsely been nominated as accused and on the basis of evidence adduced by the prosecution, no offence against the accused-appellants is made out. In support of his contention learned counsel for the accused-appellants has placed reliance upon the judgment

passed in the cases of ***Vijendra Singh and another vs. State of U.P., 2018(102) ACC 411, Jasbir vs. State of U.P. 2018(103) ACC 489, Nandu and others vs. State of U.P. 2018(103) ACC 739, Lalchand Dixit and others vs. State of U.P. 2017(99) ACC 691, Krishna Gowda and others vs. State of Karnataka 2009(64) ACC 302, State of Haryana vs. Krishna 2006(56) ACC 219, V.N. Rathees vs. State of Kerala 1997(35) ACC 841.***

42. On the other hand Sri Jitendra Kumar Jaiswal, learned AGA for the State and Sri Rajeev Kumar Singh, learned counsel for the first informant have submitted that from a bare perusal of the testimony of PW-1, PW-2 and PW-3, it is fully established that the assailants assaulted the deceased, while he was returning from the market along with his wife and daughter. The testimony of PW-1 reveals that while the deceased, PW-1 and PW-2 were returning from the market, they were apprehended by the assailants, who were hiding in the hut owned by one '*miyan'* nearby the road and as soon as the motorcycle came at the place of incident, the accused started assaulting the deceased. It has further submitted that all the 5 persons, who were hiding in a hut came out and surrounded the vehicle and started assaulting the deceased with *lathi*, *danda*, and sharp edged weapons and as a consequence of beating and assaulting, the deceased had sustained grievous injuries and he was taken to nearby Health Clinic and thereafter was taken to the Rudrapur Government Hospital and finally taken to Government Hospital, Gorakhpur, where he succumbed to the injuries. He further submitted that there was some rivalry between the deceased and assailants over a '*Shisham'* tree, which was situated at ridge/boundary of fields owned by the deceased and the assailants, side by side respectively. He also submitted that, it is not necessary that no other persons, who had arrived at the place of incident were ready to depose and become witness of the incident voluntarily because, no one was compelled to become the witness, as the number of witnesses are not important in the case crime, however, quality of deposition is more valuable piece of evidence, who throws light on each and every aspect of incident, which had taken place at the relevant time, between the parties. Hence, mother and daughter those were present and accompanied with the deceased on the motorcycle have very carefully and cogently deposed the entire incident, showing the involvement of assailants-accused persons and as per the series of events, evidence on record and testimony of witnesses the case of murder is fully established, which ought to have been considered and tried by the Trial Court, under section 302 of IPC, and not under section 304 of IPC, even if, presuming, but not admitting that the ingredients of sections 304/149 of IPC are attracted the same shall not fall within the category of section 304 Part-II of IPC, but certainly be covered within the ingredients of section 304 Part-I of IPC.

43. Having considered the rival contentions, on behalf of the learned counsel for the appellants and the State, though there are minor contradictions in the statements of the witnesses, as recorded during the course of trial, but these contradictions are not of such nature, that the case of prosecution would fail completely, but support the case of prosecution in entirety. The witnesses have by and large stated that accused persons have stopped the vehicle of the deceased, who was riding alongwith his wife and

daughter, but the witnesses got misplaced in bringing a coherent, unequivocal and concrete facts and events leading to the incident, however maintained the happening of the incident at the hands of accused persons and the testimony of the witnesses is not of such nature, which is likely to defeat the case of the prosecution, simply because the testimony of the witnesses has been recorded after the lapse of quiet some time from the date of happening of the incident, hence the appellants have not made out foolproof case for acquittal of themselves. However, in given facts and circumstances of the case, the conviction, which has been rendered under section 304 Part II I.P.C. is liable to be upheld, as per available record, evidence and testimony of the witnesses.

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44. Heard Sri Sharad Kumar, learned counsel for the surviving accused-appellants, Sri Jitendra Kumar Jaiswal, learned AGA for the State and Sri Rajeev Kumar Singh, learned counsel for the first informant and perused the record.

45. As a matter of fact and record Criminal Appeal No. 4922 of 2018 has been filed on behalf of the accused-appellants challenging the judgment and order dated 18.08.2018 passed by learned Additional Sessions Judge, IV/Special Judge, E.C. Act, Deoria in Sessions Trial No. 286 of 2014 (State Vs. Dayanand and Others), arising out of Case Crime No. 1154 of 2014, under Sections 147, 148, 323/149, 342, 304/149, 504, 506 of IPC, Police Station Rudrapur, District Deoria.

46. On the other hand, complainant/informant of the case has also filed Criminal Appeal No. 680 of 2022, challenging the judgment and order dated 18.08.2018 passed by learned Additional Sessions Judge, IV/Special Judge, E.C. Act, Deoria in Sessions Trial No. 286 of 2014 on the ground that the sentence awarded to the assailants is not commensurate with the gravity of the offence and as much as her husband had died, as a consequence of assault and beating at the hands of the assailants, which is a clear case of murder and not a mere incident.

47. Learned counsel for the appellants/informant by and large adopted the same arguments those of appeal No. 4922 of 2018, as argued by the prosecution, but with rider of enhancement of the sentence being covered under section 302 IPC, as the ingredients of section 302 IPC are fully made out in the given facts and circumstances of the case and has submitted that the case of prosecution is intact and from bare perusal of the testimony of PW-1, PW-2 and PW-3, it is fully established that the assailants assaulted the deceased, while he was returning from the market along with his wife and daughter. The testimony of PW-1 reveals that, while the deceased, PW-1 and PW-2 were returning from the market, they were apprehended by the assailants, who were hiding in the hut owned by one *'miyan'* nearby the road and as soon as the motorcycle came at the place of incident, all the 5 persons, who were hiding in a hut came out and surrounded the vehicle and started assaulting the deceased with *lathi, danda*, and sharp edged weapons and as a consequence of beating and assaulting, the deceased had sustained grievous injuries and he was taken to nearby Health Clinic and thereafter was taken to the Rudrapur Government Hospital and finally taken to

Government Hospital, Gorakhpur, where he succumbed to the injuries. He further submitted that there was some rivalry between the deceased and assailants over a *'Shisham'* tree, which was situated at ridge/boundary of fields owned by the deceased and the assailants. He also submitted that it is not necessary that no other persons, who had arrived at the place of incident was ready to depose and become witness of the incident voluntarily, and therefore, no one was compelled to become the witness, as the number of witnesses are not important in the case crime, whereas, quality of deposition is more valuable piece of evidence, who throws light on each and every aspect of incident, which had taken place at a particular time and place between the parties. Hence, mother and daughter, who were present and accompanied with the deceased on the motorcycle have very carefully and cogently deposed the entire incident, showing the involvement of assailants-accused persons and as per the series of events, evidence on record and testimony of witnesses, the case of murder is fully established, which ought to have been considered and tried under section 302 of IPC, and certainly be covered within the ingredients of section 302 of IPC. Learned counsel for the appellants/informant submitted that the learned trial court has undermined the quantum of sentence, in as much as, the accused persons ought to have been awarded the sentence under section 302 IPC and thus an illegality has been committed by the learned trial court to that extent and the sentence of the accused persons is liable to be enhanced and to be awarded under section 302 IPC, though wrongly awarded under section 304 IPC.

48. Learned counsel for the accused-appellants has relied upon the judgement of Hon'ble Supreme Court in the case of ***Devendra Kumar and others vs. State of Chhattisgarh [2024] 11 S.C.R. 523 : 2024 INSC 841.*** He also relied upon the judgment of Hon'ble Apex Court in the case of ***Sankath Prasad vs. State of Uttar Pradesh (2020 12 SCC 564,*** in which the Hon'ble Supreme Court has held that the incident was caused at the spur of moment and it was a fallout of an altercation, the charge under Section 302 I.P.C. was converted to that under Section 304 Part I, I.P.C. Though the facts of the present case are not quite similar to the facts of the cited law. However, the law laid down on the subject is helpful to the accused-appellants which suggests, that there was some dispute over *'Shisham'* tree between the accused persons and the deceased, that became a cause of assault and injury caused to deceased, but not with the intention to kill the deceased and there is no material on record to show that, there was any premeditation of mind and therefore, taking into consideration all these aspects, the possibility of offence being committed by the appellant without premeditation, in a manner which did not support it fully, cannot be ruled out, thus the accused-appellants. Hence, conviction made under Section 304 Part II IPC is upheld. However, the quantum of sentence has to be looked into in the given facts and circumstances of the case.

49. It has also been came to the notice of this Court that one of the appellant-Prayag Yadav in Criminal Appeal No. 4922 of 2018 has died on 10.05.2023, as per information received on record, according to his death certificate. Hence, the appellant No. 3-Prayag Yadav has already expired, the Criminal Appeal No. 4922 of 2018 in respect of appellant No. 3-Prayag Yadv is dismissed as having been abated.

50. Having regard to the contentions raised on behalf of the parties, the Court has come to the conclusion that the Appeal No. 680 of 2022 filed by the informant is devoid of merits, as also discussed in Appeal No. 4922 of 2018 and in entirety of the arguments raised in both the appeals. Hence the Criminal Appeal No. 680 of 2022 is liable to be dismissed. No case is made out to convict the accused under Section 302 IPC. Hence dismissed accordingly.

51. Now coming to the question of modification of sentence of the accused-appellants learned counsel for the appellants has submitted that about 11 months have already gone from the date of incident and from the evidence on record it is not clearly established whether the victim died on account of accident or as a result of injuries inflicted by the accused-appellants persons. Learned counsel for the appellants has also relied upon the judgments of Hon'ble Apex Court in the cases of ***Dattatraya Vs. The State of Maharashtra reported in AIROnline 2024 SC 196, Shahid Ali Vs. The State of Uttar Pradesh reported in AIROnline 2024 SC 129, Kariman Vs. The State of Chhattisgarh reported in AIROnline 2024 SC 422, Devendra Singh Vs. The State of Uttar Pradesh reported in AIROnline 2024 SC 598 and Hussainbhai Asgarali Lokhandwala Vs. The State of Gujarat reported in AIROnline 2024 SC 525*** wherein accused persons have been released for a period which they have been undergone incarceration and the conviction has been altered from Section 302 IPC to Section 304 Part II IPC. He further submitted that appellants are old age persons and pleaded that their sentence to be reduced to the period which they have already undergone behind the bars. The appellants have already undergone a sentence of more than 11 months and 12 days. We find that the said sentence would sub serve the ends of justice. Therefore, the appellants are sentenced to the period already undergone.

52. The appeal stands partly allowed. The judgment and order of the trial court on conviction is upheld and sentencing the appellant is modified. Hence, all the appellants (other than Prayag Yadav) are sentenced to the period already undergone by each of them, however, imposed fine is enhanced to Rs. 50,000/- each, which shall be paid by the appellants to the victim within one month from their release.

53. The appellants be released forthwith, if not wanted in any other case. Bail bonds of the appellants are cancelled and sureties discharged. The appellants are directed to furnish bail bonds U/s. 437-A Cr.P.C. within a week from their release.

54. Let a copy of this judgment and order be sent to the court concerned alongwith the trial court record within a week for compliance. The compliance report shall be sent by the court concerned to this Court within a further period of fifteen days.

(2025) 8 ILRA 453
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 23.08.2025

BEFORE

THE HON'BLE SHEKHAR KUMAR YADAV, J.

Criminal Appeal No. 5376 of 2025

Balwant Pandey ...Appellant
Versus
State of U.P. & Anr. ...Respondents

Counsel for the Appellant:
Rohit Shukla

Counsel for the Respondents:
G.A., Mahesh Kumar Shukla

Issue for Consideration

The primary question before the Court was whether the lower court erred in rejecting the appellant's bail application.

Headnotes

Criminal law-SC/ST Act-S. 14-A(2),3(2)(V) –Bhartiya Nyay Sanhita,2023-Ss. 191(2), 191(3), 190, 115(2), 117(2), 352, 351(2), 118(1), 109-
Delayed FIR-Cross-case-No recovery-both sides sustained injuries-no criminal history- The court held that the lower court erred in rejecting the bail application and the impugned order suffered from infirmity and illegality-Appeal allowed.

Held

The court found that the appellant had made out a case for bail, considering the facts and circumstances, nature of offence, evidence, complicity, role assigned and nature of injury-Appeal allowed and the impugned order was set aside.(Para 8 to 11) (E-6)

List of Acts

Bharitya Nyaya Sanhita,2023, SC/ST Act,1986

List of Keywords

SC/ST Act. BNS , recovery of weapon , criminal history, illegality, personal bond, injury.

Case Arising From

CRIMINAL APPELATE JURISDICTION-CRIMINAL APPEAL No. – 5376 of 2025
From the Judgment and Order dated 23.08.2025 of the High Court of Judicature at Allahabad.

Balwant Pandey Vs. State of U.P. & Anr.

Appearances for Parties

Advs. for Appellant:
Rohit Shukla
Advs. for Respondent:
G.A., Mahesh Kumar Shukla

(Delivered by Hon'ble Shekhar Kumar Yadav, J.)

1. In this case notice has already been served upon the informant and also counter affidavit and supplementary affidavits have been filed.

2. The present criminal appeal under Section 14-A(2) Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been filed by the appellant- **Balwant Pandey** to set aside the order dated 12.05.2025 in Bail Application No. 686 of 25 and to release him on bail in Case Crime No. 78 of 2025, under Sections 191(2), 191(3), 190, 115(2) 117(2), 352, 351(2), 118(1), 109 BNS & Section 3(2)(V) S.C./S.T. Act, P.S. Kotwali Dehat, District Mirzapur.

3. Heard learned counsel for the appellant, the learned AGA for the State, Sri Mahesh Kumar Shukla for respondent no. 2 and perused the entire record.

4. According to the prosecution case, the FIR of the incident has been lodged on the same day stating therein that when the informant was returning from his field, on the way the accused appellant met him and assaulted him and there persons. There is delayed FIR of 10 hours and no weapon has been recovered from the possession of the appellant.

5. Submission of learned counsel for the appellant is that the appellant is innocent and has been falsely implicated in this case. The appellant has not committed any offence as alleged in the impugned FIR. Further submission is that the prosecution story is totally false and fabricated. Essential ingredients to constitute the offence under the SC/ST Act are lacking in the matter. Appellant is languishing in jail since 26.03.2025. Learned counsel for the appellant next submitted that it

is a cross case, from both the sides FIRs have been registered and both the sides have sustained injuries. No weapon has been recovered from the possession of the applicant or at his pointing out. The appellant has no criminal history. the sward has been shown in the hands of one accused Gaurav Tiwari. Further submission is that the impugned order rejecting the bail application of the appellant suffers from infirmity and illegality warranting interference by this Court.

6. On the other hand, learned A.G.A. as well as learned counsel for the opposite party no.2 opposing the prayer for bail had have submitted that the appellant committed the present offence having knowledge that the victim belonged to S.C./S.T. Community. There is no infirmity or illegality in the impugned order.

7. I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record including the impugned order carefully.

8. Having regard to the facts and circumstances of the case and keeping in view the nature of the offence, evidence, complicity of the accused, role assigned to the present appellant and the nature of injury, the Court is of the opinion that the appellant has made out a case for bail. The Court below erred in rejecting the bail application of the appellant. The impugned order suffers from infirmity and illegality and the same is liable to be set-aside and the appeal is liable to be allowed.

9. Accordingly, the appeal is allowed and the impugned order rejecting the bail application of the appellant is hereby set-aside.

10. Let the appellant-**Balwant Pandey** involved in aforesaid case crime number be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The appellant will not tamper with the evidence during the trial.

(ii) The appellant will not pressurize/ intimidate the prosecution witness.

(iii) The appellant will appear before the trial court on the date fixed, unless personal presence is exempted.

(iv) The appellant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

(v) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

11. In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

(2025) 8 ILRA 455
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 27.08.2025

BEFORE

THE HON'BLE SHEKHAR KUMAR YADAV, J.

Criminal Appeal No. 7652 of 2025

Girjesh Chaudhari & Ors. ...Appellants
Versus
State of U.P. & Anr. ...Respondents

Counsel for the Appellants:
Vijay Prakash Chaturvedi

Counsel for the Respondents:
G.A.

Issue for Consideration

The appellants prayed the entire proceeding of criminal case no. 13 of 2021 as well as the summoning order dated 29.07.2025

Headnotes

Criminal law-SC/ST Act-S. 14-A(1),3(1)(dha) –Indian Penal Code,1860-Ss.147, 323, 504, 452-Challenge to-summoning order-The court held after perusing the material on record, it cannot be said that no offense is made out-At the initial stage of quashing proceedings, the court will not adjudicate disputed question of fact or consider the accused's defence-petition disposed of.

Held

The court must only see a prima facie case in light of the law laid down by the Supreme Court in cases like R.P. Kapur, Bhajan Lal, P.P. Sharma and Zandu Phrmaceuticals-The court emphasized that the appellants' proper recourse for arguing their defense is to file a discharge application before the trial court-The appeal was disposed of with the aforesaid directions.(Para 4,5) (E-6)

Case law Cited

R.P. Kapur Vs St. of Punj. A.I.R (1960) S.C. 866, St. of Haryana Vs Bhajan Lal(1992) SCC (Cr.) 426, St. of Bih. Vs P.P. Sharma (1992) SCC (Cr.), Zandu Pharmaceutical Works Ltd. Vs Mohd. Saraful Haq & Anr. (Para-10) (2005) SCC (Cr.) 283-referred to.

List of Acts

SC/ST Act,1986, Indian Penal Code,1860

List of Keywords

prima facie case, discharge,offence, summoning order, disputed question of fact, Siddharth Nagar.

Case Arising From

CRIMINAL APPELLATE JURISDICTION:CRIMINAL APPEAL No. – 7652 of 2025
From the Judgment and Order dated 27.08.2025 of the High Court of Judicature at Allahabad
Girjesh Chaudhari & 6 Ors Vs.State of U.P. & Anr.

Appearances for Parties

Advs. for Appellant(s):
Vijay Prakash Chaturvedi
Adv. for Respondent(s):-
G.A.

(Delivered by Hon'ble Shekhar Kumar Yadav, J.)

1.Heard learned counsel for the appellants, and learned A.G.A. for the State and perused the record.

2.This Criminal appeal under Section 14-A (1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, has been preferred by the appellants with the prayer to quash/set aside the entire proceeding of Criminal Complaint Case no. 13 of 2021, (Sanjay Vs. Girjesh Chaudhari and others), as well as summoning order dated 29.7.2025 passed by Additional Session Judge/Special Judge, SC/ST(P.A.) Act, Siddharth Nagar in Criminal Complaint Case no. 13 of 2021 under Sections 147, 323, 504, 452 IPC and Section 3 (1) (dha) SC/ST (P.A) Act, P.S. Shohratgarh,District Siddharth Nagar, pending in the Court of Additional Session /Special Judge, SC/ST (P.A.) Act, Siddharth Nagar.

3.The contention of the learned counsel for the appellants is that no offence against the appellants is disclosed and the present prosecution has been instituted with a malafide intention for the purposes of harassment.

4.From the perusal of the material on record and looking into the facts of the case at this stage it cannot be said that no offence is made out against the appellants. All the submissions made at the bar relate to the disputed questions of fact, which cannot be adjudicated upon by this Court. At this stage only prima facie case is to be seen in the light of the law laid down by Supreme Court in cases of **R.P. Kapur Vs. State of Punjab, A.IR. 1960 S.C. 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P. Sharma, 1992 SCC (Cr.) 192, and Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283.** The disputed defence of the accused cannot be considered at this stage. Moreover, the appellant has got a right of discharge before the court below and he is free to take all the submissions in the said discharge application before the trial court.

5.The prayer for quashing the entire proceeding as well as summoning order of the aforementioned case is **refused**.

6.With the aforesaid directions, this criminal appeal is **finally disposed of.**

(2025) 8 ILRA 457
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 22.08.2025

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE ASHUTOSH SRIVASTAVA, J.

Criminal Appeal No. 7985 of 2023

Munnu Singh & Anr. ...Appellants
Versus
State of U.P. ...Respondent

Counsel for the Appellants:
Om Narayan Pandey, Sarvesh Kumar Dubey, Umesh Kumar Singh, Vinod Kumar Kushwaha

Counsel for the Respondent:
Amrendra Nath Rai, G.A., Sanjay Singh

Issue for Consideration

The applicant is a government servant(Clerk in Nagar Panchayat who was suspended from his job on 28.07.2023 following his conviction-Appellant sought suspension due to job suspension and departmental charge-sheet as he is sole breadwinner.

Headnotes

Criminal law-Criminal procedure code,1973-S. 389(1)-Suspension of Conviction and sentence-Indian Penal Code,1973-Ss. 304, 307, 504 ,S.25 of the Arms act-Appellate courts can suspend conviction in exceptional cases considering the factors include accusation nature, crime manner, gravity of offence-application allowed-Conviction and sentence dated 13.07.2023 suspended pending appeal.

Held

The court held that the power under section 389(1) Crpc to suspend conviction exists but confined to exceptional cases,not routine upon mere filing of appeal-Court must assess offence gravity crime nature,manner, post-conviction release desirability, and convictions' ramifications-Prior bail compliance during trial loses significance post conviction-In instant case offences unconnected to appellants position-suspension of conviction would not breach service rules permitting termination during criminal probes involving moral turpitude or duty related charges-Conviction and sentence suspended pending appeal-inoperative till disposal.(Para 7 to 9) (E-6)

Case law Cited

Rama Narang Vs Ramesh Narang (1995)2 SCC 513[1995 Lawsuit (SC) 113],Navjot Singh Sidhu

Vs St. of Punj. & Anr. 2007(2) SCC 574,Omprakash Sahni Vs Jai Shankar Chaudhary & Anr. (2023) 6 SCC 123,Kishori Lal Vs Rupa & Ors (2004) 7 SCC 638,Vijay Kumar Vs Narendra & Ors (2002) 9 SCC 364-referred to.

List of Acts

Indian Penal code,1860, Arms Act,1959

List of Keywords

Suspension, Conviction, moral turpitude, charge-sheet, bread earner, Nagar Panchayat, Disciplinary proceedings.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: CRIMINAL APPEAL No. – 7985 of 2023
From the judgment and order dated 22.08.2025 of the High Court of Judicature at Allahabad.

Munnu Singh & Anr Vs. State of U.P.

Appearances for Parties

Advs. for Appellant:-
Om Narayan Pandey, Sarvesh Kumar Dubey, Umesh Kumar Singh, Vinod Kumar Kushwaha
Advs.for Respondent:
Amrendra Nath Rai,G.A., Sanjay Singh

(Delivered by Hon'ble Ashutosh Srivastava, J.)

1.Heard Sri Sarvesh Kumar Dubey, learned counsel for the Applicant/Appellant No. 1, Sri Amit Sinha, learned AGA for the State Respondent and perused the record.

2.The instant application at the instance of the Applicant/Appellant No. 1, Munnu Singh son of Sarnam Singh Thakur, under Section 389(1) of Cr.P.C. has been filed seeking the suspension of conviction and sentence of the order dated 13.07.2023 passed by the Sessions Judge, Shahjahanpur in Session Trial No. 450 of 2008 (State Vs. Munnu Singh & others) arising out of Case Crime No. 33A of 2006 under Section 304, 307, 504 I.P.C., Police Station Khudaganj, District Shahjahanpur and Session Trial No. 451 of 2008 (State Vs. Ramautar) arising out of Case Crime No. 41 of 2006, under Section 25 of Arms Act, Police Station Khudaganj, District Shahjahanpur and sentencing him to undergo life imprisonment with fine of Rs. 15,000/- each under Section 304 (Part-I)/34 I.P.C. in default thereof to undergo one year additional rigorous imprisonment, seven years rigorous imprisonment with fine of Rs. 10,000/- each under Section 307/34 I.P.C. in default thereof to undergo six months additional rigorous imprisonment and one year imprisonment with fine of Rs. 1000/- under Section 504 IPC, in default thereof to undergo two months additional imprisonment.

3.Learned counsel for the Applicant/Appellant No. 1 submits that the conviction and sentence vide order dated 13.07.2023 was assailed before this Court in Criminal Appeal No. 7985 of 2023 which Appeal has been admitted and is pending consideration. The Applicant/ Appellant No. 1 was enlarged on bail by this Court vide order dated 09.11.2023, however, the conviction and sentence of the order was not suspended.

4.Learned counsel for the Applicant/Appellant No. 1 further submits that the Applicant/Appellant No. 1 was working as a Clerk in the Office of the Nagar Panchayat, Khudaganj, District Shahjahanpur and consequent to his implication in the FIR and subsequent conviction and sentence was placed under suspension vide order dated 28.07.2023 and Charge-Sheeted by the Department vide charge-sheet dated 28.03.2024 on the ground that though he has been bailed out but the conviction and sentence has not been kept in abeyance. Resultantly, the suspension order continues to be operative

and has not been revoked. It is submitted that the applicant/appellant is the sole bread earner of the family and is suffering immensely on account of his continued suspension. The Applicant/Appellant No. 1 has not misused the liberty granted by this Court vide order dated 09.11.2023.

5.Learned counsel for the Applicant/Appellant No. 1 has placed reliance upon the decision of the Apex Court in the case of **Rama Narang Vs. Ramesh Narang**, reported in **1995(2) SCC 513 [1995 lawsuit (SC) 113]** and on the case of **Navjot Singh Sidhu Vs. State of Punjab and another,** reported in **2007(2) SCC 574** to buttress the submission that under Section 389 Cr.P.C. conviction of sentence can both be suspended during pendency of the Appeal.

6.We have heard the learned counsel for the Applicant/Appellant No. 1, learned AGA appearing for the State and perused the records as also the case laws cited at the Bar. We are of the considered opinion that the power to suspend an order of conviction, apart from the order of sentence, is not alien to Section 389(1) of the Cr.P.C., however, its exercise should be limited to very exceptional cases. Merely because the convicted person files an Appeal to challenge his conviction the Court should not suspend the operation of the conviction and the Court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance. The Apex Court very recently in **"Omprakash Sahni vs. Jai Shankar Chaudhary and Another"** reported in **2023(6) SCC 123** while considering the scope of Section 389 Cr.P.C. in cases of life imprisonment held as under:-

*"30. In Kishori Lal v. Rupa and Others, reported in **(2004) 7 SCC 638,** this Court has indicated the factors that require to be considered by the courts while granting benefit under Section 389 of the Cr.P.C in cases involving serious offences like murder etc. Thus, it is useful to refer to the observations made therein, which are as follows:*

"4. Section 389 of the Code deals with suspension of execution of sentence pending the appeal and release of the appellant on bail. There is a distinction between bail and suspension of sentence. One of the essential ingredients of Section 389 is the requirement for the appellate court to record reasons in writing for ordering suspension of execution of the sentence or order appealed against. If he is in confinement, the said court can direct that he be released on bail or on his own bond. The requirement of recording reasons in writing clearly indicates that there has to be careful consideration of the relevant aspects and the order directing suspension of sentence and grant of bail should not be passed as a matter of routine.

5. The appellate court is duty-bound to objectively assess the matter and to record reasons for the conclusion that the case warrants suspension of execution of sentence and grant of bail. In the instant case, the only factor which seems to have weighed with the High Court for directing suspension of sentence and grant of bail is the absence of allegation of misuse of liberty during the earlier period when the accused-respondents were on bail.

6. The mere fact that during the trial, they were granted bail and there was no allegation of misuse of liberty, is really not of much significance. The effect of bail granted during trial loses significance when on completion of trial, the accused

persons have been found guilty. The mere fact that during the period when the accused persons were on bail during trial there was no misuse of liberties, does not per se warrant suspension of execution of sentence and grant of bail. What really was necessary to be considered by the High Court is whether reasons existed to suspend the execution of sentence and thereafter grant bail. The High Court does not seem to have kept the correct principle in view."

31. In ***Vijay Kumar v. Narendra and Others*** *reported in* ***(2002) 9 SCC 364*** *and Ramji Prasad v. Rattan Kumar Jaiswal and Another reported in (2002) 9 SCC 366, it was held by this Court that in cases involving conviction under Section 302 of the IPC, it is only in exceptional cases that the benefit of suspension of sentence can be granted. In Vijay Kumar (supra), it was held that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 of the IPC, the court should consider the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and the desirability of releasing the accused on bail after they have been convicted for committing the serious offence of murder."*

7.In the case at hand, we find that admittedly the Applicant/Appellant No.1, Munnu Singh is a Government Servant and is being proceeded with Departmentally and has also been Charge-Sheeted. The applicant was suspended vide order dated 28.07.2023. The suspension order has been continued and disciplinary proceedings are contemplated against the applicant. The applicant has been released on bail by this Court vide order dated 09.11.2023. Under the relevant Service Rules, a Government Servant against whom an investigation, inquiry or trial relating to criminal charge, which is connected with his position as Government Servant or which is likely to embarrass him in discharge of his duties or which involves moral turpitude may be suspended. On the aforesaid charge, a Government Servant can be terminated holding independent inquiry by the disciplinary authority even during pendency of the criminal case on same charges.

8.In the case at hand, the Applicant/Appellant No. 1 has been convicted for the charges under Sections 304, 307, 504 I.P.C., Section 25 of the Arms Act, which is not connected with his position as Clerk, Nagar Panchayat, Khudaganj, District Shahjahanpur, nor it is an offence relating to moral turpitude. In case an order suspending the conviction and sentence is passed, it would not violate any statutory provision.

9.In view of the above, we are of the opinion that the application moved by the Appellant No. 1, namely Munnu Singh son of Sarnam Singh Thakur deserves to be **allowed** and is accordingly allowed. The order of conviction and sentence awarded against the Applicant/Appellant No. 1 dated 13.07.2023 is suspended and the conviction shall not be operative till the decision of the Appeal.

10.List before appropriate Court for final hearing in the month of November, 2025.

(2025) 8 ILRA 461
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 26.08.2025

BEFORE

THE HON'BLE SHEKHAR KUMAR YADAV, J.

Criminal Appeal No. 12727 of 2024

Ravindra Kumar Verma @ R.K. Verma & Anr. ...Appellants
Versus
State of U.P. & Anr. ...Respondents

Counsel for the Appellants:
Pankaj Kumar Dwivedi

Counsel for the Respondents:
G.A., Manoj Kumar

Issue for Consideration

The matter pertains to the cheating and forgery of the documents-The appellants falsely implicated with the allegations that The apellants along with co-accused opened the Osam Infra Project company, deposited the money of the informant and others and prepared forged documents.

Headnotes

Criminal law-SC/ST Act-S. 14-A(2),3(2)(V) –Indian Penal Code,1860-Ss. 419, 420, 406, 467, 468, 471,34, 120-B, 504, 506-No new ground to enlarge the appellant on bail –no illegality or perversity in the impugned order-Appeal dismissed.

Held

The court found no new ground for the bail after considering the facts and circumstances offence nature(fraud/forgery) , evidence ,accused complicity, punishment severity, criminal history of 17 cases-Appeal dismissed-bail rejected. (E-6)

List of Acts

SC/ST Act,1986, Indian Penal Code, 1860

List of Keywords

Complicity, offence, fraud , forgery ,criminal history.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: CRIMINAL APPEAL No. – 12727 of 2024
From the Judgment and Order dated 26.08.2025 of the High Court of Judicature at Allahabad.
Ravindra Kumar Verma @ R.K. Verma & Anr. Vs. State of U.P. & Anr.

Appearances for Parties

Adv. for Appellant(s):
Pankaj Kumar Dwivedi
Advs. for Respondent(s):
G.A.,Manoj Kumar

(Delivered by Hon'ble Shekhar Kumar Yadav, J.)

1. Heard learned counsel for the appellant, learned AGA as well as perused the entire record.

2. This criminal appeal under Section 14-A(2) Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been filed by the appellant- Ravindra Kumar Verma @ R.K. Verma and Rajeev Kumar Prajapati @ Rajeev Prajapati to set aside the impugned bail rejection order dated 17.10.2024 passed by Special Judge (SC/ST Act) Varanasi in Bail Application No.3540 of 2024 in Case Crime No. 354 of 2021, under sections 419, 420, 406, 467, 468, 471, 34, 120-B, 504, 506 IPC & 3(2)(V) SC/ST Act, Police Station- Cantt, District- Varanasi

3. Learned counsel for the appellant submits that the appellant has been falsely implicated in the present case. Learned counsel for the appellant submits that the appellant has not committed any offence as alleged in the impugned FIR. There are much contradiction in the version of FIR,

statement of the informant and other persons. The appellant is languishing in jail since 22.08.2021. Further submission is that the impugned order rejecting the bail application of the appellants suffers from infirmity and illegality warranting interference by this Court.

4. Learned counsel for the informant opposed the prayer for bail and submits that the appellants are the main accused persons along with other co-accused persons open the Osam Infra Project Company, deposited the money of informant and other persons. They also prepare forged documents. The appellants are having the criminal history of 17 cases. In this way, the complicity of the appellants in forgery with the informant and other persons is made out, therefore, the appellants are not entitled for bail.

5. I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record including the impugned order carefully.

6. Having regard to the facts and circumstances of the case and keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment, the statement of the injured as recorded before his death, there is no new ground to enlarge the appellant on bail. There is no illegality or perversity in the impugned order passed by the learned Special Judge SC/ST Act, the appeal deserves to be dismissed.

7. Accordingly, this criminal appeal is, hereby, dismissed.

(2025) 8 ILRA 462
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 13.08.2025

BEFORE

THE HON'BLE NALIN KUMAR SRIVASTAVA, J.

Criminal Revision No. 2619 of 2025

Abid ...Revisionist
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Revisionist:
Rajiv Sisodia, Shashank Dwivedi

Counsel for the Opposite Parties:
G.A., Manoj Kumar

Issue for Consideration

Matter pertains to whether trial court was justified in exercising its jurisdiction to frame charge u/s 308 IPC against revisionist, despite investigation materials indicating only grievous hurt and whether such framing of charge suffers from illegality, perversity or lack of judicial mind, thereby warranting interference under revisional jurisdiction.

Headnotes

Penal Code, 1860 - ss. 323, 504, 308 - Code of Criminal Procedure, 1973 - s. 161 - Against framing of charge - Initially NCR was lodged on 20.02.2020 against revisionist, which was subsequently converted into FIR on 12.04.2020 u/s 323, 504 and 325 IPC - Upon completion of investigation, charge sheet for said offences was submitted and revisionist appeared before trial court and was granted bail - During consideration of charge, Additional Chief Judicial Magistrate vide order dated 18.04.2025, proceeded to frame charges not only u/s 323 and 504 IPC but also u/s 308 IPC on basis of medical opinion indicating fracture of nasal spine alleged to have been caused by revisionist with danda - Aggrieved thereby, revisionist preferred instant criminal revision seeking quashing of said order, pleading lack of intention or knowledge to attract ingredients of Section 308 IPC and contending that case falls within purview of Section 325 IPC only.

Held: F.I.R. records that accused abused and assaulted injured - In his Section 161 Cr.P.C. statement, he corroborated F.I.R., stating that revisionist struck his nose with danda, causing bleeding and Sukkhan assaulted him with kicks and fists, accompanied by verbal abuse - Medical examination revealed four injuries, X-ray and C.T. Scan advised for injury no.1, which was later found to involve nasal spine fracture, opined by doctor as grievous in nature - In the instant case, evidence does not establish that accused at any point of time had intention or knowledge that assault could cause victim's death - Had such intention existed, attack would likely have been directed at head or any other sensitive part and not upon his face where nasal area is found - Though nasal injury caused by danda is grievous, in view of seriousness of said injury and nose is a vital part of human body, this fact alone does not attract Section 308 IPC - Evidence indicates intention to inflict grievous injury, not to cause death - Hence, while nasal injury is serious, it does not fall within ambit of Section 308 IPC - Injury in this case, though grievous u/s 320 IPC, falls within scope of Section 325 IPC and does not extend beyond it - Impugned order set aside, and matter is remitted to Trial Court to frame charges against revisionist in accordance with law. [Paras 12, 16, 18, 20] (E-13)

Case Law Cited

P. Vijayan v. State of Kerala, **(2010) 2 SCC 398;** Dilawar Balu Kurane v. The State of Maharashtra, **(2002) 2 SCC 135;** Sufiyan v. State of Uttarakhand, **2023 SCC OnLine Utt 1413 - referred to.**

List of Acts

Penal Code, 1860, Code of Criminal Procedure, 1973

List of Keywords

Framing of charge; Statement of witnesses; Arbitrary manner; Subject matter of evidence in trial; Intention or knowledge to cause grievous hurt; Fracture of nasal spine; Vital part of body; Medical Officer; C.T. Scan report; Lack of judicial mind; Injury report; Case diary; Limited scrutiny at charge stage; Section 308 IPC; Section 325 IPC; Matter remitted to trial court.

Case Arising From

REVISIONAL JURISDICTION: Criminal Revision No. - 2619 of 2025

From the Judgment and Order dated 18.04.2025 of the Additional Chief Judicial Magistrate, Court No.1, Bijnor in Case Crime No. 113 of 2020

Appearances for Parties

Advs. for the Revisionist:
Rajiv Sisodia, Shashank Dwivedi

Advs. for the Opposite Party:
G.A., Manoj Kumar

(Delivered by Hon'ble Nalin Kumar Srivastava, J.)

1. The present criminal revision has been preferred by the revisionist - **Abid** to quash the impugned order dated 18.4.2025 passed by Additional Chief Judicial Magistrate, Court No.1, Bijnor in case crime no. 113 of 2020, under Sections 323, 504, 308 IPC, Police Station Nehtour, District Bijnor whereby the Magistrate concerned proceeded to frame charge in the matter.

2. Heard learned counsel for the revisionist, learned counsel for the opposite party no.2 as well as the learned AGA for the State and perused the material available on record.

3. Admit.

4. The facts of the case are that NCR dated 20.2.2020 registered against the revisionist was converted into F.I.R. bearing case crime no. 113 of 2020 under Sections 323, 504 and 325 IPC on 12.4.2020 and after investigation charge sheet was also submitted for the said offences. The revisionist appeared before the trial court and was released on bail, however, vide order dated 18.4.2025 the

Court concerned held that charge should be framed under Section 308 IPC alongwith offences under Sections 323 and 504 IPC.

5. Assailing the impugned order, it is submitted by the learned counsel for the revisionist that he has been falsely implicated in this case. From the contents of NCR/FIR and also the statement of witnesses it is crystal clear that there was no intention or knowledge on the part of the revisionist to make assault upon the injured that if his act caused death of the injured he would be guilty of culpable homicide not amounting to murder and more over the doctor, who medically examined the injured, stated in his statement before the Investigating Officer that the injury sustained by the injured was not fatal at all. It is further submitted that the essential ingredients to establish the offence under Section 308 IPC are lacking on the basis of evidence on record.

6. The next argument is that the trial court in an arbitrary manner while hearing on the point of framing of charge suo moto opined that the injury was termed grievous in nature as per the statement of the Medical Officer and the C.T. Scan report. It is also submitted that the supplementary report available on record shows a fracture on nasal spine which was not a vital part of the body. It is further submitted that in the impugned order the Magistrate concerned wrongly interpreted the law on the subject. The opinion expressed by the concerned Magistrate whether the accused person had intention or knowledge to cause death of the deceased by his assault was the subject matter of the evidence in trial and it was also wrongly held that the nose is a vital organ of the body and assault upon the same may have proved fatal.

7. Another limb of the argument is that the Court concerned has totally discarded the legal principles governing the matter of framing of charge and passed the impugned order to face trial under Section 308 IPC as well alongwith Sections 323 and 504 IPC whereas the present case does not travel beyond the scope of Section 323, 504, 325 IPC and offence Section 308 IPC is not made out at all. The present prosecution has been instituted with a malafide intention.

8. Learned counsel for the revisionist further pointed out certain documents and statements on record in support of his contention and urged that the impugned order suffers from infirmity, illegality and lack of judicial mind warranting interference by this Court.

9. Repudiating the submissions made above, the learned AGA and learned counsel for the opposite party no.2 vehemently opposed the prayer and submitted that the nature of injuries, which were caused on the vial part of the body, the injury report, the C.T. Scan report and other relevant document clearly establish that charge under Section 308 IPC was a natural outcome in the light of the aforesaid evidence and it was not a case only under Section 325 IPC. Though charge sheet was submitted for the offence under Sections 323, 325 and 504 IPC but it was well within the jurisdiction of the trial court to frame the charges for the offences which were prima facie made out from the perusal of the case diary and materials collected by the I.O. during course of investigation. The impugned order does not suffer from infirmity, illegality, perversity or lack of judicial mind and revision deserves to be dismissed.

10. I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record carefully.

11. In connection with the issue involved herein and before dealing with the submissions made by the learned counsel for the parties, it is desirable to quote the provisions of Section 308 IPC, which are as under :

"Section 308. Attempt to commit culpable homicide .- Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both, and if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

12. In this case in the F.I.R. itself it has been mentioned that the accused persons hurled abuses and assaulted the injured Anas. In his statement under Section 161 CrPC the injured Anas has supported the F.I.R. version and has further stated that Abid made an assault upon his nose with the aid of danda due to which his nose started bleeding and accused Sukkhan assaulted him with kicking and fisting. Accused persons also hurled abuses. The injured was medically examined at PHC Nahtaur, Bijnor and four injuries were found upon his body. X-ray and C.T. Scan was advised for injury no.1. In the supplementary report fracture of nasal spine was found and the doctor opined the said injury as grievous in nature.

13. The parameters for framing of charge and discharge are well settled by a catena of judicial precedents. The Hon'ble Supreme Court in the case of **P. Vijayan vs. State of Kerala, (2010) 2 SCC 398** held that the Judge is not a mere post office to frame charge at the behest of the prosecution but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the Court, after the trial starts.

14. In the case of **Dilawar Balu Kurane vs. The State of Maharashtra, (2002) 2 SCC 135**, the Hon'ble Apex Court observed that in exercising powers under Section 227 of the Criminal Procedure Code, 1973, the settled position of law is that the Judge while considering the question of framing the charge under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out and whether the materials placed before the Court discloses grave suspicion against the accused which has not been properly explained to the Court, then in such a case the Court will be fully justified in framing the charge and proceed with the trial. On the other hand, if the Judge is satisfied that the evidence produced before the Court gives rise to some suspicion but not grave suspicion then the Judge will be fully justified in discharging the accused.

15. Moreover, at the stage of framing charges a meticulous and in-depth examination of the evidence is not required.

The court is only concerned to determine as to whether there is a prima facie case, meaning a sufficient ground to proceed with the trial or not. A detailed assessment of the evidence's credibility or a conclusive finding of guilt is not necessary at this stage.

16. The definition of Section 308 IPC establishes the essential contents to bring home the charges for the said offence. It is must to show that the accused had such intention or knowledge and under such circumstances that he by his act causes death, he would be guilty of culpable homicide not amounting to murder. In the instant matter the evidence on record is not sufficient to show that the accused / revisionist at any point of time was having such intention or knowledge that the assault might cause death of the injured. Had it been so, he could have made an assault upon his head or any other sensitive part of the body and not upon his face where the nasal area is found. No doubt the injury upon the nose of the injured caused by use of 'danda' may be termed as 'grievous injury' in view of the seriousness of the said injury and nose is a vital part of human body but this fact alone is not sufficient to bring the act of the accused into the ambit of Section 308 IPC. It appears from the evidence collected by the Investigating Officer that the intention or knowledge on the part of the accused was to inflict grievous injury but it does not denote the intention or knowledge on the part of the accused / revisionist that he by such act might cause death of the injured. A nasal injury, as found in the case in hand, was no doubt a serious injury as reflects from the medical reports but it is incapable to bring the offence under the cover of Section 308 IPC.

17. Reference may be taken of a judgment of Uttaranchal High Court in **Sufiyan vs. State of Uttarakhand, 2023 SCC OnLine Utt 1413**, wherein in almost similar circumstances the injured was examined by a Medical Board, it has been held that the injuries suffered by the injured were a 'fracture in parietal bone' and a 'fracture in nasal bone' but it was opined that the injuries were in fact grievous in nature but they were never fatal to life. Almost same situation is existing in the present matter.

18. In the case in hand it appears from the evidence on record at this stage that the accused might have kept an intention or knowledge to cause grievous hurt to the injured, as defined in Section 320 IPC but there is no evidence on record to show, even prima facie, that the accused on any point of time was having any intention or knowledge to do away with the deceased by his act of blow. The hurt caused in the instant matter may be grievous in nature and may be kept under the cover of Section 320 IPC which defined the grievous hurt and the instant matter does not travel beyond the scope of Section 325 IPC.

19. In view of the above, from a perusal of the material available on record and keeping in view the facts of the case, in my view, at this stage it cannot be said that offence under Section 308 IPC is made out against the revisionist. No evidence has been collected against the revisionist during the course of investigation to establish the offence under Section 308 IPC. At this stage, the evidence on record falls short of establishing the requisite ingredients of Section 308 IPC. The Court concerned erred in passing the impugned order. I find force in the submissions made by the learned counsel for the revisionist. The

impugned order suffers from illegality, infirmity, perversity and lack of judicial mind. The criminal revision deserves to be allowed and the impugned order is liable to be set aside.

20. Accordingly, the criminal revision is **allowed** and the impugned order dated 18.4.2025 passed by Additional Chief Judicial Magistrate, Court No.1, Bijnor in case crime no. 113 of 2020, under Sections 323, 504, 308 IPC, Police Station Nehtour, District Bijnor is set aside and the matter is remitted to the trial court with the direction to proceed to frame charges against the revisionist in accordance with law and in the light of the observations made in the present judgment.

(2025) 8 ILRA 467
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 23.08.2025

BEFORE

THE HON'BLE NALIN KUMAR SRIVASTAVA, J.

Criminal Revision No. 3324 of 2025

Phool Singh ...Revisionist
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Revisionist:
Avanish Kumar Pandey

Counsel for the Opposite Parties:
G.A.

Issue for Consideration

Matter pertains to whether trial court committed any legal error in rejecting accused's application u/s 311 Cr.P.C. seeking recall and further cross-examination of five already-examined prosecution witnesses, when said application did not specify what material questions were left and when evidence stage had already concluded.

Headnotes

Penal Code, 1860 - ss. 147, 148, 149, 307, 324, 504, 506 - Code of Criminal Procedure, 1973 - ss. 311, 313 - Revisionist assailing judgment and order dated 26.05.2025 passed by Additional Sessions Judge, u/s 147, 148, 149, 307, 324, 504, 506 IPC, whereby application filed by accused/revisionist u/s 311 Cr.P.C. seeking recall of prosecution witnesses PW-1 to PW-5 for further cross-examination was rejected by trial court on grounds that all nine prosecution witnesses had already been extensively cross-examined and application was vague and lacking in specific reasons - Revisionist contended that some relevant questions had inadvertently remained to be asked prior to stage of recording statement u/s 313 Cr.P.C., while trial court observed that no substantive explanation was furnished to show necessity for recall and that such application appeared to be attempt to fill up lacuna in case.

Held: Court is not bound to exercise its power u/s 311 Cr.P.C. merely because application has been filed by a party - Power under this provision is discretionary and cannot be claimed as matter of right - It should be invoked only when Court finds that recalling or re-examining witness is essential for just decision of case - The term "just decision" underscores principle of fair trial and proper settlement of dispute between the parties - Therefore, while exercising this power, Court must act with caution to ensure that application is not intended merely to fill lacuna in party's case but is really essential to pass a justifiable order - In view of legal principles governing Section 311 Cr.P.C., application filed by accused before Trial Court merely states that examination of P.W.1 to P.W.5 is complete, but some relevant questions remain to be asked, seeking permission for their further cross-examination in interest of justice - Undoubtedly, application is vague, as it neither specifies material questions allegedly left unasked during cross-examination

of fact witnesses nor indicates their relevance, containing only cursory statement without any supporting reasons - If application u/s 311 Cr.P.C. lacks substantive and genuine reasons, and merely states that certain relevant questions inadvertently left unasked, it cannot justify recalling witnesses for cross-examination unless it is shown that refusal to do so would cause serious prejudice to accused - In the instant case, which is at stage of recording accused's statement u/s 313 Cr.P.C., witnesses' evidence was recorded long ago - Such applications are often filed to search out material contradictions in witnesses' statements after their memory has faded with passage of time - There also exists strong possibility of witnesses being won over during this period, thereby benefiting accused - Hence, such vague applications are motivated by intent to secure contrary depositions by witnesses with their previous statements recorded before Court. [Paras 9, 12,13, 14] (E-13)

Case Law Cited

State of Haryana v. Ram Mehar, **(2016) 8 SCC 762;** Swapan Kumar Chatterjee v. CBI, **(2019) 14 SCC 328 - referred to.**

List of Acts

Penal Code, 1860, Code of Criminal Procedure, 1973

List of Keywords

Exhaustive cross-examination; Vague application; Specific questions; Recall; Just decision; Abuse of process of law; Fair trial; Serious prejudice to accused; Belated stage; Ulterior motive; Inconvenience and hardship to witnesses; Discretionary power of Court; Stage of recording the statement.

Case Arising From

REVIOSNAL JURISDICTION: Criminal Revision No. - 3324 of 2025

From the Judgment and Order dated 26.05.2025 of Additional Sessions Judge, Court No.12, Bulandshahr in Sessions Trial No. 1309 of 2020 of 2022 in Case Crime No. 290 of 2020

Appearances for Parties

Advs. for the Revisionist:
Avanish Kumar Pandey

Advs. for the Opposite Party:
G.A

(Delivered by Hon'ble Nalin Kumar Srivastava, J.)

1. Heard learned counsel for the revisionist, learned A.G.A. for the State on the point of admission and perused the record.

2. This criminal revision has been preferred against the judgement and order dated 26.5.2025 passed by Additional Sessions Judge, Court No.12, Bulandshahr in Sessions Trial No. 1309 of 2020 of 2022 arising out of case crime no. 290 of 2020 under Sections 147, 148, 149, 307, 324, 504, 506 I.P.C., P.S.-Sikandrabad, District Bulandshahr whereby the application filed by the revisionist under Section 311 Cr.P.C. has been rejected.

3. It is submitted by the learned counsel for the revisionist that the accused persons have been cooperative during the proceeding of trial now the case is fixed for recording the statement under Section 313 Cr.P.C. but some relevant questions were left over to be asked from the witnesses P.W.1- Rinku, P.W.2 Gangaram, P.W.3 Dhara, P.W.4 Nepal Singh, P.W.5 Raju @ Arjun and on this ground a prayer was made to recall the aforesaid witnesses for their further cross-examination.

4. The said application after hearing was rejected by the learned trial Court and the main ground for rejection for the same was that an exhaustive cross-examination has already been conducted with all the nine prosecution witnesses who were examined by the prosecution and the learned trial Court also pointed out that the application under Section 311 Cr.P.C. is a vague application as it does not contain the

specific questions which are left over during cross examination and only in a cursory manner the present application has been moved.

5. There is no need to issue notice to opposite party no.2/ informant.

6. It will be apt to have a glance upon the provisions of Section 311 Cr.P.C. first.

"311. Power to summon material witness, or examine person present- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined, and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case".

7. The aforesaid provisions make it explicitly clear that the Court is empowered at any stage of the trial or other proceedings to recall or re-examine any person already examined if the Court considers that the evidence of that particular person appears to be essential for the just decision of the case.

8. In the instant case the prayer before the trial Court was to recall/ re-examine five witnesses already examined before it by invoking its power under Section 311 Cr.P.C.

9. The question arises whether the Court is bound to exercise its power under Section 311 Cr.P.C. simply because such an application has been moved by one of the parties. It is always to be remembered that the power under Section 311 Cr.P.C. is the discretionary power of the Court and no party can claim it as of its right. It is also to be kept in mind that the Court shall use its power only when it appears to it that to recall/ re-examine such witness is essential for the just decision of the case meaning thereby and if the said witness/(s) is/are not re-examined or recall the Court may decide the case but it would not fall into the category of 'just decision'. The phrase 'just decision' is very significant and reminds the basic principle of a fair trial and a proper settlement of the dispute between the parties, hence the Courts while exercising its power under Section 311 Cr.P.C. should be very cautious and alert and it should always consider as to whether such application has been moved only to fill up the lacuna by either of the parties and it is really essential to pass a justifiable order.

10. Reference may be taken of a decision of Hon'ble Apex Court passed in **State of Haryana v. Ram Mehar, (2016) 8 SCC 762** wherein the Hon'ble Apex Court reiterated the principle behind the provision of Section 311 Cr.P.C. by holding that interests of victim/ the collective (represented through the prosecution) and accused must be balanced. Concept of fair trial cannot be limitlessly stretched to permit recall of witnesses endlessly on ground of magnanimity, etc.

11. In another pronouncement of **Swapan Kumar Chatterjee v. CBI, (2019) 14 SCC 328** the nature and scope of power of Court has been discussed. It was also clarified by the Hon'ble Apex Court that power under Section 311 is not to be exercised if application filed is an abuse of process of law. Thus, where prosecution evidence has been closed long back and

reasons for non-examination of a particular witness earlier are not satisfactorily disclosed in the application, re-summoning of such a witness at a belated stage would cause great prejudice to the other party and should not be allowed. Similarly, court should not encourage filing of successive applications for recall of a witness under Section 311.

12. Now in the light of the legal principle governing the subject the application for invoking the power of the court under Section 311 Cr.P.C. moved by the accused before the trial Court only mentions that the evidence of P.W.1-Rinku, P.W.2 Gangaram, P.W.3 Dhara, P.W.4 Nepal Singh, P.W.5 Raju @ Arjun is completed but some relevant and necessary questions are left over to be asked, hence, in the interest of justice the accused persons may be permitted to cross-examine all the aforesaid five witnesses. Indubitably this is a vague application which nowhere mentions as to what significant questions are left over to be asked in the cross-examination of the aforesaid witnesses who are the witnesses of fact and what is their relevancy as well but only a cursory statement has been made in the said application without assigning any reason behind it.

13. In view of the above, if there are no substantive material and genuine reasons disclosed in the application under Section 311 Cr.P.C. invoking the power of the Court under the aforesaid provision and only to mention therein that since some very relevant questions were leftover inadvertently which are necessary to bring on record the witnesses may be recalled for cross-examination is impermissible without showing the Court that refusal to do so by the learned trial Court may result into serious prejudice to the accused.

14. The case in hand is pending at the stage of recording the statement of accused under section 313 Cr.P.C. and the evidence of the witnesses has been recorded long before. The court cannot shut its eyes to the fact that very often the purpose of such applications is to search out the material contradictions in the statement of the witnesses after a long interval and to take benefit of the situation that the memory of the witnesses may fade with the passage of time.

A hard fact also hammers the mind of this court that there is a strong possibility of the witnesses to be won over by the other side during a long span of time and the accused might be benefited with this. It will be apt to add that such type of vague applications on the behest of the accused are very often filed with the ulterior motive to have some contrary deposition by witnesses with their previous statements recorded before the Court.

15. The case in hand appears to be a case of the aforesaid category of malafide motive for the reason as to how an application under Section 311 Cr.P.C. can be successesfully meet before the Court to recall or re-examine a particular witness without assigning any specific or reasonable reason. Such type of applications in the firm view of this Court are illustrative of gross abuse of the process of the court. The aim of use of its discretionary power by a court must be to clear the ends of justice without causing prejudice to either of the parties. The inconvenience and hardship caused to a witness to call him again and again for

evidence to the court is also an additional factor to be kept in mind by the court.

16. In view of the above, I do not think that the learned trial Court committed any legal error by rejecting the application filed by the revisionist under section 311 Cr.P.C.

17. This revision is, accordingly, **dismissed** at the stage of admission itself.

(2025) 8 ILRA 471
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 28.08.2025

BEFORE

THE HON'BLE SIDDHARTH, J.
THE HON'BLE SANTOSH RAI, J.

Criminal Misc. Writ Petition No. 14839 of 2025

Mohammad Wajir ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Om Prakash Singh Sisodia, Sunil Kumar Singh

Counsel for the Respondents:
G.A.

Issue for Consideration

Regulation 228 and 240 does not give an unbridled, uncanalised power to the police to use it in such a way which has necessary consequence of squeezing out the fundamental freedom of the citizen

Head Notes

The Constitution of India, 1950-Article 226 - The Uttar Pradesh Police Regulations-Regulations 228, 231 & 240 - Only one case has been registered against the petitioner - no any other case is pending - Regulation 228 and 240 does not give an unbridled, uncanalised power to the police - Police does not possess a licence to enter the names of whoever they like or dislike in the surveillance register - Representation pursuant to a direction of this Court has very casually been rejected by the Superintendent of Police - Nothing to substantiate that the petitioner is involved in the nature of offence envisaged by Regulation 228 (A) - History sheet No.18-A deserves to be quashed - Petition Allowed.

Held- No sufficient ground to entertain a reasonable belief that surveillance was required in the case of the petitioner. There exists no evidence to support the act of opening of the history sheet No.18-A of the petitioner at Police Station Bhawaniganj, District Siddharth nagar and, therefore, it deserves to be quashed. **(Para 14)** (E-15)

Case Law Cited

Govind Vs. State of Madhya Pradesh, AIR 1975 SC, 1378;Malak Singh Vs. State of Punjab and Haryana, AIR 1981 SC, 760

List of Acts

The Constitution of India, 1950, The Uttar Pradesh Police Regulations

List of Keywords

No criminal history except one case; History-sheet has been opened on the basis of only one case; No unbridled, uncanalised power to the police; Squeezing out the fundamental freedom

Case Arising From

Writ petition has been filed seeking a writ, order or direction in the nature of certiorari quashing the order dated 23.06.2025 passed by Superintendent of Police, Siddharth nagar by which the petitioner's representation for closure of History-sheet no.18 A category has been rejected.

Appearances for Parties

Counsel for Petitioners(s) : Om Prakash Singh Sisodia, Sunil Kumar Singh
Counsel for Respondent(s) : G.A

(Delivered by Hon'ble Santosh Rai, J.)

1. Heard Sri Sunil Kumar Singh, learned counsel for the petitioner and learned A.G.A. for the State.

2. This writ petition has been filed seeking a writ, order or direction in the nature of certiorari quashing the order dated 23.06.2025 passed by Superintendent of Police, Siddharthnagar by which the petitioner's representation for closure of History-sheet no.18 A category has been rejected.

3. The facts in brief as contained in the writ petition are that the petitioner is a reputed person and doing his private work having no criminal history except one case mentioned as Case Crime No.282 of 2016, under Section 3/5/7 Cow Slaughter Act. Earlier the petitioner approached this Court by means of Criminal Misc. Writ Petition No.8156 of 2024. The same has been disposed of by order dated 17.03.2025 with direction that petitioner shall file an appropriate application before Superintendent of Police, Siddharthnagar and same shall be considered and decided by Superintendent of Police, Siddharthnagar. In compliance of order dated 17.03.2025 the petitioner approached respondent no.3 Superintendent of Police, Siddharthnagar. By order dated 23.06.2025 respondent no.3 has rejected the representation of the petitioner. Hence this writ petition.

4. Learned counsel for the petitioner submitted that the petitoner Mohammad Wajir is not habitual offender. Only one case, bearing Case Crime No.282 of 2016, under Section 3/5/7 Cow Slaughter Act was registered against him. Investigation of this case has already been concluded and chargesheet has been filed before the court. The applicant has already been obtained bail that in the above case. No any F.I.R. or N.C.R. or complaint has been registered against the petitioner except the above case. The concerned police authority has wrongly opened the history-sheet against the petitioner without cogent and reliable material and in volition of para 228, 229, 231, 233 and other relevant rules of the Uttar Pradesh Police Regulations. The purpose of police regulation to open the history-sheet is to give special power in the hands of the police to keep vigilance on the activity of the history-sheeter who may be involved in criminal activities. It is true that history-sheet may be opened and vigilance surveillance may be conducted against the accused person according to law but only one case has been registered in the year 2016 against the petitioner and no other criminal case or complaint has been registered against the petitioner before the police station or the court concerned. History-sheet has been opened by the police authority on the basis of only one incident/case, which has been registered 8 years back. He further submitted that history-sheet being opened as History Sheet no.18A category which is completely illegal and liable to be quashed. He further prayed that issue writ order or direction in the nature of certiorari to quash the order dated 23.06.2025 passed by Superintendent of Police, Siddharthnagar. Further prayer is that order or direction may be issued in the nature of mandamus commanding to the respondents not to take any coercive measure on the basis of History Sheet No.18A category.

5. Learned A.G.A. for opposite parties vehemently opposed the above argument and submitted that police authority has power under the Uttar Pradesh Police Regulations to open the history-sheet against the habitual offender or the suspects

on the basis of information collected through the concerned police station on the basis of relevant material. Concerned police station of police rightly or legally opened the History-sheet no.18A category against the petitioner. He further admitted that no any cognizable offence or non cognizable offence or complaint has been registered against the petitioner except Case Crime No.282 of 2016, under Section 3/5/7 Cow Slaughter Act, P.S. Dumariyaganj, District Siddharthnagar.

6. In the light of the above observation made by learned counsel for the petitioner and learned A.G.A. we thoroughly perused the relevant record. It is admitted fact that 'only' one case Case Crime No.282 of 2016, under Section 3/5/7 Cow Slaughter Act has been registered against the petitioner and no any other case is pending or registered against the accused-petitioner. It has been submitted before the Court that trial in Case Crime No.282 of 2016, under Section 3/5/7 Cow Slaughter Act is pending before the court concerned. The aforesaid incident occurred on 21.04.2016 and the first information report was registered against five accused persons namely Kale son of Heera, Shamshulla son of Shohrat, Wajir son of Basheer, Arman and Gajju. On the basis of very same crime number, History-sheet no.18A category dated 07.02.2024 was approved against only one accused petitioner Mohammad Wajir only by Superintendent of Police, Siddharthnagar. Prior to it, the petitioner Mohammad Wajir has filed Criminal Misc. Writ Petition No.8156 of 2024 before this Court. Coordinate Bench of this Court has passed an order on 17.03.2025. Relevant para-5 is quoted below:-

"5. Considering the facts and circumstances, no useful purpose would be served in keeping the writ petition pending. With the consent of the parties, the writ petition is disposed of finally with the direction that the petitioner shall file an appropriate application before respondent no. 3 (Superintendent of Police, Siddharthnagar) within ten days from today, and the Superintendent of Police, Siddharthnagar, shall consider and decide the said application strictly in accordance with law, preferably within three months from the date of its filing. It is made clear that this Court has not expressed any opinion on the merits of the case."

7. In compliance of the order of the co-ordinate Bench of this Court dated 17.03.2025, the Superintendent of Police, Siddharthnagar has rejected the representation of the petitioner on 23.06.2025 on the basis of the report of the Circle Officer, S.H.O., police station Bhawaniganj, District Siddharthnagar by mentioning the provision of Uttar Pradesh Police Regulations particularly paras 228 and 240 of Uttar Pradesh Police Regulations.

8. Paras 228, 231 and 240 of Uttar Pradesh Police Regulations reads as under:-

*" **228. History sheets, Part V of the village Crime Note Book-** Part V consists of history sheets. These are the personal records of criminals under surveillance. History-sheets should be opened only for persons who are or like to become habitual criminal or abettors of such criminals. There will be two classes of history-sheets :*

1. Class A history-sheets for dacoits, burglars, cattle-thieves, railway goods wagon thieves, and abettors thereof.

2...

History-sheets of both classes will be maintained in similar form, but those for class B will be distinguished by a red bar marked at the top of the first page. No history-sheet of class B may be converted into a history-sheet of class A, though should be the subject of a history-sheet class B be found to be also addicted to dacoity, burglary, cattle-theft or theft from railway goods wagons. A class, as well as B class, surveillance may under paragraph 238 be applied to him. In the event of a class A history-sheet man becoming addicted to miscellaneous crime his history-sheet may be converted into a class B history-sheet with the sanction of the Superintendent."

"231. Subjects of history sheets of A-Class- *The subjects of historysheets of class A will unless they are 'starred' remain under surveillance for a least two consecutive years of which they have spent no part in jail. When the subject of a history sheet of class A whose name has not been 'starred' who has never been convicted of cognizable offence and has not been in jail or suspected of any offence or absented himself in suspicious circumstances for two consecutive years his surveillance will be discontinued, unless for special reasons to be recorded in the inspection book of the police station the Superintendent decides that it should continue.*

When the subject of a history-sheet of class A is 'starred' he will remain starred for at least two consecutive years during which he has not been in jail or been suspected of a cognizable offence or had any suspicious absence recorded against him. At the end of that period if he is believed to have reformed he will cease to be 'starred' but will remain subject to surveillance which will be discontinued only if during that period no complaints have been recorded against him."

240. History sheets of both classes when to be opened? *-History-sheets of both classes may be opened (1) on suspicion or (2) on conviction or acquittal. No history-sheet may be opened without the orders of the Superintendent of Police.*

(1) On suspicion.- Whenever as a result of investigation into a case of dacoity, burglary, cattle theft from railway goods wagons or into a case of miscellaneous crime of a professional type, the officer-in-charge of a police station applies for the name of any person to be entered in the crime register as reasonably suspected, he must at the same time report whether the suspect is under surveillance, and if not, whether a history-sheet should in his opinion be opened for him. Should the gazetted officer-in-charge of a sub-division on receiving such a report and after such further inquiry as he may think necessary consider that a history-sheet is required, he will forward the report to the Superintendent who if he accepts the proposal will define the class of historysheet to be opened and pass orders as to whether the suspect should be 'starred'. Similarly whenever an officer-in-charge of a police station finds reason to believe, otherwise than in the course of an investigation, that any resident of his circle is addicted to crime, or whenever a gazetted officer or circle inspector for any reason believes that a history-sheet for any person is necessary a report must be submitted to the Superintendent, who will pass orders on it as laid down above."

9. The Apex Court in the case of ***Govind Vs. State of Madhya Pradesh, AIR 1975 SC, 1378*** observed that a person subjected to surveillance, the object and limitation of such surveillance depends upon character and antecedents of the person concerned. The Police Regulation has force of law and, therefore, it can not be said to be infringement of fundamental right. Nevertheless Article 21 of the Constitution is a right of an individual to be free from restriction or encroachment directly imposed or indirectly approached by calculated measures.

10. Thus, we have to examine case on the basis of facts and circumstances. We are of the considered view that Regulation 228 and 240 does not give an unbridled, uncanalised power to the police to use it in such a way which has necessary consequence of squeezing out the fundamental freedom of the citizen. A note of caution was given in the case of ***Malak Singh Vs. State of Punjab and Haryana, AIR 1981 SC, 760***. Thus evidently the police does not possess a licence to enter the names of whoever they like or dislike in the surveillance register. Ordinarily the names of persons with previous criminal record alone are entered in the surveillance register. They must be proclaimed offenders, previous convicts, or persons who have already been placed on security for good behaviour. In addition, names of persons who are reasonably believed to be habitual offenders or receivers of stolen property whether they have been convicted or not, can be categorized and entered in the surveillance register under the Police Regulation.

11. We have also noticed that the representation pursuant to a direction of this Court has very casually been rejected by the Superintendent of Police, Siddharthnagar stating therein that the provisions in Police Regulation 228 and 240 authorises police to open history-sheet. However, we have noticed that there is nothing to substantiate that the petitioner is involved in the nature of offence envisaged by Regulation 228 (A) of Police Regulation, there is not even a suspicion by any of the authorities. Admittedly, petitioner has no criminal antecedent and, therefore, rejection of the representation as well as opening of the history-sheet without even looking into requirement of Regulation 228 and 240 of the U.P. Police Regulation, the order dated 23.06.2025 can not be left to stand.

12. A close perusal of the order of the Superintendent of Police, Siddharthnagar , it transpires that while rejecting representation of the petitioner and justifying opening of the history-sheet, he has referred Police Regulation 228 (1) as well as Police Regulation 240 which are enabling provisions for opening history sheet of a person. We are conscious of the Police Regulations but the said provisions provide that history sheet can be opened only against such persons who are dacoits, burglars, cattle thieves, railway goods wagon thieves and abettors of such offence as well as certain other offences classified in Police Regulation 228. Regulation 240 enables the Police to open a history sheet also on the basis of suspicion or on conviction or acquittal.

13. In the instant case the Superintendent of Police, Siddharthnagar opened History-sheet no.18A category on the basis of sole case being Crime No.282 of 2016, under Section 3/5/7 Cow Slaughter Act. Thus, the basis of opening the history-sheet appears to be cattle theft

as provided under para 228 of the Uttar Pradesh Police Regulations. Above matter is related to Cow Slaughter Act. Since only one case has been registered against the petitioner before 8 years of the incident in the year 2016, it cannot be said that the petitioner is habitual offender of cattle theft as mentioned in Caw Slaughter Act. Para 240 of Uttar Pradesh Police Regulation provides opening of history-sheet on the basis of 'suspicion' and on the basis of conviction or acquittal, but it requires same cogent and reliable material to frame basis of reliable and reasonable suspicion.

14. We are satisfied that there was no sufficient ground to entertain a reasonable belief that surveillance was required in the case of the petitioner. There exists no evidence to support the act of opening of the history sheet No.18-A of the petitioner at Police Station Bhawaniganj, District Siddharthnagar and, therefore, it deserves to be quashed.

15. In the result, the writ petition, is **allowed**. The order dated 23.06.2025 passed by respondent no.3, Superintendent of Police, Siddharthnagar is quashed. The respondents are directed to close the present history sheet No. 18-A of the petitioner and not to keep surveillance on the petitioner, in pursuance of the said history-sheet.

(2025) 8 ILRA 476
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 06.08.2025

BEFORE

THE HON'BLE JASPREET SINGH, J.

First Appeal From Order No. 468 of 2011
&
First Appeal From Order No. 467 of 2011

The Chief Engineer Irrigation Deptt. Lko. & Anr. ...Appellant
Versus
Ms. Tabassum ...Respondent

Counsel for the Appellant:
C.S.C.

Counsel for the Respondent:
Rajesh Trivedi, Shakeel Ahmad Ansari

Issue for Consideration

Issue pertains to whether a married daughter, being a legal heir of deceased victims in a motor accident claim, can be denied compensation beyond statutory no-fault liability u/s 140 of Motor Vehicles Act, 1988 on the ground that she is not a dependent, or whether she remains entitled to full and just compensation u/s 166 of Act as legal representative of deceased.

Headnotes

Motor Vehicles Act, 1988 - ss. 140, 166 - On 24.04.2009, Aftab Husain, accompanied by his son, was travelling on motorcycle towards the residence of relative when, near Bahad Gram Khushalganj, Mohaan Road, a truck bearing being driven in rash and negligent manner, collided with their motorcycle, resulting in grievous injuries to both - They were taken to Trauma Centre, where Aftab Husain succumbed to his injuries on same day, while his son expired during treatment - Claimant-respondent, daughter of Aftab Husain and sister of deceased, instituted two separate claim petitions before Motor Accident Claims Tribunal, which were contested by State-appellants, who denied accident and alleged contributory negligence by deceased - After appreciating evidence, Tribunal held that accident occurred due to rash and negligent driving of offending truck and awarded compensation of ₹2,13,200/- for death of Aftab Husain and ₹1,60,400/- for death of his son, which awards were challenged by State in instant appeals.

Held: Court holds that since claimant's husband was employed abroad and she resided with her

father and brother, her marital status does not negate her dependency - Tribunal rightly considered these facts and on a reasonable assessment, awarded compensation of Rs. 2,13,200/- for her father's death and Rs. 1,60,400/- for her brother's death, which cannot be termed excessive or unjust - It must be borne in mind that human life holds immense value and denying just compensation to legal representative merely for lack of dependency, by restricting it to no-fault liability amount as prescribed u/s 140 of Act and adding some amount under conventional heads would amount to travesty of justice and a disregard for loss of important human being caused by another's negligence - Tribunal's findings granting compensation to claimant can't be faulted - As only contention raised pertained to entitlement of married daughter and no other ground urged, State's appeals being devoid of merit, are dismissed - Awards in Claim Petitions are affirmed - Any amount deposited shall be remitted to Tribunal for release to claimant as per award, and any shortfall shall be made good with updated interest within sixty days. [Paras 28 to 31] (E-13)

Case Law Cited

Manjuri Bera v. The Oriental Insurance Company Ltd. and others, **(2007) 10 SCC 643;** Chandra Kala Sharma v. Mohd. Naushad, **2018 SCC OnLine SC 2234;** Deep Shikha v. National Insurance Co. Ltd., **2025 SCC OnLine SC 1090;** National Insurance Company Ltd. v. Birender, **(2020) 11 SCC 356;** Seema Rani and others v. Oriental Insurance Co. Ltd. and others, **(2025) SCC OnLine SC 283;** Jitendra Kumar and another v. Sanjay Prasad and others, **Civil Appeal No. 710199 of 2025(Arising out of SLP(C) No. 27779/2023);** Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another, **(2009) 6 SCC 121;** National Insurance Company Ltd. v. Pranay Sethi and others, **(2017) 16 SCC 680** - **referred to**

List of Acts

Motor Vehicles Act, 1988

List of Keywords

Rash and negligent driving; Claim petitions; Legal representative / Legal heir; Married daughter; Dependency / Loss of dependency; No-fault liability; Multiplier system; Quantum of compensation / Just and fair compensation; Compute / Calculation of compensation; Entitlement to compensation; Deduction on account of dependency; Exorbitant or unfair; Record of Tribunal be returned forthwith; Not entitled to be deprived of compensation.

Case Arising From

APPELLATE JURISDICTION: First Appeal From Order No. - 468 of 2011 Connected with First Appeal From Order No. - 467 of 2011

From the Judgment and Order dated 25.02.2011 of the Motor Accident Claims Tribunal/Additional District Judge, Court No.13, Lucknow in Claim Petitions bearing No.292 and 293 of 2009.

Appearances for Parties

Advs. for the Appellant:
C.S.C.

Advs. for the Respondent:
Rajesh Trivedi, Shakeel Ahmad Ansari

(Delivered by Hon'ble Jaspreet Singh, J.)

1. This is a batch of two appeals filed by the State under Section 173 of the of the Motor Vehicles Act, 1988 (hereinafter referred to as Act of 1988) assailing the award dated 25.02.2011 passed by the Motor Accident Claims Tribunal/Additional District Judge, Court No.13, Lucknow in two Claim Petitions bearing No.292 and 293 of 2009 whereby in a death case in Claim Petition No.292 of 2009, a sum of Rs.2,13,200/- alongwith 6% interest per annum has been awarded whereas in Claim Petition No.293 of 2009, a sum of Rs.1,16,400/- alongwith 6% interest per annum has been awarded in favour of the claimant-respondents.

2. Facts indicate that on 24.04.2009, Aftab Husain alongwith his son Tanveer Husain was travelling on a motorcycle to visit their relative. When they reached near Bahad Gram Khushalganj, Mohaan Road,

Police Station Kakori, the offending Truck bearing number URA 9406 which was being driven rashly and negligently, hit the motorcycle, as a result, both Aftab Husain and his son Tanveer Husain sustained grievous injuries. They were taken to the Trauma Centre at Medical College, Lucknow where during his treatment Aftab Husain expired on 24.04.2009 while his son Tanveer Husain expired during his treatment on 01.05.2009. Both of them were survived by the claimant-respondent Smt. Tabassum (daughter of the Aftab Husain and sister of Tanveer Husain).

3. It is in the aforesaid context that Tabassum instituted two separate claim petitions, one relating to the death of her father which came to be registered as Claim Petition No.292 of 2009 and the other claim petition in respect of her brother Tanveer Husain which was registered as Claim Petition No.293 of 2009. Both the claim petitions were contested by the State who denied the accident and further alleged that it was the deceased who was not careful while driving the motorcycle and as such on account of their own negligence the accident occurred and not on account of negligence of the Truck bearing number URA 9406.

4. The Tribunal upon exchange of pleadings framed four issues. Parties led their evidence and thereafter the Tribunal after analyzing the evidence recorded a finding that the accident occurred on account of rash and negligent driving of the Truck bearing number URA 9406. It also went on to compute the compensation and granted a sum of Rs.2,13,200/- in relation to the death of Aftab Husain and a sum of Rs.1,60,400/- was awarded on account of death of Tanveer Husain. It is the aforesaid two awards which are under challenge before this Court.

5. Shri Hemant Kumar Pandey, learned Standing Counsel for the State-appellants has vehemently urged that the amount of compensation granted to the respondents is not just and fair. It was urged that the compensation in terms of motor accident is primarily based on the principal of loss of dependency. In case if the dependency is not proved by the claimants, they are not entitled to the compensation beyond the terms of Section 140 of the Act of 1988.

6. The submission is that since the claimant was the married daughter of Aftab Husain hence she cannot be said to be the dependent on her father. Similarly, for the very same reason the claimant also cannot be treated to be a dependent on her brother. In the given circumstances at best the claimant could have been awarded compensation of a sum of Rs.50,000/- for each of the two deceased in terms of section 140 of the Act of 1988.

7. It is also urged that the Tribunal has erred in giving a larger compensation by noticing the dependency which in the instant case was not applicable, hence two awards deserve to be modified and the amount of compensation deserves to be reduced only to the extent of limit as prescribed under section 140 of the Act of 1988.

8. In support of his submission, he has relied upon the decision of the Apex Court in ***Manjuri Bera v. The Oriental Insurance Company Ltd. and others, (2007) 10 SCC 643***. He has further urged that the decision of the Apex Court in

Manjuri Bera (supra) still holds the field and it was followed by the Apex Court in ***Chandra Kala Sharma v. Mohd. Naushad, 2018 SCC OnLine SC 2234***.

9. It is urged that if a claimant did not suffer any loss since she was not a dependent on the deceased, then she can be entitled to compensation but only upto the limit fixed by the no fault liability section and may be some amount can be awarded under the conventional heads. He has also relied upon a recent decision of the Apex Court in ***Deep Shikha v. National Insurance Co. Ltd., 2025 SCC OnLine SC 1090*** wherein the Apex Court held that once a daughter is married, the logical presumption is that she has no rights on her parent as she is supported by her husband and his family. It is submitted that in Deep Shikha (supra), the Apex Court considered the dictum of the Apex Court in Manjuri Bera (supra) and further noticed that since the appellant no.1 (in Deep Shikha (supra)) was the married daughter, hence the compensation as awarded by the Tribunal to her was reduced to the extent of Rs.50,000/-whereas the claim of the appellant no.2 who was the mother of the deceased her compensation was maintained.

10. Thus, it was urged that in the instant case since the claimant was the married daughter, accordingly she was not a dependent of her father and brother, hence the amount of compensation granted is on the much higher side and the same deserves to be reduced. Consequently, the appeals deserve to be allowed.

11. Shri Rajesh Trivedi, learned counsel for the respondents has urged that the law relating to compensation arising out of motor accidents have undergone vast changes. The compensation as awarded is then primarily based on the principal of dependency but even the legal heirs are entitled to the grant of compensation. He further urged that in terms of Section 166 of the Act of 1988, the compensation can be claimed by the legal heirs/representatives. However, that does not limit the right of such legal heirs/legal representative to a particular sum. The right to claim compensation vests with the legal heirs/representative and the question depends upon the loss of dependency. The quantum can vary but it does not in any manner suggests that unless a person is dependent either wholly or in part on the deceased only then such compensation can be claimed.

12. It was further urged that in the instant case the claimant was dependent on her father as well as brother by not only being a legal heir but even for the reason that her husband was in Dubai for the purposes of his vocation and the father and brother of the claimant used to provide her with various facilities and amenities and being the daughter she used to visit her parent (as mother of the claimant had already died earlier) hence these circumstances in itself are sufficient to prove dependency and in such circumstances, the award made by the Tribunal cannot be faulted, hence the appeals deserve to be dismissed.

13. The Court had heard the learned counsel for the parties and also perused the material on record.

14. The issue before this Court for consideration is whether a married daughter can be excluded to claim compensation beyond the prescribed limit as mentioned in Section 140 of the Act of 1988.

15. In order to answer the aforesaid issue, it will first be relevant to notice the decisions cited by the learned counsel for the parties.

16. Learned counsel for the appellants has heavily relied upon the decision of the Apex Court in Manjuri Bera (supra). However, this Court is of the view that the said decision of Manjuri Bera has been largely misunderstood; inasmuch as it does not lay down any proposition to the effect that a married daughter is not entitled to compensation beyond the prescribed Section 140 of the Act of 1988.

17. In the case of Manjuri Bera, the claim petition was filed by the married daughter of Bata Krishna Mondal, an issue was raised before the Apex Court as to whether the married daughter could maintain a claim in terms of Section 166 of the Act of 1988. The Apex Court noticing the provisions of Section 166 and 168 including noticing the definition of the word 'legal representative' as mentioned in Section 2(11) CPC held that the liability under section 140 of the Act of 1988 does not cease in absence of the dependency. The right to file a claim application has to be considered in the background of right to entitlement. However, while assessing the quantum, the multiplier system is applied because of deprivation of dependency.

18. The Apex Court further held that the multiplier is a measure and there are three stages while assessing the question of entitlement; first the liability of the person who is liable and who is to indemnify the liability; next is the quantification and in this regard Section 166 is in the nature of recovery proceedings. Accordingly, the liability under Section 140 of the Act of 1988 does not cease in absence of dependency. In paragraph-15 of the said judgment, the Apex Court held as under:-

> *"15. Judged in that background where a legal representative who is not dependant files an application for compensation, the quantum cannot be less than the liability referable to Section 140 of the Act. Therefore, even if there is no loss of dependency the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from Section 140 of the Act. The appeal is allowed to the aforesaid extent. There will be no order as to costs. We record our appreciation for the able assistance rendered by Shri Jayant Bhushan, the learned amicus curiae."*

19. From the above, it would reveal that it was held that even if there is no loss of dependency, the claimant, if is, the legal heir or representative, will be entitled to compensation and the quantum of compensation shall not be less than the liability flowing from Section 140 of the Act of 1988. The use of the words that the quantum will not be less then the liability flowing from Section 140 does not mean that it is confined to the limits as provided in Section 140 rather it has been held that the compensation in such cases cannot be less then the limit as mentioned in Section 140 and does not provide for any upper limit or cap.

20. It will also be relevant to notice that the decision of Manjuri Bera (supra) came up for consideration before the Apex Court in the case of ***National Insurance Company Ltd. v. Birender, (2020) 11 SCC 356***.

21. ***In Birender*** the Apex Court has succinctly noticed the quantum before it in

para 10 whereas in paras 13 and 14, the Apex Court has explained the intent and the ratio laid down in the case of Manjuri Bera (supra). For better appreciation, paras 10, 13 and 14 of Birender (supra) is being reproduced hereinafter:-

"10. We have heard Mr Amit Kumar Singh, learned counsel for the Insurance Company (appellant) and Ms Abha R. Sharma, learned counsel for Respondents 1 and 2. The principal issues which arise for our consideration are as follows:

10.1. (i) Whether the major sons of the deceased who are married and gainfully employed or earning, can claim compensation under the Motor Vehicles Act, 1988 (for short "the Act")?

10.2. (ii) Whether such legal representatives are entitled only for compensation under the conventional heads?

10.3. (iii) Whether the amount receivable by the legal representatives of the deceased under the 2006 Rules is required to be deducted as a whole or only portion thereof?

*****

13. In para 15 of Manjuri Bera [Manjuri Bera v. Oriental Insurance Co. Ltd., (2007) 10 SCC 643 : (2008) 1 SCC (Cri) 585] , while adverting to the provisions of Section 140 of the Act, the Court observed that even if there is no loss of dependency, the claimant, if he was a legal representative, will be entitled to compensation. In the concurring judgment of S.H. Kapadia, J., as his Lordship then was, it is observed that there is distinction between "right to apply for compensation" and "entitlement to compensation". The compensation constitutes part of the estate of the deceased. As a result, the legal representative of the deceased would inherit the estate. Indeed, in that case, the Court was dealing with the case of a married daughter of the deceased and the efficacy of Section 140 of the Act. Nevertheless, the principle underlying the exposition in this decision would clearly come to the aid of Respondents 1 and 2 (claimants) even though they are major sons of the deceased and also earning."

"14. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the legal representative concerned was fully dependent on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs 1,00,000 and Rs 1,50,000 per annum. In that sense, they were largely dependent on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years."

22. From the above it would reveal that the Apex Court considering this very same issue held that the legal heir/ representative of the deceased is entitled to compensation even if there was no dependency. In the said case, the major

sons of the deceased who were not dependent had claimed compensation which was resisted by Insurance Company and in the aforesaid context it was held that the legal heirs were entitled to claim compensation and their right could not be curtailed upto the limit fixed in terms of Section 140 of the Act of 1988.

23. Now in this backdrop, if the decision of the Apex Court in Chandra Kala Sharma (supra) is seen it would indicate that it does not lay down any proposition which is contrary to what has been held by the Apex Court in Manjuri Bera (supra) and as explained in Birender (supra).

24 In so far as the decision of the Apex Court in Deep Shika (supra) is concerned, it would be noticed that in the case of Deep Sikha (supra) the Apex Court was not appraised of the earlier decision in Birender (supra). This Court hastens to add that there are two other later decisions of the Apex Court in ***Seema Rani and others v. Oriental Insurance Co. Ltd. and others, (2025) SCC OnLine SC 283 and Jitendra Kumar and another Vs. Sanjay Prasad and others, CIVIL APPEAL NO. 710199 of 2025(Arising out of SLP(C) No. 27779/2023)*** which follow the ratio as laid down in Birender (supra).

25. In Jitendra (supra) the Apex Court considered a similar issue regarding the right to claim compensation by a married daughter and relying upon the earlier decision in Birender(supra) and Seem Rani (supra), the Apex Court held as under:-

" 12.The High Court has placed reliance on the judgment of this Court in National Insurance Co. Ltd. v. Birender; (2020) 11 SCC 356 , to observe that the claimant-appellant(s) are legal representatives of the deceased and have a right to apply for compensation. Thereafter, in its discussion, the Court observed that the claimant-appellant(s) have not been shown to be dependents on the deceased and consequently, a deduction of 50% is to be made to determine the compensation to be received by the claimant-appellant(s).

13.In our considered opinion, the view on this issue cannot be faulted. The exposition of law in Birender (Supra) is clear, wherein it was observed as under: "14. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the legal representative concerned was fully dependent on the deceased and not to limit the claim towards conventional heads only."

14.Such exposition came to be followed by this Court in Seema Rani and Ors. v. Oriental Insurance Co. Ltd. and Ors.; 2025 SCC Online SC 283, wherein it was observed that the application for compensation, even by married sons and daughters, must be considered, irrespective of whether they are fully dependant or not. In the present case, it cannot be disputed that the claimant-appellant(s) became partner in the consultancy firm run by the deceased. Moreover, it is not in dispute that that the Flour Mill being run by the deceased, is still being run by the claimant-appellant(s). In such a factual

circumstance, it cannot be said that the claimant-appellant(s) were financially dependent upon the deceased.

15. Therefore, in view of the above, while the claimant-appellant(s) were not dependent upon the deceased, they are entitled to receive compensation as his legal representatives, in accordance with law. Thus, the deduction towards the loss of personal and living expenses is to be ½ (50 % of the income of the deceased) in accordance with law"

26. Having considered the decisions of the Apex Court as mentioned and noticed hereinabove, it would be clear that a legal heir cannot be deprived of compensation beyond the limits of no fault liability as provided under Section 140 of the Act of 1988 on the ground that the said heir was not a dependent of the deceased.

27. From the meaningful reading of the aforesaid decisions in Birender (supra), Seema Rani (supra) and Jitendra (supra), it would indicate that a legal heir, who may be a married daughter or a major son (married or unmarried), being a legal heir of the deceased is entitled for compensation. The compensation is to be determined as provided by the Apex Court in the case of ***Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 121*** which was further approved by the Constitution Bench of the Apex Court in ***National Insurance Company Ltd. Vs. Pranay Sethi and others (2017) 16 SCC 680***. It cannot be stated as a bland proposition that the legal heir if not dependent can only get the amount as provided under section 140 of the Act of 1988 as well as amount as indicated in the case of Pranay Sethi (supra) under the conventional heads. However, while calculating the quantum of compensation, considering the evidence on record, the dependency can be less or more in the sense that in case if there is a married daughter or a major son who may not be dependent (technically) on the deceased but the fact remains that because of the relationship, there would be some dependency and in such cases the deduction on account of dependency which may vary from case to case basis depending on the evidence but it cannot be said that there would be no dependency and the compensation would comprise of only the amount under the no fault liability and amount payable in terms of conventional heads.

28. This Court in light of the facts of the case holds that as the claimant has stated that since her husband was employed abroad hence she used to stay with her parent, (with her father and brother) hence it cannot be said that merely because the claimant was married, she would have no right or that she would not be a dependent. Thus, the findings recorded by the Tribunal cannot be faulted as the Tribunal has taken note of the aforesaid submissions and taking a conservative estimate had granted a compensation of Rs.2,13,200/- on account of death of her father and a sum of Rs.1,60,400/- for the death of her brother, which cannot be said to be exorbitant or unfair.

29. It should always be kept in mind that human life has much value, it would be anomalous to state that a person may loose a dear one or member of the family and merely because the legal representative is not dependent on the deceased hence, he or she would be confined only to the no fault liability amount as prescribed under Section 140 of the Act of 1988 and adding

some amount under the conventional heads, this would be a travesty of justice and mocking at a loss of an important human being, due to negligence of another.

30. For the aforesaid reason, this Court finds that the findings recorded by the Tribunal granting compensation to the claimant cannot be faulted. The main ground as urged by the learned Standing Counsel was in context with the entitlement of a married daughter to claim compensation and no other ground was pressed. The two appeals preferred by the State are without merit and are consequently **dismissed**. Costs are made easy. The award passed in Claim Petition No.292 and 293 of 2009 are affirmed

31. Any amount deposited before this Court shall be remitted to the Tribunal to be released in favour of the claimant as per the award and any short fall shall also be made good with updated interest to the claimant-respondents within 60 days from today. The record of the Tribunal be returned forthwith.

(2025) 8 ILRA 484
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.08.2025

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 143 of 2025

Pramod Kumar Rao @ Munna Singh ...Appellant
Versus
Legal Head Sahara India Commercial Corporation Ltd. & Ors. ...Respondents

Counsel for the Appellant:
Ajit Manit Tripathi, Sushil Kumar Mishra

Counsel for the Respondents:
Anuruddh Chaturvedi, Munna Tiwari

ISSUE FOR CONSIDERATION

Whether the civil court had jurisdiction to entertain a suit for permanent injunction filed by the plaintiff despite the existence of an arbitration agreement between the parties.

HEADNOTES

Civil Law – Civil Procedure Code, 1908 - Section 96, 151, Order 7 Rule 11, – Arbitration and Conciliation Act, 1996 - Sections 8, 8(1), 9 - First Appeal u/s 96 of CPC – filed by the plaintiff-appellant – against judgment and decree passed in Original Suit – plaintiff filed the suit for permanent injunction against dispossession from a flat allotted by the defendants – defendant moved an application under Order 7 Rule 11 of CPC - Trial court allowed the defendants' application, citing lack of jurisdiction due to an arbitration clause - plaintiff appealed under Section 96 CPC, arguing that the arbitral tribunal could not grant the relief sought – instant Appeal - court finds that, it is admitted position that there is an arbitration agreement between the between the plaintiff and the defendant to decide all the dispute arising out of the contract, regarding allotment of the disputed flat – in view of the law laid down by the Apex Court in case of Booz, Allen and Sundaram Finance Ltd. Court held that Civil Court has got no jurisdiction in this matter hence, by upholding the trial court's decision, court affirming that the dispute falls within the scope of the arbitration agreement and that the arbitral tribunal is competent to grant interim relief under Section 9 of the Arbitration and Conciliation Act, 1996 – Accordingly, instant first appeal is dismissed. (Para – 12, 13, 14)
Appeal Dismissed. (E-11)

CASE LAW CITED

Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. & Ors. – (2011 vol. 5 SCC 532) and Sundaram Finance Ltd. v. T. Thankam – 2015 vol. 14 SCC 444.

LIST OF ACTS

Code of Civil Procedure, 1908 and - Arbitration and Conciliation Act, 1996

LIST OF KEYWORDS

First Appeal - Arbitration Agreement – Jurisdiction - Permanent Injunction - Civil Court - Allotment Cancellation - Possession Rights - Interim Relief - Rejection of Plaint

CASE ARISING FROM

Original Suit No. 120 of 2020 (*Pramod Kumar vs. Sahara India and Others)* - Filed before the Civil Judge, Senior Division, Gorakhpur

APPEARANCE OF PARTIES

Counsel for Appellant(s): Mr. Ajit Manit Tripathi, Sushil Kumar Mishra.

Counsel for Respondent(s): Anuruddha Chaturvedi, Munna Tiwari

(Delivered by Hon'ble Sandeep Jain, J.)

1. This first appeal under Section 96 C.P.C. has been filed by the plaintiff-appellant against the impugned judgment and decree dated 24.01.2025 passed by the court of Civil Judge, Senior Division, Gorakhpur in Original Suit No.120 of 2020 (Pramod Kumar vs. Sahara India and others), whereby the application of the defendants under Order 7 Rule 11 C.P.C. has been allowed on the ground that there is an arbitration agreement between the parties and as such, the Court has no jurisdiction to decide the suit.

2. Learned counsel for the plaintiff-appellant submitted that the order impugned is erroneous because the trial court has not applied its mind to the controversy in issue. Learned counsel submitted that the plaintiff is in possession of the disputed property, which has been allotted to the plaintiff by the defendants and as such, the plaintiff has a right to defend its possession. The plaintiff can only be evicted by adopting due procedure, in accordance with law. Learned counsel further submitted that the relief of injunction sought in the suit, cannot be granted by the arbitral tribunal, as such, the trial court had the jurisdiction to decide the suit. It was further submitted that the plaintiff has been allotted the disputed property, which has not been cancelled by the defendants, as such, the plaintiff cannot be dispossessed. The defendants are adamant to dispossess the plaintiff from the disputed property, as such, the plaintiff had filed a suit for the relief of permanent injunction, which has been illegally dismissed at the initial stage vide impugned order, holding that the trial court has got no jurisdiction to decide the suit keeping in view the arbitration agreement between the parties.

3. Learned counsel for the caveator defendant-respondents submitted that upon an application been made by the plaintiff, a flat was allotted to the plaintiff for about Rs.71,00,000/- consideration, out of which the plaintiff paid Rs.7,50,000/- on application and further Rs.3,50,000/- on allotment, but since the remaining consideration of the flat was not paid by the plaintiff, as such, the defendants after serving legal notice on him, had cancelled the allotment of the disputed flat and had subsequently allotted that flat to third party and had also returned the consideration amount of Rs.10,00,000/- to the plaintiff. Learned counsel further submitted that since there is an existing arbitration agreement between the parties, as such, the matter in issue, can be referred to a duly appointed arbitrator and for this reason, the defendants had moved an application under Section 8 of the Arbitration and Conciliation Act, 1996 read with Order 7 Rule 11 (d) C.P.C., which has been rightly allowed by the impugned order. Learned counsel further submitted that the arbitrator is competent to grant interim injunction also. Learned counsel submitted that in

view of the above legal position, appeal is meritless and is liable to be dismissed at the admission stage.

4. I have heard, learned counsel for both the parties and perused the record.

5. It is well settled that while disposing an application under Order 7 Rule 11 C.P.C. only the averments in the plaint are to be examined and at this stage, the pleadings in the written statement of the defendant are not to be considered. It is also well settled that if the case of the plaintiff is barred by any law, then the plaint has to be rejected under Order 7 Rule 11 C.P.C.

6. Section 8 of the Arbitration and Conciliation Act,1996 reads as under:-

(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof:

Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

7. The Apex Court in the case of ***Booz Allen And Hamilton Inc. vs. SBI Home Finance Limited and Others (2011) 5 SCC 532,*** stated the principles which the Court will have to decide before referring the parties to Arbitration, which reads as under-:

"19. Where a suit is filed by one of the parties to an arbitration agreement against the other parties to the arbitration agreement, and if the defendants file an application under Section 8 stating that the parties should be referred to arbitration, the court (judicial authority) will have to decide:

(i) whether there is an arbitration agreement among the parties;

(ii)whether all the parties to the suit are parties to the arbitration agreement;

(iii) whether the disputes which are the subject-matter of the suit fall within the scope of arbitration agreement;

(iv)whether the defendant had applied under Section 8 of the Act before

submitting his first statement on the substance of the dispute; and

(v) whether the reliefs sought in the suit are those that can be adjudicated and granted in an arbitration."

8. *The Apex Court in the case of* ***Sundaram Finance Limited and Another vs. T. Thankam (2015) 14 SCC 444,*** *held as under:-*

"8. Once there is an agreement between the parties to refer the disputes or differences arising out of the agreement to arbitration, and in case either party, ignoring the terms of the agreement, approaches the civil court and the other party, in terms of Section 8 of the Arbitration Act, moves the court for referring the parties to arbitration before the first statement on the substance of the dispute is filed, in view of the peremptory language of Section 8 of the Arbitration Act, it is obligatory for the court to refer the parties to arbitration in terms of the agreement, as held by this Court in P. Anand Gajapathi Raju v. P.V.G. Raju [(2000) 4 SCC 539 : (2000) 2 SCR 684] .

9. The position was further explained in Hindustan Petroleum Corpn. Ltd. v. Pinkcity Midway Petroleums [(2003) 6 SCC 503]. To quote: (SCC pp. 510-11, para 14)

"14. This Court in P. Anand Gajapathi Raju v. P.V.G. Raju has held that the language of Section 8 is peremptory in nature. Therefore, in cases where there is an arbitration clause in the agreement, it is obligatory for the court to refer the parties to arbitration in terms of their arbitration agreement and nothing remains to be decided in the original action after such an application is made except to refer the dispute to an arbitrator. Therefore, it is clear that if, as contended by a party in an agreement between the parties before the civil court, there is a clause for arbitration, it is mandatory for the civil court to refer the dispute to an arbitrator. In the instant case the existence of an arbitral clause in the agreement is accepted by both the parties as also by the courts below but the applicability thereof is disputed by the respondent and the said dispute is accepted by the courts below. Be that as it may, at the cost of repetition, we may again state that the existence of the arbitration clause is admitted. If that be so, in view of the mandatory language of Section 8 of the Act, the courts below ought to have referred the dispute to arbitration."

10. In Magma Leasing and Finance Ltd. v. Potluri Madhavilata [(2009) 10 SCC 103 : (2009) 4 SCC (Civ) 57], the position has been restated holding that no option is left to the court, once the prerequisite conditions of Section 8 are fully satisfied.

13. Once an application in due compliance with Section 8 of the Arbitration Act is filed, the approach of the civil court should be not to see whether the court has jurisdiction. It should be to see whether its jurisdiction has been ousted. There is a lot of difference between the two approaches. Once it is brought to the notice of the court that its jurisdiction has been taken away in terms of the procedure prescribed under a special statute, the civil court should first see whether there is ouster of jurisdiction in terms or compliance with the procedure under the special statute. The general law should yield to the special law- generalia specialibus non derogant. In such a

situation, the approach shall not be to see whether there is still jurisdiction in the civil court under the general law. Such approaches would only delay the resolution of disputes and complicate the redressal of grievance and of course unnecessarily increase the pendency in the court."

9. It is apparent that the defendants had moved an application under Order 7 Rule 11 C.P.C. read with 151 C.P.C. and Section 8(1) of the Arbitration and Conciliation Act, 1996 in the trial court, wherein they submitted that the plaintiff has defaulted in making the full payment of the allotted flat within the stipulated time period and as such, they had given notice to the plaintiff to comply with the terms and conditions of the agreement but still the plaintiff failed to comply. It is mentioned in this application that since the disputes between the parties are to be decided through arbitration, as such, it was prayed that the matter be referred to arbitration. It has been specifically mentioned in this application that since there is an arbitration clause in the agreement executed between the parties, as such, the present suit is not maintainable.

10. The plaintiff opposed the above application in the trial court on the ground that the suit has been filed for the relief of permanent injunction which can only be granted by the competent civil court, as such, the relief sought cannot be granted by an arbitrator appointed under the Arbitration and Conciliation Act, 1996. It was further alleged that the plaintiff has bonafidely paid substantial consideration of the flat but the defendants are deliberately not executing the sale deed of the flat, in favour of the plaintiff.

11. From the plaint averments, it is apparent that on an application made on 3.08.2018 by the plaintiff, a flat had been allotted by the defendants to the plaintiff, for a consideration of about Rs.71.57 lacs, out of which the plaintiff has only paid an amount of Rs.11 lacs and the remaining amount is outstanding, which has not been paid to the defendants. It is also apparent that the sale deed of the flat has not been executed by the defendants in favour of the plaintiff. The plaintiff has concealed the fact whether he has paid the whole amount of agreed consideration to the defendants or not. According to the plaintiff, the defendants have not provided the facilities in the flat, which were promised, regarding which he had informed the defendants but still the defendants failed to rectify the defects in the flat. According to the plaintiff, he is in possession of the disputed flat and the defendants are adamant to dispossess him, hence the plaintiff had sought the relief of permanent injunction for restraining the defendants from dispossessing him from the disputed flat.

12. It is apparent that there is a dispute between the parties regarding the flat allotted to the plaintiff by the defendants. The defendants have filed the original application form submitted by the plaintiff along-with the terms and conditions of the agreement, which disclose that there is Clause-16 in the terms and conditions, which reads as under:-

"16. Jurisdiction

In case of any dispute arising out of this contract, it shall be referred to an Arbitrator appointed by the Company, whose decision shall be final and binding on both parties. The jurisdiction of Court shall be at Kolkata."

13. Since, there is an arbitration agreement between the parties to decide all

the disputes arising out of the contract between the plaintiff and the defendants, regarding the allotment of the disputed flat, which has not been denied by the plaintiff, as such, in view of the law laid down by the Apex Court in the case of ***Booz Allen(supra)*** and ***Sundaram Finance Limited(supra),*** the civil court has got no jurisdiction in this matter. Further, the Arbitral Tribunal is competent to grant the relief of injunction under Section 9 of the Arbitration and Conciliation Act, 1996. In view of this, the trial court has rightly allowed the defendant?s application under Order 7 Rule 11 C.P.C. read with Section 8(1) of the Arbitration and Conciliation Act,1996 by holding that the Court has got no jurisdiction in this matter, since there is an arbitration agreement between the parties pertaining to the subject-matter of the suit.

14. Accordingly, the instant first appeal under Section 96 C.P.C. is meritless and is **dismissed** at the admission stage. Consequently, the impugned judgment and decree dated 24.01.2025 passed in Original Suit No.120 of 2020 (Pramod Kumar vs. Sahara India and others) is affirmed.

15. Interim order granted by this Court on 7.03.2025, stands vacated.

16. Both the parties shall bear their respective costs of this appeal.

(2025) 8 ILRA 489
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.08.2025

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal Defective No. 185 of 2025

Pratap Fransis ...Appellant
Versus
Akil Ahmad & Ors. ...Respondents

Counsel for the Appellant:
Avinash Pandey, Virendra Kumar

Counsel for the Respondents:

ISSUE FOR CONSIDERATION

Whether a First Appeal under Section 96 of the Code of Civil Procedure (CPC) is maintainable against an order passed by a Court of Small Causes (Additional District Judge exercising Small Cause Court jurisdiction) rejecting an objection under Order 21 Rule 97 CPC.

HEADNOTES

Civil Law – Civil Procedure Code, 1908 - Section 96, 104(1), Order 21 Rule 97, – Provincial Small Cause Courts Act, 1887 - Sections 24 and 25 - First Appeal - filed u/section 96 of the CPC – against rejection of an objection moved under Order 21 Rule 97 CPC. – SSC Suit for eviction - objection was filed in execution proceedings arising from an ex parte eviction decree in suit - appellant claimed ownership of the disputed property based on a Will of year 2007 – said Will became effective only after the death of the testator in 2016 - whereas the SCC decree was passed in 2010 - appellant also filed a separate Original Suit in 2025 challenging the SCC decree and asserting ownership - Court held that, the impugned order is not appealable under Section 24 of the Provincial Small Cause Courts Act, 1887 - Remedy lies in revision under Section 25 of the PSCC Act, not in a first appeal under Section 96 CPC – therefore, present first Appeal stands dismissed as not maintainable. (Para – 11)
Appeal Dismissed. (E-11)

CASE LAW CITED

No any case was cited.

LIST OF ACTS

Code of Civil Procedure, 1908 – and - Provincial Small Cause Courts Act, 1887

LIST OF KEYWORDS

First Appeal – Maintainability - Small Cause Court - Order 21 Rule 97 CPC - Execution

Proceedings – Will - Ownership Claim - Ex parte Decree – Revisional Jurisdiction

CASE ARISING FROM

Rejection of an objection under Order 21 Rule 97 CPC in Execution Case No. 1 of 2010 (Akil Ahmad & another v. Nora Fransis) and ex-parte decree in SCC Suit No. 48 of 2009.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Mr. Avinash Pandey and Virendra Kumar.
Counsel for Respondent(s): not mentioned.

(Delivered by Hon'ble Sandeep Jain, J.)

1. The case was taken up on mention by the learned counsel for the appellant.

2. The instant first appeal under Section 96 CPC has been filed impugning the order dated 15.01.2025 passed by the court of Additional District Judge, Court No.3, Meerut in Civil Misc. Case No.43 of 2025 (Pratap Fransis Vs. Akil Ahmad & another) whereby the objector-appellant's application under Order 21 Rule 97 CPC has been dismissed.

3. Office has raised a preliminary objection that the instant appeal is not legally maintainable.

4. Learned counsel for the appellant submitted that SCC Suit No.48 of 2009 (Akil Ahmad and another Vs. Nora Fransis) was fraudulently decreed exparte on 18.02.2010 and thereafter, Execution Case No.1 of 2010 (Akil Ahmad & another Vs. Nora Fransis) was filed for evicting the tenant and obtaining the possession of the disputed premises, in which the objector-appellant had filed his objection under Order 21 Rule 97 CPC on the ground that he is the owner of the disputed property but his objection has been dismissed illegally. He further submitted that the appellant is the owner of the disputed property on the basis of the Will executed in his favour by his father Fransis on 11.04.2007. He further submitted that since the appellant is the owner of the disputed property, as such, the eviction decree cannot be executed by dispossessing the objector from the disputed property.

5. I have heard learned counsel for the objector-appellant and perused the record.

6. It is well settled that in a SCC suit, the title of the parties cannot be decided and only the relationship of landlord and tenant is to be seen between the parties and on the basis of this relationship, S.C.C Suit No.48 of 2009 was decreed on 18.02.2010 and for executing the eviction decree, an Execution Case No.1 of 2010 was filed by the decree holders in which the appellant filed an application under Order 21 Rule 97 CPC, claiming himself to be the owner of the disputed property, which has been rejected by the impugned order, against which the instant first appeal has been filed by the objector/appellant.

7. It is apparent that the appellant is claiming ownership of the disputed property on the basis of registered Will dated 11.04.2007 alleged to be executed by his father Fransis, who died on 04.05.2016. It is apparent that the Will became effective on the death of his father but prior to that S.C.C Suit No.48 of 2009 was decreed exparte on 18.02.2010 against the first wife of the appellant i.e. Nora Fransis, being the tenant in the disputed premises.

8. It is also evident that the appellant has filed Original Suit No.74 of 2025 (Pratap Fransis Vs. Akil Ahmad & another) in which he has claimed himself to be the owner of the disputed property on the basis

of the alleged Will of his father and has also sought that the exparte decree dated 18.02.2010 passed in S.C.C Suit No.48 of 2009 (Akil Ahmad & others Vs. Nora Fransis) be declared null and void. It is apparent that the rights of the plaintiff are to be decided in OS no.74 of 2025, which is pending for disposal.

9. It is also pertinent to mention that as per Section 24 of Provincial Small Cause Courts Act, 1887 (PSCC Act), only an order specified in clause (ff) or clause (h) of Section 104 (1) CPC, 1908 made by Court of Small Causes, is appealable.

10. Section 25 of the Act, 1887 as applicable in the State of Uttar Pradesh, reads as under:-

"25. Revision of decrees and orders of Courts of Small Causes.- The District Judge, for the purpose of satisfying himself that a decree or order made in any case decided by a Court of Small Causes was according to law, may of his own motion, or on the application of an aggrieved party made within thirty days from the date of such decree or order, call for the case and pass such order with respect thereto as he thinks fit."

"Provided that in relation to any case decided by a District Judge or Additional District Judge exercising the jurisdiction of a Judge of Small Causes, the power of revision under this section shall vest in the High Court."

11. It is apparent that the impugned order is not an appealable order under Section 24 of the P.S.C.C. Act and is only a revisable order under Section 25 of the P.S.C.C. Act, but the objector has filed First Appeal under Section 96 CPC, which is clearly not maintainable.

12. Accordingly, the objection regarding maintainability of the instant appeal is upheld and consequently, the instant appeal is **dismissed** as being not legally maintainable.

(2025) 8 ILRA 491
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.08.2025

BEFORE

THE HON'BLE SHEKHAR KUMAR YADAV, J.

First Appeal No. 237 of 2006

Vinod Kumar Jalaun ...Appellant
Versus
Kailash Jaiswal ...Respondent

Counsel for the Appellant:
Arvind Srivastava, Akhilanand Mishra, Anand Srivastava

Counsel for the Respondent:
Rahul Sripat, Abhishek Mishra, Asheesh Mani Tripathi, Ashok Mani Tripathi, C.K. Parekh, D.V. Jaiswal, H.P. Dubey, K.N. Mishra, Manish Goyal, Nipun Singh, Pankaj Dubey, Pramod Kumar Jain, Rakesh Pande, Raunak Parekh, Ravindra Kumar Tripathi, Satish Mandhyan

ISSUE FOR CONSIDERATION

Whether the sale deed was rightly declared ineffective due to dishonour of the cheque and the specific clause in the deed?
Whether the sale deed could be considered a concluded and enforceable contract despite non-payment of substantial sale consideration?

HEADNOTES

Civil Law – Code of Civil Procedure, 1908 - Section 96, Order 41 Rule 27 - Transfer of Property Act, 1882 - Sections 54, 55(4)(b)

- Indian Contract Act, 1872 - Section 25 - Negotiable Instruments Act, 1881 - Section 138 - Specific Relief Act, 1963 - Section 31- Defendant's First Appeal under Section 96 CPC – Challenging the Trial court's judgment dated 07.03.2006 in Original Suit – suit filed questioning validity and enforceability of a sale deed - allegedly rendered ineffective due to dishonour of a post-dated cheque forming part of the sale consideration - Plaintiff sought declaration that the sale deed was null and void due to non-payment of Rs. 45,00,000/- out of Rs. 46,00,000/- consideration, and sought permanent injunction against the defendant from interfering with possession - trial court granted declaratory relief and injunction but denied cancellation for want of court fees – defendant filed instant Appeal and applications under Order 41 Rule 27 CPC to introduce additional evidence - plaintiff also filed application under same provision to submit a gift deed executed during appeal - Defendant challenged the trial court's findings, arguing the sale deed remained valid despite cheque dishonour and that he was ready to perform his part - Court observed that - the sale deed was rightly declared ineffective due to dishonour of cheque, as per explicit clause; - Defendant's failure to pay consideration and attempt to alienate property showed bad faith; - Possession was never transferred; - only Rs. 1 lakh paid out of Rs. 46 lakh - Applications under Order 41 Rule 27 CPC were belated and inadmissible - Sale deed without consideration is void under Section 25 of the Indian Contract Act – court held that no illegality or perversity in trial court's judgment - parties are bound by contractual terms - no enforceable contract existed due to lack of consideration – consequently, Appeal stands dismissed and trial court's judgment affirmed. (Para – 26, 27, 31, 32, 34, 36, 38, 39, 44, 51, 54)
Appeal Dismissed. (E-11)

CASE LAW CITED

Kaliaperumal v. Rajagopal, (2009) 4 SCC 193) - Motilal Sahu v. Ugrah Narain Sahu, Patna HC, 22 Dec 1949) - Union of India Vs Ibrahim Uddin and Another, (2012) 8 SCC) - Janak Dulari Devi & Anr. v. Kapildeo Rai & Anr., (2011) 6 SCC 555) - Anil Kumar Harda v. Smt. Suman Bala [AIR 1980 Delhi (DB)].

LIST OF ACTS

Code of Civil Procedure, 1908 - Transfer of Property Act, 1882 - Indian Contract Act, 1872 - Negotiable Instruments Act, 1881 - Specific Relief Act, 1963.

LIST OF KEYWORDS

First Appeal - Sale Deed - Specific contractual condition - Cheque Dishonour - Permanent Injunction - Additional Evidence – Possession – insufficient – essential element of Consideration - Void Contract – contractual consequence – intention of the parties – illegality – perversity – misapplication of law.

CASE ARISING FROM

Original Suit No. 570 of 2004, filed by Plaintiff before the Civil Judge (Senior Division), Gorakhpur - Challenging the validity of the sale deed dated 16.06.2003 executed in favour of Defendant.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Anil Tiwari (Sr. Adv.)
Counsel for Respondent(s): Shri Manish Goyal (Sr. Adv.) assisted by Mr. Nipun Singh

(Delivered by Hon'ble Shekhar Kumar Yadav, J.)

1. Heard Sri Anil Tiwari, learned Senior Counsel for the defendant/Appellant, and Mr. Manish Goyal, learned Senior Counsel assisted by Mr. Nipun Singh, learned counsel for the plaintiff/Respondent at great at length.

2. This First Appeal under Section 96 of the Code of Civil Procedure has been filed by the appellant, Vinod Kumar Jalan (hereinafter "the defendant"), challenging the judgment and decree dated 07.03.2006 passed by the learned Civil Judge (Senior Division), Gorakhpur, in Original Suit No. 570 of 2004. By the impugned judgment, the trial court declared the sale deed dated 16.06.2003 to be ineffective and granted a permanent prohibitory injunction

restraining the defendant from interfering with the plaintiff's possession over the disputed property.

3. During the course of final hearing of the present appeal, learned counsel for the defendant/appellant has filed one application under Order 41 Rule 27 of CPC seeking some additional documents to be brought on record, which according to the appellant were necessary for the adjudication of the present controversy, upon which the matter was adjourned by giving opportunity to plaintiff/respondent to file any affidavit, if required. On which learned counsel for the plaintiff/respondent submitted that he had already filed reply to one of the application filed under Order 41, Rule 27 of CPC and same may be read as reply to the said application.

4. During argument, this Court was further informed that another application under Order 41 Rule 27 of CPC had also been filed by the defendant/appellant, also bringing on record certain documents for the adjudication of the controversy involved in the present matter, to which, a detailed counter affidavit had already been filed by the plaintiff/respondent, but record reflects that no rejoinder to the said counter was filed even despite giving various opportunities. This Court finds that another application under Order 41 Rule 27 of CPC has also been filed by the plaintiff/respondent for bringing on record the gift deed dated 01.06.2011, which was executed during the pendency of the present appeal by the sole defendant in favour of his son.

5. This Court would deal the merits of the applications under Order 41 Rule 27 of CPC filed by the defendant/appellant at the end of this judgment.

FACTS OF THE CASE

6. The **Plaintiff, Kailash Jaiswal**, admittedly, was the owner and in possession of Plot No. 125 area 1084.39 sq. meters land situated at Mauja Araji Chhavani, Tappa-Qasba Pargana Haveli, Tehsil and District Gorakhpur, instituted Original Suit No. 570 of 2004 for a declaration that the sale deed executed by him in favour of the Defendant on 16.06.2003 for a property situated in Gorakhpur be declared as null, void, and ineffective, and for a permanent injunction.

7. The Plaintiff's case was that the property was agreed to be sold for Rs. 46,00,000/-. Out of this, Rs. 1,00,000/- was paid in cash, and for the balance of Rs. 45,00,000/-, a post-dated cheque (No. SPI MC BJ A.B. 797760 dated 30.09.2003, drawn on Oriental Bank of Commerce, Gorakhpur) was issued by the Defendant. A crucial condition was incorporated in the sale deed that if the said cheque was dishonoured for any reason, the sale deed would automatically be considered cancelled ("वाजा हो कि मुस्तरी मजकूर द्वारा दिया गया उपरोक्त चेक यदि किन्हीं कारणों से भुगतान नहीं होता तो ऐसी सूरत में बैनामा निरस्त समझा जायेगा।"). The Plaintiff contended that the cheque dated 30.09.2003 was dishonoured due to insufficient funds. At the Defendant's request, the date on the cheque was altered by the Defendant to 07.04.2004, and he signed the alteration. This re-validated cheque was again presented and dishonoured on 08.04.2004, and subsequently again on 08.07.2004, due to insufficient funds. The Plaintiff asserted that due to the non-payment of the consideration as per the agreed terms, and in light of the specific clause, the sale deed had become automatically null and ineffective, and he continued to be the owner in possession. The Defendant,

however, allegedly threatened to alienate or encumber the property based on the said sale deed.

8. The Defendant, in his written statement, admitted the execution of the sale deed but contended that physical possession of the property was not delivered to him. He claimed that the Plaintiff had assured him that the cheque would not be presented for payment until physical possession was handed over and mutation of names was effected. The Defendant stated his readiness to pay the balance amount of Rs. 45,00,000/- provided the Plaintiff delivered possession of the suit property.

9. Perusal of written statement shows the admission of the defendant/appellant, which is also not disputed by the counsel of appellant/defendant that entire sale consideration had not been paid and the delivery of possession has also not been given by the plaintiff/respondent to the defendant/appellant.

10. In order to prove the case, the plaintiff/respondent himself appeared as PW-1 and similarly, defendant/appellant appeared as DW-1. This court has examined the evidence of PW-1, which is as under:-

> Plaintiff-respondent Kailash Jaiswal, who examined himself as P.W.1 in his oral evidence, clearly stated that the cheque was issued by the defendant-appellant towards sale consideration but the cheque was dishonoured by the bank when it was tendered for encashment on the ground that there was insufficient fund in the account of defendant-appellant. It was also stated by the plaintiff-respondent that the defendant-appellant re-validated the cheque by mentioning new date and singed the same and was trying to alienate the property on the basis of sale deed, which was void ab-initio.

11. The attention of this court was further invited to the cross examination of defendant/appellant, which is as under:-

> In cross-examination, the question was put to the P.W.1 on behalf of defendant-appellant that whether he was aware of the fact that the name of defendant-appellant could not be mutated over the property in Revenue Record on account of reason that the property was found to be government property. The P.W. 1 specifically replied that he has got property freehold in his name and freehold deed plaintiff- respondent in favour had never been subjected to any proceeding. Therefore, findings the order of the Tehsildar is of no bearing. The plaintiff- respondent also stated that he has already filed suit for ejectment against the sales tax department in the court of small cause and the order of the ejectment has already been passed in the year 2003.

12. The learned Civil Judge, Senior Division, Gorakhpur, after framing issues and considering the evidence on record, found, inter alia, that the sale deed dated 16.06.2003 had become ineffective due to the dishonour of the cheque for Rs. 45,00,000/-, based on the specific condition in the sale deed. The Plaintiff was entitled to an injunction as the sale deed was ineffective and the Defendant was not in physical possession. The suit was maintainable and the court had jurisdiction. The trial court accordingly declared the sale deed ineffective and restrained the Defendant from interfering with the Plaintiff's possession. However, the relief of formal "cancellation" of the sale deed was not granted as the appropriate court fee for such relief under Section 31 of the Specific Relief Act had not been paid by the Plaintiff.

13. It is an admitted fact that the physical possession of the disputed property was never handed over to the Defendant/appellant and has always remained with the Plaintiff/respondent.

14. The trial court had meticulously examined the entire controversy involved in the present matter and after considering the entire circumstances came to a definite opinion that the recital in the sale deed is decisive to gather the real intention of the parties as to whether it was mandatory to get the sale deed completed once the entire sale consideration is paid or as to whether the plaintiff/respondent could have recovered the sale consideration at later stage.

15. Heard learned counsel for the parties and perused the record.

ARGUMENTS IN APPEAL

On behalf of Appellant

16. It is contended by learned counsel for the defendant/appellant that the impugned judgment is contrary to the provisions of the Transfer of Property Act (TPA) and the Indian Contract Act. The non-compliance with the condition in the sale deed regarding cheque payment did not render the sale deed void. The Appellant always intended to comply with the conditions, and the Trial Court made perverse findings, ignoring the Plaintiff's conduct in not delivering possession. Material documents were ignored by the court below, and there was no demand for the amount due by the Plaintiff. It is further submitted that the judgment is contrary to Section 55(4)(b) and Section 54 of the Transfer of Property Act, arguing that the Appellant was always ready and willing to enter into the sale agreement.

17. The finding that the sale deed is void upon dishonor of the cheque is misconceived, as it was open to the Plaintiff to recover the amount under Section 138 of the Negotiable Instruments Act, which in fact he had already filed and the same has also been dismissed for want of prosecution. Payment of consideration was complete upon the Plaintiff's receipt of the cheque. The judgment was passed on surmises and conjectures and is perverse, based on non-application of mind. He further vehemently relied upon section 55(4)(b) of the Transfer of Property Act. Section 55(4) of the Transfer of Property Act is being reproduced hereunder:-

(4) The seller is entitled—

(a) to the rents and profits of the property till the ownership thereof passes to the buyer;

(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, [any transferee without consideration or any transferee with notice of the non-payment,] for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part [from the date on which possession has been delivered].

18. On the contrary, counsel for the plaintiff/respondent has vehemently argued that in the present appeal, only a very limited and short question has to be considered for the adjudication of the real controversy involved between the parties as

to whether if the sale consideration has not been passed in toto, the sale deed would be treated as cancelled or null and void or the plaintiff would be at liberty to recover the same by any means or the sale deed would be treated as concluded.

19. Learned counsel for the plaintiff/respondent further submitted that the sale deed explicitly provides for its automatic cancellation/ineffectiveness upon the dishonor of the cheque for the balance consideration. The cheque for Rs. 45,00,000/- was repeatedly dishonored due to insufficient funds, validating the condition. Since the entire sale consideration was not paid, the sale deed automatically became null and ineffective as per its agreed terms stipulated in the sale deed. It is further submitted that possession of the property was never transferred and remains with the Plaintiff. The Defendant's claim linking payment to possession is false, and his conduct demonstrates no bona fide intention to pay the remaining amount.

20. It is further submitted that the Plaintiff's applications under Order 41 Rule 27 of CPC to bring on record a subsequent gift deed dated June 1, 2011, executed by the Defendant in favor of his son during the appeal's pendency, demonstrates the Defendant's ongoing attempts to alienate the property despite the Trial Court's declared the original sale deed as ineffective.

21. This court considered the arguments raised by both the parties in detail and also perused the judgment of trial court in its entirety by further perusing the evidence of both the parties and after considering all the above aspect has come to a definite conclusion that for the purpose of adjudication of the present appeal, following point of determination is required to be formulated for determination:-

i. Whether the sale deed dated 16.06.2003 was rightly declared ineffective due to the dishonour of the cheque and the specific clause in the deed?

ii. Whether the trial court rightly granted a permanent injunction in favour of the plaintiff?

iii. Whether the sale deed could be considered a concluded and enforceable contract despite non-payment of the substantial sale consideration?

DISCUSSION AND ANALYSIS

Issues I & III: These issues relate to the effect of the Specific Contractual Condition and Concluded Contract, hence they are being decided together: -

22. On going through the judgement of the Trial Court, it is abundantly clear that Trial Court correctly centered its decision on the explicit condition within the sale deed dated June 16, 2003. This clause unequivocally stipulated that if the cheque for Rs. 45,00,000/- was dishonored, the sale deed would be deemed automatically cancelled/ineffective.

23. It is a well-settled principle, affirmed by the Hon'ble Supreme Court on numerous occasions, that courts must ordinarily give effect to the terms of a contract mutually agreed upon by the parties. Parties possess the autonomy to define the terms of their agreement and the consequences of a breach thereof, provided

such terms are not unlawful or contrary to public policy. The Hon'ble Supreme Court has consistently held that the terms of a contract, when clear and unambiguous, must be enforced as they reflect the will of the parties.

24. In the present case, the consequence of the dishonor of the cheque was unequivocally stated, and the Trial Court rightly upheld this contractual term. The transaction, by virtue of this specific clause, partook the nature of a conditional sale, where its ultimate efficacy was dependent on the honouring of the cheque. The Hon'ble Supreme Court in catena of decisions has recognized the validity of contracts with conditions subsequent, where the failure of a specified condition can lead to the termination or invalidation of rights accrued thereunder.

25. It is trite law that the intention of parties, as reflected in the contractual document, is decisive in determining whether a contract is conditional. The Hon'ble Supreme Court in ***Kaliaperumal v. Rajagopal*** **[(2009) 4 SCC 193]** affirmed that title does not pass if the sale deed is conditional upon payment and such payment is not made. Perusal of the record itself discloses that in the alleged sale deed at Page 43/44 it has been specifically mentioned that "यदि चेक का भुगतान किन्ही कारणों से नहीं होता है तो ऐसी सूरत में बैनामा स्वतः निरस्त सम्झा जायेगा". In the present case, the sale deed contained an express stipulation that dishonour of the cheque would result in automatic cancellation of the deed. This clause was clear, unequivocal, and mutually agreed upon.

26. The Trial Court meticulously analyzed the conduct of the Appellant, noting that the cheque was repeatedly dishonoured for "insufficient funds." The failure to ensure sufficient funds despite the extension of the cheque's validity, which was done at the Appellant's instance. The Appellant's attempt to get the property mutated in his name vide application dated June 17, 2003, even before the original due date of the cheque and without ensuring payment. This application was subsequently rejected by the Tehsildar on October 3, 2003, as "अदम हकीकी का है", strongly suggesting an intent to secure rights without fulfilling the corresponding obligation. The Trial Court pertinently observed that the Appellant had ample opportunity to pay the amount, even after the suit was filed, or could have deposited the amount with the Registrar or the Court, but failed to do so. The Trial Court's conclusion that the Appellant's assertion of being ready to pay was a "भुलावा" (deception) is well-founded on the evidence and consistent with the Appellant's conduct, which this Court finds no reason to interfere with.

27. The Appellant's argument that non-payment was due to non-delivery of possession is not convincing in the face of the specific contractual term. Payment of consideration, or at least ensuring the cheque would be honored, was a primary obligation of the Appellant, the failure of which directly led to the contractual consequence of the sale deed becoming ineffective. The Trial Court rightly noted that generally, payment is made before or at the time of registration. The special arrangement involving a post-dated cheque was explicitly tied to the validity of the deed itself. The argument that the mere receipt of a cheque amounts to complete payment of consideration is legally untenable; a cheque is a conditional payment, and if dishonored, the underlying

debt or obligation remains unsatisfied. While it is true that mere non-payment of consideration after registration may not always automatically invalidate a sale, and the seller may have a charge for unpaid price under Section 55(4)(b) of the Transfer of Property Act, this general principle does not preclude parties from agreeing to a more stringent consequence, such as the sale itself becoming ineffective or being deemed cancelled, if a foundational term regarding payment is breached. The non-payment of Rs. 45,00,000/- out of Rs. 46,00,000/- was not a minor part of the consideration, and its non-payment, linked to the specific clause, strikes at the root of the transaction.

28. In ***Motilal Sahu v. Ugrah Narain Sahu and Others*** **(decided on 22 December 1949)**, the Patna High Court held that although a sale deed was executed by the defendant in favour of the plaintiffs, the transaction did not operate to transfer title or possession because the stipulated consideration was never paid. The Court found that the parties intended the sale to be conditional upon payment, and in the absence of such payment, the execution of the deed alone was insufficient to effect a transfer of ownership. Consequently, the High Court restored the trial court's decree dismissing the suit, holding that no right to possession or title accrued to the plaintiffs under the incomplete transaction.

29. In the case of **Janak Dulari Devi & Anr. v. Kapildeo Rai & Anr., (2011) 6 SCC 555, under para 13** it has been held that a registered sale deed may not transfer title where full consideration is not paid. The relevant extract is quoted hereunder:

"… if the sale deed expressly or by necessary implication provides that title will not pass until consideration is paid in full and registration receipt is handed over, then the title does not pass upon execution and registration alone."

30. Learned counsel appearing for the respondent would submit that the sale deed was registered by the recital of the engrafts that "यदि चेक का भुगतान किन्ही कारणों से नहीं होता है तो ऐसी सूरत में बैनामा स्वतः निरस्त सम्झा जायेगा" then in case the cheques are dishonoured the sale deed would be cancelled, therefore, if the cheques which were tendered dishonoured which automatically would cancel the sale deed as per the intention of the parties. Learned counsel would place reliance upon the decision rendered by the Supreme Court in the matter of **Kaliaperumal v Rajgopal and Another, (2009) 4 SCC 193** to submit that the recital in the sale deed would be relevant to know the nature of the transaction. He would further submit that the learned trial Court has rightly held that as per the document the possession of the land is with the seller, therefore, the sale deed though was executed cannot be given effect.

31. In order to decide as to whether the sale deed is concluded or the same is incomplete, the intention of the parties have to be gathered from the recital of the sale deed. Therefore, this Court has meticulously read the entire sale deed and its recital from where this Court has gathered that the intention of the parties were mentioned in absolutely unambiguous and unequivocal terms that in case, the entire sale consideration is not paid and the cheque is dishonored, the sale deed would be declared as null and void.

32. This Court has further considered one of the important aspects that the total sale consideration was Rs.46 lacs, but out

of Rs.46 lacs, only Rs.1 lac was paid, which was just about 2% of the total sale consideration of the sale deed, therefore, even otherwise the equity lies in favour of plaintiff/respondent because the plaintiff/respondent cannot be directed to recover 98% balance sale consideration even if the cheque, which was supposed to be encashed, has been dishonored by further directing him to deliver the possession of the property.

33. This Court further considered that neither any counter claim was filed nor any possession was ever asked by the defendant/appellant, therefore, even if the judgment of the trial court is turned down, then also the defendant/appellant would not get anything as any claim for seeking possession in terms of the sale deed dated 16.06.2003 would be barred by limitation.

34. This Court further considered that once the intentions of the parties were very clear, there is no scope of interpreting the said specific clause which says that in case, the cheque is dishonored, the sale deed would be declared as null and void.

35. In the case of **Kaliaperumal Versus Rajagopal and Another [Supra],** the question for consideration was whether title to the disputed properties passed to the Appellant therein, when the sale deed dated 26/06/1983 was registered on 26/10/1983, though admittedly no amount was paid towards consideration to the respondents. In that case, neither the possession of properties nor the title deeds were delivered to the purchaser either on the date of sale or thereafter and it was held that the parties intended that title of ownership to the suit properties would pass to the purchaser, only after payment of full consideration by the purchaser to the vendor as a condition precedent and the parties did not intend that there should be transfer of ownership merely on execution and registration of the deed. It is observed in Paragraph Nos.18 and 19 as follows:-

"18. Normally, ownership and title to the property will pass to the purchaser on registration of the sale deed with effect from the date of execution of the sale deed. But this is not an invariable rule, as the true test of passing of property is the intention of parties. Though registration is prima facie proof of an intention to transfer the property, it is not proof of operative transfer if payment of consideration (price) is a condition precedent for passing of the property.

19. The answer to the question whether the parties intended that transfer of the ownership should be merely by execution and registration of the deed or whether they intended the transfer of the property to take place, only after receipt of the entire consideration, would depend on the intention of the parties. Such intention is primarily to be gathered and determined from the recitals of the sale deed. When the recitals are insufficient or ambiguous the surrounding circumstances and conduct of parties can be looked into for ascertaining the intention, subject to the limitations placed by Section 92 of Evidence Act. "

36. In the present case, the very sale deed on which the appellant predicates his title contains a stipulation that non-realisation of the cheque would result in the automatic cancellation of the transaction. This is not a mere collateral clause but one that strikes at the root of the contract. The appellant has, by his own admission, failed to honour the cheque despite being given time. His plea that possession was not

delivered is a red herring, as there is no convincing evidence that possession was a pre-condition to payment. The respondent, on the contrary, has established that possession was not transferred owing to the appellant's failure to honour the financial terms of the deed.

37. The argument that the sale deed, once registered, could not be declared ineffective in view of Section 55 of the Transfer of Property Act is untenable as the intention and conduct of parties are pivotal in determining the legal effect of any transaction. These provisions presume unconditional sales, whereas the present sale deed was expressly made conditional.

38. On going through the record of the case and the evidence on record, this court found that the **intention of the parties was expressly conditional:** the sale was agreed upon for ₹46,00,000, out of which only ₹1,00,000 was paid in cash at the time of execution, and the remaining ₹45,00,000 was to be paid via a post-dated cheque. Crucially, the sale deed itself included a clear stipulation that **if the cheque was not honoured for any reason, the sale deed would be deemed null and void,** and the seller (plaintiff) would continue to be the rightful owner of the disputed land. This clause was not an afterthought or a separate agreement—it was incorporated directly into the deed, reflecting the parties' mutual understanding and intention.

39. Perusal of the record further would go to show that the cheque was presented multiple times but was dishonoured due to insufficient funds. The buyer (defendant) even modified the date on the cheque and re-signed it, yet still failed to ensure payment. The court observed that such conduct, along with the defendant's failure to deposit the balance sale consideration even after repeated opportunities—including during litigation—demonstrated a lack of bona fide intention to fulfill the contractual obligation. Furthermore, the court emphasized that the buyer's inaction and subsequent attempts to assert ownership without payment reflected a design to take advantage of legal formalities while avoiding financial liability. Referring to legal principles and precedents, the Trial Court reiterated that "intention" in such matters is to be gathered not only from the recital of the sale deed but also from the conduct of the parties and the evidence on record. Here, the express clause in the sale deed and the defendant's actions evidenced a clear conditional intent—that ownership and effectiveness of the sale deed were contingent upon actual payment. Since that condition was not fulfilled, the court declared the sale deed ineffective and unenforceable.

40. The appellant's plea of readiness and willingness is not borne out by conduct. If he had intended to honour the consideration, he could have deposited the amount in the respondent's account or moved the competent court for appropriate directions. Instead, he allowed the cheque to lapse, even after altering the date twice, and made no substantial effort to discharge his part of the contract.

41. As regards the prayer for cancellation of the deed, the trial court has rightly held that the respondent is entitled to declaratory relief and injunction, but not to cancellation in absence of requisite court fee. This is in line with the legal principle laid down in **Anil Kumar Harda v. Smt. Suman Bala [AIR 1980 Delhi (DB)]**, wherein it was held that declaratory relief cannot be used as a device to evade court

fee in cases where the real prayer is one of cancellation.

42. The finding of the trial court that the sale deed is ineffective and the respondent continues to be the owner in possession of the suit property is supported by the evidence and consistent with legal principles governing conditional sales. Thus, there being no perversity or material illegality in the findings recorded by the learned trial court, this Court sees no reason to interfere.

43. **Issue No. II** relates to grant of a permanent injunction. The Defendant/Appellant explicitly admitted in their written statement and oral testimony that physical possession of the disputed property was never handed over to them by the Plaintiff/Respondent.

44. Since the sale deed has been declared ineffective due to the failure of consideration as per its own terms, and the Plaintiff/Respondent has always remained in physical possession, the Trial Court was perfectly justified in granting a permanent prohibitory injunction. This prevents the Defendant/Appellant from interfering with the Plaintiff's peaceful possession of the property. The right to injunction naturally flows from the Plaintiff's continued ownership and possession coupled with the nullity of the purported transfer.

45. Admittedly, possession is still with the plaintiff/respondent, therefore, trial court has rightly granted permanent injunction.

APPLICATION UNDER ORDER XLI RULE 27 CPC

46. Two applications for taking on record additional evidence have been filed on behalf of the defendant appellant. The first application for bringing on record the additional evidence was filed by the defendant appellant on 22.07.2015 and the second application under Order 41 Rule 27 CPC was filed on 16.07.2025 at the time when the final argument started in the matter. The additional evidence sought to be adduced is unworthy inasmuch as the additional evidence application was filed in the year 2015 for an incident which is alleged to have happened in the year 2010 and almost 5 years have passed before filing the said application for which no reason has been brought on record by the defendant appellant to explain the uncalled for delay.

47. It has been vehemently argued that in the application under Order 41 Rule 27 of CPC, the appellant, during the pendency of appeal, has paid certain amount and in this regard, he sought to bring on record one unsigned, undated alleged agreement having allegedly executed between the parties, to which the plaintiff/respondent has vehemently opposed that no document which is unregistered having no signature and date, can be accepted as additional evidence particularly when the same is inadmissible in evidence as none of the parameters mentioned under Order 41 Rule 27 of CPC is attracted.

48. The second application that was filed at the time when hearing of the present appeal started, to bring on record the order sheets of plaint case filed by the plaintiff against the defendant under Section 138 of NI Act. All proceedings under Section 138 of NI Act are irrelevant for adjudication in the present appeal inasmuch as the cause of action for institution of the instant suit was to seek declaration to the effect that the sale deed is

a nullity. Moreover, the accused namely the defendant appellant passed away on 19.01.2022 and as such the proceedings under Section 138 of NI Act stands abated. Therefore, to bring on record and considering the proceedings under Section 138 of NI Act particularly in the absence of pleading to that effect in the written statement cannot be read as additional evidence even if admitted when the defendant appellant had complete knowledge of those proceedings for past 17 years. Thus, there being no application seeking amendment in the written statement, additional evidence cannot be adduced.

49. Order 41 Rule 27 of the Code of Civil Procedure (CPC) allows an appellate court to take additional evidence at the appellate stage, but only under specific conditions. The general principle is that the appellate court should not deviate from the record of the lower court, but this rule provides an exception. The appellate court can take additional evidence in the situations, if the trial court refused to admit evidence that should have been admitted or if the party appealing can demonstrate that the evidence was not within their knowledge at the time of the trial or could not be produced despite due diligence and further, if the appellate court requires the evidence to pronounce a judgment or for any other substantial cause. The party seeking to adduce additional evidence must demonstrate that the conditions of Order 41 Rule 27 are met. The purpose of Order 41 Rule 27 is not to fill gaps in the evidence or patch up a weak case.

50. In the case of **Union of India Vs Ibrahim Uddin and Another, (2012) 8 SCC** has held under para 26 as under:

> "The Appellate Court should not, ordinarily allow new evidence to be adduced in order to enable a party to raise a new point in appeal. Similarly, where a party on whom the onus of proving a certain point lies fails to discharge the onus, he is not entitled to a fresh opportunity to produce evidence, as the Court can, in such a case, pronounce judgment against him and does not require any additional evidence to enable it to pronounce judgment."

51. This Court finds that the applications under Order 41 Rule 27 of CPC filed by the defendant/appellant are nothing but an abuse of process of law. Now the Court considers second application under Order 41 Rule 27 of CPC, which is also liable to be rejected as the same was filed after many rounds of final hearing that too bringing on record the order sheet of criminal case filed u/s 138 of N.I. Act, to which the counsel for the respondent replied that there is a deemed abatement of the criminal case after the death of main accused Vinod Kumar Jalan. Therefore, this court finds no good reason to entertain the second application under Order 41 Rule 27 of CPC, which is also liable to be dismissed. All the applications filed by the defendant/appellant under Order 41 Rule 27 of CPC for additional evidence are liable to be dismissed as the same indicated the defendant's attempts not only to introduce irrelevant or inadmissible evidence at a later stage but also an attempt to further alienate the property despite the Trial Court having already declared the original sale deed ineffective. Thus, these applications are highly belatedly and untenable and an attempt to create a defence.

52. Accordingly, all the applications filed by the defendant/appellant under Order 41 Rule 27 of CPC are hereby dismissed.

53. The law is very well settled that sale deed without sale consideration is no sale deed in the eyes of law. Under Section 25 of the Indian Contract Act, 1872, an agreement made without consideration is void unless it falls under specific exceptions. In the present case, the failure of the Defendant to ensure payment of 98% of the consideration invalidates the transaction not only under the terms of the contract itself but also under the foundational principles of contract law. The essential element of consideration, which underpins any valid contract, was never fulfilled.

54. In view of above discussions, this Court finds that the learned Civil Judge, Senior Division, Gorakhpur, has appreciated the facts, evidence, and legal provisions in their correct perspective. The finding that the sale deed dated June 16, 2003, became ineffective due to the non-payment of the consideration amount (dishonor of the cheque for Rs. 45,00,000/-) as per the explicit condition in the said deed is based on sound reasoning and evidence. The consequential relief of permanent injunction granted to the Plaintiff is also fully justified. The grounds urged by the Appellant in this appeal fail to demonstrate any illegality, perversity, or misapplication of law in the impugned judgment.

55. The first appeal is devoid of merit and is accordingly **dismissed**. The judgment and order dated March 7, 2006, passed by the Civil Judge, Senior Division, Gorakhpur, in Original Suit No. 570 of 2004 are hereby **affirmed**. Parties shall bear their own costs in this appeal.

All pending applications under Order XLI Rule 27 of CPC, if any, stands dismissed.

(2025) 8 ILRA 503
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 08.08.2025

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

Second Appeal No. 319 of 2025

Shamsher Singh Died & Ors. ...Appellants
Versus
Sukhbeer Singh & Ors. ...Respondents

Counsel for the Appellants:
Ajay Singh Ruhela, Pramod Kumar Pandey

Counsel for the Respondents:
Chetan Chatterjee

ISSUE FOR CONSIDERATION

Whether the registered agreement to sale between plaintiff and defendant was validly executed.
Whether the plaintiff was always ready and willing to perform his part of the contract under Section 16(c) of the Specific Relief Act, 1963.
Whether the subsequent sale deed executed by defendant No.1 in favor of defendants 2 to 4 during the pendency of the suit affects the plaintiff's right to specific performance.
Whether any substantial question of law arises under Section 100 CPC to admit the second appeal.

HEADNOTES

Civil Law – Civil Procedure Code, 1908 - Section 100, Order 41 Rule 31, – Indian Evidence Act, 1872 - Section 68, – Specific Relief Act, 1963 - Section 16(c), 19(b): - Second appeal - filed by defendants – challenging the validity of first appellate court's judgment - a registered agreement to sale - executed between plaintiff and defendant - Plaintiff issued notices for execution of sale deed - defendant failed to appear - Defendant sold the land to third parties during pendency of agreement – Suit for specific performance – dismissed – civil appeal - the First Appellate

Court reversed this finding, concluding that the agreement was validly executed between the plaintiff and defendant - second appeal - challenging the appellate court's judgment as arbitrary and unsustainable, raising multiple substantial questions of law, including the validity of the agreement, evidentiary issues under Section 68 of the Evidence Act, and alleged procedural and factual errors by the appellate court – court held that, - (i) the exercise of jurisdiction by the first appellate court is according to the ratio of law laid down by Hon'ble Apex court in case of Maharaj Singh - (ii) in view of ratio of law laid down by the Hon'ble Apex court on the scope of section 16(c) of the Act, 1963, there is no illegality in the judgment of first appellate court granting relief of specific performance of the contract in the instant matter – (iii) in view of legal precedents including *Aniglase Yohannan v. Ramlatha* (2006), the substantial question of law as quoted and framed in the memorandum of second appeal are not involved in the second appeal – hence, no interference is required against the judgment and decree - second appeal stands dismissed at the admission stage. (Para – 17, 19, 20, 21)

Appeal Dismissed. (E-11)

CASE LAW CITED

Maharaj Singh and Others vs. Karan Singh and Others (**AIR 2024 SC 3328)** – Aniglase Yohannan Versus Ramlatha & others (2006 vol. 2 JCLR 201 (SC).

LIST OF ACTS

Specific Relief Act, 1963 – Indian Evidence Act, 1872 – Civil Procedure Code, 1908.

LIST OF KEYWORDS

Specific Performance - Agreement to Sale - Registered Document - Readiness and Willingness - Substantial Question of Law - Bona Fide Purchaser - Trial Court Judgment - Appellate Court Reversal - Second Appeal - Civil Appeal.

CASE ARISING FROM

Original Suit No. 408 of 1995 – **Civil Appeal No. 95 of 2022** – allowed by Additional District Judge, Saharanpur - dated 10.02.2025.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Mr. Pramod Kumar Pandey.

Counsel for Respondent(s): Mr. Chetan Chatterjee.

(Delivered by Hon'ble Chandra Kumar Rai, J.)

1. Heard Mr. Pramod Kumar Pandey, learned counsel for the defendants/ appellants and Mr. Chetan Chatterjee for the plaintiff- respondent no.1.

2. Brief facts of the case are that defendant- Shamsher was recorded tenure holder of khasra No. 192 area 0.749 hectare situated in Village- Tabar Ahatmal, Pargana- Sarsawa, Tehsil- Nakud, District Saharanpur. A registered agreement to sale dated 13.6.1994 was alleged to be executed between defendant- Shamsher Singh and plaintiff- Sukhbeer Singh in respect to khasra No. 192 area 0.749 hectare for execution of sale deed for Rs. 100000/- in which 55000/- was alleged to be paid as earnest money and Rs. 45000/- was to be paid at the time of execution of sale deed. Plaintiff has issued notice dated 2.6.1995 and 25.6.1995 to defendants fixing date for execution of sale deed but defendants failed to appear before the Sub-Registrar. Defendant No.1 executed sale deed on 24.6.1995 in favour of defendant Nos. 2 to 4 in respect to khasra No. 192. Hence an original suit No. 408 of 1995 was filed by plaintiff/ Sukhbeer Singh impleading defendant nos. 1 to 6 for decree of specific performance and permanent injunction. The Trial Court vide judgement and decree dated 15.12.2022 dismissed the plaintiff's suit. A civil appeal No. 95 of 2022 filed by plaintiff was allowed by Additional District Judge, Saharanpur setting aside the judgement and decree of Trial Court dated 15.12.2022 and decreed the plaintiff suit.

Hence this second appeal on behalf of defendants for following relief :-

"The relief sought by the Appellant through this Second Appeal that this Hon'ble Court may graciously be please to allow the appeal with cost and Set-a-side the Judgement and order dated 10.2.2025 and decree dated 17.02.2025 passed by Additional District Judge, Court No.9 Saharanpur in Civil Appeal No.95 of 2022 (CNR No. UPSPO101755822022), (Sukhbeer Singh Vs. others), and otherwise Shamsher Singh appellants shall suffer irreparable loss.

And to pass such further relief which this Hon'ble Court may deem fit and proper in view of the facts and circumstances of the case in favour of the appellant."

3. Following substantial question of law are framed in memo of instant second appeal:-

1. Whether, the impugned judgment and order dated 10.02.2025 and decree dated 17.02.2025 of the Lower appellate Court are patently illegal and bad in the eye of law hence the same is liable to be set aside by this Hon'ble Court in the interest of justice ?

2. Whether, thereafter, the evidence was led by the parties on the issues framed by the trial court, the suit of the the plaintiff/respondent was dismissed by its judgment and order dated 15.12.2022 and passed the decree dated 16.12.2022 by the lower court and as such the finding recorded by the lower court is just, legal, and sustainable in the eye of law.

3. Whether, feeling aggrieved by the judgment dated 15.12.2022 and the decree dated 16.12.2022, the Plaintiff/respondent challenged the same in the court of the Additional District Judge Court No.9 Saharanpur. Thereafter the Learned Lower Appellate Court without considering finding recorded by the Lower Court, illegally, and wrongly passed the judgment and order on 10.02.2025 and decree on 17.02.2025 against the defendant/appellants and set aside the order of the lower court and allow the appeal of the plaintiff which is illegal, arbitrary and cannot legally sustained?

4. Whether, the Lower appellate court, while passing the impugned judgment and decree, failed to appreciate the correct facts and circumstances of the case and the legal questions involved in the case hence the impugned judgment and decree passed by the Lower appellate court is illegal, arbitrary and unsustainable under law?

5. Whether, the Lower appellate Court passed the impugned judgment and decree on the basis of surmises and conjectures ignoring the material available on record hence the same cannot be sustained under law?

6. Whether, the learned Lower appellate court without considering the finding recorded by the lower court illegally and wrongly allow the appeal of the plaintiff on 10.02.2025 and set aside the order dated 15.12.2022 of the lower court and directed the appellants/defendants to execute the registered sale deed of the Arazi/Khasra No.192 Rakba 0.749 hectare, in favour of the Plaintiff/respondent after received the

rest amounts Rs.45,000/-within a period of two months from the date of order and prepared the decree according to order and send the one copy of the aforesaid order to the lower court, thereafter the decree was passed on 17.2.2025 according to the aforesaid judgment and order, which are illegal arbitrary and unsustainable in the eye of law.

7. Whether according to section 68 of Evidence Act, that any evidence is necessary to be proved by law and it cannot be utilized one witness is alive and give the statement at the time of evidence in the Court , the plaintiff said that two witnesses of Ikrarnama died and neither knowledge the name of the writer and as such the plaintiff is the unsuccessful to prove the Ikrarnama during the trial of the Ist Additional Civil Judge (S.D) Saharanpur, thus on account of the said facts, it is very much clear the defendant/Appellant No.1 was not made any Ikrarnama on 13.4.1994 and neither take any earnest/Bayana money of Rs.55,000/-from the plaintiff, nor made any Ikrarnama for the sale deed to the plaintiff after obtained Rs.1,00000/- of the disputed property and as such the aforesaid finding recorded by the Learned Ist Additional Civil Judge (S.D) Saharanpur in pursuance of the issue No.1 is just, legal and according to evidence on record?

8. Whether the P.W-2 Purshottam said that the Ikrarnama has executed in my presence but I was not made any signature on Ikrarnama and DW-2 Rajbal said that the aforesaid Ikrarnama made for borrow/loan and the aforesaid Ikrarnama was not made for the sale of the aforesaid land and the DW-1 Mohar Singh ignore the signature of the Shamsher Singh of the Ikrarnama because Shamsher is illiterate person and due to said facts, the learned lower court dismiss the suit which is just, proper and sustainable in the eye of law?

9. Whether, the plaintiff was neither issue any notice on 02.06.1995, for sale deed dated 15.06.1995, and 30.06.1995 to the Shamsher Singh and nor publish any notice according to Civil Provision and did not emphasize by the plaintiff in pursuance of the Section 52 of the T.P.Act, is barred and as such the issue No.1,2,3,4,5,6 & 7 have already decided by the Lower Court is just legal and issue No.1,2 & 4 decided against the plaintiff, which is just, proper and sustainable in the eye of law?

10. Whether, the Learned Lower Appellate Court without considering the finding recorded of the lower court and without setting aside the finding recorded of the lower court illegally and wrongly allow the appeal of the plaintiff and set aside the order dated 15.12.2022 of the lower court and directed the appellants/defendants for registered sale deed of the disputed property in favour of the plaintiff within a period of two months from the date of order, which is unjust, illegal and unsustainable in the eye of law?

11. Whether, the judgment and decree passed by the lower appellate court without considering the documentary evidence adduced by the appellants/defendants are maintainable?

12. Whether the lower appellate Court was justified in affirming the perverse finding recorded by the trial court and as such finding recorded by the

lower appeallate court is illegal, arbitrary, and against the evidence on record??

4. Learned counsel for the appellants pressed the substantial question of law as quoted above and submitted that judgement and decree passed by First Appellate Court should be set aside. He submitted that judgement and decree passed by Trial Court should be maintained as there is no illegality or infirmity in the judgement and decree of Trial Court by which the plaintiff's suit for specific performance has been dismissed. He placed the provision contained under Section 68 of the Indian Evidence Act in support of his argument.

5. On the other hand, learned counsel for the plaintiff- respondent submitted that Trial Court has illegally dismissed the plaintiff's suit. He submitted that Trial Court has failed to consider the registered agreement to sale dated 13.6.1994 executed between plaintiff and defendant in proper manner but First Appellate Court has rightly consider the registered agreement to sale dated 13.6.1994 in holding that agreement to sale was executed on 13.6.1994 between plaintiff and defendants. He further submitted that point of determination was properly framed and decided by First Appellate Court as provided under Order 41 Rule 31 of Civil Procedure Code. He submitted that while deciding the point of determination no.2 finding on readiness and willingness has been recorded that plaintiff was always ready and willing to perform his part of contract in pursuance of agreement to sale dated 13.6.1994. He further submitted that while deciding the point of determination no.3 finding has been recorded that execution of sale deed by defendant during suit proceeding and after execution of agreement to sale dated 13.6.1994 will not give any right, title and interest to vendees. He submitted that in view of the finding of fact recorded by First Appellate Court, there is no scope of interference by this Court under Section 100 of Civil Procedure Code as no substantial question of law are involved in this second appeal.

6. I have considered the arguments advanced by learned counsel for the parties and perused the record.

7. There is no dispute about the fact that suit for specific performance of contract filed by plaintiff- respondent no.1 was dismissed by Trial Court but in appeal the suit was decreed by First Appellate Court.

8. In order to appreciate the controversy involved in the matter, the perusal of the issues framed in the suit will be relevant which are as under:-

"उभय पक्ष के अभिवचनो के आधार पर निम्नलिखित वाद बिन्दु विरचित किये

1 क्या प्रतिवादी नं. 1 द्वारा विवादित सम्पत्ति को बेचने का सौदा वादी के साथ अंकन 1,00,000/- रूपये में तय किया गया तथा 55,000/-रूपये बतौर ब्याना प्राप्त करके इकरारनामा मुहायदा बैय दिनांक 13.6.94 को तहरीर व तकमील करके पंजीकृत कराया गया है? यदि हाँ तो उसका प्रभाव ?

2.क्या वादी इकरारनामा मुहायदा बय की शरायत अनुसार अपने पक्ष में बैनामा कराने के लिये तैयार व इच्छूक है? यदि हाँ तो प्रभाव?

3.क्या प्रतिवादी नं. 1 के द्वारा प्रतिवादी नं0 2 ता 4 के हक में किये गये बैनामा धारा 52 टी.पी. एक्ट से बाधित है? यदि हाँ तो प्रभाव ?

4. क्या प्रतिवादीगण 5 व 6 के द्वारा दौरान वाद न्यायालय की निषेधाज्ञा आदेश दिनांकी 8.10.97 का

उल्लंघन करके बैनामा कराया गया है और वाद में वर्णित कारणो से शून्य दस्तावेज है ? यदि हाँ तो प्रभाव ?

5. क्या वादी का वाद अल्पमूल्यिंकत है।

6. क्या वादी द्वारा प्रदत्त न्यायशुल्क अपर्याप्त है ?

7. क्या वादी किसी अनुतोष को प्राप्त करने का अधिकारी हैं ? "

9. The Trial Court vide judgement and decree dated 15.12.2022 decided the issues framed before him and dismissed the suit recording finding of fact that agreement to sale dated 13.6.1994 was not executed between plaintiff and defendant for execution of sale deed in respect to the plot in question. The issues relating to readiness and willingness has been decided against the plaintiff on the ground that issue relating to execution of agreement to sale has been decided against the plaintiff. The issue relating to subsequent execution sale deed by defendant no.1 in favour of defendant nos. 2 to 4 was decided saying that issue was not pressed by the parties.

10. In civil appeal filed by plaintiff, point of determination as provided under Order 41 Rule 31 of C.P.C. were framed which are as under:-

"1-क्या इकरारनामा दिनांकित 13.06.1994 वैध रूप से सुखबीर सिंह व शमशेर सिंह के मध्य निष्पादित किया गया है ?

2- क्या अपीलार्थी इकरारनामा दिनांकित 13.06.1994 का अनुपालन करा पाने का विधिक रूप से अधिकारी है ?

3- क्या इकरारनामा दिनांकित 13.06.1994 के पश्चात तथा वाद के दौरान निष्पादित विक्रय विलेख से विधिनुसार क्रेतागण को स्वत्व व अधिकार प्राप्त होते हैं ? "

11. The First Appellate Court has decided all the three points of determination considering the oral and documentary evidence adduced by the parties.

12. On the point of determination No.1, the finding of fact has been recorded by the First Appellate Court that paper No.7Ka-1 (registered agreement to sale dated 13.6.1994) was properly executed between plaintiff- Sukhbeer Singh and defendant- Shamsher Singh for sale of the property in question and the finding recorded by the Trial Court that there was no agreement to sale for execution of sale deed has been set aside.

13. The First Appellate Court while deciding the point of determination No.2 has again considered the oral and documentary evidences adduced by the parties and recorded finding of fact that plaintiff was always ready and willing to perform the contract compliance of agreement dated 13.6.1994. The First Appellate Court while deciding the point of determination no.2 has properly considered the notices issued by plaintiff to the effect that defendant will come before the Sub-Registrar for execution of sale deed but defendant has failed to appear before the Sub-Registrar.

14. The First Appellate Court while deciding the point of determination no.3 has taken into consideration the recent judgement of Hon'ble Apex Court reported in ***AIR 2024 Supreme Court 3328 Maharaj Singh and Others Vs Karan Singh and Others*** in which it has been held that in view of Clause (b) of Section 19, the defendants who are claiming under the sale deed executed after execution of suit agreement can be subjected to a decree of

specific performance as the suit agreement can be enforced specifically against such defendants unless they are bona fide purchaser without notice of the original contract.

15. The relevant paragraph No. 23 and 24 of the judgement rendered by Hon'ble Apex Court in ***Maharaj Singh (Supra)*** will be relevant for perusal which are as under:-.

"23. Clause (a) to (c) of Section 19 of the Specific Relief Act read thus:

"19. Relief against parties and persons claiming under them by subsequent title- Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against-

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;"

24. In view of clause (b) of Section 19, the defendants who are claiming under the sale deeds executed after the execution of the suit agreement can be subjected to a decree of specific performance as the suit agreement can be enforced specifically against such defendants unless they are bona fide purchasers without the notice of the original contract. When in a given case, the defendants, who are subsequent purchasers, fail to prove that they entered into the sale deed in good faith and without notice of the suit agreement, in view of Section 19(b), a decree for specific performance can be passed against such defendants. Therefore, in such a case where Section 19(b) is applicable, under the decree of specific performance, the subsequent purchasers can be directed to execute the sale deed along with the original vendor. There is no necessary to pray for the cancellation of the subsequent sale deeds."

16. The First Appellate Court considering each and every aspect of the matter has allowed the civil appeal filed by plaintiff setting aside the judgement and decree of Trial Court dated 15.12.2022 and decreed the plaintiff suit for execution of sale deed in respect to the khasra No. 192M area 0.749 hectare.

17. The exercise of jurisdiction by the First Appellate Court is according to the ratio of law laid down by Hon'ble Apex Court in ***Maharaj Singh (Supra)***. The Hon'ble Apex Court in the case of ***Maharaj Singh (Supra)*** has maintained the decree of specific performance in spite of the fact that one of the plaintiff has supported the case of the defendant as well as subsequent sale deed was executed by defendant. The exercise of first appellate jurisdiction is in accordance with the provisions of law which requires no interference in exercise of jurisdiction under Section 100 of Civil Procedure Code.

18. The scope of Section 16(c) of the Specific Relief Act, 1963 has been considered in the judgment of Hon'ble Apex Court reported in **2006 (2) JCLR 201**

(SC) Aniglase Yohannan Versus Ramlatha & Ors. Paragraph Nos. 9, 10, 11, 12, 13 & 14 of the judgment of Hon'ble Apex Court in which earlier judgment of Hon'ble Apex Court has been considered will be relevant for perusal which are as under :-

"9. In Ardeshir H. Mama v. Flora Sassoon, AIR 1928 PC 208, the Privy Council observed that where the injured party sued at law for a breach, going to the root of the contract, he thereby elected to treat the contract as at an end himself and as discharged from the obligations. No further performance by him was either contemplated or had to be tendered. In a suit for specific performance on the other hand, he treated and was required by the Court to treat the contract as still subsisting. He had in that suit to allege, and if the fact was traversed, he was required to prove a continuous readiness and willingness from the date of the contract to the time of the hearing, to perform the contract on his part. Failure to make good that averment brings with it and leads to the inevitable dismissal of the suit. The observations were cited with approval in Prem Raj v. The D.L.F. Housing and Construction (Private) Ltd. and Anr., AIR (1968) SC 1355.

10. The requirements to be fulfilled for bringing in compliance of the Section 16(c) of the Act have been delineated by this Court in several judgments. Before dealing with the various judgments it is necessary to set out the factual position. The agreement for sale was executed on 15.2.1978 and the period during which the sale was to be completed was indicated to be six months. Undisputedly, immediately after the expiry of the six months period lawyer's notice was given calling upon the present appellant to execute the sale deed. It is also averred in the plaint that the plaintiff met the defendant several times and requested him to execute the sale deed. On finding inaction in his part, the suit was filed in September, 1978. This factual position has been highlighted in the plaint itself. Learned Single Judge after noticing the factual position as reflected in the averments in the plaint came to hold that the plaint contains essential facts which lead to inference to plaintiff's readiness and willingness. Para 3 of the plaint indicates that the plaintiff was always ready to get the sale deed prepared after paying necessary consideration. In para 4 of the plaint reference has been made to the lawyer's notice calling upon the defendant to execute the sale deed. In the said paragraph it has also been described as to how after the lawyer's notice was issued plaintiff met the defendant. In para 5 it is averred that defendant is bound to execute the sale deed on receiving the balance amount and the plaintiff was entitled to get the document executed by the defendant. It is also not in dispute that the balance amount of the agreed consideration was deposited in Court simultaneously to the filing of the suit. While examining the requirement of Section 16(c) this Court in Syed Dastagir v. T.R. Gopalakrishna Settty, [1999] 6 SCC 337 noted as follows:

"So the whole gamut of the issue raised is, how to construe a plea specially with reference to Section 16(c) and what are the obligations which the plaintiff has to comply with in reference to his plea and whether the plea of the plaintiff could not be construed to conform to the requirement of the aforesaid section, or does this section require specific words to

be pleaded that he has performed or has always been ready and is willing to perform his part of the contract. In construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. Such an expression may be pointed, precise, sometimes vague but still it could be gathered what he wants to convey through only by reading the whole pleading, depending on the person drafting a plea. In India most of the pleas are drafted by counsel hence the aforesaid difference of pleas which inevitably differ from one to the other. Thus, to gather true spirit behind a plea it should be read as a whole. This does not distract one from performing his obligations as required under a statute. But to test whether he has performed his obligations, one has to see the pith and substance of a plea. Where a statute requires any fact to be pleaded then that has to be pleaded may be in any form. The same plea may be stated by different persons through different words; then how could it be constricted to be only in any particular nomenclature or word. Unless a statute specifically requires a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of "readiness and willingness" has to be in spirit and substance and not in letter and form. So to insist for a mechanical production of the exact words of a statute is to insist for the form rather than the essence. So the absence of form cannot dissolve an essence if already pleaded."

11. Again in Motilal Jain v. Ramdasi Devi (Smt.) and Ors., [2000] 6 SCC 420 it was noted as follows:

The other contention which found favour with the High Court, is that plaint averments do not show that the plaintiff was ready and willing to perform his part of the contract and at any rate there is no evidence on record to prove it. Mr. Choudhary developed that contention placing reliance on the decision in Varghese case [1969] 2 SCC 539. In that case, the plaintiff pleaded an oral contract for sale of the suit property. The defendant denied the alleged oral agreement and pleaded a different agreement in regard to which the plaintiff neither amended his plaint nor filed subsequent pleading and it was in that context that this Court pointed out that the pleading in specific performance should conform to Forms 47 and 48 of the First Schedule of the Code of Civil Procedure. That view was followed in Abdul Khader case (JT 1989 (3) SC527)

However, a different note was struck by this Court in Chandiok case [1970] 3 SCC 140 : AIR [1971] SC 1238. In that case `A' agreed to purchase from `R' a leasehold plot. `R' was not having lease of the land in his favour from the Government nor was he in possession of the same. `R', however, received earnest money pursuant to the agreement for sale which provided that the balance of consideration would be paid within a month at the time of the execution of the registered sale deed. Under the agreement `R' was under obligation to obtain permission and sanction from the Government before the transfer of leasehold plot. `R' did not take any steps to apply for the sanction from the

Government. `A' filed the suit for specific performance of the contract for sale. One of the contentions of `R' was that `A' was not ready and willing to perform his part of the contract. This Court observed that readiness and willingness could not be treated as a straitjacket formula and that had to be determined from the entirety of facts and circumstances relevant to the intention and conduct of the party concerned. It was held that in the absence of any material to show that `A' at any stage was not ready and willing to perform his part of the contract or that he did not have the necessary funds for payment when the sale deed would be executed after the sanction was obtained, `A' was entitled to a decree for specific performance of contract.

That decision was relied upon by a three-Judge Bench of this Court in Syed Dastagir case [1999] 6 SCC 337 wherein it was held that in construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. It is pointed out that in India most of the pleas are drafted by counsel and hence they inevitably differ from one to the other; thus, to gather the true spirit behind a plea it should be read as a whole and to test whether the plaintiff has performed his obligations, one has to see the pith and substance of the plea. It was observed :

"Unless a statute specifically requires a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) of the Specific Relief Act, 1963 does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of `readiness and willingness' has to be in spirit and substance and not in letter and form."

It is thus clear that an averment of readiness and willingness in the plaint is not a mathematical formula which should only be in specific words. If the averments in the plaint as a whole do clearly indicate the readiness and willingness of the plaintiff to fulfil his part of the obligations under the contract which is the subject-matter of the suit, the fact that they are differently worded will not militate against the readiness and willingness of the plaintiff in a suit for specific performance of contract for sale."

12. Lord Campbell in Cork v. Ambergate etc. and Railway Co., (1851) 117 ER 1229 observed that in common sense the meaning of such an averment of readiness and willingness must be that the non-completion of the contract was not the fault of the plaintiffs, and that they were disposed and able to complete it had it not been renounced by the defendant.

13. The basic principle behind Section 16(c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The Court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief.

14. Section 16(c) of the Act mandates the plaintiff to aver in the plaint and establish as the fact by evidence aliunde that he has always been ready and willing to perform his part of the contract. On considering almost identical fact situation it was held by this Court in Surya Narain Upadhyaya v. Ram Roop Pandey and Ors., AIR (1994) SC 105 that the plaintiff had substantiated his plea."

19. In view of ratio of law laid down by Hon'ble Apex Court on the scope of Section 16(c) of Specific Relief Act, 1963, there is no illegality in the judgment of first appellate Court granting relief of specific performance of contract in the instant matter.

20. The substantial question of law as quoted above and framed in the memorandum of second appeal are not involved in this second appeal, as such, second appeal is liable to be dismissed at admission stage.

21. Considering the entire facts and circumstances of the case, no interference is required against the judgement and decree dated 10.2.2025 passed by Additional District Judge Court No.9 Saharanpur in civil appeal No. 95 of 2022.

22. The second appeal is **dismissed** at admission stage.

(2025) 8 ILRA 513
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 14.08.2025

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

Second Appeal No. 433 of 2022

Ram Giri ...Appellant
Versus
Raghuvir Singh & Ors. ...Respondents

Counsel for the Appellant:
Mr. B. Malik, Mr. Amit Malik

Counsel for the Respondents:
Mr. Rishikesh Tripathi

ISSUE FOR CONSIDERATION

Whether the decree for specific performance of the agreement was rightly granted by the trial and appellate courts, considering the defendant's claim that the agreement was a loan security, the alleged hardship due to undervaluation of land, and the plaintiff's readiness and willingness under Section 16(c) and Section 20 of the Specific Relief Act, 1963

HEADNOTES

Civil Law – Civil Procedure Code, 1908 – order 41, rules 31, - Specific Relief Act, 1963 – Sections 16(c) and 20 - Indian Evidence Act, 1872 – Section 92 - Second Appeal – preferred by the Defendant-appellants – assailing the judgment and decree passed by trial court as well as first appellate court granting relief of specific performance of contract - Suit for specific performance of an agreement to sell of agricultural land – for consideration of Two lacs sixty thousand rupees Rs. 2,60,000 - Agreement was executed – two lacs forty eight thousand was paid as earnest money and only twelve thousand rupees to be paid at sale deed execution - Defendant later claimed that the agreement was only a security for a loan of two lacs rupees and not a genuine sale - Plaintiff filed Original Suit for specific performance - Trial Court decreed the suit in favour of plaintiff, finding the agreement valid and plaintiff ready and willing to perform - Civil Appeal - First Appellate court dismissed the appeal, affirming trial court's decision – second appeal – during pendency of second appeal and in absence of any interim order, the Execution Court executed the sale deed and delivered the possession of land to the plaintiff – court finds that, the defendant argued that the decree was wrongly granted as the agreement was denied, the suit was delayed, and the land was undervalued, causing hardship – further,

contended that the discretionary nature of specific performance under Section 20 of the Specific Relief Act was not properly applied and relied on Supreme Court rulings to support his claim that comparative hardship and the true intent of the agreement should have been considered before granting the decree - Court held that, in light of the law under Section 16(c) of the Specific Relief Act, the findings of valid execution, timely filing, and continuous readiness and willingness by the plaintiff were well-supported by evidence – further reiterated that there is no straitjacket formula for deciding the suit/appeal relating to specific performance of contract rather same will depend upon the facts and concurrent findings of both courts below warranted no interference - Accordingly, second appeal dismissed at the admission stage. (Para – 14, 15, 16)

Appeal Dismissed. (E-11)

CASE LAW CITED

V. Muthusami (Dead) by LRs. v. Angammal & Ors., AIR 2002 SC 1279 - *Shamsher Singh & Ors. v. Rajinder Kumar & Ors.*, AIR 2014 SC 2253 - *Madhukar Nivrutti Jagtap & Ors. v. Pramilabai Chandulal Parandekar (Dead) through LRs. & Ors.*, AIR 2019 SC 4252

LIST OF ACTS

Specific Relief Act, 1963 – Indian Evidence Act, 1872 – Civil Procedure Code, 1908.

LIST OF KEYWORDS

Specific performance, agreement to sell, earnest money, readiness and willingness, loan security, comparative hardship, execution of sale deed, limitation, discretionary relief, second appeal, concurrent findings

CASE ARISING FROM

Judgement and decree dated 07.02.2011 - passed in Original Suit No. 602 of 2005 (*Raghuveer Singh v. Ramgiri) and* order dated 18.02.2022 passed in Civil Appeal No. 46 of 2011 passed by learned Additional District Judge, Court No.13, Agra.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Mr. B. Malik assisted by Mr. Amit Malik.

Counsel for Respondent(s): Mr. Rishikesh Tripathi.

(Delivered by Hon'ble Chandra Kumar Rai, J.)

1. Heard Mr. B. Malik, learned counsel, assisted by Mr. Amit Malik, learned counsel for the defendant-appellant and Mr. Rishikesh Tripathi, learned counsel for the plaintiff-respondent.

2. Brief facts of the case are that plaintiff-respondent no.1 filed a suit for specific performance of agreement dated 5.9.2003 against the defendant-appellant which was registered as Original Suit No.602 of 2005. In the plaint it was alleged that agreement dated 5.9.2003 was entered into between the plaintiff and defendant for sale of ½ share of khasara no.1411, area 2.326 hect. for consideration of Rs.2,60,000/- and Rs.2,48,000/- was paid as earnest money before the Registrar and remaining Rs.12,000/- was to be paid at the time of execution of sale deed. The time period for execution of sale deed mentioned in agreement to sell was 1 year. The defendant has filed his written statement, stating that he was in need of Rs.2,00,000/- for his personal work but he never intended to sell his property as plot no.1411 is the only source of maintenance of his family. Before the trial court, 7 issues were framed. The parties have adduced oral and documentary evidence in support of their cases. The trial court while deciding issue nos. 1, 3 and 7, has recorded finding that valid agreement to sell dated 5.9.2003 was executed between the plaintiff and defendant but defendant has not executed the sale deed in favour of plaintiff, hence, the suit for specific performance has been rightly filed on behalf of the plaintiff. The trial court while

deciding the issue no.2, relating to readiness and willingness, has recorded finding that plaintiff was always ready and willing to perform his contract in pursuance of agreement to sell dated 5.9.2003. The trial court vide judgment and decree dated 7.2.2011, decreed the plaintiff's suit for specific performance of contract and directed the defendant to execute the sale deed within a period of one month in pursuance of agreement to sell dated 5.9.2003 after getting the balance consideration from the plaintiff. Against the judgment and decree of the trial court dated 7.2.2011, civil appeal was filed before the District Judge and the same was registered as Civil Appeal No.46/2011. The aforementioned appeal was heard by the Additional District Judge, Court no.13, Agra. In the aforementioned civil appeal, three points of determination were framed by the court. The 1st appellate court considering the finding recorded by the trial court, has held that agreement to sell dated 5.9.2003 (paper no.9-Ka) was rightly executed between the plaintiff and defendant and the plaintiff was always ready and willing to perform his contract in pursuance of the agreement to sell dated 5.9.2003. The 1st appellate court has also taken into consideration the provisions of Section 20 of the Specific Relief Act and has held that decree for specific performance has been rightly granted by the trial court in pursuance of the agreement to sell dated 5.9.2003. The 1st appellate court vide judgment and decree dated 18.2.2022 dismissed the civil appeal filed by the defendant. Hence, this second appeal on behalf of the defendant for the following relief:-

"Relief sought through this appeal is that this Hon'ble High Court may be pleased to set aside the judgment and decree dated 18.2.2022 passed by the learned Additional District Judge, Court No.13, Agra, dismissing the Civil Appeal No.46 of 2011 and affirming judgment and decree dated 7.2.2011 passed by Civil Judge, Agra in Original Suit No.602 of 2005 (Raghuveer Singh vs. Ramgiri)."

3. The following substantial questions of law have been framed by the appellant in the memorandum of instant second appeal:-

"1. Whether, the decree for specific performance must be granted if the defendant admits the execution of document (agreement), but only as security of loan of 2,00,000/- to fulfill his to repay the amount of his losses. Or the decree is discretionary when defendant has paid the amount to the plaintiff before suit when suit filed about one year after service of notice after the service of notice of defendant to plaintiff?

2. Whether, it is a case of hardship on the ground that land has been highly valuable (Rs. 6, 00, 000/-or Rs. 10,00, 000/-) and disputed land (1.2 hectare) is only land held by defendant's family of six members all are educated and unemployed specially in U.P. where the execution of agreement against loan usual practice. distinction is to be found right or wrong?

3. Whether, the decree for specific performance should be refused in case, the defendant paid in part or in full amount to the plaintiff and suit filed about one year or moreso, notice by plaintiff to the defendant?"

4. The second appeal was neither admitted nor any interim order was granted

by this Court, accordingly, in Execution Case No.02 of 2022, the sale deed has been executed in favour of plaintiff-respondent and the possession has also been delivered to the plaintiff-respondent, accordingly, execution court has disposed of the Execution Case No.02 of 2022 vide order dated 29.10.2024 on the ground that decree has been satisfied.

5. Counsel for the appellant submitted that decree for specific performance cannot be granted if the defendant has denied the execution of agreement to sell alleged to be executed between the plaintiff and defendant. He submitted that decree of specific performance is discretionary relief and in the facts and circumstances of the instant case, the decree of specific performance cannot be granted by the Court. He further submitted that suit for specific performance has been filed in the instant matter after about 1 year from the date of service of notice to plaintiff, as such, decree for specific performance cannot be granted. He further submitted that disputed land measuring about 1.2 hect. was highly valuable land (Rs.6 lacs to Rs.10 lacs) but for meager amount of Rs.2,48,000/- the decree for specific performance has been granted by the trial court for execution of the sale deed in respect to the aforementioned area of the plot in question. He further submitted that the provisions of Section 20 of the Specific Relief Act has not been considered in proper manner, as such, the decree for specific performance passed by the trial court is liable to be set aside. He submitted that the execution of sale deed in the execution proceeding in absence of the interim order in the instant second appeal, will not prejudice the claim of the appellant in the instant second appeal. He submitted that second appeal should be allowed and the judgment and decree passed by the trial court as well as 1st appellate court should be set aside and plaintiff's suit should be dismissed. He further placed reliance on the following judgments of the Hon'ble Apex Court in order to demonstrate that decree for specific performance is discretionary one and comparative hardship is to be looked into while granting decree for specific performance:-

"1. AIR 2002 Supreme Court 1279, V. Muthusami (dead) by Lrs. vs. Angammal and Others;

2. AIR 2014 Supreme Court 2253, Shamsher Singh and Others vs. Rajinder Kumar and Others;

3. AIR 2019 Supreme Court 4252, Madhukar Nivrutti Jagtap and Others vs. Smt. Pramilabai Chandulal Parandekar (dead) through Lrs. And Others.

6. On the other hand, Mr. Rishikesh Tripathi, learned counsel for the plaintiff-respondent submitted that concurrent finding of fact has been recorded by the trial court and 1st appellate court to the effect that registered agreement to sell was executed between the plaintiff and respondent for execution of sale deed in respect to the plot in question within time limit fixed in the agreement to sell. He further submitted that both the courts have recorded finding of fact that plaintiff was always ready and willing to perform his contract in pursuance of agreement to sell dated 5.9.2003. He also submitted that provisions of Section 20 of the Specific Relief Act was also taken into consideration while passing impugned judgment, as such, there is no further scope of interference by this Court in exercise of

jurisdiction under Section 100 of the Civil Procedure Code as no substantial questions of law are involved in the second appeal. He submitted that in pursuance of the decree of specific performance dated 7.2.2011, the sale deed has been executed and execution case has been disposed of on the ground that decree has been satisfied as well as possession has been delivered to the plaintiff, as such, the second appeal should be dismissed on this ground also. He placed reliance upon the judgment of the Hon'ble Apex Court reported in **2021 AIR (Supreme Court) 5342, V. Anantha Raju and Another vs. T.M. Narasimhan and Others.**

7. I have considered the arguments of the learned counsel for the parties and perused the records.

8. There is no dispute about the fact that suit for specific performance filed by the plaintiff-respondent was decreed by the trial court vide judgment and decree dated 7.2.2011 and civil appeal filed by defendant, has been dismissed vide judgment and decree dated 18.2.2022.

9. In order to appreciate the controversy involved in the matter, the perusal of the seven issues framed before the trial court will be relevant which are as under:-

पक्षकारों के अभिवचनों के आधार पर निम्न वाद बिन्दु विरचित किये गयें:

"1- क्या प्रतिवादी ने वादी के पक्ष में दावी संपत्ति के 1/2 भाग को 2,60,000/- रू० मेविक्रय करने हेतु दिनांक 05'09.03 को मु० 2,48,000/- रू० बयाना प्राप्त करके पंजीकृत इकरारनामा निष्पादित किया?

2- क्या वादी अनुबंध के अनुसार अपने भाग को पूरा करने के लिये तत्पर एवं इच्छुक रहा है और अब भी तत्पर व इच्छुक है?

3- क्या वादी को प्रस्तुत वाद दायर करने का वाद कारण प्राप्त है?

4-क्या वादी का वाद विनिर्दिष्ट अनुतोष अधिनियम की धारा 38 व 41 से बाधित है?

5- क्या वादी का वाद विधिक रूप से पोषणीय है?

6- वादी किस अनुतोष को पाने का अधिकारी है?

7- क्या प्रतिवादी ने वादी दिनांक 05.09.03 को दो लाख रूपये बतौर ऋण थे और उसकोमय ब्याज एक साल के अंदर 2,48,000/-रू० के रूप में वादी को अदा कर दिये यदि हाँ तो प्रभाव ?"

10. The trial court considering the oral and documentary evidence adduced by the parties has recorded finding of fact that there was proper execution of agreement to sell dated 5.9.2003 in favour of plaintiff and defendant for execution of sale deed in respect of half share of khasra no.1411. The trial court has also recorded finding of fact that plaintiff was always ready and willing to perform his contract in pursuance of agreement to sell dated 5.9.2003. The finding of fact has also been recorded by the trial court that decree of specific performance is the proper relief to the plaintiff rather for payment of compensation to the plaintiff.

11. In civil appeal, the 1st appellate court in compliance of the provisions contained under Order 41 Rule 31 of the Civil Procedure Code, has framed three points of determination which are as under:-

उभय पक्ष की ओर से प्रस्तुत तर्कों, विधि व्यवस्थाओं व पत्रावली पर उपलब्ध समस्त मौखिक व

प्रलेखीय साक्ष्य के सम्यक परिशीलन के आधार पर वर्तमान सिविल अपील में निम्नलिखित अवधार्य बिन्दु निर्मित किए जाते हैं :-

"1. क्या पंजीकृत इकरारनामा दिनांकित **05.09.2003** खसरा संख्या-**1411** के क्षेत्रफल **2.326** है० स्थित ग्राम खाण्डा, तहसील एत्मादपुर, जिला आगरा के **1/2** भाग को मु**0 2,60,000/-** प्रतिफल में विक्रय करने हेतु तय किया गया तथा **2.48,000/-** रूपए अग्रिम धनराशि के रूप में अदा कर, उपरोक्त पंजीकृत इकरारनामा, इस शर्त के साथ कि शेष मु० **12,000/-** रूपए एक वर्ष के अन्दर अदा करके बैनामा निष्पादित किया जाएगा, प्रतिवादी / अपीलार्थी ने वादी / प्रत्यर्थी के पक्ष में पंजीकृत इकरारनामा निष्पादित किया और वादी / प्रत्यर्थी इकरारनामा दिनांकित **05.09.2003** की शर्तों के अनुसार बैनामा करने के लिए सदैव तत्पर व इच्छुक रहा है **?** यदि हॉ तो प्रभाव।

2. क्या पंजीकृत इकरारनामा दिनांकित **05.09.2003** की शर्तों में ऋण की किसी शर्त का उल्लेख न होने के कारण, प्रतिवादी / अपीलार्थी के द्वारा पंजीकृत इकरारनामा दिनांकित **05.09.2003** की शर्तों (ऋण के बावत) के संबंध में अभिकथन व साक्ष्य गृाह्य योग्य हैं अथवा नहीं **?**

3. क्या विद्वान विचारण न्यायालय द्वारा पारित प्रश्नगत निर्णय दिनांकित **07.02.2011** व डिकी पत्रावली में उपलब्ध तथ्यों, साक्ष्यों व विधिक उपबन्धों के सम्यक विवेचना पर आधारित है एवं क्या प्रश्नगत आदेश/डिकी पारित करने में विचारण न्यायालय ने अपने क्षेत्राधिकार का विधिपूर्ण ढंग से प्रयोग किया है **?"**

12. The 1st appellate court while deciding the aforementioned points of determination, has taken into consideration the provisions contained under Section 92 of the Indian Evidence Act as well as Section 20 of the Specific Relief Act. The 1st appellate court has recorded finding of fact that there was valid execution of agreement to sell between the plaintiff and defendant on 5.9.2003 and plaintiff was always ready and willing to perform his contract in pursuance of agreement to sell dated 5.9.2003. The 1st appellate court has maintained the judgment and decree passed by the trial court considering the ratio of law laid down by the Court from time to time.

13. The scope of Section 16(c) of the Specific Relief Act, 1963 has been considered in the judgment of Hon'ble Apex Court reported in **2006 (2) JCLR 201 (SC) Aniglase Yohannan Versus Ramlatha & Ors.** Paragraph Nos. 9, 10, 11, 12, 13 & 14 of the judgment of Hon'ble Apex Court in which earlier judgment of Hon'ble Apex Court has been considered will be relevant for perusal which are as under :-

"9. In Ardeshir H. Mama v. Flora Sassoon, AIR 1928 PC 208, the Privy Council observed that where the injured party sued at law for a breach, going to the root of the contract, he thereby elected to treat the contract as at an end himself and as discharged from the obligations. No further performance by him was either contemplated or had to be tendered. In a suit for specific performance on the other hand, he treated and was required by the Court to treat the contract as still subsisting. He had in that suit to allege, and if the fact was traversed, he was required to prove a continuous readiness and willingness from the date of the contract to the time of the hearing, to perform the contract on his part. Failure to make good that averment brings with it and leads to the inevitable dismissal of the suit. The observations were cited with approval in Prem Raj v. The D.L.F. Housing and Construction (Private) Ltd. and Anr., AIR (1968) SC 1355.

10. The requirements to be fulfilled for bringing in compliance of the Section 16(c) of the Act have been delineated by this Court in several judgments. Before dealing with the various judgments it is necessary to set out the factual position. The agreement for sale was executed on 15.2.1978 and the period during which the sale was to be completed was indicated to be six months. Undisputedly, immediately after the expiry of the six months period lawyer's notice was given calling upon the present appellant to execute the sale deed. It is also averred in the plaint that the plaintiff met the defendant several times and requested him to execute the sale deed. On finding inaction in his part, the suit was filed in September, 1978. This factual position has been highlighted in the plaint itself. Learned Single Judge after noticing the factual position as reflected in the averments in the plaint came to hold that the plaint contains essential facts which lead to inference to plaintiff's readiness and willingness. Para 3 of the plaint indicates that the plaintiff was always ready to get the sale deed prepared after paying necessary consideration. In para 4 of the plaint reference has been made to the lawyer's notice calling upon the defendant to execute the sale deed. In the said paragraph it has also been described as to how after the lawyer's notice was issued plaintiff met the defendant. In para 5 it is averred that defendant is bound to execute the sale deed on receiving the balance amount and the plaintiff was entitled to get the document executed by the defendant. It is also not in dispute that the balance amount of the agreed consideration was deposited in Court simultaneously to the filing of the suit. While examining the requirement of Section 16(c) this Court in Syed Dastagir v. T.R. Gopalakrishna Settty, [1999] 6 SCC 337 noted as follows:

"So the whole gamut of the issue raised is, how to construe a plea specially with reference to Section 16(c) and what are the obligations which the plaintiff has to comply with in reference to his plea and whether the plea of the plaintiff could not be construed to conform to the requirement of the aforesaid section, or does this section require specific words to be pleaded that he has performed or has always been ready and is willing to perform his part of the contract. In construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. Such an expression may be pointed, precise, sometimes vague but still it could be gathered what he wants to convey through only by reading the whole pleading, depending on the person drafting a plea. In India most of the pleas are drafted by counsel hence the aforesaid difference of pleas which inevitably differ from one to the other. Thus, to gather true spirit behind a plea it should be read as a whole. This does not distract one from performing his obligations as required under a statute. But to test whether he has performed his obligations, one has to see the pith and substance of a plea. Where a statute requires any fact to be pleaded then that has to be pleaded may be in any form. The same plea may be stated by different persons through different words; then how could it be constricted to be only in any particular nomenclature or word. Unless a statute specifically requires a

plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of "readiness and willingness" has to be in spirit and substance and not in letter and form. So to insist for a mechanical production of the exact words of a statute is to insist for the form rather than the essence. So the absence of form cannot dissolve an essence if already pleaded."

11. Again in Motilal Jain v. Ramdasi Devi (Smt.) and Ors., [2000] 6 SCC 420 it was noted as follows:

The other contention which found favour with the High Court, is that plaint averments do not show that the plaintiff was ready and willing to perform his part of the contract and at any rate there is no evidence on record to prove it. Mr. Choudhary developed that contention placing reliance on the decision in Varghese case [1969] 2 SCC 539. In that case, the plaintiff pleaded an oral contract for sale of the suit property. The defendant denied the alleged oral agreement and pleaded a different agreement in regard to which the plaintiff neither amended his plaint nor filed subsequent pleading and it was in that context that this Court pointed out that the pleading in specific performance should conform to Forms 47 and 48 of the First Schedule of the Code of Civil Procedure. That view was followed in Abdul Khader case (JT 1989 (3) SC527)

However, a different note was struck by this Court in Chandiok case [1970] 3 SCC 140 : AIR [1971] SC 1238. In that case `A' agreed to purchase from `R' a leasehold plot. `R' was not having lease of the land in his favour from the Government nor was he in possession of the same. `R', however, received earnest money pursuant to the agreement for sale which provided that the balance of consideration would be paid within a month at the time of the execution of the registered sale deed. Under the agreement `R' was under obligation to obtain permission and sanction from the Government before the transfer of leasehold plot. `R' did not take any steps to apply for the sanction from the Government. `A' filed the suit for specific performance of the contract for sale. One of the contentions of `R' was that `A' was not ready and willing to perform his part of the contract. This Court observed that readiness and willingness could not be treated as a straitjacket formula and that had to be determined from the entirety of facts and circumstances relevant to the intention and conduct of the party concerned. It was held that in the absence of any material to show that `A' at any stage was not ready and willing to perform his part of the contract or that he did not have the necessary funds for payment when the sale deed would be executed after the sanction was obtained, `A' was entitled to a decree for specific performance of contract.

That decision was relied upon by a three-Judge Bench of this Court in Syed Dastagir case [1999] 6 SCC 337 wherein it was held that in construing a plea in any pleading, courts must keep in mind that a plea is not an expression of

art and science but an expression through words to place fact and law of one's case for a relief. It is pointed out that in India most of the pleas are drafted by counsel and hence they inevitably differ from one to the other; thus, to gather the true spirit behind a plea it should be read as a whole and to test whether the plaintiff has performed his obligations, one has to see the pith and substance of the plea. It was observed :

"Unless a statute specifically requires a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) of the Specific Relief Act, 1963 does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of `readiness and willingness' has to be in spirit and substance and not in letter and form."

It is thus clear that an averment of readiness and willingness in the plaint is not a mathematical formula which should only be in specific words. If the averments in the plaint as a whole do clearly indicate the readiness and willingness of the plaintiff to fulfil his part of the obligations under the contract which is the subject-matter of the suit, the fact that they are differently worded will not militate against the readiness and willingness of the plaintiff in a suit for specific performance of contract for sale."

12. Lord Campbell in Cork v. Ambergate etc. and Railway Co., (1851) 117 ER 1229 observed that in common sense the meaning of such an averment of readiness and willingness must be that the non-completion of the contract was not the fault of the plaintiffs, and that they were disposed and able to complete it had it not been renounced by the defendant.

13. The basic principle behind Section 16(c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The Court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief.

14. Section 16(c) of the Act mandates the plaintiff to aver in the plaint and establish as the fact by evidence aliunde that he has always been ready and willing to perform his part of the contract. On considering almost identical fact situation it was held by this Court in Surya Narain Upadhyaya v. Ram Roop Pandey and Ors., AIR (1994) SC 105 that the plaintiff had substantiated his plea."

14. In view of ratio of law laid down by Hon'ble Apex Court on the scope of Section 16(c) of Specific Relief Act, 1963, there is no illegality in the judgment of trial Court as well as first appellate Court granting relief of specific performance of contract in the instant matter.

15. There can be no straitjacket formula for deciding the suit/appeal

relating to specific performance of contract rather the same will depend upon the facts and circumstances of each case as to whether the decree for specific performance is to be granted or compensation be paid to the defendant or earnest money be paid along with interest to the defendant.

16. In the instant matter, the agreement to sell was denied by the defendant but both the courts have recorded finding on the basis of evidence on record that there was valid execution of agreement to sell between the plaintiff and defendant. The suit was filed within limitation in the year 2005 in view of the expiry of period as mentioned in the agreement to sell dated 5.9.2003. The finding of continuous readiness and willingness is also in favour of the plaintiff and the provisions of Section 20 of the Specific Relief Act has also been taken into consideration, as such, there can be no interference against the concurrent judgment and decree passed by the trial court as well as the 1st appellate court, decreeing the suit for specific performance. The substantial questions of law as framed in the memorandum of second appeal are not involved in this second appeal.

17. Considering the entire facts and circumstances, no interference is required in the matter. **The second appeal is dismissed at the admission stage**.

(2025) 8 ILRA 522
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.08.2025

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 742 of 1994

Sukh Ram Singh ...Appellant
Versus
State Of U.P. & Anr. ...Respondents

Counsel for the Appellant:
Devnendra Dahma, Shiv Kumar Singh

Counsel for the Respondents:
S.C.

ISSUE FOR CONSIDERATION

Whether the reference filed under Section 18 of the Land Acquisition Act was time-barred.
Whether the Collector was justified in awarding compensation based on the lowest exemplar.
Whether the appellant is entitled to enhanced solatium, additional compensation, and interest under the amended provisions of the Land Acquisition Act.

HEADNOTES

Civil Law – Land Acquisition Act, 1894 - Sections 4(1), 6, 11, 12(2), 18, 28, 54 - Landowner's Appeal u/section 54 - against rejection of Reference case as time-barred and for enhancement of compensation awarded – Land acquisition proceedings – Notification under Section 4(1) of the Act published in the year 1979 – objections invited – Award – declaration under Section 12(2) published in 1980 – possession of the land taken – appellant held entitled to receive compensation at the rate of Rs. 479.15 per acre along with 15% solatium and Rs. 374.69 u/section 11 of the Act – appellant filed an application in 1989 seeking enhancement of compensation – matter referred by the Collector u/section 18 of the Act – appellant contended lack of prior knowledge regarding the acquisition and non-receipt of notice, copy of the award, or compensation – District Judge rejected his reference as time-barred – instant appeal - court finds that the reference was filed within six months from the date of knowledge – Collector's assessment of compensation found to be arbitrary and based on an inappropriate exemplar – Court held that the Reference Court erred in dismissing the appellant's claim as time-barred and in upholding the inadequate compensation awarded by the Collector – since the Collector's

award was made prior to the enactment of Amending Act No. 68 of 1984, but the dismissal of the reference occurred after the Act came into force, the appellant is entitled to enhanced benefits under the amended provisions – consequently, the appellant is awarded compensation at the rate of Rs. 8,784.77 per acre, along with 30% solatium, 12% additional compensation per annum from the date of notification u/section 4(1) till the date of award or possession, whichever is earlier, and interest at the rate of 15% per annum under Section 28 of the Act – Appeal is allowed – Office is directed to prepare the decree accordingly. (Para – 24, 29, 31, 38, 40, 41, 42)
Appeal Allowed. (E-11)

CASE LAW CITED

Bhagwan Das & Ors. v. State of UP & Ors., (2010) 3 SCC 545) - Mehrawal Khewaji Trust (Regd.), Faridkot & Ors. v. State of Punjab & Ors., (2012) 5 SCC 432) - General Manager, ONGC Ltd. v. Rameshbhai Jivanbhai Patel & Anr., (2008) 14 SCC 745) - Union of India v. Harpat Singh & Ors., (2009) 14 SCC 375).

LIST OF ACTS

Land Acquisition Act, 1894 - Amending Act No. 68 of 1984

LIST OF KEYWORDS

First Appeal - Land Acquisition – Compensation - Reference under Section 18 - Time-barred reference – Solatium - Additional compensation - Enhanced interest - Exemplar sale deed - Circle rate - Constructive knowledge – Limitation - Arbitrary assessment.

CASE ARISING FROM

Judgment and order dated 22.01.1993 passed by Additional District Judge, Aligarh rejecting the land acquisition reference case No. 11/1990 (Sukhram Singh Vs. State of UP) - Acquisition of 0.68 acres of agricultural land in district Aligarh (U.P.), for the construction of the Canal.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Mr. Devendra Dahma, Shiv Kumar Singh.
Counsel for Respondent(s): SC.

(Delivered by Hon'ble Sandeep Jain, J.)

1. The instant appeal under Section 54 of the Land Acquisition Act, 1894 (the Act) has been preferred by the landowner against impugned judgment and order dated 22.01.1993 passed by Third Additional District Judge, Aligarh rejecting the Land Acquisition Reference No. 11 of 1990, Sukhram Singh versus State of UP, by holding that the Collector/Special Land Acquisition Officer (SLAO) has awarded the correct amount of compensation and also, that the reference is time barred.

2. Facts in brief are, that for constructing, Amarpur canal(rajvaha) from kilometre 26–009 to 35–706, for transmitting the waters of Central Ganges canal, land acquisition proceedings were initiated for acquiring 8.62 acre land, situated in village Jirauli Dor,Tehsil and Pargana Kol, District Aligarh, on behalf of the Executive Engineer, Madhya Ganga canal, Construction Division– Second, District Aligarh. A notification under section 4(1) of the Act was published on 22.10.1979, which was published in the Gazette on 8.3.1980, and subsequently, a declaration under section 6 of the Act was made on 7.2.1980, which was published in the Gazette on 22.3.1980. After inviting the objections of the affected landowners, the Collector passed the award No. 426/1980-81 on 11.12.1980. A declaration under section 12(2) of the Act, was also made on 11.12.1980. The possession of the appellants land was taken on 16.1.1981.

3. Besides others, the appellant Sukh Ram's land belonging to khata number 186, Chuck No. 329, having area of one beegha, three Biswa, 17 biswansi(0.68 acres) situated in village Jirauli Dor,was acquired for the above purpose. The appellant was held entitled to receive compensation at the rate of rupees 479.15 per acre ,for his 0.68

acre land, amounting to rupees 325.82, besides this, he was also awarded solatium at the rate of 15% amounting to ₹48.87, in total, the appellant was awarded compensation of ₹ 374.69, under section 11 of the Act.

4. The Collector determined compensation on the basis of sale deed(exemplar) dated 20.7.1979, pertaining to an area of 2.413 acre. The Collector considered five sale deeds pertaining to the same village, but he rejected the other four exemplars on the ground that they were of lands, which were situated far away from habitation and acquired land and also were of the period, which was not proximate to the notification under section 4(1) of the Act. The compensation was determined on the basis of exemplar dated 20.7.1979 by concluding that the land pertaining in this exemplar, is very close to habitation, which is relatively distant to the acquired land. It was further held that, this land is similar to the acquired land, regarding facilities available for irrigating the land and its suitability for agriculture.

5. The appellant moved an application on 3.3.1989 before the Collector to refer the matter for enhancement of compensation under section 18 of the Act, to the reference court on the ground that he had no information prior to February, 1989 about the acquisition, since he never received any notice from the Collector, never received the copy of the award, never received the compensation, as such, he had no knowledge about the acquisition proceedings, as such, he could not make an application earlier for getting the matter referred for enhancement of compensation.

6. The Collector referred the matter under section 18 of the Act on 25.4.1989, to the District Judge, Aligarh who passed an order dated 25.5.1990 , since prima-facie it appeared that the reference was time barred, that question of limitation will be decided at the time of adjudication at the time of trial, after framing an issue and hearing the State, provided the State takes such plea in its written statement.

7. The reference court framed the following issues on 9.10.1991, which are stated as under:-

(i) Whether the compensation paid to the plaintiff is insufficient? If yes, the entitled rate?

(ii) Whether the instant reference is barred by limitation?

(iii) To what relief the plaintiff is entitled ?

8. The reference court while deciding issue no.1, came to the conclusion that the exemplar on the basis of which the Collector has awarded compensation, is correct and accordingly, the reference court came to the conclusion that the appellant is not entitled to receive enhanced compensation, than what has already been awarded by the Collector. The reference court while deciding issue no. 2, came to the conclusion that the appellant moved an application on 3.3.1989 for having the matter referred, which was time barred, because the appellant failed to examine the person from whom he got the knowledge belatedly. The reference court also concluded that since two notifications have already been issued and the possession of the land has already been taken on 16.1.1981, as such, the reference has been moved after about nine years, which is hopelessly time barred. In view of the

above conclusions, the reference court dismissed the reference by impugned judgment and order dated 22.1.1993, aggrieved against which, the landowner–appellant has preferred the instant first appeal under section 54 of the Act.

9. Learned counsel for the appellant submitted that the appellant was not having any knowledge of the award passed by the Collector because no notice was ever received by him during acquisition proceedings, no notice after pronouncement of award was sent to the appellant, no copy of the award was sent to the appellant, as such, the appellant being a poor illiterate farmer never became aware of the award and as such, he could not file reference within the stipulated time prescribed under section 18 of the Act.

10. Learned counsel further submitted that the appellant for the first time became aware of the award of the Collector in the month of February, 1989 and thereafter, he obtained the certified copy of the award and then, he became aware that a paltry compensation has been awarded to him, on the basis of exemplar dated 20.7.1979, which is not applicable, because the other exemplars ,which were about two years prior to the notification under section 4(1) of the Act, show that the land was sold for a price which was many times more than reflected in the exemplar dated 20.7.1979.

11. Learned counsel further submitted that the reference court committed illegality in concluding that the reference is time barred because the limitation is to be considered from the date of knowledge i.e. when the appellant became aware of the award passed by the Collector. Learned counsel further submitted that it has to be seen when the appellant had constructive knowledge of the award and from that date, the limitation for filing reference under section 18 of the Act is to be calculated. He further submitted that the reference court has simply calculated the limitation from the date of taking possession of the land ignoring that, the appellant had constructive knowledge of the acquisition only in February 1989. He submitted that the reference has been filed on 3.3.1989, which is within the limitation period, if calculated from the date of knowledge of the award.

12. Learned counsel further submitted that the appellant is entitled to get compensation on the basis of exemplar which has been executed for the highest consideration, as such, the Collector has committed illegality in awarding the compensation on the basis of exemplar ,which denotes the lowest sale consideration.

13. Learned counsel further submitted that the Collector only awarded solatium at the rate of 15%, whereas, since the reference was decided in the year 1993, the appellant is entitled to get solatium at the rate of 30%, additional compensation at the rate of 12% per annum and enhanced interest at the rate of 15% per annum, under section 28 of the Act.

14. With these submissions, it was prayed that the impugned judgment and order of the reference court be set aside and this appeal be allowed and consequently, the appellant be awarded enhanced compensation, solatium, additional compensation and enhanced interest, in accordance with law. Learned counsel in support of enhancing compensation on the basis of highest exemplar, relied upon the case of ***Mehrawal Khewaji Trust***

(Registered), Faridkot and others vs. State of Punjab and others (2012) 5 SCC 432.

15. Per contra, learned additional standing Counsel submitted that the appellant was aware of the acquisition proceedings and deliberately, did not appear before the Collector. The possession of the land was taken in the year 1981, but the reference was made in 1989, which is hopelessly time barred, as such, the reference court has rightly concluded that the reference was time barred. He further submitted that the compensation has been awarded on the basis of exemplar dated 20.7.1979, which is proximate in time to the date of notification under section 4(1) of the Act, as such, the Collector has not committed any illegality in determining the compensation on the basis of this exemplar. He further submitted that since the award by the Collector was made on 11.12.1980, which is, prior to April 30, 1982 as such, the appellant is not entitled to get additional compensation at the rate of 12% per annum and enhanced solatium at the rate of 30% and also enhanced interest under section 28 of the Act. With these submissions, it was prayed that this appeal be rejected.

16. I have heard the learned counsel of both the sides and perused the record.

17 This appeal raises the following factual and legal issues, which needs to be determined by this Court:-

(1) Whether the reference made by the appellant is time barred?

(2) Whether the Collector was justified in determining the compensation on the basis of lowest exemplar dated 20.7.1979, according to which the land transaction took place at the rate of rupees 1435.97 per acre, and ignoring the other exemplars, which were executed about a year or two prior, from the date of notification under section 4(1) of the Act?

(3) Whether the appellant is entitled to get enhanced solatium at the rate of 30%, additional compensation at the rate of 12% per annum and enhanced interest at the rate of 15% per annum on the additional amount of compensation awarded to him by this Court.

Issue number:1

18. The Apex Court in the case of ***Bhagwan Das and others vs. State of UP and others (2010) 3 SCC 545***, held as under:-

"Re: Question (c)

18. Clause (b) of the proviso to Section 18 requires a person interested who has not accepted the award, to make an application to the Collector requiring him to refer the matter for determination of the court, within six weeks of the receipt of the notice from the Collector under Section 12(2) or within six months from the date of the Collector's award whichever period first expires, if he or his representative was not present before the Collector at the time of making of the award.

19. The reason for providing six months from the date of the award for making an application seeking reference, where the applicant did not receive a notice under Section 12(2) of the Act, while providing only six weeks from the date of receipt of notice under Section 12(2) of the Act for making an application for reference where the applicant has received a notice under Section 12(2) of the Act is obvious.

When a notice under Section 12(2) of the Act is received, the landowner or person interested is made aware of all relevant particulars of the award which enables him to decide whether he should seek reference or not. On the other hand, if he only comes to know that an award has been made, he would require further time to make enquiries or secure copies so that he can ascertain the relevant particulars of the award.

20. The term "date of the Collector's award" occurring in clause (b) of the proviso, has been interpreted by this Court in several cases. We may refer to a few of them.

21. In Harish Chandra Raj Singh v. Land Acquisition Officer [AIR 1961 SC 1500] this Court held: (AIR pp. 1503-04, paras 5-6)

"5. ... Therefore, if the award made by the Collector is in law no more than an offer made on behalf of the Government to the owner of the property then the making of the award as properly understood must involve the communication of the offer to the party concerned. That is the normal requirement under the contract law and its applicability to cases of award made under the Act cannot be reasonably excluded. Thus considered the date of the award cannot be determined solely by reference to the time when the award is signed by the Collector or delivered by him in his office; it must involve the consideration of the question as to when it was known to the party concerned either actually or constructively. If that be the true position then the literal and mechanical construction of the words 'the date of the award' occurring in the relevant section would not be appropriate.

6. There is yet another point which leads to the same conclusion. If the award is treated as an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired it is clear that the said decision ultimately affects the rights of the owner of the property and in that sense, like all decisions which affect persons, it is essentially fair and just that the said decision should be communicated to the said party. The knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. ***Thus considered the making of the award cannot consist merely in the physical act of writing the award or signing it or even filing it in the Office of the Collector; it must involve the communication of the said award to the party concerned either actually or constructively.*** *If the award is pronounced in the presence of the party whose rights are affected by it, it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice of the date of its pronouncement an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later.* ***The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair play and natural justice the expression 'the date of the award' used in the proviso must mean the date when the award is either communicated to the party or is known by***

him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words 'from the date of the Collector's award' used in the proviso to Section 18 in a literal or mechanical way."

22. In State of Punjab v. Qaisar Jehan Begum [AIR 1963 SC 1604] this Court reiterated the principles stated in Harish Chandra Raj Singh [AIR 1961 SC 1500] and further held as follows: (Qaisar Jehan Begum case [AIR 1963 SC 1604] , AIR p. 1607, para 5)

"5. ... It seems clear to us that the ratio of the decision in Harish Chandra case [AIR 1961 SC 1500] is that the party affected by the award must know it, actually or constructively, and the period of six months will run from the date of that knowledge. ***Now, knowledge of the award does not mean a mere knowledge of the fact that an award has been made. The knowledge must relate to the essential contents of the award.*** *These contents may be known either actually or constructively. If the award is communicated to a party under Section 12(2) of the Act, the party must be obviously fixed with knowledge of the contents of the award whether he reads it or not. Similarly when a party is present in court either personally or through his representative when the award is made by the Collector, it must be presumed that he knows the contents of the award. Having regard to the scheme of the Act we think that knowledge of the award must mean knowledge of the essential contents of the award."*

24. When land is acquired and an award is made under Section 11 of the Act, the Collector becomes entitled to take possession of the acquired land. The award being only an offer on behalf of the Government, there is always a tendency on the part of the Collector to be conservative in making the award, which results in less than the market value being offered.

25. Invariably, the land-loser is required to make an application under Section 18 of the Act to get the market value as compensation. The land-loser does not get a right to seek reference to the civil court unless the award is made. This means that he can make an application seeking reference only when he knows that an award has been made.

26. If the words six months from the "date of the Collector's award" should be literally interpreted as referring to the date of the award and not the date of knowledge of the award, it will lead to unjust and absurd results. For example, the Collector may choose to make an award but not to issue any notice under Section 12(2) of the Act, either due to negligence or oversight or due to any ulterior reasons. Or he may send a notice but may not bother to ensure that it is served on the landowner as required under Section 45 of the Act. If the words "date of the Collector's award" are literally interpreted, the effect would be that on the expiry of six months from the date of award, even though the claimant had no notice of the award, he would lose the right to seek a reference. That will lead to arbitrary and unreasonable discrimination between those who are notified of the award and those who are not notified of the award.

27. Unless the procedure under the Act is fair, reasonable and non-discriminatory, it will run the risk of being branded as being violative of Article 14 as also Article 300-A of the Constitution of

India. To avoid such consequences, the words "date of the Collector's award" occurring in proviso (b) to Section 18 requires to be read as referring to the date of knowledge of the essential contents of the award, and not the actual date of the Collector's award.

28. The following position therefore emerges from the interpretation of the proviso to Section 18 of the Act:

(i) If the award is made in the presence of the person interested (or his authorised representative), he has to make the application within six weeks from the date of the Collector's award itself.

(ii) If the award is not made in the presence of the person interested (or his authorised representative), he has to make the application seeking reference within six weeks of the receipt of the notice from the Collector under Section 12(2).

(iii) If the person interested (or his representative) was not present when the award is made, and if he does not receive the notice under Section 12(2) from the Collector, he has to make the application within six months of the date on which he actually or constructively came to know about the contents of the award.

(iv) If a person interested receives a notice under Section 12(2) of the Act, after the expiry of six weeks from the date of receipt of such notice, he cannot claim the benefit of the provision for six months for making the application on the ground that the date of receipt of notice under Section 12(2) of the Act was the date of knowledge of the contents of the award.

29. A person who fails to make an application for reference within the time prescribed is not without remedy. It is open to him to make an application under Section 28-A of the Act, on the basis of an award of the court in respect of the other lands covered by the same acquisition notification, if there is an increase. Be that as it may.

*30. **When a person interested makes an application for reference seeking the benefit of six months' period from the date of knowledge, the initial onus is on him to prove that he (or his representative) was not present when the award was made, that he did not receive any notice under Section 12(2) of the Act, and that he did not have the knowledge of the contents of the award during a period of six months prior to the filing the application for reference. This onus is discharged by asserting these facts on oath. He is not expected to prove the negative. Once the initial onus is discharged by the claimant/person interested, it is for the Land Acquisition Collector to establish that the person interested was present either in person or through his representative when the award was made, or that he had received a notice under Section 12(2) of the Act, or that he had knowledge of the contents of the award.***

*31. **Actual or constructive knowledge of the contents of the award can be established by the Collector by proving that the person interested had received or drawn the compensation amount for the acquired land, or had attested the mahazar / panchnama / proceedings delivering possession of the acquired land in pursuance of the acquisition, or had filed a case challenging the award or had acknowledged the making of the award in***

any document or in statement on oath or evidence. The person interested, not being in possession of the acquired land and the name of the State or its transferee being entered in the revenue municipal records coupled with delay, can also lead to an inference of constructive knowledge. In the absence of any such evidence by the Collector, the claim of the person interested that he did not have knowledge earlier will be accepted, unless there are compelling circumstances not to do so."

(emphasis supplied)

19. It is evident from the law laid down by the Apex Court in the case of ***Bhagwan Das (supra)*** that when a person interested makes an application for reference seeking the benefit of six months, from the date of knowledge, the initial onus is on him to prove that he(or his representative) was not present when the award was made, that he did not receive any notice under section 12(2) of the Act, and that he did not have the knowledge of the contents of the award during the period of six months prior to the filing of the application for reference. This onus is discharged by asserting these facts on oath. He is not expected to prove the negative. Once the initial onus is discharged by the claimant/person interested, it is for the land acquisition Collector to establish that the person interested was present either in person or through his representative when the award was made, or that he had received a notice under section 12(2) of the Act, or that he had knowledge of the contents of the award. Actual or constructive knowledge of the contents of the award can be established by the Collector by proving that the person interested had received or withdrawn the compensation amount for the acquired land, or had attested the mahazar/Panchnama/proceedings delivering possession of the acquired land in pursuance of the acquisition, or had filed a case challenging the award or had acknowledged the making of the award in any document or any statement on oath or evidence. The person interested, not being in possession of the acquired land and the name of the State or its transferee being entered in the revenue/ municipal records coupled with delay, can also lead to an inference of constructive knowledge. In the absence of any such evidence by the Collector, the claim of the person interested that he did not have knowledge earlier will be accepted, unless there are compelling circumstances not to do so.

20. In the application seeking reference, the appellant specifically mentioned that he had no knowledge of the acquisition proceedings because he never received any notice from the Collector and for the first time he became aware of the award in February ,1989 and thereafter, he obtained the certified copy of the award and only then he became aware of the contents of the award and then he became aware that only a paltry amount has been awarded to him and as such he moved an application for seeking reference.

21. The landowner – appellant Sukhlal appeared in the witness box in the reference court and examined himself as PW-1 and deposed that before passing of the award, no notice was ever received by him. He also remained unaware that an award had been passed. He deposed in his examination-in-chief that for the first time he became aware of the award in February, 1989 and then after obtaining the copy of the award, he had filed reference. He further deposed that the compensation

awarded has not been obtained by him because it is meagre.

22. Sukhlal deposed in cross-examination that he was informed about the award by his neighbour Lal Singh, who resides in village Moosepur, whose land is nearby to his acquired land, whose land was also acquired by the government. He also admitted that their lands were acquired for the same canal(rajvaha). He admitted that Lal Singh had enquired from him whether he received any compensation or not and then he was told about the acquisition. He also admitted that prior to that, a canal was dug in his land. He further deposed that he never received any notice from the Collector.

23. The respondents pleaded in their written statement before the reference court, that the appellant was well aware of the acquisition proceedings because notices were sent to him, which were received by him, but he neither appeared nor adduced any evidence, as such, the appellant deliberately preferred reference belatedly ,which is barred by limitation.

24. It is evident that in support of the above pleadings, the respondents have not filed any documentary or oral evidence, to prove, that the appellant was sent notices during acquisition proceedings, which were received by him, the appellant was aware of the award of the Collector and he deliberately did not prefer reference, within the stipulated period of limitation. The respondents could have very well filed documentary evidence of the receipt of notices by the appellant, but no such documentary evidence was ever filed before the reference court. Even no witness was examined by the respondents in support of their above contentions. In view of this, the statement of Sukhlal PW-1 remains uncontroverted, that he had no knowledge of the acquisition proceedings and for the first time he became aware of it in February, 1989. There is no evidence to presume that the appellant was having knowledge of the award prior to February, 1989. In view of this, the application dated 3.3.1989 seeking reference under section 18 of the Act, cannot be held to be barred by limitation, because it was made within six months from the date of actual knowledge of the award. In view of this conclusion, the reference court has recorded a perverse finding that the reference was time barred. Accordingly, this issue is decided in the negative and it is held that, the reference was preferred within time.

Issue No.2

25. The Apex Court in the case of ***Mehrawal Khewaji Trust(Registered), Faridkot and Others vs. State of Punjab and others (2012) 5 SCC 432***, while considering the applicability of exemplars in awarding compensation in land acquisition cases, held as under:-

14. As pointed out above, the Reference Court failed to take note of the highest exemplar, namely, the sale transaction under Ext. A-61 dated 22-7-1977. In this regard, it is useful to refer the decision of this Court in M. Vijayalakshmamma Rao Bahadur v. Collector of Madras [(1969) 1 MLJ 45 (SC)] . In this case, this Court has held thus : (MLJ pp. 46-47)

"... where sale deeds pertaining to different transactions are relied on behalf of the Government, that representing the highest value should be preferred to the

rest unless there are strong circumstances justifying a different course. In any case we see no reason why an average of two sale deeds should have been taken in this case."

15. In State of Punjab v. Hans Raj [(1994) 5 SCC 734] this Court has held that method of working out the "average price" paid under different sale transactions is not proper and that one should not have, ordinarily recourse to such method. This Court further held that the bona fide sale transactions proximate to the point of acquisition of the lands situated in the neighbourhood of the acquired lands are the real basis to determine the market value.

16. This Court in Anjani Molu Dessai v. State of Goa [(2010) 13 SCC 710 : (2011) 1 SCC (Civ) 788] , after relying upon the earlier decisions of this Court in M. Vijayalakshmamma Rao Bahadur and Hans Raj held in para 20 as under :(SCC p. 715)

"20. The legal position is that even where there are several exemplars with reference to similar lands, usually the highest of the exemplars, which is a bona fide transaction, will be considered."

Again, in para 23, it was held that "the averaging of the prices under the two sale deeds was not justified."

*17. **It is clear that when there are several exemplars with reference to similar lands, it is the general rule that the highest of the exemplars, if it is satisfied that it is a bona fide transaction, has to be considered and accepted. When the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. In our view, it seems to be only fair that where sale deeds pertaining to different transactions are relied on behalf of the Government, the transaction representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. It is not desirable to take an average of various sale deeds placed before the authority/court for fixing fair compensation.***

18. Based on the above principles, the market value as per Ext. A-61 dated 22-7-1977 was Rs 1,39,130.43 per acre (approx. Rs 1.40 lakhs per acre). The said sale deed was two-and-a-half years prior in time than Section 4(1) Notification dated 22-12-1979. There is no reason to eschew the above sale transaction. It is also pointed out that the lands covered under Ext. A-61 are nearer to the lands of the appellants under acquisition."

(emphasis supplied)

26. It is evident that the Apex Court in the case of ***Mehrawal Khewaji Trust(supra)*** has held that when there are several exemplars with reference to similar lands, it is the general rule that the highest of the exemplars, if the Court is satisfied that it is a bonafide transaction, has to be considered and accepted. It was further held that when the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. It was further held that where

sale deeds pertaining to different transactions are relied on, on behalf of the State, the transaction representing the highest value should be preferred to the rest, unless there are strong circumstances justifying a different course. It was further held that it is not desirable to take an average of various sale deeds placed before the authority/court for fixing fair compensation.

27. This principle of law has been reiterated recently by the Apex Court in the case of ***Manohar and others vs. State of Maharashtra and others 2025 SCC OnLine SC 1519***, in which it was held as under:-

"46. It was sought to be contended by the learned counsel for the Respondent No. 3 (MIDC) that the Reference Court has rightly used the principle of averaging of sale price of sale exemplars at Sr. No. 1, 2, 3 and 5 for determination of market value of acquired land. However, it is clear from a reading of paragraph 20 of the judgment of this Court in the case of Anjani Molu Dessai vs. State of Goa & Another (2010) 13 SCC 710 that the legal position is that even where there are several exemplars with reference to similar lands, usually the highest of the exemplars, which is a bonafide transaction will be considered. Further, only where there are several sales of similar lands whose prices range in a narrow bandwidth, the average thereof can be taken, as representing the market price. The said position of law was reiterated in the judgment of this Court in the cases of Mehrawal Khewaji Trust (supra) and Mohammad Yusuf & Others vs. State of Haryana & Others (2018) 16 SCC 105.

47. Even in the case of Major General Kapil Mehra & Others vs. UOI & Another (2015) 2 SCC 262, relied upon by the learned counsel for Respondent No. 3 (MIDC), it has been held that where there are several sales of similar lands, more or less, at the same time, whose prices have marginal variation, averaging thereof is permissible.

48. The position of law being thus and further on account of the fact that the lands acquired in the present case are in a prime location, we are of the considered opinion that no occasion arose for the Reference Court to deviate from the well-settled position of law and that the claimants/ Appellants deserve the benefit of the highest sale exemplar dated 31st March 1990. Not only that but in the event, the values of the sale instances taken into consideration by the Reference Court had a "marginal variation", averaging thereof would have been permissible. But the sale exemplars taken into consideration by the Reference Court, in the present case, were the ones from Sr. Nos. 1 to 6 and they ranged from Rs. 25,000/- per Acre to Rs. 72,900/- per Acre. In such a case, the averaging thereof was clearly not permissible."

28. The S.L.A.O. considered five exemplars, the relevant details of which are mentioned below:-

S. No.	**Exemplar-1**	**Exemplar-2**	**Exemplar-3**	**Exemplar-4**	**Exemplar-5**
Date of Sale	20.7.1979	9.8.1978	24.11.1977	30.9.1977	29.9.1977
Field No.	70	339	374	121	323
Area sold (in acre)	2.413	7.674	0.975	0.939	0.683
Consideration (in Rs.)	3,465/-	17,400/-	7,500/-	6,000/-	6,000/-
Quality of soil	Bada aavi parata	Matiyara-2 Khak	Matiyara-2 Khak	Matiyara-2 aavi	Matiyara-2 Khak

		hi parata	hi parata		hi parata
Rate(in Rs.)	9.56	4.81	4.81	5.37	4.82
Distance from habitation	Near	Far	Far	Far	Very far
Distance from acquired land	Far	Far	Far	Very far	Very far
Consideration per acre (in Rs.)	1,435.97	2,267.39	7,692.31	6,389.77	8,784.77

29. It is evident that the Collector only considered **exemplar No. 1** dated 20.7.1979 because it was executed only about three months prior to the date of notification under section 4(1) of the Act. He noted that the land pertaining to this sale deed is situated close to habitation, is irrigated and the quality of the soil is ***Bada aavi parata.*** The other exemplars dated 9.8.1978, 24.11.1977, 30.9.1977 and 29.09.1977 were not considered by him on the ground that they were not proximate to the date of acquisition. He held that since the other exemplars were of a period which was a year or two, prior to the date of notification under section 4(1) of the Act as such, they were not relevant for determining compensation in this case. He noted that the land sold in the other 4 exemplars, was situated far away from habitation and also from the acquired land, as such, he chose to ignore these exemplars.

30. It is not disputed that the land sold in all the above referred exemplars, is agricultural land, situated in the same village. It is also well settled that the cost of land depends upon its distance from habitation, its quality of soil and whether it is irrigated or not. In the instant case, all the lands referred to in the 4 above-mentioned exemplars, which were not considered suitable for determining compensation, are fertile and irrigated, but were not close to habitation and the acquired land. The appellant deposed in his examination-in-chief that he reaped two crops in a year, but sometimes, he managed to get three crops. He also deposed that his land was irrigated from private tubewell and the quality of soil was *domatt*, the circle rate of which was at that time ₹ 10,000 per beegha and he demanded in the reference, compensation at the rate of ₹ 15,000 per beegha. He further deposed that even as per the sale deed of the year 1977, his land was valued more than what was determined, while passing the award. He further deposed that the quality of the soil of his land was *domatt*, not *pilia*. The respondent had not adduced any contrary evidence.

31. It is apparent that 0.68 acre land of the appellant was acquired by notification under section 4(1) of the Act dated 22.10.1979 ,but the compensation has not been awarded on the basis of exemplar dated 29.9.1977, which pertains to land 0.683 acre, which was almost similar in area, to the acquired land of the appellant. According to the exemplar dated 29.9.1977, land 0.683 acre was sold for ₹ 6,000/-, which was situated far away from habitation and the acquired land, but even then the consideration per acre ₹ 8,784.77 was much more than that of exemplar dated 20.7.1979, in which the land was situated near habitation but relatively distant to acquired land. Since in exemplar dated 20.7.1979, the land sold was situated near habitation, it was priced more than the land of exemplar dated 29.9.1977 which was situated very far away from habitation, but the land sold on 20.7.1979 was priced at the rate of only rupees 1435.97 per acre,

which was much less than ₹ 8,784.77 per acre, which the land situated very far away from habitation fetched. It is also apparent that the exemplar dated 20.7.1979 and 9.8.1978 pertain to larger piece of land, which are almost 3.5 times and 11 times larger than the acquired land of appellant. In view of this, the exemplar dated 20.7.1979 and 9.8.1978 are irrelevant for determining the correct market value of the acquired land of the appellant. It is also apparent that exemplar dated 24.11.1977 and 30.9.1977 also pertain to land, which was almost 1.5 times larger than the acquired land of the appellant, as such, these exemplars are also not applicable in the instant case.

32. During hearing of this appeal, it was enquired from the learned additional standing counsel what the term **"aavi parata"** denotes, which has been used by the Collector in the award. It was pointed out that previously this Court had asked the State to file supplementary affidavit for clarifying this point and in compliance of that order dated 31.7.2018, the State has filed supplementary affidavit which denotes as under:-

"अतः बैनामा नं०-01 के आधार पर अर्जन भूमि पी०-02 खाकी परता रेट 1-94 पैसे की दर प्रति एकड़ मु० 291-39 पैसे पी०-01 खाकी परता रेट 3-19 पैसे की दर मु० 479-15 पैसे पी०-01 आवी परता रेट 4-44 पैसे की दर मु० 666-91 पैसे मटि० 02 आवी परता रेट 5-37 पैसे की दर मु० 806-60 पैसे तथा मटि० 01 आवी किस्म परता रेट 6-62 पैसे की दर मु० 994-36 पैसे प्रति एकड़ नियत करता हूँ।

उक्त से स्पष्ट है कि तत्कालीन विशेष भूमि अध्याप्ति अधिकारी अलीगढ़ द्वारा निम्नानुसार किस्म जमीन के आधार पर दर निर्धारण किया गया है।

क्र0सं0	किस्म जमीन	परता रेट/ सर्किल रेट	दर प्रति एकड़
		प्रति बीघा	
1	पी०-2 खाकी (पीलिया दोयम खाकी)	1.94 पै०	291.39
2	पी०-1 खाकी (पीलिया अब्बल खाकी)	3.19 पै०	479.15
3	पी०-1 आवी (पीलिया अब्बल आवी)	4.44 पै०	666.91
4	मटि०-2 आवी (मटियार दोयम आवी)	5.37 पै०	806.60
5	मटि०- 1 आवी (मटियार अब्बल आवी)	6.62 पै०	994.36

उपरोक्त से स्पष्ट है कि तत्कालीन विशेष भूमि अध्याप्ति अधिकारी अलीगढ़ द्वारा आवी शब्द का अर्थ किस्म जमीन एवं परता शब्द का अर्थ सर्किल रेट के लिये प्रयोग किया गया है।"

33. The supplementary affidavit, discloses that there are several types of soil and depending upon the quality of the soil, its market value is determined. The affidavit discloses that in this case, the quality of the soil of the acquired land of appellant was **pilia awwal khaki (P-1 khaki),** having circle rate of ₹ 3.19 per beegha, which amounts to rupees 479.15 per acre. Since, one beegha land = 0.62 acre, as such, on the basis of circle rate of ₹ 3.19 per beegha, the cost per acre cannot be rupees 479.15. This shows that the supplementary affidavit has been filed, without application of mind, which does

not explain the basis on which the Collector has awarded compensation to the appellant. The standing Counsel has not been able to explain how the Collector has determined compensation payable to the appellant at the rate of rupees 479.15 per acre, when on the basis of **exemplar-1** relied upon, the rate comes to rupees 1435.97 per acre. This clearly demonstrates the arbitrary and whimsical manner in which the compensation has been determined by the Collector.

34. The land owner PW-1 has deposed in his examination-in-chief in the reference court, that his land was priced more than rupees 10,000/- per beegha even prior to the date of acquisition, which has not been controverted by the respondents, by adducing contrary evidence before the reference court.

35. In view of the above evidence on record, this Court is of the opinion that the Collector and the reference court both have committed illegality in awarding compensation at the rate of rupees 479.15 per acre to the appellant. The appellant is entitled to get compensation on the basis of **exemplar-5** dated 29.9.1977, which pertains to a land transaction made more than two years prior to the date of notification under section 4(1) of the Act, regarding land which was situated far away from habitation and acquired land, but in the same village, which is more disadvantageous from the land of exemplar-1 dated 20.7.1979, which was proximate to habitation but distant to acquired land. It is apparent that the land which is having more disadvantage, is getting a better price than land, which is in relatively advantageous position, which itself proves that the exemplar-1 chosen by the Collector and approved by the reference court, does not reflect the true market value of the acquired land of the appellant. It is also apparent that the land sold in exemplar-5(0.683 acre) is almost similar to the acquired land(0.68 acre) of the appellant, as such, even if the land of exemplar-5 was sold almost two years prior to the notification under section 4(1) of the Act, even then, the appellant is entitled to get compensation at the same rate, at which the land of exemplar-5 was sold. It is also apparent that the same principle has been followed while awarding compensation by the Apex Court in the case of ***Mehrawal Khewaji Trust(supra)*** and ***Manohar (supra).***

36. It is also well settled that the land owner is also entitled to get yearly increase in the value of land. The Apex Court in the case of ***General Manager, ONGC Ltd. vs. Rameshbhai Jivanbhai Patel and Another (2008)14 SCC 745***, has held that where the acquired land is in urban/semi-urban areas, increase can be to the tune of 10% to 15% per annum and if the acquired land is situated in rural areas, increase can be between 5% to 7.5% per annum. In ***Union of India vs. Harpat Singh and others (2009) 14 SCC 375,*** the Apex Court applied the rule of 10% increase per annum.

37. Since the exemplar-5 dated 29.9.1977 pertains to a land transaction which took place more than two years prior to the date of notification under section 4(1) of the Act, as such, the appellant is entitled to increase in the value of land at the rate of 7.5% per annum but, since the land mentioned in the above transaction, is of a soil(matiyar doyam aavi) which is of a superior quality, than the soil(pilia awwal khaki) of the acquired land of the appellant(as per the record), as such, the

appellant is not entitled to get the increased value of the land, in accordance with the law laid down by the Apex Court in the case of ***Rameshbhai Jivanbhai Patel (supra)***and ***Harpat Singh (supra).***

38. In view of the above discussion, the appellant is entitled to get, on the basis of the highest exemplar-5 dated 29.9.1977, compensation for his acquired land at the rate of ₹ 8,784.77 per acre. Issue No.2 is decided, accordingly.

Issue No. 3

39. From the discussion made hereinbefore, it is evident that the reference court committed illegality in concluding that the reference was time barred and the Collector has awarded the correct amount of compensation to the appellant.

40. It is evident that the amending Act No. 68 of 1984, awarding enhanced solatium at the rate of 30%, additional compensation at the rate of 12% per annum and granting enhanced interest at the rate of 15% per annum came into effect from 24.9.1984. It is also true that in this case the award of the Collector was made on 11.12.1980, which is prior to the introduction of amending Bill(which was subsequently enacted as Act No. 68 of 1984) in the Parliament i.e. 30.4.1982. Since, the reference was illegally dismissed on 22.1.1993, which is after the enforcement of the amending Act No. 68 of 1984 w.e.f 24.09.1984, as such, the appellant is also entitled to get enhanced solatium at the rate of 30%, additional compensation at the rate of 12% per annum and enhanced interest under section 28 of the Act ,at the rate of 15% per annum, for the enhanced compensation awarded by this Court, in the instant appeal. Issue No. 3 is decided, accordingly.

41. In view of the above discussion, it is evident that the Collector has committed illegality in awarding less amount of compensation to the appellant and the reference court has further aggravated that illegality, by upholding the above compensation and also dismissing the reference as time barred. It is also true that since the reference court dismissed the reference as time barred, it could not have gone into the merits of the compensation awarded by the Collector, but still, the reference court erred in upholding the compensation awarded by the Collector.

42. In view of the above analysis and the conclusion reached while deciding the above issues, the appellant is entitled to get compensation for his acquired land at the rate of ₹ 8,784.77 per acre, solatium at the rate of 30% on this amount, additional compensation at the rate of 12% per annum and also under section 28 of the Act, enhanced interest at the rate of 15% per annum.

43. Accordingly, the instant first appeal is **allowed**. However in the facts and circumstances of the case, the parties shall bear their respective costs.

44. The office is directed to prepare the decree accordingly.

(2025) 8 ILRA 537
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 29.08.2025

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

First Appeal No. 1000 of 2023

M/S L.R. Solutions ...Appellant
Versus
M/S Suro Exim Llp & Ors. ...Respondents

Counsel for the Appellant:
Abhishek Kumar, Ishwar Kumar Upadhyay

Counsel for the Respondents:
Akhilesh Kumar Sharma, Ishir Sripat, Kaushalendra Nath Singh

ISSUE FOR CONSIDERATION

Whether the plaintiff's Suit for cancellation of the sale deed and for permanent injunction is maintainable before the Civil Court?

Whether the application filed by the defendants under Order VII Rule 11 of the Civil Procedure Code (CPC) was rightly allowed, resulting in rejection of the plaint?

HEADNOTES

Civil Law – Civil Procedure Code, 1908 - Section 96, 151, Order VII Rule 11, – Transfer of Property Act, 1882 - Sections 54, 55: - First Appeal u/s 96 of CPC – filed by the plaintiff-appellant – against the trial court's judgment and decree - Suit was for cancellation of a sale deed as well as for permanent injunction against the defendants - an application under Order VII Rule 11 CPC was filed by the defendants for rejection of the plaint - plaintiff filed an objection - Trial Court – allowed the defendants' application and rejected the plaintiff's objection – resulted suit was dismissed at the threshold without framing issues or allowing evidence – instant Appeal - Maintainability of Suit in Civil Court and Validity of Order VII Rule 11 CPC Application – court finds that - Plaintiff is a *tenant* of Defendant No.2, not the owner – the sale deed was executed by Defendant No.2 in favour of Defendant No.1 - Disputes regarding tenancy were already addressed in arbitration and are pending before the District Judge - Plaintiff cannot challenge the sale deed or seek injunction based on *adverse possession* as he is a tenant, not a trespasser or owner – in view of law laid down by the Apex Court in *Himalaya Vintrade Pvt. Ltd.' Case* court held that, a person in possession as a tenant cannot claim ownership or adverse possession hence, suit is not maintainable in civil court and therefore, the application under Order VII Rule 11 CPC was rightly allowed, and the plaint has been rightly rejected by the trial court – accordingly, present first appeal is dismissed. (Para – 12, 13, 14, 15, 16, 17)
Appeal Dismissed. (E-11)

CASE LAW CITED

T. Arivandandam v. T.V. Satyapal & Others (AIR 1977 SC 2421) - Himalaya Vintrade Pvt. Ltd. v. Md. Zahid & Another (2021 SCC Online SC 744) - Bharat Petroleum Corporation Ltd. v. Khaybar Transport Pvt. Ltd. (AIR 2011 All 131) - Rajasthan High Court Advocates Association v. Union of India (AIR 2001 SC 4160) - Society v. Ponniamman Educational Trust, (2012) 8 SCC 706)

LIST OF ACTS

Code of Civil Procedure, 1908 and - Transfer of Property Act, 1882

LIST OF KEYWORDS

First Appeal - Civil Suit - - Order VII Rule 11 CPC – Rejection of plaint – Objection – Plaint - Adverse Possession - Tenant - Suppression of Material Facts – Non-disclosure - Commercial Court - material facts - Rejection of plaint - Sale deed cancellation - Permanent injunction - Tenant rights - Arbitration proceedings – Maintainability.

CASE ARISING FROM

Order: Dated 29.05.2023 passed by Civil Judge (Senior Division), Gautam Budh Nagar, rejecting the plaint under Order VII Rule 11 CPC in Original Suit No. 342 of 2021 filed for Cancellation of sale deed dated 05.03.2021.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Mr. Abhishek Kumar and Shri Ishwar Kumar Upadhyay.
Counsel for Respondent(s): Shri Ishir Sripat.

(Delivered by Hon'ble Chandra Kumar Rai, J.)

1. Heard Sri Abhishek Kumar and Shri Ishwar Kumar Upadhyay learned counsel for the plaintiff-appellant and Sri Ishir Sripat, learned counsel for the defendant-respondent Nos.1 and 2.

2. Brief of the case are that plaintiff-appellant filed a suit for cancellation of sale

dead as well as permanent injunction before Civil Judge (Senior Division), Gautam Budh Nagar impleading three defendants, who are respondent Nos.1, 2 and 3 of the present First Appeal. The aforementioned suit was registered as original suit No.342 of 2021. Defendant Nos. 1 and 2 have put in appearance in the aforementioned suit and filed an application under order VII Rule 11 of Civil Procedure Code), 1908 (hereinafter referred to as 'the C.P.C.'), the application was numbered as paper no.30-Ga. Against the application no.30-Ga filed by defendant-respondent nos.1 and 2, an objection was filed by plaintiff-appellant, which was numbered as paper no.39 Ka. The trial court heard the application no.30-Ga filed under Order-VII Rule-11 C.P.C.as well as objection paper no.39 ka filed by plaintiff and vide judgement and order dated 29.5.2023 allowed the application No. 30-Ga filed by defendant under Order VII Rule 11 C.P.C. and rejected the plaintiff's objection filed by plaintiff-appellant. Hence, this first appeal under Section-96 of C.P.C. on behalf of plaintiff for following relief:-

" The relief sought by this Hon'ble Court is that this Hon'ble Court may graciously be pleased to set aside the judgment dated 29.05.2023 and decree dated ?...2023 passed by Civil Judge, (Senior Division) Gautam Buddh Nagar in Civil Suit No. 342 of 2021 (M/S L.R. Print Solutions Vs. M/S SURO EXIM LLP and others)."

3. This Court admitted the first appeal on 10.04.2024 and summoned the record of the trial court. The defendants were already appearing before this Court through counsel.

4. In pursuance of the order of this Court dated 10.04.2024 record of the trial court has been received to this court.

5. Learned Counsel for the plaintiff-appellant submitted that trial court has committed the manifest error of law in rejecting the plaint under Order-VII Rule-11 C.P.C. as the plaint of the suit does not fall under Order VII Rule 11 of C.P.C.. He further submitted that trial court has not considered the objection filed by plaintiff-appellant to the application filed by defendant-respondents under Order-VII Rule 11 C.P.C. to the effect that sale deed dated 5.3.2021 has not satisfied the ingredients of section- 54 and 55 of the Transfer of Property Act 1882. He submitted that trial court summarily decided the case on the basis of the application 30-Ga Under Order VII Rule 11 C.P.C. He submitted that suit for cancellation of the sale dead as well as for permanent injection is to be decided after framing issues giving parties to lead the evidence rather to reject the plaint on the basis of the application filed by defendant under Order VII Rule 11 C.P.C. He submitted that while deciding the application under Order VII Rule 11 C.P.C. the plaint allegations are only to be seen and plaint allegation fully demonstrate that plaintiff suit for cancellation of sale dead and permanent injection cannot be dismissed on the basis of application file under Order VII Rule 11 C.P.C. He submitted that impugned judgement and order dated 29.5.2023 passed by trial court should be set aside and application 30-Ga filed by defendant under Order VII Rule 11 C.P.C. should be dismissed as well as plaintiff suit should be decided on merit after framing issues and affording opportunity to the parties to lead evidence in accordance with law. He placed reliance

upon the following judgements of Apex court in support of his arguments in order to demonstrate that application under order VII rule 11 CPC cannot be allowed in view of the plaint allegation made in the present case:-

1. AIR 2001 Supreme Court 416 Rajasthan High Court Advocates Association V Union of India and others.

2. (2012) 8 Supreme Court Cases 706 Society represented by Chairman vs. Ponniamman Educational Trustee.

6. On the other hand, learned counsel for respondent Nos.1 and 2 submitted that application 30-Ga under Order VII rule 11 C.P.C. read with Section 151 C.P.C. was rightly filed in view of earlier litigation taken place in respect of the property in question. He further submitted that trial court has rightly allowed the application 30-Ga under Order VII Rule-11 C.P.C. and rejected the plaint filed by plaintiff-appellant. He further submitted that plaintiff has concealed the material fact regarding pendency of the proceeding before commercial Court. He submitted that according to the plaint allegation plaintiff is tenant in the disputed property as such he cannot seek relief for cancellation of sale deed with respect to the property in question. He submitted that application under Order VII Rule 11 C.P.C. has been allowed after considering the objection of the plaintiff as well as evidence on record. He submitted that no interference is required against the order impugned passed by trial court rejecting the plaint of suit filed by plaintiff-appellant. He placed reliance upon the following judgments of the Apex Court as well as of this Court in support of his arguments:-

1. IR 1977 SC 2421 Special Leave Petition (Civil) No.4483 of 1977 T. Arivandandam Vs. T.V. Satyapal and others.

2. 2021 SCC Online SC 744 Civil Appeal No.5779 of 2021 Himalaya Vintrade Pvt. Ltd. vs. Md. Zahid and Another

3. AIR 2011 All 131 Civil Revision No. 333 of 2010 Bharat Petroleum Corporation Ltd. Vs. Khaybar Transport Pvt. Ltd.

7. I have considered the arguments advanced by learned Counsel for the parties and perused the record .

8. There is no dispute about the fact that suit for cancellation of sale deed and permanent injection was filed by plaintiff-appellant. There is also no dispute about the fact that defendants have filed application under Order VII Rule 11 C.P.C. which has been allowed and the plaint of the plaintiff has been rejected under the impugned judgement / order.

9. On the basis of the arguments, advanced by learned counsel for the parties and evidence on record, the following points of determination are to be determined in the instant first appeal:

i). whether the plaintiff suit No.342 of 2021 for cancellation of sale dead dated 5.3.2021 as well as for permanent in junction is maintainable in Civil Court ?

ii). whether the application filed by defendant under Order VII Rule-11 C.P.C. can be allowed and plant of suit no.342 of 2021 can be rejected?

10. <u>Point of determination no.i):- whether the plaintiff suit No.342 of 2021 for cancellation of sale dead dated 5.3.2021 as well as for permanent in junction is maintainable in Civil Court ?-</u> In order to decide the point of determination no.1 the plaint allegation is to be seen. Paragraph Nos. 1 to 11 of plaint will be relevant for perusal, which are as under:-

"श्रीमान् जी,

वादी निम्नलिखित निवेदन करता है:-

1.यह कि वादी उपरोक्त पते पर मैसर्स एल0आर0 प्रिन्ट साल्यूशन्स के नाम से प्रिटिंग का कार्य करता है, जो वादी की मुख्य आजीविका है और वादी एक सज्जन परिवार से ताल्लुक रखता है।

2. यह कि वादी ने प्रतिवादी सं0-2 से उक्त सम्पत्ति यानी प्लाट सं0-सी-156, सैक्टर-10, नोएडा, जनपद-गौतमबुध्दनगर को दिनांक 21.06.2008 को रेन्ट पर अपनी आजीविका के सम्बन्ध में कार्य करने के लिए लिया था और दिनांक 21.06.2008 से आज तक वादी उक्त सम्पत्ति के बदस्तूर कब्जे में है और वहीं से अपना कार्य कर रहा है।

3. यह कि इस तथ्य की पुष्टि स्वंय प्रतिवादी सं0-2 द्वारा वादी के विरूद्ध योजित श्रीमान Arbitrater गौतमबुध्दनगर के सम्मुख वादी यानि Arbitration (claim) क्लेम पिटिशन नं0-4/2016 में किये गये क्लेम व शपथपत्र द्वारा वादी के उक्त सम्पत्ति के कब्जे में होना स्वीकार किया है, जिससे स्पष्ट है कि वादी उक्त सम्पत्ति के Peacefull Possession में है और अपना बिजनेस कर रहा है।

4. यह कि वादी वादगत सम्पत्ति के सम्पूर्ण कब्जे में रहते हुए अपनी फर्म मैसर्स एल0आर0 प्रिन्ट साल्यूशन्स जोकि उपरोक्त पते पर स्थापित यूनिट है, के द्वारा वर्ष 2008 से लगातार अपने बिजनेस को सुचारू रूप से संचालित करता आ रहा है।

5. यह कि यहां यह भी स्पष्ट किया जाना आवश्यक है कि उपरोक्त वादगत सम्पत्ति के सम्बन्ध में एक वाद जनपद न्यायाधीश जनपद गौतमबुध्दनगर के सम्मुख वादी व प्रतिवादी सं0-2 के मध्य आज भी विचाराधीन है। जिसका प्रतिवादी सं0-2 का पूर्ण इल्म है बावजूद इसके प्रतिवादी सं0-1 व प्रतिवादी सं0-2 ने आपस में साज कर वाद व सम्पत्ति को प्रतिवादी सं0-2 ने प्रतिवादी सं0-1 के पक्ष में दिनांक 05.03.2021 को एक बैनामा वादी को विधि विरूद्ध तरीके से बेदखल करने की नीयत से कर दिया जो प्रारम्भ से ही शून्य है।

6. यह कि वादगत सम्पत्ति के सम्बन्ध में विधि विरूद्ध तरीके से किया गया बैनामा बही सं0-1, जिल्द सं0-10405, पृष्ट सं0-73 से 105 तक क्रमांक-1021 पर दिनांक 05.03.2021 को श्रीमान उपनिबन्धक सदर प्रथम गौतमबुध्दनगर के यहां तहरीर व तकमील करा दिया।

7. यह कि बैनामा दिनांक 05.03.2021 विधि के वांछित प्रावधानों यानी सम्पत्ति अन्तरण अधिनियम की विशेष धाराओं के प्रावधानों से भी वाधित होने के कारण प्रारम्भ से शून्य व निष्प्रभावी दस्तावेज है, क्योंकि विधि का यह सूस्थापित सिध्दांत है कि सम्पत्ति का कोई भी अन्तरण तब तक मान्य नहीं हो सकता जब तक कि बैनामा में वर्णित का कब्जा हस्तांतरित नहीं हो जाता है। जबिक मौजूदा प्रकरण में विधिक रूप से आज भी वादी ही काबिज है। जैसा कि प्रतिवादी सं0-2 को स्वीकार है और कब्जा हस्तांतरण ना होने की स्थिति में बैनामा दिनांक 05.03.2021 अपने आज में एक शून्य दस्तावेज है।

8. यह कि प्रतिवादी सं0-2 को पूर्ण जानकारी होते हुए कि बैनामा में वर्णित सम्पत्ति के सम्बन्ध में प्रतिवादी सं0-2 व वादी के मध्य वाद विचाराधीन है, बावजूद इसके बगैर विधिक प्रक्रिया अपनाऐ बैनामा दिनांक 05.03.2021 प्रतिवादी सं0-1 के पक्ष में Execute कर वादी के शांतिपूर्ण कब्जे को Disturb करने की कोशिश मात्र है, जो पूर्णरूप से अविधिक है।

9. यह कि प्रतिवादी सं0-2 द्वारा प्रतिवादी सं0-1 के पक्ष में किया गया शून्य बैनामा दिनांक 05.03.2021 के आधार पर प्रतिवादी सं0-1 वादी को दिनांक 10.03.2021 को जब वादगत सम्पत्ति पर आया और वादी को बिना कानूनी प्रक्रिया अपनाये बेदखल करने की कोशिश की।

10. यह कि वादी ने प्रतिवादी सं0-1 से मार्च माह 2021 के तृतीय सप्ताह में जब प्रतिवादी सं0-1 को उक्त वादगत सम्पत्ति के सम्बन्ध में उत्पन्न वाद को सुलह समझौते से निबटाने के

लिए कहा तो प्रतिवादी सं0-1 ने विवाद को आपसी सुलह समझौते से निबटाने के लिए साफ इंकार कर दिया, लिहाजा वादी मजबूरन नालिशी है।

11. यह कि वाद का कारण दिनांक 21.06.2008 को जब उत्पन्न हुआ वादी ने वादगत सम्पत्ति का इकरारनामा दिनांक 21.06.2008 के द्वारा प्रतिवादी सं0-2 से बिजनेस संचालित किये जाने हेतु रेन्ट पर ली व दिनांक 05.03.2021 को जब प्रतिवादी सं0-2 व प्रतिवादी सं0-1 ने आपस में साज कर वादगत सम्पत्ति का बैनामा प्रतिवादी सं0-1 के पक्ष में कर दिया और माह मार्च के तृतीय सप्ताह में जब प्रतिवादीगण ने उक्त विवाद को आपसी सुलह समझौते से इंकार कर दिया।"

11. In order to decide the point of determination No.i) as well as appreciate the controversy involved in the matter perusal of Order VII Rule 11 C.P.C. will be also relevant, which is as under :-

<u>Under Oder VII Rule 11.</u> Rejection of plaint.— The plaint shall be rejected in the following cases:

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within atime to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

[(e) where it is not filed in duplicate;

[(f) where the plaintiff fails to comply with the provisions of rule 9:]

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

12. Perusal of paragraph Nos.1 and 2 of the plaint demonstrate that plaintiff-petitioner is tenant of opposite party-defendant No.2. The perusal of paragraph No.5 of the plaint demonstrate that matter relating to tenancy is pending before District Judge, Gautam Buddh Nagar. Perusal of paragraph Nos.5, 6 and 7 demonstrate that defendant No.2 has executed a registered sale deed on 05.03.2021 in favour of defendant No.1. The perusal of the plaint allegation demonstrate that plaintiff is tenant of the accommodation in question and defendant No.1 is owner of the accommodation in question, as such plaintiff cannot challenge the sale deed executed by defendant No.2 in favour of defendant No.1 on the ground that plaintiff is in possession over the same. The plaint allegation further demonstrate that the dispute regarding the tenancy has already been decided in the arbitration proceeding and the matter is pending before the District-Judge, Gautam Buddh Nagar. The relief of permanent injunction on the basis of adverse possession cannot

be claimed as plaintiff is the tenant of defendant No.2 according to the plaint allegation and the proceeding relating to the tenancy has already been decided against the plaintiff.

13. The Hon'ble Apex Court in the similar facts and circumstances of the case in case of ***Himalaya Vintrade Pvt. Ltd.* (supra)** has rejected the plaint of the suit after setting aside the order of Trial Court & High Court. The paragraph Nos.6 to 13 of the judgment rendered by the Apex Court in the case **Himalaya Vintrade Ltd. (Supra)** will be relevant for perusal, which is as under:-

"6. After the notice was served. The application under Order VII Rule 11, CPC came to be filed at the behest of the present appellant-defendant with an objection that the suit proceedings at the instance of the respondent no.1-plaintiff who had pleaded himself to be a caretaker/servant, acquires interest in the subject property irrespective of his long possession, is not maintainable under the law and as regards the plea of adverse possession is concerned, it lacks material particulars.

7. The Trial Judge dismissed the application on the premise that these are the subject matter of disputes which can be examined only after the written statement being filed at the behest of the present appellant-defendant and is not within the scope of Order VII Rule 11, CPC and order of Trial Judge came to be confirmed by the High Court by the impugned order assailed in the present proceedings.

8. After we heard counsel for the parties and taking into consideration the material on record, in our considered view, the Trail Court has committed a manifest error in appreciating the pleadings on record from the plaint filed at the instance of respondent no. 1-plaintiff who as a caretaker/servant can never acquire interest in the property irrespective of his long possession and the caretaker/servant has to give possession forthwith on demand and so far as the plea of adverse possession is concerned as it lacks material particulars and the plaint does not discloses the cause of action for institution of the suit.

9. In our considered view, the order of the Ld. Trial Judge which has been confirmed by the High Court impugned in the instant proceeding is not sustainable on the first principles of law.

10. Consequently, the appeal succeeds and is allowed. The order of the High Court s, hereby, quashed and set aside. The plaint no. T.S. 150/2019, on the file of Ld. 2nd Civil Judge (Jr. Div) at Sealdah is, accordingly, rejected.

11. Since we have rejected the plaint in reference to the proceeding initiated, we direct the respondent no. 1-plaintiff to handover, vacant and peaceful possession of the subject property in question free from all encumbrances within three months.

12. If the respondent no. 1-plaintiff fails to handover possession, the appellant-defendant will be at liberty to take the recourse as known to the law.

13. Pending application(s), if any, shall stand disposed of."

14. In view of the aforementioned facts and circumstances of the case the

point of determination No.(i) is decided in negative and it is held that suit for cancellation of sale deed and injunction at the instance of plaintiff, who is tenant of the defendant No.2 is not maintainable.

15. Point of determination No.ii) Whether the application filed by defendant under Order VII Rule 11 C.P.C. can be allowed and plaint of suit No.342 of 2021 can be rejected?

16. While deciding the point of determination No.(i) it is held that suit No.342 of 2021 for cancellation of sale deed and injunction at the instance of plaintiff who is tenant of the defendant No.2 is not maintainable as such in view of ratio of law laid down by Apex Court in **Himalaya Vintrade Ltd. (Supra)** the plaint of suit No.342 of 2021 is liable to be rejected.

17. In view of the aforementioned facts and circumstances of the case the point of determination No.(ii) is answered in affirmative and the plaint of suit No.342 of 2021 should be rejected which has been rightly rejected by trial court under impugned judgment.

18. Considering the entire facts and circumstances of the case, there is no illegality in the judgment and decree passed by trial court rejecting plaint of suit No.342 of 2021 under Order VII Rule 11 C.P.C.

19. The first appeal is dismissed, accordingly.

(2025) 8 ILRA 544
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 28.08.2025

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Second Appeal No. 2375 of 1982

Ram Phal ...Appellant
Versus
Ram Singh & Ors. ...Respondents

Counsel for the Appellant:
A.K. Gaur, M.K. Sharma

Counsel for the Respondents:
Madnesh Prasad Singh, Pramod Kumar, Vinod Kumar

ISSUE FOR CONSIDERATION

Whether the decision in *Mst. Ananti v. Chhannu* (AIR 1930 All 193), which held that a plaint filed in a Civil Court for a suit cognizable by a Revenue Court cannot be returned for presentation to the proper court, still holds good in light of the Supreme Court's decision in *Athmanathaswami Devasthanam v. K. Gopalaswami Aiyangar* (AIR 1965 SC 338) and the amended provisions of Order 7 Rule 10 of the Civil Procedure Code (CPC).

HEADNOTES

Civil Law – Civil Procedure Code, 1908 - Section 100, Order 7 Rule 10, – Indian Limitation Act, 1963 – Article - 14 - Second appeal – of the year 1982 - concerning jurisdiction of Civil Court over suits cognizable by Revenue Court - during pendency, several respondents died however legal heirs were impleaded - substantial question of law – once a court come to the conclusion that it has no jurisdiction to adjudicate the suit, the plaint has to be returned back and the said court mya not be go into the other issues and if plaint is presented in the competent court, the suit will be decided De Novo by granting benefit of Article 14 of Limitation Act - Trial Court held it lacked jurisdiction but proceeded to decide other issues and dismissed the suit – Civil Appeal – first appellate court upheld dismissal without addressing jurisdictional error – second appeal – court finds that, the said court has no jurisdiction to adjudicate the suit and the competent court would be the court of Revenue

- held - once jurisdiction is found lacking, the plaint must be returned under Order 7 Rule 10 CPC – hence, instant second Appeal is allowed - Trial Court directed to return plaint for presentation before Competent Revenue Court. (Para – 6, 7, 8, 9)
Appeal Allowed. (E-11)

CASE LAW CITED

Mst. Ananti v. Chhannu, AIR 1930 All 193 (Full Bench); Athmanathaswami Devasthanam v. K. Gopalaswami Aiyangar, AIR 1965 SC 338; Bansraj & Others v. Moti & Others (Second Appeal No. 545 of 1992, decided on 30.07.2019) and EXL Careers v. Frankfinn Aviation Services (P) Ltd., (2020) 12 SCC 667 : 2020 SCC OnLine SC 621.

LIST OF ACTS

Code of Civil Procedure, 1908 – and - Limitation Act, 1963.

LIST OF KEYWORDS

Jurisdiction - Revenue Court - Civil Court - Return of plaint - Order 7 Rule 10 CPC - De novo trial - Legal heirs - Substantial question of law - Limitation Act - Second Appeal.

CASE ARISING FROM

Dismissal of a civil suit by the Trial Court on grounds of lack of jurisdiction, followed by dismissal of the first appeal without addressing the jurisdictional error.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Mr. A. K. Gaur and Shri W. H. Khan learned Senior Advocates.
Counsel for Respondent(s): Mr. M K Sharma and Shri Madnesh Prasad Singh.

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. Heard Sri A.K. Gaur and Sri W.H. Khan, learned Senior Advocates assisted by Sri M.K. Sharma, learned counsel for appellants and Sri Madnesh Prasad Singh, learned counsel for legal heirs of some respondents.

2. This is second appeal of the year 1982. During pendency of second appeal, number of respondents have died and some of legal heirs were already brought on record and rest of them brought on the date of hearing. Number of legal heirs have already been represented by their respective advocates, therefore, without waiting the fresh notice, this appeal was heard finally on the question of law framed when present appeal was admitted by an order dated 25.08.1982. For reference the said order is reproduced hereinafter :-

" Admit. Issue notice.

The substantial question of law involved in the second appeal is whether the decision of a full Bench of this Court in Mst. Ananti Vs. Chhannu (AIR 1930 Alld. 193) that if the suit is cognizable by a Revenue Court and is filed in a Civil Court, the plaint cannot be returned for presentation before the proper court is still good law in view of the decision of the Supreme Court in Athmanathaswami Devasthanam Vs. K. Gopalaswami Aiyangar (AIR 1965 SC 338) and the amended provisions of order 7 Rule 10 C.P.C. and what order should be passed in the suit."

3. Heard counsel for parties and perused the record.

4. I have the benefit of a very elaborate judgment passed on same issue by a co-ordinate Bench of this Court in Bansraj And Others Vs. Moti And Others, Second Appeal No.545 of 1992, decided on 30.07.2019 and the relevant part thereof is mentioned hereinafter :-

"38. The aforesaid issue again came up before this Court in Gulab and

others vs. Jaggan Ram Singh and others11, where this Court held that an old Full Bench Decision reported in Mst. Ananti vs. Channu12 (to which reference has been made in the context of the authority next considered in this judgment) is no longer good law in view of the authority of the Supreme Court in Sri Athmanatha-swami Devasthanam (supra). It was held by this Court in Gulab and others (supra) that the jurisdiction can be challenged anywhere, at any stage, and once it is held that the Court has no jurisdiction, it could neither decree the suit or dismiss it. It was held by this Court in Gulab and others (supra) thus:

"4. I am of the opinion that in view of Athmanathaswami Devasthanam's case (supra) decided by the Supreme Court, the Full Bench case of Mst. Ananti was no more good law. It has been held in AIR 1954 SC 340Kiran Singh v. Chaman Paswan where an order was passed without jurisdiction it could be challenged anywhere at any stage. As the Courts below have given a finding that they have no jurisdiction to entertain the suit any further finding or decision given by them would be without jurisdiction. They could neither decree the suit nor dismiss it.

5. Under the circumstances I am bound to follow the law laid down by AIR 1965 SC 338 in case of Athmanathaswami (supra).

6. The learned counsel for the respondent argued that the case of that Athmanathaswami (supra) was considered by the learned single Judge in the case of Devi Dutt Sharma (1979 All LJ 1086) (supra). From the judgment it appears that the learned single Judge referred to that case in para 3 of the judgment but how that case was not applicable is not indicated in the judgment. Consequently I hold that the Courts below were not justified in dismissing the suit."

39. This Court, however, in Lal Bahadur Singh and another vs. Bagesara and others13, went into the distinction between cases where the question as to lack of jurisdiction is raised and decided at the earliest, and those cases where parties go to trial completing the entire course, or may be in appeal where it is found that the Court had no jurisdiction to try the suit. This distinction appears to have its genesis in the Full Bench decision of this Court in Mst. Ananti vs. Channu (supra), where it was held that in cases where after trial of the suit on all issues, the Court also holds that it had no jurisdiction, the suit must be dismissed and the plaint not returned. In Lal Bahadur Singh and another (supra), the case arose out of an order of the Appellate Court where the Trial Court framed as many as eight issues in a suit for declaration that the plaintiffs were bhumidhars of the land, and the revenue entry in favour of the defendants was wrong. The Trial Court decided all issues and also held that the Civil Court had no jurisdiction to try the suit. The suit was dismissed. In appeal, the lower Appellate Court did not examine the findings on other issues, but merely dealt with the issue of jurisdiction. Expressing agreement that the suit was not triable by the Civil Court, the Appellate Court set aside the decree of dismissal, and substituted it by an order for the return of plaint for presentation to the proper Court. Two appeals, both by the plaintiffs and the defendants, were carried to this Court from the order for return of the plaint. It was in the context of the said facts that this Court in Lal Bahadur Singh and another (supra) held thus:

"6. The question that has been canvassed before me is about the form of

the order that ought to be passed by the Court in such cases. No difficulty arises when an order for return of the plaint under Order 7, Rule 10, C.P.C., or of rejection of the plaint under Rule 11, is passed. The real difficulty arises in the other cases. According to Sri R.N. Singh, when once the Court enters upon adjudication of all the controversies of merit, the Court has no option left but to finally determine all these issues and if it finds that it has no jurisdiction in the matter, it must dismiss the suit instead of ordering return of the plaint for presentation to the proper Court. Sri Sankatha Rai, on the other hand, contended that once the Civil Court finds that it had no jurisdiction, it must stay its hands at once and should order return of the plaint without further venturing to decide any other issue or to express its opinion on merits. According to the following rule laid down in Athmanath Swami Devasthanam v. K. Gopalaswami Ayyangar, AIR 1965 SC 338:--

"When the Court had no jurisdiction over the subject matter of the suit, it cannot decide any question on merits. It can simply decide on the question of jurisdiction and coming to the conclusion that it had no jurisdiction over the matter had to return the plaint." He contended that return of the plaint was the only proper course for the Court.

7. This case was referred to by the learned single Judge who decided the case of Devi Datt Sharma (1979 All LJ 1086) (supra) also. According to the learned Judge where the Court, as a matter of caution, records all findings on issues touching merits of the controversy in addition to the issue of jurisdiction, the order has to be of return of plaint because the other findings in such a case have no legal effect. These are recorded only for facilitating the higher Courts and avoidance of a remand in case they come to a different conclusion on the question of jurisdiction. After briefly referring to the above Supreme Court decision, the learned Judge proceeded to consider an earlier Full Bench decision of this Court in Smt. Ananti v. Chhannu AIR 1930 All 193 and held that if after going to the trial of the suit on all the issues the Court ultimately holds that it had no jurisdiction in the matter, it must result in an order of dismissal of the suit. It may, however, be mentioned here that in Smt. Ananti's case, the controversy was raised in an altogether different manner and the facts were also quite different. There a suit had been filed in the Civil Court and after the written statement had been filed, the Munsif entertained a serious doubt as to whether the Civil Court could take cognizance of the suit. He, therefore, framed two questions and made a reference to the High Court. It was while answering the reference that the Full Bench had made the following observations which are also quoted by the learned Judge in his decision (1979 All LJ 1086).

"The plaintiff chooses his forum and files his suit. If he establishes the correctness of his facts, he will get his relief from the forum chosen. If he framed his suit in a manner not warranted by facts and goes for his relief to a Court which cannot grant him relief, on the true facts, he will have his suit dismissed. Then there will be no question of returning the plaint for presentation to the proper Court, for the plaint, as framed, would not justify the other kind of Court to grant him the relief. But we are told that although the plaintiff has chosen his forum rightly, the defendant, if he so wishes, may, merely by saying something in his defence-something the

correctness of which he need not take the trouble to establish, oust the jurisdiction of the Court and compel the plaintiff to go to another Court."

8. What has been decided by the Supreme Court in Devasthanam's case (AIR 1965 SC 338) (supra) is that while holding that the Court had no jurisdiction to decide the particular suit, no decision on merit on any point involved therein should be made. It, however, does not lay down that if the Court has no jurisdiction then it had no right to dismiss the suit and must necessarily direct return of the plaint for presentation to the proper Court. The view taken to the contrary in 1983 Rev. Dec. 185 : (AIR 1983 All 145), therefore, does not appear to be wholly correct. In every case, it has to be seen whether on the allegations made in the plaint the suit was not maintainable in the Civil Court if so, the plaint had to be returned. But if the question of jurisdiction depends on decision of other questions on merit, then it is not necessary that the Court should always return the plaint. The Court has a discretion either to dismiss the suit after recording a finding that it had no jurisdiction and may in appropriate cases also direct return of the plaint without dismissing the same. It will depend upon the facts of each case and the broad principles have been rightly laid down in the Full Bench decision in Smt. Ananti's case (supra). Applying the principles laid down therein to the facts of the present case, I find that the order passed by the Court below was eminently justified and it was not incumbent on the Court to have dismissed the suit. The lower appellate Court has rightly directed that the plaint should be returned for presentation to the proper Court after recording a finding that the Civil Court had no jurisdiction in the matter."

(Emphasis by Court)

40. The point again arose before their Lordships of the Supreme Court in R.S.D.V. Finance Co. Pvt. Ltd. vs. Shree Vallabh Glass Works Ltd14. The said decision arose on an Appeal by Special Leave from a Division Bench of the Bombay High Court in a summary suit brought for recovery of money on the original side. Dealing with the defendant's plea as to lack of territorial jurisdiction with the Court at Bombay, the learned Single Judge held that the suit was maintainable at Bombay on reasoning given in the learned Judge's judgment. On Letters Patent Appeal to the Division Bench, an Application seeking to amend the plaint appears to have been brought in order to give up some part of the cause of action, that was beyond the territorial jurisdiction of the Court at Bombay. The said Application was rejected and the appeal allowed dismissing the suit. On the plaintiff's Appeal by Special Leave, it was held, thus, by their Lordships:

"7. ..... Even if there was any doubt in the mind of the Division Bench, the learned counsel for the plaintiff had made a request for allowing him to amend the plaint but such request was wrongly refused by the learned Division Bench. The Division Bench was totally wrong in passing an order of dismissal of suit itself when it had arrived to the conclusion that the Bombay Court had no jurisdiction to try the suit. The only course to be adopted in such circumstances was to return the plaint for presentation to the proper court and not to dismiss the suit. ....."

(Emphasis by Court)

41. There is still another decision of this Court in Mattukki and Ors. vs. Rajwanti15, where again classification of cases into two categories was approved; one where the suit has been tried on all issues the entire way, one of these being about jurisdiction, which is not found with the Court, and the other category being of cases where the issue about jurisdiction is considered at the earliest stage, looking to the allegations in the plaint. This Court held falling back on the Full Bench decision in Mst. Ananti vs. Channu (supra) and distinguishing the decision of their Lordships in Sri Athmanatha-swami Devasthanam (supra), that suits where the entire course of trial has gone through, it would not be the proper course to order return of the plaint, but to dismiss the suit as done by the first Appellate Court. Of course, to those conclusions, has been added a further dimension that this categorization of cases would be applicable to those causes where the plea is based on lack of jurisdiction as to subject matter, and not where it relates to territorial or pecuniary jurisdiction. It was held in Mattukki and Ors. vs. Rajwanti (supra) thus:

"15. The present case falls in the second category where the first appellate court upon deciding an issue between the parties about their status which question had a direct bearing on the question of jurisdiction has found that the class of Courts in the civil court would not have Jurisdiction to entertain the suit. It was not the case where the territorial limits or the pecuniary limits or the class of the Court within civil court was involved. It was a case where cancellation of the Will deed at the instance of a plaintiff who was not recorded in the revenue records and had not filed any evidence or substantial evidence to prove an interest in the property that the civil court held that the class of civil courts had no jurisdiction because the plaintiffs interest and title was under a cloud and it required a declaration from the competent court. Therefore, under these circumstances the discretion was exercised by the civil court when the first appellate court dismissed the suit of the plaintiff on the issue of lack of jurisdiction and did not return the plaint for presentation before the competent court because even the plaint as it stood for cancellation of a Will deed could not be entertained by the revenue court.

16. The decision cited by Sri R. N. Singh in the case of Athmanathaswami Devasthanam (supra) relates to a case where the suit was filed for recovery of damages for use and occupation of the land. The respondent therein was given possession of the land by the previous trustees of the Devasthanam trust and he started claiming acquisition of the status of ryot under Section 3(15) of the Madras Estates Land Act and acquired permanent rights of occupancy under Section 6 of the said Act. In appeal the High Court disagreed with the trial court and found that the suit as presented could be instituted only in the revenue court and civil court had no jurisdiction to entertain the same and, therefore, it ordered the return of the plaint for presentation to the proper Court. The Hon'ble Supreme Court was considering such a dispute and held that when the Court has no jurisdiction over the subject-matter of the suit it cannot decide any question on merits. The question that can be decided is only a question of jurisdiction and if it comes a conclusion that it had no jurisdiction over the matter it

had to return the plaint which was on the plain averments made therein cognizable by another Court competent to entertain the suit.

17. The decisions cited on behalf of the respondents is with respect to the two circumstances when the Court has to return a plaint for presentation or exercise its discretion to dismiss the suit on the ground of having no jurisdiction. The present case is one of the second category where the question of jurisdiction depends upon the averments in the plaint and other questions on merit and the Court proceeded to decide the other issue relating to the claim of the plaintiff as not maintainable before the civil court due to reasons given therein and when the plaint as such could not be maintainable before the revenue court.

18. Once having decided the locus of the plaintiff Phekani in relation to the property and relationship of Gajadhar and Smt. Sugani it found that the suit for cancellation of the Will filed by the plaintiff was not maintainable before the civil court because the plaintiff first required a declaration of her interest which was possible only by the revenue courts. The first appellate court dismissed the suit in toto and did not order return of the plaint. It has, therefore, to be seen whether the plaint ought to have been returned under Order VII, Rule 10 of C.P.C. in the facts and circumstances or the discretion exercised by the first appellate court by dismissing the suit in toto without directing return of plaint is proper or not.

19. As has already been indicated above there are two categories of cases when a jurisdictional issue is involved and the Courts have to decide the same on the facts averred in the plaint. The discretion is only in the second category and in case the plaint allegations are such as falls in the second category where no issue of territorial limits or pecuniary limits or class of Courts within the civil courts is concerned the Court is free to exercise its discretion. Therefore when in the present case there was no issue of territorial limits or pecuniary limits or the class of Courts in the hierarchy of civil courts where the plaint could be maintainable the issue falls squarely where the Court has to consider the question of its jurisdiction on the averments in the plaint only after deciding the competence of the plaintiff to maintain the suit. This was a suit for cancellation of the Will deed by the plaintiff who was not recorded in the revenue records nor had filed any substantial evidence to indicate any interest in the property in question. Therefore, the plaintiff required to get a declaration of her title and remove the cloud over her relating to any right title or interest in the property in question. Hence, the plaint as it stood could not be returned since it would not be cognizable by the revenue court."

42. The question has also been the subject matter of a decision by the Chhattisgarh High Court in Suryakant Gupta vs. B.L. Saraf and another16, where in unequivocal terms, the learned Judge has held that at any stage of the proceeding once it is held that the Court had no jurisdiction, the proper course is to make an order for return of the plaint. In the aforesaid decision, N.K. Agarwal, J. relied upon a Full Bench decision of the Himachal Pradesh High Court in Prithvi Raj Jhingta vs. Gopal Singh17. The decision of the Supreme Court in R.S.D.V. Finance Co. Pvt. Ltd. (supra) was also relied on by His Lordship. It was held in Suryakant Gupta (supra) thus:

"10. The Full Bench of the High Court of Himachal Pradesh in case of Prithvi Raj Jhingta v. Gopal Singh, [AIR

2007 Himachal Pradesh 11.] considering the amended provision of Order XIV has held, to eliminate delay and to ensure expeditious disposal of the suits, both at the stage of trial as well as at the appeal stage, the legislature decided to provide for a mechanism whereby, subject to all exception created under sub-rule (2), all issues, both of law and fact were required to be decided together and the suit had to be disposed of as a whole, of course based upon the findings of the Trial Court on all the issues, both of law and fact.

11. Order XTV of C.P.C. has to be read along with Order VII, Rule 10 of C.P.C. As per explanation of Order VII, Rule 10(I), the Court of Appeal or Revision may direct, after setting aside the decree passed in a suit, return of the plaint. Even if the Court had recorded findings on all issues including the issue of jurisdiction, proper course open for the Court is to return the plaint for its presentation to proper Court. Therefore, ratio of law laid down by the High Court of Himachal Pradesh in Prithvi Raj Jhingta's (supra) case is of no help to the respondents in the facts and circumstances of the present case. For the reasons mentioned hereinabove, in the considered opinion of this Court, the judgment and decree of the Trial Court is not sustainable in law. Therefore, the appeal is allowed. The judgment and decree impugned is set aside. The matter is remitted back to the Trial Court for return of plaint to the plaintiff in terms of provisions contained in Order VII, Rule 10 of C.P.C. Parties are directed to appear before the Trial Court on 2.5.2011. Record of the Trial Court shall be sent back forthwith."

43. A consideration of all the authorities on this seemingly debatable point are preponderant that in a case where the Court at any stage of the proceeding finds that the suit is not triable by it, the proper order to make is one for return of the plaint under Order VII Rule 10 CPC, and not one of dismissal of the suit, or any kind of a decision on merits. The guidance of their Lordships of the Supreme Court, and as already said preponderant authority, certainly not in consensus, is that it does not matter whether the suit has gone through trial the whole way, or has reached the stage of appeal or second appeal. What is relevant is that lack of jurisdiction once determined at any stage, ought to lead to an order for return of the plaint with no determination on merits made. The other view which seems to be not largely subscribed is based on the Full Bench decision in Mst. Ananti vs. Channu (supra). It would be well to remember that the statutory context in which the Full Bench in Mst. Ananti vs. Channu (supra), decided way-back in 1930, was a differently phrased provision of the Code of Civil Procedure, much different from the way it is now worded after the Amendment Act of 1976. The most significant change that the 1976 Amendment has brought about is the addition of the explanation. The added explanation makes it explicit that the power to return can be exercised by virtue of the added explanation by the Court of appeal or revision, after setting aside the decree passed in the suit and by substituting it with an order for return of the plaint. The addition of the explanation brought about by CPC Amendment Act 104 of 1976 is of great significance. The purpose of an explanation is clarificatory. It is expressive of the legislative intent, where doubt has arisen in the application of a statute.

5. The Court also takes note of a judgment passed by Supreme Court in EXL

Careers v. Frankfinn Aviation Services (P) Ltd., (2020) 12 SCC 667 : 2020 SCC OnLine SC 621 and its relevant paragraph Nos. 15 and 16 are reproduced hereinafter :-

"15.Modern Construction [ONGC v. Modern Construction & Co., (2014) 1 SCC 648 : (2014) 1 SCC (Civ) 617] , referred to the consistent position in law by reference to Ramdutt Ramkissen Dass v. E.D. Sassoon & Co. [Ramdutt Ramkissen Dass v. E.D. Sassoon & Co., 1929 SCC OnLine PC 3 : (1928-29) 56 IA 128 : AIR 1929 PC 103] , Amar Chand Inani v. Union of India [Amar Chand Inani v. Union of India, (1973) 1 SCC 115] , Hanamanthappa v. Chandrashekharappa [Hanamanthappa v. Chandrashekharappa, (1997) 9 SCC 688] , Harshad Chimanlal Modi (2) [Harshad Chimanlal Modi (2) v. DLF Universal Ltd., (2006) 1 SCC 364] and after also noticing Joginder Tuli [Joginder Tuli v. S.L. Bhatia, (1997) 1 SCC 502] , arrived at the conclusion as follows: (Modern Construction case [ONGC v. Modern Construction & Co., (2014) 1 SCC 648 : (2014) 1 SCC (Civ) 617] , SCC p. 654, para 17)

"17. Thus, in view of the above, the law on the issue can be summarised to the effect that if the court where the suit is instituted, is of the view that it has no jurisdiction, the plaint is to be returned in view of the provisions of Order 7 Rule 10 CPC and the plaintiff can present it before the court having competent jurisdiction. In such a factual matrix, the plaintiff is entitled to exclude the period during which he prosecuted the case before the court having no jurisdiction in view of the provisions of Section 14 of the Limitation Act, and may also seek adjustment of court fee paid in that court. However, after presentation before the court of competent jurisdiction, the plaint is to be considered as a fresh plaint and the trial is to be conducted de novo even if it stood concluded before the court having no competence to try the same.

16. We find no contradiction in the law as laid down in Modern Construction [ONGC v. Modern Construction & Co., (2014) 1 SCC 648 : (2014) 1 SCC (Civ) 617] pronounced after consideration of the law and precedents requiring reconsideration in view of any conflict with Joginder Tuli [Joginder Tuli v. S.L. Bhatia, (1997) 1 SCC 502] . Modern Construction [ONGC v. Modern Construction & Co., (2014) 1 SCC 648 : (2014) 1 SCC (Civ) 617] lays down the correct law. We answer the reference accordingly"

6. In the aforesaid circumstances, question framed is answered in following terms that once a Court come to the conclusion that it has no jurisdiction to adjudicate the suit, the plaint has to be returned back and the said Court may not go into the other issues and if plaint is presented in the Competent Court, the suit will be decided De Novo by granting benefit of Article 14 of Limitation Act.

7. In the present case, it is not much under dispute that learned Trial Court has in a very specific manner has held that the said Court has no jurisdiction to adjudicate the suit and the Competent Court would be the Court of Revenue, however, after returning the said finding, learned Trial Court erroneously proceeded to decide other issues which were unwarranted and legally not permissible and dismissed the suit and appeal filed by plaintiff was also dismissed without taking note of legal error committed by learned Trial Court.

8. In the aforesaid circumstances, I accepts the argument raised by learned Senior Counsel for appellants and rejects the argument raised by learned counsel for respondents for some of legal heirs, since he was failed to show any judgment contrary of position of law on the issue as referred above.

9. In the aforesaid circumstances, the present Second Appeal is allowed and learned Trial Court is directed to return the plaint and it is now up to appellants to present it before the Competent Court.

(2025) 8 ILRA 553
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 01.08.2025

BEFORE

THE HON'BLE ATTAU RAHMAN MASOODI, J.
THE HON'BLE SUBHASH VIDYARTHI, J.

Public Interest Litigation (P.I.L.) No. 960 of 2024
&
Public Interest Litigation (P.I.L.) No. 21609 of 2021

Shipra Devi ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Paavan Awasthi, Bhanu Bajpai

Counsel for the Respondents:
C.S.C., Bhupendra Singh Bisht, Ram Kumar Singh

Issue for Consideration

Matter pertains to lack of proper implementation of the Integrated Child Development Services (ICDS) Scheme, resulting in malnutrition of pregnant women, lactating mothers, and children aged six months to six years, and compliance with the National Food Security Act, 2013.

Headnotes

Public Interest Litigation - ICDS Scheme - Implementation - Statutory Mandate - State bound to ensure compliance with Sections 4, 5 and Schedule II of the National Food Security Act, 2013 - Procurement Process – Transparency - States must follow General Financial Rules, 2017 and Vigilance Guidelines in procurement of Take-Home Ration (THR) - Empowerment of women SHGs must not violate statutory mandates - Supply of dry ration in place of THR and hot cooked meal impermissible under Act and Rules - State to ensure accuracy on Poshan Tracker and compliance with statutory norms.

Held: State shall ensure complete compliance with Sections 4, 5 and Schedule II of the National Food Security Act, 2013 in a time-bound manner - Procurement and supply of THR and hot cooked meals shall conform strictly to Rules, 2022, General Financial Rules, 2017, and Vigilance Guidelines - Supply of dry ration in place of THR or hot cooked meals is not permissible - State must empower SHGs genuinely, ensuring participation of Gram Panchayats without compromising statutory norms - Poshan Tracker data shall be accurate and consistent with Anganwadi records - Copy of the 3-Member Committee Report to be forwarded to the Ministry of Women & Child Development for verification and corrective measures - order dated 20.02.2025, affirmed by the Supreme Court, shall form part of this judgment for necessary guidance. (Paras 65,66,80,81,82) (E-7)

Case Law Cited

Maa Santhoshi Swa Sahayata Samuh v. Union of India, **W.P.(C) No. 5063 of 2021**; *Renuka Mata Mahila Bachat Gat v. State of Maharashtra*, **W.P. No. 5942 of 202**.

List of Acts

National Food Security Act, 2013; Food Safety and Standards Act, 2006; Micro, Small and Medium Enterprises Development Act, 2006; Legal Services Authorities Act, 1987; General Financial Rules, 2017; Supplementary Nutrition

(Provisions, Procurement and Monitoring) Rules, 2022

List of Keywords

ICDS Scheme; Take Home Ration (THR); Hot Cooked Meal; Malnutrition; Self-Help Groups (SHGs); Juristic person; Poshan Tracker; Quality Assurance; Nutritional Standards; Procurement Process; Women Empowerment.

Case Arising From

Public Interest Litigations under Article 226 of the Constitution challenging the non-implementation of the ICDS Scheme and distribution of dry ration contrary to the National Food Security Act, 2013, in the State of Uttar Pradesh; arising from deficiencies noticed in implementation of the Supplementary Nutrition Programme (SNP) and the Court's earlier order dated 20.02.2025, which the Supreme Court later affirmed.

Appearances for Parties

Advs. for the Petitioner:

Paavan Awasthi, Bhanu Bajpai, Shobhit Mohan Shukla, Virendra Kumar Dubey.

Advs. for the Respondents:

C.S.C., Bhupendra Singh Bisht, Ram Kumar Singh, C.S.C.,
A.S.G., Raj Kumar Singh,

(Delivered by Hon'ble Attau Rahman Masoodi, J.)
&
Hon'ble Subhash Vidyarthi, J.)

(1) The subject matter of the present writ petitions filed in public interest is lack of proper implementation of ICDS Scheme resulting in malnutrition of the pregnant women, lactating mothers and children aged 6 months to 6 years.

(2) An order was passed by this Court on 20.02.2025 wherein certain deficiencies in implementing the ICDS scheme were highlighted and directions were accordingly issued. In the spirit of the directions issued, a three-member Committee constituted by the Court was required to submit its report regarding the ground realities of implementing the Supplementary Nutrition Programme (SNP) on or before 25.03.2025 which period was extended thereafter looking to the ongoing progress. For beginning with the necessary exercise to draw the report, a sum of Rs. 25,000/- was made payable to each member of the committee from the fund of U.P. State Legal Services Authority. The final report was filed by the Committee and the same was taken on record vide order dated 07.07.2025 which, for ready reference, is extracted below:

1. Heard learned counsel for the parties at some length.

2. By a detailed order passed on 20.02.2025, a committee was constituted to submit the report on the implementation of ICDS scheme in the State of U.P.

3. Pursuant to the order dated 20.02.2025, the Committee has submitted its report through Chairman/Dr.G.C. Prakash, I.A.S. (Retd.), and the same is taken on record. The Chairman of the Committee is present to assist the Court.

4. Let all the parties be provided a copy of the report submitted by the Committee free of cost within two days who may file their views/submissions on the report within ten days so that the matter may be concluded in the light of submissions made.

5. Ms. Pallavi Singh, Advocate holding brief for Sri Ram Kumar Singh, learned counsel for the respondent No.4/U.P.State Rural Livelihood Mission submitted that the opposite party No.4 does not wish to press the application for recall

of the order dated 20.02.2025. Since the said application is not on record, the Registry is directed to place it on record on the next date of listing. The U.P. State Rural Livelihood Mission is directed to submit the complete details of 204 Self-Help Groups inclusive of their capacity building status.

6. Since the report as directed has come to be filed before this Court, therefore, the rights of the minor children upto the age of six years and lactating mothers under the ICDS scheme are bound to be viewed in the light of the relevant statutory provisions, on the vital areas of quality and quantity checks besides achieving the real target of service to the beneficiaries.

7. This Court after hearing the parties proceeds to frame the following questions for consideration:-

(i) Whether the implementation of ICDS Scheme through 204 SHGs in the State of U.P. has an established base of processing units meeting the quantity and quality checks under the Rules and Regulations applicable in this behalf.

(ii) Whether the supply of dry ration through NAFED as an interim measure stands in consonance with the scheme as well as the law applicable in the matter of implementing the ICDS Scheme.

(iii) As to whether the accountability of SHGs for implementing the Scheme in absence of they being a juristic person, can be fixed upon the group collectively or severally and the procedure in this behalf.

8. We appreciate the efforts of the committee to have brought on record the relevant inputs and data and the exercise undertaken by the committee deserves to be acknowledged. For quantifying the expenditure incurred for travelling and other expenses, necessary order deserves to be passed within scope of Legal Services Authority Act, 1987.

9. Any further modular change may not be effected by the opposite parties without seeking leave of the Court and without considering the report placed on record. The arrangement as affirmed by the Apex Court shall also remain operative until decision of the matter.

10. List/put up on 17.7.2025, for further hearing"

(3) On taking the three member committee report on record, this Court framed three questions in paragraph-7 of the order extracted above and the matter was directed to be listed for further hearing.

(4) When the matter came up before this Court on 17.07.2025, learned counsel for the State raised an objection to the effect that further hearing of the matter be deferred as the State of U.P. had firstly filed an SLP before the apex court arising out of the order dated 20.02.2025 and secondly, the Court may not proceed until the application for recall of order dated 20.2.25 was decided. Until the date of passing of order dated 07.07.2025, the State Government neither raised any objection as regards the credentials of three member committee nor was the application for recall of order pressed. The UPSRLM had rather made a prayer for not pressing the recall application filed by them.

(5) The Apex Court on hearing the SLP arising out of the order dated 20.2.2025, disposed of the same in terms of the following order on 21.7.2025:-

"1. Delay condoned.

2. Mr. K. M. Natraj, learned Additional Solicitor General appearing for the 1 petitioner-State, submits that an application for recall of the impugned order dated 20th February, 2025 is pending on the file of the High Court; since such application is not being heard and decided, the petitioner-State has been compelled to approach this Court.

3. Presently, we see no reason to interfere with the impugned order. The special leave petition stands disposed of, without expressing any opinion on merits.

4. We are informed that the High Court has fixed 25th July, 2025 as the date for hearing Mr. K. M. Natraj. In view thereof, we observe that the High Court may consider the desirability of deciding the recall application first before proceeding with the matter on merits.

5. All points are kept open for being urged before the High Court.

6. Pending application(s), if any, shall stand closed."

(6) Looking to the fact that credentials of the committee members who had submitted the report were strongly questioned by the State of U.P., therefore, this Court deemed it proper not to rely upon the same and in alternative proposed to proceed with the matter on merit. Learned counsel for the parties conceded to the suggestion and proceeded to argue on merit. The recall application became irrelevant, therefore, did not call for any further order to be passed on the same.

(7) The hearing of the case was thus resumed and learned counsel for the parties were heard at length on 23.07.2025, 24.07.2025, 28.07.2025 and finally the arguments concluded on 29.07.2025. The Apex Court's order passed on 17.07.2025 mentioning date of hearing as 25.07.2025 instead of 23.07.2025 appears to be an inadvertent error, may be, due to wrong information given by the parties.

(8) On the aspect of the quantum of legal fee/charges to be paid to the members of the Committee, learned counsel for the parties agreed for the exercise of discretion by the Court as the pain taken by the Committee to formulate an exhaustive report was conceded by all.

(9) We accordingly direct the Secretary, State Legal Services Authority to pay each of the member of the Committee a sum of Rs. 50,000/- over and above the amount of Rs. 25,000/-, as was quantified at the initial stage, within a period of three months from the date of receiving a copy of this order.

(10) Sri Nataraj, learned Senior Counsel for the State of U.P. based his exhautive arguments mainly on two points. It was firstly contended that in the matter of policy making in furtherance of ICDS Scheme, the State has unfettered powers to formulate the same and wisdom of policy makers is not amenable to judicial review unless the same is found to contravene or violate the mandate of law or rules and regulations framed by the Central Government under its rule making authority.

(11) In this context, it was argued before us that the ICDS Scheme being a part and parcel of Food Security Act, 2013, is implemented by the State strictly in accordance with law and there is no room for interference on the questions framed by the Court.

(12) Learned counsel for the State of U.P., in order to substantiate the argument put-forth, took us through various provisions of Food Security Act, 2013 as well as the Rules made thereunder to emphasize that the self-help groups, as were operating in the State of U.P. under the guidelines of State Rural Livelihood Mission (in short 'SRLM') are a permissible class or entity who are assigned the responsibility of implementing ICDS Scheme under the Memorandum of Understanding (MoU) between the State and the U.P. State Rural Livelihood Mission.

(13) It was further informed that the U.P. State Rural Livelihood Mission had provided a base of 204 Micro Enterprises for production of nutritional food, as per the standards fixed under the Statute and the same was supplied to the children below six years of age as well as the lactating mothers and pregnant women through the Anganwadi Centres.

(14) In other words, the submission put-forth by learned counsel for the State of U.P. is to the effect that once the self-help groups are formed at the base level in the form of Micro Enterprises, the obligations are carried out by the SRLM under a MoU therefore there is sufficient compliance made by the State which stands compliant to the Statute and Rules framed thereunder.

(15) According to the learned Senior Counsel, the very questions framed by this Court did not flow out of any incompliant situation, therefore, the very effort of judicial review on the questions framed was a futile exercise.

(16) Learned counsel for Union of India has argued that the Central Government and the State are the two partners financing the ICDS Scheme and the State Government is bound to follow the rules and regulations framed by the Central Government.

(17) Learned counsel for Union of India, in order to demonstrate that the nutrient food supplied to the children and lactating mothers has been specified by the Central Government, referred to various paras of the short counter affidavit filed by them which seek to re-emphasize on the observance of Rules and Regulations framed by the Central Government.

(18) Ms Deepa Ranjan, Director of U.P. State Rural Livelihood Mission was also heard in person and she brought to our notice that 204 micro-enterprises are functioning for the processing of nutrient food for the beneficiaries and the liability to the extent of 20% beneficiaries under the scheme was carried out by raising capital from amongst the members of the self-help groups working under the Scheme and the capital so raised was utilized for procurement and processing of the nutrient food by the aforesaid 204 enterprises which was delivered to the beneficiaries at the base level through Anganbadi centers.

(19) It was also stated that the Micro Enterprises are registered units under the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act) having an ID issued under the GST, Act and necessary registration under the Food Safety and Standards Act, 2006 was also ensured.

(20) The details placed on record, however, do not show as to how 204 Micro Enterprises ever achieved the targeted processing of nutrient food and supply thereof to the respective Anganbadi Centers within their jurisdiction. The service actualised within the range of 20% beneficiaries assignment to SRLM under a MoU has remained deficient both in the matter of supply of dry ration and the hot cooked meal service remains zero as per the own portal of the State. The remaining 80% of the beneficiaries are supplied dry ration procured through NAFED which is impermissible under the Rules, 2022.

(21) It is an admitted position given out to this Court by the officer present that hot cooked meal was not served in any of the Anganbadi Centers against 20% responsibility held by the SRLM through the support system of 204 Micro Enterprises and the resultant deficiency was carried forward over the succeeding months. This was an alarming information which was projected before this Court making the questions framed by the Court more relevant and of public importance. Sri Sandeep Dixit, learned Senior Advocate, looking to the assistance of officer present has argued that any directions issued by this Court to effectuate the implementation of the scheme shall be duly honoured, which, in our humble view was unconvincing.

(22) After closure of the submissions, the State has filed written submissions containing the following pleas:-

"1. **Present PIL is a Proxy; Credentials of petitioner questionable**

Petitioner in the instant case appears to have filed the instant petition as a proxy for big players having interplay with ICDS, operations in Southern India. The credentials of the Petitioner are itself misleading, incomplete and eye-brow raising. While the petitioner has declared that she is daughter of Shri Satya Prakash Mishra and is residing in Khiri, U.P., she has withheld her husband's name, her financial background, or her income or the sources of income, the sources of funding for the present litigation before this Hon'ble Court and Hon'ble Supreme Court.

a. The four experience certificates, at pages 45, 46, 47 & 48 of the WP) filed to show that she has worked as volunteer with NGOs are *prima facie* bogus and do not inspire any confidence. Two certificates (at pages 45 & 46) dated 02.02.2019 and 15.02.2020 issued from Lucknow do not even disclose as to in which project the Petitioner had volunteered and at which location, while she was undergoing education at Lakhimpur Khiri.

b. Certificate at pages 47 & 48 of writ petition are even more mercurial having been issued by a trust and a society both located in Bangalore, Karnataka.

c. These certificates do not even disclose the (I) dates or (ii) the period or (ii) the location or (iv) the program in which the Petitioner may have volunteered.

2. Amicus curiae

The appointment of Dr LP Mishra, a very seasoned and highly respected Advocate at the Bar, *amicus curiae* vide order 17.07.2025 cannot be said to be in accordance with law as he has filed his Vakalatnama in the instant case,

with an application for impleadment representing a company, which company was going to be directly impacted if the tender conditions as suggested/proposed by the report of the committee were accepted as, in his submissions, the conditions of RFP as proposed in the report of the 3 member committee were tailor made for a particular company who, as per his preliminary submissions, was also the sponsorer of the insant proxy PIL. However, he was given extensive hearing on 29.07.2025. In such circumstances it may not be in fitness of proceedings to rely upon submissions of Dr.L.P. Mishra, Advocate as an *amicus curiae* as he could be in possessions of information shared by his client which may have resultant adverse impact on parties at lis. Also, his appearance in support of company only lends credence to the proxy nature of the instant writ petition who are using this court as a platform for gaining entry into ICDS operatives in UP.

3. Non affording of Opportunity of hearing to State of UP : Hurried closure of proceedings

The hearing of the instant PIL was carried out in an extremely hurried manner without due opportunity of hearing to the State of UP, with this Hon'ble Court shutting out counsel form making submissions. Though the hearing on 29th July, 2025 was stretched till 5:45 p,m but the mic of the learned Senior Counsel representing the State of UP present before the Hon'ble Bench was not even permitted to make any oral submissions and instead asked to furnish written submissions. Such denial of opportunity to both the learned counsel representing the State renders the proceedings contaminated and vitiated. In a matter of policy decision in which the Court may be lacking expertise sufficient opportunity ought to have been given which was wrongfully denied.

4. No material on record to interfere in the policy domain of the State and Union

a. The Hon'ble High Court while issuing notice in the present PIL at the very first instance vide order dated 13.11.2024 ordered

"Director, Deference Food and Research Laboratory, Mysore having its network all over the country to make necessary study of Aaganbadi Centres in the State of U.P. both in the matter of procurement of specified nutritious food and supply thereof to the respective centres including all its aspects e.g. quantity, frequency of supply and its quality and the mechanism operating as on date. The delays in the supply, if any, may also be studied and apprised to the Court in the report so drawn as well as the cause of delays."

b. Although inquiry by the DFRL ordered ex-parte at the first instance, missed out on the fact that the aspects which have been ordered to be studied/inquired into by the DFRL fell under the "Policy Domain of the State". The Department/State co-operated with DFLR for the inquiry.

c. The report dated 07.01.2025 of the DFRL on record, vindicates the way in which the scheme is being implemented in the State of UP.

d. The second recall application filed before the Hon'ble High Court on 23.07.2025 raised the issued w.r.t each of

the 3 Members of the Committee and why their report is maligned and not acceptable. Upon highlighting the grounds as to why the report of the committee cannot be relied upon (especially with the chairman of the committee facing corruption allegations), the Hon'ble High Court agreed to not rrely upon the report, though no such finding was recorded in any subsequent order.

e. Now that the report of the 3 member committee stands shelved/removed from record and is not to be referred to or relied upon, there survives no material except the report dated 07.01.2025 of the DFRL which only vindicates the way in which the scheme is being implemented in the State of UP, while suggesting some areas of improvement, which are being worked upon.

5. The issues framed

a. That while taking the report of the 3 Member Committee on record, the following 3 issues were framed for consideration:

(i) Whether the implementation of ICDS Scheme through 204 SHGs in the State of U.P. has an established base of processing units meeting the quantity and quality checks under the Rules and Regulations applicable in this behalf.

(ii) Whether the supply of dry ration through NAFED as an interim measure stands in consonance with the scheme as well as the law applicable in the matter of implementing the ICDS Scheme.

(iii)As to whether the accountability of SHGs for implementing the Scheme in absence of they being a juristic person, can be fixed upon the group collectively or severally and the procedure in this behalf.

b. That since the Hon'ble High Court is vehemently against the usage of SHGs for implementing the objectives of the Scheme it is essential to highlight the true structure of how SHGs fall in the amb it of functionaries in order to implement the scheme.

c. The clarification has been provided in the Affidavit filed on behalf of UPSRLM as well as the documents received from the department. The following information comes to light while discussing the issue of using SHGs for implementation of the scheme:

"The 204 Take Home Ration (THR) units are not run by the 204 SHGs but actually run by the 204 Association of Peron (AOP)/SHG Micro Enterprises. Each AOP/SHG Micro Enterprises is formed by 300 SHGs of a block coming from all the 03 CLF of the block, who have collectively resolved to form a micro enterprise by signing a notarized agreement as mentioned in the Standard Operating Procedure (SOP) for formation of AOP/SHG micro-enterprise issued by the government by the GO number 312/38-6-2021-308/LC/2020/|TC1 dated 17.07.2021 and GO number 541/38-6-2021-308/LC/2020/TC1 dated 20 October 2021."

d. Hence it is evident that the complete issue regarding the validity of the SHGs relies upon:

(i) The judgment of the Hon'ble Supreme Court in Vaishno Mahila Bachat;

(ii) The GO number 312/38-6-2021-308/LC/2020/TC1 dated 17.07.201;

(iii) The GO number 541/38-6-2021-308/LC/2020/TC1 dated 20 October 2021.

e. That, as has been stated by UPSRLM in its affidavit of compliance, the 204 THR Centres "are not run by SHGs" rather there is a system of SHG Microenterprises.

f. On structure:

That with respect to 1st issue, the key features of the schemes is that one woman member from each of the 10-20 rural poor household are brought under the Self-Help Group (SHG) Network. Women SHG group would have back-linkage arrangements. 0510 SHGs at the village level would be federated as village organization and 20-30 village organization are federated at the block level as a cluster level Federation (CLF) which is in such a way that each cluster level federation has around 300 SHGs office bearers federated in such a way that each administrative block has 04 cluster level federation representing all the SHGs formed in all the Gram Panchayats of the blocks. The SHG-VO-CLF is a pyramid structure which the SHGs are at the base of the pyramid, VO at intermediate level and CLF is at the top of pyramid.

g. That for the **2nd issue** of consideration framed by the Honb'ble High Court in relation to the supply of Dry Ration i.e., "Whether the supply of dry ration through NAFED as an interim measure stands in consonance with the scheme as well as the law applicable in the matter of implementing the ICDS Scheme" it is essential to point out before the Hon'ble High Court that:

(i) Firstly, that it has been consistent stand of government through affidavits filed in connected PIL before this Hon'ble Court that *raw ration* and *semi processed fortified ration are* NOT same. The fortified ration meets out the requirement of the nutritional value/norms, once it is processed by virtue of addition of micro and macro nutrients. In 43 districts of State of Uttar Praesh, Recipe based Take Home Ration is given which is mandate of the Rules of 2022 read in conjunction with National Food Security Act, 2013 and in rest 32 districts of the State, semi-processed fortified ration is being supplied which is not a dry ration as provided through fair price shop in public distribution system. The fortified ration meets the requirement of nutritional norms and is vetted by National Institute of Nutrition, Hyderabad (NIN);

(ii) And secondly that, the beneficiaries aren't being deprived of the nutrient norms by providing semi processed fortified ration other than THR. To ensure the raw rations provided to ICDS beneficiaries through NAFED align with applicable regulations, fortification has been implemented for wheat dalia, edible oil, and rice along with alignment to NFSA, 2013 norms. The ration combinations, formulated jointly by the World Food Programme (WFP) and UNICEF, have been rigorously developed to meet specified protetin and caloric norms has received approval from the National Institute of Nutrition (NIN);

(iii) That as for the manner of procurement i.e., procuring the ration from NAFED it is pertinent to mention that the issue of 'procurement' was discussed before the Hon'ble Supreme Court in Civil Appeal NO. 2635 of 2025 (Arising out of

SLP © No.30405/2024] titled "State of Uttar Pradesh & Ors. vs. Pratyush Rawat & Ors." wherein the State/Department challenged the order dated 11.11.2024 of the Hon'ble High Court in WPIL 21609 of 2021 (connected with PIL No. 960 of 2024]

(iv) That all the essential points regarding the validity of procuring semi processed fortified ration from NAFED as an interim measure were raised before the Hon'ble Supreme Court and the Hon'ble Supreme Court while granting leave in the present matter and setting aside all other interim directions passed in PIL NO. 21609 of 2024 held as follows:

"We make it clear that the appellants shall be entitled to implement the subject Scheme for supply of food items maintaining the requisite quality, to be used by lactating mothers and young children, till final disposal of the Public Interest Litigation."

h. That with respect to the 3rd **issue** framed for consideration, i.e., "As to whether the accountability of SHGs for implementing the Scheme in absence of they being a juristic person, can be fixed upon the group collectively or severally and the procedure in this behalf?", it is essential to point out the following regarding the aspect of a Legal Entity of the AoP/SHG Micro Enterprises and the manner their functioning is overseen as per Government of India letter dated 13.01.2021 (paragraph 2) which relates to the streamlining guidelines and the Gazette of India dated 12.09.2022 (Rule 2022, Part II, Section 3(i), paragraph 4)which say:

(i) Supply chain process in the State must be made transparent for functionaries to ensure uninterrupted supply to the last mile, which are compliant with FSSAI registration licensing process for entities involved in manufacture storage and distribution of food to ensure food safety and hygiene.

(ii) Entity has been defined as the person, association of person (AoP), firm, company or cooperative society but by whatsoever name called or referred to. Therefore not just entities but functionaries which are compliant with FSSAI can also be a part of the Supply Chain as per Rules, 2022.

(iii) The AoP/SHG Micro Enterprises has it own bylaws, signed a notarize agreement, has PAN and GST registration including Udhayam registration under MSME and FSSAI License.

(iv) The CLF from where the concerned AoP has emerged, are mandated to be registered under Societies Registration Act, 1860.

(v) To the support and provide technical guidance to the AoP, a Nodal Block Mission Manager (BMM) is appointed at the block level and a Nodal District Mission Manager (DMM) is appointed at the district level.

(vi) Financial assistance made to Self Help Groups (SHGs) as Revolving Funds (RF) and Community Investment Funds (CIF) under the National Rural Livelihoods Mission (NRLM), now known as Deendayal Antyodaya Yojana - National Rural Livelihoods Mission (DAY--NRLM), are provided under the overall policy and administrative guidelines issued by the Ministry of Rural Development, Government of India. These funds are part of the broader financial inclusion and

livelihood promotion strategy. UPSRLM currently operates 204 THR units across 43 districts, reaching 1.08 crore beneficiaries under 288 ICDS projects as of September 2024 which has been revised thereafter to streamline the production.

(vii) These units are managed by trained women's micro-enterprises, ensuring compliance with Good Manufacturing Practices (GMP) and Good Hygiene Practices (GHP). All THR recipes strictly adhere to the National Food Security Act (NFSA) 2013 norms and are fortified with 12 micro-nutrients, vetted by NIN, Hyderabad.

(viii) To oversee the full potential functioning of THR plants at the district level, an Executive Committee has been constituted, chaired by the Chief Development Officer (CDO), Its members include the District Coordinator (National Rural Livelihood Mission - NRLM), District Program Officer (DPO), Deputy Regional Medical Officer (Dy.RMO), Sub-Divisional Officer of the Electricity Department, and District Mission Manager (DMM).

(ix) This committee is primarily responsible for resolving issues faced by THR microenterprises, conducting regular monitoring, quality checks, evaluating and endorsing bills, payment of VGF, examine the income and expenditure of THR units, and ensuring uninterrupted raw material availability for two shifts of 8 hours each daily.

(x) Similarly, at the block level, a committee has been formed under the Chairmanship of the Block Development Officer (BDO), with members including the Assistant Development Officer (ADO), Child Development Project Officer (CDPO), Junior Engineer of the Electricity Department, Block Mission Manager (BMM), and the President and Treasurer of the Association of Persons (AoP). Both Committees are mandated to meet regularly and review the receipt and expenses of the THR plant fortnightly, payment of VGF, conduct plant visits for monitoring and quality checks, and ensure optimal plant efficiency.

i. The Food Security Act 2013 has provisions for constituting a State Food Commission that will give advice to the State Government, their agencies, autonomous bodies as well as non-government organizations involved in delivery of relevant services for the effective implementation of food and nutrition related schemes, to enable individuals to fully access their entitlements specified in this Act. This clearly reflects that these non-government organizations and SHGs are entitled for providing nutritional services whether it be supply or distribution.

j. The data presented by the Petitioner with respect to the hot cooked meal, fed on Poshan Tracker was of January 2025 is not factually correct. Hot cooked meals are given to the children (age 3 yrs-6 yrs) under SNP Scheme of ICDS who come to Anganwadi centers for pre-school education. The district administration decided to close the Anganwadi centers from mid-December, 2024 to mid-January 2025 due to the extreme cold. This was the main reason as to why the data on Pohan Tracker for those specific days represents temporary data and cannot be the basis of evaluate the proper functioning of the Hot cooked meal Scheme.

k. The data validation is being carried out on Poshan Tracker during SAMBHA Abhiyaan (State Innovation) from July 2025 to September 2025 and before 1st April 2025, it was not mandated by the Government of India to feed the data only on the Poshan Tracker, instead AWWs used to maintain the data manually in registers. Thus, it is requested before this Hon'ble Court to take into account the data maintained on the registers by AWWs and not base their opinion/analysis solely on the data on Poshan tracker as it would fail to provide a complete picture.

l. In conclusion, it is submitted that all the documents and grounds regarding the validity of the SHGs, the manner in which they are utilized, the manner of scrutiny, the functioning of the THR Units, the suitability of the Dry Ration in areas where THR is not available and all the accompanying grounds have already been discussed before the Hon'ble High Court. The aforementioned grounds/points are highlights which cover majority of the issues which the Hon'ble High Court has framed to be considered.

m. That the Department/State is in process of implementing the new SNP Regime and the State is Duty Bound to properly implement the Scheme and is actively making measures for the same."

(23) The opposite party No.4-Uttar Pradesh State Rural Livelihood Mission has also filed written submissions *inter alia* stating that it is a proxy PIL and it is liable to be rejected outrightly for this reason alone. In the written submissions, the opposite party No.4 has placed reliance on the report dated 12.12.2024 submitted by the Defence Food Research Laboratory, Mysore which mentions that the current THR plants are operating and functioning efficiently. It has been stated that the report contains some corrective suggestions particularly regarding the storage and hygiene and all corrective measures have been taken by the opposite party No.4. It is strange that on the one hand the opposite party No.4 has joined hands with the State of U.P. in opposing the constitution of the Committee and is objecting against the report submitted by the Committee and at the same time it is relying upon the report submitted by the Committee.

(24) In reply to the first question framed by this Court in the order dated 07.07.2025, the opposite party No.4 in light of the relevant guidelines, Rules and Regulations made an attempt to explain that all the 204 processing units do maintain cashbooks, ledgers, stock registers, invoice files, Chart of Accounts (CoA) files and they record all transactions. The opposite party NO.4 claims that the THR plants were envisaged in pursuance of the directions issued by the Hon'ble Supreme Court in its order passed in the case of ***Vaishnorani Mahila Bachat Gat v. Mahila Bachat Gat v. State of Maharashtra, Civil Appeal No. 2336 of 2019*** in compliance of which the SHGs have been brought forth in the form of Association of Persons (AoP) for supply of the captive demand of ICDS's supplementary nutrition in consonance with the production capacities. It has further been submitted that the recipes of the existing THR were developed jointly by World Food Programme (WFP) and Uttar Pradesh Technical Support Unit (UPTSU) and the same have been approved by the Director, ICDS. The new recipes met the global nutrition standards and also the national nutrition norms. The recipe based THR menu includes Atta, Besan, Halwa;

Atta Besan Barfi Premix; Dalia, Moong Dal Kitchdi and Energy Dense Halwa which are provided in packets of different quantities. The samples of THR are sent to an empanelled National Accreditation Board for Testing and Calibration Laboratories (NABL) accredited laboratory for conducting quality test. Total 166 Ajeevika vehicles have been engaged specially for transportation of THR packets from the plant to the AWCs and local vehicles are also engaged for this purpose. The District Nutrition Committee reviews and monitors Integrated Child Development Services (ICDS) and Poshan Abhiyaan.

(25) It has been stated that THR units are run by the Association of Person (AoP)/SHG Micro Enterprises. Each AoP/SHG Micro Enterprise is supported by 300 SHGs of a Cluster Level Federation (CLF) coming from 03 CLFs of the block. Nearly 6 lakh SHG members are directly or indirectly involved in THR programme, out of which nearly 4000 executive members are directly involved in operation and management of THR plants and they are paid an honorarium of Rs.8,000/- per month. Each of the 300 SHGs contributed Rs.30,000/- as equity fund for the purpose of installation and operation of THR plants. The fact remains that the above nomenclature or structure of service is answerable to SRLM alone being its own creation for business sharing.

(26) Regarding the second question framed by this Court, it has been stated in the written submissions of the opposite party No.4 that since supply of dry ration through NAFED is implemented and monitored by the ICDS department, this question does not concern the opposite party No.4.

(27) In reply to the third question, it has been submitted that AOP/SHG Micro Enterprises have their own bye-laws under the Societies Registration Act, therefore, the AoP is a juristic person.

(28) The opposite party No.4 has filed supplementary written submissions stating that the THR units have the capacity to cater approximately 70-80 lakhs beneficiaries per month, if other conditions like timely procurement of raw materials, timely allotment and lifting of wheat from FCI, uninterrupted electric supply and no machinery breakdown etc. exist.

(29) It is relevant to mention that in the written submissions filed initially, it was claimed that the 204 THR units cater to 1.08 crore beneficiaries. It has been submitted that the 20 women working at THR plant are trained for minor repair of the machinery and for major repair annual maintenance contract (AMC) has been entered into with the vendors having expertise in the field. All the 204 THR units/SHG micro enterprises are registered as MSME and they are registered with GST and they have their PAN, FSSAI licences.

(30) Strangely, the supplementary written submissions of the opposite party No.4 allege that while Shri K.M. Natraj, Additional Solicitor General of India was arguing on behalf of the State of U.P. on 29.07.2025 and Shri Pankaj Khare, learned Additional Chief Standing Counsel who was assisting Shri K. M. Natraj had gone outside the Court for few minutes, this Court made a query regarding absence of assisting Counsel to pass on the reference of some text relied upon, Shri Natraj expressed his inability to assist by muting the link. We heard other counsel in the meantime who advanced their arguments

and concluded the same. Later on Shri Pankaj Khare came to the Court and requested the Court to complete his arguments but the Court did not permit for the same leaving it open to submit the written text, if any. The judgment was reserved.

(31) Shri Natraj, learned Additional Solicitor General of India who has represented the State of U.P. in this case had advanced submissions extensively on 17.07.2025, 23.07.2025 and 28.07.2025. The Court heard the submissions of Shri K.M. Natraj on 29.07.2025 for about an hour required to finish the submissions. Suffice it to say that no other counsel except Shri Natraj has complained of any hurry, therefore, we do not find it desirable to comment on the assistance of learned Senior Counsel whose arguments have contributed to appreciate the issues even deeper. The alleged attributes of hurry have been levelled baselessly to derail the proceedings off the track that too at the finish of time slot granted to the counsel. The written submissions submitted by the State of U.P. have been taken note of.

(32) Sri Vikas Singh, learned Senior Counsel for the petitioner taking a clue from the arguments put-forth by the counsel for Union of India, State of U.P. and on behalf of U.P. State Rural Livelihood Mission, has argued that the provisions of Food Security Act and the rules framed thereunder in the year 2022 formulated a complete mechanism according to which the ICDS scheme is bound to be carried out.

(33) It was further argued that the State of U.P. having entered into the MoU with the SRLM, was not within its rights to create such a discretionary mechanism for implementation of the scheme, that too, when the safeguards for quantity and quality checks have remained inadequate and deficient at all levels.

(34) Learned counsel for the petitioners has thus argued that the objects of the scheme have remained unfulfilled, as a consequence whereof, the State of U.P. ranks amongst the top most States in malnutrition of children and lactating mothers.

(35) This Court, for its assistance, had solicited the assistance of Dr. L.P. Mishra to put-forth his submissions keeping in view the precise legal position as was propounded and canvassed before us. Although an application for impleadment of some enterpreneur was made by him who was not a party in any of the two petitions so it was deemed proper to allow him argue orally as intervenor on the questions framed. Dr. Mishra has valuably assisted the Court and the legal position put-forth by him may be put on record as under.

(36) Dr. L.P. Mishra first and foremost referred to the structure of ICDS Scheme as pointed out in paragraph 22 of the order dated 20.02.2025 passed by this Court which has attained finality. Paras 22 to 24 for ready reference are reiterated below:

(22) The Organogram of ICDS is structured across multiple levels, including Central, State, District and Sub-district tiers. At the Central level, the ICDS programme is headed by the Cabinet Minister, Ministry of Women and Child Development (MWCD), Government of India (GoI) with support from the Ministry of State for MWCD, GoI. The graphical representation at the central level of ICDS as under:-

Cabinet Minister GoI
Ministry of Women and Child Development (WCD)
↓
State Minister, GoI
Ministry of Women and Child Development (WCD)

(23) At the State level, the programme is guided by the Cabinet Minister with support from the Minister of State, Women's Welfare, Child Development and Nutrition, Government of Uttar Pradesh. The following flow-chart reveals the structure of ICDS department at the District level:-

Cabinet Minister, GoUP
Women, Welfare, Child Development & Nutrition Dept.
↓
Minister of State GoUP
Women, Welfare, Child Development & Nutrition Dept.
↓
Principal Secretary
Women, Welfare, Child Development & Nutrition Dept.
↓
Secretary
Women, Welfare, Child Development & Nutrition Dept.
↓
Director, ICDS Department
→ Addl. Director Finance ICDS Department UP
→ Joint Director ICDS Department UP
↓
D.D. (1) D.D. (2) D.D. (3) D.D. (4) D.D. (5) D.D. (6) D.D. (7)

Note: **D.D. means Deputy Director**

(24) At the District level, the programme is led by the District Project Officer (DPO), at the project level by the Child Development Project Officer (CDPO) and at the sector level by a Lady Supervisor. At the Anganwadi Centre (AWC) level, the Anganwadi Worker (AWW) supported by the Anganwadi Helper (AWD) serves as the frontline functionary of the ICDS Department. The organogram of the ICDS department from district level to AWC level is illustrated below:-

District level — District Project Officer
↓
Project level — Child Development Project Officer
↓
Sector level — Lady Supervisor
↓
AWC level — Anganwadi Worker (AWW)
↓
Anganwadi Helper (AWH)

(37) Keeping the aforesaid operational structure of the scheme in mind, learned counsel has explained the chart available on the portal, which depicts the strength of beneficiaries and the services available at the Anganbadi Centers in the State of Uttar Pradesh are alarmingly deficient. Thus, the structural design of the scheme with the object of serving the beneficiaries of sizeable number on being projected in clear terms as existing on date deserved to be viewed in the background of legal position as has transcended since last many decades.

(38) Although numerous prayers have been made in the writ petition, but since the petition has been filed in public interest and upon hearing, it transpired that the interest of pregnant women, lactating mothers, children from the age group 6 months to 6 years and adolescent girls is involved in the present case, the Court had framed the aforesaid questions so as to ascertain the interest of the aforesaid persons forming a large section of the Society, the majority of whom are not capable of taking steps for ensuring fulfillment of their nutritional needs.

(39) Much has been said about the credentials of the petitioner. As this Court has entertained the petition keeping in view the interests of the pregnant women, lactating mothers, children from the age group 6 months to 6 years and adolescent girls and not the interest of the petitioner and this Court has not even gone into the prayers made in the writ petition, rather, it has framed certain questions, what the Court is looking at is the interest of the aforesaid section of the society only and not the interest of the petitioner and in these circumstances, the credentials of the petitioners lose significance.

(40) While exercising the extraordinary and discretionary writ jurisdiction in public interest, this Court is not bound by the pleadings contained in the P.I.L. or the prayers made therein. The Court is merely trying to secure the interest of the aforesaid section of the society as per the provisions of the relevant Statutes, Rules, Regulations and policies of the Central Government and State Government. This Court has solicited the assistance from all the opposite parties and had repetitively requested the learned Counsel representing the opposite parties that they should not treat the petition as an adversarial litigation.

(41) So far as the submission that in exercise of its writ jurisdiction, the High Court should refrain from interfering in policy matters, suffice it to say that neither any challenge has been laid to any policy in the aforesaid two PILs nor has the Court raised any question against the policy of the State. We are merely examining the deficiencies in implementation of the policy and the resultant deprivation of its benefits to the eligible beneficiaries.

(42) The Parliament has enacted the National Food Security Act, 2013 (Act No. 20 of 2013) on 10th September, 2013 to provide for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity and for matters connected therewith or incidental thereto.

(43) Section 2(1) of the National Food Security Act, 2013 (here-in-after referred to as 'the Act') provides that "anganwadi" means a child care and development center set up under the Integrated Child Development Services Scheme of the Central Government to render services covered under section 4, clause (a) of sub-section (1) of section 5 and section 6.

(44) Section 2(6) provides that 'food security' means the supply of the entitled quantity of food-grains and meal specified under Chapter II;

(45) Section 2(9) defines 'meal' which means hot cooked or pre-cooked and heated before its service meal or take home ration, as may be prescribed by the Central Government.

(46) Sections 4 to 7 of the Act which are relevant for consideration of the present read as under:-

"4. Nutritional support to pregnant women and lactating mothers – Subject to such schemes as may be framed by the Central Government, every pregnant woman and lactating mother shall be entitled to—

(a) meal, free of charge, during pregnancy and six months after the child birth, through the local anganwadi, so as to meet the nutritional standards specified in Schedule II; and

(b) maternity benefit of not less than rupees six thousand, in such instalments as may be prescribed by the Central Government:

Provided that all pregnant women and lactating mothers in regular employment with the Central Government or State Governments or Public Sector Undertakings or those who are in receipt of similar benefits under any law for the time being in force shall not be entitled to benefits specified in clause (b).

5. Nutritional support to children – (1) Subject to the provisions contained in clause (b), every child up to the age of fourteen years shall have the following entitlements for his nutritional needs, namely:—

(a) in the case of children in the age group of six months to six years, age appropriate meal, free of charge, through the local anganwadi so as to meet the nutritional standards specified in Schedule II:

Provided that for children below the age of six months, exclusive breast feeding shall be promoted;

(b) in the case of children, up to class VIII or within the age group of six to fourteen years, whichever is applicable, one mid-day meal, free of charge, everyday, except on school holidays, in all schools run by local bodies, Government and Government aided schools, so as to meet the nutritional standards specified in Schedule II.

(2) Every school, referred to in clause (b) of sub-section (1), and anganwadi shall have facilities for cooking meals, drinking water and sanitation:

Provided that in urban areas facilities of centralised kitchens for cooking meals may be used, wherever required, as per the guidelines issued by the Central Government.

6. Prevention and management of child malnutrition – The State Government shall, through the local anganwadi, identify and provide meals, free of charge, to children who suffer from malnutrition, so as to meet the nutritional standards specified in Schedule II.

7. Implementation of Schemes for realisation of entitlements -- The State Governments shall implement schemes covering entitlements under sections 4, 5 and section 6 in accordance with the guidelines, including cost sharing, between the Central Government and the State Governments in such manner as may be prescribed by the Central Government."

(47) Chapter V of the Act deals with reforms in targeted Public Distribution

System and it consists of only Section 12 which provides as follows:-

"12. Reforms in targeted Public Distribution System – (1) The Central and State Governments shall endeavour to progressively undertake necessary reforms in the Targeted Public Distribution System in consonance with the role envisaged for them in this Act.

(2) The reforms shall, inter alia, include—

(a) doorstep delivery of foodgrains to the Targeted Public Distribution System outlets;

(b) application of information and communication technology tools including end-to-end computerisation in order to ensure transparent recording of transactions at all levels, and to prevent diversion;

(c) leveraging "aadhaar" for unique identification, with biometric information of entitled beneficiaries for proper targeting of benefits under this Act;

(d) full transparency of records;

(e) preference to public institutions or public bodies such as Panchayats, selfhelp groups, co-operatives, in licensing of fair price shops and management of fair price shops by women or their collectives;

(f) diversification of commodities distributed under the Public Distribution System over a period of time;

(g) support to local public distribution models and grains banks;

(h) introducing schemes, such as, cash transfer, food coupons, or other schemes, to the targeted beneficiaries in order to ensure their foodgrain entitlements specified in Chapter II, in such area and manner as may be prescribed by the Central Government."

(48) Chapter IX of the Act deals with obligations of State Government for food security and it contains provision for implementation and monitoring of schemes for ensuring food security.

(49) Schedule II referred to in sections 4(a), 5(1) and 6 is as follows:-

"SCHEDULE II

[See sections 4(a), 5(1) and 6]

NUTRITIONAL STANDARDS

Nutritional standards: The nutritional standards for children in the age group of 6 months to 3 years, age group of 3 to 6 years and pregnant women and lactating mothers required to be met by providing "Take Home Rations" or nutritious hot cooked meal in accordance with the Integrated Child Development Services Scheme and nutritional standards for children in lower and upper primary classes under the Mid Day Meal Scheme are as follows:

Sl. No.	Category	Types of meal2	Calories (Keal)	Protein (g)
1	Children (6 months to 3 years)	Take Home Ration	500	12-15
2	Children (3 to 6	Morning	500	12-15

	years)	Snack and Hot Cooked Meal		
3	Children (6 months to 6 years) who are malnourished	Take Home Ration	800	20-25
4	Lower primary classes	Hot Cooked Meal	450	12
5	Upper primary classes	Hot Cooked Meal	700	20
6	Pregnant women and Lactating mothers	Take Home Ration	600	18-20

(50) Thus it is clear that children aged about 3 to 6 years and children studying in lower primary and upper primary classes should not be provided take home ration and they should be provided with morning snack and hot cooked meal.

(51) Prior to enactment of the aforesaid Statute, the Hon'ble Supreme Court of India was seized with the subject matter in Writ Petition(Civil) No. 196 of 2021 titled People's Union for Civil Liberties v. Union of India & others and other connected matters, but on 10.02.2017, the Hon'ble Supreme Court passed an order stating that in view of the passage of the National Food Security Act, 2013, nothing further survives in the writ petition and accordingly the writ petition was disposed of.

(52) The Ministry of Women and Child Development made a Supplementary Nutrition (under the Integrated Child Development Services Scheme) Rules, 2015 to regulate the entitlements specified under the provisions of the Act for every pregnant woman and lactating mother till six months after child birth, and every child in the age group of six months to six years (including those suffering from malnutrition) for 300 days in a year as per the nutritional standards specified in Schedule II to the Act. Rule 5 dealt with supplementary nutrition under ICDS and it provides as under:-

5. Supplementary Nutrition under ICDS - The Supplementary Nutrition under the ICDS for different categories of beneficiaries shall be as under:-

Sl. No.	Categories	Type of meal or food as per the nutritional standards specified in Schedule II of the Act
(1)	(2)	(3)
1	Children (Between 6 to 36 months)	Take home ration as per ICDS guidelines in conformity with the provisions of the Act.
2	Malnourished children (Between 6 to 36 months)	The same type of take home ration as above with food supplement of 800 calories and 20-25 grams

		of protein.
3	Children (Between 3 to 6 years)	Morning snacks and hot cooked meal as per ICDS norms.
4	Malnourished children (Between 3 to 6 years)	Additional 300 calories of energy and 8-10 grams of protein in addition to the meal or food provided to children between 3 to 6 years.
5	Pregnant women and lactating or nursing mothers	Take home ration as per ICDS guidelines in conformity with the provisions of the Act.

Note:- Early initiation and exclusive breast feeding shall be promoted for children up to the age of 6 months. Adequate age-appropriate complementary feeding (cereal based) shall be ensured for children from 6 months to 12 months of age and balanced adult food shall be provided from 12 months to 24 months along with continued breast feeding.

(53) Rule 8 of the Rules, 2015 provided that till the engagement of Self Help Groups, the supply of Supplementary Nutrition shall be ensured from such other sources or approved agencies in terms of the existing rules and regulations notified by the Central Government and the State Government.

(54) Thereafter, the Ministry of Women and Child Development issued notification dated 20th February, 2017 in supersession of the Supplementary Nutrition (under the ICDS) Rules, 2015. Rule 5 of the Rules, 2017 provides as follows:-

"5. Supplementary Nutrition under ICDS. - The Supplementary Nutrition under the ICDS for different categories of beneficiaries shall be as under:-

Sl. No.	Categories	Type of meal or food as per the nutritional standards specified in Schedule II of the Act
(1)	(2)	(3)
1	Children (Between 6 to 36 months)	Take home ration as per Anganwadi Services (Integrated Child Development Services) guidelines in conformity with the provisions of the Act.
2	Malnourished children (Between 6 to 36 months)	The same type of take home ration as above with food supplement of 800 calories and 20-25 grams of protein.
3	Children (Between 3 to 6 years)	Morning snacks and hot cooked meal as per Anganwadi Services (Integrated Child Development Services) norms.
4	Malnourished children	Additional 300 calories of energy

	(Between 3 to 6 years)	and 8-10 grams of protein in addition to the meal or food provided to children between three to six years.
5	Pregnant women and lactating or nursing mothers	Take home ration as per Anganwadi Services (Integrated Child Development Services) guidelines in conformity with the provisions of the Act.

Note:- Early initiation and exclusive breast feeding shall be promoted for children up to the age of six months. Adequate age-appropriate complementary feeding (cereal based) shall be ensured for children from six months to twelve months of age and balanced adult food shall be provided from twelve months to twenty-four months along with continued breast feeding.

(55) The Hon'ble Supreme Court decided the case of **Vaishnorani Mahila Bachat Gat (supra)** by means of a judgment dated 26.02.2017 while the 2017 Rules were in vogue. In this judgment the Hon'ble Supreme Court held that fixing of unit area as a district has effectively ousted several players from the field, it would be appropriate to form groups of the smaller area such as at panchayat or group of panchayats etc. within the District so that the real intention behind the policy is fulfilled in its real sense and supply should be decentralized as much as possible as it is not for the big players/industrialists in the field to cater to the needs of the Scheme as they have usurped in past. It is open to the State Government to make alternative arrangement and they are restrained from continuing the existing system of supply in the interregnum period. The decision as to alternative arrangement should be taken within ten days.

(56) It was in furtherance of the aforesaid direction that the State had issued a Government Order dated 01.10.2020 providing that the State had already taken a decision for production and distribution under the State Livelihood Mission through ladies Self-Help Groups. The work had already been commenced in 18 districts for establishment of Nutritional Supplement Units and it would take two years to develop the requisite infrastructure in the entire State. As it is necessary to maintain the Supplementary Nutrition Services during this period, it was decided that take home ration can be distributed as dry ration through Anganwadi Centres for beneficiaries of all the categories during this period.

(57) Although it was stated in the aforesaid Government Order dated 01.10.2020 that the requisite establishment for production and distribution of nutritional supplement in the entire State will be developed within a period of two years, admittedly merely 20% of the requirement of nutritional supplement is being catered by the Micro Processing units established and operated by the Self-Help Groups and 80% of the requirement is being met with by supplying Take Home Ration through NAFED.

(58) On 13.01.2021, the Ministry of Women & Child Development issued guidelines pressing various operational

aspects of the nutrition content and delivery under the Supplementary Nutrition Programme which superseded the Supplementary Nutrition (under the Integrated Child Development Services Scheme) Rules, 2017 and the Rules of 2017 were de-notified on 29.06.2021. It is specifically stated in the Office Memorandum dated 29.06.2021 that it has come to the attention of MoWCD that some States/Uts are giving Raw Ration as Take-Home Ration (THR). This is **not** permissible under Rules and Guidelines. While complying with the provisions of the Streamlined Guidelines, it is reiterated that the Take-Home-Ration (THR) as defined under National Food Security Act, 2013 is not to be misconstrued as 'raw ration'. Therefore, the Office Memorandum dated 29.06.2021 issued by the Ministry of Women & Child Development, Government of India reiterated in unambiguous terms that giving raw ration as THR is not permissible and THR cannot be misconstrued as raw ration.

(59) On 12.09.021 the Ministry of Women & Child Development notified the Integrated Nutrition Support Programme - Saksham Anganwadi and Poshan (2.0) Rules, 2022. Rule 2 of the Rules, 2022 provides that these Rules shall apply to every pregnant woman and lactating mother till six months after child birth and every child in the age group of six months to six years (including those suffering from malnutrition) for three hundred days in a year, as per the nutritional standards specified in Schedule II to the National Food Security Act, 2013.

(60) Rule 3(e) provides that "Take Home Ration" for the purpose of Supplementary Nutrition should be made using locally available staple cereals and millets, pulses and legumes, nuts and oilseeds, ensuring that refined sugar does not exceed permissible limits. Take Home Ration should be in the form of a processed mixture of various food ingredients (not raw ration), which when consumed by a child or Pregnant Woman and Lactating Mother meets the recommendation for calories, proteins and micro nutrients (Calcium, Zinc, Iron, Dietary Folate, Vitamin A, Vitamins B6, B12 and D) and such Ration should be tested in Food Safety and Standards Authority of India approved laboratories to ensure that the norms of macro and micro nutrients recommended or bench-marked for the different categories of Supplementary Nutrition beneficiaries are maintained. **Raw Ration as Take-Home Ration is not permissible and the Take-Home-Ration as mentioned under National Food Security Act, 2013 shall not be misconstrued as 'raw ration'.**

(61) Rule 5 of the Rules, 2022 provides as follows:-

"5. Procurement and Quality of Nutrition:- *(1) The State or Union Territory must introduce process for procurement as per General Financial Rules, 2017 and Vigilance Guidelines and er norms issued from time to time by the Government of India and ensure that Take-Home Ration procured conforms to nutritional norms set by the Government of India.*

(2) The States or Union Territories shall ensure that the quality of Supplementary Nutrition items procured is as per the food safety norms as well as nutrient composition. Supplementary Nutrition must conform to prescribed standards as laid down under the Food Safety and Standards Act, 2006 and

regulations made thereunder to ensure consistent quality and nutritive value per serving and the periodicity of sample testing shall be once in a quarter of annual year, per project.

(3) Take-Home Ration shall be tested from Food Safety and Standards Authority of India owned or registered or empanelled and National Accreditation Board for Testing and Calibration Laboratories accredited laboratory and random testing must be conducted by Anganwadi Services functionaries after receipt of stock at the Anganwadi Centre or at the Block level. Provided that in case of Hot Cooked Meal, it should be ensured that it is prepared in proper kitchen sheds having adequate sanitation and safe drinking water so as to maintain hygienic conditions.

(4) Supply chain process in the States or Union Territories must be made transparent for functionaries to ensure uninterrupted supply to the last mile, which are compliant with Food Safety and Standards Authority of India registration-licensing process for entities involved in manufacture, storage and distribution of food to ensure food safety and hygiene.

(5) The States or Union Territories shall co-ordinate the activities of various departments through a State Level Steering Committee to ensure effective convergence between various schemes or programs having bearing on nutrition and review the progress made regarding Nutritional Indicators on regular basis.

(6) The States or Union Territories shall mandatorily and regularly input data into the Poshan Tracker Information and Communication Technology application.

(7) The States or Union Territories are required to adhere to Saksham Anganwadi and Poshan 2.0 Scheme guidelines with reference to integrating AYUSH concepts for holistic nourishment.

(8) The Scheme guidelines shall address the required changes warranted from time to time and shall be coextensive with the nutrition dynamics."

(62) Thus after enforcement of the 2022 Rules made by the Government of India, it has become mandatory for the States and Union Territories to introduce transparent process for procurement as per General Financial Rules, 2017 and Vigilance Guidelines and other norms issued from time to time by the Government of India.

(63) It is significant to notice that although Rule 8 of Rules, 2015 and Rule 8 of Rules, 2017 Rules contained provisions for engagement of Self-Help Groups to ensure supply and quality of supplementary nutrition, but the same is conspicuously absent in the Rules of 2022.

(64) The learned counsel for the opposite parties have laid much stress upon the provisions contained in Section 12 (2)(e) of the Act which provides for giving preference to public institutions or public bodies such as Panchayats, selfhelp groups, co-operatives, in licensing of fair price shops and management of fair price shops by women or their collectives. Therefore the preference contemplated by Section 12(2)(e) is limited to licensing and management of fair price shops and

management of fair price shops and not to production and supply of THR and hot cooked meals. This provision has no application to the SNP which is regulated under the Rules, 2022.

(65) On 13.01.2021, the Government of India issued a Circular to the Chief Secretaries of all States/Union Territories regarding streamlining guidelines on Quality Assurance, Roles and Responsibilities of Duty Holders, procedure for procurement, integrating AYUSH concepts and Data Management and monitoring through 'Poshan Tracker' for transparency, efficiency and accountability in delivery of Supplementary Nutrition'. It *inter alia* provided that the States and Union Territories must introduce transparent process for procurement as per General Financial Rules, 2017 and Vigilance Guidelines and ensure that THR procured conforms to technical and nutritional standards set by Ministry of Women & Child Development.

(66) The State and UPSRLM have filed their counter affidavits, written submissions and supplementary submissions but they are silent about this aspect of the matter as to whether they have introduced a transparent process for procurement of nutritional supplement as per General Financial Rules, 2017 and Vigilance Guidelines and other norms issued from time to time by the Government of India.

(67) In ***Maa Santhoshi Swa Sahayata Samuh v. Union of India and other connected matters***, WPC No. 5063 of 2021, decided by a Single Bench of High Court of Chhattisgarh vide order dated 28.04.2022, the petitioners were women's Self-Help Groups working under the Scheme of ready to eat food programme under the contracts with respective authorities in which the petitioners used to purchase the groceries, prepared the Take Home Ration (THR) and supplied them to the concerned and thus, implemented the ICDS Scheme. The Court held that:-

"88. The interest of the petitioners has been affected because of the impugned order, which is leaving no scope for them in the matter of procurement of THR through SHGs. As it has been discussed here-in-above that the petitioners are only agencies, which were engaged for the supply of THR and other mid day meals according to ICDS scheme. The question of possible unemployment of petitioners has been raised in this case. Therefore, the private interest of the petitioners are getting affected by the impugned order. It has been held earlier while deciding the first question that PUCL order of 07.10.2004, has lost its relevance after passing the final order in the same case by the Supreme Court on 10.02.2017. It was also held that when the Vaishnorani case was decided by the Supreme Court, the Court had taken notice of the policy and rules prevailing at that time and rendered the decision. Scenario has changed after framing of new guidelines of MoWCD dated 13.01.2021 and also by the de-notification of the Rules, 2017. It has been held that the guidelines have been issued in exercise of powers under Section 38 of the Act, 2013 and therefore, the same have the statutory effect and it is on the basis of the same guidelines and also on the basis of the provisions in the Act, 2013, a cabinet decision has been taken by the State Government, on the basis of which, the impugned order has been passed. The emphasis is upon the quality of assurance

according to the guidelines dated 13.01.2021 with reference to the norms of Food Security as well as nutrient composition confirming to the prescribed standard laid down under the Food Safety and Standard Act, 2006. There is further provision for periodical test from FSSAI owned/registered/ impaneled /NABL accredited laboratory. It is on this basis, the respondents side has argued that the quality assurance can be there only when the manufacturing is done through mechanized process and also that the manufacture plant is equipped with facilities to ensure the norms of food safety as well as nutrient composition. rguments have been submitted from the petitioners side that the petitioners SHGs have the experience about more than 10 years, for procuring and supply of the THR since long for which the SHGs have made investment, purchased equipments, obtained training and also have obtained certification from FSSAI time to time. Therefore, they may not be ousted from ICDS scheme. The UNICEF report have been relied upon by the petitioners as well as by the respondents. The UNICEF report is complete with data and figures mentioning about the shortcomings of SHGs and also making recommendation for the improvement of the functioning of SHGs. Therefore, it can be said that the performance of SHGs so far had not been up to the mark because of which shortcomings have been reported and recommendations have been made. The apprehensions raised regarding competence of Beej Nigam are premature.

89. The question is how the interest of SHGs can be protected in such a case. The targeted beneficiaries of the ICDS scheme, the Act, 2013 and the guidelines dated 13.01.2021, which is at force at present are children between age group of 6 months to 6 years, pregnant women and lactating mothers. In the guidelines of 13.01.2021 and the Act, 2013 nowhere mentions SHGs. The Act, 2013 and guidelines of 13.1.2021 are not under challenge. It has been argued by the petitioners side that the guidelines dated 13.01.2021 and the Act, 2013 also do not mention of private contractor or a corporate industrialists. There being no statutory right of the petitioners to claim to be employed as an agent, it is the privilege of the State Government to take decision regarding the agencies to be appointed. Hence, in such circumstances, the impugned order is found to be based on the decision of the State Government, which has been taken in accordance with the Act, 2013 and under the guidelines dated 13.01.2021, which appears to be lawful in the present state of things. The State Government has offered the petitioners SHGs to participate in the supply system of the THR, that shall be produced by the respondent - C.G. Beej Evam Krishi Vikas Nigam through its agencies. Hence, there is nothing to say that the impugned order is either arbitrary or unreasonable. This question is answered accordingly. The power of judicial review cannot be exercised with respect to the impugned order.

90. The main allegations made by the petitioners is this that the State Government is privatising the procurement and supply in ICDS scheme. As per the submissions made and the documents presented by the respondent side, which has not been specifically challenged by the petitioners side. It is now clear that the C.G. Beej Evam Krishi Vikas Nigam has entered into a joint venture agreement with C.G. Agro Food Corporation Limited and PBS Food Pvt. Ltd. in the year 2012. The

inclusion of PBS Food Private Limited has been made through a transparent process by publication of advertisement and that PBS Food was the highest bidder and thus its bid was accepted. Thus the respondent C.G. Beej Evam Krishi Vikas Nigam is a partner of this joint venture. C.G. Agro Food Corporation Limited and PBS Food Pvt. Ltd. have not been made a party in any of the petitions.

(68) The aforesaid judgment was challenged through Writ Appeal No. 289 of 2022 and other connected mattes and the Writ Appeal was dismissed by means of a judgment and order dated 06.11.2023.

(69) In the case of **Renuka Mata Mahila Bachat Gat v. Staet of Maharashtra and another,** Civil Writ Petition No. 5942 of 2023 decided on 06.12.2023, it was contended before a Division Bench of the Bombay High Court that Self-Help Groups have a preferential right to participate in the distribution of Take Home Ration based on the decentralized distribution policy being a fundamental principle. Negating this contention, the Bombay High Court held as under:-

"94. For effectively eradicating malnutrition, the State has to explore innovative methods and approaches, considering that malnutrition is also influenced by various factors that evolve. While exercising the power of judicial review of the State action seeking to achieve the larger good and its statutory duty to improve nutrition outcomes, it must be kept in mind that the State, within the bounds of law, has the freedom to try new methods and technologies. Such experimentation will permit the State to explore alternative solutions that may lead to superior results in reducing malnutrition rates and improving public health. The focus should be on what works best in addressing the immediate needs of the target group. The mere fact that a different approach is also possible will not automatically warrant Court's intervention. Instead, it will have to be assessed whether the State's actions are reasonable, justifiable, and aimed at achieving the public good. The Petitioners have no inherent legal right to insist that the distribution of Take Home Ration must be exclusively through their channels. Having found that there is no illegality or arbitrariness in the impugned action of the State, we must acknowledge the flexibility available to it in choosing the approach that, according to it, is the most efficient and results- oriented in meeting the urgent health needs of children and mothers. Nutritional support to vulnerable populations must remain the paramount consideration in this litigation, and the role Trupti 103 Writ Petition No- 5942-2023 and Group.docx of the Self-Help Groups, such as the Petitioners, must be subservient to this overarching goal. It may be that the State in future change the methodology and may even give an emphasis to Self-Help Groups, but that decision must be left to the State as long it does not violate established norms. The central focus of the policy is to provide supplementary nutrition to children, pregnant women, and lactating mothers. This focus should not be diluted by diverting attention to other areas, such as engaging in contracts with Self-Help Groups."

(70) The aforesaid judgment of the Bombay High Court was challenged before the Hon'ble Supreme Court of India through SLP No. 27358 of 2023 and the

Hon'ble Supreme Court dismissed the SLP on 14.12.2023.

(71) The allegation levelled in the written submissions of the State of U.P. that this Court is vehemently against the usage of Self-Help Groups for implementing the objectives of the Scheme is not correct. The court is neither against to any group nor for any group/individual/entity. The Court's concern in these PILs is that the nutritional benefits meant for pregnant and lactating women and small children should reach them in accordance with the provisions contained in the National Food Security Act and the Rules in vogue i.e., Rules, 2022.

(72) Section 4 of the Act clearly provides that every pregnant women and lactating mother shall be provided free meals during pregnancy and six months after the child birth through the local anganwadi so as to meet the nutritional standards specified in Schedule II. Section 5 (1)(a) of the Act provides that children in the age group of 6 months to 6 years will be provided age appropriate meal through the local anganwadi so as to meet the nutritional standards specified in Schedule II. Section 5 (2) of the Act provides that every school, referred to in clause (b) of sub-section (1) and anganwadi shall have facilities for cooking meals, drinking water and sanitation. Schedule II referred to Sections 4 and 5 of the Act provides that children between 3-6 years shall be provided with morning snack and hot cooked meal and children studying in lower and upper primary schools shall be provided with hot cooked meals. Children aged about 6 months to 3 years, children aged about 6 months to 6 years) who are malnourished and pregnant women and lactating mothers will be provided Take Home Ration.

(73) Rule 3(e) of the Rules of 2022 specifically provides that raw ration as Take Home Ration is not permissible and Take Home Ration as mentioned under the Act shall not be misconstrued as Raw Ration. The guidelines issued by the Government of India on 13.01.2021 also provide that giving Raw Ration as Take Home Ration is not permissible. Although it has been contended that raw ration being provided under the Scheme is not in fact 'raw ration' and it is fortified ration which is compliant with the norms laid down by the World Health Organizations, the fact remains that even fortified ration is raw ration and it is not THR as defined under the Rules.

(74) The ICDS Scheme was introduced on 02.10.1975 with a noble and pious objective of ensuring integrated development i.e., all-round development of children. It is indeed unfortunate that even after completion of 50 years since launching the Scheme we are yet to achieve the objective of the Scheme in its true sense.

(75) The apprehension repetitively and vehemently expressed by the learned counsel for the respondents that this Court should not interfere in the policies of the State is unfounded. The Court repetitively expressed its concern that the Court is not interfering in the policy of the State. We are concerned about the non-implementation of the policy and the failure to achieve the true objectives of the policy of the State. As per the information available on the Poshan Tracker Portal of the Government for the month of June, 2025, 75 district of the State of U.P.

contain 1,89,373 Anganwadi Centers in which 1,79,810 Anganwadi workers are working to cater to the needs of 2,22,14,147 beneficiaries. Out of 1,89,373 Anganwadi centers, merely 1,52,723 remain functional for atleast 15 days of the month. Amongst those 1,08,044 remained functional for atleast 21 days in a month and merely 39,295 Anganwadi centres open for at least 25 days in a month. It is significant to recall that the Scheme requires to provide supplementary nutrition to the targeted section of the Society for at least 300 days per year which comes to 25 days a month and merely 20.75% Anganwadi centres are open 300 days a year.

(76) The State has contended that the data presented by the petitioners with respect to Hot Cooked Meal for the month of June, 2025 is factually incorrect in view of the fact that the Anganwadi Centers were closed due to extreme cold weather from December, 2024 to Mid-January, 2025 and for this reason, the data on Poshan Tracker for those specified dates represent temporary data. In this regard it is relevant to note that the information available on Poshan Tracker for June, 2025 reveals that there are 2,42,43,505 total beneficiaries of Supplementary Nutrition Programme, out of whom, 1,96,804 have opted out and there are 2,40,46,701 are eligible beneficiaries. 0.00% of the beneficiaries are being provided hot cooked meals as per the information available on Poshan Tracker. 99% of the beneficiaries are provided THR. When Schedule II appended to the Act categorically provides for providing hot cooked meals to children aged about 3-6 years, total failure to provide hot cooked meal to the eligible beneficiaries cannot be appreciated.

(77) The contention of the State that the data fed for the month of January, 2025 does not depict the correct position cannot justify the data fed in the month of June, 2025 which also shows supply of Hot Cooked meal to be 0%. The State has fed that some Anganwadi Centers maintain data manually in the registers and the same is not fed on Poshan Tracker. When the State itself has launched an on-line tracker for providing information regarding implementation of supply of Supplementary Nutrition under ICDS Scheme, there is no reason that the correct data is not fed on Poshan Tracker. The State must take corrective measures to provide the correct information available on Poshan Tracker.

(78) A news-item was published on 28.07.2025 in the Hindi Daily Newspaper Dainik Jagaran that it has come to light from an analysis of the several documents placed in the Parliament that more than 50% children nominated in Anganwadi centres, in 13 States and Union Territories including 34 districts of the State of U.P., are suffering from stunting. Stunting is the result of long term malnutrition of children as per the information available on Poshan Tracker for the month of June, 2025.

(79) This Court is constrained to put on record that the vehement of position to the Court's concern about hot cooked meal and THR being provided to the eligible beneficiaries can also not be appreciated by the Court.

(80) In view of the foregoing discussion, we **dispose of** both the PILs by issuing the following directions:-

The State shall ensure complete compliance with the statutory mandate

contained in Sections 4 and 5 and Schedule II appended to the National Food Security Act, 2013 in a time-bound manner;

The State shall ensure procurement of supplies of THR and hot cooked meal strictly as per the provisions contained in Rules, 2022 as per the procurement procedure under General Financial Rules, 2017 and Vigilance Guidelines and other norms issued from time to time by the Government of India.

The supply of dry ration in place of THR and hot cooked meal is not permissible either under the Act or the Rules and supply of dry ration in place of hot cooked meal and THR should be stopped.

It was stated in the Government Order dated 01.10.2020 that establishment of requisite infrastructure for production of supplementary nutrition through women Self-Help Groups would take two years, but the State has failed to achieve this target even after expiry of five years. In case the State really wishes to empower women Self-Help Groups it should make an earnest endeavour in this direction and ensure that Self-Help Groups are empowered to make production and supply of THR and hot cooked meal in accordance with the provisions contained in the Act and the Rules and in accordance with the General Financial Rules, 2017 and Vigilance Guidelines and other norms issued from time to time by the Government of India.

Giving preference to Self-Help Groups and empowering the women is a welcome approach but the empowerment should be a real empowerment with the participation of Gram Panchayats and the Self-Help Groups should not be treated as suffering from such handicaps as would justify violation of statutory mandates and provisions contained in the relevant Rules and Regulations in their favour.

The State must ensure upholding the correct information on the portal of Poshan Tracker and there should not be any discrepancy in the information available on the portal and the information kept in the registers maintained at the Anganwadi Centers manually.

Lastly, this Court expresses its earnest hope and desire that the authorities of the state should take the aforesaid steps and all/any other requisite steps so as to ensure that the object of ICDS Scheme which is in vogue for the last 50 years and the objectives of the National Food Security Act. 2013 are achieved in its true spirit and the children of the State do not suffer any more for want of proper nutrition.

(81) The Order passed by this Court on 20.02.2025 as affirmed by the Apex Court shall form part of this judgment for necessary guidance.

(82) Before parting, we take note of the fact that the report submitted to this Court was opposed by the State of U.P., simply by questioning the credentials of the Committee Members that too at the stage of hearing but the SRLM has relied upon the findings recorded in the report. Going into such objections would have distracted us from the main issues, therefore, we leave it open to the Central Government to take-up the matter for necessary verification of the suggestions, data and details collected by 3-Member Committee Report through some reliable agency, as may be deemed proper,

so that, the ground realities come to light for taking corrective action,if any. The defaulting authorities responsible for implementing the Scheme may also be visited with action, if so warranted. This exercise is directed to be undertaken at the earliest for which a copy of the report submitted to the Court shall be forwarded to the Ministry of Women & Child Development forthwith, preferably within a period of ten days from today.

(2025) 8 ILRA 582
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 18.08.2025

BEFORE

THE HON'BLE PANKAJ BHATIA, J.

RERA Appeal No. 8 of 2024
&
Connected With Other Cases

Shashank Gupta ...Appellant
Versus
M/S Vatika Nirman Pvt. Ltd. Lko. ...Respondent

Counsel for the Appellant:
Brijesh Kumar , Apoorva Tewari, Kaustubh Singh, Utkarsh Srivastava

Counsel for the Respondent:
Gaurav Mehrotra, Gaurav Mehrotra, Tushar Mittal

Issue for Consideration

Whether the non-inclusion of a Technical Member in the impugned judgement would be a valid exercise of appellate powers considering the scope of Section 43(3), Section 45 and Section 55 of the Act

Head Notes

The Real Estate (Regulation and Development) Act, 2016- Sections 43(3), 45 & 55 - Impugned order not in consonance with section 43(3) - Not stand cured by invoking Section 55 of the Act - Order passed by the Appellate Tribunal being without jurisdiction is null and void - Matter is relegated to the Appellate Tribunal to decide the matter afresh with all expedition - Appeals disposed of.

Held-Section 55(c) of the Act would also not rectify the defect of constitution of a Bench as prescribed under Section 43(3) of the Act as it has been incorporated only to save any irregularity in the procedure of the Appellate Tribunal and cannot be read to mean to cure the irregularities in the constitution of the Bench - Order passed by the Appellate Tribunal, which is not in consonance with the manner of constitution of Benches as prescribed under Section 43(3) of the Act is null and void and would not stand cured by invoking Section 55 of the Act - The order impugned is clearly beyond the jurisdiction and cannot be sustained - The order passed by the Appellate Tribunal being without jurisdiction is null and void - Matter relegated to the Appellate Tribunal to decide the matter afresh with all expedition without granting any unnecessary adjournment to any of the parties. **(Para 20, 24, 25, 26 & 27)** (E-15)

Case Law Cited

2020 SCC OnLine P&H 2030; Man Global Pvt. Ltd. Vs. Bharat Prakash Joukani; Larsen and Toubro Limited Vs. Ms. Rekha Sinha

List of Acts

The Real Estate (Regulation and Development) Act, 2016

List of Keywords

Non-inclusion of Technical Member in the impugned judgment; Section 55(c) would also not rectify the defect of constitution of a Bench; Defect in the constitution of the Appellate Tribunal; Irregularity, cannot be accepted; Technical Member demitted the office

Case Arising From

Judgment dated 14.05.2024 passed by the RERA Appellate Tribunal in Appeal Nos.39 of 2024, 59 of 2024, 60 of 2024, 61 of 2024, 62 of

2024, 63 of 2024, 64 of 2024, 65 of 2024, 66 of 2024, 67 of 2024, 68 of 2024 and 69 of 2024.

Appearances for Parties

Counsel for Appellant :- Brijesh Kumar,Apoorva Tewari,Kaustubh Singh, Utkarsh Srivastava
Counsel for Respondent :- Gaurav Mehrotra,Gaurav Mehrotra,Tushar Mittal

(Delivered by Hon'ble Pankaj Bhatia, J.)

1. Heard Shri Apoorva Tewari, learned counsel for the appellant and Shri Gaurav Mehrotra, learned counsel for the respondent.

2. The appeal in question was admitted vide order dated 22.04.2025, wherein the following three questions of law were framed by the Court while admitting the appeals and the same is recorded herein-under:

"(i) Whether the REAT (Real Estate Appellate Tribunal) was justified in holding that the complaint was premature, and if so, then a finding on the issue of cancellation could not have been decided especially without any evidence and finding on the point of any breach committed by the appellant of the allotment order or its term?

(ii) Whether the judgment passed by the appellate tribunal suffers from vice of being coram non judice in light of Section 43(3) read with Section 45 of the RERA Act, 2016.

(iii)Whether findings recorded by the appellate tribunal can be sustained in absence of material placed before the RERA relating to the issue of consideration paid towards the allotment of the units and breach of the terms of allotment by the appellant."

3. Learned counsel for the appellant argues that question No.2 has been framed with regard to the jurisdiction is a contentious issue and can be decided. He, however, suggests that even if, the Court decides the question No.2 in favour of the appellant and against the respondent, this Court should still go into the other two questions to avoid any multiplicity and future course of litigation as the litigation is old one and would bring unnecessary misery on the parties in view of the pendency.

4. Learned counsel for the respondent, on the other hand, argues that issue No.2 is of huge importance and can be decided and should be decided against the appellant in view of the submissions which are being considered herein.

5. The appeal in question has been filed challenging the judgement dated 14.05.2024 passed by the RERA Appellate Tribunal in Appeal Nos.39 of 2024, 59 of 2024, 60 of 2024, 61 of 2024, 62 of 2024, 63 of 2024, 64 of 2024, 65 of 2024, 66 of 2024, 67 of 2024, 68 of 2024 and 69 of 2024. The appeal was barred by the Appellate Tribunal. The Tribunal recorded that the Technical Member demitted the office on 26.09.2023 and as such, the functioning of the Tribunal came to a stand still w.e.f. 27.09.2023. It further records that after the issuance of the notification dated 28.11.2023, whereby a Judicial Member was appointed. It was considered in the interest of public at large to resume the judicial function of the Tribunal with the Chairman and the Bench comprising of a Judicial Member appointed on 28.11.2023 and an office order was issued to that effect. It further records in pursuance of the office order that the Appellate Tribunal was continuing with the

Chairman and one Judicial Member on account of non-appointment of a Technical Member.

6. In the backdrop of the said, the Bench of Tribunal comprising of Chairman and Technical Member decided the appeals. While deciding the appeals, the Tribunal held that the claim of the appellant before the Tribunal was premature, inasmuch as, the date of possession was yet to arrive. As such, the appeals preferred by the respondent herein were allowed.

7. My attention is drawn to the other findings recorded, to argue that on the one hand, the appellant has expressed that the appeal was premature, however, it has commented on the other issues, which is wholly bad in law.

8. Considering the rival submissions, I propose to decide the question No.2 as framed by this Court as the first issue. It is essential to notice that in one of the appeals before this Court not connected with the present case being RERA Defective Appeal No.9 of 2024, a Single Judge of this Court had set aside the orders passed by the RERA Appellate Tribunal, mainly on the ground that the composition was not in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the 'Act') and the rules framed thereunder.

9. The Single Judge while passing the said order had noticed the mandate of Section 43(3) of the RERA Act, 2016 and also the Regulation 6(5) of the U.P. Real Estate Appellate Tribunal Regulation, 2019. The Appellate Tribunal once again suspended the working of the Tribunal w.e.f. 15.05.2024.

10. A Division Bench of this Court took suo motu cognizance of consequent directions given by the Registrar, U.P. RERA on 15.05.2024, which was a notification directing that the entire functioning of the Tribunal would be suspended from 15.05.2024. The Division Bench of this Court noticed the arguments and prima facie formed a view, after considering the scope of Section 55 of the Act directed that the Tribunal shall resume its hearings. The said interim order was passed on 16.05.2024 by the Division Bench of this Court. The order also records that no final findings were given with regard to the scope of Section 55 of the Act and the issue was left open for consideration. Paragraph 19 of the said judgement is quoted herein-below:-

"(19) Leaving the import, purport and meaning of the said provision read with other provisions of the Act, 2016, open for consideration on the next date, considering the larger public interest involved and as it is not in the interest of the citizens who are appellants before the Appellate Tribunal that the functioning of the UP Real Estate Appellate Tribunal comes to a standstill on account of the aforesaid reason, accordingly, we provide as under:-

1. Let a Suo-motu Public Interest Litigation be registered in this regard on the basis of this order titled as "Suo-Motu Inre: Appointment of members in the Real Estate Appellate Tribunal at Lucknow and the functioning of Tribunals in general including filling up of the vacancies therein" and the documents referred by us be kept on its record.

2. Considering the provision of Section 55 of the Act. 2016, we further

order that the functioning of the Tribunal, as it was taking place prior to 15.05.2024. shall stand resumed forthwith under ourfilled up the vacancy of Administrative/ Technical member and the proceeding at least as of now cannot be said to be invalid merely on that count in view of the statutory provision contained in Section 55 of the Act, 2016."

11. It is also essential to notice that the Division Bench of this Court in the order extracted above, was not appraised of the judgement on the point and thus, as is evident a prima facie view was taken. I am not going into the question as to whether on the basis of a prima facie view, jurisdiction can be conferred upon the Tribunal and as was done by the Division Bench. In the present case as the order impugned was passed prior to 16.05.2024 and even if it is presumed that the jurisdiction was conferred by virtue of an interim order passed by the Division Bench, the same would still not cure the lack of jurisdiction of the Tribunal while passing the order impugned.

12. It is now informed that the Technical Member has been appointed and the Appellate Tribunal is working in terms of the mandate of the Act. In the light of issue No.2, which has been proposed to be decided as a preliminary issue and the arguments advanced.

13. To decide the issue No.2, it is essential to notice that the RERA Act was enacted to regulate and promote the real estate sector in addition thereto to protect the interest of the consumers in the real estate and to establish an adjudicating mechanism. In terms of the mandate of the Act, the requirement of registration was made mandatory under Chapter-II. The functions and duties of promoters were prescribed in Chapter-III. The rights and duties of the allottees were prescribed in Chapter-IV. Chapter-V prescribed for setting up a regulatory authority and Chapter-VII prescribed for establishment of a Real Estate Appellate Tribunal.

14. It is essential to notice the mandate of Section 43 of the Act, which prescribes the manner in which, the Appellate Tribunal shall be established. The same is quoted herein-below:-

"43. (1) The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Appellate Tribunal to be known as the — (name of the State/Union territory) Real Estate Appellate Tribunal.

(2) The appropriate Government may, if it deems necessary, establish one or more benches of the Appellate Tribunal, for various jurisdictions, in the State or Union territory, as the case may be.

(3) Every bench of the Appellate Tribunal shall consist of at least one Judicial Member and one Administrative to Technical Member.

(4) The appropriate Government of two or more Staes or Union territories may, if it deems fit, establish one single Appellate Tribunal: Provided that, until the establishment of an Appellate Tribunal under this section, the appropriate Government shall designate, by order, any Appellate Tribunal Functioning under any law for the time being in force, to be the Appellate Tribunal to hear appeals under the Act: Provided further that after the Appellate Tribunal under this section is

established, all matters pending with the Appellate Tribunal designated to hear appeals, shall stand transferred to the Appellate Tribunal so established and shall be heard from the stage such appeal is transferred.

(5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:

Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal at least thirty per cent. of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.

Explanation.—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force."

15. The composition of the Appellate Tribunal is specified in Section 45 is quoted herein-below:-

"45. The Appellate Tribunal shall consist of a Chairperson and not less than two whole time Members of which one shall be a Judicial member and other shall be a Technical or Administrative Member, to be appointed by the appropriate Government. Explanation.—For the purposes of this Chapter,— (i) "Judicial Member" means a Member of the Appellate Tribunal appointed as such under clause (b) of sub-section (1) of section 46;

(ii) "Technical or Administrative Member" means a Member of the Appellate Tribunal appointed as such under clause (c) of sub-section (1) of section 46."

16. The qualification for appointment of the Chairman and the Members of the Appellate Tribunal is specified in Section 46 of the Act, which is quoted herein-below:-

"46. (1) A person shall not be qualified for appointment as the Chairperson or a Member of the Appellate Tribunal unless he,—

(a) in the case of Chairperson, is or has been a Judge of a High Court; and

(b) in the case of a Judicial Member he has held a judicial office in the territory of India for at least fifteen years or has been a member of the Indian Legal Service and has held the post of Additional Secretary of that service or any equivalent post, or has been an advocate for at least twenty years with experience in dealing with real estate matters; and

(c) in the case of a Technical or Administrative Member, he is a person who is well-versed in the field of urban development, housing, real estate development, infrastructure, economics, planning, law, commerce, accountancy, industry, management, public affairs or administration and possesses experience of at least twenty years in the field or who has held the post in the Central Government, or a State Government equivalent to the post of Additional Secretary to the Government

of India or an equivalent post in the Central Government or an equivalent post in the State Government.

(2) The Chairperson of the Appellate Tribunal shall be appointed by the appropriate Government in consultation with the Chief Justice of High Court or his nominee.

(3) The judicial Members and Technical or Administrative Members of the Appellate Tribunal shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department handling Housing and the Law Secretary and in such manner as may be prescribed."

17. Section 55 of the Act prescribes that proceeding shall not be invalidated only on account of vacancy arising. Section 55 of the Act, which is the statutory section, based upon which both the arguments are founding that their arguments, is quoted herein-below:-

"55. No act or proceeding of the Appellate Tribunal shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Appellate Tribunal, or

(b) any defect in the appointment of a person acting as a Member of the Appellate Tribunal; or

(c) Any irregularity in the procedure of the Appellate Tribunal not affecting the merits of the case."

18. Thus, the sole consideration is whether the non-inclusion of a Technical Member in the impugned judgement would be a valid exercise of appellate powers considering the scope of Section 43(3), Section 45 and Section 55 of the Act.

19. On a plain reading of the prescriptions as extracted herein-above, it is clear that there is a distinction between the Appellate Tribunal, which has to be established in terms of Chapter-VII and the Bench which is to be established for hearing in the Appellate Tribunal. The use word 'Bench' in Section 43(3) of the Act, clearly marks out a distinction between the phrases used in Section 43(3) and Section 45 of the Act. Section 55 of the Act is an enabling provision, which has been incorporated to protect any orders, which can be challenged in case any appointment to the Appellate Tribunal or any defect pertaining to the Appellate Tribunal surfaces subsequent thereto. Much emphasis is placed on Section 55(c) of the Act.

20. I am of the firm view that Section 55(c) of the Act would also not rectify the defect of constitution of a Bench as prescribed under Section 43(3) of the Act as it has been incorporated only to save any irregularity in the procedure of the Appellate Tribunal and cannot be read to mean to cure the irregularities in the constitution of the Bench.

21. The view taken above, is fortified by the Division Bench judgement of the High Court of Punjab and Haryana reported in **2020 SCC OnLine P&H 2030**, wherein amongst the several issues considered by the Division Bench framed the following issues for consideration:-

"47. The issues that arise for consideration are:

(a) Can a Single Member of the Authority validly pass orders on a complaint under the Act? Are Regulations 7 and 8 of the Punjab RERA Procedure Regulations ultra vires the Act?

(b) Can a Single Member of the Appellate Tribunal validly pass orders in the appeals before it?

(c) Should all the complaints under the Act be entertained in the first instance by the AO under Section 71 of the Act and in that context is the Circular dated 21st November, 2018 issued by the Authority valid?

(d) Is the appointment of Mr. Sanjiv Gupta as Member of the Authority valid?

(e) Are the Appellate Tribunal's orders declining to waive the requirement of pre-deposit valid? Should this Court in exercise of its jurisdiction under Article 226 of the Constitution direct the Appellate Tribunal to entertain the appeals without the pre-deposit? "

22. The said issue was answered in respect of the constitution of the Appellate Tribunal in the following manner:-

"64. The next issue is whether the Appellate Tribunal can function as a Single Member Bench? At the outset, it must be noted that although this question arises directly in the RERA appeals, it has not been specifically raised as such in the grounds of appeal. However, since it is a pure question of law that goes to the root of the matter, it can be permitted to be raised at any stage.

65. The relevant provision with regard to the Appellate Tribunal is Section 43 of the Act. Under Section 43(1) of the Act, the appropriate Government can establish an Appellate Tribunal. Under Section 43(2), the appropriate Government could establish one or more Benches of the Appellate Tribunal for various jurisdictions in the State or Union Territory as the case may be. Section 27 of 41 CWP No. 8548 of 2020 and other connected matters page 28 of 41 43 (3) is important for the purposes of the question under consideration. It reads as under:

"43. Establishment of Real Estate Appellate Tribunal.

(3) Every bench of the Appellate Tribunal shall consist of at least one Judicial Member and one Administrative or Technical Member."

66. Section 43(4) of the Act envisages the setting up of an Appellate Tribunal for two or more States or Union Territory. The proviso thereto permits the appropriate Government to designate any Appellate Tribunal functioning under any law for the time being in force, to be the Appellate Tribunal to hear appeals under the Act. Therefore, on a plain reading of Section 43(3) of the Act, the Appellate Tribunal is envisaged to sit in Benches. Section 45 states that the Appellate Tribunal shall consist of "a Chairperson and two whole time members, one shall be judicial member and other an administrative or technical member".

67. Since Section 43(3) of the Act itself provides the minimum quorum of the Bench of the Appellate Tribunal to be two, a harmonious construction of Section 43 (3) and 45 of the Act leads to the

conclusion that an Appellate Tribunal has to have at least two members, one of which has to be a judicial and other a technical or administrative member. Unlike Section 21 of the Act, which simply states that the Authority shall comprise of a Chairperson and not less than two whole time members, a combination of provisions, viz., Section 43(3) read with Section 45 of the Act envisages there being Benches of the Appellate Tribunal subject however to the mandatory requirement that each such Bench shall have at least two members i.e. one judicial and another administrative or the technical member. There can, therefore, be no manner of doubt that the judicial functions of the Appellate Tribunal in the State of Punjab cannot be exercised by a Single Member Bench. Any order passed by such Single Member Bench of the Appellate Tribunal would be null and void in law."

23. The Division Bench also referred to a similar view taken by the Single Judge of the Bombay High Court in **Man Global Pvt. Ltd. Vs. Bharat Prakash Joukani** and in the case of **Larsen and Toubro Limited Vs. Ms. Rekha Sinha**. The Division Bench also approved and considered the scope of Section 55 of the Act and recorded as under:-

"69. In this context, a reference was made to Section 55 of the Act which reads as under:

"55. Vacancies, etc., not to invalidate proceeding of Appellate Tribunal.

No act or proceeding of the Appellate Tribunal shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Appellate Tribunal; or

(b) any defect in the appointment of a person acting as a Member of the Appellate Tribunal; or

(c) any irregularity in the procedure of the Appellate Tribunal not affecting the merits of the case."

70. As rightly held in Larsen and Toubro Limited (supra), an order passed by a Single Member of the Appellate Tribunal would not stand validated by Section 55 as that would violate the plain language of Section 43(3) of the Act. Such an order would be a nullity, an illegality and not a mere irregularity. Reference in this context may also be made to the decision in Gulzari Lal Agarwal vs. The Accounts Officer (1996) 10 SCC 590 which holds that every provision of the Act needs to be construed harmoniously with the view to promoting the object and purpose of the Act and that by doing so no violence should be done to the plain language of the Section. Therefore, the plea of Mr. Sanjay Kaushal, with reference to Section 55 of the Act, that a Single Member exercising judicial functions of the Appellate Tribunal was merely a defect in the constitution of the Appellate Tribunal and, therefore, an irregularity, cannot be accepted. This goes to the very root of the jurisdiction of the Appellate Tribunal and cannot be said to be saved by reference to Section 55 of the Act."

24. Thus, on a conjoint reading of the said three provisions, I do not have any hesitation in holding that the order passed by the Appellate Tribunal, which is not in consonance with the manner of constitution of Benches as prescribed under Section 43(3) of the Act is null and void and would not stand cured by invoking Section 55 of the Act.

25. In view of the said findings, the order impugned is clearly beyond the jurisdiction and cannot be sustained on that ground.

26. The issue No.2 as framed is decided by holding that the order passed by the Appellate Tribunal being without jurisdiction is null and void. In view of the finding on issue No.2, I do not see any reason to decide the other two issues.

27. Further as it is informed that the Technical Member has now been appointed, the matter is relegated to the Appellate Tribunal to decide the matter afresh with all expedition without granting any unnecessary adjournment to any of the parties, preferably within a period of 60 days from today. While doing so, the Appellate Tribunal will consider the matter afresh particularly the date of allotment, which has not been done.

28. The appeals are **disposed of** in terms of above.

(2025) 8 ILRA 590
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 14.08.2025

BEFORE

THE HON'BLE IRSHAD ALI J.

Civil Misc. Review Application Defective No. 165 of 2024

C/M Inter College Para Hamidpur, Pratapgarh, Thru. Manager ...Applicant
Versus
Km. Poonam Sharma ...Opposite Party

Counsel for the Applicant:
Anurag Kumar Singh

Counsel for the Opposite Party:
Sharad Pathak, Priya Singh, Ran Vijay Singh

Issue for Consideration

The appointment of the petitioner has been made under U.P. Recognised Basic Schools (Junior High Schools) (Recruitment And Conditions Of Service Of Teachers) Rules, 1978. A junior high school when granted recognition under Section 7-A(a) of U.P. Intermediate Education Act, 1921 and upgraded to high school, if any vacancy of Teacher arises in such institution subsequently whether it would be filled in following procedure laid down under U.P. Basic Education Act, 1972 read with U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 or for administrative and other purposes the institution would be deemed to be governed by provisions of U.P. Intermediate Education Act, 1921 and recruitment would be governed by provisions of U.P. Secondary Education Services Selection Board Act, 1982

Head Notes

The Uttar Pradesh Intermediate Education Act, 1921- Section 7A (a), The Uttar Pradesh Secondary Education Services Selection Board Act, 1982 - A Basic School or a Junior High School is different from a High School or an Intermediate College - Once a basic school or a Junior High School being upgraded as a High School or an Intermediate College the identity of the institution known as basic school or Junior High School is lost - Appointment of the petitioner has been made as a Headmistress in an institution, which has been upgraded to intermediate college - Petitioner is not entitled for the appointment made against the provisions - petitioner is not entitled for issuance of writ of mandamus, directing for payment of salary to her. Petition dismissed.

Held-Once an institution is upgraded or recognition upto High School is granted under Section 7-A(a), provisions of U.P. Intermediate Education Act, 1921 would be attracted and in such a case any vacancy of teaching staff

caused in such Institution, would have to be filled in as per the provisions of U.P. Secondary Education Services Selection Board Act, 1982 - Appointment of the petitioner made on the post of Headmistress is totally against the provision of U.P. Intermediate Education Act, 1921 and U.P. Secondary Education Services Selection Board Act, 1982, therefore, the petitioner is not entitled for the appointment made against the provisions referred hereinabove, therefore, the petitioner is not entitled for issuance of writ of mandamus, directing for payment of salary to her. **(Para 18 & 20)** (E-15)

Case Law Cited

Vinod Kumar and others Vs. Union of India and others

List of Acts

The Uttar Pradesh Intermediate Education Act, 1921-, The Uttar Pradesh Secondary Education Services Selection Board Act, 1982

List of Keywords

Junior High School upgraded as a High School; Cases to exist as a legal entity; Junior High school vacancy filled up in accordance with procedure; No appointment of a Headmaster in a junior high school under Rules 1978

Case Arising From

Writ-A No.2823 of 2004

Appearances for Parties

Counsel for Applicant :- Anurag Kumar Singh
Counsel for Opposite Party :- Sharad Pathak, Priya Singh, Ran Vijay Singh

(Delivered by Hon'ble Irshad Ali, J.)

1. Vide order dated 6.8.2025, the review application was allowed, which is being quoted below :-

" ***IA No.1 of 2024- Delay Application***

1. Heard.

2. In paragraph-2 of the objection filed, objection has been raised, which has no merit. The reasons assigned in the affidavit filed in support of the application are sufficient. Accordingly, the application is allowed. The delay in filing the review application is condoned.

Review Application

1. Heard Sri Anurag Kumar Singh, learned counsel for the applicant and Sri Sharad Pathak, learned counsel for the respondent.

2. This review application has been filed for review of judgment and order dated 14.2.2023, passed in Writ-A No.2823 of 2004.

3. It is submitted by learned counsel for the applicant that at no point of time, correct facts were brought into the notice of the Court, neither the validity of the appointment was shown by the respondent/ petitioner, therefore, writ of mandamus cannot be issued for the payment of salary to the respondent/ petitioner from the State exchequer. He next submitted that once the institution has been upgraded to high school and intermediate, the provisions of U.P. Intermediate Education Act, 1921 and U.P. Secondary Education Services Selection Board Act, 1982 are applicable, therefore, the appointment made under the U.P. Recognised Basic Schools (Junior High Schools) (Recruitment And Conditions Of Service Of Teachers) Rules, 1978 is not permissible in the eyes of law.

4. Sri Sharad Pathak, Advocate opposed the review application filed by the applicant on the ground that the Committee of Management was issued notice and did

not turn up to file counter affidavit before this Court and in absence of the Committee of Management, the judgment was passed by this Court on 14.2.2023, therefore, the submission advanced by learned counsel for the applicant is not sustainable in law.

5. In rebuttal, learned counsel for the applicant submitted that after filing of Writ-A No.2823 of 2004, several other disputes came before this Court in the writ petition and special appeal and it was nowhere disclosed that in the writ petition filed by the petitioner, the Committee of Management was not represented, therefore, it is pure concealment of fact, therefore, the review application is maintainable.

6. I have heard the submission so advanced by both the parties. The respondent has concealed material fact in regard to appointment of the petitioner that will the Rules of 1978 are applicable and the institution has been upgraded to intermediate college, has obtained the order for payment of salary in the writ petition, therefore, the review application is maintainable. I am of the considered opinion that once the Committee of Management was not represented by any of the counsel before this Court in the writ petition (Writ-A No.2823 of 2004), therefore, by coming alongwith the relevant facts, the review application is maintainable and is hereby ***allowed****.*

7. In the present writ petition, writ of mandamus has been prayed on the ground that the petitioner was appointed by the approval of the District Basic Education Officer dated 21.10.2003 on the post of Headmistress in the institution. Question arose that whether after upgradation of the institution as intermediate college, the appointment made with the approval of the District Basic Education Officer and selection committee appointed by him, is in accordance with law or not and whether a writ of mandamus can be issued for payment of salary from the State exchequer.

8. For dealing with the matter, relevant facts are necessary to be brought into notice. Initially, the institution was junior high

school, Para Hamidpur, District Pratapgarh. There is sanctioned strength of one Headmaster and Teachers. On 2.11.1995, recognition was granted to the society running the junior high school under Section 7(4) of U.P. Intermediate Education Act, 1921 for the purpose of examination up to the intermediate level.

9. The petitioner's service was terminated from the School and she filed Writ Petition No.4534 (S/S) of 1993 on 30.5.1993. The petitioner was appointed as Assistant Teacher in the said junior high school on 30.8.1991. She took leave and started working in a Co-operative Bank and since she was not paid salary, she filed Writ Petition No.7000 of 1992. Leave was granted from 1.10.1992 to 19.5.1993. She joined back as Assistant Teacher in the School on 1.11.1993. Communications were made for payment of salary to the petitioner as Assistant Teacher on 24.6.1997. Recognition was granted under Section 7(4) of the U.P. Intermediate Education Act, 1921 on 5.1.2001.

10. Vacancy on the post of Headmaster occurred due to retirement of one Ramsamugh Maurya in intermediate college. The Committee of Management sent letter for permission from Basic

Education Officer for starting selection process, which was granted on 8.8.2003.

11. Vide letter dated 22.8.2003, the Committee of Management request the District Basic Education Officer to appoint Observer at the time of holding of selection. On 20.9.2003, Observer was appointed by the Basic Education Officer and selection was held by duly constituted selection committee. Basic Education Officer approved the selection of the petitioner and she joined the post on 1.12.2003 and started getting salary. The Finance and Accounts Officer stopped the salary of the petitioner vide order dated 27.3.2004. The petitioner filed the present writ petition, in which interim order was passed and notice was issued to the Committee of Management, which is duly served and no counter affidavit has been filed during the pendency of the writ petition.

12. Election of the Committee of Management was held and new office bearers came into the office on 20.9.2008 and dispute arose in the Committee of Management of the School. Vide order dated 11.10.2008, the petitioner was suspended on the ground that she does not follow the dictates of the new Manager. In view of the provisions contained under U.P. Intermediate Education Act, after expiry of sixty days period, suspension order stood revoked. An enquiry report has been submitted in regard to the appointment of the petitioner on 25.9.2008, in which selection process of the petitioner has been found to be appropriate. Thereafter, various orders were passed for payment of salary of the petitioner, which was stopped by the Committee of Management.

13. The Committee of Management filed Writ Petition No.5640 (S/S) of 2012, alleging therein that the appointment of the petitioner is illegal. Learned Single Judge directed for enquiry to be conducted by the Commissioner.

14. The petitioner filed Special Appeal No.818 of 2012, wherein the enquiry order was stayed and question was framed by the Court in regard to validity of appointment of the petitioner. An application for modification of the judgment passed in the present writ petition was filed, which was dismissed as withdrawn. The special appeal was also filed against judgment and order dated 14.2.2023, which was also dismissed as withdrawn vide order dated 20.8.2024 and the review application in the present writ petition has been filed thereafter.

15. Submission of Sri Sharad Pathak, learned counsel for the petitioner is that there is no prohibition in regard to the appointment of the petitioner on the post of Headmistress in an intermediate college, which is receiving grant in aid from the State Government. The appointment made by constituting a selection committee at the level of Basic Education Officer is the criteria to make appointment on the post of Headmaster/ Headmistress of an intermediate college. Next submission is that in view of government order dated 15.10.2009, a ban was imposed on appointment in intermediate colleges.

16. He next submitted that the appointment of the petitioner is not dehors the rules, that is in accordance with law under U.P. Recognised Basic Schools (Junior High Schools) (Recruitment And Conditions Of Service Of Teachers) Rules,

1978, therefore, the salary of the petitioner cannot be denied in view of the fact narrated above. Relying on certain judgments, learned counsel for the petitioner submitted that prior to judgment of ***Manju Awasthi and others Vs. State of U.P. and others****, there is no prohibition in regard to appointment in intermediate colleges under U.P. Recognised Basic Schools (Junior High Schools) (Recruitment And Conditions Of Service Of Teachers) Rules, 1978, therefore, the judgment relied upon by the learned counsel for the respondent is not applicable to the facts and circumstances of the present case.*

17. The moot question in the present writ petition is that whether the appointment of the petitioner is in accordance with law or not. The question arises for consideration is that once the institution has been upgraded from junior high school to high school and intermediate, the process of appointment will be under U.P. Recognised Basic Schools (Junior High Schools) (Recruitment And Conditions Of Service Of Teachers) Rules, 1978 or U.P. Intermediate Education Act, 1921 and U.P. Secondary Education Services Selection Board Act, 1982.

18. In support of his submission, Sri Sharad Pathak, learned counsel for the petitioner placed reliance upon judgment rendered in the case of ***Vinod Kumar and others Vs. Union of India and others*** *arising out of* ***SLP (C) Nos.22241-42 of 2016****. Relevant paragraph-7 is being quoted below :-*

"7. The judgement in the case Uma Devi (supra) also distinguished between "irregular" and "illegal" appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case. Paragraph 53 of the Uma Devi (supra) case is reproduced hereunder:

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [(1967) 1 SCR 128 : AIR 1967 SC 1071] , R.N. Nanjundappa [(1972) 1 SCC 409 :

(1972) 2 SCR 799] and B.N. Nagarajan [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are

being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.""

19. On the other hand, Sri Anurag Kumar Singh, learned counsel for the respondent has placed reliance upon the judgments, which are as under :-

(i) ***State of Uttar Pradesh and others Vs. District Judge Varanasi and others [1981 SCC OnLine All 279]****. Relevant paragraph-17 is being quoted below :-*

"17. A basic school or a Junior High School is thus different from a High School or an Intermediate College. On the plain language of these definitions the same institution cannot be called a basic school or a Junior High School as well as a High School or an Intermediate College. Each one has a distinct legal entity. On a basic school or a Junior High School being upgraded as a High School or an Intermediate College the identity of the institution known as basic school or Junior High School is lost. It ceases to exist as a legal entity and in its place another institution with a new legal entity comes into being. One cannot be equated with the other. In this connection reference may also be made to the decision of the Supreme Court in Commissioner, Lucknow Division and Others Vs. Kumari Prem Lata Misra, . It would further be seen that administration including constitution of Committee of Management of an institution recognized under U, P. Act II of 1921 is to be carried out in accordance with a Scheme of Administration prepared u/s 16-A of the said Act and this Section does not apply to basic school or a Junior High School. For all these persons and in the absence of any specific provisions in this behalf-none having been pointed out to us-maintenance grant payable to the basic school or Junior High School which has been upgraded as High School cannot and does not automatically become payable to the recogned High School. Suppose after a Basic School or a Junior High School has been upgraded as a recognised High School, the State Government stops payment of the amount of maintenance grant which was being paid to the Basic School or the Junior High School, can the recognized High school claim as a matter of right that the said amount has become automatically payable to it. The answer, in the absence of any specific provision permitting such automatic transformation, so to speak will, in our opinion, have to be in the negative. Such a recognized High School will have to wait till maintenance grant payable to it as a recognized High School has been fixed as contemplated by Section 2(c) of U.P. Act 24 of 1971. Consequently, even if the maintenance grant payable to a Basic School or a Junior High School is continued to be paid to those who were managing the erstwhile Basic School or Junior High School it cannot be said that the upgraded recognized High School is receiving any maintenance grant as defined in Section 2(c) of U.P. Act 24 of 1971. In view of the foregoing discussion our answer to both the questions referred to us is in the negative."

(ii) ***Dr.(Smt.) Sushila Gupta Vs. The Joint Director of Education, Kanpur***

and others [2005 SCC OnLine All 1183]. *Relevant paragraph-28 is being quoted below :-*

"28. It is, thus, clear from all the decisions cited herein above and the provisions discussed herein above that a Junior High School upgraded to the High School/Intermediate level, the institution is governed by the provisions of U.P. Intermediate Education Act and Service Rules as applicable to such institution, have to be applied. There is no distinction drawn between an aided or an unaided school. The recognition of the institution is by itself sufficient to exclude the applicability of the laws governing Junior High School once the institution is upgraded. It is for this reason that a special transitory amending provision was brought in by way of Section 13-A in U.P. Act No. 6 of 1979 discussed herein above to enable such upgraded institution to continue to receive the grant-in-aid that they were receiving at the level of Junior High School."

(iii) ***Ajay Pratap Rai Vs. District Basic Education Officer, Jaunpur and others [2007 SCC OnLine All 1485]***. *Relevant paragraphs-6, 7 and 8 are being quoted below :-*

"6. Replying to the aforesaid submissions, Shri Khare has taken us to the findings recorded by the learned Single Judge with the aid of the Full Bench decision in the case of State of U.P. and Ors. v. District Judge, Varanasi and Ors. 1981 UPLBEC 336 and the decision of the learned Single Judge in the case of Dr.Smt. Sushila Gupta v. Regional Joint Director of Education (2006) 1 AD 523 and has urged that the entire claim of the appellant has to be rejected in view of the findings recorded by the learned Single Judge and, therefore, the appeal deserves to be dismissed.

7. The learned Standing Counsel has also made his submissions and has Invited the attention of the Court to the various definitions as contained in Act, 1972, the Rules, 1978, the U.P. Junior High School (Payment of Salaries of Teachers and other Employees) Act, 1978, the provisions of the Act, 1921 and the U.P. Secondary Education Services Selection Boards Act, 1982 (hereinafter called the "Act 1982") and has urged that the directions given by the learned Single Judge in respect of the claim on the post of the Head of the Institution do not deserve any interference as no ground has been made out either in law or in fact for any further judicial intervention.

8. Having considered the rival submissions, we find that the learned Single Judge after having noticed the Full Bench decision in the case of State of U.P. and Ors. (supra) and the judgment of the learned Single Judge in Sushila Gupta (supra) has held that once a Junior High School stands upgraded as a High School or an Intermediate College, then in that event the post of the Head of the Institution has to be filled up in accordance with the procedure prescribed under the Act, 1921 read with Act, 1982. It has been held that in such eventuality the Junior High School looses its identity as such and upon upgradation of the Institution, there cannot be any appointment of a Head Master in a Junior High school under Rules 1978. For this, the learned Single Judge has placed reliance upon the decisions referred to therein and has also indicated the ratio of the decision in Sushila Gupta"s case to be fully applicable to the facts of the present controversy."

(iv) ***Manju Awasthi and others Vs. State of U.P. and others [MANU/UP/ 3739/ 2012****. Relevant paragraph-72 is being quoted below :-*

"72. After the Full Bench judgment, the Legislature inserted Section 13-A, the consequence of which is for limited purpose that is for payment of salary, the provisions of 1978 Act applies and the service conditions of teachers of High School have to be governed by 1921 Act and 1982 Act. Before the Division Bench in Ajay Pratap Rai Vs. District Basic Education Officer & others 2007(4) ADJ 357, the issue as to whether after upgradation of an institution as High School, U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 shall apply or appointment is to be made in accordance with 1921 Act and 1982 Act came for consideration. Following was laid down by the Division Bench in paragraphs 8,10,11 and 16:

"8. The learned Standing Counsel has also made his submissions and has Invited the attention of the Court to the various definitions as contained in Act, 1972, the Rules, 1978, the U.P. Junior High School (Payment of Salaries of Teachers and other Employees) Act, 1978, the provisions of the Act, 1921 and the U.P. Secondary Education Services Selection Boards Act, 1982 (hereinafter called the 'Act 1982') and has urged that the directions given by the learned Single Judge in respect of the claim on the post of the Head of the Institution do not deserve any interference as no ground has been made out either in law or in fact for any further judicial intervention.

10. The issue raised by the appellant, therefore, in respect of the status of the institution as still to be that of a Junior High School for the purposes of appointment on the post of Head of the Institution, has to be rejected for the reasons given by the learned Single Judge with which we find ourselves to be in full agreement with, The word "upgradation" in its normal connotation means improvement; enhancement of status; more efficient. The word "grade" is derived from the latin word 'gradus' which means degree, step. In Hari Nandan Sharan Bhatnagar v. S.N. Dixit and Anr. MANU/SC/0430/1969 : [1970]1SCR421 ; and A.K. Subraman v. Union of India and Ors. MANU/SC/0360/1974 : (1975)ILLJ338SC , the Apex Court held 'grade' means rank, position in a scale, a class or position in a class according to the value. It means a degree in the scale of rank, dignity, proficiency etc. (Section 15 of Code of Civil Procedure, 1908). The word 'upgradation' therefore means improvement in degree, raising of status, rank, quality or in value. It is an improvement in proficiency and reflects a rising gradient. The institution was admittedly a Junior High School and was raised to the status of a High School in 1993 and to that of Intermediate College in the year 1999. It is undisputed that upon being upgraded as a High School, the institution has been recognized as such under the provisions of Act, 1921. This undisputed position, therefore, clearly establishes that the institution ceases to be a Junior High School and for the purposes of appointment of Head of the Institution, the appointment can only be made by resorting to the provisions as indicated in the judgment rendered in Sushila Gupta's case (supra). The observations made by the Full Bench in the case of State of U.P. v. District Judge Varanasi (supra), which have been quoted in detail by the learned Single Judge are

worth reiterating to the effect that Basic School or a Junior High School is different from a High School or an Intermediate College as the same institution cannot be called Basic School or a Junior High School as well as a High School or an Intermediate College. The Full Bench above referred to held as under:

On a Basic School or a Junior High School being upgraded as a High School or Intermediate College, the identity of the institution known as Basic School or a Junior High School is lost and it ceases to exist as a legal entity and in its place another institution with a legal entity comes into being. One cannot be equated with the other.

11. The aforesaid observations of the Full Bench as explained in the judgment Sushila Gupta's case, therefore, leave no room for doubt that the selection and appointment on the post of Head of the Institution which has been cognized as a High School and Intermediate College cannot be made under the provisions which are applicable to a Junior High School. In Sushila Gupta (supra), the learned Single Judge considered all the Amendment made in the Statute and held that in spite of so many amendments to the statutory provisions, the proposition of law laid down by the above referred to Full Bench remained the same. Mr. Saxena has not brought to our notice any provision which have altered the legal position.

16.The contention with regard to the direction of the learned Single Judge in respect of lodging a First Information Report also does not deserve to be interfered with as the learned Single Judge having recorded his finding in respect of the manipulations in the publication in the newspaper, has concluded that the same requires to be investigated by an investigating agency. We do not find any error in the same as, prima facie, there was ample material before the learned Single Judge to have arrived at the aforesaid conclusion. We have ourselves also perused the two copies of the Hindi Daily "Dainik Manyavar" alleged to have been published on Monday, the sixth of January, 2003. On page two of the said newspaper there is a clear difference as the same space in one copy carries a news item of arrest of two persons whereas the other copy contains the advertisement under scrutiny. The same therefore leaves no room for a genuine doubt that fraud has been apparently practiced. Both copies at page four disclose the name of the Editor Sri Om Prakash Jaiswal and recite the name and address of Mamta Printers, Khwajgi Tola, Jaunpur as Publishers. The same further discloses the name of the printing press as Bharatdoot Press, 6 Rampuri, Varanasi. The telephonic and E-mail address are also indicated therein. The Investigating agency shall also take notice of the above while initiating proceedings and copies of the newspapers shall be made available and obtained for the said purpose as the involvement of the publishing and printing agency in this matter cannot be ruled out. The investigation shall forthwith be set into motion as per the directions of the learned Single Judge.""

(v) ***Standard Intermediate College Mau-Aima and others Vs. State of U.P. and others [MANU/UP/ 2018/ 2019]****. Relevant paragraphs-1, 15, 16, 17, 18, 19, 20 are being quoted below :-*

"1. All these appeals have arisen from a common judgment dated 16.01.2019

passed by learned Single Judge deciding nine Writ Petitions collectively. Basic issue raised in all these appeals is that Junior High School when granted recognition under Section 7-A(a) of U.P. Intermediate Education Act, 1921 (hereinafter referred to as "U.P. Act, 1921") and upgraded to High School, if any vacancy of Teacher arises in such Institution subsequently whether it would be filled in following procedure laid down under U.P. Basic Education Act, 1972 (hereinafter referred to as "U.P. Act, 1972") read with U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 (hereinafter referred to as "Rules, 1978") or for administrative and other purposes the Institution would be deemed to be governed by provisions of U.P. Act, 1921 and recruitment would be governed by provisions of U.P. Secondary Education Services Selection Board Act, 1982 (hereinafter referred to as "U.P. Act, 1982"). Learned Single Judge has taken the view that once Institution is upgraded or recognition upto High School is granted under Section 7-A(a), provisions of U.P. Act, 1921 would be attracted and in such a case any vacancy of teaching staff caused in such Institution, would have to be filled in as per the provisions of U.P. Act, 1982.

15. In all these Appeals, basic submission is that despite recognition having been granted by U.P. Board upto High School and Intermediate under Section 7-A of U.P. Act, 1921, appointments of teaching and non-teaching staff in respect to the classes upto Junior High School, Institution would continue to be governed by the provisions of U.P. Act, 1972 read with Rules, 1978 and U.P. Act, 1921 read with U.P. Act, 1982 would not apply. It is in this regard, judgment of learned Single Judge, taking an otherwise view, has been challenged.

16. We find that real issue need be considered by this Court to find out whether judgment of learned Single Judge is correct or not is "whether on recognition as High School, a Junior High School or Basic School would loose its identity and would be governed by provisions applicable to Secondary Schools or in respect to posts upto Junior High School, it would continue to be governed by provisions applicable to a Junior High School."

17. We find that this aspect is covered by a Division Bench Judgment of this Court in Ajay Pratap Rai Vs. District Basic Education Officer 2007 (4) ADJ 357 (DB), wherein Court has held that once an Institution is upgraded to High School level, it would cease to exist as a legal entity as a Junior High School and, therefore, provisions applicable to a Junior High School would not be applicable to govern the same and, on the contrary, it would be governed by provisions applicable to a High School. Court in para-10 of the judgment said as under:

"10. From the aforesaid discussions, it is evident that status of an institution after being upgraded looses its significance and the lower section of the school after upgradation completely merges into the upgraded institution. Interpreting the provisions otherwise would lead to complete absurdity and create a chaotic situation even for governance of the different parts of the same institution. An institution cannot have a multiple Code for its governance. There is no provision permitting continued applicability of the laws in relation to a Junior High School

even after its upgradation."(emphasis added)

18. This view is fortified from the fact that legislature had inserted Section 13-A in U.P. Act, 1978 providing for payment of salary to Teachers and other employees which has received grant-in-aid if it is upgraded and recognition is granted upto High School level. This provision was inserted to take care of a situation where without any grant-in-aid, a Junior High School which is in grant-in-aid, is upgraded and recognition is granted upto High Schol level and since it becomes a secondary educational institution, thereupon previsions of Junior High School will not be applicable, hence to obviate the difficulty in payment of salary to Teachers working upto Junior High School, who were already in grant-in-aid, Section 13-A was inserted and this also supports the view that after upgradation/ recognition granted to a Junior High School upto High School level, Statutes applicable to an institution which is upto Junior High School, become inapplicable.

19. Further this issue that a Junior High School when upgraded or recognized upto High School looses its identity as Junior High School has also has been considered by a Full Bench in State of U.P. and others Vs. District Judge, Varanasi and others 1981 UPLBEC 336, and it has been held that after a basic school or a Junior High School is upgraded as a High School or an Intermediate College, the identity of Institution as basic school or Junior High School is lost. It ceases to exist as a legal entity and in its place another institution with a new legal entity comes into being. In fact Section 13-A was inserted after the aforesaid judgment of Full Bench so as to continue payment of salary from State Exchequer under the provisions of Act, 1978.

20. The view taken by Division Bench in Ajay Pratap Rai Vs. District Basic Education Officer (supra) has been reiterated by another Division Bench in Manju Awasthi and others Vs. State of U.P. and others 2013 (3) ADJ 64 (DB). Once a Junior High School ceased to continue with a separate entity, provisions relating to selection and appointment of Teachers applicable to Junior High School will not apply and entire Institution as a whole will be a Secondary Educational Institution and governed by provisions of Statute applicable to a Secondary Institution. Therefore, the view taken by learned Single Judge, we find, is consistent with the authorities discussed above. We find no legal infirmity therein so as to warrant interference in these appeals."

(vi) ***Sharda Prasad Yadav Vs. DIOS Deoria and others [2002 (49) ALR 800]****. Relevant paragraphs-16 to 19 are being quoted below :-*

"16. As regards the third contention of the petitioners, it is apparent from the records of this case as well as from the contention of the parties that the appointments of the petitioners were not as per Rules. There were only fourteen sanctioned posts of class-IV employee and the District Inspector of Schools, Deoria was not at all applied to grant financial sanction for four additional posts, which has been made against the rules. The contention of the petitioners that their appointments have been made on the posts in accordance with law by the Principal of the institution, is not correct.

17. Apart from the above, under Regulation 101 it is mandate upon the appointing authority not to pay the non-

teaching staff except without prior approval of the District Inspector of Schools. The use of word shall in the Regulation 101 makes it obligatory upon the appointing authority to obtain prior approval from the D.I.O.S. before filling any vacancy of non-teaching post in the institution. Further use of word 'except' with prior approval of the D.I.O.S. do not give discretionary power to the appointing authority, Regulation 101 is as under:

"101. The appointing authority shall not fill any vacancy in the non-teaching staff of a recognized aided institution except with the prior approval of the inspector."

18. In Amit Kumar v. D.I.O.S., Jaunpur [2001 (42) ALR 153.] , it has been held by a Single Judge of this Court that the Regulation 101 cannot be treated to be directory and this interpretation would result in giving power to the appointing authority for making appointment and thereafter obtain financial sanction. This Court held:

"If Regulation 101 is treated to be directory then the appointing authority could make appointment on non-teaching post even without prior approval of the DIOS. It would result in giving power to the appointing authority to make appointment first and thereafter obtain financial approval. This was not the intention of legislature or the Rule making authority. And it clearly intended that before makingany appointment the appointing authority must obtain prior approval of the DIOS. The legislative intent has to be given effect to while interpreting regulatory provisions of Regulation 101. Regulations 103 to 106 further make it clear that the Regulation 101 cannot be construed as permissive or directory. Further the procedural safeguard contained in Regulation 101, making it obligatory for the appointing authority in matter of making appointment on non-teaching post, not to fill the vacancy except with the prior approval of the DIOS, has an element of public interest."

19. Since the petitioners have contended that they are still working since the date of their appointment by the Principal of the institution, they may raise their prayer of salary before the Principal of the institution. This Court will not regularize their appointments by directing the D.I.O.S. to grant financial sanction to the appointments of the petitioner in the aforesaid circumstances."

(vii) ***Shailendra Pratap Singh Vs. State of U.P. and others [2024 SCC OnLine All 2138]****. Relevant paragraphs-3, 32 and 33 are being quoted below :-*

"3. Factual matrix of the case is that a post of clerk became vacant due to retirement of regular clerk, namely, Mohan Lal Sharma in the Uchchatar Madhyamik Vidyalaya, Para Hamidpur Pratapgarh (hereinafter referred to as 'the institution'), on 30.9.2011. Thereafter, the then Manager of the Committee of Management moved an application on 4.11.2011, to the District Basic Education Officer (hereinafter, referred to as 'DBEO') for granting permission for filling up the post of Clerk. On such application, the 'DBEO' granted permission and, thereafter, the post of Clerk (Class-III) was advertised in the newspaper as per the provisions of UP Recognised Basic Schools (Junior High Schools) (Recruitment of Conditions of Service of Ministerial Staff and Group D Posts), Rules 1984 (hereinafter referred to

as 'the Rules 1984'). The qualification and other description as an eligibility criterion, was also mentioned in the advertisement and on 30.11.2011, the Manager i.e opposite party no.4 sent a letter to the 'DBEO' for providing Observer on 4.12.2011, i.e., the date fixed for interview but the same remained unheard. Again on 27.12.2011, a letter was sent for providing Observer/Nominee for 1st of January 2012 and in response, after the expiry of the aforesaid date, the DBEO informed to the opposite party no.5 that since, assembly election is notified, therefore, the appointment process would be conducted after the election is denotified. After the election was over again, the date of interview was fixed on 1st of April 2012 and it was intimated by the opposite party no.4, vide letter dated 3.3.2012 to the DBEO and, thereafter, on 29.3.2012, 28.6.2012, 11.7.2012 and 24.7.2012, the same request was repeated before the DBEO while fixing the dates for interview but, ultimately, when the Entire effort went unsuccessful, the interview was held on 29.7.2012 and the selection so made was placed before the Committee of Management, who sent the papers before the opposite party no.2 for approval, which was received in the office of opposite party no.2, on 14.8.2012, which is undisputed fact.

32. Now the question crops up that whether, the institution in question is governed with the provisions of Rules, 1984 or the same is governed with the provision of the Act, 1921. The undisputed fact is that uptill 01.11.1982, the institution was running at the level of Junior High School and by virtue of an order dated 02.11.1982, this has been upgraded, however, there is no overt provision in the Rules, 1984 for appointment of Group D posts, in such institution, but time and again this issue was brought up before this Court and ultimately, this was decided in the case of Manju Awasthi and Ors. Vs. State of U.P. and Ors, reported in Manu/UP/3739/2012 wherein, in the paragraphs 77,78 and 82, the Division Bench has very categorically held that the 'Government Order dated 24.11.2001 can be supported only to the extent of payment of salary at the Junior High School level and the ancillary power thereunder, but the Basic Siksha Adhikari cannot exercise any administrative control over the institution, except to the extent of payment of salary.' Paragraphs 77, 78 and 82 of the abovesaid judgment are extracted as under:-

"We are of the view that the Government Order dated 24.11.2011 can be supported only to the extent of payment of salary of teachers at the Junior High School level and ancillary power thereunder. However, the Basic Shiksha Adhikari cannot exercise any administrative control over the institution except to the extent of payment of salary nor can make any appointment in view of the applicability of 1921 and 1982 Acts. The judgment of Hon'ble Single Judge in Committee of Management Beni Singh Vaidīc Vidyawati Inter College, Baluganj, Agra and others (supra) to that extent cannot be approved. It is relevant to note that against the judgment of Hon'ble Single Judge dated 7.9.2005 in Committee of Management Beni Singh Vaidic Vidyawati Inter College, Baluganj, Agra and others (supra) special appeal No. 1419 of 2005, Agam Prakash Deepak. State of U.P., was filed, which appeal was also dismissed on 29.11.2005.

78. The Special Appellate bench considered the submissions of the appellant

only qua the qualifications of the Assistant Teacher and laid down that Assistant Teacher must possess the training course recognised by the State Government hence, the appellant could not have been appointed as Assistant Teacher hence, the appeal was dismissed. No other ratio was laid down in the said judgment.

82. The selections made by the Basic Shiksha Adhikari under the provisions of U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978, have rightly been quashed in the writ petitions by Hon'ble Single Judge on the ground that after up-gradation of a Junior High School, selection/appointment is to be made in accordance with 1921 Act and U.P. Act No. 5 of 1982. As noticed above, we have found that the State Government as well as the educational authorities have not been properly construing the provisions of Section 7A and under the misconception, they have granted recognition to the institution under Section 7A, for the first time whereas recognition under Section 7A is to be granted to an existing recognised institution within the meaning of Section 2(b). We thus, feel that certain directions are necessary to be issued in this context. We have already observed that our observations and interpretation of Section 7A in no manner shall affect any recognition already granted to an institution under Section 7A and institution which has been granted recognition shall be treated to be duly recognised but necessary action which has not yet been taken with respect to the said institution is required to be taken by the educational authorities as per our observation. The appeals are disposed of with following directions:

1. The judgment of Hon'ble Single Judge Impugned in the appeal holding that after up-gradation of a Junior High School to High School, appointment and selection on the post of Head Master shall be made in accordance with 1921 Act and U.P. Act No. 5 of 1982 are upheld and prayer of the appellant to set aside the judgment of Hon'ble Single Judge is refused.

2. The recognition/permission under Section 7A shall be granted to an institution which is already recognised institution within meaning of Section 2(b) of 1921 Act.

3. Recognition to a junior high school as High School is to be granted in accordance with the provisions of Section 7(4) of 1921 Act.

4. The State is fully empowered to grant recognition under Section 7(4) or Section 7A without finance (Vitta vihin).

5. After an institution is granted recognition for the first time as a High School minimum necessary post of teachers and Head Master is contemplated to be created even though without finance (Vitta Vihin) so as to fill up those posts in accordance with 1921 Act and 1982 Act.

6. Against the recognition/permission granted under Section 7A, the appointment of a part time teacher or instructor as contemplated under Section 7A(a) shall be continued to be made by the management as per the Government Orders issued from time to time regulating their terms and conditions.

All the appeals are disposed of accordingly.

Parties shall bear their own costs."

33. While dealing with the aforesaid issue, the coordinate division bench of this Court at Allahabad has also sketched out the difference in the judgment and order passed in earlier Special Appeal, thereby holding that the same considered the qualification of Assistant Teacher and no other ratio was laid down in the said judgement and therefore, this was open to the coordinate bench to dealt with the issue, regarding the applicability of the other provisions. The law laid down in the case of Manju Awasthi and Ors. Vs. State of U.P. and Ors still holds filled and therefore, the institution in question is covered with the provisions of the Act, 1921."

20. After having heard the rival submission of learned counsel for the parties, I perused the material on record as well as law report cited by the parties.

21. Arguments are concluded and judgment is reserved."

2. Initially, the institution was junior high school, Para Hamidpur, District Pratapgarh. The institution was granted recognition for high school vide order dated 2.11.1985 and thereafter, the institution was upgrade to the level of intermediate college by granting recognition under Section 7(4) of U.P. Intermediate Education Act, 1921.

3. The petitioner was appointed as Assistant Teacher in graduate scale on adhoc basis till the appointment of regularly selected candidate by the Board on 3.8.1991. During the course of appointment, the petitioner was also enrolled as a regular student for Master of Education course in Dr. Ram Manohar Lohiya Avadh University, Faizabad and completed M.Ed. in 1994. She was also working in the National Urban Cooperative Bank Limited, Pratapgarh from 16.4.1992 to 18.9.1992 on the post of Clerk-cum-Typist and her service was terminated, then she filed Writ Petition No.7000 (S/S) of 1992, challenging her termination.

4. The petitioner also filed Writ Petition No.4534 (S/S) of 1993, claiming salary w.e.f. 30.8.1991 in the Bank and this Court directed the respondents to allow her to work and pay her salary and the said writ petition was subsequently dismissed as infructuous.

5. On 30.6.2003, the regular Headmaster of the school retired from his post after completing his superannuation. The District Basic Education Officer granted permission for advertisement of the post of Headmaster in two newspapers on 18.8.2003. The post of Headmaster was advertised in two newspapers i.e. Dainik Jagran and Swatantra Bharat on 22.8.2003.

6. The respondent No.3 wrote for providing Observer in the selection scheduled to be held on 21.9.2003. The Assistant Basic Education Officer was directed by the respondent No.1 to participate in the selection. A selection committee was constituted under 1978 Rules and the petitioner-Km. Poonam Sharma was selected in the selection so held on 21.9.2003.

7. Papers were sent for grant of approval and the District Basic Education Officer, by granting approval on 21.10.2003, issued direction to appoint the petitioner and in pursuance thereof, the

petitioner joined by issuing appointment letter on 21.11.2003 and when no payment of salary was made, the petitioner filed Writ-A No.2823 of 2004, alleging her appointment made under 1978 Rules, in spite of the fact that the institution has been upgraded to high school and intermediate by granting recognition under Section 4 of the U.P. Intermediate Education Act.

8. The moot question for consideration is that whether the appointment of the petitioner has been made in accordance with the Act and Rules of U.P. Intermediate Education Act and U.P. Act No.5 of 1982 or not.

9. A Basic School or a Junior High School is different from a High School or an Intermediate College. On the plain language of these definitions the same institution cannot be called a basic school or a Junior High School as well as a High School or an Intermediate College. Each one has a distinct legal entity. Once a basic school or a Junior High School being upgraded as a High School or an Intermediate College the identity of the institution known as basic school or Junior High School is lost. It ceases to exist as a legal entity and in its place another institution with a new legal entity comes into being. One cannot be equated with the other.

10. It is admitted by the parties that the appointment of the petitioner has been made as a Headmistress in an institution, which has been upgraded to intermediate college, therefore, consideration for payment of salary as well as appointment under 1978 Rules is in question that whether appointment after upgradation to another college can be made under 1978 Rules or not.

11. It would further be seen that administration including constitution of Committee of Management of intermediate college recognized under U.P. Act No.2 of 1921 is to be carried out in accordance with a Scheme of Administration prepared u/s 16-A of the said Act and this Section does not apply to basic school or a Junior High School. For all these, junior high school which has been upgraded as high school cannot and does not automatically become payable to the recognized high school. Suppose after a basic school or a junior high school has been upgraded as a recognized high school, the State Government stops payment of the amount of maintenance grant which was being paid to the basic school or the junior high school, can the recognized high school claim as a matter of right that the said amount has become automatically payable to it. The answer, in the absence of any specific provision permitting such automatic transformation, so to speak will, in my opinion, have to be in the negative.

Such a recognized High School will have to wait till maintenance grant payable to it as a recognized high school has been fixed as contemplated by Section 2(c) of U.P. Act 24 of 1971. Consequently, even if the maintenance grant payable to a basic school or a junior high school is continued to be paid to those who were managing the erstwhile basic school or junior high school it cannot be said that the upgraded recognized high school is receiving any maintenance grant as defined in Section 2(c) of U.P. Act 24 of 1971.

12. Sri Anurag Kumar Singh, counsel for the review applicant invited attention of this Court to various definitions as contained in Act, 1972, the Rules, 1978, the U.P. Junior High School (Payment of

Salaries of Teachers and other Employees) Act, 1978, the provisions of the Act, 1921 and the U.P. Secondary Education Services Selection Boards Act, 1982 and has argued that the claim on the post of the Head of the Institution do not deserve any payment of salary under U.P. Act No.24 of 1971, such recognition was granted *vitta vihin*.

13. Once a junior high school stands upgraded as a high school or an intermediate college, then in that event the post of the Head of the Institution has to be filled up in accordance with the procedure prescribed under the Act, 1921 read with Act, 1982. In such eventuality the junior high school looses its identity as such and upon upgradation of the institution, there cannot be any appointment of a Headmaster in a junior high school under Rules 1978.

14. Submission of Sri Sharad Pathak, Advocate in respect of the status of the institution as still to be that of a junior high school for the purposes of appointment on the post of Head of the institution, has to be rejected for the reasons hereinabove.

15. The word "upgradation" in its normal connotation means improvement; enhancement of status; more efficient. The word "grade" is derived from the latin word 'gradus' which means rank, position in a scale, a class or position in a class according to the value. It means a degree in the scale of rank, dignity, proficiency. The word 'upgradation' therefore means improvement in degree, raising of status, rank, quality or in value. It is an improvement in proficiency and reflects a rising gradient. The institution was admittedly a junior high school and was raised to the status of a high school in 1985 and to that of intermediate college in the year 2002. It is undisputed that upon being upgraded as a high school, the institution has been recognized as such under the provisions of Act, 1921. This is undisputed position, therefore, clearly establishes that the institution ceases to be a junior high school and for the purposes of appointment of Head of the institution, the appointment can only be made by resorting to the provisions as indicated hereinabove.

16. The above paragraphs clearly demonstrate the fact that once a basic school or a Junior High School being upgraded as a High School or an Intermediate College the identity of the institution known as basic school or Junior High School is lost. It ceases to exist as a legal entity and in its place another institution with a new legal entity comes into being. One cannot be equated with the other.

17. The basic issue raised in the writ petition is that the appointment of the petitioner has been made under U.P. Recognised Basic Schools (Junior High Schools) (Recruitment And Conditions Of Service Of Teachers) Rules, 1978. A junior high school when granted recognition under Section 7-A(a) of U.P. Intermediate Education Act, 1921 and upgraded to high school, if any vacancy of Teacher arises in such institution subsequently whether it would be filled in following procedure laid down under U.P. Basic Education Act, 1972 read with U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 or for administrative and other purposes the institution would be deemed to be governed by provisions of U.P. Intermediate Education Act, 1921 and recruitment would be governed by provisions of U.P. Secondary Education Services Selection Board Act, 1982.

18. In my opinion, once Institution is upgraded or recognition upto High School is granted under Section 7-A(a), provisions of U.P. Intermediate Education Act, 1921 would be attracted and in such a case any vacancy of teaching staff caused in such Institution, would have to be filled in as per the provisions of U.P. Secondary Education Services Selection Board Act, 1982.

19. The judgments relied upon by the review applicant are fully applicable to the facts and circumstance of the present case and the judgment relied upon by learned counsel for the petitioner in the case of **Vinod Kumar and others Vs. Union of India and others** has not applicability to the case in hand and is distinguishable in nature.

20. In view of the overall facts and circumstances of the case, I am of the considered opinion that the appointment of the petitioner made on the post of Headmistress is totally against the provision of U.P. Intermediate Education Act, 1921 and U.P. Secondary Education Services Selection Board Act, 1982, therefore, the petitioner is not entitled for the appointment made against the provisions referred hereinabove, therefore, the petitioner is not entitled for issuance of writ of mandamus, directing for payment of salary to her.

21. In view of the above, the writ petition fails and is hereby **dismissed**.

(2025) 8 ILRA 607
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.08.2025

BEFORE

THE HON'BLE MANOJ KUMAR GUPTA, J.

THE HON'BLE RAM MANOHAR NARAYAN MISHRA, J.

Special Appeal Defective No. 570 of 2025

Pankaj Kumar & Ors. ...Appellants
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Appellants:
Siddharth Khare, Sr. Advocate

Counsel for the Respondents:
Akanksha Sharma, C.S.C.

Issue for Consideration

Application of the principle of 'no work no pay', when though, the appellant/petitioner was ready and willing to offer services, but was prevented from doing so by the respondents themselves.

Headnotes

(A) Service law – Payment of salary – Principle of 'no work no pay' – Application – Earlier, the order terminating service of the petitioner was set aside, which was confirmed upto Supreme Court – Petitioner was given joining after issuance of notice in contempt proceeding – Another writ petition was filed claiming salary from 20.02.2024 to 31.12.2024 – Writ court upheld the claim for payment of arrears of salary for the period of two and half months after joining, but rejected the claim for the preceding period on ground that the respondents were availing the legal remedies and it was not a case of intentional delay in complying with the direction of the writ court – Later part of writ order was challenged.

Held : The aspect of 'no intentional delay to comply with the direction' was relevant only for deciding whether the respondents should be punished under the Contempt of Courts Act. It would not wipe out the liability incurred under the order of the writ court – The principle of 'no work no pay' is not of universal application, but depends on facts of each case. As in the instant case, though, the appellants were ready and willing to offer their services, but were prevented from so doing by the respondents

themselves, they cannot be permitted to take shelter behind the doctrine of 'no work no pay'. [Paras 12 and 14] (E-1)

Case Law Cited

Sobha Ram Raturi v. Haryana Vidyut Prasaran Nigam Ltd. and Others, 2016 (16) SCC 663 – **referred to.**

List of Keywords

Principle of 'no work no pay'; BTC Certificate; Termination of service; Reinstatement; Joining; Salary; Liability to pay salary; Legal remedy; Intentional delay; Condonable delay; Dismissal of SLP; Universal application.

Case Arising From

Judgment and Order dated 11.04.2025 passed in Writ A no. 4160 of 2025 to the extent it denies salary to the appellants for the period 20.02.2024 to 15.10.2024, on the principle of 'no work no pay'.

(Delivered by Hon'ble Manoj Kumar Gupta, J.)
&
(Hon'ble Ram Manohar Narayan Mishra, J.)

A. Civil Misc. Delay Condonation Application No. 01 of 2025

1. The appeal is reported to be beyond time by 85 days.

3. Cause shown for the delay is found to be sufficient.

4. Accordingly, the delay is condoned.

5. The application is allowed.

6. Office is directed to allot regular number to the instant appeal.

B. Order on Memo of Appeal

1. Heard Shri Ashok Khare, learned Senior Counsel assisted by Shri Siddharth Khare, Advocate for the appellants, Ms. Akansha Sharma, learned counsel for the respondents No. 2, 3 & 4 and Shri Rajiv Gupta, learned Addl. Chief Standing Counsel for the State-respondent.

2. The present *intra court* appeal is directed against the order of learned Single Judge dated 11.04.2025 in Writ-A No. 4160 of 2025 to the extent it denies salary to the appellants (the petitioners in the writ petition) for the period 20.02.2024 to 15.10.2024, on the principle of 'no work no pay'.

3. The facts relevant for deciding the said controversy are as follows:

4. The appellants were appointed as Assistant Teachers in pursuance of appointment orders dated 02.07.2016. After about seven years, by orders dated 05.09.2023 and 08.09.2023, the District Basic Education Officer, Moradabad, terminated the services of the appellants on the ground that they did not possess BTC certificate on the date of filing of the online application for their recruitment in service. The appellants, being aggrieved thereby, filed Writ-A Nos. 15776 of 2023 and 16010 of 2023, which were disposed of by a Single Judge Bench by a common judgment dated 29.01.2024. The termination orders were set aside, and the respondents were directed to reinstate the appellants on their respective posts, within three weeks from the date of judgment. The operative part of the judgment, in paragraphs No. 29, 30 and 31, is extracted below:

"29. Accordingly impugned orders dated 05.09.2023 and 08.09.2023 are

hereby set aside. Respondents are directed to permit petitioners to join their services at their respective places within three weeks from today. Petitioners are directed to submit separate certified copy of this judgment within a week from today.

30. The writ petitions are disposed of with further direction that from the period of impugned orders till the date of joining, since petitioners have not worked, therefore, in view of principle of "no work no pay" they will not be entitled for salary for that period, however, their services will be treated in continuity on notional basis.

31. In aforesaid circumstances, it is also observed that in further recruitment process a column, namely, "status of result" may also be included in the application form so as to facilitate the candidates whose result are awaited and likely to be declared in a short period, if there is no legal impediment."

5. The respondents challenged the aforesaid judgment in special appeals, which were dismissed by a common judgment and order dated 24.04.2024. The respondents, still aggrieved, carried the matter to the Apex Court. The Special Leave Petition (Civil) Diary No. 34039 of 2024, filed by the respondents, was also dismissed by order dated 23.08.2024, which is as follows:

"1 Delay condoned

2 Intervention allowed

3 There is no dispute that as on the extended date for filing applications, the respondents were duly qualified. It is not in dispute that the Government Order dated 18th December 2015 extending the time to file applications by 15th January, 2016 was not under challenge before the High Court. Further, there is no dispute that as on the extended date for filing applications, the respondents were duly qualified and that they were duly selected for appointment after participating in a competitive selection process. Also, it cannot be overlooked that the respondents put in more than 7 (seven) years of service before they were terminated. The Division Bench of the High Court, considering these factors, rightly upheld the decision of the learned Single Judge while at the same time clarifying that such decision shall not be treated as a precedent.

4 We are, thus, not inclined to interfere with the impugned judgment(s) and order(s) of the High Court; hence, the special leave petitions are dismissed.

5 Pending applications, if any, stand disposed of"

6. As the appellants were not given joining during the said period, some of the appellants herein filed Contempt Application (Civil) No. 1655 of 2024. On 12.08.2024, the contempt court issued notices to the opposite parties therein, namely Secretary, Board of Basic Education, U.P. and District Basic Education Officer, Moradabad, and required them to comply with the order of the writ court or appear personally for framing of charges. While the contempt proceedings were pending, the appellants were permitted to join on 14.10.2024. Thereafter, an affidavit of compliance was filed in the contempt proceedings. The appellants, who were paid salary only from 01.01.2025, raised the plea that full compliance of the judgement was not

made. But the said plea was not examined by the contempt court, and it was left open to the appellants to exercise the legal remedies available to them in this regard. The contempt application was disposed of observing that, since, the respondents were pursuing legal remedies available to them under law and, therefore, it was not a case of willful disobedience. The relevant part of the order of the contempt court dated 15.10.2024 is extracted below for ease of reference:

"It has been argued by the counsel for the applicants that under the orders passed by the Court, the opposite parties were under an obligation to allow the applicants to join within a period of three weeks from the date of the order. However, the applicants have been allowed to join only by order dated 14.10.2024 passed by the concerned District Basic Education Officer. It has been argued that therefore, the applicants are entitled to salary from February, 2024 till date.

A perusal of the affidavit filed by the opposite parties shows that against the order passed by the Writ Court, Special Appeals were filed by the District Basic Education Officer which were dismissed by order dated 24.04.2024 and subsequently, Special Leave Petition was filed before the Supreme Court which was also dismissed by order dated 23.08.2024 passed by the Supreme Court.

As the opposite parties were pursuing remedies against the order passed by the Writ Court, no wilful disobedience can be imputed to the opposite parties in failing to allow the applicants to join within three weeks as stipulated in the order of the Writ Court. So far as the claim of the applicants for arrears of salary from February, 2024 till the date of their joining is concerned, the applicants may exercise other legal remedy available to them in law. It is not a case to proceed under the Contempt of Courts Act, 1971.

The contempt application is disposed of."

7. The appellants, thereafter, filed Writ-A No. 4160 of 2025, claiming salary from 20.02.2024 to 31.12.2024 and from 01.09.2023 to 05.09.2023, with interest and consequential benefits. The claim for salary from 20.02.2024 to 14.10.2024 i.e., for almost 8 months, was on the ground that the respondents were under mandate of court to permit the appellants to join their services at their respective places within 3 weeks from the date of judgment i.e., 29.01.2024. But since their joining was delayed by the respondents themselves, they cannot shirk from their liability to pay salary for the said period. The salary for subsequent period of two and half months (15.10.2024: date of actual joining to 31.12.2024) was claimed on the ground that salary for the said period was not paid, despite the appellants having worked in pursuance of the joining on 15.10.2024.

8. The writ court has upheld the claim for payment of arrears of salary for the period of two and half months after joining, but has rejected the claim for arrears of salary for the preceding period, and which part of the order is under challenge. The learned Single Judge has held that the respondents were availing the legal remedies and it was not a case of intentional delay in complying with the direction of the writ court. The writ court has also taken note of the fact that immediately after dismissal of the SLP, the appellants were permitted to join and,

therefore, the delay of eight months was found to be condonable. Relevant part of judgement of learned Single Judge is extracted below:

"12. In the present case, this Bench has passed judgment dated 29.01.2024. Special Appeals were filed with small delay which were condoned and all Special Appeals were later on dismissed vide order dated 24.04.2024 and thereafter Special Leave Petition was also filed before Supreme Court with a short delay, which was also condoned by Supreme Court and Special Leave Petition was dismissed vide order dated 23.08.2024. Therefore, within a very short period of seven months, challenge upto the Supreme Court was concluded and judgment dated 29.01.2024 was confirmed. It cannot be held that respondents have intentionally delayed to comply the directions passed by this Court. They have a legal remedy to challenge the judgment passed by this Court upto Supreme Court and they have availed it.

13. The Court also takes note that delay in filing Special Appeals and Special Leave Petition was condoned as well as contempt proceedings were also dropped. Therefore, the delay to allow petitioners to join their services has sustainable reasons.

14. The Court also takes note that immediately after dismissal of Special Leave Petition, i.e., 23.08.2024, petitioners were allowed to join on 14.10.2024, i.e., within about eight weeks, therefore, such delay is also condonable. In view of above, prayer for payment of salary for said period has no legal basis."

9. We have heard learned counsel for the parties and perused the pleadings and the material placed on record.

10. Indisputably, the writ petition filed by the appellants challenging termination of their services was allowed by judgment dated 29.01.2024. The respondents were directed to permit the appellants to **'join their services at their respective places within three weeks'** from the date of judgment.

11. The respondents being aggrieved thereby were well within their right to avail legal remedies available to them. However, despite the fact that there was no stay in their favour in Special Appeal or SLP, they chose not to comply with the order of the writ court, anticipating that the ultimate outcome may be in their favour. The contempt court, having regard to the facts of the case, has found it not to be a case of willful disobedience, so as to punish the respondents under the Contempt of Courts Act but it would not mean that the contempt court has rejected the claim of the appellants for salary during the said period. In fact, as noted above, the said claim was left open for being agitated by the appellants in separate proceedings.

12. The learned Single Judge, while examining the claim, was influenced by the fact that during this period the respondents have been pursuing their legal remedies and, thus, there was no intentional delay to comply with the direction given by the writ court. The said aspect was relevant only for deciding whether the respondents should be punished under the Contempt of Courts Act. It would not wipe out the liability incurred under the order of the writ court.

13. Here, it is pertinent to note that in the previous round of litigation, the writ court itself denied salary to the appellants for the period prior to their reinstatement pursuant to its judgement. Now, after the

judgement of the writ court, denying salary to them on the principle of 'no work no pay', albeit the respondents were at fault, would be too harsh.

14. The principle of 'no work no pay' is not of universal application, but depends on facts of each case. As in the instant case, though, the appellants were ready and willing to offer their services, but were prevented from so doing by the respondents themselves, they cannot be permitted to take shelter behind the doctrine of 'no work no pay'.

15. The view taken by us also finds support from the judgement of Supreme Court in **Sobha Ram Raturi vs. Haryana Vidyut Prasaran Nigam Ltd. and Others, 2016 (16) SCC 663**. In the said case, the employee was due to retire on 31.12.2005, but he was illegally retired on 31.12.2002. The order of retirement was quashed by the writ court, but back wages was denied on the principle of 'no work no pay'. The order of writ court was upheld by the Division Bench of the High Court in Letters Patent Appeal. The Supreme Court, in challenge to the aforesaid judgments by the employee held that the employer being at fault, the employee cannot be denied wages for the period in question on the principle of 'no work no pay'. The relevant observations contained in this behalf in paragraphs 3 and 4 are extracted below:

3. Having given our thoughtful consideration to the controversy, we are satisfied, that after the impugned order of retirement dated 31-12-2002 was set aside, the appellant was entitled to all consequential benefits. The fault lies with the respondents in not having utilised the services of the appellant for the period from 1-1-2003 to 31-12-2005. Had the appellant been allowed to continue in service, he would have readily discharged his duties. Having restrained him from rendering his services with effect from 1-1-2003 to 31-12-2005, the respondent cannot be allowed to press the self-serving plea of denying him wages for the period in question, on the plea of the principle of "no work no pay".

4. For the reasons recorded hereinabove, we are satisfied, that the impugned order passed by the High Court, to the limited extent of denying wages to the appellant, for the period from 1-1-2003 to 31-12-2005 deserves to be set aside. The same is accordingly hereby set aside."

16. In view of the above, we **allow** the instant appeal and set aside the judgment of learned Single Judge, to the extent, it denies salary for the period 20.02.2024 to 15.10.2024.

17. We direct the respondents to pay salary to the appellants from 20.02.2024, the date on which, period of three weeks expired from the date of judgment of learned Single Judge i.e., 29.01.2024.

(2025) 8 ILRA 612
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 28.08.2025

BEFORE

THE HON'BLE ARUN BHANSALI, C.J.
THE HON'BLE KSHITIJ SHAILENDRA,J.

Special Appeal No. 788 of 2025

Alok Kumar Yadav ...Appellant
Versus
Sri Ashish Kumar Pandey ...Respondent

Counsel for the Appellant:

Ashish Agrawal, Uttam Singh

Counsel for the Respondent:

Issue for Consideration

Maintainability of Special Appeal against the order of Single Judge declining to initiate contempt proceeding.

Headnotes

(A) Contempt Law – Appeal against dismissal of contempt – Maintainability – Order was passed declining to initiate proceeding for contempt – Validity challenged – Appellant relied upon Tasneem Fatima's case passed by Division Bench – Binding effect of Tasneem Fatima's case as president felt into consideration:

Held : Appeal against order passed refusing to initiate proceedings for contempt/dropping of contempt proceedings is not maintainable except for exception carved out in the case of Midnapore (Supreme Court) – So far as the judgement in the case of Tanseem Fatima is concerned, the Division Bench without referring to any of the binding precedents came to the conclusion that the judgement in the case of Midnapore on the question of maintainability of Special Appeal under Chapter VIII Rule 5 of the Rules of 1952, has no application and provisions of Chapter VIII Rule 5 of the Rules of 1952 do not bar appeal against order dismissing the contempt petition, which judgement apparently on account of ignoring binding precedents is *per incuriam* and cannot be pressed into service as a precedent. [Paras 15 and 16] (E-1)

Case Law Cited

Tasneem Fatima v. Sri Amit Mohan Mishra: 2025 : AHC-LKO:11415-DB; Midnapore Peoples' Co-operative Bank Ltd. & Ors. v. Chunilal Nanda & Ors., (2006) 5 SCC 399; Jagdamba Prasad v. Balgovind and 10 Others, 2016: AHC:77023-DB; Sheo Charan v. Naval and Others, 1997 SCC OnLine All 1136; Hub Lal Yadav v. Mahendra and Others, 2017 ADJOnline 0638; Vinod Kumar Gupta and Ors. v. Veer Bahadur Yadav and Ors., 2023 (7) ADJ 107; Subhash Chandra v. Srikant Goswami Posted Managing Director, Sahkari Gram Vikas Bank Ltd. Lucknow And 2 Others, 2024:AHC-LKO:58884-DB; Bhanu Pratap Singh VS. Vikrant Vir and Ors.: 2025:AHC:4796-DB – **referred to.**

List of Acts

Allahabad High Court Rules, 1952 – Ch. VIII R. 5; Contempt of Court Act, 1971 – S. 19.

List of Keywords

Wilful disobedience; Dismissal of contempt application; Maintainability of appeal; President; Binding effect; *Per incuriam.*

Case Arising From

Judgment and Order dated 30.07.2025 passed in Contempt Application (Civil) no. 3759 of 2025.

(Delivered by Hon'ble Arun Bhansali, C.J.
&
Hon'ble Kshitij Shailendra, J.)

1. This appeal under Chapter VIII Rule 5 of Allahabad High Court Rules, 1952 (for short, 'the Rules of 1952') is directed against order dated 30.07.2025 passed by learned Single Judge in Contempt Application (Civil) No. 3759 of 2025 whereby, the learned Single Judge based on the order passed qua which contempt was alleged, pleadings in the affidavit and the documents annexed with the same came to the conclusion that the same did not reveal any wilful disobedience and consequently dismissed the contempt application.

2. At the outset, learned counsel for the appellant was put to a query pertaining to the maintainability of the appeal as office has raised objection in this regard.

3. Learned counsel for the appellant, by relying on an order of co-ordinate Bench of this Court in **Tasneem Fatima Vs. Sri Amit Mohan Mishra: 2025:AHC-LKO:11415-DB,** made submissions that the Division Bench with reference to the

provisions contained in Chapter VIII Rule 5 of the Rules of 1952 has come to the conclusion that there is no bar in maintaining the special appeal and, therefore, the special appeal is maintainable.

4. An attempt was made to make submissions pertaining to the merits of the case so as to question the dismissal of the contempt application.

5. We have considered the submissions made by learned counsel for the appellant and have perused the order passed in the case of **Tasneem Fatima (supra).**

6. The issue of maintainability of appeal against dismissal of contempt application under Chapter VIII Rule 5 of the Rules of 1952, is not a new issue. The said aspect has been repeatedly argued, deliberated upon and it has consistently been ruled that the appeal under Chapter VIII Rule 5 of the Rules of 1952 against dismissal of contempt petition, is not maintainable.

7. Hon'ble Supreme Court in **Midnapore Peoples' Co-operative Bank Ltd. & Ors. V. Chunilal Nanda & Ors.: (2006) 5 SCC 399,** has laid down the following qua the maintainability of appeal and the remedy available to a party aggrieved of the order passed by the contempt Court, as under:

"11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarised thus:

I. An appeal under Section 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.

II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.

III. In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of "jurisdiction to punish for contempt" and, therefore, not appealable under Section 19 of the CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under Section 19 of the Act, can also encompass the incidental or inextricably connected directions.

V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved

person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases).

The first point is answered accordingly."

8. The Hon'ble Supreme Court while dealing with the appeals against orders in contempt proceedings inter *alia* laid down in Clause II above, that neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating a contemnor is appealable under Section 19 of the Contempt of Courts Act, 1971 and further observed that in special circumstances, those orders may be open to challenge under Article 136 of the Constitution of India.

9. Under Clause V, a window was kept open by Hon'ble Supreme Court that in cases if the High Court decides an issue or makes any direction relating to the merits of the dispute between the parties in a contempt proceedings, the aggrieved party can question the same in an intra court appeal or under Article 136 of the Constitution of India.

10. It would be seen that it was categorically laid down that appeal against an order declining to initiate proceedings for contempt or an order dropping the proceedings for contempt, the appeal is not maintainable and even qua intra court appeals, the power has been restricted qua nature of orders as indicated herein before.

11. The issue is no more res integra as this Court has repeatedly laid down in **Jagdamba Prasad Vs. Balgovind and 10 Others: 2016: AHC:77023-DB, Sheo Charan Vs. Naval and Others 1997 SCC OnLine All 1136, Hub Lal Yadav Vs. Mahendra and Others 2017 ADJOnline 0638** that an order passed by contempt judge in exercise of powers of his contempt jurisdiction whereby the contempt proceedings have been discharged cannot be made the subject matter of intra court appeal.

12. In **Vinod Kumar Gupta and Ors. v. Veer Bahadur Yadav and Ors.: 2023 (7) ADJ 107,** again the Division Bench after taking into consideration the entire law on the subject and referring to various precedents, came to the following conclusion:

"32. While applying the above noted judgment in the facts of the present case, now this Court has to bestow its anxious consideration as to whether the present intra-court appeal is maintainable against the judgment and order of the learned Single Judge while declining to initiate contempt proceedings against the opposite parties.

33. As noticed above, the Hon'ble Apex Court and this Court has consistently held that an intra-court appeal is not maintainable against the order of the learned Single Judge exercising contempt jurisdiction in a contingency, when the contempt proceedings are not being initiated. The reliance placed upon the judgment in the case of Durga Nagpal (supra) is misconceived and misplaced as in the said case, the Hon'ble Judges while exercising appellate jurisdiction were confronted with the situation where the

contempt court reviewed its own order after entertaining miscellaneous application for modification of the final judgment. The Division Bench opined that when accused are discharged and proceedings are closed, miscellaneous application for modification is not maintainable. In the said perspective, the Special Appeal was held to be maintainable. Since the present case originates from a judgment and order of the contempt court declining to exercise contempt jurisdiction, thus, the said judgment is of no aid to the appellants.

34. Accordingly, we are of the firm opinion that the present intra-court appeal against the judgment and order of the learned Single Judge dated 17.03.2023 declining to initiate contempt proceedings is not maintainable under Chapter VIII Rule 5 of the Rules of the Court."

13. Recently, another Division Bench to which one of us (Arun Bhansali, CJ.) was a member in **Subhash Chandra Vs. Srikant Goswami Posted Managing Director, Sahkari Gram Vikas Bank Ltd. Lucknow And 2 Others: 2024:AHC-LKO:58884-DB,** again after taking into consideration the entire law laid down as under:

"69. The pith and substance of the aforesaid discussion, the legal principles involved and circumstances when an appeal may lie under Section 19 of the Contempt of Courts Act, 1971 and when a Special Appeal may lie from an order passed in contempt jurisdiction can be summarized as under:-

(A) Section 19 (1) of the Contempt of Courts Act can be invoked only when the Contempt Court has exercised its jurisdiction to punish for contempt. The essence of this provision is to provide a remedy against decision where the court has taken a definitive action to penalize a contemnor. This includes orders that impose fines, imprisonment, or other punitive measures directly related to the contemptuous behavior. Interlocutory orders, which do not entail punishment for contempt, do not fall within the ambit of Section 19. Such orders may include directions to produce documents, file affidavits, or procedural directives necessary for the continuation of the contempt proceedings. These are routine judicial actions that facilitate the progress of the case but do not constitute a final determination on the issue of contempt. Routine orders passed during the pendency of contempt proceedings are also excluded from the scope of Section 19. These orders are typically procedural and administrative in nature, ensuring that the proceedings move forward without addressing the substantive issues of the original case or the merits of the contempt.

(B) The crux of the matter lies in the nuanced interpretation of what constitutes "merit" within the context of contempt proceedings, as referenced by the Supreme Court in the Midnapore Peoples Cooperative Bank Limited case. The term "merit" has not been defined in a straight jacket formula, leading to varying interpretations. However, a cumulative reading of the judgments provide clarity on several key aspects. In the Midnapore case, the Supreme Court held that in contempt proceedings, it is inappropriate to adjudicate or decide any issue related to the merits of the dispute between the parties. This principle aims to ensure that contempt proceedings do not encroach upon the substantive rights of the parties involved in the original dispute. The focus

of contempt jurisdiction is to uphold the dignity and authority of the court, not to resolve the underlying dispute. The term "merit" in this context refers to the substantive issues of the original case that led to the contempt proceedings. It encompasses the core legal and factual questions that were or are being contested in the original litigation.

(C) Special appeals from the order or judgment of a single judge bench in contempt cases hinge on the distinction between addressing the merits of the original dispute and the conduct constituting contempt. The primary responsibility of the Contempt Court is to determine whether contempt has occurred and to impose appropriate sanctions if it has. The merits of the original controversy are outside the domain of the contempt court. However, when the Contempt Court issues directions or discusses the merits of the original controversy, it oversteps its jurisdiction. In such cases, a special appeal would lie to the High Court. This ensures that the original substantive issues are not inadvertently decided within the limited scope of contempt proceedings, preserving the parties' rights to a fair adjudication of their dispute.

(D) The interpretation of each case depends on its specific facts and circumstances. Courts must carefully distinguish between orders that address the procedural aspects of contempt proceedings and those that encroach upon the substantive issues of the original case. This distinction is crucial to maintaining the integrity of contempt jurisdiction and ensuring that appeals under Section 19 of the Act of 1971 are appropriately limited to cases where punitive action for contempt has been taken. Thus, Special appeals in contempt cases are warranted only when the Contempt Court oversteps its jurisdiction by addressing the merits of the original dispute, ensuring that the substantive rights of the parties are protected. The interpretation of each case must consider the specific facts and circumstances to uphold the integrity of contempt jurisdiction and provide appropriate remedies for aggrieved parties."

14. The said judgement in the case of **Subhash Chandra (supra)** was followed in **Bhanu Pratap Singh VS. Vikrant Vir and Ors.: 2025:AHC:4796-DB** by a co-ordinate Bench to which one of us (Arun Bhansali, CJ.) was a member wherein again the issue raised in this regard was thoroughly dealt with and it was laid down as under:

"Accordingly, we are of the firm opinion that the present intra-court appeal seeking to challenge the order of the learned Single Judge in exercise of the contempt jurisdiction declining to initiate contempt proceedings is not maintainable."

15. In view of the above, the legal position is well settled and established over a period of about two decades holding that appeal against order passed refusing to initiate proceedings for contempt/dropping of contempt proceedings is not maintainable except for exception carved out in the case of **Midnapore (supra).**

16. So far as the judgement in the case of **Tanseem Fatima (supra)** is concerned, the Division Bench without referring to any of the binding precedents came to the conclusion that the judgement in the case of **Midnapore (supra)** on the question of maintainability of Special Appeal under

Chapter VIII Rule 5 of the Rules of 1952, has no application and provisions of Chapter VIII Rule 5 of the Rules of 1952 do not bar appeal against order dismissing the contempt petition, which judgement apparently on account of ignoring binding precedents is *per incuriam* and cannot be pressed into service as a precedent.

17. In view of the above discussion, as the learned Single Judge has dismissed the contempt petition on coming to the conclusion that the pleadings in the affidavit and the documents annexed with the same do not reveal any wilful disobedience, the intra court appeal is **dismissed** as not maintainable.

(2025) 8 ILRA 618
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 22.08.2025

BEFORE

THE HON'BLE MAHESH CHANDRA TRIPATHI, J.
THE HON'BLE KSHITIJ SHAILENDRA,J.

Special Appeal No. 1303 of 2012

Union Of India & Ors. ...Appellants
Versus
No. 913126828 Ex. Constable Driver Girwar Singh Tomar ...Respondents

Counsel for the Appellants:
B.K. Singh Raghuvanshi, Kuldeep Singh Chauhan

Counsel for the Respondents:
S. Shekhar

Issue for Consideration

(A) Relevancy of clinical examination to proof drunken state of the delinquent employee at the time of incident.

(B) Application of doctrine of proportionality of punishment to the charges leveled.

(C) Justification of remanding the matter back to the Disciplinary Authority keeping in view of the efflux of time taken during litigation.

Headnotes

(A) Service law – Dismissal from service – Working on the post of Constable Driver – One charge was that the delinquent employee was found under influence of alcohol – No blood test, but only clinical examination was held to proof drunken state at the time of incident – Effect :

Held : Mere report of the medical officer mentioning that "clinically" the respondent appeared to be under influence of alcohol was not sufficient to arrive at a definite conclusion in that regard [Para 18]

(B) Service law – Doctrine of proportionality – Application – Punishment of dismissal – Quantum of punishment – Writ court set aside the order of dismissal and remanded back to the Disciplinary authority – Legality of writ order was challenged – Proportionality of punishment of dismissal with the charges and justification of remand of matter were also felt into consideration :

Held : Normally, it is the disciplinary authority which should be best left with the duty of imposing the punishment after considering the facts and circumstances of the case, however, in case, if on the admitted facts, the punishment imposed is grossly disproportionate to the offence, which shocks the conscience of the Court, the Court has the power and jurisdiction to interfere with the punishment imposed – Remanding the matter to the Disciplinary Authority would be an inappropriate exercise of power by us at this stage and we can mould the relief to be granted in order to sub-serve the ends of justice considering the fact that dismissal order was passed in the year 1999, the writ petition was filed in the year 2001, which was decided in the year 2007 and the present special appeal has remained pending for a period of about 18 years – The appellants would be entitled for all notional benefits of service. The order of dismissal would not come in the way of computing the length of his services for the purpose of granting pensionery

and other post retiral benefits. [Paras 23, 25 and 29] (E-1)

Case Law Cited

Sahdeo Singh v. U.P. Public Services Tribunal, 2001 (2) ESC 511; Amarjeet Singh v. State of U.P., 2004 (1) ESC (All) 366; Kesoram Cotton Mills v. Gangadhar, (1963) II LLJ 371 (SC); Hindustan Tin Works Pvt. Ltd. v. Its Employees, 1978 L/C 1667 (SC); M. L. Bose v. Its Employee, AIR 1961 SC 1178; Ranjit Thakur v. Union of India and Others., AIR 1987 SC 2386; Union of India and others v. Giriraj Sharma, AIR 1994 SC 215; Harpal Singh v. State Public Services Tribunal, Lucknow and Ors., 2000 (86) FLR 334; Alexandar Pal Singh v. Divisional Operating Superintendent, 1987 (2) ATC 922 (SC) **– referred to.**

List of Acts

Central Reserved Police Force, Act, 1949 – Ss. 9, 10 and 11; Central Reserved Police Force Rules, 1955.

List of Keywords

Punishment; Dismissal; Remand of matter; Disciplinary authority; Influence of alcohol; Departmental appeal; Gross misconduct; Cross examination; Medical examination; Minor punishment; More heinous offence; Less heinous offence; Guilty of disobedience; Negligent of duty; Remissness in discharge of duty; Blood test; Clinical examination; Quantum of punishment; Gravity of misconduct; Judicial review; Delay; Procedural lapse; Age of superannuation; Moulding of relief; Notional benefit.

Case Arising From

Judgment and order dated 10.04.2007 passed in Civil Misc. Writ Petition No. 5262 of 2001; Constable Driver Girwar Singh Tomar vs. Union of India & others setting aside the punishment order as well as appellate and revisional orders, and remanding the matter back to the Disciplinary Authority to pass fresh orders.

(Delivered by Hon'ble Kshitij Shailendra, J.)

1. Heard Shri S.P. Singh, learned Additional Solicitor General of India assisted by Shri Vivek Kumar Singh, for the appellants and Shri V. K. Singh, learned Senior Advocate assisted by Shri Ankur Azad, for the respondent.

2. The present appeal has been filed by the Union of India and its officers challenging the order dated 10.04.2007 whereby learned Single Judge allowed Civil Misc. Writ Petition No. 5262 of 2001 (Constable Driver Girwar Singh Tomar vs. Union of India & others) setting aside the punishment order as well as appellate and revisional orders and remanded the matter back to the Disciplinary Authority to pass fresh orders in accordance with law after taking into account the principles laid down in the decisions referred to in the order itself.

BRIEF FACTS

3. Brief facts of the case are that the respondent who was working as Constable Driver in the Central Reserve Police Force (CRPF) was charge-sheeted on 12.07.1999 on two charges; first, that while being on duty on 19.06.1999, he was found under influence of alcohol and, secondly, that at about 07.30 p.m. on the said date, while coming back to the headquarter, he caused damage to a cycle in a market by his negligent driving, but did not inform the higher Authorities about the incident.

4. After conduct of departmental proceedings, the respondent was dismissed from service by an order dated 21.10.1999. The departmental appeal and revision preferred by respondent were dismissed, respectively on 07.02.2000 and 25.09.2000. Being aggrieved of the aforesaid orders, the respondent filed the aforesaid writ petition.

5. The learned Single Judge, after noticing the facts of the case and by placing

reliance upon decision in **Sahdeo Singh vs. U.P. Public Services Tribunal : 2001 (2) ESC 511**, and **Amarjeet Singh vs. State of U.P. : 2004 (1) ESC (All) 366,** allowed the writ petition setting aside the orders impugned therein and remanded the matter back to the Disciplinary Authority to pass fresh orders in accordance with law. The learned single judge also noticed the incident giving rise to the disciplinary proceedings. The relevant observations made by learned Single Judge in this regard read as under:-

"The accident which had taken place is said to have been caused by the rear part of the vehicle driven by the petitioner, in which a cycle was damaged. The submission of the learned counsel for the petitioner is that the accident was not of such nature in which any person had been injured. It has also been submitted that no complaint with regard to any such accident was ever lodged. As regards the consumption of liquor by the petitioner, the submission of the learned counsel for the petitioner is that the petitioner had consumed liquor after returning back and not prior to going on duty. In support of the same he has placed reliance on the evidence adduced by the co-passenger in the vehicle who has stated that he did not consume liquor in his presence. The petitioner was, however, medically examined and it was found that he had consumed liquor. In evidence it has also come that another Hawaldar had asked the petitioner to bring a bottle of English wine for him and that the petitioner had consumed one peg of liquor and then went away with the vehicle. The explanation of the petitioner is that the said consumption of liquor was made by the petitioner after returning from duty. On this basis, learned counsel for the petitioner states that the petitioner had not consumed liquor while on duty.

Be that as it may, in the facts of this case, even if it is accepted that the two charges are proved against the petitioner, then too the ultimate punishment of dismissal from service is too harsh and totally disproportionate to the charges proved against him."

6. An interim order was passed in this appeal on 30.08.2007 noticing a suggestion made to the learned counsel for the respondent that he may make a representation before the authorities to claim benefits of service he had already put in, however, on the insistence of learned counsel that he wanted to contest the matter, the appeal was admitted and order of remand passed by learned Single Judge was stayed till disposal of this appeal. The suggestion made by the Court to learned counsel for the respondent and his insistence to contest the matter, as noted in 6th and 7th paragraphs of interim order dated 30.08.2007, are reproduced hereunder:-

"6. We suggested learned counsel for the respondent that he may make a representation, if he so wants, to claim all benefits for the service he has already put in.

7. He however wants to contest the matter, the appeal is, therefore, admitted. The order of learned Single Judge is stayed till the disposal of appeal."

SUBMISSIONS ON BEHALF OF THE APPELLANTS

7. While assailing the order of learned Single Judge, Shri. S.P. Singh, learned

Additional Solicitor General of India submits that the respondent being a member of Disciplined Reserved Force, was guilty of gross misconduct and once in the inquiry proceedings, which were held in accordance with law, the charges against the respondent were proved, learned Single Judge was not justified in holding that the punishment was too harsh and, in the given facts and circumstances of the case, punishment in terms of dismissal from service was rightly awarded.

8. Elaborating his submissions, attention of this Court has been drawn by Shri Singh towards record of inquiry proceedings wherein statement of one Constable Guman Singh (Witness No. 1) was recorded wherein he stated that he had given one peg of alcohol to the respondent, which was consumed by the respondent then and there and he started his vehicle. Further reference to a report of Medical Officer was made, wherein he had opined that the respondent had consumed alcohol, effects whereof were obvious and he appeared to be under influence of alcohol clinically.

9. It is further contended that the respondent was granted sufficient opportunity to cross-examine the witnesses, however, he chose not to cross-examine them and, therefore, after due observance of principles of natural justice and following the provisions of law, punishment was rightly awarded, which should not have been interfered with by the learned Single Judge merely on the pretext that a lenient view should have been taken by awarding lesser punishment.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

10. Per contra, Shri V.K. Singh, learned Senior Advocate submits that witness No. 2, namely, Constable Pratap Singh clearly stated that he was sitting towards left hand side of driver and that the respondent had not consumed alcohol in his presence. Submission is that statement of second witness has not been taken into consideration and, therefore, the entire departmental proceedings leading to passing of the orders impugned stand vitiated.

11. Shri V.K. Singh has further drawn attention of this Court towards charge sheet, inquiry report, punishment order as well as appellate and revisional orders in the light of provisions of **Central Reserved Police Force, Act, 1949** (in short 'Act of 1949') and submission has been made that Sections 9 and 10 thereof describe two categories of offences, i.e. (i) More heinous offences and (ii) Less heinous offences. It is further contended that since the entire proceedings refer to invocation of Section 11 of the Act, no major penalty of dismissal from service could be awarded as the provision itself is meant for 'Minor Punishment'whereas dismissal from service is a major punishment.

12. It is further contended that no medical examination was conducted by the Department, rather, reliance was placed only on an opinion furnished by the Medical Officer, which was not sufficient to arrive at a concrete and definite conclusion that at the time of alleged incident, the respondent was under influence of liquor. It is, therefore, submitted that the learned Single Judge rightly found the punishment as too harsh in nature and, therefore, the respondent is entitled to be reinstated in service, in the

alternative, the order of remand to examine award of lesser punishment cannot be said to be illegal. He prays for dismissal of special appeal.

DISCUSSION AND FINDINGS

13. Having heard learned counsel for the parties, we find that the provisions of **Central Reserved Police Force, Act, 1949** and **Central Reserved Police Force Rules, 1955** govern the disciplinary proceedings. In the instant case, it would be apt to refer Sections 9 and 10 of the Act, as under:-

"9. More heinous offences.- Every member of the force who-

(a) begins, excites, causes or conspires to cause or joins in any mutiny, or being present at any mutiny, does not use his utmost endeavour to suppress it, or knowing, or having reason to believe in, the existence of any mutiny, or of any intention or conspiracy to mutiny or of any conspiracy against the State does not, without delay, give information thereof to his superior officer; or

(b) uses, or attempts to use, criminal force to, or commits an assault on, his superior officer, whether on or off duty, knowing or having or having reason to believe him to be such; or

(c) shamefully abandons or delivers up any post or guard which is committed to his charge, or which it is his duty to defend ; or

(d) directly or indirectly holds correspondence with, or assists or relieves any person in arms against the State or omits to discover immediately to his superior officer any such correspondence coming to his knowledge; or who, while on active duty,-

(e) disobeys the lawful command of his superior officer; or

(f) deserts the Force; or

(g) being a sentry, sleeps upon his post or quits it without being regularly relieved or without leave; or

(h) leaves his commanding officer, or his post or party , to go in search of plunder ; or

(i) quits his guard, picquet, party or patrol without being regularly relieved or without leave; or

(j) uses criminal force to, or commits an assault on, any person bringing provisions or other necessaries to campo or quarters, of forces a safeguard or breaks into any house or other place for plunder, or plunders, destroys or damages property of any kind; or

(k) intentionally causes or spreads a false alarm in action or in camp, garrison or quarters; or

(l) displays cowardice in the execution of his duty,

shall be punishable with imprisonment for a term which may extend to fourteen years or with imprisonment for a term which may extend to fourteen years or with fine which may extend to three months pay or with fine to that extent in addition to such sentence of transportation or imprisonment."

"10. Less heinous offences.- Every member of the force who-

(a) is in a state of intoxication when on, or after having been warned for, any duty or on parade or on the line of march; or

(b) strikes or attempts to force any sentry; or

(c) being in command of a guard, piquet or patrol, refuses to receive any prisoner or person or person duly committed to his charge or without proper authority releases any person or prisoner placed under his charge or negligently suffers any such prisoner or person to escape; or

(d) being under arrest or in confinement, leaves his arrest or confinement, before he is set at liberty by lawful authority; or

(e) is grossly in-subordinate or insolent to his superior officer in the execution of his office ; or

(f) refuses to superintend or assist in the making of any fieldwork or other work of any description ordered to be made either in quarters or in the field; or

(g) strikes or otherwise ill-uses any member of the force subordinate to him in rank or position ; or

(h) designedly or through neglect injures or loses or fraudulently disposes of his arms, clothes, tools, equipments, ammunition or accountrement or any such articles entrusted to him or belonging to any other person ; or

(i) malingers or feigns or produces disease or infirmity in himself, or intentionally delays his cure, or aggravates his disease or infirmity; or

(j) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or any other person; or

(k) does not, when called upon by his superior officer so to do or upon ceasing to be a member of the force forthwith deliver up, or duly account for, all or any arms,. Ammunition, stores, accountrements or other property issued or supplied to him or in his custody or possession as such member; or

(l) knowingly furnishes a false return or report of the number or state of any men under his command or charge or of any money, arms ammunition, clothing, equipments, stores or other property in his charge, whether belonging to such men or to the Government or to any member of or any

(m) person attached to the force or who through design or culpable neglect, omit, or refuses to make or send any return or report of the matters aforesaid ; or

(n) absent himself without leave, or without sufficient cause overstays leave granted to him: or

(o) is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and discipline: or

(p) contravenes any provision of this Act for which no punishment is expressly provided: or who, while not on active duty:-

(q) commits any of the offences specified in clauses (e) to (l) (both inclusive) of section 9, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to three months pay, or with both."

14. The categorisation of offences in **'More heinous offences'** and **'Less heinous offences'** reflects that, in case the department is inclined to proceed against a delinquent employee, it has to be ascertained by the department as to under which category the offences committed by the employee would fall; that is to say, as to whether the offence falls under Section 9 or under Section 10.

15. Since, in the present case, the department has throughout invoked Section 11 of the Act, it would be appropriate to refer the same, which is reproduced as under:-

"11. Minor punishments.- (1) The Commandant or any other authority or officer as may be prescribed, may, subject to any rules made under this Act award in lieu of or in addition to, suspension or dismissal any one or more of the following punishments to any member of the force whom he considered to be guilty of disobedience, neglect of duty, or remissness in the discharge of any duty or of other misconduct in his capacity as a member of the force, that is to say :-

(a) reduction in rank;

(b) fine of any amount not exceeding one month's pay and allowances;

(c) confinement to quarters, lines or camp for a term not exceeding one month;

(d) confinement in the quarter-guard for not more than twenty eight days with or without punishment drill or extra guard, fatigue or other duty; and

(e) removal from any office of distinction or special emolument in the force.

(2) Any punishment specified in clause (c) or clause (b) of sub-section (l) may be awarded by any gazetted officer when in command of any detachment of the force away from headquarters, provided he is specially authorised in this behalf by the Commandant.

(3) The Assistant Commandant, a Company Officer or a Subordinate Officer , not being below the rank of Subedar or Inspector commanding a separate detachment or an outpost, or in temporary command at the headquarters of the force, may, without a formal trial, award to any member of the force who is for the time being subject to his authority any one or more of the following punishments for the commission of any petty offence against discipline which is not otherwise provided for in this Act or which is not of a sufficiently serous nature to require prosecution before a Criminal Court that is to say:-

(a) confinement for not more that seven days in the quarterguard or such other place as may be considered suitable, with forfeiture of all pay and allowances during its continuance;

(b) punishment drill, or extra guard, fatigue or other duty, for not more than thirty days, with or without confinement to quarters, lines, or camp.

(4) A jemadar or Sub-Inspector who is temporarily in command of a

detachment or an outpost may in like manner and for the commission of any like offence award to any member of the force for the time being subject to his authority any of the punishment specified in clause (b) of sub-section (3) for not more than fifteen days."

16. A bare perusal of Section 11 of the Act reflects that minor punishments prescribed under sub-clauses (a) to (e) of Sub-Section (1) can be imposed on any member of force in lieu of, or in addition to, suspension or dismissal, in a case where the authority finds that the member of the force is guilty of disobedience, negligent of duty, or remissness in the discharge of any duty or of other misconduct in his capacity as a member.

17. In the instant case, right from the issuance of charge sheet till the revision of the respondent was decided, Section 11 (1) was referred. Therefore, it was incumbent for the respondent to minutely examine as to whether the alleged act of the respondent falls within Section 9 or Section 10 of the Act, that is to say whether the act is a more heinous offence or less heinous offence. The entire proceedings leading to passing of the orders impugned completely ignore the fact that even if the respondent was allegedly found under influence of alcohol on 19.06.1999, what act of misconduct and to what gravity was committed by him. It has come on record, as also noticed by the learned Single Judge, that a cycle was damaged by the rear part of the vehicle driven by the respondent and the accident was not of such a nature in which any person had been injured. Under such circumstances, the question of considering the award of punishment in lieu of, or in addition to, suspension or dismissal, as provided under Clauses (a) to (e) of sub-Section (1) of Section 11 should have been critically analyzed by the Authority, however, the extreme penalty of dismissal from service was awarded to the respondent and despite raising all possible grounds of challenge to the order of punishment as well as validity of the inquiry proceedings, appeal and revision preferred by the respondent were dismissed.

18. We also find that the respondent was not subjected to any blood test etc. so as to form a conclusive opinion regarding his drunken state at the time of incident. Mere report of the medical officer mentioning that "clinically" the respondent appeared to be under influence of alcohol, in our view, was not sufficient to arrive at a definite conclusion in that regard, particularly when there were contradictory statements of the witnesses regarding consumption of alcohol by the respondent. The report of the Medical Officer, based upon the clinical examination of the respondent and expressing opinion against him, reads as under:-

> "In my opinion Ct/Drv G.S. Tomar has consumed alcohol and effects of alcohol are obvious and he appears to be under influence of alcohol clinically."

19. The law relating to quantum of punishment corresponding to the gravity of misconduct, if any, has been laid down time and again. The Apex Court, in the case of **Ranjit Thakur v. Union of India and Others., AIR 1987 SC 2386,** has held that "the question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to

shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Marital, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review."

20. In the case of **Union of India and others v. Giriraj Sharma, AIR 1994 SC 215,** the Apex Court has held that over-staying of leave subsequent to the order of rejection of application for extension of leave could not be considered to be a sever enough charge to warrant punishment of dismissal from service and the same was held to be harsh and disproportionate.

21. A Division Bench of this Court, in the case of **Harpal Singh v. State Public Services Tribunal, Lucknow and Ors., 2000 (86) FLR 334,** has held that where it was on account of negligence of the constable of the G.R.P. that one passenger was misbehaved with and was murdered, the same could not be a case of serious misconduct and held that the punishment of dismissal from service was totally disproportionate to the offence and thus directed reinstatement of the employee in service, with half back wages and also ordered that he be given a severe warning.

22. In the case of **Alexandar Pal Singh v. Divisional Operating Superintendent, 1987 (2) ATC 922 (SC),** the Supreme Court has held that ordinarily the Court or Tribunal cannot interfere with the discretion of the punishing authority in imposing particular penalty but this rule has an exception. If the penalty imposed is grossly disproportionate to the misconduct committed, then the Court can interfere. The railway employee on being charged with negligence in not reporting to the railway hospital for treatment was removed from service. The Supreme Court found it fit to interfere with the punishment of removal from service and modified it to withholding of two Increments.

23. In the light of the law laid down by the Apex Court as well as this Court, the broad principle which emerges is that, normally, it is the disciplinary authority which should be best left with the duty of imposing the punishment after considering the facts and circumstances of the case, however, in case, if on the admitted facts, the punishment imposed is grossly disproportionate to the offence, which shocks the conscience of the Court, the Court has the power and jurisdiction to interfere with the punishment imposed.

24. In view of aforesaid discussion, we are of the view that while the learned Single Judge did not err in setting aside the order of punishment, we have to examine as to whether remand to the Disciplinary Authority can be resorted to at this stage. If we simply dismiss the appeal, necessary consequence would be that matter would go back to the Disciplinary Authority to pass a fresh order which, when passed in either way, would give rise to further litigation in terms of appeal, revision and writ petition at the instance of the party aggrieved of the same.

25. We have been informed by the learned counsel for both sides that the respondent is now aged about 54 years and the age of superannuation is 60 years. Therefore, even if we find that the order of

dismissal from service was rightly set aside by the learned single judge, remanding the matter to the Disciplinary Authority would be an inappropriate exercise of power by us at this stage and we can mould the relief to be granted in order to sub-serve the ends of justice considering the fact that dismissal order was passed in the year 1999, the writ petition was filed in the year 2001, which was decided in the year 2007 and the present special appeal has remained pending for a period of about 18 years.

26. We may also mention that the instant appeal was filed in the year 2007 as a defective one on account of delay of 68 days. Although delay was condoned by order dated 30.08.2007, on which date the appeal was admitted and an interim order was also passed, the order sheet reveals that the appellants did not pursue the appeal with diligence, probably on account of an interim order having been passed in their favour which was directed to remain operative till disposal of the appeal. Later on, the appeal was assigned a regular number in the year 2012 and on 20.09.2017, none appeared to press the appeal even in the revised list although the appeal has been filed by Union of India and its officials. Consequently, the appeal was dismissed for want of prosecution. On a restoration application filed by the appellants in the year 2017, the appeal was restored to its original number after four years by order dated 28.10.2021. Even thereafter, the appeal was not pursued by the appellants and was taken up for consideration on 14.07.2025, on which date order for listing of the appeal in top ten cases was passed. Thereafter, the appeal was listed on three occasions and was heard finally on 19.08.2025.

27. The aforesaid proceedings demonstrate that for a period of 18 years, the appellants were not diligently prosecuting the lis and, for this additional reason also, we, for delay occurred on account of procedural lapses attributable to the appeellants, are inclined not to penalize the respondent whose services were terminated in the year 1999 and who succeeded from the writ Court in the year 2007. The appellants cannot earn premium on account of laches/lapses on their own part and, hence, for this reason too, we are inclined to mould relief.

28. We are of the view that since about 6 years are left for the respondent to reach the age of superannuation, we deem it appropriate to dispose of the appeal accordingly by moulding relief. The normal rule is that when the dismissal order is set aside, reinstatement with full back wages has to be granted vide **Kesoram Cotton Mills vs. Gangadhar,** (1963) II LLJ 371 (SC); **Hindustan Tin Works Pvt. Ltd. vs. Its Employees,** 1978 L/C 1667 (SC) and **M.L. Bose vs. Its Employee,** AIR 1961 SC 1178.

29. In the facts of the case, we direct the appellants to reinstate the respondent in service within a period of three weeks from the date a certified copy of this order is served upon them on the current pay-scale applicable for the post of Constable Driver and he would be entitled for all notional benefits of service. The order of dismissal would not come in the way of computing the length of his services for the purpose of granting pensionery and other post retiral benefits. The respondent shall also be entitled to get 25% back-wages/salary from the date of his dismissal, i.e. w.e.f. 21.10.1999 till the date of his reinstatement. The aforesaid benefits shall be computed and released in favour of the respondent within a period of two months from service of copy of order.

30. With the aforesaid observations, the special appeal stands **disposed of.**

(2025) 8 ILRA 628
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 14.08.2025

BEFORE

THE HON'BLE AJIT KUMAR, J.

Writ A No. 3032 of 2025

Uttar Pradesh Gram Rojgar Sevak Sangh ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Rajesh Kumar Sharma, Shobh Nath

Counsel for the Respondents:
C.S.C.

Issue for Consideration

How far the lack of an appropriate guidelines may come in the way of giving effect the Government Order dated 18.03.2024 to grant compassionate appointment to the dependent of deceased?

Headnotes

(A) Service law – Compassionate appointment – Entitlement of dependent of deceased, held the post of Rojgar Sewak – General direction sought for compassionate appointment relying upon the GO dated 18.03.2024 – However, the District Magistrate, in the personal affidavit, averred that in absence of guidelines for giving compassionate appointment in terms of the Government Order dated 18.03.2024, no such appointments are being considered – Permissibility – Necessity of issuing direction to ensure compliance of GO dated 18.03.2024 also felt into consideration :

Held : Once the Government has issued a Government Order providing for compassionate appointment to the dependants of the deceased Rozgar Sevak, every district has to comply with the same – As far as the guidelines are concerned, in absence of any Rule or Regulation framed in that regard in such districts, the eligibility criteria laid down in the U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 as amended from time to time, may be followed – I further issue directions to the Secretary, Gram Vikas to issue necessary guidelines and directions so as to ensure that the Government Order dated 11.03.2024 is complied in its letter and spirit in all the districts of Uttar Pradesh. [Paras 7 and 8] (E-1)

List of Acts

U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974; Government Order dated 18.03.2024.

List of Keywords

Compassionate appointment; Dependent of deceased; Absence of guidelines; Secretary, Gram Vikas; Directions; Affected families; Application for compassionate appointment; Consideration without undue delay.

Case Arising From

Seeking compassionate appointment to the dependent of deceased of Rojgar Sewak in term of Government Order dated 18.03.2024.

(Delivered by Hon'ble Ajit Kumar, J.)

1. Heard learned counsel for the parties.

2. By means of this petition filed under Article 226 of Constitution of India, petitioner is seeking compassionate appointment on account of death of his father working as Rozgar Sevak, while in employment.

3. Learned counsel for the petitioner has relied upon Government Order issued in this regard on 18.03.2024. Accordingly this Court on 11.03.2024 directed the learned Standing Counsel to obtain

instruction in the matter by passing following order:

"1. The contention advanced on behalf of the petitioner is that in respect of those Rozgar Sevak who died in harness after Covid-2019, the guidelines issued by the Central Government as well as the State Government for offering appointment to the dependents are not being followed in terms of the Government Order dated 18.03.2024 whereas in other districts these guidelines are being followed.

2. In respect of submission so advanced, learned counsel for the petitioner has drawn the attention of the Court to the letter issued by the C.D.O. Sravasti dated 20.01.2025 whereby the dependents of the deceased Rozgar Sewak has been offered appointment.

3. Let the District Magistrate/District Programme Coordinator, MNREGA, District Maharajganj file a detailed affidavit meeting the points raised in this petition specially discrimination in the matters of compassionate appointment of dependents of the deceased Rozgar Sevak on the next date fixed failing which, the District Magistrate/ District Programme Coordinator, MNREGA, District Maharajganj shall appear in person before this Court.

4. List this case on 03.04.2025 amongst top ten cases. "

4. U.P. Gram Rozgar Sewak, Sangh has approached this Court for a direction in general to all the districts for complying with the Government Order dated 18.03.2024 which provides for claim of the dependents of deceased Rozgar Sewak for compassionate appointment. The relevant Government Order is reproduced hereunder:

संख्या-73/38-7002 (099)/143/2019

प्रेषक,

सुखलाल भारती,
सचिव,
उत्तर प्रदेश शासन।

सेवा में.

आयुक्त,
ग्राम्य विकास,
उत्तर प्रदेश।

ग्राम्य विकास अनुभाग-7 लखनऊः दिनांकः 18 मार्च, 2024

विषयः कोविड-19 के अतिरिक्त आकस्मिक मृत्यु होने पर ग्राम रोजगार सेवको के आश्रित को संविदा के आधार पर नियुक्ति प्रदान किये जाने के संबंध में।

महोदय,

शासनादेश संख्या-834/अड़तीस-7-2021-01 वीआईपी/2020 टीसी, दिनांक 17-06-2021 का कृपया संदर्भ ग्रहण करने का कष्ट करें, जिसके माध्यम से कोविड-19 से मृत ग्राम रोजगार सेवकों के मृतक आश्रितों को भारत सरकार द्वारा निर्गत मनरेगा गाइडलाइन य शासनादेश संख्या-1799/38-7-2007-02 एनआरईजीए/2005 टीसी-1, दिनांक 23-11-2007 में उल्लिखित प्राविधानों के अन्तर्गत संविदा के आधार पर नियुक्ति प्रदान किये जाने के संबंध में नियमानुसार अग्रतर कार्यवाही किये जाने के निर्देश दिये गये थे।

2- इस संबंध मे मुझे यह कहने का निदेश हुआ है कि कोविड-19 के अतिरिक्त आकस्मिक मृत्यु होने पर विषमगत प्रकरण में भारत सरकार द्वारा निर्गत गाइड लाइन एवं शासन द्वारा समय-समय पर निर्गत शासनादेशों के अनुरूप आवश्यक कार्यवाही कराने का कष्ट करें।

भवदीय,
(सुखलाल भारती)
सचिव
(Emphasis added)

5. In this petition it has been claimed that Chief Development Officer, Sravasti has passed order on 20.01.2025 giving compassionate appointment to the dependent of the deceased as Gram Rozgar Sewak in his district. The order of Chief Development Officer, Sravasti dated 20.01.2025 is also reproduced hereunder:

कार्यालय आदेश

रोजगार सेवक (संविदा) पद पर ग्राम पंचायरा-बागवानी विकास खन्ड गिलौला में कार्यरत थी। श्रीमती किरण पाण्डेय का दिनांक 25.05.2024 को देहान्त हो गया है। स्व0 श्रीमती किरन पाण्डेय के पति का लगभग 04 वर्ष पूर्व देहान्त हो गया है। सुश्री नेहा पाण्डेय पुत्री स्व0 भवानी प्रसाद निवासिनी ग्राम केदारपुरवा दाखिला बागवानी विकास खण्ड-गिलौला ने अपने नोटरी शपथ-पत्र दिनांक 16.12.2024 द्वारा ग्राम रोजगार सेवक पद पर उनकी बहन जूली का चयन होने से उन्हें आपत्ति न होने का शपथ-पत्र दिया गया है।

महात्मा गाँधी नरेगा अन्तर्गत शासनादेश संख्या 1799/38-7-2007-02 एनआरईजीए/2005 टीसी-1 दिनांक 23.11.2007 द्वारा ग्राम रोजगार सेवक (संविदा) पद हेतु दिशा निर्देश निर्गत है तथा सचिव, ग्राम्य विकास अनुभाग-7 उ0प्र0 शासन-लखनऊ के शासनादेश संख्या 73/38-7-7002 (099) / 143/2019 दिनांक 18 मार्च, 2024 द्वारा कोविड-19 के अतिरिक्त आकस्मिक मृत्यु होने पर ग्राम रोजगार सेवकों के आश्रित को संविदा के आधार पर नियुक्ति किये जाने के सम्बन्ध में निर्देश निर्गत है।

शासनादेश संख्या 73/38-7-7002(099)/143/2019 दिनांक 18 मार्च, 2024 एवं ग्राम पंचायत बागवानी विकास खण्ड-गिलौला की बैठक कार्यवाही दिनांक 08.10.2024 द्वारा निर्गत प्रस्ताव तथा जिला स्तरीय समिति के अनुमोदन दिनांक 17.01.2025 के कम में सुश्री जूली पुत्री स्व0 भवानी प्रसाद निवासी ग्राम केदार पुरवा दाखिला बागवानी विकास खण्ड-गिलौला (मृतक आश्रित स्व0 श्रीमती किरम पाण्डेय, ग्राम रोजगार सेवक (संविदा) ग्राम पंचायत बागवानी विकास खण्ड-गिलौला) की सेवाएं ग्राम रोजगार सेवक (संविदा) ग्राम पंचायत-बागवानी विकास खण्ड-गिलौला पद पर प्राप्त किए जाने की अनुमति प्रदान की जाती है।

सुश्री जूली पुत्री स्व0 भवानी प्रसाद निवासी ग्राम केदार पुरवा दाखिला बागवानी विकास खण्ड- गिलौला (मृतक आश्रित स्व0 श्रीमती किरन पाण्डेय, ग्राम रोजगार सेवक (संविदा) ग्राम पंचायत-बागवानी विकास खण्ड-गिलौला) को सूचित किया जाता है कि ग्राम प्रधान एवं ग्राम सचिव ग्राम पंचायत-बागवानी विकास खण्ड-गिलौला के सक्ष उपस्थित होकर ग्राम पंचायत से अनुबन्ध की कार्यवाही पूर्ण करके महात्मा गाँधी राष्ट्रीय ग्रामीण रोजगार गारण्टी योजनान्तर्गत ग्राम रोजगार सेवक (संविदा) के पदीय दायित्वों का निर्वाहन सुनिश्चित करें। सुश्री जूली पुत्री स्व0 भवानी प्रसाद की ग्राम रोजगार सेवक (संविदा) पद पर सेवाएँ ग्राम पंचायत द्वारा अनुबन्ध के आधार पर प्राप्त की जायेगी तथा ग्राम रोजगार सेवक पर प्रशासकीय नियंत्रण पूर्णतः सम्बन्धित ग्राम पंचायत का होगा।

(अनुभव सिंह)
मुख्य विकास अधिकारी,
श्रावस्ती।

कार्यालय मुख्य विकास अधिकारी, मनरेगा प्रकोष्ठ श्रावस्ती

संख्या 462/ मनरेगा/ग्रा0 रो0 सेवक/2024-25

दिनांक 20/01 2025

प्रतिलिपिः- निम्नांकित को सूचनार्थ एवं आदेश अनुपालनार्थ प्रेषित।

1- सुश्री जूली पुत्री स्व0 भवानी प्रसाद निवासी ग्राम केदार पुरवा दाखिला बागवानी विकास खण्ड- गिलौला द्वारा ख0वि0अ0-गिलौला।

2-सम्बन्धित ग्राम विकास अधिकारी/ग्राम पंचायत अधिकारी द्वारा ख0वि0अ0, गिलौला।

3- कार्यकम अधिकारी, मनरेगा/खण्ड विकास अधिकारी-गिलौला।

4- जिलाधिकारी, महोदय-श्रावस्ती की सेवा में अवलोकनार्थ प्रेषित।

मुख्य विकास अधिकारी,
श्रावस्ती।

6. Interestingly, in the personal affidavit filed by the District Magistrate, Maharajganj it has come to be averred vide Paragraph 6 that in absence of guidelines and in absence of any specific direction issued to the district authorities for giving compassionate appointment in terms of the Government Order dated 18.03.2024 no such appointments are being considered in his district Maharajganj. Paragraph-6 has been reproduced hereunder:

"6. That the aforesaid letter is a communication between the Secretary, U.P. Government and the Commissioner, Rural Development, U.P. No further guidelines/direction have been issued to the District Authorities till date with respect of appointment to the dependants of those who died in harness other than/except COVID-19. Hence, no action has been taken at the end of the Deponent in this regard. If any such guidelines/directions is issued in this respect by the Commissioner, Rural Development, U.P. to the District Authorities then the same shall be complied with."

7. The Court is not satisfied with the explanation offered vide paragraph-6 of the personal affidavit of District Magistrate, Maharajganj. Once the Government has issued a Government Order providing for compassionate appointment to the dependants of the deceased Rozgar Sevak, every district has to comply with the same. As far as the guidelines are concerned, in absence of any Rule or Regulation framed in that regard in such districts, the eligibility criteria laid down in the U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 as amended from time to time, may be followed. And hence, I direct the District Magistrate, Maharajganj to issue direction to Subordinate Officers and then communicate this order to the Chief Development Officer of the district to comply with the Government Order dated 18.03.2024 applying the principles as contained in 1974 rules in so far as definition of dependents and other eligibility criteria are concerned.

8. I further issue directions to the Secretary, Gram Vikas, Government of U.P., Lucknow and also the Commissioner, Village Development Department, Lucknow to issue necessary guidelines and directions so as to ensure that the Government Order dated 11.03.2024 is complied in its letter and spirit in all the districts of Uttar Pradesh.

9. It is expected both from the State Government as well as from those who are looking after such appointments in districts that dependants of the Gram Rozgar Sevak are offered compassionate appointment further by the concerned Gram Panchayats considering the immediacy of such applicants for the affected families where the sole earning member has died. It is directed accordingly that as and when the applications for compassionate appointment are filed by the dependants, the same sahll be disposed of within a maximum period of 2-3 months without any undue delay in the light of the observations made hereinabove.

10. With these observations and directions, this petition stands **disposed of.**

(2025) 8 ILRA 632
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 21.08.2025

BEFORE

THE HON'BLE ABDUL MOIN, J.

Writ A No. 3068 of 2018

Abdul Qayoom Ansari & Anr. ...Petitioners
Versus
U.P. Industrial Co-Operative Association Ltd. ...Respondent

Counsel for the Petitioners:
Kartikey Dubey, Anshuman Singh, Ashok Kumar Singh, Geetika Yadav, Riya Ghosh

Counsel for the Respondent:
C.S.C., Amit Chandra, Nadeem Murtaza, Prashast Puri

Issue for Consideration

Permissibility to raise ground of non-regularization of the petitioner, appointed on daily-wage, but continuously rendered the service of 37 to 38 years to negate the right accruing to the petitioner.

Headnotes

(A) Service law – Regularization – Appointed as Salesman on daily wage in 1984 and 1985 – The order dated 17.01.2018 rejecting the claim for regularization was stayed by the High Court – The petitioners have rendered uninterrupted service of 37 to 38 years – During pendency of writ petition against this order, petitioner no. 1 was retired and petitioner no. 2 was died – Effect – Grounds that the respondent no. 1, being in a precarious financial position, and further that petitioners were retrenched in 2007, were taken to justify the non-regularization – Permissibility :

Held : Despite having been retrenched in the year 2007, the writ Court, vide the order dated 22.08.2017, directed that the duration for which the petitioners had worked was to be taken into consideration while considering the case of the petitioners for regularization – Merely because the respondent No. 1 is in a precarious financial position, the rights which have accrued to the petitioners cannot be negated and the continuous working of 37 to 38 years cannot be written off on the whims, fancies and caprices of the respondent No. 1. [Paras 40 and 41] (E-1)

Case Law Cited

Dharam Singh and others v. State of U.P. and another, 2025 SCC OnLine SC 1735 **– referred to.**

List of Acts

Uttar Pradesh Regularization of Services of Persons Working on Daily Wages or on Work Charge or on Contract Basis on Posts Within the Purview of the Uttar Pradesh Co-operative Institutional Service Board in Co-operative Societies Regulations, 2017 – Clause 4; Regularization Rules, 1985, as amended by the Rules, 1990.

List of Keywords

Retrenchment; Salesman; Daily wages; regularization; Retirement; Co-operative society; precarious financial position; Rendering continuous service; Non-regularization; Livelihoods and dignity; workers; Recommendation by the Commission; Whims, fancies and caprices of the respondent.

Case Arising From

The order of the respondent dated 17.01.2018 rejecting the claim of petitioners for their regularization.

(Delivered by Hon'ble Abdul Moin, J.)

[C.M. Application No. IA/21 of 2024 : Application for Substitution]

(1) This is an application for substitution of the legal heirs of petitioner No.2.

(2) Shri Amit Chandra, learned counsel appearing for respondent No.1, Shri Prashast Puri, learned counsel appearing for the respondent No.2 and learned Standing Counsel representing the State-respondent No.3 have no objection to the same.

(3) On due consideration, the application is **allowed**.

(4) Let the legal heirs of the petitioner No.2 be substituted during the course of the day.

[order on petition]

(5) Heard Ms. Gitika Yadav, learned counsel appearing for the petitioners, Shri Amit Chandra, learned counsel appearing for respondent No.1, Shri Prashast Puri, learned counsel appearing for the respondent No.2 as well as learned Standing Counsel representing the State-respondent No.3.

(6) The instant writ petition has been filed praying for the following reliefs :-

"I. Issue a writ of certiorari or a writ, order or direction in the nature of certiorari quashing the impugned order dated 17.01.2018 passed by the opposite party No.1, contained in Annexure No.1 to the writ petition.

II. Issue a writ of mandamus or a writ, order or direction in the nature of mandamus commanding the respondents not to give effect to the order dated 17.01.2018 passed by the opposite party no.1, contained in Annexure No.1 to the writ petition, and to allow the petitioners to continue to discharge their duties with full back wages/salary, and to continue to pay salary to the petitioners.

III. Issue a writ of mandamus or a writ, order or direction in the nature of mandamus commanding the respondents to forthwith regularise the services of the petitioners and accord them all consequential benefits including grant of regular scale of pay, payment of arrears of salary according to the scale as applicable to them from time to time, and grant of seniority taking into consideration the entire duration of service of the petitioner.

IV. Issue an appropriate writ, order or direction requiring the opposite parties to pay heavy cost to the petitioners for subjecting them to unwarranted harassment and mental anguish."

(7) The petitioners are aggrieved by an order dated 17.01.2018 passed by the respondent No.1, a copy of which is Annexure-1 to the petition. A further prayer is for a mandamus commanding the respondents to regularize the services of the petitioners and to accord them all consequential benefits including regular scale of pay, payment of arrears, etc.

(8) By means of the order dated 17.01.2018, the petitioners have been informed that their retrenchment order dated 31.01.2007 is being given effect to with immediate effect.

(9) The order impugned has been stayed by this Court vide order dated 01.02.2018 and the said stay order is still continuing till date.

(10) Bereft of any unnecessary details, the facts set forth by learned counsel for the petitioners are that the petitioners were appointed as Salesmen under the respondent No.1 on daily wages with effect from 12.09.1985 and 24.09.1984

respectively. They continued in service without any break.

(11) After that petitioners had continued for a sufficient period of time, yet they are not regularized, they were constrained to file Writ Petition No.2486 (S/S) of 2000 in Re: *Raj Kumar Divedi vs. U.P. Industrial Co-operative Association Limited and others* praying for the regularization.

(12) Learned counsel for the petitioners states that both the petitioners were also the petitioners in the said petition.

(13) The said petition was decided vide the judgment and order dated 18.04.2006, a copy of which is Annexure-8 to the petition, with a direction to the respondent No.1 to consider the case of the petitioners for regularization, taking into consideration the long period of working.

(14) Instead of regularizing the petitioners, an undated order was passed by the respondents, a copy of which is Annexure-9 to the petition, whereby the petitioners were not found eligible for being regularized. Being aggrieved, the petitioners filed Writ Petition No.6377 (S/S) of 2006 challenging the undated order by which the regularization had been rejected and praying for their regularization.

(15) This Court in Writ Petition No.6377 (S/S) of 2006, by means of order dated 06.11.2006, as reproduced in paragraph 21 of the petition, directed that till further orders, the respondents shall not proceed to retrench the petitioners from service.

(16) During the pendency of the petition, the respondents issued an order dated 31.01.2007, whereby the services of the petitioners and the others were retrenched.

(17) However, in pursuance to the interim order dated 06.11.2006, admittedly, the petitioners were continued in service and were never retrenched.

(18) The Writ Petition No.6377 (S/S) of 2006 was decided vide judgment and order dated 11.04.2017 as corrected on 22.08.2017, copies of which have been filed as Annexures-2 and 3 to the petition.

(19) The corrected order dated 22.08.2017 recorded the statement of the learned counsel for the petitioners that the case of the petitioners is covered by the Regularization Rules, 1985 as amended by the Rules, 1990. His submission that the entire duration for which the petitioners worked be also considered was also recorded. This Court indicated that it goes without saying that the duration for which the petitioners worked has to be taken into consideration while considering the case of the petitioners for regularization. Respondent No.2 was directed to consider the case of the petitioners for regularization, taking into consideration the observations made by this Court vide order dated 22.08.2017.

(20) In pursuance thereof, the case of the petitioners for regularization has been rejected vide impugned order dated 16/17.01.2018, a copy of which is Annexure-1 to the petition, on the ground that the retrenchment order is being given effect, i.e., with effect from the date of issuance of the order dated 16/17.01.2018.

(21) Raising a challenge to the said order and praying for regularization, the instant petition has been filed.

(22) Learned counsel for the petitioners states that both the petitioners have already retired from service in the year 2022 itself and petitioner No.2 has also died during pendency of the instant petition and his legal heirs have been substituted.

(23) The contention is that the petitioners have rendered long period of service since the year 1984-85 till their retirement wherein they continued to work continuously. The Regularization Rules have been issued, namely, the Uttar Pradesh Regularization of Services of Persons Working on Daily Wages or on Work Charge or on Contract Basis on Posts Within the Purview of the Uttar Pradesh Co-operative Institutional Service Board in Co-operative Societies Regulations, 2017 (hereinafter referred to as **"Regulations, 2017"**) which in Clause 4 categorically provides for regularization of any person who was directly engaged or employed or deployed for working on daily wages or on work charge or on contract basis in a Co-operative Society under the purview of the Board on or before 31.12.2001 and still engaged or employed or deployed or working as such on the date of commencement of the Regulations, which commenced on 04.12.2017. It is contended that the case of the petitioners for regularization stood crystallized on the date of promulgation of the said Regulations, 2017 i.e. 04.12.2017 and consequently, the respondents are patently in error while passing the impugned order in rejecting the claim of the petitioners for regularization and also in contending that the retrenchment order is to come into force with immediate effect.

(24) The further contention is that once the petitioners had been continued in service for a period of about 38 years, consequently, there cannot be any occasion for the respondents to have not considered them for regularization, rather rejected their claim for regularization and to have indicated in the impugned order that the retrenchment order dated 31.01.2007 is being implemented with effect from 16/17.01.2018.

(25) On the other hand, Shri Amit Chandra, learned counsel appearing for respondent No.1, has justified the impugned order by contending that the petitioners, along with several others, had been retrenched vide the order dated 31.01.2007 on account of the precarious financial position of respondent No.1. However, in terms of the order of the writ Court dated 06.11.2006, whereby the petitioners were directed to continue until further orders, both the petitioners were continued in service. It is only when the writ petition was decided vide the order dated 11.04.2017 and the Court directed for consideration of the claim of the petitioners for regularization that considering the earlier retrenchment order dated 31.01.2007, the said order was directed to be implemented with effect from 16/17.01.2018 as indicated in the said order. Thus, once the petitioners are retrenched employees, consequently, there cannot be any occasion for regularization in terms of Regulations, 2017. Shri Chandra states that the respondent No.1 is in a precarious financial situation and it is not possible to regularize the petitioners.

(26) Shri Prashast Puri, learned counsel appearing for the respondent No.2, has stated that in terms of the Regulations, 2017, repeated reminders have been sent to respondent No.1 for sending of the Managing Director of the society/respondent No.1, who is the Member/Secretary of the Selection Committee for the purpose of consideration by the Selection Committee in terms of Clause 5 of the Regulations, 2017, for the purpose of consideration of the claim of the petitioners for regularization, but the respondent No.1 has failed to send the Managing Director of the society. In this regard, Shri Puri has placed reliance on various letters that have been sent by the Commission, including the letter dated 25.03.2025.

(27) Heard learned counsel for the parties and perused the records.

(28) From the arguments as raised by learned counsel for the contesting parties and perusal of record, it emerges that the petitioners were appointed as Salesmen under respondent No.1 on daily wages with effect from 12.09.1985 and 24.09.1984 respectively and retired in the year 2022 and, as such, till their retirement in the year 2022 had rendered almost 37 to 38 years of continuous service. As they had not been regularized, they filed a writ in the year 2000 praying for the regularization, which was decided in April, 2006 with a direction to the respondents to consider the case of the petitioners for regularization. However, their case for regularization was rejected.

(29) Perusal of the rejection order, a copy of which is Annexure-9 to the petition, would indicate that the respondents have not disputed that other persons who were working on daily wages had been regularized. However, respondent No.1 has indicated that it has no power to regularize the petitioners, as the said power lies with the Sansthagat Sewa Mandal, i.e., respondent No.2.

(30) Being aggrieved with the said order, the petitioners again filed Writ Petition No.6377 (S/S) of 2006, praying for quashing of the order of rejection of regularization and further praying for their regularization. During pendency of the writ petition, by means of order dated 31.01.2007, the services of the petitioners and others were retrenched. This Court, vide order dated 06.11.2006, had earlier directed that, till further orders, the respondents shall not proceed to retrench the petitioners from service. As such, considering the interim order dated 06.11.2006, the petitioners were continued in service. Writ Petition No.6377 (S/S) of 2006 was decided vide the judgment and order dated 11.04.2017 as corrected on 22.08.2017, whereby the statement of learned counsel for the petitioners was recorded that the case of the petitioners is covered by the Regularization Rules, 1985 as amended by the Rules, 1990. The writ Court indicated that the duration for which the petitioners worked has to be taken into consideration while considering their case for regularization and the respondents were directed to consider the case of the petitioners for regularization considering the observations made in the order dated 22.08.2017.

(31) The case of the petitioners for regularization was rejected vide the order impugned dated 17.01.2018 on the ground that the retrenchment order dated 31.01.2007 is to come into force with immediate effect, i.e., with the date of issuance of the order dated 17.01.2018.

(32) Being aggrieved, the petitioners filed the instant petition in which this Court passed an interim order dated 01.02.2018 directing that the operation and enforcement of the order dated 17.01.2018 shall remain stayed. The petitioners thus again continued in service. The order continued to remain in operation and ultimately, the petitioners retired on attaining the age of superannuation in the year 2022.

(33) From perusal of the aforesaid facts, it thus emerges that the petitioners have been in continuous service since their initial appointment, i.e., 12.09.1985 and 24.09.1984 respectively and have also retired on attaining the age of superannuation in the year 2022 having rendered almost 37 to 38 years of continuous service. The claim of regularization was earlier rejected. The petitioners were also retrenched and the retrenchment order was also sought to be made effective vide the order dated 17.01.2018. However, the fact of the matter remains that the petitioners have rendered uninterrupted service of 37 to 38 years and thus it is apparent that the petitioners have spent their entire working period under respondent No.1 but the benefit of regularization has not been extended to them.

(34) The only ground taken by Shri Amit Chandra, learned counsel appearing for the respondent No.1, to justify the non-regularization and the retrenchment of the petitioners is that respondent No.1 is in a precarious financial position and, once the petitioners are retrenched employees, consequently there cannot be any occasion for their regularization.

(35) Whether the aforesaid ground(s) for non-regularization of the petitioners would be available to respondent No.1 would have to be seen by this Court.

(36) Recently, the Hon'ble Supreme Court in the case of **Dharam Singh and others vs. State of U.P. and another : 2025 SCC OnLine SC 1735**, had an occasion to consider a matter where there were no regularization rules, yet the persons concerned had continued to work for a long period of time and the State had benefited from their services.

(37) In these circumstances, the Hon'ble Supreme Court held as under :-

"1. When public institutions depend, day after day, on the same hands to perform permanent tasks, equity demands that those tasks are placed on sanctioned posts, and those workers are treated with fairness and dignity. The controversy before us is not about rewarding irregular employment. It is about whether years of ad hoc engagement, defended by shifting excuses and pleas of financial strain, can be used to deny the rights of those who have kept public institutions running. We resolve it by insisting that public employment should be organised with fairness, reasoned decision making, and respect for the dignity of work.

....

17. Before concluding, we think it necessary to recall that the State (here referring to both the Union and the State governments) is not a mere market participant but a constitutional employer. It cannot balance budgets on the backs of those who perform the most basic and recurring public functions. Where work recurs day after day and year after year, the establishment must reflect that reality

in its sanctioned strength and engagement practices. The long-term extraction of regular labour under temporary labels corrodes confidence in public administration and offends the promise of equal protection. Financial stringency certainly has a place in public policy, but it is not a talisman that overrides fairness, reason and the duty to organise work on lawful lines.

18. Moreover, it must necessarily be noted that "ad-hocism" thrives where administration is opaque. The State Departments must keep and produce accurate establishment registers, muster rolls and outsourcing arrangements, and they must explain, with evidence, why they prefer precarious engagement over sanctioned posts where the work is perennial. If "constraint" is invoked, the record should show what alternatives were considered, why similarly placed workers were treated differently, and how the chosen course aligns with Articles 14, 16 and 21 of the Constitution of India. Sensitivity to the human consequences of prolonged insecurity is not sentimentality. It is a constitutional discipline that should inform every decision affecting those who keep public offices running.

....

20. We have framed these directions comprehensively because, case after case, orders of this Court in such matters have been met with fresh technicalities, rolling "reconsiderations," and administrative drift which further prolongs the insecurity for those who have already laboured for years on daily wages. Therefore, we have learned that Justice in such cases cannot rest on simpliciter directions, but it demands imposition of clear duties, fixed timelines, and verifiable compliance. As a constitutional employer, the State is held to a higher standard and therefore it must organise its perennial workers on a sanctioned footing, create a budget for lawful engagement, and implement judicial directions in letter and spirit. Delay to follow these obligations is not mere negligence but rather it is a conscious method of denial that erodes livelihoods and dignity for these workers. The operative scheme we have set here comprising of creation of supernumerary posts, full regularization, subsequent financial benefits, and a sworn affidavit of compliance, is therefore a pathway designed to convert rights into outcomes and to reaffirm that fairness in engagement and transparency in administration are not matters of grace, but obligations under Articles 14, 16 and 21 of the Constitution of India."

(38) Perusal of the said judgment of **Dharam Singh (supra)** indicates that the Hon'ble Supreme Court has issued comprehensive directions as, case after case, orders of the Hon'ble Supreme Court have been met with fresh technicalities which prolong the insecurity of those who have already laboured for years on daily wages. The Hon'ble Supreme Court was of the view that such circumstances demand the imposition of clear duties, fixed timelines and verifiable compliance and that as a constitutional employer, the State is held to a higher standard and, therefore, it must organize its perennial workers on a sanctioned footing, create a budget for lawful engagement and implement judicial directions in letter and spirit. Delay to follow the said obligations would not be a mere negligence but rather is a conscious method of denial that erodes livelihoods and dignity for the workers.

(39) In the said judgment, the Hon'ble Supreme Court, without there being any regularization scheme, issued directions for the regularization of the said persons who had worked for decades from the date the High Court directed a fresh recommendation by the Commission and a fresh decision by the State on sanctioning posts for the appellants.

(40) The instant case stands on a better footing, inasmuch as the petitioners have worked from the year 1984-85 till the year 2022, i.e., having rendered almost 37 to 38 years of continuous service and having spent their entire working life working under the respondents. The respondent No.1 has been benefited from their service. Despite having been retrenched in the year 2007, the writ Court, vide the order dated 22.08.2017, directed that the duration for which the petitioners had worked was to be taken into consideration while considering the case of the petitioners for regularization. The respondents, in the earlier rejection order, have admittedly regularized the services of the persons who were working under the respondent No.1 and by means of the impugned order, it has been indicated that the petitioners had been retrenched in the year 2007.

(41) Nothing would be more adverse to the petitioners than the aforesaid grounds which have been taken by the respondents for their non-regularization, including the ground of respondent No.1 being in a precarious financial position. Merely because the respondent No.1 is in a precarious financial position, the rights which have accrued to the petitioners cannot be negated and the continuous working of 37 to 38 years cannot be written off on the whims, fancies and caprices of the respondent No.1. Even otherwise, the earlier direction of the writ Court dated 18.04.2006, directing the respondent No.1 to consider the petitioners for regularization, as well as the subsequent order of the writ Court dated 22.08.2017, have attained finality; rather, the respondents have acquiesced to the said orders.

(42) In view of the aforesaid discussions, the Court finds that in view of the law laid down by the Hon'ble Supreme Court in the case of **Dharam Singh (supra),** this is a fit case in which this Court should exercise the extraordinary powers vested under Article 226 of the Constitution of India.

(43) Accordingly, the writ petition is **allowed**. A writ of certiorari is issued, quashing the impugned order dated 17.01.2018, a copy of which is Annexure-1 to the petition. A writ of mandamus is issued commanding the respondents to treat the petitioners as regularized with effect from the date of the orders of the writ Court dated 18.04.2006. The respondents shall also pay the retiral dues, including pension, gratuity and other benefits, to petitioner No.1 and the legal heirs of the petitioner No.2 with effect from the date of retirement.

(44) It is made clear that the regularization order would only be for the purpose of their retiral benefits and the petitioners would not be entitled to any other benefits for the aforesaid period of service.

(45) The respondents shall comply with this order within a period of six weeks from the date of receipt of a certified copy of this order.

(2025) 8 ILRA 640
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 26.08.2025

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No. 3925 of 2025

Amit Kumar Gautam ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Sandeep Kumar

Counsel for the Respondents:
Vishakha Pande, C.S.C.

Issue for Consideration

(1) Entitlement of deputationist to remain as it for a period as prescribed in the order of deputation.
(2) Jurisdiction of borrowing department to repatriate the deputationist to the Parent department, when the appointment on deputation was made by an order of Governor.

Headnotes

(A) Service law – Repatriation – Right to remain on deputation for the prescribed period – Entitlement – Appointment on deputation was made for three years by an order of Governor – Order of repatriation was passed by the borrowing department i.e. U.P. Project Corporation Limited before three years – Competence of borrowing department to repatriate the petitioner to the parent department was challenged – Legality of order, calling it a punitive order was also challenged as it was passed without enquiry:

Held : Petitioner can be repatriated before maximum period prescribed in order to his parent department. There is no bar that borrowing department cannot pass an order of repatriation **–** U.P. Project Corporation Limited is a separate entity and its orders are not passed on behalf of Governor and since impugned order is passed by Prabandh Nideshak of said Corporation, who is the appropriate authority, therefore, there is no ground to challenge the impugned order that it was passed by an Officer beyond its jurisdiction **–** Impugned order is not an stigmatic order. There may be some reasons that working of petitioner was not found suitable by respondents but it does not reflect from impugned order. Even no inquiry was initiated by Corporation except few notices were issued. Therefore, there is no legal basis to challenge the impugned order on a ground, it being a stigmatic order**.** [Paras 12, 13 and 14] (E-1)

Case Law Cited

Ashok Kumar Pandey and others v. State of U.P. and others, 2005 SCC OnLine All 600; Ratilal B. Soni and others v. State of Gujarat and others, AIR 1990 SC 1132; Kunal Nanda v. Union of India and another, AIR 2000 SC 2076; Union of India and another v. S. N. Maity and another, 2015(4) SCC 164 **– referred to.**

List of Keywords

Deputation; Repatriation; Parent department; Borrowing department; Selection process; Indefeasible right; Vested right; Jurisdiction.

Case Arising From

Order dated 20.02.2025 to repatriate the petitioner to his parent department.

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. Petitioner, an employee of Irrigation and Water Resource Department, was sent on deputation to U.P. Project Corporation Limited vide order dated 07.02.2024. For reference said order is reproduced hereinafter:

"उत्तर प्रदेश शासन
सिंचाई एव जल संसाधन अनुभाग-10

संख्या 23/2024/335/27-10001 (002)/5/2023-10

लखनऊः दिनांक 07 फरवरी, 2024

कार्यालय ज्ञाप

तात्कालिक प्रभाव से सिंचाई एवं जल संसाधन विभाग के यांत्रिक संवर्ग के श्री अमित कुमार गौतम, नवप्रोन्नत सहायक अभियन्ता (यां०) को उत्तर प्रदेश प्रोजेक्ट कारपोरेशन लिमिटेड में प्रतिनियुक्ति पर निम्नलिखित शर्तों के अधीन एतद्द्वारा नियुक्त/पदस्थापित किये जाने की श्री राज्यपाल सहर्ष स्वीकृति प्रदान करते हैं:-

1. श्री अमित कुमार गौतम, नवप्रोन्नत सहायक अभियन्ता (यां०) की प्रतिनियुक्ति की अवधि 03 वर्ष से अधिक नहीं होगी। 03 वर्ष की अवधि पूर्ण होने के उपरान्त श्री गौतम को पैतृक विभाग में तत्काल वापस कर दिया जायेगा।

2. श्री गौतम को प्रतिनियुक्ति पर लेते समय उनके मूल वेतन में किसी भी प्रकार का परिवर्तन नहीं किया जाएगा।

3. प्रतिनियुक्ति की अवधि में श्री गौतम को वही वेतन और मंहगाई भत्ता प्राप्त होंगे जो उन्हें पैतृक विभाग में रहते हुए प्राप्त होते।

4. उक्त प्रतिनियुक्ति के फलस्वरूप श्री अमित कुमार गौतम, नवप्रोन्नत सहायक अभियन्ता (यां०) को कोई अतिरिक्त लाभ भत्ता देय नहीं होगा।"

2. Petitioner has worked at U.P. Project Corporation Limited only for about one year and by means of impugned order dated 20.02.2025 he was repatriated to his parent department. Said order is also reproduced hereinafter:

"पत्र सं०: 8749/पी०सी०एल० /मुख्यालय/T-19 दिनांक: 20/02/2025

कार्यालय ज्ञाप

उत्तर प्रदेश शासन सिंचाई एवं जल ससाधन अनुभाग 10 के कार्यालय आदेश संख्या 23/2024/335/27-10001 (002)/5/2023-10 लखनऊ दिनांक 07.2.2024 एवं वरिष्ठ स्टाफ अधिकारी (ई-10) कार्यालय प्रमुख अभियन्ता के पत्र सं० जी-33/ई-10/नवप्रोन्नत स०अ० (यॉ०) /कार्यभार ग्रहण लखनऊ दिनांक 14.02.2024 द्वारा श्री अमित कुमार गौतम, सहायक अभियन्ता (यॉत्रिक), सिंचाई एवं जल संसाधन विभाग को यू०पी० प्रोजेक्ट्स कारपोरेशन लि० में प्रतिनियुक्ति पर पदास्थापित किया गया था, जिसके अनुपालन में इनके द्वारा दिनांक 23.02.2024 के पूर्वान्ह में कार्यभार ग्रहण किया गया था, को तत्कालिक प्रभाव से उनके पैतृक विभाग सिंचाई एवं जल संशाधन विभाग, उ० प्र० में एतद्वारा प्रत्यावर्तित किया जाता है।

श्री अमित कुमार गौतम, सहायक अभियन्ता (यॉत्रिक) / सहायक परियोजना प्रबन्धक को कार्यमुक्त करने से पूर्व यह सुनिश्चित कर लिया जाय कि इनके विरूद्ध कोई अभिलेख /सी०यू०जी०/ टी०एण्ड पी० आदि अवशेष तो नहीं है।

यह आदेश तत्काल प्रभावी होंगे।"

3. Aforesaid order is impugned in present case. Sri Sandeep Kumar, learned counsel for petitioner, has made following arguments:

(i) Petitioner was appointed on deputation with U.P. Project Corporation Limited by an order issued on behalf of Governor of State for a period of three years, therefore, any order to repatriate him to his parent department could be passed only by State Government on behalf of Governor.

(ii) The borrowing department, i.e., U.P. Project Corporation Limited has no power to repatriate petitioner before the fixed period of three years.

(iii) If the veil is lifted there are certain allegations levelled against the petitioner which are also reflected in counter affidavit filed by respondents, therefore, impugned order is punitive and without any inquiry no such impugned order can be passed.

(iv) U.P. Project Corporation Limited is still asking parent department to send Officers on deputation, as such borrowing department has still need of Officers on deputation.

(v) He has placed heavy reliance on a judgment passed by this Court in **Ashok Kumar Pandey and others vs. State of U.P. and others, 2005 SCC OnLine All 600.**

4. Per contra, Ms. Vishakha Pandey, learned counsel appearing for Respondent-U.P. Project Corporation Limited, submitted that it is a case of transfer on deputation and not appointment on deputation, therefore, petitioner has no indefeasible right to continue on deputation for the period prescribed.

5. Learned counsel also submitted that U.P. Project Corporation Limited is an independent entity and can take decisions in terms of applicable regulations. Governor is not an authority to pass orders for employees of U.P. Project Corporation Limited, therefore, the borrowing department can pass an order for repatriation.

6. She further submitted that impugned order is not stigmatic since nothing adverse is mentioned therein though it has not been denied that work of petitioner was not satisfactory and except issuing certain notices to him, no proceedings were initiated against him.

7. Learned counsel has placed reliance on the judgments passed by Supreme Court in the cases of **Ratilal B. Soni and others vs. State of Gujarat and others, AIR 1990 SC 1132** and **Kunal Nanda vs. Union of India and another, AIR 2000 SC 2076.**

8. I have considered the above submissions and perused the material on record.

9. First issue before this Court to consider is, whether petitioner has any right to remain on deputation for the period prescribed in order.

10. Undisputedly, it is not a case where petitioner was appointed on deputation after participating a selection process. It was a simple order of deputation. Therefore, in view of a judgment passed by Supreme Court in **Union of India and another vs. S.N. Maity and another, 2015(4) SCC 164** the case of petitioner could not fall under appointment on deputation and it may be a case of only transfer on deputation. Therefore, petitioner has no indefeasible right and in that background it would be relevant to reproduce following paragraphs of **S.N. Maity (supra):**

"14. In the above backdrop, this Court made a distinction between 'transfer on deputation' and 'appointment on deputation' and proceeded to lay down thus:

"14. However, the aforesaid principle cannot be made applicable in the matter of appointment (recruitment) on deputation. In such case, for appointment on deputation in the services of the State or organisation or State within the meaning of Article 12 of the Constitution of India, the provisions of Article 14 and Article 16 are to be followed. No person can be discriminated nor is it open to the appointing authority to act arbitrarily or to pass any order in violation of Article 14 of the Constitution of India. A person who applies for appointment on deputation has

an indefeasible right to be treated fairly and equally and once such person is selected and offered with the letter of appointment on deputation, the same cannot be cancelled except on the ground of non-suitability or unsatisfactory work.

15. The present case is not a case of transfer on deputation. It is a case of appointment on deputation for which advertisement was issued and after due selection, the offer of appointment was issued in favour of the appellant. In such circumstances, it was not open for the respondent to argue that the appellant has no right to claim deputation and the respondent cannot refuse to accept the joining of most eligible selected candidate except on ground of unsuitability or unsatisfactory performance".

15. Eventually, taking note of the communications, this Court directed as follows:

"18. For the reasons aforesaid, the impugned order of withdrawal of appointment dated 11-3-2010 and the order of the Division Bench of the Gujarat High Court cannot be sustained and they are accordingly set aside. As the post of Director is vacant, in view of the interim order of this Court dated 9-5-2011, we direct the 2nd respondent to accept the joining of the appellant for a period of one year on deputation which is to be counted from the date of his joining and other terms and conditions of deputation will remain same. North Gujarat University is directed to relieve the appellant with further direction to the 2nd respondent to accept the joining of the appellant within one week from the date of reporting by the appellant."

11. In above background, the Court also takes note of the judgments relied by learned counsel for respondents in **Ratilal B. Soni (supra)** and **Kunal Nanda (supra)** wherein it was held that a deputationist has no vested right and he can be repatriated to his parent department at any time. Relevant part of aforesaid judgments are reproduced hereinafter:

Ratilal B. Soni (supra):

"5. The appellants being on deputation they could be reverted to their parent cadre at any time and they do not get any right to be absorbed on the deputation post. We see no infirmity in the judgment of the High Court and as such we dismiss the appeal. There shall be no order as to costs."

Kunal Nanda (supra):

"6. On the legal submissions made also there are no merits whatsoever. It is well settled that unless the claim of the deputationist for permanent absorption in the department where he works on deputation is based upon any statutory Rule, Regulation or Order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption. The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation. The reference to the decision reported in Rameshwar Prasad vs M.D., U.P. Rajkiya Nirman Nigam Ltd. and Others, 1999 (8) SCC 381 is inappropriate

since, the consideration therein was in the light of statutory rules for absorption and the scope of those rules. The claim that he need not be a graduate for absorption and being a service candidate, on completing service of 10 years he is exempt from the requirement of possessing a degree need mention, only to be rejected. The stand of the respondent department that the absorption of a deputationist being one against the direct quota, the possession of basic educational qualification prescribed for direct recruitment i.e., a degree is a must and essential and that there could no comparison of the claim of such a person with one to be dealt with on promotion of a candidate who is already in service in that department is well merited and deserves to be sustained and we see no infirmity whatsoever in the said claim."

12. In view of above, considering the nature of order of deputation, this Court is of the opinion that petitioner can be repatriated before maximum period prescribed in order to his parent department. There is no bar that borrowing department cannot pass an order of repatriation.

13. It is also not in dispute that U.P. Project Corporation Limited is a separate entity and its orders are not passed on behalf of Governor and since impugned order is passed by Prabandh Nideshak of said Corporation, who is the appropriate authority, therefore, there is no ground to challenge the impugned order that it was passed by an Officer beyond its jurisdiction.

14. Impugned order is not an stigmatic order. There may be some reasons that working of petitioner was not found suitable by respondents but it does not reflect from impugned order. Even no inquiry was initiated by Corporation except few notices were issued. Therefore, there is no legal basis to challenge the impugned order on a ground, it being a stigmatic order.

15. It may be a case that Respondent-U.P. Project Corporation Limited is still require Officers from parent department of petitioner, on deputation but petitioner has no indefeasible right to consider for deputation. Therefore, the Court is of the opinion that all argument raised on behalf of petitioner are not legally sustainable and in view of **Kunal Nanda (supra), Ratilal B. Soni (supra)** and **S.N. Maity (supra),** the petitioner can be repatriated to his parent department at any time and even before prescribed period came to an end.

16. The writ petition is accordingly dismissed.

17. In the interest of justice, it would be necessary to observe that only on ground that petitioner is repatriated before expiry of maximum period, he would not be disentitled for consideration of fresh deputation, if circumstances so warrant.

(2025) 8 ILRA 644
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 11.08.2025

BEFORE

THE HON'BLE AJIT KUMAR, J.

Writ A No. 4120 of 2018

Mool Chandra Singh ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Brijesh Kumar Singh, Hemant Kumar

Counsel for the Respondents:
C.S.C.

Issue for Consideration

Whether the period of service rendered by the petitioner in the work charge establishment, can be added alongwith qualifying service to enhance the pension?

Headnotes

(A) Service law – Pension – Qualifying period of service – Service rendered in work charge establishment claimed to be counted – Petitioner was regularized in 2014, on the basis of which he already attained the qualifying period and is receiving service – However, he claimed that if the previous period is also counted for qualifying service then the net result would be that petitioner's regularization would take effect from back date i.e. from the date he entered in the work charge establishment in the year 1997 – Permissibility:

Held : Principles of law laid down in Prem Singh's case would not be attracted in the present case as petitioner has already attained the qualifying period for pension and is receiving pension – A person gets substantive appointment on the date he is regularized in service and hence, regularization cannot be given effect from the back date unless and until the regularization rules do provides for the same or the regularization order provide for the same. It is not the case of the petitioner that he has been regularized w.e.f. the year 1997 and hence, I do not find any force in the petition. [Para 7] (E-1)

Case Law Cited

Prem Singh v. State of Uttar Pradesh and others (2019) 10 SCC 516; Udai Pratap and others v. State of Bihar and others 2023 0 Supreme (SC) 429 – **referred to.**

List of Acts

U.P. Retirement Benefit Rules, 1961 – Rule 3(8).

List of Keywords

Pension; Qualifying service; Work charge establishment; Computation of service; Regularization; Substantive capacity; Substantive appointment.

Case Arising From

Order dated 05.09.2017 whereby the respondent refused to computes the period of service rendered in the work charge establishment.

(Delivered by Hon'ble Ajit Kumar, J.)

1. Heard Shri Hemant Kumar, learned counsel for the petitioner and Shri Rahul Malviya, learned Standing Counsel.

2. By means of this petition filed under Article 226 of the Constitution petitioner has assailed the order dated 05.09.2017 passed by the respondent No. 4 to the extent it computes the period running from 2004 till he attained the age of superannuation in the year 2017 and thereby ignoring the period of service rendered by the petitioner prior to 2004 in the work charge establishment.

3. It is contended by learned counsel for the petitioner that in the light of the judgment in the case of **Prem Singh v. State of Uttar Pradesh and others (2019) 10 SCC 516** the period rendered in the work charge establishment is required to be counted towards qualifying service and for pension and hence, the period rendered by the petitioner in the work charge establishment ought to have been taken into consideration.

4. On the contrary it is argued by learned Standing Counsel that petitioner retired in the year 2017 and hence he qualified for pension for having attained the qualified period for pension which is ten years as his service came to be counted

from the year 2004 untill he retired in the year 2017.

5. It is next contended by the learned Standing Counsel that the principle of law laid down in the case of **Prem Singh (supra)** would be attracted in the event an employee while discharged his duties in work charge establishment and retired after his regularization without getting the benefit of pension scheme for the reason that during interregnum period he discharged his duties in the work charge establishment that could not be taken into consideration for relevant Civil Service Regulation. He submits that the **Prem Singh's (supra)** judgment has further been clarified by the Supreme Court itself in a later authority of **Udai Pratap and others v. State of Bihar and others 2023 0 Supreme (SC)429** in which the Court has held that the principle of law laid down in the case of **Prem Singh (supra)** would be attracted only to the extent of taking service rendered in the work charge establishment to meet the requirement of qualifying period for pension.

5. Having heard learned counsel for respective parties and having perused the records, I fund no quarrel between the parties as to the claim of old pension benefit to the petitioner but the limited question that arise for consideration is whether the period of service rendered by the petitioner in the work charge establishment is required to be counted further towards qualifying service to inhouse pension. The judgment in the case of **Udai Pratap (supra)**, therefore, becomes relevant here. The relevant paragraphs 6.2 and 6.3 of the judgment is reproduced hereunder:

"6.2 Insofar as the submission on behalf of the appellants that their entire services rendered as work charged should be considered and/ or counted for the purpose of pension/ quantum of pension is concerned, the same cannot be accepted. If the same is accepted, in that case, it would tantamount to regularizing their services from the initial appointment as work charged. As per the catena of decisions of this Court, there is always a difference of distinction between a regular employee appointed on a substantive post and a work charged employee working under work charged establishment. the work charged employees are not appointed on a substantive post. They are not appointed after due process of selection and as per the recruitment rules. Therefore, the services rendered as work charged cannot be counted for the purpose of pension/ quantum of pension. However, at the same time, after rendering of service as work charged for number of years and thereafter when their services have been regularized, they cannot be denied the pension on the ground that they have not completed the qualifying service for pension. That is why, the service rendered as work charged is to be counted and/ or considered for the purpose of qualifying service for pension, which is provided under Rule 5(v) of the Rules, 2013.

6.3 Now, insofar as the reliance placed upon the decision of this Court in the case of Prem Singh (supra) by the learned counsel appearing on behalf of the appellants is concerned, the reliance placed upon the said decision is absolutely misplaced. In the said case, this Court was considering the validity of Rule 3(8) of the U.P. Retirement Benefit Rules, 1961, under which the entire service rendered as work charged was not to be counted for qualifying service for pension. **To that, this Court has observed and held that**

after rendering service as work charged for number of years in the Government establishment/ department, denying them the pension on the ground that they have not completed the qualifying service for pension would be unjust, arbitrary and illegal. Therefore, this Court has observed and held that their services rendered as work charged shall be considered/ counted for qualifying service. This Court has not observed and held that the entire service rendered as work charged shall be considered/ counted for the quantum of pension/ pension. The decision of this Court in the case of Prem Singh (supra), therefore, would be restricted to the counting of service rendered as work charged for qualifying service for pension".

(Emphasis added)

6. From the observations made *qua* the directions issued by the Supreme Court in Prem Singh's Judgment, it is clear that the principles of law laid down in Prem Singh's case would not be attracted in the present case as petitioner has already attained the qualifying period for pension and is receiving pension. Petitioner since claims to be regularized in substantive capacity in the year 2004 under the rules of regularization and if the previous period is also counted for qualifying service then the net result would be that petitioner's regularization would take effect from back date i.e. from the date he entered in the work charge establishment in the year 1997. The legal position is very clear, a person gets substantive appointment on the date he is regularized in service and hence, regularization cannot be given effect from the back date unless and until the regularization rules do provides for the same or the regularization order provide for the same. It is not the case of the petitioner that he has been regularized w.e.f. the year 1997 and hence, I do not find any force in the petition.

8. In view of the above, the petition fails and is accordingly dismissed.

(2025) 8 ILRA 647
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 07.08.2025

BEFORE

THE HON'BLE MANISH MATHUR, J.

Writ A No. 5314 of 2002
&
Writ A No. 2007437 of 1992

Rajendra Kumar Jain ...Petitioner
Versus
State of U.P. & Anr. ...Respondents

Counsel for the Petitioner:
Alka Verma, Shivam Tiwari, Tanay Hazari, Vijay Kumar Azad

Counsel for the Respondents:
C.S.C., Prashant Singh Atal

ISSUE FOR CONSIDERATION

Whether the punishment order removing the petitioner from service is vitiated for non-issuance of show cause notice and denial of opportunity of hearing as mandated under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930 and Article 311 of the Constitution of India.

HEADNOTE

Service Law – Disciplinary Proceedings – Rule 55 of Civil Services (Classification, Control and Appeal) Rules, 1930 – Article 311(2) of Constitution of India – Supply of inquiry report and mandatory show cause notice – Two-stage disciplinary process – Non-issuance vitiates punishment – Removal order quashed.

Held :
Petitioner challenged the order whereby punishment of removal from service was inflicted upon him on the ground that no fresh show cause notice was ever served prior to passing of the impugned order. *Rule 55 of CCA Rules clearly stipulates in a mandatory notion that notice is required to be issued to the delinquent employee prior to imposition of punishment.* After submission of the inquiry report, at the first stage, it is the right of the delinquent employee to raise objections with regard to the manner of conduct of inquiry and the findings recorded by the Inquiry Officer. Only after such grievance is considered by the disciplinary authority can it record a finding either agreeing or disagreeing with the inquiry report. If agreeing, issuance of notice for imposition of punishment must follow. Court found that *neither any show cause notice was issued nor any opportunity of personal hearing was provided* prior to passing of the impugned order. As the mandatory procedure was not followed, the removal order was quashed. Respondents directed to treat petitioner in regular service throughout with consequential service benefits on a notional basis. *(Paras 18, 22, 24, 29)* (E-5)

CASE LAW CITED
E.C.I.L. v. B. Karunakar, (1993) 4 SCC 727

List of Acts
1. Civil Services (Classification, Control and Appeal) Rules, 1930, Rule 55
2. Constitution of India, Article 311

List of Keywords
Service Law; Disciplinary Proceedings; CCA Rules; Show Cause Notice; Natural Justice; Article 311; Inquiry Report; Removal from Service; Consequential Benefits; No Back Wages.

CASE ARISING FROM
Order dated 29.09.1992 removing the petitioner from service

Appearances for Parties
Advs For Petitioner: Ms. Alka Verma assisted by Mr. Tanay Hazari; Hemendra Pratap; Shivam Tiwari; Vijay Kumar Azad
Advs For Respondents: C.S.C.; Prashant Singh Atal; Sandeep Sharma (State Counsel)

(Delivered by Hon'ble Manish Mathur, J.)

1. Heard Ms. Alka Verma, assisted by Mr. Tanay Hazari, learned counsel for petitioner and Mr. Sandeep Sharma, learned State counsel for opposite parties.

2. Writ Petition No.7437 (S/S) of 1992 has been filed challenging the punishment order dated 29.09.1992 whereby punishment of removal from service has been inflicted upon petitioner.

3. Writ-A No. 5314 of 2002 has been filed with regard to consequential benefits sought in case the petition of 1992 succeeds.

4. It has been submitted that earlier while in service, petitioner was issued a charge sheet dated 27.01.1976 thereby instituting the disciplinary proceedings against him whereafter an inquiry report was submitted holding petitioner guilty of charges levelled against him. On the basis of inquiry report, punishment order dated 02.12.1980 was passed against petitioner dismissing him from service. The said order was thereafter challenged by petitioner before the State Public Services Tribunal in Claim Petition No.173/F/iv of 1981. The said claim petition was allowed by means of judgment and order dated 29.10.1983 primarily on the ground that punishment order had been passed without jurisdiction. Therefore, the matter was remanded for passing of orders afresh on the aspect of punishment while upholding the inquiry proceedings. The said order was thereafter challenged before this Court by the State Government in Writ Petition No.1524 of (S/S) 1984 in which although

initially an interim order was passed but was subsequently vacated and in pursuance of which petitioner was allowed to join duties w.e.f. 26.05.1990. The judgment and order passed by Tribunal was also assailed by petitioner in Writ Petition No.2581 of (S/S)1994.

5. Supplementary affidavit filed today on behalf of petitioner, which is taken on record, brings on record the fact that both the aforesaid petitions were thereafter dismissed as infructuous in view of passing of subsequent order which is impugned in the present petition.

6. It has been submitted that the impugned order has been passed without complying with directions issued by the Tribunal inasmuch as no fresh show cause notice was ever served upon petitioner prior to passing the impugned order of removal, which was mandatory in terms of Rule 55 of Civil Services (Classification, Control and Appeal), Rules 1930 ,which were applicable at that time and which specifically provided that no order of punishment would be passed by the disciplinary authority until and unless an opportunity of hearing was provided to the delinquent employee. It is submitted that during pendency of petition, petitioner passed away and has been substituted by his legal heirs.

7. Learned counsel for petitioner submits that since the said procedure has not been followed, the impugned order therefore is rendered vitiated. She has placed reliance on judgment rendered by Hon'ble Supreme Court in the case of ***E.C.I.L. vs B Karunakar (1993) 4 SCC 727.***

8. Learned State counsel has refuted submissions advanced by learned counsel for petitioner with the submission that once the Tribunal has clearly upheld findings recorded in the inquiry proceedings, the only aspect required was to consider inflicting punishment upon petitioner and has adverted to paragraph 28 of counter affidavit to submit that order of removal has been passed on the basis of entire material on record and inquiry report submitted by the Inquiry Officer. It is further submitted that there is no specific ground taken by petitioner in pleadings that he was not served with any show cause notice or was not provided any opportunity of hearing prior to passing of order of removal. It is further submitted that petitioner has also been unable to indicate any prejudice caused to him even if it is assumed, though not admitted, that he was not afforded any opportunity of hearing prior to passing of impugned order.

9. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is evident from a perusal of judgment and order passed by the Tribunal, particularly in paragraphs 6 and 7 thereof that the Tribunal did not find any lacuna in the inquiry proceedings and the punishment order challenged therein was set-aside only on the ground of lack of jurisdiction granting liberty to the opposite parties to commence from the stage after submission of inquiry report. The Tribunal has also in paragraph 7 thereof clearly held that it is in accordance with settled law that prior to passing of final orders on the basis of inquiry report, a show cause notice is required to be issued to the delinquent employee and for providing a personal hearing prior to passing of such order.

10. It is also evident and admitted between the parties that judgment and order

passed by Tribunal was thereafter assailed by the petitioner as well as by the State in writ petitions which were subsequently dismissed as having been rendered infructuous due to passing of present impugned order. The said aspect clearly indicates that findings recorded by the Tribunal pertaining to inquiry proceedings therefore attained finality since no lacuna in the inquiry proceedings was found by the Tribunal.

11. In such circumstances, the only question surviving for examination is the aspect whether petitioner was issued any show cause notice or provided any opportunity of personal hearing prior to passing of impugned order of removal. The aspect of prejudice being caused also requires examination.

12. Although there is no specific ground taken by petitioner in memorandum of petition with regard to show cause notice or opportunity of hearing not being provided to him prior to passing of punishment order but foundation for same has been made in ground nos.1 and 9 thereof specifically indicating therein that the impugned order is in violation of Rule 55 of CCA Rules as well as Article 311 of Constitution of India.

13. In such circumstances, this Court is of the considered opinion that since foundation for such a ground has already been raised in writ petition, the same can be adjudicated upon.

14. With regard to the aspect of issuance of a show cause notice prior to passing any order inflicting punishment upon the delinquent employee, the aspect has clearly been delineated by Hon'ble Supreme Court in the case of ***E.C.I.L (supra)*** in following manner:-

"(1) Where the enquiry officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, enquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached.

While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the Forty- second Amendment. The second stage consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the enquiry officer. The latter right was always there. But before the Forty-second Amendment of the

Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz., the stage of considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be imposed were only tentative. All that has happened after the Forty-second Amendment of the Constitution is to advance the point of time at which the representation of the employee against the enquiry officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence in respect of the charges.

** * * Article 311(2) says that the employee shall be given a "reasonable opportunity of being heard in respect of the charges against him". The findings on the charges given by a third person like the enquiry officer, particularly when they are not borne out by the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputations. The proviso to Article 311(2) in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the enquiry officer being only his delegate appointed to hold the inquiry and to assist him), the employee's reply to the enquiry officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry.*

Hence, when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."

15. For examination and applicability of aforesaid judgment in the present facts and circumstances of the case, particularly paragraph 28 of the counter affidavit, it is evident that neither any show cause notice was issued nor any opportunity of personal hearing was provided to petitioner prior to passing of the impugned order.

16. The aspect therefore which assumes importance is prejudice which is caused to the petitioner.

17. Hon'ble Supreme Court in the case ***E.C.I.L (supra)*** has clearly held that the disciplinary proceedings are in two stages with the first stage ending with submission of inquiry report and second stage when the disciplinary authority decides to impose penalty on the basis of its conclusion. It has also been held that the first right is the right conferred upon the delinquent employee to prove innocence and the second right is to plead for either no penalty or lesser penalty although conclusion regarding guilt is accepted.

18. The aspect which can be therefore culled out from the aforesaid judgment is that even after submission of inquiry report,

at the first stage, it is the right of the delinquent employee to raise objections with regard to the manner of conduct of an inquiry and the findings recorded by the Inquiry Officer. It is only once such a grievance is addressed by the disciplinary authority that it can thereafter record a finding either agreeing with the inquiry report or disagreeing with the findings recorded by the Inquiry Officer. It is in case the disciplinary authority agrees with the finding recorded by the Inquiry Officer, the aspect of issuance of notice for purposes of imposition of punishment is required to be followed.

19. Thus, it is evident as held in aforesaid case of ***E.C.I.L (supra)*** that providing a copy of the inquiry report to the delinquent employee is mandatory. It can be seen that the aspect as to why supply of the inquiry report to the delinquent employee is mandatory is primarily for such a delinquent employee to raise objections either to conduct of inquiry proceedings or to raise objections to findings recorded by the Inquiry Officer.

20. This very purpose would stand frustrated in case a copy of the inquiry report is not supplied to delinquent employee. Therefore, in the considered opinion of this Court, after supplying of inquiry report, not only as per Rule 55 of CCA Rules but also in terms of Article 311 of Constitution of India, an objection is mandatorily required to be called for by the disciplinary authority from the delinquent employee not only for the purposes of imposition of punishment but also for providing an opportunity of hearing to the delinquent employee to prove his innocence before the disciplinary authority.

21. From the purpose of issuance of show cause notice subsequent to submission of the inquiry report, it is evident that the said procedure forms a substantive part of the entire disciplinary proceedings and is not merely a formality and therefore is required to be strictly adhered to.

22. In view of aforesaid discussions, it is thus evident that reason for issuance of notice prior to imposition of punishment upon the delinquent employee is not only for the purposes of punishment but also to give an opportunity to the delinquent employee to prove his innocence raising grievance against the inquiry proceedings as well as the findings recorded by the Inquiry Officer. It is probably for this reason that Rule 55 of CCA Rules clearly stipulates in a mandatory notion that notice is required to be issued to the delinquent employee prior to imposition of punishment.

23. In the present facts and circumstances of the case, not only upon examination of impugned punishment order but also as per paragraph 28 of counter affidavit, it is evident that neither any notice was served upon petitioner nor any personal opportunity of hearing was provided to him prior to passing of impugned order. This also assumes significance in view of judgment rendered by the Tribunal specifically indicating that prior to passing of punishment order, the opposite parties were required to issue show cause notice to the delinquent employee.

24. In view of the fact that such mandatory procedure has not been followed by the opposite parties, renders the impugned order dated 29.09.1992 vitiated and is consequently quashed by issuing a writ in the nature of certiorai.

25. Although learned counsel for petitioner has submitted that once the impugned punishment order has been quashed, he would be entitled for backwages but this Court is disinclined to grant such relief, particularly in view of the fact that the inquiry report has specifically been upheld against the petitioner by the Tribunal with such findings having attained finality and it is only on a technical aspect that this petition is being allowed. Since the findings recorded by the Inquiry Officer are not being interfered with, this Court does not find any occasion to grant backwages.

26. Ordinarily, in such circumstances, the dispute is required to be remitted for consideration afresh but considering the fact that charge sheet pertains to the year 1976 and the petitioner in the meantime has also passed away, this Court does not find any occasion to remit the matter for consideration afresh.

27. Writ-A No.5314 of 2002 has been filed seeking a direction to opposite parties to treat petitioner in continued service and pay all the service benefits including selection grade and other revised pay scales as revised from time to time.

28. In view of the fact that impugned order of removal of petitioner stands quashed, the consequential benefits as sought for in subsequent Writ-A No.5314 of 2002 are also allowed to the petitioner.

29. Resultantly, both the petitions succeed and are **allowed**. Further writ in the nature of mandamus is issued commanding the opposite parties to treat petitioner in regular service throughout with consequential service benefits financially being provided to him on a notional basis.

(2025) 8 ILRA 653
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.08.2025

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No. 5735 of 2025

Yogesh Kumar Sharma ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Pradeep Kumar Upadhyay, Sharad Rastogi, Sr. Advocate

Counsel for the Respondents:
Aditya Bhushan Singhal, C.S.C., Suresh Singh

ISSUE FOR CONSIDERATION

Whether initiation of departmental proceedings against a Superintending Engineer of U.P. Jal Nigam (Urban), on the basis of approval granted by the Board of Directors instead of the Governor, is legally valid.

HEADNOTE

Service Law — Disciplinary Proceedings — Post-Retirement Inquiry — Rule 351-A of Civil Services Regulations — Competent Authority — Board of Directors — Delegation of Power — Validity — U.P. Jal Nigam (Urban) — Gratuity and Leave Encashment.

Held :

Petitioner, a retired Superintending Engineer of U.P. Jal Nigam (Urban). *Prabandh Nideshak/Nideshak Mandal*, in terms of amended Rules 3(1) and 3(2) of the U.P. Sarkari Karmchari Acharan Niyamavali, 1956, with the permission of the Chairman, U.P. Jal Nigam (Urban), Lucknow, took a decision to initiate inquiry against the petitioner under Rule 351(A) of the C.S.R. The petitioner argued that the appropriate authority to grant such permission

was the Hon'ble Governor and that it could not be delegated to the Board of Directors of U.P. Jal Nigam. The issue being who is the appropriate authority to grant sanction to initiate proceedings under Section 351(A) of the C.S.R., it was noted that the Chairman, U.P. Jal Nigam, had issued an Office Memo dated 3.2.2003, whereby the decision taken by the Board of Directors in its 138th meeting dated 22.1.2003 was communicated, adopting the provisions of the U.P. Government Servant (Discipline and Appeal) Rules, 1999, with the amendment that the words "Governor" or "State Government" be read as "Nigam/Board of Directors." The aforesaid Office Memo dated 3.2.2003 still holds good. There was no legal error in initiating proceedings against the petitioner after retirement, since the decision of the Board of Directors was duly taken under the aforesaid provisions. *Writ petition dismissed. (Paras 24–29) (E-5)*

CASE LAW CITED

None.

List of Acts

1. Civil Services Regulations, Rule 351-A;
2. U.P. Government Servant (Discipline and Appeal) Rules, 1999.

List of Keywords

Service Law; Rule 351-A; Board of Directors; Delegation of Power; Post-Retirement Inquiry; U.P. Jal Nigam (Urban); Disciplinary Proceedings; Gratuity; Leave Encashment; Sanction.

CASE ARISING FROM

Challenge to charge-sheet dated 23.08.2024 and departmental proceedings initiated under Rule 351-A of the Civil Services Regulations after retirement.

Appearances for Parties

Advs For Petitioner: Sri Ashok Khare, Senior Advocate; assisted by Sri Pradeep Kumar Upadhyay.

Advs For Respondents: Sri M.C. Chaturvedi, Additional Advocate General; assisted by Sri Aditya Bhushan Singhal; C.S.C.; and Sri Suresh Singh.

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. Heard Sri Ashok Khare,learned Senior Counsel assisted by Sri Pradeep Kumar Upadhyay, learned counsel for the petitioner, Sri M.C.Chaturvedi, learned Additional Advocate General assisted by Sri Aditya Bhushan Singhal, learned counsel for the respondents.

2. Petitioner was initially appointed as Junior Engineer (Civil) in 1984 in U.P Jal Nigam.

3. Petitioner was promoted as Assistant Engineer in the year 2003 and was accommodated as Executive Engineer in April 2016.Later on, he was accorded promotion on the post of Superintending Engineer on 3.3.2023 and he retired on 30.4.2023 as Superintending Engineer.

4. On 30.6.2024, an occurrence took place and a recently constructed water tank at Krishna Vihar, Colony, Mathura having a capacity of 2500 Litres fell down, which resulted into death of two women and 11 persons were injured also.

5. The aforesaid occurrence was taken note of and an inquiry was conducted by a four member committee and its report dated 24.7.2024 was submitted and on basis of its outcome, disciplinary proceedings were initiated against the petitioner after his retirement since it was found that petitioner was incharge and was looking after the construction of water tank between 7. 10.2020 to 8.6.2022 and at least 45% of work was completed during his tenure though according to the petitioner, only 25% of work was done under his tenure which includes construction of Top Dome (Top Cover), Pipe Fitting & Fixture,

Painting, Testing and Commissioning. Disciplinary Proceedings were initiated against other employees also.

6. A decision was also taken to lodge an F.I.R and accordingly an F.I.R was also lodged on 1.7.2024 under Sections 304 and 338 of I.P.C. against construction companies and unnamed officials.

7. Petitioner was already retired therefore, Prabandh Nideshak/ Nideshak Mandal in terms of amended Rules 3(1) and 3(2) of U.P. Sarkari Karmchari Acharan Niyamavali-1956, with a permission of Chairman, U.P. Jal Nigam (Urban) Lucknow took a decision to initiate inquiry against the petitioner, under Rule 351 (a) of CCS Rules and an Inquiry Officer was appointed. This communication was in anticipation of permission from Nideshak Mandal of U.P. Jal Nigam (Urban) Lucknow). For reference order dated 9.8.2024 is reproduced hereinafter:

"तत्कालीन कार्यालय अधिशासी अभियंता, ड्रेनेज एवं सीवरेज इकाई/अतिरिक्त निर्माण इकाई, मथुरा में अधिशासी अभियंता के पद पर तैनाती के दौरान श्री योगेश कुमार शर्मा, तत्कालीन अधिशासी अभियंता/ वर्तमान में सेवानिवृत्त अधीक्षण अभियंता द्वारा दायित्वों का निष्ठापूर्वक निर्वहन न करने, अमृत कार्यक्रम के अन्तर्गत मथुरा पेयजल पुनर्गठन योजना थ्रू गोकुल बैराज पार्ट-1 के निर्माण कार्यों में लापरवाही बरते जाने के फलस्वरूप कृष्णा विहार कॉलोनी, मथुरा में निर्मित अवर जलाशय, क्षमता 2500 किली0/20 मीटर स्टेजिंग के दिनांक 30.06.2024 को क्षतिग्रस्त होकर गिर जाने, कार्यों की गुणवता प्रथम दृष्टया अधोमानक होने, अधीनस्थों पर शिथिल नियंत्रण रखने, कार्यों का सही ढंग से क्रियान्वयन / निरीक्षण न करने विभाग को आर्थिक क्षति पहुंचाने, विभाग की छवि धूमिल करने एवं उ०प्र० सरकारी कर्मचारी आचरण नियमावली-1956 (यथासंशोधित) के नियम-3(1) एवं 3(2) में निहित प्राविधानों का उल्लंघन करने आदि से संबंधित प्रतिकूल तथ्यों के प्रकाश में आने एवं प्रथम दृष्टया दोषी पाये जाने के फलस्वरूप अध्यक्ष, उ०प्र० जल निगम (नगरीय) के अनुमोदनोपरान्त निदेशक मण्डल उ०प्र० जल निगम (नगरीय) की स्वीकृति की प्रत्याशा में श्री योगेश कुमार शर्मा, सेवानिवृत्त अधीक्षण अभियंता के विरूद्ध एतद् द्वारा के नियम-351 (ए) के अधीन विभागीय कार्यवाही संस्थित करते हुए आरोपों की जांच हेतु मुख्य अभियंता (कानपुर क्षेत्र) उ०प्र० जल निगम (नगरीय), कानपुर को पदेन जांच अधिकारी नियुक्त किया जाता है।

मुख्य अभियंता (कानपुर क्षेत्र) उ०प्र० जल निगम (नगरीय), कानपुर व पदेन जांच अधिकारी प्रकरण की अनुशासनिक जांच कार्यवाही पूर्णकर, जांच आख्या विलम्बतम् दिनांक 10.09.2024 तक प्रस्तुत करेंगे।"

8. In the aforesaid circumstances a charge-sheet dated 23.8.2001 was served upon the petitioner on 2 charges. For reference details of Charges No.1 and 2 are reproduced hereinafter:

"आरोप संख्या-1

अमृत कार्यक्रम के अन्तर्गत मथुरा पेयजल पुर्नगठन योजना थ्रो गोकुल बैराज पार्ट-1 के अन्तर्गत पेयजल से सम्बन्धित योजना के प्राक्कलन की स्वीकृति शासनादेश संख्या 285/2018/794/नौ-5-2018-30बजट/2017 दिनांक 02.08.2018 के अनुसार योजना की स्वीकृत लागत रू० 3864.12 लाख है। स्वीकृत योजना में मुख्यतः निम्नलिखित कार्य प्रस्तावित थेः-

वितरण प्रणाली 74.434 कि०मी०

भूमिगत जलाशय 3700 कि०ली० एवं 600 कि०ली० - 2 नग

ओवर हैड टेंक 2500 कि०ली० एवं 1650 कि०ली० -2 नग

फीडर मेन- 3880 मी०
राइजिंग मेन- 100 मी०
पेयजल गृह संयोजन- 8835 नग

अमृत कार्यक्रम के अन्तर्गत मथुरा पेयजल पुर्नगठन योजना थ्रो गोकुल बैराज पार्ट-1 से संबंधित प्रस्तावित कार्यों को पूर्ण कराने हेतु अनुबन्ध संख्या-08/जी.एम.-डी.एस.यू./18-19 के अधीन मैसर्स एस.एम. कन्स्ट्रक्शन, 109, अदन बाग, दयाल बाग, आगरा (जे.वी.) मैसर्स बनवारी लाल, आगरा (जे.वी.) मैसर्स त्रिलोक सिंह रावत, गाँव दोब, पोस्ट नौल (मासी), अल्मोड़ा, उत्तराखण्ड को अनुबन्धित किया गया, जिसके सापेक्ष कार्य प्रारम्भ करने की तिथि 25.01.2019 एवं कार्य समाप्ति की तिथि 24.04.2021 निर्धारित की गयी। निर्धारित समयान्तर्गत कार्य पूर्ण न हो पाने के फलस्वरूप दिनांक 28.02.2022 तक की समयवृद्धि प्रदान करते हुये मथुरा नगर में योजनान्तर्गत वितरण प्रणाली -74.434 कि०मी०, भूमिगत जलाशय 3700 कि०ली० एवं 600 कि०ली० -2 नग, उच्च जलाशय 2500 कि०ली० एवं 1650 कि०ली० -2 नग, फीडर मेन -3880 मी०, राइजिंग मेन -50 मी० एवं पेयजल गृह संयोजन -11238 नग से संबंधित निर्माण कार्य दिनांक 30.11.2021 तक पूर्ण कराये गये।

उपर्युक्त अनुबन्ध संख्या 08/जी.एम. डी.एस.यू./18-19 के अन्तर्गत वितरण प्रणाली, भूमिगत जलाशय, उच्च जलाशय, फीडर मेन, राइजिंग मैन पेयजल गृह संयोजन एवं तत्सम्बन्धी कार्य आपके नियंत्रण में उक्त अनुबन्धित फर्मों के माध्यम से दिनांक 30.11.2021 तक तथा 03 माह के ट्रायल रन अवधि सहित 28.02.2022 तक पूर्ण कराये गये। दिनांक 30.06.2024 को सांय 6 बजे के आस-पास कृष्णा विहार कॉलोनी में उक्त निर्मित अवर जलाशय क्षमता 2500 कि०ली०/20 मीटर स्टेजिंग क्षतिग्रस्त होकर गिर पड़ी, जिसके फलस्वरूप उच्च जलाशय के परिसर के आस-पास निवास कर रहे 15 व्यक्ति घायल हो गये, जिनमें से 02 व्यक्तियों की मृत्यु हो गयी। उक्त घटना के कारण जल संयोजन से संबंधित उपभोक्ताओं की पेयजल आपूर्ति बन्द हो गई। इस प्रकार स्वीकृत योजना / अनुबन्ध में निर्धारित शर्तों के अनुसार प्रस्तावित कार्यों को विशिष्टियों के अनुसार न कराते हुये गैर तकनीकी ढंग से निर्माण कार्य कराये जाने के फलस्वरूप उक्त दुर्घटना घटित होने से जनहानि हुयी और योजना पर किया गया व्यय रू0 2,09,75,164.00 निष्फल हुआ। योजना का पूर्ण लाभ आम जनमानस को नहीं मिल सका, जिस हेतु आप उत्तरदायी है।

पठनीय साक्ष्य :-

उक्त आरोप के समर्थन में खण्ड कार्यालय द्वारा उपलब्ध करायी गयी रिपोर्ट दिनांक 30.06.2024 एवं पत्रांक-549, गोकुल बैराज पार्ट-1/01 दिनांक 30.06.2024 द्वारा प्रभारी अधिकारी, कोतवाली, मथुरा में दर्ज करायी गयी एफ०आई०आर० संख्या-0439 दिनांक 01.07.2024 की प्रति, अनुबन्ध संख्या-08/जी.एम.-डी.एस.यू./18-19, इसमें उल्लिखित सिविल निर्माण की तकनीकी विशिष्टियों की पठनीय प्रति संलग्न है।

आरोप संख्या-2

प्रकरण में जिलाधिकारी, मथुरा के पत्रांक-1248/ओ०एस०डी०/2024 दिनांक 25.07.2024 द्वारा उपलब्ध करायी गयी जांच आख्या के अनुसार स्थलीय निरीक्षण के समय यह पाया गया कि निर्मित उपर्युक्त उच्च जलाशय में टेस्टिंग के समय से ही लीकेज था, जो हस्तान्तरण के उपरान्त तथा उच्च जलाशय के धराशायी होने तक जारी रहा। लीकेज का पानी उच्च जलाशय परिसर में एक स्थान पर एकत्रित होता रहा, जिसके निकासी की समुचित व्यवस्था नहीं की गयी। प्रथम दृष्ट्या ऐसा परिलक्षित हुआ है कि बियरिंग कैपेसिटी प्रभावित होने के कारण फाउडेशन सेटलमेन्ट हुआ और उच्च जलाशय धराशायी हो गया। जांच समिति की तकनीकी रिपोर्ट प्राप्त होने पर कराये गये निर्माण कार्यों की गुणता एवं अन्य तकनीकी पहलुओं पर स्थिति स्पष्ट हो सकेगी।

उक्तानुसार अपने कर्तव्यों एवं दायित्वों का अनुपालन न करने, योजना के स्वीकृत/अनुबन्धित कार्यों हेतु निर्धारित विशिष्टियों के अनुसार गुणतापरक कार्य न कराने, निर्माण कार्य में लापरवाही बरते जाने के फलस्वरूप कृष्णा विहार कॉलोनी, मथुरा में निर्मित 2500 किली/20 मीटर स्टेजिंग क्षमता के अवर जलाशय के दिनांक 30.06.2024 को क्षतिग्रस्त होकर गिर जाने, कार्यों की गुणता प्रथम दृष्टया अधोमानक होने, अधीनस्थों पर शिथिल नियंत्रण रखने, कार्यों का सही ढंग से क्रियान्वयन/निरीक्षण न करने एवं विभाग की छवि धूमिल करने हेतु आप उत्तरदायी हैं।

पठनीय साक्ष्यः-

उक्त आरोपों के समर्थन में अनुबन्ध में उल्लिखित सिविल निर्माण की तकनीकी विशिष्टियों की पठनीय प्रति एवं जिलाधिकारी, मथुरा के पत्रांक-1248/ओ०एस०डी०/2024

दिनांक 25.07.2024 द्वारा उपलब्ध करायी गयी जांच समिति की आख्या की पठनीय प्रति संलग्न हैं।

अतः सी०एस०आर० के नियम-351 (ए) के अधीन आपसे अपेक्षा की जाती है कि आप इस पत्र प्राप्ति से 15 दिन के अन्दर अपने बचाव के पक्ष में उक्त आरोप पर लिखित स्पष्टीकरण प्रस्तुत करें। यदि उक्त निर्धारित अवधि के अन्दर आपका स्पष्टीकरण प्राप्त नहीं होता है, तो यह समझा जायेगा कि आपको कुछ नहीं कहना है एवं तद्नुसार ही अन्तिम आदेश पारित कर दिये जायेंगे।

आपसे यह भी अपेक्षा की जाती है कि यदि आप अपने बचाव पक्ष में कोई गवाह प्रस्तुत करना चाहते हैं अथवा किसी साक्ष्य का प्रति परीक्षण करना चाहते हैं तो ऐसे गवाह का नाम, पता व उसके द्वारा किये जाने वाले सम्भावित बयान के संक्षिप्त विवरण सहित लिखें। यदि आप व्यक्तिगत सुनवाई का अवसर चाहते हैं, तो समय निश्चित करके अधोहस्ताक्षरी को सूचित करें।"

9. In the present Writ Petition, the petitioner has challenged above referred charge-sheet and further proceedings, mainly on a ground that a decision to initiate inquiry after retirement was without following due process as required under Rule 351 (a) of the CCS Rules.

10. Petitioner is also aggrieved that gratuity and leave encashment was illegally withheld being against the provisions of law.

11. The permission to initiate departmental proceedings vide Office Memo dated 9.8.2024 is not under challenge.

12. Court also takes note of para 24 of Rejoinder Affidavit that, it is not the case that petitioner was not aware about the aforesaid Office Memo dated 9.8.2024, when present Writ Petition was filed nor any prayer was made to amend the prayers.

13. Sri Ashok Khare, learner Senior Counsel has argued at length that procedure to initiate departmental inquiry, after petitioner's retirement was illegal. The appropriate authority to grant such permission was the Hon'ble Governor and it could not be delegated to the Board of Directors of U.P. Jal Nigam.

14. Learned Senior Counsel also submitted that the Office Memo dated 9.8.2024 was placed before the Board of Directors for consideration. The Board in its meeting dated 22.10.2024, delegation was objected and it was directed to take a fresh opinion from the State. Details of relevant part of agenda and decision are mentioned hereinafter:

07.10	श्री योगेश कुमार शर्मा, सेवानिवृत्त अधीक्षण अभियन्ता के विरूद्ध सी०एस०आर० के नियम-351(ए) के अन्तर्गत अध्यक्ष उ०प्र० जल निगम (नगरीय) द्वारा प्रदान की गयी अनुमति के अनुक्रम में संस्थित विभागीय अनुशासनिक कार्यवाही पर औपचारिक अनुमोदन/कार्योत्तर स्वीकृत हेतु एजेण्डा नोट।	इस बिन्दु पर चर्चा के दौरान निदेशक मण्डल के समक्ष यह तथ्य रखा गया कि सी०एस०आर० के नियम-351(ए) के अधीन सेवानिवृत्त विभागीय कार्मिकों के विरूद्ध कार्यवाही किये जाने हेतु महामहिम राज्यपाल से अनुमति प्राप्त किये जाने का नियम है। यह तर्क दिया गया कि निदेशक मण्डल द्वारा इस सम्बन्ध में पूर्व में जो निर्णय लिया गया है कि इस हेतु निगम निदेशक मण्डल सक्षम होगा, विधि अनुरूप नहीं है। जल निगम (नगरीय) की विशिष्ट प्रास्थिति के दृष्टिगत कि यहां के कार्मिकों की पेंशन ट्रेजरी से नहीं प्राप्त होती है। प्रथम दृष्टया यह तर्क ग्राह्य

		नहीं माना जा सकता है फिर भी इस सम्बन्ध में निदेशक मण्डल द्वारा निर्णय लिया गया कि इस स्थिति का एक बार पुनः विधिक परीक्षण कराते हुए शासन का अभिमत प्राप्त कर लिया जाये।

15. Learned Senior Counsel further argued that once sanction to initiate proceedings was itself vitiated, consequently the charge-sheet becomes void-ab-initio.

16. Learned Senior Counsel also stated that there is no adverse order against the petitioner, therefore, to withhold gratuity and leave encashment amount is also illegal.

17. Learned Senior Counsel also stated that construction of Water Tank was almost complete when the petitioner has joined as only 25% work was left.

18. Per contra, Sri M.C. Chaturvedi, learned Additional Advocate General has referred following paragraphs of counter affidavit that due process was followed by making Office Memorandum power to grant sanction was duly delegated to Board of Directors. Paragraphs Nos.14, 19 and 20 of counter affidavit are reproduced hereinafter:

"14. That the contents of paragraphs no.15,16,17 & 18 of the writ petition are misleading and misconceived as stated, hence denied. In reply it is submitted that when cases of serious misconduct committed during service, or financial loss caused to the department, come to light against retired employees of the department, disciplinary proceedings are initiated against them under Rule 351 (A) of the Civil Services Regulations (CSR) after obtaining approval from the Board of Directors, U.P. Jal Nigam (Uran). As per the decision taken in Item No.163.11 of the 183th Meeting of the Board of Directors of the erstwhile U.P. Jal Nigam dated 05.07.2014, the authority to initiate proceedings against referred public servants of U.P. Jal Nigam under Rule 351 (A) of CSR has been delegated to the Chairman, U.P. Jal Nigam, subject to post facto approval being obtained in the next meeting of the Board of Directors. True copy of the decision dated 05.07.2014 circulated vide letter dated 28.08.2024 is being annexed herewith and marked as ***Annexure No.CA-2*** *to this affidavit.*

Accordingly, with the permission of the respondent No. 2 i.e. Chairman, Uttar Pradesh Jal Nigam (Urban), departmental proceedings were initiated under Rule 351(A) through Memorandum dated 09.08.2024, in accordance with the prescribed rules, and the respondent No.5 was appointed as the Inquiry Officer to conduct an investigation into the charges. True copy of Memorandum dt. 09.08.2024 is being annexed herewith and marked as ***Annexure No. CA-3*** *to this affidavit.*

The proposal placed under Item No.138.08 of the 138th Meeting of the Board of Directors of Uttar Pradesh Jal Nigam dated 22.01.2003 was approved by the Board of Directors. Accordingly, the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999, issued under Notification No.13/9/98-Ka-1-99 dated 09 June, 1999, shall be deemed applicable to public servants employed in the Uttar Pradesh Water Corporation, subject to the following modifications:

(i) Wherever the words "Governor" or "State Government" occur in the said Rules, the words "Corporation" and "Board of Directors" shall be deemed to be substituted in their place. Accordingly, the powers conferred on His Excellency the Governor or the State Government under the aforementioned Rules shall be exercised by the "Board of Directors of the Corporation" in the case of public servants of the Uttar Pradesh Jal Nigam.

(ii) Further as per the order issued under Office Memorandum No.1845/P-1/JN/35/137/2002 dated 13.11.2002, while invoking Rules 13, 14, and 15 of the U.P. Government Servant (Discipline and Appeal) Rules, 1999, it shall not be necessary to comply with Rule 16 of the said Rules.

True copy of the extract of the 138th Board Meeting dated 22.01.2003 circulated vide letter dated 03.02.2003 being annexed herewith and marked as ***Annexure No. CA-4*** *to this affidavit.*

In addition to the foregoing, the following decision has been taken with regard to the delegation of powers under Rule 351-A of the CSR vide Letter dated 08 October, 2001 issued by Urban Development Section-3, Government of Uttar Pradesh, to the Board of Directors of the Uttar Pradesh Jal Nigam:

"That from 09.06.1996, the U.P. Government Servant (Discipline and Appeal) Rules, 1999 have been in force, and Rules 7 to 9 therein prescribe the procedure for imposing major penalties, including dismissal. Therefore, the inquiry in the present matter must be conducted strictly in accordance with the procedure laid down in the aforesaid Rules of 1999. In the said Rules as well as in Article 351-A, wherever the words "Governor" or "State Government" appear, they shall be construed to mean "Corporation" in the present case. Accordingly, the powers conferred on the Governor or the State Government in the said Rules shall be exercised by the "Corporation" in matters concerning officers/employees of U.P. Jal Nigam.

True copy of the letter dated 08.10.2001 issued by the State Govt. is being annexed herewith and marked as ***Annexure No. CA-5*** *to this affidavit.*

In the instant case, the Corporation itself is competent to initiate departmental proceedings against retired personnel. The approval of the Governor or the State Government is not required.

19. That the contents of paragraph no. 27 of the writ petition so far as it relates to the Minutes of Meeting dated 22.10.2024 is a matter of record, rest of the averments as stated in paragraph under reply are not admitted, hence denied. In reply it is submitted that vide Office Memorandum No.630 dated 09.08.2024, a proposal for ex post facto approval of the departmental proceedings initiated against the petitioner under Rule 351-A of the CSR was duly placed before the Board of Directors of the Uttar Pradesh Jal Nigam (Urban) under Agenda Item No.7.10 in its meeting held on 22.10.2024. The operative portion of the decision taken in that meeting is reproduced below for ready reference:

During the discussion on this agenda item, it was brought to the attention of the Board that Rule 351-A of the CSR

provides for obtaining permission from His Excellency the Governor before taking action against retired departmental employees. It was argued that the earlier resolution of the Board empowering itself as the competent authority in such matters was inconsistent with legal provisions. However, in view of the special status of the Water Corporation (Urban)-in particular, the fact that employees do not receive pension from the State Treasury-this argument was prima facie not found acceptable. Nevertheless, it was resolved that the matter be subjected to further legal examination and that the opinion of the Government be obtained."

That from the above decision, it is manifest that the argument raised against the authority of the Board of Directors was not accepted by the Board of Directors. The Uttar Pradesh Jal Nigam (Urban) is a utility-based statutory body, and the status of its employees is not equivalent to that of State Government employees.

In pursuance of the above, the legal opinion of the departmental legal consultant was obtained, and the relevant portion thereof is extracted as follows:

"Perused the noting as well as letter dated 08.10.2001 issued by the Government. It is crystal clear that since Jal Nigam has adopted Regulation 351-A with the prior approval of the State Government, by means of which the Board of Directors has been substituted in place of the Governor, the competent authority in respect of 351-A proceedings will be the Board of Directors, U.P. Jal Nigam, without a doubt.

20. That from the above, it is evident that the authority under Rule 351-A of the CSR to initiate departmental proceedings against retired personnel vests with the Board of Directors, Uttar Pradesh Jal Nigam/Uttar Pradesh Jal Nigam (Urban). Accordingly, disciplinary proceedings against the petitioner were lawfully instituted vide letter dated 09.08.2024, strictly in accordance with Rule 351-A of the CSR."

19. Learned Additional Advocate General also submitted that in departmental proceedings, no interference be caused at a very initial stage.

20. Heard learned counsel for the parties and perused the records.

21. On basis of available records, it is not much under dispute that a newly constructed Water Tank (under Amrit Programme) fell down, which resulted into death of two women and 11 persons were injured also.

22. A Four Member Committee was constituted which gave its report dated 25.7.2024. The Committee recorded statements of residents, living nearby the Water Tank. Unfortunately, petitioner has not annexed complete copy of report. Similarly, respondents have also not filed completely copy. Details of Executive Engineers connected with the project are missing. Therefore, the Court takes note of earlier report dated 30.6.2024, submitted by the 2 officials, that the petitioner was appointed in the concerned region from 7.10.2020 to 8.6.2021, when construction of water tank was going on and it was complete on 28.8.2021. According to Reports, during his tenure around 45% of construction took place.

23. The petitioner has disputed percentage of construction during his tenure i.e. according

to him, it was only 25%, however, such dispute would not have any material effect, since admittedly final construction work was undertaken during petitioner's tenure and he had opportunity to check standard of construction, however, he failed to do so.

24. Now the issue is who is the Appropriate Authority to grant sanction to initiate proceedings under Section 351 (a) of CCS Rules. Chairman, U.P.Jal Nigam has issued an Office Memo dated 3.2.2003, whereby a decision taken by Board of Directors, U.P.Jal Nigam in its 138th meeting dated 22.1.2003 was communicated, whereby provision of U.P. Government Service Servant (Discipline and Appeal) Rules, 1999 were adopted with an amendment that word 'Governor' or 'State Government' be read as 'Nigam/Board of Directors'. For reference, Office Memo dated 3.2.2003 is reproduced hereinafter:

"कार्यालय- ज्ञाप

उत्तर प्रदेश जल निगम की निदेशक मंडल की 138वीं बैठक दिनांक 22-1-2003 के मद संख्या 138.08 पर रखे गये प्रस्ताव का अनुमोदन निदेशक मंडल द्वारा किया गया। तदनुसार उ०प्र०जल निगम में कार्यरत लोक कर्मियों पर, शासन की अधिसूचना संख्या 13/9/98-का-1-99 दिनांक 9 जून-1999 द्वारा जारी, "उत्तर प्रदेश सरकारी सेवक (अनुशासन एवं अपील) नियमावली-1999" को निम्नलिखित संशोधन के साथ लागू माना पायेगा :-

1- उपरोक्त नियमावली में जहाँ कहीं शब्द राज्यपाल या राज्य सरकार प्रयुक्त हुआ है, वहाँ शब्द "निगम निदेशक मंडल" प्रतिस्थापित हुआ माना जायेगा। तदनुसार उपरोक्त नियमावली में महामहिम राज्यपाल या राज्य सरकार को प्राप्त शक्तियों का प्रयोग, उ०प्र०जल निगम के लोक कर्मियों के प्रकरण में "निगम निदेशक मंडल" द्वारा किया जायेगा।

2- इस कार्यालय के ज्ञाप संख्या 1845/प्र-1/ज०नि०अनु०/35/137/2002, दिनांक 13-11-2002 के द्वारा जारी आदेश के अनुसार उ०प्र०सरकारी सेवक (अनुशासन एवं अपील) नियमावली-1999 के नियम-13, 14 एवं 15 का प्रयोग करते समय, नियम-16 में प्राविधानित नियम के पालन करने की आवश्यकता नहीं होगी।"

25. Aforesaid Office Memo dated 3.2.2003 still hold's good and it has never interfered, therefore, a doubt created in 7th meeting of Board of Directors has no legal value, since, above referred decision dated 22.12.2003 is completely applicable upon respondents also.

26. Otherwise also, later on a legal opinion was also communicated and till date no contrary decision is taken by Board of Directors.

27. The Office Memo dated 28.8.2024 of the respondents also grants permission to take ex-post facto permission or decision to initiate proceedings under above referred Rules from Board of Directors preferably in its next meeting, which was accordingly placed and legal impediment was also removed.

28. In the aforesaid circumstances, there is no legal error in initiating proceedings against the petitioner after retirement since Board of Directors decision was duly taken under aforesaid provisions.

29. Writ Petition being sans merit, is accordingly dismissed.

(2025) 8 ILRA 661
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 13.08.2025

BEFORE

THE HON'BLE ABDUL MOIN, J.

Writ A No. 6528 of 2009

Ram Kumar S/O Mani Ram ...Petitioner
Versus
State Of U.P. & Anr. ...Respondents

Counsel for the Petitioner:
Ajay Pratap Singh, Arvind Kumar Tripathi, Dinesh Kumar Soni, G.K. Pandey, Kapil Dev Chaubey, Pradeep Kumar Kovid, R.R. Pandey, Raj Srivastava, Satya Prakash, Vijai Kumar Shukla

Counsel for the Respondents:
C.S.C.

ISSUE FOR CONSIDERATION

Whether denial of appointment to the petitioner, suffering from 40% locomotor disability, on the ground that the post of ***Safai Karmi*** was identified only for ***Partially Deaf and Dumb*** persons and not for locomotor disability, is legally sustainable under Sections 32 and 33 of the ***Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.***

HEADNOTE

Service Law — Reservation for Persons with Disabilities — Sections 32 and 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Identification of Posts — Locomotor Disability — Government Order dated 07.05.1999 — Validity — Appointment as Safai Karmi — Entitlement.

Held:

As per Section 32 of the Act, 1995, there has to be an identification of posts by the appropriate Government which can be reserved for persons with disabilities. As per Section 33 of the Act, 1995, every appropriate Government is to appoint such percentage of vacancies not less than three per cent for persons or class of persons with disability, of which one per cent each shall be reserved for persons suffering from blindness or low vision, hearing impairment, and locomotor disability or cerebral palsy, in the posts identified for each disability. In light of Section 32 of the Act, 1995, a Government Order dated 07.05.1999 was issued by which various posts had been identified for the purpose of being reserved. The post of Sweeper, for which the petitioner had applied, was reserved only for PDD/DD, i.e. partially deaf and dumb/deaf and dumb; no reservation was provided for a person with locomotor disability. Once the post in terms of Section 32 of the Act, 1995, was never identified for a person with locomotor disability, the petitioner has not been given the benefit of reservation for locomotor disability; consequently, no error can be found in the said action on the part of the respondents. The Government cannot be compelled to fill in all the vacancies which it is having, and as such, the Court cannot issue a mandamus to the respondents for filling in the remaining vacancies. Writ petition dismissed. *(Paras 15–23) (E-5)*

CASE LAW CITED

Dileep Kumar Sen and 8 others v. State of U.P. and 2 others, 2023:AHC-LKO:65595 ; *State of Haryana v. Subash Chander Marwaha and others*, (1974) 3 SCC 220 (21)

List of Acts

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995

List of Keywords

Service Law; Reservation; Physically Handicapped; Locomotor Disability; Identification of Posts; Government Order dated 07.05.1999; Safai Karmi;

CASE ARISING FROM

Order dated 24.04.2009 rejecting the petitioner's representation for appointment as *Safai Karmi* under the physically handicapped quota.

Appearances for Parties

Advs For Petitioner: Sri Ajay Pratap Singh, Sri Arvind Kumar Tripathi, Sri Dinesh Kumar Soni, Sri G.K. Pandey, Sri Kapil Dev Chaubey, Sri Pradeep Kumar Kovid, Sri R.R. Pandey, Sri Raj Srivastava, Sri Satya Prakash, Sri Vijai Kumar Shukla.

Advs For Respondents: Standing Counsel (C.S.C.).

(Delivered by Hon'ble Abdul Moin, J.)

1. Supplementary affidavit filed today in Court by the learned Standing Counsel is taken on record.

2. Learned counsel for the petitioner states that he does not intend to file any objection to the aforesaid affidavit and prays that the matter may be heard finally.

3. Accordingly, the Court proceeds to hear and decide the matter finally.

4. Heard learned counsel for the petitioner and learned Standing Counsel for the respondents.

5. The facts of the case have already been noted in detail in the order dated 23.07.2025. For the sake of convenience, the relevant extract of the order dated 23.07.2025 is reproduced below:-

"1. Heard.

2. The facts of the case have already been noted in detail in the order dated 09.05.2025 which, for the sake of convenience, is reproduced below:-

"1. At the very outset, learned counsel for the petitioner states that earlier he had moved an application for impleadment of Sri Ramesh Chandra Balmiki, which was allowed and he was impleaded as respondent no.3 in the array of parties. Now he does not want to press on the writ petition against respondent no.3 and prays that respondent no.3 be deleted from the array of parties.

2. To the aforesaid prayer, learned Standing Counsel has no objection.

3. Accordingly, let the respondent no.3 be deleted from the array of parties within a week.

4. Heard.

5. The matter has been listed before this Court after nomination by Hon'ble Chief Justice.

6. Under challenge is the order dated 24.04.2009, a copy of which is Annexure-1 to the petition, whereby the representation of the petitioner for appointment as Safai Karmi has been rejected.

7. The contention of learned counsel for the petitioner is that an advertisement dated 28.06.2008, a copy of which is Annexure-5 to the writ petition, was issued by respondent no.2 inviting applications for various vacancies. The controversy revolves around 499 vacancies for Other Backward Class (OBC).

8. The petitioner, an OBC, applied in pursuance to the said advertisement and claims to have been allotted Roll No.1330 as appears from the interview letter, a copy of which is Annexure-6 to the petition.

9. It is contended that the interview took place on 12.09.2008 yet when the respondents declared the result against his roll number one Sri Ramesh Chandra Balmik was indicated to have been selected.

10. Being aggrieved, the petitioner approached this Court and this Court required the respondents to decide the representation of the petitioner in Writ Petition No.8095 (SS) of 2008. In pursuance thereof, the petitioner claims to have submitted his representation which has been rejected vide the order impugned dated 24.04.2009 and hence the petition.

11. The argument of learned counsel for the petitioner is that apart from the fact the petitioner is an OBC and is also a physically handicapped as per the handicap certificate issued by the Chief Medical Officer which indicates his permanent disability as 40%, copy of which has been filed as Annexure-4 to the petition, and as per the averments made in paragraph 6 of the supplementary counter affidavit dated 20.05.2015 it emerges that the respondents admit of having only filled in 494 posts of OBC vis-a-vis 499 posts that were advertised and have also indicated that the remaining vacancies against OBC are vacant due to non-availability of the applications for the post in question as the same belonged to deaf/partially deaf (PD/D) as such it is apparent that sufficient number of vacancies were available with the respondents on which the petitioner could have been appointed in his own category.

12. Learned Standing Counsel has however expressed his inability to address the Court on merits on account of not having the records.

13. Although in the counter affidavit it clearly emerges that the respondents in fact admit of having filled in only 494 vacancies out of 499 vacancies towards OBC that had been advertised and have indicated that the remaining vacancies i.e. 5 are vacant due to non-availability of deaf/partially deaf persons but it is not clear that as to whether a physically handicapped quota could be further divided into one towards deaf/partially deaf candidates leaving out another physically handicapped person, as in the instant case, i.e. the petitioner who is also 40% physically handicapped.

14. The other aspect of the matter would be that it is not understood as to how the same roll numbers, in this case roll no.1330, could be allotted against various categories namely SC & OBC as has been done in the instant case which might be the case with respect to the other categories also.

15. Let learned Standing Counsel seek specific instructions in this regard and also equip himself with his own record.

16. As the matter pertains to the year 2009, list this case in the next week.

17. The matter may not be adjourned on the next date of listing."

3. Thereafter, when the matter was taken up on 04.07.2025 the Court had required learned Standing Counsel to bring on record the Government Order dated 07.05.1999 and also file supplementary affidavit indicating therein as to how compliance of Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 has been done with respect to reserving of one percent vacancy for the persons suffering from (i) blindness or low vision (ii) hearing impairment, and (iii) locomotor disability or cerebral palsy.

4. Responding Sri Piyush Kumar, learned Standing Counsel, indicates that in terms of Section 32 of the Act, 1995, Government Order dated 07.05.1999 had been issued, a copy of which is Annexure CA-1 to the counter affidavit dated 16.08.2011, which indicates at serial no.10 with respect to Group D posts of Sweeper, Cleaner and Related workers in the category of PDD.

5. Referring to the letter dated 24.04.2009, which is part of Annexure CA-1 to the counter affidavit, learned Standing Counsel states that PDD has been indicated so far as it pertains to Safai Karmi as partially deaf and dumb/deaf and dumb and as the petitioner is suffering from 40% locomotor disability consequently as the post of Sweeper, Cleaner and Related Workers has not been identified for the locomotor disability persons as such the petitioner is not entitled for benefit of any reservation.

6. So far as the petitioner not being considered against OBC category, learned Standing Counsel states that as per the averments made in supplementary counter affidavit dated 22.05.2025 the marks obtained by the petitioner are 23.25 and he has thus not qualified in the OBC category."

6. The Court vide order dated 23.07.2025 had also required learned Standing Counsel to file a supplementary affidavit duly bringing on record the Government Order dated 20.09.1997 (wrongly typed as 20.09.1977 in the order dated 23.07.2025) as was indicated in the advertisement.

7. In pursuance thereof, the Government order dated 20.09.1997 has been brought on record.

8. From perusal of the detailed order 23.07.2025 it emerges that an advertisement had been issued by the respondents dated 28.06.2008 inviting applications for various vacancies. Controversy revolves around 499 vacancies for Other Backward Class (OBC). The petitioner claims that his result was declared yet he has not been appointed although sufficient number of vacancies are available. The representation filed by the petitioner for his appointment has been rejected by the respondents vide order impugned dated 24.04.2009 by indicating that the post of Safai Karmi has not been identified against locomotor disability with which the petitioner is suffering rather the said post has been identified towards PD/D i.e. partially deaf and dumb/deaf and dumb.

9. While raising a challenge to the order impugned dated 24.04.2009 learned counsel for the petitioner has raised the following arguments namely (a) that the Government Order dated 07.05.1999 as has been brought on record and as has been indicated in the advertisement cannot and will not supersede the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as the 'Act, 1955') which Act was prevailing at the time of advertisement, (b) there is no clarification with regard to the marks of the petitioner, (c) sufficient number of vacancies are still available on which the petitioner can be appointed, and (d) once in terms of Section 33 of the Act, 1995, one per cent quota is also available to a person with locomotor disability, consequently the respondents, while issuing the Government Order dated 07.05.1999 could not have taken away that quota of one per cent meant for a person with locomotor disability. In this regard, learned counsel for the petitioner has placed reliance on the judgment of this Court in the case of ***Dileep Kumar Sen and 8 others vs. State of U.P. and 2 others – 2023: AHC-LKO:65595.***

10. On the other hand, learned Standing Counsel has contended that Section 32 of the Act, 1995, clearly

provides for identification of posts which can be reserved for persons with disabilities. Identification has been done with the issuance of the Government Order dated 07.05.1999 per which the post of Sweeper, Cleaner and related workers i.e. Sweeper Dry, Sweeper Wet, Sweeper Sewer and Sweeper Cleaner and Related Workers have only been reserved for PDD/DD i.e. persons with partially deaf and dumb/deaf and dumb disability.

11. Placing reliance on the provisions of Section 33 of the Act, 1995, the argument of learned Standing Counsel is that said section itself provides that the reservation is to be done for persons suffering from (a) blindness or low vision, (b)hearing impairment, and (c) locomotor disability or cerebral palsy in the posts identified for such disability and therefore once the identification of the posts has been done by means of Government Order dated 07.05.1999 and the State is fully empowered to do so under the provisions of Section 32 of the Act, 1995 consequently it cannot be said that any error has been occasioned in non-appointment of the petitioner once no post has been reserved for the post of Sweeper for the disability with which the petitioner is affected.

12. Heard learned counsels for the parties and perused the records.

13. From perusal of record, it emerges that the respondents have not appointed the petitioner against the one per cent reserved quota for the physically handicapped/locomotor disability.

14. Sections 32 and 33 of the Act, 1995 read as under:-

"32. Identification of posts which can be reserved for persons with disabilities. *- Appropriate Governments shall –*

(a.) identify posts, in the establishments, which can be reserved for the persons with disability;

(b.) at periodical intervals not exceeding three years, review the list of posts identified and up-date the list taking into consideration the developments in technology.

33. ***Reservation of Posts*** *- Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent. for persons or class of persons with disability of which one per cent. each shall be reserved for persons suffering from-*

i. blindness or low vision;

ii. hearing impairment;

iii. locomotor disability or cerebral palsy, in the posts identified for each disability:

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

15. From perusal of Section 32 of the Act, 1995 it emerges that there is to be an **identification of posts which can be reserved for persons with disabilities** and that the appropriate Government is to identify the posts in the establishment

which can be reserved for persons with disability.

16. From perusal of Section 33 of the Act, 1995 it emerges that every appropriate Government is to appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent each shall be reserved for persons suffering from blindness or low vision, hearing impairment, and locomotor disability or cerebral palsy, **in the posts identified for each disability**.

17. Section 2(a)(ii) of the Act, 1995 provides that the appropriate Government would be the State Government.

18. In terms of the power as vested in the State Government in light of Section 32 of the Act, 1995 a Government Order dated 07.05.1999 was issued by which various posts had been identified for the purpose of being reserved. So far as the post of the petitioner is concerned, which is a post of Sweeper, for which the petitioner had applied, the reservation was only provided for PDD/DD i.e. partially deaf and dumb/deaf and dumb i.e. no reservation was provided for a person with locomotor disability. Accordingly, once identification of the posts has been done in terms of Section 32 of the Act, 1995 with the issuance of the Government Order dated 07.05.1999 consequently Section 33 of the Act, 1995 would have to be read in accordance with the identification of posts reserved for persons with disability which has been made in terms of Section 32 of the Act, 1995 inasmuch as Section 33 of the Act, 1995 specifically provides that the Government shall appoint in every establishment such percentage of vacancies not less than three per cent on the **posts identified for each disability**. Consequently once the post in terms of Section 32 of the Act, 1995 was never identified for a person with locomotor disability as clearly emerges from perusal of the Government Order dated 07.05.1999, as such in case the petitioner has not been given the benefit of reservation for locomotor disability, consequently no error can be found in the said action on the part of the respondents as also emerges from perusal of the order dated 24.04.2009 per which representation of the petitioner has been rejected.

19. So far as the judgment of this Court in the case of ***Dileep Kumar Sen (supra)*** is concerned, the said judgment may not detain the Court inasmuch as here it is not a case of a Government Order being issued contrary to the provisions of the Act, 1995 inasmuch as the Government Order dated 07.05.1999 has clearly been issued in terms of the powers vested with the State Government under Section 32 of the Act, 1995. Thus, the said judgment would have no applicability in the facts of the instant case.

20. So far as the argument of learned counsel for the petitioner that no clarification has been given by the respondents pertaining to the marks of the petitioner, no case has been set up by this petitioner in this regard and thus the said ground merits to be rejected and is rejected.

21. So far as the ground that vacancies still exist in which the petitioner can be accommodated, suffice to state that keeping in view the law laid down by Hon'ble Supreme Court in the case of **State of Haryana vs. Subash Chander Marwaha and others - (1974) 3 SCC 220,** the Government cannot be compelled to fill in

all the vacancies which it is having and as such there cannot be any occasion for this Court to issue a mandamus to the respondents for filling in the remaining vacancies.

22. At this stage, learned counsel for the respondents has also produced the marks as have been obtained by the petitioner which are found to be 23.25 and as the cut off which has been specified for the OBC category is 23.75 as such it is apparent that the petitioner has failed to obtain even the cut off marks for being selected against the advertised posts.

23. Keeping in view the aforesaid discussion no case for interference is made out. Accordingly, the writ petition is **dismissed**.

(2025) 8 ILRA 668
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 11.08.2025

BEFORE

THE HON'BLE MANISH MATHUR, J.

Writ A No. 8383 of 2025

Maya Shukla @ Maya Mishra ...Petitioner
Versus
Secy. / Examination Controller Lower Subordinate Service Selection Commission Lko & Ors. ...Respondents

Counsel for the Petitioner:
Jitendra Kumar Pandey, Ankit Pandey

Counsel for the Respondents:
Gaurav Mehrotra, C.S.C., Utsav Mishra

Issue for Consideration

Prevailing authority on the occurrence of contradiction in the Hindi version and English version of any provision?

Headnotes

(A) Service law – Recruitment – Post of Cutting Swing – Candidature – Marks in High School and I.T.I. Certificate examination are to be considered – Clear dichotomy occurred in English and Hindi version of Rule 16(3)(a)(ii) – While English version provided that 'Twenty percent of the percentage of marks secured in the Certificate Test shall be given to each candidate, its Hindi version provide that Twenty percent of marks secured in the Certificate Test shall be given to each candidate – Which would prevail :

Held : Clause 3 of Article 348 of the Constitution of India therefore clearly prescribes an aspect that in case of any dichotomy between the vernacular language and English language, it is the English language which will be considered to be authoritative – It would be the English version of any Hindi translation of a bill or order or service regulations which would prevail. In such circumstances, twenty percent of the percentage of marks secured in the National Trade Certificate Test/National Apprenticeship Certificate Test would prevail. [Paras 11 and 16] (E-1)

Case Law Cited

Civil Appeal No. 6636 of 2002, Commissioner of Trade Taxes v. Associated Distributors Limited; Ram Surat Mishra v. State of UP and others, Writ petition No. 8 (S/B) of 2010; Prabhat Kumar Sharma v. Union Public Service Commission and others, (2006) 10 SCC 587; Smt. Ram Rati and others v. Gram Samaj Jehwa, through its Up-Pradhan, AIR 1974 Allahabad 106 (FB) **– referred to.**

List of Acts

Constitution of India – Article 348; U.P. Audhyogik Shikshan Sansthan (Anudeshak) Sewa Niyamavali 2014 – Rule 16 (3)(Ka); Official Language Act, 1951.

List of Keywords

Post of Cutting Swing; Candidature; Marks in I.T.I. Certificate Examination; Percentage of marks; English version; Hindi version; Contradiction; Clear dichotomy; Proceeding of Supreme Court; Proceeding of High Court; Non-obstante clause; President; Hindi language;

English language; Vernacular language; Official Language.

Case Arising From

Seeking direction for including the name in the list for the post, in question on the basis of marks as per the Hindi version of relevant Rules.

(Delivered by Hon'ble Manish Mathur, J.)

1. Heard Mr. Prabhat Kumar, whose power filed today is taken on record, and Mr. Jitendra Kumar learned counsel for the petitioners, Mr. Utsav Mishra, learned counsel for opposite parties 1 and 2, and learned State Counsel for opposite party No. 3.

2. Petition has been filed seeking a direction to the concerned authority to permit petitioner to participate and include her name in the impugned list for the post of "cutting swing" scheduled on July 29th, July 2025.

3. Learned counsel for petitioner submits that in view of the U.P. Audhyogik Shikshan Sansthan (Anudeshak) Sewa Niyamavali 2014 the petitioner would be entitled for consideration in terms of paragraph 16(3)(ka) thereof since marks in the high school and I.T. I. certificate examinations are required to be taken into consideration in the following manner:-

" टिप्पणीः नियुक्ति प्राधिकारी अन्य सदस्यों से वरिष्ठ किसी अधिकारी को अपनी ओर से चयन समिति के अध्यक्ष के रूप में नामं निर्दिष्ट कर सकता है और वह केवल साक्षात्कार लेने के लिए एक से अधिक चयन समिति गठित कर सकता है।

(2) चयन हेतु विचारार्थ आवेदन, नियम-15 के अधीन जारी किये गये विज्ञापन में प्रकाशित प्रपत्र में नियुक्ति प्राधिकारी द्वारा आमंत्रित किये जाएंगे।

(3) सीधी भर्ती के लिए चयन करते समय पात्र अभ्यर्थियों की श्रेष्ठता सूची निम्नलिखित रीति में तैयार की जाएगी

(क) पद के लिए विहित शैक्षिक अहतांकों हेतु प्रत्येक अभ्यर्थी को निम्नलिखित रीति में अंक प्रदान किये जायेंगे

(एक) हाई स्कूल परीक्षा में प्राप्त अंकों के प्रतिशत का 50 प्रतिशत प्रत्येक अभ्यर्थी को दिया जायेगा।

(द) राष्ट्रीय व्यवसाय प्रमाण पत्र/राष्ट्रीय शिक्षुता प्रमाण पत्र परीक्षा में प्राप्त अंको का बीस प्रतिशत प्रत्येक अभ्यर्थी को दिया जायेगा

या

डिप्लोमा या उपाधि परीक्षा में प्राप्त अंकों के प्रतिशत का 20 प्रतिशत प्रत्येक अभ्यर्थी को दिया जायेगा।

(तीन) शी0आई0टी0एस0 /पी0ओ0टी0 परीक्षा में प्राप्त अंकों के प्रतिशत का 15 प्रतिशत प्रत्येक अभ्यर्थी को दिया जायेगा।

(ख) (एक) खण्ड (क) के अधीन मूल्यांकनों के परिणाम प्राप्त हो जाने और सारिणीबद्ध कर लिये जाने के पश्चात् चयन समिति साक्षात्कार आयोजित करेगी। यदि प्राप्त आवेदन, संख्या में बहुत अधिक हो तो ऐसी स्थिति में साक्षातकार हेतु बुलाये जाने वाले अभ्यर्थियों की संख्या, रिक्तियों की संख्या की चार गुनी होगी। इस प्रयोजनार्थ अभ्यर्थियों की श्रेष्ठता सूची उनके द्वारा खंड (क) के अधीन प्राप्त अंकों के कुल योग के आधार पर पृथक रूप से तैयर की जाएगी।

(दो) साक्षाकार एक सौ अंकों का होगा। साक्षात्कार में प्राप्त अंकों का 15 प्रतिशत प्रत्येक अभ्यर्थी को दिया जायेगा।"

4. Learned counsel appearing for opposite parties 1 and 2 has refuted submissions advanced by learned counsel for the petitioner with submission that the petitioner's candidature has not been considered since there was no such provision in the advertisement issued in November 2015 for the said post, which is

in accordance with the English version of the rules known as UP Industrial Training Institutes (Instructors) Service Rules, 2014, which is in the following manner:-

" 16. (1) Direct recruitment shall be made by a Selection Committee comprising:

(1) xxxxx xxxxx xxxxx

(2) xxxxx xxxxx xxxxx

(3) In making selection for direct recruitment, the merit list of the eligible candidates shall be prepared in the following manner:-

(a) For academic qualifications prescribed for the post, the marks shall be awarded to each candidate in the following manner:

(i) Fifty percent of the percentage of marks secured in the High School Examination shall be given to each candidate."

(ii) Twenty percent of the percentage of marks secured in the National Trade Certificate Test/ National Apprenticeship Certificate Test shall be given to each candidate,

Or

Twenty percent of the percentage of marks secured in Diploma or Degree Examination shall be given to cach candidate.

(iii) Fifteen percent of the percentage of the marks secured in CUS/POT test shall be given to each candidate.

(b) (1) After the results of the evaluations under clause (a) have been received and tabulated, the Selection Committee shall hold an interview. If the applications received are large in numbers, then in such situation the number of candidates to be called for interview shall be four times the number of vacancies. For this purpose the merit list of candidates shall be prepared separately on the basis of aggregate of marks obtained by them under clause (a).

(ii) The interview shall carry one hundred marks. Fifteen percent of the marks obtained at the interview shall be given to each candidate."

5. It is also submitted that in case of any contradiction in the Hindi and English versions, it is the English version which would prevail in terms of Article 348(3) of the Constitution of India.

6. Upon consideration of the submissions advanced by learned counsel for the parties and perusal of the material on record, particularly the Hindi version of rule 16(3) and the English version thereof, a clear dichotomy is evident between Rule 16(3)(ka)(Da) of the Hindi version and Rule 16(3)(a)(ii) of the English version in the following manner:-

<u>Rule 16(3)(ka)(Da) of the Hindi version</u>

"(द) राष्ट्रीय व्यवसाय प्रमाण पत्र/राष्ट्रीय शिक्षुता प्रमाण पत्र परीक्षा में प्राप्त अंकों का बीस प्रतिशत प्रत्येक अभ्यर्थी को दिया जायेगा।"

Rule 16(3)(a)(ii) of the English version

" (ii) Twenty percent of the percentage of marks secured in the National Trade Certificate Test/ National Apprenticeship Certificate Test shall be given to each candidate "

7. In such circumstances, the question arising for consideration is whether the Hindi or English version of the rules would prevail.

8. The aforesaid aspect is delineated delineated in Article 348(3) of the Constitution of India in the following manner:-

"Notwithstanding anything in sub-clause (b) of clause (1), where the Legislature of a State has prescribed any language other than the English language for use in Bills introduced in, or Acts passed by, the Legislature of the State or in Ordinances promulgated by the Governor of the State or in any order, rule, regulation or bye-law referred to in paragraph (iii) of that sub-clause, a translation of the same in the English language published under the authority of the Governor of the State in the Official Gazette of that State shall be deemed to be the authoritative text thereof in the English language under this article."

9. Learned counsel for the petitioner has placed reliance on a judgment rendered by Supreme Court in the case of Commissioner of Trade Taxes versus Associated Distributors Limited, Civil Appeal No. 6636 of 2002, as well as a full bench decision of this court in the case of Ram Surat Mishra versus State of UP and others, writ petition No. 8 (S/B) of 2010, while learned counsel for the answering opposite party has placed reliance on a judgment rendered by Supreme Court in the case of Prabhat Kumar Sharma versus Union Public Service Commission and others, (2006) 10 SCC 587, as well as a full bench decision of this court in the case of Smt. Ram Rati and others versus Gram Samaj Jehwa, through its Up-Pradhan, AIR 1974 Allahabad 106 (FB).

10. Upon consideration of provision of Article 348 of the Constitution of India, it is evident that the aforesaid provision commences with a non-obstante clause and indicates that all proceedings in the Supreme Court and High Courts and authoritative texts shall the in English language. Clause 2 of the Article, again commencing with a non-obstante clause, indicates that with the previous cosnent of the President, use of Hindi language, or any other language used for any official of the State may be authorized. However clause 3 of the aforesaid Article provides that the authoritative text in English language under this Article would prevail.

11. In the considered opinion of this court, Clause 3 of Article 348 of the Constitution of India therefore clearly prescribes an aspect that in case of any dichotomy between the vernacular language and English language, it is the English language which will be considered to be authoritative.

12. The said proposition has been considered by Hon'ble Supreme Court in the case of Prabhat Kumar Sharma (supra) in the following manner:-

" 19. The Court after taking notice of Article 348(1)(b) of the Constitution of India which provides that

the authoritative text of all Bills to be introduced or amendments thereof to be moved in either House of Parliament shall be in English language came to the conclusion that the Hindi version was a translated version and the original version was the authoritative text and in the Hindi version there was some defect in translation because of which Lohar community had been claiming the advantage of being a Scheduled Tribe when actually they were only a Backward Class and thus could not be given the benefit of reservation as a Scheduled Tribe. It was observed in Nityanand case [(1996) 3 SCC 576] : (SCC p. 584, para 19)

"19. Article 348(1)(b) of the Constitution provides that notwithstanding anything in Part II (in Chapter II Articles 346 and 347 relate to regional languages) the authoritative text of all Bills to be introduced and amendments thereto to be moved in either House of Parliament ? of all ordinances promulgated by the President ? and all orders, rules, regulations and bye-laws issued under the Constitution or under any law made by Parliament, shall be in the English language. By operation of sub-article (3) thereof with a non obstante clause, where the legislature of a State has prescribed any language other than the English language for use in Bills introduced in, or Acts passed by, the legislature of the State or in ordinances promulgated by the Governor of the State or in any order, rule, regulation or bye-law referred to in para (iii) of that sub-clause, a translation of the same in the English language published under the authority of the Governor of the State in the Official Gazette of that State shall be deemed to be the authoritative text thereof in the English language under this article. Therefore, the Act and the Schedule thereto are part of the Act, as enacted by Parliament in English language. It is the authoritative text. When the Schedules were translated into Hindi, the translator wrongly translated Lohara as Lohar omitting the letter 'a' while Lohra is written as mentioned in English version. It is also clear when we compare Part XVI of the Second Schedule relating to the State of West Bengal, the word Lohar both in English as well as in the Hindi version was not mentioned. Court would take judicial notice of Acts of Parliament and would interpret the Schedule in the light of the English version being an authoritative text of the Act and the Second Schedule."

20. We are respectfully in agreement with the view taken in Nityanand case [(1996) 3 SCC 576] .

21. Learned Senior Counsel appearing for the appellant contends that after the coming into force of the Official Languages Act, 1963 the Hindi version was the authoritative text and in the case of ambiguity between Hindi and English versions, the Hindi version would prevail. Article 348 of the Constitution clearly provides English to be the authoritative text in respect of Acts of Parliament, amendments to Acts subject to any law made by Parliament. The Official Languages Act, 1963 vide Section 3 thereof provides for continuance of English language for official purposes of the Union and for use in Parliament. Section 5 provides for a Hindi translation of all Central Acts and Ordinances promulgated by the President or if any order or rule or regulation or bye-laws issued under the Constitution or under any Central Act. Section 6 deals with the State Act with which we are not concerned in the instant case. From a conjoint reading of Article

348 of the Constitution and Sections 3 and 5 of the Official Languages Act, 1963, English continues to remain the authoritative text in respect of the Acts of Parliament."

13. The aforesaid aspect has also been considered by Full Bench of 5 judges of this court in the case of Ram Rati (supra), which has also held as follows:-

"14. Under this Article two things have been provided; Firstly, all proceedings in the Supreme Court and in every High Court have to be in the English, language except when under clause (2) the Governor of a State with the previous consent of the President, authorises the use of the Hindi language or any other local language in proceedings in the High Court of that State. We are not concerned with that question in this case. Secondly, the authoritative text of all Bills and Acts of the Parliament and of the State Legislatures has to be in the English language. However, the State Legislatures are authorised to prescribe any language other than the English language for this purpose, but, in such an event, clause (3) provides that a translation in the English language of any Bill introduced in or Act passed by a State Legislature in a language other than the English language has to be published under the authority of the Governor of the State in the official Gazette of that State and such translation shall be deemed to be the authoritative text of such a Bill and Act. Whenever a question arises as to what is the authoritative Text of a particular Act or an Ordinance etc. of a State Legislature, one has to turn to its Engl in translation, if it was enacted in a language other than the English language. The authoritative text of any Bill, Act or Ordinance of a State Legislature cannot be in a language other than the English language unless the Parliament by law otherwise provides. Thus, the power to declare that the authoritative text of any Ordinance, Act etc. of a State Legislature shall be in a language other than the English language has been vested exclusively in the Parliament. The Parliament has not made any such provision so far. The official language of the State of Uttar Pradesh is Hindi, so that the Legislature of this State can pass Ordinance, Acts, etc. in the Hindi language. Thus even though the U.P. Consolidation of Holdings Act was passed by the State Legislature in Hindi, yet its translation in the English language shall be regarded its authoritative text and shall prevail over its Hindi version.

15. The learned counsel for the respondents referred to Arts. 345, 346 and 347 of the Constitution Art. 345 makes a provision for official language of a State and provides that the State Legislature may by law adopt any one or more of the languages in use in the State or the Hindi as the language or languages to be used for all or any of the official purposes Art. 346 makes a provision about the official language for communication between one State and another or between a State and the Union. In Art. 347 a provision has been made that on a demand being made the President may direct that a language other than the English language shall be officially recognised in a State or any part thereof for such purposes as may be specified. These Articles have no hearing upon the question before us. We are not concerned with the official language of a State but are concerned with the question of the language in which the Bills and Acts have to be passed by a State Legislature and that subject has been specifically dealt with in Art. 348, which provides that

notwithstanding anything in the foregoing provisions of this Part of the Constitution, all Acts, etc. shall be in the English language. It is thus clear that the provisions contained in Art. 345, 346 and 347 are subject to the provisions contained in Art. 348.

16. The other argument is that in clause (3) of Art. 348 the use of the words "notwithstanding anything in sub-clause (b) of clause (1)" suggests that this clause will over ride clause (1). This interpretation is not correct. It only means that a State Legislature may prescribe any language other than the English language for use in Bills introduced in or Acts passed by the State Legislature and that clause (1)(b) shall not create an impediment in its way. As we have already indicated above, when a Bill is introduced or an Act is passed in a language other than the English language by a State Legislature, an authoritative translation thereof in the English language has to be provided and that translation shall for the purposes of clause (1)(b) be deemed to be the authoritative text thereof. Indeed, it will be beyond the competence of a State Legislature to provide that the authoritative text of its Acts and Ordinances etc. shall be in a language other than the English language, because such a power vests only in the Parliament. Thus, when there is a conflict between the English version of a statute of a State Legislature and its Version in a local language, the version in English language will prevail over the version in the local language. A Division Bench of this Court in Sagir Ahmad v. The Government of the State of U.P. [A.I.R. 1954 Alld. 257.] while referring to Art. 348 of the Constitution has at page 278 in paragraph 83 observed:?

"In view of this provision of the Constitution the notification appearing in. English must prevail over the notification appearing in Hindi".

14. It is relevant that the aforesaid judgments have also considered the aspect of Official Languages Act.

15. Learned counsel for petitioner has pleaded reliance on judgments indicated herein above but a perusal of same would make it evident that while in the case of Associated Distributors Limited (supra), no reference pertaining to Article 348 of the Constitution of India has been made, in the case of Full Bench of this court in the case of Ram Surat Mishra (supra), only Clauses (1) and (2) of Article 348 have been adverted to while considering the UP Official Language Act, 1951, but again there was reference neither to Clause 3 of Article 348 nor of the earlier Full Bench decision of this court in the case of Smt. Ramrati (supra).

16. In view of aforesaid facts & circumstances, it is quite evident that not only in terms of Article 348(3) of Constitution of India, but also in terms of judgments of Hon'ble Supreme Court and Full Bench decision of this court, it would be the English version of any Hindi translation of a bill or order or service regulations which would prevail. In such circumstances, twenty percent of the percentage of marks secured in the National Trade Certificate Test/National Apprenticeship Certificate Test would prevail.

17. In view of aforesaid, since petitioner is seeking benefit of Hindi version, the petition fails and is dismissed

at the admission stage itself. Parties to bear their own costs.

(2025) 8 ILRA 675
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 23.08.2025

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No. 9820 of 2014

Indra Mohan Pandey ...Petitioner
Versus
Union Of India & Ors. ...Respondents

Counsel for the Petitioner:
Ashish Kumar Srivastava, Satyam Singh, Shiv Nath Singh, Swapnesh Singh

Counsel for the Respondents:
A.S.G.I., C.B. Gupta

Issue for Consideration

Whether dismissal order can be passed without holding proper inquiry and without mentioning conduct of petitioner, in the matter where the petitioner was convicted in criminal case arising out of offence of culpable homicide with allegation of direct and specific role?

Headnotes

(A) Service law – Dismissal from service – Conviction in criminal case – Sentence of six years rigorous imprisonment for an offence of culpable homicide not amounting to murder was passed, which was subsequently suspended in appeal against it – No inquiry was conducted before passing order of dismissal – Permissibility – Conduct of petitioner was not mentioned in the dismissal order – Effect :

Held : Regulation 12(E) provides an exception to Rule 12 that no order imposing any penalty specified in Clause 4 to 8 of Rule 11 shall be made except after an inquiry held as far as may be in the manner provided in the Rule 12 and Rule 12-A except where any penalty imposed on service on a ground of conduct which has led to his conviction in a criminal case, therefore, in present case where impugned order was passed without conducting proper inquiry is not an illegal order – Only on a ground that conduct of petitioner led to his conviction was not specifically mentioned in impugned order would not render the order impugned absolutely illegal since concerned respondents have taken note of order of conviction and punishment and considered the gravity of misconduct and an order of dismissal from service was passed. [Paras 12 and 15] (E-1)

Case Law Cited

Ram Kishan v. State of U.P. and others, 2020:AHC:7131; Vishwanath Vishwakarma v. State of U.P. and others, 2023:AHC-LKO:59434; Gulab Dutt Dubey v. State of U.P. and others, 2024:AHC-LKO:22623; Deputy Director of Collegiate Education (Admin.) Madras v. S. Nagoor Meera, AIR 1995 SC 1364; Shankar Das v. Union of India, (1985) 2 SCC 358 **– referred to.**

List of Acts

The Cantonment Fund Servants Rules, 1937 **–** Clause 12(A)(1) and 12(E).

List of Keywords

Dismissal; Conviction; Sentence of six years rigorous imprisonment; Suspension of sentence; Departmental Appeal; Punishment; Culpable homicide not amounting to murder; Common intention; Direct role; Exception; Proper inquiry; Conduct of petitioner; Gravity of misconduct.

Case Arising From

Order dated 03.09.2013 passed in departmental appeal confirming the order dated 30.01.20204 dismissing the petitioner from service.

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. In the present case, petitioner, a Pharmacist at Cantonment Hospital, Agra has faced a Sessions Trial for an offence under Sections 302, 323, 452 IPC for an occurrence took place on 14.03.1988

wherein one person died and two persons got injured. The trial was concluded and trial Court by a judgment and order dated 28.04.2000 convicted the petitioner and other three accused under Sections 304/34, 323/34 and 452 IPC and petitioner was awarded sentence of six years rigorous imprisonment.

2. An appeal against the aforesaid judgment and order was filed which is still pending though petitioner was granted suspension of sentence vide an order dated 02.05.2000.

3. On basis of above referred conviction, the petitioner was dismissed from service vide an order dated 30.01.2004 passed by the Cantonment Executive Officer, Agra (Competent Authority). For reference, said order is quoted below :-

"WHEREAS, Shri Indra Mohan Panday, Pharmacist, has been convicted by the Hon'ble Court of IV, Addl. Session Judge, Agra in judgment and order dt. 28.4.2000 in S.T. No. 166 of 1000;

AND WHEREAS, the conviction by the court has not been set-aside by any other Court/authority;

AND WHEREAS, the judgement dt. 28.4.2000 of the Hon'ble Court of IV Addl. Session Judge, Agra in S.T. No. 166 of 1990 (State Vs Indra Mohan & others) has been perused by the undersigned and it is found that the gravity of misconduct committed by Shri Indra Mohan Panday, Pharmacist is prejudicial to the administration of the Cantonment Board and that he is not fit to remain in service;

AND WHEREAS, the representation dt. Nil received in the office on 17.12.2003 from Shri Indra Mohan Panday has been considered by the undersigned;

THEREFORE, in exercise of powers conferred upon the disciplinary authority under Rule 11 (2) (VIII) of CFSR 1937 Shri Indra Mohan Panday, Pharmacist is dismissed from the service with immediate effect."

4. Immediately, thereafter, the petitioner has filed Departmental Appeal which remained pending for many years and finally vide order dated 03.09.2013, it was dismissed after taking note of judgment and order of conviction and punishment and relying upon a judgment of Supreme Court.

5. Initially this writ petition was filed wherein only the order dated 03.09.2013 (order passed in Departmental Appeal) was challenged, however, later on by way of amendment, order dated 30.01.2004 whereby punishment awarded in disciplinary proceedings was also challenged.

6. Sri Shrinath Singh, learned Senior Advocate assisted by Sri Swapnesh Singh, learned counsel for petitioner has placed reliance upon judgments of this Court in **Ram Kishan vs. State of U.P. and others, 2020:AHC:7131, Vishwanath Vishwakarma vs. State of U.P. and others, 2023:AHC-LKO:59434 and Gulab Dutt Dubey vs. State of U.P. and others, 2024:AHC-LKO:22623** and submitted that in the impugned order, concerned respondent has not assigned any consideration about conduct of petitioner leading to his conviction and has prayed that impugned order be set aside and petitioner may be given consequential benefits.

7. In rebuttal, Sri C.B. Gupta, learned counsel for respondents has placed reliance upon judgment of Supreme Court in **Deputy Director of Collegiate Education (Admin.) Madras vs. S. Nagoor Meera, AIR 1995 SC 1364** as well as referred Clause 12(A)(1) and 12(E) of The Cantonment Fund Servants Rules, 1937. For reference, relevant Clause 12(E) is quoted below :-

"12(E) – Notwithstanding anything contained in Rules 12 to 12 D –

(i) Where any penalty is imposed on a servant on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) Where the disciplinary authority is satisfied for reasons recorded by it in writing that it is not reasonable practicable to hold an inquiry in the manner provided in these rules, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit."

8. I have considered above submissions and perused the records.

9. Before considering the rival submissions, it would be necessary to reproduce reasons given by the trial Court while convicting the petitioner and others for committing an offence of culpable homicide not amounting to murder, voluntarily causing hurt and mischief in furtherance of common intention of all accused :-

"उपरोक्त विवेचना से यह स्पष्ट है कि पी.डब्ल्यू 1 नरेश कुमार जो कि स्वयं चुटैल है ने अभियोजन पक्ष का अपने साक्ष्य द्वारा पूर्ण समर्थन किया है तथा इस गवाह के साक्ष्य को चिकित्सीय साक्ष्य का समर्थन भी प्राप्त है । इस प्रकार से यह गवाह पूर्णतया विश्वनीय है तथा घटना की रिपोर्ट भी बिना किसी देरी के अंकित करा दी गयी है । दिनांक 24.8.98 के आदेशपत्र से यह स्पष्ट है कि इसमें मेरे पूर्वाधिकारी द्वारा यह स्पष्ट किया, गया है कि वाद की कार्यवाही के दौरान विमला देवी की मृत्यु हो गयी है। इस प्रकार से विमला देवी जो कि दूसरी चुटैल साक्षी थी मृत्यु हो जाने के कारण साक्ष्य में प्रस्तुत नहीं हो पाई है। अभियुक्तगण द्वारा मारपीट करके मृतक भगवान दास, विमला देवी व नरेश कुमार को चोटें पहुंचाये जाने से सम्बन्धित मोटिव भी अभियोजन पक्ष की ओर से पी.डब्ल्यू. 1 नरेश कुमार की साक्ष्य द्वारा सिद्ध कर दिया गया है।

उपरोक्त विवेचना से मैं इस निष्कर्ष पर आता हूँ कि प.डब्लू. 1 नरेश कुमार की साक्ष्य एवं पत्रावली पर उपलब्ध चिकित्सकीय एवं अन्य साक्ष्य से यह सिद्ध हो गया है कि दिनांक 14-3-88 को लगभग 11 बजे रात कम्पनी बाग कैन्टनमैन्ट बोर्ड द्वारा क्वाटर थाना सदर बाजार जिला आगरा में अभियुक्तगण द्वारा वादी नरेश कुमार के क्वाटर में घुसकर वादी नरेश कुमार, उसके भगवान दास तथा उसकी माँ विमला देवी को घर में घुसकर ईंट-पत्थर व डण्डों से मारापीटा गया जिससे कि उनको चोटें आयीं और इन्हीं चोटों के के कारण दिनांक 15-3-88 को भगवान दास की मृत्यु अस्पताल में हो गयी। इस प्रकार से अभियोजन ने अपना पक्ष अभियुक्तगण के विरूद्ध संदेह से परे सिद्ध कर दिया है।

जहां तक धारा- 323, 425 भा०दं०सं० का प्रश्न है यह आरोप अभियुक्तगण के विरूद्ध संदेह से परे सिद्ध हो गये हैं। अब देखना यह है कि अभियुक्तगण धारा 302 भा०दं०सं० में दण्डित होने योग्य हैं या धारा 304 भा०दं०सं० में दण्डित होने योग्य हैं।

प्रथम सूचना रिपोर्ट में केवल इतना है कि अभियुक्तगण ने ईंट-पत्थर लाठी डण्डों से घुसकर मारपीट किया था अर्थात ऐसा कोई तथ्य कि अभि-युक्तगण ने यह मारपीट भगवान दास की मृत्यु कारित करने के आशय से जानबूझ कर की थी व उन्हें यह ज्ञान था कि इस मारपीट से भगवान दास की मृत्यु हो जायेगी। प्रथम सूचना रिपोर्ट में या साक्ष्य में नहीं आया है। जबकि धारा 302 भा०दं०सं० के लिये यह आवश्यक है कि अभियुक्तगण का आशय मृत्यु कारित करना हो तथा अभियुक्तगण को यह ज्ञान हो कि उनके इस कार्य से मृत्यु कारित हो जायेगी, यही नहीं अभियुक्तगण पर कोई घातक हथियार होना भी नहीं कहे गये हैं। इस प्रकार से अभियुक्तगण उपरोक्त साक्ष्य की विवेचना के अनुसार धारा 302 भा०दं०सं० में दण्डित होने योग्य नहीं है क्योंकि उनका आशय मृत्यु कारित करने का नहीं था। किन्तु पत्रावली पर उपलब्ध साक्ष्य से यह स्पष्ट है कि अभियुक्तगण ने लाठी-डण्डों व ईंट-पत्थर से मृतक भगवान दास व विमला देवी तथा नरेश कुमार को चोटें पहुंचायी थीं जिससे भगवान दास की मृत्यु हो गयी थी। पी.डब्ल्यु. 4 डा० आर.सी. जैन के अनुसार मृतक के शरीर पर 5 चोटें थीं तथा मृतक की मृत्यु सिर पर आई चोटों की वजह से हुई थी। पी.डब्ल्यु. 9 डा० विजय कुमार मित्तल के अनुसार भगवान दास इमरजेन्सी में गम्भीर सिर की चोटों के कारण भर्ती हुये थे। इस प्रकार से यह स्पष्ट है कि मृतक भगवान

दास को अभियुक्तगण द्वारा एक राय होकर गम्भीर चोटें पहुंचायी गयी थीं किन्तु यह चोटें घातक अस्त्रों से नहीं पहुंचायी गयी थी। साक्ष्य एवं परिस्थितियों से यह ज्ञात होता है कि अभियुक्तगण के संज्ञान में यह था कि उनके द्वारा की गयी मारपीट से घातक चोटें आ सकती थी जिससे कि मृत्यु भी कारित हो सकती थी और उन्हीं चोटों के कारण मृतक भगवान दास की मृत्यु दिनांक 15.3.88 को हो गयी। अतः इस परिस्थितियों में अभियुक्तगण उपरोक्त विवेचना के अनुसार धारा 304/34 भा०दं०सं० के अन्तर्गत दण्डित होने योग्य है।"

10. Learned Senior Advocate has vehemently argued that while passing the impugned order, conduct of petitioner leading to conviction was not considered whereas argument of learned counsel for respondents was that since conviction was for culpable homicide not amounting to murder, a serious offence, and petitioner was directly involved in the crime and that impugned order was based on the judgment and order of trial Court, therefore, there was no requirement to assign specific reason or to mention specific conduct of the petitioner.

11. Heard learned counsel for parties and perused the records.

12. Above referred Regulation 12(E) provides an exception to Rule 12 that no order imposing any penalty specified in Clause 4 to 8 of Rule 11 shall be made except after an inquiry held as far as may be in the manner provided in the Rule 12 and Rule 12-A except where any penalty imposed on service on a ground of conduct which has led to his conviction in a criminal case, therefore, in present case where impugned order was passed without conducting proper inquiry is not an illegal order.

13. Now Court proceeds to consider whether the conduct of petitioner which has led his conviction is mandatory to be mentioned in impugned order of imposing any penalty or if the contents of impugned order are on basis of perusal of the order of conviction wherein petitioner has a direct role would be sufficient.

14. Court takes note of a judgment on which learned Senior Advocate appearing for petitioner has placed reliance which are essentially based on a judgment passed by Supreme Court in **Shankar Das vs. Union of India, (1985) 2 SCC 358** wherein employee was convicted under Section 409 IPC and on basis of conviction, he was dismissed from service and since it was a pity offence, therefore, in given circumstances, penalty of dismissal was interfered making observation that right to impose a penalty carries with it a duty to act justly considering a ground of conduct which has led to conviction of employee.

15. In aforesaid circumstances, Court is of the view that only on a ground that conduct of petitioner led to his conviction was not specifically mentioned in impugned order would not render the order impugned absolutely illegal since concerned respondents have taken note of order of conviction and punishment and considered the gravity of misconduct and an order of dismissal from service was passed.

16. I have already mentioned relevant paragraph of judgment of conviction that petitioner along with other accused were directly involved in committing offence of culpable homicide not amounting to murder, voluntarily causing hurt and mischief with common intention of all accused, therefore, role of petitioner in committing said crime was direct and specific.

17. In view of above, this Court does not find any illegality in the impugned order whereby petitioner was dismissed

from service after taking note of gravity of offence and judgment of conviction.

18. Accordingly, this Court does not find any ground to interfere with the impugned order, hence, present writ petition is **dismissed**.

(2025) 8 ILRA 679
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 05.08.2025

BEFORE

THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Writ A No. 10716 of 2021

Nevtej Kumar Singh ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Santosh Kr. Singh Paliwal, Sr. Advocate

Counsel for the Respondents:
C.S.C., Sanjay Chaturvedi, Sanjay Kumar Singh

ISSUE FOR CONSIDERATION

Whether the petitioner obtained State employment fraudulently or the State functionaries committed an unintentional error in issuance of Certificate for Dependent of Freedom Fighter to the petitioner.

HEADNOTE

Service Law – Assistant Teacher – Dependents of Freedom Fighter (DFF) Certificate – Alleged Forgery – Clerical Error – No Misrepresentation – Fraud must be proved – Termination illegal – Reinstatement ordered.

Held :

Entitlement of the petitioner under the DFF category was never in dispute. The sole basis for termination was the observation that the certificate dated 04.04.2008 was not traceable at serial no. 1114 in the office records. Subsequent issuance of a fresh certificate dated 01.04.2021 by the competent authority categorically reaffirmed the correctness of the petitioner's DFF status. Only the endorsement of the certificate dated 04.04.2008 at serial no. 1114 was questioned, and the Court found that this was not within the domain of the petitioner, nor could he have played any role in maintaining the relevant records of the concerned office. No fraud, as alleged in the impugned order, appeared to have been played by the petitioner. Issuance of a certificate owing to an error or oversight of the competent authority cannot be construed as forgery, particularly when the same authority has subsequently issued a rectified certificate acknowledging the mistake. If a certificate is issued due to the fault, negligence, or administrative lapse of the issuing authority, and there is no evidence of manipulation, falsification, or misrepresentation by the petitioner, it does not amount to forgery in law. Where an appointment is granted due to the department's own mistake and the beneficiary has not committed any misrepresentation, punitive action cannot be taken unless mala fide intent is proved. Fraud must be established by cogent evidence; mere irregularity in issuance of a document by the authority does not automatically amount to fraud or forgery on the part of the recipient. Order dated 31.07.2021 quashed; petitioner directed to be reinstated forthwith. (Paras 11–24)

CASE LAW CITED

1. State of Bihar v. Devendra Sharma, 2019 Supreme (SC) 1158;
2. Satish Chandra Yadav v. Union of India, 2022 Supreme (SC) 982;
3. Saurabh Srivastava v. State of U.P., 2024:AHC:177954;
4. Ahire Ajinkya Shankar v. Indian Coast Guard, 2023 SCC OnLine Del 5726;
5. Md. Zamil Ahmed v. State of Bihar, (2016) 12 SCC 342.

List of Acts

Constitution of India

List of Keywords

Assistant Teacher; DFF Certificate; Forgery Allegation; Certificate Verification; Clerical Error;

Fraud Standard; Administrative Lapse; Misrepresentation; Termination; Reinstatement.

CASE ARISING FROM

Termination order dated 31.07.2021 passed by District Basic Education Officer, Ballia directing dismissal and salary recovery.

Appearances for Parties

Advs For Petitioner: Sri R.K. Ojha, Senior Advocate; Sri Santosh Kumar Singh Paliwal

Advs For Respondents: C.S.C.; Sri Sanjay Chaturvedi; Sri Sanjay Kumar Singh

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. By means of present writ petition, the petitioner has challenged an order dated 31.07.2021 passed by third respondent[1], whereby services of the petitioner, who is an Assistant Teacher, have been terminated on the ground that he is alleged to have obtained appointment on the basis of forged certificate of freedom fighter's dependent. By the order impugned, he has also been directed to deposit the salary back, received by him, into the State Exchequer.

2. Facts of the case, in brief, are that the petitioner was appointed as an Assistant Teacher in Junior Basic School, Yadav Basti Chibbi, Block Chilkahar, Ballia, under the category of dependents of freedom fighter[2]. He joined his services on 22.10.2020 and since then he has been working on the aforesaid post. During verification of documents, it revealed that dependent certificate of freedom fighters dated 04.04.2008 as provided by the petitioner is not available at Sl. No. 1114 in the relevant records of District Magistrate, Ballia – fourth respondent, whereas name of one Harmeet Singh is mentioned at Sl. No. 1114. Thereafter, the third respondent issued a show cause notice to the petitioner on 24.03.2021. The petitioner approached the office of fourth respondent, whereupon he was issued another certificate on 01.04.2021. The petitioner appeared before the third respondent and submitted his reply on 06.04.2021 and placed all relevant documents along with the certificate issued on 01.04.2021. The third respondent issued another show cause notice to the petitioner on 01.07.2021 asking about the issuance of two certificates for the dependent of freedom fighter issued on 04.04.2008 and 01.04.2021. Pursuant thereto, the petitioner submitted a detailed reply on 24.07.2021, appending all the relevant records including documents of his late grandfather showing that he was a freedom fighter. The third respondent by the order impugned terminated the petitioner's services on the ground that the certificate dated 04.04.2008 appears to be forged. Said order is under challenge in the present writ petition.

3. Learned counsel for the petitioner submits that the petitioner is the dependent of freedom fighter late Shubh Narain Singh. His date of birth is 15.07.1991. He was issued a certificate of dependent of freedom fighter, bearing no. 1114 dated 04.04.2008 by the fourth respondent, when he was about sixteen and half years old. An advertisement was issued on 18.01.2021 inviting applications for the posts of Assistant Teachers. The petitioner, being the dependent of freedom fighter, applied under the said category. He appended the certificate issued by the fourth respondent on 04.04.2008 along with his application form.

4. It is further submitted by learned counsel for the petitioner that being eligible for the post of Assistant Teacher, the petitioner was selected as an Assistant Teacher and was posted at Junior Basic

School, Yadav Basti, Chibbi, Block Chilkahar, District Ballia. He joined his services at the said institution on 22.10.2020. Learned counsel for the petitioner next submits that the petitioner was discharging his duties with sincerity and utmost dedication and there was no complaint whatsoever against him.

5. During verification, all documents submitted by the petitioner were found genuine, however, with respect to the certificate for dependent of a freedom fighter, of the petitioner, it was informed by the fourth respondent that at Sl. No. 1114, against which the petitioner is said to have been issued said certificate, name of one Harmeet Singh is mentioned. Learned counsel for the petitioner contended that the fourth respondent did not raise any suspicion over the validity of petitioner's certificate. The petitioner being a bonafide person, on issuance of show cause notice by the third respondent dated 24.03.2021, moved again before the fourth respondent for issuance of certificate of dependent of freedom fighter to him, whereupon the certificate dated 01.04.2021 was issued categorically reiterating the fact as was noted in previously issued certificate dated 04.04.2008, that the petitioner belongs to the category of dependents of freedom fighter. Thus, there is no dispute regarding the truthfulness of the fact that the petitioner falls under DFF category, however, the entire issue which has resulted in the present proceedings, is only account of the some clerical error on the part office of fourth respondent though it was not under the supervision of applicant or his guardians to have verified the serial number or dispatch number while issuing certificate dated 04.04.2008. The genuineness of the fact is proven again by the concerned authority on issuance of certificate dated 01.04.2021 that the petitioner genuinely falls under the relevant category of DFF against which his appointment as Assistant Teacher is made.

6. Learned counsel for the petitioner has further contended that there is no suppression, concealment or misrepresentation at petitioner's end. The mistake or error, if any, might have been a clerical one, which does not even alter the genuineness of petitioner's eligibility under DFF category. In support of his submissions, he has relied upon a judgement of Lucknow Bench of this Court passed in the case of **Neeraj Kumar v. State of U.P. and others[3].**

7. Learned counsels for the respondents submit that the petitioner obtained his appointment by playing fraud as he enclosed a forged certificate of freedom fighter, as is evident from the verification report obtained from the office of fourth respondent, which says that name of one Harmeet Singh is mentioned at Sl. No. 1114. Before passing the order impugned, the petitioner was afforded due opportunity of hearing, however, instead of proving his DFF certificate dated 04.04.2008 to be genuine, he placed another certificate dated 01.04.2021. It has further been contended that petitioner's services were terminated because he submitted a certificate which was not endorsed in the relevant records of fourth respondent at Sl. No. 1114.

8. It has further been contended that the petitioner has committed fraud as he obtained his appointment on the basis of a forged certificate and it is a well settled law that fraud vitiates even the solemn proceedings in any civilized system of jurisprudence. Learned counsel for the

respondents have relied upon the judgements of Apex Court in the case of **The State of Bihar and others v. Devendra Sharma[4]; Satish Chandra Yadav v. Union of India & Ors. [5],** and a judgement of this Court passed in the case of Saurabh **Srivastava v. State of U.P. and others[6]**.

9. I have heard Sri R.K. Ojha, learned Senior Advocate assisted by Sri Santosh Kumar Singh Paliwal, learned counsel for the petitioner, Sri Ashish Kumar Nagvanshi, learned Additional Chief Standing Counsel for the State and Sri Sanjay Kumar Singh, learned counsel appearing for respondent no. 3.

10. The facts of the case and arguments advanced by learned counsel for the parties, germinate sole question for consideration, that would conclude the controversy concisely in precision. The question is - 'whether the petitioner obtained State employment fraudulently or the State functionaries committed an unintentional error in issuance of Certificate for Dependent of Freedom Fighter to the petitioner.

11. Indisputably, the petitioner belongs to DFF category. Said fact is not questioned even by the respondent authorities at any stage. Here, the question arises, has the petitioner played any fraud or forgery in obtaining the certificate in question. Barely, the answer would be in affirmative, if he would have been beneficiary by the suppression of information on the basis of which the certificate is issued, **and**, the answer is in negative if no inadmissible favour is awarded on the basis of said certificate.

12. In the present case, the certificate of DFF was issued to the petitioner on 04.04.2008, when he was about sixteen and a half years old. He earned academics and being eligible for the post of Assistant Teacher, applied pursuant to the advertisement issued on 18.01.2021, at the age of 31 years, appending the aforementioned certificate. During verification, said certificate was not found to have been endorsed at the given serial number i.e. 1114. The petitioner subsequently obtained another certificate of DFF on 01.04.2021. Thereafter, the impugned termination order has been passed alleging discrepancies in said two certificates, without alluding to any incorrect or deceitful information regarding DFF category, on the basis of which the certificates were issued.

13. Arguments advanced by learned counsel for the respondents that the petitioner obtained appointment on the basis of a forged certificate do not corroborate the premise, on which the impugned order stands for. Impugned termination order does not refer any fraudulent exercise or submission of a forged document on the part of petitioner.

14. The judgement referred to hereinabove by the learned counsel for the respondents in **Devendra Sharma (supra)** holds the law about the irregular appointments obtained by way of backdoor entries, act of nepotism, favourtism and illegal appointments got on the basis of forged documents. Pertinently, there is no allegation of forgery or suppression against the petitioner in the present case, thus, the said judgement does not nourish the arguments of learned counsel for the respondents.

15. Insofar as the judgement cited by learned counsel for respondents in **Satish Chandra Yadav (supra)**, is concerned, it is about the public employment obtained by an employee on the basis of false declaration and suppression of relevant and concerned information. Here, in the instant case, no allegation of such nature is levelled against the petitioner. This judgement also does not support the respondents' version.

16. In the case referred by learned counsel for the respondents in **Saurabh Srivastava (supra)**, a Coordinate Bench of this Court has been pleased to deal in detail with the act of fraud by an incumbent, who obtained employment on the basis of fraudulent educational certificates. In the present case, the alleged certificate dated 04.04.2008 issued to the petitioner is not proven to have been obtained fraudulently as the concerned authority has again issued certificate of DFF to the petitioner on 01.04.2021, therefore, this judgement also does not hold the field, insofar as the facts of the case in hand are concerned.

17. Recently, the Delhi High Court in the case of **Ahire Ajinkya Shankar v. Indian Coast Guard and others[7],** observing about the purpose of document verification and mismatch, which were found during verification, has held as under:

"13. We need not reiterate that the purpose of document verification is to ensure that there is no impersonation, misleading or incorrect documents furnished to seek enlistment. The aforesaid alleged mismatch cannot be, by any stretch of imagination, labeled as discrepancy or furnishing of any false information. Mere inadvertent mentioning or non-mentioning of surname in caste certificate issued by the Competent Authority would not mean and indicate that it is a case of impersonation or furnishing of false information. The details have been filled up as per the contents of the certificates available with the petitioner. Moreover, the alleged mismatch is not such an error which could have led to rejection of the candidature of the petitioner, particularly, in view of the fact that there is nothing which may even remotely indicate that these are forged or procured documents. The caste certificate ought to have been read in conjunction with other documents. A holistic view of the matter would not suggest that the petitioner is not a bonafide candidate."

18. In the case of **Md. Zamil Ahmed v. State of Bihar & others[8],** wherein the appellant therein, was not found responsible for making any false declaration or suppression of any material fact for securing appointment, the Supreme Court has held that the State is not entitled to take advantage of their own mistake if they felt it to be so. Relevant part of the said judgement reads thus:

"15. ...In any case, we are of the view that whether it was a conscious decision of the State to give appointment to the appellant as we have held above or a case of mistake on the part of the State in giving appointment to the appellant which now as per the State was contrary to the policy as held by the learned Single Judge, the State by their own conduct having condoned their lapse due to passage of time of 15 years, it was too late on the part of the State to have raised such ground for cancelling the appellant's appointment and terminating his services. It was more so because <u>the appellant was not responsible for making any false declaration nor he</u>

suppressed any material fact for securing the appointment. The State was, therefore, not entitled to take advantage of their own mistake if they felt it to be so. The position would have been different if the appellant had committed some kind of fraud or manipulation or suppression of material fact for securing the appointment. ...”

(Emphasis supplied)

19. The process of issuance of a certificate and its endorsement in the records is the duty of concerned office, and it cannot be expected to have been done by the applicant. It is a settled position of law that the certificate or appointment issued on the basis of documents available with the department, the employee had no role in manipulation or misrepresentation, thus, it cannot be treated as fraudulent.

20. In view of the settled position of law, as discussed in the preceding paragraphs, if an appointment or benefit is granted by the department due to its own mistake, and the beneficiary has not committed any misrepresentation, then punitive action cannot be taken unless malafide intent is proved.

21. It has also been settled that a candidate cannot be held guilty of fraud or forgery unless there is deliberate suppression or misrepresentation of facts by him in obtaining the certificate. If, a certificate is wrongly issued by the authority, and the candidate has not played any active role in its issuance, no fraudulent intent can be imputed.

22. In the present case, entitlement of the petitioner under the relevant category of DFF is not disputed, rather only the endorsement of certificate dated 04.04.2008 at a particular serial number, i.e., 1114, is being questioned, to which this Court finds that it was not under the domain of the petitioner nor the petitioner could have played any role to maintain the relevant record of the concerned office. No fraud, as alleged in the order impugned, appears to have been played by the applicant. Fraud must be proved by cogent evidence, mere irregularity in issuance of a document by authority does not automatically amount to fraud or forgery on part of the recipient.

23. In view of the above discussion, it is evident that the issuance of a certificate to the petitioner owing to an error or oversight on the part of the competent authority cannot be construed as forgery, particularly when the said authority has later issued a rectified certificate acknowledging the mistake. If the certificate was issued due to the fault, negligence, or administrative lapse of the issuing authority and there is no evidence of manipulation, falsification, or misrepresentation by the petitioner, it does not amount to forgery under law. No fault is found to have been proved on the part of the petitioner in obtaining the DFF certificate.

24. Having considered the facts and circumstances of the case and the settled position of law, this Court finds that the case is made out in favour of the petitioner and the order impugned is unsustainable. Thus, the order impugned dated 31.07.2021 is quashed and the respondent no. 2 – District Basic Education Officer, Ballia is directed to reinstate the services of the petitioner allowing him to function on the post of Assistant Teacher, forthwith.

25. The writ petition stands allowed accordingly.

26. No order as to costs.

(2025) 8 ILRA 685
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 12.08.2025

BEFORE

THE HON'BLE AJIT KUMAR, J.

Writ A No. 11406 of 2025

Kumari Sonam ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Anil Kumar Prajapati, Kuldeep Kumar Mishra

Counsel for the Respondents:
C.S.C.

Issue for Consideration

Whether the sister-in-law (jethani) came within definition of 'family' of the petitioner for the purposes of selection and appointment on the post of Anganbari Worker and so whether bar imposed under GO dated 21.05.2023 can be enforced?

Headnotes

(A) Service law – Cancellation of appointment – Anganbari Worker – Petitioner's sister-in-law (Jethani) was also appointed as Anganbari Assistant – No notice was given – Principle of natural justice – Applicability – Bar was imposed under GO dated 21.05.2023 that two ladies of same family cannot be appointed – Relevancy – Ground of living in separate family was taken – Definition of family also felt into consideration:

Held : Daughter-in-law (jethani) would not become member of the family and daughter-in-law (jethani) can be considered to be a member of family provided both brothers are living together having common kitchen and house – It cannot be said that both sister-in-law (jethani) and petitioner were women of the same family, and hence, order impugned is rendered unsustainable on both grounds of violation of principles of natural justice and also on merits. [Paras 12 and 13] (E-1)

Case Law Cited

Writ C No. 21935 of 2021, Smt. Kusum Lata v. State of U.P. and 2 Others, decided on 29.11.2021 – referred to.

List of Acts

Civil Procedure Code **– O. XXXII-A, R. 6;** The Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974.

List of Keywords

Appointment; Anganbari Worker; Cancelation; Jethani; Anganbari Assistant; Family; Notice; Opportunity of hearing; Bar; Definition of family; Separate house; Definition of family; Medical assistant; Dying in harness Rule; Principle of natural justice.

Case Arising From

Order dated 13.06.2025 cancelling appointment of petitioner as Anganbari Worker.

(Delivered by Hon'ble Ajit Kumar, J.)

1.Heard learned counsel for the parties.

2.By means of present petition filed under Article 226 of the Constitution, petitioner has prayed for quashing of the order dated 13.6.2025 passed by District Programme Officer, Bareilly cancelling the appointment of the petitioner as Anganbari Worker chiefly on the ground that petitioner's sister-in-law (jethani) was also working as Anganbari Assistant in the same block and the Government Order does not permit the posting of two women of the same family at same centre as Anganbari Worker and Anganbari Assistant.

3.Assailing the order impugned, learned counsel for the petitioner in the first

instance submitted that order impugned has been without any notice and opportunity of hearing to the petitioner. Since order has adverse civil Consequences, petitioner ought to have been afforded her explanation in defence of appointment order. The legal aspect as to the bar created under the Government Order dated 21.5.2023, learned counsel for the petitioner submits that relevant Clause of the said order vide Clause 12 (iv) only this much provides that two ladies of the same family will not be appointed as Anganbari Worker and Anganbari Assistant at the same center. The relevant provisions as reproduced hereunder:

" एक आंगनबाड़ी केन्द्र पर एक ही परिवार की दो महिलाओं की नियुक्ति आंगनबाड़ी कार्यकत्री व सहायिका के पद पर नहीं की जीयेगी। "

4.It is argued that petitioner's sister-in-law (jethani) is living in a separate house having separate house number and hence she also does not fall within the definition of family of the husband of the petitioner may be she belongs to the family of her father-in-law, and therefore, within the definition of family, sister-in-law will not fall.

5.In support of this above submission, firstly, learned counsel for the petitioner has taken the Court the relevant document of family register which shows that petitioner's husband is living in house no. 126 whereas petitioner's sister-in-law, namely, Ramwati, W/o Prempal, brother-in-law, of the petitioner is living in separate house being no. 107.

6.Learned counsel for the petitioner has further taken the Court to the definition clause of family provided for government employee in the medical department for the purpose of medical assistance to dependents of the family in government department which provides for husband, wife, parents, step son, unmarried/ divorce /deserted sisters, minor, brother and step mother.

7.In respect of other support has been taken from the definition of family given under Order XXXII-A, Rule 6 that provides for definition of family consisting of man and his wife living with child or children being issue of heirs or of such man and such wife any child or children maintained being man and wife. Relevant provisions of CPC ,Rule 6 of CPC is reproduced hereunder:

"6. "Family"-Meaning of

For the purposes of this order, each of the following shall be treated as constituting a family, namely-

(a) (i) a man and his wife living together,

(ii) any child or children, being issue of theirs; or of such man or such wife,

(iii) any child or children being maintained by such man and wife;

(b) a man not having a wife or not living together with his wife, any child or children, being issue of his, and any child or children being maintained by him;

(c) a woman not having a husband or not living together with her husband, any child or children being issue of her,sand any child or children being maintained by here;

(d) a man or woman and his or her brother, sister, ancestor or lineal descendant living with him or her; and

(e) any combination of one or more of the groups specified in clause (a), clause (b), clause (c) or clause (d) of this rule.

Explanation: For the avoidance of doubts, it is hereby declared that the provisions of rule 6 shall be without any prejudiced tot he concept of "family"in any personal law or in any other law for the time being in force."

8.Learned counsel for the petitioner in support of his argument has relied upon the judgment of coordinate bench of this Court in the case of **Smt. Kusum Lata v. State of U.P. and 2 Others, Writ C No. 21935 of 2021, decided on 29.11.2021**, in which the Court dealt with definition providing under the relevant cadre order of the year 2016 providing for allotment of fair price shop. Rule framed under the The Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 were also taken into consideration. Relevant paragraph 21 and 22 of the judgment of Coordinate bench is reproduced hereunder:

"21. Pursuant to the Control Order of 2016 the State Government issued a Government Order dated 05.08.2019 in regard to the allotment of license of vacant fair price shop and the reservation applicable therein. Sub-clause (10) of Clause IV provides that the definition of family as occurring in the Control Order of 2016 will also apply in case of the allotment of license of vacant shop which is as under;

"ग्राम प्रधान के परिवार के सदस्यों के पक्ष में उचित दर की दुकान के आवंटन का प्रस्ताव नहीं किया जायेगा। परिवार की परिभाषा, जैसा कि उ 0 प्र आवश्यक वास्तु (वितरण के विनियमन का नियंत्रण) आदेश 2016 में दी गई है, निम्नानुसार होगी :-

- परिवार का मुखिया,

- पति/पत्नी विधिक रुप से अपनाये गये दत्तक संतान सहित ।

- संतान जो परिवार के मुखिया पर पूर्ण रुप से आश्रित हो ।

- अविवाहित, विधिक रुप से पृथक और विधवा बेटी, और

- परिवार के मुखिया पर पूर्ण रुप से आश्रित माता /पिता"

22. The definition of family occurring in the Control Order of 2016 is not para materia to the definition of family occurring in Rule 2 (c) of the Dying-in-Harness Rules, which is extracted here as under;

"2(c) "family" shall include the following relations of the deceased Government servant:

(i) Wife or husband;

(ii) Sons/adopted sons;

(iii) Unmarried daughters, unmarried adopted daughters, widowed daughters and widowed daughters-in-law;

(iv) Unmarried brothers, unmarried sisters and widowed mother dependent on the deceased Government servant, if the deceased Government servant was unmarried;

(v) aforementioned relations of such missing Government servant who has been declared as "dead" by the competent Court;

Provided that if a person belonging to any of the above mentioned relations of the deceased Government servant is not available or is found to be physically and mentally unfit and thus ineligible for employment in Government service, then only in such situation the word "family" shall also include the grandsons and the unmarried granddaughters of the deceased Government servant dependent on him."

9.After discussion, vide paragraph 36, the Court held thus:

36. More so, the Control Order of 2016 does not make any distinction between the sons and daughters of a license holder, as in case of Rule 2 (c) of the Dying-in-Harness Rules. The definition of family occurring in the Control Order of 2016 as well as the government order of 2019 embraces the word "dependant child", which also includes the dependant father and mother. Argument that married daughter had been excluded creates gender bias cannot be accepted, as the very purpose is the distribution of food grains to the card holders attached to the ration shop situated in village. Once the daughter of a licensee is married outside the village, she cannot continue to run the fair price shop and distribute ration. The sole purpose of enacting the Act of 2013 and the Control Order of 2016 is that the food reaches the last person of the society and a licensee being only an agent of the State through which the target is achieved by both the Central Government and the State Government.

10.Thus, learned counsel for the petitioner submits that by no stretch of imagination the sister-in-law (jethani) can be taken to be falling within the definition of family for the purposes of selection and appointment on the post of Anganbari Worker.

11.Learned Standing Counsel though sought to defend the order, but could not dispute that order was passed without giving notice and opportunity of hearing to the petitioner, nor could dispute that relevant clause of the Government Order only includes two women of the same family.

12.From the discussion made above with reference to various service rules and the definition of family given in CPC , it can easily be concluded that daughter-in-law (jethani) would not become member of the family and daughter-in-law (jethani) can be considered to be a member of family provided both brothers are living together having common kitchen and house.

13.In view of above, therefore, it cannot be said that both sister-in-law (jethani) and petitioner were women of the same family, and hence, order impugned is rendered unsustainable on both grounds of violation of principles of natural justice and also on merits.

14.Writ petition accordingly succeeds and is allowed. The order impugned dated 13.6.2025 is hereby quashed. The District Programme Officer is directed to reinstate the petitioner as Anganbari Worker to discharge her duties and shall also be paid salary month by month. As a result the order being quashed, the petitioner shall also be entitled to consequential benefits in terms of arrears of salary for the period she has been denied on account of order impugned.

(2025) 8 ILRA 689
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 05.08.2025

BEFORE

THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Writ A No. 12839 of 2023

Shiv Kumar ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Neelam Singh

Counsel for the Respondents:
C.S.C., Gaurav Bishan

ISSUE FOR CONSIDERATION

Whether the petitioner's compassionate appointment could be terminated after 14 years on the ground that he failed to disclose in his application the material fact that his mother was employed in government service, despite the petitioner's mother having submitted a notarized affidavit disclosing that she was working as an Assistant Teacher and the respondents having verified all documents at the time of appointment.

HEADNOTE

Service Law – Compassionate Appointment – Alleged Concealment – Mother employed in Government service – No prescribed application format – No misrepresentation – Duty of authority to verify – Long delay of 14 years – Termination arbitrary – Reinstatement directed.

Held :

Petitioner applied for compassionate appointment upon the death of his father in harness. In the year 2000, when the petitioner submitted his application, no prescribed format existed requiring disclosure of any specific information. Petitioner submitted all necessary documents, including a notarized affidavit dated from his mother expressly stating that she was working as an Assistant Teacher. After due enquiry and verification of all records, the petitioner was appointed as Junior Clerk on 12.07.2001.

Held : Non-disclosure of a fact not required under law does not constitute fraud or forgery. Fraud requires intentional concealment or misrepresentation of a material fact that the law obligates the applicant to disclose, and such misrepresentation must induce the authority to act to its detriment. Mere silence does not amount to fraud unless there exists a legal duty to disclose.

There was no misrepresentation or concealment by the petitioner regarding his mother's employment. The notarized affidavit dated 28.07.2000 clearly disclosed her employment status, and the authorities had verified all documents before making the appointment. At the age of 18½, amid the family's distress after the sudden death of the breadwinner, the petitioner could not be expected to understand technical disclosure requirements; the burden of verification lay with the authorities. Allegations of fraud cannot be presumed and must be proved by cogent evidence. Respondents failed to act against the officials responsible for verification, yet sought to penalise the petitioner after 14 years. Once an appointment is made after due scrutiny, it carries a presumption of validity and cannot be cancelled on mere presumptions. The petitioner's appointment was neither illegal nor irregular.

Termination order held unsustainable. Writ petition allowed; order quashed; reinstatement with all consequential benefits directed. (Paras 34, 41–55) (E-5)

CASE LAW CITED

1. Smt. Sugandha Upadhyay v. State of U.P., Writ-A No. 4597/2024;
2. State of U.P. v. Smt. Sugandha Upadhyay, Special Appeal No. 5/2025;
3. State of U.P. v. Sugandha Upadhyay, SLP (C) No. 6320/2025 (dismissed);
4. Uday Pratap Singh v. DBEO Basti, Writ-A No. 2134/2023;
5. Basic Shiksha Adhikari And another *v. Uday Pratap Singh*, Special Appeal Defective No. 870/2023;
6. Special Leave Petition (Civil) Diary No.7348 of 2024 (Basic Shiksha Adhikari, District Basti & Anr vs. Uday Pratap Singh & Anr.);
7. Vishwaroop v. State of U.P., Writ-A No. 2058/2024;

8. State of U.P. v. Vishwaroop, Special Appeal Defective No. 93/2025;
9. Rahul v. State of U.P., Writ-A No. 11785/2021;
10. Md. Zamil Ahmed v. State of Bihar, (2016) 12 SCC 342;
11. S.P. Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1;
12. R.K. Anand v. Registrar, Delhi High Court, (2009) 8 SCC 106;
13. Union of India v. M. Bhaskaran, 1995 Supp (4) SCC 100;
14. Lazarus Estates Ltd. v. Beasley, [1956] 1 QB 702;
15. Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey, (2004) 12 SCC 299;
16. Bharat Coking Coal Ltd. v. Shyam Kishore Singh, (2020) 3 SCC 411;
17. SBI v. Raj Kumar, (2010) 11 SCC 661;
18. State of Punjab v. Jagdip Singh, AIR 1964 SC 521.

List of Acts

Constitution of India; U.P. Government Servant (Discipline & Appeal) Rules, 1999.

List of Keywords

Compassionate Appointment; Concealment; Misrepresentation; Affidavit Disclosure; Employment of Mother; Duty of Verification; Administrative Lapse; Fraud Standard; Delay of 14 Years; Natural Justice; Reinstatement.

CASE ARISING FROM

Termination order dated 31.05.2023 issued by the competent authority cancelling petitioner's compassionate appointment after 14 years of service.

Appearances for Parties

Advs For Petitioner: Ms. Neelam Singh; Mr. Adarsh Singh
Advs For Respondents: C.S.C.; Mr. Gaurav Bishan

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. Heard Mr. Adarsh Singh, learned counsel for the petitioner, Mr. Gaurav Bishan, learned counsel for the respondent no.5 as well as Mr. Hare Ram, learned Standing counsel for the State and perused the record.

2. By way of the present petition filed under Article 226 of the Constitution of India, the petitioner has assailed the order dated 31.05.2023, whereby he has been terminated from service on the ground that, while seeking compassionate appointment following the death of his father in harness on 02.11.1998, he failed to disclose in his application dated 17.05.2000 the material fact that his mother was already employed in government service.

3. Brief facts as stated by the counsel for the petitioner are that the petitioner's father, who was serving as an Assistant Teacher in the Junior High School, Toksin Block, District Mursan, District Hathras, passed away while in service on 02.01.1998. He was survived by his wife, one son, and two daughters, as mentioned in paragraph 5, who were all dependent on him.

4. The petitioner filed an application seeking compassionate appointment along with relevant documents pertaining to the family's economic condition, as well as a notarized affidavit of no objection from the family members before the District Basic Education Officer, Hathras. After conducting the necessary enquiry, the officer appointed the petitioner to the post of Junior Clerk on 12.07.2001.

5. The petitioner diligently performed the duties of the said post to the satisfaction of his superior officers and was subsequently promoted to the position of Senior Clerk on a vacant post on 16.10.2006. During this period, no

complaints or adverse remarks were recorded against the petitioner.

6. The petitioner was also granted the benefits of the Assured Career Progression (A.C.P.) scheme along with the corresponding grade pay, after due verification and full satisfaction of the senior officials of the department.

7. A complaint was lodged by an unidentified individual against the petitioner which contained several vague and unsubstantiated allegations. One of the accusations in the aforesaid complaint was that ambiguous or misleading information had been provided by the petitioner to secure an appointment on compassionate grounds.

8. Pursuant to the aforesaid complaint, an inquiry was conducted against the petitioner on multiple occasions following notice to him. However, without due consideration of the reply submitted by the petitioner, the impugned order was passed in an arbitrary and unjust manner.

9. Learned counsel for the petitioner submits that the petitioner as a matter of fact, did not conceal any material fact vide seeking compassionate appointment. He further submits that at that time i.e in the year 2000, when the application for compassionate appointment was given by the petitioner, there was no form prescribed as such which required particular information to be furnished. The petitioner has submitted all the relevant documents like the affidavits regarding no objection of the family members, including a notarized affidavit dated 28.07.2000 given by his mother, wherein it has been mentioned that she is working as an Assistant Teacher in Prathmik Vidhyalay Bahrampur, District- Aligarh. The said affidavit is annexed as Annexure No.1 to the rejoinder affidavit. After due verification of the documents, the petitioner was offered appointment on compassionate ground.

10. Thus, from the aforesaid facts, it cannot be said that the petitioner concealed any material information/fact from the respondents for seeking appointment on compassionate ground. Hence, the ground assigned in the impugned order is absolutely unsustainable.

11. Learned counsel for the petitioner further contends that the relevant rules regarding compassionate appointment came into effect on 04.09.2000 and the applicant moved the application for appointment on compassionate ground prior to enforcement of the aforesaid rules. The petitioner was of tender age, not understanding the intricacies involved while moving an application however, he has submitted all the relevant documents which were duly verified by the respondents, prior to giving appointment to the petitioner.

12. He further contends that the entire exercise, prior to passing the order impugned, was initiated on a complaint by some unknown person that too after 19 years of appointment of the petitioner, on which the inquiry was initiated and without considering the reply of the petitioner wherein all the facts about aforesaid affidavit have been mentioned, order impugned has been passed in an arbitrary manner. While supporting his case and meeting the grounds as raised in the order impugned, the learned counsel for the petitioner has relied upon the judgment passed in Writ-A No.-4597 of 2024 (Smt. Sugandha Upadhyay vs. State of U.P. And 2 Others) as decided on 23.08.2024, in which it has been observed as follows :-

"The petitioner had submitted her application seeking appointment on 07.11.2012, i.e., when the petitioner was merely 18 years of age. The petitioner, at that age, cannot be expected to have read the Rules, 1974. The petitioner submitted a simple application which was not on any prescribed proforma stating her relationship with the deceased, her occupational skills and educational qualifications and sought compassionate appointment in place of the deceased claiming herself to be a family member and dependent of the deceased employee. The mother of the petitioner also submitted an affidavit declaring her no-objection to the appointment of the petitioner in place of the deceased. There was no misrepresentation by the petitioner regarding the employment status of her mother in the sense that the petitioner had not represented in her application that her mother was not employed with the State Government or Central Government or any corporation owned or controlled either by the State Government or the Central Government. The mother of the petitioner was employed as Class - IV employee in the Labour Department itself. It cannot be believed that the selection committee and the appointing authority had no knowledge or information regarding the fact that the mother of the petitioner was already employed with the State Government. There is nothing on record to show that the department had sought from the petitioner the details of the family members of the deceased, especially as to whether any family member or the spouse of the deceased was already employed. By order dated 07.05.2024, this Court had asked the Standing Counsel to annex the application form submitted by the petitioner seeking employment and also to explain as to whether the details regarding other dependents of the deceased employee were sought from the petitioner while considering her application for compassionate appointment. …….

In the present case, the petitioner was appointed ten years back and had been confirmed in service. Considering the length of service of the petitioner, it is too late for the respondents to cancel the appointment of the petitioner on the ground of the prohibition incorporated in Rule 5 and the employment status of her mother."

13. Against the order passed in the aforesaid case, a **Special Appeal No.-5 of 2025 (State of U.P. Through Its Principal Secretary And 2 Others vs. Smt. Sugandha Upadhyay)** was filed which has been decided on 24.01.2025, wherein the Court while dispersing the appeal of the State and affirming the order passed by the learned Single Judge has held as follows :-

"8. Learned Single Judge had mentioned that she had not stated that her mother was not employed with the State Government or the Central Government or any corporation owned or controlled either by the State Government or the Central Government. Learned Single Judge had also found that the mother of the petitioner was employed as Class-IV employee in the Labour Department itself and it was not believable that the Selection Committee and the Appointing Authority had no knowledge or information regarding the fact that the mother of the petitioner was already employed with the same department of the State Government. Learned Single Judge has thereafter found that there was absolutely no fraud committed by the petitioner. He had also found that the petitioner had already worked for ten years and her services had

been confirmed and also the petitioner had been promoted after her initial appointment and the writ petition thereafter was allowed.

9. Learned counsel for the appellants has submitted that when there is a fraud committed then no length of service had to be seen and that no departmental inquiry etc. had to be gone into. He submits that fraud had been committed therefore the services of the petitioner had to be done away with, and in support of this submission, he relied on the decisions in ***Anoop Kumar Srivastava Vs. State of UP and others, 2021 (6) AWC 5341, and Sumit Kumar Verma Vs. State of UP and others 2022 (2) AWC 1683 (LB).***

10. Learned counsel for the petitioner (respondent herein) has submitted that the petitioner had not concealed any aspect of the matter. All facts were disclosed by the petitioner. Mother of the petitioner had given an affidavit to the effect that she had no objection to the appointment of the petitioner. The appointment was preceded by a full fledged proceeding wherein the Selection Committee of the Department where the mother was working had assembled and thereafter the department itself had issued the appointment letter. Learned counsel for the petitioner therefore states that the judgments which had been relied upon by the learned counsel for the appellants had no application in the present case."

14. The matter travelled up to the Apex Court and Special Leave Petition to Appeal No.6320 of 2025 (State of U.P. & Ors. vs. Sugandha Upadhyay) was filed and the Special Leave Petition filed by the State was dismissed.

15. Thus, the learned counsel for the petitioner submits that from the aforesaid, it was clear that after so many years of service, the petitioner could not have been terminated on the ground of concealment of the fact that the petitioner's mother was in government service, which has not been proved.

16. In support of his submission, learned counsel for the petitioner has also relied upon a judgment passed in Writ-A No.-2134 of 2023 (Uday Pratap Singh vs. District Basic Education Officer, Basti And 2 Others) as decided on 08.08.2023. The relevant paragraphs are quoted herein below :-

"48. Essence of the time and length of service is of paramount importance in the matters of cancellation of appointment on the ground that the initial appointment is contrary to the provisions of rules or government orders. If immediately after the appointment, authorities would have acted upon and the appointment of the petitioner was cancelled, then definitely no interference by this Court was warranted but where initial compassionate appointment was made 19 years back and there was no concealment of facts at the time of the said appointment, the same cannot be cancelled after elapse of 19 years on the ground that the initial appointment was made in violation of some provision of government order. Even further, in the present case departmental authorities, at no point of time, ever noticed that petitioner's appointment on compassionate ground was made contrary to the provisions of Government Order dated 04.09.2000 rather the exercise of cancellation of the petitioner's appointment has been done after elapse of 19 years on the behest of private complainant,

therefore, in the given facts and circumstances of the case, the order dated 30.12.2022 whereby appointment of the petitioner has been cancelled, cannot sustain in the eyes of law.

49. The order dated 30.12.2022 whereby services of the petitioner have been terminated by cancelling his appointment from the date of his initial appointment is also not sustainable on another ground as regular disciplinary proceedings were initiated against the petitioner by issuing him a charge-sheet to which he submitted reply but thereafter neither the procedure for conducting disciplinary inquiry was adopted nor inquiry report was submitted. It is well settled proposition of law that once disciplinary proceedings have been initiated by issuing a charge-sheet then the procedure prescribed for holding disciplinary inquiry has to be followed and on the basis of the inquiry report, disciplinary authority will issue a show cause notice and after taking reply, the final order in the disciplinary proceedings will be passed whereas in the present case though charge-sheet was issued to the petitioner and his reply was taken but thereafter procedure as provided under Rule 7 and Rule 9 of The Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 has not been followed, therefore, the final order passed by the District Basic Education Officer on 30.12.2022 cannot sustain in the eyes of law.

50. In view of the aforesaid reasons, this writ petition is ***allowed****. The order dated 30.12.2022 passed by the District Basic Education Officer, Basti is quashed. Respondent No. 1 i.e. District Basic Education Officer, Basti is directed to reinstate the petitioner in service forthwith and to pay his salary along with arrears."*

17. Against the aforesaid, ***Special Appeal Defective No.- 870 of 2023 (Basic Shiksha Adhikari And Another vs. Uday Pratap Singh And Another)*** was filed and the same was dismissed vide order dated ***19.01.2024***. The relevant paragraphs are quoted herein under :-

"10. Facts as have been noticed above are not in issue. It remains undisputed that respondent claimed compassionate appointment in the year 2000 and was offered such appointment in 2003. The father of the respondent had clearly given an affidavit wherein it was mentioned that he was employed in the Education Department of the State. From such material it can clearly be deduced that the factum of the father of the respondent being in Government Service was a fact clearly made known to the authorities and it can therefore not be asserted by the appellant that there was any fraud or misrepresentation made on part of the respondent.

11. It is undisputed that the legality of compassionate appointment offered to respondent was challenged before the authorities and after an appropriate inquiry, the matter was dropped in the year 2013. A PIL writ petition was also dismissed in that regard in the year 2014. Though, the PIL was also dismissed on the ground that it was not entertainable in service matters, yet the Division Bench did take note of the fact that the appointment was made more than ten years ago.

12. In such circumstances, we are of the considered opinion that the compassionate appointment offered to the respondent ought not to be interfered with

after 20 years when the fault in issuing such appointment was attributed to the Department itself. The view taken by the learned Single Judge, therefore, is a permissible view with which we find no reasons to disagree. The equity clearly stares against the appellants."

18. The matter went up to the Apex Court wherein a **Special Leave Petition (Civil) Diary No.7348 of 2024 (Basic Shiksha Adhikari, District Basti & Anr vs. Uday Pratap Singh & Anr.)** was filed by the State and the same was dismissed vide order **dated 16.04.2024.**

19. Similar controversy was also dealt by this Hon'ble Court in **Writ-A No.2058 of 2024 (Vishwaroop vs. State of U.P. Thru. Addl. Chief Secy. Agriculture Deptt. Lko. And 3 Others)** which was **decided on 15.10.2024.** In the aforesaid case, the Court has held as under :-

*"12. Hon'ble the Supreme Court in similar circumstances where the individual had obtained compassionate appointment de hors the rules and his appointment was set aside after a period of 15 years, it was held that the same was not justified in terminating such an appointment. The relevant paragraphs of the judgment of the Supreme Court in the case of **Md. Zamil Ahmed Vs. The State of Bihar & Ors., Civil Appeal No. 4815 of 2016)** is quoted herein below:-*

"14) Keeping in view the peculiar undisputed facts of the case and having regard to the totality of the circumstances, we are of the considered view that the State was not justified in terminating the appellant's services. In other words, the ground on which the appellant's services were terminated by the State after a period of 15 years of appellant's appointment does not appear to be well founded. This we say for the following reasons:

15) Firstly, the appellant and wife of the deceased at the time of seeking compassionate appointment did not conceal any fact and nor filed any false or incorrect document/declaration. On the other hand, both of them disclosed their true family relations and conditions prevailing in the deceased family on affidavit.

16) Secondly, the appellant, who is the brother of the deceased, undertook to maintain the family of the deceased in the event of his securing the compassionate appointment and he accordingly also gave such undertaking to the State."

13. It is in the aforesaid circumstances, this Court is also of the considered view that there was no justification on the part of the State to have woken up after a lapse of 12 years and found infirmity in the appointment of the petitioner and quashed the same. Further there is no allegations that the petitioner had concealed any material fact or some fact was found out by the State after a substantial length of time necessitating termination of his services. Once a finding has been recorded that the petitioner was not responsible for suppression of any material fact in securing his appointment then the onus lay upon the State to have examined the entire facts prior to giving him appointment on compassionate grounds. For the lapse if any of the State the services of the petitioner cannot be terminated after a lapse of 12 years."

20. Against the aforesaid, **Special Appeal Defective No.- 93 of 2025 (State**

of U.P. Thru. Addl. Chief Secy. Agriculture Deptt. Lko And 3 Others vs. Vishwaroop) was filed and while dismissing the Special Appeal of the State vide order **dated 04.03.2025,** the Court has held as follows :-

"13. We equally notice that the erring Officer who has made the appointment was not proceeded against for the wrong committed by him and it is in this background that the respondent, who has not concealed any fact in the application made, is rather subjected to a severe consequence. The State Government, in such a situation, must visit the erring Officials with a stern message in absence of which, the decision taken against the employee concerned does not appear to be in good faith and does not appear to be the right approach of rectifying the mistakes committed by the Officers of the State discharging onerous and responsible duties."

21. The learned counsel for the petitioner has also placed reliance upon the order passed in **Writ-A No.-11785 of 2021 (Rahul vs. State of U.P. And 6 Others)** wherein while allowing the writ petition vide order **dated 18.04.2025,** the Court has held as follows :-

"2. By means of this petition filed under Article 226 of Constitution of India, the petitioner has challenged the order dated 28.08.2021 whereby petitioner's services have been dispensed with only on the ground that while seeking compassionate appointment for his father dying in harness on 01.02.2008, vide application dated 29.02.2008, he concealed this material fact that his mother was already under Government service.

10. Having heard learned counsel for the respective parties and having perused the record, I find that it is a case where there was no prescribed format provided for a candidate seeking compassionate appointment to disclose every detail of the family including the status of each member of the family. It is true that the affidavit was filed by the mother of petitioner giving no objection in favour of the petitioner and she might not have disclosed the fact that she was a Government employee but the family register was before the authorities which showed that the mother of the petitioner who was a widow of late father of the petitioner was very well in the employment. I have perused the family register filed as Annexure No.2 that discloses the petitioner's mother to be in service.

11. Besides the above, I may observe here that in cases of compassionate appointment where the family suffers mental shock due to sudden death of bread earner of the family as in this case the father, the family cannot go into the technical niceties involved while moving application for compassionate appointment. It is a burden more upon the authorities to carry out verification as to the details of the family and its status. If the authorities themselves failed to verify the facts which was apparent on the fact of record then person appointed on compassionate basis could not be blamed for concealing any such fact. It is well established principle of law that fraud being a matter of fact cannot be presumed and so shall have to be proved by the party taking plea of fraud. It is a duty cast upon the authority to verify the records to look into them minutely. If no format is prescribed regarding disclosure of a particular fact, then non-disclosure of such

fact cannot form a charge of misconduct. Moreover, in matters of compassionate appointment, which is permanent in nature, employer if finds an employee to have committed fraud in seeking appointment then that charge should be established by holding a full fledged enquiry under discipline and appeal rules as may be applicable to the establishment.

12. In these facts and circumstances and also in so far as the summary proceedings that have been drawn in the matter of annulment of employment of the petitioner, I find myself in full agreement with the view of the co-ordinate Bench of this Court that a proper procedure ought to have adopted. I also find that the Division Bench as well as the Supreme Court has very clearly held that once the employment has been offered and the facts were before the authorities, after such a long gap of a decade or so such appointment should not be annulled. Looking to the facts that the family has survived due to the earning of the petitioner and petitioner also might have got married and may also having a family absolutely dependent upon him, subsequently I do not find any justification for cancelling the application of the petitioner."

22. He has also placed reliance upon the case of ***Md. Zamil Ahmed v. State of Bihar,*** reported in ***(2016) 12 SCC 342***. The relevant paragraphs are quoted herein below :-

"11. Keeping in view the peculiar undisputed facts of the case and having regard to the totality of the circumstances, we are of the considered view that the State was not justified in terminating the appellant's services. In other words, the ground on which the appellant's services were terminated by the State after a period of 15 years of the appellant's appointment does not appear to be well founded. This we say for the following reasons:

11.3. Thirdly, there was no one in the family of the deceased to claim compassionate appointment except the appellant who, as mentioned above, was the close relative of the deceased i.e. real younger brother and used to live with the deceased. He was otherwise eligible to claim such appointment being major, educated and only male member in the family.

13. The fact that the appellant was the younger brother of the deceased was within the knowledge of the State. Similarly, the State was aware that the brother does not fall within the definition of "dependant" at the relevant time and still the State authorities obtained the undertaking from the appellant that he would maintain the family of the deceased once given the appointment."

23. Thus, on the aforesaid submissions, impugned order is liable to be quashed.

24. Learned counsel for the respondents submits that there is no illegality or infirmity in the impugned order. It is contended that, following an inquiry, the petitioner's appointment was found to be in violation of the Dying-in-Harness Rules, as framed under the Government Order dated 04.09.2000, which governs appointment on compassionate grounds. The said rules expressly prohibit the appointment of a dependent of a deceased employee if the spouse of the deceased is already employed in a government service. This restriction is

clearly stipulated under Rule 3(1) and Rule 5 of the applicable rules, as well as in the aforementioned Government Order. It is further submitted that the petitioner, by concealing this material fact, secured appointment in contravention of the rules, rendering the appointment illegal and unsustainable in law.

25. The counsel for the respondents submits that in support of the no objection affidavit, the declaration given by the petitioner's mother as well as other family members, does not disclose the fact that the petitioner's mother was employed as an Assistant Teacher at the Primary School, Behrampur, Block Iglas. This amounts to a clear act of concealment on the part of the petitioner, as neither the petitioner, his mother, nor any other family member revealed that the petitioner's mother was a government employee at the time of the petitioner's father's demise.

26. In paragraph nos. 14 and 15 of the counter affidavit, the respondents contend that the entire proceedings were initiated based on a complaint submitted by Virendra Kumar Sharma, pursuant to which a show-cause notice was issued to the petitioner. However, the petitioner, in an attempt to manipulate the process, produced a forged signature purportedly of the complainant, asserting that no such complaint had ever been filed.

27. Emphasizing upon Rule 5 of the Dying-in-Harness Rules, the Counsel for the respondents submits that compassionate appointment cannot be granted if the spouse of the deceased employee is already employed in a government job. In the present case, the petitioner was appointed on compassionate grounds despite the fact that the petitioner's mother was serving in a government post at the relevant time, rendering the appointment irregular and in contravention of the established rules.

28. Placing reliance upon a judgment ***dated 15.10.2024*** passed in ***Special Appeal Defective No.506 of 2024 (Distt. Basic Education Officer and Another vs. Smt. Punita Singh and 3 Others)*** wherein order passed by learned Single Judge in the case of Smt. Punita Singh and 3 Others relating to the petitioner therein, who had procured appointment on the basis of forged documents, which was allowed by the Single Judge, has been set-aside.

29. He, therefore, contends that the petitioner is not entitled to any relief in view of the observations of the Court in the aforesaid Special Appeal as he has sought appointment by concealing material fact of his mother being in government job at the relevant point of time, therefore, his appointment cannot stand.

30. In the aforesaid Special Appeal, the Division Bench of this Court has held as follows :-

"18. A Division Bench of this Court in ***Zila Basic Shiksha Adhikari, Balrampur Vs. Anand Kumar Tripathi and others : 2024:AHC-LKO:37313-DB,*** *in a case where compassionate appointment accorded to the respondent therein, was terminated on account of failure to produce relevant documents as regard his parentage, etc., the Division Bench, on the question whether in such case show cause notice should be issued and thereafter order of cancellation of appointment should be passed or a full fledged inquiry in terms of Rules of 1999 should be held followed by removal or dismissal, came to the conclusion that*

disciplinary proceedings are ordinarily initiated if any misconduct has been committed after joining service, therefore, if the initial appointment itself was fraudulent, then referring to the judgment of Hon'ble Supreme Court in ***R. Vishwanatha Pillai Vs. State of Kerala and others : (2004) 2 SCC 105,*** *and Patna High Court judgements in* ***Ishwar Dayual Sah Vs. State of Bihar : 1987 Lab IC390 and Rita Mishra Vs. Director, Primary Education : 1988 Lab IC 907,*** *came to the following conclusion:*

"12. Taking a cue from the ratio of the decision of the Supreme Court, we are of the opinion that if it is ultimately found on inquiry referred earlier that the opposite party no. 1 had practiced fraud or deceit to obtain the appointment as already discussed, then, it would be a case to proceed for cancellation of appointment by issuing a show cause notice for the said purpose annexing the inquiry report and material collected in such inquiry and then considering the reply of the appointee in this regard and taking a reasoned decision after affording an opportunity of personal hearing for cancellation of appointment and not necessarily for dismissal or removal of service, therefore, there is no question of any inquiry to be held in terms of Rules, 1999 as has already been held in the aforesaid decision of the Supreme Court.

13. This will be sufficient observance of principles of natural justice. It may also be pointed out that an employee of Basic Education Department does not have the benefit of Article 311 of the Constitution of India as Article 311 of the Constitution of India would not apply, however, the relevant rules for disciplinary proceedings for imposition of major punishment such as removal, dismissal etc. would apply, but, for the reasons aforesaid, those will also not apply if on a fact finding inquiry it is found that the appointment was obtained by fraud, as already observed hereinabove and thereafter the aforesaid procedure is followed."

19. Recently, Hon'ble Supreme Court in ***Union of India Vs. Prohlad Guha etc.: 2024 SCC OnLine SC 1865,*** *in a case where the writ petitions filed by the employees were allowed for not following the Railway Servants (Discipline & Appeal) Rules, 1968 and on coming to the conclusion that qua a person in regular service, the dismissal cannot take place sans any disciplinary inquiry, while setting aside the judgement, came to the following conclusion:*

"13. The impugned judgment is liable to be set aside on a further ground, since the requisite to establish eligibility for compassionate appointment was not properly fulfilled, they were appointed on the basis of false claims and fabricated documents. It then becomes imperative to discuss what constitutes fraud and what is its impact on an act afflicted by such vice. R.M. Sahai, J. writing in Shrisht Dhawan (Smt.) v. M/s. Shaw Brothers observed –

"20. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy-hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary fraud in equity has been defined as an act or omission to act or concealment by which

one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. ...From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of a fact with knowledge that it was false.

.....The colour of fraud in public law or administrative law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. That is misrepresentation must be in relation to the conditions provided in a Section on existence or non-existence of which power can be exercised.

13.1. The words of Denning L.J. in Lazarus Estates Ltd. v. Beasley are of importance qua the impact of fraud. He wrote –

".....I cannot accede to this argument for a moment. No Court in this land will allow a person to keep an advantage he has obtained by fraud. No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved, it vitiates judgment, contract and all transactions whatsoever...."

13.2. 'Fraud' is conduct expressed by letter or by word, inducing the other party to take a definite stand as a response to the conduct of the doer of such fraud. [See; Derry v. Peek; Ram Preeti Yadav v. U.P. Board of High School of Intermediate Education]

13.3 In R. Vishwanatha Pillai v. State of Kerala, a Bench of three learned Judges observed that a person who held a post which he had obtained by fraud, could not be said to be holding a post within the meaning of Article 311 of the Constitution of India. In this case, a person who was not a member of Scheduled Castes, obtained a false certificate of belonging to such category and, as a result thereof, was appointed to a position in the Indian Police Service reserved for applicants from such category.

14. The above discussion reiterates that fraud vitiates all

proceedings. Compassionate appointment is granted to those persons whose families are left deeply troubled or destitute by the primary breadwinner either having been incapacitated or having passed away. So when persons seeking appointment on such ground attempt to falsely establish their eligibility, as has been done in this case, such positions cannot be allowed to be retained. So far as the submission of non-compliance of the Rules is concerned, the judgment in Vishwanatha Pillai (supra) answers the question. The Respondent-employees in the present case, having obtained their position by fraud, would not be considered to be holding a post for the purpose of the protections under the Constitution. We are supported in this conclusion by the observations made in Devendra Kumar v. State of Uttaranchal. In paragraph 25 thereof it was observed –

"25. More so, if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. Sublato fundamento cadit opus - a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent court. In such a case the legal maxim nullus commodum capere potest de injuria sua propria applies. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation. (Vide Union of India v. Major General Madan Lal Yadav [(1996) 4 SCC 127: 1996 SCC (Cri) 592: AIR 1996 SC 1340] and Lily Thomas v. Union of India [(2000) 6 SCC 224: 2000 SCC (Cri) 1056].) Nor can a person claim any right arising out of his own wrongdoing (jus ex injuria non oritur)."

(Emphasis supplied)

15. The impugned judgment passed by the High Court, in view of the above discussion, is set aside and the order passed by the Tribunal dismissing the Respondent-employees' Original Applications is restored. The Respondent-employees were rightly dismissed from service by the Appellant-employer. ……."

20. From the above, it is well established that in case, the employment has been obtained based on fraudulent documents, the beneficiary of such fraud cannot seek that procedure prescribed under the Rules of 1999 must be followed.

*21. So far as the judgment in the case of **Smt. Parmi Maurya (supra)** relied on by counsel for the respondent is concerned, it was a case where the Division Bench came to the conclusion that petitioner therein, was not afforded adequate opportunity of hearing. However, in the present case, it is ex facie clear from the order impugned that she was provided adequate opportunity with regard to her documents being forged and fabricated and the only plea raised by her was that she would produce duplicate copies of the said documents and neither in the writ petition nor in the present appeal, she has been able to produce any further document/material to substantiate that the mark-sheets issued to her, were not forged and fabricated."*

31. Thus, the counsel for the respondents submits that it is well established that in case the employment has been obtained based on fraudulent documents on concealing material fact, the beneficiary of such fraud (petitioner in the present case) cannot seek that proper procedure as prescribed under law has not

be followed while passing the impugned order.

32. Relying upon another judgement passed by the Apex Court in **Civil Appeal No.7353-7354 of 2009 (Rajesh Kumar vs. Union of India Through Chief Of Army Staff & Ors.)** as **decided on 11.11.2021,** learned counsel for the respondents submits that the Apex Court in the aforesaid case has observed that in the event of any suppression or on submitting forged information, it is always open to the employer to cancel the candidature or terminate the services of any employee. For reference, paragraph no.32 of judgment passed in the case of **Avatar Singh vs. Union of India & Ors** reported in **(2016) 8 SCC 471** which has been relied upon in the aforesaid case is quoted herein under :-

"32. No doubt about it that once verification form requires certain information to be furnished, declarant is duty-bound to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to termination of his services or cancellation of candidature in an appropriate case. However, in a criminal case incumbent has not been acquitted and case is pending trial, employer may well be justified in not appointing such an incumbent or in terminating the services as conviction ultimately may render him unsuitable for job and employer is not supposed to wait till outcome of criminal case. In such a case non-disclosure or submitting false information would assume significance and that by itself may be ground for employer to cancel candidature or to terminate services."

33. Answering the objections as raised by learned counsel for the respondents, the learned counsel for the petitioner submits that there has been no concealment of material fact that the petitioner has not disclosed about his mother being in government job as an affidavit dated 28.07.2000 has been given by the petitioner's mother requesting for original pension, denying claim of dearness allowance wherein it has been mentioned that she is in service in Parishadiya School. The aforesaid document is placed on record. As regards the other objections regarding the conduct of the petitioner while managing the complaint on which the inquiry was done, the respondents have failed to produce any evidence against the petitioner and at a later stage, the complaint was also found to be false. The learned counsel for the petitioner has already placed his submission to show that there was no concealment of fact and no fraud has been played by him, therefore, the order impugned is arbitrary and may be set-aside.

34. He further contends that non-disclosure of a fact not required to be disclosed under law does not ordinarily amount to fraud or forgery. To establish fraud or forgery, there must be intentional concealment or misrepresentation of a material fact which the law obligates to be disclosed, and such misrepresentation must have induced another party to act to their detriment. He also submits that it is settled position of law that mere non-disclosure of a fact is not fraud unless there is a duty to speak. Silence cannot be considered fraudulent unless there's an obligation to disclose. It also clarifies that unless there is a legal duty to disclose a material fact, non-disclosure itself is not fraud.

35. In support of his submissions, learned counsel for the petitioner has relied upon several judgments :-

(i). In the case of ***S.P. Chengalvaraya Naidu (dead) by LRS v. Jagannath (dead) by LRS & Ors.,*** reported

in **(1994) 1 SCC 1**, the Apex Court has opined that fraud is an act of deliberate deception to secure an unfair advantage. Suppression of material facts which are mandated to be disclosed amounts to fraud. This case helps in distinguishing between a required disclosure and mere omission. Fraud requires concealment of mandatory material facts.

(ii). In the case of ***R. K. Anand v. Registrar, Delhi High Court,*** reported in ***(2009) 8 SCC 106,*** it was held that forgery requires fabrication of a false document with intention to cause damage or injury and, therefore, non-disclosure alone does not amount to forgery unless there's falsification of documents.

(iii). In the case of ***Union of India v. M. Bhaskaran,*** reported in ***1995 Supp (4) SCC 100,*** the Hon'ble Supreme Court ruled that if a person gains public employment through false representation or forged documents, the appointment is void ab initio reinforcing that forgery arises only where false documents are used, not through omission or silence.

(iv). The Engligh Court in the case of ***Lazarus Estates Ltd. v. Beasley,*** reported in ***[1956] 1 QB 702 (UK case, often cited in Indian courts)*** has famously stated that "Fraud unravels everything" but clarified that such fraud must involve deceit or concealment of a required truths, not mere silence unless there is a duty to disclose.

36. In view of the aforesaid, learned counsel for the petitioner further submits that if the fact was not legally required to be disclosed, then mere omission would not amount to fraud or forgery. To prove fraud, there must be intentional concealment of a material fact which must be disclosed and to prove forgery, there must be creation or alteration of a false document with intent to deceive.

37. In the present case, where no prescribed format was provided to the candidate seeking compassionate appointment for disclosing detailed information regarding each family member, it cannot be denied that a no-objection affidavit was submitted by the petitioner's mother as well as other family members. Additionally, an affidavit dated 28.07.2000 was submitted by the petitioner's mother clearly stating that she was employed as an Assistant Teacher at Prathamik Vidyalaya, Bahrampur, District Aligarh. Upon due scrutiny of the relevant documents, the petitioner was granted appointment on compassionate grounds. Therefore, it cannot be alleged that there was any concealment of fact on the part of the petitioner.

38. Learned counsel for the petitioner has also placed reliance upon the following judgments :-

(i). In the case of ***Kendriya Vidyalaya Sangathan vs. Damodar Prasad Pandey and others,*** reported in ***(2004) 12 SCC 299,*** the Apex Court has held that compassionate appointment cannot be denied on hyper-technical grounds. The objective is to provide relief to the family in distress. Procedural lapses or absence of specific formats, unless resulting in fraud, are not fatal to the claim.

(ii). In the case of ***Bharat Coking Coal Ltd. v. Shyam Kishore Singh,*** reported in ***(2020) 3 SCC 411,*** the Hon'ble Supreme Court has held that when relevant documents and affidavits were examined

and the authority was satisfied, challenge on grounds of concealment at a later stage must be substantiated with clear evidence of fraud or misrepresentation.

(iii). In the case of ***SBI vs. Raj Kumar***, reported in ***(2010) 11 SCC 661***, the Apex Court has opined that compassionate appointment is not a vested right, but once it is granted after proper scrutiny and no material suppression is proven, the appointment cannot be invalidated.

39. Learned counsel for the petitioner further submits that it is settled law that affidavit evidence submitted by family members is valid and binding unless proven otherwise. The appointment made on that basis after scrutiny cannot be invalidated merely on assumptions.

40. Heard learned counsels for the parties and perused the record.

41. It stands established that there was neither any misrepresentation nor concealment on the part of the petitioner with respect to the employment status of his mother. The petitioner did not suppress the fact that his mother was serving in a government post specifically as an Assistant Teacher in the same department at the time he submitted his application for compassionate appointment. It was incumbent upon the respondent authorities to undertake due diligence and conduct a proper verification of such material facts prior to extending the appointment. Since such scrutiny was duly carried out before the petitioner was offered the appointment, the benefit granted cannot be withdrawn or cancelled on account of any lapse attributable to the respondents themselves.

42. This Court further observes that the petitioner was merely 18 and a half years old at the time of submitting the application for compassionate appointment. At such a tender age, he could not have been expected to comprehend the technical requirements relating to the disclosure of the employment status of family members. In circumstances where the family is grappling with emotional distress due to the sudden demise of its sole breadwinner as in the present case, the petitioner's father the responsibility to verify and scrutinize the family particulars rests squarely upon the respondents.

43. If the authorities themselves failed to conduct due diligence and verify facts that were otherwise apparent from the record, the petitioner cannot be held liable for any alleged non-disclosure. It is a well-established principle of law that allegations of fraud must be specifically pleaded and proved by cogent evidence; fraud, being a question of fact, cannot be presumed.

44. Even the erring official, who failed to conduct proper scrutiny in a case where the petitioner's mother was employed in the same department, has not been subjected to any disciplinary action. Therefore, the petitioner cannot be penalized in any manner for such an administrative lapse.

45. Once it is established that there was no concealment of material facts by the petitioner at the time of his initial appointment, the respondents cannot, after a lapse of 14 years, seek to reopen the issue on the ground that the petitioner failed to disclose the fact of his mother being in government service at the time of applying for compassionate appointment particularly when such disclosure was not mandated under the relevant rules.

46. Moreover, all documents submitted by the petitioner were duly scrutinized by the respondent authorities prior to the issuance of the appointment order. Therefore, at this belated stage, the petitioner's appointment cannot be annulled, especially when the delay and oversight are attributable solely to the respondents themselves.

47. Such action after an inordinate delay of 14 years, without any allegation of fraud or misrepresentation, would be arbitrary and against the principles of natural justice.

48. The Court is of the opinion that it would also be appropriate to observe that once the petitioner has been appointed on compassionate grounds and such appointment has attained finality, being a regular and permanent appointment, the same cannot be cancelled arbitrarily or without adhering to the due process of law, particularly after the lapse of several years from the date of initial appointment as is the settled position in law.

49. It is relevant to reproduce herein the observation made by the Apex Court in the case of ***Shankarsan Dash vs. Union of India***, reported in ***(1991) 3 SCC 47*** in which it has been reiterated that appointments, once validly made, cannot be disturbed except in accordance with law.

50. An irregular appointment refers to an appointment to a job or post that does not follow the proper legal or procedural rules. This may include skipping required qualifications, bypassing selection procedures, violating recruitment norms, or appointments made without proper authority or approval.

51. Unlike appointments obtained by fraud or misrepresentation, an irregular appointment may not involve any dishonest intent but still remains legally flawed or procedurally defective.

52. In the present case, it cannot be held that the appointment of the petitioner was made in violation of the established rules or without following the due procedure prescribed under law. The record reflects that all necessary formalities and verifications were duly carried out at the time of appointment. Therefore, the appointment cannot be termed as 'irregular' merely on presumptions or belated allegations. It is a settled position of law that once an appointment is made after due scrutiny by the competent authority, it carries a presumption of validity unless proven otherwise by cogent evidence.

53. In the case of ***State of Punjab vs. Jagdip Singh***, reported in ***(1964 AIR 521),*** the Apex Court has held that a void appointment is one made without the authority of law; however, an appointment following some procedural irregularity is not void ab initio unless there is violation of essential conditions.

54. In the present case, it is evident from the record that the petitioner did not indulge in any act of concealment or misrepresentation at the time of seeking appointment. All relevant documents were submitted and duly scrutinized by the competent authority before the appointment was offered. As such, the appointment cannot be termed as illegal or void. It is a settled principle of law that an appointment made after due verification and without any fraudulent intent cannot be cancelled merely on technical grounds or assumptions. In the absence of any material

irregularity or violation of the prescribed procedure, the petitioner's appointment stands on firm legal footing and is not liable to be annulled retrospectively.

55. In light of the above discussion, the writ petition is **allowed**. The impugned order is **quashed**. The respondents are directed to reinstate the petitioner in service with all consequential benefits for which he is entitled.

(2025) 8 ILRA 706
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 12.08.2025

BEFORE

THE HON'BLE VIKRAM D. CHAUHAN, J.

Writ A No. 14109 of 2021

Hari Shankar Yadav ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Gulrez Khan, Javed Husain Khan, Sr. Advocate

Counsel for the Respondents:
C.S.C., Rohit Pandey

ISSUE FOR CONSIDERATION

Whether an order of compulsory retirement with 50% deduction of gratuity could be sustained when the enquiry report recorded no specific finding of misconduct against the petitioner, and the alleged irregularities in handling answer booklets were attributable primarily to other employees, coupled with institutional lapses, and no provision existed authorising deduction of gratuity in the absence of financial loss to the University.

HEADNOTE

Service Law – Disciplinary Proceedings – Compulsory Retirement – No Specific Finding of Misconduct – Collective Liability – Institutional Failure – Deduction of Gratuity Without Financial Loss – Illegal.

Held :

Petitioner, working on the post of Assistant Registrar, was subjected to disciplinary proceedings for alleged negligence relating to answer booklets that were found to have been written after evaluation. Petitioner denied the charges. Despite the absence of any specific finding of negligence or misconduct, the disciplinary authority imposed compulsory retirement with 50% deduction of gratuity, which was upheld in appeal. Held: A person having overall supervision of the concerned department cannot be punished with compulsory retirement unless a finding is recorded to the effect that the petitioner has committed misconduct or has been negligent in his duties. Once such a finding has not been recorded in the impugned order, and only on the basis of general fixation of liability on all the employees involved in the department concerned, the impugned order of compulsory retirement and 50% deduction of gratuity is not sustainable in the eyes of law. Deduction of 50% gratuity, when no financial loss was suffered by the University, does not stand legal sanctity, as no provision was shown which empowered the respondent-University to deduct gratuity without financial loss. Writ petition allowed; orders of compulsory retirement and deduction of gratuity dated 06.06.2019 and 10.11.2020 quashed; consequential benefits directed. (Paras 20–24) (E-5)

CASE LAW CITED

None

List of Acts

Constitution of India;

List of Keywords

Disciplinary Proceedings; Compulsory Retirement; Misconduct Not Proved; Collective Liability; Institutional Failure; Forensic Examination; Answer Booklet Manipulation; Supervisory Role; Gratuity Deduction; Natural Justice; No Financial Loss; Arbitrary Punishment.

CASE ARISING FROM

Order dated 06.06.2019 passed by Registrar, Bundelkhand University, Jhansi, imposing compulsory retirement with 50% deduction of

gratuity; Appellate order and Executive Council resolution dated 10.11.2020 affirming the punishment.

Appearances for Parties

Advs For Petitioner: Sri Gulrez Khan; Sri Javed Husain Khan, Senior Advocate

Advs For Respondents: C.S.C.; Sri Rohit Pandey

(Delivered by Hon'ble Vikram D. Chauhan, J.)

1. Heard Sri Gulrez Khan, learned counsel for the petitioner, learned Standing Counsel for the State-respondent and Sri Rohit Pandey, learned counsel for the respondent-University.

2. The present writ petition has been preferred challenging the order dated 6.6.2019 passed by respondent no. 3 and order dated 10.11.2020 passed by the Disciplinary Committee as well as resolution dated 10.11.2020. Further, prayer has been made in writ petition for directing respondents to treat the petitioner in service till the date of retirement i.e. 31.10.2019 and pay arrears of salary for the period 6.6.2019 to 31.10.2019 and further all consequential benefits.

3. The petitioner was initially appointed as routine clerk/typist by order dated 1.4.1982. Petitioner was granted promotion from time to time and finally petitioner was promoted to the post of Office Superintendent by order dated 22.12.2015 and thereafter petitioner was promoted on Adhoc basis on the post of Assistant Registrar by order dated 6.7.2018. Petitioner received chargesheet dated 26.4.2019 alleging negligence in duty in respect of three charges mentioned in the above-mentioned chargesheet. The petitioner submitted detailed reply to the chargesheet denying allegations against the petitioner by means of reply dated 2.5.2019. After enquiry proceedings, enquiry report was submitted on 17.5.2019 holding the petitioner guilty of negligence/indifferent on the basis of fact that petitioner was responsible for the alleged act. The petitioner thereafter was issued a show cause notice dated 30.5.2019 against the enquiry report dated 17.5.2019. Petitioner submitted a detailed explanation dated 1.6.2019 in respect of show cause notice dated 30.5.2019. Thereafter, by means of the impugned order dated 6.6.2019, petitioner was inflicted punishment of compulsory retirement. The petitioner thereafter preferred an appeal against the order dated 6.6.2019 before the Disciplinary Committee under the University Statutes. The Disciplinary Committee dismissed the appeal of petitioner by order dated 10.11.2020 and said dismissal of appeal was approved by Executive Council in its meeting dated 10.11.2020.

4. Learned counsel for petitioner submits that order dated 6.6.2019 directs compulsory retirement of petitioner with deduction of 50% gratuity, in pursuance to disciplinary proceedings. The chargesheet dated 26.4.2019 alleged three charges against the petitioner. The first charge pertains to the fact that after evaluation of answer sheets it was found that the answer sheet has been written subsequently and as such the petitioner was alleged to be negligent and indifferent to his work. The second charge against the petitioner pertains that keys of evaluation centre being handed over to Daily Assistant – Satya Prakash without permission of higher authorities. The third charge against the petitioner pertains to failure of petitioner to supervise progress when the copy of

answer sheet was given to the students. Learned counsel for the petitioner further submits that charges against the petitioner were denied by the petitioner.

5. The petitioner who was working on the post of Office Superintendent in the respondent-University by order dated 6.6.2019 has been inflicted with the punishment of compulsory retirement along with deduction of 50% of gratuity. The facts and circumstances which led to initiation of disciplinary proceedings against petitioner are to the effect that for the Academic Session 2017-18, in respect of annual examination, 13 students applied under the Right to Information Act for copy of the answer booklet. The said students further alleged that there is a mistake in the evaluation of answer booklet or some of answers have not been awarded marks. The aforesaid grievance was made to Grievance Committee. The member of Grievance Committee, Prof. Archana Verma on founding doubt on the handwriting in the answer booklet reported the same to the Registrar of University. The Registrar of University thereafter got conducted forensic examination of 13 answer booklets and the aforesaid forensic examination confirmed that answer booklets in which the answer have not been awarded marks were in fact written later on.

6. In view of aforesaid facts, the Registrar of the University constituted a preliminary examination committee consisting of Prof. V.K. Sehgal, Prof. S.K. Kabia and Dr. M.M. Rajput. The aforesaid examination committee in its report dated 30.1.2019 found that petitioner, one Rajendra Ram (Retired Senior Assistant) and Shri Satya Prakash, Daily Assistant were prima facie found to be involved in the above-mentioned incident. The aforesaid report was placed before the examination committee in its meeting dated 30.1.2019 and thereafter examination committee cancelled the examination of 13 students and further recommended for disciplinary proceedings being initiated against the employees found involved in the alleged incident.

7. In furtherance of above mentioned examination committee report and recommendation of examination committee, the Registrar of University constituted a Final Enquiry Committee of Prof. S.K. Katiyar (Chairman), Prof M.M. Singh (Member) and Dr D.P. Gupta (Member). The final enquiry committee thereafter gave opportunity to 13 students to represent their case before the aforesaid committee. As per the meeting dated 25.4.2019, seven students did not appear before the aforesaid committee. The said committee further granted time to the petitioner, Sri Satya Prakash, Daily Assistant who were issued chargesheet dated 26.4.2019. Sri Rajendra Ram and other workers who were attached with the evaluation section of the University were also given opportunity to represent their case before the committee.

8. A perusal of the chargesheet dated 26.4.2019 issued to the petitioner would show that three charges were levelled against the petitioner in the disciplinary proceedings. The aforesaid three charges are as under :-

a) The first charge against the petitioner pertains to writing of answer booklets after evaluation, which is indicative of negligence and indifference towards his work by the petitioner.

b) The second charge against the petitioner pertains that the keys of evaluation centre were handed over to Daily Assistant - Sri Satya Prakash without the permission of higher authorities.

c) The third charge against petitioner pertains to failure of petitioner to supervise the process when the copy of answer booklet was given to students.

9. The petitioner thereafter submitted his reply dated 2.5.2019 in response to chargesheet dated 26.4.2019. In the reply dated 2.5.2019, petitioner denied the charges levelled in the chargesheet against the petitioner. The petitioner further replied that answer booklet storage office work was being executed by Sri Satya Prakash-Daily Assistant and Sri Rajendra Ram and for the assistance of the aforesaid two employees, five daily wage workers were appointed under the order of the Registrar of University. The aforesaid workers were working under the guidance of Sri Satya Prakash-Daily Assistant and Sri Rajendra Ram and used to execute the work of taking out the answer booklets on their instructions. Out of five daily wage workers, three workers were assigned duty of taking out the answer booklet on the instructions of Sri Satya Prakash-Daily Assistant and Sri Rajendra Ram and the other two workers were assigned duty of making copy of the answer booklets. The petitioner further replied that the petitioner was stationed at evaluation building of the University and used to visit answer booklet storage facility for taking information about the work in progress and the petitioner thereafter used to report the same to the higher authorities. The petitioner further in his reply stated that he was stationed at administrative building and used to discharge his duty pertaining to examination from the aforesaid office.

10. The petitioner in its reply further stated that he was suffering from heart disease and was also admitted in the hospital at Gurugram, New Delhi and also undergone open heart surgery from 1.10.2018 to 21.11.2018 and petitioner remained on medical leave. The petitioner in its reply dated 2.5.2019 also submitted reply to each of three charges against petitioner, which are as under :-

(a) In respect of charge no. 1, petitioner replied that in answer booklet storage centre for the past 8 to 10 years, Sri Rajendra Ram was working. In respect of examination of year 2018, large number of applications were received under the Right to Information Act and as such Sri Satya Prakash-Daily Assistant was directed orally by earlier Examination Controller Sri P.N. Prasad to work at the answer booklet storage centre, for the Right to Information applications and maintenance of answer booklets pertaining to scrutiny and for preparing copy of aforesaid booklet being send to concerned department. For the assistance of the aforesaid two employees, five daily wage workers were also assigned and said daily wage workers, work under the supervision of Sri Rajendra Ram and Sri Satya Prakash. The said Sri Rajendra Ram and Sri Satya Prakash were responsible that the answer booklets are taken out and copy prepared by the workers in their presence and sent to concerned department. It was also stated by petitioner that in September 2018, petitioner suffered serious ailment of heart disease which was informed to senior officials and as such, the petitioner claimed that there was no negligence or indifference attitude to work, by the petitioner.

(b) In respect of charge no. 2, petitioner in its reply stated that Sri Rajendra Ram for last 8 to 10 years was working at answer booklet storage centre and after his retirement storage centre keys and other documents were handed over to Sri Satya Prakash on the oral direction of Deputy Registrar (Examination). The petitioner in its reply stated that in pursuance to above-mentioned oral direction, keys of answer booklet storage centre was handed over to Sri Satya Prakash by petitioner. Thereafter, Deputy Registrar (Examination) called for re-employment of Sri Rajendra Ram after his retirement. Sri Rajendra Ram was thereafter appointed by Registrar of respondent-University on 10.5.2018 on daily wages in the answer booklet storage centre for six months. The aforesaid two employees used to open answer booklet storage centre at 10:00 a.m. and close the same at 5:00 p.m. The keys of the centre at the time when Sri Satya Prakash was on leave were kept with Sri Rajendra Ram.

(c) In respect of charge no. 3, petitioner in its reply stated that copy of original answer booklet was prepared by daily wage worker on instructions of Sri Rajendra Ram and Sri Satya Prakash and thereafter entry was made in the register; subsequently the aforesaid was sent to the Right to Information Department and the aforesaid department used to hand over copy of answer booklet to the student concerned. The students were not provided with the copy of answer booklet directly from the answer booklet storage facility. The transfer of answer booklet to the Right to Information Department was made under the supervision of petitioner. Whenever challenged, answer booklets were required by the challenge department then Sri Satya Prakash used to send the same under the signature of petitioner. The petitioner also used to make certain inspection of examination building. From 1.10.2018 to 21.11.2018 petitioner was on medical leave and no other person was made in-charge of evaluation centre during the period when petitioner was on medical leave. The petitioner denied any negligence in his work.

11. The petitioner thereafter received letter dated 9.5.2019 enclosing copy of complaint dated 3.3.2019 submitted by above-mentioned Sri Satya Prakash. The above mentioned complaint dated 3.3.2019 alleged that the petitioner had called for answer booklet of one student Madhur Kumar Sahu (through one pawan who was working on daily wage) and the same was returned after three days. Before return of the answer booklet, the student obtain 14 marks and was failed in the aforesaid subject, however, on return of the answer booklet, he had obtained 15 marks and was passed. The complainant made request that the forensic examination be made of the said booklet. It was further alleged in the said complaint that five persons who are working as daily wager at the evaluation centre were brought by petitioner and the aforesaid person also used to do work at the home of petitioner. It was also alleged that keys of the evaluation centre were kept with the petitioner for the period from 4.10.2018 to 21.11.2018 and one key was with Sri Satya Prakash.

12. The petitioner thereafter submitted its reply on 15.5.2019 in respect of complaint dated 3.3.2019. The petitioner denied the allegations made in complaint. In respect of the student Madhur Kumar Sahu it is stated in reply that the answer booklets were never called for by petitioner nor same was returned. The daily wagers

were appointed by administrative order of University. It was also denied that the aforesaid daily wagers were related to petitioner or they were working at the household of petitioner. It was also alleged in reply that in respect of work of scrutiny and public information or answer booklets, the daily wagers proposal was presented by Sri Satya Prakash. Sri Satya Prakash under his supervision used to take work from the daily wagers. The keys were kept by Sri Satya Prakash.

13. Thereafter, enquiry report dated 17.5.2019 was submitted by the enquiry committee. The aforesaid enquiry committee entered into enquiry in respect of three points, one being whether the petitioner was negligent and indifferent towards the work, has handed over the keys of evaluation centre to Sri Satya Prakash without permission of higher officials; and was negligent in the photo copy of the answer booklets. The second issue examined by the enquiry committee pertains to negligence on the part of choice of Sri Satya Prakash and third point pertaining to examination of the working of retired employee Sri Rajendra Ram and daily wagers.

14. The issue no. 1 in the enquiry report pertaining to the petitioner whether the petitioner was negligent and indifferent towards the work, has handed over the keys of evaluation centre to Sri Satya Prakash without permission of higher official; and was negligent in photo copy of the answer booklets. The enquiry report came to the conclusion that petitioner was posted in the admin block and used to do sudden inspection of the evaluation centre as a result of the same no permanent supervision of evaluation centre could be made and the centre were in the custody of Sri Satya Prakash and all the work was being done under the supervision of Sri Satya Prakash and Sri Rajendra Ram. The aforesaid enquiry report in respect of issue no. 1 did not record any finding of negligence or misconduct against the petitioner. Insofar as issue nos. 2 and 3 are concerned, the same did not pertain to the petitioner.

15. The said enquiry report further concludes that all the employees were collectively responsible for the writing of the answers subsequently. The aforesaid report further recorded a finding that the evaluation work was specifically being done by Sri Satya Prakash and Sri Rajendra Ram. The aforesaid report further recorded that the keys of centre were kept with Sri Satya Prakash. The enquiry report further concludes that the aforesaid latches is a institutional failure.

16. The aforesaid enquiry report dated 17.5.2019 was accepted by Vice Chancellor. The petitioner was issued a notice dated 28.5.2019 annexing copy of enquiry report and the same was replied by petitioner's reply dated 1.6.2019. Thereafter, by impugned order dated 6.6.2019, the petitioner has been directed for compulsory retirement with deduction of 50% gratuity. The petitioner preferred an appeal and the same was rejected by respondent authority by order dated 10.11.2020.

17. Learned counsel for the petitioner further submits that enquiry report does not show the petitioner to be guilty of any misconduct connected with the allegations in the chargesheet. It is further submitted that petitioner has been punished on the basis of presumption as being in-charge of the evaluation centre. The petitioner was

assigned duty to assist the coordinator and in this respect, petitioner has retired by the office order dated 6.3.2018. It is submitted that the finding recorded by enquiry report, the alleged misdeeds has been conducted and the joint responsibility is vested with all the employees. The primary responsibility as per the enquiry report was vested with Sri Satya Prakash. It is further submitted that deduction of 50% of the gratuity in the impugned order is totally illegal as no financial loss was suffered by the respondent-University. Learned counsel for petitioner further submits that no specific finding has been recorded against the petitioner with regard to any misconduct in the enquiry report although all the employees have been found to be jointly responsible. No finding has been recorded as to whether the petitioner was having charge of the work of answer booklet storage centre.

18. Learned counsel for the respondent-University has opposed the prayer in the writ petition and submits that the answer booklets were written subsequently after evaluation on the pretext of filing of Right to Information applications. Learned counsel for the respondent-University further submits that joint liability on all the employees have been fixed by the University, however, he could not dispute the fact that no specific liability with regard to misconduct has been recorded in the enquiry report against the petitioner. Learned counsel for the respondent-University submits that petitioner was in the supervisory capacity and the main delinquent employee is Sri Satya Prakash.

19. On a query being made to learned counsel for the respondent-University with regard to any specific finding, learned counsel for the respondent-University submits that complaint dated 3.3.2019 of Sri Satya Prakash, copy of student Madhur Kumar Sahu was taken out on the instructions of the petitioner which was subsequently found to have been written after evaluation and the petitioner was also involved in the alleged incident.

20. It is further to be seen that in the enquiry report dated 17.5.2019 in respect of charge no. 1, following finding has been recorded :-

"श्री हरीशंकर यादव प्रशासनिक भवन में बैठकर व मूल्यांकन केन्द्र का औचक निरीक्षण कर अपने दायित्वों का निर्वहन करते थे जिससे मूल्यांकन कार्य की स्थायी निगरानी नहीं हो पाती थी तथा चाबियाँ भी श्री सत्यप्रकाश की अभिरक्षा में रहती थीं। समस्त कार्य सत्यप्रकाश व राजेन्द्रराम की देखरेख में होता था।"

21. A perusal of aforesaid finding in the enquiry report would go to show that no specific finding with regard to any misconduct has been recorded against the petitioner and the finding was only indicative of the lapses on the part of University administration. A specific finding has also been recorded in the enquiry report that daily wagers used to take out the answer booklets on the instruction of Sri Satya Prakash- Daily Assistant. The enquiry also records its finding that the complaint of Sri Satya Prakash dated 3.3.2019 have been found to be incorrect. The relevant portion of the enquiry report is quoted hereinbelow :-

"6. समिति की षष्टम बैठक दिनांक 15/05/2019 को बुलायी गयी जिसमें दोनों आरोपी श्री हरीशंकर यादव एवं सत्यप्रकाश उपस्थित होकर जांच समिति द्वारा निर्मित प्रश्नों के लिखित उत्तर दिए तथा कुछ मौखिक जवाब दिए। श्री राजेन्द्रराम सेवानिवृत्त कर्मचारी ने उपस्थित होकर लिखित में अपना पक्ष प्रस्तुत किया। परीक्षार्थी अशोक यादव की उत्तर पुस्तिका का फॉरेन्सिक रिपोर्ट का अवलोकन किया तथा सत्यप्रकाश की

शिकायत दिनांक 03/03/2019 के आधार पर उत्तर पुस्तिका मंगाकर अवलोकन किया गया तो शिकायत असत्य पायी गयी।"

22. The enquiry report records finding that eight answer booklets were taken out from the storage centre at the time when the petitioner was in-charge of the aforesaid department and five answer booklets were taken out when the petitioner was on medical leave. The case of petitioner is that the petitioner was having his duty at the evaluation department and not at the storage centre may be indicative of fact that the petitioner was not having proper control over the storage centre and the aforesaid finding could only be recorded in the event findings recorded by the Enquiry Officer that the petitioner was responsible for supervision of the storage centre. As per the office order dated 6.3.2018, the petitioner was assigned duty to assist the Coordinator. The office order dated 6.3.2018 has not been denied in the counter affidavit. The only stand taken in the counter affidavit was to the effect that the petitioner was in-charge of the evaluation centre and no office order has been filed along with the counter affidavit with regard to the aforesaid duties of the petitioner. Even otherwise, if there was a laxity on the part of the petitioner then specific finding ought to have been recorded by referring to the duty chart of the petitioner, more particularly, when finding as recorded in the enquiry report that the answer booklets were taken out on the instruction of Sri Satya Prakash-Daily Assistant.

23. Even otherwise deduction of 50% gratuity, more particularly, when no financial loss has been suffered by the University also does not stand legal sanctity as no provision is shown by learned counsel for the University which empowers respondents to deduct gratuity without financial loss. Insofar as the stand of the respondent-University that complaint dated 3.3.2019 with regard to student Madhur Kant Sahu is concerned, specific finding has been recorded to the effect that the complaint dated 3.3.2019 was found to be incorrect. Even otherwise a person having overall supervision of a concerned department cannot be punished with compulsory retirement unless finding recorded to the effect that petitioner has committed any misconduct or has been negligent in his duties. Once such finding has not been recorded in the impugned order and only on the basis of general fixation of liability on all the employees involved in department concerned, the impugned order of compulsory retirement and 50% deduction of gratuity is not sustainable in the eyes of law and as such is liable to be set aside.

24. Accordingly, the impugned order dated 6.6.2019 passed by Registrar, Bundelkhand University, Jhansi – respondent no. 3 and order dated 10.11.2020 passed by the Disciplinary Committee as well as resolution dated 10.11.2020 is set aside. The writ petition is **allowed** with consequential relief.

(2025) 8 ILRA 713
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.08.2025

BEFORE

THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Writ A No. 20140 of 2023

Kamlesh Kumar Nirankari ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Anil Kumar Verma, Kamalesh Kumar Nishad, M.S. Chauhan, Ravindra Kumar Srivastava, Shriprakash Shrivastava

Counsel for the Respondents:
Shashi Prakash Singh

Issue for Consideration

Applicability of principle of natural justice to the appointment obtained by means of fraudulent means and forged documents.

Headnotes

(A) Service law – Cancellation of appointment – Post of Assistant Teacher – Appointment was obtained on the basis of forged marksheets and certificate – Documents of complainant (who got selected somewhere else) have been used by the petitioner to obtain appointment in place of complainant using his name – Permissibility – No copy of impugned order was served – Effect – Application of principle of natural justice also felt into consideration :

Held : Fraudulent appointments are void ab initio and must be set aside, regardless of the consequences – If an appointment is found to be based on forgery, the authority has the right to recall the appointment. The individual appointed under such circumstances cannot claim any equity or rights based on their continued service, as the appointment is fundamentally flawed – Principles of natural justice cannot be put into a strait-jacket formula and it cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case – If the initial appointment itself was obtained fraudulently then no enquiry in terms of Rules 1999 is required – Where facts are admitted, an enquiry would be an empty formality – Appointments obtained through fraudulent means are considered *void ab initio*, meaning they are null and void from the beginning. Such appointments are not recognized by law, and the individual holding the appointment is not entitled to any benefits or protection – Holding disciplinary proceedings envisaged by Article 311 of the Constitution of India or under any disciplinary rules including the Uttar Pradesh Basic Education Staff Rules, 1973 or the Uttar Pradesh Government Servant (Discipline and Appeal) Rules 1999, shall not arise. [Paras 10, 13, 18, 22, 26, 27 and 35] (E-1)

Case Law Cited

District Basic Education Officer and another v. Smt. Punita Singh and 3 others, 2024 SCC Online All 8415; Union of India vs. M. Bhaskaran, (1995) Supp(4) SCC 100; Ram Chandra Singh vs. Savitri Devi, (2003) 8 SCC 319; Usha Singh vs. State of U.P. and another, 2017 SCC Online All 6109; Nageswar Sonkesri v. State of M.P. and another, 2020 SCC Online MP 4461; Vijay Krishnarao Kurundkar and another v. State of Maharashtra and Others, 2020 SCC Online SC 834; Jainendra Singh vs. State of U.P., 2012 (8) SCC 748; K.L. Tripathi Vs. State Bank of India & Ors., (1984) 1 SCC 43; N.K. Prasada Vs. Government of India & Ors., (2004) 6 SCC 299; State of Punjab V. Jagir Singh, (2004) 8 SCC 129; Karnataka SRTC v. S.G. Kotturappa, (2005) 3 SCC 409; Viveka Nand Sethi Vs. Chairman, J&K Bank Ltd., (2005) 5 SCC 337; Union of India Vs. Tulsiram Patel, (1985) 3 SCC 398; Sohan Lal Gupta v. Asha Devi Gupta, (2003) 7 SCC 492; Mardia Chemicals Ltd. Vs. Union of India, (2004) 4 SCC 311; Canara Bank Vs. Debasis Das, (2003) 4 SCC 557; R. Vishwanatha Pillai v. State of Kerala and others, (2004) 2 SCC 105; Ishwar Dayual Sah v. State of Bihar, 1987 Lab IC 390; Rita Mishra v. Director, Primary Education, 1988 Lab IC 907; Union of India Vs. Prohlad Guha etc., 2024 SCC OnLine SC 1865 **– referred to.**

List of Acts

Constitution of India **–** Article 311; Uttar Pradesh Basic Education Staff Rules, 1973; Uttar Pradesh Government Servant (Discipline and Appeal) Rules 1999.

List of Keywords

Appointment; Assistant Teacher; Null and void; Inquiry; Forged document; Marksheet and certificate; Principle of natural justice; Fraudulent means; Cancellation; Public appointment; Misrepresentation; Strait-jacket formula; Vacuum; Equitable principles; Equitable doctrine; Concealment of material facts; Void ab initio; Show-cause notice.

Case Arising From

Order date 06.10.2022 whereby the petitioner's appointment on the post of Assistant Teacher was rendered null and void.

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. Heard Mr. Shriprakash Srivastava, learned counsel for the petitioner, Mr. Shashi Prakash Singh, learned counsel for the respondent nos.2&3 and Mr. Shailendra Singh, learned counsel for the State-respondent.

2. The instant writ petition has been preferred, inter alia, challenging the order dated 6.10.2022, passed by Respondent No.2, whereby the appointment of the petitioner on the post of Assistant Teacher has been rendered null and void, and a consequential direction for recovery of the salary paid has also been issued.

3. Learned counsel for the petitioner has made the following contentions:-

i) The petitioner was initially appointed as an Assistant Teacher vide order dated 10.08.2010, and the appointment letter was issued by Respondent No.2 on the same date. The petitioner discharged his duties honestly, and there were no complaints against him.

ii) Subsequently, the District Basic Education Officer issued a letter dated 26.06.2020, calling the petitioner to appear on 02.07.2020 to explain the documents produced at the time of appointment.

iii) Further, another letter dated 14.08.2020 was issued, requiring the petitioner to submit documents on 17.08.2020 and appear before the Block Education Officer. The petitioner was again required to be present before the Block Education Officer vide letter dated 26.06.2020.

iv) On 13.06.2022, the petitioner appeared before the Block Education Officer and submitted the relevant documents, i.e., his appointment letter, mark sheets and certificates of High School, Intermediate, Bachelor of Arts (B.A.), and Bachelor of Education (B.Ed.) as well as BTC training certificate, and domicile certificate.

v) Notwithstanding the submission of documents, Respondent No. 2 passed an order dated 6.10.2022, declaring the Petitioner's appointment null and void *ab initio* and directing recovery of the salary paid to him.

vi) The learned counsel for the petitioner submits that the impugned order suffers from fundamental infirmities. Firstly, a copy of the impugned order has not been served upon the petitioner, which is violative of the principles of natural justice and contrary to the mandate of law. Secondly, the impugned order has been passed in a mechanical manner, sans application of mind, rendering it illegal, arbitrary, and *mala fide*.

vii) The petitioner appeared before Respondent No.2 on 13.06.2022 and submitted all the relevant educational certificates, which have not been considered while passing the impugned order.

viii) It is contended that if the original documents were suspected to be forged, a thorough inquiry should have

been conducted by the concerned Board or University, which has not been done.

ix) It is further submitted that the entire exercise appears to have been done based on a complaint moved by one Kamlesh Kumar Yadav.

x) It is contended that the Petitioner is a resident of Village Haldi Rampur, Tehsil Belthra Road, District Ballia, and belongs to the Scheduled Caste category, specifically Hindu Chamar. The petitioner's date of birth is 20.06.1982, as per his academic records. He studied up to Class 5th at Prathamic Vidyalaya Taranv, Ghazipur and subsequently, completed Class 6th to 12th at Hanuman Singh Inter College, Devkali, Gazipur (U.P.). The Transfer Certificate, issued on 15th December 2023 by the Principal of the institution, has been appended as Annexure No.SA-3 of the 2nd supplementary affidavit. Perusal of the document reveals no evidence of manipulation, forgery, or cheating by the Petitioner. However, due to inadvertent errors on the part of the concerned authorities, the petitioner's name appears as 'Kamlesh Kumar' in PAN Card, ‘Kamlesh’ in Aadhar Card and ‘Kamlesh Kumar s/o Ramtahal Ram’ in the certificate of Special B.T.C. Training 2008, whereas his all academic documents shows the name “Kamlesh Kumar Nirankari s/o Ram Tahal Ram” as well as residential certificate, and Scheduled Caste certificate bear the name of petitioner as 'Kamlesh Kumar' s/o Ram Tahal. The Petitioner submits that these discrepancies are not attributable to any fault on his part but are rather due to mistakes committed by the authorities.

xi) Learned counsel for the petitioner further contends that the cancellation was effected without affording him a full-fledged opportunity of hearing or conducting a regular departmental enquiry, thereby violating the principles of natural justice.

xii) He further submits that the impugned order violates the principles of natural justice and is, therefore, unsustainable in the eyes of law.

4. On the other hand, learned counsel for the respondent-BSA, submits that the Petitioner obtained appointment on the basis of forged marksheets and certificates. It is contended that the Petitioner was selected for the Special BTC Training 2008 on the basis of forged documents. The petitioner had not submitted his entire documents despite various letters issued by the departments. The petitioner has filed the instant writ petition mentioning his name as “Kamlesh Kumar Nirankari” but alongwith his record has not annexed his residential certificate and the Aadhar Card produced by the petitioner, which shows the name as “Kamlesh” s/o Ram Tahal, resident of Haldi Rampur, Ballia U.P. Pin Code-221715. The address mentioned by the petitioner appears to be suspicious, therefore, vide office letter no.9697-99/2021-22 dated 02.12.2021 addressed to the Senior Superintendent of Police, District Ballia, it was requested to provide the verification report followed by another letter no.11460/2021-22 dated 19.01.2022, a request was again made for verification of the address. However, no reply was received, therefore, another letter bearing no.12236/2021-22 dated 17.02.2022 and letter no.428/2022-23 dated 13.04.2022 was issued requesting for verification of the address of the petitioner. Hence, Superintendent of Police, Ballia submitted a verification report dated 21.07.2022, wherein it was informed as under:-

"कमलेश कुमार पुत्र रामटहल निवास पता हल्दीरामपुर, थाना-उभांव, जनपद-बलिया का सत्यापन किया गया तो इस नाम पता का कोई व्यक्ति हल्दीरामपुर में नहीं रहता है।"

5. He, therefore, submits that after affording full opportunity to the petitioner the order impugned dated 06.10.2022 was passed, which is correct, legal and proper and does not call for any interference.

6. In reply, learned counsel for the petitioner submits that the petitioner had no knowledge of the letters dated 26.06.2020 and 14.08.2020, which were not served on the petitioner. However, when the letter dated 06.06.2022 was issued by respondent no.3 to the petitioner, the petitioner received it by registered post at the same address, which is annexed in the supplementary affidavit as Annexure No.1. The respondent authority ignored the same and passed the impugned order. The petitioner's address mentioned in the service document is correct, and the letter dated 06.06.2022 was received by the petitioner at the same address. Thereafter, the petitioner replied to the same on 13.06.2022 before the office of respondent no.3 physically and filed an application on the same date before the office dispatch section, which was received and endorsed on the application.

7. Learned counsel for the respondent-BSA further submits that no notice or inquiry is required when fraud has been played. He further submits that it is the complainant whose documents have been used by the petitioner showing himself to be Kamlesh Kumar Nirankari in place of Kamlesh Kumar s/o Ram Tahal. In support of his contention, he has relied upon the judgment of the Co-ordinate Bench of this Court in the case of **District Basic Education Officer and another vs. Smt. Punita Singh and 3 others**[1].

8. Heard learned counsel for the parties and perused the record.

9. The following issues arise for determination in the present case:-

a). Whether the Petitioner's appointment was obtained through fraudulent means?

b). Whether the Respondent was justified in cancelling the Petitioner's appointment without conducting an inquiry?

c). Whether the Petitioner is entitled to any relief in the circumstances?

10. The law is well-settled on this issue, with numerous judicial pronouncements emphasizing the importance of integrity and honesty in public appointments. Courts have consistently held that fraudulent appointments are void ab initio and must be set aside, regardless of the consequences.

11. Individuals who obtain appointments through fraudulent documents or actions are not entitled to any legal protection or benefits derived from such appointments. The law clearly states that any benefits obtained through fraudulent means must be returned. The Apex Court in the case of **Union of India vs. M. Bhaskaran**[2] has held that if employment is obtained by committing fraud, such appointment cannot be countervance and reinstatement is impermissible.

12. In the case of **Ram Chandra Singh vs. Savitri Devi**[3], the Apex Court held that fraud as is well known vitiates

every solemn act, fraud and justice never dwells together.

13. If an appointment is found to be based on forgery, the authority has the right to recall the appointment. The individual appointed under such circumstances cannot claim any equity or rights based on their continued service, as the appointment is fundamentally flawed. The aforesaid has been held by the Co-ordinate Bench of this Court in the case of **Usha Singh vs. State of U.P. and another**[4]. Also the same has been held by Madhya Pradesh High in the case of **Nageswar Sonkesri vs. State of M.P. and another**[5].

14. In the case of **Vijay Krishnarao Kurundkar and another vs. State of Maharashtra and Others**[6], the Apex Court has consistently held that appointments made on the basis of forged documents are invalid and such appointments are void ab initio and cannot be legitimized by any subsequent actions.

15. In the case of **Jainendra Singh vs. State of U.P.**[7], Hon'ble Supreme Court considered the fact of appointment obtained by fraud and held in para 29.1 to 29.10 as under :-

"29.1 Fraudulently obtained orders of appointment could be legitimately treated as voidable at the option of the employer or could be recalled by the employer and in such cases merely because the respondent employee has continued in service for a number of years, on the basis of such fraudulently obtained employment, cannot get any equity in his favour or any estoppel against the employer.

29.2 Verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to the post under the State and on account of his antecedents the appointing authority if find not desirable to appoint a person to a disciplined force can it be said to be unwarranted.

29.3 When appointment was procured by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer and, therefore, it would create no equity in his favour or any estoppel against the employer while resorting to termination without holding any inquiry.

29.4 A candidate having suppressed material information and/or giving false information cannot claim right to continue in service and the employer, having regard to the nature of employment as well as other aspects, has the discretion to terminate his services.

29.5 Purpose of calling for information regarding involvement in any criminal case or detention or conviction is for the purpose of verification of the character/antecedents at the time of recruitment and suppression of such material information will have clear bearing on the character and antecedents of the candidate in relation to his continuity in service.

29.6 The person who suppressed the material information and/or gives false information cannot claim any right for appointment or continuity in service.

29.7 The standard expected of a person intended to serve in uniformed service is quite distinct from other services and, therefore, any deliberate statement or omission regarding a vital information can

be seriously viewed and the ultimate decision of the appointing authority cannot be faulted.

29.8 An employee on probation can be discharged from service or may be refused employment on the ground of suppression of material information or making false statement relating to his involvement in the criminal case, conviction or detention, even if ultimately he was acquitted of the said case, inasmuch as such a situation would make a person undesirable or unsuitable for the post.

29.9 An employee in the uniformed service pre-supposes a higher level of integrity as such a person is expected to uphold the law and on the contrary such a service born in deceit and subterfuge cannot be tolerated.

29.10 The authorities entrusted with the responsibility of appointing Constables, are under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of a Constable and so long as the candidate has not been acquitted in the criminal case, he cannot be held to be suitable for appointment to the post of Constable."

(Emphasis supplied by me)

16. Thus, the law in case of appointment obtained fraudulently is well settled. Fraudulently obtained order of appointment or approval can be recalled by the authority concerned. In such cases merely because the employee continued in service for a number of years, on the basis of fraudulently obtained orders, cannot create any equity in his favour or any estoppel against the employer/authority. When an appointment or approval has been obtained by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer. It would create no equity in his favour or any estoppel against the employer to cancel such appointment or approval since "Fraud and justice never dwell together."

17. In view of the foregoing analysis and observations, now, it is clear that when any selection/recruitment or appointment to some post was made illegally and it is noticed on the complaint or at subsequent stage that illegalities, irregularities, improprieties, procedural infirmities and deficiencies and defects have occurred, forgery or foul-play adopted or non observance of Act, rules, norms were made in process then the beneficiary candidate, who has become output and product of such defective and bad selection or outcome of spoiled system process, shall have no right or claim to the post or salary or any consequential benefits in the service.

18. In so far as the submission made by counsel for the petitioner that the copy of impugned order has not been served upon the Petitioner, which is violative of the principles of natural justice and contrary to the mandate of law, it cannot be doubted that the principles of natural justice cannot be put into a strait-jacket formula and that principles cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. This is what has been held by the Supreme Court in **K.L. Tripathi Vs. State Bank of India & Ors.[8]; N.K. Prasada Vs. Government of India & Ors.[9]; State of Punjab Vs. Jagir Singh[10]; Karnataka SRTC Vs. S.G. Kotturappa[11] and in Viveka Nand Sethi Vs. Chairman, J&K Bank Ltd.[12]**

19. In **Union of India Vs. Tulsiram Patel**[13], the Supreme Court observed :-

"Though the two rules of natural justice, namely, nemo judex in causa sua and audi alteram partem, have now a definite meaning and connotation in law and their content and implications are well understood and firmly established, they are nonetheless not statutory rules. Each of these rules yields to and changes with the exigencies of different situations. They do not apply in the same manner to situations which are not alike. These rules are not cast in a rigid mould nor can they be put in a legal straitjacket. They are not immutable but flexible."

20. It is equally well settled that the principles of natural justice must not be stretched too far and in this connection reference can be made to the decisions of the Supreme Court in the cases of **Sohan Lal Gupta VS. Asha Devi Gupta**[14]**; Mardia Chemicals Ltd. Vs. Union of India**[15] **and Canara Bank Vs. Debasis Das**[16]**.**

21. An appointment obtained by fraud is non est. Fraud is anathema to all equitable principles and any affair tainted with fraud could not be perpetuated or saved by application of any equitable doctrine.

22. It is well settled that if the initial appointment itself was obtained fraudulently then no enquiry in terms of Rules 1999 is required as is held by the Hon'ble Supreme Court in the cases of **R. Vishwanatha Pillai Vs. State of Kerala and others**[17]**, and Patna High Court judgements in Ishwar Dayual Sah Vs. State of Bihar**[18] **and Rita Mishra Vs. Director, Primary Education**[19]**.** The Apex Court, in the aforesaid cases, came to the following conclusion:-

"12. Taking a cue from the ratio of the decision of the Supreme Court, we are of the opinion that if it is ultimately found on inquiry referred earlier that the opposite party no. 1 had practiced fraud or deceit to obtain the appointment as already discussed, then, it would be a case to proceed for cancellation of appointment by issuing a show cause notice for the said purpose annexing the inquiry report and material collected in such inquiry and then considering the reply of the appointee in this regard and taking a reasoned decision after affording an opportunity of personal hearing for cancellation of appointment and not necessarily for dismissal or removal of service, therefore, there is no question of any inquiry to be held in terms of Rules, 1999 as has already been held in the aforesaid decision of the Supreme Court.

13. This will be sufficient observance of principles of natural justice. It may also be pointed out that an employee of Basic Education Department does not have the benefit of Article 311 of the Constitution of India as Article 311 of the Constitution of India would not apply, however, the relevant rules for disciplinary proceedings for imposition of major punishment such as removal, dismissal etc. would apply, but, for the reasons aforesaid, those will also not apply if on a fact finding inquiry it is found that the appointment was obtained by fraud, as already observed hereinabove and thereafter the aforesaid procedure is followed."

23. In the case of **Union of India Vs. Prohlad Guha etc.**[20], it has been clearly held by the Apex Court that in case the employment has been obtained based on

fraudulent documents on concealing material facts, the beneficiary of such fraud cannot seek that proper procedure as prescribed under Rule 1999 must be followed.

24. In the present case, the petitioner has used the documents of the complainant, who had not come to join at the place where the petitioner joined as he was given appointment somewhere else and after coming to know that the petitioner was taking benefits of his educational certificates, as he had produced the same before the authorities to get an appointment on which the petitioner was called to bring the original certificates, which he could not, hence complaint made was look into.

25. From the records, it is also clear that the petitioner is not the person he is claiming to be as is evident from his Pan Card, Aadhar Card, Special B.T.C. training 2008 Certificate, academic documents, residential and scheduled caste certificates, wherein name has been mentioned differently.

26. It is clear from the aforesaid decisions of the Hon'ble Supreme Court that the application of the principles of natural justice depends upon the relevant facts and circumstances of the case and whenever a complaint is made about its violation, the Court has to decide whether the observance of that Rule was necessary for a just decision on the facts of the case. The Supreme Court also noticed that there can be a situation where persons who are not even eligible for being appointed are appointed and in such a situation, if such persons are discontinued it would not be a punitive measure because they have been discontinued as they had infact never been appointed. In fact, it has been held, that they do not hold any right over the post and, therefore, are not entitled for any hearing. The decision also holds that where facts are admitted, an enquiry would be an empty formality.

27. Appointments obtained through fraudulent means are considered *void ab initio,* meaning they are null and void from the beginning. Such appointments are not recognized by law, and the individual holding the appointment is not entitled to any benefits or protection. Any benefits obtained through fraudulent means, including salary, allowances, and other emoluments, must be returned to the employer or the State. The individual is not entitled to retain any benefits derived from a fraudulent appointment.

28. In the present case, upon perusal of the records, discrepancies in the petitioner's name across various documents have been noted, specifically:

"1. PAN Card: "Kamlesh Kumar"

2. Aadhar Card: "Kamlesh"

3. Special B.T.C. Training 2008 certificate: "Kamlesh Kumar"

4. Academic documents: "Kamlesh Kumar Nirankari s/o Ram Tahal Ram"

5. Residential and Scheduled Caste certificates: "Kamlesh Kumar" s/o Ramtahal"

29. These discrepancies raise concerns regarding the authenticity and validity of the documents and the petitioner's appointment.

30. The petitioner has failed to establish the authenticity of his academic documents, and discrepancies in his name across vital records reveal a prima facie case of fraud. The petitioner's inability to produce genuine documents, coupled with the misuse of documents belonging to some other, i.e. Kamlesh Kumar Yadav, confirms that the appointment was obtained through fraudulent means.

31. It is clear from the records that documents of complainant (who got selected somewhere else) have been used by petitioner to obtain appointment in place of complainant using his name.

32. In the present case, the verification report categorically records that the documents submitted by the petitioner were forged. The petitioner was issued a show-cause notice and was called upon to produce the original certificates, but he failed to do so. In these circumstances, the respondents were justified in concluding that the appointment had been procured by fraudulent means.

33. The contention that a full departmental enquiry ought to have been held is without merit. Once it is established that the very entry into service was vitiated by fraud, there is no "termination" in the strict sense, but only a declaration that no valid appointment ever existed. The requirement of an elaborate enquiry, as mandated for proven misconduct of a regular employee, has no application to such cases.

34. In this view of the matter, when the petitioner had produced forged documents for getting appointment and nothing has been pointed out to controvert the findings recorded in the impugned order, the petitioner is not entitled to grant any relief as prayed.

35. Thus, where a person secures appointment on the basis of a forged marksheet or certificate or appointment letter and on that basis he or she has been inducted in Government service then he/she becomes beneficiary of illegal and fraudulent appointment. Such an appointment is illegal and void *ab initio*. Therefore, holding disciplinary proceedings envisaged by Article 311 of the Constitution of India or under any disciplinary rules including the Uttar Pradesh Basic Education Staff Rules, 1973 or the Uttar Pradesh Government Servant (Discipline and Appeal) Rules 1999, shall not arise.

36. The forgery committed by the petitioner, for obtaining public employment on the basis of forged educational documents is the basic eligibility condition for appointment on the post of Assistant Teacher. Therefore, it vitiates the process of his appointment. Thus, the appointment of the petitioner is void ab initio and he cannot be said to be a government servant. Therefore, his appointment has been lawfully cancelled by the impugned order.

37. For all the reasons aforestated, I do not find any error of law in the impugned order dated 06.10.2022, which has been passed by the respondent no.2. Therefore, the writ petition is, accordingly, dismissed.

(2025) 8 ILRA 722
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 19.08.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ A No. 45146 of 2015
&
Connected With Other Matters

Ashok Kumar Yadav ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Anurag Asthana, Ashok Khare, Sanjeev Kumar Yadav

Counsel for the Respondents:
B.D. Pandey, C.S.C., Rohit Pandey

Issue for Consideration

(1) Legality of order of cancellation of appointment of probationers passed without issuing notice and affording opportunity of hearing.
(2) Competence of State Government to terminate service of petitioner, appointed as Class-III and IV employees of an affiliated college.
(3) Entitlement of the petitioners to an automatic reinstatement in service after quashing of the impugned orders by the High Court after giving liberty to the appropriate authorities to hear and pass fresh orders in each matter of individual-petitioner.

Headnotes

(A) Service law – Termination of service – Principle of natural justice – Applicability – Appointment was on probation basis as Class-III and IV employees – Allegation leveled was that the petitioner possessed no CCC certificate issued by DOEACC society – No show cause notice and opportunity of hearing was given – Effect :
Held : A probationer may be discharged from service without assignment of reason is a proposition of the law that hardly brooks doubt **–** At the same time, it is equally well settled on principle that if a probationer's services are dispensed with on the basis of allegations relating to his conduct, which we think, would extend to those affecting the selection process, he is entitled to a fare and minimum of opportunity to show cause to the Appointing Authority before his services are dispensed with. [Para 35]

(B) Service law – Cancellation of appointment – Impugned order was passed by the State Government and consequential order was passed by the Director – The State Government is neither appointing authority nor approving authority – Competence of State Government felt into consideration :
Held : There is no authority of any kind vested in the State Government, to direct a cancellation of appointment of Class-III and IV employees of a private institution of higher learning, the State funding notwithstanding **–** No doubt, the scope of inspection of affiliated and associated colleges under Section 40 extends to clothing the State Government with the power to cause an inquiry in regard to matters connected with the administration and finances, but sub-Section (1) of Section 40 read with sub-Section (4) cannot clearly extend to directing a cancellation of the appointments of Class-III and IV employees of affiliated colleges **–** It affords no source of authority to the State Government to terminate the services of individual Class-III and IV employees of an affiliated college or cancel his/ her appointment. [Paras 39 and 40]

(C) Service law – Termination of service – Appointment in two separate institutions was held after adopting two separate process – However, the appointment of all the thirteen candidates were cancelled by one stroke of pen by passing a common order dated 19.06.2015 – No individual consideration was made – Validity challenged :
Held : The principle of segregating the tainted selections from the untainted ones, is a well recognized principle, where the purity or the sanctity of the selection process in public employment is doubted. The principle further exposits that individual cases have to be scrutinized unless the taint is so widespread as to soil the entire selection process **–** The two processes would be entirely different. Therefore, this possibly cannot be a case where all the selections would be affected by the same taint so drastically as to call for a wholesome countermanding of all selections and appointments by an omnibus order. [Paras 42 and 43]

(D) Service law – Reinstatement in service – Petitioners, who were probationers, have been out of service since the year 2015, after that short probation of some months that they were terminated – The impugned order was being quashed by giving liberty to appropriate authorities to hear the individual petitioners and make

fresh orders – Reinstatement in service was claimed – Permissibility :

Held : Notwithstanding the orders impugned being fit to be quashed with liberty to the competent Appointing Authority to proceed afresh against the petitioners, they would not be entitled to reinstatement in service unless upon inquiry, as directed hereinafter, the respondents conclude in the petitioners' favour, or they elect in one or more case not to proceed afresh at all. [Para 48] (E-1)

Case Law Cited

Nisha Devi v. State of Himachal Pradesh and others, (2014) 16 SCC 392; Indian Institute of Information Technology, Allahabad and another v. Dr. Anurika Vaish and others, (2017) 5 SCC 660; Uttar Pradesh Jal Nigam and others v. Ajit Singh Patel and others, (2019) 12 SCC 285; State of Orissa and another v. Ram Narayan Das, AIR 1961 SC 177; Unit Trust of India v. T. Bijaya Kumar Patra, 1992 SCC OnLine SC 586; Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences and another, (2002) 1 SCC 520; Progressive Education Society and another v. Rajendra and another, (2008) 3 SCC 310; State Bank of India and others v. Palak Modi and another, (2013) 3 SCC 607; Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, (1999) 3 SCC 60; Inspector of Panchayats and District Collector, Salem v. S. Arichandran and others, 2022 SCC OnLine SC 1282; State of Uttar Pradesh and others v. Rajit Singh, (2022) 15 SCC 254; Allahabad Bank and others v. Krishan Pal Singh, (2021) 19 SCC 227 **– referred to.**

List of Acts

U.P. State Universities Act, 1973 – Ss. 40 and 58; U. P. State Control Over Public Corporations Act, 1975.

List of Keywords

Privately managed postgraduate colleges; Grant-in-aid from the State Government; Selection; Appointment; Class III employee; Class IV employee; Probationers; Termination of service; Competent authority; Appointing authority; Approving authority; Preliminary enquiry; Ex parte; ulta vires; Beyond the authority; University; Omnibus order; Blanket order; Jurisdiction Stereotyped and cyclostyled order; Show cause; Opportunity of hearing; Principle of natural justice; Discharge of service; Dispensation of service; Stigmatic; Innocuous; Fact finding inquiry; Stigma; Sticky; Nepotism; Tainted selection; Prior permission; *ad idem*; Authorized Controller; Segregation; Scrutiny; Principle of segregating the tainted selections from the untainted ones; Sanctity of selection; Individual cases; automatic reinstatement in service.

Case Arising From

Order dated 19.06.2015 passed by the State Government to terminate the services of all the thirteen petitioners.

(Delivered by Hon'ble J.J. Munir, J.)

1. This judgment will decide Writ-A No.45146 of 2015 and connected Writ-A Nos.41708 of 2015, 42609 of 2015, 45142 of 2015, 1441 of 2024, 42482 of 2015, 42483 of 2015, 42843 of 2015, 42844 of 2015 and 46719 of 2015.

2. The writ petitioners in all the writ petitions were Class-III and IV employees of two privately managed postgraduate colleges that are in receipt of grant-in-aid from the State Government. Both the postgraduate colleges, where the writ petitioners had been serving, at the time when they were selected and appointed, were under the control and management of an Authorized Controller appointed by the State Government. In all these cases, the writ petitioners complain of illegal termination of their services under orders of the State Government that are impugned in each of the writ petitions, besides those giving effect to those orders passed by the Director of Education (Higher Education) and the Authorized Controller of the Institution or the Principal, depending upon the post held by the petitioner concerned in a particular writ petition.

3. In one of the writ petitions, to wit, Writ-A 1441 of 2024, all that is under

challenge is an order of the Director of Higher Education, addressed to the Higher Education Officer, Allahabad, in compliance with the Government Order dated 19.06.2015, directing termination of services of employees at the A.P.N. Post Graduate College, Basti, selected and appointed in violation of rules. The writ petitioner in this case has not challenged the Government Order dated 19.06.2015 passed by the State Government or the consequential order issued by the competent Appointing Authority of the Institution, terminating his services. He pleads a case of oral termination of services pursuant to the order dated 20.06.2015 passed by the Director of Education (Higher Education).

4. Out of the ten writ petitions, that have been heard together and proposed to be decided by this judgment, Writ-A Nos.45146 of 2015, 41708 of 2015, 42609 of 2015, 45142 of 2015, 1441 of 2024 have been filed by employees of the A.P.N. Post Graduate College, Basti, whereas Writ-A Nos.42482 of 2015, 42483 of 2015, 42843 of 2015, 42844 of 2015 and 46719 of 2015 have been filed by employees of the Shiv Harsh Kisan Post Graduate College, Basti. The A.P.N. Post Graduate College, Basti, wherever individually referred, shall hereinafter be called 'the A.P.N.', whereas the Shiv Harsh Kisan Post Graduate College, Basti, in all individual references to the said Institution, shall be called 'the Shiv Harsh'; in case of a collective reference to both the institutions, these shall be called 'the Institutions'.

5. Of all the ten writ petitions, above detailed, Writ-A No.45146 of 2015 has been heard as the leading case. Nevertheless, a reference to the facts of each of the individual writ petitions, wherever necessary and to the extent required, shall be made in the course of this judgment.

6. In order to facilitate a better understanding of the facts involved in the leading case and the connected matters, it would be apposite to set forth relevant information regarding the facts in each case in tabular form, shown below:

Sl. No.	Name of Employee	Class and Designation	Institution	Order impugned date	Passed by	Writ-A No.
1.	Ashok Kumar Yadav	Class-III, Stenographer	A.P.N.	19.06.2015	Special Secretary, Govt. of U.P., Lucknow	45146/2015
				20.06.2015	Director (Higher Education), Allahabad	
				22.06.2015	Authorized Controller	
2.	1. Ajeet Pratap Pal 2. Radhey Shyam	Class-IV, Book Lifter Class-IV, General Peon	A.P.N.	19.06.2015	Special Secretary, Govt. of U.P., Lucknow	42609/2015
				20.06.2015	Director (Higher Education), Allahabad	
				22.06.2015	Authorized Controller	

				24.06.2015	Principal	
3.	Raghvendra Chaurasia	Class-IV, General Peon	A.P.N.	19.06.2015	Special Secretary, Govt. of U.P., Lucknow	41708/2015
				20.06.2015	Director (Higher Education), Allahabad	
				24.06.2015	Principal	
4.	Ram Lakhan Yadav	Class-III, Routine Clerk	A.P.N.	19.06.2015	Special Secretary, Govt. of U.P., Lucknow	45142/2015
				20.06.2015	Director (Higher Education), Allahabad	
				22.06.2015	Authorized Controller	
5.	Arvind Yadav	Class-III, Laboratory Assistant Geography	A.P.N.	20.06.2015	Director (Higher Education), Allahabad	1441/2024
				---	A case of oral termination by the Institution	
6.	1. Harish Chandra Bharti 2. Sailendra Pt. Singh	Class-III, Routine Clerk Class-III, Library Clerk	Shiv Harsh	19.06.2015	Special Secretary, Govt. of U.P., Lucknow	46719/2015
				20.06.2015	Director (Higher Education), Allahabad	
				08.07.2015	Authorized Controller	
7.	Rakesh Kumar Pandey	Class-III, Laboratory Assistant, Botany	Shiv Harsh	19.06.2015	Special Secretary, Govt. of U.P., Lucknow	42482/2015
				20.06.2015	Director (Higher Education), Allahabad	
				08.07.2015	Authorized Controller	
8.	Radhika Chakaravarti	Class-III, Laboratory Assistant, Geography	Shiv Harsh	19.06.2015	Special Secretary, Govt. of U.P., Lucknow	42844/2015
				20.06.2015	Director (Higher Education), Allahabad	
				08.07.2015	Authorized Controller	
9.	Chandra	Class-III,	Shiv Harsh	19.06.2015	Special	42843/

	Shekhar Yadav	Routine Clerk	h		Secretary, Govt. of U.P., Lucknow	2015
				20.06.2015	Director (Higher Education), Allahabad	
				08.07.2015	Authorized Controller	
10.	Jay Nath Yadav	Class-III, Laboratory Assistant, Physics	Shiv Harsh	19.06.2015	Special Secretary, Govt. of U.P., Lucknow	42483/2015
				20.06.2015	Director (Higher Education), Allahabad	
				08.07.2015	Authorized Controller	

7. Since Writ-A No.45146 of 2015 has been heard as the leading case, facts apart from those already set forth hereinabove, would be noticed from that petition. Ashok Kumar Yadav, the writ petitioner in the leading case, applied in response to an advertisement dated 25.08.2014 published by the Authorized Controller of the A.P.N. On 04.03.2015, the petitioner was called for interview and asked to undergo a typing test during the course of interview. The petitioner was selected for appointment to the post of a Stenographer in the A.P.N. The Regional Higher Education Officer, Gorakpur vide memo dated 26.03.2015, addressed to the Principal/ the Authorized Controller of the A.P.N., approved the petitioner's selection for the post of Stenographer, regarding which, papers were submitted to him. On the following day, i.e. 27.03.2015, a letter of appointment was issued by the Authorized Controller of the A.P.N., granting appointment to the petitioner against the vacant post of Stenographer in the pay scale of Rs.5200-20200/- with a grade pay of Rs.2800/-. These documents are on record of the writ petition.

8. It is the petitioner's case that he joined the institution and discharged his duties with utmost devotion and sincerity. He was surprised to receive an office order dated 22.06.2015 issued by the Authorized Controller of the A.P.N., cancelling his appointment. The order dated 22.06.2015, impugned in the petition, passed by the Authorized Controller, does not carry a decision by the said Authority, according to the petitioner, but merely echoes compliance with an order dated 20.06.2015 issued by the Director (Higher Education), U.P., Allahabad, which, in turn, gives effect to a decision of the State Government in the Department of Higher Education dated 19.06.2015, directing termination of services of the petitioner, besides others made in the establishment of the A.P.N. It is the petitioner's case that he did not know initially what the orders dated 19.06.2015 and 20.06.2015 were about. He later on secured copies of these orders and came to know that the process of appointment for the petitioner was held invalid by the State Government under some kind of an inquiry undertaken at the Government's behest. The petitioner says that he has been appointed validly in accordance with rules, after facing a selection committee constituted for the

purpose and undergoing the requisite typing test. He holds the essential qualifications prescribed. The Government Order dated 19.06.2015, which is the source of it all, relies on some inquiry report, where the inquiry was undertaken behind the petitioner's back. The order passed by the Government is one which was made also without hearing the petitioner. The orders of the Director (Higher Education) dated 19.06.2015 and the order by the Authorized Controller impugned, terminating the petitioner's service, are nothing more than orders mechanically implementing the State Government's order dated 19.06.2015.

9. It is pleaded in paragraph No.14 of the writ petition that the inquiry, that was undertaken under orders of the Government, was based upon a complaint by Hon'ble Mr. Sanjay Pratap Jaiswal, Member of the Legislative Assembly. This complaint was addressed by the Hon'ble Member on 18.03.2015. The Government constituted a two-member committee and a fact finding or a preliminary inquiry was undertaken by this committee, which found the process of selection flawed. The Special Secretary on behalf of the State Government made the substantial order impugned dated 19.06.2015. The petitioner has pleaded that the preliminary inquiry was held ex parte without hearing him. The Principal of the Institution was blamed for holding flawed selections and suspended from service pending inquiry.

10. The petitioner further says that the order dated 19.06.2015 passed by the State Government does not speak of the allegations or the infirmities found by the inquiry committee in the selection process. It mentions irregularities committed by the then Principal Dr. R.K. Pathak, where, there is an allegation of improper evaluation in the typing test, so far as the petitioner is concerned. There is also some case about erroneous award of quality point marks, because qualifications beyond intermediate were taken into account, which, under the rules, were not relevant. Be that as it may, the case of the petitioner is that neither was he heard by the inquiry committee that undertook a fact finding or the preliminary inquiry nor by the State Government, before they passed the order impugned dated 19.06.2015. He, thus, complains of violation of the principles of natural justice, in his pleadings set forth in the writ petition.

11. There are two counter affidavits filed in the leading case – one on behalf of respondent Nos.1, 2 and 4, and the other, on behalf of respondent No.3. Substantially, the first counter affidavit mentioned is on behalf of the State Government and its officers, whereas the other is on behalf of the Pt. Deen Dayal Upadhyay Gorakhpur University, Gorakhpur. There is a rejoinder affidavit put in by the petitioner, answering the State Government's counter. Substantially, the issue is between the State Government and their officers on one hand, and the petitioner, on the other.

12. Upon a perusal of the counter affidavit filed on behalf of the State Government and their officers, what we notice is that it is an affidavit filed by Dr. Vinita Yadav, Assistant Director, Directorate of Higher Education, U.P., Allahabad. In our opinion, she is competent to represent respondent Nos.2 and 4, but not the State Government. After all, the State Government can be represented by a Secretary of theirs and not by an officer, working in the Directorate of Higher

Education. In substance, therefore, the counter affidavit, on behalf of the State Government and their officers, is not really one on behalf of the State Government, who have passed the substantial order impugned. We may remark at this stage that in all the connected matters, the date of advertisement and the post advertised, to which the various petitioners have been selected, may be different and the institution, where the concerned petitioner appointed, may either be the A.P.N. or the Shiv Harsh, but the same issues, as those involved in the present petition, arise for consideration. The substantial order, that has been passed by the State Government, directing a termination of service of all the petitioners, is the same and founded on a common inquiry report – a fact finding or preliminary inquiry, done under orders of the State Government. It is for these reasons that the same pleas have been raised in all the petitions and common questions of fact and law arise.

13. It must also be remarked that in all the writ petitions, the counter affidavit, that has been filed on behalf of the State Government and its officers, is an affidavit not sworn by a Secretary to the Government and, therefore, not really a competent affidavit on behalf of the Government. The affidavit can be read as one on behalf of the officers of the Directorate of Higher Education and the Regional Director of Higher Education, Gorakhpur, but not the Government, as already remarked.

14. There is one writ petition, being Writ-A No.45142 of 2015, where there is no counter affidavit filed, either on behalf of the State Government or their officers or the University, despite time being granted.

15. In the counter affidavit filed in the leading case, it is averred in paragraph No.4 that an inquiry was conducted on the basis of complaints made by the College regarding recruitment of employees on various posts. It is also asserted that the inquiry, after being done, led to an inquiry report, that was submitted vide letter dated 26.04.2015, where opportunity was given to the petitioner to have his say. It is also asserted that after due consideration of the petitioner's reply, it was found unsatisfactory. His selection and the appointment was, therefore, held invalid. It is also said in the counter affidavit that the petitioner is a brother of full blood to one Ravindra Nath Yadav, a Clerk posted in the office of the Regional Higher Education Officer, Gorakhpur, who was handling matters relating to District Basti. One Professor Sadan Ram happened to be the Regional Higher Education Officer at the material point of time. It is claimed that in this way, the petitioner's brother influenced the selection process and members of the selection committee to unfairly select him. The advertisement is castigated as one, which did not conform to the prescribed scheme of qualifications. The candidates, who had knowledge of typing, were ignored and the petitioner, with no such skill or knowledge, selected. The petitioner's appointment is also asserted to be one not in accordance with Articles 14, 16 and 21 of the Constitution, but the result of an arbitrary selection influenced by extraneous considerations.

16. In the rejoinder affidavit, the petitioner has averred in paragraph No.5 that the entire inquiry was a fact finding inquiry, done behind his back. The allegation regarding undue influence is attributed to a relative of his, a junior clerk in the office of the Regional Higher

Education Officer. He has stated that a junior clerk could not have influenced the selection and appointment. It is also averred that opportunity of hearing ought have been given to the petitioner, not at the level of the Authorized Controller, but the State Government, who took the decision to cancel appointments and rescind the selection process relating to the petitioner. No opportunity was given by the State Government before passing the impugned order dated 19.06.2015. It is also averred in paragraph No.5 of the rejoinder that the advertisement was in accordance with rules. It was published in two newspapers of wide circulation, to wit, the daily *'Hindustan'* and the *'Dainik Jagran'*. About the petitioner not possessing a CCC Certificate issued by the DOEACC Society, it is pleaded that the requirement was introduced through a Government Order dated 03.11.2015 and would have no application at the time when he was selected. It is also asserted that the petitioner, in any case, possesses a CCC Certificate granted to him by the DOEACC Society.

17. It is also pleaded that so far as the petitioner's selection and appointment being influenced by Ravindra Nath Yadav, a Clerk in the office of the Regional Higher Education Officer is concerned, disciplinary proceedings initiated against Ravindra Nath Yadav, on the charge of influencing the selection process, has resulted in a complete exoneration for him and reinstatement in service vide order dated 23.01.2016.

18. This petition as also the connected matters were admitted to hearing on 06.05.2024 and heard on that day, and again on 21.05.2024 extensively. There was a change of roster, after which, under orders of nomination by his Lordship the Hon'ble The Chief Justice, the matter came up again before me. It was heard further on 10.01.2025, 04.02.2025 and lastly on 10.03.2025, when judgment was reserved.

19. Heard Mr. Ashok Khare, learned Senior Advocate assisted by Mr. Kauntey Singh, learned Counsel for the petitioners in Writ-A Nos.45146 of 2015, 41708 of 2015, 42482 of 2015, 42483 of 2015, 42843 of 2015, 42844 of 2015 and 45142 of 2015, Mr. Ashok Khare, learned Senior Advocate assisted by Mr. Alok Mishra, learned Counsel for the petitioner in Writ-A No.46719 of 2015, Mr. Abhishek Mishra, learned Counsel for the petitioner in Writ-A No.1441 of 2024, and Mr. Shivendra Rajwar, Advocate holding brief of Mr. Gautam Baghel, learned Counsel for the petitioners in Writ-A No.42609 of 2015; Mr. Vivek Kumar Rai, learned Counsel appearing for the respondent, Pt. Deen Dayal Upadhyay Gorakhpur University, Gorakhpur in Writ-A Nos.45146 of 2015, 1441 of 2024 and 45142 of 2015; and Mr. Sharad Chandra Upadhyay, learned Standing Counsel appearing for the State respondents in all the writ petitions. No one appears on behalf of the other respondents, the Authorized Controller or the Principal of the College in any of the writ petitions.

20. It is submitted by Mr. Ashok Khare, learned Senior Advocate assisted by Mr. Kauntey Singh and Mr. Alok Mishra, learned Counsel for the petitioners in Writ-A Nos.45146 of 2015, 41708 of 2015, 42482 of 2015, 42483 of 2015, 42843 of 2015, 42844 of 2015, 45142 of 2015 and 46719 of 2015, that the petitioners in each of these writ petitions were appointed by the Authorized Controller/ the Principal of the A.P.N. or the Shiv Harsh, after an

approval to the process of selection granted by the Regional Higher Education Officer, Gorakhpur. It is submitted by Mr. Khare that the petitioners have been appointed after invitation of applications by means of advertisement published in newspapers in accordance with the procedure prescribed under Chapter XXIII of the Statutes of the Gorakhpur University, in particular, Statute 23.01 to Statute 38. There is no infirmity in the process of advertisement. It is next argued that the order passed by the State Government on 19.06.2015, which is the basis of all orders individually impugned in the writ petition, is *ultra vires* and beyond the authority of the State Government to make. The only authority vested in the State Government under the U.P. State Universities Act, 1973 (for short, 'the Act of 1973') are the powers conferred upon the Government by virtue of Sections 40, 57, 58 and 59. The power under Section 40 is a power of inspection with regard to affiliated/ associated colleges of the University, where, directions envisaged in the said provision can alone be issued. Such power of inspection vested in the State Government does not clothe them in any manner with authority to annul appointments of individual employees made in the affiliated colleges of the University.

21. The power under Sections 57 to 59 is a power to supersede the committee of management by appointing an Authorized Controller in contingencies contemplated under the law. Neither of the aforesaid provisions of the Act of 1973 confer power or authority upon the State Government to interfere with the selection and/ or appointment of Class-III/ Class-IV employees in the affiliated colleges of the Universities governed by the Act of 1973. Apart from the aforesaid power vested in the State Government regarding supersession of the management in certain cases, the only other authority vested in the Government is under the Uttar Pradesh State Control Over Public Corporations Act, 1975 (for short, 'the Act of 1975'). It is pointed out that the Act of 1975 empowers the State Government to issue directions to statutory corporations, but excludes Universities from the purview of the said Act. The Act of 1973 alone governs the Universities. It is emphasized that individual selections and appointments do not involve any policy matter. The final authority to grant approval or take objection against irregularity in selection proceedings is the Regional Higher Education Officer of the region. In the present case, the Regional Higher Education Officer, Gorakhpur has granted approval to the petitioner's selection. It is after grant of approval by the Regional Higher Education Officer that appointment orders in each case have been issued in favour of the petitioner. They have subsequently joined and commenced discharging duties.

22. It is next submitted that the impugned order passed by the State Government is entirely vague and fails to specify the particulars of irregularities in the selection proceedings or the consequent appointment. In the absence of any specific finding having been recorded by the State Government, it was, in no manner, open for the Government to pass the order impugned dated 19.06.2015. The other orders are merely consequential. It is argued that the State Government have passed the order impugned without opportunity of hearing being afforded to the petitioners. The order is, therefore, a nullity. The learned Counsel for the petitioners submits that it is a settled principle of the law that an order, as serious

as cancellation of appointment, where candidates have joined, entitle them to the grant of opportunity of hearing before such a drastic order, carrying civil consequences, is made. Here, that opportunity has not been afforded by the Government, who have taken the substantial decision in the matter. In support of his contention, learned Counsel for the petitioners places reliance upon the authority of the Supreme Court in **Nisha Devi v. State of Himachal Pradesh and others, (2014) 16 SCC 392** and another decision of their Lordships of the Supreme Court in **Indian Institute of Information Technology, Allahabad and another v. Dr. Anurika Vaish and others, (2017) 5 SCC 660.**

23. It is, in the last, submitted that the order impugned passed by the Government is invalid, as it fails to make an endeavour to segregate the tainted portion of the selection proceedings from the untainted part thereof. Instead, a composite order has been passed, cancelling all Class-III and Class-IV appointments made in two different postgraduate colleges of the district. This cannot be done, according to the learned Counsel, and he reposes faith for the purpose in the authority of the Supreme Court in **Uttar Pradesh Jal Nigam and others v. Ajit Singh Patel and others, (2019) 12 SCC 285.**

24. Mr. Ashok Khare, learned Senior Advocate assisted by Mr. Alok Mishra, learned Counsel in support of Writ-A No.46719 of 2015 has emphasized that under the First Statutes of the University, the appointing authority, in relation to Class-III employees, is the management of the college, whereas for Class-IV employees, it is the Principal. It is emphasized that the two petitioners in this writ petition have been selected and appointed to Class-III posts; one of them a Routine Grade Clerk, and the other, a Library Clerk. They were appointed in the establishment of the Shiv Harsh. The advertisement relative to the two vacancies was issued in the *'Dainik Jagran'* and the *'Hindustan'*, both reputed dailies, issues dated 14.09.2013. The qualification advertised for the Routine Grade Clerk was an intermediate certificate and the post was reserved for SC/ ST. For the Library Clerk, which was an unserved post, the qualification prescribed as essential was an intermediate certificate. Preferential qualification was also mentioned as a B.Lib. Degree. The selection committee, which selected the petitioners in this case, held interview on 16.01.2014. It comprised the following members:

(i) Dr. Jay Prakash, Nominee of the Authorized Controller;

(ii) Ajeet Kumar Pandey, Principal of the College;

(iii) District Inspector of Schools, Basti;

(iv) District Employment Exchange Officer, Basti.

25. The petitioners were selected by the aforesaid selection committee in accordance with the procedure prescribed. The Regional Higher Education Officer granted approval to their selection, upon which, letters of appointment dated 27.01.2014 were issued by the Authorized Controller of the Shiv Harsh in their favour. Both the petitioners joined the Shiv Harsh on 29.01.2014. The inquiry against the petitioners was ordered by the State Government upon an Hon'ble MLA's complaint, which was a fact finding

inquiry. The petitioners were not heard there at all, and if that report were to form the basis of action, it would be gross violation of principles of natural justice.

26. Mr. Khare submits that the State Government had taken a decision to cancel the selection proceedings. The orders, therefore, made by the Director (Higher Education) and the appointing authority in the Institutions was nothing more than a ritual, as Mr. Khare puts it. It is argued by Mr. Khare that a post decisional opportunity of hearing before the Authorities of the Directorate of Education or the Management of the Institutions, would not avail the petitioners, inasmuch as they would be bound by the orders of the State Government. They cannot arrive at a contrary conclusion, once the State Government had taken a decision to cancel the selection process and the resultant appointment. Learned Counsel for the petitioners argues that the power to take disciplinary action and award punishment vests in the appointing authority under Statute 24.02 of the First Statutes of the University and the decision has to be reported by the appointing authority to the District Inspector of Schools (DIOS). The decision does not take effect, unless approved by the DIOS in writing. There is a provision for appeal against the order of the DIOS to the Regional Higher Education Officer. In the present case, it is submitted that there is a blatant violation of the principles of natural justice, because the State Government had taken the effective decision, which they have communicated to the Director (Higher Education) without hearing the petitioners. It is also emphasized that the qualification of the CCC Certificate earned from the DOEACC Society was not the requirement of the law at the point of time when the petitioners were selected. It came later on. Also, the B.Lib. Degree, in case of the Library Clerk, was a preferential qualification and not an essential one.

27. Likewise, in support of Writ-A No.42609 of 2015, Mr. Shivendra Rajwar, Advocate holding brief of Mr. Gautam Baghel, learned Counsel for the petitioners submits that the Authorized Controller, before dispensing with the services of the petitioners, has not bothered to take approval of the DIOS, pursuant to Clause 24.03 of the First Statutes of the University, vitiating the impugned order. It is emphasized by the learned Counsel for the petitioners here that a perusal of the impugned order dated 19.06.2015 would show that there is no specific allegation as regards the petitioners or the selection proceedings, which resulted in their appointment. The order of the State Government is omnibus and blanket. The individual features given in the orders of the Authorized Controller are of no consequence, because the true decision maker in the matter, the State Government, has not considered cases individually. It is also emphasized that in this case, the Chairperson of the selection committee, Dr. Raj Kumar Pathak and two members thereof, to wit, Dr. Lalu Ram Bhardwaj and Dr. Rajendra Baudh, were both arraigned in disciplinary proceedings on charges of nepotism relating to the selection that had led to the petitioners' appointment, but were exonerated after inquiry. Reference in the matter is made to the documents annexed as Annexure No. RA-1 and Annexure No. RA-2 to the rejoinder affidavit. The learned Counsel, therefore, submits that those who comprised the selection committee, having been exonerated of the charges of nepotism, the petitioners' selection cannot be said to be tainted.

28. Mr. Sharad Chandra Upadhyay, learned Standing Counsel appearing on behalf of respondent Nos.1, 2 and 3, has submitted that the inquiry ordered by the State Government into selections and appointments of Class-III and Class-IV employees at the A.P.N. and the Shiv Harsh, was done by two independent and impartial Principals of Government Postgraduate Colleges. Full and fair opportunity was given to those likely to be adversely affected by the outcome of the inquiry. The petitioner, in the leading petition, had a brother of full blood, posted in the Office of the Regional Higher Education Officer, who handled matters relating to District Basti. It is emphasized that the impugned order has been passed after extending due opportunity to the petitioners. There is a reference made to Sections 40 and 58 of the Act of 1973 to submit that the State Government have ample jurisdiction to pass orders cancelling the selection and appointment of Class-III and IV employees made to private aided postgraduate colleges, affiliated to a University, functioning under the Act of 1973. It is conceded that the Act of 1975 would not be applicable. Individual submissions in each of the writ petitions regarding details on facts have been advanced by Mr. Sharad Chandra Upadhyay, who has been at much pains to defend the orders passed by the State Government. Mr. Vivek Kumar Rai, learned Counsel, appearing for the University, has advanced his submissions as well, largely in agreement with what Mr. Upadhyay has submitted on behalf of the State.

29. One of the two principal questions that arise for consideration in this case is, if it was open to the respondents, in this context, the State Government, to cancel the petitioners' appointment on account of the selection process lacking transparency, one undertaken in breach of the lawful procedure and the law, without affording the petitioners' opportunity of hearing. The other question that would arise for consideration is, if the State Government, being neither the petitioners' Appointing Authority nor one competent to grant approval, could direct, on whatever ground, a cancellation of the petitioners' appointment. Both these questions are common to all the writ petitions, including the leading case. In fact, the orders, giving rise to these questions, passed by the State Government and the consequential orders passed by the Director (Higher Education), U.P., are under challenge in all the writ petitions, as earlier noticed in this judgment.

30. The impugned order dated 19.06.2015 passed by the State Government appears to have originated from a notice given by Hon'ble Mr. Sanjay Pratap Jaiswal, Member, Legislative Assembly, on 18.03.2015 in accordance with the Rules of Procedure and Conduct of Business of the Uttar Pradesh Legislative Assembly, 1958. The Director (Higher Education), U.P., Allahabad, acting on the Government's resolve, proceeded to appoint a committee, comprising Dr. Shyam Narayan Singh, Principal, Pt. Ram Lakhan Shukla, Government P.G. College, Alapur, Ambedkar Nagar and Dr. Onkar Prasad, Principal, Ravindra Kishore Shahi Government Degree College, Pathardeva, Deoria, to inquire into allegations of extraneous considerations, involving blood relations in appointments of Class-III and IV employees in the A.P.N. and the Shiv Harsh. This committee went into the allegation of relatives of those, who could influence selections, being appointed and

found these vindicated in some cases. They found it vindicated in the case of the petitioner in the leading writ petition, where Ravindra Nath Yadav, a Clerk posted in the office of the Regional Higher Education Officer, Gorakhpur, who handled matters in that office relating to District Basti, is said to have influenced the selection of the petitioner, Ashok Kumar Yadav, his brother of full blood. There are similar cases found vindicated by the two-member committee. There are other allegations vitiating the selection process, including the transparency of selections, the selections being an eyewash, the selections being held with less than three candidates in the fray, the reckoning of marks earned in the Bachelors' Degree, whereas these were irrelevant for the post, besides arbitrariness in the selection done by Professor Sadan Ram, who held both the position of the Regional Higher Education Officer and the Authorized Controller.

31. Acting on this inquiry report, the State Government passed the order impugned dated 19.06.2015, directing termination of services of all Class-III and IV employees in both the A.P.N. and the Shiv Harsh by one stroke of pen. Acting upon the order of the State Government, the Director (Higher Education), U.P., Allahabad passed stereotyped and cyclostyled orders, directing the Regional Higher Education Officer as well as the Authorized Controller/ Principal of the A.P.N. and the Shiv Harsh to cancel appointments of Class-III and IV employees. Here, it must be noticed that the orders passed by the Director (Higher Education), though cyclostyled, in the sense of being identically worded, are not one order in all the cases. These have been made on the same day i.e. 20.06.2015. These are three different orders – one each made in the case of Class-III employees separately relating to the A.P.N. and the Shiv Harsh, and, a third one relating to Class-IV employees appointed to the A.P.N. There is no appointment of a Class-IV employee involved in any of the writ petitions relating to the Shiv Harsh.

32. Consequential orders were then passed, echoing the directions of the State Government by the respective Appointing Authorities in the A.P.N. and the Shiv Harsh on different dates, 'cancelling with immediate effect' the respective appointments of the petitioners in the individual writ petitions. In the leading petition, this order was passed by the Authorized Controller on 22.06.2015. A look at all the orders passed by the Director (Higher Education) and the Appointing Authorities of the petitioners in the various writ petitions would show that neither the Director (Higher Education) nor the Appointing Authorities concerned have applied mind or taken a decision to dispense with the services of the petitioners, styled as 'cancellation of appointment'. The substantial decision has been that of the State Government. The State Government's order is one affecting all the employees in both the Institutions.

33. Now, order of the State Government clearly proceeds on the basis of the inquiry report dated 25.04.2015 submitted by the two-member committee, comprising the Principals of the two Government P.G. and Degree Colleges. A look at the inquiry report dated 25.04.2015 does not spare a shadow of doubt in our mind that it is no more than a fact finding inquiry that the committee were entrusted with. In keeping with their assignment, the committee have held a preliminary inquiry of sorts and expressed opinion for whatever

its worth. They have apparently not heard the petitioners in the manner a committee entrusted with returning a finding would. They have generally asked questions of the Principals, the Teachers, the Class-III and IV employees in going about their task on 20.04.2015, when visiting the two college campuses. The committee's report does not clearly offer any opportunity of hearing to any of the petitioners in the sense understood before a finding adverse to an employee's interest is recorded.

34. The State Government has acted on this report to pass the order impugned dated 19.06.2015 ex facie without hearing any of the petitioners. The report of the fact finding committee has been accepted for every word of it, without putting any of the petitioners to notice of the adverse material reported by the committee, affecting their appointments.

35. The petitioners, apparently, are probationers. Though the fact nor the point was mooted by either party during hearing, but we cannot ignore it. The letters of appointment relating to all the petitioners show that they had been appointed on a year's probation. *Ex facie*, the dispensation of service, styled as cancellation, as already said, has come before confirmation. 'A probationer may be discharged from service without assignment of reason' is a proposition of the law that hardly brooks doubt. The authorities in support of this proposition are: **State of Orissa and another v. Ram Narayan Das, AIR 1961 SC 177; Unit Trust of India v. T. Bijaya Kumar Patra, 1992 SCC OnLine SC 586; Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences and another, (2002) 1 SCC 520; and, Progressive Education Society and another v. Rajendra and another, (2008) 3 SCC 310.** At the same time, it is equally well settled on principle that if a probationer's services are dispensed with on the basis of allegations relating to his conduct, which we think, would extend to those affecting the selection process, he is entitled to a fare and minimum of opportunity to show cause to the Appointing Authority before his services are dispensed with. This is qualified by the principle that the adverse material or allegations must be the foundation of discharge or dispensation of services, and not merely a consideration for the Appointing Authority to generally find the employee unsuitable for the post held. In this connection, reference may be made to **State Bank of India and others v. Palak Modi and another, (2013) 3 SCC 607,** where it was held:

> ***"25*** *. The ratio of the abovenoted judgments is that a probationer has no right to hold the post and his service can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post held by him. If the competent authority holds an inquiry for judging the suitability of the probationer or for his further continuance in service or for confirmation and such inquiry is the basis for taking decision to terminate his service, then the action of the competent authority cannot be castigated as punitive. However, if the allegation of misconduct constitutes the foundation of the action taken, the ultimate decision taken by the competent authority can be nullified on the ground of violation of the rules of natural justice."*

36. A distinction in this regard has been made in earlier authority between the allegations against the probationer being the 'motive' or the 'foundation' of the

action. This test was invented to determine if the order, dispensing with a probationer's services, was stigmatic or innocuous. If it is stigmatic, it would require opportunity; if innocuous, it would not. The motive and the foundation test was evolved to determine if the order of discharge was innocuous or casts stigma upon the probationer discharged from service. Their Lordships of the Supreme Court in **Palak Modi** (*supra*) have noticed an earlier authority on the point and observed:

"22. *In Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences [(1999) 3 SCC 60 : 1999 SCC (L&S) 596] the two-Judge Bench considered the appellant's challenge to the termination of his service after adverting to the various communications sent by the Head of the Organisation to the appellant and formulated the following points: (SCC p. 70, para 18)*

"(1) In what circumstances, the termination of a probationer's services can be said to be founded on misconduct and in what circumstances could it be said that the allegations were only the motive?

(2) When can an order of termination of a probationer be said to contain an express stigma?

(3) Can the stigma be gathered by referring back to proceedings referred to in the order of termination?

(4) To what relief?"

While dealing with the first point, the Court referred to various earlier judgments and observed: (Dipti Prakash Banerjee case [(1999) 3 SCC 60 : 1999 SCC (L&S) 596] , SCC pp. 70-72, paras 19 & 21)

"19. As to in what circumstances an order of termination of a probationer can be said to be punitive or not depends upon whether certain allegations which are the cause of the termination are the motive or foundation. In this area, as pointed out by Shah, J. (as he then was) in Madan Gopal v. State of Punjab [AIR 1963 SC 531] there is no difference between cases where services of a temporary employee are terminated and where a probationer is discharged. This very question was gone into recently in Radhey Shyam Gupta v. U.P. State Agro Industries Corpn. Ltd. [(1999) 2 SCC 21 : 1999 SCC (L&S) 439] and reference was made to the development of the law from time to time starting from Parshotam Lal Dhingra v. Union of India [AIR 1958 SC 36 : 1958 SCR 828] to the concept of 'purpose of enquiry' introduced by Shah, J. (as he then was) in State of Orissa v. Ram Narayan Das [AIR 1961 SC 177] and to the seven-Judge Bench decision in Samsher Singh v. State of Punjab [(1974) 2 SCC 831 : 1974 SCC (L&S) 550 : (1975) 1 SCR 814] and to post-Samsher Singh [(1974) 2 SCC 831 : 1974 SCC (L&S) 550 : (1975) 1 SCR 814] case-law. This Court had the occasion to make a detailed examination of what is the 'motive' and what is the 'foundation' on which the innocuous order is based.

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*21. If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as 'founded' [**Ed**.: The word "founded" is emphasised in the original also.] on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an*

enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid."

(emphasis supplied)

23. *In Chandra Prakash Shahi v. State of U.P. [(2000) 5 SCC 152 : 2000 SCC (L&S) 613] the Court considered the correctness of the order passed by the High Court which had allowed the writ petition filed by the State and set aside the order passed by the U.P. Public Services Tribunal for reinstatement of the appellant. The competent authority had terminated the appellant's service in terms of Rule 3 of the U.P. Temporary Government Servants (Termination of Service) Rules, 1975. It was argued on behalf of the appellant that the order by which his service was terminated, though innocuous, was, in fact, punitive in nature because it was founded on the allegation that he had fought with other colleagues and used filthy and unparliamentary language. In the counter-affidavit filed on behalf of the respondents, it was admitted that there was no adverse material against the appellant except the incident in question. The original record produced before the Tribunal revealed that the appellant's service was terminated on account of his alleged involvement in the quarrel between the constables. After noticing various precedents, this Court observed: (SCC pp. 167-68, paras 27-30)*

"27. The whole case-law is thus based on the peculiar facts of each individual case and it is wrong to say that decisions have been swinging like a pendulum; right, the order is valid; left, the order is punitive. It was urged before this Court, more than once including in Ram Chandra Trivedi case [(1976) 4 SCC 52 : 1976 SCC (L&S) 542] that there was a conflict of decisions on the question of an order being a simple termination order or a punitive order, but every time the court rejected the contention and held that the apparent conflict was on account of different facts of different cases requiring the principles already laid down by this Court in various decisions to be applied to a different situation. But the concept of 'motive' and 'foundation' was always kept in view.

28. The important principles which are deducible on the concept of 'motive' and 'foundation', concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question. If for the determination of suitability of the probationer for the post in question or for his further retention in service or for confirmation, an inquiry is held and it is on the basis of that inquiry that a decision is taken to terminate his service, the order will not be punitive in nature. But, if there are allegations of misconduct and an inquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that inquiry, the order would be punitive in nature as the inquiry was held not for assessing the general suitability of the employee for the post in question, but to find out the truth of allegations of

misconduct against that employee. In this situation, the order would be founded on misconduct and it will not be a mere matter of 'motive'.

29. 'Motive' is the moving power which impels action for a definite result, or to put it differently, 'motive' is that which incites or stimulates a person to do an act. An order terminating the services of an employee is an act done by the employer. What is that factor which impelled the employer to take this action? If it was the factor of general unsuitability of the employee for the post held by him, the action would be upheld in law. If, however, there were allegations of serious misconduct against the employee and a preliminary inquiry is held behind his back to ascertain the truth of those allegations and a termination order is passed thereafter, the order, having regard to other circumstances, would be founded on the allegations of misconduct which were found to be true in the preliminary inquiry.

30. Applying these principles to the facts of the present case, it will be noticed that the appellant, who was recruited as a Constable in the 34th Battalion, Pradeshik Armed Constabulary, U.P., had successfully completed his training and had also completed two years of probationary period without any blemish. Even after the completion of the period of probation under Paragraph 541 of the U.P. Police Regulations, he continued in service in that capacity. The incident in question, namely, the quarrel was between two other constables in which the appellant, to begin with, was not involved. When the quarrel was joined by few more constables on either side, then an inquiry was held to find out the involvement of the constables in that quarrel in which filthy language was also used. It was through this inquiry that the appellant's involvement was found established. The termination was founded on the report of the preliminary inquiry as the employer had not held the preliminary inquiry to find out whether the appellant was suitable for further retention in service or for confirmation as he had already completed the period of probation quite a few years ago but was held to find out his involvement. In this situation, particularly when it is admitted by the respondent that the performance of the appellant throughout was unblemished, the order was definitely punitive in character as it was founded on the allegations of misconduct."

(emphasis supplied)

24. *In Union of India v. Mahaveer C. Singhvi [(2010) 8 SCC 220 : (2010) 2 SCC (L&S) 602] the three-Judge Bench considered the question whether termination of the respondent's service who was serving as IFS probationer by way of discharge in accordance with the terms of employment was punitive. The Court noted that the respondent's service was terminated because he had sought extension to join the Mission at Madrid in Spain because of sudden deterioration in the health condition of his parents and also requested for providing medical facilities and diplomatic passports to them. The Court also noted that the Ministry of External Affairs had taken cognizance of the complaint made by one Mrs Narinder Kaur Chadha that the respondent had been threatening her entire family and in particular her daughter which was followed by some enquiries conducted into his conduct or character by the Joint Secretary, Foreign Service Institute and a memorandum was issued to the respondent*

alleging his unauthorised absence. The Joint Secretary found that the complaint was wholly unfounded. The Court then referred to the principles laid down in earlier judgments and approved the view taken by the High Court that even though the order of discharge did not contain any stigma, the same was not conclusive and the High Court had rightly termed the same as punitive. Some of the observations made in the judgment are extracted below: (SCC p. 233, para 47)

"47. The materials on record reveal that the complaint made by Mrs Narinder Kaur Chadha to the Minister of External Affairs had been referred to the Joint Secretary and the Director (Vigilance) on 8-2-2002 with a direction that the matter be looked into at the earliest. Although, nothing adverse was found against the respondent, on 19-2-2002, the Joint Secretary (Vigilance) held further discussions with the Joint Secretary (Admn.) in this regard. What is, however, most damning is that a decision was ultimately taken by the Director, Vigilance Division, on 23-4-2002, to terminate the services of the respondent, stating that the proposal had the approval of the Minister of External Affairs. This case, in our view, is not covered by the decision of this Court in Dipti Prakash Banerjee case [(1999) 3 SCC 60 : 1999 SCC (L&S) 596]."""

37. In our opinion, the remarks of their Lordships of the Supreme Court in **Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, (1999) 3 SCC 60,** quoted in **Palak Modi** would be attracted to the facts of the present case. Relevant remarks are to be found in paragraph No.21 of the report in **Dipti Prakash Banerjee** (*supra*) quoted in **Palak Modi**. This is not a case, where no inquiry was at all held for any reason, whatsoever, to determine the truth of the allegations. An inquiry committee, to hold a preliminary inquiry or fact finding inquiry, was appointed, which forms the basis of the impugned order passed by the State Government. The order on its face refers to allegations vitiating the selection and the consequent appointments made in favour of the petitioners. There are allegations as sticky as nepotism being at play. Bearing this state of record in mind, it is difficult to hold that the order impugned passed by the State Government is one directing a simple discharge of the probationers, to wit, the petitioners. The order of the State Government, to its face, casts a malevolent stigma, shadowing the petitioners' selection and appointments. The orders passed by the Director (Higher Education) and the respective Appointing Authorities are no more than processes to give effect to the State Government's decision carried in the impugned order dated 19.06.2015. This order has been made by the State Government by one stroke of pen, based on allegations that clearly serve as foundation for the order impugned and not merely a motive to direct a dispensation of the petitioners' services. An order of this kind, in our considered opinion, called for opportunity of hearing to be afforded to the petitioners before the decision was taken by the Authority, which directed cancellation of the petitioners' appointment, as it is called.

38. This takes us to the other question, and that is, if the State Government, not being the petitioners' Appointing Authority nor one competent to grant approval, could direct termination of their services.

39. The petitioners' employers are the two Institutions, to wit, the A.P.N. and the

Shiv Harsh. These, as already said, are privately managed Institutions, funded by the State. Both the Institutions are engaged in imparting higher education at the postgraduate level. The Appointing Authorities of the petitioners are decidedly the Authorities of the two Institutions. In case of those of the petitioners, who are Class-IV employees, like the petitioners in Writ-A Nos.41708 of 2015 and 42609 of 2015, the Appointing Authority is the Principal of the Institution concerned. In case of Class-III employees, the Appointing Authority is the Manager of the Institution, and, since the managements of both the Institutions were superseded with the Authorized Controller managing their affairs, the Authorized Controller is the Appointing Authority. Mr. Sharad Chandra Upadhyay, learned Standing Counsel along with Mr. Vivek Kumar Rai, learned Counsel appearing for the University, have been at pains to say that the State Government would have authority to direct a termination of service of the petitioners on ground of the tainted and patently illegal selections. We cannot agree. There is no authority of any kind vested in the State Government, to direct a cancellation of appointment of Class-III and IV employees of a private institution of higher learning, the State funding notwithstanding. Section 40 of the Act of 1973 empowers the State Government to cause an inspection to be made, by persons nominated, of any affiliated or associated college of a University, including buildings, laboratories and equipments, to borrow the phraseology of the Statute. It also authorizes the examination of other work conducted or done by such college. There is also authority to cause an inquiry to be made in regard to matters, connected with administration and finances of such institutions/ colleges. After the inspection envisaged under sub-Section (1) of Section 40 has been carried out, the State Government may communicate the conclusions drawn during the inspection or inquiry made, and, may issue directions as to the action to be taken, obliging the management to comply with such directions. The power under sub-Section (4) of Section 40 comes closest to controlling or directing the management of a college, affiliated to a University governed by the Act of 1973, with the kind of powers exercised. Since the power with the State Government is also there to issue directions regarding action to be taken, which the management are obliged to comply with, it has been urged by the learned Standing Counsel that the tainted selections held are within the competence of the State Government to direct a cancellation of.

40. No doubt, the scope of inspection of affiliated and associated colleges under Section 40 extends to clothing the State Government with the power to cause an inquiry in regard to matters connected with the administration and finances, but sub-Section (1) of Section 40 read with sub-Section (4) cannot clearly extend to directing a cancellation of the appointments of Class-III and IV employees of affiliated colleges. The appointment of Class-III and IV employees takes place with prior permission of the Regional Higher Education Officer. It is difficult to read into the wider clause of matters, connected with administration and finances of an affiliated college, the power to cancel appointments or direct a termination of services of individual employees, selected and appointed by a college with due approval of the Regional Higher Education Officer. In support of the legal position that the State Government are conferred with power to

direct a cancellation of appointments in affiliated colleges, like the Institutions, no authority, much less a binding precedent, has been cited on behalf of the respondents. The State Government's power of inspection etc., under Section 40 of the Act of 1973, upon the terms of the Statute, has not been found by us as one enabling the Government to direct cancellation of appointment or ordering termination of services of Class-III and IV employees of privately managed and funded colleges, affiliated to Universities. The parties are ad idem that the Act of 1975 is not applicable to Universities and, a fortiori, to their affiliated colleges, like the Institutions, so as to confer upon the State Government power to issue directions of the kind carried in the impugned order by resort to Section 2 of the last mentioned Act. Likewise, the powers under Section 58 of the Act of 1973 are with regard to the affairs of the management and conditions when the management of an affiliated college may be superseded and directed to be taken over by an Authorized Controller. It affords no source of authority to the State Government to terminate the services of individual Class-III and IV employees of an affiliated college or cancel his/ her appointment.

41. This takes us to an allied question as to what are the ways out and means available to the State Government to keep the stream of selections and appointments to the Institutions unsullied by extraneous considerations, which they were confronted with upon a perusal of the fact finding or the preliminary inquiry report. If the State Government thought that there was some flaw relating to one or more of the selections relating to Class-III and IV employees made in the Institutions, that to say, one or more of the petitioners' selection and appointments, they could refer the matter to the Appointing Authority for holding such inquiry, as may be necessary, and pass orders after affording the petitioners' opportunity of hearing. The matter could also be referred to the Higher Education Officer, who had granted approval to the petitioners' appointment and he could likewise hold an inquiry, affording the petitioners some kind of opportunity. Ideally, the validity of the appointments, if at all the Government thought that these were tainted by all the ills that the fact finding inquiry has pointed out, should have been inquired into by the Appointing Authority relating to each of the petitioners under directions of the Higher Education Officer, or with his participation and appropriate orders made, again not without affording the necessary opportunity of hearing. Since the petitioners are apparently probationers, we should not be understood at all to have said that they were entitled to the benefit of regular disciplinary proceedings. A show cause and opportunity to have their say effectively would suffice.

42. It is true that this case involves thirteen appointments of Class-III and IV employees to the two Institutions, to wit, the A.P.N. and the Shiv Harsh. In each case, advertisements were issued and selection committees convened. The report of the fact finding committee submitted to the State Government neither had the remit nor did they do a careful segregation of each case to opine which of them were tainted and which not. The State Government, in passing the impugned order, directed a cancellation of all appointments by one stroke of pen. There was no individual consideration of each case with a bare minimum level of scrutiny and relative finding to come to the conclusion, if it was indeed tainted, flawed

and bad. The principle of segregating the tainted selections from the untainted ones, is a well recognized principle, where the purity or the sanctity of the selection process in public employment is doubted. The principle further exposits that individual cases have to be scrutinized unless the taint is so widespread as to soil the entire selection process. An exposition and endorsement of this principle is there in **Ajit Singh Patel** (*supra*), where it has been remarked:

*"**13.** The appellants have now relied upon the opinions given by the experts (Indian Institute of Information Technology, Allahabad and Indian Institute of Technology, Kanpur) as noted in the report submitted to this Court dated 20-8-2018 [U.P. Jal Nigam v. Ajit Singh Patel, 2018 SCC OnLine SC 2598]. The same were certainly not available to the appropriate authority before the order was passed on 11-8-2017. Indeed, the appropriate authority took into account two inquiry reports but the same did not evince that an exercise had already been undertaken to distinguish the tainted and untainted candidates or that it was not possible to do so, so as to uphold the decision of declaring the entire selection process as void. Had the appropriate authority done that exercise and recorded its satisfaction in that behalf, to be reflected in the order passed by the Chief Engineer on 11-8-2017, the High Court could have then followed the settled legal position expounded in Union of India v. O. Chakradhar [Union of India v. O. Chakradhar, (2002) 3 SCC 146, paras 7, 8 & 12 : 2002 SCC (L&S) 361] that the nature and extent of illegalities and irregularities committed in conducting a selection will have to be scrutinised in each case so as to come to a conclusion about the future course of action to be adopted in the matter. Further, if the mischief played is so widespread and all-pervasive, affecting the result so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, in such cases, it will neither be possible nor necessary to issue individual show-cause notices to each selectee. In that case, the only option would be to cancel the whole selection process and not limiting to one section of appointees. This view has been restated in the recent decision in Veerendra Kumar Gautam v. Karuna Nidhan Upadhyay [Veerendra Kumar Gautam v. Karuna Nidhan Upadhyay, (2016) 14 SCC 18, paras 57-59 & 61] (also see Joginder Pal v. State of Punjab [Joginder Pal v. State of Punjab, (2014) 6 SCC 644, paras 32-36 & 38-40 : (2014) 2 SCC (L&S) 333]). The dictum in the two judgments relied upon by the appellants, of O. Chakradhar [Union of India v. O. Chakradhar, (2002) 3 SCC 146, paras 7, 8 & 12 : 2002 SCC (L&S) 361] and Vikas Pratap Singh v. State of Chhattisgarh [Vikas Pratap Singh v. State of Chhattisgarh, (2013) 14 SCC 494 : (2013) 3 SCC (L&S) 100] will be of no avail to the appellants in the fact situation of the present case."*

43. In the present case, it has to be borne in mind that it is not one selection process. There are two Institutions, the A.P.N. and the Shiv Harsh. Within the Institutions also, like the A.P.N., there are Class-IV and Class-III posts, to which the selections and appointments have been made. The two processes would be entirely different. Therefore, this possibly cannot be a case where all the selections would be affected by the same taint so drastically as to call for a wholesome countermanding of all selections and appointments by an omnibus order.

44. The last question that needs to be considered is what relief is to be afforded

to the petitioners. They were after all probationers, when their services were dispensed with in consequence of the impugned order of cancellation passed by the State Government and the consequential orders. They have hardly worked for a few months – in most cases, a period of three months approximately. Once the impugned orders are quashed, which has to be done with liberty to the appropriate Authorities to hear the individual petitioners and make fresh orders, would the petitioners be entitled to an automatic reinstatement in service? We do not think so. Reference in this connection may be made to the decision of the Supreme Court in **Inspector of Panchayats and District Collector, Salem v. S. Arichandran and others, 2022 SCC OnLine SC 1282.** In that case, the High Court had set aside the order of dismissal passed by the Disciplinary Authority on ground of breach of principles of natural justice, the breach being that the delinquent had not been furnished a copy of the inquiry report and given opportunity to put in his comments before the order of dismissal was passed. The delinquent was ordered by the learned Single Judge of the High Court to be reinstated in service with back-wages. The judgment was affirmed by the Division Bench in appeal. As it appears from the report of the judgment of their Lordships of the Supreme Court, the delinquent was ordered to be reinstated, without remitting the matter to the Disciplinary Authority to proceed afresh from the point that the breach was committed and natural justice violated. It was in this context that it was held by the Supreme Court in **S. Arichandran** (*supra*):

"14. *At the outset, it is required to be noted that the learned Single Judge has set aside the order of dismissal passed by the Disciplinary Authority on the ground that the same was in breach of principles of Natural Justice, in as much as, the copy of the Inquiry Officer's Report was not furnished to the delinquent and his comments were not called for on the Inquiry Officer's Report. It is to be noted that the respondent - delinquent was facing the departmental inquiry with respect to a very serious charge of misappropriation. Therefore, the High Court ought to have remitted the matter back to the Disciplinary Authority to conduct the inquiry from the point that it stood vitiated.*

15. *At this stage, a recent decision of this Court in the case of Rajit Singh (supra), in which this Court had considered its earlier decision in the case of A. Masilamani (supra) is required to be referred to. In paragraph 15, it is observed and held as under:—*

"15. It appears from the order passed by the Tribunal that the Tribunal also observed that the enquiry proceedings were against the principles of natural justice in as much as the documents mentioned in the charge sheet were not at all supplied to the delinquent officer. As per the settled proposition of law, in a case where it is found that the enquiry is not conducted properly and/or the same is in violation of the principles of natural justice, in that case, the Court cannot reinstate the employee as such and the matter is to be remanded to the Enquiry Officer/Disciplinary Authority to proceed further with the enquiry from the stage of violation of principles of natural justice is noticed and the enquiry has to be proceeded further after furnishing the necessary documents mentioned in the charge sheet, which are alleged to have not been given to the delinquent officer in the

instant case. In the case of Chairman, Life Insurance Corporation of India v. A. Masilamani, (2013) 6 SCC 530, which was also pressed into service on behalf of the appellants before the High Court, it is observed in paragraph 16 as under:—

"16. It is a settled legal proposition, that once the court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the court cannot reinstate the employee. It must remit the case concerned to the disciplinary authority for it to conduct the enquiry from the point that it stood vitiated, and conclude the same. (Vide ECIL v. B. Karunakar [(1993) 4 SCC 727], Hiran Mayee Bhattacharyya v. S.M. School for Girls [(2002) 10 SCC 293], U.P. State Spg. Co. Ltd. v. R.S. Pandey [(2005) 8 SCC 264] and Union of India v. Y.S. Sadhu [(2008) 12 SCC 30])."

45. Also of relevance to the issue is the holding of the Supreme Court in **State of Uttar Pradesh and others v. Rajit Singh, (2022) 15 SCC 254,** wherein the following remarks of their Lordships are pertinent:

***"11**. It appears from the order passed by the Tribunal that the Tribunal also observed that the enquiry proceedings were against the principles of natural justice inasmuch as the documents mentioned in the charge-sheet were not at all supplied to the delinquent officer. As per the settled proposition of law, in a case where it is found that the enquiry is not conducted properly and/or the same is in violation of the principles of natural justice, in that case, the Court cannot reinstate the employee as such and the matter is to be remanded to the enquiry officer/disciplinary authority to proceed further with the enquiry from the stage of violation of principles of natural justice is noticed and the enquiry has to be proceeded further after furnishing the necessary documents mentioned in the charge-sheet, which are alleged to have not been given to the delinquent officer in the instant case."*

46. There are some remarks of great relevance in **Allahabad Bank and others v. Krishan Pal Singh, (2021) 19 SCC 227,** which are as follows:

***"8.** The directions issued by the High Court of Allahabad for reinstatement were stayed by this Court on 23-8-2019 [Allahabad Bank v. Krishan Pal Singh, 2019 SCC OnLine SC 2061]. During the pendency of these proceedings, the respondent workman had attained age of superannuation. Though, there was strong suspicion, there was no acceptable evidence on record for dismissal of the workman. However, as the workman has worked only for a period of about six years and he has already attained the age of superannuation, it is a fit case for modification of the relief granted by the High Court. <u>The reinstatement with full back wages is not automatic in every case, where termination/dismissal is found to be not in accordance with procedure prescribed under law.</u> Considering that the respondent was in effective service of the Bank only for about six years and he is out of service since 1991, and in the meantime, respondent had attained age of superannuation, we deem it appropriate that ends of justice would be met by awarding lump sum monetary compensation. We accordingly direct payment of lump sum compensation of Rs 15 lakhs to the respondent, within a period of eight weeks from today. Failing to pay*

the same within the aforesaid period, the respondent is entitled for interest @ 6% p.a., till payment."

(emphasis by Court)

47. In a case where an order of termination from service, whether by way of cancellation of appointment or in consequence of disciplinary proceedings, has to be quashed on grounds of violation of principles of natural justice, there are, in the opinion of this Court, very pertinent factors to be taken into consideration, if reinstatement is to be ordered pending the resumed inquiry. It goes without saying that invariably, wherever an order of termination from service is passed in breach of principles of natural justice, the matter has to be remitted to the employers to take fresh proceedings from the stage, where they have faltered. Of course, that is an election to be left to the employers and not a position thrust upon them that they must re-inquire. The question if in the interregnum, when proceedings are resumed post remand to the employers, the employee is to be reinstated or not, may not always have a fixed answer. If the employee was serving on a permanent tenure for a long number of years and has had his services terminated in utter violation of principles of natural justice, the question of reinstatement pending inquiry may invariably be answered for the employee. The nature and gravity of the charges, on which the action has been taken, would also be relevant. In the consequences of quashing of the order of termination in **Krishan Pal Singh** (*supra*), one reason that weighed with the Supreme Court in denying reinstatement with full back-wages, the question of superannuation apart, was the short period of six years, for which the employee had served. Here, the petitioners are all probationers, whom we have already noticed, have served for a few months alone. They have been out of service since the year 2015, after that short probation of some months that they were in service.

48. In the circumstances, therefore, we would think that notwithstanding the orders impugned being fit to be quashed with liberty to the competent Appointing Authority to proceed afresh against the petitioners, they would not be entitled to reinstatement in service unless upon inquiry, as directed hereinafter, the respondents conclude in the petitioners' favour, or they elect in one or more case not to proceed afresh at all.

49. In the result, all the writ petitions succeed and are **allowed**. The orders impugned passed by the State Government and the Director (Higher Education), U.P., Allahabad and each of the orders impugned passed in the individual petitions by the Appointing Authority, are hereby **quashed**. The competent Appointing Authority in each individual case of the petitioners, subject, of course, to the supervision of the Regional Higher Education Officer, shall be at liberty to proceed afresh against the petitioners after granting them effective opportunity of hearing regarding whatever flaw in the selection process is found to taint each individual petitioner's selection. If after granting opportunity, the case of any of the petitioners is found to be without a vitiating flaw in the matter of appointment, the petitioner concerned would be entitled to reinstatement in service on the same terms as he was serving at the time that the impugned orders were passed. If in a given case the Appointing Authority concerned, under the supervision of the Regional Higher

Education Officer, does not find it fit to inquire into the validity of the selection process and appointment, the petitioner concerned shall be entitled to reinstatement in service on the same terms. It is also made clear that upon quashing of the order alone, there would not be any automatic reinstatement for any of the petitioners. It is clarified that the Appointing Authority concerned in each individual case shall act under supervision of the Regional Higher Education Officer, but in the exercise of their independent discretion. They will not be influenced by any direction of the State Government carried in the impugned order or any further order made by them in the matter.

50. There shall be no order as to costs.

(2025) 8 ILRA 747
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 12.08.2025

BEFORE

THE HON'BLE AJIT KUMAR, J.

Writ A No. 66368 of 2005

Umesh Chandra ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
P.K. Dwivedi, Virendra Singh

Counsel for the Respondents:
C.S.C., J.K. Khanna

ISSUE FOR CONSIDERATION

Whether refixation of pay and consequential recovery after retirement, without notice or opportunity of hearing, is sustainable in law.

HEADNOTE

Service Law – Pay Fixation – Recovery – Natural Justice – No Recovery from Retired Employee – Rafiq Masih principle – Retrospective correction of pay fixation without notice – Unsustainable – Orders quashed.

Held :

Petitioner, who retired on **30.06.2005**, challenged the order dated **13.07.2005** providing for refixation of pay w.e.f. **1.7.1985** and consequential orders of recovery. Court held that *petitioner was not put to notice and not afforded opportunity to offer his explanation prior to passing of the order.* On the principles of natural justice, the impugned order was set aside and consequential orders of recovery also quashed. Court held that *no such recovery can be enforced against retired class III and IV employees after their retirement for any correction of pay fixation.* Petitioner having retired on **30.06.2005**, such recovery could not have been proceeded with. Respondents were directed to refix the pension and post-retirement dues and the recovered amount shall also be refunded to the petitioner within **two months'** time. **(Paras 8–16)** (E-5)

CASE LAW CITED

State of Punjab and Others v. Rafiq Masih (White Washer), (2015) 4 SCC 334; *Sushil Kumar Singhal v. Pramukh Sachiv, Irrigation Department*, (2014) 16 SCC 444

List of Acts

Constitution of India

List of Keywords

Recovery; Pay Fixation; Notice; Natural Justice; Retired Employee; No Recovery; Pension; Last Pay Drawn; Reasonable Period; Rafiq Masih; Refund.

CASE ARISING FROM

Order dated 13.07.2005 (refixation); consequential recovery orders dated 27.09.2005 and 13.09.2005.

Appearances for Parties

Advs For Petitioner: P.K. Dwivedi; Virendra Singh
Advs **For Respondents:** C.S.C.; J.K. Khanna

(Delivered by Hon'ble Ajit Kumar, J.)

1.Heard Sri Virendra Singh, learned counsel for the petitioner and learned Additional Chief Standing Counsel representing State respondents.

2.By means of present petition filed under Article 226 of the Constitution, petitioner has challenged the order dated 13th July, 2005 providing for refixation of pay of the petitioner w.e.f. 1.7.1985 as the pay fixation in the payscale of Rs. 450-720 w.e.f. 1.7.1985 has been cancelled. The consequential order passed in that behalf on 27th September, 2005 providing for recovery of excess amount paid to the petitioner by way of salary passed by Superintendent Engineer has also been challenged and so also final consequential order passed by Executive Engineer dated 30th September, 2005 directing for recovery has been challenged.

3.The basic argument advanced to assail the orders is that petitioner having retired on 30th June, 2005 from post of junior clerk, no such pay refixation could have been order w.e.f on 1st July, 1985 and that too without any notice and opportunity of hearing to him. Yet another argument advanced is that subsequently the State Government itself has released a Government Order that such correction in pay fixation beyond period of 34 weeks prior to the date of retirement, to be bad. It is, therefore, argued that this being beneficial peace of subordinate legislation, its scope and ambit can be made effective in so far as its applicability is concerned, though on principles. It is also submitted that at no point of time petitioner had made any misrepresentation for particular pay fixation and hence petitioner cannot be saddled with liability for recovery on the principle of *Suggestio falsi" or "suppressio veri"*

4.It is also submitted on behalf of the petitioner that case of the petitioner stands squarely covered with the judgment in the case of **State of Panjab and Others v. Rafiq Masih (White Washer) (2015) 4 SCC 334**. Vide paragraph 12, the Court has held thus:

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such

an extent, as would far outweigh the equitable balance of the employer's right to recover."

5.Learned counsel for the petitioner states that respondents in the counter affidavit having failed to demonstrate that petitioner at any point of time had given any undertaking for recovery of such pay fixation, for any wrongful pay fixation, corrections cannot be enforced by way of recovery of the excess payment .

6.Meeting the submissions so advanced by learned counsel for the petitioner, Learned Additional Chief Standing Counsel sought to urge that pay fixation correction is not bad for the reason that petitioner could not have been given benefit of 10 years service w.e.f. 1985. He further argues that the Government Order brought in the year 2007 cannot be given retrospective effect unless and until Government Order so provides. However, on the point of non compliance of principles of natural justice, he has placed only reliance upon reply given in paragraph 13 of the counter affidavit that as per relevant service records, such correction was accorded. Thus, it is not denied that petitioner was not afforded any opportunity of hearing before passing of the order for correction of re-fixation.

7.Having heard learned counsel for the respective parties and having perused the records, what I find from the perusal of the order of pay fixation is that, it can be undisputedly concluded that petitioner was not put to notice prior to passing of the order. Justification is sought to be given that certain investigation was carried out in the matter of pay fixation as such and queries were put, but such internal departmental communication cannot have bearing upon the rights of an employee if he is not afforded opportunity to offer his explanation. Thus on the principles of natural justice, the order dated 13th July, 2005 directing for re-fixation w.e.f on 1st January, 1985 cannot be sustained and on this ground alone, the order deserves to be set aside and so also consequential orders of recovery.

8.Since order dated 13th July, 2005 is unjustified are all consequential orders being date 27th September, 2005 and 13th September, 2005 passed by Superintending Engineer Minor Irrigation, Gorakhpur and the Executive Engineer Minor Irrigation, Gorakhpur respectively are liable to be held unsustainable.

9.On the point of recovery were to be made or not, the legal position stands crystalized in the judgment of the Supreme Court in the case of State of Panjab v. Rafiq Masih (supra) wherein the Court has clearly laid down that no such recovery can be enforced against retired class III and IV employees after their retirement for any correction of pay fixation. Admittedly petitioner had attained the age of superannuation on 30th June, 2005, and therefore, such recovery could not have been proceeded with. This legal principle though came to be enunciated by Supreme Court in its judgment passed in the year 2014, but the object and that was kept in mind and the principle behind the *ratio* if applied to the present case, then legal position shall remain same. It is also settled law that enforcement of common law means law made by the Judge/Court of Law and enforcement of such law is always taken to be on the principle that law laid down always stood there unless the Court makes it prospective.

10.In view of above, therefore, recovery is held to be bad as a consequence to the order of pay fixation dated 13th July, 2005. This Court is also of the considered view that such correction in pay fixation should be within a reasonable period and that too where employee has retired. In service jurisprudence, the legal position has been that employer employee relationship exists so long as an employee is working in the establishment as once an employee attains the age of superannuation, this relationship comes to an end. This is the reason why for continuation of disciplinary proceedings drawn prior to an employee attaining the age of superannuation, the law had to be made by State Government giving special power to Governor to be exercised in such cases. In such circumstances, the said principle if borrowed here, then no such action ought to have been taken without sanction of the State Government even in the matter of pay fixation . In order to arrest this situation, State Government brought into force the Government Order in on 16th January, 2007, which has been interpreted by the Supreme Court in the case of **Sushil Kumar Singhal Vs. Pramukh Sachiv Irrigation Department and others, 2014 (16) SCC 444**. Hence, I consider it appropriate to apply those principles in the present case as well to hold that such fixation beyond reasonable period was certainly bad and hence the order dated 13th July, 2005 is equally liable to be held bad on this ground.

11.In view of above, this writ petition succeeds and is allowed. The order dated 13th July, 2025 directing for re-fixation of the petitioner w.e.f. 1.1.2005 and consequential recovery dated 27the September, 2005 passed by Superintendent Engineer, Minor Irrigation, Gorakhpur as well as Consequential Order of recovery passed by Executive Engineer Minor Irrigation Division Gorakhpur dated 13th September, 2005 are hereby quashed.

12.Respondent concerned is directed to re-fix the pension and post retirement dues of the petitioner on the basis of last pay drawn on the date of his retirement i.e. dated 30th June, 2005. Revised pension and post retirement dues shall be paid to the petitioner and recovered amount made shall also be replaced to the petitioner within next two months' time.

13.Entire computation shall be done accordingly in terms of order passed by this Court and the amount liable to be refunded to the petitioner shall be credited into account within the same period. Difference of arrears of pension and other retirement dues on account of orders impugned if set aside shall also be calculated and the amount shall also be credited into account of the petitioner within the same period.

14.It is made clear that if order remains uncomplied with, the respondent shall be liable to be payable interest @ 8 percent over and above amount to be paid to the petitioner upon expiry of period of two months till actual payment is made.

(2025) 8 ILRA 750
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 29.08.2025

BEFORE

THE HON'BLE ALOK MATHUR, J.

Writ B No. 669 of 2025

Shahadat Ali & Anr. ...Petitioners
Versus
Board Of Revenue, U.P. , Lko. & Ors. ...Respondents

Counsel for the Petitioners:
Mohammad Aslam Khan, Faiz Ahmad Khan

Counsel for the Respondents:
C.S.C., Pankaj Gupta, Pt. Devesh Kumar Mishra

Issue for Consideration

Matter pertains to Whether, when an oral family partition (Vahami Batwara) has already taken place and acted upon between co-sharers, can the property be subjected to partition afresh under S. 117 of the U.P. Revenue Code, 2006

Headnotes

Property Law - Partition Suit - Family Arrangement/Settlement - Oral Partition (Vahami Batwara) - U.P. Revenue Code Rules, 2016 - Rule 109(5)(g) vs. Rule 109(5)(c) and (f) - Applicability - primacy has to be given to family settlement, which has been acted upon, and the co-tenure holders are in possession of their respective shares - *Lekhpal* is bound to prepare *Kurra* accordingly under Rule 109(5)(g) of the Rules, 2016 - Family Arrangement - Binding Effect - Legal Principles - family arrangement, if bona fide and voluntary, is binding and enforceable - Interpretation of Rule 109(5) - Order of Preference - Where the co-tenure holders are in separate possession based on mutual consent or family settlement, clause (g) of Rule 109(5) governs preparation of *Kurra* - if no family settlement exists, clause (e) applies; and only thereafter, clauses *(a) to (f)* may be invoked - Error by Board of Revenue - Misapplication of Rule 109(5)(c) & (f) -

Held: Trial court had rightly given effect to the family settlement (Vahami Batwara) recognized under Rule 109(5)(g) of the Rules, 2016 – The 2nd appellate court, Board of Revenue committed manifest error in ignoring the admitted family arrangement and misapplying clauses (c) and (f) - Primacy must be given to bona fide family arrangements voluntarily accepted and acted upon by the parties - Petition is allowed - Judgment of the Board of Revenue dated 17.06.2025 is set aside - Orders of the Sub-Divisional Magistrate dated 31.08.2020 and the 1st Appellate Court dated 21.12.2021 are affirmed. (Paras 23,33,36,37,38,39,42,43) (E-7)

Case Law Cited

Ravinder Kaur Grewal v. Manjit Kaur, **(2020) 9 SCC 706: 2020 SCC OnLine SC 612**; *Kale v. Director of Consolidation*, **(1976) 3 SCC 119**

List of Acts

U.P. Revenue Code, 2006; U.P. Revenue Code Rules, 2016.

List of Keywords

Family settlement - Vahami Batwara - Kurra - Oral partition - Tenure holder - Highway adjacent land - Legal partition - Estoppel - metes and bounds - joint possession - remand order.

Case Arising From

Order of the Board of Revenue, Uttar Pradesh, Lucknow, dated 17 June 2025 in Second Appeal, arising out of the order of Additional Commissioner, Devi Patan Division, Gonda dated 31 August 2020 and the order of Sub-Divisional Magistrate, Mahsi, Bahraich dated 21 December 2021.

Appearances for Parties

Advs. for the Petitioners:
Sri Mohammad Aslam Khan, Faiz Ahmad Khan.
Advs. for the Respondents:
C.S.C., Pankaj Gupta, Pt. Devesh Kumar Mishra.

(Delivered by Hon'ble Alok Mathur, J.)

1. Heard Sri Mohammad Arif Khan, learned Senior Advocate assisted by Sri Mohammad Aslam Khan, learned counsel for the petitioners as well as Dr. Krishna Singh, learned Standing Counsel for resp. nos. 1 and 9 and Sri Pt. Devesh Kumar Mishra, learned counsel for respondent no. 2.

2. The petitioners have filed the present writ petition assailing the order of the Board of revenue dated 17/06/2025 whereby it has allowed the 2nd appeal

preferred by opposite party No. 2, and set aside the 1st appellate order dated 31/08/2020 passed by the Additional Commissioner, Devi Patan Division, Gonda as well as the order of the trial Court dated 21/12/2021 passed by the Sub Divisional Magistrate, Mahsi, Bahraich and remanded the matter back for determination afresh after following the directions contained therein .

3. The property which is subject matter of the present partition dispute was initially recorded in the name of one Razaq who was the recorded tenure holder of Plot No. 572, area 0.588 hectares situated in Village - Tajwapur, Pargana - Fakharpur, Tehsil - Mahsi, District - Bahraich. Razaq died in 1960, and was survived by 3 sons namely Jumai, Siddiqui and Birahim. The 1st son Jumai, had 3 sons namely Rajjab Ali (respondent No. 2), Abdul Hasan (respondent No. 7) and Taami, (who was initially made respondent No. 6 in the present writ petition but was deleted by order of this Court dated 24/07/2025), while Siddiqui had 3 sons namely Jalil @ Jami Ahmad, Poosu, Ali Hasan and lastly Birahim had one son Shahadat Ali who is the petitioner no.1, while petition No. 2 is the wife of petitioner no.1.

4. The suit was filed by opposite party No. 2 on 26/10/2015 in the Court of Sub Divisional Magistrate, Mahasi, District Bahraich stating that property situated at plot No. 572/0.617 hectares is the ancestral property of petitioner no.1 and respondent no. 2, 3, 4, 5 and 7. The 3 sons of Razaq namely Jumai, Siddiq and Birahim had 1/3rd share each in the property, and after their death their sons have inherited their share of the property in equal shares to which they were entitled. Taami son of Jumai has sold his share in favour of petition No. 2 while Abdul Hasan has sold his share to respondent No. 2.

5. In the plaint preferred by opposite party No. 2 it was clearly stated that oral partition has already taken place between all the tenure holders, but with regard to payment of revenue rent and exact location of their plots is a constant dispute occurring between the parties and also as the Highway having come up known as the Bahraich - Chahlari Highway adjacent to the disputed plot the plaintiff demanded that he be given a share adjacent to the road which has been denied and also that they want legal partition due to which the suit was being filed.

6. In the suit proceedings the defendants therein appeared and opposite party No.s 3 and 4 filed joint written statement clearly admitting the facts pertaining to the family partition having already taken place. It was further stated that petitioner No.1 who has 1/3rd share, out of which he has sold 2/3rd of his share to his wife through registered sale deed 17.1.2007 and she is in possession of the said land. Petitioner No.2 had also purchased the share of Taami under registered sale deed dated 7.11.2002 and her name was duly mutated in pursuance of the sale deed and she is possession over the said land. It is in aforesaid circumstances that preliminary decree dated 22.8.2016 were drawn up where share of all the parties was determined. The share of the petitioners was determined as 2/9 and Sahadat Ali son Birahim and Smt. Jannatul Nisan wife of Shahadat Ali were jointly given 4/9 share while Jalil @ Jami Ahmad son of Siddiqui were given 1/9 share each. Pursuant to the preliminary decree kurra was directed to be prepared in consonance with Rule 109 (5) of U.P. Revenue Rule,

2016. The said kurra report was submitted on 14.8.2020 against which objections were filed by opposite party No.2 which were rejected and final decree was passed on 31.8.2020.

7. While preparing final decree Sub Divisional, Magistrate held that the request made by the plaintiff for giving more portion of land on the District Highway has been rejected and the kurras have been prepared on the basis of the actual possession of all the parties on the basis of family partition which has already taken place between the respective parties who are in possession of their respective share on the basis of the partition and have also constructed houses on the said lands. He was further of the view that subsequently some of the share holders have sold the land by registered sale deed wherein in the sale deed the exact location of the land has been clearly described by clear boundary and accordingly rejected the objections and confirmed the kurras prepared by the concerned Lekhpal on 17.1.2020.

8. Against the decree dated 31.8.2020 an appeal was filed by opposite party Nos. 2, 3 , 4 and 5 before Commissioner, Devi Patan Division, Gonda.

9. The main grievance raised was that the partition has been done in clear violation of the statutory provisions contained in Rule 109 (5) (c) of the U.P. Revenue Code Rules and the appellants claim their rights to the portion of the land in equal share which fell adjacent to the District highway and, therefore challenged the validity of the Kurra dated 17.1.2020 prepared by the Lekhpal.

10. The Additional Commissioner, duly considered the contentions of rival parties and dismissed the appeal. While dismissing the appeal he returned the following findings:-

11. He held that there has been *Vahami Batwara* between the parties, this fact is admitted by all the parties and further all the parties are in possession of the shares allotted to them as per the said settlement. To evidence the said fact he took into consideration that:-

(i) Firstly, the plaintiff/appellant had clearly stated this fact in his plaint that a family partition/settlement had taken place, and Birahim was allotted the plot on the northern side. Southern side was given to Siddique and South to Siddiqui there existed the land Jumai and while all the three brothers were allotted land land from South side in equal portion to which they are in possession. After the death of Birahim, Siddiqui and Jumai and their sons are in possession of the said land.

(ii) Secondly, for construction of canal a portion of the land i.e. 0.80 acres of land was acquired by sale deed dated 5.3.1997 which was executed in favour of the Governor of Uttar Pradesh through Executive Engineer, Saryu Nahar Khand, Bahraich, which was executed by Birahim and Jalil, Pushu and Ali Hasan sons of Siddiqui. The land which was acquired fell into their share. There is no dispute that appellant obtained compensation/sale consideration. In the said sale deed a chak marg has been mentioned on the southern side which clearly indicates that to the South of the land of Birahim father of the petitioner there exists a chak road.

(iii) Thirdly, Taami brother of Rajjab Ali i.e. opposite party No.2 sold his entire share in favour of Smt. Jannatul

Nishan wife of Shahadat Ali by means of registered sale deed dated 7.11.2002. In the said sale deed also the boundaries are clearly stated and south side of the said land, plot of the petitioner has been described and accordingly on perusal of the said sale deeds it was found that all the share holders are in possession of respective shares and the said family partition has been accepted by the all the parties. He further recorded that on both sides of Gata No.572 there existed a chak road at the time of family settlement and it is only after on the northern side when the district highway was constructed that the present litigation was initiated claiming share and access to the said highway.

12. In the aforesaid circumstances the appellate authority concluded that the appellant himself has entered to a sale deed dated 19/09/1998 where he has clearly described the land with mets and bounds in the plot of the appellant has been described on the south side along with the chak marg, and even in the sale deed executed by Tammi brother of the appellant sold his share to Ms Jaintulnisha the boundaries were clearly demarcated and the plot of the petitioner was described on the southern side. He had also looked into the sale deed executed by Siddiqui and Binahim in favour of the State government for construction of canal where also the plots were clearly demarcated and identified and accordingly on the faces of the aforesaid facts he concluded that a family partition had already taken place and the chorus have been prepared correctly and no interference is required in the order of the trial court dated 31/08/2020 and consequently dismissed the appeal.

13. The petitioner being aggrieved by the order trial Court as well as by the appellate court for the 2nd appeal before the Board of revenue. Before the Board of revenue was contended that the *Khurras* were prepared by the Lekhpal in his report dated 17/01/2020 illegally and arbitrarily and contrary to the provisions of Rule 109(c) of the U.P Revenue Court Rules, 2016 (*hereinafter referred to as "the Rules, 2016"*). It was the case of the petitioner/appellant that the Kurra should have been prepared in according to Rule 109 (c) and (f) of the Rules, 2016 which provides that as far as possible no party shall be given all the inferior or all the superior class of land, and the plot or any part thereof is of commercial value or is adjacent to Road, Abadi or any other land of commercial value, the same shall be allotted to each tenure holder proportionately and accordingly the property should be allotted proportionately adjacent to the Road, Abadi or other land of commercial value.

14. It was contended that irrespective of the family partition, the land adjacent to the District highway should be proportionately and equally distributed amongst all the shareholders, and the Lekhpal not having followed the aforesaid condition had committed manifest illegality, and prayed for setting aside of the order of the trial court in the 1st appellate court.

15. The Board of Revenue had also held that the property was in joint possession of all the tenure holders, and the shares of individual tenure holders can be determined only by a legal petition.

16. The arguments of the petitioner found favour with the Board of revenue, and the 2nd appeal is allowed and the order of the trial court as well as the 1st appellate

Court was set aside and the matter was remitted back to the trial Court for adjudication of fresh, after holding that all the tenure holder is were entitled to equal share in the property falling on the district highway, and also passed several directions as to how the Khurras be prepared, and further directed that the proceedings be concluded within 6 months.

17. The order of the Board of Revenue dated 17/06/2025 has been challenged in the present writ proceedings.

18. The primary issue canvassed by the learned Senior Advocate appearing on behalf of the petitioners is that the Khurras were prepared by the Lekhpal by his report dated 17/01/2020, were totally in accordance with the provisions of Rule 109(g) of the Rules, 2016 which provides that if the court tenure holders are in separate possession on the basis of mutual consent or family settlement, the Khurras shall, as far be possible, be fixed accordingly. It was vehemently Submitted that there was no infirmity in the order of the trial court as well as the 1st appellate court where the entire evidence was considered specially the fact that that there was a family partition on the basis of mutual consent and all the shareholders were in possession of the respective shares.

19. It was submitted that in case there is a family settlement, and the tenure holders are in separate possession, then Rule 109(5) (g) would prevail and there would have been no occasion to prepare the *Khurras* in accordance with Rule 109(5) (c) &(f) of the Rules, 2016.

20. Shri M.A. Khan, Senior Advocate, argued that the record contains overwhelming evidence confirming that all tenure holders had mutually accepted the family partition and were in possession of their respective shares accordingly. He stated that the Sub-Divisional Magistrate, while adjudicating the suit under Section 117 of the U.P. Revenue Code, 2006 had rightly dismissed the objections raised by Opposite Party No. 2 against the Khurra prepared by the Lekhpal on 17/01/2020.

21. Furthermore, it was noted that even the co-tenure holders did not dispute this fact, which was clearly supported by three sale deeds:

(i) 05/03/1997: The State purchased portions of the disputed land from Birham and Siddiq for construction of canal.

(ii) 19/09/1998: Opposite Party No. 2 purchased his brother Abdul Hassan?s share.

(iii) 17/11/2002: Tommi, brother of Opposite Party No. 2, sold his share to Smt. Jaitulnisha.

22. Each sale deed recorded the precise boundaries of the land sold, indicating that the transactions of sale of disputed land were of an exact plot of land on the basis of metes and bounds rather than mere undivided shares, further affirming the existence and acceptance of the family partition.

23. It was further submitted that the Board of Revenue has committed a manifest error of law and fact by not adequately considering the aspect of family settlement, and on the other hand, relying on provisions of Rule 109 (5)(c) and (f) of the U.P. Revenue Code Rules, 2016 to set aside the order of the trial Court as well as

the 1st appellate court. According to the petitioner, if the matter falls under sub Clause (e) of Rule 109(5) of the Rules, 2016, then it was not open for the Lekhpal to invoke sub-Rule (c) and (f) of Rule 109(5) of the Rules, 2016.

24. Counsel for the respondents, on the other hand, would contend that the Board of Revenue has correctly appreciated the entire controversy and held that the Kurras ought to have been prepared keeping in mind the principles enshrined in sub Clauses (c) and (f) of Rule 109(5) of the Rules, 2016. It was stated that whenever an application for partition is moved, it ought to be decided strictly in light of provisions of Rule 109 of the Rules, 2016, and submitted that the land which was adjacent to the District highway was a valuable piece of land and all the co-tenure holders were entitled to an equal share of the valuable piece of land. It was also submitted that even if in the sale deeds, the area of property transferred was described by metes and bounds, it would not affect the suit for partition in as much as a co-tenure holder would be entitled only to sell his share in the property and the sale deed would be void to the extent it provides for transfer of the properties by metes and bounds.

25. I have heard the learned counsel for the parties at length and perused the record.

26. The facts in the present case are not in dispute, inasmuch as the respondents are seeking partition of plot No. 572, area 0.588 hectares, situated in the Village - Tajwapur, Pargana - Fakharpur, Tehsil - Mahsi, District - Bahraich, which was recorded in the name of Razzaq. Razaq had 3 sons, namely Jumai, Siddique, and Birahim. After the death of Razzaq in 1960, all three sons succeeded to his property, receiving 1/3 share each.

27. There was a *Vahami Batwara* (oral partition) between the parties, and on the basis of the oral partition of the 3 parties were allotted their share in the disputed property. The northernmost plot was given to Birahim, below that plot was the plot of Siddique, and the southernmost plot was Jumai. The fact of *Vahami Batwara* has been accepted by the opposite party No. 2, namely Rajjab Ali, who initiated the present litigation by filing a suit under Section 117 of the U.P Revenue Code, 2006. In the said plaint filed before the Sub Divisional Magistrate, the fact of family partition was accepted, and no objection against the said settlement was stated by him in the entire plaint. The reason for filing the suit for partition was said to be the dispute over the payment of land revenue between the co-sharers, and while accepting the *Vahami Batwara*, it was stated that there was a requirement to legally partition the said property.

28. The suit proceedings were resisted by the petitioners, who were made the defendants therein, and stated that all the tenure holders were in possession of the respective shares after the partition and had also made houses on the said land.

29. After the partition, 3 sale deeds have been executed by the tenure holder is selling their portion of the land, and especially opposite party No. 2 was the plaintiff, had himself purchased the entire share of his brother Abdul Hassan by means of a sale dated 19/09/1998. In the sale deed, the purchase was made of the share which was described in meats and bounds. The details of the sale deeds are as under:-

(i) 05/03/1997: The State purchased portions of the disputed land from Birham and Siddiqui for the construction of a canal.

(ii) 19/09/1998: Opposite Party No. 2 purchased his brother Abdul Hassan?s share.

(iii) 17/11/2002: Tommi, brother of Opposite Party No. 2, sold his share to Smt. Jaitulnisha.

30. All the sale deeds were brought on record to evidence the fact that all the parties have entered into a sale deed by specially describing the land in metes and bounds, and they did not merely sell only their share in the property.

31. On a fair consideration of the entire facts, the question which is for consideration before this Court is as to whether, when a partition has already taken place amicably between the co-sharers, should the Court proceed to partition the property again?

32. The object of the family arrangement is to protect the family from long-drawn litigation and perpetual strife, which mare the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Today, when we are striving to build up an egalitarian society and are trying for a complete reconstruction of the society, to maintain and uphold the unity and homogeneity of the family, which ultimately results in the unification of the society. A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is undoubtedly a milestone in the administrating of social justice. That is why the term "family" has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a specific successions so that future disputes are sealed for ever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country. The Courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the Courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits.

"A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family, either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour.

The agreement may be implied from a long course. Of dealing, but it is more usual to embody or to effectuate the agreement in a deed to which the term "family arrangement" is applied.

Family arrangements are governed by principles which are not applicable to dealings between strangers. The court, when deciding the rights of parties under family arrangements or claims to upset such arrangements, considers what, in the broadest view of the matter, is most for the interest of families, and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account. Matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements".

33. In other words, to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:

(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence:

(3) The family arrangement may be even oral, in which case no registration is necessary;

(4) It is well-settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made, either for the purpose of the record or for information of the court for making necessary mutation.

34. The aforesaid principle was affirmed by the Supreme Court in the case of ***Ravinder Kaur Grewal v. Manjit Kaur*, (2020) 9 SCC 706 : 2020 SCC OnLine SC 612 at page 723**

"25. *Be that as it may, the High Court has clearly misapplied the dictum in the relied upon decisions. The settled legal position is that when by virtue of a family settlement or arrangement, members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once and for all in order to buy peace of mind and bring about complete harmony and goodwill in the family, such arrangement ought to be governed by a special equity peculiar to them and would be enforced if honestly made. The object of such arrangement is to protect the family from long-drawn litigation or perpetual strives which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family, as observed in Kale [Kale v. Director of Consolidation, (1976) 3 SCC 119] . In the said reported decision, a three-Judge Bench of this Court had observed thus: (Kale case [Kale v. Director of Consolidation, (1976) 3 SCC 119] , SCC pp. 125-26, para 9)*

"9. ... A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the

hands of a few is undoubtedly a milestone in the administration of social justice. That is why the term ?family? has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a spes successionis so that future disputes are sealed for ever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country. The courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits."

35. In the instant case, the trial court had correctly applied the law and decided the matter in light of the undisputed *Vahami Batwara* between the parties. Such a partition is recognized by Rule 109(5) of the Revenue Court Rules, 2016 (*hereinafter referred to as "the Rules, 2016"*), which is quoted herein below:-

*"**109 (5)** The Lekhpal shall submit the Kurra report within a period of one month from the date of receiving the order in this regard and at the time of preparation of Kurra he shall observe the following principles-*

(a) the plot or plots shall be allotted to each party in proportionate to his share in the holding;

(b) the portion allotted to each party shall be as compact as possible;

(c) as far as possible no party shall be given all the inferior or all the superior classes of land;

(d) as far as possible existing fields shall not be split up;

(e) Plots which are in the separate possession of a tenure holder shall, as far as possible, be allotted to such tenure holder if they are not in access of his share;

(f) If the plot or any part thereof is of commercial value or is adjacent to road, abadi or any other land of commercial value, the same shall be allotted to each tenure holder proportionately and in the case of second condition the same shall be allotted proportionately adjacent to road, abadi or other land of commercial value; and

(g) If the co-tenure holders are in separate possession on the basis of mutual consent or family settlement, the Kurra shall, as far as possible, be fixed accordingly."

36. Accordingly, while preparing Kurra the Lekhpal shall first enquire about the existence of any family settlement, or in case the poor tenure holders are in separate possession on the basis of mutual consent, and if it is so, we shall prepare Kurras taking into consideration such family settlement in accordance with sub Clause (g) of Rule 109 (5) of the Rules, 2016.

37. In case it is found that there is no family settlement, but the tenure holders are in separate possession of the joint

property, then, in case they are not in excess of their share, prepare the *Kurras* on the basis of such possession as per sub Rule (e) of Rule 109 (5) of the Rules, 2016.

38. The Lekhpal, if he finds that the conditions contained in sub rules (g) and (e) are not applicable shall thereafter proceed to partition the property considering the conditions laid down in sub Rules (a), (b), (c), (d), and (f) of rule 109 (5) of the Rules, 2016.

39. This Court, upon considering various judgments of the Supreme Court as well as provisions of the Revenue Court Rules, is of the considered opinion that primacy has to be given to family settlement, which has been acted upon, and the co-tenure holders are in possession of their respective shares. In case there is no dispute between the parties with regard to the family settlement, the Kurras has to be prepared to take into consideration the family settlement, which is duly recognised in sub Rule (g) of Rule 109 (5) of the Rules, 2016.

40. Applying the aforementioned principle to the present case, it is evident that the trial court has appropriately taken into account the fact that the parties are in possession of their respective shares pursuant to a family settlement, under which the land was equally divided among the three sons of Razzaq. In addition, the court noted that three sale deeds had been executed between the parties, each describing the disputed land with precise boundaries. This clearly indicates that the parties were ad idem regarding the partition of the land by metes and bounds, and that there was no dispute concerning the validity of the family settlement, and therefore proceeded to partition the property in terms of the *Vahami Batwara*. It is relevant to note that even the plaintiff at no stage had assailed the validity or existence of the *Vahami Batwara*.

41. Furthermore, the plaintiff himself had purchased the share of his brother, Abdul Hassan, through a registered sale deed dated 19/09/1998. The property acquired was distinctly described with defined boundaries, further reinforcing the conclusion that each co-tenure holder is in possession of his respective share.

42. The 2nd appellate court, which is the Board of Revenue, had clearly failed to appreciate the fact of partition having already taken place on the basis of an oral family settlement. It further fell into error when they found a lacuna in the judgment of the trial court, having ignored the provisions of sub-Rules (a), (b), (c), (d), and (f) of Rule 109 (5) of the Rules, 2016. As we have already held, in case it is found that there has been a family settlement between the co-tenure holder, then primacy has to be given to such a settlement, the property ought to be partitioned on the basis of the same, in case the same has been arrived at bonafidely.

43. In light of the above, the writ petition is **allowed**, the judgment of the Board of Revenue dated 17/06/25 is set aside, and the judgments of the Sub Divisional Magistrate dated 31/08/2020 and the 1st appellate Court dated 21/12/2021 are affirmed.

(2025) 8 ILRA 760
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 13.08.2025

BEFORE

THE HON'BLE ALOK MATHUR, J.

Writ B No. 746 of 2025

Urmila Devi ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Ashok Kumar Singh, Savitri Arya, Surya Prakash

Counsel for the Respondents:
C.S.C., Mukesh Sharma, Satendra Nath Rai

Issue for Consideration

whether the petitioner, having divested herself of the entire disputed land through sale deed and gift deed, retained any locus standi to maintain the writ petition.

Headnotes

Property Law - U.P. Zamindari Abolition and Land Reforms Act, 1950 - Section 176 - Partition of Holding - Locus Standi - Alienation of Entire Interest - Effect on Continuation of Litigation - Right or Interest in Disputed Property - Once a petitioner has sold or otherwise divested all rights in the property in dispute, he becomes a stranger to the lis and cannot continue litigation in respect thereof - Right to Sue - Requirement of Subsisting Interest - Only a person having a direct or substantial interest in the subject matter can prosecute or defend proceedings.

Held: Once the petitioner has been divested all the rights vested in the property he would be stranger to the said dispute and accordingly will not have any right to litigate with regard to the said property - Had the petitioner retained even a fractional interest in the said property, such retention would have been adequate to sustain his participation in the proceedings - But, having divested himself of the entire property, the petitioner neither stands to gain nor to suffer any loss by the outcome of the litigation - The principle that a litigant must demonstrate a subsisting right in the subject matter of dispute to maintain a proceeding has been consistently affirmed by the Courts - Applying the above principles, petitioner lacked locus standi - writ petition not maintainable. (Paras 5,6,7,8,9,10,11,12) (E-7)

Case Law Cited

Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay, **(1992) 2 SCC 524;** *K. Venkatachalam v. A. Swamickan,* **(1999) 4 SCC 526;** *Ram Swarup v. Board of Revenue,* **AIR 1966 All 623;** *Usha Sinha v. Dina Ram & Ors.,* **(2008) 7 SCC 144;** *Ram Pyare Verma v. Third Addl. District Judge, Faizabad,* **2015 (128) RD 273**

List of Acts

Constitution of India; U.P. Zamindari Abolition and Land Reforms Act, 1950

List of Keywords

Divestment of property; locus standi; subsisting right; partition; co-sharers; sale deed; gift deed; disputed property; mutation; maintainability; Subsequent transferee; stranger

Case Arising From

Order dated 17.3.2020 passed by Sub Divisional Magistrate, Utraula, District Balrampur
Appellate order passed by the Additional Commissioner, Administration-II, Devi Patan Mandal, Gonda dated 20.11.2024
Order dated 04.07.2025, passed by the Board of Revenue

Appearances for Parties

Advs. for the Petitioner: Ashok Kumar Singh, Savitri Arya, Surya Prakash.
Advs. for the Respondents: C.S.C., Mukesh Sharma, Satendra Nath Rai.

(Delivered by Hon'ble Alok Mathur, J.)

1. Heard Shri Ashok Kumar Singh 'Pankaj', learned counsel for the petitioner, learned Standing Counsel for respondents no. 1 to 4, Shri Satendra Nath Rai, learned counsel for respondents no. 5 to 7 and Shri Mukesh Sharma, learned counsel for respondent no.8.

2. In view of the order proposed to be passed, notice to respondent no. 9 is dispensed with.

3. By means of present writ petition, the petitioner has challenged the order dated 17.3.2020 passed by Sub Divisional Magistrate, Utraula, District Balrampur as well as the appellate order passed by the Additional Commissioner, Administration-

II, Devi Patan Mandal, Gonda dated 20.11.2024 and order dated 04.07.2025, passed by the Board of Revenue, wherein all the three orders the matter has been decided against the petitioner.

4. The facts in brief, as stated in the writ petition, are that the petitioner had purchased the half of the land of Gata No. 280 Min. through a registered sale deed on 18.05.1991 from the recorded tenure holder, Prameshwari and his name was duly mutated in the revenue records. The opposite parties no. 5 to 7 are the successor in interest of the recorded tenure holder and undoubtedly are owners of the remaining portion of Gata No. 280 and in the aforesaid circumstances, the suit for partition for half of the land was filed before the Sub Divisional Magistrate, under Section 176 of U.P. Z.A. & L.R. Act. At the stage of preparation of Kura (share) objections were filed by the petitioner and a prayer was made to divide the land in such a manner that both the co-sharers have equal land of P.W.D. Road side, which is of higher value land. The Sub Divisional Magistrate decided the matter in favour of respondents no. 5 to 7 rejecting the prayer made by the petitioner. By means of order dated 17.3.2020 the petitioner thereafter, filed an application for recall of the order dated 17.3.2020, which was also rejected and thereafter filed an appeal before the Commissioner, Devi Patan Mandal, Gonda, which was also rejected on 20.11.2024. A Second Appeal was filed before the Board of Revenue, which has also been rejected by means of the impugned order dated 4.7.2025. All the aforesaid orders have been assailed in the present writ petition.

5. At the very outset learned counsel for the petitioner has submitted that the petitioner does not have any right or interest in the disputed property, in as much as, he has gifted 0.2160 hectare of land by means of a registered sale deed on 2.6.2021 and the remaining portion of the land i.e. 0.107 hectare by means of a sale deed on 19.7.2021. He submits that after divesting with the aforesaid portion of the land no further portion remains with the petitioner and accordingly he has no right to further litigate in the said matter after that he has divested himself in the said property.

6. Learned counsel for the petitioner has opposed the objection made by the respondents, he does not firstly dispute the said fact that the entire portion of land stands divested by sale deed dated 19.7.2021 and gift deed dated 2.6.2021 but submits that despite the aforesaid fact, the petitioner still has right to pursue his legal remedies. In support of his submission he has relied upon the judgment in the case of ***Ram Chander Vs. Deputy Director of Cosmopolitan,*** passed in Case Consolidation No. 47 of 2013. In the said judgment he has relied upon the judgment which was quoted therein in the case of ***Ram Pyare Verma Versus Third Additional District Judge, Faizabad,*** 2015 (128) RD 273; wherein he has held that impleadment of the purchaser who had bought the property during the pendency of the suit is not necessary. The purchaser during the pendency of the lis steps into the shoes of the original defendant/ judgement debtor. It is only the aforesaid judgment was quoted but the petitioner could not reduced the entire judgment even perusal of the aforesaid clearly indicates that the same does not apply in the case of the petitioner, in as much as, it is clearly held that the purchaser steps into the shoes of the original defendant and accordingly the proceedings if any, can be continued after

impleading the subsequent purchaser. He further relied upon another judgment in the case of ***Usha Sinha Vs. Dina Ram and others;*** (2008)7 Supreme Court Cases 144, which was the matter when the question before the Court was pertaining to an execution of a decree and which case also does not apply to the facts of the present case and it is clearly distinguishable.

7. Considering the objections raised by the respondents, it is noticed that once the petitioner has been divested all the rights vested in the property he would be stranger to the said dispute and accordingly will not have any right to litigate with regard to the said property. One of the basic consideration for any person in any litigation in his right or interest in the disputed property. Even if the right is removed still a person has a right to litigate even if he has contingent right he can contest and participate in the litigation which is distinguishable from a person who has absolutely no right in the property and initially had a right but had subsequently divested such a right. In the present case there is no dispute that the petitioner has sold of entire portion of the disputed property and does not have any right or interest in the said land. Even if a small portion had been retained by the petitioner then he would have sufficient interest to continue with the litigation but we are not persuaded by the argument of the petitioner that despite selling of and divesting the entire land, he would continue with the litigation.

8. In the present case, it is an admitted position that the petitioner has transferred the whole of his share in the disputed land and no portion thereof remains vested in him. Had the petitioner retained even a fractional interest in the said property, such retention would have been adequate to sustain his participation in the proceedings. But, having divested himself of the entire property, the petitioner neither stands to gain nor to suffer any loss by the outcome of the litigation. In such a situation, the only person competent to prosecute or defend the proceedings would be the transferee, or any person lawfully stepping into the shoes of the petitioner, unless it is shown that some residual right or interest continues to subsist in favour of the petitioner.

9. The principle that a litigant must demonstrate a subsisting right in the subject matter o dispute to maintain a proceeding has been consistently affirmed by the Courts. In ***Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay*** [(19920)2 SCC 524], the Hon'ble Supreme Court held that the primary test for determining locus standi is whether the person approaching the Court has a direct or substantial interest in the outcome of the litigation. Similarly, in ***K. Venkatachalam v. A Swamickan*** [(1999)4 SCC 526], it was emphasized that a person who becomes a stranger to the subject matter, having divested all interest therein, cannot be permitted to prosecute the proceedings. The Allahabad High Court in ***Ram Swarup v. Board of Revenue*** [AIR 1966 All 623] reiterated that once a party has completely alienated his interest in the disputed land, the proper course is for the transferee or assignee to be substituted in his place, as the transferor ceases to have any enforceable right.

10. Applying the above principles, it is clear that since the petitioner has sold away the entire disputed property, he lacks the necessary locus standi to continue with the present proceedings.

11. In the aforesaid circumstances, this Court is of the view that once the petitioner has sold of and divested upon the disputed property, he cannot persuade the court to decide any lis in the dispute and for this reason, this Court is of the considered view that the petitioner does not have any right to continue the litigation subsequent to divesting of the said land.

12. In the light of the above, I find that this petition is not maintainable at the behest of the petitioner and consequently ***dismissed***.

(2025) 8 ILRA 764
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 13.08.2025

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ B No. 8309 of 1978

Azimullah & Ors. ...Petitioners
Versus
Dost Mohammad & Ors. ...Respondents

Counsel for the Petitioners:
S.P. Misra, O.P. Misra, Ramesh Chandra, Shashi Prakash Misra

Counsel for the Respondents:
Ashok Tripathi, H.S.N. Tripathi, P.S. Tiwari, Prem Shanker Tripathi, S.C.

Issue for Consideration

Matter pertains to two objections under *S. 9-A (2)* of the *Uttar Pradesh Consolidation of Holdings Act, 1953*, and whether the *Deputy Director of Consolidation* exceeded jurisdiction under *S. 48* by disturbing concurrent findings of the *Consolidation Officer* and *Settlement Officer (Consolidation)* regarding ownership and co-tenancy rights.

Headnotes

Consolidation of Holdings Act, 1953 (U.P.) – Ss. 9-A (2), 48 – Jurisdiction of Deputy Director of Consolidation – Concurrent findings – Interference without finding of perversity – Held, unsustainable - Consent Decree (dated 5.10.1957) - Decree passed by a Judicial Officer cannot be set-aside by Deputy Director of Consolidation as well as no contrary interpretation could be taken - Finding based on assumption – beyond jurisdiction - Remand – Contradictory directions – One order granting 1/5th share and another remanding on sole tenancy claim – Held, legally not sustainable - Consolidation proceedings – Delay of 48 years – No remand warranted at belated stage – Court may decide finally to end prolonged litigation.

Held: Deputy Director of Consolidation has wide powers, but it is not expected by him to disturb finding of facts and concurrent findings recorded by Consolidation Officer and Settlement Officer of Consolidation, except when the findings are perverse i.e. not supported by evidence brought on record - *Consolidation Officer* and *Settlement Officer (Consolidation)* rightly relied on Compromise Decree dated 5.10.1957, declaring *Ali Hasan* as Bhumidhar - Deputy Director's finding rejecting the decree was based merely on assumption and without evidence - thus exceeding jurisdiction - Remand regarding *Smt. Dukhni's* inheritance claim was without basis, as concurrent finding that she failed to prove herself daughter of *Marchia* remained undisturbed - Directions were contradictory - granting 1/5th share to *Dost Mohammad* and simultaneously remanding for *Smt. Dukhni's* sole tenancy - hence unsustainable - After 48 years, remand not in interest of justice; concurrent findings restored - Petition allowed - Impugned order of Deputy Director of Consolidation set aside - legal consequence to follow. (Paras 22,23,25,26,27,28,29,30,31,32) (E-7)

Case Law Cited

Sheo Nand v. Deputy Director of Consolidation, Allahabad, **(2000) 3 SCC 103**

List of Acts

Uttar Pradesh Consolidation of Holdings Act, 1953; U.P. Zamindari Abolition and Land Reforms Act; U.P. Panchayat Raj (Maintenance of Family Register) Rules, 1976.

List of Keywords

Consolidation Officer - Settlement Officer Consolidation - Deputy Director of Consolidation -Consent Decree – Bhumidhar - Ancestral land – Inheritance – Remand - Jurisdiction exceeded - Concurrent findings - Perverse finding - De Novo - Sole tenancy.

Case Arising From

Appeal against orders dated 23.1.1976 and 8.3.1976 passed by Consolidation Officer and Settlement Officer Consolidation, later revision orders dated 22.8.1978 by Deputy Director of Consolidation, Deoria.

Appearances for Parties

Advs. for the Petitioners:

Shri S.P. Misra, O.P. Misra, Ramesh Chandra, Shashi Prakash Misra

Advs. for the Respondents:

Shri Ashok Tripathi, H.S.N. Tripathi, P.S. Tiwari, Prem Shanker Tripathi, S.C.

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. Heard Shri O.P. Misra, learned counsel for the petitioners and Shri Anand Kumar Tripathi, learned counsel for the respondents.

2. Present case is arising out of two objections filed by Alibas, Dost Mohammad, Neur, Rasool sons of Idu and Smt. Dukhni, daughter of Bullah @ Billar under Section 9-A (2) of Uttar Pradesh Consolidation of Holdings Act, 1953 (hereinafter referred to as "Act, of 1953") in regard to Khata No.142 of Village-Kanchanpur, District-Deoria.

3. First set of objection filed by 4 brothers was based on a claim of co-tenancy being on ancestral property, whereas second set of claim was based on sole tenancy.

4. The Consolidation Officer, Deoria as well as Settlement Officer Consolidation rejected both objections vide orders dated 23.1.1976 and 8.3.1976 respectively and held that land in suit would remain in the name of legal heirs of deceased Ali Hasan and his three sons i.e. original petitioners herein that they shall have undivided share of 1/3rd part of land in suit.

5. Objections filed by Dost Mohammad and others was rejected on a ground that land in suit was never remained an ancestral land and held that Ali Raza who was recorded in Khata No.1359. (Original tenure) has compromised with Ali Hasan father of petitioners herein in a Suit filed under Section 229-B of Uttar Pradesh Zamindari Abolition and Land Reforms Act and a (Consent Decree) was prepared on 5.10.1957 and Ali Hasan was declared as Bhumidhar.

6. The objection of second set i.e. of Smt. Dukhni was rejected on ground that she failed to prove that she was daughter of deceased Marchia and she was not able to prove that she was either a Sirdar or a co-tenure. Relevant part of both the orders are reproduced hereinafter:

<u>Order dated 23.7.1976 passed by the Consolidation Officer.</u>

"इस आपत्ति को श्री दोस्त मोहम्मद आदि पुत्रगण ईदू निवासी ग्रा० कंचनपुर ने धारा 9क (2) चकबन्दी अधिनियम के अन्तर्गत प्रस्तुत किया है। आपत्ति है खतौनी खाता 142 उनके तथा प्रतिवादीगण के पूर्वजों द्वारा सम्मिलितावस्था में उपार्जित किए गए है अतः वादीगण का नाम उक्त खातों मे बतौर सहखातेदार अंकित किया जाय।

वाद निस्तारण हेतु निम्नलिखित वाद बिन्दु बनाए गए है।

1. क्या प्रतिवादीगण विवादित भूमि के तनहा सीरदार है?

2. क्या वादीगण नेऊर अलीवास रसूल दोस्तमोहम्मद प्रतिवादीगण के साथ सहखातेदार है तथा अध्यासित है?

3. पक्षों का अंश विवादित भूमि में क्या है?

4. क्या सुलहनामा नेऊर अलीवास रसूल दिनांक 20.8.75 अवैध व बेअसर है?

5. आधा पक्षों के पूर्वजो के बीच 70-80 वर्ष पूर्व विभाजन हो चुका था?

6. विवादित खाता में पक्षों का अंश क्या है?

उभयपक्ष के विद्वान अधिवक्तागण के तर्क सुने गए तथा पत्रावली पर उपलब्ध साक्ष्य एवं प्रमाण का अवलोकन किया गया।

निर्णय

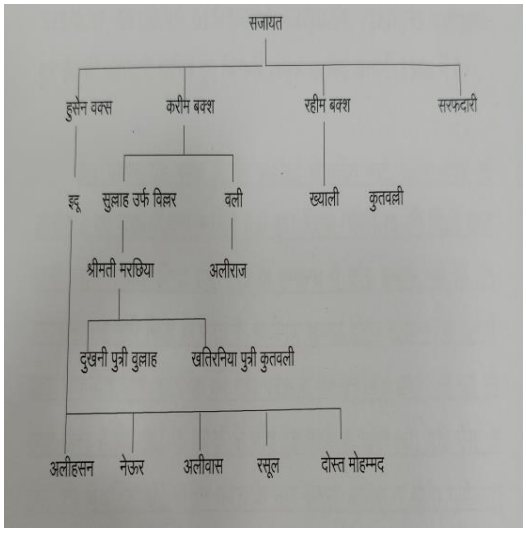
वाद बिन्दु सं० 4:-

दि० 20.8.75 को नेऊर अलीवास रसूल अपनी सहखातेदारी की आपत्ति खारिज करने के लिए स्वीकार पत्र प्रस्तुत किया है किन्तु वह अप्रमाणित है अतः अवैध है वाद बिन्दु सं० 4 सकारात्मक रूप से निर्णय किया जाता है।

वाद बिन्दु सं०: 1, 2, 5:-

यह वाद बिन्दु 1, 2, 5 एक दूसरे से सम्बन्धित हैं अतः एक साथ निर्णय किया जाना न्यायोचित है।

वादीगण ने प्रतिवादीगण से अपना सम्बन्ध सिद्ध करने हेतु निम्न वंश वृक्ष प्रस्तुत किया है।



दोस्त मोहम्मद ने अपनी मौखिक साक्ष्य में कहा है कि विवादित गाटे सुजायत के द्वारा उपार्जित भूमि है उनका यह बयान उन्ही द्वारा प्रस्तुत लिखित प्रमाण द्वारा गलत सिद्ध होता है। वादीगण ने यह कहीं नही कहा है कि करीम वक्श का नाम 1292फ0 में प्रतिनिधि स्वरूप अंकित था। दोस्त मोहम्मद ने यह कहा है कि हुसेन वक्श व करीम वक्श, रहीम वक्श सरफल्ली के जीवनकाल मे विभाजन नहीं हुआ था बल्कि उनकी मृत्यु के वाद उनके लड़कों के जीवन में बंटवारा हुआ। वादी दोस्त मोहम्मद के अनुसार उनके 5 भाईयों के बीच भी बंटवारा हो गया है। लेकिन उसे मालूम नहीं है कि बंटवारा मे उसे क्या मिला वादी दोस्त मोहम्मद का साक्षी विश्वनाथ भी पक्षों के परिवार के सम्बन्ध में कुछ नही जानता है।

प्रतिवादीगण ने सन् 1359फ0 की खतौनी न्यायिक अधिकारी देवरिया के न्यायालय मे हुए वाद सं0 49 सन् 1957 में हुए संधि पत्र की प्रतिलिपि तथा सन् 1365फ0 की खतौनी उद्धरण प्रस्तुत किया है। सन् 1359फ0 के खतौनी में गाटा सं0 611/25, 515/0.37, 591/0.85, 615/3/0.24, 627/0.54, 718/0.39, अलीतंज पुत्र वली मोहंम्मद के नाम जमन 7 मुदत्त 23 साल व 14 साल अंकित है। न्यायिक अधिकारी के न्यायालय के वाद सं० 49/1957 अली हसन बनाम अली राज मुकदमा दि० 15-10-57 को सन्धि पत्र के आधार पर डिक्री पारित हुई जिसके अनुसार गाटा सं0 611/.25, 515/0.37, 591/0.85, 615/3/0.24, 627/0.54, 718/0.39 अलीहसन पुत्र ईदू की सीरदारी घोषित हुए जिसकी अमल दरामद खतौनी 1365 में है।

इस प्रकार यह स्पष्ट है कि उपरोक्त विवादित गाटे करीम वक्श से अलीराज को उत्तराधिकार स्वरूप प्राप्त हुए। जिन्हे न्यायालय की डिक्री द्वारा अली हसन ने प्राप्त किया शेष गाटों के सम्बन्ध में कोई प्रमाण नहीं है। इन प्रमाण से यह नही सिद्ध हो पाता है। वादीगण अथवा दोस्त मोहम्मद के पूर्वजों द्वारा विवादित भूमि उपार्जित की गई। पत्रावली पर उपलब्ध प्रमाण से यह भी स्पष्ट होता है कि पक्षों के पूर्वजों के बीच विभाजन हो चुका था। यदि ऐसा न होता तो विवादित गाटे करीम वक्श के नाम तनहा अंकित न होते। पहिचाना जाय कि विवादित गाटे करीम वक्श के नाम प्रतिनिधि स्वरूप अंकित थे। तब भी सन् 1957 के डिक्री के आधार पर यह कहा जा सकता है। कि विवादित गाटों की स्थिति बदल गई। चूंकि दोस्त मोहम्मद ने स्वयं स्वीकार किया है कि वह अली हुसेन से अलग हो गया था इसलिए अली हसन द्वारा उपार्जित सम्पत्ति मे उसे कोई अंश नही मिल सकता।

उपरोक्त विवेचनाओ के आधार पर मैं इस निष्कर्ष पर पहुंचता हूं कि प्रतिवादीगण विवादित खाता सं० 142 के तनहा सीरदार है वादीगण उसके सहखातेदार नही हैं तथा पक्षों के पूर्वजों के बीच बंटवारा हो चुका था। वाद बिन्दु सं० 1, 2, 5 का निर्णय इस प्रकार किया जाता है।

वाद बिन्दु सं० 3, 6:-

दोनों वाद बिन्दु एक ही है वाद बिन्दु सं० 1, 2, 5 के निर्णय से यह स्पष्ट हो चुका है कि वादीगण खतौनी खाता 142 के सहसीरदार नही है इसलिए उसमें उनका कोई अंश नही है। प्रतिवादी करमतुल्ला ने एक प्रार्थना पत्र प्रस्तुत किया है कि उसके भाईयो के बीच विभाजन न किया जाय किन्तु उक्त प्रार्थना पत्र पर सभी भाईयों के हस्ताक्षर नहीं है। अतः विभाजन आवश्यक है। उपरोक्त विवेचन से स्पष्ट है। प्रतिवादीगण ने विवादित भूमि उत्तराधिकार स्वरूप अपने पिता अली हुसेन से प्राप्त किया है। अतः अजीमुल्लाहद्व करमुल्लाह तैमुल्लाह प्रत्येक 1/3 अंश खाता 142 में है वाद विन्दु सं० 3, 6 का निर्णय इस प्रकार किया जाता है।

आदेश

खतौनी खाता 142 से अलीहसन मृतक का नाम खारिज करके " अजीमुल्लाह, तैमुल्लाह, करमुल्लाह पुत्रगण अलीहसन का नाम उत्तराधिकारी के रूप में अंकित हो। वादीगण दोस्त मोहम्मद नेऊर, अलिवास, रसूल पुत्रगण ईदू की आपत्ति बावत सहखातेदारी खाता 142 निरस्त हो। पक्षों का अंश खाता 142 आधार वर्ष कंचनपुर में निम्न प्रकार है। किन्तु वे विभाजन नही चाहते अतः खाता 142 पूर्ववत संयुक्त रहे।

अजीमुल्लाह 1/3 भाग

करमतुल्लाह 1/3 भाग

तैमुल्लाह 1/3 भाग

पक्ष सूचित हो। पत्रावली वाद अमल दरामद दाखिल दफ्तर हो।"

Order dated 8.3.1976 passed by the Consolidation Officer.

"प्रस्तुत वाद में श्रीमती दुखनी की आपत्ति है कि खाता सं० 142 की भूमि हमारे पिता वुल्लाह उर्फ विल्लर के सगा भाई ओली तथा मु० मरछिया की उपार्जित है। जिसपर कब्जा दखल उपरोक्त व्यक्तियों का था वाद वफात ओली उनके लड़के अलिराज तथा मु० मरदिया काबिज दखील है। अलिराज के जिन्दगी ही में मु० मरछिया माता वादिनी भी विवादित भूमि में खेती करती थी। वाद वफात्त मरछिया हम वादिनी विवादित भूमि पर काबिज दखील हुई तबसे लगातार आज तक बिना रोक टोक काबिज दखील है।

वादिनी अलिराज तथा 'मरछिया की एक मात्र वारिस हुई अतः विवादित खाते से प्रतिवादीगण का नाम खारिज करके हमे वादिनी का नाम बतौर वारिस सीरदार घोषित किया जावे। अजीमुल्लाह आदि ने प्रत्युत्तर प्रस्तुत करके कहा है कि आपत्ति वादिनी निरस्त योग्य है। वादिनी हरगिज मु० मरछिया की लड़की नहीं है और न मु० मरछिया वुल्ला उर्फ विल्लर की औरत थी। मु० मरछिया कुतवल्ली की औरत थी और उसकी एक मात्र लड़की श्रीमती खातूनियां है जिसकी शादी रसूल मोहम्मद सा० कन्चनपुर मे हुई है। विवादित नम्बरान पर मु० मरदिया का या उसके मृत्यु के बाद वादिनी का कभी कब्जा दखल नहीं हुआ मु० मरदिया अपनी सम्पत्ति अपनी लड़की के लड़के अर्थात अपने नातियों को तूफानी, सुमानी को अपने जीवन काल में ही देकर सम्बन्ध विच्छेद कर लिया। अतएव आपत्ति वादिनी निरस्त किया जाय।

सं०च०अ० के प्रा०पत्र से विदित है कि खाता सं० 142 मे अलीहुसेन पुत्र ईदू के नाम अंकित है।

वाद एवं इन्द्राज के आधार पर निम्न वाद प्रश्न बनाए गए।

1. क्या श्रीमती दुखनी पुत्री वुल्लाह उर्फ विल्लर खाता सं० 142 में बतौर सहखातेदार स्वरूप अध्यासित है?

2. क्या श्रीमती दुखनी पुत्री वुल्लाह उर्फ विल्लर खाता सं० 142 मे बतौर सहखातेदार स्वरूप अध्यासित है?

3. विवादित खाते में पक्षों का अंश क्या है?

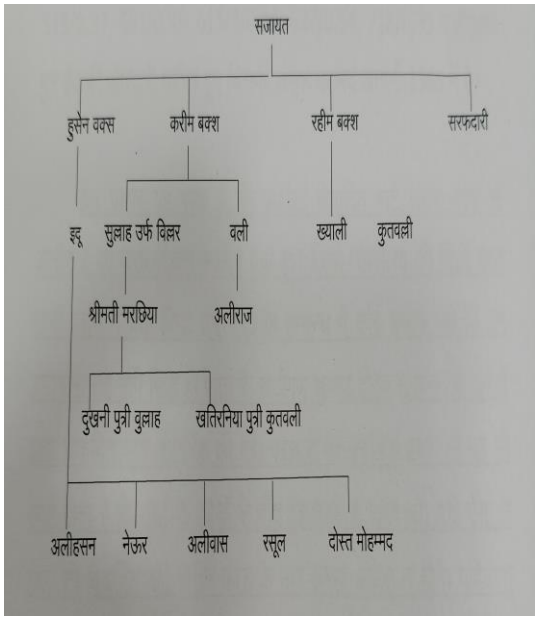
उभयपक्ष के विद्वान अधिवक्तागण का तर्क सुना गया और पत्रावली में संलग्न साक्ष्यों का विधिवत अवलोकन किया गया।

वादिनी ने अपने वाद के पुष्टि में स्वयं तथा फरजन गवाह का बयान लेखबद्ध कराया और प्रतिलिपि खतौनी जिल्द बन्दोबस्त बावत सन् 1324फ0 प्रतिलिपि बयान करामुल्लाह प्रस्तुत किया।

प्रतिवादीगण ने अपने वाद के समर्थन में प्रतिलिपि खतौनी वावत सन् 1376फ0, प्रतिलिपि आदेश एस०के० सिंह एस०डी०ओ०, देवरिया, प्रतिलिपि खतौनी वावत सन् 1365फ० तथा प्रतिलिपि खतौनी 1359फ0 प्रस्तुत किया और कौलदान तथा करामुल्लाह का बयान कराया।

वाद बिन्दु सं० 1 लगायत 3 एक दूसरे से सम्बन्धित है अतएव निस्तारण एक साथ किया गया।

वादिनी के पक्ष से निम्नलिखित वंश वृक्ष प्रस्तुत किया गया।



उपरोक्त वंश वृक्ष के आधार पर तर्क प्रस्तुत किया गया कि मु० मरछिया की वादिनी लड़की है और भूमि विवादी जिल्द वन्दोबस्त सन् 1324फ0 में बली मोहम्मद पुत्र अलीवक्श तथा मु० मरछिया जौजे विल्लर के नाम अंकित था परन्तु सन् 1359फ0 में अलिराज के नाम अंकित है जैसा कि संलग्न प्रतिलिपि खतौनी वावत सन् 1324फ0 और 1359फ0 से विदित है। प्रतिलिपि खतौनी 1365फ0 मे वर्तमान अमलदरामद से विदित है कि विवादित गाटों से अलिराज का नाम खारिज होकर अलिहुसेन के नाम अंकित किए गए हैं। परन्तु इस नम्बरान में कोई बटे अथवा मिलजुमला गाटे नहीं है अतएवं स्पष्ट है कि मु० मरछिया का भी अंश विवादित गाटों में वर्तमान है। इससे मु० मरछिया का अंश वादिनी को अवश्य मिलना चाहिए क्योंकि मु० मरछिया की लड़की वादिनी है।

विरोध मे कहा गया कि श्रीमती दुखनी मु० मरछिया की लड़की नहीं है बल्कि खातुनीस मु० मरछिया की लड़की है। भूमि विवादी पर दुखनी वादिनी का वेश मात्र भी कब्जा नही है और न श्रीमती दुखनी से भूमि विवादी सम्बन्ध है।

उपरोक्त तर्क के आधार पर मु० मरछिया की लड़की वादिनी किंचित साक्ष्यों द्वारा प्रमाणित नही है। क्योंकि वादिनी ने कोई ऐसा सटीक प्रमाण नही प्रस्तुत किया जिससे विदित होता है कि वादिनी मु० मरछिया की लड़की है बल्कि खातुमनिसा मु० मरछिया की लड़की प्रमाणित जो अपना स्वत्व प्रतिवादीगण के पक्ष में छोड़ चुकी है। फलस्वरूप श्रीमती दुखनी न तो सीरदार है और न सहखातेदार ही है वाद सं० 1 व 2 नाकारात्मक सिद्ध है। अंश विभाजनं का कोई प्रश्न ही नहीं उठता है।

आदेश

अतः आदेश हुआ कि खाता सं० 142 के सम्बन्ध में वादिनी श्रीमती दुखनी की आपत्ति निरस्त हो इन्द्राज प्रतिवादीगण के पक्ष मे पूर्ववत रहे। पश्चात अमलदरामद पत्रावली दाखिल दफ्तर हो।"

7. Both the orders dated 23.1.1976 and 8.3.1976 were challenged by way of filing two appeals, which were rejected by a common order dated 30.11.1976 passed by Settlement Officer of Consolidation, upholding the reasons given by the Consolidation Officer.

8. It was held that Ali Hasan became bhumidhar on basis of a Consent Decree dated 05.10.1957, therefore, claim of Dost Mohammad and other co-tenure holders was rightly rejected.

9. The appeal filed by Smt. Dukhni (respondent/since deceased) was rejected by upholding a finding returned by Consolidation Officer that she was not able to prove that she was daughter of deceased Marchia. Relevant part of the said order passed by Settlement Officer of Consolidation is mentioned hereinafter :-

"यह तथ्य निर्विवाद रूप से सभी पक्षों को स्वीकार है कि विवादित भूमि के पूर्व कृषक अलीयास के जिनका नाम 1359 फ० में अंकित है। इसके पहले 1324में पुत्र करीब बक्स तथा मु० मरछिया बेबा बिल्लर का नाम अंकित है। 1365 फ० खतौनी में एक आदेश अंकित है जिसमें यह आदेश हुआ कि विवादित भूमि पर से नाम अलीराज का खारिज होकर अलीहसन का अंकित किया जाए। यह आदेश मु० नं० 49/निर्णित 5-10-57 अन्तर्गत धारा 229/234/ज० उ० अ० का है। जिसमें अलीहसन ने अलीराज के विरूद्ध दावा दायर किया था। वह समझौते की डिक्री के आधार पर अली हसन का नाम खाते मेंे अंकित हो गया दोस्त मोहम्मद ने उसको फर्जी बताया है किन्तु उसके विरूद्ध कोई कार्यवाही उसके खारिजे के लिए ऐसा पत्रावली से सिद्ध नहीं होता है। अतः दोस्त मोहम्मद का सह-खातेदारी का वाद विवादित भूमि में सिद्ध नहीं होता।

जहाँ तक दुखनी के दावे का प्रश्न है उस सम्बन्ध में मुझे यह कहना है कि मरछिया का नाम 1324 फ० में खाते में अंकित है तथा इसके बाद1359 फ० में अली राज का तनहा नाम अंकित है जिससे यह स्पष्ट होता है कि मरछिया की मृत्यु 1324 व 1359 फ० के बीच किसी समय हुई। जहाँ तक मु० दुखनी का मु० मरछिया की पुत्री होने का सम्बन्ध है। इस सम्बन्ध में दुखनी ने कोई उचित दावा प्रस्तुत नहीं किया और अब मु० मरछिया की मृत्यु को कम से कम 50 साल हो गए हैं, किन्तु दुखनी ने आज तक कोई प्रार्थना पत्र अपने नाम के दाखिल खारिज के सम्बन्ध में नहीं दिया। इससे भी उसका व्यक्तित्व संदिग्ध हो जाता है। दूसरी बात यह है कि यू०पी० टेनेन्सी एक्ट या आगरा टेनेन्सी एक्ट 1326 में मु० मरछिया की वारिस हो सकती थी।

आदेश

उपरोक्त परिस्थितियों से मैं समझता हूँ कि मु० मरछिया तथा दोस्त मुहम्मद का कोई स्वामित्व विवादित भूमि के सम्बन्ध में नहीं होता है।

अतः दोनों अपीलें निरस्त की जाती हैं। विवादित भूमि के सम्बन्ध में चकबन्दी अधिकारी के आदेश यथास्थिति कायम होंगे।"

10. Aforesaid order was thereafter challenged by filing two revision petitions before Deputy Director of Consolidation, Deoria, who vide order dated 22.08.1978, allowed both revision petitions and the orders passed by the Consolidation Officer and the Settlement Officer Consolidation in regard to objection and appeal filed by Dost Mohd. were set aside and it was held that he will be entitled to 1/5th share of the land in suit. By the same order, Revision Petition filed by Smt. Dukhni (since deceased) was disposed of and matter was remanded to the Consolidation Officer to decide her objection afresh by framing an issue on inheritance. Relevant part thereof is reproduced hereinafter :-

"बहस सुनी गयी तथा पत्रावली का अवलोकन किया गया।

निगरानीकर्ता दोस्त मुहम्मद पुत्र इद्दु ने अजीमुल्लाह आदि के साथ अपने को सहखातिदार बताया है और उसका यह तर्क है कि यह भूमि उसके और प्रतिपक्षी के पूर्वजों द्वारा सम्मिलित रूप से अर्जित की गयी थी। वंशवृक्ष उभयपक्ष को इस हद तक स्वीकार है कि हुसेन बक्श के पुत्र इद्दु और इद्दु के पांच पुत्र अलीहसन, नेउर, अली बास, रसूल और दोस्त मुहम्मद है और अली हुसेन के पुत्र प्रतिपक्षीगण हैं। विवादित भूमि पर 1350 प्र० में अलीराज पुत्रबली मोहम्मद का नाम जमन-7 में दर्ज है और असिसटेन्ट क्लेक्टर के आदेशानुसार सुलहनामें द्वारा उसके नाम के साथ अली हुसैन का नाम अंकित होने का आदेश दिनांक 15-10-57 को हुआ। यह निर्विवाद है कि दोस्त मोहम्मद, अली हसन के भाई है और अली राज की भूमि पर अली हसन का तनहा अधिवासी से सीर-दार

अंकित होने का कोई आधार नहीं प्रतीत होता। अलीहसन का व नाम इसके पहले किसी कागजात में अंकित नहीं है और यदि अलीराज अलीहसन का कब्जा मानते हैं तो यह स्पष्ट है कि उसके अन्य भाईयों का भी कब्जा उक्त भूमि पर समान रूप से होना और अंकित किया जाना चाहिए, क्योंकि यह भूमि जमन-7 में अंकित है और अली हसन के तनहा कब्जे का कोई आधार नहीं है।

जहाँ तक श्री मती दुखनी का निगरानी का प्रश्न है प्रति-पक्षों ने इस बात को इन्कार किया है कि श्री मती दुखनी, मरछिया की लड़की है। निगरानीकर्ता श्रीमती दुखनी ने ग्राम कन्चनपुर गाँवसभा के परिवार रजिस्टर की नकल दाखिल की है जिसमें यह मरछिया की लड़की मु० खतुनियाँ जोकि रसूल लिखी है। विद्वान सहायक बन्दोबस्त अधिकारी ने अपने निर्णय में यह लिखा है कि जूंकि मरछिया की मृत्यु के बाद मु० दुखनी ने कोई प्रार्थना पत्र नहीं दिया जिसमें काफी समय हो चुका है, अतः उसके वारिस होने और भूमि पर उसका अधिकारी होने का कोई औचित्य नहीं है परन्तु जैसा कि चकबन्दी अधिकारी ने अपने निर्णय में व्यक्त किया है कि यदि दुखनी का मु० मरछिया की लडड़की होमा सिद्ध हो जाय तो उसको उसके अधिकार से वन्चित नहीं किया जा सकता। केवल अलीराज द्वारा अली हसन के हक में बयान देने से उसका अधिकार समाप्त नहीं हो सकता परन्तु जैसा कि अधिनस्थ न्यायालय ने अपने निर्णय में व्यक्त किया है कि मु० दुखनी ने इस सम्बन्ध में जो प्रमाण प्रस्तुत किया है यह पर्याप्त नहीं है और इसी आधार पर उन्होंने मु० दुखनी का अधिकार नहीं माना है जब यह बात निश्चित है कि मरछिया की एक पुत्री थी तो यह निश्चित करना आवश्यक है कि वह पुत्री दुखनी है अथवा अन्य कोई और तदनुसार इसका निर्णय किया जाय। इस सम्बन्ध में वह उपर्युक्त प्रतीत होता है कि इस पर पक्षों को साक्ष्य प्रस्तुत करने का अवसर दिया जाय। और मु० मरछिया की वरासत के सम्बन्ध में निर्णय किया जाय।

अतः दोस्त मुहम्मद को निगरानी स्वीकार की जाती है, अधीनस्थ न्यायालय के आदेश निरस्त किये जाते हैं और दोस्त मुहम्मद पुत्र इद्दु को विवादित भूमि में 1/5 हिस्सा दिया जाता है।

इस 1/5 भाग पर निगरानीकर्ता, दोस्त मुहम्मद का नाम अंकित किया जाये।

श्री मती दुखनी की निगरानी स्वीकार कर पत्रावली चकबन्दी अधिकारी की इस आशय से प्रत्यावर्तित की जाती है कि उसकी वरासत के सम्बन्ध में वाद बिन्दु बनाकर वाद का निस्तारण नियमानुसार करें।

11. Aforesaid order was challenged before this Court by way of filing present writ petition in the year 1978. This Court vide order dated 23.09.1978 granted stay. During pendency of this writ petition, both respondents i.e. Dost Mohammad and Smt. Dukhni died and their respective legal heirs were brought on record. This writ petition was dismissed as infructuous on 19.11.2020 and restored by an order dated 25.11.2022.

12. Recently petitioner No.1, Azimullah also died and his legal heirs were also brought on record and finally this writ petition was heard on 06.08.2025 i.e. about 47 years.

13. Learned counsel for petitioners has vehemently argued that a well reasoned judgment passed by the Consolidation Officer and the Settlement Officer Consolidation was erroneously interfered by Deputy Director of Consolidation, being beyond jurisdiction as provided under Section 48 of the Act of 1953.

14. Learned counsel for petitioners referred judgments passed by Settlement Officer of Consolidation and submitted that Deputy Director of Consolidation has made out a fresh case and conducted proceedings as *De Novo* only on basis of presumption. The effect of compromise decree was wrongly rejected and 1/5th share of land in dispute was also wrongly granted to Dost Mohammad (since deceased/respondent).

15. Learned counsel for the petitioners submitted that despite aforesaid direction, claim of Smt. Dukhni (since deceased/ respondent) was remitted for fresh consideration with a direction to frame issue of her inheritence, without considering that she has claimed sole tenancy over the land in suit and in an event if Consolidation Officer on remand

grants relief to Smt. Dukhni (since deceased/respondent), it would be contrary to decision of the Deputy Director of Consolidation since 1/5th share has already been granted to Dost Mohammad (since deceased/respondent).

16. Learned counsel for the petitioner further submitted that it was a fit case to remand the matter to Deputy Director of Consolidation to decide the revision petition afresh within the scope of Section 48 of Act of 1953 and he suggested some issues for consideration.

17. Learned counsel for the petitioners also submitted that compromise decree passed on 5.10.1957 was never challenged though the consolidation proceedings commenced after almost two decades.

18. Learned counsel for the petitioners submitted that very basis of the claim of Smt. Dukhni (since deceased respondent) was based on a Family Register, however it was not maintained under the provisions of The U.P. Panchayat Raj (Maintenance of Family Register) Rules, 1976, therefore, cannot be relied upon.

19. Learned counsel for the petitioners submitted that Deputy Director of Consolidation has not given a specific finding that land in question was an ancestral land, as such the finding returned that Dost Mohammad, (since deceased respondent) and his brothers have a right over the land in dispute was perverse.

20. Per contra, learned counsel for the respondents submitted that compromise decree was a collusive decree and on basis of it, father of the petitioner Ali Hasan could not be considered that he was in possession of land in suit as an 'Adivasi' and became Sirdar.

21. Learned counsel for the respondents stated that objection of Smt. Dukhni (since deceased/respondent) was wrongly rejected by Consolidation Officer and Settlement Officer of Consolidation and it was a correct decision of Deputy Director of Consolidation to remit it to the Consolidation Officer for a decision of inheritence of Smt.Dukhni. However, he is not able to dispute that since Deputy Director of Consolidation has passed a specific order directing 1/5th share of land in suit to Dost Mohammad (since deceased/respondent), no relief could be granted to Smt. Dukhni (since deceased/ respondent) even if the matter is remanded to the Consolidation Officer since it would be contrary to order of Deputy Director of Consolidation as Smt. Dukhni (since deceased/respondent) has claimed sole tenancy.

22. It is well settled that Deputy Director of Consolidation has wide powers, but it is not expected by him to disturb finding of facts and concurrent findings recorded by Consolidation Officer and Settlement Officer of Consolidation, except when the findings are perverse i.e. not supported by evidence brought on record. **(See Sheo Nand Vs. Deputy Director of Consolidation, Allahabad, (2000) 3 SCC 103**.

23. As referred above, the Consolidation Officer and the Settlement Officer of Consolidation have accepted and relied on a Compromise Decree dated 5.10.1957, whereby Ali Hasan was declared a Bhumidhar, however, Deputy Director of Consolidation has disbelieved it

that "दोस्त मोहम्मद, अली हसन के भाई है और अली राज की भूमि पर अली हसन का तनहा आदिवासी से सरदार अंकित होने का कोई आधार प्रतीत नहीं होता है। अली हसन का नाम इससे पहले किसी कागज़ात में अंकित नहीं"

24. Aforesaid observation itself would not be sufficient to dispute the Compromise Decree specially when none of the objectors has approached to competent court to set-aside it for almost two decades before the Consolidation Proceedings were commenced and objections were filed.

25. A decree passed by a Judicial Officer cannot be set-aside by Deputy Director of Consolidation as well as no contrary interpretation could be taken.

26. Finding returned by Deputy Director of Consolidation was only based on an assumption and it was not a case that findings which were disturbed were perverse, therefore, it is a case where Deputy Director of Consolidation has exceeded his jurisdiction and interfered in the concurrent findings of two authorities without giving a finding that it was perverse and being not based on any evidence. In regard to findings returned in the revision petition filed by Smt. Dukhni (since deceased/respondent) were also passed without interfering with the concurrent finding that Smt. Dukhni (since deceased/respondent) was failed to prove that she was daughter of Marchia.

27. Revision petition was allowed and matter was remanded to authority concerned to frame a issue in respect of inheritence of Smt. Dukhni (since deceased/respondent) and to decide it afresh therefore, order of remand was without any reason and is accordingly unsustainable. The finding returned by Consolidation Officer about daughter of deceased Marchia was also not disturbed.

28. Court also finds substance in argument of learned counsel for the petitioner that since on one hand the Deputy Director of Consolidation has granted 1/5th share to Dost Mohammad and on the other hand has remanded matter to consider claim of Smt. Dukhni (since deceased/respondent)without appreciating and considering that Smt. Dukhni (since deceased/respondent) had claimed sole tenancy over the land in dispute, therefore, directions being contradictory, being also a ground for causing interference.

29. In the aforesaid circumstances, Court is of the view that order passed by the Deputy Director of Consolidation is legally not sustainable.

30. Now the question left before this Court for consideration that in such circumstances wherein present writ petition is being decided after 48 years, whether it would be reasonable to remand it to Deputy Director of Consolidation to pass a fresh order.

31. Court has considered the rival submissions on this issue also and is of the opinion that at this belated stage, it would not be in the interest of justice to remand the matter to the Deputy Director of Consolidation for fresh consideration. The Court is of the view that concurrent finding returned by the Consolidation Officer and Settlement Officer of Consolidation were based on documents and based on a Compromise Decree as well as that Smt. Dukhni (since deceased/respondent) was not able to show any document that she was the daughter of deceased Marchia, therefore, there was no reason for the Deputy Director of Consolidation to interfere with it, accordingly, Court is of the view that matter may not be remanded back.

32. In the aforesaid circumstances, present writ petition succeeds and is allowed. Impugned order is set-aside and its legal consequence shall follow.

(2025) 8 ILRA 773
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 25.08.2025

BEFORE

THE HON'BLE ALOK MATHUR, J.

Writ B No. 31127 of 2019

Sukh Ram & Ors. ...Petitioners
Versus
U.P. Board Of Revenue Lko. & Ors. ...Respondents

Counsel for the Petitioners:
Hemant Kumar Mishra, Arti Ganguly, Pankaj Kumar Singh, Ravi Prakash

Counsel for the Respondents:
C.S.C., Ishwar Dutt Shukla, Sanjeev Dwivedi

Issue for Consideration

The dispute falls for consideration with respect to succession of the property of one Govinde S/o Daili and whether Smt. Hardei, widow of Govinde, had remarried after his death, thereby ceasing her right to succeed under S. 172 of the U.P. Zamindari Abolition and Land Reforms Act, 1950.

Headnotes

Land Revenue Act - S. 34 - Mutation - effect of remarriage of widow - Whether widow remarried after death of husband - burden of proof on party alleging remarriage - finding must rest on cogent and reliable evidence - The U.P. Zamindari Abolition and Land Reforms Act, 1950 - S. 172 - Succession by widow - ceases on remarriage - remarriage must be proved by reliable evidence establishing performance of ceremonies under Hindu Marriage Act - Question of marriage has to be established on facts even in absence of documentary evidence - Hindu Marriage Act, 1955, SS. 7 & 8 - Mere oral assertion or village hearsay insufficient - ceremonies must be proved - registration cannot confer legitimacy without solemnization - Evidence - proof of marriage - Hearsay statements of Lekhpal and interested witnesses unreliable - finding of remarriage without proof perverse - interference under Article 226 - Justified.

Held: Oral statements and hearsay evidence are insufficient to establish remarriage under S. 7 of the Hindu Marriage Act - In the absence of any documentary evidence, marriage certificate, or credible witness to the alleged remarriage, the conclusion of the revenue courts is perverse and arbitrary - The findings regarding Smt. Hardei's alleged remarriage are ex facie perverse - There is no proof of the essential ceremonies, of marriage being performed nor has any custom been established - Courts below relied on vague assertions, stray documents, and revenue entries, while ignoring contemporaneous records where Smt. Hardei continued to describe herself as a widow - No finding of fact with regard to the marriage of Hardei could have been returned by the Tehsildar - Burden to prove remarriage lay on private respondents, which they failed to discharge - The findings of the Tehsildar, appellate and revisional authorities were perverse and based on conjecture - Petition allowed - Orders dated 11.08.2000, 14.06.2011, 17.10.2011, and 14.10.2019 are set aside. (Paras 21,22,23,24,25,26,28,29,30) (E-7)

Case Law Cited

State of U.P. v. Laxmi Sugars and Oil Mills Ltd., **(2013) 10 SCC 509***; General Manager, Electrical Rengali Hydroelectric Project, Odisha v. Girdhari Sahu,* **(2019) 10 SCC 695***; Dolly Rani v. Manish Kumar Chanchal,* **(2025) 2 SCC 587***.*

List of Acts

U.P. Zamindari Abolition and Land Reforms Act, 1950; U.P. Land Revenue Act; Hindu Marriage Act, 1955; Constitution of India.

List of Keywords

Remarriage - Widow - Mutation - Succession - Will - Ex-parte - Nearest surviving heir - Bhumidhari rights - Burden of proof - Hearsay evidence - Hindu rites and rituals - Revenue records - Perversity - Summary proceedings - Cogent Evidence - Reliable evidence - Valid Marriage.

Case Arising From

Order dated 14.10.2019 passed by Uttar Pradesh Board of Revenue which dismissed the revision preferred by the petitioner and upheld the validity of the orders passed by courts below, namely, orders dated 11.08.2000, 14.06.2011 and 17.10.2011.

Appearances for Parties

Advs. for the Petitioners:

Hemant Kumar Mishra, Arti Ganguly, Pankaj Kumar Singh, Ravi Prakash

Advs. for the Respondents:

C.S.C., Ishwar Dutt Shukla, Sanjeev Dwivedi

(Delivered by Hon'ble Alok Mathur, J.)

1. Heard Sri Hemant Kumar Mishra, learned counsel for petitioners as well as learned Standing Counsel for the State-respondent and Sri Ishwar Dutt Shukla, learned counsel for private respondents.

2. The petitioner by means of present writ petition has assailed the validity and legality of the order dated 14.10.2019 passed by Uttar Pradesh Board of Revenue wherein they have dismissed the revision preferred by the petitioner and has upheld the validity of the orders passed by courts below, namely, orders dated 11.08.2000, 14.06.2011 and 17.10.2011.

3. The dispute which falls for consideration in the present case pertain to the succession of the property of one Govinde S/o Daili. Govinde had died in 1960 leaving behind his wife Smt. Hardei and after the death of Govinde name of Hardei was recorded in the revenue records on 17.08.1964.

4. After a very long period of time around 36 years, an application was moved by respondent Nos. 4 & 5 on 04.07.2000 U/S 34 of Land Revenue Act for mutating their names in place of Smt. Hardei on account of fact that Smt. Hardei has remarried 15 years prior and therefore as per provisions of Section 172 of U.P. Zamindari Abolition and Land Reforms Act, 1950 has ceased her right to succeed to the property of Govinde on account of her marriage with one Haripal and in the aforesaid circumstances a prayer was made to mutate the name of Pyare Lal and Shatrohan.

5. The Tehsildar, Tehsil - Sadar, Lucknow considering the fact that no objections were filed against the application U/S 34 of Land Revenue Act and perused the revenue records wherein he found that the disputed land was recorded in the name of Govinde in the revenue records pertaining to fasli 1400-1405 as well as in 1406-1411 after whose death his widow Hardei succeeded to the said property and also considered the evidence given by the Regional Lekhpal, Anil Kumar, according to which Hardei the widow of Govinde had remarried Haripal and accordingly came to the conclusion that in the aforesaid circumstances Hardei would be divested of her share succeed of the property of Govinde. While the applicant was the nephew of Govinde and that Govinde had died intestate the applicant was held to be duly entitled to succeed the property of Govinde and accordingly allowed the application and accordingly deleted the name of Hardei with the further direction that name of Praye Lal and Shatrohan were likely to be substituted in her place.

6. Subsequently, Hardei W/o of Govinde moved an application for recall on 19.09.2002 stating that she had succeeded to the property of Govinde who was her husband and further stated that she was never served notice during the proceeding and the order dated 11.08.2000 was ex-parte. She had further clearly stated in paragraph no. 8 of her application that after the death of Govinde she has never married and the application for mutation was given by the Pyare Lal and Shatrohan only to usurp the property of Hardei and accordingly sought recall of the order dated 11.08.2000.

7. It has been submitted that it is during pendency of the recall application that Hardei W/o Govinde died on 27.04.2005 and her application for recall was also rejected on 14.06.2011 by Tehsildar, Sadar, Lucknow. The Tehsidlar, Sadar, Lucknow duly recorded the fact of the death of the applicant Hardei. The Tehsildar, Sadar, Lucknow has duly considered the evidence of Shiv Narain S/o Moti Lal as well as statement of Lekhpal on the basis of which he has returned a finding that Hardei had married Haripal after death of previous husband.

8. A perusal of the statement of the Anil Kumar, Regional Lekhpal which was recorded on 09.08.2000. It was stated that the name of Hardei was mutated in the revenue records after the death of Govinde and that she has remarried after his death with Haripal and that Pyare Lal and Shatrohan S/o Raman are nephew of Govinde. It is relevant to notice that from the aforesaid statement, it is clear that Anil Kumar, Regional Lekhpal was not present during the said wedding and has only stated that said fact on account of knowledge derived by him from the villagers but has failed to disclose as to which villager has given the said information and as to whether he has verified the said information.

9. Even the statement of Shatrohan which is on record, he has stated that his aunt (Chachi) Hardei had married 2-3 years after the death of Govinde. Shatrohan has stated his age to be 30 years while Govinde died in the year 1960 and Shatrohan in all probability was not even born when Hardei had married Haripal, and apart from the above he is an interested party in the case and no evidence was produced by him.

10. After the death of Hardei, the petitioners also claimed their rights on the disputed land and for having their names to be mutated in the revenue records in place of Hardei as she has left a registered will in favour of petitioners dated 11.08.2000 and on the basis of the will, the petitioners claimed their rights to succeed the property of Hardei.

11. Accordingly, in the aforesaid circumstances, the Tehsildar, Sadar, Lucknow while deciding the application of respondents U/S 34 of Land Revenue Code, 2006, held that the remarriage of Hardei had taken place about 15 years prior to filing of the said application and consequently from the date of remarriage, she has become dis-entitled to succeed the property of Govinde and any Will made subsequently will not have any effect upon bequeathing the right of the Hardei in favour of petitioners inasmuch as on account of succession as per provision of Section 172 of the U.P.Z.A. & L.R. Act, the applicants i.e. Pyare Lal and Shatrohan would succeed to the property of Govinde and accordingly rejected the application for recall and reaffirming the previous order dated 11.08.2000.

12. The petitioners being aggrieved by the order of Tehsildar, Sadar, Lucknow

dated 14.06.2011 as well as order dated 11.08.2000 preferred an appeal U/S 210 of the Land Revenue Act before the Dy. Collector (Revenue), Lucknow who rejected the appeal by means of order dated 17.10.2011, against which a revision was preferred before the Board of Revenue which was also rejected by means of order dated 14.10.2019 which has been assailed in the present writ petition.

13. Learned counsel for petitioners has submitted that the central issue which deserves to be decided on the basis of evidence was the fact as to whether Hardei W/o Govinde had remarried after his death to Haripal. In case she had remarried then by the operation of provision of Section 172 of U.P.Z.A. & L.R. Act, the property of Govinde will devolve upon his nearest surviving heirs which are private respondents who are nephew of Govinde.

14. While on the other hand, in case it is established that she did not remarry after the death of Govinde then there is no dispute with regard to registered will having been executed by her on 28.08.1990 in favour of petitioners who would be entitled to succeed to the property of Govinde/Hardei. There is no dispute that on an application made by private respondents U/S 34 of Land Revenue Act, the application was allowed ex-parte where Hardei had not participated. It was alleged that after the death of Govinde in 1960 Hardei had married Haripal and therefore had disentitled herself from succeeding the property of Govinde as per Section 172 of U.P.Z.A. & L.R. Act, which reads as under:-

"172. Succession in the case of a woman holding an interest inherited as a widow, mother, daughter, etc.

- [(1) When a bhumidhar, [* *] [Substituted by U.P. Act No. 20 of 1954.] or asami who has after the date of vesting, inherited an interest in any holding-*

(a)as a widow, widow of a male lineal descendant, in the male line of descent, mother or father's mother dies, marries, abandons or surrenders such holding or part thereof; or

(b)as a daughter, son's daughter, sister or half-sister being the daughter of the same father as the deceased [marries] [Inserted by U.P. Act No. 37 of 1958.] dies, abandons or surrenders such holding or part thereof,

the holding or the part shall devolve upon the nearest surviving heir (such heir being ascertained in accordance with the provisions of Section 171) of the last male bhumidhar, [* * *] [Omitted by U.P Act No. 8 of 1977(w.e.f. 28.01.1977).] or asami.]

(2)Where a bhumidhar [* *] [Omitted by U.P. Act No. 8 of 1977(w.e.f. 28.01 1977).] who has before the date of vesting inherited an interest in any holding as a [widow, widow of a male lineal descendant in the male line of descent, mother, daughter, father's mother, son's daughter, sister or half-sister being the daughter of the same father as the deceased] [Substituted by U.P. Act No. 20 of 1954.]-*

(a)dies and such bhumidhar [* *] [Omitted by U.P. Act No. 8 of 1977 (w.e.f. 28.01.1977).] was on the date immediately before the said date an intermediary of the land comprised in the holding or held the holding as a fixed rate tenant, or an exproprietary or occupancy*

tenant in Avadh or as a tenant on special terms in Avadh and-

(i)she was in accordance with the personal law applicable to her entitled to a life estate only in the holding, the holding shall devolve upon the nearest surviving heir (such heir being ascertained in accordance with the provisions of Section 171) of the last male intermediary or tenant aforesaid; and if

(ii)she was in accordance with the personal law applicable to her entitled to the holding absolutely the holding shall devolve in accordance with the table mentioned in Section 174;

(b)[dies, abandons or surrenders and in the case of a widow, widow of a male lineal descendant in the male line of descent, mother, father's mother, marries such bhumidhar [* *] [Substituted by U.P. Act No. 20 of 1954.] on the date immediately before the said date held the holding otherwise than as an intermediary or tenant referred to in Clause (a), the holding shall devolve upon the nearest surviving heir (such heir being ascertained in accordance with the provisions of Section 171) of the last male tenant.]*

(3)The provisions of sub-section (1) mutatis mutandis apply to an asami who inherited the holding before the date of vesting.

(4)Nothing in sub-section (1) shall apply to a person succeeding to an interest in any holding under the provisions of Section 174.

Explanation. - For the purposes of this section the expression "last male bhumidhar, [* *] [Omitted by U.P. Act No. 8 of 1977 (w.e.f. 28.01.1977).] or asami" includes the last male tenant, grove-holder, permanent lessee in Avadh, grantee or sir or khudkasht holder, as the case may be."*

15. The aforesaid application was allowed on 11.08.2000 subsequent to which an application for recall was preferred by Hardei wherein in paragraph No. 8, she has clearly stated that she has not remarried and she was not served with any notice in proceedings U/S 34 of Land Revenue Act which were defective and in fact the orders were passed without effecting service upon her. Before her application could be decided, she died on 27.04.2005 and subsequently the petitioners entered into the said litigation claiming their rights to succeed the property of late Hardei on the basis of a will executed by her on 28.08.1990.

16. The Tehsildar, Sadar, Lucknow decide the application rejecting the contention of the petitioners as well as application of recall filed by late Hardei and upheld his previous order dated 11.08.2000. While passing the said order, he relied upon the evidence on record which were in the shape of statement of Anil Kumar, Regional Lekhpal and the evidence of Shatrohan, both of them stated that Hardei had married after death of Govinde.

17. The appellate authority and the revisional authority have merely reiterated the findings recorded by Tehsildar, Sadar and held that due opportunity of hearing has been given to all the parties and the order has been passed after due perusal of material records which did not require interference.

18. The writ petition has been vehemently opposed by Sri I.D. Shukla, learned counsel appearing on behalf of private respondents. He has submitted that there is no dispute that Hardei had remarried after death of Govinde which in fact is evident from various documents filed by the petitioners themselves specially the document where the address of Hardei has been disclosed to be same address as that of Haripal and submitted that once it is established that Hardei and Haripal were living together then there is no difficulty to presume that they were living as husband and wife. He further supported the findings recorded by all the authorities below and prayed for dismissal of the writ petition.

19. The objection of the private respondents that the concurrent findings of the three courts below with regard to the alleged remarriage of Smt. Hardei cannot be interfered with under Article 226 of the Constitution is without substance. The authorities cited by them, namely State of U.P. v. Laxmi Sugars and Oil Mills Ltd. (2013) 10 SCC 509 and General Manager, Electrical Rengali Hydroelectric Project, Odisha v. Girdhari Sahu (2019) 10 SCC 695, merely reiterate the principle that writ courts ordinarily do not disturb findings of fact. They do not, however, preclude interference where the findings suffer from perversity or manifest error apparent on the face of the record. It is well settled that a writ court can intervene when conclusions are based on no evidence, are contrary to material on record, or proceed on a clear misdirection in law.

20. Having heard the rival contention of the parties. The only aspect which is to be determined by this Court is as to whether there was sufficient material on record on the basis of which the Tehsildar and the Sub-Divisional Magistrate have held that that Hardei widow of Govinde had remarried after his death. Accordingly in case it is established that Hardei has remarried then as Section 172 of Zamindari Abolition and Land Reforms Act will dis-entitle her from succeeding to the estate of Govinde (her late husband). This fact was only stated in the application filed by the private respondents U/S 34 of Land Revenue Act and clearly denied by Smt. Hardei in her application for recall.

21. In order to establish a marriage under the Hindu Marriage Act, it had to be demonstrated that Smt. Hardei was married to Haripal in accordance with Section 7 of Hindu Marriage Act. Oral statement of certain parties merely stating that Haripal was married to Haripal would not establish a valid marriage.

22. This aspect of the matter was considered by Hon?ble Supreme Court in the case of **Dolly Rani Vs. Manish Kumar Chanchal, 2025 (2) SCC 587**, and held as under:-

"21. Under Section 8 of the Act, it is open for two Hindus married under the provisions of the Act to have their marriage registered provided they fulfil the conditions laid down therein regarding performance of requisite ceremonies. It is only when the marriage is solemnised in accordance with Section 7, there can be a marriage registered under Section 8. The State Governments have the power to make rules relating to the registration of marriages between two Hindus solemnised by way of requisite ceremonies. The advantage of

registration is that it facilitates proof of factum of marriage in a disputed case.

22. But if there has been no marriage in accordance with Section 7, the registration would not confer legitimacy to the marriage. We find that the registration of Hindu marriages under the said provision is only to facilitate the proof of a Hindu marriage but for that, there has to be a Hindu marriage in accordance with Section 7 of the Act inasmuch as there must be a marriage ceremony which has taken place between the parties in accordance with the said provision. Although the parties may have complied with the requisite conditions for a valid Hindu marriage as per Section 5 of the Act in the absence of there being a "Hindu marriage" in accordance with Section 7 of the Act, i.e., solemnization of such a marriage, there would be no Hindu marriage in the eye of law.

23. In the absence of there being a valid Hindu marriage, the Marriage Registration Officer cannot register such a marriage under the provisions of Section 8 of the Act. Therefore, if a certificate is issued stating that the couple had undergone marriage and if the marriage ceremony had not been performed in accordance with Section 7 of the Act, then the registration of such marriage under Section 8 would not confer any legitimacy to such a marriage. The registration of a marriage under Section 8 of the Act is only to confirm that the parties have undergone a valid marriage ceremony in accordance with Section 7 of the Act. In other words, a certificate of marriage is a proof of validity of Hindu marriage only when such a marriage has taken place and not in a case where there is no marriage ceremony performed at all."

23. There is no dispute that no document or marriage certificate was filed indicating remarriage of Hardei. It is during the proceedings that statement of Anil Kumar, Regional Lekhpal and Shatrohan were recorded. Anil Kumar, Regional Lekhpal in his statement has only stated that he came to know that about remarriage of Hardei from villagers. This Court does not find that the said statement would be reliable or worthy of any credence to establish the remarriage of Hardei. There is no material to indicate that either he himself was witness of the marriage or as to the person who has told him that Hardei had remarried.

24. With regard to the factum of remarriage of Hardei, the testimony of Anil Kumar, Regional Lekhpal is totally unreliable and is not trustworthy or of any credence. Shatrohan himself was a party to the proceedings and has only given lip service to the fact that Hardei had remarried. Evidently he has not even born when Hardei is alleged to have remarried nor did he give any evidence as to how he derived the knowledge that Hardei had remarried. Accordingly, the testimony of both aforesaid witnesses is unreliable and on the basis of such unreliable evidence no finding of fact with regard to the marriage of Hardei could have been returned by the Tehsildar, Sadar while deciding the aspect of mutation in favour of the applicants.

25. Even in summary proceedings where a finding has to be returned with regard to a particular fact, then such finding should be based on cogent and reliable evidence and not on the basis of conjectures and surmises. Question of marriage has to be established on facts even in absence of documentary evidence. A Hindu marriage is solemnized in the

presence of all the relatives and friends and villagers and performed by a Priest and there facts have to be established in order ot prove a valid marriage.

26. Statement of Anil Kumar, Regional Lekhpal and Shatrohan are mere hearsay evidence and cannot fulfill the lacunae of any direct or cogent evidence in this regard and consequently merely on the basis of the said evidence the findings has been returned with regard to marriage of Hardei. It is in the aforesaid reasons, this Court find itself unable to accept findings recorded by the Tehsildar, Sadar, Lucknow in his order dated 14.06.2011 and accordingly this Court finds that even the orders of the appellate authority and the revisional authority are arbitrary having upheld the order of Tehsildar, Sadar dated 14.06.2011.

27. In the present case, contrary to oral assertion made by petitioners while moving the application U/S 34 of Land Revenue Act, late Hardei while filing the application for recall in paragraph No. 8 had clearly denied that she had remarried after the death of Govinde.

28. In the aforesaid circumstances, the burden of proof lay upon the private respondents to establish that a valid marriage had taken place in accordance with Hindu rites and rituals which they have clearly failed to establish. There is no evidence let by the petitioners to demonstrate that late Hardei had validly married Haripal and in absence of any such evidence no finding can be returned with regard to remarriage of Hardei. The proof of marriage is a matter of fact and the burden of proof lay upon the private respondents to establish the same and they failed to establish the said fact before the Tehsildar, Sadar and accordingly the findings returned in favour of the private respondents and and against the Hardei was illegal and arbitrary, liable to be set aside.

29. In the present case, the findings regarding Smt. Hardei's alleged remarriage are ex facie perverse. There is no proof of the essential ceremonies, of marriage being performed nor has any custom been established; instead, the courts below relied on vague assertions, stray documents, and revenue entries, while ignoring contemporaneous records where Smt. Hardei continued to describe herself as a widow. The testimonies on which reliance was placed are inconsistent and fail to discharge the burden of proving a valid remarriage. The conclusions drawn are thus contrary to both evidence and law, and cannot be sustained. Hence, this Court would be justified in setting aside the findings despite their concurrence.

30. In the aforesaid circumstances, the writ petition is **allowed**. The orders dated 11.08.2000 , 14.06.2011, 17.10.2011, 14.10.2019 are set aside.

(2025) 8 ILRA 780
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.08.2025

BEFORE

THE HON'BLE ROHIT RANJAN AGARWAL, J.

Writ C No. 719 of 2022
&
Connected With Other Matters

Mohan Lal Srivastava & Ors. ...Petitioners
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioners:

M.N. Singh, Mahesh Narain Singh

Counsel for the Respondents:
C.S.C., Sudhir Bharti

Issue for Consideration

Whether the petitioners, claiming possession over land recorded as Gaon Sabha Banjar land, were entitled to protection or settlement of such land in their favour u/s 9 of Act, 1950, or alternatively, u/s 67-A of U.P. Revenue Code, 2006, on the plea that land in their occupation was of abadi nature and had been held by their ancestors since prior to enforcement of U.P. Act No. 1 of 1952, and further, whether orders of eviction passed u/s 67(1) of Code of 2006 and affirmed in appeal u/s 67(5) suffered from any illegality or violation of petitioners' lawful rights or principles of natural justice.

Headnotes

U.P. Zamindari Abolition and Land Reforms Act, 1952 - ss. 9, 132, - U.P. Revenue Code, 2006 - ss. 63, 64, 67-A, 67(1), 67(5) - U.P. Revenue Code Rules, 2016 - Rule 67 (2) - U.P. Consolidation of Holding Act 1953 - Section 52 - Code of Civil Procedure, 1908 - O. VIII R 5 Petitioners, claimed to be in long-standing possession of land originally recorded as old Khasra No. 137, subsequently renumbered as Khasra No. 1275 during consolidation proceedings, asserting that it was of abadi nature and had been held by their ancestors since prior to enforcement of U.P. Z.A.L.R.Act, 1950 (U.P. Act No. 1 of 1952) - They contended that, by virtue of Section 9 of said Act, abadi site stood settled with them and that they had acquired lawful rights over same - Proceedings, however, were initiated u/s 67(1) of Revenue Code, 2006, treating land as Gaon Sabha Banjar land and directing their eviction along with imposition of damages - Their appeals u/s 67(5) were dismissed, affirming eviction - Petitioners approached High Court challenging orders as illegal and violative of their rights, contending that land was not public utility land u/s 132 of Act of 1952, and alternatively, that they were entitled to settlement u/s 67-A of Revenue Code, 2006 - State resisted petitions, asserting that land was recorded as Banjar Category 5(3) in consolidation records since 1990, never formed part of old Gata No. 137 as alleged, and was required for extension of Kushinagar International Airport, thereby rendering petitioners' occupation unauthorized and their claim untenable in law.

Held: To claim the benefit of Section 9, petitioners were required to establish lawful possession after enforcement of Act No. 1 of 1952, however, no document was produced to substantiate such claim - Petitioners' claim rests on two grounds i.e. settlement of land u/s 9 of Act No. 1 of 1952 or, in alternative, extension of benefit u/s 67-A for settlement in their favour - Petitioners have failed to substantiate their claim, as consolidation proceedings concluded in village in 1990 with notification u/s 52 of Act of 1953 - Gata No. 137, claimed by them, now stands subdivided into Gata Nos. 25 to 28, recorded as chak, bhumidhari land, chak marg, and nali, with no link to petitioners - Their claim u/s 9 is contradicted by unchallenged consolidation and revenue records for the past 35 years and petitioners made no effort to challenge the adverse revenue entries - It was only when eviction proceedings were initiated against them and notices having been served upon them, they filed appeal and raised plea of Section 9 - Realizing weakness of their claim, petitioners alternatively sought settlement u/s 67-A, however, being outside preferential category of Section 64, they are not entitled to such allotment of land - Facts and pleadings reveal that land is required for ILS (Instrument Landing System)–Glide Path of upcoming international airport, and Gaon Sabha is transferring land for extension of airport and runway central line - In view of facts and circumstances, no interference with impugned orders is warranted, and petitioners are liable to eviction from Gaon Sabha land recorded as Banjar Category 5(3) since 1990 consolidation proceedings. [Paras 15, 25 to 29] (E-13)

Case Law Cited

Manorey @ Manohar v. Board of Revenue, **AIR 2003 SC 4102;** Rishipal Singh v. State of U.P. and others, **2023 (160) RD 204;** Sharda Industries through partner Mayank v. The Additional District Collector, District Unnao and others, **Writ-C No. 9500 of 2022 decided on 14.2.2023;** Pushpa Pathak v. State of U.P. and others, **Writ-C No. 9433 of 2023 decided on 28.10.2023;** Babu Ram v. State of U.P. and others, **Writ-C No. 19804 of 2021, decided on 13.8.2021;** Budhan Singh v. Nabi Bux, **1970 ALJ 903 SC;** Jagat Narain & others v. State of U.P. and others, **Writ-C No. 54062 of 2013, decided on 9.2.2015 - referred to**

List of Acts

U.P. Revenue Code, 2006; U.P. Zamindari Abolition and Land Reforms Act, 1952; U.P. Revenue Code Rules, 2016 ; U.P. Consolidation of Holding Act, 1953; Code of Civil Procedure, 1908

List of Keywords

Article 226 of Constitution of India; Proceedings u/s 67 U.P. Revenue Code, 2006; Eviction from land of Gaon Sabha; Abadi nature of land; Unauthorized occupation; Damages imposed; Banjar Category 5(3) land; Show cause notice in RC Form 20 under Rule 67(2); Assistant Collector / Tehsildar; Lawfully holding the land; Section 9 of U.P. Z.A.L.R.Act, 1952; Public utility land u/s 132; Section 67-A of Revenue Code, 2006; Preferential category u/s 64; Abadi site; Settlement of land; Consolidation proceedings under U.P. Consolidation of Holdings Act, 1953; Publication u/s 52 of Act of 1953; CH Form 41 and CH Form 45; Non-denial under Order VIII Rule 5 CPC; Lawful possession; Legal title; Benefit u/s 9; Preferential allotment u/s 64; Allotment of abadi sites u/s 63; Public purpose land; Banjar land liable for agricultural use; Kushinagar International Airport; Virtual Flight Rule; Instrument Landing System (ILS) – Glide Path; Eviction order to be complied with; No interference required; Petitioners liable to be evicted.

Case Arising From

ORIGINAL JURISDICTION: (Writ C No. - 719 of 2022) Connected with other matters
Writ C No. - 721 of 2022, Writ C No. - 724 of 2022, Writ C No. - 727 of 2022, Writ C No. - 730 of 2022, Writ C No. - 732 of 2022, Writ C No. - 740 of 2022, Writ C No. - 802 of 2022.

From the Order dated 14.12.2021, passed by District Magistrate, Kushi Nagar and Order dated 03.12.2020, passed by Assistant Collector/Tehsildar, Tehsil Kasia, District Kushi Nagar.

Appearances for Parties

Advs. for the Petitioner:
M.N. Singh, Mahesh Narain Singh

Adv. for the Respondent:
C.S.C., Sudhir Bharti

(Delivered by Hon'ble Rohit Ranjan Agarwal, J.)

1. These bunch of writ petitions arise out of proceedings initiated under Section 67 of U.P. Revenue Code, 2006 (hereinafter referred as the 'Code of 2006') for evicting petitioners from the land of Gaon Sabha. The order passed under Section 67 (1) of the Code of 2006 was subjected to appeal under Section 67 (5) which confirmed the order of eviction leading to filing of the present writ petitions.

2. The issue raised in all the connected matters are one and the same and related to the same village and, as such, all the matter have been tagged together and with the consent of learned counsel for the parties all the writ petitions are being heard together and decided by a common judgment/order.

3. Facts, in brief, of the leading writ petition being Writ-C No. 719 of 2022, are that dispute relates to old Khasra No. 137, which has been renumbered in consolidation proceedings as Khasra No. 1275 situated in Village Bhaluhi Madari Patti, Tappa Mainpur, Pargana Sidhua

Jobna, Tehsil Kasaya, District Kushinagar. Petitioners claim the land to be of abadi nature and in possession since the time of their ancestors. After the enforcement of U.P. Act No. 1 of 1952 (U.P.Z.A. & L.R. Act 1950) the abadi site stood settled with the petitioners. A show cause notice in RC Form 20 under Rule 67 (2) of U.P. Revenue Code Rules, 2016 (hereinafter referred as the 'Rules of 2016') was issued but no objections were filed nor petitioners appeared before the court of Assistant Collector/Tehsildar, consequently, an order was passed for eviction on 3.12.2020 and also imposing the damages amounting to Rs. 3,28,500/- for unauthorized occupation of land in question.

4. Petitioners challenged the said order and filed Appeal No. 1273 of 2021 under Section 67 (5) of the Code of 2006, which was dismissed on 14.12.2021. Hence, present writ petition. Similarly, in other bunch of cases the eviction order was passed against various petitioners which was subjected in appeal, which was dismissed. Dismissal of appeal led to filing of the connected writ petitions.

5. Learned counsel for petitioners submits that the land in question stood settled in favour of petitioners in terms of Section 9 of the Act No. 1 of 1952 as abadi was existing of the ancestors of petitioners. According to him without dealing with the issue of Section 9, the revenue authorities have proceeded to pass the order of eviction confirming the same in appeal. It was further submitted that the land in question is not a public utility land as defined under Section 132 of the Act No. 1 of 1952 as well as Section 67 of the Code of 2006 and, thus, the same can be settled in favour of petitioner under Section 67-A of the Code of 2006.

6. It was also contended that the RC Form 19 & 20 was never served upon the petitioners before the order of eviction was passed and in garb of the fact that extension of Kushinagar Airport has to be done the State authorities are forcibly evicting the petitioners to deprive them of their rights as accrued under Section 9 of the Act No. 1 of 1952. Reliance has been placed upon the decision rendered in **Manorey @ Manohar Vs. Board of Revenue, AIR 2003 SC 4102, Rishipal Singh Vs. State of U.P. and others, 2023 (160) RD 204, Sharda Industries through partner Mayank Vs. The Additional District Collector, District Unnao and others, Writ-C No. 9500 of 2022** decided on 14.2.2023, **Pushpa Pathak Vs. State of U.P. and others, Writ-C No. 9433 of 2023** decided on 28.10.2023 **and Writ-C No. 19804 of 2021, Babu Ram Vs. State of U.P. and others**, decided on 13.8.2021.

7. Sri Sudhir Bharti, learned counsel appearing for Gaon Sabha/respondent no. 4, submitted that the notices were served upon the petitioners but they do not file any objection nor they appeared before the revenue authorities. The land in question i.e. Gata No. 1275 (area 0.174 hectare) is recorded under category – 5 (3) as Banjar land liable for agricultural use in the revenue records. According to him, petitioners could not prima facie establish through any document that they are in lawful possession in respect of Gata No. 1275. According to him, the issue stand settled by the decision of the Apex Court rendered in case of **Budhan Singh Vs. Nabi Bux, 1970 ALJ 903 SC.**

8. It is next contended that unless petitioners establish that they were lawfully holding the land they cannot be extended the benefit of Section 9 of the Act No. 1 of

1952. Learned counsel next contended that to get the benefit of Section 67-A of the Code of 2006 petitioners have to establish that they come under the preferential category provided in Section 64 of the Code of 2006 in respect of the land referred in Section 63. Petitioners being members of general category and not living below the poverty line and their ancestors having house at another place in village they are not covered under the preferential category enumerated in Section 64, thus, the land under Section 67-A cannot be settled.

9. He lastly contended that as the land in question lies in close vicinity of the airport area it would be treated as reserved land for the aforesaid public purpose and cannot be settled in favour of petitioners under Section 67-A. Reliance has been placed upon the decision of Division Bench of this Court rendered in case of **Jagat Narain & others Vs. State of U.P. and others, Writ-C No. 54062 of 2013**, decided on 9.2.2015.

10. Sri Manish Goyal, learned Additional Advocate General, appearing on behalf of the State, submitted that claim of petitioners that Khasra No. 1275 has been formed from old Gata No. 137 is false and incorrect. In fact, Gata No. 1275 measuring 0.174 hectare was carved out from old Gata No. 2230/227 in consolidation operation recorded it as Banjar in the year 1990 with publication of notification under Section 52 of U.P. Consolidation of Holding Act 1953 (hereinafter referred as the 'Act of 1953') which can be ascertained from the extract of CH Form 45 appended as annexure No. 5 to the supplementary counter affidavit.

11. According to him, the old Gata No. 137 was renumbered and new Gata Nos. 25, 26, 27 and 28 were carved out in consolidation proceedings and they were recorded as chak, bhumidhari land, chak marg, nali etc. These gata numbers are not at all related to the petitioners which can be ascertained from the extract of CH Form 45. He then contended that benefit of Section 67-A cannot be extended as petitioners do not fall in preferential category.

12. It was also argued that petitioners never participated in consolidation proceedings to get their alleged right establish nor the averments made in the supplementary counter affidavit has been controverted. He lastly contended that Kushinagar International Airport is currently serving as VFR (Virtual Flight Rule) Airport. For extension of airport additional land including the land in dispute has been proposed for extending approximately 190 meter each on either side of the runway central line for facilitating upcoming ILS (Instrument Landing System) – Glide Path. On account of interim order operating the extension of runway to facilitate upcoming ILS (Instrument Landing System) – Glide Path is hampered to meet prescribed safety and operational standards.

13. I have heard respective counsel for the parties and perused the material on record. Before adverting to decide the issue in hand a glance of Section 9 of the Act No. 1 of 1952 is necessary for better appreciation of the case, which is extracted hereasunder;

"9. Private wells, trees in abadi and buildings to be settled with the existing owners or occupiers thereof. - [All wells,] trees in abadi and all buildings situate within the limits of an estate belonging to or held by an intermediary or

tenant or other person whether residing in the village or not, shall continue to belong to or be held by such intermediary tenant or person, as the case may be, and the site of the wells or the buildings within the area appurtenant thereto shall be deemed to be settled with him by the State Government on such terms and conditions as may be prescribed."

14. According to the said provision, all wells, trees in abadi and all buildings situate within the limits of an estate belonging to or held by an intermediary or tenant or other person whether residing in the village or not, shall continue to belong to or be held by such intermediary tenant or person, as the case may be. The issue regarding interpretation of Section 9 came for consideration before the Apex Court in case of **Budhan Singh (Supra)** wherein the Apex Court interpreted Section 9 and held that the word 'held' shall be read as 'lawfully held'. Relevant paragraph nos. 11, 12 and 13 are extracted hereasunder;

"11. It is true that according to the dictionary meaning the word "held" can mean either a lawful holding or even a holding without any semblance of a right such as holding by a trespasser. But the real question is as to what is the legislative intent? Did the legislature intend to settle the concerned building with a person who was lawfully holding or with any person holding lawfully or otherwise? Mr. Misra contended that there is no justification for us to read into the section the word "lawfully" before the word "held". According to him, if the legislature intended that the holding should be a lawful one, it would have said"lawfully held". He wanted us to interpret the section as it stands.

12. It is true that the legislature could have used the word "lawfully held" in place of the word "held" in Section 9 but as mentioned earlier one of the dictionary meanings given to the word "held" is, "lawfully held". In Webster's New Twentieth Century Dictionary (Second Edition), it is stated that in legal parlance the word "held" means to possess by "legal title". In other words the word "held" is technically understood to mean to possess by legal title. Therefore by interpreting the word "held" as "lawfully held", we are not adding any word to the section. We are merely spelling out the meaning of that word. It may further be seen that the section speaks of all buildings .... within the limits of an Estate, belonging to or held by an intermediary or tenant or other person" .... The word "belonging" undoubtedly refers to legal title. The words "held by an intermediary" also refer to a possession by legal title. The words "held by tenant" also refer to holding by legal title. In the sequence mentioned above it is proper to construe the word "held" in Section 9 when used in relation to the words "other person" as meaning "lawfully held" by that person. That interpretation flows from the context in which the word "held" has been used. We have earlier mentioned that the said interpretation accords with justice.

13. The expression "held" has been used in the Act in various other sections—see Sections 2(1) (c), 13, 17, 18, 21, 144, 204, 240A, 298, 304, and 314 to connote possession by legal title. Mr. Misra, learned Counsel for the appellants does not deny that the expression "held" in those sections means held lawfully. But according to him that is because of the context in which the word is used. Mr. Misra is right in saying so but he overlooks the context in which that expression is used

in Section 9. We have already made reference to that context. He failed to point out to us any section in the Act, leaving aside Section 9 for the time being where the word "held" has been used as meaning mere holding, lawful or otherwise. In K.K. Handique v. The Member, Board of Agricultural Income Tax, Assam(1) this Court was called upon to consider the meaning of the word "holds" in Sections 12 and 13 of the Assam Agricultural Income Tax Act. Subba Rao, J. (as he then was) speaking for the Court observed that the expression "holds" includes a two-fold idea of the actual possession of a thing and also of being invested with a legal title though some times it is used only to mean actual possession. After reading Sections 12 and 13 together he observed that the word "holds" in those sections means holding by legal title. In Eramma v. Verrupanna & Ors.(2), this Court considered the meaning of the word (1) A.I.R. 1966 S.C. 1191. (2) [1966] 2, S.C.R. "possessed" in Section 14 (1) of the Hindu Succession Act which laid down that "any property possessed by a female Hindu whether acquired before or after the commencement of this Act shall be held by her as full owner thereof and not as a limited owner". It held that the property possessed by a female widow, as contemplated in the section, is clearly a property to which she has acquired some kind of title whether before or after the commencement of the Act. It is true that in arriving at that conclusion the Court took into consideration the language of the provision as a whole and also the explanation to the section. The scheme of the Act is to abolish all Estates and vest the concerned property in the State but at the same time certain rights were conferred on persons in possession of lands or buildings. It is reasonable to think that the persons who were within the contemplation of the Act are those who were in possession of lands or buildings on the basis of some legal title. Bearing in mind the purpose with which the legislation was enacted, the scheme of the Act and the language used in Section 9, we are of opinion that the word "held" in Section 9 means "lawfully held". In other words we accept the correctness of the view taken by Mukerji and Dwivedi, JJ. For the reasons already mentioned we are unable to agree with Desai, C.J. that the fact that the appellants had demolished the buildings put up by the respondents and put up some other building in their place had conferred any rights on them under Section 9."

15. Thus, petitioners, who are claiming the benefit of Section 9, have to demonstrate that they are lawfully holding the land after the enforcement of the Act No. 1 of 1952. No document was placed to substantiate the argument advanced by them in regard to Section 9.

16. Further, the State has come up with specific plea that consolidation proceedings took place in the aforesaid village and publication of notification under Section 52 of the Act of 1953 was made in the year 1990 and the land in question was recorded as Banjar in CH Form No. 41 and 45. Moreover, the State has demonstrated from the documents appended as annexure Nos. 1 to 3, filed alongwith supplementary counter affidavit that Gata No. 1275 measuring 0.174 hectare was carved out from the old Gata No. 2230/227 in consolidation proceedings and not from Gata No. 137, as claimed by the petitioners.

17. Paragraph no. 7 of the supplementary counter affidavit specifically reflect that Gata Nos. 25, 26,

27 and 28 were carved out in consolidation proceedings from the old Gata No. 137 and were recorded as chak, bhumidhari land, chak marg, nali etc. These gata numbers are not at all related to petitioners, which can be verified from CH Form 41 appended with the said affidavit.

18. There is no specific denial in terms of Order VIII Rule 5 CPC in respect of paragraph nos. 5 to 10 of supplementary counter affidavit that Gata No. 1275 was carved out from the old Gata No. 2230/227 and Gata Nos. 25, 26, 27 and 28 were carved out from Gata No. 137. The case of petitioners falls flat in view of non denial of the fact brought by the State through their supplementary counter affidavit that Gata No. 1275 was never carved out from Gata No. 137, which was the case set-up by the petitioners.

19. Once the petitioners themselves are not sure of the land over which they are claiming the benefit under Section 9 and in consolidation proceedings new Gata Nos. 25, 26, 27 and 28 have been carved out from Gata No. 137 and have been recorded as chak, bhumidhari land, chak marg, nali etc. not belonging to the petitioners. Their claim under Section 9 cannot be entertained as the chain remain uncompleted and no case for settling the abadi site in their favour arise under Section 9 of the Act No. 1 of 1952.

20. The Apex Court in **Budhan Singh (Supra)** had clearly held that to claim benefit under Section 9 the party has to demonstrate that it is lawfully holding the land over which it is claiming, mere assertion that land settled in terms of Section 9 would not suffice but has to be demonstrated from some cogent evidence.

21. Now coming to the second limb of the argument raised by petitioners for extending the benefit under Section 67-A of the Code of 2006. A glance of Sections 63 and 64 is necessary before arriving at conclusion for extending the benefit of Section 67-A is concerned. Relevant Sections 63, 64 and 67-A of the Code of 2006 is extracted hereasunder;

"63. Land which may be allotted for abadi sites.- (1) The Sub-Divisional Officer may of his own motion or on the resolution of the Bhumi Prabandhak Samiti earmark the following classes of land for the provision of abadi sites for allotment to persons specified in section 64:-

(a) all lands entrusted or deemed to be entrusted to a Gram Panchayat under clause (i) of sub-section (2) of section 59;

(b) all lands coming into possession of Gram Panchayat under any other provisions of this Code.

(2) Notwithstanding anything contained in any other provision of this Code or in the U.P. Panchayat Raj Act, 1947, the Bhumi Prabandhak Samiti may, with the previous approval of the Sub-Divisional Officer, allot the following classes of land for the purposes of building houses:-

(a) any vacant land referred to in sub-section (1);

(b) any land earmarked for abadi sites under the Uttar Pradesh Consolidation of Holdings Act, 1953;

(c) any land acquired under the provisions of Land Acquisition Act, 1894

(Act No.1 of 1894) and The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No.30 of 2013).

64. Allotment of abadi sites.- (1) The following order of preference shall be observed in making allotment of land referred to in section 63:-

(a) an agricultural labourer or a village artisan residing in the Gram Sabha and belonging to a scheduled caste or scheduled tribes or other backward classes or a person of general category living below poverty line as determined by the State Government;

(b) any other agricultural labourer or a village artisan residing in the Gram Sabha;

(c) any other person residing in the Gram Sabha and belonging to a scheduled caste or scheduled tribe or other Backward Classes or a person of general category living below poverty line as determined by the State Government:

Provided that preference will be given to widow and physically handicapped person within same category.

Explanation.- For the purposes of this sub-section-

(1) "other backward class" means the backward classes of citizens specified in Schedule-I of the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 (U.P. Act No.4 of 1994);

(2) "person of general category living below poverty line" means such persons as may be determined from time to time by the State Government.

(2) In making an allotment under this section, preference shall be given to a person who either holds no house or has insufficient accommodation considering the requirements of his family.

(3) Every land allotted under this section shall be held by the allottee on such terms and conditions as may be prescribed:

Provided that if the allottee is a married man and his wife is alive, she shall be co-allottee of equal share in the land so allotted.

67-A Certain house sites to be settled with existing owners thereof.- (1) If any person referred to in sub-section (1) of section 64 has built a house on any land referred to in section 63 of this Code, not being land reserved for any public purpose, and such house exits on the November 29, 2012, the site of such house shall be held by the owner of the house on such terms and conditions as may be prescribed.

(2) Where any person referred to in sub-section (1) of section 64, has built a house on any land held by a tenure holder (not being a government lessee) and such house exits on November 29, 2000, the site of such house, notwithstanding anything contained in this Code, be deemed to be settled with the owner of such house by the tenure holder on such terms and conditions as may be prescribed.

Explanation. - For the purpose of sub-section (2), a house existing on November 29, 2000, on any land held by a

tenure holder, shall, unless the contrary is proved, be presumed to have been built by the occupant thereof and where the occupants are members of one family by the head of that family."

22. From the reading of Section 63 it is clear that the revenue authorities either on their own motion or on the resolution of the Land Management Committee earmark the land mentioned therein for the provision of abadi sites for allotment to persons specified in section 64, meaning thereby that abadi sites can be allotted only to the persons specified in Section 64. Section 64 lays down the order of preference in making the allotment of the land referred in Section 63. The said provision provides for preferential allotment of a land to an agricultural labourer or village artisan residing in village and belonging to scheduled caste or scheduled tribe or backward class or a person of general category living below the poverty line. It also provides that preference will be given to a widow and physically handicapped person within the same category.

23. Section 67-A clearly speaks that if any person referred to in Sub-section (1) of Section 64 has built a house on any land referred to in Section 63, not reserved for public purpose and the house exist on November 29, 2012 it may be settled with the person on the terms and conditions as may be prescribed, meaning thereby that benefit under Section 67-A can only be extended taking into consideration Sections 63 and 64 of the Code of 2006.

24. Section 64 is of great relevance as it provides the order of preference for allotment of land for abadi sites referred in Section 63. Petitioners before this Court clearly do not fall within the category enumerated in Section 64 nor they have come up with a case that they are entitled for the benefit under Section 64 to be read with Section 67-A.

25. The entire claim of petitioners hinges basically on two arguments i.e. either the land in question be settled in terms of Section 9 of the Act No. 1 of 1952 or in the alternative they should be extended the benefit of Section 67-A and the land in question be settled in their favour.

26. On both these issues, petitioners have miserably failed to substantiate their claim as consolidation proceedings already stood concluded in the village in the year 1990 and notification under Section 52 of the Act of 1953 was published. Gata No. 137 over which they are claiming possession has been carved out as Gata Nos. 25, 26, 27 and 28 recording it to be chak, bhumidhari land, chak marg and nali and revenue records demonstrate that petitioners have no concern with the said gata numbers. Their claim under Section 9 is belied from the records of the consolidation proceedings which had remained unchallenged for the last 35 years and no effort was made by petitioners to challenge the entries standing in the revenue records against them.

27. It was only when the eviction proceedings were initiated against them and notices having been served upon them that they had filed an appeal and raised the plea of Section 9. Petitioners' finding that they were standing on a sticky wicket took an alternative plea that the abadi site be settled with them in terms of Section 67-A. It has been clearly demonstrated that they do not fall in the preferential category of Section

64 and, thus, cannot be allotted the land in question.

28. It is clear from the facts of the case and pleading of the parties that the international airport is coming up in the District Kushinagar for which additional land is needed for ILS (Instrument Landing System) – Glide Path for which Gaon Sabha is transferring the land to the authorities for extension of the airport and the runway central line.

29. Considering the facts and circumstances of the case, I find that no interference is required with the orders impugned. Petitioners are liable to be evicted from the land of Gaon Sabha, which has been recorded as Banjar Category 5 (3) land since the consolidation proceedings of the year 1990.

30. All the writ petitions fail and are hereby **dismissed**. Interim order, if any, stands discharged. Revenue authorities to comply the eviction order within a period of three weeks.

(2025) 8 ILRA 790
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 20.08.2025

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE PRAVEEN KUMAR GIRI, J.

Writ C No. 1969 of 2025

M/S Jaharveer Maharaj Agro Pvt. Ltd. & Anr. ...Petitioners
Versus
Union Of India & Ors. ...Respondents

Counsel for the Petitioners:
Mr. Vijay Kumar Sharma

Counsel for the Respondents:
Mr. Sanjai Singh

Issue for Consideration

Issue pertains to whether, after having entered into One Time Settlement Agreement dated 10.05.2023 under Simplified One Time Settlement Scheme 2022–23, petitioners, who failed to make payment of settled amount within stipulated period of 180 days as prescribed in Clauses 7.3 to 7.5 of Scheme, could lawfully seek enforcement or continuation of said OTS through writ petition under Article 226, and whether Bank's cancellation of OTS and subsequent sale of mortgaged property u/s 13(4) of SARFAESI Act, 2002 was liable to be interfered with by High Court on grounds of arbitrariness or violation of any vested right of petitioners.

Headnotes

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - ss. 13(2), 13(4) - Petitioners and another, a borrower company and its guarantor, availed a cash credit limit of ₹1,00,00,000/–, an overdraft facility of ₹10,00,000/–, and a term loan of ₹2,80,00,000/– from respondent Bank in 2017, however, due to financial distress, their loan accounts were declared non-performing assets (NPAs) on 10.05.2021 - Thereafter, petitioners applied for and were granted a One Time Settlement (OTS) under Bank's Simplified One Time Settlement Scheme (SOTS) 2022–23 vide letter dated 10.05.2023, stipulating repayment within 180 day - Despite repeated reminders, petitioners failed to deposit settled amount within prescribed period, leading Bank to cancel OTS by orders dated 25.04.2024, 10.05.2024, and 22.05.2024, and subsequently issue auction notices u/s 13(4) of SARFAESI Act, 2002 - One of mortgaged properties was sold on 27.01.2025, and sale certificate was issued on 02.02.2025 in favour of auction purchaser - Aggrieved thereby, petitioners filed instant petiton, contending that OTS remained valid and Bank acted arbitrarily in cancelling same

and auctioning secured assets without affording them adequate opportunity to comply with settlement terms.

Held: Petitioners have failed to comply with OTS Scheme - They have raised grounds stating that OTS Scheme is still alive as SOTS Scheme was not known to them - This argument cannot be countenanced and rejected for simple reason that letter granting OTS to petitioners specifically refers to SOTS Scheme - Secondly, any OTS is time bound and petitioners cannot raise argument that no time frame was fixed for making repayment of same just because time frame has not been provided in letter granting OTS - Letter dated May 10, 2023 granting OTS to petitioners specifically refers to SOTS Scheme 2022-23 and said Scheme provides that maximum repayment period would be 180 days - Accordingly, none of cases cited by petitioners support their claim of a vested right to seek extension of time under OTS Scheme - Petitioners have shown no valid reason for non-payment within 180-day period prescribed under Clauses 7.3 to 7.5 of SOTS Scheme 2022-23 - Bank's cancellation of OTS and sale of secured assets in accordance with law to third parties, in whose favour third party rights have been created and sale certificates issued, cannot be faulted - In these circumstances, no interference is warranted with Bank's bona fide action. [Paras 5, 11] (E-13)

Case Law Cited

M/s Rima Transformers and Conductors Pvt. Ltd. v. Canara Bank reported in 2022 Law Suit (Kar) 3002; M/s R.S. Mills; Harjinder Singh v. Debts Recovery Tribunal-I; State Bank of India reported in **Law Suit (P&H) 983;** Md. Afroz Baig v. State Bank of India, Mumbai and another reported in **2022 SCC Online TS 1804;** Hardayal Singh Cheema v. State Bank of India and another reported in **2022 SCC Online P&H 4400 - distinguished**

M/s Samarth Woolen Mills and another v. Indian Bank (erstwhile Allahabad Bank) reported in **Law Suit (P&H) 669; referred to**

List of Acts

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

List of Keywords

Article 226 of Constitution of India; Certiorari; Mandamus; One Time Settlement (OTS); Cancellation Order; Sale/Auction Notice; Sale of Immovable Properties; Non-Performing Asset (NPA); Property mortgaged; Cash Credit Limit; Overdraft Facility; Term Loan; OTS Scheme / SOTS Scheme 2022–23; Clause 7.3 to 7.5 of Scheme; Repayment Period of 180 Days; Default in Compliance; Rejection of OTS; Section 13(4) of SARFAESI Act, 2002; Sale Certificate; Auction Purchaser; Representation submitted by petitioners; Failure to comply with OTS Scheme; Time-bound scheme; Bonafide action of Bank; Extension of time; Cancellation of OTS; Writ of Certiorari to quash; Direction to accept balance amount; Interfere with the action of the Bank; Third-party rights created.

Case Arising From

ORIGINAL JURISDICTION: Writ-C NO.1969 OF 2025

From the Order dated 25.04.2024, 10.05.2024, 22.05.2024 and 16.12.2024 of Punjab National Bank, Recovery Department, Hathras

Appearances for Parties

Advs. for the Petitioners:
Vijay Kumar Sharma

Adv. for the Respondent:
Sanjai Singh

(Delivered by Hon'ble Shekhar B. Saraf, J.)

1. This is a writ petition under Article 226 of the Constitution of India wherein the writ petitioners are aggrieved by the cancellation of the One Time Settlement that was offered by the Bank. The prayers in the writ petition are as follows:-

"a. A writ order or direction in the nature of certiorari call for the record and to quash the first One Time Settlement

Cancelation Order dated 25/04/2024, second One Time Settlement Cancelation Order dated 10/05/2024, third One Time Settlement Cancelation Order dated 22/05/2024 and also Sale/Auction notice dated 16/12/2024 all are issued by the respondent no.4 (Annexure no. 1, 2, 3 and 4 to this writ petition).

b. A writ, order or direction in the nature of mandamus commanding and directed the respondent Bank not to proceeded further and also stay the entire proceeding initiated in pursuance of One Time Settlement Cancelation Orders dated 25/04/2024, 10/05/2024 and 22/05/2024 and Sale Notice for Sale of Immovable Properties dated 16/12/2024 till the disposal of the present writ petition.

c. A writ, order or direction in the nature of mandamus commanding and directing the respondent no. 6, to accept the entire balance amount/remaining amount dues as per the terms and condition prescribed in the paragraph no. 2 and 6 of the One Time Settlement dated 10/05/2023 (Annexure no. 7 to this writ petition), after deducting the deposited amount deposited by the petitioners within the period as fixed by this Hon'ble Court.

d. A writ order or direction in the nature of mandamus directing and commanding the respondent no. 4 to 6 not to interfere in peaceful possession of both the petitioners' properties except in accordance with law.

e. A writ, order or direction in the nature of mandamus commanding and directing the respondent no. 4 to 6 do not take any coercive action against the property mortgaged by the petitioners.

f. A writ, order or direction in the nature of mandamus commanding and directed the respondent no. 4, to consider and passed appropriate order on the representation dated 04/11/2024 and 03/01/2025 submitted by the petitioner Company for compliance the terms and condition prescribed in the paragraph no. 2 and 6 of the One Time Settlement dated 10/05/2023 expeditiously within a suitable period as fixed by this Hon'ble Court (Annexure no. 15 and 17 to this writ petition).

..."

2. The facts of the present case, as emerge from the pleadings of the parties, are as under:-

(a) The petitioners, a registered company, took a Cash Credit Limit of Rs.1,00,00,000/- and also Over Draft Facility of Rs.10,00,000/- as well as a Term Loan of Rs.2,80,000,00/- in the year 2017. On May 10, 2021, as the petitioners could not maintain payment of the loan accounts, due to financial constraint, the loan accounts were declared as non performing asset.

(b) On March 31, 2023, the petitioners deposited a sum of Rs.34,50,000/- and applied for the One Time Settlement, and thereafter, on May 10, 2023, the bank and the petitioners have entered into an agreement for One Time Settlement.

(c) On April 25, 2024, as the petitioners failed to comply with the OTS Scheme, the Bank rejected the OTS and further declared the account of the petitioners as a non performing asset. Thereafter, on October 8, 2024 auction

notice was published. As per the petitioners, they have made several representations to the Bank but the Bank without considering the same, again issued auction notice dated October 22, 2024 under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

(d) The petitioners filed a writ petition bearing Writ-C No.36133 of 2024 before this Court which was disposed of on November 5, 2024 directing the petitioners to deposit 20% of the amount indicated in the notice under Section 13(2) of the Act and thereafter remaining amount was to be paid in three equal bimonthly installments.

(e) Thereafter, the guarantor namely Kali Charan Sharma approached this Court by means of Writ-C No.42166 of 2024 that was disposed of granting liberty to the guarantor to approach the Bank.

(f) On December 16, 2024 sale notice was issued for sale of the immovable properties of the petitioners and the guarantor. Thereafter, the Bank has sold one mortgage property on January 27, 2025 and the sale certificate has also been issued in favour of the auction purchaser on February 2, 2025.

3. It is clear from the above facts that the petitioners agreed on a One Time Settlement (hereinafter referred to as the 'OTS') with the Bank and the Bank issued a letter dated May 10, 2023 to the petitioners wherein the terms and conditions were laid down. The letter specifically refers to the SOTS Scheme 2022-23. Upon perusal of the SOTS Scheme, it is clear from Clause 7.3 to 7.5 that OTS Scheme would be applicable for a maximum repayment period of 180 days. The above clauses are delineated below:-

"7.3 Party to be impressed upon to deposit OTS amount within 90 days of approval of OTS.

7.4 In case the entire OTS amount, as per the terms finalized in the sanction, is paid within 90 days of conveying approval to the borrower, no interest will be charged. However, simple interest @ MCLR for one-year (applicable on the date of sanction) plus 1% on reducing balance basis will be charged where OTS amount is paid beyond 90 days, effective from the date of Sanction.

7.5 The maximum repayment period for the said scheme will be 180 days. In case any borrower fails to pay OTS amount, respective sanctioning authority may consider extension of time period upto aggregate of 180 days from the date of conveying approval."

4. From the facts, it is further clear that the Bank wrote to the petitioners on several occasions to complete payment of OTS amount but on one pretext or the other, the payment was not made.

5. Counsel on behalf of the petitioners submits that as per the OTS, approximately a sum of Rs.33,00,000/- is payable while the counsel appearing on behalf of the Bank submits that as the OTS has failed, the remaining balance is approximately Rs.1,33,00,000/-. In light of the above, we are of the view that we cannot, in any manner, come to the assistance of the petitioners as the petitioners have failed to comply with the OTS Scheme. The petitioners have raised grounds stating that the OTS Scheme is still alive as the SOTS Scheme was not known to them. This argument cannot be countenanced by us and is outrightly rejected for the simple

reason that the letter granting OTS to the petitioners specifically refers to the SOTS Scheme. Secondly, any OTS is time bound and the petitioners cannot raise the argument that no time frame was fixed for making the repayment of the same just because time frame has not been provided in the letter granting OTS. The letter dated May 10, 2023 granting OTS to the petitioners specifically refers to the SOTS Scheme 2022-23 and the said Scheme clearly provides that the maximum repayment period would be 180 days.

6. Counsel appearing on behalf of the petitioners has relied on the judgment of the Karnataka High Court in the case of **M/s Rima Transformers and Conductors Pvt. Ltd. Vs. Canara Bank** reported in **2022 Law Suit (Kar) 3002,** judgment of the Punjab and Haryana High Court in the case of **M/s R.S. Mills; Harjinder Singh vs. Debts Recovery Tribunal-I; State Bank of India** reported in **Law Suit (P&H) 983,** judgment of the Telangana High Court in the case of **Md. Afroz Baig vs. State Bank of India, Mumbai and another** reported in **2022 SCC Online TS 1804,** the judgment of the Punjab and Haryana High Court in the case of **M/s Samarth Woolen Mills and another vs. Indian Bank (erstwhile Allahabad Bank)** reported in **Law Suit (P&H) 669** and another judgment of Punjab and Haryana High Court in the case of **Hardayal Singh Cheema vs. State Bank of India and another** reported in **2022 SCC Online P&H 4400** to buttress his argument that the Bank is mandatorily required to extend the period under the OTS and the writ Court has power to allow such extension and grant relief to the petitioners.

7. In the case of **M/s Rima Transformers and Conductors** (supra), the petitioner had deposited the entire amount before the deadline fixed by the Bank but the Bank later unilaterally withdrew the OTS offer. In those circumstances, the Court interfered in the matter. This case is clearly distinguishable from the present case in hand.

8. In **M/s R.S. Mills** (supra), the Court had held that since the sale certificate had not been issued, the borrower's right to redeem the mortgage had not been lost. This case is also clearly distinguishable from the present case in hand as it is not similar to the facts involved in the present case.

9. In **Md. Afroz Baig** (supra), the petitioner had delayed the payment by only one day and the Court taking into consideration the fact that the petitioner had made efforts to pay the amount by selling his agricultural land, in the peculiar facts and circumstances, directed the Bank to accept the OTS payment. As is evident from the facts of the case, this case does not come to the rescue of the petitioners.

10. One need not join issue with the judgment in the case of **M.s Samarth Woollen Mills** (supra) which has simpliciter laid down guidelines in cases of OTS Scheme. Furthermore, the judgment in **Hardayal Singh Cheema** (supra) that has been referred to by the petitioners, is a case of COVID-19 pandemic being involved, and accordingly, some relief was granted to the petitioner in that case keeping the COVID-19 pandemic in mind. This case has no application in the facts and circumstances of the present case.

11. In light of above, we are of the view that none of the cases cited by the petitioners come to their rescue as they do

not lay down any ratio that the petitioners have a vested right to demand an extension of time limit that has been provided under the OTS Scheme. The petitioners have not been able to provide any plausible reason as to why the payment was not made within 180 days as prescribed under Clauses 7.3 to 7.5 of the SOTS Scheme 2022-23. Owing to the same, we cannot fault the Bank for proceeding to cancel the OTS provided to the petitioners and selling the securities in accordance with law to third parties. It is to be further noted that third party rights have already been created and the sale certificate has also been issued. In these circumstances, we do not see any reason to interfere with the action taken by the Bank which has proceeded in a bonafide manner.

12. In view of the aforesaid, the writ petition is dismissed.

(2025) 8 ILRA 795
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 21.08.2025

BEFORE

THE HON'BLE RAJAN ROY, J.
THE HON'BLE MANJIVE SHUKLA, J.

Writ C No. 7305 of 2025

M/S Ramesh Dyeing And Washing, Ghaziabad ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan, Tarannum Sana

Counsel for the Respondents:
C.S.C., Ashok Kumar Verma, Chandra Shekhar Pandey

ISSUE FOR CONSIDERATION

Whether U.P. Pollution Control Board has jurisdiction to impose environmental compensation and whether the writ petition is liable to be entertained despite availability of an alternative statutory remedy under Section 16 of the NGT Act, 2010.

HEADNOTE

Environmental Law – Pollution Control Board – Jurisdiction – Environmental Compensation - *Polluter Pays Principle* – Supreme Court affirms authority of Boards to impose restitutionary/compensatory damages – Statutory remedy under Section 16, NGT Act available – Writ petition filed after long delay – Discretion under Article 226 declined – Petition dismissed.

Held :

Environmental Law – Closure direction and environmental compensation of Rs.14,20,000/- imposed under Section 33A of the Water Act, 1974 challenged – Contention that State Board lacks jurisdiction to impose environmental compensation rejected – In Civil Appeal No.757-760 of 2013, *Delhi Pollution Control Committee v. Lodhi Property Company Ltd.* the Apex Court has held that Pollution Control Boards can impose and collect, as restitutionary or compensatory damages, fixed sum of monies or require furnishing of bank guarantees as ex-ante measures towards potential or actual environmental damage – Pollution Control Board has the authority/jurisdiction to impose environmental compensation – High Court's writ jurisdiction not ousted, but discretionary – Effective statutory appeal provided under Section 16 of the NGT Act, 2010 not availed within limitation – Writ petition filed after more than three years – High Court declined to exercise writ jurisdiction – Petition dismissed. (E-5)

CASE LAW CITED

*1. Kantha Vibhag Yuva Koli Samaj Parivartan Trust v. State of Gujarat*Civil Appeal No. 1046 of 2019, decided on 21.01.2022 (SC) ;
2. Delhi Pollution Control Committee v. Lodhi Property Company Ltd. & Ors, Civil Appeal Nos. 757–760 of 2013, decided on 04.08.2025 (SC);
3. M.C. Mehta v. Union of India (1987) 1 SCC 395;

4. Indian Council for Enviro-Legal Action v. Union of India; (1996) 3 SCC 212'
5. Vellore Citizens Welfare Forum v. Union of India (1996) 5 SCC 647;
6. State Pollution Control Board, Odisha v. Swastik Ispat Pvt. Ltd. 2014 SCC OnLine NGT 1;
7. Madhya Pradesh High Court Advocates Bar Association v. Union of India Writ Petition (Civil) No. 433 of 2012, decided on 18.05.2022 (SC);
8. Whirlpool Corporation v. Registrar of Trade Marks, Mumbai (1998) 8 SCC 1
9. Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India (2012) 8 SCC 326

List of Acts

Water (Prevention & Control of Pollution) Act, 1974;
Air (Prevention & Control of Pollution) Act, 1981 ;
National Green Tribunal Act, 2010; Environmental Protection Act, 1986 ; Constitution of India

List of Keywords

Environmental Compensation; Polluter Pays Principle; Jurisdiction; Statutory Remedy; Delay; Discretion under Article 226

CASE ARISING FROM

Orders dated 12.08.2021, 25.03.2022 and 28.06.2022 imposing environmental compensation and closure direction against the petitioner-unit.

Appearances for Parties

Advs For Petitioner: Shri Jalaj Kumar Gupta, Shri Mehdi Khan, Shri Mohd. Aslam Khan, Smt. Tarannum Sana
Advs For Respondents: C.S.C.; Shri Ashok Kumar Verma; Shri Chandra Shekhar Pandey

(Delivered by Hon'ble Rajan Roy, J.
&
(Hon'ble Manjive Shukla, J.)

1. Heard learned counsel for the petitioner, Shri Chandra Shekher Pandey, learned counsel for the Central Pollution Control Board, Shri Ashok Verma, learned counsel appearing for U.P. Pollution Control Board and Shri Nishant Shukla, learned Additional Chief Standing Counsel for the State.

2. After hearing the parties and going through the record, what comes out is that by means of this petition the petitioner has challenged two orders, one is dated 12.08.2021 by which closure of the petitioner?s industrial unit was ordered and environmental compensation of Rs.14,20,000/- was imposed accordingly. Subsequently, the said order, as also another order dated 25.03.2022, which was in continuation of the earlier order, was revisited and a decision was taken on 28.06.2022 for cancelling the said orders subject to certain conditions, one of which was that the remaining environmental compensation, payable by the petitioner under the earlier orders amounting to Rs.13,20,000/-, would be paid by the petitioner within two months, failing which the closure order will again revive. This order dated 28.06.2022 is also under challenge.

3. It is not out of place to mention that in the interregnum the petitioner admits to have paid Rs.1,00,000/- towards environmental compensation albeit, as alleged, under compulsion and coercion.

4. The question which has arisen before us is as to whether U.P. Pollution Control Board has jurisdiction to impose such environmental compensation and in this context, contention of petitioner is that the impugned orders having been passed under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as "Water Act, 1974"), it did not have any such jurisdiction as the said provision does not vest any such authority/jurisdiction upon the Board to impose environmental

compensation. Reliance has been placed in this regard upon judgment of Hon'ble Supreme Court dated 21.01.2022 rendered in ***Civil Appeal No.1046 of 2019; Kantha Vibhag Yuva Koli Samaj Parivartan Trust and others vs. State of Gujarat and others.***

5. Sri A. K. Verma, counsel appearing for U.P. Pollution Control Board as also Sri Chandra Shekhar Pandey, counsel appearing for Central Pollution Control Board submitted that this issue is no more res integra as the same has already been considered and decided in favour of the Board albeit in the context of Delhi Pollution Control Committee in ***Civil Appeal No.757-760 of 2013; Delhi Pollution Control Committee vs. Lodhi Property Company Ltd. Etc.*** wherein, it has been held that the Pollution Control Board can impose such environmental compensation in exercise of powers under Section 33A of the Water Act, 1974 and Section 31A of the Air (Prevention and Control of Pollution) Act, 1981. (hereinafter referred to as "the Air Act, 1981" As regards the earlier decision of Hon'ble Supreme Court in ***Kantha Vibhag Yuva Koli Samaj Parivartan Trust and others (supra),*** he submitted that the said judgment does not specifically deal with this issue and therefore it is not applicable, although, he admitted the fact that the NGT also has adjudicatory powers in this regard under Section 15 of National Green Tribunal Act, 2010 (hereinafter referred to ?the NGT Act, 2010?) and can impose environmental compensation.

6. Having heard learned counsel for the parties and having perused the records, we find first of all that the orders impugned have been passed under Section 33A of the Water Act, 1974.

7. As regards the decision of Hon'ble the Supreme Court in ***Kantha Vibhag Yuva Koli Samaj Parivartan Trust and others (supra)***, the specific issue as to whether the Pollution Control Boards have the power to impose environmental compensation etc. or not, did not fall for consideration in the said case, in fact, the issue therein was as to whether the NGT could abdicate its adjudicatory powers under the Act, 2010 to the Committees formed by it and in that context it was held that it could not do so. The inference being drawn by the counsel for the petitioner, based on the said judgment, that it is the NGT alone which has adjudicatory powers to determine environmental compensation and impose it, is unfounded. The said judgment is not an authority on the issue involved before us.

8. We have gone through the subsequent decision of Hon'ble the Supreme Court in ***Lodhi Property Company Ltd. (supra),*** wherein the issue falling for our consideration was specifically considered by Hon'ble the Supreme Court of India albeit in the context of Delhi Pollution Control Committee. Relevant paragraphs of the said judgment are quoted hereinbelow:-

"1. The Delhi Pollution Control Committee (DPCC) is in appeal against the judgment of the Division Bench of the High Court holding that it is not empowered to levy compensatory damages in exercise of powers under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31A of the Air (Prevention and Control of Pollution) Act, 1981 on the ground that such an action amounts to imposition of penalty provided for in Chapters VII and VI of the respective Acts, and as such, procedure contemplated thereunder will be the only method for

imposing and collecting compensatory damage.

2. Having considered the principles that govern Indian environmental laws, we have held that the environmental regulators, the Pollution Control Boards exercising powers under the Water and Air Acts, can impose and collect restitutionary or compensatory damages in the form of fixed sum of monies or require furnishing of bank guarantees as an ex-ante measure to prevent potential environmental damage. These powers are incidental and ancillary to the empowerment under Sections 33A and 31A of the Water and Air Acts. At the same time, we have directed that the powers must be exercised as per procedure laid down by subordinate legislation incorporating necessary principles of natural justice, transparency and certainty.

8. The core question in these appeals is - whether the regulatory boards can, in exercise of powers under Section 33A of the Water Act and Section 31A of the Air Act, impose and collect as restitutionary and compensatory damages fixed sums of monies or require furnishing bank guarantees as an ex-ante measure towards potential environmental damage?

11. In 1988, both Acts were amended. Notably, through amendments the State Boards were further empowered to give directions under Section 33A of the Water Act and Section 31A of the Air Act. These two provisions are identically worded. Section 33A of the Water Act is as under;

"Section 33A. Power to give directions.—Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation. —For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) the stoppage or regulation of supply of electricity, water or any other service."

12. The directions contemplated under Sections 33A and 31A of the Water and Air Acts must be in furtherance of the powers and functions of the Boards and they must be in writing. These provisions, declares that the power to issue directions will include the power to direct closure, prohibition or regulation of any industry, operation or process. Further, this power extends to directing the stoppage or regulation of supply of electricity, water or any other service. The power to give directions has been worded broadly, and it allows the Boards significant flexibility in deciding the nature of directions. The legislative intention of granting these powers through the 1988 amendment can be inferred from the Statement of Objects and Reasons of the Water Act, which reads as follows —

"2. The Water Act is implemented by the Central and State Governments and the Central and State Pollution Control

Boards. Over the past few years, the implementing agencies have experienced some more administrative and practical difficulties in effectively implementing the provisions of the Act. The ways and means to remove these difficulties have been thoroughly examined in consultation with the implementing agencies. Taking into account the views expressed, it is proposed to amend certain provisions of the Act in order to remove such difficulties?.

3. The Bill, inter alia, seeks to make the following amendments in the Act, namely: —

....

(iv) in order to effectively prevent water pollution, the penal provisions of the Act are proposed to be made stricter and bring them at par with the punishments prescribed in the Air (Prevention and Control of Pollution) Act, 1981 as amended by Act 47 of 1987;

....

(vi) it is proposed to empower the Boards to give directions to any person, officer or authority including the power to direct closure or regulation of offending industry, operation or process or stoppage or regulation of supply of services such as water and electricity;"

13. Similar objective is expressed for the amendment introduced in the Air Act.

14. An appeal against directions issued under Section 33A of the Water Act by the State Board can be filed before the National Green Tribunal under Section 33B, introduced in 2010. Unlike the Water Act there is no specific Appeal provision against directions issued under Section 31A of the Air Act. This asymmetry must be addressed legislatively.

15. Offences and penalties under the two Acts, and the related procedures, are covered in Chapter VII of the Water Act and Chapter VI of the Air Act. These chapters have undergone significant and substantial amendments. Prior to the amendments, the two Acts stipulated penalties in the form of imprisonment, monetary fine or both for offences under the statute. Courts could only take cognizance of an offence if a complaint was filed by a Board or any officer authorized by it, or by any person who had given notice of the alleged offence and of his intention to make a complaint. No court inferior to that of a Metropolitan Magistrate or a Judicial magistrate of the first class can try an offence punishable under the two Acts. Be that as it may, for the present purpose we have to examine and interpret Sections 33A and 31A of the Water and Air Acts.

16. Our constitutionalism bears the hallmark of an expansive interpretation of fundamental rights. But such creative expansion is only a job half done if the depth of the remedies, consequent upon infringement, remain shallow. In other words, remedial jurisprudence must keep pace with expanding rights and regulatory challenges. It is not sufficient that courts adopt injunctory, mandatory and compensatory remedies, but our regulators also must be empowered in that regard. However, the legislative grammar must be elastic for us to infuse the regulators with power to fashion different remedies. This infusion must also be tempered with the necessary guidelines and parameters of

exercise of remedial powers, failing which such infusion would aid arbitrary use. Our firm view is that remedial powers or restitutionary directives are a necessary concomitant of both the fundamental rights of citizens who suffer environmental wrongs and an equal concomitant of the duties of a statutory regulator, which are informed by Part IV A of the constitution. To that extent, the functions and powers of a regulator must be inspired by the obligation in Part IV A and Article 48 A. The State's 'endeavour to protect and improve the environment' will be partial, if it does not encompass a duty to restitute.

17. Of all the duties imposed under Article 51A, the obligation to conserve and protect water and air, is perhaps the most significant, amidst our climate change crisis. The Water Act and the Air Act institutionalised all efforts and actions that need to be taken to protect air that we breathe and water that we consume by creating the Pollution Control Boards. These Boards functioning as our environment regulators are expected to act with institutional foresight by evolving necessary policy perspectives and action plans. Working with perpetual seal and succession, they are to develop and retain institutional memory so that they can act on the basis of the experience, data and information that they would have gathered and processed. Institutional expertise is critical, and these bodies are to employ human resource which have domain expertise and talent. These bodies are intended to maintain institutional integrity by taking independent and objective decisions without governmental or industrial control. These values flow naturally if there is institutional transparency and accountability. It is in this perspective that we need to interpret Section 33A of the Water Act and 31A of the Air Act."

9. Hon'ble Supreme Court of India noticed the distinction between an action for environmental damages for restitution or remediation and imposition of penalties or fines levied at the culmination of a punitive action and in this context referred to the earlier decision in ***M.C. Mehta and another vs. Union of India and others, (1987) 1 SCC 395 (decided on 20.12.1986).*** It has then considered the Polluter Pays principle with reference to various decisions including the decision of Hon'ble the Supreme Court in the case of ***Indian Council for Enviro Legal Action etc. vs. Union of India and others etc.*** reported in ***(1996) 3 SCC 212,*** wherein, it has been held that according to Polluter Pays principle the responsibility for repairing the damage is that of the offending industry. In that case, Hon'ble the Supreme Court held that powers of the Central Government to issue direction under Section 5 read with Section 3 of the Environmental Protection Act, 1986 include the power to impose cost for remedial measures.

10. It has then referred to another decision of Hon'ble the Supreme Court in ***Vellore Citizens Welfare Forum vs Union Of India & Others, (1996) 5 SCC 647,*** wherein it has been held that liability for environmental damage includes both compensatory aspect and a restorative or remedial aspect.

11. Most important it has then referred to a judgment of National Green Tribunal in the case of ***State Pollution Control Board, Odisa vs. M/s. Swastik Ispat Private Ltd. & others, (2014) SCC Online NGT 13*** wherein a distinction was made

between a punitive action and a direction to pay environmental damages. In that case, the NGT held that the Pollution Control Board did not act as a consequence of a punitive or penal action but it acted in exercise of the powers vested in it in relation to recalling the conditions of consent and ensuring their implementation while also making compensatory provision for remedying the apprehended wrong to the environment and that such action squarely fell within the power of the Board to prevent and control pollution in consonance with the scheme of the Acts concerned. The decision of the Supreme Court of India in ***Lodhi Property Company Ltd. (supra)*** approves the decision of the NGT in ***M/s Swastik Ispat (supra)*** with the observation that the Tribunal correctly interpreted Section 33A of the Water Act and 31A of the Air Act. In para 27, it has summarized the principles elucidated from preceding discussion in the following terms.

27. Based on a review of precedents on this issue, the following legal position emerges —

I. There is a distinction between a direction for payment of restitutionary and compensatory damages as a remedial measure for environmental damage or as an ex-ante measure towards potential environmental damage on the one hand; and a punitive action of fine or imprisonment for violations under Chapters VII of the Water Act and VI of the Air Act on the other hand.

II. If directions in furtherance of restitutionary and compensatory measures are issued, these are not to be considered as punitive in nature. Punitive action can only be taken through the procedure prescribed in the statute for example under chapters VII and VI of the Water and Air Acts respectively.

III. Indian environmental law has assimilated the principle of Polluter Pays and there is also a statutory incorporation of this principle in our laws. The invocation of this principle is triggered in the situations; i) when an established threshold or prescribed requirement is exceeded or breached, and it does result in environmental damage, ii) when an established threshold or prescribed requirement is not exceeded or breached, nevertheless the act in question results in environmental damage and also iii) when a potential risk or a likely adverse impact to the environment is anticipated, irrespective of whether or not prescribed thresholds or requirements are exceeded or breached.

IV. Environmental regulators have a compelling duty to adopt and apply preventive measures irrespective of actual environmental damage. Ex-ante action shall be taken by these regulators and for this purpose a certain measure in exercise of powers under Sections 33A and 31A of the Water and Air Acts is necessary.

V. The powers of the Boards under Sections 33A and 31A of the Water and Air Acts are identical to that of Section 5 of the Environment Protection Act. Under Section 5, the Central Government or its delegate has the power to issue directions to the polluting industry to pay certain amounts and utilise the said fund for carrying out remedial measures. The Boards are empowered to take similar actions under Sections 33A and 31A of the Acts."

12. After noticing the distinction between a direction for payment of restitutionary and compensatory damages as a remedial measure for environmental

damage or as an ex-ante measure towards potential environmental damage and a punitive action of fine or imprisonment for violations under Chapter-VII of the Water Act,1974 and Chapter-VI of the Air Act, 1981, it has been observed that if the directions in furtherance of restitutionary and compensatory measures are issued, these are not to be considered as punitive in nature. Punitive action can only be taken through the procedure prescribed in the statute. Environmental regulators such as the Pollution Control Boards have a compelling duty to adopt and apply preventive measures irrespective of actual environmental damage. Ex-ante action shall be taken by these regulators and for this purpose, certain measure in exercise of powers under Sections 33A and 31A of the Water and Air Act is necessary. It has categorically held that powers of the Boards under Sections 33A of the Water Act, 1974 and 31A of the Air Act, 1981 are identical to that of Section 5 of the Environmental Protection Act, which had been considered in the case of ***Indian Council for Enviro Legal Action etc. (supra)***, as already referred above.

13. It has categorically held that the Boards have similar powers under Sections 33A of the Water Act, 1974 and 31A of the Air Act, 1981 as the Central Government under Section 5 of the Environmental Protection Act, 1986.

14. It has then categorically held that *"we are of the opinion that these regulators in exercise of these powers can impose and collect, as restitutionary or compensatory damages fixed sum of monies or require furnishing bank guarantees as ex-ante measure towards potential or actual environmental damage"*. There is no doubt that Sections 33A of the Water Act, 1974 and 31A of the Air Act, 1981 give the State Boards powers to issue necessary directions for environmental restoration, remediation and compensation and for the payment of costs for the same.

15. It has then observed that the Board's power under Section 33A of the Water Act,1974 and Section 31A of the Air Act, 1981 have to be read in light of the legal position on the application of Polluter Pays principle as formulated and explained. This means that the State Board cannot impose environmental damages in case of every contravention or offence under the Water Act and Air Act. It is only when the State Board has made a determination that some form of environmental damage or harm has been caused by erring entity, or the same is so imminent, that the State Board must initiate action under Section 33A of the Water Act,1974 and Section 31A of the Air Act,1981. It has emphasized that the exercise of powers by the Board as aforesaid should be guided by transparency and non arbitrariness and also emphasized the necessity of subordinate legislation in the form of rules and regulations to be notified in this regard in light of the said judgment.

16. In view of the said authority, it is no longer *res integra* that the Pollution Control Board has the authority/jurisdiction to impose environmental compensation. The only reason we had proposed to hear the matter, earlier, was the plea taken by the petitioner that the Board does not have jurisdiction, but now that the legal position has been clarified through Hon'ble Supreme Court in the case of ***Lodhi Property Company Ltd. (supra),*** this ground is not available.

17. We may also put it on record that prior to pronouncement of the decision of Hon'ble the Supreme Court in ***Lodhi***

Property Co. Ltd. (supra) on 04.08.2025 a co-ordinate Bench of this Court had an occasion to decide a similar issue vide judgment dated 17.7.2025, however, in view of subsequent judgment of Hon'ble the Supreme Court directly on the said issue of jurisdiction of the U.P. Pollution Board, we are unable to follow the law discussed and enunciated by the co-ordinate Bench of this Court as we are bound by the dictum of Hon'ble the Supreme Court as envisaged under Article 141 of the Constitution of India. Of course, counsel for petitioner has heavily relied upon the judgment dated 18.05.2022 rendered by Hon'ble Supreme Court in ***Writ Petition (Civil) No.433 of 2012; Madhya Pradesh High Court Advocates Bar Association and another vs. Union of India and another*** wherein one of the questions under consideration was whether- "whether the National Green Tribunal ousts the High Court's jurisdiction under Sections 14 & 22 of the NGT Act?", which was answered in the negative, as, such jurisdiction of the High Court under Article 226 and 227 is part of the basic structure of the Constitution. Based on the aforesaid, it was contended that even if the Board has the power to impose such compensation, nevertheless, there are other irregularities and illegalities which could be seen by the High Court.

18. On the other hand, learned counsel for Board emphasized upon the judgment of Hon?ble the Supreme Court reported in ***(2012) 8 SCC 326; Bhopal Gas Peedith Mahila Udyog and others vs. Union of India and others,*** paragraph 40 of which reads as under:-

"40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short "the NGT Act") particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short "NGT"). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before NGT. This will help in rendering expeditious and specialised justice in the field of environment to all concerned."

19. The above quoted judgment has not been considered in the subsequent decision in ***Madhya Pradesh High Court Advocates Bar Association and another (supra).*** Much emphasis was laid by counsel for the Board on the fact that an earlier decision on the subject will prevail if it has not been considered in the subsequent decision of Hon?ble Supreme Court, but without expressing any opinion on this aspect, suffice it to say that even if the judgment in ***Madhya Pradesh High Court Advocates Bar Association and another (supra)*** is to be applied, the fact remains that though jurisdiction of this Court is not ousted, but it is a discretionary jurisdiction and, ordinarily, unless there are exceptional circumstances, such as those mentioned in the decision of Hon'ble Supreme Court in the case of ***Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others, 1998 8 SCC 1,*** the High Court under Article 226 is ordinarily loathe to entertain a writ petition when there is a statutory remedy, as prescribed in

this case under Section 16 of the NGT Act, 2010, which has not been availed of. Further, an order dated 28.06.2022 has been challenged by filing this writ petition on 22/23.07.2025 i.e. with a delay of more than three years. Statutory remedy of appeal has not been availed in terms of limitation prescribed under Section 16 of the NGT Act, 2010 and after more than three years this writ petition has been filed challenging the said order.

20. Accordingly, we decline to exercise our discretion to entertain this petition.

21. The writ petition is **dismissed** accordingly.

(2025) 8 ILRA 804
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 25.08.2025

BEFORE

THE HON'BLE PANKAJ BHATIA, J.

Writ C No. 7820 of 2025

Sabra Ahmad ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Moti Lal Yadav

Counsel for the Respondents:
C.S.C., Syed Mohammad Haider Rizv

Issue for Consideration

The petitioner claimed that the reservation for SC/ST and OBC far exceeded 50% in four Government Medical Colleges located at Ambedkar Nagar, Kannuaj, Jalaun and Saharanpur, which is contrary to the Uttar Pradesh Admission to Educational Institutions Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes Act,2006.The total reservation shown in the seat matrix was exceeding 79%.

Headnotes

Civil law-Constitution of India,1950-Article 226- Uttar Pradesh Admission to Educational Institutions Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes Act,2006.-S. 4(1)-Reservation in Educational Institutions-Permissible Extent of Reservation-Contradiction between Executive Order and Statute-The Government Orders were founded on a misreading and misinterpretation of the Central Government's policy guidelines for the SCP-The G.O. was clearly contrary to the mandate of Section 4 of the Act,2006-Petition Allowed.

Held

The court held that the guidelines for SCP, which mention 70% SC/ST and 30% general population, relate to hostel facilities and the expenditure to be borne by the SCP and General Plan Funds(70% and 30% respectively), not the reservation for educational admissions as defined in the Act,2006-All the Government orders mandating quotas in excess of the reservation prescribed in 2006 Act were quashed-The State of U.P. was directed to fill the seats in the four college afresh strictly based upon the reservation prescribed under the Act,2006 along with the reservation for the Central Government seats and the State Governments Seats.(Para 24 to 30) (E-6)

List of Acts

Uttar Pradesh Admission to Educational Institutions Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes Act, 2006

List of Keywords

Act,2006, Reservation, quota , EWS, SC/ST, OBC, SCP, Ambedkar Nagar, Kannuaj, Jalaun and Saharanpur, Indra Sawhney, MBBS seats, Tribal Sub-plan

Case Arising From

CIVIL JURISDICTION:WRIT-C No. – 7820 of 2025

From the Judgment and Order dated 25.08.2025 of the High Court of Judicature at Allahabad.
Sabra Ahmad Vs. State of U.P. & Ors.

Appearances for Parties
Advs. for Petitioner(s):
Moti Lal Yadav
Advs.for Respondent(s):
C.S.C., Syed Mohammad Haider Rizvi

(Delivered by Hon'ble Pankaj Bhatia, J.)

1. Heard learned counsel for the petitioner, Shri Syed Mohd. Haider Rizvi, learned counsel for respondent No.2 and Shri Vinod Kumar Shahi, learned Additional Advocate General assisted by Shri Rahul Shukla, learned Chief Standing Counsel for the State-respondents.

2. The Petition raises a very important issue with regards to permissible extent of reservation for entrance in medical colleges in four Government Medical colleges at Ambedkar Nagar, Kannauj, Jalaun and Saharanpur.

3. The facts in brief are that the petitioner had appeared in the NEET-2025 examination and had secured 523 marks /All India Rank 29061. It is stated that for providing the reservation in the State of Uttar Pradesh for the admission to the educational institutions, the State Government has framed an Act, which is known as Uttar Pradesh Admission to Educational Institutions Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes Act, 2006 (hereinafter known as the 'Reservation Act of 2006').

4. It is stated that for giving the reservation, a seat matrix has been issued, which is on record as Annexure No.4 to the writ petition, wherein in respect of four Medical Colleges situated at Ambedkar Nagar, Kannauj, Jalaun and Saharanpur, the reservation is prescribed as under:-

"Summary of Reserved MBBS Seats in Impugned Medical Colleges

Government Medical College	MBS Seats in State Quota	No of MBBS Seats in Category			
		Unreserved	SC	ST	OBC
Ambedkar Nagar	85	7	62	5	11
Kannauj	85	7	62	5	11
Jalaun, Orai	85	7	62	5	11
Saharanpur	85	7	62	5	11
Total Seats	340	28	248	20	44

SEAT MATRIX

Summary of Category Wise MBBS Seats Matrix in State								
Category	Nos	OP	GL	PH	EX	EF	NC	
UR	1705	1192	341	85	35	35	17	1705
BC	1151	805	230	58	23	23	12	1151
SC	1110	778	222	55	22	22	11	1110
ST	102	75	19	4	2	2	0	102
EW	374	264	75	18	7	8	2	374

Total	44 42	31 14	8 8 7	2 2 0	8 9	9 0	4 2	44 42

UR: Unreserved. BC: Backward Class (OBC), SC: Scheduled Caste, Scheduled Trobe, EW: Economically Weaker Section (EWS) OP Open GL: Girls PH: Physically Handicapped EX Servicemen, FF: Freedom Fighters & NC: NCC Certificate"

5. In the light of the said seat matrix, the submission of learned counsel for the petitioner is that the reservation for SC/ST and OBC far exceed 50%, which is contrary to the Reservation Act of 2006. It is further argued that 15% seats of the said Medical Colleges equivalent to 60 seats of the impugned Colleges falling under the central quota are being allotted by the Medical Council Committee, a body of the Government of India, which is to prescribe the reservation in terms of the provisions contained in the Central Educational Institutions (Reservation in Admission) Act, 2006, and the rest of seats fall under the state quota to be allotted by the State Government as per the State Act of 2006, whereas, in the seat matrix as extracted above, the reservation is exceeding 79%, which is contrary to the State Act as well as the Central Act and also violative of the well settled principle of 50% reservation. It is stated that although, the petitioner has qualified, however, her merit would get adversely affected because of the illegal reservation prescribed by the respondents. It is stated that the petitioner has also given a representation to that effect. However, no decision was taken as such the Petitioner has approached this court.

6. In light of the said arguments, this Court had called the State Counsel as well as learned counsel for respondent No.2 to take instructions on the manner of providing reservations and the reasons thereof.

7. Learned Standing Counsel has filed detailed instructions sent by the State Government, which are taken on record.

8. Justifying the reservation as has been done in the seat matrix reflected above, it is stated that Government Orders dated 10.11.2006 as well as 29.01.2008 are of relevance which led to establishing the Medical Colleges at Jalaun and Ambedkar Nagar. Similarly, the Medical Colleges at Kannauj and Saharanpur were established on 20.01.2010 and 21.02.2011, the said Government orders stated that grants for setting up medical colleges were received under the Special Component Plan of the central Government and also contained a prescription for reservation to the following extent, 70% would be reserved for the scheduled castes and scheduled tribes, 15% for the other backward classes and 15% shall be reserved for the general category.

9. To further justify the said Government Orders, it is stated that the said Government Orders were issued in pursuance of the letter dated 05.07.2007 issued by the Central Government while establishing the four Medical Colleges under the 'special component plan'. It is further stated that in pursuance of the said communication dated 05.07.2007, the Government Orders dated 13.07.2011, 19.07.2012, 17.07.2013 as well as 23.06.2015 were issued, wherein directions were given in respect of the reservation to be granted at the State level seats and the Central level seats to the following effect:-

क्र०सं०	श्रेणी	राज्य	भारत	योग

		सरकार द्वारा आवंटित सीटें	सरकार द्वारा आवंटित सीटें	
1	अनुसूचित जाति	62	02	64
2	अनुसूचित जनजाति	05	01	06
3	अन्य पिछड़ा वर्ग	11	04	15
4	अनारक्षित	07	08	15
	योग-	85	15	100

10. To further justify the said Act, the following has been pleaded in the instructions as reasoning:-

"5) The Uttar Pradesh Admission to Educational Institutions Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes Act, 2006 के अंतर्गत 50 प्रतिशत आरक्षण सामान्य व्यवस्था के अन्तर्गत है। भारत सरकार द्वारा निर्धारित स्पेशल कम्पोनेन्ट प्लान की गाइड-लाइन्स के अन्तर्गत स्पेशल कम्पोनेन्ट प्लान की धनराशि तभी व्यय की जा सकती है, जबकि इन्फास्ट्रक्चर सेक्टर में प्रस्तावित इन्फ्रास्ट्रक्चर से लाभान्वित होने वाले कुल व्यक्तियों में से 50 प्रतिशत से अधिक व्यक्ति अनुसूचित जाति के हों। अनुसूचित जाति सब प्लान के सम्बन्ध में योजना आयोग, भारत सरकार के उक्त पत्र दिनांक 05.07.2007 के साथ संलग्न दिशा-निर्देश के अनुसार एस०सी०एस०पी० से शैक्षिक संस्थाओं की स्थापना हेतु 70 प्रतिशत छात्र/छात्रायें अनुसूचित जाति/अनुसूचित जनजाति तथा शेष 30 प्रतिशत सामान्य दर के छात्र/छात्राओं को प्रवेश दिये जाने के निर्देश हैं। साथ ही कुल व्यय में 70 प्रतिशत धनराशि एस०सी०एस०पी० तथा अवशेष 30 प्रतिशत धनराशि सामान्य योजना से वहन किये जाने तथा इन कोर्सी को चलाये जाने हेतु व्यय एस०सी०एस०पी० के परिव्यय से वहन के निर्देश हैं। इन दिशा-निर्देशों के अनुरूप मेडिकल कालेज की स्थापना भी अनुसूचित जाति सब प्लान (एस०सी०एस०पी०) से करायी जा सकती है।

विशेष समन्वित योजना (Special Component Plan) अनुसूचित जाति, जनजाति एवं अन्य पिछड़ा वर्ग के अभ्यर्थियों के सामाजिक, आर्थिक विकास को बढ़ावा देने व उनकी स्थिति में सुधार करने के उद्देश्य से केन्द्र सरकार एवं राज्य सरकार की एक सार्थक पहल है ताकि उन्हें शिक्षा, स्वास्थ्य, रोजगार एवं अन्य क्षेत्रों में समान अवसर मिल सके व गरीबी रेखा से ऊपर आ सके।"

11. The State Government has also placed before this Court the guidelines and additional guidelines issued by the Central Government pertaining to Schedule Caste Sub Plan issued to State Government for its effective implementation.. The guidelines were consolidated and communicated by the Planning Commission to the Planning secretary through letter dated October 31st, 2005. It is pleaded by the state that in pursuance of the said guidelines issued **for preparing the schemes/programmes under the special component plan and the tribal sub plan by the State Government,** . The guidelines based upon which the State Government had issued the Government Orders fixing the reservation and relevant for the present case are as under:-

" 3 An educational complex in the name of educational institute may be set up in each district. The facilities relating to sports, multi-purpose hall, intermediate college with sports education may be provided in this institute on the pattern of Navodaya Vidyala and Kendriya Vidyala. This educational institute will also have classes from 1 to 12 with hostel facilities for 70% SC/ST boys and girls and 30% boys and girls from general population. 70% expenditure of this institute will be provided from the SCP earmarked funds and 30% will come from the Genera Plan.

4. In every Divisional Headquarters, a polytechnic may be set up. Further, one of two training colleges for nursing and para-medical training courses, for nurses, ANMs, physiotherapists,

technicians, radiologists may be provided exclusively for SCs & STs. The nursing colleges exclusively for SC/ST girls may be attached to medical colleges provided. 70% expenditure of this. institute will be provided from the SCP earmarked funds and 30% will come from the General Plan. The expenditure for running these courses will be made out of Special Component Plan outlay earmarked in the State.

7. The candidates preparing for various competitive exams like admission in engineering colleges and medical colleges and other services may be allowed to take admission in any reputed private training centre and their full fees should be reimbursed by the Government from SCP/ TSP funds.

8. Government may also think of providing one time financial support of say Rs 25 to Rs. 40 lakhs to the recognized social institutions for starring intermediate /degree colleges in each Block exclusively for SC/ST boys and girls or admitting 70% SC/ST boys and girls and 30% boys and girls from general population as is being done in U.P."

12. Taking a cue from the guidelines issued referred to above, the State Government issued the Government Order dated 20.01.2010, wherein for the first time, while taking a decision for establishing a Medical College at Kannauj, the following decision was taken:-

"3- प्रश्नगत मेडिकल कालेज में प्रवेश हेतु निर्धारित कुल सीटों में से 70 प्रतिशत सीटे अनुसूचित जाति/जनजाति, 15 प्रतिशत सीटे पिछड़े वर्ग तथा 15 प्रतिशत सीटे सामान्य वर्ग के लिए आरक्षित रहेगीं तथा प्रश्नगत संस्थान की स्थापना आदि पर होने वाले कुल व्यय का 70 प्रतिशत एस०सी०एस०पी० से तथा 30 प्रतिशत व्यय सामान्य योजना से वहन किया जायेगा। "

13. Similarly, in respect of establishment of a Medical College at Saharanpur, the following decision was taken:-

"4- स्वीकृत की जा रही धनराशि का व्यय भारत सरकार तथा राज्य सरकार द्वारा निर्धारित एस०सी०एस०पी०/ टी०एस०पी० के मानक/दिशा-निर्देशों के अनुसार किया जाना सुनिश्चित करेगें।

5- प्रश्नगत मेडिकल कालेज में प्रवेश हेतु निर्धारित कुल सीटो में से 70 प्रतिशत सीटें अनुसूचित जाति/जनजाति, 15 प्रतिशत सीटें पिछड़े वर्ग तथा 15 प्रतिशत सीटें सामान्य वर्ग के लिए आरक्षित रहेगीं तथा प्रश्नगत संस्थान की स्थापना आदि पर होने वाले कुल व्यय का 70 प्रतिशत एस०सी०एस०पी० से तथा 30 प्रतिशत व्यय सामान्य योजना से वहन किया जायेगा।"

14. Similarly, vide order dated 13.7.2011 while establishing a Medical College at Ambedkar Nagar, the following decision was taken:-

"उपर्युक्त विषयक आपके पत्र संख्या एमई-3/2011/6617, दिनांक 11.07.2011 के संदर्भ में मुझे यह कहने का निदेश हुआ है कि विशेष समन्वित योजना (एस०सी०पी०) के अन्तर्गत स्थापित राजकीय मेडिकल कालेज, अम्बेडकर नगर में एम०बी०बी०एस० पाठ्यक्रम की 100 सीटों के आवंटन के संबंध में समाज कल्याण विभाग की राय प्राप्त की गयी। समाज कल्याण विभाग द्वारा 100 सीटों में से 64 सीटें अनुसूचित जाति हेतु 06 सीटें अनुसूचित जनजाति हेतु, 15 सीटें अन्य पिछड़ा वर्ग हेतु तथा 15 सीटें अनारक्षित (समान्य वर्ग) अभ्यर्थियों हेतु आवंटित किये जाने की राय दी गयी है।

उल्लेखनीय है कि भारत सरकार के पत्र संख्या-यू०-11011/05/2011-एम०ई०सी०, द्वितीय 06.05.2011 में दिये गये निर्देशानुसार 15 प्रतिशत सीटें अर्थात 100 में से 15 सीटें भारत सरकार को दिये जाने के फलस्वरूप 15 सीटों में भारत सरकार में लागू आरक्षण नीति के अनुसार श्रेणीवार निम्नांकित सीटें आवंटित की जायेगीः-

क्र०	श्रेणी	सीटें

1	अनुसूचित जाति	02(15%)
2	अनुसूचित जनजाति	01(7.5%)
3	अन्य पिछड़ा वर्ग	04(27%)
4	अनारक्षित (सामान्य)	08
	योगः-	15

3- राज्य सरकार द्वारा आवंटित की जाने वाली अवशेष 85 सीटों में से भारत सरकार द्वारा अनुसूचित जाति को आवंटित की जाने वाली 02 सीटों, अनुसूचित जनजाति को आवंटित की जाने वाली 01 सीट तथा अन्य पिछड़ा वर्ग को दी जाने वाली 04 सीटों को हटाने के उपरान्त तथा समाज कल्याण विभाग द्वारा दी गयी राय के अनुसार अनुसूचित जाति के अभ्यर्थियों को 61 सीटें, अनुसूचित जनजाति के अभ्यर्थियों को 06 सीटें, अन्य पिछड़ा वर्ग के अभ्यर्थियों को 15 सीटें बनाये रखने का तथा अनारक्षित (सामान्य) अभ्यर्थियों को 15 सीटें बनाये रखने को रखते हुए राज्य सरकार द्वारा अवशेष 85 सीटों तथा भारत सरकार द्वारा आवंटित की जाने वाली 15 सीटों का श्रेणीवार विवरण निम्नवत् होगा:-

क्र०	श्रेणी	राज्य सराकर द्वारा आवंटित सीटें	भारत सरकार द्वारा आवंटित सीटें	योग
1	अनुसूचित जाति	62	02	64
2	अनुसूचित जनजाति	05	01	06
3	अन्य पिछड़ा वर्ग	11	04	15
4	अनारक्षित (सामान्य)	07	08	15
	योग	85	15	100

कृपया शासन द्वारा लिये उपर्युक्त निर्णयानुसार यथावश्यक कार्यवाही करने का कष्ट करें।"

15. Similarly, in respect of establishment of a Medical College at Kannauj having 100 seats, a decision was taken with regard to fixing the reservation by the Government order dated 19.07.2022 to the following effect:-

"उपर्युक्त विषयक आपके पत्र संख्या-एमई-3/2012/342, दिनाँक 05.07.2012 के संदर्भ में मुझे यह कहने का निदेश हुआ है कि विशेष समन्वित योजना (एस०सी०पी०) के अन्तर्गत स्थापित राजकीय मेडिकल कालेज, कन्नौज में एम०बी०बी०एस० पाठ्यक्रम की 100 सीटों के आवंटन के संबंध में समाज कल्याण विभाग की राय प्राप्त की गयी। समाज कल्याण विभाग द्वारा 100 सीटों में से 64 सीटें अनुसूचित जाति हेतु 06 सीटें अनुसूचित जनजाति हेतु, 15 सीटें अन्य पिछड़ा वर्ग हेतु तथा 15 सीटें अनारक्षित (सामान्य वर्ग) अभ्यर्थियों हेतु आवंटित किये जाने की राय दी गयी है।

2— उल्लेखनीय है कि भारत सरकार के पत्र संख्या-यू०-11011/06/2011-एम०ई०सी०, दिनाँक 06.05.2011 में दिये गये निर्देशानुसार 15 प्रतिशत सीटें अर्थात 100 में से 15 सीटें भारत सरकार को दिये जाने के फलस्वरूप 15 सीटों में भारत सरकार में लागू आरक्षण नीति के अनुसार श्रेणीवार निम्नांकित सीटें आवंटित की जायेगीः-

क्र०	श्रेणी	सीटें
1	अनुसूचित जाति	02(15%)
2	अनुसूचित जनजाति	01(7.5%)
3	अन्य पिछड़ा वर्ग	04(27%)
4	अनारक्षित (सामान्य)	08
	योग	15

राज्य सरकार द्वारा आवंटित की जाने वाली अवशेष 85 सीटों में से भारत सरकार द्वारा अनुसूचित जाति को आवंटित की जाने वाली 02 सीटें, अनुसूचित जनजाति को आवंटित की जाने वाली 01 सीट तथा अन्य पिछड़ा वर्ग को दी जाने वाली 04 सीटों को हटाने के उपरान्त तथा समाज कल्याण विभाग द्वारा दी गयी राय के अनुसार अनुसूचित जाति के अभ्यर्थियों को 64 सीटें, अनुसूचित जनजाति के अभ्यर्थियो पर्ने 06 सीटें, अन्य पिछड़ा वर्ग के अभ्यर्थियों को 15 सीटें तथा अनारक्षित (सामान्य) अभ्यर्थियों ***अपठित 15 सीटें*** *बनाये रखने को दृष्टिगत रखते हुए राज्य सरकार द्वारा अवशेष 85 सीटों तथा भारत सरकार द्वारा आवंटित की जाने वाली 15 सीटों का श्रेणीवार विवरण निम्नवत् होगा:-*

क्र०	श्रेणी	राज्य	भारत	योग

		सराकर द्वारा आवंटित सीटें	सरकार द्वारा आवंटित सीटें	
1	अनुसूचित जाति	62	02	64
2	अनुसूचित जनजाति	05	01	06
3	अन्य पिछड़ा वर्ग	11	04	15
4	अनारक्षित (सामान्य)	07	08	15
	योग	85	15	100

कृपया शासन द्वारा लिये उपर्युक्त निर्णयानुसार यथावश्यक कार्यवाही करने का कष्ट करें।"

16. Similarly, in respect of a Medical College at Jalaun, a decision was taken vide Government Order dated 17.07.2013 to the following effect:-

"उपर्युक्त विषयक आपके पत्र संख्या-एमई-3/2013/1901, दिनाँक 16.07.2013 के संदर्भ में मुझे यह कहने का निदेश हुआ है कि विशेष समन्वित योजना (एस०सी०पी०) के अन्तर्गत स्थापित राजकीय मेडिकल कालेज, जालौन में एम०बी०बी०एस० पाठ्यक्रम की 100 सीटों के आवंटन के संबंध में समाज कल्याण विभाग की राय प्राप्त की गयी। समाज कल्याण विभाग द्वारा 100 सीटों में से 64 सीटें अनुसूचित जाति हेतु 06 सीटें अनुसूचित जनजाति हेतु, 15 सीटें अन्य पिछड़ा वर्ग हेतु तथा 15 सीटें अनारक्षित (सामान्य वर्ग) अभ्यर्थियों हेतु आवंटित किये जाने की राय दी गयी है।

2— उल्लेखनीय है कि भारत सरकार के पत्र संख्या-यू०-11011/05/2011-एम०ई०सी०, दिनाँक 06.05.2011 में दिये गये निर्देशानुसार 15 प्रतिशत सीटें अर्थात 100 में से 15 सीटें भारत सरकार को दिये जाने के फलस्वरूप 15 सीटों में भारत सरकार में लागू आरक्षण नीति के अनुसार श्रेणीवार निम्नांकित सीटें आवंटित की जायेगी:-

क्र०	श्रेणी	सीटें
1	अनुसूचित जाति	02(15%)
2	अनुसूचित जनजाति	01(7.5%)
3	अन्य पिछड़ा वर्ग	04(27%)
4	अनारक्षित (सामान्य)	08
	योग	15

3- राज्य सरकार द्वारा आवंटित की जाने वाली अवशेष 85 सीटों में से भारत सरकार द्वारा अनुसूचित जाति को आवंटित की जाने वाली 02 सीटों, अनुसूचित जनजाति को आवंटित की जाने वाली 01 सीट तथा अन्य पिछड़ा वर्ग को दी जाने वाली 04 सीटों को हटाने के उपरान्त तथा समाज कल्याण विभाग द्वारा दी गयी राय के अनुसार अनुसूचित जाति के अभ्यर्थियों को 64 सीटें, अनुसूचित जनजाति के अभ्यर्थियो को 06 सीटें, अन्य पिछड़ा वर्ग के अभ्यर्थियों को 15 सीटें तथा अनारक्षित सीटों तथा भारत सरकार द्वारा आवंटित की जाने वाली 15 सीटों का श्रेणीवार विवरण निम्नवत् होगा:-

क्र०	श्रेणी	राज्य सराकर द्वारा आवंटित सीटें	भारत सरकार द्वारा आवंटित सीटें	योग
1	अनुसूचित जाति	62	02	64
2	अनुसूचित जनजाति	05	01	06
3	अन्य पिछड़ा वर्ग	11	04	15
4	अनारक्षित (सामान्य)	07	08	15
	योग	85	15	100

कृपया शासन द्वारा लिये उपर्युक्त निर्णयानुसार यथावश्यक कार्यवाही करने का कष्ट करें।"

17. Ultimately, vide Government Order dated 23.06.2015, a decision for providing reservation for the Medical College at Saharanpur was taken, which is as under:-

"उपर्युक्त विषयक आपके पत्र संख्या-एम०ई०-3/2015/2109, दिनाँक 18.08.2015 के क्रम में मुझे यह

कहने का निदेश हुआ है कि श्री राज्यपाल महोदय शेकूल हिन्द मौलाना महमूद हसन मेडिकल कालेज, सहारनपुर को भारत सरकार के पत्र संख्याः यू०-120/12/886/2014-एम०ई० (पी०-II) दिनांक 15.06.2015 के द्वारा शैक्षिक सत्र 2015-16 हेतु एम०बी०बी०एस० पाठ्यक्रम को 100 सीटों पर दी गयी प्रवेश की अनुमति के अन्तर्गत उक्त सीटों पर शैक्षिक सत्र 2015-16 से प्रवेश की अनुमति एतदद्वारा प्रदान करते है।

2- समाज कल्याण विभाग के पत्र संख्याः 115/28-व०प्र०-2011-जी-136/2007 दिनांक 21.02.2011 तथा भारत सरकार के पत्र संख्या यू-11011/05/2011-एम०ई०सी० दिनांक 06.05.2011 में दिये के प्राविधानों के अनुसार एम०बी०बी०एस० पाठ्यक्रम को उक्त सीटों का श्रेणीवार विभाजन निम्नवत होगा

क्र०	श्रेणी	राज्य सराकर द्वारा आवंटित सीटें	भारत सरकार द्वारा आवंटित सीटें	योग
1	अनुसूचित जाति	62	02	64
2	अनुसूचित जनजाति	05	01	06
3	अन्य पिछड़ा वर्ग	11	04	15
4	अनारक्षित (सामान्य)	07	08	15
	योग	85	15	100

कृपया तद्नुसार अग्रेतर कार्यवाही सुनिश्चित करने का कष्ट करें। "

18. From the bare perusal of the above extracted government orders the State Government not only prescribed for the extent of reservations for the State Seats but also for the seats falling under the Central Quota.

19. Thus the entire exercise of providing reservations to the extent mentioned above the reasoning and foundation is that funds were received for establishing these colleges under the Special Component Plan which contained a stipulation the funds received under the said plan had to be used so as to benefit 70% of boys and girls of SC/ST and 30% for general population. In the light of said, the State Government has tried to justify the reservation exceeding 50%.

20. To evaluate the arguments placed by learned counsel for the petitioner as well as learned Standing Counsel and learned counsel for respondent No.2, it is essential to notice that after the judgement of the Hon'ble Supreme Court in the case of ***Indra Sawhney etc Vs. Union of India and others AIR 1993 SC 477,*** the State Government enacted the Act No.23 of 2006 known as the Reservation Act of 2006. The object of the Act was to provide for reservation and admission in the educational institutions including private educational institutions whether ,aided or unaided by the State other than the minority educational institutions referred to under Article 30(1) of the Constitution of India in favour of the persons belonging to the Scheduled Castes and Scheduled Tribes and other backward classes and for the matters connected thereto. The said Act came into force from 10.07.2006.

21. Section 2 of the said Act clearly prescribes as under:

"2. This Act shall apply to all admissions taking place in Educational Institutions, including private Educational Institutions, whether Aided or unaided by the State, other than the Mionrity Educational Institutions referred to in clause (1) of the Article 30 of the Constitution of India."

22. The vertical reservation prescribed in terms of the said Act is contained in Section 4 of the said Act, which is prescribed for the reservation in the following manner:-

"4. (I) In admission to educational institutions, including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30 of the Constitution of India, there shall be reservation at the stage of admission in the following percentage of sanctioned intake to which admission is to be made in favour of person belonging to Scheduled Castes, Scheduled Tribes and other backward classes of citizens, in the academic year-

(a) in the case of Scheduled Castes twenty one per cent

(b) in the case of scheduled Tribes two per cent,

(c) in the case of other backward classes of citizen twenty seven per cent;

(2) In respect of any academic year if any vacancy reserved for any category of persons under sub-section (1) remains unfilled, another special admission drive shall be made to fill such vacancy from amongst the person belonging to that category.

(3) If in the special admission drive referred to in sub-section (2) suitable candidates belonging to the Scheduled Tribes are not available to fill the vacancy reserved for them, such vacancy shall be filled by persons belongings to the Scheduled Castes.

(4) Where, due to non-availability of suitable candidates, any of the seats reserved under sub-section (1) remains unfilled even after special admission drive referred to in sub-section (2), or sub-section (3), then such vacancy shall be filled by any other suitable candidate, on the basis of merit.

(5) If a person belonging to any of the categories mentioned in sub-section (1) gets selected on the basis of merit as a general candidate, and if he wants to remain as a general candidate, then he shall not be adjusted against the vacancies reserved for such category under sub-section (1)."

23. It is also essential to notice that educational institutions are defined in Section 3(e), which is as under:-

"(e) "educational institution" means-

(i) a college or a school or an institution, by whatever name called, imparting education approved or recognized by a competent Statutory Body and affiliated to a State University, including a Private University established or incorporated by an Act of the State Legislature or a constituent unit of a deemed to be University defined. under section 3 of the University Grants Commission Act, 1956, imparting education.

(ii) a college or a school or an institution, by whatever name called, imparting professional courses, approved or recognized by the Competent Statutory Body leading to the award of a degree, diploma or a certificate, by whatever name called."

24. In terms of Section 10 of the said Act, the State Government is empowered to take decision in the event of any difficulty arises in giving effect to the provisions of this Act and the State Government is also empowered by virtue of Section 12 of the said Act to issue notifications and make rules for carrying out the purpose of the said Act. Admittedly, after the enactment of 2006 Act, no decision has been taken in terms of the powers conferred by virtue of Section 10 or otherwise. The Government Orders extracted above, which prescribes for the reservation, are not mandated or prescribed in terms of the Reservation Act of 2006. The communication for issuance of the Government Orders, based upon the policy decision of the Central Government issued for implementation and execution of the special component plan for scheduled castes tribal sub plan for scheduled tribal is merely a policy decision, providing for the guidelines and the manner in which the decisions are to be taken for establishing facilities relating to sports,multipurpose halls,intermediate college with sports education,extending benefits such as preparing for competitive exams for admission to various colleges ,etc for which the funds would be spent as prescribed.

25. The terms of the said guidelines issued and extracted above, merely prescribes for grant of hostel facilities after the extent of 70% to SC/ST boys and girls and 30% for the general population. It also prescribe manner of expenditure to the extent of 70% from the SCP earmarked funds and 30% from the general plan. Even the said stipulation does not in any way authorize /prescribed/ mandate the fixing of reservation for educational institutions at the admission stage in the said educational institutions as defined in the Act, 2006.

26. Thus, the Government Orders fixing reservation are clearly contrary to the mandate of Section 4 of the Act, 2006 or any other law Otherwise, also are founded on misreading and misinterpretation of the policy guidelines issued by the Central Government. The reservation has clearly violated the reasonably well settled rule of not exceeding 50% that too without any authority of law and as such, the same cannot be justified.

27. All the four Government Orders being Government Order No.41/26-ब०प्र०-2010-जी-87/2006 dated 20.01.2010, Government Order No.115/26-ब०प्र०-2011-जी 136/2007 dated 21.02.2011, Government Order No.1493/71-1-2011-जी-264/2011 dated 13.07.2011, Government Order No. 1764/71-1-2012-जी-284/20 dated 19.07.2012, Government Order No. 1846/71-1-2013-जी-264/201 dated 17.07.2013 and Government Order No.1243/71-1-2015-जी-264/2011 dated 13.06.2015 which mandate fixing of quotas for reservation in excess of the extent of reservation prescribed in the 2006 Act of the State Government are quashed. The State of U.P. is directed to fill the seats in the said four colleges afresh strictly based upon the reservation as prescribed under the Reservation Act of 2006 along with the reservation for the Central Government seats and the State Government seats.

28. As it is informed that the seats have already been filled, respondent No.2 will have to undergo into the fresh exercise to fill the seats in terms of the prescriptions contained for reservation in the Act, 2006 afresh.

29. Learned Counsel for respondent No.2 lays emphasis and reads the directions contained in the judgement of *Indra Sawhwney (supra)* to argue that the bar of 50% reservation is not sacrosanct and can be breached. However, he does not dispute that the same can be breached only in accordance with law. He could not place any Act/prescriptions under law justifying the breach.

30. The petition is **allowed** in the abovesaid terms.

(2025) 8 ILRA 814
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 19.08.2025

BEFORE

THE HON'BLE ARINDAM SINHA, J.
THE HON'BLE AVNISH SAXENA, J.

Writ C No. 57045 of 2011

Shiv Ratan Dixit & Ors. ...Petitioners
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioners:

Counsel for the Respondents:

Issue for Consideration

Whether, after dismissal of State's Special Leave Petition by Supreme Court upon hearing both parties, High Court retains jurisdiction to entertain a review application against its earlier judgment dated 22.01.2015, particularly when such review is sought on the ground of alleged error apparent on face of record relating to date of possession of disputed land (recorded as 06.01.2003 instead of 04.08.1992).

Headnotes

Urban Land (Ceiling and Regulation) Act, 1976 - ss. 6(1), 8(4), 10(1), 10(3), - Petitioners, challenged alleged illegal taking of possession of their land under Act, 1976 and its subsequent transfer to Kanpur Development Authority - They contended that certificate of possession dated 06.01.2003, relied upon by State to assert transfer of possession, was a mere paper transaction, as they continued to remain in actual physical possession of disputed land - Division Bench, by judgment dated 22.01.2015, accepted this contention and allowed writ petition - Aggrieved, State of Uttar Pradesh preferred Special Leave Petition before Supreme Court, dismissed on 04.12.2019 after hearing both parties - Thereafter, State filed Civil Misc. Review Application seeking review of said judgment on the plea that Court had proceeded on wrong premise by recording date of possession as 06.01.2003 instead of 04.08.1992, thereby asserting error apparent on face of record - Petitioners opposed review as abuse of process, contending that dismissal of SLP on contest barred any review - Interference with

Held: To address applicant's ground for review, it was contended that error apparent existed as possession was allegedly taken on 4th August 1992, whereas Division Bench referred to possession with State based on certificate dated 6th January 2003 - However, when possession was shown to be given to Kanpur Development Authority vide certificate dated 6th January, 2003, Division Bench, upon examining said certificate, recorded categorical finding that land remained under cultivation of writ petitioners even at the time of its preparation and constructions existed only on remaining portion, thereby holding that possession claimed by respondents through certificate dated 6th January 2003 was merely a paper transaction - Writ petitioners had actual physical possession over land in dispute even thereafter and till date of judgment - Division Bench was dealing with petitioners' claimed possession at time it prepared certificate - On perusal of it, Bench appreciated review applicant to be in purported possession inasmuch as, it sought to deliver possession to Kanpur Development Authority - From relied upon paragraph, it is evident that Division Bench did not hold that review

applicant had obtained possession under certificate dated 6th January 2003, observations therein were findings of fact and inferences drawn therefrom, not indicative of any error apparent on record. - It follows that State, being aggrieved by findings, was advised to seek special leave before Supreme Court - Review applicant has disclosed no subsequent discovery of material which, despite due diligence, could not have been produced earlier - Hence, ground urged for review is based neither on newly discovered evidence nor on any error apparent on face of record - Delay is condoned, review application is admitted, but dismissed on merits. [Paras 9, 10] (E-13)

Case Law Cited

Experion Developers Private Limited v. Himanshu Dewan, Sonali Dewan and others**, Civil Appeal No. 1434 of 2023, judgment dated 18.08.2023;** Khoday Distilleries Ltd. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd. **reported in (2019) 4 SCC 376;** Abbai Maligai Partnership Firm v. K. Santhakumaran **reported in (1998) 7 SCC 386 - referred to**

List of Acts

Urban Land (Ceiling & Regulation) Act, 1976; Repeal Act, 1999

List of Keywords

Review Application; Error apparent on face of record; Judgment under review**;** Abuse of the process of the court; Special Leave Petition (SLP); Delay condoned; Condonation of delay; Purported possession; Certificate of possession; Physical possession; Paper transaction; Competent authority; Date of possession; Neither based on new materials.

Case Arising From

ORIGINAL JURISDICTION: Writ C No. 57045 of 2011

From the Judgment and Order dated 22.01.2015 of Division Bench of Allahabad High Court

Appearances for Parties

Advs. for the Petitoner:

Sanjay Kumar, Dheeraj Kumar Dwivedi

Adv. for the Respondent:

Pradeep Kumar Tripathi, Sanjay Goswami, Parth Goswami

(Delivered by Hon'ble Arindam Sinha, J.)

1. The review application is for hearing and disposal. Review-applicant is the State. It seeks review of judgment dated 22nd January, 2015 of a Division Bench, none of the learned judges in which are at present available. Hence, we as the regular Bench are dealing with the review.

2. The application was earlier heard on 12th August, 2025 by a Bench, to which one of us was party (Arindam Sinha, J.). Preliminary objection was raised on behalf of writ petitioners, opposing the review, contending State had filed Special Leave to Appeal petition (SLP) in the Supreme Court, dismissed on order dated 4th December, 2019. It then filed for review on delay. It is an abuse of the process.

3. Mr. Srivastava, learned advocate and Standing Counsel appears on behalf of review-applicant (State). He relies on **judgment dated 18th August, 2023** of the Supreme Court in **Civil Appeal no.1434 of 2023 (Experion Developers Private Limited Vs. Himanshu Dewan, Sonali Dewan and others),** paragraphs 26 to 28 in Indian Kanoon print. He submits, the SLP having had been dismissed by the Supreme Court, it does not cause merger, for said judgment dated 22nd January, 2015 as can be said to have been confirmed, thereby barring right of review.

4. He draws attention to ground no.1 in the review application to submit, there is error apparent in the judgment. It is reproduced below.

"1. Because, the Hon'ble Division Bench while allowing the petition appears to have proceeded on a wrong premise regarding the date of possession, recording it as 06.01.2003. However the date of possession in the present matter is 04.08.1992. The possession had also been transferred to the Kanpur Development Authority in the year 2003. *The name of the Urban Ceiling / State Government was recorded in the Revenue Records, in the year 2003. Therefore it is apparent that an error has crept in, and which invites attentions of this Hon'ble Court for Review of the judgment dated 22.01.2015."*

(emphasis supplied)

He submits, by said judgment dated 22nd January, 2015 the Division Bench had made error apparent in recording the date of possession to be 6th January, 2003. It was taken long before on 4th August, 1992. He then relies upon a paragraph in said judgment, reproduced below.

"It is stated that from record it appears that the petitioners also inspected the record of the office of the Competent Authority and found that a certificate of possession of 6.1.2003 had, been prepared by the authorities whereby they have shown to have transferred the possession of the excess vacant land of the petitioners to the employees of the Kanpur Development Authority, Kanpur. ***However, a perusal of the said certificate of possession clearly show that the land of plot nos.68,69,70,47 and 125M was shown under cultivation of the petitioners even at the time of preparation of certificate while constructions were shown on the remaining land. This fact itself establishes that purported possession of respondents vide certificate dated 6.1.2003 was a mere paper transaction*** *and petitioners had actual physical possession over the land in dispute even thereafter and uptill now."*

(emphasis supplied)

Mr. Srivastava submits, the delay be condoned and as there is error apparent in the judgment under review, it be recalled. The writ petition be posted for hearing once again.

5. Mr. Sanjay Goswami, learned advocate appears on behalf of petitioners in the writ petition. He opposes only the review application on submission, State itself said in its SLP that advice from the legal department was to file SLP. He reiterates his clients' contention that after the SLP stood dismissed on order dated 4th December, 2019 of the Supreme Court, State cannot now turn around and press for review.

6. Preliminary objection that the review is abuse of the process is based on review applicant having unsuccessfully petitioned the Supreme Court for Special Leave to Appeal against judgment dated 22nd January, 2015 and then moving this Court, for review of it. The Supreme Court in **Experion Developers** (supra) referred to, inter alia, **Khoday Distilleries Ltd. vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd.** reported in **(2019) 4 SCC 376,** paragraphs 16 to 18 in which dealt with situations as may arise on SLPs dismissed and reviews filed in the lower Court thereafter. In paragraph 16, **[Khoday Distilleries Ltd.** (supra)] there was reference made to an earlier decision of said Court in **Abbai Maligai Partnership Firm vs. K. Santhakumaran** reported in **(1998) 7 SCC 386,** wherein the Supreme

Court had disapproved of the High Court entertaining a review filed after dismissal of the SLP. In said paragraph (16) stands quoted paragraph 4 from **Abbai Maligai Partnership Firm** (supra). The extracted and reproduced paragraph 4 is also reproduced below.

"4. The manner in which the learned Single Judge of the High Court exercised the review jurisdiction, after the special leave petitions against the selfsame order had been dismissed by this Court after hearing learned counsel for the parties, to say the least, was not proper. Interference by the learned Single Judge at that stage is subversive of judicial discipline. The High Court was aware that the SLPs against the orders dated 7-1-1987 had already been dismissed by this Court. The High Court, therefore, had no power or jurisdiction to review the selfsame order, which was the subject-matter of challenge in the SLPs in this Court after the challenge had failed. By passing the impugned order on 7-4-1994, judicial propriety has been sacrificed. After the dismissal of the special leave petitions by this Court, on contest, no review petitions could be entertained by the High Court against the same order. The very entertainment of the review petitions, in the facts and circumstances of the case, was an affront to the order of this Court. We express our strong disapproval and hope there would be no occasion in the future when we may have to say so. The jurisdiction exercised by the High Court, under the circumstances, was palpably erroneous. The respondents who approached the High Court after the dismissal of their SLPs by this Court, abused the process of the court and indulged in vexatious litigation. *We strongly deprecate the matter in which the review petitions were filed and heard in the High Court after the dismissal of the SLPs by this Court. The appeals deserve to succeed on that short ground. The appeals are, consequently, allowed and the impugned order dated 7-4-1994 passed in the review petitions is hereby set aside.* ***The respondents shall pay Rs 10,000 as costs."***

(emphasis supplied)

7. We find from order dated 4th December, 2019, whereby the Supreme Court dismissed review-applicant's SLP **[(petition for special leave to appeal(c) no.33292 of 2015, State of U.P. and another vs. Shiv Ratan Dixit and others)],** it was made upon hearing the counsel. Said order bears record of appearance showing both petitioners and respondents were represented before the Supreme Court. This is because on earlier order dated 27th November, 2015 there was direction for notice, after which by order dated 13th November, 2017 it was recorded that all the respondents had already filed counter affidavits. Text of said order of dismissal made thereafter on 4th December, 2019 is reproduced below.

"The application for discharge of previous Advocate-on-Record is allowed in terms of the prayer made.

Heard learned counsel for the parties.

The special leave petition is dismissed.

As a sequel to the above, pending interlocutory applications also stand disposed of."

(emphasis supplied)

8. As aforesaid, in **Experion Developers** (supra), the Supreme Court referred to paragraph 20 in **Khoday Distilleries Ltd.** (supra), reproduced below.

"20. The Court thereafter analysed number of cases where orders of different nature were passed and dealt with these judgments by classifying them in the following categories:

(i) Dismissal at the stage of special leave petition - without reasons - no res judicata, no merger.

(ii) Dismissal of the special leave petition by speaking or reasoned order - no merger, but rule of discipline and Article 141 attracted.

(iii) Leave granted - dismissal without reasons - merger results."

(emphasis supplied)

To our mind the proceeding before the Supreme Court in applicant's SLP, had directions given for issuance of notice, respondents filed counter affidavits and upon hearing counsel the review dismissed on said order dated 4th December, 2019. It would bring the dismissal under instance (ii) given in paragraph 20 of **Khoday Distilleries Ltd.** (supra) read with paragraph 4 in **Abbai Maligai Partnership Firm** (supra). We say so because the SLPs referred to in **Abbai Maligai Partnership Firm** (supra) were preferred against orders dated 7th January, 1987 of the High Court. The **petitions for special leave to appeal (civil) nos.4039-4040 of 1987** were dismissed by the Supreme Court on order dated **16th September, 1987** upon hearing the counsel. Text of the order is reproduced below.

"Special leave petitions are dismissed."

The Supreme Court answering the reference in **Khoday Distilleries Ltd.** (supra) said in paragraph 21 as reproduced below.

21. It may be pertinent to mention here that while laying down the second principle mentioned above, the Court took note of the judgment in Abbai Maligai Partnership Firm and discussed it in the following manner: (Kunhayammed case, SCC pp.377, para 26)

"26. The underlying logic attaching efficacy to an order of the Supreme Court dismissing SLP after hearing counsel for the parties is discernible from a recent three-Judge Bench decision of this Court in Abbai Maligai Partnership Firm v. K. Santhakumaran. In the matter of eviction proceeding initiated before the Rent Controller, the order passed therein was subjected to appeal and then revision before the High Court. ***Special leave petitions were preferred before the Supreme Court where the respondents were present on caveat. Both the sides were heard through the Senior Advocates representing them. The special leave petitions were dismissed. The High Court thereafter entertained review petitions which were highly belated and having condoned the delay reversed the orders made earlier in civil revision petitions.*** *The orders in review were challenged by filing appeals under leave granted on special leave petitions. This Court observed that what was done by the learned Single Judge was "subversive of judicial discipline". The facts and circumstances of the case persuaded this Court to form an opinion that the tenants were indulging in vexatious litigations, abusing the*

process of the Court by approaching the High Court and the very entertainment of review petitions (after condoning a long delay of 221 days) and then reversing the earlier orders was an affront to the order of this Court. However the learned Judges deciding the case have nowhere in the course of their judgment relied on doctrine of merger for taking the view they have done. A careful reading of this decision brings out the correct statement of law and fortifies us in taking the view as under."

(emphasis supplied)

9. Nevertheless, to first address applicant's ground for review, applicant's contention is presence of error apparent because according to it, possession was taken on 4th August, 1992 but the Division Bench referred to possession with State as purportedly evidenced by certificate dated 6th January, 2003. In relied upon paragraph reproduced above, we see clear finding of a fact that when possession was shown to be given to Kanpur Development Authority vide certificate dated 6th January, 2003, the Division Bench, from perusal of the certificate of possession itself, said it clearly showed that the lands were under cultivation of (writ) petitioners even at the time of preparation of the certificate, while constructions were shown on the remaining land. The Bench went on to say that it establishes, purported possession of respondents (review's applicant) vide certificate dated 6th January, 2003 was a mere paper transaction. Writ petitioners had actual physical possession over the land in dispute even thereafter and till the date of judgment. The Division Bench was dealing with petitioners' claimed possession at the time it prepared the certificate. On perusal of it, said Bench appreciated review applicant to be in purported possession inasmuch as, it sought to deliver the possession to Kanpur Development Authority. By relied upon paragraph in the judgment, the Division Bench did not say review applicant had come into possession vide said certificate dated 6th January, 2003, for us to conclude error apparent. Those were findings of facts and inferences drawn thereupon. It follows, State being aggrieved by the findings was advised to prefer SLP for grant of leave by the Supreme Court, to admit the matter as an appeal before it. There is no disclosure by review-applicant, on discovery subsequent to passing of the judgment which even by due diligence it could not lay its hands upon earlier. Thus, the urged upon ground, said to be for review, is neither based on new materials subsequently discovered nor error apparent.

10. For reasons aforesaid, the delay is condoned and the review application, admitted. It is dismissed.

(2025) 8 ILRA 819
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.08.2025

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE PRAVEEN KUMAR GIRI, J.

Writ C No. 58143 of 2012

Smt. Kalindi Singh ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Sri D.B. Yadav

Counsel for the Respondents:
Sri N. Mishra, Sri Rajeev Sharma, Sri V.K. Srivastava

Issue for Consideration

The petitioner applied for a loan to establish a brick kiln under the Margin Money Scheme (a subsidy granted by the Khadi and Village Industries Commission or K.V.I.C.) for rural employment generation-The bank sanctioned a loan of Rs. 10,00,000/- The respondent bank failed to release the Margin Money of Rs. 3,00,000/- despite the petitioner completing all formalities-The claim for subsidy was rejected by KVIC, based on inspection reports.

Headnotes

Civil law- Constitution of India,1950-Article 226-Rural Employment Generation Programme (R.E.G.P.)-Margin Money Scheme-Eligibility-Margin Money assistance under R.E.G.P. is available exclusively for new projects sanctioned under the scheme-the inspection reports confirm that a unit claiming the subsidy is not a new establishment but an old, previously closed unit, the claim for Margin Money is justifiably rejected-Petition dismissed.

Held

The court held that the petitioner failed to establish a new unit as mandated by the R.E.G.P. Scheme-The rejection of the petitioner's claim for Margin Money by Dy. Director,KVIC, vide impugned order dated 22.05.2008 was rightly made-The decision was based on two inspection reports which confirmed that no new brick kiln was installed at the site, thereby rendering the unit ineligible under the REGP norms-Hence, The impugned order is justified, and does not require any interference.(Para 5 to 15) (E-6)

List of Keywords

Margin Money Scheme, Khadi and Village Industries Commission (K.V.I.C.), Rural Employment Generation Programme(R.E.G.P.), Brick Kiln, Village Chorpa, Inspection Reports, New Project/New Unit, Existing Units.

Case Arising From

CRIMINAL APELLATE JURISDICTION: WRIT-C No. – 58143 of 2012

From the Judgment and Order dated 21.08.2025 of the High Court of Judicature at Allahabad.

SMT. KALINDI SINGH Vs STATE OF U.P.THRU SECY. & ORS.

Appearances for Parties

Adv. for Petitioner:

Mr. D.B Yadav , Advocate

Advs. for Respondent:

Mr. N. Mishra, Mr. Rajeev Sharma, Mr. V.K. Srivastava, Advocates

(Delivered by Hon'ble Praveen Kumar Giri, J.)

The present writ petition has been filed under Article 226 of the Constitution of India wherein the petitioner has made the following prayers :

1) Issue a writ or direction in the nature of writ of mandamus directing the respondent no.2 to release the amount of Margin Money Scheme Rs.3,00,000/- in the account of the petitioner.

2) Issue a writ or direction in the nature of writ of mandamus directing the respondents to restrain the respondent bank to not compel the petitioner to deposit the amount of Margin Money Scheme.

3) Issue a writ or direction in the nature of writ of mandamus directing the respondent bank to refund the excess amount so deposited by the petitioner before him.

Further, vide order of this Court dated October 20, 2022, the petitioner amended the the writ petition by adding the following prayer :

"Issue a Writ order or direction in the nature of writ of certiorari quashing the impugned order dated 22.05.2008 passed by the respondents which received to the petitioner in the counter affidavit as

Annexure No.C.A.6 as well as amend the paragraph no.23 of the writ petition."

FACTS

2. The factual matrix of the present writ petition is delineated below:

a. The petitioner applied for a loan to establish a brick kiln in a rural area under the Scheme of Margin Money, a subsidy granted by the Khadi and Village Industries Commission (for short 'K.V.I.C.') for generation of ruler employment. The application of the petitioner was accepted by the K.V.I.C. and its recommendation for granting the loan was sent to the respondent Bank. On October 31, 2002, the bank sanctioned a loan of Rs. 10,00,000/- by taking a pre deposit of Rs. 50,000/-. From the loan amount of Rs.9,50,000/-, the petitioner purchased construction materials including cement and bricks and other required materials for establishing the brick kiln on November 5, 2002.

b. The petitioner repaid the significant part of the loan amount within time except an amount of Rs. 2,45,503/-. However, the respondent bank failed to release the Margin Money of Rs. 3,00,000/- up to 28th September, 2004 which was recommended by the K.V.I.C., though the petitioner had completed all the formalities for that and the respondent Bank had obtained a receipt of the payment of margin money from the petitioner on August 14, 2007.

c. The petitioner, hoping the subsidy would be released, did not deposit the remaining amount of loan i.e. Rs. 2,45,503/-. This amount has since grown to over Rs. 4,00,000/- due to accrued interest and now the respondent bank is compelling the petitioner to pay the full, updated amount.

d. The petitioner made representations before the authority concerned with latest reminder on July 18, 2012 alleging that she was not aware of the rejection of her claim by the authority concerned on May 22, 2008.

e. In the meantime, inspection of the petitioner's unit was done by a team consisting of officials from the Bank, K.V.I.C, etc. on two occasions i.e. on February 4, 2005, and November 2, 2006. On both the occasions, the Inspection Team found no new brick kiln installed at village Chorpa. The reports reveal that there was an old brick kiln in village Chorpa which was closed four to five years ago.

f. Thereafter, the claim of the petitioner for subsidy under Margin Money Scheme was rejected vide impugned order dated May 22, 2008 passed by Deputy Director/ In-charge, Regional Office, Khadi and Village Industries Commission, Gorakhpur on the basis of the reports of the Inspection Teams.

g. The petitioner claiming herself to be unaware of the rejection of her claim, presented this writ petition seeking direction upon the respondents to release the margin money, however, after the receipt of counter affidavit, she came to know about the rejection order and, therefore, she added a new prayer for quashing the impugned order.

CONTENTIONS OF PETITIONER

3. The learned counsel appearing on behalf of the petitioners has made the following submissions:

a. The petitioner though fulfilled all the criteria for receiving the margin money under the Scheme and completed all formalities yet the authority had not released the margin money.

b. On the application of the petitioner, the KVIC recommended for grant of loan by the Bank to establish a brick kiln under the Scheme. Thereafter, an amount of Rs. 10,00,000/- was sanctioned by the Bank after taking pre deposit money of Rs.50,000/-. The petitioner repaid the loan amount, however, the margin money was not released in her favour.

c. The team which inspected the spot where the brick kiln of the petitioner was installed had demanded illegal money for release of the margin money, which was not paid by the petitioner and, therefore, the report was submitted against her.

d. The petitioner was never made aware of the impugned order until filing of the counter affidavit by respondent authorities and, therefore, the order impugned is liable to be set aside.

CONTENTIONS OF RESPONDENTS

4. Learned counsel appearing on behalf of the respondents has rebutted the arguments of petitioner and made following submissions:

a. Inspection of the petitioner's unit was done by a team consisting of officials from the Bank, KVIC, etc. on two occasions i.e. on February 4, 2005, and November 2, 2006. On both the occasions, the team found no new brick kiln at village Chorpa; rather, there was an old brick kiln that had been closed four to five years ago.

b. The above spot inspection was done not by any individual but by a team of officials from three different departments and on two different dates by different officials.

c. On the basis of the above spot inspection report, the petitioner's claim for margin money was rejected vide impugned order dated May 22, 2008 as no new brick kiln was found to be installed at Village Chorpa and the claim of the petitioner was not in consonance with the standards of Rural Employment Generation Programme (Gramodyog Rojgar Yojna) (for short R.E.G.P.).

d. The respondents have annexed copies of Inspection Reports dated February 4, 2025 (annexure 4) and November 2, 2006 (annexure 5) and the Scheme of R.E.G.P. (annexure 7) to substantiate their response.

ANALYSIS

5. I have given our thoughtful consideration to the submissions advanced by the learned counsel for the parties and have also perused the relevant records of the case and the affidavits filed on behalf of both the parties.

CONCLUSION

6. The petitioner's claim for margin money was rejected on 22.5.2008 by Deputy Director/In-charge, Regional Office, Khadi and Village Industries Commission, Gorakhpur; on the basis of the inspection done by a team of officials from the Bank, the KVIC, etc. on two occasions i.e. on February 4, 2005, and November 2, 2006. Upon reaching the spot where the brick kiln was claimed to be

established by the petitioner under the Scheme of R.E.G.P., the team found that no new brick kiln had been installed in Village Chorpa, which was the basis for the petitioner's claim for margin money. Reasons assigned by the authority for rejection of the petitioner's claim are quoted below :

"इकाई की परियोजना बैंक शाखा द्वारा गांव चोरपा के लिए स्वीकृत किया गया है, लेकिन गांव चोरपा में पूर्व की भौतिक सत्यापन टीम ने दर्शाया है। कि गांव चोरपा में ईट भट्ठा नही पाया गया, गांव चोरपा में पुराना भट्ठा था, जो लगभग 4-5 वर्ष पूर्व बन्द हो गया था। इसलिए (sic.) भौतिक सत्यापन टीम ने इकाई को मार्जिन मनी का पात्र नहीं दर्शाया है इकाई का सेलटैक्स न. एमयू-0058618 चोरपा कला का दिनांकः 15.01.1997 से प्रभावी है तथा लामार्थी ने बाद में सेलटैक्स न. एमयू-00518718 दिनांकः 15.01.2003 से ग्रांव सरवां के लिए प्रभावी है। आर.ई.जी.पी. के मानकों के अनुसार इकाई मार्जिन मनी की पात्र नही है। जैसाकि पूर्व की भौतिक सत्यापन टीम ने दर्शाया है।"

7. The relevant provision of the Scheme i.e. Rural Employment Generation Programme (R.E.G.P.) (Gramodyog Rojgar Yojna), annexure No.7 to the counter affidavit, is quoted below :

"K (xi). Margin Money assistance is available only for new project sanctioned specifically under the REGP-Gramodyog Rojgar Yojna. Existing units are not eligible under the Scheme."

8. In the first Inspection Report dated February 4, 2005, the inspecting team observed that on physical inspection of the site, they found no chimney at the spot. The report further revealed that there was only an old pit at the spot. On enquiry, they found that the brick kiln had been closed four to five years ago. The team concluded that because no chimney was installed and the brick kiln was closed, the unit was not eligible for margin money. A checklist of relevant documents and their status was also annexed to the report.

9. The second spot inspection report dated November 2, 2006 reveals the same finding that was observed in the first report. The Inspection Team scrutinized a checklist of 15 documents that were required for the claim of the petitioner for margin money. The inspection team further observed that permission was granted to establish a unit in village Chorpa under R.E.G.P. scheme; however, on physical inspection of the spot, no brick kiln was found in Village Chorpa. An old brick kiln was found which had been closed four to five years ago. The Team concluded that the petitioner is not eligible for margin money as per the norms of the R.E.G.P. Scheme.

10. The impugned order passed on May 22, 2008 was already communicated to Branch Officer, Sanyukta Gramin Bank, Branch Badhua Godam, Mau, as well as the petitioner along with the Director (R.E.G.P.), Khadi and Village Industries Commission, Mumbai and State Director, State Office, Khadi and Village Industries Commission, Lucknow. However, the petitioner claims that she came to know about rejection of her claim only after filing of the counter affidavit by the respondents wherein the order of rejection was annexed.

11. Be that as it may, on due consideration of the arguments on behalf of the learned counsel for the parties, the reports of the two Inspecting Teams, the R.E.G.P. Scheme and the finding recorded by the Deputy Director in the impugned order dated May 5, 2008, I am of the view that as per the R.E.G.P. Scheme, the

petitioner had to establish a new unit but she failed to do so, therefore, her claim for margin money has been rightly rejected by the authority concerned.

12. It is trite law that a writ of mandamus and/or writ of certiorari would only be issued by this Court when the Court finds palpable error or manifest illegality in the procedure followed by the State authorities. Furthermore, if the authorities have acted within jurisdiction and passed an order based on the materials available, no writ would lie.

13. In the present factual matrix, it is clear that the authorities have acted on the basis of two inspection reports that have indicated that the petitioner has not acted in terms of the Rural Employment Generation Programme and has not created a new project to become eligible under the above programme. In fact, the petitioner has not been able to controvert the statements made in the counter affidavit.

14. In light of the same, this Court is of the view that the impugned order is justified, in accordance with law and does not require any interference.

15. Accordingly, the writ petition lacks merit and is dismissed.

(2025) 8 ILRA 824
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 20.08.2025

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 3000065 of 1997

Smt. Afsar Jahan ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Vimla Mishra, Harguru Charan, Mohammad Aslam Khan, Pt. S. Chandra, Vinod Kumar

Counsel for the Respondents:
C.S.C., C.P.M. Tripathi, Fateh Bahadur Singh, Ripu Daman Shahi, Syed Aftab Ahmad, Syed Ali, Veer Keshwar Singh

Issue for Consideration

Matter pertains to whether the orders passed by Prescribed Authority under U.P. Imposition of Ceiling on Land Holdings Act, 1960 thereby declaring certain lands belonging to Waqf as surplus and subsequent proceedings initiated by State authorities pursuant thereto, could be sustained in law, in spite of abatement of original ceiling proceedings and appeal by virtue of Section 31(2) and (3) of U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1976 and existence of final and binding civil court decree declaring said land to be Waqf property under management of Shia Central Waqf Board, thereby exempt from operation of Ceiling Act under Section 6(f) thereof.

Headnotes

U.P. Muslim Waqfs Act, 1960 - ss. 29, 66, 68 - U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1976 - para 31(2) - U.P. Imposition of Ceiling on Land Holdings Act, 1960 - ss. 6(f), 7, 10, 10(2), 13 - U.P. Imposition of Ceiling on Land Holdings Rules, 1961 - r. 8 - The undisputed facts of case are that one Raja Yasin Ali Khan, erstwhile Taluqdar of Devgaon Estate, had, in the year 1936, dedicated certain immovable properties situated in several villages for religious and charitable purposes, thereby creating a Waqf in accordance with Muslim law - Subsequent to his demise, Yawar Hussain Khan acted as Mutawalli and on 22 November 1959, submitted application for registration of said Waqf to Shia Central Waqf Board, Uttar Pradesh, whereupon certificate of registration u/s 29 of U.P. Muslim Waqfs Act, 1960 was issued on 23 March 1973 - Despite the said property being recorded as Waqf land, proceedings

under U.P. Imposition of Ceiling on Land Holdings Act, 1960 were initiated against Yawar Hussain Khan, culminating in order dated 31 December 1974, declaring part of land as surplus - Appeal filed there against was deemed to have abated under U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1976 - Thereafter, Shia Central Waqf Board instituted regular civil suit seeking declaration and injunction, which was decreed in its favour in 1990, affirming land as Waqf property - Finding upheld in appeal by District Judge, Faizabad, in 1996 - Notwithstanding finality of such decrees, State authorities issued fresh notices in 1996–1997 to take possession of property, leading to instant writ petition filed by petitioner, successor Mutawalliya, challenging legality and jurisdiction of such proceedings.

Held: In the instant case, during pendency of appeal before District Judge, Faizabad, U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1976 i.e. U.P. Act No.20 of 1976 came into force and as per above-extracted provisions, entire proceedings pending including appeals had to abate and Prescribed Authority was empowered to issue fresh notice for determination of surplus area of tenure holder only within period of 2 years from 10.10.1975, but no notice was ever issued either to Shia Central Waqf Board or to Yawar Husain or to petitioner and in this view of matter, notice issued on 20.12.1996 and 16.1.1997 are illegal and without jurisdiction and order passed by Prescribed Authority in regard to taking possession over surplus land is contrary to provisions of Act - It is pertinent to note that State of U.P. preferred Civil Appeal before District Judge, Faizabad, against order dated 08.05.1990, whereby IInd Additional Civil Judge, Faizabad, declared land as waqf property and protected its possession from disturbance under judgment dated 31.12.1974 of Prescribed Authority - The said appeal was dismissed on 30.11.1996, and no further appeal having been filed, order attained finality - Considering totality of facts and circumstances, orders dated 08.04.1997, 31.12.1974 passed by Prescribed Authority and 23.04.1976 passed in appeal are hereby quashed. [Paras 18 to 20] (E-13)

Case Law Cited

Nil

List of Acts

U.P. Muslim Waqfs Act, 1960; U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1976; U.P. Imposition of Ceiling on Land Holdings Act, 1960; U.P. Imposition of Ceiling on Land Holdings Rules, 1961.

List of Keywords

Writ of Certiorari; Prescribed Authority; Mutwalli / Mutawalliya / Naib Mutwalli; Oral Waqf; Taziadari; Waqf property; Tenure-holder; Surplus land / surplus area; Imposition of Ceiling on Land Holdings Act, 1960; Abatement / abated proceedings; Civil Court decree; Jurisdiction / without jurisdiction; Notice u/s 10 of Act, 1960; Exempt u/s 6(f) of Act, 1960; Regular Suit / Decree / Appeal; Declaration and Permanent Injunction; Overriding effect; Alternative remedy / efficacious remedy; Violation of principles of natural justice; Miscarriage of justice / material injustice; Benami entry; Tenure rights / khatedar; Redetermination of surplus land; U.P. Act No.20 of 1975; Amendment Act, 1976 (U.P. Act No. 20 of 1976); Abatement of appeal u/s 31(2) and (3); Certificate of registration u/s 29 of Act, 1960; Ex-Taluqdar; Decree attained finality; Quashed / set aside.

Case Arising From

ORIGINAL JURISDICTION: Writ - C No. - 3000065 of 1997

From the Order dated 8.4.1997, 31.12.1974 passed by the Prescribed Authority and Order dated 23.4.1976 passed in appeal.

Appearances for Parties

Advs. for the Petitioner:

Vimla Misra, Harguru Charan, Mohammad Aslam Khan, Pt. S. Chandra, Vinod Kumar

Adv. for the Respondent:

C.S.C., C.P.M.Tripathi, Fateh Bahadur Singh, Ripu Daman Shahi, Syed Aftab Ahmad, Syed Ali, Veer Keshwar Singh

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Mohd. Arif Khan, learned Senior Advocate assisted by Mohd. Sadab

Khan, learned counsel for the petitioner, Shri Syad Aftab Ahmad, learned counsel for the respondent-Shiya Central Board of Waqf, Uttar Pradesh, Lucknow, Shri vinod Kumar Gupta, learned counsel for the intervener, learned Standing Counsel for the respondents-State and Shri A.P. Singh, learned Advocate holding biref of Shri R.D. Shahi, learned Advocate.

2. By means of the present writ petition, the petitioner has prayed for issuance of a writ in the nature of Certiorari quashing judgment and order dated 8.4.1997 as well as the order dated 31.12.1974 of the Prescribed Authority and order dated 23.4.1976 passed in appeal.

3. Factual matrix of the case is that Raja Yasin Ali Khan , Ex Tauluqedar of Devgaon Estate for religion and charitable purpose before 1.5.1959 and dedicated his land in several villages used as Waqf property, but the application for registration of the Waqf was given on 22.11.1959 by Sri Yawar Hussain Khan to the Shiya Central Board of Waqf, U.P., Lucknow. Due to oversight the certificate for registration under Section 29 of U.P. Muslim Waqfs Act, Shri Yawar Hussain on 16.6.1971, on which report was submitted by the Secretary of the Board on 19.10.1971 and the certificate under Section 29 of the Act was issued on 23.3.1973.

The proceedings under the provisions of Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 was taken and even though the land was recorded as Waqf property. Neither Shiya Central Board of Waqf, U.P., Lucknow was made a party in the proceedings in according with Section 68 of the U.P. Muslim Waqfs Act, 1960 nor any notice was given to it under Section 66 of the said Act.

After the death of Sri Yawar Hussain, petitioner no.1, his widow became the sole Mutwalli of the Waqf property but after she became old and inform on her requested dated 28.5.1993 petitioner no.2 , Ikhlas Hussain @ Shawar was appointed Naib Mutwalli.

Notices under Section 10 of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 were issued in the name of Sri Yawar Hussain Khan who was only a Sarbarakar or Mutwalli. In response to the notices, Sri Yawar Hussain Khan submitted his replies and pointed out that the Waqf and in accordance with Section 6(f) of the Act is exempt from the provisions of the Act. This contention was accepted by the Prescribed Authorityin respct of land in village Poorey Lal Khan and by the judgment and order dated 30.6.1962 the notice was discharged. The Prescribed Authority in his judgment and order annexed as Annexure no.4 had come to the conclusion that the oral waqf had been created by Raja Yasin Ali Khan in 1936 and the income from the land was utilised for Taziadari etc.

In respect of other villages Devgaon Poora alias Sumerpur, Mewapur, Indalpur the Prescribed Authority did not accept the contention that the land was Waqf property created before 1.5.1959 and holding the same to be that of Sri Yawar Hussain he declared 278 Bighas 16 Biswas 15 Biswansi to be surplus area of Sri Yawar Hussain.

Aggrieved by the judgment and order, Sri Yawar Hussain Khan preferred appeal under Section 13 of the Act which

was decided by the Civil Judge, Faizabad on 23.4.1976. During the pendency of the appeal, U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1976 i.e. U.P. Act No.20 of 1976 came into force and para 31(2) which had abated all the pending appeals.

The appeal was thus deemed to have abated and the Prescribed Authority had been given powers to issue fresh notices for determining the surplus area of a tenure holder only within a period of two years from 10.10.1975, but in the present case the Prescribed Authority did not give any notice either to Shiya Central Board of Waqf of Sri Yawar Hussain Khan of the petitioners.

When the State of U.P. wanted to take possession of the Waqf property Shiya Central Board of Waqf instituted regular suit for declaration and permanent injunction against 1. State of U.P. through Secretary Department of Revenue, U.P. Government as well as State of U.P. through Collector, Faizabad, Prescribed Authority, Ceiling Bikapur, District Faizabad and Sri Yawar Hussain Khan was also impleaded as defendant no.4 in the same suit. The suit was decreed on 8.5.1990 by Sri R.K. Gupta, Second Additional Civil Judge, Faizabad. It was held that the land was Waqf property belonging to Shiya Central Board of Waqf and that the possession of the same could not be disturbed by the judgment and order dated 31.12.1974.

Aggrieved by the judgment and decree the State of U.P. preferred appeal no.60 of 1990 which has been heard and dismissed by Sri V.B. Srivastava, Vith Additional District Judge, Faizabad on 30.11.1996. On 20.12.1996, opposite party no.2 issued notice to the petitioners asking the petitioners as to why possession be not taken. Another notice was issued to the petitioners by opposite party no.2 on 16.1.1997.

In response to the notice, petitioners preferred written objections on 10.3.1997 raising the plea that there was legal order for declaration of the land as surplus area of the petitioners, and notice if any could have been issued within two years from 10.10.1975 and the same could not be issued after such a long time even under Rule 8 of the Rules under the Act.

The Prescribed Authority opposite party no.2 has mentioned the pleas taken by the petitioner but without giving cogent reasons for rejecting the same has rejected them and by the impugned order filed as Annexure no.1 has ordered that possession be taken of the surplus area declared in the order dated 31.12.1974.

The Prescribed Authority ignoring the provisions of U.P. Act No.20 of 1975 has taken notice of the judgment and orders dated 31.12.1974 passed by the Prescribed Authority and the judgment and order dated 23.4.1976 passed by Sri U.C. Dikshit, Civil Judge, Faizabad dismissing the appeal even through the same had abated. He further ignored the judgment and decree passed by the Civil Court declaring that the land belonged to Shiya Central Board of Waqf and that the possession of the same be not disturbed.

4. Learned Senior Advocate submitted that the judgment and order dated 31.12.1974 passed by the Prescribed Authority and the appeal preferred against the said order was deemed to have abated in view of Section 31(2)(3) of the U.P. Act

No.20 of 1975 amending the provisions of U.P. Imposition of Ceiling on Land Holdings Act, 1960.

5. Learned counsel for the petitioner further submitted that no notice having been given either to the petitioners or opposite party no.3- Shiya Central Board of Waqfs which is the tenure holder of the land in question opposite party nos.1 and 2 have no jurisdiction under the law to declare or take possession of any land in an illegal manner.

6. Learned counsel for the petitioner further submitted that the opposite party nos.1 and 2 being defendants in the regular suit instituted by Shiya Central Board of Waqf decreed against them and being appellants in the appeal which had been dismissed with costs have no right to sit in judgment over the same and ignore the decrees passed by the competent Civil Court.

7. Learned counsel for the petitioner further submitted that the land in dispute being Saqf property as accepted by the Prescribed Authority in respect of village Poorey Lalganj, is exempt from the proceedings under Section 6 (f) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960.

8. Learned counsel for the petitioner further submitted that the notice issued on 20.12.1996 and dated 16.1.1997 are manifestly erroneous illegal and without jurisdiction.

9. Learned counsel for the petitioner lastly submitted that in any view of the matter, the impugned judgment and order dated 8.4.1997 annexed as Annexure No.1 is contrary to law laid down by the Act and the Rules as well as the legal principles laid down by the Hon'ble Supreme Court and High Court and the same is arbitrary only for pleasing the present Government which wants to let out the land to Dalits at all costs.

10. Per contra, learned Standing Counsel submitted that Prescribed Authority after analysing the provisions contained under Sections 6 and 7 of the Act, observed that the provisions of Ceiling Act will have overriding effect over the other general civil laws and moreover findings arrived at by the Ceiling Court cannot be questioned before any Civil Court. Learned Prescribed Authority also observed that entry in the name of the Waqf in the revenue record is benami and the interest of the Khatedar, Mutawalli and the Waqf Board is the same and thereafter rejected the objections filed by the petitioners and opposite party no.3.

11. Learned Standing Counsel further submitted that it is settled view that efficacious alternate remedy the adjudication of writ petition having some exception such as the violation of principles of natural justice i.e. order passed by the Authority without having proper hearing to the concerned party whose legal rights have been infringed, another order obtained by playing forgery or fraud committing material injustice and miscarriage of justice.

12. Learned Standing Counsel further submitted that the Prescribed Authority firmly held that the Civil Court has not given any finding on the point of Waqf being registered prior to 1.5.1959 and rather left the issue for authority on the application and documentary evidence held that Waqf was constituted after 1.5.59 and

in this view of the matter the writ petition is liable to be rejected and this Court be pleased to issue the direction to the petitioners to avail the remedy of Appellate jurisdiction.

13. Learned counsel for the intevener has reiterated the same submission as advanced by learned Standing Counsel of having alternative remedy to file appeal under Section 13 of the Act and as such, the writ petition is not maintainable and liable to be dismissed.

14. I have considered the submissions advanced by learned counsel for the parties and gone through the material available on record.

15. Perusal of the material available on record reveals that Raja Yaseen Ali was the Taluqdar of Deogaon dedicated his properties situated in several villages by creating Waqf in 1936. On 22.11.1959, an application for registration of the Waqf was made by Yawar Husain Khan to Shia Central Waqf Board, wherein on 23.3.1973, a certificate of registration under U.P. Muslim Waqf Act, 1960 was issued under Section 29 of the Act. After death of Yawar Hussain Khan, his widow became Mutawalliya of the Waqf and thereafter she appointed Ikhlas Husain as Naib Mutawalli by making an application to the Board.

Notice under Section 10 of the Act was issued to Yawar Husain Khan, whereupon he filed objections. On 31.6.1962, Prescribed Authority allowed objection and in regard to other village namely Deogaon, Poora @ Sameerpur, Mewapur, Indalpur, held that it was not the Waqf property, thereby declared 278-16-15 bighasis surplus land. Being aggrieved, Yawar Husain Khan filed an appeal before the District Judge which was transferred to Court of Civil Judge, Faizabad and the same was dismissed the appeal vide judgment dated 23.4.1976. Thereafter, a suit bearing Regular Suit No.60 of 1980 titled 'Shia Central Waqf Board v. State of U.P. and others' for declaration and injunction was filed which was decreed by IInd Additional Civil Judge, Faizabad holding that the land in suit was Waqf property and possession could not be disturbed.

Being aggrieved, the State of U.P. filed an appeal bearing Civil Appeal No.60 of 1990 before the District Judge, Faizabad which was dismissed vide judgment dated 30.11.1996. On 20.12.1996, a notice was issued by the opposite party no.2 to the petitioner as why possession be not taken. On 16.1.1997, another notice was issued under Section 10(2) of the Act by the Prescribed Authority whereupon objections were filed stating therein that a declaration had already been made about the Waqf and no notice would be issued after expiry of two years.

16. To resolve the controversy involved in the present writ petition, Para 31(2) of the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1976 i.e. U.P. Act No.20 of 1976, are quoted hereinbelow:

(2) Where an order determining the surplus land in relation to a tenure holder has been made under the Principal Act before January 17, 1975 and the Prescribed Authority is required to redetermine the surplus land under Section 9 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1974 (U.P. Act II of 1975) then notwithstanding anything contained in

subsection (2) of Section 19 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 (U.P. Act No. XVII of 1975) every appeal under Section 13 of the Principal Act or other proceedings in relation to such appeal preferred against the said order and pending immediately before the tenth day of October, 1975 shall be deemed to have abated on the said date.

(3) Where an order determining surplus land in violation to a tenure holder has been made under the Principal Act before the tenth day of October, 1975, the Prescribed Authority (as defined in the Principal Act) may at any time within a period of two years from the said date redetermine the surplus land in accordance with the Principal Act as amended by this Act whether or not any appeal was filed against such order and notwithstanding any appeal (whether pending or decided) against the original order of determination of surplus land."

17. On perusal of the above-extracted, it is crystal clear that where an order determining surplus land in relation to a tenure-holder has been made under the principal Act before 10.10.1975, the prescribed authority may, at any time within a period of two years from the said date, redetermine the surplus land in accordance with the principal Act as amended by Act No. 20 of 1976, at any time within a period of two years from the said date.

18. In the present case, during pendency of appeal before the District Judge, Faizabad, U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1976 i.e. U.P. Act No.20 of 1976 came into force and as per the above-extracted provisions, the entire proceedings pending including the appeals had to abate and the the Prescribed Authority was empowered to issue a fresh notice for determination of the surplus area of a tenure holder only within a period of 2 years from 10.10.1975, but no notice was ever issued either to Shia Central Waqf Board or to Yawar Husain or to the petitioner and in this view of the matter, notice issued on 20.12.1996 (Annexure-8) and 16.1.1997 (Annexure-9) are illegal and without jurisdiction and order passed by the Prescribed Authority in regard to taking possession over the surplus land is contrary to the provisions of the Act.

19. It is also pertinent of the mention that the State of U.P. filed an appeal (Civil No.60 of 1990) before the District Judge, Faizabad against the order dated 8.5.1990 vide which IInd Additional Civil Judge, Faizabad held that the land in suit was waqf property and the possession could not be disturbed in pursuance to the judgment dated 31.12.1974 passed by the Prescribed Authority, which was dismissed vide judgment dated 30.11.1996. Thereafter, no second appeal was filed against the order dated 30.11.1996 and the said order became final.

20. Considering in totalities of facts and circumstances of this case, order dated 8.4.1997 as annexed as Annexure-1, order dated 31.12.1974 passed by the Prescribed Authority and order dated 23.4.1976 passed in appeal are hereby quashed.

21. In the result, this writ petition succeeds and is **allowed**.

(2025) 8 ILRA 831
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 01.08.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Application U/S 482 No. 5919 of 2025

Jyoti Rawat ...Applicant
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicant:
Shabnam

Counsel for the Opposite Parties:
G.A.

Issue for consideration
Matter pertains to Rape on false pretext of marriage.

Headnotes
Indian Penal Code-sec. 376-Allegation of rape on false promise of marriage-claim 7 years of love relationship-victim married someone else-claim to divorce him-but accused refused to marry the victim-impugned FIR-accused cannot marry a married women-proof of divorce not given-refusal to marry a married women cannot be criminalized –proceedings quashed. **Application allowed.** (E-9)

Case Law Cited
1.Bharat Sangh vs. Prafful Kumar, 1989,CRLJ 154 (S.C.)
2. Deepak Kumar Gulati vs. State of Haryana, (2013) 7 SCC 675
3. Uday vs. State of Karnataka, (2003) 4 SCC 46
4. Pramod Suryabhan Pawar vs. State of Maharashtra and others, (2019) 9 SCC 608

List of Acts
Indian Penal code,1860

Appearances of parties
Counsel for Applicant :- Shabnam, Counsel for Opposite Party :- G.A.

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. प्रार्थिनी के विद्वान अधिवक्ता सुश्री शबनम शेख तथा विद्वान अपर शासकीय अधिवक्ता श्री अभय कुमार सिंह को सुना तथा पत्रावली का अवलोकन किया।

2. धारा 482 दण्ड प्रक्रिया संहिता के अंतर्गत प्रस्तुत इस प्रार्थना पत्र द्वारा प्रार्थिनी ने विशेष न्यायाधीश एस.सी. / एस.टी. एक्ट, लखनऊ द्वारा सत्र वाद संख्या 1089 सन 2024 में पारित आदेश दिनांक 02.06.2025 की वैधता को चुनौती दी है जिसके द्वारा विचारण न्यायालय ने प्रार्थी के विरुद्ध मात्र धारा 504, 506 भा०दं०सं० व धारा 3(1) ब (ii) एस०सी० / एस०टी० में आरोप विरचन का मामला पाया एवं धारा 376, 313 भा०दं०सं० के अपराधों से विपक्षी संख्या 2 तथा 3 को उन्मोचित कर दिया, की वैधता को चुनौती दी गयी है।

3. प्रस्तुत प्रकरण प्रार्थिनी द्वारा विपक्षी संख्या 2 तथा 3 के विरुद्ध दिनांक 08.11.2023 को लिखाई गई प्रथम सूचना रिपोर्ट के आधार पर संस्थित हुआ जिसमें कहा गया है कि प्रार्थिनी का संबंध लगभग 7 वर्ष पूर्व विपक्षी संख्या 2 से हुआ था तथा उनमें प्रेम प्रसंग हो गया एवं शादी का झांसा देकर विपक्षी संख्या 2 ने कई बार शारीरिक संबंध बनाये जिससे प्रार्थिनी गर्भवती हो गयी। दवा खिलाने से उसका गर्भपात हो गया। प्रार्थिनी का अन्यत्र विवाह हो गया। प्रार्थिनी का अन्यत्र विवाह हो गया किन्तु इसके बाद भी विपक्षी संख्या 2 उसे फोन करके विवाह करने का झांसा देता रहा

तथा उसने पुनः प्रार्थिनी से शारीरिक संबंध बनाये। विपक्षी संख्या 2 के कहने पर प्रार्थिनी ने अपने पति को छोड़कर विवाह विच्छेद करा लिया किन्तु उसके बाद पुनः जब प्रार्थिनी गर्भवती हो गयी तो उसे कोई दवा पिलाकर पुनः गर्भपात करा दिया एवं इसके उपरान्त विपक्षी संख्या 2 ने प्रार्थिनी से शादी करने से अस्वीकार कर दिया।

4. धारा 161 दं०प्र०सं० के अंतर्गत अंकित अपने बयान में प्रार्थिनी ने कहा कि वर्ष 2020 में उसका विवाह उसके घरवालों ने करा दिया था किन्तु उसके बाद उसके ससुराल से अलगाव हो गया और वह मायके में रहने लगी। इसके उपरान्त उसके और प्रार्थी के बीच कई बार शारीरिक संबंध बने जिससे वह गर्भवती हुई किन्तु अंततः प्रार्थी ने उससे शादी करने से मना कर दिया एवं कोई दवा दी जिससे प्रार्थिनी का गर्भपात हो गया।

5. पीड़िता का चिकित्सकीय परीक्षण नहीं हुआ जिससे इन आरोपों के समर्थन में कोई चिकित्सकीय साक्ष्य उपलब्ध नहीं है।

6. धारा 164 दं०प्र०सं० के अंतर्गत अंकित अपने बयान में प्रार्थिनी ने कहा कि वह विपक्षी संख्या 2 के साथ 7 साल से प्यार के रिश्ते में थी। दिनांक 17.05.2020 को उसकी शादी एक अन्य व्यक्ति के साथ हो गयी किन्तु कुछ दिन बाद वह अपने घर वापस आ गयी।

7. विपक्षी संख्या 2 से वह वर्ष 2021 व वर्ष 2023 में गर्भवती हुई किन्तु विपक्षी संख्या 2 द्वारा दवा देने से उसका गर्भपात हो गया।

8. विवेचक ने दिनांक 24.12.2023 को प्रार्थी के विरुद्ध धारा 376, 313, 504, 506 भा०दं०सं० एवं धारा 3 (1) द, ध एस.सी. / एस.टी. अधिनियम के अपराध के लिए आरोप-पत्र प्रस्तुत किया।

9. जिस उन्मोचन प्रार्थना-पत्र पर आलोच्य आदेश दिनांक 02.06.2025 पारित हो गया, जिसकी प्रति प्रार्थना-पत्र के साथ संलग्न नहीं की गयी है तथा इस कारण से मात्र आलोच्य आदेश के कथनों के आधार पर ही आदेश की वैधता का परीक्षण किया जा रहा है।

10. अभियुक्तगण द्वारा उन्मोचन के संबंध में कथन किया गया कि पीड़िता वयस्क थी, उसका बचपन से अभियुक्तगण के परिवार से संबंध था।

11. विचारण न्यायालय ने आलोच्य आदेश में यह अंकित किया कि विवेचक ने एक होटल के रिसेप्शनिस्ट का बयान अंकित किया है जिसने कहा गया है कि दिनांक 30.07.2023 की शाम को शिकायतकर्ती एवं अभियुक्त होटल के एक कमरे में लगभग 4 घण्टे तक रुके थे। विचारण न्यायालय ने पाया कि पीड़िता विवाहिता है तथा वर्ष 2020 में उसका विवाह किसी अन्य व्यक्ति से हो चुका है। उसका अपने पति से विवाह विच्छेद नहीं हुआ है इसके उपरान्त भी उसने अभियुक्त से संबंध बनाये हैं। पीड़िता ने एक भ्रूण की फोटो दाखिल की है किन्तु अल्ट्रासाउण्ड की कोई तिथि अंकित नहीं है। विवाहित होते हुए गर्भवती होना तथा किसी भ्रूण की फोटो दाखिल करने से प्रथम दृष्ट्या यह माना जाएगा कि वह अपने पति से ही गर्भवती हुई। बिना विवाह विच्छेद के अभियुक्त

से संबंध बनाने से मात्र धारा 497 भा०दं०सं० का अपराध बनेगा किन्तु यह अपराध माननीय उच्चतम न्यायालय द्वारा असंवैधानिक घोषित किया जा चुका है। ऐसी परिस्थिति में विचारण न्यायालय ने **भारत संघ बनाम प्रफुल्ल कुमार** 1989 सी०आर०एल० जे० 154 (एस०सी०) के निर्णय का आश्रय लिया जिसमें यह कहा गया है कि यदि साक्ष्य के मूल्यांकन से दो दृष्टिकोण सामने आ रहे हों तथा अभियुक्तगण के विरुद्ध मात्र संदेह हो, जो गंभीर संदेह की श्रेणी में न आ रहा हो तो ऐसी दशा में अभियुक्त का उन्मोचित कर दिया जाना चाहिए।

12. उपरोक्त कारणों से विचारण न्यायालय ने विपक्षी संख्या 3 को पूर्णतया तथा विपक्षी संख्या 2 को धारा 376, 313 भा०दं०सं० के आरोपों से उन्मोचित कर दिया तथा मात्र विपक्षी संख्या 2 के विरुद्ध धारा 504, 506 भा०दं०सं० एवं धारा 3(1) ब (ii) एस०सी० / एस०टी० एक्ट के आरोप विरचन के लिए प्रकरण में तिथि लगायी।

13. उपरोक्त आदेश की वैधता को चुनौती देते हुए प्रार्थी के विद्वान अधिवक्ता ने **दीपक गुलाटी बनाम हरियाणा राज्य** (2013) 7 SCC 675, **उदय बनाम कर्नाटक राज्य** (2003) 4 SCC 46 तथा **प्रमोद सूर्यभान पवार बनाम महाराष्ट्र राज्य तथा एक अन्य** (2019) 9 SCC 608 के निर्णयों का आश्रय लिया। उपरोक्त आधारों पर माननीय उच्चतम न्यायालय ने अपील स्वीकार करते हुए दोषसिद्धि तथा दण्डादेश को निरस्त कर दिया।

14. दीपक गुलाटी बनाम हरियाणा राज्य का प्रकरण सत्र न्यायालय द्वारा अपीलार्थी को धारा 365 एवं 376 भा०दं०सं० के अपराध के लिए दोषसिद्ध तथा दंडित किए के जाने के आदेश तथा उपरोक्त आदेश को उच्च न्यायालय द्वारा पुष्ट किए जाने के विरुद्ध प्रस्तुत अपील में पारित किया गया था। माननीय उच्चतम न्यायालय ने अपील स्वीकार करके दोषसिद्धि तथा दण्डादेश को निरस्त कर दिया। माननीय उच्चतम न्यायालय ने इस निर्णय में कहा कि बलात्कार तथा सहमति से यौन संबंध बनाने में एक स्पष्ट अंतर है। ऐसे प्रकरणों में न्यायालय को बहुत सावधानीपूर्वक यह परीक्षण करना चाहिए कि क्या अभियुक्त पीड़िता से वास्तव में विवाह करना चाहता था अथवा उसके उद्देश्य दुराशयपूर्ण थे और उसने मात्र अपनी वासना की तृप्ति के लिए शादी का झूठा वादा किया। एक किए हुए वादे को तोड़ने और एक झूठे वादे को पूरा न करने में अंतर है। न्यायालय को यह देखना चाहिए कि क्या प्रारंभ से ही अभियुक्त ने विवाह का झूठा आश्वासन दिया था। क्या पीड़िता ने सहमति यौन संबंधों की प्रकृति और असर समझते हुए दी थी। यदि पीड़िता ने शारीरिक संबंध की स्वीकृति अभियुक्त के साथ प्रेम संबंध के चलते दी थी तथा यह मात्र अभियुक्त द्वारा किए गए मिथ्या कथन पर आधारित नहीं थी अथवा अभियुक्त बाद में किसी कारण से पीड़िता से विवाह नहीं कर पाया, जबकि वह पीड़िता से विवाह करने का इच्छुक था, ऐसे प्रकरण को भिन्न तरह से देखना चाहिए, अभियुक्त को बलात्कार के लिए तभी दोषी सिद्ध किया जा सकता है, जबकि उसका आशय दुर्भावनापूर्वक था तथा उसके कुछ गुप्त उद्देश्य थे।

15. प्रस्तुत प्रकरण में पीड़िता पहले से ही शादीशुदा थी तथा ऐसे में उसके द्वारा प्रार्थी

द्वारा उससे विवाह किए जाने के वादे के कारण उसने शारीरिक संबंध बनाये, यह स्वीकार नहीं किया जा सकता, क्योंकि एक विवाहिता दूसरा विवाह नहीं कर सकती।

16. उदय बनाम कर्नाटक राज्य का प्रकरण भी अपीलार्थी को विचारण न्यायालय द्वारा धारा 376 भा०दं०सं० के अपराध के लिए दोषसिद्ध करके दण्डित किए जाने एवं उक्त आदेश को उच्च न्यायालय द्वारा पुष्ट किये जाने के आदेश से उत्पन्न विशेष अनुमति याचिका में पारित किया गया था। इस निर्णय में माननीय उच्चतम न्यायालय कई पूर्व निर्णयों का आश्रय लिया जिसमें यह अवधारित किया गया कि यदि कोई पीड़िता किसी व्यक्ति से किसी व्यक्ति से अगाध प्रेम करती है तथा ऐसी परिस्थिति में उसके इस वादा करने पर कि वह आगे चलकर उससे विवाह करेगा, शारीरिक संबंध बनाती है तो ऐसी सहमति तथ्यों के मूलभूत गलतफहमी के आधार पर दी हुई नहीं मानी जायेगी।

17. प्रमोद सूर्यभान पवार का निर्णय धारा 482 दं०प्र०सं० के अंतर्गत प्रथम सूचना रिपोर्ट निरस्त करने का अनुरोध अस्वीकार किये जाने के आदेश के विरुद्ध प्रस्तुत आपराधिक अपील में पारित किया गया था जिसमें माननीय उच्चतम न्यायालय ने यह कहा कि यह सिद्ध करने के लिए कि विवाह हेतु सहमति किसी तथ्यात्मक गलतफहमी से ली गयी थी, दो चीजें देखना आवश्यक है, 1- विवाह के लिए दिया गया वचन दुराशय से दिया गया हो जबकि इस वचन के पालन का कोई इरादा न रहा हो तथा ऐसा झूठा वचन महिला द्वारा शारीरिक संबंध बनाने की सहमति देने से तात्कालिक जुड़ाव रखता हो।

18. उपरोक्त तीनों ही निर्णयों में माननीय उच्चतम न्यायालय ने विवाह की सहमति के कारण बनाये हुए शारीरिक संबंध को बलात्कार नहीं माना।

19. उपरोक्त परिस्थिति में, जबकि पीड़िता ने लगभग 7 वर्ष पूर्व से प्रेम प्रसंग होना कहा है, वर्ष 2020 में पीड़िता ने किसी अन्य व्यक्ति से विवाह कर लिया तथा प्रथम दृष्ट्या अभियुक्त से विवाह करने से पीड़िता स्वयं ही पीछे हट गयी; पीड़िता के पति से उसका विवाह विच्छेद हुआ है इसका कोई साक्ष्य उपलब्ध नहीं है तथा अभियुक्त एक विवाहित से विवाह नहीं कर सकता, न्यायालय का मत है कि ऐसी परिस्थिति में अभियुक्त ने पीड़िता से विवाह न करने में कोई अवैधानिकता कारित नहीं की तथा इस कारण से उसको उसके विरुद्ध आपराधिक कार्यवाही चलाकर उसको दण्डित नहीं किया जा सकता।

20. उपरोक्त समीक्षा के आलोक में न्यायालय का मत है कि विचारण न्यायालय द्वारा वाद संख्या 1089 सन 2024 में पारित आदेश दिनांक 02.06.2025 में कोई अवैधानिकता नहीं है तथा आलोच्य आदेश से न्याय के उद्देश्य विफल नहीं होते हैं।

21. अतः धारा 482 दं०प्र०सं० के अंतर्गत प्रस्तुत प्रार्थना-पत्र बलहीन है तद्नुसार निरस्त किया जाता है।

(2025) 8 ILRA 835
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 14.08.2025

BEFORE

THE HON'BLE SALIL KUMAR RAI, J.
THE HON'BLE SANDEEP JAIN, J.

Criminal Appeal No. 393 of 1984

Jubli & Anr. ...Appellants
Versus
State of U.P. & Anr. ...Respondents

Counsel for the Appellants:
Apul Mishra, P.N. Misra

Counsel for the Respondents:
A.P. Tewari

Issue for Consideration

Whether the conviction of the appellants under Section 302 IPC could be sustained on the basis of ocular testimony of related eye-witnesses, corroborated by medical evidence and a statement of the deceased recorded under Section 161 Cr.P.C. treated as a dying declaration, despite acquittal of other co-accused and alleged contradictions in prosecution evidence.

Headnotes

Indian Penal Code, 1860 — s.302 — Criminal Trial — Appreciation of evidence — Related eye-witnesses — Dying declaration recorded under s.161 Cr.P.C. — Absence of medical fitness certificate — Evidentiary value — Acquittal of co-accused — "Falsus in uno, falsus in omnibus" — Not applicable — Conviction affirmed.

Held:

Testimony of PW-1 (informant) and PW-3 (eye-witness), though related to the deceased, was natural, consistent and trustworthy. Their presence at the place of occurrence was fully explained and could not be doubted merely on the ground of relationship. Minor inconsistencies and embellishments did not affect the core prosecution version. [Paras 36–40]

Statement of the injured recorded under Section 161 Cr.P.C., followed by his death, assumed the character of a dying declaration. Absence of a doctor's certificate regarding mental fitness was not fatal where evidence of witnesses and Investigating Officer established that the deceased was conscious and capable of making the statement. The dying declaration stood corroborated by ocular and medical evidence. [Paras 46–51]

Medical evidence fully supported the prosecution case. Gunshot injuries, direction of wounds and absence of blackening/tattooing corroborated the manner of assault described by the eye-witnesses. Time of death as opined in post-mortem report was consistent with ocular testimony. [Paras 38–39, 58–59]

Acquittal of six co-accused did not render the entire prosecution case doubtful. The maxim *falsus in uno, falsus in omnibus* has no application in Indian criminal jurisprudence; court is duty-bound to separate truth from embellishment. Conviction of the appellants could be sustained on reliable residue of evidence. [Paras 52–55]

Prosecution proved motive, prompt lodging of FIR, place of occurrence and chain of events beyond reasonable doubt. Conviction under Section 302 IPC and sentence of life imprisonment rightly recorded by the trial court. Appeal dismissed. [Paras 41–45, 60–64]

Appeal dismissed. (E-14)

Case Law Cited

Dharmendra Kumar @ Dhamma v. State of M.P., (2024) 8 SCC 60 — applied; Laxman v. State of Maharashtra, (2002) 6 SCC 710 — relied on; Mahendran v. State of Tamil Nadu, (2019) 5 SCC 67 — followed; Ramesh Harijan v. State of U.P., (2012) 5 SCC 777 — relied on; Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381 — referred; Balaka Singh v. State of Punjab, (1975) 4 SCC 511 — referred.

List of Acts / Statutes

Code of Criminal Procedure, 1973; Indian Penal Code, 1860; Indian Evidence Act, 1872.

List of Keywords

Murder; Section 302 IPC; Ocular evidence; Related witnesses; Dying declaration; Section 161 Cr.P.C.; Medical corroboration; Motive; Acquittal of co-accused; Falsus in uno falsus in omnibus; Appreciation of evidence; Life imprisonment.

Case Arising From

Judgment and order dated **03.02.1984** passed by the Additional Sessions Judge, Budaun in **Sessions Trial No. 37 of 1982** (State v. Jubli and 7 others), arising out of Case Crime No. 129 of 1981, Police Station Rajpura, District Budaun.

Appearance for Parties

For the Appellants: Sri Apul Misra, Sri P.N. Misra

For the Respondent: Sri A.P. Tewari

(Delivered by Hon'ble Sandeep Jain, J.)

1. This Criminal Appeal has been preferred by the convicted accused Jubli and Mihilal @ Bhagatji against the impugned judgment and order dated 03.02.1984 passed by Sri. B.D. Maurya, Additional Sessions Judge, Budaun in Sessions Trial No.37 of 1982 (State vs. Jubli and 7 others), arising out of Case Crime No.129 of 1981, Police Station Rajpura, District Budaun, whereby the appellants have been convicted under Section 302 I.P.C. and sentenced to undergo life imprisonment.

2. Factual matrix is that on 28.08.1981, first informant Dhan Singh (PW-1 at the trial) along with his son Shahzadey, his brother's son Kishanlal(PW-3 at the trial), villagers Sheodan, Gendan Lal (PW-5 at the trial), and first informant's brother Fateh Singh, were returning from animal market Babrala and when they reached in between village Pahalwada and Ji Nagla, then at about 5:00 PM, they met accused Jubli, Nawab, Mihilal @ Bhagatji, Ganga Sahai, Ompal, Surja, Palia and Gappoo, who after exchanging greetings, surrounded the first informant and the other persons accompanying him. After saying, that Fateh Singh was doing intense pairvi against Ram Singh in a case, jointly accused Jubli and Mihilal with intention to kill, pulled out *'tamancha'* and fired two shots on first informant's brother Fateh Singh, and when the first informant and the persons accompanying him, tried to save Fateh Singh, then the accused persons fired two more rounds and then accused Nawab, Ompal, Ganga Sahai, Palia, Gappoo and Surja also threatened them, by saying, that the fate of Fateh Singh has been decided and their fate would too, be decided. Thereafter, the first informant and other persons accompanying him, brought injured Fateh Singh on a cot to Police Station Rajpura for registering the first information report, where Dhan Singh (PW-1) gave an application (Ex.Ka-1 at the trial) scribed by Shafaat Ali.

3. On the basis of application Ex.Ka-1 given by Dhan Singh PW-1 at police station Rajpura, first information report regarding the incident was registered on 28.08.1981 at 21:35 PM being Case Crime No.129 of 1981, under Sections 147, 149, 307 I.P.C. against accused-appellants Jubli, Mihilal and their six accomplices and a corresponding entry was made in G.D. at serial No.20 at 21:35 hours on 28.08.1981. at P.S. Rajpura.

4. After registration of F.I.R., since the seriously injured Fateh Singh required treatment, as such, he was referred to District hospital Budaun. The investigation of the case was assigned to S.I. Hari Nath

Sharma(PW-6 at the trial), who also recorded the statement of injured Fateh Singh under Section 161 Cr.P.C and later on, after his death, treating it as dying declaration, proved it as Ex.Ka-9 during trial, which reads as under:-

"फ़तेह सिंह पुत्र बिहारी थाना राजपुरा ने बताया कि आज मैं वह मेरा भाई धन सिंह बाजार बबराला पैंठ करने गए थे। वहां से हम वह गाँव के किशन लाल पुत्र संतराम, शिवदान पुत्र पाली, मेरा भतीजा शहज़ादा तथा तुमरिया घाट का गेंदन लाल पुत्र भांजन बबराला का बाजार करके घर आ रहे थे। जब हम सब पहलवाड़ा तथा जी नंगला के बीच के करीब आए तो हमें रास्ते में गाड़िया बगडोर के जुबली, नवाब, मिहिलाल जिसको भगतजी भी कहते हैं, जिसका बाप का नाम मुंशी है, गंगा सहाय पुत्र तोड़ी व ओमपाल पुत्र अरी सिंह, सुरजा पुत्र रामचंदर तथा हमारे गांव के पलिया पुत्र होली तथा गप्पू पुत्र राम सिंह गांव के बैठे,मिले,हमारे... ... राम किशन कहने के बाद हम सबको चारों तरफ से घेर लिया और मुझसे कहा कि तू राम सिंह के मुक़दमे में खिलाफत कर रहा है। जुबली तथा मिहि लाल ने यह कहकर अपनी अपनी अंटी से तमंचा निकालकर जान से मारने के लिए मेरे ऊपर दो फायर किए। जब हमारे साथ वालों ने बचाने की कोशिश की तो दो फायर और किए तथा यह कहकर कि तुम्हारा सभी का इंतज़ाम होगा चले गए। मेरी कांख तथा कमर में गोली लगी है और मैंने अपने पेट पर पट्टी बाँध ली थी, तथा चारपाई पर रखकर थाना आया हूँ। "

5. It is the case of the prosecution that when the injured Fateh Singh was being taken on cot for treatment from police station Rajpura to District Hospital Budaun, then, on the way at Babrala, he died. His dead body was taken to the nearest police station Gunnaur where, the *Panchayatnama* of his dead body was prepared by Hoshiyar Singh (PW-4 at the trial), which is Ex.Ka-3, on 29.08.1981, between 9:30 AM and 11 AM. PW-4 also prepared the necessary papers for conducting the autopsy of the dead body of Fateh Singh and thereafter, the dead body was sent to District Hospital, Budaun, for autopsy.

6. The autopsy of deceased Fateh Singh was conducted by Dr. V.K. Gupta (PW-2 at the trial) on 30.08.1981 at 12:00 noon. The following ante-mortem injuries were found on his body:

(i) Gun shot wound of entry 1cm x 1 cm on the posterior aspect and upper 1/3 part of left forearm, 6.5 cm below the left elbow joint. No blackening and tattooing present, margin lacerated and inverted, on dissecting both bone fractured ulna and radial artery lacerated.

(ii) Gun shot wound of exit 2.5cm x 2 cm on the anterior of middle of left forearm 9 cm beneath the middle of left cubital fossa, margin lacerated and everted and communicate with injury No.1.

(iii) Gun shot wound of entry of 1 cm x 1 cm x cavity deep on the right side of abdomen in the middle of axillary line, 15 cm above the right illiac crest. Margin lacerated and inverted. No blackening and tattooing present. On dissecting of wound, muscle, peritoneum, small intestine and spleen lacerated, one litre clotted blood present in cavity.

(iv) Gun shot wound of exit 2 cm x 1.5 cm on the posterior axillary line on the left side of abdomen 17 cm above the left illiac crest communicate with injury No.3, margin lacerated and everted.

7. In the opinion of the Doctor PW-2, Fateh Singh died about one and a half day prior to the autopsy, due to shock and haemorrhage. The autopsy report is Ex.Ka-2 at the trial.

8. The Investigating Officer PW-6 collected blood stained and plain soil from the spot on 29.08.1981. The recovery memo of the above objects is Ex.Ka-11. The Investigating Officer also prepared the site plan of the spot of occurrence, which is

Ex. Ka-10, at the trial. The Investigating Officer after completion of investigation submitted a charge sheet (Ex.Ka-12) against Jubli, Nawab, Mihilal @ Bhagatji, Ganga Sahai, Ompal, Surja, Palia and Gappoo under Section 147, 148, 149, 302 IPC, on which cognizance was taken.

9. The trial court framed charges against the accused Jubli and Mihilal under Section 147 and 302 IPC and against accused Nawab, Ganga Sahai, Ompal, Surja, Gappoo and Palia under Section 147 and 302/149 IPC on 01.10.1982, to which they pleaded not guilty and claimed trial. The trial court by impugned judgment and order dated 03.02.1984, acquitted the accused Ompal, Ganga Sahai, Surja, Nawab, Gappoo and Palia from the charges under Section 147, 302 IPC and convicted accused-appellants Jubli and Mihilal @ Bhagatji under Section 302 IPC, hence this appeal by the convicted accused.

10. The State has not challenged the acquittal of accused Ompal, Ganga Sahai, Surja, Nawab, Gappoo and Palia, by filing Government Appeal.

11. During trial, the prosecution examined the following witnesses, who proved the following documents/material objects:-

S.No.	Witnesses	Document proved
1.	Dhan Singh, first informant, examined as PW-1	Proved the *Tehrir* as Ex.Ka-1
2.	Dr. V.K. Gupta, examined as PW-2.	Proved the autopsy report of deceased Fateh Singh as Ex.Ka-2
3.	Kishanlal, eye witness, examined as PW-3,	Proved no document
4.	Inspector Hoshiyar Singh, examined as PW-4	(i)Proved the *Panchayatnama* of deceased Fateh Singh as Ex.Ka-3, (ii)The prosecution papers prepared for conducting the autopsy of deceased Fateh Singh as Ex.Ka-4 to Ex.Ka-8.
5.	Gendan Lal, examined as PW-5	Proved no document
6.	S.I. Hari Nath Sharma, Investigating Officer, examined as PW-6	(i)Proved the statement of injured Fateh Singh under Section 161 Cr.P.C.,recorded in the case diary, as Ex.Ka-9 (ii)site plan of the spot of occurrence as Ex.Ka-10. (iii)recovery memo of blood stained and plain earth as Ex.Ka-11. (iv)charge sheet against the accused as Ex.Ka-12.
7.	Constable Netrapal, examined as PW-7	(i)Proved the check FIR as Ex.Ka-13 and the carbon copy of G.D. entry No.20 time 21:35 hours dated 28.08.1981 as Ex.Ka-14.

12. The accused appellant Jubli and Mihilal @ Bhagatji in their statement under Section 313 Cr.P.C. denied the prosecution story and stated that they have been falsely implicated.

13. The first informant, Dhan Singh (PW-1) stated in his examination-in-chief that about fifteen months back, he, his son Shahzadey, Kishanlal, his brother Fateh Singh had gone to Babrala market at about 10:00 AM. After selling the bullock of Shahzadey in the market, they started return journey at about 03:00 PM, then, in the way, Sheodan and Gendan Lal (PW-5 at the trial) met, who also accompanied them and when they reached between village Pahalwada and Ji Nagla, then they met accused Jubli, Mihilal, Ompal, Ganga Sahai, Surja, Nawab, Palia and Gappoo, who were sitting on the way, who after exchanging greetings, surrounded them, and they said to Fateh Singh that he was doing intense Pairvi against the case of Ram Singh. Then accused Jubli and Mihilal pulled out their *'tamancha'* and both fired a

single shot on Fateh Singh. They raised alarm. The accused persons thereafter, stated that the fate of Fateh Singh was decided and their fate will also be decided. Thereafter, they fired twice in the air. Fateh Singh collapsed on the ground and the accused persons fled towards east. He further deposed that he took his brother on a cot to police station Rajpura, where he got the application scribed from a person, known to his brother. The first informant proved the application given at police station Rajpura as Ex. Ka-1. He further deposed that his brother Fateh Singh died at Babrala.

14. PW-1 deposed in cross-examination that Fateh Singh had enmity with the accused, regarding the case pertaining to Ram Singh. Besides this, there was no other enmity. According to him, a dacoity occurred at Ram Singh's house, about two to two and a half months prior to this incident. He admitted that, except accused Gappoo and Palia, the remaining accused had no concern with the above dacoity. In that dacoity, Bhure, Mahendra, Kalyan and Roshan were accused. He admitted that his brother Fateh Singh, was tried for murdering Lakhi, in which accused Jubli, was also an accused. He also admitted that his brother Fateh Singh and accused Jubli were acquitted in that murder case about two years back. He denied the suggestion that in a case of dacoity relating to village Bisangpur, P.S. Bahjoi, District Moradabad, Fateh Singh was tried and arrested.

15. PW-1 further deposed in cross-examination that he left his house for the market at about 10:00 AM., and reached the market at about 11:30 AM. Shahzadey sold his bullock for Rs.1,400/- to a shepherd of Islamnagar, the recitals of sale were recorded in the cattle market, Babrala. He further deposed that after selling bullock, they started the return journey at about 03:00 PM and in the way, Gendan Lal and Sheodan met them outside the Babrala market and they (including Kishanlal and Shahzadey) were all returning together. He further deposed that the spot of occurrence, is at a distance of 2-3/4 koos from Babrala and, 2-2 ¼ koos from the police station Rajpura, and it takes, about an hour, to reach the police station, on foot. He further deposed that in the journey between Babrala market and the spot of occurrence, they had not met any person. He further deposed that one can reach the spot from Babrala in about 1-1 ½ hours. He went from the spot of occurrence to police station Rajpura.

16. He further deposed that after registration of F.I.R., the Investigating Officer had enquired from him, Gendan Lal, Sheodan and Kishanlal at the police station. He remained at the police station till 09:30 PM. Kishanlal went to the spot again, but he had not thereafter, visited the spot, because he remained with his brother. He disclosed that he was not aware, who scribed the *Tehrir* report, but it was written by someone, who was known to his brother. According to him, in his presence, the *Panchayatnama* was prepared by Sub-Inspector of police station Gunnaur. He obtained cot from Malkhan of Ji Nagla on which, he had taken his brother to the police Station Rajpura. The cot was not stained with blood, because he bandaged his *dhoti* on the wounds. He denied the suggestion that the first information report was registered ante-time on the advise of police.

17. He further deposed that they were surrounded, from all sides, by all the

accused and at that time, they were at a distance of about 2-3 paces from one another. Accused Jubli was towards east of Fateh Singh and accused Mihilal was towards west of Fateh Singh. Both the above accused, fired from a distance of about 2-3 paces. He had not seen any weapon with other remaining accused. His brother was not having any licensed gun. When accused Mihilal and Jubli had pulled out their *'tamancha'*s, then he and Fateh Singh had not fled and at that place, the accused had surrounded them. They all were towards south of Fateh Singh. Kishanlal and Shahzadey were in front of Fateh Singh, he was towards west and Sheodan and Gendan Lal were behind Fateh Singh. The assailants fired from east-west, not from south. There was blood on the spot. They had not suffered any injuries, because the accused fired towards the sky. He had got scribed in his report, and also told the I.O. that the accused fired in the sky for threatening them, but if it is not mentioned in it, then he cannot tell its reason. He further deposed that no pellet etc. was found at the spot, because the accused had put the empty cartridges, in their pocket. He told this fact, to the Investigating Officer and also got scribed in his report, but, if this is not mentioned in it, then he cannot tell its reason. After firing, all the accused left. Due to fear, he had not attempted to apprehend the accused. He denied that he falsely implicated the accused Nawab and Jubli because in the Panchayat, they had given a verdict in favour of Fateh Singh. He further denied the suggestion that no murder took place at the spot of occurrence.

18. Dr. V.K. Gupta (PW-2) deposed in his examination-in-chief that on 30.08.1981, at 12:00 noon he conducted the autopsy of deceased Fateh Singh. The ante-mortem injuries found on the dead body have been mentioned previously in this judgment, hence, are not being repeated. This witness opined that Fateh Singh died about one and a half day prior to the autopsy, due to shock and haemorrhage, caused from ante-mortem injuries. This witness further opined that Fateh Singh could have died on 28.08.1981 after 5:00 PM. He proved the autopsy report of deceased Fateh Singh as Ex.Ka-2.

19. PW-2 stated in cross-examination, that the direction of injury no.1 was downwards, from back to front. Similarly, the direction of injury no.3 was upwards, from right to left. He admitted that both the above injuries were possible from two shots, which would have been fired from a distance of more than three feet. He further deposed that shape of entrance of both the wounds, was circular.

20. Kishanlal (PW-3) deposed in his examination-in-chief that two years and three months back, he, Shahzadey, Dhan Singh and Fateh Singh had gone to Babrala market, where a bullock of Shahzadey was sold. He had also taken his two bullocks for selling in the market, but they remained unsold. He, Fateh Singh, Dhan Singh and Shahzadey commenced their return journey at 3:00 PM from the market, then in the way, they met Sheodan and Gendan Lal, who also accompanied them. When they reached between Ji Nagla and Pahalwada village, then at 5:00 PM, they met accused Jubli, Mihilal, Ompal, Ganga Sahai, Surja, Gappoo, Palia and Nawab Singh. He knew all of them previously. Accused Jubli, Mihilal and Nawab Singh are real brothers, Ompal, Ganga Sahai and Surja are cousin brothers, Palia and Gappoo are also cousin brothers. He further deposed that, after having exchanged greetings with them, the

accused surrounded them. The accused said to Fateh Singh that he was intensely opposing the case of Ram Singh. He disclosed that previously, a dacoity occurred at Ram Singh's house, in which Bhure, Mahendra, etc. were accused, and Fateh Singh had bailed out accused Bhure. He further stated that Ram Singh is the uncle of accused Jubli, etc and father of accused Gappoo. He further deposed that, thereafter, accused Jubli and Mihilal pulled out their *'tamancha'*s and both fired a single shot at Fateh Singh, who collapsed after being shot. They raised alarm and then accused said that they had silenced Fateh Singh thereafter, accused Jubli and Mihilal, fired two rounds in air and fled towards east. He further deposed that PW-1 brought a cot from Ji Nagla and had also torn pieces from his *dhoti* and bandaged the wounds of Fateh Singh and thereafter, Fateh Singh was put on the cot and Dhan Singh, Shahzadey, Mahendra, etc. took the injured to police station Rajpura. He deposed that he proceeded to his house, thereafter, on the next day Investigating Officer had recorded his statement at the spot.

21. PW-3 deposed in cross-examination that the deceased Fateh Singh was his uncle, who was neither a litigant nor indulged in money transactions. Fateh Singh did not belong to any party and was facing trial in only Lakhi's murder case alongwith, accused Jubli. He denied the suggestion, that in a dacoity that took place in Bisangpur village, police station Bahjoi, District Moradabad, Fateh Singh was apprehended and was identified in jail. He also admitted that Shahzadey was his cousin brother. He also admitted that in the dacoity that took place at Ram Singh's house, Bhure, Mahendra, Kalyan and Roshan were accused, who all belong to Fateh Singh's village, but in that dacoity, the accused of this case, were not involved. He also admitted that accused Palia is nephew of Ram Singh and the remaining accused, are cousin brothers of Gappoo and Palia. He admitted that he had not told the Investigating Officer that the accused were relatives of Ram Singh and Fateh Singh had bailed out Bhure, and was doing Pairvi against Ram Singh. He admitted that Fateh Singh had bailed out Bhure and was his(Bhure's)surety. He also admitted that except Bhure Singh, Fateh Singh was not doing pairvi of any other accused in the dacoity case of Ram Singh. He also admitted that there was an enmity between Fateh Singh and Ram Singh and his family members, because Fateh Singh had bailed out Bhure.

22. PW-3 further disclosed that he and Shahzadey both had taken two bullocks each, for selling in the market, but only one bullock of Shahzadey was sold. When they were returning from the market they had three bullocks. He admitted that he had told the Investigating Officer that they had taken four bullocks for selling in the market, but only one was sold out and 3 remaining bullocks were with them, but, if this is not recorded in his statement, then he cannot tell its reason. He further deposed that around 1-1:30 PM the bullock was sold, to a shepherd for Rs.1,400/-, it's receipt was prepared, which was given to the purchaser.

23. PW3 further deposed that they all proceeded from their house together and were also returning together. He further deposed that they remained in the market till 3-3:30 PM and thereafter, started their return journey. The incident occurred on thoroughfare and at that time, none was present. He further deposed that, 4 of them

were walking together and in the way, they met Sheodan and Gendan Lal, who were also walking with them, at the time of the incident. They met Sheodan and Gendan Lal at a distance of about 8-10 paces, after exiting from the market, who were not having bullock with them, who have purchased something from the market. It took about one and a half hours to reach the spot of occurrence, from the market. He further deposed that it was a month of *Bhadon(Bhadrapada)* and at that time, it was not raining. It rained 5-10 days before the incident. Millet*(bajra)* crop was in the field.

24. PW3 further deposed that he saw the accused from a distance of 2-3 paces, but they were not afraid of being killed. Even Fateh Singh was also not afraid. The accused persons were sitting on the road side, towards west, in a field, which was ploughed for rabi crop. The movement on this road is in the north-south direction. The accused were not sitting on both sides of the road. He had not told the Investigating Officer that the accused were sitting on both the sides i.e. east and west of the road, and if, the Investigating Officer has shown this in the site plan, then he cannot specify its reason. He further deposed that the accused surrounded Fateh Singh, but had not caught him. The accused fired in all, four rounds, after surrounding him(Fateh Singh) which were fired by only two persons. At the time of firing, accused Jubli was towards east and accused Mihilal was towards west of Fateh Singh, Fateh Singh was in between them. When Fateh Singh was shot, at that time, he(Fateh Singh) was facing north, the accused fled towards east. When Fateh Singh was shot, he was in between Jubli and Mihilal, who collapsed on the ground instantaneously after being shot, but had not become unconscious and was speaking, who stopped speaking at Babrala. This witness was asked whether Fateh Singh was speaking till reaching Babrala and previously also at police Station Rajpura, but this question was disallowed by the trial court, by recording that since the "witness did not accompany the injured Fateh Singh to the police station Rajpura, Babrala and Budaun. He is not expected to give answer to this question because the answer will be based on hearsay knowledge."

25. PW-3 further deposed in the cross-examination that when the injured Fateh Singh was brought to the police station, then he was conscious, who was speaking a lot, who had also seen the assailants, who had a conversation with him, after being injured. He further deposed that the accused fired from a distance of about one and a half yards. Two rounds were fired in the sky and two rounds were fired at Fateh Singh. He told the Investigating Officer that two rounds were fired in the sky but, if this is not mentioned in his statement, he cannot tell its reason. He further clarified that after firing two rounds at Fateh Singh the accused threatened them and then fired, two more rounds. He denied the suggestion that he neither saw the incident nor went to Babrala market for selling bullocks. He admitted that except Jubli and Mihilal, the other accused were unarmed. He further admitted that when Fateh Singh was shot dead, he was at a distance of 2-3 yards and they were also surrounded on all sides, by the accused. He was holding his bullocks, but after firing, the bullocks got released. He further claimed that he remained till about an hour after the incident and the cot was brought from Ji Nagla, from where, many persons arrived. Till he remained at the spot, neither anybody brought any paper-pen nor any recital were prepared.

He disclosed that the police station is at a distance of about 5-6 miles from the spot, which is traversed in 2-2:30 hours and Fateh Singh was taken in the night on cot, on foot, and it would have taken about 2-2:30 hours to reach the police station Rajpura. He further admitted that when he left the spot for his house, till then, Fateh Singh etc. had not proceeded towards the police station, who went thereafter. He further admitted that except Fateh Singh, neither any of them nor any bullock was injured from pellets. He further disclosed that at the spot, blood was found on two places, which were in close proximity. He further disclosed that shots were fired from *'tamancha'*, from the front.

26. Inspector Hoshiyar Singh PW-4 deposed in examination-in-chief that on 29.08.1981, he was posted as SHO at police station Gunnaur, then it was informed by Constable Ram Ji Lal, of P.S. Rajpura, that he was taking injured Fateh Singh from police station Rajpura for treatment, then in the way at Babrala, Fateh Singh died. This information was recorded in GD No.12 at police station Gunnaur and thereafter, he prepared the *Panchayatnama* of deceased Fateh Singh, which was proved as Ex.Ka-3. This witness also prepared the other prosecution papers required for conducting the autopsy of deceased Fateh Singh and proved them as Ex.Ka-4 to Ka-8, at the trial. He further proved that after *Panchayatnama*, the dead body was sent for autopsy. In cross-examination he admitted that at the time of *Panchayatnama* proceedings, he had FIR in his possession. He stated that the information of the death of Fateh Singh was received at police station Gunnaur at 00.45 hours on 29.08.1981 and *Panchayatnama* proceedings were started on 29.08.1981 at 09:30 AM. He further admitted that he told from his memory, that Constable told him that Fateh Singh died at Babrala. He denied the suggestion that till the *Panchayatnama* proceedings were conducted, the FIR was not registered.

27. Gendan Lal, the alleged eye witnesss of the incident, was examined as PW-5, who deposed in his examination-in-chief that he had not seen the murder of Fateh Singh. In cross-examination, this witness denied his previous statement under Section 161 Cr.P.C. He admitted that he had earlier returned alone, from the Babrala market.

28. S.I. Hari Nath Sharma PW-6 deposed in examination-in-chief that on 28.08.1981 he was posted as SHO, Rajpura, then in his presence, the FIR of this case was registered, and thereafter, he commenced the investigation. He recorded the statement of Constable Netrapal, first informant Dhan Singh and injured Fateh Singh in the case diary. This witness further deposed that since the condition of Fateh Singh was serious, he was sent for treatment to the hospital. This witness proved the statement of injured Fateh Singh recorded under Section 161 Cr.P.C., as Ex.Ka-9, the site plan of the spot of occurrence as Ex.Ka-10, the recovery memo of blood stained soil and plain soil as Ex.Ka-11 and the charge sheet submitted against the accused as Ex. Ka-12.

29. PW-6 in cross-examination deposed that the deceased Fateh Singh was also brought to the police station and that time, he was in a fit mental condition, was speaking and he had not thought, that he would die. He saw the bodily injuries of Fateh Singh, which were serious, and he opined, that if Fateh Singh had received appropriate treatment, then he could have been saved.

30. PW-6 further deposed that at the time of registration of FIR, Fateh Singh was lying on a cot, in front of his office and when the FIR was being written, then Fateh Singh was listening. At that time 2-4 persons were also present near Fateh Singh, who brought him on a cot and they remained present, when he recorded the statement of Fateh Singh. He denied the suggestion that at the time of registration of FIR, Fateh Singh was unconscious.

31. PW-6 further deposed in cross-examination that since case crime number, section of offence, etc. was mentioned in the *Panchayatnama*, it appeared that Sub-Inspector conducting the *Panchayatnama*, obtained the first information report either from the complainant or the injury memo. He admitted that he had not seen any cartridge or pellet on the spot, and had only collected blood stained soil in the morning of 29.08.1981, and Fateh Singh was probably, dead by then. He admitted that till the time he had enquired from witnesses, on 29.08.1981, he was not aware that Fateh Singh has died. He admitted that witness Kishanlal told him that both the accused fired a single shot, but had not told that two rounds were fired in the sky, but this witness told him that both the accused had subsequently fired a single shot and had also threatened.

32. Constable Netrapal (PW-7) proved registration of the check F.I.R. and the carbon copy of the corresponding G.D. No.20 time 21:35 hours dated 28.08.1981 of police station Rajpura regarding registration of F.I.R. as Ex.Ka-13 and Ex.Ka-14, respectively. This witness also admitted in cross-examination that injured Fateh Singh was brought to the police station, and he also admitted, that in the above G.D., the injuries of Fateh Singh were mentioned.

33. Learned counsel for the accused-appellants submitted that Fateh Singh was seriously injured in the alleged incident, who was not in a fit mental and physical condition to give any statement, in fact, he was unconscious at the time when he was taken to the Police Station Rajpura, as such, he could not have given any statement to the Investigating Officer, PW-6. Even if, it is assumed that Fateh Singh gave any statement to the Investigating Officer, then, it was not recorded by him in the manner, in which statement under Section 164 Cr.P.C is recorded. The prosecution has not examined any independent witness to prove that Fateh Singh had ever given such statement to the Investigating Officer. It was further submitted that before recording any dying declaration, it is mandatory to get a certificate of doctor that such person is in a fit mental and physical condition to make statement, but in this case, no such certificate of doctor was taken, before recording statement of Fateh Singh. It was further submitted that even if any such statement was given by Fateh Singh, then it was a tutored statement, which is not credible. He further submitted that the first informant Dhan Singh PW-1 and PW-3 Kishanlal are not the eye witnesses of the incident, whose testimony is not credible. There are many contradictions and inconsistencies in their testimony. It was further submitted that the prosecution failed to prove any motive of the crime. There was delay of about five hours in recording the FIR, which was not explained, which renders the whole prosecution story doubtful. It was further submitted that there is no evidence on record to prove at what time Fateh Singh died. It was further submitted that the time of death of Fateh Singh mentioned in the autopsy report does not match with the ocular evidence. It was further submitted that the trial court

disbelieved the testimony of PW-1 and PW-3 regarding six other co-accused and, as such, acquitted them. In view of this, their entire testimony becomes doubtful and, as such, the appellants could also not have been convicted on that evidence. Learned counsel further submitted that the prosecution failed to prove its case beyond reasonable doubt and, as such, the appeal deserves to be allowed.

34. Learned A.G.A. submitted that the incident took place on 28.08.1981 at about 5:00 PM and thereafter a cot was arranged, to take the injured Fateh Singh, to Police Station Rajpura, on foot. Fateh Singh was taken on cot to Police Station Rajpura, where FIR was registered on 28.08.1981 at 21:35 hours and, at that time, he was alive, speaking and was in a fit mental and physical condition, to make a statement, which is proved from the evidence of PW-1, PW-6 and PW-9. Learned A.G.A. further submitted that the prosecution case is based on direct evidence and, as such, it is not required to prove motive, for the commission of crime. Learned A.G.A. further submitted that since Fateh Singh sustained gunshot injury in his abdomen, he did not die instantaneously, but remained alive for about 7 to 8 hours, after the incident, which is proved from the testimony of prosecution witnesses. He further submitted that since Fateh Singh died after making statement under Section 161 Cr.P.C., his statement became a dying declaration, which is corroborated from the ocular testimony of PW-1 and PW-3. The injuries sustained by Fateh Singh are proved by ocular evidence and corroborated by medical evidence. It was further submitted that in the facts and circumstances of the case, there was no delay in recording the FIR and the prosecution evidence is credible. He admitted that there were some minor improvements and inconsistencies in the testimony of eye witnesses but, according to him, they were not of such nature, that would make the whole prosecution case doubtful. With these submissions, it was prayed, that the appeal be dismissed.

35. We have heard the learned counsel of both the parties and perused the trial court record.

36. From the evidence of PW-1 Dhan Singh and PW-3 Kishanlal, it is evident that on the date of the incident, they along with Shahzadey and Fateh Singh had left their house for going to Babrala market at about 10:00 AM for selling four bullocks, had reached the market and after selling one bullock of Shahzadey, they commenced their return journey at about 3:00 PM, from the market, with three unsold bullocks, then in the way, they met Sheodan and PW-5 Gedan Lal, who also accompanied them to the spot of occurrence. It was further proved that when they reached in between village Pahalwada and Ji Nagla, at about 5:00 PM, then they met accused Jubli, Mihilal, Ompal, Ganga Sahai, Surja, Nawab, Palai and Gappoo, who after exchanging greetings with them, surrounded them. It is further proved that the accused said to Fateh Singh that he was doing intense *pairvi* against the case of Ram Singh and then, accused Jubli and Mihilal pulled out their *'tamancha'* and fired one round each on Fateh Singh from close distance. Thereafter, the accused claimed that they had decided the fate of Fateh Singh and the fate of the remaining accused will also be decided. Thereafter, the accused fired two more rounds in the sky and fled. It is also proved that after being shot, Fateh Singh collapsed on the ground, who was taken on a cot, on foot, by

PW-1 and others to police station Rajpura where the first informant PW-1 scribed the application, on the basis of which, subsequently F.I.R. was registered. PW-1 proved the *tehrir* as Ex. Ka-1.

37. From the evidence of PW-1, it is further proved that the application Ex.Ka-1 was scribed outside the Police Station Rajpura, from a person who knew Fateh Singh. PW-1 remained at the Police Station till the FIR was registered and the statement of Fateh Singh was recorded by PW-6. It is also proved that the cot on which Fateh Singh was taken to the police station, was obtained from one Malkhan, belonging to village Ji Nagla. It is also proved that PW-1 and PW-3 knew all the accused, prior to the incident. It is also proved that a piece of dhoti was applied as bandage on the wounds of Fateh Singh and he was taken to the Police Station Rajpura on foot, on a cot, by PW-1, Shahzadey, etc. but PW-3 had not accompanied them. From the evidence of PW-1 and PW-3, it is also proved, that they were all returning together from Babrala market and were proceeding towards their house, then at about 5 PM the incident occurred. They proved that the incident took place on a thoroughfare but, at that time, besides them and their fellow villagers and accused, none other was present. They also proved that, in the way Sheodan and Gendan Lal met them, who also accompanied them, but this fact was denied by PW-5 Gendan Lal. They further proved that they had taken about one and half hours to reach the spot from the market and at that time, it was not raining. They further proved that all the accused were sitting on the roadside, in a ploughed field, who surrounded them. They also proved that both the accused Jubli and Mihilal, fired one round each, from their *'tamancha'*, and after the incident, two rounds were fired in the sky. They also proved that the accused Jubli was towards east and Mihilal was towards west of Fateh Singh, who was standing in between the two accused, when he was shot. They further proved that after being shot, Fateh Singh remained conscious and was speaking, who had stopped speaking at Babrala. PW-3 further proved that after the incident, Fateh Singh had a conversation with him and Fateh Singh had also seen the assailants.

38. PW-1 and PW-3 also proved that the accused fired 2 rounds on Fateh Singh from a distance of about 5-6 feet and remaining two rounds were fired in the sky. According to the medical evidence on record, no blackening and tattooing was found on the two entry wounds, during autopsy of deceased Fateh Singh, which proves that he was shot from an effective distance (actual distance between deceased and muzzle of *'tamancha'*) of more than three feet. According to doctor PW-2, two exit wounds caused by firearm were found on the dead body of Fateh Singh, which communicated with two entry wounds caused by firearm, which is also corroborated from the ocular testimony of PW-1 and PW-3.

39. We are of the considered view that the manner in which PW-1 and PW-3 proved that Fateh Singh was shot, is corroborated from the testimony of doctor PW-2, and also, by the medical evidence on record. It is true that there are certain improvements in the testimony of PW-1 and PW-3 that they did not tell the Investigating Officer that after the incident, two rounds were fired in the sky by the accused and also that the accused put the empty cartridges in their pocket. In our opinion, these are minor improvements,

which do not affect the core of the prosecution case. As such, they do not make the prosecution story doubtful.

40. We are also of the opinion that the prosecution has proved the place of occurrence, beyond reasonable doubt. The Investigating Officer, PW-6, recovered the blood stained soil from the spot, the recovery memo of which was proved as Ex.Ka-11.

41. It is also proved from the testimony of PW-1 and PW-3 that there was an enmity of accused with Fateh Singh regarding a dacoity that took place in the house of Ram Singh about two to two and half months, prior to the incident, in which Bhure, Mahendra, Kalyan and Roshan were accused, and the accused Bhure was bailed out by Fateh Singh. It is also proved that Ram Singh is uncle of accused Jubli, Nawab and Mihilal, Palia is nephew of Ram Singh, and accused Gappoo is the son of Ram Singh. It is also proved that Fateh Singh was doing intense pairvi against Ram Singh in that dacoity case and due to this, the accused were annoyed and aggrieved, being the family members of Ram Singh. It is also proved that just before Fateh Singh was shot, even then the accused had verbally expressed their displeasure that he was doing intense pairvi against Ram Singh, in that dacoity case and due to this reason, accused Jubli and Mihilal shot him dead. We are of the opinion, that although it is a case of direct ocular evidence, in which the prosecution is not required to prove the motive of the crime, but still in this case, the prosecution has successfully proved the motive of the commission of crime.

42. It is also evident that previously Fateh Sigh was tried in a murder case, in which he was acquitted, but even then, he could not have been murdered by the accused.

43. From the evidence of PW-1 and PW-3, it is also proved that the incident took place at about 5 PM on 28.08.1981. Thereafter, a cot was arranged from village Ji Nagla to carry injured Fateh Singh to the Police Station Rajpura, on foot, which was about 7 Kilometers from the spot of occurrence. It took time to arrange cot and for bandaging the wounds of Fateh Singh and, thereafter, he was carried on cot, on foot, to Police Station Rajpura. According to PW-3, it could have taken about two to two and half hours on foot in the night to carry Fateh Singh on cot to Police Station Rajpura. PW-1 further proved that he remained on the spot for about one hour after the incident, and till then PW-1 had not proceeded with injured to the Police Station, which proves that it took time in arranging the cot and other things. It is also proved that Ex.Ka-1 was scribed outside the Police Station, which should also have taken considerable time.

44. It is proved by PW-7 that first information report regarding the incident was registered on 28.08.1981 at 21:35 hours, on the basis of written application Ex.Ka-1 submitted by PW-1. In view of the above evidence on record, it cannot be said that the first information report was deliberately lodged belatedly by the first informant.

45. It is proved from the evidence of PW-1 and I.O. Harinath Sharma PW-6 that when Fateh Singh arrived at police station Rajpura in an injured condition, he was conscious and was speaking. It is proved by PW-6 that an injury memo was prepared and Fateh Singh was sent for medical help

to the hospital. PW-7 also proved that in the GD entry No.20 dated 28.08.1981, the injuries of Fateh Singh were noted. It is also proved from the evidence of Hoshiyar Singh (PW-4) that Constable Ramjilal of P.S. Rajpura informed him at police station Gunnaur, that when injured Fateh Singh was being taken by him from police station Rajpura for treatment, then he died at Babrala and the information of his death, according to PW-4, was recorded in the general diary of police station Gunnaur at Serial No.12 and thereafter, PW-4 conducted the *Panchayatnama* of Fateh Singh, outside the police station Gunnaur, in the next morning. From the perusal of *Panchayatnama* Ex.Ka-3, it is evident that the information of death of Fateh Singh was received at police station Gunnaur on 29.08.1981 at 00:45 hours and thereafter, the *Panchayatnama* of his dead body was performed on 29.08.1981 between 9:30 to 11:00 AM. From the evidence of PW-1, and other documentary evidence, it is proved that injured Fateh Singh was taken to police station Rajpura on 28.08.1981 at 21:35 hours, and after completing formalities, which included registration of FIR, recording GD, preparing injury memo and recording his statement under Section 161 Cr.P.C, when he was being taken for treatment to the District Hospital Budaun on cot, then he died at Babrala, at about midnight of 28/29.08.1981.

46. In this case, after registration of first information report, the Investigating Officer (PW-6) recorded the statement of injured Fateh Singh under Section 161 Cr.P.C. which was proved by him as Ex.Ka-9 during trial. What is the evidentiary value of this statement, needs to be examined.

47. The Apex Court in the case of ***Dharmendra Kumar @ Dhamma vs. State of M.P. (2024) 8 SCC 60***, while examining, whether statement of deceased recorded under Section 161 Cr.P.C., can be treated as dying declaration, when the Investigating Officer, did not take any certification from the doctor, regarding the mental fitness of the deceased, held as under:

"65. Section 161 CrPC empowers the police to examine orally any person who is acquainted with the facts and circumstances of the case under investigation. The police may reduce such statement into writing also. Section 162(1)CrPC, nonetheless, mandates that no statement made by any person to a police officer, if reduced to writing, be signed by the person making it, nor shall such statement be used in evidence except to contradict a witness in the manner provided by Section 145 of the Evidence Act. However, sub-section (2) of Section 162CrPC carves out an exception to sub-section (1) as it explicitly provides that nothing in Section 162 shall be deemed to apply to any statement falling within the ambit of clause (1) of Section 32 of the Evidence Act. In other words, a statement made by a person who is dead, as to the cause of his death or to the circumstances of the transaction which resulted in his death, to a police officer and which has been recorded under Section 161CrPC, shall be relevant and admissible, notwithstanding the express bar against use of such statement in evidence contained therein. In such eventuality, ***the statement recorded under Section 161CrPC assumes the character of a dying declaration. Since extraordinary credence has been given to such dying declaration, the court ought to be extremely careful and cautious in placing reliance thereupon.*** *There are a catena of decisions of this Court which lend*

support to the interplay between the provisions of CrPC and the Evidence Act, as explained above [See : (i) Mukeshbhai Gopalbhai Barot v. State of Gujarat, (2010) 12 SCC 224 : (2011) 1 SCC (Cri) 318; (ii) Sri Bhagwan v. State of U.P., (2013) 12 SCC 137 : (2012) 4 SCC (Cri) 197; (iii) Pradeep Bisoi v. State of Odisha, (2019) 11 SCC 500 : (2019) 4 SCC (Cri) 249] .

66. As regards the assessment of mental fitness of the person making a dying declaration, it is indubitably the responsibility of the court to ensure that the declarant was in a sound state of mind. This is because there are no rigid procedures mandated for recording a dying declaration. If an eyewitness asserts that the deceased was conscious and capable of making the declaration, the medical opinion cannot override such affirmation, nor can the dying declaration be disregarded solely for want of a doctor's fitness certification. The requirement for a dying declaration to be recorded in the presence of a doctor, following certification of the declarant's mental fitness, is merely a matter of prudence. [Koli Chunilal Savji v. State of Gujarat, (1999) 9 SCC 562 : 2000 SCC (Cri) 432]

67. The Constitution Bench in Laxman v. State of Maharashtra [Laxman v. State of Maharashtra, (2002) 6 SCC 710 : 2002 SCC (Cri) 1491] has authoritatively ruled that : (SCC pp. 713-14, para 3)

"3. ... But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. ... What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise."

68. It is important in this case to appreciate that the investigating officer recorded the statement instantly, a day after the incident. He has categorically stated that the medical report did not mention that the condition of the declarant, Tularam, was serious in nature. More importantly, Tularam was able to convey his statement properly. Furthermore, on perusal of the statement, it is clear that the declarant Tularam was in a fit condition as not only did he properly explain the incident but has also markedly specified the role of the appellant. That apart, the injuries found during the post-mortem examination conducted by PW 13 and PW 15 have duly corroborated the statement of deceased Tularam.

*69. From the above discussion, **it is manifest that the mere non-obtainment of a medical fitness certificate will not deter this Court from considering a properly recorded statement under Section 161CrPC to be a dying declaration**."*

(emphasis supplied)

48. From the law laid down by the Apex Court in the case of ***Dharmendra Kumar @ Dhamma (supra),*** it is evident that the statement recorded under Section 161 Cr.P.C. assumes the character of a dying declaration, after the death of the person, whose statement was so recorded. It is also evident that the Court should be extremely careful and cautious in placing reliance on such statement. It is also evident that absence of medical fitness certificate will not deter the court from considering such dying declaration. In view of the above law, the statement of Fateh Singh, recorded under Section 161 Cr.P.C., after his death, has assumed the character of a dying declaration, whose veracity needs to be examined.

49. We have carefully gone through the dying declaration of Fateh Singh, proved as Ex.Ka-9 by PW-6. In this statement Fateh Singh mentioned that on the day of incident, he along with his brother Dhan Singh (PW-1) went to Babrala animal market and when they were returning home from the market, with Kishanlal, Sheodan, his nephew Shahzadey, Gendan Lal, then between village of Pahalwada and Ji Nagla, they met accused Jubli, Mihilal, Ompal, Nawab, Ganga Sahai, Surja, Palia and Gappoo, who after exchanging greetings with them, surrounded them and said that he was doing pairvi against the case of Ram Singh and after this, accused Jubli and Mihilal pulled out their *'tamancha'* and fired one round each at him, with the intention to kill him and when his companions tried to save him, then two more rounds were fired by them, and they fled. He further stated that the accused said that similarly, all the others would be taken care of. He also stated that he sustained injuries in his axilla and waist and bandaged his injury on the abdomen and was brought on a cot to the police station.

50. The manner in which the incident took place as per the dying declaration of Fateh Singh, is also corroborated from the ocular testimony of PW-1 and PW-3. There is absolutely no material improvement in the manner in which PW-1 and PW-3 proved the occurrence of incident.

51. Although, the trial court has not relied upon the dying declaration of Fateh Singh for convicting the accused-appellants, but it is legally admissible, which stands corroborated from the credible ocular testimony of PW-1 and PW-3, and the medical evidence of PW-2.

52. We are also conscious that six co-accused Ompal, Ganga Sahai, Surja, Nawab, Gappoo and Palia have been acquitted by the trial court, but only on this ground, the whole testimony of PW-1 and PW-3 cannot be discarded. We reiterate the well settled law, that the maxim *"falsus in uno, falsus in omnibus"* is not applicable in India.

53. The Apex Court in the case of **Mahendran vs. State of Tamil Nadu (2019) 5 SCC 67** while considering the maxim *"falsus in uno, falsus in omnibus",* held as under:

"38. It is argued that, the prosecution has put on trial twenty-four accused, but presence of A-11 and A-16 to A-24 was doubted by the learned trial court and they were acquitted on benefit of doubt. Five accused, A-10, A-12, A-13, A-14 and A-15 have been granted benefit of doubt in appeal as well. The argument that the entire case set up is based on falsehood and thus is not reliable for conviction of the

appellants, is not tenable. It is well settled that the maxim "falsus in uno, falsus in omnibus" has no application in India only for the reason that some part of the statement of the witness has not been accepted by the trial court or by the High Court. Such is the view taken by this Court in Gangadhar Behera's case(2002)8SCC381, wherein the Court held as under:-

"15. To the same effect is the decision in State of Punjab v. Jagir Singh and Lehna v. State of Haryana. Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out the entire prosecution case. In essence prayer is to apply the principle of "falsus in uno, falsus in omnibus " (false in one thing, false in everything). This plea is clearly untenable. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end. The maxim "falsus in uno, falsus in omnibus" has no application in India and the witnesses cannot be branded as liars. The maxim "falsus in uno, falsus in omnibus " has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence". (See Nisar Ali v. State of U.P.) Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a court to differentiate the accused who had been acquitted from those who were convicted. (See Gurcharan Singh v. State of Punjab). The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because a witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See Sohrab v. State of M.P. and Ugar Ahir v. State pf Bihar.) An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate the grain from the chaff, truth from falsehood. Where it is not feasible to separate the truth from falsehood, because grain and chaff are inextricably mixed up,

and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See Zwinglee Ariel v. State of M.P. and Balaka Singh v. State of Punjab.) As observed by this Court in State of Rajasthan v. Kalki normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in Krishna Mochi v. State of Bihar. Accusations have been clearly established against the accused-appellants in the case at hand. The courts below have categorically indicated the distinguishing features in evidence so far as the acquitted and the convicted accused are concerned."

39. Therefore, the entire testimony of the witnesses cannot be discarded only because, in certain aspects, part of the statement has not been believed.

42. All these judgments are in respect of appreciation of evidence of witnesses in the facts being examined by the Court. The general principle of appreciation of evidence is that even if some part of the evidence of witness is found to be false, the entire testimony of the witness cannot be discarded."

54. The Apex Court in the case of **Ramesh Harijan vs. State of Uttar Pradesh (2012) 5 SCC 777** reiterating the principles on appreciation of evidence, held as under:

"26. In Balaka Singh v. State of Punjab [(1975) 4 SCC 511 : 1975 SCC (Cri) 601 : AIR 1975 SC 1962] , this Court considered a similar issue, placing reliance upon its earlier judgment in Zwinglee Ariel v. State of M.P. [(1952) 2 SCC 560 : AIR 1954 SC 15 : 1954 Cri LJ 230] and held as under : (Balaka Singh case [(1975) 4 SCC 511 : 1975 SCC (Cri) 601 : AIR 1975 SC 1962] , SCC p. 517, para 8)

"8. ... the court must make an attempt to separate grain from the chaff, the truth from the falsehood, yet this could only be possible when the truth is separable from the falsehood. Where the grain cannot be separated from the chaff because the grain and the chaff are so inextricably mixed up that in the process of separation, the court would have to reconstruct an absolutely new case for the prosecution by divorcing the essential details presented by the prosecution completely from the context and the background against which they are made, then this principle will not apply."

27. In Sukhdev Yadav v. State of Bihar [(2001) 8 SCC 86 : 2001 SCC (Cri) 1416 : AIR 2001 SC 3678] this Court held as under : (SCC p. 90, para 3)

"3. It is indeed necessary, however, to note that there would hardly be a witness whose evidence does not contain some amount of exaggeration or embellishment—sometimes there would be a deliberate attempt to offer the same and sometimes the witnesses in their over anxiety to do better from the witness box detail out an exaggerated account."

28. A similar view has been reiterated in Appabhai v. State of Gujarat

[1988 Supp SCC 241 : 1988 SCC (Cri) 559 : AIR 1988 SC 696] (SCC pp. 246-47, para 13) wherein this Court has cautioned the courts below not to give undue importance to minor discrepancies which do not shake the basic version of the prosecution case. The court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness for the reason that witnesses nowadays go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the court. However, the courts should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy.

29. In Sucha Singh v. State of Punjab [(2003) 7 SCC 643 : 2003 SCC (Cri) 1697 : AIR 2003 SC 3617] (SCC pp. 113-14, para 51) this Court had taken note of its various earlier judgments and held that even if major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, it is the duty of the court to separate grain from chaff. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim falsus in uno, falsus in omnibus has no application in India and the witness cannot be branded as a liar. In case this maxim is applied in all the cases it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of credence, and merely because in some respects the court considers the same to be insufficient or unworthy of reliance, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well."

55. In view of the law laid down by the Apex Court in the case of **Mahendran (supra) and Ramesh Harijan (supra),** the whole testimony of PW-1 and PW-3 cannot be discarded because the maxim *"falsus in uno, falsus in omnibus"* is not applicable in India and as such the acquittal of six co-accused by the trial court, does not make the whole prosecution case doubtful.

56. We are of the considered opinion that the ocular evidence of PW-1 and PW-3 is reliable, which is corroborated by the dying declaration of Fateh Singh and also from the medical evidence on record.

57. It was also feebly submitted by learned counsel for the appellants that the time of death of Fateh Singh calculated on the basis of time mentioned in the autopsy report, is not in consonance, with the ocular testimony of the eye witnesses.

58. According to the ocular testimony of PW-1 and PW-3, the incident occurred on 28.08.1981 at about 05:00 PM and according to PW-1 and PW-4, Fateh Singh died at Babrala around midnight of 28/29.08.1981, when he was being taken on a cot for treatment. The autopsy of Fateh Singh's dead body was conducted on 30.08.1981 at 12:00 noon by PW-2, who opined that Fateh Singh could have died about one and a half day prior to the time of autopsy, which comes to mid night on 28/29.08.1981, which is corroborated by the testimony of PW-1 and PW-4.

59. In view of the above, we are of the opinion that there is no contradiction between the ocular and medical evidence, regarding the time of death of Fateh Singh.

60. To conclude, from the evidence on record, it is proved, that the accused-

appellants had the motive to commit the offence and in furtherance of that, they shot and grievously injured Fateh Singh, who later on succumbed to his injuries. It is also proved that the incident was witnessed by PW-1 Dhan Singh and Kishanlal PW-3. We find that there is no material contradiction between eye witness account rendered by PW-1 and PW-3, regarding the manner in which the incident took place, which is also corroborated by the dying declaration of Fateh Singh, which was recorded and proved by I.O. Hari Nath Sharma, PW-6. The injuries proved in ocular evidence were found on the dead body, which is also corroborated from the medical evidence, proved by doctor PW-2. The spot of occurrence, as well as, the prompt registration of FIR, is also proved. It is also proved that the accused-appellants had indeed shot and grievously injured Fateh Singh, who died subsequently.

61. We are of the opinion that the prosecution has proved its case beyond reasonable doubt, against the appellants, as such, this criminal appeal deserves to be dismissed.

62. **Accordingly, this criminal appeal is dismissed.**

63. The impugned judgment and order dated 03.02.1984 passed by the trial court in Sessions Trial No.37 of 1982 (State Vs. Jubli & 7 others) insofar, as it relates to, conviction of accused-appellants, for offence under Section 302 I.P.C., is affirmed.

64. The minimum sentence of life imprisonment imposed by the trial court on the appellants under Section 302 I.P.C., is also affirmed.

65. Since, both the accused-appellants are on bail, they are directed to surrender in the trial court, within a period of one month from today, to undergo the remaining sentence, failing which, the trial court is directed to adopt coercive measures for securing their presence, in accordance with law.

66. A copy of this judgment be sent to the concerned trial court, through Registrar (Compliance), forthwith.

67. Office is directed to send back the trial court record. The trial court is directed to submit it's compliance report, within 3 months.

(2025) 8 ILRA 854
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 20.08.2025

BEFORE

THE HON'BLE VIVEK KUMAR BIRLA, J.
THE HON'BLE MS. NAND PRABHA SHUKLA, J.

Criminal Appeal No. 538 of 1984

Khanne & Ors. ...Appellants
Versus
State of U.P. ...Respondents

Counsel for the Appellants:
Abrar Ahmad Siddqui, Krishna Kumar Shukla, Sanjay Kumar Tripathi, Suresh Dhar Dwivedi

Counsel for the Respondents:
Krishna Kumar Shukla, Sanjay Kumar Tripathi

Issue for Consideration

Whether the conviction of the surviving appellant under **Section 302 read with Section 34 IPC** could be sustained on the basis of ocular testimony of related eye-

witnesses, corroborated by medical evidence, in a case of homicidal strangulation, despite non-recovery of the rope used in the crime and allegations of false implication due to prior enmity.

Headnotes

Indian Penal Code, 1860 — ss. 302, 34 — Murder — Strangulation — Common intention — Related witnesses — Identification in torchlight — Medical corroboration — Non-recovery of weapon — Effect — Acquittal of co-accused by death — Conviction affirmed.

Held:

Evidence of PW-2, PW-3 and PW-4, who rushed to the spot on hearing the cries of the deceased and saw the accused fleeing in torchlight, was natural and trustworthy. Merely because the witnesses were related to the deceased or inimical to the accused, their testimony could not be discarded when found consistent and credible on careful scrutiny. [Paras 24–25]

Medical evidence conclusively established homicidal death by strangulation. Presence of ligature marks around the neck, fracture of hyoid bone and opinion of the doctor that death occurred due to asphyxia from ante-mortem strangulation fully corroborated the ocular version and ruled out the defence theory of suicide. [Paras 18, 24]

Non-recovery of the rope used for strangulation was not fatal to the prosecution case when the manner of death stood proved by reliable ocular testimony supported by medical evidence. Absence of blood at the spot was consistent with death by strangulation. [Paras 18, 25]

Common intention under Section 34 IPC stood established from the collective presence of the accused, their concerted act of cornering and strangulating the deceased, and fleeing together from the spot. Proof of a long-standing pre-arranged plan was not required; common intention could be formed on the spot. [Paras 25–27]

Prior enmity arising out of village Pradhani elections supplied motive and, being a double-edged weapon, could not by itself justify false implication in the face of cogent evidence. Conviction of the surviving appellant under Section 302/34 IPC and sentence of life imprisonment upheld. Appeal dismissed. [Paras 24–29]

Appeal dismissed. (E-14)

Case Law Cited

Namdev v. State of Maharashtra, (2007) 14 SCC 150 — relied on; **Mohd. Rojali Ali v. State of Assam**, (2019) 19 SCC 567 — applied; **Gulab v. State of U.P.**, (2022) 12 SCC 677 — followed; **Krishnamurthy @ Gunodu v. State of Karnataka**, (2022) 7 SCC 521 — relied on.

List of Acts / Statutes

Code of Criminal Procedure, 1973; Indian Penal Code, 1860; Indian Evidence Act, 1872**.**

List of Keywords

Murder; Strangulation; Section 302 IPC; Section 34 IPC; Common intention; Related witnesses; Torchlight identification; Medical corroboration; Hyoid bone fracture; Non-recovery of weapon; Political rivalry**.**

Case Arising From

Judgment and order dated **15.02.1984** passed by the Vth Additional Sessions Judge, Shahjahanpur in **Sessions Trial No. 140 of 1983 and Sessions Trial No. 141 of 1983** (State v. Sabir and others / State v. Khanne and others), arising out of Case Crime No. 239 of 1982, Police Station Kanth, District Shahjahanpur.

Appearance for Parties

For the Appellants: Sri Suresh Dhar Dwivedi
For the State: Sri Rahul Asthana

(Delivered by Hon'ble Ms. Nand Prabha Shukla, J.)

1. Heard Sri Suresh Dhar Dwivedi, learned Counsel for the surviving Appellant No. 4, Sabir Ali, Sri Rahul Asthana, learned Additional Government Advocate for the State and perused the records.

2. This Criminal Appeal has been filed against the Judgement and Order dated 15.02.1984 passed by the Vth Additional Sessions Judge, Shahjahanpur in Sessions Trial No. 140 of 1983 (State vs. Sabir and Others) and Sessions Trial No. 141 of 1983 (State vs. Khanne and Others) convicting the appellants under Section 302/34 IPC and sentencing each of them for life imprisonment.

3. The Criminal Appeal against Appellant No.1, Khanne, Appellant No.2, Shamsher and Appellant No.3, Room Singh has been abated on 19.07.2018 due to their death.

4. The present Criminal Appeal has been argued only on behalf of surviving Appellant No.4, Sabir Ali.

INTRODUCTORY FACTS

5. The prosecution case, in brief, is as follows:

The first informant, Rajaram lodged an F.I.R. dated 04.12.1982 at 9.15 P.M. against Room Singh, Sabir, Shamsher and Khanne alleging that on 04.12.1982 at around 7.00 P.M., his brother Ratiram, aged about 18 years, had gone to take a round of his paddy crop field situate at Village Walipur, P.S. Kanth, District Shahjahanpur whereby due to previous enmity the accused caught hold and strangulated his brother Ratiram and done him to death. Ompal, Haripal and Natthu witnessed the incident.

6. The scribe of the FIR was Attar Singh, son of Rameshwar Singh, Police Station Paraur, District Shahjahanpur.

7. The FIR was registered as Case Crime No. 239 of 1982 under Section 302 IPC, Police Station Kanth, District Shahjahanpur.

8. The police proceeded to the spot. The inquest proceeding was started on the very same day and completed on the next day i.e 05.02.1982 at 7.00 A.M. According to the inquest report, the death occurred due to strangulation.

9. The dead body of Ratiram was sent for post mortem examination on 05.12.1982. According to the opinion of the Doctor, the cause of death was due to asphyxia as a result of *anti mortem* strangulation.

10. On 08.12.1982, two separate Recovery Memo were prepared. One torch having two cells was recovered from Deen Mohammad and another having three cells was recovered from Harpal.

11. The investigation was entrusted to S.I Narottam Singh Chauhan who went to the place of occurrence, recorded the statement of the witnesses and prepared the site plan. The investigation was further conducted by Inspector Prem Chand Pathak and after the completion of investigation the charge sheet was submitted on 31.12.1982 against Sabir under Section 302 IPC and rest accused were charge sheeted on 05.02.1983. Shamsher was proceeded under Section 82/83 Cr.P.C.

12. The cognizance was taken on 15.01.1983.

13. After committal proceedings, on 31.3.1983, the learned VIth Additional Sessions Judge, Shahjahanpur framed the

charges against all the four accused under section 302 IPC read with section 34 IPC.

14. It would be relevant to mention that as two separate charge sheets were submitted, therefore, two separate Sessions Trial were proceeded, namely, 140 of 1983 and 141 of 1983 against all the four appellants and were consolidated and heard together. The trial commenced and in both the trials, a common set of evidence was led by the prosecution and the defence.

15. The accused pleaded not guilty and claimed for the trial.

PROSECUTION EVIDENCE

16. The prosecution examined as many as eight witnesses and proved the Ex. Ka-1 to Ex. Ka-20 and Ex. Kha-1 to 4 and Material Exhibits 1 to 3 which are discussed here-in-below:-

P.W.1	**Rajaram**	Real brother of the deceased	First Informant
P.W.2	**Harpal**	Real brother of the deceased	Eyewitness
P.W.3	**Natthu**	Cousin brother of the deceased	Eyewitness
P.W.4	**Deen Mohammad**	Villager	Eyewitness
P.W.5	**Dr. P.K. Gupta**		Conducted the autopsy and proved the post mortem report
P.W.6	**Narottam Singh Chauhan**	Sub-Inspector, Police Station Kanth, Shahjahanpur	Investigating Officer
P.W.7	**Prem Chand Pathak**	Inspector, Police Station Kanth, Shahjahanpur	Further investigated the matter and proved the charge sheet dated 31.12.1982 and 05.02.1983
P.W.8	**Ram Charan Singh**	Head Constable No. 34, Police Station Kanth, Shahjahanpur	Proved the Chik FIR and the G.D. Entry No. 32 at 9.15 P.M.

Exhibits

Exhibit Ka-1	Written Report
Exhibit Ka-2	Panchayatnama (Inquest Report)
Exhibit Ka-3	Site Plan
Exhibit Ka-4	Post Mortem Report
Exhibit Ka-5	Search Memo
Exhibit Ka-6	Search Memo
Exhibit Ka-7	Search Memo
Exhibit Ka-8	Search Memo
Exhibit Ka-9	Recovery Memo of Torch and Supardginama
Exhibit Ka-10	Recovery Memo of Torch and Supardginama
Exhibit Ka-11	Memorandum of Attachment under Section 82/83 Cr.P.C.
Exhibit Ka-12	Memorandum of Attachment under Section 82/83 Cr.P.C.
Exhibit Ka-13	Memorandum of Attachment under Section 82/83 Cr.P.C.
Exhibit Ka-14	Diagram of Dead Body
Exhibit Ka-15	Letter Address to CMO
Exhibit Ka-16	Challan
Exhibit Ka-17	Sample of Seal
Exhibit Ka-18	Chik FIR
Exhibit Ka-19	G.D. at Serial No. 32 (Extract of Registration of F.I.R.)
Exhibit Ka-20	Affidavit of Constable Baburam taking the dead body to Mortury
Exhibit Kha-1	Chargesheet dated 31.12.1982
Exhibit Kha-2	Copy of the surety bond
Exhibit Kha-3	Copy of the application addressed to SDM Sadar, Shahjahanpur dated 03.01.1984
Exhibit Kha-4	Extract of Kutumb Register

MATERIAL EXHIBITS

Material Exhibit 1	Bushirt of the deceased
Material Exhibit 2	Sweater of the deceased
Material Exhibit 3	Underwear of the deceased

WITNESS OF FACT

17. P.W.-1 to P.W.4 are the witnesses of fact. Their testimony, in brief, are as follows:

PW-1, Rajaram : The deposition of Rajaram was recorded on 23.06.1983. He was the real brother of the deceased. He lodged the First Information Report but was not an eye witness of the occurrence. In his testimony, he deposed that on 04.12.1982 at 7.00 P.M. his brother Ratiram had gone to see his paddy crop field lying at a distance of one furlong from his Village Walipur in its north west direction. He deposed that his paddy crop stood reaped and stacked in the field of Ram Sahai in the west. On the South of his field lies the field of Chhanga and there was a fence (medh) in between. Shamsher, Ram Singh and Gulzari Singh were contesting for the Pradhani elections. Gulzari Singh stood victorious with his support and canvassing. In this backdrop, Shamsher and Ram Singh were inimical with him. The election took place in the month of Chaitra and the incident took place in the month of Aghan. At around 7.00 P.M. Harpal, Ompal and Natthu came and informed that his brother Ratiram had been cornered (gheraoed) by Shamsher, Room Singh, Khanne and Sabir and strangulated his neck with a rope and done him to death. Hearing this news, he rushed to the spot and found his brother lying dead at the (fence) medh of the field. The medh connected three fields, his own, Chhanga and Ram Sahai. The witness and his brothers brought the dead body of Ratiram at the Chaupal (portico) of their house. Thereafter, the Tehrir was dictated to Attar Singh, the scribe which was proved as Ex. Ka.-1 bearing his signature. The FIR was registered and the Police proceeded to his village and inspected the spot and prepared the site plan. In his cross-examination, the witness deposed that they were four brothers and now only three remains. He was the eldest, then Krishnapal, Harpal and the youngest was Ratiram. Natthu was his cousin brother. Om Pal was his uncle. Natthu was proceeded under Section 107/116 Cr.P.C. However, at the time of incident, the said proceedings were dropped. He and his brother Krishnapal, Kifaiyat and his son Deen Mohammad were also involved along with Natthu in the said proceeding. Sabir initiated the proceeding along with his brother-in-law Nabi and Shamsher who were the accused persons. At the time of trial, Gulzari Singh was present. The wife of Ratiram (deceased) had solemnised marriage with Harpal. Krishnapal was married prior to the incident. At the time of occurrence he received the information while he was at home. He had returned from Shahjahanpur around 4.00 to 5.00 P.M. by bus. He further deposed that Attar Singh (Scribe) was his nephew. He studied at Jalalabad and was present at home on account of his holidays. He had mentioned the distance and the use of rope in the FIR but did not know why it was not there. He went to the spot and with the help of his brothers, brought the dead body of Ratiram to the Chaupal (portico) of his house. Nothing was lying near the dead body not even *lathi, danda* or torch. He could not listen the hue and cry of his brother. He was informed at his Chaupal that Ratiram had been killed so he rushed to the spot at once. While rushing he carried a torch and another torch was carried by Deen Mohammad.

PW-2, Harpal: This witness was also the real brother of the deceased and was an eye witness account. He deposed that at around 7.00 P.M. while he was sitting at home, along with Ompal and Natthu, heard Ratiram screaming that he was beaten and caught hold by the accused

Shamsher, Khanne, Room Singh and Sabir. Hearing the hue and cry, he along with Ompal and Natthu rushed to the spot and in the flash of torch light saw Shamsher, Khanne, Sabir and Room Singh. When they challenged the accused, they rushed away. Shamsher was carrying the rope which was a cattle driving rope. While they chased the accused, Deen Mohammad also reached at the spot. He went near Ratiram and found him dead. He went straight to his house and informed his brother Rajaram who also came to the spot and together they brought the dead body of Ratiram at their Chaupal (Portico). During the cross-examination, he deposed that he handed over two cells torch to the Police Officer. He heard his brother screaming (bachao, bachao mar gaye). He did not take lathi with him. Torch and danda was already with him. Om Prakash and Natthu were having lathi. He did not inform at home. His house and Chaupal are nearby. After crossing 2 to 3 fields from his village he saw the accused persons. He could not recollect whose fields he had crossed. He could not recollect whether he crossed the distance of ten feet or twenty feet. He went towards north west direction. Firstly, the accused were not running. Then he saw his brother and raised the noise and chased them thereafter the accused ran away. He went to his brother and found him dead. Leaving Natthu, Om Prakash and Deen Mohammad near the deceased he went to his home. There existed previous dispute between the family members of Deen Mohammad and Sabir. Sabir was the real brother of Shamsher who contested the Pradhani elections. Shamsher was available in the village and was the resident of Khudaganj. He further deposed in his cross examination that Ratiram was married to the daughter of Maiku of Sambhalpur about six months back. He denied that she was first married at Allahganj. He deposed that the paddy was harvested 3 to 4 days back and were stacked together by them. They did not take the lunch. They remained in the field for the full day till 5.00 P.M.

P.W.-3, Natthu : This witness was the cousin brother of the deceased and also was an eye witness account. The said witness deposed that he heard the noise of Ratiram. He rushed towards the spot along with Harpal and Ompal and saw Shamsher, Room Singh, Khanne and Sabir who were assaulting Ratiram by putting the rope around his neck. Harpal carried a torch and lathi and he was carrying only lathi. Harpal went to his home. In the meantime, Deen Mohammad reached at the spot with his torch. He saw the accused in the flash of the torch light of Harpal and thereafter saw the dead body of Ratiram lying dead. The dead body of Ratiram was brought to the Chaupal (Portico) and thereafter FIR was registered. In his cross-examination, he deposed that at the time of incident he was proceeding from his house towards the west direction when he heard the noise. He walked the distance of 30 to 40 feet from his house and went from west to north about 40 to 50 feet. Hearing the noise, he could realise that someone had been killed. He was carrying a lathi and did not went to take the torch. His house was at the distance of about 2 to 4 fields. When he shouted, the accused fled away. He denied that he did not witness any incident. He gave the information to Rajaram.

P.W-4, Deen Mohammad : A villager and an eye witness deposed that when he heard the hue and cry, he rushed towards the west side of the village carrying his torch and from a distance of 10 feet, he saw Shamsher, Khanne, Room Singh and Sabir. He identified their faces in the flash of the torch light. Shamsher was carrying a rope and Khanne was armed with lathi and the rest were unarmed. When

he challenged then Shamsher replied that he had done his task and fled away. He reached the spot and found Ratiram lying dead near the field of Sohan Pal and Rajaram. Many villagers gathered and saw the dead body lying. In his cross-examination, he reiterated that he saw all the four accused. Though Shamsher replied but did not disclose as to what he did. The deceased was wearing sweater, bushirt and underwear but was barefooted. The nose was running and slight blood was oozing. No blood was found nearby. Further, in his cross-examination, he deposed that there was no case registered against his father. He knew Sabir. A proceeding under Section 107/116 Cr.P.C. was initiated. He admitted that before the incident Sabir was beaten by family and Shamsher had beaten his father regarding which litigation is going on. His father had received fracture in his hand. In the proceeding under Section 107/116 Cr.P.C. he went to jail. His house is at the distance of at least 40 feet from the place of the occurrence. He saw the accused carrying the rope. He could notice its length and diameter.

FORMAL WITNESSES

18. **P.W.-5, Dr. P.K. Gupta** : This witness was posted as a Surgeon at the District Hospital, Shahjahanpur. He deposed that on 05.12.1982 he conducted the post mortem of deceased Ratiram aged about 18 years. The dead body was one day old and was of average built. Rigor mortis stood passed off the upper limbs but was present in lower limbs. The abdomen was distended. Nails were of blue colour. Dense bloody fluid was coming out of mouth and nostrils. Faecal matter was present at anus. The following *anti mortem* injuries were found on the body of the deceased:-

EXTERNAL EXAMINATION

There was ligature marks all round the neck and were well marked except on the left side in an area of 1.5 cm. on the lateral aspect of neck. They were faint and dimensions were 31cmx1cm. The marks passed from front hyoid bone and were located 6.5 cm below the left ear pinna on neck and 6 cm below the left ear pinna, on the right side on neck and middle of back of neck.

INTERNAL EXAMINATION

On internal examination he found membranes, brain, lungs, liver, intestines, stomach, spleen and kidneys congested. He also located fracture of the hyoid bone. Left side of heart was empty and right side contained dark blood weighing 2.5 ounce. Stomach contained food matter including rice. Small and large intestines contained faecal matter. Bladder was empty. According to the opinion of the doctor, the death was caused due to asphyxia as a result of *anti mortem* strangulation. The said injury was possible due to strangulation with some muslin rope. The said incident was possible on 04.12.1982 at 7.00 P.M. In his cross- examination, the said witness deposed that in a case of suicide by tieing the rope, the hyoid bone will not be fractured.

P.W.6, Narottam Singh Chauhan : He was the first Investigating Officer. He deposed that on the date of incident he was posted as Sub-Inspector at Police Station Kant. The First Information Report was lodged in his presence and was entrusted with its investigation and recorded the statement of the Head Mohrir and the first informant. He made spot inspection and on the next date, the inquest report of the deceased was prepared and

sent for the post mortem. The said witness proved the inquest report which was in his handwriting and signatures and proved it as Ex.Ka-2. He prepared the site plan and exhibited as Ex.Ka-3. He also arrested the accused Sabir and issued search warrants for others which was in his handwriting and signature and proved it as Exhibits Ka-4, Ka-5, Ka-6, Ka-7, Ka-8. In his cross-examination, he deposed that till the inquest proceedings he could only record the statement of Panch witnesses. At the place of incident, he did not find any material which could prove the incident nor found any marks of the feet. He did not prepare the site plan of the place where the dead body was found. He also proved challan lash and Chithhi CMO as Ex. Ka-14 to Ex. Ka-17.

P.W. 7, Prem Chand Pathak : This witness deposed that on 08.12.1982 he was posted as Inspector In-charge at Police Station Kant. He took over the further investigation after S.I. Narottam Singh Chauhan on 08.12.1982. He went to the village to search the accused but he did not find him. He recorded the statement of the witnesses Harpal Singh, Rup Pal Singh, Natthu etc. He prepared the Supurdginama (Recovery Memo) of the torches of Harpal Singh and Deen Mohammad and returned them back. He proved the Supurdginama which were in his own handwriting and signatures and proved it as Ex. Ka-9 and Ex. Ka-10. On 31.12.1982, he submitted the charge sheet against Sabir, and on 05.02.1983 against rest other accused. Proceedings under sections 82 and 83 Cr.P.C. were initiated against Shamsher and warrant of attachment were issued. He proved the attachment proceedings as Ex. Ka-11 to Ex. Ka-13. In his cross-examination, he deposed that witness Harpal did not disclose that the deceased was shouting taking the names of the accused.

P.W.-8, Ram Charan Singh, Head Constable No. 34 : This witness deposed that on 04.12.1982 he was posted as Head Mohrir at Police Station Kant. On that day, at around 09.00 P.M., the first informant Rajaram along with others gave a written Tehrir scribed by Attar Singh, on the basis of which a Chik FIR was registered which was in his handwriting and signatured and proved as Ex. Ka-18 and its extract entered in the G.D. as Rapat No. 32 at 9.15 P.M. and proved it as Ex. Ka-19. He refuted that the FIR was *anti timed.*

DEFENCE WITNESS

STATEMENT OF ACCUSED U/S 313 CR.P.C.

19. The statement of all the four accused were recorded under Section 313 Cr.P.C. and incriminating circumstances were put to them. They denied the prosecution case and stated that they have been falsely implicated due to previous enmity. The accused pleaded that the first informant Rajaram was not an eye witness of the incident and Harpal was the real brother of the deceased, Natthu was the cousin brother of the deceased and Deen Mohammad was inimical to the accused. The accused in their statement under Section 313 Cr.P.C. admitted that there was enmity between the parties due to Pradhani elections.

D.W.1, Parivaksha : The accused examined Parivaksh, son of Chhihu as DW. 1 who deposed that he knew Ratiram (deceased) son of Chhotu Lal. His residence was at a distance of 50 to 60 feet. Rajaram and Ratiram were real brothers. Rajaram was ploughing the field

of about five bighas. The field of Nausey lies in the south and field of Chhangey was also in the south and field of Sohal Pal in the west. He saw the house of Rajaram and the field was at the distance of two kilometers from the house of Rajaram. He further deposed that he saw the dead body of Ratiram which was lying at Mohra (frontage) of Ratiram and his mother was sitting and weeping. He heard the mother saying that in case she would have not performed the Gauna (Vidai) then her son would not have committed suicide. In his cross-examination, he deposed that the dead body was lying upside down on the cot and again corrected and stated that it was lying straight. He further deposed that no blood was oozing from any place. About 10 to 12 ladies and 2 to 4 persons were present. He stayed there at about 20 to 25 minutes. He had not disclosed anything to the Police Officer regarding the suicide. Many villagers were of the opinion that he committed suicide.

20. Thus, after examining and scrutinising the prosecution and defence evidence as well as in the light of the documentary and ocular evidence, the learned Trial Court held all the four accused appellants guilty and convicted them for the commission of offence under Section 302 read with section 34 IPC and sentenced them for life imprisonment.

SUBMISSIONS ON BEHALF OF THE APPELLANT

21. The learned counsel for the appellant contended that the Appellant No. 4, Sabir is innocent and has been falsely implicated due to previous enmity. Shamsher who was the real brother of Sabir contested the Pradhani elections but could not succeed. While the first informant supported Gulzari who won the election. Both the parties were at daggers drawn. The prosecution witnesses in their FIR had admitted that there existed previous enmity between them. It was pleaded by learned counsel for the appellant that enmity is a double edged weapon and has been used as a tool to falsely implicate the appellant. It was further submitted that the incident took place during winter season at around 7.00 P.M. and there was darkness all around. There was no source of light to identify the actual assailants. Though the FIR was lodged in time but the first informant Rajaram was not an eye witness to the incident. Counsel for the appellant has also raised the contention that the alleged FIR was *anti timed* as the incident did not take place at the given date, time, place and manner as alleged by the prosecution. No incriminating material was found from the spot. Neither any drop of blood nor any weapon or any other material was collected by the Investigating Officer. The alleged incident seems to have taken place at some other place and a false story has been cooked up to falsely implicate the appellant. There are major contradictions in the statement of eye witnesses P.W.-2 Harpal, PW-3 Natthu and P.W.-4 Deen Mohammad in regard to the distance and use of rope in committing murder. In the First Information Report, there is no narration regarding the use of rope but a fresh story was cooked up by the witnesses by stating that the deceased was strangulated with a rope and was done to death. The alleged rope was also not recovered from the appellant nor from any other co-accused. The prosecution in order to evade the truth had brought the dead body from the place of incident and placed it before their Chaupal (Portico) and thereafter lodged a false case against the appellant to take vengeance for the

previous enmity. It was also submitted that in the *post mortem* report, some food particle and rice was found in the large intestine of the deceased which falsifies the prosecution case as by that time the food is digested and villagers in rural areas go for the ease during dusk time. The post mortem report does not support this fact. It is also relevant to mention that except Deen Mohammad all the three witnesses were the close relatives of the deceased, therefore, they are the partisan witnesses and are not reliable and trustworthy. P.W.-1, Rajaram was a real brother of the deceased and P.W.-2 Harpal, the eye witness was also the real brother of the deceased and P.W.-3 Natthu was his cousin brother. As far as Deen Mohammad is concerned proceedings under Section 107/116 Cr.P.C. were drawn by Sabir against him, therefore, he could be an interested witness in taking revenge against the appellant.

22. As far as the search warrants are concerned the appellant never escaped from the court proceedings. The alleged search warrants were prepared falsely for the arrest of the accused. The non-recovery of any incriminating article (rope) or weapon from the possession of the appellant also falsifies the prosecution case. It was quite strange that P.W.-1, P.W.-2 and P.W.-3 were available in the house at the time of incident and only PW-2 and PW-3 could hear the noise of the deceased and rushed to the spot but PW-1 could not hear a single sound of the deceased. It is relevant to discuss that the distance from the spot to the house of the eye witness was too far (two kilometres) to hear the scream of the deceased who was seeking help. The prosecution witnesses in their testimony could not specify the manner of incident except spotted Shamsher carrying the rope. P.W.-2, P.W-3 and P.W.-4 who are the eye witness account did not disclose the actual occurrence of the incident rather they had falsely implicated the appellant on the basis of suspicion and previous enmity. According to the defence witness D.W.1, Parivaksha the deceased committed suicide due to his Gauna ceremony. The alleged recovery memo of torches are vague and are baseless. The witnesses did not see the actual commission of the offence as there was no source of light. They could only notice the accused running away. There was no prior meeting of mind or pre-arranged plan to commit the offence, therefore, the appellants have been wrongly held guilty of the commission of offence under Section 302 read with Section 34 IPC. It has also been pleaded that all three main accused have already died, therefore, there is no occasion to convict the sole surviving appellant no. 4, Sabir.

SUBMISSIONS ON BEHALF OF THE STATE

23. *Per contra*, learned Additional Government Advocate has vehemently refuted the aforesaid contentions and submitted that the FIR was prompt and was lodged in time as the distance of the Police Station was about three miles from his village Walipur. It was also contended that the prosecution story cannot be disbelieved on the ground that the first informant was not an eye witness of the incident. As soon as the P.W.-2, P.W-3 and P.W- 4 heard the noise they rushed to the spot and saw the accused from a distance of about 40 feet in the flash of the torch light and challenged them. They also saw the dead body of Ratiram lying nearby. It was getting darker, therefore, in order to place the dead body at a safer place, the witnesses brought the deceased Ratiram in a cot and placed him in front of their Chaupal (Portico). The

presence of the eye witnesses at the spot cannot be doubted. The FIR was not anti timed as P.W.-8, Ram Charan Singh Head Constable No. 34, in his testimony, had proved the Chik FIR and extract of the G.D. Entry No. 32 at 9.15 P.M. Additionally, the prosecution case cannot be doubted and was a genuine one as the first informant Rajaram P.W.-1 was not produced and examined as an eye witness though he was available at his home and could have been examined as an eye witness. The evidence of Harpal, Natthu and Deen Mohammad leaves no room for doubt that it was the accused-appellants who actually perpetrated the crime. The version of the First Information Report/Written Tehrir corroborates with the inquest as well in the post mortem report. According to P.W5, Dr. P.K.Gupta, the cause of death of the deceased was due to asphyxia as a result of *anti mortem* strangulation, therefore, it was a case of homicidal death and not a suicidal death. The hyoid bone was found fractured. The rest other *anti mortem* injuries also indicated that the deceased was done to death at the relevant point of time. The testimony of Dr. P.K. Gupta (P.W.5) corroborates with the prosecution case. As far as application of Section 34 of the IPC is concerned there is no requirement of overact, only a pre-mediation or pre-arranged plan between the appellant was sufficient to implicate them with the aid of Section 34 IPC. All the three eye witnesses P.W.-2, P.W-3, P.W-4 are natural and reliable witnesses who rushed at the spot and saw the appellants running from the place of incident with Shamsher carrying a rope in his hand. The deposition of D.W.-1, Parivaksha was entirely a false story of suicide which does not justify the offence under Section 302 IPC. The ocular evidence corroborates with the medical evidence, therefore, the appellants have been rightly convicted by the learned Trial Court.

ANALYSIS

24. Upon hearing learned counsel for the parties and the arguments advanced, it transpires that the prosecution had lodged the FIR promptly against all the four appellants. The distance of the police station from the place of incident was about three miles and the first informant gave the written Tehrir in time. There was no deliberation, consultation or concoction. The contents of the FIR was brief and gave a true narration of the incident. The Investigating Officer in his testimony admitted that he reached the spot on the very same night and made spot inspection and found the dead body lying at the Chaupal (Portico). The Investigating Officer had proved the Inquest Report and the Post Mortem Report. The Head Mohrir had proved the Chik FIR and extract of the G.D. Entry No. 32 at 9.15 P.M. and the FIR was not *anti timed*. The post mortem of the deceased was conducted on the next day and the cause of death was due to asphyxia as a result of *anti mortem* strangulation which cannot be a suicidal death rather it was a homicidal death. The hyoid bone was also found fractured. The appellant, Sabir was the real brother of main accused Shamsher who contested and lost the Pradhani election and was inimical with them. Apart from political rivalry the proceedings under section 107/116 Cr.P.C. was also drawn between the parties. The first informant was the supporter and canvassed for Gulzari who won the Pradhani election against Shamsher which was the main motive and root cause for enmity. The contention that P.W-1, P.W-2 and P.W-3 were the close relatives of the

deceased and were the partisan witness being the real brothers and cousin brother of the deceased is baseless. It is trite that their evidence cannot be discarded solely on the ground as there is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield the actual culprit and falsely implicate the accused. The Apex Court in the case of **Nam Dev vs. State of Maharashtra, (2007) 14 SCC 150** has held that a close relative cannot be characterised as an (interested witness). He is a natural witness. His evidence, however, must be scrutinised carefully. If upon such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the sole testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the relative would normally be most reluctant who spare the real culprit and falsely implicate and innocent one. In **Mohd. Rojali Ali v. State of Assam, (2019) 19 SCC 567** it was held that the mere fact that the witnesses are related to the deceased does not impugne the credibility of the evidence if it is otherwise credible and cogent. Further, it was observed in para (13-15) and is quoted below:

"13. As regards the contention that all the eyewitnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an "interested" witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between "interested" and "related" witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused [internal citations omitted].

14. In criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested. Indeed, one of the earliest statements with respect to interested witnesses in criminal cases was made by this Court in Dalip Singh v. State of Punjab, (1953) 2 SCC 36 wherein this Court observed: (AIR p. 366, para 26)

"26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent person."

15. In case of a related witness, the Court may not treat his or her testimony as inherently tainted, and needs to ensure only that the evidence is inherently reliable, probable, cogent and consistent."

25. Thus, there is no occasion for the false implication of the appellant. The three eye witnesses are the most natural witness who rushed to the spot and from a distance of about 40 feet saw in flash light of the torches that all the four appellants were running away and Shamsher was spotted carrying a rope. They found the deceased

Ratiram lying dead. Though they challenged the appellants but they ran away. All the accused were known to the witnesses and three of them were the resident of same village. There was a strong motive and both the parties were inimical to each other due to Pradhani elections. The three eye witnesses in their testimony deposed that all the four accused were present at the spot and cornered the deceased Ratiram strangulated him with rope and done him to death. The appellants examined the defence witness D.W.-1 Parivaksha who gave a false colour of suicide to the incident. The said plea was baseless and unsustainable as it did not corroborate with the medical evidence. The hypothesis of suicide was not consistent with the medical evidence. It is the admitted case of the prosecution as well as the defence D.W.-1 Pariveksha that no blood was found at the place of incident and a very small quantity of blood was found oozing from the nose of the deceased. Thus, no blood could be collected from the spot. It was a dark/winter night and the witnesses reached the spot with their torches and identified the four accusedfrom the distance of about 40feet. They brought the dead body of the deceased and placed it at the Chaupal (Portico) in front of their house which was a safe place. There is no matter to doubt the date, time, place and manner of incident. The recovery memo/supurdiginama of the two torches of two cells and three cells also supports the prosecution case. The Trial Court had rightly framed the charge against the accused under section 302 IPC with the aid of section 34 IPC. It is an admitted case that there was previous enmity between the parties and the appellants in a pre-concerted manner had committed the murder and were seen running away from the spot. The only issue for consideration is whether the surviving appellant no. 4, Sabir shared common intention along with other co-accused in killing Ratiram. From the perusal of record and after examining the testimony of the eye witnesses, it cannot be doubted that all the four appellants had shared the common intention collectively and together killed the deceased by strangulating his neck which is not possible by a single person.

26. The Hon'ble Apex Court in **Gulab vs. State of U.P., (2022) 12 SCC 677** (three Judges Bench) had observed that common intention implies acting in concert. Existence of a pre-arranged plan has to be proved either from the conduct of the accused or from circumstances or from incriminating facts. It is not enough to have the same intention independently to each other. The prosecution is not required to prove that there was an elaborate plan between the accused to kill the deceased or appellant was in existence for a long time. A common intention to commit the crime is proved if the accused by their words or action indicate their assent to join in the commission of the crime.

27. Recently, the Hon'ble Supreme Court in **Krishnamurthy @ Gunodu v. State of Karnataka, (2022) 7 SCC 521** has observed on the collective action of all the accused and sharing of the common intention and is quoted hereinbelow:

"Section 34 IPC makes a co-perpetrator, who had participated in the offence, equally liable on the principle of joint liability. For Section 34 to apply there should be common intention between the co-perpetrators, which means that there should be community of purpose and common design or pre-arranged plan. However, this does not mean that co-

perpetrators should have engaged in any discussion, agreement or valuation. For Section 34 to apply, it is not necessary that the plan should be pre-arranged or hatched for a considerable time before the criminal act is performed. Common intention can be formed just a minute before the actual act happens. Common intention is necessarily a psychological fact as it requires prior meeting of minds. In such cases, direct evidence normally will not be available and in most cases, whether or not there exists a common intention has to be determined by drawing inference from the facts proved. This requires an inquiry into the antecedents, conduct of the co-participants or perpetrators at the time and after the occurrence. The manner in which the accused arrived, mounted the attack, nature and type of injuries inflicted, the weapon used, conduct or acts of the co-assailants/perpetrators, object and purpose behind the occurrence or the attack etc. are all relevant facts from which inference has to be drawn to arrive at a conclusion whether or not the ingredients of Section 34 IPC are satisfied. We must remember that Section 34 IPC comes into operation against the co-perpetrators because they have not committed the principal or main act, which is undertaken/performed or is attributed to the main culprit or perpetrator. Where an accused is the main or final perpetrator, resort to Section 34 IPC is not necessary as the said perpetrator is himself individually liable for having caused the injury/offence. A person is liable for his own acts. Section 34 or the principle of common intention is invoked to implicate and fasten joint liability on other co-participants."

The role of the appellants and their presence at the spot and the nature of the incident that emerges from the consistent account of the three eye witnesses proves the prosecution case beyond reasonable doubt.

CONCLUSION

28. In the present appeal, as the guilt of the Appellant No. 4, Sabir has been established by the prosecution beyond reasonable doubt under Section 302 read with Section 34 IPC and the judgement of the Trial Court is a well discussed decision. We do not find any cogent reason to interfere in it.

29. Accordingly, the Judgement and Order of conviction dated 15.02.1984 passed by learned Vth Additional Sessions Judge, Shahjahanpur is hereby affirmed.

30. The Criminal Appeal is, accordingly, **dismissed.**

31. The surviving Appellant No. 4, Sabir is on bail. His bail bonds are cancelled and the sureties discharged. He shall surrender before the Court concerned within 30 days from the date of the order to serve the remaining sentence, failing which the Trial Court shall take appropriate steps for the compliance.

32. The Registry is directed to transmit the certified copy of the Judgement and Order of this Court along with the records to the Court concerned for necessary information and compliance. It is further directed that the record of the case transmitted by this Court shall be kept in safe custody by the Trial Court.

(2025) 8 ILRA 867
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 11.08.2025

BEFORE

THE HON'BLE SAUMITRA DAYAL SINGH, J.
THE HON'BLE TEJ PRATAP TIWARI, J.

Criminal Appeal No. 580 of 2019
With
Criminal Appeal No. 3056 of 2015

Nadeem ...Appellant
Versus
State of U.P. ...Respondent

Counsel for the Appellant:
Divya Yadav, Srijan Mehrotra, Umesh Singh

Counsel for the Respondent:
G.A.

Issue for Consideration

Whether imposition of **life imprisonment** for offences under Sections **395/120-B, 397/120-B, 412 IPC and Section 25 Arms Act** was justified, or whether the sentence required modification in light of **principles of proportionality**, absence of prior criminal antecedents, young age of appellants, long period of incarceration already undergone, and mitigating circumstances, when conviction itself was not pressed.

Headnotes

Indian Penal Code, 1860 — ss. 395, 397, 412, 120-B — Arms Act, 1959 — s.25 — Criminal Procedure Code, 1973 — s.354(3) — Sentencing — Proportionality — Aggravating and mitigating circumstances — Use of deadly weapon — Dacoity on public highway — Life imprisonment — Reduction of sentence.

Held:

For offences under Sections 395 and 397 IPC, while the statute prescribes minimum sentence of seven years where deadly weapon is used, it does not mandate life imprisonment in every case. Award of maximum punishment requires judicial application of mind to aggravating and mitigating circumstances and recording of reasons as mandated by Section 354(3) Cr.P.C. [Paras 16–20]

In the present case, aggravating circumstances existed inasmuch as the offence was pre-meditated, committed on a public highway in broad daylight, involving loot of public money collected at a toll plaza, thereby impacting societal sense of security. [Paras 40–41]

However, equally weighty mitigating circumstances were present: appellants were very young (21 and 24 years) at the time of offence; had no prior convictions; were acquitted in other connected cases; no grievous injury or death was caused; only simple injuries were proved; and appellants had already undergone about 14 years of actual incarceration. [Paras 44–47]

Sentencing must adhere to the principle of proportionality; maximum punishment of life imprisonment ought to be reserved for gravest cases. Unduly harsh sentencing without balancing mitigating factors defeats reformative goals of criminal justice and burdens appellate courts. [Paras 28, 36–38]

Balancing three aggravating and two mitigating factors, sentence of 14 years rigorous imprisonment was held to be adequate, proportionate and sufficient to meet ends of justice. Conviction affirmed; sentence modified from life imprisonment to 14 years' imprisonment with remission. [Paras 49–50]

Appeal partly allowed. (E-14)

Case Law Cited

Hem Chand v. State of Haryana, (1994) 6 SCC 727 — relied on; Narinder Singh v. State of Punjab, (2014) 6 SCC 466 — relied on; State of Punjab v. Prem Sagar, (2008) 7 SCC 550 — applied; State of M.P. v. Suresh, (2019) 14 SCC 151 — followed; Balwant Singh v. State of Punjab, (1976) 1 SCC 425 — referred; Bachan Singh v. State of Punjab, (1980) 2 SCC 684 — relied on; Machi Singh v. State of Punjab, (1983) 3 SCC 470 — referred; Ruli Ram v. State of Haryana, (2002) 7 SCC 691 — applied; Anil alias Anthony Arikswamy Joseph vs State of Maharashtra, (2014) 4 SCC 69; Anshad vs State of Karnataka, (1994) 4 SCC 381; Ramnaresh & Ors. vs Sate of Chhattisgarh, (2012) 4 SCC 257; Suresh (2019) 14 SCC 151; P. Rathinam Vs. Union of India, (1994) 3 SCC 394; Chandrakant Patil Vs. State through CBI, (1998) 3 SCC 38; Commissioner of Police & Ors. Vs. Sandeep Kumar, (2011) 4 SCC 644.

List of Acts / Statutes

Code of Criminal Procedure, 1973; Indian Penal Code, 1860; Arms Act, 1959**.**

List of Keywords

Dacoity; Use of firearm; Section 397 IPC; Sentencing discretion; Proportionality of

punishment; Life imprisonment; Mitigating circumstances; Young offenders; Long incarceration; Reformative justice; Reduction of sentence.

Case Arising From

Judgment and order dated **15.02.1984** passed by the Vth Additional Sessions Judge, Shahjahanpur in **Sessions Trial No. 140 of 1983 and Sessions Trial No. 141 of 1983** (State v. Sabir and others / State v. Khanne and others), arising out of Case Crime No. 239 of 1982, Police Station Kanth, District Shahjahanpur.

Appearance for Parties

For the Appellants: Sri Rajiv Lochan Shukla along with Sri Shashank Pandey and Sri Abhishek Shukla; Umesh Singh
For the State: Vikas Goswami learned AGA-I

(Delivered by Hon'ble Saumitra Dayal Singh, J.
&
Hon'ble Tej Pratap Tiwari, J.)

1. Heard Sri Rajiv Lochan Shukla alongwith Sri Shashank Pandey and Sri Abhishek Shukla learned counsel on behalf of appellant-Khursheed, Sri Umesh Singh learned counsel for the appellant-Nadeem and Sri Vikas Goswami learned AGA-I for the State.

2. Present appeal arises from judgment and order dated 26.06.2015 passed by Sri Akhilesh Dubey Additional Sessions Judge/Fast Track Court, J.P. Nagar, in Sessions Trial No. 403 of 2011 (State Vs. Khursheed and others), whereby the appellants as also the co-accused Amit have been convicted for offence under Section 395/120B, 397/120B IPC and sentenced for life together with fine Rs. 50,000/- each, with default sentence of two years simple imprisonment. They have also been convicted for offence under Section 412 IPC and sentenced to ten years rigorous imprisonment together with fine Rs. 25,000/- each with default sentence of one year simple imprisonment. Also, they have been convicted under Section 25 Arms Act and sentenced to two years rigorous imprisonment together with fine Rs. 2000/- and default sentence of two months - in Sessions Trial No. 401 of 2011 (State Vs. Nadeem) and 402 of 2011 (State Vs. Khursheed). The appellants have been acquitted in Sessions Trial No. 400 of 2011 for offence under Section 147, 148, 307/149 IPC and in Sessions Trial No. 404 of 2011 for the offence under Sections 395, 397 IPC.

3. Three appeals are listed before us today. One by the appellant-Nadeem (Criminal Appeal No. 580 of 2019), second by the co-accused Amit (Criminal Appeal No. 2936 of 2015) and third by the appellant-Khursheed (Criminal Appeal No. 3056 of 2015). At the outset, learned counsel for the appellant Nadeem and Khursheed have stated, they are not pressing their appeals against the order of conviction. They have confined their submissions on the point of sentence awarded, to those accused. Sri Anil Mehrotra learned counsel appearing for the third appellant-Amit stated, he would be pressing that appeal on merits, against conviction. Accordingly, we have heard Criminal Appeal No. 580 of 2019 (Nadeem Vs. State of U.P.) and Criminal Appeal No. 3056 of 2015 (Khursheed Vs. State) only. Criminal Appeal No. 2936 of 2015 (Amit Vs. State) is detagged from this batch. That appellant is on bail. That appeal may be listed on its own turn.

4. On the issue of sentence, it may only be noted that the present appellants were charged as below:

Common charges against the appellants Khursheed, Nadeem and co-accused Amit:

*" **प्रथमः** यह कि दिनांक 14.03.2011 को समय 10:45 बजे बस्थान ग्रीन वैली होटल के पास, पुलिस थाना रजबपुर, जिला ज्योतिबा फुले नगर में आपने अपने अन्य साथियों के साथ मिलकर आपसी सहमति के द्वारा आपराधिक षड्यंत्र कर वादी मुकदमा राजीव भटनागर के दो बैग, जिनमें से एक में 20,92,845/- रूपये व दूसरे में लैपटॉप था, को लूट ले गये, जो कि एक अवैध कार्य था। इस प्रकार आपका उक्त कृत्य धारा 120बी भा०दं०सं० के अंतर्गत दण्डनीय अपराध है, जो इस न्यायालय के प्रसंज्ञान में है।*

***द्वितीयः** यह कि उपरोक्त तिथि, समय एवं स्थान पर आप लोगों ने अपने एक अन्य साथी के साथ संयुक्त रूप से, जिनकी कुल संख्या पांच थी, मिलकर वादी मुकदमा राजीव भटनागर से उसकी गाड़ी में रखे दो बैग, जिनमें से एक में 20,92,845/- रूपये व दूसरे में लैपटॉप था, को लूट ले गये और एतद्द्वारा आपने डकैती कारित की, जो भारतीय दण्ड संहिता की धारा 395 के अधीन दण्डनीय अपराध है, जो इस न्यायालय के प्रसंज्ञान में है।*

***तृतीयः** यह कि उपरोक्त तिथि, समय एवं स्थान पर आप लोगों ने अपने एक अन्य साथी के साथ मिलकर घातक आयुधों से सुसज्जित होकर वादी मुकदमा राजीव भटनागर से रूपया व लैपटाप की लूट करते समय वादी व उसके साथियों पर तमंचे से फायर कर उनकी मृत्यु कारित करने या घोर उपहति कारित करने का प्रयत्न किया, जो भारतीय दण्ड संहिता की धारा 397 के अधीन दण्डनीय अपराध है, जो इस न्यायालय के प्रसंज्ञान में है।*

***चतुर्थः** यह कि उपरोक्त तिथि, समय एवं स्थान पर से लूटी गयी नकदी व सामान, जिसके कब्जे के विषय में आप यह जानते थे कि वह डकैती द्वारा अन्तरित की गयी है, को बेईमानी से प्राप्त किया / पास रखा है, जो सामूहिक रूप से आपके कब्जे से बरामद भी हुई है और इसके द्वारा आपने ऐसा कार्य किया है, जो भारतीय दण्ड संहिता की धारा 412 के अधीन दण्डनीय अपराध है, जो इस न्यायालय के प्रसांज्ञान में है।"*

Additional charge against the appellant Khursheed (Sessions Trial No. 402 of 2011):

"यह कि दिनांक 14.03.2011 को समय 13:00 बजे दिन स्थान सरकड़ी अजीज, पुलिस थाना रजबपुर, जिला ज्योतिबा फुले नगर में आपको पुलिस द्वारा मौके पर गिरफ्तार करने पर आपके कब्जे से एक तमंचा देशी 315 बोर नाजायज, तमंचे की नाल में फंसा एक ताजा चला खोखा कारतूस व पैंट की दाहिनी जेब से दो अदद जिंदा कारतूस 315 बोर के बरामद हुये हैं, जिसको रखने का कोई लाईसेंस आपके पास नहीं था। इस प्रकार आपने ऐसा कार्य किया है जो भारतीय आयुध अधीनियम की धारा 25 के अधीन दण्डनीय अपराध है, जो इस न्यायालय के प्रसंज्ञान में है।"

Additional charge against the appellant Nadeem (Sessions Trial No. 401 of 2011):

"यह कि दिनांक 14.03.2011 को समय 13:00 बजे दिन स्थान सरकड़ी अजीज, पुलिस थाना रजबपुर, जिला ज्योतिबा फुले नगर में आपको पुलिस द्वारा मौके पर गिरफ्तार करने पर आपके कब्जे से एक तमंचा देशी 12 बोर नाजायज, तमंचे की नाल में फंसा एक ताजा चला खोखा कारतूस व पैंट की दाहिनी जेब से दो अदद जिंदा कारतूस 12 बोर के बरामद हुये हैं, जिसको रखने का कोई लाईसेंस आपके पास नहीं था। इस प्रकार आपने ऐसा कार्य किया है जो भारतीय आयुध अधीनियम की धारा 25 के अधीन दण्डनीय अपराध है, जो इस न्यायालय के प्रसंज्ञान में है।"

5. As noted above, the appellants have been convicted for offences for which they were charged in Sessions Trial No. 403 of 2011, 402 of 2011 and 401 of 2011. At the same time, it may be noted, the appellants have been acquitted of charges framed in Sessions Trial Nos. 400 of 2011 and 404 of 2011.

6. Thus, the charge found proven against the appellants is of committing dacoity with use of deadly weapon, namely firearm. In that they committed dacoity and looted Rs. 20,92,845/- alongwith a laptop computer device, from Rajeev Bhatnagar (an employee of a Toll Plaza), and Tejpal - on a highway, at about 10.45 a.m., on 14.03.2011, when those persons were carrying that cash (collected at the Toll Plaza), to deposit at a bank. It is the proven case of the prosecution that the accused looted that cash and fled in their Bolero vehicle. The said Rajeev Bhatnagar shot at and hit the wheel of that moving Bolero car. Then, the accused were chased down by the police and the appellants Khursheed and Nadeem alongwith two others (declared juvenile), were arrested from the spot. The accused Amit fled. He was apprehended later. The entire cash together with the laptop computer device, were recovered from the appellants. Khursheed and Nadeem remained in jail during trial. After spending about 14 years in jail (actual), the appellant Nadeem has been released on bail, by this Court. At present, Khursheed has remained confined for close to 14 years (actual).

7. In such circumstances, Sri Rajiv Lochan Shukla learned counsel appearing for the appellants would submit, against the minimum sentence awardable - seven years, learned court below has awarded the maximum punishment of life. In that, neither aggravating circumstances are shown to exist nor all mitigating circumstances have been considered, before awarding the maximum sentence. The appellants have been acquitted in two other cases lodged against them - one of a previous transaction - for a similar offence under Section 395 IPC wherein they are described to have looted Rs. 2,03,000/- and another case that pertained to the subsequent part of this transaction wherein they are described to have shot at the police party that was trying to apprehend them. In both cases, the appellants have been acquitted. It is undisputed, those orders have attained finality.

8. Second, no gunshot injury was caused or intended to be caused by the appellant in the course of the transaction for which they have been held guilty.

9. Third, only injuries proven by the prosecution were simple in nature as was established by Dr. Karunendra Dev Rahul (P.W.-7).

10. Fourth, both appellants were young in age - Khursheed being 24 years of age and Nadeem being 21 years of age, on the date of the occurrence. No prior

conviction had been suffered by them for like or other offence and no fact was proven by the prosecution as may establish propensity (of either of the appellants), to commit criminal offence. Therefore, there is every hope with the society in general that those appellants have reformed upon adequate sentence undergone.

11. Referring to the order passed by the learned court below, it has been stressed, the only aggravating circumstance considered is of the occurrence caused in broad day light, on a highway. In absence of due consideration offered to the mitigating circumstances, learned court below has erred in law, in awarding the maximum sentence.

12. At present, the appellants have suffered fourteen years of incarceration (in all). They would be about more than 30 years of age. Also, the appellant Khursheed has four children born to him while the appellant Nadeem has three children born to him. In the absence of any doubt as to presence of those mitigating circumstances, the appellants may be released against sentence undergone. In support of his submissions, Sri Shukla has relied on four decisions of the Supreme Court in **Hem Chand Vs. State of Haryana, (1994) 6 SCC 727, Narinder Singh and Others Vs. State of Punjab and Another (2014) 6 SCC 466, State of Punjab Vs. Prem Sagar and Others (2008) 7 SCC 550 and State of Madhya Pradesh Vs. Suresh (2019) 14 SCC 151.**

13. On the other hand Sri Vikas Goswami, learned AGA-I would submit, there is no codified law with respect to sentencing and the quantum of sentence remains a matter of judicial discretion. At the same time, well recognized principle exists - to account for all aggravating and mitigating circumstances, while awarding appropriate sentence to the offenders, commensurate to the proven offence. By way of aggravating circumstances, (i) nature and gravity of the offence, (ii) degree of deliberation and pre-meditation in committing the office, (iii) impact of the offence on the victim and the society, (iv) deterrent effect of the sentence awarded and (v) previous proven criminal history of the accused, may be considered.

14. At the same time, he would fairly state - mitigating circumstances namely, (i) age of the accused at the time of the occurrence, (ii) any ailment afflicting the accused and (iii) family responsibilities of the accused, may also be considered to determine the adequacy of the sentence to be awarded to avoid undue harsh sentence being awarded.

15. In the context of the present facts he would submit, there is absolutely no doubt that the nature and gravity of the offence is established alongwith the element of degree of deliberation and pre-meditation, impact on the society inasmuch the occurrence was caused on a public highway, involving loot of public money in broad day light. Therefore, a deterrent punishment must be awarded keeping the societal objectives in mind. As to existence of mitigating circumstances, it could not be denied that the appellants have family responsibilities and they were young in age, when they committed the offence, and they have no criminal history of prior conviction. He would submit, keeping in mind the nature of the occurrence, the learned court below has awarded adequate sentence. It may not be interfered with.

16. Having heard learned counsel for the parties and having perused the record, we find Section 395 IPC reads as below:

"395. Punishment for dacoity.

Whoever commits dacoity shall be punished with [imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

(emphasis supplied)

Also, Section 397 IPC reads as below:

"397. Robbery or dacoity, with attempt to cause death or grievous hurt-

If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

(emphasis supplied)

17. Thus, for offence under Section 395 IPC not involving use of deadly weapon or without causing grievous hurt etc., the minimum awardable sentence may be - any sentence, involving imprisonment below ten years. However, if that offence is committed involving either a deadly weapon or upon causing grievous hurt etc. (in that occurrence), it would enhance the minimum sentence awardable to that convict - to seven years, in accordance with the provisions of Section 397 IPC. Also, it may lead to the maximum sentence of (remaining) life imprisonment.

18. Here, involvement of deadly weapon in the occurrence is proven inasmuch as the appellants are described to have caused the occurrence brandishing firearms. Therefore, to begin with the minimum sentence awardable to the appellants Nadeem and Khursheed may not be below seven years. That is the base punishment awardable for reason of all ingredients of offence under Section 397 IPC being proven. That minimum sentence has to be awarded by the court for reasons of fulfilment of all ingredients of the offence under Section 397 IPC.

19. Second, Section 354(3) Cr.P.C. reads as below:

354. Language and contents of judgment.

(1) ...

(2) ...

(3) When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.

(emphasis supplied)

20. Also, though not directly applicable, Section 360(1) Cr.P.C. reads as below:

360. Order to release on probation of good conduct or after admonition.

(1) When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient

that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour: Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class, forwarding the accused to, or taking bail for his appearance before such Magistrate, who shall dispose of the case in the manner provided by sub-section (2).

(emphasis supplied)

21. In **Balwant Singh vs State of Punjab, (1976) 1 SCC 425**, considering the provisions of Section 354(3) Cr.P.C., the Supreme Court underscored the requirement to give reasons for sentence that may be awarded by a criminal court. Besides the requirement to record special reasons in the case of sentence of death. In that regard, it was observed as below:

Under this provision the Court is required to state the reasons for the sentence awarded and in the case of sentence of death, special reasons are required to be stated.

(emphasis supplied)

22. Third, as to objective of punishment, in **Machi Singh & Ors. vs State of Punjab, (1983) 3 SCC 470**, observed as below:

The reasons why the community as a whole does not endorse the humanistic approach reflected in death sentence-in-no-case doctrine are not far to seek. In the first place, the very humanistic edifice is constructed on the foundation of reverence for life principle. When a member of the community violates this very principle by killing another member, the society may not feel itself bound by the shackles of this doctrine. Secondly, it has to be realized that every member of the community is able to live with safety without his or her own life being endangered because of the protective arm of the community and on account of the rule of law enforced by it. The very existence of the rule of law and the fear of being brought to book operates as a deterrent for those who have no scruples in killing others if it suits their ends. Every member of the community owes a debt to the community for this protection. When ingratitude is shown instead of gratitude by killing a member of the community which protects the murderer himself from being killed, or when the community feels that for the sake of self-preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so in rarest of rare cases when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The community may entertain such a sentiment when the crime is viewed from the platform of the motive for, or the manner of commission of the crime, or the anti-social or abhorrent nature of the crime.

23. In that, it was further observed that (i) Manner of commission of murder, (ii) Motive for commission of murder, (iii)

Anti-social or socially abhorrent nature of the crime,(iv) Magnitude of crime and, (v) Personality of victim of murder, were relevant factors to be considered by the courts.

24. In **Anil alias Anthony Arikswamy Joseph vs State of Maharashtra, (2014) 4 SCC 69**, the Supreme Court maintained that the probability that the accused would not commit criminal act of violence as may constitute the threat to the society, is a relevant circumstance. It may help the court to determine if there is no possibility of reformation and rehabilitation. In that, it was observed as below:

In Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] this Court has categorically stated, the probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to the society, is a relevant circumstance, that must be given great weight in the determination of sentence. This was further expressed in Santosh Kumar Satishbhushan Bariyar[Santosh Kumar Satishbhushan Bariyarv.State of Maharashtra, (2009) 6 SCC 498 : (2009) 2 SCC (Cri) 1150]. Many a times, while determining the sentence, the courts take it for granted, looking into the facts of a particular case, that the accused would be a menace to the society and there is no possibility of reformation and rehabilitation, while it is the duty of the court to ascertain those factors, and the State is obliged to furnish materials for and against the possibility of reformation and rehabilitation of the accused. The facts, which the courts deal with, in a given case, cannot be the foundation for reaching such a conclusion, which, as already stated, calls for additional materials. We, therefore, direct that the criminal courts, while dealing with the offences like Section 302 IPC, after conviction, may, in appropriate cases, call for a report to determine, whether the accused could be reformed or rehabilitated, which depends upon the facts and circumstances of each case.

(emphasis supplied)

25. Fourth, as to aggravating and mitigating circumstance to be considered, to award appropriate punishment, in **Bachan Singh vs State of Punjab, (1980) 2 SCC 684**, considering the provisions of legislative policy that underlines the structure of our criminal law as contained in the Indian Penal Code and the Criminal Procedure Code, the Supreme Court first observed - it may not be possible to make an exhaustive enumeration of aggravating and mitigating circumstances to be considered while sentencing an offender. At the same time, it was maintained that a discretion to be exercised by the judge, judicial, after balancing of aggravating and mitigating circumstances of the crime. Considering the same in the context of capital sentence, following pertaining observations pertaining came to be made: In that regard, it was observed as below:

202. Drawing upon the penal statutes of the States in U.S.A. framed after Furman v. Georgia [33 L Ed 2d 346 : 408 US 238 (1972)] , in general, and clauses 2 (a), (b), (c) and (d) of the Penal Code, 1860 (Amendment) Bill passed in 1978 by the Rajya Sabha, in particular, Dr Chitale has suggested these aggravating circumstances:

Aggravating circumstances: A court may, however, in the following cases

impose the penalty of death in its discretion:

(a) if the murder has been committed after previous planning and involves extreme brutality; or

(b) if the murder involves exceptional depravity; or

(c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed

(i) while such member or public servant was on duty; or

(ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant; or

(d) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the Code of Criminal Procedure, 1973, or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said Code.

203. Stated broadly, there can be no objection to the acceptance of these indicators but as we have indicated already, we would prefer not to fetter judicial discretion by attempting to make an exhaustive enumeration one way or the other.

26. In **Anshad vs State of Karnataka, (1994) 4 SCC 381**, the Supreme Court re-emphasized the need to account that aggravating and mitigating circumstances while awarding the appropriate punishment to convicts. In that regard, it was observed as below:

32. We have perused the reasons given by the High Court for awarding the sentence of death. Apart from referring to some of the aggravating circumstances like the betrayal of confidence of the deceased by A-1 and murder for committing robbery on a helpless widow, the High Court only referred to some of the judgments of this Court and then almost abruptly came to the conclusion that the sentence of death was called for in the instant case. We notice with regret that the High Court did not take into account any of the mitigating circumstances at all. Courts are expected to exhibit sensitiveness in the matter of award of sentence particularly, the sentence of death because life once lost cannot be brought back. This Court has in cases more than one emphasised that for determining the proper sentence in a case like this while the court should take into account the aggravating circumstances it should not overlook or ignore the mitigating circumstances. The manner in which the crime was committed, the weapons used and the brutality or the lack of it are some of the considerations which must be present to the mind of the court. Of course, the High Court has the power and jurisdiction to enhance the sentence of life imprisonment to death but that power has to be sparingly exercised, in rarest of the rare cases for special reasons to be recorded. The courts must be alive to the legislative changes introduced in 1973 through Section 354(3) CrPC. Death sentence, being an exception to the general rule, should be awarded in the rarest of the rare cases for special reasons to be recorded after balancing the aggravating and the mitigating circumstances, in the facts and circumstances of a given case. The number of persons murdered is a consideration but that is not the only consideration for imposing death penalty unless the case falls in the category of rarest of the rare cases. The courts must

keep in view the nature of the crime, the brutality with which it was executed, the antecedents of the criminal, the weapons used etc. It is neither possible nor desirable to catalogue all such factors and they depend upon case to case.

(emphasis supplied)

27. In **Ramnaresh & Ors. vs Sate of Chhattisgarh, (2012) 4 SCC 257**, referring to **Bachan Singh vs State of Punjab, (1980) 2 SCC 684** and **Machi Singh & Ors. vs State of Punjab, (1983) 3 SCC 470**, the Supreme Court re-emphasized the need to consider the cumulative effect of both aggravating and mitigating circumstances. It was observed that the balance between the two must be entertained. Also, the Supreme Court may note of certain aggravating and mitigating circumstances. Relevant to our discussion, the Supreme Court noted as below:

76. The law enunciated by this Court in its recent judgments, as already noticed, adds and elaborates the principles that were stated in Bachan Singh [(1980) 2 SCC 684 : 1980 SCC (Cri) 580] and thereafter, in Machhi Singh [(1983) 3 SCC 470 : 1983 SCC (Cri) 681] . The aforesaid judgments, primarily dissect these principles into two different compartments one being the aggravating circumstances while the other being the mitigating circumstances. The court would consider the cumulative effect of both these aspects and normally, it may not be very appropriate for the court to decide the most significant aspect of sentencing policy with reference to one of the classes under any of the following heads while completely ignoring other classes under other heads. To balance the two is the primary duty of the court. It will be appropriate for the court to come to a final conclusion upon balancing the exercise that would help to administer the criminal justice system better and provide an effective and meaningful reasoning by the court as contemplated under Section 354(3) CrPC.

Aggravating Circumstances

(1) The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping, etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.

(2) The offence was committed while the offender was engaged in the commission of another serious offence.

(3) The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.

(4) The offence of murder was committed for ransom or like offences to receive money or monetary benefits.

(5) Hired killings.

(6) The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.

(7) The offence was committed by a person while in lawful custody.

(8) The murder or the offence was committed to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under Section 43 CrPC.

(9) When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.

(10) When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.

(11) When murder is committed for a motive which evidences total depravity and meanness.

(12) When there is a cold-blooded murder without provocation.

(13) The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

Mitigating circumstances

(1) The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.

(2) The age of the accused is a relevant consideration but not a determinative factor by itself.

(3) The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.

(4) The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.

(5) The circumstances which, in normal course of life, would render such a behaviour possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behaviour that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

(6) Where the court upon proper appreciation of evidence is of the view that the crime was not committed in a preordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

(emphasis supplied)

28. Fourth, it is equally important that Courts may keep in mind the fundamental principle of proportionality of the punishment to the offence. In **Ruli Ram Vs. State of Haryana, (2002) 7 SCC 691**, the Supreme Court has observed as under:

23...The punishment has to be always proportionate to the crime. Punishment serves a purpose inasmuch as it acts as a deterrent for those who have the propensity to take the law into their own hands. The principle of proportion between crime and punishment is a principle of just deserts that serves as the foundation of every criminal sentence that is justifiable. As a principle of criminal justice it is hardly less familiar or less important than the principle that only the guilty ought to be punished. Indeed, the requirement that punishment not be disproportionately great, which is a corollary of just deserts, is dictated by the same principle that does not allow punishment of the innocent, for any punishment in excess of what is deserved for the criminal conduct is punishment without guilt.

(emphasis supplied)

29. In **Suresh (2019) 14 SCC 151**, the Supreme Court again considered the sufficiency of sentence to be awarded and it did not approve over lenient view being

taken. In that regard it made the following useful discussion:

11 .In State of M.P. v.Ghanshyam Singh [State of M.P.v. Ghanshyam Singh, (2003) 8 SCC 13 : 2003 SCC (Cri) 1935] , relating to the offence punishable under Section 304 Part I IPC, this Court found sentencing for a period of 2 years to be too inadequate and even on a liberal approach, found the custodial sentence of 6 years serving the ends of justice. This Court underscored the principle of proportionality in prescribing liability according to the culpability; and while also indicating the societal angle of sentencing, cautioned that undue sympathy leading to inadequate sentencing would do more harm to the justice system and undermine public confidence in the efficacy of law. This Court observed, inter alia, as under:

12. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. This position was illuminatingly stated by this Court in Sevaka Perumalv. State of T.N. [Sevaka Perumal v. State of T.N., (1991) 3 SCC 471 : 1991 SCC (Cri) 724]

13. Criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges, in essence, affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence, sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably, these considerations cause a departure from just deserts as the basis of punishment and create cases of apparent injustice that are serious and widespread.

14. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilised societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.

15. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence,the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a

dispassionate manner by the court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in McGautha v. California [McGautha v. California, 1971 SCC OnLine US SC 89 : 28 L Ed 2d 711 : 402 US 183 (1971)] that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case is the only way in which such judgment may be equitably distinguished.

30. From the above, in the first place it is seen, there is no structured or well codified law of sentencing. Yet, first there exist different objectives of sentencing such as (i) Retributive, (ii) Deterrent, (iii) Punitive, (iv) Correctional or Reformative. Second, as to choice of objective of sentencing to be pursued in the proven facts of any case, is a matter of judicial discretion to be exercised by the Court concerned. Third, though no hard and fast rule exists, at the same time, rule exists in favour of proportionality of sentence (to be awarded qua the offence committed). It must be borne in mind by Courts, even while choosing the objective of punishment to be awarded. Non consideration of that factor may lead to undue harsh results in certain cases. Fourth, where lesser than maximum punishment is permissible and desirable to be awarded, the Courts may consider both- the aggravating and mitigating circumstances, while awarding befitting/proper/appropriate or enough sentence as may pass the test of proportionality.

31. Examined in that light, we first note, broadly there may exist five aggravating circumstances such as (i). nature and gravity of the offence; (ii). degree of deliberation and pre-meditation to commit the offence; (iii). impact of the offence committed on the victim and the society; (iv). deterrence objective to be created/pursued in the interest of the society; (v) previous proven criminal history of the accused. Also, there may exist other aggravating circumstances of like nature or as may be noticed by Courts in proven facts of individual cases. To that extent, the specific enumeration of the aggravating factors (noted by us), is only illustrative but in no way exhaustive.

32. Similarly, some of the well recognised mitigating factors are (i) very young or old age of the convict; (ii). any ailment suffered by the convict; (iii). family responsibilities of the convict; (iv) prior conviction of the convict; (v) probabilities of reform of the convict and (vi) probability of any possible risk to the society, etc.

33. In the present facts, first it appeared to us in the totality of all facts proven and established at the trial, we felt inclined to form a subjective opinion that 14 years sentence, would be enough. However, considering the further fact that this issue is arising in many criminal appeals, the making of such subjective decisions has lead us to explore if a scale of objectivity may be devised in our decision making, to test the adequacy of that sentence to be awarded.

34. For offences where discretion has been vested with Courts to award appropriate sentence, especially where maximum sentence may extend to life as against minimum sentence prescribed by

law being seven years or ten years, such consideration is necessary.

35. Another practical difficulty arises where trial courts award maximum sentence almost by way of a policy enforcement. If reasons are given by the trial courts, both to indicate the objective of the punishment pursued by it and also to the aggravating and mitigating circumstance noted by it and such sentence is awarded proportionate to the offence alleged - in the context of the object of punishment being pursued, less than life imprisonment may be awarded by way of punishment. That itself may allow the appeal court to consider in more objective manner the point when such convicts may be considered to be enlarged on bail if their appeals remain pending beyond half that sentence undergone.

36. Award of maximum/life sentence to all convicts without assigning any reasons or without offering any consideration to either the objective of the punishment to be awarded or to the aggravating and mitigating circumstance of each case, may result in implementation of law, that may appear too harsh as may not serve any useful purpose to the society. It practically amounts to a punishment that may be described - be jailed till dead. It may never be the purpose of handing out punishments to all convicts found guilty of any offence, irrespective of the individual facts of each case. Enforcement or acceptance of such sentencing, by way of policy, by the learned trial courts may itself indicate violation of the rule of proportionality.

37. More importantly, it may indicate lack of judicial reasoning and lack of application of judicial mind to critical aspects of criminal jurisprudence. If the learned trial courts were to remain indifferent or if they were to be given wide margin in that regard to allow such errors to creep in their orders it may leave the appeal court with avoidable work. In a State as populous as Uttar Pradesh, involving large pendency of appeals at the High Court, many involving life sentence awarded to the convicts, it leads to additional pressure on the appeal court, in bail matters. That leads to further constraint of time with the appeal court, to consider more appeals for hearing. All in all, a cascading effect arises from such harsh sentencing as may travel upward.

38. Therefore, in our opinion the time is right that the learned trial courts may remain reminded of their duties and obligation to not only pass correct orders of conviction based on evidence but they may also remain fine - tuned on the aspect of sentencing. Primarily, in cases involving conviction under Sections 307, 304, 304-B and 376 IPC, we have come across instances that make us implore the learned trial courts to not fall in error, by awarding unduly harsh sentences, than may be awarded upon consideration to all relevant factors.

39. Here, as to aggravating circumstances, we are unable to accept the submissions advance by the State that in the proven facts, the nature and gravity of offence was an aggravating circumstance proven by the prosecution. Merely because the occurrence was caused involving use of firearm is not relevant here, to treat the same as an aggravating factor. Here, because of that fact occurrence, the gravity of offence stood (statutorily recognised), as aggravated. The fact that deadly weapon was involved in the commission of the

offence of dacoity escalated the offence from Section 395 to Section 397 IPC. Against minimum punishment upto ten years, involvement of that deadly weapon/s, enhanced the minimum punishment to seven years. Inasmuch as no grievous hurt was caused and the firearm was not proven to have been used in its normal way i.e. to fire a shot at any person or for any purpose in that occurrence, and to the extent the prosecution only proved that the butt of the firearm was used to cause simple injuries to the injured person, the aggravating circumstance as claimed is found lacking.

40. As to degree of deliberation and pre-meditation in commission of the offence, clearly that was found proven by the prosecution. The occurrence was caused when the victims were transporting public money collected at the Toll Plaza in a car, to be deposited at a bank. Unless pre-planned and premeditated, such an occurrence may not have been caused at the spur of the moment. The appellants had exact knowledge about transportation of the cash, at designated time, from and to designated place. They acted at that time; chased down the vehicle of the victims; blocked it on the highway and thereafter committed the dacoity. To that extent, the aggravating factor of degree of deliberation and pre-meditation is found proven.

41. Third, as to impact of the offence on the victim and society, we note that the occurrence was caused on a public highway involving public money, in a daring manner, in full day light. Such occurrences spread terror/fear and the accompanying it sense of insecurity that may otherwise arise amongst the members of the society. Therefore, a second aggravating factor is also found present.

42. Fourth, as to the personal deterrent effect of the punishment, for the reasons noted above, we find, the third aggravating factor also present to the extent, minimum punishment may not deter the appellants from engaging/involving in such activities again. Yet, we may keep in mind that in **P. Rathinam Vs. Union of India (1994) 3 SCC 394**, the Supreme Court expressed its doubt if award of punishment has a direct relation with reduction of crime. In that, it observed as below:

62. The aforesaid is not enough for our purpose. We have also to know as to whether infliction of punishment can be said to have a direct relation with the reduction of criminal propensity. It would be enough in this context to state that it has been seriously doubted whether imposition of even death sentence has been able to reduce the number of murders. Bhagwati, J. as he then was, in his dissenting judgment in the case of Bachan Singh v. State of Punjab [(1982) 3 SCC 24 : 1982 SCC (Cri) 535 : AIR 1982 SC 1325] has brought home well this aspect of the matter.

63.While on the question of sentencing it would be rewarding to note that sentencing has been regarded as a subtle art of healing, and the legal and political people uninstructed in the humanist strategy of reformation, fail even on first principles. Justice Iyer in his aforesaid book has further stated at p. 47 that it puzzles a Judge or a Home Secretary to be told in Shavian paradox:

If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him. And men are not improved by injuries.

64.What was said by Victor Hugo in his Les Miserablesis instructive:

We shall look upon crime as a disease. Evil will be treated in charity instead of anger. The change will be simple and sublime. The cross shall replace the scaffold, reason is on our side, feeling is on our side and experiment is on our side.

(emphasis supplied)

43. Fifth, in absence of any previous conviction and in face of acquittal for other offence alleged under Section 395 IPC and the offence alleged under Section 307 IPC, the fifth aggravating factor alleged is found lacking. Also, no other aggravating factor has been alleged to exist, in the facts of this case. Thus, out of five possible aggravating factors cited, we find three present in this case.

44. At the same time, by way of mitigating factor, it is found that both the appellants were aged less than 25 years of age at the time of occurrence. Thus, that mitigating factor is found present.

45. As to ailment, none has been cited. Therefore, that mitigating circumstance is lacking.

46. As to the third mitigating circumstance, we find, existence of family responsibilities of these appellants is not denied. Being young in age with young families as they have, the accused have remained confined for 14 years and may have missed the childhood and adolescence of their children, already. That itself is a punishment to a normal human being.

47. Excessive punishment to an accused including the present appellants Khursheed and Nadeem, may allow for ill effects of the punishment to visit them and their families. Upon sufficient sentence undergone and in absence of any disabling fact shown to exist, in normal circumstances, the society/community should have positive hope of reformation and rehabilitation undergone by an accused. An offender whether an under trial or a convict, remains part of the civil society, they may have offended. They have a right to life as others. What distinguishes them from other citizens is the act i.e. the offence attributed to or committed by them. For that, they have to be convicted and sentenced adequately. At the same time, they are not to be condemned for life, irrespective of any other consideration.

48. Then, in **Ruli Ram (supra) and Chandrakant Patil Vs. State through CBI, (1998) 3 SCC 38**, another principle was stated by the Supreme Court that the maximum punishment permissible in law should be reserved for gravest instances. We are also cognizant, in **Commissioner of Police & Ors. Vs. Sandeep Kumar, (2011) 4 SCC 644**, it has been recognized with the Supreme Court that primarily, sentence awarded should be reformative as may not condemn the offender as a criminal, for all his life. Thus, keeping in mind the principles discussed in the decisions of the Supreme Court noted above, on a rough and ready estimate, we find three out of five aggravating circumstances are made out against the appellants and two mitigating circumstances made out in their favour.

49. In these facts, we find, our first opinion to award 14 years imprisonment to the appellant Nadeem and Khursheed measures well against the scale of punishment we have considered above. We find no reason to take any other view. Neither it appears to be excessive nor it

appears to be too less/lenient. Rather, it commends to us as proportionate.

50. Accordingly, the impugned judgement and order of the learned court below is modified to the extent that the conviction of the appellants for the offence under Sections 395/120B, 397/120B, 412 IPC and Section 25 Arms Act is confirmed. However, the sentence awarded is reduced to 14 years (with remission) in place of life sentence awarded by the learned court below. That may have already been undergone by the appellants.

51. The fine imposed by the learned court below does not warrant interference. It is maintained. Fine shall be deposited by the appellants within three months from their release. In default of payment of fine, they shall further undergo additional imprisonment as provided under impugned judgment and order.

52. Accordingly, the appeals are **partly allowed**. Appellant-Nadeem is on bail. He need not surrender, in case he is not wanted in any other case. His bail bonds and sureties are discharged. The appellant-Khursheed is in jail. He be released forthwith. Both the appellants are directed to furnish bail bonds in compliance of Section 437-A Cr.P.C. to the satisfaction of the Court concerned within two months from today.

53. A copy of this judgment be transmitted to the Court concerned for necessary compliance. Compliance report be submitted to this Court, at the earliest. Office is directed to keep the compliance report on record. Pending applications, if any, stand disposed of.

(2025) 8 ILRA 884

APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 21.08.2025

BEFORE

THE HON'BLE ANISH KUMAR GUPTA, J.

Criminal Appeal No. 2100 of 1983

Ramvir ...Appellants
Versus
State of U.P. ...Respondents

Counsel for the Appellants:
A. Rathore

Counsel for the Respondents:
A.G.A.

Issue for Consideration

Whether conviction of the appellant under **Sections 363 and 366 IPC** was sustainable when the victim initially accompanied the appellant voluntarily, but was thereafter threatened, confined and taken away from lawful guardianship, and whether documentary evidence regarding age of the victim would prevail over medical opinion.

Headnotes

Indian Penal Code, 1860 — ss. 363, 366 — Kidnapping from lawful guardianship — Enticement of minor girl — Voluntary initial companionship — Subsequent threat and compulsion — Confinement — Proof of age — Documentary evidence — Medical opinion — Conviction affirmed.

Held:

For an offence under Section 361 IPC, it is not necessary that the minor be taken away by force from the very inception. If the accused plays an **active role of inducement or enticement** which becomes the proximate cause for the minor leaving lawful guardianship, the offence of kidnapping is complete. Initial voluntary accompaniment by the minor does not absolve the accused when subsequent conduct discloses threat, intimidation and compulsion. [Paras 17–20]

In the present case, the appellant enticed the victim, a minor girl aged about 15 years, on the false pretext that her father had granted permission to watch cinema. Thereafter, on her refusal to marry him, he threatened to kill her and compelled her to accompany him to Gwalior, where she was kept confined in the house of his relative under false identity. These facts clearly established kidnapping and abduction with intent to compel marriage. [Paras 20–21]

Where **documentary evidence** such as a High School marksheet proving date of birth of the victim is available, the same prevails over medical opinion regarding age. Medical estimation of age being approximate cannot displace reliable documentary proof. [Para 21]

The testimony of the victim was consistent, natural and corroborated by other prosecution witnesses. No material contradiction or improbability was shown. Ingredients of Sections 363 and 366 IPC were fully established. Conviction and sentence recorded by the trial court warranted no interference. [Paras 20–22]

Appeal dismissed. (E-14)

Case Law Cited

***S. Varadarajan v. State of Madras, AIR 1965 SC 942* — relied on (distinction between "taking" and voluntary accompaniment; enticement of minor).**

List of Acts / Statutes

Code of Criminal Procedure, 1973; Indian Penal Code, 1860**.**

List of Keywords

Kidnapping; Abduction; Minor girl; Enticement; Threat and compulsion; Lawful guardianship; Section 361 IPC; Documentary proof of age; Medical opinion; Cinema pretext; Confinement;

Case Arising From

Judgment and order dated **24.08.1983** passed by the XIth Additional Sessions Judge, Agra in **Sessions Trial No. 117 of 1982**, arising out of FIR dated 30.04.1980, Police Station Gwalior (transferred to P.S. Etmadpur), District Agra.

Appearance for Parties

For the Appellants: Sri Deenanath Mishra, Amicus Curiae
For the State: Sri Satyendra Nath Tiwari

(Delivered by Hon'ble Anish Kumar Gupta, J.)

1. Heard Shri Deenanath Mishra, learned amicus curie for the appellant and Shri Satyendra Nath Tiwari, leaned AGA for the State.

2. The instant criminal appeal has been filed by the sole appellant-Ramvir being aggrieved by the judgment and order dated 24.8.1983 passed by the XIth Additional Session Judge, Agra in Sessions Trial No. 117 of 1982 whereby the appellant was convicted for the offence under Section 363 and 366 IPC and was sentenced to undergo rigourous imprisonment of 3 years and 5 years respectively.

3. The prosecution story in brief is that victim/informant lodged an FIR on 30.4.1980 at 11 a.m. at Police Station Gwalior stating therein that she is the daughter of Shri Ram Gopal Vaidya, resident of Etmadpur, Police Station-Etmadpur, District Agra and is aged about 15 years. She came to the Police Station and made a statement that she has appeared in 10th class and Ramvir, who is the resident of Nagla and known to her father used to come to her village. On 24.4.1980, she was present in the medical shop of her father and her father was not there. The said Ramvir came to the medical shop of her father and asked her to accompnay him for watching cinema on the pretext that he has already taken permission from her father. The appellant brought her to Tundla and told her to come to Agra to watch cinema there. Then, he brought her to Agra and after watching the cinema at Agra, he

told that he will marry her. When she refused, then he threatened that she will not be left alive and asked her to follow silently and told that if anybody asked her, then she should tell that he is her brother-in-law. Out of fear, she accompanied the said Ramvir, who brought her to Gwalior on 25.4.1980 and kept her in the house of one Rajendra, one of the relative of Ramvir and he told his relative that the victim is her sister-in-law and has come for tourism. Since then, she was kept in the house of Rajendra. Today, when Ramvir had gone to market, then she had escaped from the house and straight away came to the police station. Ramvir had brought her forcefully and she is reporting for the same. On such report submitted by the victim, the police arrested the accused-appellant Ramvir and after registration of the FIR, the case was handed over to police station Etmadpur. The victim was thereafter handed over to her father at the police station.

4. The medical examination of the victim was conducted on 1.5.1980 and in the medical examination, no injury was found on the private parts of the victim. X-ray was conducted and as per the x-ray reports, age of the victim was found between 16-18 years. No opinion was given by the doctor with regard to any rape of the victim as according to the doctor the victim was habitual of masturbation. The matter was investigated by the police and after recording the statement of witnesses, chargesheet was filed against the appellant for the offence under Section 363 and 366 IPC.

5. In support of its case, the prosecution has examined the father of the victim-Ram Gopal as P.W. 1, victim as P. W. 2, Hargyan Singh as P.W. 3, Dr. Veena Jain as P. W. 4, Lakhan Singh Parihar as P. W. 5 and Constable Ranvir Singh as P. W. 6.

6. P. W. 1-Ram Gopal is the father of the victim and he stated that on the date of incident he has gone to Agra to take the medicines for his medical shop; when he returned at around 4 p.m., he came to know that his daughter is not at home. He tried to search her out, then his compounder Shankar Lal told that master Hargyan Singh-P..W. 3 has seen the appellant and victim riding on the bus. He further stated that on 13.4.1980, her daughter came from Gwalior to the police station Etmadpur and then was handed over to him. He further stated that at the time of incident the age of her daughter was 15 years.

7. The victim P. W. 2 has deposed the entire incident in great detail as to how the incident had taken place and as to how she herself has lodged the FIR at police station Gwalior after escaping from the clutches of the appellant, as mentioned above.

8. P.W.-3 Hargyan Singh has stated that 24.4.1980, he has seen the victim along with the appellant at bus stand. At that time, he was coming from school. Both the appellant and the victim had boarded the bus which was going towards Tundla and he had informed the father of the victim on the same date at around 7.00 pm.

9. Dr. Veena Jain is P.W.-4 has medically examined the victim and she had supported the medical examination reports.

10. Lakhan Singh Parihar is the P.W.-5, who had investigated the instant case and thereafter submitted the charge sheet.

11. Constable Ranvir Singh is P.W.-6 who has made the entries in the General Diary on 30.4.1980.

12. The appellant has denied the allegations in his statement under Section

313 Cr.P.C. and stated that he used to come to the shop of father of victim and her father also used to send the victim with him many times. He had advanced some money to the father of the victim and after the incident also the victim continued to write letters to the appellant. He further submitted that the police has wrongly investigated the matter and prosecuted the appellant. The appellant has not led any evidence in support of his statment nor any letter, which is alleged to have been written by the victim, has been produced. On the basis of aforesaid evidence, the trial court has convicted the appellant for the offence under Section 363 and 366 IPC and sentenced him to undergo three years and five years of rigirous imprisonment, respectively.

13. Learned counsel for the appellant submits that the victim had gone with the appellant out of her own free will without any force or fear created on the part of the appellant herein. As per the medical examination report, her age was found to be between 16-18 years and benefit of doubt should go in favour of the appellant, therefore, she should be presumed to be 18 years of age at the time of incident. He further submits that in the entire incident when she has gone along with the appellant, first she has gone to Tundla then to Agra where she watched the cinema and thereafter the allegation is that she was threatened to marry forcibly and under threats she was taken to Gwalior. In the entire journey, at public places she had not raised any alarm that she was being forcibly taken by the appellant. Learned counsel for the appellant further submits that the conduct of the father of the victim is also very unusual. As per P.W.-3, the father of the victim came to know that his daughter has gone with the appellant on the date of the incident itself at 7:00 PM, however, he has not made any efforts to find her out nor reported the incident at the police station. Thus, the victim and the appellant were familiar to each other and the victim had gone with the appellant out of her own free will without there being any force or fear from the appellant. Hence, no offence under Section 363 and 366 IPC is made out against the appellant. Thus, learned counsel for the appellant seeks acquittal of the appellant in the instant case.

14. Per contra, learned AGA submits there is nothing on record to disbelieve the testimony of the victim herself. Though she admits that she had voluntarily gone with the appellant at the initial stage from her village to Tundla and then from Tundla to Agra and watched cinema with him in Agra, however, the appellant proposed to marry the victim which was denied by the victim; thereafter the appellant had threatened her to kill and being frightened by such threats, she had accompanied the appellant to Gwalior where she was kept in confinement in the house of one Rajendra, the relative of the appellant, by giving a misinformation that she is the sister-in-law of the appellant. There she was not allowed to move out of the house. When the appellant had gone out to the market, the victim has successfully escaped from the house of said Rajendra and thereafter lodged the FIR at the nearest police station at Gwalior. As per the high school mark sheet, her date of birth is 11.4.1965, thus on the date of incident she was a minor aged about 15 years. It is further submitted by learned AGA that once the documentary proof such as the high school mark sheet is available on record with regard to date of birth of the victim that has to be relied upon and medical opinion would not serve any purpose with regard to age of the victim.

Thus the offence under Section 363 and 366 IPC are categorically made out in the instant case from the testimony of the victim herself which is corroborated by the other evidences and the statement of the other witnesses.

15. Having heard the rival submissions made by learned counsel for the parties, this Court has carefully gone through the records of the case.

16. Before proceedings further, it would be relevant to take note of the provisions of Section 359, 361, 363 and 366 IPC, which are reproduced herein as under:-

"359. Kidnapping.*—Kidnapping is of two kinds: kidnapping from India, and kidnapping from lawful guardianship.*

361. Kidnapping from lawful guardianship*.—Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.*

Explanation.— The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

363. Punishment for kidnapping*.—Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

366. Kidnapping, abducting or inducing woman to compel her marriage, etc.*—Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid."*

17. Thus, from the provisions of Section 361 IPC, it appears that if a person takes away or entices a girl below 18 years of age and keeps her away from the lawful guardianship of such minor, without the consent of her guardian, the same is said to be kidnapping of such girl from the lawful guardianship. Section 363 provides for the punishment for kidnapping from the lawful guardianship. Section 366 provides that whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

18. In **S. Varadarajan v. State of Madras, AIR 1965 SC 942** the Apex Court in paragraphs 9, 10, 12, 13, 14, 15, 16, 18, and 19 has held as under:-

"9. It must, however, be borne in mind that there is a distinction between "taking" and allowing a minor to accompany a person. The two expressions are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstance can the two be regarded as meaning the same thing for the purposes of Section 361 of the Indian Penal Code. ***We would limit ourselves to a case like the present where the minor alleged to have been taken by the accused person left her father's protection knowing and having capacity to know the full import of what she was doing voluntarily joins the accused person. In such a case we do not think that the accused can be said to have taken her away from the keeping of her lawful guardian****. Something more has to be shown in a case of this kind and* ***that is some kind of inducement*** *held out by the accused person or an* ***active participation by him in the formation of the intention of the minor to leave the house of the guardian.***

10. It would, however, be sufficient if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. In our, opinion if evidence to establish one of those things is lacking it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian merely because after she has actually left her guardian's house or a house where her guardian had kept her, joined the accused and the accused helped her in her design not to return to her guardian's house by taking her along with him from place to place. No doubt, the part played by the accused could be regarded as facilitating the fulfillment of the intention of the girl. That part, in our opinion, falls short of an inducement to the minor to slip out of the keeping of her lawful guardian and is, therefore, not tantamount to "taking".

11. ....

12. In the next decision, that is, that in Kumarasami's case (2 MHCR 331) upon which the High Court has relied, it was observed that the fact that a married woman whom the accused was alleged to have taken or enticed away for certain purposes was a temptress, would make no difference and the accused who yielded to her solicitations would be guilty of an offence under Section 498 (b) of the Penal Code. This decision was approved of in In Re: Sundara Dass Tevan (4 MHCR 20), a case to which also the High Court has referred. The basis of both these decisions appears to be that depriving the husband of his proper control over his wife, for the purpose of illicit intercourse is the gist of the offence of taking away a wife under the same section and that detention occasioning such deprivation may be brought about simply by the influence of allurement and blandishment. It must be borne in mind that while Sections 497 and 498, I.P.C. are meant essentially for the protection of the rights of the husband, Section 361 and other cognate sections of the Indian Penal Code are intended more for the protection of the minors and persons of unsound mind themselves than of the rights of the guardians of such persons. In this connection we may refer to the decision in State v. Harbansing Kisansing (ILR 1954 Bom. 784). In that case Gajendragadkar J., (as he then was) has, after pointing out what we have said above, observed:

"It may be that the mischief intended to be punished partly consists in

the violation or the infringement of the guardians' right to keep their wards under their care and custody; but the more important object of these provisions undoubtedly is to afford security and protection to the wards themselves."

13. While, therefore, it may perhaps be argued on the basis of the two Madras decisions that the word "taking" occurring in Sections 497 and 498 of the Indian Penal Code should be given a wide interpretation so as to effectuate the object underlying these provisions there is no reason for giving to that word a wide meaning in the context of the provisions of Section. 361 and cognate sections.

14. The last case relied upon by the High Court is Ramaswami Udayar v. Raju Udayar (1952 MWN 604) which is also a case under Section 498, I.P.C. In that case the High Court has followed the two earlier decisions of that Court to which we have made reference but in the course of the judgment the learned Judge has observed that it is not open to a minor in law to abandon her guardian, and that, therefore, when the minor leaves the guardian of her own accord and when she comes into the custody of the accused person, it is not necessary that the latter should be shown to have committed an overt act before he could be convicted under Section 498. The learned Judge has further observed :

"A woman's free will, or her being a free agent, or walking out of her house of her own accord are absolutely irrelevant and immaterial for the offence under Section. 498."

Whatever may be the position with respect to an offence under that, section and even assuming that a minor cannot in law abandon the guardianship of her lawful guardian, for the reason which we have already stated, the accused person in whose company she is later found cannot be held guilty of having taken her out of the keeping of her guardian unless something more is established.

15. The view which we have taken accords with that expressed in two decisions reported in Cox's Criminal Cases. The first of them is Reg. v. Christian Olifir (X Cox's Criminal Cases, 402). In that case Baron Bramwell stated the law of the case to the jury thus :

"I am of opinion that ***if a young woman leaves her father's house without any persuasion, inducement, or blandishment held out to her by a man, so that she has got fairly away from home, and then goes to him, although it may be his moral duty to return her to her parent's custody, yet his not doing so is no infringement of this Act of Parliament*** *(24 & 25 Vict. clause 100, Section 55) for the Act does not say he shall* ***restore her, but only that he shall not take her away."***

The jury returned a verdict of guilty in this case because the girl's evidence showed that the initial formation of her intention to leave her father's ***house was influenced by the solicitations of the accused and by his promise to marry her.***

16. The other case is Rex v. James Jarvis(XX Cox's Criminal Cases, 249). There Jelf J., has stated the law thus to the jury :

"Although there must be a taking, yet it is quite clear that an actual physical taking away of the girl is not necessary to render the prisoner liable to conviction; it is sufficient if he persuaded her to leave her home or go away with him by persuasion or blandishments. The question for you is ***whether the active part in the going away together was the act of the prisoner or of the girl;*** *unless it was that of the prisoner, he is entitled to your verdict. And, even if you do not believe that he did what he was*

morally bound to do-namely, tell her to return home- that fact is not by itself sufficient to warrant a conviction : for if she was determined to leave her home, and showed prisoner that that was her determination, and insisted on leaving with him-or even if she was so forward as to write and suggest to the prisoner that he should go away with her, and he yielded to her suggestion, taking no active part in them matter, you must acquit him. If, however, prisoner's conduct was such as to persuade the girl, by blandishments or otherwise, to leave her home either then or some future time, he ought to be found guilty of the offence of abduction."

In this case there was no evidence of any solicitation by the accused at any time and the jury returned a verdict of "not guilty". Further, there was no suggestion that the girl was incapable of thinking for herself and making up her own mind.

17. ....

18. Relying upon both these decisions and two other decisions, the law in England is stated thus in Halsbury's Laws of England, 3rd edition, Vol. 10, at p. 758 :

"The defendant ***may be convicted, although he took no part in the actual removal of the girl, if he previously solicited her to leave her father, and afterwards received and har- boured her when she did so.*** *If a girl leaves her father of her own accord, the defendant taking no active part in the matter and not persuading or advising her to leave, he cannot be convicted of this offence, even though he failed to advise her not to come, or to return, and afterwards harboured her."*

On behalf of the appellant reliance was placed before us upon the decisions in Rajappan v. State of Kerala (ILR 1960 Kerala 481) and Chathu v. Govindan Kutty (ILR 1957 Kerala 591). In both the cases the learned Judges have held that the expression ***"taking out of the keeping of the lawful guardian" must signify some act done by the accused which may be regarded as the proximate cause of the person going out of the keeping of the guardian; or, in other words an act but for which the person would not have gone out of the keeping of the guardian as he or she did.*** *In taking this view the learned Judge followed, amongst other decisions, the two English decisions to which we have adverted. More or less to the same effect is the decision in Nura v. Rex (AIR 1949 All 710).* ***We do not agree with everything*** *that has been said in these decisions and would make it clear* ***that the mere circumstance that the, act of the accused was not the immediate cause of the girl leaving her father's protection would not absolve him if he had at an earlier stage solicited her or induced her in any manner to take this step.***

19. As against this Mr. Ranganadham Chetty appearing for the State has relied upon the, decisions in Bisweswar Misra v. The King (ILR 1949 Cuttack 194) and In re : Khalandar Saheb (ILR 1955 Andhra 290). The first of these decisions is distinguishable on the ground that it was found that the ***accused had induced the girl to leave the house of her lawful guardian.*** *Further the learned Judges have made it clear that mere passive consent on the part of a person in giving shelter to the minor does not amount to taking or enticing of the minor but the active bringing about of the stay of the minor in the house of a person by playing upon the weak and hesitating mind of the minor would amount to "taking" within the meaning of Section 361. In the next case, the act of the accused, upon the facts of the case was held by the Court to fall under*

Section 366, I.P.C. and the decision in Nura v. Rex on which reliance has been placed on behalf of the appellant is distinguished. Referring to that case it was observed by the Court :

"Reliance is placed upon the decision of Mustaq Ahmed J. in Nura V. Rex wherein the learned Judge observed that ***where a minor girl voluntarily leaves the roof of her guardian and when out of his house, comes across another who treats her with kindness, he cannot be held guilty under secti on 361, Indian Penal Code.*** *This decision cannot help the accused for, on the facts of that case, it was found* ***that the girl went out of the protection of her parents of her own accord and thereafter went with the accused.....*** *In the present case it is not possible to hold that she is not under the guardianship of her father. In either contingency, namely, whether she went out to answer calls of nature, or whether she went to the house of the accused pursuant to a previous arrangement, she continued to be under the guardianship of her father. On the evidence,* ***it is not possible to hold that she abandoned the guardianship of her father and, thereafter, the accused took her with him."***

After pointing out that there is an essential distinction between the words "taking" and "enticing" it was no doubt observed that the mental attitude of the minor is not of relevance in the case of taking and that the word "take" means to cause to go, to escort or to get into possession. But these observations have to be understood in the context of the facts found in that case. For, it had been found that the minor girl whom the accused was charged with having kidnapped had been persuaded by the accused when she had gone out of her house for answering the call of nature, to go along with him and was taken by him to another village and kept in his uncle's house until she was restored back to her father by the uncle later. Thus, here there was ***an element of persuasion by the accused person which brought about the willingness of the girl and this makes all the difference.*** *In our opinion, therefore, neither of these decisions is of assistance to the State."*

19. Thus, from the aforesaid judgments which are also referred by the apex court in S. Vardhrajan (Supra), there must be an active role of the accused-appellant while taking and enticing away a minor girl from her legal guardianship.

20. In the instant case, the appellant has enticed the victim for watching cinema with him on the pretext that he had already sought permission from her father. Thus, the victim has accompanied the appellant. Subsequent thereto, he has threatened the victim to marry him and when she denied, she was threatened to be killed. Since the victim was minor of 15 years of age at the time of incident, obviously there was threat perception on her and she obeyed dictates of the appellant under threat perception and followed him to Gwalior and stayed with him and followed all the instructions given by the appellant. However, when she found a chance to escape, she has escaped and reported the incident to the police. Thereupon the police has arrested the appellant and the victim was handed over to her father after transferring the case to Etmadpur Police Station. Thus, in the considered opinion of this court, all the ingredients of Section 363 and 366 are clearly made out in the instant case.

21. As per the high school mark sheet and the statement of the victim, she was 15 years of age at the time of the incident.

When there is documentary evidence available on record, the medical opinion with regard to age of the victim becomes irrelevant. Thus, since the victim was minor and she was enticed by the appellant to watch cinema with him on the pretext that her father has already given consent for the same and thereafter she was threatened to follow the appellant and she was taken to Gwalior and was kept there under confinement. In view thereof in the considered opinion of this court the appellant is guilty of the offence under Section 363 and 366 IPC. Accordingly, this court do not find any illegality in the impugned judgment and order dated 24.8.1983. Hence, the conviction as well as the sentence awarded to the appellant by the trial court is hereby affirmed.

22. The instant criminal appeal is **dismissed** accordingly.

23. The appellant is on bail. The Cheif Judicial Magistrate, Agra is directed to take him into custody in the aforesaid case and send him to jail to serve out the remaining sentence as awarded by the trial court and affirmed by this Court.

24. Office is directed to send a copy of this order to the court concerned within a week for compliance along with the Lower Court Record. The compliance report shall be sent by the court concerned to this court within a further period of fifteen days.

25. This Court appreciate the able assistance provided by Sri Deena Nath Mishra, learned Amicus Curiae. He shall be paid an honorarium of Rs. 10,000/- for services rendered by him as per rules.

(2025) 8 ILRA 893
APPELLATE JURISDICTION

CRIMINAL SIDE
DATED: ALLAHABAD 13.08.2025

BEFORE

THE HON'BLE VIVEK KUMAR BIRLA, J.
THE HON'BLE JITENDRA KUMAR SINHA, J.

Criminal Appeal No. 2695 of 1986

Bala Shankar ...Appellant
Versus
State of U.P. ...Respondent

Counsel for the Appellant:
Kamlesh Kumar, Deena Nath

Counsel for the Respondent:
A.G.A.

Issue for Consideration

Whether the conviction of the surviving appellants under **Section 302 read with Section 149 IPC** was sustainable when the deceased died **eight days after the incident** due to **septicaemia arising from ante-mortem injuries**, and whether, in the facts proved, the offence was liable to be altered to **Section 304 Part-II read with Section 149 IPC**, along with appropriate modification of sentence.

Headnotes

Indian Penal Code, 1860 — ss. 302/149, 304 Part-II/149, 147, 148, 323/149, 324/149 — Murder — Unlawful assembly — Common object — Injured witnesses — Evidentiary value — Death due to septicaemia — Intention and knowledge — Alteration of conviction — Sentence already undergone — Fine and compensation.

Held:

Testimonies of PW-1 (informant) and PW-2 (injured witness) were natural, cogent and trustworthy. Evidence of an injured witness carries a higher evidentiary value and ordinarily warrants reliance unless major contradictions are shown. Their ocular version stood fully corroborated by medical evidence and

contemporaneous documents. [Paras 10–14, 22–24]

Medical evidence established that the deceased sustained penetrating injuries caused by 'ballam', which were sufficient in the ordinary course of nature to cause death. However, the deceased succumbed eight days after the incident, and the cause of death was septicaemia resulting from ante-mortem injuries, not instantaneous death. [Paras 26–28]

Applying the principles laid down in *Virsa Singh v. State of Punjab*, intention to cause such bodily injury as is likely to cause death was not established to the extent required for Section 302 IPC. The facts disclosed knowledge that the act was likely to cause death, attracting Section 304 Part-II IPC. [Paras 29–30]

Common object of the unlawful assembly to assault was clearly proved; liability under Section 149 IPC rightly attracted. Conviction under Sections 147/148, 323/149 and 324/149 IPC was affirmed. [Paras 25, 31]

Considering that the incident occurred more than 43 years ago, and the advanced age of the surviving appellants (about 78 and 89 years), sentence was modified to period already undergone, with imposition of fine of ₹25,000 each, part of which was directed to be paid as compensation to the legal heirs of the deceased. [Paras 31–32]

Appeal partly allowed. (E-14)

Case Law Cited

Virsa Singh v. State of Punjab, AIR 1958 SC 465 — applied; Krishna Mochi v. State of Bihar, (2002) 6 SCC 81 — relied on; Masalti v. State of U.P., AIR 1965 SC 202 — referred; Appabhai v. State of Gujarat, AIR 1988 SC 696 — relied on; Jarnail Singh v. State of Punjab, (2009) 9 SCC 719 — referred; Neeraj Sharma v. State of Chhattisgarh, (2024) 3 SCC 125 — relied on; Dheer Singh and Others Vs. State of U.P., 2025 (4) ADJ 791-relied on.

List of Acts / Statutes

Code of Criminal Procedure, 1973; Indian Penal Code, 1860**.**

List of Keywords

Murder; Culpable homicide; Section 302 IPC; Section 304 Part-II IPC; Unlawful assembly; Common object; Injured witness; Septicaemia; Ante-mortem injuries; Ballam injury; Alteration of conviction; Sentence modification; Compensation to victim's family.

Case Arising From

Judgment and order dated **24.08.1983** passed by the XIth Additional Sessions Judge, Agra in **Sessions Trial No. 117 of 1982**, arising out of FIR dated 30.04.1980, Police Station Gwalior (transferred to P.S. Etmadpur), District Agra.

Appearance for Parties

For the Appellants: Sri Deenanath
For the State: Sri S. S. R. Dwivedi

(Delivered by Hon'ble Jitendra Kumar Sinha, J.)

1. The appeal stood abated in respect of appellant Nos. 2 and 5 namely Nand Lal and Bhagirathi vide order dated 14.05.2025. The appeal survives in respect of appellant Nos. 1, 3 and 4 namely Bala Shankar, Rajmani and Mangaru.

2. Heard Sri Deena Nath, learned counsel for the appellants and Sri S.S.R. Dwivedi, learned A.G.A. for the State and perused the record.

3. The appellants have challenged their conviction under Section 302/149, 323/149 and 324/149 I.P.C.. Further appellant No.1 Bala Shankar has been convicted under Section 148 I.P.C. and rest of the appellants have been convicted under Section 147 I.P.C. The appellants have been sentenced to imprisonment for life under Section 302/149 I.P.C. Appellant No.1 Bala Shankar has been sentenced to undergo one year rigorous imprisonment under Section 148 I.P.C., whereas rest of the appellants have been sentenced to undergo one year rigorous imprisonment

for offence under Section 147 I.P.C. Appellant Bala Shankar has been sentenced to rigorous imprisonment for six months under Section 323/149 I.P.C. and rest of the appellants have been sentenced six months rigorous imprisonment for the offence under Section 323/149 I.P.C. Further all the sentences have been ordered to run concurrently.

4. Prosecution story in brief is that one Ram Pyare @ Babau Mishra gave a written report to the Police Station- Rampur, District- Jaunpur stating therein that on 21.06.1982 at about 02:00 P.M. Bala Shankar, Mangaru, Rajmani, Nand Lal and Bhagirathi armed with 'ballam' and 'lathi' (Bala Shankar was armed with 'ballam' and other were armed with 'lathi') came to his door and started abusing him. When he stopped them from abusing, Bhagirathi exhorted the other accused persons and on the said exhortation they attacked his brother Vidya Shankar and his mother Sohagin and their neighbour Adya Prasad Mishra by 'lathi' and 'ballam'. When uproar was made, Murlidhar Mishra, Shambhunath Mishra, Anil Kumar Mishra reached there and intervened and saved them. It is further stated that Bala Shankar gave blows of 'ballam' to Vidya Shankar and Vidya Shankar had received many injuries. The informant has further stated that he reached the police station along with injured persons to lodge a report. On the basis of the above written report, the first information report was lodged under Sections 147, 148, 323, 324 and 326 of the I.P.C. against Bala Shankar, Mangaru, Rajmani, Nand Lal and Bhagirathi. During medical treatment, Vidya Shankar died and case was converted into Section 304 I.P.C. After investigation the charge sheet was submitted under Sections 147, 148, 323, 324, 326 and 304 of I.P.C. on 01.07.1982. The Magistrate took cognizance of the offence and committed the case to the court of sessions for trial. Trial stood transferred to the court of Special Judge/Additional Session Judge, Jaunpur. The then learned Addition Sessions Judge, Jaunpur framed charges under Section 147, 302/149, 307/149 of the I.P.C. against appellants Mangaru, Rajmani, Nand Lal, Bhagirathi vide order dated 18.07.1983, whereas the appellant Bala Shankar has been charged under Sections 147, 148, 302, 302/149, 307/149 I.P.C. vide order dated 18.07.1983.

5. The prosecution has examined Pyare Lal Mishra as PW-1. Adya Prasad as PW-2. Dr. Chandra Bhoosan Upaddhyay as PW-3. Dr. R.K. Singh as PW-4. Sri Vidya Dhar Tripathi (S.H.O.) as PW-5. Sri Purushottam Das Sharma as PW-6. Sri Jamwant Singh (Constable) as PW-7.

In documentary evidence, the prosecution has proved written report as Ext. Ka-1. Injury report of Adya Prasad as Ext. Ka-2. Injury report of Pyare Lal @ Babau as Ext. Ka-3. Injury report of Smt. Suhagin as Ext. Ka-4. Injury report of Vidyadhar as Ext. Ka-5. Post mortem report as Ext. Ka-6. Panchayatnama as Ext. Ka-7. F.I.R. as Ext.-12. Charge sheet as Ext. Ka-17.

6. After closure of prosecution evidence the statement of appellants/accused persons were recorded under Section 313 Cr.P.C. The appellants denied their involvement in the commission of offence and stated that they have been implicated in this case due to enmity. The defence has also produced two witnesses DW-1 Mewa Lal and DW-2 Sri Sahab Lal.

7. After hearing the arguments of the prosecution and defence, the learned trial

court has passed the judgment and order impugned.

8. Learned counsel for the surviving appellant Nos. 1, 3 and 4 states that the learned trial court has erred in convicting the appellants under Section 302/149 I.P.C. as the charge sheet was submitted against the appellants under Section 304 I.P.C. He further submits that the incident took place on 21.06.1982 and Vidya Shankar died on 29.06.1982 i.e. eight days after the incident. He further submits that PW-4 Dr. R.K. Singh., who conducted the postmortem of the deceased Vidya Shankar on 29.06.1982 has categorically stated in his examination-in-chief and it was difficult for him to say that the deceased died due to injuries received in the incident that took place at 02:00 P.M. on 21.06.1982. Learned counsel further submits that PW-4 in his cross-examination has stated that it is wrong to say that he made cutting on 'not' in the post mortem report in which it has been mentioned that death is due to shock and subsequent septicaemia. He further submits that the Doctor has sated in his cross-examination that the cutting in the post mortem report does not bear his initials. Learned counsel further submits that from the testimony of PW-4 Doctor, it is not proved that the death of Vidya Shankar was the result of injuries he received on 21.06.1982 at 02:00 P.M. as alleged by the prosecution. He further submits that the death of deceased Vidya Shankar was due to septicaemia . He further submits that septicaemia can be due to negligence of the Doctor while treating the patient. Learned counsel further submits that out of six witnesses of fact as mentioned in the charge sheet only two witnesses have been examined by the prosecution which also casts doubt on the prosecution case. There is a cross case of the incident and it is not clear that who was the aggressor in the incident. Initially, the fight was started by the informant side and the accused appellants have acted in their self-defence. Learned counsel further submits that even if the case is found to be proved, the offence does not fall under Section 302/149 I.P.C., at best it would fall under Part-II of Section 304 I.P.C. He further submits that the incident took place some 43 years ago and now appellants Bala Shankar, Rajmani are aged about 78 years and appellant Mangaru is aged about 89 years. He further submits that considering the above even if the appeal is not successful then at best they should be sentenced under Section 304 Part-II/149 for period of incarceration already undergone by them.

9. On the other hand, learned A.G.A. Sri S.S.R. Dwivedi has supported the judgement of learned trial court and has submitted that PW-1 and PW-2 are injured witnesses and from the testimonies of the witnesses, accused appellant Bala Shankar gave two blows of 'ballam' to the deceased Vidya Shankar. He further submits that it is well settled law that testimonies of injured witnesses stand on higher pedestal than any other witnesses. Further contention of learned A.G.A. is that from the evidence available on record the case against the surviving appellants Balashankar, Rajmani and Mangaru does not fall under Section 304 I.P.C. and learned trial court was fully justified in convicting them under Section 302/149 I.P.C. and other sections.

10. In a recent judgment of **Dheer Singh and Others Vs. State of U.P., 2025 (4) ADJ 791**, a Co-ordinate Bench of this Court, of which one of us (Vivek Kumar Birla, J.) was a member has considered the law as to why a realistic approach to be adopted by criminal courts, which

appreciating evidence in criminal trial. The law in respect of injured, related and interested witness was also considered extensively, paragraph nos. 22 to 35 whereof reads as under:-

"22. In Krishna Mochi and others vs. State of Bihar, (2002) 6 SCC 81, the Hon'ble Apex Court laid emphasis on realistic approach to be adopted by the criminal courts while appreciating evidence in criminal trial, paragraph 32 whereof is quoted as under:

"32. The court while appreciating the evidence should not lose sight of these realities of life and cannot afford to take an unrealistic approach by sitting in an ivory tower. I find that in recent times the tendency to acquit an accused easily is galloping fast. It is very easy to pass an order of acquittal on the basis of minor points raised in the case by a short judgment so as to achieve the yardstick of disposal. Some discrepancy is bound to be there in each and every case which should not weigh with the court so long it does not materially affect the prosecution case. In case discrepancies pointed out are in the realm of pebbles, the court should tread upon it, but if the same are boulders, the court should not make an attempt to jump over the same. These days when crime is looming large and humanity is suffering and the society is so much affected thereby, duties and responsibilities of the courts have become much more. Now the maxim "let hundred guilty persons be acquitted, but not a single innocent be convicted" is, in practice, changing the world over and courts have been compelled to accept that "society suffers by wrong convictions and it equally suffers by wrong acquittals". I find that this Court in recent times has conscientiously taken notice of these facts from time to time……"

(Emphasis supplied)

23. In Masalti vs. State of U.P., AIR 1965 SC 202, Hon'ble Apex Court in paragraph 14 observed as under:

"14. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. ... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice."

(Emphasis supplied)

24. In Darya Singh vs. State of Punjab, AIR 1965 SC 328, the Hon'ble Apex Court has also taken the view that related witness does not necessarily mean or is equivalent to an interested witness. A witness may be called interested only when he or she derives some benefit from the result of litigation; a decree in a civil case, or in seeing a person punished in a criminal trial, paragraph 6 whereof is quoted as under:

"6. On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars."

25. In Appabhai and another vs. State of Gujarat, AIR 1988 SC 696, the Hon'ble Apex Court in paragraph 11 observed as under:

"11……..Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the

general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability if any, suggested by the accused. The Court, however, must bear in mind that witnesses to a serious crime may not react in a normal manner. Nor do they react uniformly. The horror stricken witnesses at a dastardly crime or an act of egregious nature may react differently. Their, course of conduct may not be of ordinary type in the normal circumstances. The Court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner....."

(Emphasis supplied)

26. Similar view has been taken in State of A.P. vs. S. Rayappa and others, (2006) 4 SCC 512 wherein it has been observed that it is now almost a fashion that public is reluctant to appear and depose before the court especially in criminal cases and the cases for that reason itself are dragged for years and years, paragraph 6 whereof is quoted as under:

"6.....by now, it is a well-established principle of law that testimony of a witness otherwise inspiring confidence cannot be discarded on the ground that he being a relation of the deceased is an interested witness. A close relative who is a very natural witness cannot be termed as interested witness. The term interested postulates that the person concerned must have some direct interest in seeing the accused person being convicted somehow or the other either because of animosity or some other reasons."

(Emphasis supplied)

27. In Pulicherla Nagaraju @ Nagaraja Reddy v. State of AP, (2006) 11 SCC 444, the Hon'ble Apex Court in paragraph 16 has held as under:

"16. In this case, we find that the trial court had rejected the evidence of PW1 and PW2 merely because they were interested witnesses being the brother and father of the deceased. But it is well settled that evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or closely related to the deceased, if it is otherwise, found to be trustworthy and credible. It only requires scrutiny with more care and caution, so that neither the guilty escape nor the innocent wrongly convicted. If on such careful scrutiny, the evidence is found to be reliable and probable, it can be acted upon. If it is found to be improbable or suspicious, it ought to be rejected. Where the witness has a motive to falsely implicate the accused, his testimony should have corroboration in regard to material particulars before it is accepted."

(Emphasis supplied)

28. In Satbir Singh and others vs. State of U.P., (2009) 13 SCC 790, the Hon'ble Apex Court in paragraph 26 held as under:

"26. It is now a well-settled principle of law that only because the witnesses are not independent ones may not by itself be a ground to discard the prosecution case. If the prosecution case has been supported by the witnesses and no cogent reason has been shown to discredit their statements, a judgment of conviction can certainly be based thereupon ..... "

(Emphasis supplied)

29. In Jayabalan vs. U.T. of Pondicherry, 2010 (68) ACC 308 (SC), the

Hon'ble Apex Court in paragraph 21 held as under:

"21. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim."

(Emphasis supplied)

30. In Dharnidhar vs. State of U.P., (2010) 7 SCC 759, the Hon'ble Apex Court held that there is no hard and fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before the Court. It will always depend upon the facts and circumstances of a given case, paragraphs 12 and 13 whereof is quoted as under:

"12. There is no hard and fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before the Court. It will always depend upon the facts and circumstances of a given case. In the case of Jayabalan v. U.T. of Pondicherry [(2010)1 SCC 199], this Court had occasion to consider whether the evidence of interested witnesses can be relied upon. The Court took the view that a pedantic approach cannot be applied while dealing with the evidence of an interested witness. Such evidence cannot be ignored or thrown out solely because it comes from a person closely related to the victim. The Court held as under:

" 23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.

……..

13. Similar view was taken by this Court in Ram Bharosey v. State of U.P. [AIR 2010 SC 917], where the Court stated the dictum of law that a close relative of the deceased does not, per se, become an interested witness. An interested witness is one who is interested in securing the conviction of a person out of vengeance or enmity or due to disputes and deposes before the Court only with that intention and not to further the cause of justice. The law relating to appreciation of evidence of an interested witness is well settled, according to which, the version of an interested witness cannot be thrown over-board, but has to be examined carefully before accepting the same.

14. In the light of the above judgments, it is clear that the statements of the alleged interested witnesses can be safely relied upon by the Court in support of the prosecution's story. But this needs to be done with care and to ensure that the administration of criminal justice is not undermined by the persons, who are closely related to the deceased. When their statements find corroboration by other witnesses, expert evidence and the circumstances of the case clearly depict

completion of the chain of evidence pointing out to the guilt of the accused, then we see no reason why the statement of so called `interested witnesses' cannot be relied upon by the Court."

(Emphasis supplied)

31. In a very recent judgement rendered by Hon'ble Apex Court in Baban Shankar Daphal and others vs. The State of Maharashtra, 2025 SCC Online SC 137 in respect of testimony of witness which should not be discarded merely because of relation with victim, the Hon'ble Apex Court has, in paragraphs 27 and 28, held as under:

"27. One of the contentions of the learned counsel for the appellants is that the eyewitnesses to the incident were all closely related to the deceased and for prudence the prosecution ought to have examined some other independent eyewitness as well who were present at the time of the unfortunate incident. This was also the view taken by the Trial Court, but the High Court has correctly rejected such an approach and held that merely because there were some more independent witnesses also, who had reached the place of incident, the evidence of the relatives cannot be disbelieved. The law nowhere states that the evidence of the interested witness should be discarded altogether. The law only warrants that their evidence should be scrutinized with care and caution. It has been held by this Court in the catena of judgments that merely if a witness is a relative, their testimony cannot be discarded on that ground alone.

28. In criminal cases, the credibility of witnesses, particularly those who are close relatives of the victim, is often scrutinized. However, being a relative does not automatically render a witness "interested" or biased. The term "interested" refers to witnesses who have a personal stake in the outcome, such as a desire for revenge or to falsely implicate the accused due to enmity or personal gain. A "related" witness, on the other hand, is someone who may be naturally present at the scene of the crime, and their testimony should not be dismissed simply because of their relationship to the victim. Courts must assess the reliability, consistency, and coherence of their statements rather than labelling them as untrustworthy.

(Emphasis supplied)

32. In a recent judgement rendered by Hon'ble Apex Court in Shahaja @ Shahajan Ismail Mohd. vs. State of Maharashtra, (2023) 12 SCC 558 has observed that the appreciation of ocular evidence is a hard task and has summed up the judicially evolved principles for appreciation of ocular evidence in a criminal case, paragraphs 29 and 30 whereof is quoted as under:

"29. The appreciation of ocular evidence is a hard task. There is no fixed or straight-jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

29.1 While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

29.2. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

29.3 When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

29.4. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

29.5. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

29.6. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

29.7. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

29.8. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

29.9. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

29.10. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

29.11. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

29.12. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub- conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

29.13. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.

[See Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, 1983 Cri LJ 1096 : AIR 1983 SC 753, Leela Ram v. State of Haryana, AIR 1999 SC 3717, and Tahsildar Singh v. State of UP, AIR 1959 SC 1012]

30. To put it simply, in assessing the value of the evidence of the eye-witnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, the circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, yet the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or puts forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence."

(Emphasis supplied)

33. Paragraph 48 of Pahalwan Singh and others vs. State of U.P., 2020 (6) ALJ 166 is quoted under:

"48. Thus, in view of aforementioned decisions of the Supreme Court, it is now a settled position of law that the statements of the interested witnesses can be safely relied upon by the court in support of the prosecution story. But this needs to be done with care and to ensure that the administration of criminal justice is not undermined by the persons who are closely related to the deceased. When their statements find corroboration by other evidence, expert evidence and the circumstances of the case clearly depict completion of the chain of evidence pointing out to the guilt of the accused, then there is no reason as to why the statement of so-called 'interested witnesses' cannot be relied upon by the Court. It would be hard to believe that the close relatives shall leave the real culprit and shall implicate innocent persons falsely simply because they have enmity with the accused persons.

(Emphasis supplied)

34. Insofar as the testimony of injured witness is concerned, this Court in Kaptan Singh vs.
State of UP, 2020 (1) ADJ 106 (DB) has, in paragraph 20, observed as under:

"20. Close scrutiny of the evidence shows that the statements of (PW-1) Vimla Devi and (PW-2) Ram Singar Pandey are clear, cogent and credible. Theyhave been subjected to cross-examination, but they remained stick to the prosecution version and no such fact, contradiction or inconsistency could emerge, so as to create any doubt about their testimony. Keeping in view the fact that after incident, deceased as well as injured were taken to hospital and were admitted there and that on the same night

deceased Ram Niwas Rao has succumbed to injuries, it is apparent that the first information report of the incident was lodged without any undue delay. Version of (PW-1) Vimla Devi finds corroboration from testimony of (PW-2) Ram Singar Pandey and is fully consistent with medical evidence. It is also to be kept in mind that (PW-2) Ram Singar Pandey has himself sustained injuries in the same incident. In Jarnail Singh v. State of Punjab, (2009) 9SCC 719, the Supreme Court reiterated the special evidentiary status accorded to the testimony of an injured accused. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case, the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon. Similar view was expressed in the case of Krishan v. State of Haryana, (2006) 12 SCC 459. Hon'ble Supreme Court in Criminal Appeal Nos. 513-514 of 2014 Baleshwar Mahto and another v. State of Bihar and another, decided on 9.1.2017, has reiterated the law as under :

"28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone.

"Convincing evidence is required to discredit an injured witness." [Vide Ramlagan Singh v. State of Bihar [(1973) 3 SCC 881:1973 SCC (Cri) 563:AIR 1972 SC 2593], Malkhan Singh v. State of U.P. [(1975) 3 SCC 311 : 1974 SCC (Cri) 919 : AIR 1975 SC 12], Machhi Singh v. State of Punjab [(1983) 3 SCC 470 : 1983 SCC (Cri) 681], Appabhai v. State of Gujarat [1988 Supp SCC 241 : 1988 SCC (Cri) 559 : AIR 1988 SC 696], Bonkya v. State of Maharashtra [(1995) 6 SCC 447 : 1995 SCC (Cri) 1113], Bhag Singh [(1997) 7 SCC 712 : 1997 SCC (Cri) 1163], Mohar v. State of U.P. [(2002) 7 SCC 606 : 2003 SCC (Cri) 121] (SCC p. 606b-c), Dinesh Kumar v. State of Rajasthan [(2008) 8 SCC 270 : (2008) 3 SCC (Cri) 472], Vishnu v. State of Rajasthan [(2009) 10 SCC 477 : (2010) 1 SCC (Cri) 302], Annareddy Sambasiva Reddy v. State of A.P. [(2009) 12 SCC 546 : (2010) 1 SCC (Cri) 630] and Balraje v. State of Maharashtra [(2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211] 29. While deciding this issue, a similar view was taken in Jarnail Singh v. State of Punjab [(2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107], where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under: (SCC pp. 726-27, paras 28-29)

"28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In Shivalingappa Kallayanappa v. State of Karnataka [1994 Supp (3) SCC 235 : 1994 SCC (Cri) 1694] this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that

he suffered the injury during the said incident.

In State of U.P. v. Kishan Chand [(2004) 7 SCC 629 : 2004 SCC (Cri) 2021] a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide Krishan v. State of Haryana [(2006) 12 SCC 459 : (2007) 2 SCC (Cri) 214]). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the Courts below."

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein." In this very judgment, relationship between the medical evidence and ocular evidence was also discussed, based on number of earlier precedents, as under: "33. In State of Haryana v. Bhagirath [(1999) 5 SCC 96 : 1999 SCC (Cri) 658] it was held as follows: (SCC p. 101, para 15)

"15. The opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the Court. If the opinion is bereft of logic or objectivity, the Court is not obliged to go by that opinion. After all opinion is what is formed in the mind of a person regarding a fact situation. If one doctor forms one opinion and another doctor forms a different opinion on the same facts it is open to the Judge to adopt the view which is more objective or probable. Similarly if the opinion given by one doctor is not consistent with probability the Court has no liability to go by that opinion merely because it is said by the doctor. Of course, due weight must be given to opinions given by persons who are experts in the particular subject."

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(Emphasis supplied)

35. In a recent judgement rendered by Hon'ble Apex Court in Neeraj Sharma vs. State of Chhattisgarh, (2024) 3 SCC 125 in respect of importance of injured witness in a criminal trial, the Hon'ble Apex Court has, in paragraphs 22 and 23, held as under:

"22. The importance of injured witness in a criminal trial cannot be over stated. Unless there are compelling circumstances or evidence placed by the defence to doubt such a witness, this has to be accepted as an extremely valuable evidence in a criminal Trial.

23. In the case of Balu Sudam Khalde v. State of Maharashtra 2023 SCC OnLine SC 355 this Court summed up the principles which are to be kept in mind when appreciating the evidence of an injured eye-witness. This court held as follows:

"26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded."

(Emphasis supplied)

11. PW-1 Pyare Lal Mishra informant has stated that there was enmity due to election of Pradhanship of the village and his side had voted in favour of Hari Shankar and accused persons were supporters of Mewa Lal. The real nephew of accused Bhagirathi namely Samar Bahadur was also a candidate in the election. Mewa Lal had been elected as Pradhan and on account of this there was enmity between the informant side and accused side. This witness has supported the prosecution case stating that about three years and three months from the date of his deposition in the trial court he was sitting along with Vidya Shankar, Adya Prasad, Anil Kumar, Murlidhar and Shambhu at his door and at this point Bala Shankar, Nand Lal, Mangaru, Rajmani and Bhagirathi all the accused persons reached there. Accused Bala Shankar was armed with 'ballam' and rest of the accused persons were armed with 'lathi'. Bhagirathi exhorted other accused persons to kill them. On the above exhortation of Bagirathi, Bala Shankar gave blows of 'ballam' to Vidya Shankar and rest of the accused gave blows of 'lathi' to his mother Sohagin and Adya Prasad.

12. This witness has further stated that Bala Shankar also gave blow of 'ballam' to his mother. Anil Kumar, Shambhu and

Murlidhar intervened and saved them. He got the report written by Murlidhar and lodged. This witness has identified his signature on Ext. ka-1. In cross examination this witness has been consistent in his testimony and defence has not been able to extract any material contradiction in his testimony.

13. PW-2 Adya Prasad, who is injured witness has supported prosecution case in his examination-in-chief and has stated that the incident took place at 02:00 P.M. on 21.08.1982 when he was sitting at the door of Pyare lal and Shambhu, Murlidhar, Anil Kumar were also sitting there. At that point of time Bala Shankar, Nand Lal, Mangaru, Rajmani and Bhagirathi reached there. Bala Shankar was armed with 'ballam' and rest of the accused were armed with 'lathi'. Bhagirathi gave exhortation to other accused persons and on that exhortation Bala Shankar gave blow of 'ballam' to Vidya Shankar and when his mother tried to save him, she was also given blow of 'ballam' by him and rest of the accused gave 'lathi' blow to his mother. This witness has further stated that when he rushed to save them, Mangaru and Rajmani assaulted him and Pyare Lal by 'lathi'. Pyare Lal, Sohagin and he received blows of 'lathi'. He further states that Vidya Shankar died due to injuries caused by 'ballam'. This witness is an injured witness and has been consistent in his cross-examination. The defence has not been able to extract any materiel contradiction in his testimony.

14. PW-3 Dr. Chandra Bhusan Upaddhyay has medicolegally examined Adya Prasad and has found following injuries:

"1- Contusion 9cm x 2cm on right thigh 14 cm above right knee joint.

2- Contusion 7 cm x 2 cm right thigh 24 cm above right knee joint.

3- Traumatic swelling 4 cm x 2 cm on right fore arm.

4- Abrasion 1cm x 1/2cm in left fore arm.

5- Contusion 7cm x 3cm on right back on scapula.

6- Contusion 5cm x 4cm on left back.

7- Abrasion 4cm x 2cm on left back."

In the opinion of Doctor all the injuries were simple in nature and were caused by blunt object and were 1.25 days old.

15. Similarly, PW-3 has also medicolegally examined Sohagin and has found following injuries:-

"1- Incised wound 6cm x 1/2cm scalp deep 4 cm above left eye brow.

2- Traumatic swelling 6cm x 4cm on right palm.

3- Abrasion 1cm x 1cm right index finger.

4- Abrasion 1cm x 1/2cm on right upper arm.

5- Contusion 4cm x 1cm on right back."

16. Similarly, PW-3 has also medicolegally examined Pyare Lal Mishra and found
following injuries:-

"1- Abrasion 1/2cm x 1/2cm on left thigh.

2- Lacerated 2cm x 1cm x 1/2cm left foot."

17. This witness has also examined Vidya Shankar and found the following injuries:-

"1- Punctured wound 7cm x 3cm depths food material came out indicating puncture of intestined 11cm right nipple.

2- Punctured wound 3cm x 1cm x 4cm dept at left back 23cm below left nipple."

18. PW-4 Dr. R.K. Singh has conducted post mortem of the deceased Vidya Shankar and reported that the death was caused due to shock and haemorrhage as a result of following injuries-:

"1- Septic punctured stiched wound obliqvely placed on front of abdomen crossing the mid line transversely. The wound is clean cut measuring 3.5cm x 0.5cm x skin deep. Muscle passing through the penitorial tissue entering into abdomen cavity thus converting it into penetrating wound corresponding to this wound the interior surface of stomach is penetrated which repair but the cut gut stiches Septic surgical wound stiched 7cm x 1cm on the right side of the front of abdomen. Pus is coming out from the

2- Stiche septic stabbed wound 1.5 cm x .5 on on the outer aspect of the lowest portion of the left side of chest in left posterior axillary. 24 cm below the left axillary. The wound is just cavity deep.

3- Scabed linior abrasion some what semicular in shape 4 cm long on the palm of the right hand towards literal side."

19. PW-5 Police Officer is formal witness, who has proved the inquest of the deceased. PW-6 Investigating Officer is also formal witness,, who has proved the chik F.I.R. and he has testified regarding investigation being done by him and has proved various police papers. PW-7 Jamwant Singh is Constable of Police, who has given an affidavit and he is a formal witness.

20. The defence has produced two witnesses namely DW-1 Mewa Lal and DW-2 Sahab Lal. DW-1 has stated that he is Pradhan of village. The election of 'Pradhanship' took place on 21.06.1982. This witness has further stated that Hari Shankar Mishra, Samar Bahadur, Bansh Raj and he himself were candidates for Pradhanship. This witness has stated that no 'marpeet' took place during the election and he had heard that a quarrel took place between the voters at about 02:00 P.M. This witness has stated that after hearing that the quarrel had taken place he reached there by 2:15 P.M. then no body was there. This witness has further stated that Vidya Shankar received stab injuries and he was lying there. He did not see any other person. This witness has further stated that he did not see family members of Vidya Shankar there, later on police vehicle came in which Sub-Inspector and Constables took the injured Vidya Shankar in their vehicle. In cross-examination this witness has stated that he did not see any one assaulting Vidya Shankar and no one had even stabbed him in front of him.

21. DW-2 Sahab lal has stated that on 21.06.1982 on the date of election for Pradhanship he had gone to cast vote and after casting his vote he was taking rest under the 'Neem tree' and at about 2:00-02:30 P.M. he heard some uproar and on hearing the uproar he went there and saw that an altercation was going on between voters and they were fighting with 'lathis' and other weapons. Then he saw that someone gave stab blow to Vidya Shankar

but he did not see as to who inflicted the said blow. Adya Prasad and Subhagi were also injured but they did not see as to who assaulted them. In cross-examination this witness has stated that he had heard that knife blow was given but he cannot say that it was knife blow or it was blow of 'ballam'. Similarly this witness has stated that he did not identify the person who inflicted the injuries on Adya Prasad and Vidya Shankar and Shubhagi.

22. PW-1 is eye-witness to the occurrence and as discussed above, is wholly reliable and PW-2 is an injured witness who is also wholly reliable. It is well settled that prosecution is under no obligation to produce each and every witness. It is well settled law that it is the quality and not the quantity of evidence which matters.

23. Even DW-1 and DW-2 have stated that the deceased Vidya Shankar had received knife blows and other injured Adya Prasad and Shubhagi had received 'lathi' blows, however these witnesses have stated that they did not see as to who inflicted the said injuries on them.

24. The testimonies of PW-1 and PW-2 have been corroborated by medical evidence of PW-3 and PW-4. The injuries on the person of the deceased Vidya Shankar and other injured persons have already been noticed above and remaining witnesses are of formal nature.

25. From the overall appreciation of evidence and all the witnesses, we find that the incident as alleged by the prosecution has been proved beyond reasonable doubt. Now the question arises that under what section the accused persons are liable to be convicted?

26. PW-4 Dr. R.K. Singh who conducted the post mortem of the deceased Vidya Shankar has stated in his examination-in-chief that it was difficult for him to say that the deceased had died due to injuries received by him on 21.06.1982 at 02:00 P.M., because duration of the injuries could be ascertained only when a person is alive. However, this witness has stated that injuries of the deceased could have been caused by 'ballam' and the injuries were sufficient in the ordinary course of nature to cause death.

27. In the opinion of this witness, the death of the deceased was caused due to septicaemia arising out of ante mortem injuries and the death of the deceased took place in the District Hospital, Jaunpur on 29.06.1982 at 04:50 A.M.

28. The incident took place on 21.06.1982 and the deceased died on 29.06.1982 i.e. after about eight days. In the opinion of Doctor the cause of death was septicaemia due to ante mortem injuries.

29. Hon'ble Supreme Court in the case of **Virsa Singh Vs. State of Punjab 1958 AIR (SC) 465** has held as under:-

"(9) This is a favourite argument in this kind of case but is fallacious. If there is an intention to inflict an injury that is sufficient to cause death in the ordinary course of nature, then the intention is to kill and in that event, the "thirdly " would be unnecessary because the act would fall under the first part of the section, namely-

" If the act by which the death is caused is done with the intention of causing death."

In our opinion, the two clauses are disjunctive and separate. The first is subjective to the offender:

"If it is done with the intention of causing bodily injury to any person."

It must, of course, first be found that bodily injury was caused and the nature of the injury must be established, that is to say, whether the injury is on the leg or the arm or the stomach, how deep it penetrated, whether any vital organs were cut and so forth. These are purely objective facts and leave no room for inference or deduction: to that extent the enquiry is objective; but when it comes to the question of intention, that is subjective to the offender and it must be proved that he had an intention to cause the bodily injury that is found to be present.

(10) Once that is found, the enquiry shifts to the next clause-

" and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death."

The first part of this is descriptive of the earlier part of the section, namely, the infliction of bodily injury with the intention to inflict it, that is to say, if the circumstances justify an inference that a man's intention was only to inflict a blow on the lower part of the leg, or some lesser blow, and it can be shown that the blow landed in the region of the heart by accident, then, though all injury to the heart is shown to be present, the intention to inflict ail injury in that region, or of that nature, is not proved. In that case, the first part of the clause does not come into play. But once it is proved that there was an intention to inflict the injury that is found to be present, then the earlier part of the clause we are now examining-

"and the bodily injury intended to be inflicted "

is merely descriptive. All it means is that it is not enough to prove that the injury found to be present is sufficient to cause death in the ordinary course of nature; it must in addition be shown that the injury is of the kind that falls within the earlier clause, namely, that the injury found to be present was the injury that was intended to be inflicted. Whether it was sufficient to cause death in the ordinary course of nature is a matter of inference or deduction from the proved facts about the nature of the injury and has nothing to do with the question of intention.

(11) In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarly proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to enquire into every last detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or a kidney or bowels, be cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broadbased and simple and based on common sense: the kind of enquiry that " twelve good men and true could readily appreciate and understand.

(12) To put it shortly, the prosecution must prove the following facts before it can bring a case under S. 300 "thirdly " ;

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that

it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

(13) Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under S,300 "thirdly". It does not matter that there was no intention to cause death. It does not matter that there was Do intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced that the injury was accidental or otherwise unintentional."

30. Since the death of the deceased took place after about eight days of the incident and cause of death is septicaemia due to ante mortem injuries, we find that the case of the surviving appellants Bala Shankar, Rajmani and Mangharu falls under Section 304 Part-II/149 instead of Section 302/149.

31. In view of the above the conviction of the appellants is altered to Section 304 Part-II/149 I.P.C. instead of Section 302/149 I.P.C. The conviction of the appellants under various other sections are just and proper and they remain unaltered. The incident took place more than 43 years ago and now the appellant Bala Shankar is aged about 78 years, appellant Rajmani is aged about 78 years and appellant Mangaru is aged about 89 years. For the above reason we find that the period of sentence already undergone by them is sufficient to meet the ends of justice. Further they are directed to pay fine of Rs. 25,000/- each within one month, out of which Rs.60,000/- shall be paid to the legal heirs of the deceased Vidya Shankar. In default of payment of fine the appellants shall undergo imprisonment for six months in lieu of fine.

32. With the aforesaid modification, the appeal stands **partly allowed.**

33. Let a copy of this order be communicated by the Registrar (Compliance) to the Chief Judicial Magistrate, Jaunpur for compliance forthwith.

34. The Chief Judicial Magistrate, Jaunpur is also directed to send his compliance report within two months to Court from the date of receipt of this order.

(2025) 8 ILRA 911
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 13.08.2025

BEFORE

THE HON'BLE SHEKHAR KUMAR YADAV, J.

Criminal Appeal No. 4122 of 2025

Abdul Raseed ...Appellant
Versus
State of U.P. & Anr. ...Respondents

Counsel for the Appellant:
Juned Alam

Counsel for the Respondents:
G.A.

Issues for Consideration

Whether the rejection of bail by the Special Judge (SC/ST Act) under **Section 14-A(2) of the SC/ST (Prevention of Atrocities) Act, 1989** was justified, and whether, having regard to the nature of allegations, absence of medical corroboration, contradictions in the victim's statement, lack of criminal antecedents and prolonged pre-trial incarceration, the appellant was entitled to be enlarged on bail.

Headnotes

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — s.14-A(2), ss.3(1)(da), 3(1)(ha), 3(2)(v); Indian Penal Code, 1860 — ss.147, 323, 376, 452, 504, 506; 376-D — Bail — Scope of appellate interference — Prima facie case — Medical corroboration — Contradictions in victim's statement — No criminal antecedents — Prolonged custody — Bail granted.

Held:

An appeal under Section 14-A(2) of the SC/ST Act is maintainable against an order rejecting bail, and the High Court is empowered to examine whether the order suffers from **infirmity or illegality**. Bail cannot be denied mechanically merely on the gravity of allegations, particularly when liberty of the accused is at stake. [Paras 1, 6–7]

In the present case, the allegations against the appellant disclosed **no medical corroboration** of sexual assault. The statements of the victim recorded under the provisions of the **Bharatiya Nagarik Suraksha Sanhita** disclosed material inconsistencies. The victim was a major woman aged about 29 years. The appellant had **no previous criminal history** and was in custody since 26.11.2024. [Paras 3–4, 7]

The essential ingredients to attract the offences under the SC/ST Act were prima facie **not clearly established**, and the trial had not commenced with no likelihood of early conclusion. Continued incarceration in such circumstances was unwarranted. [Paras 4, 7]

The Special Judge erred in rejecting the bail application without properly appreciating the aforesaid factors. The impugned orders were found to suffer from infirmity and illegality. Bail granted with conditions to ensure presence of the accused and to prevent misuse of liberty. [Paras 7–9]

Bail granted. (E-14)

Case Law Cited

List of Acts / Statutes

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; Indian Penal Code, 1860; Bharatiya Nagarik Suraksha Sanhita, 2023**.**

List of Keywords

Bail; Sexual offence; Absence of medical evidence; Contradictions in victim's statement; No criminal antecedents; Prolonged custody.

Case Arising From

Orders dated **13.01.2025** and **05.02.2025** passed by the Additional Sessions Judge / Special Judge (SC/ST Act), Kushinagar at Padrauna, rejecting bail in **Bail Application No. 3087 of 2024** and **Bail Application No. 292 of 2025**, arising out of **Case Crime No. 393 of 2024**, Police Station Ahirauli Bazar, District Kushinagar.

Appearance for Parties
For the Appellants: Juned Alam
For the State: Government Advocate

(Delivered by Hon'ble Shekhar Kumar Yadav, J.)

Ref: Criminal Misc. Bail Application No.01 of 2025

1. The present criminal appeal under Section 14-A(2) Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been filed by the appellant to set aside the bail rejection orders dated 13.01.2025 and 05.02.2025 passed by Additional Sessions Judge/Special Judge (SC/ST Act) Kushinagar at Padrauna passed in 1st Bail Application No.3087 of 2024 in Case Crime No.393 of 2024, under Sections 147, 323, 376, 452, 504, 506 IPC and Section 3(1)(Da), 3(1) (ha) and 3(2) (V) SC/ST Act and 2nd Bail Application No.292 of 2025, under Section 376D IPC, Police Station Ahirauli Bazar, District Kushinagar.

2. Heard learned counsel for the appellant, the learned AGA for the State-respondent no.1 and perused the entire record. Despite service of notice, none has appeared on behalf of respondent no.2.

3. According to the prosecution case, on 10.05.2024 at about 6.30 pm in the evening when the informant was alone in her house, the accused persons, namely, Abdul Aziz and Abdul Rasheed entered into the house of the victim and started abusing her. Both accused pushed the victim inside the house and closed the door from inside, thereafter, co-accused Abdul Aziz tore her cloths and threw her on the ground. It is further alleged that accused appellant started pressing the private part of the victim and started moving his finger inside her private part. It is further alleged that when the victim tried to shout, the accused Abdul Aziz pressed her mouth, thereafter, both the accused persons ran away from the spot giving threat.

4. Submission of learned counsel for the appellant is that the appellant is innocent and has been falsely implicated in this case. The appellant has not committed any offence as alleged in the impugned FIR. Further submission is that the prosecution story is totally false and fabricated. As per statement of the victim recorded under Sections 180 and 183 of BNSS, there are material contradictions in her statement. The victim is aged about 29 years. No any medical report is supported the prosecution story. Essential ingredients to constitute the offence under the SC/ST Act are lacking in the matter. Further submission is that trial has not been started as yet and there is no possibility of early conclusion of trial, hence, the appellant may be enlarged on bail. Appellant is languishing in jail since 26.11.2024 having no previous criminal history. Further submission is that the impugned order rejecting the bail application of the appellant suffers from infirmity and illegality warranting interference by this Court.

5. On the other hand, learned A.G.A. opposing the prayer for bail has submitted that the appellant committed the present offence having knowledge that the victim belonged to S.C./S.T. Community. There is no infirmity or illegality in the impugned order.

6. I have considered the rival submissions made by the learned counsel for the parties and have gone through the

entire record including the impugned order carefully.

7. Having regard to the facts and circumstances of the case and keeping in view the nature of the offence, evidence, complicity of the accused, role assigned to the present appellant and the nature of injury, the Court is of the opinion that the appellant has made out a case for bail. The Court below erred in rejecting the bail application of the appellant. The impugned order suffers from infirmity and illegality and the same is liable to be set-aside and the appeal is liable to be allowed.

8. Accordingly, the appeal is **allowed** and the impugned order rejecting the bail application of the appellant is hereby set-aside.

9. Let the appellant- **Abdul Raseed**, involved in aforesaid case crime number be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The appellant will not tamper with the evidence during the trial.

(ii) The appellant will not pressurize/ intimidate the prosecution witness.

(iii) The appellant will appear before the trial court on the date fixed, unless personal presence is exempted.

(iv) The appellant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

(v) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

10. In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

(2025) 8 ILRA 913
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 25.08.2025

BEFORE

THE HON'BLE NALIN KUMAR SRIVASTAVA, J.

Criminal Revision No. 1669 of 2025

Shankar Singh ...Revisionist
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Revisionist:
Ajay Sengar, Akshay Raj Singh

Counsel for the Opposite Parties:
G.A.

Issue for Consideration

Whether, in view of Section 12 of the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986, the Sessions Trial arising out of the IPC case was liable to be kept in abeyance when a Special Sessions Trial under the Gangsters Act arising out of the same incident was pending against the same accused.

Headnotes

U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 — s.12 — Criminal Trial — Precedence of trial — Special Court — Meaning of "kept in abeyance" — Concurrent proceedings — Mandatory nature — Error of Sessions Court — Interference in revision-revision allowed

HELD:

Section 12 of the Gangsters Act mandates that the trial of an offence by a Special Court under the Act **shall have precedence** over the trial of any other case against the accused pending before any other court (not being a Special Court). The expression "shall remain in abeyance" does not mean permanent stoppage of the other proceedings but obligates the court to **defer and avoid clash of proceedings**, giving priority to the Gangsters Act trial. [Paras 9–11, 15]

The object of Section 12 is to ensure **speedy conclusion of trials under the Gangsters Act** and to prevent an accused from facing simultaneous trials in different courts. The provision is mandatory in nature, and the use of the word "shall" casts a duty upon the trial court to accord precedence to the Gangsters Act case. [Paras 10, 15]

The view taken by the trial court that Section 12 does not confer precedence to the Gangsters Act trial over the Sessions Trial under the IPC was legally unsustainable and contrary to the settled interpretation laid down by the Supreme Court and this Court. [Paras 6, 16]

Accordingly, the impugned order rejecting the application under Section 12 of the Gangsters Act was set aside; the Sessions Trial under the IPC was directed to remain in abeyance, and the Special Court was directed to **expedite the Gangsters Act trial**. [Paras 16–18]

Revision allowed. (E-14)

Case Law Cited

***Dharmendra Kirthal v. State of U.P.,* AIR 2013 SC 2569 — relied on; *Rohit Singh v. State of U.P.*, 2016 (95) ACC 350 (All) — followed; *Vipul @ Alok Singh and others v. State of U.P.*, Application u/s 482 No. 23736 of 2023, decided on 12.07.2023 — referred to.**

List of Acts / Statutes

Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986; Code of Criminal Procedure, 1973; Indian Penal Code, 1860

List of Keywords

Gangsters Act; Precedence of trial; Special Court; Sessions Trial; Kept in abeyance; Concurrent proceedings; Mandatory provision; Speedy trial.

Case Arising From

Order dated 03.03.2025 passed by the Additional District & Sessions Judge / Special Judge (D.A.A.), Lalitpur in Sessions Trial No. 0934 of 2023 (State of U.P. v. Pancham Singh and others), arising out of Case Crime No. 0342 of 2023, Police Station Talbehat, District Lalitpur**.**

Appearance for Parties

For the Revisionist: Sri Ajay Sengar, Sri Akshay Raj Singh.

For the Respondent : Learned Government Advocate**.**

(Delivered by Hon'ble Nalin Kumar Srivastava, J.)

1. Heard Sri Ajay Sengar, learned counsel for the revisionist and learned A.G.A. for the State and perused the material available on record.

2. Since the case before the trial court is a State case, there is no need to issue notice to opposite party no.2 - the informant.

3. This revision is directed against the order dated 03.03.2025 passed by learned Additional District & Sessions Judge / Special Judge (D.A.A.), Lalitpur in Sessions Trial No.0934 of 2023 (State of U.P. Vs. Pancham Singh and others) arising out of Case Crime No.0342 of 2023 under Sections 147, 302/149, 323/149, 427, 504, 506 IPC, Police Station Talbehat, District Lalitpur whereby the Application 70C-2 filed by the revisionist under Section 12 of the U.P. Gangsters & Anti-Social Activities (Prevention) Act, 1986 (hereinafter referred to as Gangster Act) was rejected.

4. In the present matter, there are two trials pending in respect of same incident. First is registered as Sessions Trial No.0934 of 2023 (State of U.P. Vs. Pancham Singh and others) arising out of Case Crime No.0342 of 2023 under Sections 147, 302/149, 323/149, 427, 504, 506 IPC, Police Station Talbehat, District Lalitpur which is going on before the Court of the learned Sessions Judge, Lalitpur and in the second one i.e. Special Sessions Trial No.01 of 2024 arising out of Case Crime No.0001 of 2024 under Section 2 (b) (i) of the U.P. Gangsters & Anti-Social Activities (Prevention) Act, 1986, Police Station Talbehat, District Lalitpur, wherein charge-sheet has been submitted, the trial has yet to begin.

5. Application 70C-2 moved by the accused persons in Sessions Trial No.0934 of 2023 to keep the proceedings of the said Sessions Trial in abeyance on the ground that proceedings under the Gangster case against the same accused persons are going on in the Special Court following the mandatory provisions of Section 12 of the Gangster Act but the same was disallowed by the learned Addl. Sessions Judge / Special Judge (D.A.A.), Lalitpur vide order dated 03.03.2025.

6. The impugned order was passed by the learned Addl. Sessions Judge on the ground that there is no provision under Section 12 of the Gangsters Act that the trial of any offence under the Act triable by a Special Court shall have precedence over any other case against the accused in any other Court. There is no justification for providing preference to the Gangster case upon the other Session Trial. Therefore the provisions of Section 12 of the Gangsters Act are not applicable in this case.

7. Learned counsel for the revisionist submitted that the learned trial court has not appreciated the submissions advanced on behalf of the accused - revisionist in right perspective and has illegally passed the impugned order rejecting the application 70C-2 moved by the accused - revisionist. It is further submitted that according to Section 12 of the Gangsters Act, proceedings under the said Act shall take priority over any other proceedings in the cases listed in the gang chart. In support of his contention the learned counsel for the revisionist has placed reliance on the decision of the Hon'ble Supreme Court in the case of **Dharmendra Kirthal Vs. State of U.P. and another, AIR 2013 Supreme Court 2569**.

8. On the other hand, learned A.G.A. opposed the revision and vehemently submitted that the court concerned committed no mistake in passing the impugned order.

9. **Section 12 of the Gangsters Act - Provisions and Object**

Before proceeding further, it would be desirable to quote the provisions of Section 12 of the Uttar Pradesh Gangsters And Anti-Social Activities (Prevention) Act, 1986, which may be read as follows :-

"12. Trial by Special Court to have precedence –

The trial under this Act of any offence by Special Court shall have precedence over the trial of any other case against the accused in any other court (not being a Special Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall remain in abeyance."

10. From the perusal of the aforesaid legal provision it is manifestly clear that if one case under the Gangsters Act is going on, the precedence shall be given to the said case which should be decided first in comparison to the other cases pending against the accused persons.

11. The object behind the said distinguished provision was elaborated by the Lucknow Bench of this Court in **Rohit Singh Vs. State of U.P., 2016 (95) ACC 350 (ALL)** wherein it was explained that intention of legislature behind enacting Section 12 is that case under the Gangsters Act should not be delayed. Other cases can go on but clash of dates has to be avoided and for this purpose 'kept in abeyance' would mean that if dates are common then case under the Gangsters Act will get precedence.

12. **Constitutional Validity -** The object and constitutional validity of the legal provision under reference was assailed and put under challenge before the Hon'ble Supreme Court in **Dharmendra Kirthal (supra)** case on the grounds that it will delay other criminal cases in which accused was facing trial in other courts. Delay will violate the right of speedy trial and secondly if the accused was in jail, he will have to languish in custody. It is in the nature of Preventive detention. The Hon'ble Supreme Court replied the contentions by holding that by virtue of Section 12 accused does not face trial in two cases simultaneously and a case before the Special Court does not linger owing to clash of dates in trial. In other cases accused can seek bail under Criminal Procedure Code and be at liberty.

13. Further the Hon'ble Apex Court while dealing with the various aspects of the controversy repelled all the contentions and upheld the validity of the provisions contained under section 12. The significant part of the said decision is found in Paragraph 32 of the judgment quoted above which is extracted as hereinbelow –

"32. The present provision is to be tested on the touchstone of the aforesaid constitutional principle. The provision clearly mandates that the trial under this Act of any offence by the Special Court shall have precedence and shall be concluded in preference to the trial in such other courts to achieve the said purpose. The legislature thought it appropriate to provide that the trial of such other case shall remain in abeyance. It is apt to note here that "any other case" against the accused in "any other court" does not include the Special Court. The emphasis is on speedy trial and not denial of it. The legislature has incorporated such a provision so that an accused does not face trial in two cases simultaneously and a case before the Special Court does not linger owing to clash of dates in trial. It is also worthy to note that the Special Court has been conferred jurisdiction under sub-section (1) of Section 8 of the Act to try any other offences with which the accused may, under any other law for the time being in force, have been charged and proceeded at the same trial."

14. This Court in the case of **Vipul @ Alok Singh and 2 others Vs. State of U.P. and another vide order dated 12.7.2023 passed in Application u/s 482 No. - 23736 of 2023** observed as under :

"It is clear that intention of legislature behind enacting the Section 12 of Gangsters Act is that the case under the Gangsters Act should not be delayed and

other case can also go on but clash of dates should be avoided and for this purpose, 'kept in abeyance' would mean, if dates in both the cases are common, then the case under the Gangsters Act will get precedence."

15. Hence, it is now explicitly clear that the intention of the legislature is to provide precedence to the cases under the Gangsters Act in comparison to any other case pending against the same accused in any other Court. It never means that the legislature intended to stop the proceedings of the said other case completely but the legislature intended that in case of two legal proceedings pending in respect of the same accused, it shall not clash with each other. Since the case under the Gangsters Act is a special trial for the specially legislated Act to deal with the matters of Gangsters, it is to be given priority in comparison to other cases. The use of word 'Shall' in Section 12 of the Gangsters Act casts a duty upon the trial court itself to always pay attention to the situation that being a special enactment the conclusive end of the said Act be always preferable against the trial of other cases related to the same accused in any other Court. It is significant to note here that the legislature intended to certify the category of the Gangsters Act as a Special Act and due to this reason the Gangsters Act itself clarifies that the cases to which the Gangsters Act shall be given preference are required to be normal trial and it should not be pending before any Special Court, as reveals by sifting the provisions of Section 12 of the Act meaning thereby that the legislature recognized the special category of cases pending in a Special Court by using the words 'not being a Special Court'. Hence, the preferential part of Section 12 of the Act takes care of all the Special Courts as well as the Gangsters Act.

16. Having considered the rival submissions made by learned counsel for the parties and taking into consideration the provisions of Section 12 of the Gangsters Act and the law laid down by Hon'ble Apex Court as well as by this Court, the Court is of the view that the impugned order is not sustainable in the eye of law and the same is liable to be set-aside.

17. Accordingly the impugned order dated 03.03.2025 is set-aside. The Sessions Trial No.0934 of 2023 (State of U.P. Vs. Pancham Singh and others) which is running concurrently before the Court of Sessions Judge, Lalitpur, shall be kept in abeyance and the learned Special Judge is directed to expedite the proceedings of Gangster Sessions Trial No.01 of 2024 to satisfy the intent of mandatory provisions contained in Section 12 of the Gangsters Act.

18. With the above observations, the revision stands allowed.

(2025) 8 ILRA 917
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 14.08.2025

BEFORE

THE HON'BLE AJAY BHANOT, J.

Writ A No. 4063 of 2025

Mrs. Meghna Sanjeev Kumar ...Petitioner
Versus
Punjab & Sind Bank & Anr. ...Respondents

Counsel for the Petitioner:
Ravindra Narayan Singh, Vishal Kashyap

Counsel for the Respondents:
Sundeep Agarwal

Issue for consideration

Whether petitioner's transfer can be held valid in view of the pending complaints against the petitioner?

Headnotes

A. Service Law - A Government Servant has no vested right to remain posted at a place of his choice nor can he insist that he be posted at one place or the other. If there is a complaint against the employee, the plea that the employee cannot be transferred on such complaint deserves to be rejected outrightly inasmuch as on initiation of disciplinary proceedings against the employee he can always be transferred. (Para 20)

Admittedly the functioning of the bank started getting adversely affected on account of the petitioner's conduct, frayed relations with officials and other negative reports of her performance. The Court is not examining the merits or correctness of the complaints or adverse material against the petitioner. Suffice to say that **the discretion to take disciplinary action for acts of misconduct against an employee or to transfer such employee on complaints lies with the employer. The employer may also adopt both the said options simultaneously in the facts of a case. No hard and fast rule can be laid down which will fetter discretion of the employer.** Each case will have to be judged on its peculiar facts and circumstances and it is for the employer to take a decision after considering all relevant factors. In the facts of this case it was open to the respondent bank to transfer the petitioner to another branch and provide her an opportunity to perform better in a new environment. The impugned order of transfer cannot be faulted with. The transfer order does not preclude the bank to examine the veracity of the complaints against petitioner in an enquiry, or to take departmental action as per law. (Para 22, 24)

This judgment is without prejudice to the rights of the petitioner to defend herself against the complaints, and in the same breath the order does not fetter the right of the employer to take out appropriate proceedings against the petitioner as per law. (Para 23)

Writ petition dismissed. (E-4)

Case Law Cited:

1. Union of India Vs. Janardhan Debnath and Anr., 2004 (4) SCC 245 (Para 16)
2. Rajendra Singh Vs. State of U.P., 2009 (15) SCC 178 (Para 17)
3. Registrar General High Court Vs. R. Perachi, 2011 (12) SCC 137 (Para 18)
4. Dr. Anil Kumar Pradhan Vs. State of U.P., 2010 SCC Online ALL 1152 (Para 19)
5. Shiv Kumar Vs. State of U.P., and 3 others, Writ-A No. 13262 of 2023 (Para 20)
6. N.K. Singh Vs. Union of India, AIR 1995 SC 423 (Para 21)

List of Keywords

Service Law, Transfer, seniority, salary.

Appearances for Parties:

For Appellant: Ravindra Narayan Singh, Vishal Kashyap
For Respondent: Sundeep Agarwal

(Delivered by Hon'ble Ajay Bhanot, J.)

1. Heard Sri Ravindra Narayan Singh, learned counsel for the petitioner and Sri Sundeep Agarwal, learned counsel for the respondents.

2. By the impugned order dated 10.01.2025 the petitioner has been transferred from Prayagraj branch to Bisani Pratapgarh.

3. The petitioner has assailed the impugned transfer order on the footing that it is actuated by mala fide and is penal in nature. Further as per the petitioner the transfer has been made on the basis of

complaints which in itself is contrary to law.

4. The grounds on which the transfer order has been assailed shall be examined in the succeeding paragraphs.

5. A bare perusal of the transfer order and the attending circumstances discloses that a transfer order is not punitive in any manner. The petitioner has not been demoted to a lower post nor her salary has been lowered. The seniority of the petitioner does not get affected in any adverse manner.

6. The petitioner was posted at Prayagraj for a very long period of time between 2007-2025, except for a brief interlude from 19.11.2022 to 10.06.2024 when she was posted at Raipur. It is noteworthy that the husband of the petitioner is in the Railways and was posted at Raipur. Moreover district Pratapgarh is a neighbouring city of Prayagraj and the two cities are well connected.

7. Transfers can be challenged only on limited grounds namely, infraction of statutory provision or mala fides. No violation of statutory provision has been pleaded or established before this Court.

8. Allegations of mala fides can be enquired into only if they are specifically pleaded with material particulars. Moreover, the individual against whom such allegations are made has to be arrayed as co-respondent. In the instant case both the essential ingredients to prove mala fides are absent in the writ petition.

9. In fact the pleadings related to mala fides are bald, vague and self serving. Mere differences of opinion or compatibility issues may not be sufficient to attribute mala fides to the action of the superior authority in the facts and circumstances of a case. Mala fides are not established from the pleadings. The official against whom mala fides are alleged is arrayed as a party. The ground that the transfer order is vitiated by mala fides is accordingly rejected.

10. The petitioner also claims reliance on certain provisions of the transfer policy. The transfer policy does not confer any enforceable rights upon the petitioner. Further the power of an employer to transfer an employee is not derived from the transfer policy. Absence of provisions to transfer on administrative grounds in the transfer policy does not denude the authority of the employer to make transfers on said grounds.

11. Transfer is an incident of service. No employee has a vested right to be transferred to any place of their choice. Transfer policy has to subserve the larger interests of the institution.

12. The question of the validity of the transfer in view of the the pending complaints against the petitioner will now be examined.

13. The petitioner has stated in her writ petition that she was transferred on complaints. A fact finding enquiry was made in regard to the said complaints. The transfer order could not have been made without affording an opportunity of hearing to the petitioner.

14. The counter affidavit clearly establishes the nexus between the aforesaid complaints against the petitioner and the transfer order. The counter affidavit records

frequent and unauthorised absence of the petitioner from duty. The petitioner also took leave without prior sanction and was in the habit of taking frequent leaves before and after weekend holidays. According to the respondents the petitioner indulged in acts of insubordination against superior officers. The conduct of the petitioner hampered the business of the bank. An enquiry was got conducted into complaints against the petitioner. One of the superior officers of the petitioner also filed an application before the competent authorities that he apprehended a false complaint of sexual harassment by the petitioner since he had taken to her task for her deficient performance. The fact finding inquiry returned adverse findings against the petitioner.

15. The complaints in the record disclose that the petitioner had some compatibility issues with other officials of the bank and her performance was deficient. These started impacting the functioning of the branch.

16. The issue of transfers based on complaints arose for consideration before the Supreme Court in **Union of India Vs Janardhan Debnath and Anr1. The Supreme Court in Janardhan Debnath (supra)** while examining the scope of challenge to transfer order and the permissibility of transferring an employee on footing of complaints held as under:-

"4. The Union of India took the stand that the transfer was done in public interest and on account of exigencies of administration. It was pointed out that the respondents not only misbehaved with the Director (Postal Services), a senior lady officer, she was confined and dragged from one room to another and this was done with a view to force her to withdraw the charge sheet against the Deputy Post Master. She was abused in filthy language and was physically manhandled. This conduct was certainly unbecoming of an employee and with a view to enforce discipline and to avoid recurrence of such unfortunate incident, they were transferred. There was no violation of either Rule 37 of the Manual or FR 15. The High Court accepted the prayers made in the writ petitions and held that transfer was impermissible in terms of Rule 37 and was in violation of FR 15. It was as a measure of penalty and the seniority and the promotional prospects were likely to be affected.

9. A bare reading of Rule 37 shows that officials of the Department are liable to be transferred to any part of India unless it is expressly ordered otherwise for any particular class or classes of officials. Transfers were not to be ordered except when advisable in the interests of public service. The transfers can be made subject to conditions laid down in FR 15 and 22. The appellant has indicated as to why and under what circumstances the transfers were thought proper in the interests of public service. The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India, 1950 (in short the 'Constitution') had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a

condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan and Anr.,

12. That brings us to the other question as to whether the use of the expression 'undesirable' warranted an enquiry before the transfer. Strong reliance was placed by learned counsel for the respondents on a decision of this Court in Jagdish Mitter v. The Union of India (1964)ILLJ418SC to contend that whenever there is a use of the word 'undesirable' it casts a stigma and it cannot be done without holding a regular enquiry. The submission is clearly without substance. The said case relates to use of the expression 'undesirable' in an order affecting the continuance in service by way of discharge. The decision has therefore no application to the facts of the present case. The manner, nature an extent of exercise to be undertaken by Courts/Tribunals in a case to adjudge whether it casts a stigma or constitutes one by way of punishment would also very much depend upon the consequences flowing from the order and as to whether it adversely affected any service conditions - status, service prospects financially and same yardstick, norms or standards cannot be applied to all category of cases. Transfers unless they involve any such adverse impact or visits the persons concerned with any penal consequences, are not required to be subjected to same type of scrutiny, approach and assessment as in the case of dismissal, discharge, reversion or termination and utmost latitude should be left with the department concerned to enforce discipline, decency and decorum in public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth functioning of the administration.

13. Additionally, it was pointed out by learned counsel for the Union of India that as indicated in the special leave petition itself there was no question of any loss of seniority or promotional prospects. These are the aspects which can be gone into in an appropriate proceeding, if at all there is any adverse order in the matter of seniority or promotion. It was also submitted that transfer was within the same circle i.e. the North Eastern Circle and, therefore, the question of any seniority getting affected by the transfer prima facie does not arise.

14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any misbehavior is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehavior or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirements, as submitted by learned counsel for the respondents, of holding an

elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as costs."

17. Similarly the Supreme Court in **Rajendra Singh Vs State of U.P.2** held as under:-

"3. The transfer order dated July 31, 2007 came to be challenged by the Writ Petitioner before the High Court of Allahabad, Bench Lucknow. While challenging the legality of the transfer order, Writ Petitioner set up the grounds that he joined as Sub-Registrar, Ghaziabad, Sadar-IV only a month back; that the transfer order has been issued on the complaint of one Radhey Lal, Sanyojak Dalit Morcha Sangharsh Samiti, Lucknow and that the order of transfer was arbitrary, stigmatic and suffers from non-application of mind.

8. A Government Servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the Government Servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires.

9. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In the case of Shilpi Bose (Mrs.) and Ors. v. State of Bihar and Ors. AIR 1991 SC 532, this Court held:

4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to- day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.

10. In N.K. Singh v. Union of India and Ors. (1994) 6 SCC 1998, this Court reiterated that the scope of judicial

review in matters of transfer of a Government Servant to an equivalent post without adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides or violation of any specific provision.

12. As regards Respondent No. 5, the High Court considered the matter thus:

...in our view, it is evident that the respondent No. 5 also can not be said to be an Officer having a better conduct and integrity in comparison to the petitioner justifying his posting at Ghaziabad and in this regard, it appears that I.G. (Stamps) did not give correct information to the Principal Secretary. However, it can not be held that the respondent No. 1 in passing order dated 31st July, 2007 has acted maliciously or for extraneous reasons amounting to malafide. Once the basic ground of challenge to the impugned order of transfer that the same is malicious in law falls, we do not find any reason to interfere with the impugned order of transfer, transferring the petitioner from Ghaziabad to Hapur. It is not the case of petitioner that his transfer is contrary to rules or has been issued by an authority who is not competent. It is well settled that an order of transfer is amenable for judicial review on limited grounds namely it is contrary to rules or has been passed an incompetent authority or is a result of malafide. In view of admission on the part of the respondent No. 1 in his Counter Affidavit that the respondent No. 5 has been found guilty of serious misconduct for causing loss to the Government revenue by acting without jurisdiction and colluding evasion of stamp duty, in our view transfer of the respondent No. 5 to Ghaziabad can not be sustained in view of further admission on the part of the respondent No. 1 that the interest of department requires posting of an honest and efficient person at Ghaziabad.

13. It is difficult to fathom why the High Court went into the comparative conduct and integrity of the petitioner and Respondent No. 5 while dealing with a transfer matter. The High Court should have appreciated the true extent of scrutiny into a matter of transfer and the limited scope of judicial review. Respondent No. 5 being a Sub-Registrar, it is for the State Government or for that matter Inspector General of Registration to decide about his place of posting. As to at what place Respondent No. 5 should be posted is an exclusive prerogative of the State Government and in exercise of that prerogative, Respondent No. 5 was transferred from Hapur-II to Ghaziabad-IV keeping in view administrative exigencies.

14. We are pained to observe that the High Court seriously erred in deciding as to whether Respondent No. 5 was a competent person to be posted at Ghaziabad-IV as Sub- Registrar. The exercise undertaken by the High Court did not fall within its domain and was rather uncalled for. We are unable to approve the direction issued to the State Government and Inspector General of Registration to transfer a competent officer at Ghaziabad-IV as Sub-Registrar after holding that Respondent No. 5 cannot be said to be an officer having a better conduct and integrity in comparison to the petitioner justifying his posting at Ghaziabad-IV. The High Court entered into an arena which did not belong to it and thereby committed serious error of law."

18. While examining the validity of the transfer of an employee on the basis of an adverse report of the Supreme Court in **Registrar General High Court Vs R. Perachi3** laid down the law as under:-

"21. We have considered the submissions of both the counsel. As far as the action of transfer against the first Respondent was concerned, the same was on the basis of the report of the Registrar (Vigilance). Besides, the District Judge had also opined that retention of the Appellant in his district was undesirable from the point of view of administration. Thus, it involved inter-district transfer. The Respondent No. 1 had not disputed the power of the High Court to transfer him outside the district, nor did the division bench interfere therein on that ground. This is apart from the fact that transfer is an incident of service, and one cannot make a grievance if a transfer is made on the administrative grounds, and without attaching any stigma which was so done in the present case.

22. In the context of transfer of a govt. servant we may refer to the dicta of this Court in N.K. Singh v. Union of India reported in AIR 1995 SC 423 where this Court observed in para 22 as follows:

22... Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of the hierarchical superiors to make the decision. Unless the decision is vitiated by mala fides or infraction of any professed norm of principle governing the transfer, which alone can be scrutinized judicially, there are no judicially manageable standards for scrutinizing all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated.

23. In State of Madhya Pradesh v. S.S. Kourav reported in AIR 1995 SC 1056, the Administrative Tribunal had interfered with the transfer order of the Respondent and directed him to be posted at a particular place. It is relevant to note that while setting aside the order of the tribunal this Court observed in para 4 of its judgment as follows:

4....The Courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the Courts or Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background foundation. In this case we have seen that on the administrative grounds the transfer orders came to be issued. Therefore, we cannot go into the expediency of posting an officer at a particular place.

24. We may mention that this Court has reiterated the legal position recently in Airports Authority of India v. Rajeev Ratan Pandey reported in 2009 (8) SCC 337 that:

"10..... In a matter of transfer of a govt. employee, the scope of judicial review is limited and the High Court would not interfere with an order of transfer lightly, be it at interim stage or final hearing. This is so because the courts do not substitute their own decision in the matter of transfer."

31. As seen above, the transfer was purely on the administrative ground in view of the pending complaint and departmental enquiry against first respondent. When a complaint against the integrity of an employee is being investigated, very often he is transferred outside the concerned unit. That is desirable from the point of view of the administration as well as that of the employee. The complaint with respect to the first respondent was that he was dominating the administration of the District Judiciary, and the District Judge had reported that his retention in the district was undesirable, and also that departmental enquiries were pending against him and other employees, with respect to their integrity. In the circumstances the decision of the then Chief Justice to transfer him outside that district could not be faulted."

19. A Division Bench of this Court in **Dr. Anil Kumar Pradhan Vs State of U.P.4** also affirmed the order of transfer which was made on the basis of a complaint by holding:-

"3. Mr. Manish Kumar, learned Counsel for the petitioner submits that after being selected through U.P. Public Service Commission, the petitioner was appointed on the post of Medical Officer on 14.2.1988 and while working as such, he was promoted on the post of Senior Consultant at S.S.P.G. District Hospital, Varanasi in the month of September, 2009. He submits that pursuant to the oral complaint being moved by unknown person, opposite party No. 6-Hon'ble Minister, Medical and Health, U.P. Civil Secretariate, Lucknow, summoned the petitioner, to which the petitioner tendered his explanation, wherein it has been stated that the patient was not operated prior to one month as his hemoglobin was below 5% and as soon as his hemoglobin was above 10%, he had operated the patient. He submits that there is no complaint ever made against the petitioner in his 22 years of service. Further, the impugned transfer order has not been passed either in public interest or in administrative exigency and as such, the petitioner has been transferred merely on the dictate of the Hon'ble Minister. He also submits that it is the policy decision of the Government that no one will be transferred during financial year 2010-11.

16. One more important aspect of the matter is that the government servant does not have right not to comply with the transfer order without there being any interference or otherwise protection given by the Court or by the superior authority and to keep on filing petition after petition challenging the order in the High Court. Government servant can not claim that he should be posted at a particular place for a particular period. The transfer is an incidence of service. The posting of government servant by issuing transfer order is a natural requirement in service law. The transfer is effected keeping in mind the exigency of service, and in public interest or for administrative reasons. It is the sole discretion of the appointing authority to post the government servant at any place where he/she is more required. Of course, if transfer order has been passed in violation of any statutory Provision or Rule or is a result of mala fide or bias of the authorities, then that can be subjected to scrutiny by the Court but unless the order so suffers, the High Court will, normally, not interfere in the transfer order.

17. In the instant case, there is admittedly a complaint against the petitioner. The petitioner fully knows about

that complaint as is evident from the stand taken in the writ petition itself. The plea of the petitioner that he cannot be transferred on such a complaint deserves to be rejected outright. It may be mentioned that instead of initiating disciplinary proceedings against the petitioner on the ground of a charge of negligence in performing his duties, he has only been required to be transferred."

20. A learned Single Judge of this Court while examining the issue of transfer made on a complaint in **(Writ-A No. 13262 of 2023 Shiv Kumar Vs State of U.P. and 3 others)** laid down the following proposition of law:-

"9. From perusal of the aforesaid judgment in the case of Anil Kumar Mishra (supra), it clearly emerges that this Court after considering various judgments of Hon'ble the Apex Court as well as the Division Bench of this Court has held that unless the transfer order is vitiated by mala fides or infraction of any professed norm of principles governing the transfer, which alone can be scrutinized judicially, there are no judicially manageable standards for scrutinizing all transfers and the Courts lack the necessary expertise for personnel management of all government departments. When a complaint against the integrity of an employee is investigated, very often he is transferred outside the concerned unit which would be desirable from the point of view of the administration as well as that of the employee. A Government Servant has no vested right to remain posted at a place of his choice nor can he insist that he be posted at one place or the other. If there is a complaint against the employee, the plea that the employee cannot be transferred on such complaint deserves to be rejected outrightly inasmuch as on initiation of disciplinary proceedings against the employee he can always be transferred."

21. In the context of transfer it will be apposite to extract the holding of the Supreme Court rendered in **N.K. Singh Vs Union of India5**:-

"22..... Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of the hierarchical superiors to make the decision. Unless the decision is vitiated by mala fides or infraction of any professed norm of principle governing the transfer, which alone can be scrutinized judicially, there are no judicially manageable standards for scrutinizing all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated."

22. The judgments discussed in the preceding paragraphs squarely apply to the facts of the case. Admittedly the functioning of the bank started getting adversely affected on account of the petitioner's conduct, frayed relations with officials and other negative reports of her performance. The Court is not examining the merits or correctness of the complaints or adverse material against the petitioner. Suffice to say that the discretion to take

disciplinary action for acts of misconduct against an employee or to transfer such employee on complaints lies with the employer. The employer may also adopt both the said options simultaneously in the facts of a case. No hard and fast rule can be laid down which will fetter discretion of the employer. Each case will have to be judged on its peculiar facts and circumstances and it is for the employer to take a decision after considering all relevant factors. In the facts of this case it was open to the respondent bank to transfer the petitioner to another branch and provide her an opportunity to perform better in a new environment. The impugned order of transfer cannot be faulted with. The transfer order does not preclude the bank to examine the veracity of the complaints against petitioner in an enquiry, or to take departmental action as per law.

23. Needless to add this Court had not gone into the veracity of the complaints against the petitioner or the allegations made by her against her superior authorities. The findings of this Court are confined to the legality of the transfer order. This judgment is without prejudice to the rights of the petitioner to defend herself against the complaints, and in the same breath the order does not fetter the right of the employer to take out appropriate proceedings against the petitioner as per law.

24. Transfer order does not warrant any interference.

25. In the wake of the preceding narrative the writ petition is liable to be dismissed and is dismissed.

(2025) 8 ILRA 927
ORIGINAL JURISDICTION

CIVIL SIDE
DATED: ALLAHABAD 29.08.2025

BEFORE

THE HON'BLE NEERAJ TIWARI, J.

Writ A No. 11427 of 2022
Connected with Other Cases

Tarun Chaudhary & Ors. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Atipriya Gautam, Dharmendra Shukla, Kabeer Tiwari, Sr. Advocate, Vinod Kumar Mishra

Counsel for the Respondents:
Aishwarya Pratap Singh, C.S.C.

Issue for consideration:
Whether the candidates can be debarred only on the allegation that they have solved the question papers in a very short time, which is humanly impossible and where the whole exercise of debarment is based upon the CRL (Candidate Response Log Report, which means complete video recording of candidates during the examination period)?

Headnotes
A. Service Law - Once there is no complaint and no information about the use of unfair means and nothing has been recovered from the possession of the candidates, only suspicion cannot be a ground to cancel the candidature ruining their career. (Para 50)

In the present case, for use of unfair means, no rules have ever been framed, no procedure regarding cancellation of candidature has ever been informed to candidates and further, they have also not been informed that they have to solve the question paper in a particular time bound manner. In fact, no compliant or any adverse information has been received against any of the petitioners and nothing has been recovered from their possession. Prior to

cancellation of the candidature, no opportunity of hearing or rebuttal was given to petitioners and **the decision has been taken in gross violation of natural justice based upon surmises and conjunctures.** (Para 51)

The conduct of respondent-authorities are most irresponsible or unbecoming of government servant rather they are behaving like a group of unlawful persons. In Paragraph 6 of the counter affidavit filed on behalf of respondent nos. 2 & 3 dated 15.9.2022, stand of the State respondents is clear that FIR has been lodged against the petitioners and other candidates and they have not been permitted to appear in next phase of the examination and accordingly ousted from the selection process due to use of unfair means, whereas in the affidavit of Chairman of Board, Lucknow dated 27.2.2025 entirely different view has been taken that petitioners themselves left the examination. Such type of conduct of State-respondents is highly depreciated. It is expected that State Government shall take action in accordance with law. (Para 52)

Writ petitions allowed. (E-4)

List of Acts/Statutes

Uttar Pradesh Sub-Inspector & Inspector (Civil Police) Service Rules, 2015; Uttar Pradesh Public Examination (Prevention of Unfair Means) Act, 1998; The Uttar Pradesh Public Examination (Prevention of Unfair Means) Act, 2024.

List of Keywords

Service Law, recruitment, appointment, advertisement, selection.

Appearances for Parties

For Appellant: Atipriya Gautam, Dharmendra Shukla, Kabeer Tiwari, Sr. Advocate, Vinod Kumar Mishra

For Respondent: Aishwarya Pratap Singh, CSC

(Delivered by Hon'ble Neeraj Tiwari, J.)

1. Heard Sri Anil Tiwari, Vijay Gautam, learned Senior Counsels assisted by Sri Kabeer Tiwari, Ms. Atipriya Gautam, Sri Dharmendra Shukla, learned counsel for the petitioners, learned Chief Standing Counsel for the respondent Nos. 1 to 7 and Sri Aishwarya Pratap Singh, learned counsel for the respondent Nos. 8 to 10.

2. Present petition has been filed with the following prayers:

a) Issue, a writ, order or direction, in the nature of mandamus, directing the Respondents, to conduct the Physical Efficiency Test(PET) of the petitioners and to declare the petitioners as selected candidates and appoint them on the post of Sub-Inspector in Civil Police(Male/Female), Platoon Commander, PAC & Fire Station Second Officer Direct Recruitment-2020-21.

b) Issue, a writ, order or direction, in the nature of mandamus, directing the Respondents, to stay the further selection process and the same should not be finalized upto the final decision of present writ petition.

3. Pleadings have been exchanged between the parties, therefore, with the consent of learned counsel for the parties, writ petitions are being decided at the admission stage itself.

4. Brief facts of the case are that advertisement for recruitment of Sub-Inspector in Civil Police (Male/Female), Platoon Commander, PAC & Fire Station Second Officer Direct Recruitment, 2020-21 was issued on 24.02.2021. In the aforesaid advertisement, total 9534 vacancies have been advertised (9027 vacancies for Sub-Inspector in Civil Police, 484 vacancies for Platoon Commander in PAC, 23 vacancies for Fire Station Second Officer (FSSO) in Fire Service). Thereafter,

notifications dated 07.04.2021 & 22.04.2021 have also been issued by which certain amendments have been made in the advertisement dated 24.02.2021. Vide notification dated 03.11.2021, syllabus of online written examination has been published, according to which online written examination would be of total 160 objective type questions (40 questions from each subject) with maximum marks being 400 for all four subjects, namely General Hindi, General Knowledge (Basic Law and Constitution), Reasoning & Mental Ability Test, each question of 2.5 marks and no negative marking for wrong answer. The next stage would be Document Verification and Physical Standard Test (DV/PST) and the last stage would be Physical Efficiency Test (PET) having 4.8 Kms. running within 28 minutes for Male and 2.4 Kms. within 16 minutes for Female and thereafter the final merit list shall be prepared.

5. Being fully qualified, petitioners applied for the aforesaid posts in their respective categories along with requisite fee pursuant to advertisement dated 24.02.2021. Their applications have been thoroughly examined and accepted by Uttar Pradesh Recruitment and Promotion Board, Lucknow (hereinafter, referred to as, Board, Lucknow). Online computer based written examination (CBT) was held from 12.11.2021 upto 02.12.2021 in three shifts, in thirteen districts at total 92 centres.

6. Answer key of written examination has been published vide notification dated 10.12.2021 on the official website and objections were also invited from the candidates from 10.12.2021 to 16.12.2021. Thereafter, vide notification dated 14.04.2022, Cut Off marks for online written examination were released for each category to appear in the next stage i.e. Document Verification and Physical Standard Test (DV/PST). Vide notification dated 29.04.2022, list of selected candidates has been issued, who had qualified in online written examination and called for Document Verification and Physical Standard Test (DV/PST). The said list is having the names of the petitioners also, as they have cleared the online written examination. Thereafter, selected candidates have also been issued call letters to appear in Document Verification and Physical Standard Test (DV/PST). They all have appeared in the next phase i.e. DV/PST in which they have been declared successful for the last stage i.e. Physical Efficiency Test (PET). Now, they were required to appear in the last phase of examination i.e. Physical Efficiency Test (PET). Vide notification dated 03.05.2022, method and list of candidates qualified to appear for the Physical Efficiency Test (PET) has been issued for the candidates who have qualified to appear in that. In this list too, names of petitioners were included and accordingly, they have also appeared for Physical Efficiency Test (PET) at the scheduled examination centre.

7. Instead of conducting the Physical Efficiency Test (PET), petitioners have been alleged for using unfair means and further, FIR has been lodged against all the petitioners on the basis of Candidate Response Log Report (hereinafter, referred to as, 'CRL'). CRL means complete video recording of candidates during the examination period. Thereafter they were sent to jail. Hence, present petition.

8. Sri Anil Tiwari, learned Senior Counsel appearing for the petitioners submitted that no doubt State Government is having authority to cancel the examination in case of use of unfair means,

but such cancellation must be carried out strictly in accordance with procedure established by the law. He next submitted that for cancellation of candidature, there must exist a statutory rule, which defines unfair means and specifies the conduct that qualifies as such and prescribes a procedure for determining whether a candidates is engaged in use of unfair means and also provide safeguard to ensure candidates are not arbitrarily penalized. He also submitted that in the present case, respondents have failed to demonstrate the existence of any rule defining the term unfair means in the context of present examination or laying down of procedure for cancellation of candidature.

9. Learned Senior Counsel next submitted that earlier, respondent nos. 2 and 3 have filed counter affidavit dated 15.09.2022 heavily relying upon Appendix-3 of Uttar Pradesh Sub-Inspector & Inspector (Civil Police) Service Rules, 2015 (hereinafter, referred to as, ?Rules, 2015?), which rightly covers the power to cancel the candidature in case of use of unfair means, but in a subsequent affidavit dated 27.02.2025 filed by Chairman, Board, Lucknow-respondent no. 2, he has taken entirely different view and stated that by the first amendment in the Rules, 2015 on 03.12.2015 Appendix-3 has been withdrawn and ceased to exist w.e.f. 03.12.2015. This fact was not disclosed in the earlier counter affidavit dated 15.09.2022, which is an attempt to mislead the Court regarding the authority to disqualify the candidates. Exercise of debarring the petitioners and disqualifying them has been done by unfettered and arbitrary discretion of the respondents.

10. He also pointed out that State Government has not come with clean hands before the Court as in the counter affidavit dated 15.09.2022 as well as affidavit dated 27.02.2025, respondents have taken entirely different stands.

11. He further submitted that the whole exercise adopted by the respondents for disqualifying the petitioners is based upon CRL, according to which candidates/petitioners have answered questions at a significantly faster rate towards the latter portion of the examination in comparison to the earlier portion. He also submitted that procedure adopted by the State-respondents in arriving at this conclusion is not only violative of the provisions of the Uttar Pradesh Public Examination (Prevention of Unfair Means) Act, 1998 (hereinafter, referred to as, Act, 1998), but also patently illegal as it contravenes the terms stipulated in the Advertisement dated 24.02.2021.

12. He next submitted that Section 2(d) of the Act, 1998 defines unfair means as follows:

Unauthorized help from any person directly or indirectly, or from any material written, recorded, copied, or printed, in any form whatsoever, or the use of any unauthorized telephonic, wireless, electronic or other instrument or gadget.

13. He further submitted that allegation levelled against the petitioners does not fall within the statutory definition of unfair means.

14. He lastly submitted that during the course of examination, no complaint has been made against the petitioners for using unfair means or any other misconduct from the examination centre or any other authority further, no unfair material has

been recovered from the possession of the petitioners. No procedure has been adopted to oust the petitioners from the selection process and no opportunity of hearing or rebuttal was given to petitioners before cancelling their candidature. Further, as per the counter affidavit dated 15.09.2025, petitioners have been debarred/ousted from the selection process based upon unusual and unbelievable behaviour on the basis of CRL. The only allegation against the petitioners is that they have solved the question paper in a very short time i.e. 15 minutes, which is unusual and unbelievable.

15. Learned Chief Standing Counsel while opposing the submission of learned Senior Counsel for the petitioners could not dispute the facts that in the counter affidavit dated 15.09.2022, respondents have taken stand that examination of candidates/petitioners has been cancelled relying upon Appendix-3 of Rules, 2015, whereas, in the affidavit dated 27.02.2025, respondent no. 2 has taken entirely different stand that Appendix-3 of Rules, 2015 has been withdrawn vide order dated 03.12.2015. He also could not dispute that before disqualifying the petitioners, no opportunity of rebuttal or hearing was given to them and whole exercise of rejection of candidature has taken place based upon CRL. He also could not dispute that no complaint has been received against the petitioners nor anything has been recovered from their possession. He admitted that whole exercise of debarring the candidates is based upon the CRL and the only allegation against the petitioners is that they have solved the question papers in a very short time, which is humanly impossible.

16. During the course of argument to decide the issue, this Court has raised five queries from the State-respondents vide order dated 18.2.2025. Paragraph 4 of the said order is being quoted hereinbelow:

4. In light of Rule, there is no doubt that State Government having authority to cancel the examination for use of unfair means, but for cancellation of the candidature there are certain requirements. First of all there must have been a Rule which provides the procedure for cancellation of candidature of candidate in case of use of unfair means. The said Rule should also contain the definition of unfair means, conduct of the candidate, which is treated to be use of unfair means. Secondly, before cancellation of candidature or ousting a candidate from selection process, rule of natural justice has to be followed and candidates must have been given opportunity of hearing as well as rebuttal. Therefore, respondent no.1-Additional Chief Secretary, Home, Govt. of Uttar Pradesh is directed to file affidavit of following points:-

(i) He shall inform the date of framing of Rules in case of use of unfair means in the light of paragraph 13 of appendix-3 of Rules, 2015 and annex the copy of the Rule.

(ii) He shall also inform the procedure so adopted for cancellation of candidature or to oust from further selection process.

(iii) He shall also inform the Court about the opportunity of hearing or rebuttal so given to petitioner before cancellation of their candidature or ousting them from selection process.

(iv) As per counter affidavit, petitioners' candidates are ousted from selection process based upon unusual and unbelievable behaviour. He shall also inform as to why information about unusual and unbelievable behaviour was

given to candidates which may lead to cancellation of their candidature.

(v) Second ground for cancellation of candidature is that candidates have solved many questions in a very short time. He shall inform as to whether any such information as given to petitioner to solve the papers in a particular manner or particular time limit and violation of that may be resulted in cancellation of candidature.

(vi) He shall also inform as to whether respondents have received any information or complaint with regard to use of unfair means or any misconduct by the candidates during the exam period.

17. Pursuant to the aforesaid order, Chairman of Board, Lucknow-respondent no. 2 has filed affidavit dated 27.02.2025. Petitioners have also filed objection dated 02.03.2025 to affidavit dated 27.02.2025.

18. At this stage, learned Senior Counsel has argued that in Paragraph 6 of the counter affidavit dated 15.09.2022 on behalf of respondent Nos. 2 & 3, respondents have taken specific stand that Point No. 13 of Appendix 3 of Rules, 2015 provides that in case of use of unfair means during the course of examination, Board, Lucknow can cancel the candidature of a candidate, whereas in Paragraph 6 of the affidavit dated 27.02.2025 of Chairman of Board, Lucknow-respondent no. 2, he has taken a different view and stated that vide first amendment dated 3.12.2015 in Rules 2015, Appendix 3 of Rule 2015 has been ousted, therefore, no rules have been framed in light of Point No. 13 of Appendix 3 of Rule 2005. Thereafter, vide government order dated 13.7.2020, seventh amendment has been made in the Rules, 2015 and Rule 15 Kha was inserted, which provides that detailed procedure for the written examination shall be determined by the Board, Lucknow and the same shall also be displayed on its website. Not only this, he also pointed out that Chairman of Board, Lucknow is talking about the The Uttar Pradesh Public Examination(Prevention of Unfair Means) Act, 2024(hereinafter, referred to as, Act, 2024), which was promulgated on 06.08.2024, but the examination was conducted in the year 2021, therefore, any definition given in Act, 2024 would not be applicable to the case of petitioners and there is nothing to show that the Act, 2024 would be given retrospective effect.

19. Being confronted by the Court, learned Chief Standing Counsel could not dispute the submission so raised by learned Senior Counsel for the petitioners at this stage.

20. I have considered the submissions advanced by the learned counsel for the parties and perused the records including writ petition, counter affidavit dated 15.9.2022, affidavit dated 27.2.2025, objection filed by the petitioners, advertisement and other relevant documents.

21. In Paragraph nos. 8(2) & 8(3) of the Advertisement dated 24.02.2021, there is provision to cancel the candidature of candidate and debar the candidate from the examination, which are being quoted hereinbelow:

"8(2). अभ्यर्थी दिवालिया न हो तथा किसी न्यायालय द्वारा कभी दण्डित न हुआ हो।

8(3)-किसी अनाचार, किसी महत्वपूर्ण सूचना को छिपाने, अभियोजन/अपराधिक वाद लम्बित होने, दोष सिद्ध होने, एक से अधिक जीवित पत्नी के होने, तथ्यों को गलत प्रस्तुत करने तथा अभ्यर्थन अथवा चयन के सम्बन्ध में सिफारिश करने आदि

कृत्यों में लिप्त पाये जाने पर अभ्यर्थन निरस्त करने तथा बोर्ड की परीक्षाओं एव चयनों से प्रतिवारित (Debar) करने का अधिकार बोर्ड को होगा।"

22. From perusal of the same, it is apparently clear that in case of violation of Paragraph nos. 8(2) and 8(3) of the Advertisement, Board, Lucknow has right to cancel the candidature of candidate as well as debar the candidate from the examination. Here it is undisputed that against the petitioners, none of the allegations found mentioned in the Paragraph nos. 8(2) and 8(3) of the advertisement, therefore, candidature of the petitioners cannot be cancelled in terms of Paragraph 8(2) and 8(3) of the Advertisement.

23. I have perused the Paragraph 6 of the counter affidavit dated 15.9.2022 and in fact Paragraph 6 is the crux of the case of the respondents, which is being quoted hereinbelow:-

6. That the contents of paragraph 2 of the writ petition are not admitted and in reply thereto it is most respectfully submitted that during the Online written examination of said recruitment process, it has been found by the Board that the petitioners succeeded in Online written examination by using unfair means, as such on the occasion of physical efficiency test, F.I.R. has been registered against the petitioners and other candidates and they have not been permitted to appear in next phase of examination, accordingly, they have been ousted from selection process. Copy of the status of investigation pursuant to F.I.R., is being filed herewith and marked as Annexure-CA-1 to the present counter affidavit. It is further relevant to mention here that in this respect in point No. 13 of Appendix-3, it is specifically mentioned that during the examination if any candidate is found using unfair means then Board could have cancelled his candidature and decision of the Board in this respect will be final.

It is further submitted that from the comparative analysis of C.R.L (Candidates Exam day response Log) of the petitioners and from the C.R.L. Report, it is evident that the petitioners have used unfair means in the written examination. Copy of the C.R.L. report of petitioners who are 42 in numbers, are being filed herewith and marked as Annexure-CA-2, and in order to avoid bulkiness of C.R.L. chart in respect of all petitioners, only copy of the C.R.L. Chart relating to only petitioner Nos. 1 and 2 are being filed herewith and marked as Annexure-CA-2A to the present counter affidavit. However, copy of C.R.L. chart relating to rest of the petitioners shall be produced at the time of hearing of the writ petition, if so required by this Hon'ble Court.

It is submitted that from the C.R.L. review of the petitioner No. 1, it is transpired as follows :-

(a) In the written examination, 120 minutes was allocated for answering 160 questions of Online written examination. The petitioner No. 1 Tanu Chaudhary initially has given answer of very less questions and by leaving most of the question she has gone ahead and at that time, she has not given the answer of questions.

(b)The Tanu Chaudhary at initial time of examination has given answer of 20 questions in 75 minutes and after getting outside unfair aid/means, she has solved 123 questions only in 30 minutes and in last 15 minutes, she has not given any answer of the question. From the analysis of correct answer of 123 questions in 30 minutes, it has been found that she has

given answer of 4 questions in 1 minute at the rate of 15 second per question in which 40 questions of numerical and mental ability were also included.

(c) The petitioner No. 1 has given correct answer of 35 questions out of 40 questions relating to numerical and mental ability and she has taken 2 minutes and 55 second in reading and viewing these questions but at that time, she has not given any answer. It is submitted that view time of the candidate is not displayed in the C.R.L. who has given answer of the question after understanding and reading it and in the C.R.L. the view time is included in the response time meaning thereby that 2 minutes and 55 seconds is only view time of answer of 35 questions of numerical and mental ability in which only questions has been seen and read but the same was not answered by that time but surprisingly in reading/understanding and solving 35 questions only 5 minutes and 25 second has been consumed and accordingly, 9 second has been taken in solving 1 question whereas from mathematical analysis, at least 15 second is consumed in reading and understanding a question whereas the petitioner No. 1 has given answer of these questions in very short time.

(d) It is settled view that answer of question of mathematic subject comes after its salvation and in such a short time, 35 questions cannot be solved, from which it is evident that she has used unfair means through Electronic devices/technical means and outside illegal assistances in solving 35 questions whereas the nature and behavior of the petitioner in solving the question was found to be abnormal.

(e) It is relevant to mention here that generally selected candidates has given answer of 40 questions of numerical and mental ability in duration of 30 to 60 minutes while the petitioner No,. 1 has taken only 5 minutes and 43 seconds in solving aforesaid 40 questions. Which is not possible for any sharp brain.

(f) It is also relevant to mention here that, For example one selected candidate Registration No. SICUP0257894 has taken 36 minutes and 40 seconds in solving 40 questions of numerical and mental ability and similarly, another candidate, registration No. SICUP0483466 has taken 44 minutes and 11 second in solving 40 questions of numerical and mental ability and another candidate, registration No. SICUP0649471 has taken 44 minutes and 52 second in solving 40 questions of numerical and mental ability. Another selected candidate, Registration No. SCIUP0658407 has taken 40 minutes and 30 seconds in solving 40 questions of numerical and mental ability. Copy of C.R.L. Report of four selected candidates is being filed herewith and marked as Annexure-CA-3 to the present counter affidavit.

(g) That the petitioner No. 1 in respect of questions of numerical and mental ability has taken 05 seconds or less than this in giving answer of 26 questions, 10 seconds or less than this in giving answer of 9 questions, 15 second or less than this in in giving answer of 4 questions and thus has taken 15 second or excess than this in giving answer of 01 question in which time taken in reading, understanding and solving the question is also included which is impossible to give answer of mathematical questions in such a short time which is evident from C.R.L. of the petitioner No. 1 which is given as follows :-

Time Breakup(in seconds)	***Count of Numerical & Mental Ability Questions***
01 to 05	*26*
06 to 10	*09*

11 to 15	*04*
Excess than 15	*01*
Total	***40***

Copy of the chart relating to time taken by 42 petitioners in giving answer of 40 questions prepared on the basis of C.R.L. of the petitioners, is being filed herewith and marked as Annexure-CA-4 to the present counter affidavit.

(h)Apart from petitioner No. 1, the nature and behavior of rest of 41 petitioners in giving answer of questions is unnatural and abnormal, which is clear from the C.R.L. analysis of the petitioners.

(i) That in view of the facts and circumstances above, the Board by exercising its powers vested to it under rule, has very rightly not permitted to participate in the next phase of examination of recruitment process in question which was very mandatory requirement to maintain transparency and fairness of examination.

24. To decide the controversy, this Court has analysed the response of five queries raised vide its order dated 18.02.2025 in light of affidavit dated 27.02.2025 filed by Chairman of Board, Lucknow-respondent no. 2.

25. Now coming to the **first query** raised by this Court in its order dated 18.2.2025, which is relevant to decide the controversy, therefore, same is being quoted hereinbelow:-

(i) He shall inform the date of framing of Rules in case of use of unfair means in the light of paragraph 13 of appendix-3 of Rules, 2015 and annex the copy of the Rule.

26. In reply of the query raised by the Court, respondent authorities have given specific reply in Paragraph 6 of the affidavit dated 27.2.2025, which is quoted hereinbelow:-

6. That regarding the Query No. i, it is most respectfully submitted that prior to the recruitment in question the first amendment has been made in U.P. Sub Inspector and Inspector (Civil Police) Service Rules, 2015 on 03.12.2015. For kind perusal of this Hon'ble Court, copy of the first amendment in U.P. Sub Inspector and Inspector (Civil Police) Service Rules, 2015 dated 03.12.2015 is being annexed herewith and marked as ANNEXURE NO. 1 to this affidavit.

By this amendment Appendix-3 of Rule 2015 has been ousted, therefore no rules have been framed in light of paragraph-13 of Appendix-3 of rule-2015. In these rules even after this by Government order no. 2/2020/1399/6-Po.-1-20- 53-2015 dated 13.07.2020 the Seventh amendment has been made. For kind perusal of this Hon'ble Court, copy of the Government order no. 2/2020/1399/6-Po.-1-20-53-2015 dated 13.07.2020 is being annexed herewith and marked as ANNEXURE NO. 2 to this affidavit.

By this amendment in rule 15(Kha) provision has been given regarding examination, the Note (1) is as given:

"(1) लिखित परीक्षा केलिए विस्तृत प्रक्रिया बोर्ड द्वारा अवधारित की जायेगी और इसेअपनी वेबसाइट पर प्रदर्शित की जायेगी"

By para 8 (3) of the Advertisement dated 24.02.2021 the following provision has been made:

"3- किसी अनाचार, किसी महत्वपूर्ण सूचना को छिपाने, अभियोजन / अपराधिक वाद लम्बित होने, दोशसिद्ध होने, एक से अधिक जीवित पत्नी के होने, तथ्यों को गलत प्रस्तुत करने

तथा अभ्यर्थन अथवा चयन के सम्बन्ध में सिफारिश करने आदि कृत्यों में लिप्त पाये जाने पर अभ्यर्थन निरस्त करने तथा बोर्ड की परीक्षाओं एवं चयनों से प्रतिवारित (Debar) करने का अधिकार बोर्ड को होगा।"

Besides this, detailed instructions were given to the candidates in their Admit Card for online examination. For kind perusal of this Hon'ble Court, copy of the instructions given in the Admit Card by the Recruitment Board is being annexed herewith and marked as Annexure No.3 to this affidavit.

From bare perusal of this the candidate who falls under use of unfair means is transparently clear.

The Uttar Pradesh Public Examination (Prevention of Unfair Means) Ordinance, 2024 regarding use of unfair means in recruitment conducted by the Government of Uttar Pradesh, came into effect from July, 2024 which was not in force at the time of the examination in question. By Section 2 (K) of this Act unfair means has been defined for the first time and by Section 4(1) use or indulgence of unfair means or in connection with any public examinations or the conduct or public examinations has been prohibited and provision has been made to conduct enquiry for the violation of the prescribed act by Examination Authority and examinee have been given opportunity of being heard. This ordinance is converted into the Uttar Pradesh Public Examination (Preventions of Unfair Means) Act, 2024 by the U.P. Act No.8 of 2024

It is important to mention here that by means of Section 13(1) read with Section 4 (1) of the act, it has been provided that where any examinee contravenes, or attempt or abets to contravene the provision of Section (1) of Section 4, his result of concerned public examination shall be withheld. For kind perusal of this Hon'ble court, copy of the Act is being annexed herewith and marked as Annexure No.4 to this affidavit.

The online examination was held from 12.11.2021 to 2.12.2021 prior to enforcement of the Uttar Pradesh Public Examination (Preventions of Unfair Means) Act, 2024 and earlier there was no provision to provide opportunity of hearing to the candidates prior to cancellation of their candidature on the ground of use of unfair means.

By order dated 7.11.2024 passed in Civil Appeal No.2634 of 2013 (Tej Prakash Pathak & others vs. Rajasthan High Court and others) the following considerable points have been raised.

(4) Recruiting bodies, subject to the extant Rules, may devise appropriate procedure for bringing the recruitment process to its logical end provided the procedure so adopted is transparent, non-discrimination/non arbitrary and has a rational nexus to the object sought to be achieved.

(5) Extant Rules have statutory force are binding on the recruiting body both in terms of procedure and eligibility. However, where the Rules are non-existent, or silent, administrative instructions may fill in the gaps.

It is relevant to mention here that the petitioners have not alleged any arbitrariness or discrimination against the Recruitment Board. The Board has conducted the whole process transparently and judicially.

27. In the affidavit dated 27.02.2025, they have not disclosed about the framing of rules with regard to use of unfair means based upon which candidature has been cancelled. Further, from perusal of both the affidavits, it is apparently clear that respondents have taken different views in both the affidavits. In the counter affidavit

dated 15.9.2022, it is their case that they have relied upon Point No. 13 of the Appendix 3 of Rules, 2015 for framing of Rules, whereas in affidavit dated 27.2.2025, it is their case that Point No. 13 of Appendix 3 of Rules, 2015 was deleted vide amendment dated 03.12.2015 in Rules, 2015, therefore, it is an attempt to mislead the Court. Therefore, it is clear that no rules have ever been framed. Not only this, they have admitted that at the time of Physical Efficiency Test(PET), FIR has been lodged against the petitioners and other candidates and they have not been permitted to appear in next phase of the examination and accordingly, they have been ousted from the selection process.

28. They are relying upon certain provisions of The Uttar Pradesh Public Examination(Prevention of Unfair Means) Ordinance, 2024, which was converted into The Uttar Pradesh Public Examination(Prevention of Unfair Means) Act, 2024 by U.P. Act No. 8 of 2024. Further, once the examination has taken place in the year 2021 any provision of the Act, 2024 would not be applicable as it was not promulgated with retrospective effect. Relying upon an Act of 2024 for an examination held in 2021 shows non application of mind of respondents and also their mental bankruptcy.

29. Annexure CA-3 annexed along with the affidavit dated 27.02.2025 regarding instructions to candidates only says that there will be no negative marks for wrong answers and further, other conditions mentioned in the instruction are having no relevance with the present controversy as none of the instructions is saying to solve the questions in a particular time frame.

30. In light of facts stated in both the affidavits, it is established that for cancellation of examination, no rules have ever been framed and in arbitrary manner, candidature of the candidates are rejected and they are also subjected to criminal proceedings.

31. The **second query** raised by the Court in its order dated 18.2.2025, reads as follows:-

(ii) He shall also inform the procedure so adopted for cancellation of candidature or to oust from further selection process.

32. In reply of the aforesaid query raised by the Court, respondent authorities have given specific reply in Paragraph 7 of the affidavit dated 27.2.2025, which is quoted hereinbelow:-

That regarding the Query No.ii, it is most respectfully submitted that 40 candidates/petitioners of the writ petition became out of the selection process automatically due to not participating in the physical efficiency test hence no process are initiated to cancel their candidature. Regarding two petitioners, namely, Jitesh Kumar and Rajat Chauhan the Candidate Response Log was examined by the service provider agency and found proof regarding use of unfair means. These candidates appeared in Document Verification and physical standard examination but they could not give satisfactory answer for solving very few questions unusually and unbelievably in very short time, which indicates that their act falls within criminal activity and for lawful investigation of which first information report was lodged and the Recruitment Board took the decision to

cancel their candidature. Against the petitioners, after investigation, charge-sheets have been been submitted.

By order dated 08.07.2024 passed in Writ Petition (Civil) No. 335 of 2024 (Vanshika Yadav vs. Union of India) before Hon'ble Apex Court regarding use of unfair means in the examination and for sorting such candidates by the analysis the following point has been discussed:

18 The third aspect on which it is necessary to have a further disclosure by the Union Government as well by NTA is whether it would be feasible, using data analytics either within the cyber forensic unit or any other expert agencies within the government or which may be employed by the government to identify suspect or suspicious cases. If this is possible, the authority shall identify the modalities which can be followed so as to segregate the students suspected of using unfair means from the other students"

Further, vide order dated 02.08.2024 in the same writ petition the Hon'ble Apex Court again passed the following remars:

"Third, the Union of India and NTA were directed to inform the Cou't as to whether it was feasible to use data analytics to identify suspicious cases. If such an approach was found to be feasible, the parameters used for flagging such cases (such as abnormal score patterns) were required to be placed on record. (Page 11 Para 14)

...Data analysis is a useful tool in the endeavour to detect malpractice (Page-40, Para-72)

. Consider the viability of comprehensive CCTV surveillance systems at all examination centers, including real-time monitoring and recording of all activities. The aim is to deter and detect any malpractice or unauthorized activities and to provide evidence in case of incidents; (Page-56, Para 106)"

Thus, it is clear that to sort out candidates, using unfair means, the Examination experts of the service provider agency may use Data Analysis and Abnormal Score Pattern besides other means which has been permitted by the Hon?ble Apex Court. Prior to witholding result of suspected candidates of NEET no show cause notice was issued by NTA to the candidates.

33. From perusal of the same, it is apparent that the stand of respondents is that 40 petitioners/candidates of the present writ petition became out of the selection process automatically due to not participating in Physical Efficiency Test, hence no process has been initiated to cancel their candidature. Being not satisfied with the preliminary enquiry, FIR has been lodged and Board, Lucknow took decision to cancel their candidature. It is also stated that every action has been taken in light of CRL of the service provider agency using data analysis and abnormal score pattern.

34. It is very surprising that in Paragraph 6 of the counter affidavit dated 15.9.2022, they have admitted that FIR has been lodged against the petitioners and other candidates and they have not been permitted to appear in the next phase of the examination. Now, in affidavit dated 27.02.2025, different view has been taken which clearly shows malafide on the part of respondent authorities and in a arbitrary manner without adopting any procedure, respondents have cancelled the candidature of the candidates, which is admitted in the Paragraph 6 of the counter affidavit dated 15.09.2022. After query of this Court in its order dated 18.2.2025, to save their skin, respondent authorities have taken different

view shifting the liability to candidates that they have themselves left the examination, therefore, such conduct is highly depreciated.

35. In fact, Court is of the firm view that for cancellation of candidature, no procedure has ever been adopted and based only on CRL, action has been taken, which cannot be a conclusive proof of use of unfair means coupled with the undisputed fact that against the petitioners, no complaint has ever been made by the examination centre, invigilators or any other agency, which were involved in the examination procedure, therefore, reply of query no. 2 so given by the respondent authorities is an attempt to mislead the Court.

36. Now coming to the **third query** raised by this Court in its order dated 18.2.2025, which reads as follows:-

He shall also inform the Court about the opportunity of hearing or rebuttal so given to petitioner before cancellation of their candidature or ousting them from selection process.

37. The respondent authorities have given specific reply of same in Paragraph 8 of the affidavit dated 27.2.2025, which is quoted hereinbelow:-

8. That regarding the Query No. iii, it is most respectfully submitted that the petitioners were given opportunity of being heard prior to lodging FIRs and when they could not provide a satisfactory answer to their unusual behaviour, only then FIRs were lodged. The candidate who did not participate in any one of the stage of the selection process, they automatically got out of the selection process.

38. From perusal of the same, it is very astonishing that petitioners were given opportunity of being heard prior to lodging of FIRs and they could not provide a satisfactory answer to their unusual behaviour, only then FIRs have been lodged. It is also stated that candidate did not participate in any one of the stage of the selection process, they automatically got out of the selection process.

39. As per settled principles of law, for lodging of FIR either in Cr.P.C. or B.N.S.S., there is no provision to provide opportunity of hearing, but so far as cancellation of candidature is concerned, law is also settled that candidature cannot be cancelled before giving opportunity of rebuttal. In the present case, it is admitted that no opportunity of rebuttal was given to the petitioners before the cancellation of their candidature or ousting them from selection process. Not only this, Chairman of Board, Lucknow again tried to mislead the Court by saying that candidates themselves automatically got out from the selection process, whereas in the Paragraph 6 of the counter affidavit dated 15.09.2022, there is clear admission that FIR has been lodged against the petitioners and other candidates and they have not been permitted to appear in the next phase of the examination.

40. Therefore, this Court is of the firm view that all action have been taken in gross violation of principles of natural justice and candidature of the candidates have been cancelled without opportunity of rebuttal or hearing in a most arbitrary manner.

41. Now coming to the **fourth query** raised by the Court in its order dated 18.2.2025, which is read as follows:-

(iv) As per counter affidavit, petitioners candidates are ousted from selection process based upon unusual and unbelievable behaviour. He shall also inform as to why information about the unusual and unbelievable behaviour was given to candidates which may lead to cancellation of their candidature.

42. The reply of the same was given in Paragraph 9 of the affidavit dated 27.2.2025, which is being quoted hereinbelow:-

9. That regarding the Query No.iv, it is most respectfully submitted that for ensuring fairness and transparency and also to ensure trusts in the selection process in all the candidates it was necessary that against these suspect candidates, appropriate action should have been taken with immediate effect. As there was prima facie data analytic evidence against the petitioners, hence by intimating them orally and after not getting any satisfactory answer, FIRs have been lodged in which after investigation the charge sheets have been submitted. For being absent from the selection process the candidates become out automatically from the same.

43. From perusal of the same, this Court is of the firm view that no information has ever been given to the petitioner about any unusual or unbelievable behaviour in examination, which may have lead to cancellation of their candidature. In fact, entire exercise has taken place based upon the prima facie data analytic evidence as stated in Paragraph 9 of the affidavit 27.2.2025. Again an attempt has been made to mislead the Court taking contrary view in paragraph 9 of the affidavit dated 27.02.2025 from counter affidavit dated 15.09.2022. In Paragraph 9 of the affidavit dated 27.02.2025 it is reiterated that candidates automatically quit the examination, whereas, in counter affidavit dated 15.09.2022 it is stated that they have not been permitted to appear in the next phase of the examination and ousted from the selection process. The Paragraph 9 of the affidavit dated 27.02.2025 is absolutely silent about any information given to the candidates with regard to unusual and unbelievable behaviour, which confirms that no such information has ever been given petitioners and in an arbitrary manner their candidature has been cancelled.

44. Now coming to the **fifth query** raised by this Court in its order dated 18.2.2025, which is read as follows:-

Second ground for cancellation of candidature is that candidates have solved many questions in a very short time. He shall inform as to whether any such information as given to petitioner to solve the papers in a particular manner or particular time limit and violation of that may be resulted in cancellation of candidature.

45. The reply of the same was given in Paragraph 10 of the affidavit dated 27.2.2025, which is being quoted hereinbelow:-

10. That regarding the Query No. V, it is most respectfully submitted that the relevant facts have already been given/discussed in the preceding paragraph of this reply. However, it is further submitted that the candidates were required to solve 160 questions in 120 minutes. As per predetermined standard these questions were of simple, medium and

difficult in nature. All the candidates in solving these questions utilized the time which was under reasonable time limit. During Data Analysis in connection to every examinee/candidates qualified for DV/PST clear Data Points were collected from the Candidates Response Log which were sufficient to examine their Response Pattern. In this light, it is made clear that it was not required to intimate the candidates regarding allocation of time to solve the same questions or regarding the method of solving the question, for violation of which their candidature could be rejected and it was neither required nor possible in the selection process.

It is important to mention here that after the online written examination for the next stage of document verification and physical standard test, total 36,170/- candidates were called. For all these total 36,170 candidates the board instructed the service provider agency NSELT to examine their behaviour in Candidate Response Loge and their Candidate Response Patten in giving the reply of questions through Expert Committee. After this examination NSEIT made remarks regarding total 303 candidates as given under:-

Behaviour is quite unusual and unbelievable, there is suspicion that the candidate has sought some external help via illegal means.

46. From perusal of the same, it is apparently clear that no such instruction has ever been given to petitioners. In fact, Paragraph 10 of the affidavit is saying that all candidates are required to solve the question under reasonable time and during data analysis in connection to every examinee/candidates qualified for DV/PST, clear data points were collected from the CRL, which are sufficient to examine their response pattern. It is also mentioned that behaviour is quite unusual and unbelievable and there is suspicion that candidates has sought some external help through illegal means.

47. It is very surprising that action is totally based upon suspicion, neither any complaint has been received nor any unfair material has been recovered to establish that they have got some external help through illegal means. Law is very well settled that only based upon surmises and conjunctures, no such action can be taken jeopardising the future of the candidates. There is no dispute on the point that candidates may solve all questions in 15 minutes and once there is no negative marking, in case most of the answers are found correct, solving of question in a short time cannot said to be the use of unfair means without supported by any material. Therefore, this reply of the respondents also cannot be accepted for rejection of candidature of petitioners.

48. Now coming to the **last query** i.e. **sixth query** raised by the Court in its order dated 18.2.2025, which is read as follows:-

He shall also inform as to whether respondents have received any information or complaint with regard to use of unfair means or any misconduct by the candidates during the exam period

49. The reply of the same was given in Paragraph 11 of the affidavit dated 27.2.2025, which is being quoted hereinbelow:-

11. That regarding the Query No. vi, it is most respectfully submitted that regarding 42 candidates in present writ petition the following remark has been received by the service provider agency:-

Behaviour is quite unusual and unbelievable, there is suspicion that the candidate has sought some external help via illegal means.

50. From perusal of the same, it is apparently clear that no information or complaint has been received against the petitioners. Once there is no complaint and no information about the use of unfair means and nothing has been recovered from the possession of the candidates, only suspicion cannot be a ground to cancel the candidature ruining their career.

51. In light of facts discussed hereinabove, this Court is of the firm view that for use of unfair means, no rules have ever been framed, no procedure regarding cancellation of candidature has ever been informed to candidates and further, they have also not been informed that they have to solve the question paper in a particular time bound manner. In fact, no compliant or any adverse information has been received against any of the petitioners and nothing has been recovered from their possession. Prior to cancellation of the candidature, no opportunity of hearing or rebuttal was given to petitioners and the decision has been taken in gross violation of natural justice based upon surmises and conjunctures.

52. In last, the conduct of respondent-authorities are most irresponsible or unbecoming of government servant rather they are behaving like a group of unlawful persons. In Paragraph 6 of the counter affidavit filed on behalf of respondent nos. 2 & 3 dated 15.9.2022, stand of the State-respondents is clear that FIR has been lodged against the petitioners and other candidates and they have not been permitted to appear in next phase of the examination and accordingly ousted from the selection process due to use of unfair means, whereas in the affidavit of Chairman of Board, Lucknow dated 27.2.2025 entirely different view has been taken that petitioners themselves left the examination. Such type of conduct of State-respondents is highly depreciated. It is expected that State Government shall take action in accordance with law.

53. In light of aforesaid facts and circumstances, the writ petitions are **allowed**. Any order rejecting the candidature of petitioners/candidates on the grounds referred hereinabove is hereby set aside. Writ of Mandamus is issued directing the respondent-authorities to complete the selection process by conducting Physical Efficiency Test (PET) or any other remaining part of the examination maximum within a period of three months from the date of production of certified copy of this judgment.

54. It is further directed that this judgment shall be applicable to all the similarly situated candidates, who had not been permitted to participate in the Physical Efficiency Test(PET) based on similar allegation, which is subject matter of these writ petitions, whether they are petitioners in this writ petition/connected writ petitions or not.

55. It is also clarified that, in case candidature of any of the petitioners in this writ petition/connected writ petitions has been cancelled or they are not permitted to appear in the Physical Efficiency Test (PET) and other part of the examination due to some other reasons, not the subject matter of this writ petition, they shall not be given benefit of this judgment and respondents shall pass separate orders

along with reasons witihin the same time in those matters.

56. Respondent-authorities are also directed to declare the result of the petitioners within a month from the date of completion of examination and issue appointment letters, if they are selected.

(2025) 8 ILRA 943
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 06.08.2025

BEFORE

THE HON'BLE RAJNISH KUMAR, J.

Criminal Appeal No. 74 of 2000

Rajendr Yadav ...Appellant
Versus
State of U.P. ...Respondent

Counsel for the Appellant:
J.N. Chaudhry, Bhaiya Lal Yadav, Rajendra Prasad

Counsel for the Respondent:
Govt Advocate

Issue for Consideration

Whether the conviction of the appellant under **Section 307 IPC** could be sustained when (i) the statement of the injured witness was **not recorded under Section 161 Cr.P.C.**, thereby denying the accused a valuable right of contradiction; (ii) the presence of eye-witnesses and **source of light** at the place of occurrence was doubtful; (iii) ocular testimony suffered from material contradictions inconsistent with medical evidence; and (iv) the prosecution failed to prove intention to commit murder beyond reasonable doubt.

Headnotes

Indian Penal Code, 1860 — s.307 — Attempt to murder — Appreciation of evidence — Injured witness — Non-recording of statement under s.161 Cr.P.C. — Right of contradiction under ss.145 Evidence Act & 162 Cr.P.C. — Source of light doubtful — Ocular evidence inconsistent with medical evidence — Benefit of doubt — Acquittal.

Held:

Failure of the Investigating Officer to record the statement of the injured witness under Section 161 Cr.P.C. before submission of the charge-sheet amounted to **gross negligence** and deprived the accused of a valuable statutory right to contradict the witness under Sections 145 Evidence Act and 162 Cr.P.C. Though such omission does not render the testimony inadmissible, it **seriously impairs its evidentiary value** and necessitates heightened scrutiny. [Paras 10–19]

In the present case, the **presence of the alleged eye-witnesses** at the place of occurrence was doubtful owing to material contradictions regarding their seating position, the **existence and placement of light**, and the distance and direction from which the firearm was allegedly discharged. The source of light was not mentioned in the FIR and remained uncertain in evidence. [Paras 21–22]

The injured witness stated that the shot was fired from the **east** while he was moving towards the **north-west**, yet the gunshot injury was found on the **front of the chest**, rendering the ocular version **inconsistent with medical evidence**. Such inconsistency went to the root of the prosecution case. [Paras 22, 26]

Independent witnesses named in the FIR were not examined; the alleged blood trail was not scientifically corroborated; and presumptions drawn by the trial court regarding lighting conditions were unsupported by evidence. In these circumstances, the prosecution failed to establish the **intention requisite for Section 307 IPC** beyond reasonable doubt. [Paras 21–26]

The appellant was entitled to **benefit of doubt**. Conviction and sentence set aside; appellant acquitted. [Paras 26–27]

Appeal allowed. (E-14)

Case Law Cited

Gopal Krishna v. State, AIR 1964 All 481 — relied on; Shankar Lal and others v. State, AIR 1954 All 779 — followed; State of NCT of Delhi v. Ravi Kant Sharma, (2007) 2 SCC 764 — referred; Virender Singh v. State of Haryana, (2017) 11 SCC 126 — referred; Balu Sudam Khalde v. State of Maharashtra, AIR 2023 SC 1736 — applied; Jage Ram v. State of Haryana, (2015) 11 SCC 366 — referred; State of M.P. v. Kanha, AIR 2019 SC 713 — referred.

List of Acts / Statutes

Code of Criminal Procedure, 1973; Indian Penal Code, 1860; Indian Evidence Act, 1872**.**

List of Keywords

Attempt to murder; Section 307 IPC; Injured witness; Statement under Section 161 Cr.P.C.; Right of contradiction; Source of light; Ocular–medical inconsistency; Benefit of doubt; Faulty investigation; Acquittal.

Case Arising From

Judgment and order dated **27.01.2000** passed by the Ist Additional Sessions Judge, Unnao in **Sessions Trial No. 432 of 1994** (State v. Rajendra Yadav), arising out of Case Crime No. 44 of 1994, Police Station Makhi, District Unnao.

Appearance for Parties

For the Appellants: Sri Rajendra Prasad
For the State: Additional Government Advocate

(Delivered by Hon'ble Rajnish Kumar, J.)

1. Heard Sri Rajendra Prasad,learned counsel for the appellant and learned Additional Government Advocate.

2. This Criminal Appeal under Section 374(2) of Criminal Procedure Code (hereinafter referred to as Cr.P.C.) has been filed against the judgment and order dated 27.1.2000 passed in Session Trial No.432 of 1994 (State versus Rajendra Yadav) by Ist Additional Sessions Judge, Unnao, by means of which the appellant Rajendra Yadav has been convicted and sentenced under Section 307 IPC to undergo 7 years rigorous imprisonment and Rs.5000/- as fine and in default of payment of fine to further undergo 1 year rigorous imprisonment.

3. Learned counsel for the appellant submitted that the appellant has falsely been implicated in the case and the trial court, without considering the evidence and material on record appropriately, has convicted the appellant and sentenced him as above. He further submitted that the presence of P.W.1 and P.W.2 at the place of incident itself is doubtful. He also submits that the injury sustained by the appellant cannot come in the facts and circumstances of the case because as per the evidence of the injured, while he was going towards North-West, the fire was made by pistol by the appellant from East and in such circumstances the said injury could not have come at 10'o clock to niple in chest. He further submitted that no source of light has been shown at the place of incident either in the F.I.R. or in the evidence and only a lantern was at some distance but the recovery memo of torch has been shown. He also submitted that the F.I.R. is anti-dated and there is contradiction in the story, as such, the same is concocted. He also submitted that the trial itself was faulty because statement of injured Shyam Lal was neither recorded under Section 161 Cr.P.C nor given to the appellant, therefore, he has been denied the opportunity to contradict to the injured about his previous statement. He also submitted that there is contradiction in the evidence of the investigating officer and the Constable. The scriber of F.I.R. has not been got examined. None of the independent eye witness has been got examined. The trail of blood has not been

found on the spot. He relied on ***Gopal Krishna versus State; AIR 1964 All 481 and Shankar Lal and others versus State; AIR 1954 All 779.***

4. On the basis of above, submission of learned counsel for the appellant is that the impugned judgment and order is not sustainable in the eyes of law and liable to be set aside and the appellant is liable to be acquitted.

5. Learned AGA vehemently opposed the submissions of learned counsel for the appellant. He submitted that the prosecution has proved it's case beyond doubt in accordance with law by adducing the evidence. The testimony of injured witness cannot be discarded as the injured witness has proved the incident and the injury. The F.I.R. was lodged promptly. Thus, learned AGA submitted that the impugned judgment and order has rightly been passed in accordance with law, which does not suffer from any illegality or error. The appeal has been filed on misconceived and baseless grounds and it is liable to be dismissed. He relied on ***Balu Sudam Khalde and Others versus The State of Maharashtra; MANU/ SC/0328/2023[AIR 2023 SC 1736], Jage Ram versus State of Haryana; MANU/SC/0074/2015,[(2015) 11 SCC 366]; and The State of Madhya Pradesh versus Kanha; MANU/SC/0130/2019; [AIR 2019 SC 713].***

6. I have considered the submissions of learned counsel for the parties and perused the records.

7. The prosecution story, in brief, is that on 13.2.1994 in the evening informant Nand Kumar alongwith his brother injured Shyam Lal had gone to the house of accused Rajendra Yadav on invitation for a feast. At about 7 P.M. Shyam Lal asked Rajendra to serve food without delay as he had invited so early. On this, the accused persons started abusing Shyam Lal. Shyam Lal then said that he would go back. On this accused Gyan Singh, Chhote Lal, Rajjan and Ram Shanker asked Rajendra to beat him, whereupon accused Rajendra Yadav, with intent to cause death, fired at Shyam Lal with a country made pistol, whereby Shyam Lal sustained hurt on his chest and fell down at some distance. The incident was witnessed by informant-Nand Kumar, Sukh Lal, Surjan and many others. Shyam Lal was taken to District Hospital, Unnao, wherefrom he was referred to Hallet Hospital, Kanpur. Nand Kumar got a written report of the incident scribed by Lakshmi Narain and lodged it at the police station Makhi on 14.02.1994 at 1:30 a.m., whereupon Case Crime No.44/94, under Sections 147, 148, 149, 307 and 504 IPC was registered and investigated. The injured was medically examined at District Hosptial, Unnao on 13.02.1994 at 9:45 p.m. The investigating office recorded statements of the witnesses and prepared a site plan. He seized blood stained earth and plain earth from the spot and prepared a memo. He also seized blood stained clothes of the injured and prepared a memo. Torch of Nand Kumar was inspected and given to the Supurdagi of Nand Kumar after preparing Fard Supardaginama. After completing the investigation, the local police submitted charge sheet against all the five accused persons.

8. The case was committed to the court of Sessions by means of the order dated 29.06.1994 by 5th Additional C.J.M., Unnao. The charge was framed against the appellant Rajendra Yadav under Sections 148 and 307 I.P.C., while the remaining

four accuseds, namely, Ram Shankar, Gyan Sngh, Chhotey Lal and Rajjan were charged with Section 147 and 307 I.P.C. read with Section 149 IPC. The prosecution examined Nand Kumar as P.W.1, Shyam Lal as P.W.2, Constable Om Prakash as P.W.4, Dr. Rajeev Khare as P.W.4, S.I. Ramsingar Singh as P.W.5 and S.I. S.P. Singh as P.W.6 to prove it's case. After evidence adduced by the prosecution, statement under Section 313 Cr.P.C. of the appellant alongwith other accuseds were recorded, in which they denied the allegations and stated that they have falsely been implicated due to enmity. The appellant Rajendra Yadav in addition thereto stated that the injured Shyam Lal used to come to his doors earlier also in a drunken state and hurl abuses, whereupon he used to ask him to get away. However, in defence, the appellant and the other accuseds did not adduce any evidence. Learned trial court, thereafter, after hearing learned counsel for the parties and perusing the evidence and material on record, acquitted Ram Shankar, Gyan Singh, Chhotey Lal and Rajjan under Sections 147 and 307 I.P.C. read with Section 149 I.P.C. and the appellant Rajendra Yadav under Section 148 I.P.C. However, the appellant Rajendra Yadav has been held guilty and has been convicted under Section 307 I.P.C. and sentenced to undergo the aforesaid punishment. Hence this criminal appeal has been filed.

9. P.W.1 Nand Kumar is the real brother of the injured and informant of the case. He proved written report Exhibit Ka-1. P.W.2 Shyam Lal is the injured. P.W.3 Constable Om Prakash has proved the chik F.I.R. Exhibit Ka-2 and a copy of the relevant entries made in the G.D. Exhibit Ka-3. P.W. 4 Rajeev Khare, who had examined the injuries of the injured Shyam Lal P.W.2 on 13.02.1994 at 9:45 p.m. at District Hospital Unnao, proved the injury report, Ext.Ka-4. He found gun-shot wound of entry 3 cm. x 2/5 c.m. x chest cavity deep on left side of chest, 4 cm. medial to left nipple at 10 O' clock position. Margins of the wound were lacerated, echymosed and inverted, blackening and tattooing present in an area of 6 cm.x5.5 c.m. area of wound. The wound was sucking in nature. He kept the injuries under observation and advised for X' ray of chest and opined the injury to have been caused by fire-arm weapon with fresh duration. He also stated that condition of injured was serious. P.W.5 S.I. Ram Singar Singh had started investigation of the case and prepared Fard Exhibit Ka-5 of blood stained and plain earth. He also prepared Fard Exhibit Ka-6 of blood stained clothes of Shyam Lal. He inspected torch of Nand Kumar and prepared Fard Supardaginama Exhibit Ka-7. He prepared site plan Exhibit Ka-8 and proved charge sheet Exhibit Ka-9 filed by S.I. S.P. Singh, who appeared as P.W.6. P.W.6 Surendra Pal Singh, Sub-Inspector, took over the investigation from S.I. Ram Singar Singh and recorded statements of accused Rajjan and Chhote Lal on 24.03.1994 and submitted charge sheet Exhibit Ka-9 against all the accuseds on 28.03.1994.

10. One of the grounds of challenge to the impugned order is that the statement of the injured Shyam Lal, who appeared as P.W.2, was not recorded under Section 161 Cr.P.C., therefore, the trial vitiated and the conviction of the appellant could not have been made. Thus before proceeding to consider the case on merit, this Court deems it appropriate, to consider this issue first because it will have impact on the consideration of the case and evidence on record.

11. Section 161 Cr.P.C. provides the examination of witness by police. Sub Section (1) provides that any police officer making an investigation under this Chapter, may examine orally any person supposed to be acquainted with the facts and circumstances of the case and such person shall be bound to answer truly all questions relating to such case under Sub Section (2). Under Sub Section (3) the police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the same. Section 161 Cr.P.C. is extracted here-in-below:-

"161-Examination of witnesses by police:- (1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3)The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

Provided that statement made under this sub-section may also be recorded by audio-video electronic means"

12. Section 162 Cr.P.C. provides that no statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement of record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. The proviso appended to Sub Section (1) of Section 162 provides that when any witness is called for the prosecution in such inquiry or trial, whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872, and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination. Section 162 Cr.P.C. is extracted here-in-below:-

"162-Statements to police not to be signed : Use of statements in evidence.

(1)No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement of record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2)Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of section 27 of that Act.Explanation. - An omission to state a fact or circumstances in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact."

13. Section 145 of the Indian Evidence Act,1872 provides cross-examination of a witness regarding previous statements in writing. It provides that a witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. Section 145 of the Indian Evidence Act, 1872 is extracted here-in-below:-

"145.Cross Examination as to previous statement in writing:-

A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

14. In view of above, the police officer investigating any offence may examine orally any person supposed to be acquainted with the facts and circumstances of the case and reduce into writing any statement made by him. The said statement cannot be used in any inquiry or trial in respect of any offence under investigation but the said statement may be used to contradict the said witness for the purpose of explaining any matter referred in his cross-examination by the witness. The accused may contradict the said witness in cross-examination in the manner provided under Section 145, in which his writing may also be got proved. Since the right has been given to the accused in the proviso to Section 162(1), therefore, the statement of such witness recorded under Section 161 Cr.P.C. would be material for his defence at the time of cross-examination. It is settled in law that every accused shall be afforded sufficient opportunity of defence during trial to prove his innocence, therefore, statute also provides to supply all the relevant material to the accused. The statements recorded under section 161 Cr.P..C. are also required to be furnished to

the accused under Section 207(iii) Cr.P.C. Section 207(iii) Cr.P.C. is extracted hereinbelow:-

" 207 Supply to the accused of copy of police report and other documents:-

In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following;

(i)……..

(ii)……..

(iii) the statements recorded under Sub-Section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under Sub-Section (6) of section 173;

(iv)……..

(v)……..

Provided that the Magistrate may, after perusing any such pan of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused; Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court."

15. A Coordinate Bench of this Court, in the case of **Gopal Krishna versus State(supra),** has observed that it is obvious that though the police is not bound to make a record of the statement of the witnesses under Section 161 as a matter of obligation, but it is their duty to do so, when the witness is a material witness for unfolding the prosecution story. It is also clear that a failure on their part to comply with the requirements of Section 161(3), though does not render the subsequent statement of the witness at the trial inadmissible, it does greatly impair the value of the evidence of that witness. Thus the Court opined that the statement of such witness looses much of it's weight and the value of the testimony furnished by the witnesses produced at the trial has to be assessed. The relevant paragraph 19 to 23 is extracted here-in-below:-

"19. Section 161(3) runs as follows:

"The police officer may reduce into writing any statement made to him in the course of an examination under this section ……"

20. Section 164(1) also provides that "Any Presidency Magistrate, any Magistrate of the First Class …… may record any statement or confession made to him in the course of an investigation under this Chapter.

The word 'may' as used in S. 164 came up for comment in the case of Nazir Ahmad v. King Emperor, AIR 1936 PC 253 (2) and their Lordships were pleased to observe as follows:

"It can hardly be doubted that a magistrate would not be obliged to record

any confession made to him if, for example, it were that of a self-accusing mad man or for any other reasons the magistrate thought it to be incredible or useless for the purposes of justice. Whether a magistrate records any confession is a matter of duty and discretion and not of obligation" …… In the case of Purushottam Jethanand v. State of Kutch, AIR 1954 SC 700 it was held:

"There can be no doubt that the right which the accused had got of obtaining the copies of the statements made by witnesses during investigation is a very valuable right and that the wholesale refusal to grant the same will be a serious irregularity which would vitiate the entire trial as held by the Privy Council in Kottaya v. Emperor, AIR 1947 PC 67."

21 In the case of Tilkeshwar Singh v. State of Bihar, (S) AIR 1956 SC 238 it was held that while the failure to comply with the requirements of Section 161(3) of the Cr PC might affect the weight to be attached to the evidence of the witnesses, it does not render it inadmissible.

22. On the basis of these authorities, it is obvious that though the police are not bound to make a record of the statement of the witnesses under S. 161 as a matter of obligation, it is their duty to do so when the witness is a material witness for unfolding the prosecution story. It is also clear that a failure on their part to comply with the requirements of S. 161(3), though does not render the subsequent statement of the witness at the trial inadmissible, it does greatly impair the value of the evidence of that witness. I am, therefore, of opinion that the statement of the Complaints Officer Bal Singh at the trial though admissible in evidence has lost much I of its weight on account of the fact that his statement was not recorded under Section 161 of the Cr PC.

23. In the light of above discussion of the legal questions raised in the case, the value of the testimony furnished by the witnesses produced at the trial has to be assessed."

16. A Division Bench of this Court, in the case of ***Shankar Lal and others versus State(supra),*** has held that It is not safe to convict an accused person on the statements of witnesses, who have not been effectively and completely cross-examined because appellants were denied a valuable right conferred on them by law.

17. The Hon'ble Supreme Court, in the case of ***State of NCT of Delhi versus Ravi Kant Sharma and Others; (2007) 2 SCC 764,*** has held that the police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records. It is only when the investigating officer decides to record the statement of witnesses under Section 161 Cr.P.C. that he becomes obliged to make a true record of the statement which obviously will not include the interpretation of the investigating officer of the statements or the gists of statement.

18. The Hon'ble Supreme Court, in the case of ***Virender Singh versus State of Haryana; (2017) 11 SCC 126,*** has held that the statements made by the witness in the course of her investigation and recorded under Section 161 CrPC do not constitute evidence that can be relied upon by a court

to convict an accused. But this is what the High Court seems to have done. It was open for the High Court to consider all other evidence, ocular or circumstantial, implicating the accused, if such evidence was available. But no reliance could have been placed on the statements recorded under Section 161 CrPC. The absence of any evidence and a suspicion in the mind of the Court cannot justify recourse to a consideration of what clearly is not evidence in law.

19. Adverting to the facts of the present case, admittedly the statement under Section 161 Cr.P.C. of the injured Shyam Lal; P.W.-2 was not recorded by the Investigating Officer S.I. S.P. Singh as he was admitted in hospital and no effort was made by him to examine the injured before submitting the charge sheet, which has been admitted by him, therefore, the trial court had directed to send a copy of the judgment to the Superintendent of Police, Unnao to take such action against him as he deems appropriate for gross negligence in not examining the injured Shyam Lal under Section 161 Cr.P.C. before submitting the charge sheet. Thus in view of the law as discussed above, the appellant could not be afforded opportunity to contradict his earlier statement in cross-examination, if he would have made any, immediately after the incident. However in the present case learned counsel for the appellant himself has relied on the evidence and cross-examination of P.W.-2; injured. Therefore, it is to be seen that irrespective of his evidence before the trial court, the evidence adduced by the other witnesses was sufficient or not to prove the charge against the appellant and as to whether his evidence, who was an injured witness and sustained injuries in the incident can be discarded totally on the aforesaid ground in the present case and if not, what would be weight of his evidence and how much of it can be relied.

20. In the present case, learned counsel for the appellant, though argued that in absence of statement under Section 161 Cr.P.C. of the injured Shyam Lal; P.W.-2, the proper opportunity could not be afforded to him and impugned judgment and order is liable to be set aside, but he has heavily relied on the evidence of P.W.-1 and P.W.2 to show that their presence on the spot of incident was doubtful and the injured P.W.-2 could not have sustained the injuries in chest in the said incident and source of light on the spot also could not be proved, therefore, the said witnesses could not have seen as to who had fired. Thus this court is of the view that the impugned judgment and order cannot be set-aside merely on the ground of non recording of statement of injured under Section 161 Cr.P.C. For this reason also the case is to be considered in the light of aforesaid observations.

21. P.W.1 Nand Kumar, who is real brother of the injured and the informant of the case, appeared as an eye witness. He stated in his evidence that he does not know brother-in-law and father-in-law of the appellant, whereas he had lodged F.I.R. against them. He stated in his cross-examination that he is neither neighbour nor of the caste of the appellant Rajendra. Jagdhar had invited and called him at 6:00 in the evening for the feast. At that time, there was light but at the time of incident, it was dark. He, on the one hand stated that they sat in front of the house of Ram Shankar instead of Rajendra and Ram Shankar had informed him and on the other he has stated that they were sitting on a cot inside the chaupal. Thus there is

contradiction in it and the injured Shyam Lal i.e. P.W.-2 has stated that he sat in room in the forefront of house of Rajendra and further stated that it was like Chaupal, in which he sat. He, also stated that his brother was not sitting with him. Thus their presence at one and the same place is doubtful. P.W.-1 has also stated that where they were sitting, no lantern was burning. A chirag was burning in chaupal, where they were sitting and the place of incident was at a distance of 15 steps. My brother had not fallen there, rather, he had fell after 2-4 steps. He further stated that he has not stated in the report about burning of the lantern and he does not know any reason as to why burning of the lantern has not been mentioned in the report. He further stated that the lantern was under the thatch out side Chaupal. He also stated that his brother Shyam Lal used to take liquor and he was challaned by police. Thus burning of a chirag has been shown by P.W.1 in chaupal, where they were sitting in his cross examination, whereas in the examination-in-chief he stated that the lantern was burning but the place has not been disclosed and in cross-examination lantern has been shown under thatch, which was out of chaupal or room, where they were stated to were sitting and the injured Shyam Lal had suffered injury at a distance of about 15 steps. P.W.-2 has also stated about lantern in chaupal. But it has not been disclosed as to from which side and from what distance the appellant fired. Thus the source of light at the place of incident is doubtful. He has further stated that Jaghdar had come to call him and Shyam Lal and they accompanied him on 13.02.1994 at about quarter to 7, whereas in cross-examination he has stated the time 6. He also stated that Shyam Lal asked to the appellant Rajendra for making arrangement of food quickly and call whomsoever he wants to call because we have been called very early. The appellant replied that the food is still not ready and you always used to make nuisance in his work. Shyam Lal stated that give us food otherwise we will go and they stood up to go. At that time Chhotey Lal, Gyan Singh, Rajjan and Ram Shankar exhorted the appellant Rajendra to beat Shyam Lal, so that he may not go, on which, the appellant Rajendra fired on Shyam Lal from country made pistol, in which Shyam Lal got injuries. He ran but fell after going at some distance. Sukhlal, Surjan, Bheekha and others had seen the incident. On being controverted, the accuseds ran away. Thus though the names of at least three independent persons have been mentioned by P.W.1 but none of them have been produced in evidence.

22. Shyam Lal injured, who appeared as P.W.2, stated in examination-in-chief that the appellant Rajendra had fired him on chest with intention to kill him. However, in the cross examination he stated that when he suffered injury, the fire was shot on him from the side of East, when it hit him he was going towards the North-West. Thus if this evidence of P.W.2 injured is considered, firstly it is in contradiction to his evidence in examination-in-chief, secondly if the fire was made from the east side, while he was going towards the north-west, it could not have hit at chest in front of his body and it should have been on the back. Admittedly, the incident occurred at about 7:00 in the evening and it must have been night and dark at that time. If there is ocular and direct evidence in regard to the light given by the eye witness, then the presumption could not have been drawn by the trial court that if certain persons were invited for party, there must have been some

arrangement of light, particularly when the statement of injured under Section 161 Cr.P.C. was not recorded, on account of which the appellant could not be afforded opportunity to contradict him. Thus the appellant is entitled for benefit of evidence of P.W.-2. Even otherwise the conviction may not be made solely on the evidence of P.W.-2 in such circumstance, but it can be considered otherwise and in the light of other evidence and benefit of his evidence, if any, may be in favour of the accused i.e. the appellant.

23. The Hon'ble Supreme Court, in the case of **Balu Sudam Khalde and Ors. versus The State of Mahrashtra(supra),** has enumerated the judicially evolved principles for appreciation of ocular evidence in a criminal case and as to how the evidence of an injured eye-witness is to be appreciated. In assessing the value of the evidence of the eyewitnesses, two principal considerations; firstly, whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. The relevant paragraphs 25, 26 and 27 are extracted here-in-below:-

APPRECIATION OF ORAL EVIDENCE

"25. The appreciation of ocular evidence is a hard task. There is no fixed or straight-jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

"I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the

investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person. XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness." [See Bharwada Bhoginbhai Hirjibhai v. State of Gujarat 1983 Cri LJ 1096 : (AIR 1983 SC 753) Leela Ram v. State of Haryana AIR 1995 SC 3717 and Tahsildar Singh v. State of UP (AIR 1959 SC 1012)]

26. When the evidence of an injured eye-witness is to be appreciated, the under- noted legal principles enunciated by the Courts are required to be kept in mind:

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.

27. In assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or put forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence."

24. The Hon'ble Supreme Court, in the case of **Jage Ram versus State of Haryana(supra),** held that for the purpose of conviction under Section 307 IPC, prosecution has to establish (i) the intention to commit murder and (ii) the act done by the accused. The burden is on the prosecution to prove that accused had attempted to commit the murder. The relevant paragraphs 12 and 13 are extracted here-in-below:-

"12. For the purpose of conviction under Section 307 IPC, prosecution has to establish (i) the intention to commit murder and (ii) the act done by the accused. The burden is on the prosecution that accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing

death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given etc.

13. In the case of State of M.P. vs. Kashiram & Ors.[1], the scope of intention for attracting conviction under Section 307 IPC was elaborated and it was held as under:-

"13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt."

25. The Hon'ble Supreme Court, in the case of **The State of Madhya Pradesh versus Kanha (Supra),** has relied the aforesaid case of Jage Ram versus State of Haryana and found that the ocular evidence is cogent and corroborated by the medical evidence.

26. Considering the case in hand in view of the facts and circumstances of the case as discussed above and the law, it is apparent that the presence of the eye witnesses i.e. P.W.-1 and P.W.-2 at the place of incident is doubtful as there is contradiction in their testimony about the place of their sitting, source of light on the spot and the most important thing is that the injuries sustained by the injured P.W.-2; Shyam Lal could not have sustained on the chest, when the fire would have been shot by the appellant from the east side, when the injured was going towards north-west as per evidence of P.W.-2, which could not be controverted by the other side. This court also finds that there is contradiction in the evidence of P.W.-1 and P.W.-2 in regard to going of the injured Shyam Lal to Kanpur for selling Cabbage (Bandha) as one has said that he had gone a day prior to the date of incident and came back at about 6.00 in the evening on the date of incident, while the other said that he had gone and came back on the same day. No trail of blood stain found from the place of hit of fire upto the place, where the injured fell down after running and a presumption has been drawn by the trial court on the basis of clothes on the body of the injured that the blood may not have fell down without any evidence in this regard, whereas as per the recovery memo plain and blood stained mud was collected by the Investigating Officer from the spot, but the same has not been got matched with the blood of the injured, in as much as, the learned trial court has failed to consider the same. The reason for false implication has been stated by the appellant is that the injured was a drunkard and he used to come before his house and abuse and P.W.-1 has admitted in his evidence that the injured Shyam Lal used to take liquor and he was challaned also by the police. Thus,

this court is of the view that the prosecution has failed to prove its case beyond doubt and in the facts and circumstances of the case the appellant is entitled for benefit of doubt, but the learned trial court failed to consider it, therefore, the impugned judgment and order is not sustainable in the eyes of law and liable to be set-aside and the appellant is liable to be acquitted giving the benefit of doubt.

27. The appeal is, accordingly, **allowed**. The impugned judgment and order dated dated 27.1.2000 passed in Session Trial No.432 of 1994; State versus Rajendra Yadav by the Ist Additional Sessions Judge, Unnao is hereby set aside. The appellant is acquitted giving benefit of doubt.

28. Let a copy of this judgment as well as the lower court record be transmitted to the concerned Trial Court forthwith.

(2025) 8 ILRA 957
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 08.08.2025

BEFORE

THE HON'BLE SAUMITRA DAYAL SINGH, J.
THE HON'BLE MADAN PAL SINGH, J.

Criminal Appeal No. 2977 of 1984

Vijai @ Babban ...Appellant
Versus
State of U.P. ...Respondent

Counsel for the Appellant:
G.P. Mathur

Counsel for the Respondent:
A.G.A.

Issue for Consideration

Whether the conviction of the appellant under **Section 302 read with Section 34 IPC** could be sustained when the appellant was assigned only the role of **exhortation**, the principal assailant having inflicted the fatal knife injuries, and whether the prosecution proved **common intention** beyond reasonable doubt in absence of premeditation or any overt/covert act attributable to the appellant.

Headnotes

Indian Penal Code, 1860 — ss. 302/34 — Murder — Common intention — Exhortation — Evidentiary value — Premeditation — Participation — Weak evidence — Benefit of doubt — Acquittal.

Held:

To attract liability under Section 34 IPC, the prosecution must establish **(i) common intention** and **(ii) participation** of the accused in the commission of the offence, whether by overt or covert act or illegal omission. Mere presence at the spot or sharing a mental state, without participation, is insufficient. Common intention, being a state of mind, must be inferred from proved circumstances and conduct. [Paras 19–20, 28–32]

Evidence of **exhortation** is, by its nature, a **weak piece of evidence**. Courts must be cautious, as there is a frequent tendency to implicate an additional person by attributing exhortation. Unless such evidence is clear, cogent and reliable, and supported by surrounding circumstances showing participation or facilitation, conviction cannot be sustained. [Paras 26, 31]

In the present case, the appellant was attributed only a role of exhortation ("maro saale ko"). The **FIR did not attribute** to him any active role such as wielding a knife or threatening witnesses; the alleged acts deposed at trial constituted **material improvements**. There was no proof of prior meeting of minds or premeditation; the encounter between the parties appeared **chance**, preceded by a verbal altercation. [Paras 21–23]

Although the appellant's **presence at the spot** was proved, the prosecution failed to establish

that he shared a common intention with the principal offender to commit murder. Notably, despite the allegation that he too carried a knife, **he did not assault the deceased**, which militates against the inference of common intention. [Paras 23–24]

On the totality of circumstances, the prosecution failed to prove beyond reasonable doubt that the appellant participated in the offence in furtherance of a common intention. Conviction under Section 302/34 IPC could not be sustained. Appeal allowed; appellant acquitted. [Paras 38–39]

Appeal allowed. (E-14)

Case Law Cited

Pandurang v. State of Hyderabad, 1955 (1) SCR 1083 — relied on; Jainul Haque v. State of Bihar, AIR 1974 SC 1651 — applied (exhortation as weak evidence); Surendra Chauhan v. State of M.P., (2000) 4 SCC 110 — relied on; Suresh v. State of U.P., (2001) 3 SCC 673 — followed; Matadin v. State of Maharashtra, (1998) 7 SCC 216 — applied; State of Orissa v. Arjun Das Aggarwal, (1999) 8 SCC 154 — followed; Parshuram Singh v. State of Bihar, (2002) 8 SCC 16 — relied on; Vaijayanti v. State of Maharashtra, (2005) 13 SCC 134 — referred; State of U.P. v. Farid Khan, (2005) 9 SCC 103 — distinguished.

List of Acts / Statutes

Code of Criminal Procedure, 1973; Indian Penal Code, 1860; Indian Evidence Act, 1872**.**

List of Keywords

Murder; Common intention; Section 34 IPC; Exhortation; Weak evidence; Premeditation; Participation; Material improvement; Mere presence; Benefit of doubt; Acquittal.

Case Arising From

Judgment and order dated **20.10.1984** passed by the Ist Additional Sessions Judge, Jhansi in **Sessions Trial No. 35 of 1984** (State v. Narendra Kumar & another), arising out of **Case Crime No. 510 of 1983**, Police Station Nawabad, District Jhansi.

Appearance for Parties

For the Appellants: Shri Rajiv Lochan Shukla, learned Amicus Curiae, ably assisted by Shri Shashank Pandey

For the State: Shri L.D. Rajbhar and Mr. Murtaza Ali, learned AGAs for the State

(Delivered by Hon'ble Madan Pal Singh, J.)

1. The instant criminal appeal is directed against the judgment and order dated 20.10.1984 passed by Ist Additional Sessions Judge, Jhansi, in Sessions Trial No. 35 of 1984 (State Vs. Narendra Kumar & another), arising out of Case Crime No. 510 of 1983, under Sections 302/34 IPC, Police Station -Nawabad, District - Jhansi, whereby the appellant has been convicted under Section 302/34 IPC and sentenced to undergo life imprisonment.

2. Facts giving rise to the present appeal may be summarized as under:-

(i). The prosecution case in brief is that on the basis of Written Report dated 17.12.1983, of the informant Bahadur Shah (P.W.-1), resident of Kapoor Tekari, Police Station Nawabad, District Jhansi, an FIR was lodged stating therein that on 17.12.1983 at about 7.45 PM, he, his brother Bashir Shah and one Mahendra, resident of Narmal School, Kachahary Chauraha were returning to their home via Khushipura. As soon as they reached in front of the house of Khem Chand, they met Narendra Kori son of Mangali and Vijai @ Babban son of Sher Singh, who were coming from Kapoor Tekari. At the same time, Narendra started abusing his brother Bashir Shah and said "Who are you to come between me and Kanti, you are constantly trying to intrude in this matter. I have tried to convince you many times in this matter, yet, you continued". At this, his brother Bashir said that you are making

false allegation against me without any basis and don't try to bully me. Upon which, Vijay responded by saying "Maro Sale Ko". At that moment Narendra drew a knife and gave three-four knife blows to his brother (since deceased), due to which, he became injured and he fell down. The incident was witnessed by Ali Hasan son of Subrati, Manjoor Ahmad son of Ismail and Hazarat son of Noor Shah, resident of Kapoor Tekari and several others. There was enough source of light at the place of occurrence. After causing the incident, Narendra and Vijai @ Babban fled from the place of occurrence brandishing knife, towards village Khushipura. The injured was carried to the Medical College on a two wheeler, where the Doctor declared him dead. Narendra used to visit to the house of Kanti daughter of Karanjoo with bad intentions. Bashir Shah also used to visit the house of Kanti and treated her as his sister. On many occasions, Bashir Shah warned Narendra not to visit the house of Kanti. Due to this very reason, the accused Narendra was having enmity with the deceased and accordingly, killed him. The Written Report was marked as Ex. Ka-1.

(ii). On the basis of teharir submitted by the informant, Case Crime No. 510 of 1983, under Sections 302 IPC, Police Station Nawabad, District Jhansi, was registered against the accused persons and investigation ensued.

(iii). During the course of investigation, panchayatnama was conducted on 18.12.1983, which was marked as Ex. Ka-13 and the body was sent for autopsy.

(iv). The autopsy of the dead body of Bashir Shah was conducted on 18.12.1983 at 12.30 PM at District Hospital, Jhansi, by Dr. D. Saxena. It was marked as Ex. Ka-8.

(v). The investigation was conducted and after preparing the site plan, recorded the statement of witnesses and after completing the other necessary formalities, the Investigation Officer had submitted the charge-sheet against the accused persons on 25.12.1983 under Section 302 IPC, and cognizance thereupon was taken on 20.01.1984 by the Chief Judicial Magistrate concerned and thereafter the case was committed to the Court of Sessions on 20.01.1984 for trial. The charge-sheet was marked as Ex. Ka-20.

(vi). That on the basis of evidence collected during investigation, vide order dated 27.04.1984, charges were framed against the appellants under Section 302/34 IPC. The appellants denied the charges and claimed to be tried.

(vii). The prosecution to prove its case had examined P.W.1-Bahadur Shah (informant), P.W.2-Ali Hasan, P.W.3-Mahendra, as witnesses of fact and P.W.4-Yashpal Singh, P.W.5-Dr. D. Saxena and P.W.6-Jaipal Singh as a formal witnesses.

(viii). The prosecution in support of its case had also produced oral as well as documentary evidence, which were marked as follows:

(a) Written Report Ex. Ka-1, **(b)** FIR Ex. Ka-2, **(c)** Postmortem Report Ex. Ka-8, **(d)** Recovery memo of blood stained Bushirt Ex. Ka-9, **(e)** Recovery memo of blood stained soil and plain soil Ex. Ka-11 **(f)** Recovery memo of blood stained Bushirt Ex. Ka-12 **(g)** Report of chemical examiner Ex. Ka-22, **(h)** Panchayatnama

Ex. Ka-13 **(g)** Charge-sheet Ex. Ka-20 and **(h)** Site Plan with index Ex. Ka-10.

3. After closing of the prosecution evidence, the statements of the accused persons were recorded under section 313 of the Code of Criminal Procedure, in which, appellant stated that police had implicated him in several false cases in which he got acquitted, due to this animosity, he has falsely been implicated in the present case.

4. Heard Shri Rajiv Lochan Shukla, learned Amicus Curiae, ably assisted by Shri Shashank Pandey, learned counsel for the appellant and Shri L.D. Rajbhar and Mr. Murtaza Ali, learned AGAs for the State.

5. Learned counsel for the appellant mainly argued that the main allegation of causing knife injury to the deceased was against the co-accused Narendra Kumar, against whom the appeal has already been abated. The appellant-Vijai @ Babban was assigned the role of exhortation, only.

6. He next argued that prosecution has failed to establish that the present appellant had shared common intention with the principal offender, which was essential to prove to bring home the charge against the present appellant, of committing the murder of the deceased in furtherance of common intention.

7. He further argued that the presence of the appellant is also not proved beyond reasonable doubt, inasmuch as, had the appellant been there and had shared common intention to commit the murder of deceased, no reason appears why he would not have assaulted the deceased, himself.

8. Lastly, he argued that mere presence of appellant at the spot and utterance of the word (MARO SALE KO) can not reflect common intention. Such type of words are commonly used even in a trivial nature of altercation, which do not necessary suggest an intention to kill the person, rather these words may imply the commission of simple *'marpeet'*, particularly, when the prosecution has failed to prove that both the accused reached at the place of occurrence with premeditation of mind.

9. On the other hand, learned A.G.A. appearing for the State has argued that this case revolves around the common intention and sufficient evidence is available on record against the present appellant regarding exhortation upon which, the main accused Narendra, who had preferred Criminal Appeal No. 3113 of 1984 before this Court and during the pendency of the aforesaid Criminal Appeal, he died and appeal filed by him already stands abated vide order dated 08.03.2018.

10. He next argued that the common intention may occur at the spot which had clearly been shown by the overt act of the present appellant. Hence he prayed to dismiss the appeal preferred by the appellant.

11. Before discussing the arguments advanced on behalf of the parties, it is necessary to have a glance on the evidence recorded by the trial court.

12. P.W.1-Bahadur Shah, the informant in his examination-in-chief had narrated the factum of incident and supported the prosecution version. He deposed that prior to about 7 months at around 07:45 p.m. he along with his brother

Bashir Shah was going towards his house from Kachahri Chauraha where Mahendra met them and asked him to accompany them for seeing lightening in Kasai Mandi. The witness along with his brother Bashir Shah and Mahendra proceeded towards their house via Khushipura and on reaching near the house of Khem Chandra in Kapoor Tekari, accused Vijai @ Babban and Narendra met them. Narendra said to his brother Bashir that despite several warnings given by him, he is constantly interfering between him and Kanti, which was refuted by Bashir, who objected and told him not bully him. Thereupon, co-accused Narendra and Vijai @ Babban took out knives and Narendra started inflicting knife blows upon Bashir. On alarm being raised, witnesses Ali Hasan, Manjoor and Hazarat reached the spot. The witnesses could not intervene as Vijai, while brandishing knife said that if anyone will come to intervene the matter, he will kill him. The deceased Bashir fell down in an injured condition and accused persons fled from the place of occurrence. This witness and Mahendra took Bashir Shah to Chakki of Haziji and from there they took Bashir Shah to Medical-College in a taxi, where the doctor declared him dead. A written report (Ex. Ka.1) was got written by Yusuf which is Ex. Ka-1. He further stated that he along with all the witnesses saw the incident in road-side electric light.

13. P.W.2- Ali Hasan in his examination-in-chief has stated the factum of incident and supported the prosecution version and stated that he was returning after electric fitting in the house of one Yakub driver, on the way he met with Hazrat conductor. As soon as they reached near the house of Manzoor Ahmad, he saw that Narendra and Vijay were arguing with Bashir, saying why he was interfering in his matter with Kanti. On this Bashir replied, he had not interfered in anyone's matter but told him not to bully him. At this Vijay said (AAJ SALE KO JAAN SE MAAR DO). Upon this Narendra drew out his knife at once and started inflicting stab wounds to Bashir and fled towards Khusipura.

14. P.W.3- Mahendra, in his examination-in-chief narrated the factum of incident and supported the prosecution version almost in the same manner as stated by other witnesses of fact and he further stated that he met Bashir and Bahadur and asked them to accompany him to see light on the occasion of Barawafat. As soon as they reached near village Kapoor Tekari, they saw accused Narendra and Babban and at the same time, Narendra asked Bashir why he was interfering in the affairs between him and Kanti. Bashir refuted and said that he is making false allegations against him. Thereupon Babban said *"Sale ko Khatam kar do"*. Thereafter, co-accused Narendra took out his knife and gave 3-4 knife blows to Bashir. He also stated that Babban threatened the witnesses not to come forward otherwise they would face dire consequences.

15. P.W.4- Yashpal Singh, in his examination-in-chief stated that on 17.12.1983, he was posted as a Head Moharrir, P.S. Nawabad, District- Jhansi, he wrote the chick F.I.R. Ex. Ka-2 on basis of written report Ex. Ka.1, copy of entry in G.D. regarding the same is Ex. Ka-3, copy of the entry in the G.D. regarding deposition of case property in Sadar Malkhana is Ex. Ka-4, copy of the entry regarding one envelope and one sealed bundle in the G.D.

16. P.W.5- Dr. D. Saxena in his examination-in-chief stated that he was posted as Medical Officer, District

Hospital, Jhansi on 18.12.1983 and performed the autopsy of the dead body of the deceased Bashir Shah at 12:30 pm, who was brought and identified by constables Shri Shiv Charan Sharma and Shri Ram Nagar. The deceased was of average built, eyes half open, fluid coming out of nostrils, rigor mortis well established in lower and upper limbs, p.m. strains present on back of trunk. In the postmortem, he noted the following ante-mortem injuries:

1. Stab wound 2 cm x 1 cm x cavity deep x oblique on the left side chest upper part 3-1/2 cm below medial end of left collarbone, 10 cm from left nipple at 10'o' clock position and just touching midline. Margins regular clotted blood present (on exposing sternum upper part shows oblique cut of 2 cm size underneath congestion and right lung cut upper part).

2. Incised wound 2 cm x 1 cm x 1 cm x oblique on the left side of chest 4-1/2 cm above left nipple at 10 'o' clock position 9 cm from injury no.1. Margins regular. Clotted blood.

3. Stab wound 2-1/2 cm x 1 cm x cavity deep x oblique on left side back upper part 4 cm below post. axillary fold and 18 cm from midline. Margins regular. Bleeding.

4. Stab wound 2 cm x 1 cm x cavity deep on the left side of back upper third part x oblique 8 cm medial to injury no.3 and 8 cm from midline. Margins regular. Bleeding.

As to the immediate cause of death, it was recorded, "shock and haemorrhage" as a result of ante-mortem injuries". The said autopsy report is Ex. Ka-8.

17. P.W. 6- Jaipal Singh, the Investigating Officer was posted as S.H.O. Nawabad, District – Jhansi, in December, 1983. An F.I.R. was lodged in his presence at around 9:30 p.m. The investigation of the case was taken over by him. He went to the place of occurrence alongwith police force, recorded the statements of Bahadur Shah (first informant-P.W.-1), took into possession his blood-stained shirt, fard regarding which was prepared and signed by Head Constable- Bajrang Singh is Ex. Ka-9, got the site-plan prepared by dictating the same to Head Constable Bajrang Singh, signed the same which Ex. Ka-10, on record, took in possession the blood stained and ordinary sample of soil, sealed them separately, the fard regarding which was prepared by Head Constable Bajrang Singh on his dictation Ex. Ka-11, recorded the statements of witnesses Mahendra and others, took in possession blood-stained shirt of witness Mahendra, got it sealed and fard prepared by Head Constable Bajrang Singh on the dictation of this witness which is Ex. Ka-12, the inquest report of the deceased was prepared by Sri Chandrabali Shukla, SSI, who was posted with him. He is well acquainted with his hand-writing and signatures. This witness proved the autopsy report Ex. Ka-13, challan nash, Photonash, sample sealed, letter to R.I., letter to C.M.O., letter regarding clothes of deceased, which are Exs. Ka-14 to Ka-19. Thereafter, on 21.12.1983, he recorded the statements of the accused persons in District Jail and further recorded the statements of other formal witnesses, sent the blood-stained clothes for chemical examination to Agra and after completion of investigation, submitted charge-sheet against accused persons, which was got prepared by Head Constable Bajrang Singh on dictation of the witness which is Ex. Ka-20. This witness

also proved the blood stained and ordinary sample of earth as Exs. Ka-9 and Ka-10 and blood-stained shirt of Bahadur Shah, Mahendra as Exs. Ka-1 and Ka-2. In his cross-examination he deposed that he did not think it necessary to show the flour-mill of Hazi Chimman Shah in the site-plan. He did not find any blood on the place of occurrence to the flour-mill of Chimman Shah, and did not enquire about the motive of the incident.

18. We have heard the arguments of learned counsel for the parties and perused the evidence available on record.

19. In the light of arguments advanced on behalf of appellant very short question before us is to see as to whether the present appellant had shared common intention with the principal offender to commit the murder of the deceased and if both the accused reached at place of occurrence after prior meeting of their mind and premeditation.

20. For the application of Section 34 I.P.C, in order to prove the common intention among the offenders, it is essential to establish that there must be prior meeting of their mind and to commit a crime in furtherance of common intention of all.

21. So far as the premeditation of appellant is concerned, we find that all the witnesses of fact categorically deposed that when they were returning from their work, they met with the accused Narendra and Vijay, who were coming from the other side. None of the witnesses stated that the accused were standing at the place of occurrence and were waiting for the deceased. Further, the witnesses of fact also did not depose that as soon as they reached near the accused, Narendra started dealt knife blows to Bashir. A perusal of examination-in-chief of all the witnesses goes to show that before actual assault was committed by the co-accused Narendra, hot exchange of words had taken place between Narendra and deceased involving a woman who the deceased cared as his sworn sister and who the co-accused used to visit often indicates that there was no premeditation of mind between the present appellant and co-accused.

22. In so far as the deposition of witnesses regarding active role of present appellant is concerned, upon deeper scrutiny of the testimony of the witnesses, we find that in the written report submitted by the informant who also claims himself as an eye witness, has not mentioned any active role of the present appellant except the role of exhortation. Neither any role of having caused knife blows assigned to him nor any role of threatening the witnesses has been assigned while brandishing a knife. P.W.-1 has assigned the role of the present appellant (in his deposition), which is not mentioned in the written report submitted by him. Although the F.I.R. is not an encyclopedia, but such details must find place in F.I.R. That deficiency goes to the root of the case. That role assigned to the present appellant was not a such of nature that could be ignored by the informant while submitting his written report. Thus, giving the role of whipping out his knife and threatening the witnesses and other witnesses is not free from all doubt. That deposition made in Court is not corroborated from the FIR. It is a material improvement made at the trial.

23. As to the presence of the present appellant at the spot is concerned, we find that presence of the appellant could not be

doubted in any manner as all the witnesses of fact categorically stated that they had seen the appellant along with main offender. But mere presence of the appellant at the spot is not sufficient to establish common intention of the appellant. Moreover, in view of the testimony of P.W. -2, who deposed in his cross-examination that Vijay @ Babban used to say that he will marry to Kanti, whereas Narendra had an illicit relationship with Kanti. Therefore, it is not possible that Vijay would have shared any common intention with Narendra to kill Bashir, simply based on the saying that ***'the enemy of an enemy is a friend.'*** On this premise also, it does not appear reliable that the Vijay, would have gone to commit the murder of the deceased in furtherance of a common intention shared with Narendra.

24. One another aspect, on which we are reluctant to believe on the theory of prosecution that the present appellant had a common intention to commit the murder of Bashir, is that the present appellant had not assaulted the deceased, even though he was also carrying a knife as alleged by the prosecution witnesses. If the act of committing the murder of the deceased was to be done solely by Narendra, it may not be believed that the present appellant had shared common intention with the co-accused. Though in some circumstances, facilitation by one accused to other, may be in furtherance of common intention but in the present case the role of facilitation which is alleged to have been given to the present appellant could not be proven free from doubt. Thus, we are of view that the presence of present appellant on spot is proved but we are not inclined to accept that the present appellant had shared any common intention to commit the murder of the deceased, from before the two parties met up, by chance.

25. Now the question before us is, whether the act of exhortation of the appellant Vijay @ Babban is leading to the doing of a criminal act in furtherance of common intention. To appreciate the issue, it will be apt to refer the law laid down by Hon'ble Supreme Court in this regard.

In **Pandurang VS State Of Hyderabad, 1955 1 SCR 1083,** Hon'ble Supreme Court in para 34 and 35 of its judgment has held as under:

"34. In the present case, there is no evidence of any prior meeting. We know nothing of what they said or did before the attack-not even immediately before. Pandurang is not even of the same caste as the others. Bhilia. Tukia and Nilia are Lambadas, Pandurang is a Hatkar and Tukaram a Maratha. It is true prior concert and arrangement can, and indeed often must be determined from subsequent conduct as; for example, by a systematic plan of campaign unfolding itself during the course of the action which could only be referable to prior concert and pre-arrangement, or a running away together in a body or a meeting together subsequently. But, to quote the Privy Council again,

"the inference of common intention should never be reached unless it is a necessary inference deducible from the circumstances of the case".

But to say this is no more than to reproduce the ordinary rule about circumstantial evidence, for there is no special rule of evidence for this class of case. At bottom, it is a question of fact in every case and however similar the circumstances, facts in one case cannot be used as a precedent to determine the

conclusion on the facts in another. All that is necessary is either to have direct proof of prior concert, or proof of circumstances which necessarily lead to that inference, or, as we prefer to put it in the time-honoured way, "the incriminating facts must be incompatible with the innocence of the accused and incapable of explanation on any other reasonable hypothesis". (Sarkar s Evidence, 8th edition, page 30).

35. The learned counsel for the state relied on - Mamand v. Emperor , AIR 1946 PC 45 (C), because in that case the accused all ran away and their Lordships took that into consideration to establish a common intention. But there was much more than that. There was evidence of enmity on the part of the accused who only joined in the attack but had no hand in the killing; and none on the part of the two who did the actual murder. There was evidence that all three lived together and that one was a younger brother and the other a tenant of the appellant in question. There was evidence that they all ran away together: not simply that they ran away at the same moment of time when discovered, but that they ran away together.

As we have said, each case must rest on its own facts and the mere similarity of the facts in one case cannot be used to determine a conclusion of fact in another. In the present case, we are of opinion that the facts disclosed do not warrant an inference of common intention in Pandurang's case. Therefore, even if that had been charged, no conviction could have followed on that basis. Pandurang is accordingly only liable for what he actually did." (emphasis supplied)

26. In case of **Jainul Haque vs State Of Bihar, AIR 1974 SC1651,** Hon'ble Supreme Court in para 8 of its judgment has held as under:

"The evidence of exhortation is, in the very nature of things, a weak piece of evidence. There is quite often a tendency to implicate some person, in addition to the actual assailant by attributing to that person an exhortation to the assailant to assault the victim. Unless the evidence in this respect be clear, cogent and reliable, no conviction for abetment can be recorded against the person alleged to have exhorted the actual assailant."

(emphasis supplied)

27. In **Surendra Chauhan VS State Of M. P. , (2000) 4 SCC 110,** Hon'ble Supreme Court in para 11 of its judgment has held as under:

"11. Under Section 34 a person must be physically present at the actual commission of the crime for the purpose of facilitating or promoting the offence, the commission of which is the aim of the joint criminal venture. Such presence of those who in one way or the other facilitate the execution of the common design is itself tantamount to actual participation in the criminal act. The essence of Section 34 is simultaneous consensus of the minds of persons participating in the criminal action to bring about a particular result. Such consensus can be developed at the spot and thereby intended by all of them. Ramaswami Ayhangar & Ors. v. State of Tamil Nadu2. The existence of common intention can be inferred from the attending circumstances of the case and the conduct of the parties. No direct evidence of common intention is necessary. For the purpose of common intention even the participation in the commission of the

offence need not be proved in all cases. The common intention can develop even during the course of an occurrence. Rajesh Govind Jagesha v. State of Maharashtra3. To apply Section 34 IPC apart from the fact that there should be two or more accused, two factors must be established : (i) common intention and (ii) participation of the accused in the commission of an offence. If a common intention is proved but no overt act is attributed to the individual accused, Section 34 will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and a common intention is absent, Section 34 cannot be invoked. In every case, it is not possible to have direct evidence of a common intention. It has to be inferred from the facts and circumstances of each case."

(emphasis supplied)

28. In **Suresh and another vs State Of U.P. (2001) 3 SCC 673,** Hon'ble Supreme Court in para 24 of its judgment has held as under:

"24. Looking at the first postulate pointed out above, the accused who is to be fastened with liability on the strength of Section 34, IPC should have done some act which has nexus with the offence. Such act need not be very substantial, it is enough that the act is only for guarding the scene for facilitating the crime. The act need not necessarily be overt, even if it is only a covert act it is enough, provided such a covert act is proved to have been done by the co-accused in furtherance of the common intention. Even an omission can, in certain circumstances, amount to an act. This is the purport of Section 32, IPC. So the act mentioned in Section 34, IPC need not be an overt act, even an illegal omission to do a certain act in a certain situation can amount to an act, e. g. a co-accused, standing near the victim face to face saw an armed assailant nearing the victim from behind with a weapon to inflict a blow. The co-accused, who could have alerted the victim to move away to escape from the onslaught deliberately refrained from doing so with the idea that the blow should fall on the victim. Such omission can also be termed as an act in a given situation. Hence an act, whether overt or covert, is indispensable to be done by a co-accused to be fastened with the liability under the section. But if no such act is done by a person, even if he has common intention with the others for the accomplishment of the crime, Section 34, IPC cannot be invoked for convicting that person. In other words, the accused who only keeps the common intention in his mind, but does not do any act at the scene, cannot be convicted with the aid of Section 34, IPC. "

(emphasis supplied)

29. In general, principle of criminal law is that the person who commits the offence be held guilty. Yet, section 34 of Indian Penal Code introduces joint liability. The essence of joint liability is in existence of a common intention connecting all the accused to the doing of a criminal act, in furtherance of such common intention. Upon existence of common intention being established, individual acts of t he principal offenders, in the actual occurrence, looses relevance. All participants who may act with that common intention would become equally liable for the offence committed. Common intention essentially is a state of mind. Therefore, it is very difficult to procure direct evidence to prove its existence. Hence, in majority of cases it has

to be inferred from the overt or covert act, other relevant circumstances of the case and conduct of the accused in the totality of circumstances of the case. In this regard gainfully, para 12 of the judgment of apex court in the case of **Ramesh Singh @ Photti VS State Of A. P. AIR 2004 (SC) 4545,** is reads as under:

"12. To appreciate the arguments advanced on behalf of the appellants it is necessary to understand the object of incorporating Section 34 in the Indian Penal Code. As a general principle in a case of criminal liability it is the primary responsibility of the person who actually commits the offence and only that person who has committed the crime can be held to guilty. By introducing Section 34 in the penal code the Legislature laid down the principle of joint liability in doing a criminal act. The essence of that liability is to be found in the existence of a common intention connecting the accused leading to the doing of a criminal act in furtherance of such intention. Thus, if the act is the result of a common intention then every person who did the criminal act with that common intention would be responsible for the offence committed irrespective of the share which he had in its perpetration. Section 34 IPC embodies the principles of joint liability in doing the criminal act based on a common intention. Common intention essentially being a state of mind it is very difficult to procure direct evidence to prove such intention. Therefore, in most cases it has to be inferred from the act like, the conduct of the accused or other relevant circumstances of the case. The inference can be gathered by the manner in which the accused arrived at the scene, mounted the attack, determination and concert with which the attack was made, from the nature of injury caused by one or some of them. The contributory acts of the persons who are not responsible for the injury can further be inferred from the subsequent conduct after the attack. In this regard even an illegal omission on the part of such accused can indicate the sharing of common intention. In other words, the totality of circumstances must be taken into consideration in arriving at the conclusion whether the accused had the common intention to commit an offence of which they could be convicted."

(emphasis supplied)

30. In **Nagaraja Vs. State of Karnataka (2008) 17 SCC 277,** the Supreme Court examined two factors considered to be necessary ingredients of Section 34 IPC. In that regard, it was observed as below:

***"17**. We are not concerned herein as to whether the said iron rod was the weapon of assault. Having regard to the quality of evidence that the prosecution had led, in our opinion, it is difficult to come to the conclusion that all the accused persons had a common intention to commit the murder of the deceased.*

***18**. For invoking the provisions of Section 34 IPC, at least two factors must be established; (1) common intention, and (2) participation of the accused in the commission of an offence. For the aforementioned purpose although no overt act is required to be attributed to the individual accused but then before a person is convicted by applying the doctrine of vicarious liability not only his participation in the crime must be proved but presence of common intention must be established. It is true that for proving formation of common intention, direct evidence may not be*

available but then there cannot be any doubt whatsoever that to attract the said provision, prosecution is under a bounden duty to prove that the participants had shared a common intention. It is also well settled that only the presence of the accused by itself would not attract the provisions of Section 34 IPC. Other factors should also be taken into consideration for arriving at the said conclusion. The accused persons were not related to each other; they did not have any family connection; they have different vocations. It has not been established that they held any common animosity towards the deceased."

(emphasis supplied)

31. From the law laid down in the above referred cases it can be deduced that evidence of exhortation is a weak piece of evidence. There is quite often a tendency to implicate some person, in addition to the actual assailant by ascribing to that person role of an exhortation to the assailant to assault the deceased by alleging his presence after accompanied with role of exhortation. Unless the evidence in this respect is clear, cogent and reliable, conviction may not be recorded against the person alleged to have exhorted the actual assailant, unless attending circumstances proven by the prosecution also establish either a covert or overt act or omission as may convince the Court as to existence of common intention.

32. To invoke Section 34 IPC two factors must be established : (i) common intention and (ii) participation of the accused in the commission of an offence. To fasten the liability u/s 34 IPC performance of an act or omission (whether overt or covert), is indispensable. If no such act or omission is done by a person, even if he has common intention (in his mind) with the others for the accomplishment of the crime, Section 34, IPC cannot be invoked to successfully convict that person. In other words, the accused who only keeps the common intention in his mind, but does not commit any act or omission, cannot be convicted with the aid of section 34, IPC. To ascertain common intention, totality of circumstances must be taken into consideration in arriving at the conclusion whether the accused had the such intention to commit an offence of which he could be convicted.

33. In **Matadin etc. Vs. State of Maharashtra (1998) 7 SCC 216,** the accused Matadin was similarly charged with exhorting the main accused Ram Singh with use of words "Maaro Saale Ko". Thereupon the main accused Ram Singh took out his knife and assaulted the victim. In that context, it was observed as below:

"9. However, the case of Matadin would appear to stand on a different footing. It was submitted that when he exhorted his fellows by saying "maro sale ko", he did not intend that the deceased should be killed. It was submitted that there was no premeditation, no enmity and Matadin never intended to cause death of the deceased.....

...

11. The courts below have not found that the language which Matadin used exhorting his fellows was used in such a tone as to exhort them to kill Ashok or to cause grievous hurt to him by using dangerous weapons or means. When the words "maro sale ko" are used, it could

mean "to beat" or even "to kill" a person. Though the witnesses have stated that these words were used by Matadin in an abusive way, but from that it could not be said that he exhorted his fellows to kill Ashok....."

(emphasis supplied)

34. In **State of Orissa Vs. Arjun Das Aggarwal (1999) 8 SCC 154,** the Supreme Court dealt with a similar question. There the accused was held guilty for murder-with the aid of common intention. Later, he was acquitted by the High Court as the only role assigned to him was-standing on the road, he instigated the assailants. In that case, it was held that:

"26. Regarding accused-respondent Arjun Das Agrawal we find from the evidence on record that this accused neither went inside the house of the deceased nor took any part in the commission of the murder. He only instigated by shouting at the other accused persons. There is nothing in evidence to show that due to his instigation more blows were given by the accused persons. Therefore, no inference can be drawn that this accused-respondent had the common intention of causing death of the deceased or that he actually participated in the criminal act. Therefore, the High Court rightly acquitted this accused."

(emphasis supplied)

35. Also, in of **Parshuram Singh v. State of Bihar (2002) 8 SCC 16,** the Sessions Court convicted all the 11 persons accused under Section 302 read with Section 149 (besides some other lesser offences). The High Court convicted them for the offence under Section 302 read with Section 34 IPC, although the High Court confirmed the conviction of the offences under Sections 147 and 148 etc. of the Indian Penal Code, 1860, also. After hearing the parties and going through the evidence as well as the reasoning given by the two courts for convicting the appellants, the Supreme Court held:

***"5**. Nonetheless, we have to evaluate the role played by A-1 Rameshwar Singh and A-4 Parshuram Singh in order to ascertain whether they would have entertained a common intention to murder the deceased. Neither of them had inflicted any injury on the deceased. A-1 Rameshwar Singh had a lathi with him and in spite of that he did not choose to give even a minor assault on the deceased. All that is said against him is that he ordered the killing of the deceased. It is not shown that A-1 had any particular reason for taking up the leadership of the gang. On the other hand the genesis of the quarrel was the dispute regarding the timber tree which stood on the boundary of the lands belonging to A-3 on the one side and the deceased on the other. For convicting a person merely on the basis of the oral statement made at the spot, the Court must have other surrounding circumstances to ensure the confidence that he made such an exhortation. If A-1 had really any intention to participate in the occurrence, much less any common intention to murder the deceased, it is difficult for us to conceive as to why he did not use the weapon which was handy with him then."*

(emphasis supplied)

36. In **Vaijayanti v. State of Maharashtra (2005) 13 SCC 134,** the appellant, a lady, had been convicted for alleged commission of an offence under Section 302 read with Section 34 of the

Penal Code, 1860, the Apex Court while acquitting the appellant held that:

"16. The High Court, therefore, in our opinion, was not correct in arriving at a finding that the appellant had shared the common intention with other accused for commission of the crime because she not only gave an exhortation and chased the deceased but also did not do anything to prevent the other accused persons from committing the crime. The last reasoning of the High Court, in our opinion, was misconceived. The High Court arrived at the conclusion that the appellant chased the accused for some time which would lead to an inference that the accused might not have chased the deceased all the way. The High Court was furthermore not correct in arriving at a finding that a case has been made out that common intention was developed on the spur of the moment. Apart from the fact that no such case had been out by the prosecution at the trial stage, the fact situation obtaining herein also does not lead to such inference.

(emphasis supplied)

37. The decision in the case of **State of Uttar Pradesh Vs. Farid Khan (2005) 9 Supreme Court Cases 103**, relied by the learned AGA rather than helping the prosecution story is found to be consistent to the principle discussed above. In that regard, we note that the Supreme Court discussed the issue as below:

"7. *All the three respondents were found guilty by the Sessions Court for the offence of murder punishable under Section 302 read with Section 34. The evidence of the three eyewitnesses proves that A-1 Saghir, s/o Zakkan Khan stabbed on the chest of the deceased whereas A-2 Amir Ahmad and A-3 Farid Khan caused injuries on the back and legs of the deceased. The post-mortem report shows that the deceased Khurshid Mian sustained two injuries on the chest whereas the injuries on the right thigh above knee joint and the inner aspect of right ankle were very small in nature and these injuries must have been caused by A-2 Amir Ahmad and A-3 Farid Khan.*

8. *Having regard to the nature of the involvement of A-2 Amir Ahmad and A-3 Farid Khan, it is difficult to believe that they shared a common intention to cause the death of Khurshid Mian. If at all, they committed an offence punishable only under Section 324 read with Section 34. Conviction of A-2 and A-3 for the offence of murder under Section 302 read with Section 34 IPC is set aside. After conviction by the Sessions Court and earlier as under-trials, these accused had been in jail for some period. The imprisonment undergone by them would be sufficient to meet the ends of justice for the offence under Section 324 read with Section 34 IPC."*

38. As discussed above, the only role assigned to the present appellant is of general exhortation, which is a weak piece of evidence as has been held by the Hon'ble Apex Court, in the case law cited above. On such a weak piece of evidence, the accused cannot be convicted for such a heinous offence on the test-beyond reasonable doubt. Accordingly, the conviction and sentence awarded by the trial court deserves to be set aside.

39. Accordingly, the appeal is allowed. The conviction and sentence awarded by the trial court vide order dated 20.10.1984 passed by Ist Additional

Sessions Judge, Jhansi, in Session Trial No. 35 of 1984 (State Vs. Narendra Kumar & another), arising out of Case Crime No. 510 of 1983, under Sections 302/34 IPC, Police Station -Nawabad, District – Jhansi, is set aside. The appellant is acquitted from the charges levelled against him. The appellant is in jail. He be released forthwith, in case, he is not required in some other case. The appellant is directed to furnish bail bonds in compliance of Section 437-A Cr.P.C. to the satisfaction of the Court concerned within one month from today.

40. Copy of this judgment along with original record of Court below be transmitted to the Court concerned for necessary compliance. Compliance report be submitted to this Court at the earliest. Office is directed to keep the compliance report on record.

41. Shri Rajiv Lochan Shukla, learned Amicus Curiae assisted by Shri Shashank Pandey appearing on behalf of the appellant has rendered his valuable assistance to the Court. He be paid Rs. 25,000/- towards fee for the able assistance provided by him, in hearing of the present appeal.

(2025) 8 ILRA 971
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 14.08.2025

BEFORE

THE HON'BLE SALIL KUMAR RAI, J.
THE HON'BLE SANDEEP JAIN, J.

Criminal Appeal No. 4773 of 2005
&
Government Appeal No. 114 of 2006

Umesh ...Appellant
Versus
State of U.P. ...Respondent

Counsel for the Appellant:
Rakesh Chandra Upadhyay, Meenendra Tripathi, Ram Kishore Gupta, Ram Milan Dwivedi, Ravindra Kumar Mishra, Shyam Sunder Tripathi, Tarun Kumar Tripathi

Counsel for the Respondent:
Govt Advocate

Issues for Consideration

I. Whether conviction of accused Umesh under Sections 302 IPC and 25 Arms Act was sustainable on the basis of ocular evidence of independent witnesses corroborated by medical evidence, despite alleged defects in investigation, recovery and proof of source of light;

II. Whether acquittal of co-accused Mahesh and Gore Lal under Section 302/34 IPC and of accused Umesh under Sections 504 and 506 IPC was perverse, warranting interference in a Government Appeal.

Headnotes

Indian Penal Code, 1860 — ss.302, 302/34, 504, 506 — Arms Act, 1959 — s.25 — Murder — Common intention — Exhortation — Prior enmity — Independent eye-witnesses — Source of light — Recovery under s.27 Evidence Act — Non-matching ballistic evidence — Effect — Scope of interference in appeal against acquittal — Conviction affirmed and acquittal reversed.

Held:

Testimony of PW-2 and PW-3, independent villagers with no animus against the accused, was natural, cogent and reliable. Their presence at the spot stood explained; their ocular account of accused Umesh firing a close-range shot on exhortation by Mahesh and Gore Lal was fully corroborated by medical evidence showing firearm entry wound with tattooing, consistent with firing from close proximity. [Paras 35–37, 85–87]

Existence of motive was proved by prior altercation regarding breaking of a coal furnace

and immediate provocation at the liquor vend shortly before the incident. In cases resting on direct ocular evidence, proof of motive is not indispensable; nevertheless, motive stood established. [Paras 33–35]

Common intention under Section 34 IPC can be inferred from conduct before, during and after the occurrence. Mahesh and Gore Lal were aware that Umesh was armed; they exhorted him to kill the deceased, did not attempt to prevent the act, and fled together thereafter. Their conduct clearly established sharing of common intention. Acquittal by the trial court on the ground that they were unarmed or lacked prior planning was perverse. [Paras 38–47, 50]

Recovery of the country-made weapon at the instance of Umesh was proved in accordance with Section 27 of the Evidence Act. Even assuming absence of scientific linkage between the recovered weapon and the bullet found at the spot, conviction could still be sustained on the strength of trustworthy ocular evidence. Recovery of weapon is not sine qua non for conviction. [Paras 73–84]

Omission to mention source of light in FIR or site plan, or alleged lapses by Investigating Officer, did not vitiate the prosecution case. FIR is not an encyclopaedia; witnesses who were well acquainted with the accused could also identify them by voice. Defence evidence regarding absence of electricity supply was unreliable. [Paras 59–66]

Ingredients of Sections 504 and 506 IPC were satisfied by proof of intentional abuse and threats at the liquor vend with knowledge of likely provocation; absence of verbatim abusive words was immaterial. Acquittal of Umesh under Sections 504 and 506 IPC was erroneous. [Paras 52–58]

Conviction of Umesh under Sections 302 IPC and 25 Arms Act affirmed; Government Appeal allowed — acquittal of Mahesh and Gore Lal under Section 302/34 IPC and of Umesh under Sections 504 and 506 IPC set aside; Mahesh and Gore Lal convicted and sentenced. [Paras 89–93]

Appeal of the accused dismissed and Government Appeal allowed. (E-14)

Case Law Cited

Rajkishore Purohit v. State of M.P., (2017) 9 SCC 483 — relied on; Damodar v. State of U.P., (2005) 1 SCC 543 — applied; Gulab v. State of U.P., (2022) 12 SCC 677 — followed; Boby v. State of Kerala, (2023) 15 SCC 760 — considered; Rakesh v. State of U.P., (2021) 7 SCC 188 — relied on; State v. Laly @ Manikandan, 2022 SCC OnLine SC 1424 — followed; B.V. Ram Kumar v. State of Telangana, (2025) 3 SCC 475 — applied; Babu Sahebagouda Rudragoudar v. State of Karnataka, (2024) 8 SCC 149 — referred.

List of Acts / Statutes

Code of Criminal Procedure, 1973; Indian Penal Code, 1860; Indian Evidence Act, 1872; Arms Act, 1959**.**

List of Keywords

Murder; Firearm injury; Common intention; Exhortation; Independent witnesses; Prior enmity; Recovery under Section 27; Ballistic evidence; Source of light; Criminal intimidation; Intentional insult; Appeal against acquittal; Perverse finding.

Case Arising From

Judgment and order dated **14.09.2005 and 15.09.2005** passed by the Additional Sessions Judge, Court No.1, Hamirpur in **Sessions Trial No. 246 of 2004** (State v. Umesh and others) and **Sessions Trial No. 247 of 2004** (State v. Umesh), arising out of Case Crime Nos. **167 of 2004** and **169 of 2004**, Police Station Muskura, District Hamirpur.

Appearance for Parties

For the Appellants: Rakesh Chandra Upadhyay,Meenendra Tripathi,Ram Kishore Gupta,Ram Milan Dwivedi,Ravindra Kumar Mishra,Shyam Sunder Tripathi,Tarun Kumar Tripathi

For the State: Govt. Advocate

(Delivered by Hon'ble Sandeep Jain, J.)

1. Criminal appeal No.4773 of 2005 has been preferred by the convicted accused Umesh against impugned judgement and order dated 14.09.2005 and 15.09.2005 passed by Sri Yogesh Kumar, Additional Sessions Judge, Court No.1, Hamirpur whereby he has been convicted in Sessions Trial No.246 of 2004 (State vs. Umesh and others), P.S. Muskura, District Hamirpur, arising out of Case Crime No.167 of 2004, under Section 302 I.P.C. and sentenced to undergo rigorous life imprisonment with a fine of Rs.1,000/- and in default of payment of fine to further undergo simple imprisonment for a period of 2 months. Besides this, accused Umesh has also been convicted in Sessions Trial No.247 of 2004 (State vs. Umesh), arising out of Case Crime No.169 of 2004, P.S. Muskura, District Hamirpur, under Section 25 of Arms Act and sentenced to undergo two years rigorous imprisonment. Both the sentences have been ordered to run concurrently.

2. Government Appeal No.114 of 2006 has been preferred by the State of U.P. against the judgment and order dated 14.09.2005 passed by Sri Yogesh Kumar, Additional Sessions Judge, Court No.1, Hamirpur in Sessions Trial No.246 of 2004 (State vs. Umesh, Mahesh and Gore Lal), arising out of Case Crime No.167 of 2004, P.S. Muskura, District Hamirpur, whereby accused Umesh has been acquitted of the charge under section 504 and 506 I.P.C and Mahesh and Gore Lal have been acquitted of the charge framed against them under Section 302/34 I.P.C.

3. Since both the above appeals arise out of a single judgment and order, hence, they were connected and are being decided by a common judgment.

4. Factual matrix giving rise to these criminal appeals is that the First Information Report was lodged by Sushil Kumar (P.W.-1 at the trial) at Police Station Muskura, District Hamirpur. He submitted an application (Ex.Ka-1 at the trial), stating that a dispute had occurred about one and a half months prior to the incident between his brother, Ram Sharan Tiwari and the accused Umesh, concerning a coal furnace situated in village Kharela. Since then, Umesh had harboured enmity towards Ram Sharan Tiwari.

5. On 08.09.2004, Rakesh Kumar (P.W.-3 at the trial) and Ram Sajivan (P.W.-2 at the trial), had gone towards a liquor shop where Umesh was present. Umesh began to abuse and threaten Ram Sharan Tiwari. Subsequently, Ram Sharan Tiwari, Rakesh Kumar and Ram Sajivan left that place. Around 10:30 p.m., as they were passing in front of the house of Vasudev Kachi, intending to go there for a Ramayana recitation, Umesh along with his brother Mahesh and another person Gore Lal, surrounded Ram Sharan Tiwari. Umesh then shot Ram Sharan in the chest, resulting in his instantaneous death. Rakesh Kumar and Ram Sajivan then went to the house of Sushil Kumar and informed him of the incident.

6. Based on the application of Sushil Kumar, the FIR regarding this incident was registered on 09.09.2004, at 00:15 hours, as Case Crime No.167 of 2004, under Sections 302, 504 and 506 I.P.C. at P.S. Muskura, District Hamirpur, against the accused Umesh, Mahesh and Gore Lal. The investigation was assigned to S.O. Shailendra Singh (P.W.-6 at the trial). The check FIR is Ex.Ka-3 at the trial. A corresponding entry of FIR registration was also made in the G.D. at serial No.2 at

00:15 hours, a carbon copy of which is Ex.Ka-4 at the trial.

7. The 'Panchayatnama' of the deceased, Ram Sharan Tiwari, was prepared under the direction of S.O. Shailendra Singh (P.W.-6 at the trial) between 6:30 a.m. and 8:30 a.m. on 09.09.2004. This document is Ex.Ka-7 at the trial.

8. The Investigating Officer (P.W.-6) also recovered plain soil and blood-stained soil from the spot. The Recovery Memo for these items is Ex.Ka-11 at the trial. Further, 315 bore bullet found near dead body of Ram Sharan Tiwari, was recovered by P.W.-6 on 09.09.2004. Its Recovery Memo is Ex.Ka-12 at the trial.

9. On the same day, a pair of black slippers(size 8 number), blood-stained pocket diary, a paper, pen and Rs.155/- (including four coins) belonging to the deceased Ram Sharan Tiwari, were recovered from the spot. The Recovery Memo for these items is Ex.Ka-13 at the trial. Further, a pair of size seven black slippers and a white 'angocha' (towel), allegedly belonging to the accused Gore Lal were also recovered from the spot by P.W.-6 in the presence of witnesses Ram Sajivan, Rakesh Kumar and others. The Recovery Memo for these items is Ex.Ka-14 at the trial.

10. The post-mortem examination of the deceased Ram Sharan Tiwari was conducted by Dr. D.C. Tiwari (P.W.-4 at the trial) on 09.09.2004 at about 3:00 p.m. The following ante-mortem injuries were found on the body:-

(i)"Gunshot wound of entry 1cm x 1cm on the centre of chest between two nipple margins of wound are inverted and abraded collar present. There is tattooing on the chest over an area of 14cmX14cm around the wound clotted blood present.

(ii)Gunshot wound of exit 1.5cm x 1.5cm on the left side of back of chest just below the angle of scapula(left) bone, margins of wound are everted and clotted blood present around the wound."

11. According to the Doctor (P.W.-4), Ram Sharan Tiwari died due to haemorrhage resulting from the ante-mortem injuries, about one day prior to the post-mortem examination.

12. On 14.09.2004, accused Umesh was arrested at about 6:00 a.m. based on information from an informer. Following his arrest, Umesh disclosed to S.O. Shailendra Singh (P.W.-7) that he had murdered Ram Sharan Tiwari on 08.09.2004 and could lead them to the country-made weapon used in the crime. Later, at his pointing out, a 315 bore country-made weapon(*tamancha*) and an empty 315 bore cartridge lodged in its muzzle were recovered at about 7:00 a.m., which was concealed in a straw-filled room, of his dilapidated house in village Pahadi Bhetari. This recovery was made in the presence of public witnesses Ram Bodh and Jagmohan Yadav. As accused Umesh could not produce the requisite license under the Arms Act, Case Crime No. 169 of 2004, under Section 25 of the Arms Act was registered against him at P.S. Muskura, District Hamirpur, on 14.09.2004 at about 9:15 a.m.

13. The recovery memo for the country-made weapon and empty cartridge is Ex.Ka-16 at the trial.

14. During investigation, various items were sent to the Forensic Science Laboratory(FSL), Agra. These included the plain soil and blood-stained soil, the bullet recovered from the spot, currency notes, coins, a diary, a pen, a pair of slippers and a handkerchief belonging to the deceased, Ram Sharan Tiwari. Further, a pair of slippers and an *'angocha'* (towel) allegedly belonging to accused Gore Lal along with Ram Sharan Tiwari's pant, shirt, *vest(baniyan)*, underwear, *'kalawa'* (sacred thread) and other items, were also sent to the FSL. The FSL report, dated 16.05.2005 is Ex.Ka-22 at the trial. This report confirmed the presence of human blood on the blood-stained soil, currency note, diary, pen, a pair of slippers, pant, shirt, vest, underwear, 'kalawa' and one other item belonging to the deceased, Ram Sharan Tiwari. However, no blood was found on the bullet, handkerchief of the deceased, slippers and the *'angocha'* allegedly belonging to accused Gore Lal.

15. The country-made weapon and the empty 315 bore cartridge, recovered at the pointing out of accused Umesh, were also sent to the FSL, Agra. It's report dated 03.06.2005 is Ex.Ka-23 at the trial. According to this report, the empty cartridge found in the muzzle of the country-made weapon, was indeed fired from it.

16. After the investigation, charge sheet in Case Crime No.167/04 was submitted by S.H.O. Aditya Kumar Dwivedi (P.W.-9 at the trial) against accused Umesh, Mahesh and Gore Lal under Sections 302/34, 504 and 506 I.P.C. on which cognizance was taken. Besides this, charge sheet under Section 25 Arms Act was submitted against the accused Umesh Chandra by S.I. Geetam Singh (P.W.-8), on which cognizance was taken by the trial court. The trial court framed charges against the accused Mahesh and Gore Lal, under Section 302 read with 34 I.P.C. and against accused Umesh under Sections 302, 504, 506 I.P.C. and Section 25 Arms Act. All the accused pleaded not guilty and claimed trial.

17. During trial, the prosecution examined the following witnesses, who proved the following documents/material objects:

S.No.	Witnesses	Document Proved
1.	First informant Sushil Kumar examined as P.W.-1	Proved the '*Tehrir*' as Ex.Ka-1
2.	Ram Sajivan examined as P.W.-2	Not proved any document
3.	Rakesh Kumar examined as P.W.-3	Not proved any document
4.	Dr. D.C. Tiwari examined as P.W.-4	Proved the post-mortem report of the deceased Ram Sharan Tiwari as Ex.Ka-2 and pant, shirt, *baniyan*, underwear, sacred thread (*janau*) and *kalawa* of deceased as material Ex-1 to material Ex-6.
5.	H.C.P Shyam Swaroop examined as P.W.-5	(i) Proved the check FIR of Case Crime No-167/2004 as Ex.Ka-3 and carbon copy of G.D. Entry No.2 as Ex.Ka-4. (ii) Proved the check FIR of Case Crime No-169/2004 as Ex.Ka-5 and carbon copy of G.D. Entry No.12

		as Ex.Ka-6.
6.	S.I. Shailendra Singh, 1st Investigating Officer, examined as P.W.-6	(i) '*Panchayatnama'* of the deceased as Ex.Ka-7 and prosecution papers prepared for post mortem examination as Ex.Ka-8 to Ex.Ka-10. (ii) Recovery Memo of plain and blood-stained soil from the spot as Ex.Ka-11 and the Recovery Memo of 315 bore bullet as Ex.Ka-12 and these objects as material Ex-12 to 14. (iii) Recovery Memo of pair of black slippers, blood-stained diary, *baniyan*, a pen and Rs.155/- (including four coins) belonging to the deceased as Ex.Ka-13 and these objects as material Ex-7 to 11. (iv) The Recovery Memo of a pair of slippers and *'angocha'* belonging to accused Gore Lal as Ex.Ka-14 and these objects as material Ex-15 and 16. (v) Site Plan of Case Crime No.167/2004 as Ex.Ka-15.
7.	S.O. Shailendra Singh, 2nd Investigating Officer examined as P.W.-7.	(i) Proved the Recovery Memo of country-made 315 bore weapon and empty cartridge recovered at the pointing out of accused Umesh as Ex.Ka-16 and these objects, including three test cartridges as material Ex-17 to 19(corrected number according to trial court judgment) (ii) Site plan of the recovery spot as Ex.Ka-17.
8.	S.I. Geetam Singh examined as P.W.-8. He is the Investigating Officer of Case Crime No.169/04 against accused Umesh under Arms Act.	Proved the Site Plan of Case Crime No.169/2004, as Ex.Ka-18, the sanction granted by the District Magistrate under the Arms Act as Ex.Ka-19 and the charge sheet submitted against the accused Umesh Chandra under the Arms Act as Ex.Ka-20.
9.	S.O. Aditya Kumar Dwivedi, 3rd Investigating Officer of Case Crime No-167/2004 examined as P.W.-9.	Proved the charge sheet submitted against the accused in Case Crime No. 167/2004 as Ex. Ka- 21.

18. The accused in their statements under Section 313 Cr.P.C. have admitted that the first informant Sushil Kumar along with witnesses Ram Sajivan and Rakesh Kumar are residents of their village Pahadi Bhetari, police station Muskura but they have denied the prosecution story of murder of Ram Sharan Tiwari. The accused have submitted that they have been falsely implicated in this case due to enmity.

19. Learned counsel for the convicted accused-appellant and acquitted accused-respondents submitted that the first informant Sushil Kumar P.W.-1 is not an eye witness of the alleged incident. The F.I.R. in this case has been registered ante-time. In reality, it was registered in the next morning, which makes the whole prosecution case doubtful, which is proved from the '*Panchayatnama'* and prosecution papers prepared for getting post-mortem examination of the body of deceased Ram Sharan Tiwari. It was further submitted that P.W.-2 Ram Sajivan and P.W.-3 Rakesh Kumar are not reliable witnesses, who have given evidence against the accused persons due to enmity. It was further submitted that the statement of P.W.-2 and P.W.-3, under Section 161 Cr.P.C., was recorded with considerable delay making their whole testimony unreliable. P.W.-2 and P.W.-3 stated that they identified the accused persons in electric light, but from the evidence of D.W.-3, it was proved that at the time of the alleged incident, there was no electric supply in the village, there was no source of light, it was pitch dark and as such it was impossible for P.W.-2 and P.W.-3 to identify the assailants. It was further submitted that the alleged recovery of country-made weapon and cartridge from accused Umesh was doubtful because his disclosure statement was not recorded and proved in accordance with law, by P.W.-7 and further no independent witness in support of the alleged recovery was examined by the prosecution. Further, it was not proved from the report of FSL that the alleged recovered country-made weapon, was used in the commission of offence. It was further submitted that the prosecution failed to prove the motive of the crime, as well as the existence of common intention on the part of the accused Mahesh and Gore Lal with accused Umesh, as such, they had been rightly acquitted by the trial court.

20. With these submissions, it was prayed that the Criminal Appeal preferred by accused Umesh be allowed and the Government Appeal against the acquittal filed by the State, against accused Mahesh and Gore Lal be dismissed.

21. Learned A.G.A. for the State submitted that the incident took place at 10:30 p.m. on 08.09.2004, which was witnessed by P.W.-2 and P.W.-3, who informed the first informant P.W.-1 regarding the incident promptly and thereafter F.I.R. regarding the incident was lodged on the night of 08/09.09.2004 at 00.15 hours at police Station Muskura against all the three accused Umesh, Mahesh and Gore Lal and in this F.I.R. P.W.-2 and P.W.-3 were named as eye witnesses. He further submitted that F.I.R. in this case was promptly registered in which all the material facts relating to the incident were narrated and the F.I.R. version was proved in accordance with law by the prosecution witnesses. He further submitted that the spot of occurrence was proved from the recovery of blood stained soil, objects belonging to deceased, bullet of 315 bore and a pair of slippers and '*angocha'* of accused Gore Lal. Further P.W.-2 and P.W.-3 proved that accused Mahesh and Gore Lal jointly gave an exhortation to co-accused Umesh to commit the crime and after the commission of crime, both Mahesh and Gore Lal fled from the spot, who were chased. The conduct of accused Mahesh and Gore Lal before and after the commission of crime proved that they had common intention with convicted accused Umesh, for committing the murder of Ram Sharan Tiwari, but the trial court recorded a

perverse finding that the prosecution failed to prove any motive on the part of the accused Mahesh and Gore Lal. Learned A.G.A. further submitted that the prosecution proved the motive on the part of the accused persons for committing the crime. Just before the incident, in the presence of P.W.-2 and P.W.-3, an altercation took place between the deceased and accused Umesh, in which Umesh abused and threatened the deceased with dire consequences. Prior to this, a dispute took place between the deceased and accused Umesh regarding breaking of a coal furnace, due to which accused Umesh bore enmity towards deceased Ram Sharan. Learned A.G.A. further submitted that in a case based on direct ocular evidence, prosecution is not required to prove motive of the offence, but in this case prosecution proved the motive of the offence. He further submitted that P.W.-2 and P.W.-3 are independent and unrelated witness, who were having no enmity with the accused persons. Further P.W.-2 and P.W.-3 and all the accused are residents of the same village Pahadi Bhetari, who were known to each other, as such, there is no dispute regarding the identification of the accused persons. P.W.-2 and P.W.-3 had specifically mentioned that they saw and recognized the accused persons in the torch and electric light. Further since accused Umesh openly expressed his displeasure towards the deceased for showing his attitude(*rangbazi*) at the liquor vend and accused Mahesh and Gore Lal made an exhortation at the spot, as such, the accused persons were also recognized by their voice by P.W.-2 and P.W.-3. It was further submitted that only one conclusion is possible in the facts and circumstances of the case, that all the accused had common intention to murder Ram Sharan Tiwari and in furtherance of that common intention, accused Umesh shot dead Ram Sharan Tiwari with a country-made weapon. In view of this uncontroverted and reliable evidence, the trial court committed grave error by recording a perverse finding that the prosecution failed to prove its case against acquitted accused Mahesh and Gore Lal. Learned A.G.A. submitted that in the light of the above evidence on record, the Criminal Appeal filed by convicted accused Umesh be dismissed and the Government Appeal filed against acquittal of accused Umesh(for acquittal under Section 504,506 I.P.C), Mahesh and Gore Lal(for acquittal under Section 302/34 I.P.C) be allowed and thereafter, they also be convicted.

22. We have heard, learned counsel for both the parties and perused the record.

23. First informant Sushil Kumar (P.W.-1) deposed in his examination-in-chief that on 08.09.2004 at about 10:35 p.m. Ram Sajivan (P.W.-2) and Rakesh Kumar (P.W.-3) came to his house and informed him about the incident. He claimed that he was awake at that time. Thereafter he along with his uncle Ram Sanehi, Sunil and Manikchand etc. reached in front of the house of Vasudev where he saw the dead body of his brother Ram Sharan. He further deposed that he left Santram etc. near the dead body and returned to his house, where he dictated the application to his younger brother Vimal, which he proved as Ex. Ka-1 during trial, and thereafter he gave the application at Police Station Muskura, on the basis of which F.I.R. was registered in this case. P.W.-1 further deposed that accused Umesh used to visit Raju Mishra of village Kharela where work of coal furnace used to take place and regarding the same furnace, an altercation took place about one and half months prior to the incident, between

deceased Ram Sharan and accused Umesh and due to this, accused Umesh bore enmity towards Ram Sharan. He further deposed in his examination-in-chief that his brother Ram Sharan, P.W.-2 and P.W.-3 had gone in night at about 9:00 p.m. towards a liquor vend, where they met accused Umesh, who abused Ram Sharan and threatened him with dire consequences, thereafter Ram Sharan, P.W.-2 and P.W.-3 went towards Chamardha pond to defecate and accused Umesh had also gone to his house. He further deposed that after defecating, the above three persons, were going to participate in Ramayana recital at the house of Babbu Pandit.

24. P.W.-1 deposed in cross-examination that police station Muskura is at a distance of about 7 Km from his village and by cycle he can reach the police station in about 45 minutes. He further deposed that the incident occurred in front of the house of Vasudev Kachi, who resides therein with his family members. He admitted that he had scribed the application (Ex.Ka-1) at his house from Vimal Kumar. He claimed that he received the information regarding the incident at about 10:35 p.m. and at that time he was viewing television and was present at his house and on getting this information, he went to the spot where the dead body was lying and at that time Santram was present near the dead body and after seeing the dead body, he returned to his house and thereafter had got the Ex. Ka-1 scribed by Vimal. He further stated that the spot of occurrence is at a distance of about 300 meters from his house. He remained at the spot for about 10 to 15 minutes. It took about half an hour to get the Ex.Ka-1 scribed and thereafter he, Manikchand and Sunil proceeded to the police station on a horse cart, where they reached in about half an hour. After getting the F.I.R. registered they waited at police station for about one and half hours, thereafter, the police personnel along with them returned to the village. He returned with the police personnel in jeep. P.W.-2 and P.W.-3 met the police personnel in the morning when *Panchayatnama* of the dead body was conducted at about 8:30 a.m. He had not accompanied the dead body to the police station, but had gone to the place where the post mortem examination was conducted. He further admitted that the altercation regarding the coal furnace between deceased Ram Sharan and accused Umesh had not occurred in his presence. It occurred at Kharela which is at a distance of about 12-13 k.m. from his village. He further claimed that the coal furnace neither belonged to deceased Ram Sharan nor to accused Umesh, rather it belonged to Raju Mishra. He denied the suggestion that Ram Sharan was murdered in the night at about 11-12 p.m. and he became aware of it in the morning.

25. From the evidence of Sushil Kumar (P.W.-1) it is evident that he is not an eye-witness of the incident. At the time of the incident, he was awake at his house viewing television then at about 10:35 p.m. he was informed about the incident by Ram Sajivan (P.W.-2) and Rakesh Kumar (P.W.-3). Then he went to the spot where he saw his brother Ram Sharan lying dead. Then he returned back to his house and thereafter dictated the application to Vimal, which he later proved as Ex.Ka-1. Later on, on the basis of which, F.I.R. in this case was registered at police station Muskura.

26. From the evidence of P.W.-1 it is also evident that prior to the incident, an altercation took place between the deceased Ram Sharan and accused Umesh about one and half months back, regarding the coal

furnace and since then, accused Umesh bore enmity towards Ram Sharan. It is further proved that on the day of the incident, at about 9:00 p.m. Ram Sharan, Ram Sajivan (P.W.-2) and Rakesh Kumar (P.W.-3) had gone towards a liquor vend where they met accused Umesh, who had abused Ram Sharan and threatened him with dire consequences and thereafter Ram Sharan, Ram Sajivan (P.W.-2) and Rakesh Kumar (P.W.-3) had gone towards Chamardha pond for defecating and accused Umesh had proceeded towards his house. It is true that the above altercations did not occur in the presence of P.W.-1 but still he was having knowledge about them and as such, proved that accused Umesh bore enmity towards his deceased brother Ram Sharan.

27. Ram Sajivan (P.W.-2) deposed in his examination-in-chief that he knew accused Umesh and Mahesh, who are residents of his village besides accused Gore Lal, who is a resident of another '*mohalla'* but Gore Lal used to remain in the company of accused Umesh and Mahesh. He deposed that he knew the first informant's brother Ram Sharan who was murdered in the night of 08.09.2004 at about 10:30 p.m. in front of the house of Vasudev Kachi. He further deposed that Ram Sharan was murdered by shooting in the chest by accused Umesh from a country made weapon (*tamancha*). He further deposed that at the time of incident, he and Rakesh Kumar(P.W.-3) were with Ram Sharan and were returning from Chamardha pond after defecation and were going to attend recital of Ramayana being held at the house of Babbu Pandit and when they reached near the house of Vasudev Kachi then accused Umesh, Mahesh and Gore Lal met. Accused Umesh was armed with '*tamancha'*, who said to Ram Sharan that he was showing attitude(*rangbazi*) at the liquor vend and then, jointly accused Gore Lal and Mahesh exhorted that Ram Sharan be killed and acting on this exhortation accused Umesh fired from '*tamancha'* on Ram Sharan, who died on the spot. He further claimed that he identified the accused in the light of bulb hanging on an electric pole situated in front of the house of Vasudev, as well as, in the light of the bulb hanging in front of the house of Ramphal. Beside this, accused Mahesh was also lighting a torch. He further stated that Santram had also witnessed this incident and he had left Santram on the spot, before he and Rakesh Kumar (P.W.-3) proceeded to inform Sushil Kumar (P.W.-1/ first informant) about the incident. He further proved that prior to the above incident, on the same day at about 9:00 p.m. he, Ram Sharan and Rakesh Kumar (P.W.-3) had gone towards a liquor vend where they met accused Umesh, who threatened Ram Sharan because previously he had a hand in breaking the coal furnace. He further proved that all the three persons i.e. he, Ram Sharan and Rakesh Kumar had proceeded to Chamardha pond and accused Umesh had also proceeded to his house. He also proved that a month prior to the above incident, in Kharela Village, an altercation occurred between Ram Sharan and Umesh regarding a coal furnace and since then, accused Umesh bore enmity towards Ram Sharan. He further claimed that they had challenged the accused persons after the incident, then accused Umesh and Mahesh fled. They had a scuffle with accused Gore Lal due to which a pair of slippers and *'angocha'* belonging to him, was left behind before he fled. This witness identified his signature on the recovery memo of the pair of slippers and *'angocha'* belonging to the accused Gore Lal, prepared and

subsequently proved by P.W.-6 Shailendra Singh as Ex.Ka-14.

28. P.W.-2 denied the suggestion in the cross-examination that accused Gore Lal was not having any friendship with accused Umesh and Mahesh. He stated that he was present in the village Kharela when the altercation took place between accused Umesh and Ram Sharan, regarding the coal furnace, which occurred in front of the gate of Badshah Singh at Charkhari Road, from which Badshah Singh's house is at a distance of about 500 meters and at that time, Badshah Singh was not present at the spot. He claimed that he along with Umesh and Ram Sharan were present at that time, but neither any assault took place during the altercation nor any complaint was made at the police station. He admitted that his statement was recorded by the Investigating Officer about a month after the incident at the police station in which, he had told him that the incident at village Kharela occurred in his presence, but if this has not been mentioned in his statement, then he cannot specify it's reason. He further stated that if the Investigating Officer has mentioned that the incident in Kharela took place 2-2 ½ month prior to the incident then he cannot specify it's reason. He further denied the suggestion that no altercation occurred in village Kharela between Umesh and Ram Sharan Tiwari. He further stated that on the day of the incident, they neither took liquor from the liquor vend nor reached the shop of Udal, but returned from the liquor vend and then proceeded towards Chamardha pond for defecation. After defecation, they remained present at a well situated near the pond for about 1-1.15 hours and continued talking, after which they proceeded to attend the Ramayana recital which was being held at the house of Babbu Pandit, which is at a distance of about 300 meters from the well. The Ramayana recital was going on since 5-6 days, which was organized by the villagers, but there was no festival. He further stated that the house of the first informant is at a distance of about 100 meters from the house of Babbu Pandit. He further stated that when the altercation occurred in front of liquor vend, then besides them, none was present. The salesman of the liquor vend was sitting inside the vend, after closing it. The vend closes at about 10:00 p.m. He was not aware that the vend remained open the whole night. He disclosed that it took them about 10 minutes to reach the spot from the well, which is at a distance of about 40-45 meters from the well. He proved that he saw the accused from a distance of 2-3 hands, and at that time they had crossed the door of Vasudev Kachi's house and had reached the chabutara. He further proved that he had heard them(accused) talking about the allegation of showing attitude (*rangbazi*) levelled against them at the vend, but he was neither afraid of its consequences nor they had attempted to flee. Accused Umesh fired from a distance of about 2-3 hands and at that time, Umesh and Ram Sharan Tiwari were facing one another. Ram Sharan Tiwari fell instantly after being shot, he could not run. He further proved that only one shot was fired at the spot and thereafter, the accused fled in the direction from which they had arrived at the spot. He further stated that they tried to apprehend accused Gore Lal and chased him, but he fled. He further stated that they proceeded towards the house of first informant(Sushil Kumar) one minute after the incident and it took them 4-5 minutes to reach there and at that time Sushil Kumar was watching T.V. He and P.W.-3 remained at first informant's house for about ten minutes and after informing P.W.-1 about the

incident, he and P.W.-3 had left for their house. He further stated that from the house of Vasudev Kachi towards east at a distance of about 8-10 paces, there is an electric pole on which a bulb was lit and in its light, they witnessed the incident. He further stated that he had not told this to the Investigating Officer because he had not enquired about this. He further admitted that he had not told the Investigating Officer that at the time of the incident accused Mahesh was having a torch in his hand because this was not asked from him by the Investigating Officer. He stated that he met the Investigating Officer on the spot at about 6:00 – 6:30 a.m. and at that time the '*Panchayatnama'* proceedings were going on. The dead body was sealed and taken in a tractor. He remained present in the village. Thereafter, on the second day of the incident he proceeded to his sister's matrimonial house situated in village Bagra, Tehsil Sarila, District Hamirpur due to fear and he returned after about 15 days to his village and thereafter, he remained present in his village.

29. Rakesh Kumar P.W.-3 deposed in his examination-in- chief that he knows accused Umesh, Mahesh and Gore Lal. Umesh and Mahesh are real brothers whereas accused Gore Lal is having good terms with them. He also knows Sushil Kumar, who was the brother of the deceased Ram Sharan, who was murdered about 7-8 months back in the night at 10-10.30 p.m., on the way, in front of the house of Vasudev Kachi. Ram Sharan was shot dead by Umesh from a country made weapon and at that time, he and Ram Sajivan were with Ram Sharan. He further deposed that they were returning after defecation from Chamardha pond and were going to participate in the Ramayana recital being held at the house of Babbu Pandit and during this, when they reached near the house of Vasudev Kachi, then accused Umesh, Mahesh, Gore Lal came, Umesh was armed with '*tamancha'*, who said to Ram Sharan that he was showing attitude(*rangbazi*) at the liquor vend and at that moment, accused Mahesh and Gore Lal exhorted accused Umesh by saying that *"it is a good opportunity, he should not escape, shoot him dead"* and on this exhortation, Umesh shot Ram Sharan in the chest with a '*tamancha'*. He further deposed that they challenged the accused, then accused Mahesh and Umesh fled and they tried to apprehend accused Gore Lal, but in the scuffle he fled leaving his slippers and *'angocha'* behind. He further deposed that he identified accused in the light of electric bulb hanging from the pole and also in the torch light held by accused Mahesh. He further claimed that the incident was also witnessed by Santram. He further stated that on that day before the incident, at about 09:00 p.m. he, Ram Sajivan and Ram Sharan had gone towards the liquor vend, where they met Umesh, who abused Ram Sharan and threatened him with dire consequences on the pretext that he was involved in breaking the furnace and thereafter Umesh had proceeded towards his house and they had gone to Chamardha pond for defecation. This witness identified his signature on the recovery memo Ex.Ka-14 prepared by P.W.-6 while taking into possession the slippers and *'angocha'* of accused Gore Lal.

30. P.W.-3 admitted in his cross-examination that he was aware that in village Kharela a coal furnace had been broken about one and a half months prior to the incident, but he was not present at that time. He was not aware that regarding the above coal furnace, any report was registered or not. He further stated that he

had told the Investigating Officer that the accused Umesh had threatened Ram Sharan with dire consequence on the pretext of his hand in breaking coal furnace, but if that is not recorded in his statement, then he cannot give any reason for it. He also stated that he reached the liquor vend from the house of Ram Sajivan and all three came together. They stayed at the house of Ram Sajivan for 10-15 minutes. They had gone to Ram Sajivan's house because Ramayana recital was being held at the house of Babbu Pandit which was in progress since 4-5 days, but they had not participated in it.

31. He further stated that two days prior to the incident, he had gone to the house of Babbu Pandit for participating in the Ramayana recital. On the day of the incident, Ram Sajivan and Ram Sharan had also intended to participate in the Ramayana recital. He further stated that they had gone to the liquor vend for purchasing *Guthka*. The *Guthka* shop is at a distance of 15-20 paces from the liquor vend, towards the horse-cart stand. They had not entered the liquor vend because accused Umesh had met them, but, even if accused Umesh had not met them, even then they would not have gone inside the liquor vend. He further stated that on the day of the incident after altercation with Umesh at the liquor vend they had not gone to purchase *Guthka*, but had proceeded straightaway to the Chamardha pond for defecation where they took 7-8 minutes and thereafter, washed their hands and face with hand-pump water and thereafter, they remained seated at the well for about 45 minutes, where they spent their time talking and thereafter, proceeded from the pond to the house of Babbu Pandit for taking part in the Ramayana recital, then in front of the house of Vasudev Kachi, the incident occurred. He further stated that at the time of the incident, all three of them i.e. he, Ram Sajivan and Ram Sharan were in line, with Ram Sharan in the centre. He was towards his(Ram Sharan) left and Ram Sajivan, towards right of Ram Sharan and when Ram Sharan was shot, even at that time, they were going in a line. He further stated that the passage in front of Vasudev Kachi's house is about 4-5 feet wide and the *Chabutara* of Vasudev Kachi's house is about 7-8 hands wide and 10-12 hands long. He further stated that the I.O. had called him at about 6:30-7:00 a.m. and till that time, the body of deceased Ram Sharan was lying on the spot. He had shown the spot and also the place to I.O. from where, he and Ram Sajivan had seen the incident. He further stated that only one shot was fired at the spot of occurrence. The accused arrived at the spot from the northern side and after firing, they returned in the same direction. He neither saw the empty cartridge of 315 bore at the spot in the night nor in the morning. The I.O. sealed the dead body of Ram Sharan in his presence. He remained at the spot for about one and a half to two hours. Thereafter, dead body was taken in a tractor for postmortem, but he had not accompanied the dead body. He remained present in the village, in his house. He further stated that at the time of the incident, Ram Sharan and Umesh were facing each other and Umesh shot Ram Sharan from a distance of 2-3 paces. They had chased the accused for 8-10 paces after the incident. Ram Sajivan (P.W.-2) had a scuffle with Gore Lal for about a minute. He had shown to the I.O. the electric pole from which a bulb was hanging in whose light he saw the incident and if the I.O. had not shown the electric pole in the site plan, then he cannot specify its reason. He admitted that he had not told the Investigating Officer that he saw the incident in the light of an electric bulb

because the Investigating Officer had not asked him about it. He further admitted that he had not told that at the time of the incident, accused Mahesh was having a torch and in that torch light, he saw the incident. He further stated that Investigating Officer recorded his statement about 2-3 days after the incident at the police station. After the incident, he straight away proceeded to the house of the deceased, for informing him about the incident, where he remained for 2-4 minutes and from there, he proceeded to his house. He further stated that Santram was also present at the time of the incident. He denied the suggestion that he had not witnessed the incident and was a pocket witness of the police.

32. Dr. D.C. Tiwari (P.W.-4) deposed in his examination-in-chief that he conducted the post-mortem examination of deceased Ram Sharan Tiwari on 09.09.2004. During post-mortem examination, a fire arm entry wound was found on the centre of chest and a fire arm wound of exit was found on the back of the chest. The third rib of deceased was fractured towards the left side, left lung was lacerated, left and right atrium of the heart was also lacerated. The abdominal cavity was filled with blood. He opined that deceased died about a day prior to the post-mortem examination, due to excessive haemorrhage, as a result of ante-mortem injury caused to him. This witness has proved the post-mortem examination report of deceased Ram Sharan Tiwari as Ex.Ka-2 and has further stated that his death could have occurred due to fire arm injury caused by '*tamancha'* on 08.09.2004 at about 10:30 p.m. This witness further proved the clothes etc. found on the body of the deceased at the time of post-mortem examination as material Ex-1 to 6. In the cross-examination this witness stated that the deceased could have died in the night of 8/9.09.2004. between 12:00 mid night and 1:00 a.m. He opined that since the small and large intestine of the deceased were filled with faeces, it appeared that deceased had not defecated prior to his death. Since the stomach of the deceased was empty, it appeared that he had not taken meals, within 5-6 hours, prior to his death, and he had not found any liquor in the stomach. He admitted that he had found a hole in the *baniyan* and shirt worn by the deceased at the time of incident, but there was no blackening on it. He further opined that the assailant must have been towards right of the deceased because the bullet after entering the chest, had travelled towards the left. He further admitted that tattooing was present on the injury. He further opined that if the injury was caused from a revolver then the shot must have been fired from a distance of about six inches and if a gun had been used, then the distance would be about one foot, but in exceptional cases, this distance could be up to three feet and injury no.1 could have been caused by a 12 bore weapon.

33. From the combined evidence of P.W.-2 Ram Sajivan and P.W.-3 Rakesh Kumar, it is evident that just prior to the incident on the night of 08.09.2004 at about 9:00 p.m., these two witnesses along with Ram Sharan had gone towards a liquor vend, where they met accused Umesh, who abused Ram Sharan Tiwari and threatened him with dire consequences because previously about 1 ½ months back, he had taken active part in breaking a coal furnace. P.W.-2 specifically mentioned in his cross-examination that when in village Kharela, coal furnace was broken, then an altercation occurred between accused Umesh and deceased Ram Sharan Tiwari

and at that time he was present. P.W.-3 admitted in the cross-examination that although at that time, he was not present, but he was aware of the incident. It is proved that Ram Sharan Tiwari had managed to get a coal furnace broken about one and a half month prior to the incident, which had annoyed accused Umesh and an altercation had taken place between them and due to this, accused Umesh bore enmity towards Ram Sharan Tiwari and in furtherance of that, he was murdered. It is proved from the evidence of P.W.-2 and P.W.-3 that accused Umesh was having enmity with Ram Sharan Tiwari and had also threatened him with dire consequences.

34. As such, the prosecution has succeeded in proving the motive of the incident.

35. From the evidence of P.W.-2 and P.W.-3, it is proved that on the day of the incident, after having altercation at the liquor vend, where accused Umesh had abused and threatened Ram Sharan Tiwari with dire consequences, P.W.-2, P.W.-3 and Ram Sharan Tiwari had proceeded towards Chamardha pond for defecation and after defecating, when they were returning to attend Ramayana recital at the house of Babbu Pandit, then in front of Vasudev Kachi's house accused Umesh, Mahesh and Gore Lal met them, and at that time accused Umesh was armed with a '*tamancha'*. It is also proved that accused Umesh made a verbal statement, expressing his displeasure at the attitude(*rangbazi*) shown by Ram Sharan Tiwari at the liquor vend. That verbal statement of accused Umesh proved that he was still having a grudge with Ram Sharan Tiwari and wanted to take revenge from him.

36. From the evidence of P.W.-2 and P.W.-3, it is proved that just prior to the incident, accused Gore Lal and Mahesh gave an exhortation by saying that this is a good opportunity, hence, he should not escape and be killed and acting on this exhortation, accused Umesh fired a single shot at Ram Sharan Tiwari's chest from '*tamancha'*, killing him instantly. Both P.W.-2 and P.W.-3 proved that the fire arm injury was caused on the chest of Ram Sharan Tiwari, which is corroborated from the testimony of Dr. D.C. Tiwari (P.W.-4), who in the post-mortem examination of deceased, found a fire arm wound of entry in the centre of chest and an exit wound of fire arm on the back of the chest. Around the fire arm wound of entry, tattooing was found in an area of 14 cm x 14 cm, alongwith clotted blood. P.W.-2 specifically stated in cross-examination that Umesh fired at Ram Sharan Tiwari from close distance, approximately from a distance of about 2-3 hands and at that time they were facing one another and only one shot was fired. Similarly, P.W.-3 stated in cross-examination that when Umesh fired at Ram Sharan, they were facing one another and Umesh fired at Ram Sharan from a distance of about 2-3 paces. Since tattooing was found on the fire arm wound of entry, as such, it is evident that Ram Sharan was shot from close proximity. If the length of hand and muzzle of '*tamancha'*, are together(because the tamancha was held in hand) taken into consideration, then from the ocular evidence of P.W.-2 and P.W.-3 it is proved that accused Umesh shot Ram Sharan from a distance of about 3 feet, which is also corroborated from the testimony of doctor P.W.-4, according to which, tattooing can only be caused if a person is shot from close proximity i.e. from a distance of less than 3 feet.

37. In view of this, the ocular evidence regarding the manner in which deceased Ram Sharan Tiwari was shot dead, is also corroborated by the medical evidence on record.

38. It is also evident from the evidence of P.W.-2 and P.W.-3 that at the time of the incident accused Mahesh, Umesh and Gore Lal were present. It is also proved that accused Mahesh is the real brother of accused Umesh. It is also proved that Gore Lal was having friendship with accused Mahesh and Umesh, who used to remain in their company. It is also proved that just prior to the incident on seeing Ram Sharan, accused Umesh had verbally expressed his displeasure regarding the attitude(*rangbazi*) shown by Ram Sharan at the liquor vend and thereafter, accused Gore Lal and Mahesh had jointly exhorted accused Umesh by saying that today is a good opportunity, he(Ram Sharan)should not escape and be killed and thereafter, acting on this exhortation, accused Umesh shot dead Ram Sharan with a single shot of '*tamancha'*. It is proved that accused Umesh was exhorted to kill Ram Sharan by accused Gore Lal and Mahesh. It is also proved that accused Gore Lal and Mahesh neither stopped Umesh from shooting Ram Sharan nor they remained present at the spot after the incident, instead, they along with Umesh fled, who were chased and P.W.-2 and P.W.-3 also had a scuffle with Gore Lal, during which his slippers and *'angocha'* were left behind, which were recovered by P.W.-6 in the next morning, regarding which recovery memo Ex. Ka-14 was proved by P.W.-6 during trial, on which P.W.-2 and P.W.-3 had admitted their signatures. It is also proved that accused Mahesh and Gore Lal knew prior to the incident, that accused Umesh was armed with a '*tamancha'* and due to this reason, they gave an exhortation to kill Ram Sharan. Otherwise, if they were not aware that accused Umesh was having a '*tamancha'* in his possession, then there was no purpose of giving an exhortation to him, to kill Ram Sharan. This conduct of accused Mahesh and Gore Lal prior to the incident, simply proves that they were aware that accused Umesh was having a '*tamancha'* in his possession and by using it, Ram Sharan could be killed. Besides this, if Mahesh and Gore Lal were not having common intention to kill Ram Sharan with Umesh, then, since they were in close proximity to accused Umesh, they could have very well stopped him or at least made an effort to prevent Umesh from shooting Ram Sharan, but no such positive action was taken by them. Even after the incident, if accused Mahesh and Gore Lal were not having common intention to kill Ram Sharan with Umesh, then, they could have remained present at the spot. The evidence of P.W.-2 and P.W.-3 proves that accused Mahesh and Gore Lal also fled, who were chased by the above witnesses and during this chase, a scuffle took place between the witnesses and accused Gore Lal, during which the slippers and *'angocha'* of Gore Lal were left behind, but he ultimately managed to flee. The conduct of the accused Mahesh and Umesh, prior to and after the incident, proves that they had common intention with accused Umesh to kill Ram Sharan Tiwari.

39. The trial court acquitted accused Mahesh and Gore Lal on this ground that on the day of the incident i.e. 08.09.2004 at 09.00 PM in the altercation that took place between Ram Sharan and accused Umesh at the liquor vend, both the accused Mahesh and Gore Lal were not present and only accused Umesh had threatened Ram Sharan with dire consequences and

subsequently, at the time of the incident, accused Mahesh and Gore Lal were unarmed. In the opinion of the trial court, if all the three accused had planned to murder Ram Sharan, then certainly accused Mahesh and Gore Lal would have arrived at the spot, armed with lathi, danda or fire-arm. It was further opined by the trial court that in order to convict the accused under Section 34 I.P.C it must be proved that the real accused and his accomplice, were having a well planned scheme and the accomplice also participated in the commission of the offence.

40. In the opinion of the trial court, there was neither any planning nor any common intention on the part of the accused Mahesh and Gore Lal, with accused Umesh, to murder Ram Sharan, hence, the trial court acquitted them.

41. In view of the above findings recorded by the trial court, we have to examine what are the ingredients for 'common intention' as per Section 34 I.P.C. The law on this subject is well settled. The Apex Court in the case of ***Rajkishore Purohit Vs. State of M.P. (2017) 9 SCC 483,*** while considering the common intention, held as under:-

"9. Common intention is a state of mind. It is not possible to read a person's mind. There can hardly be direct evidence of common intention. The existence or non-existence of a common intention amongst the accused has to be deciphered cumulatively from their conduct and behaviour in the facts and circumstances of each case. ***Events prior to the occurrence as also after, and during the occurrence, are all relevant to deduce if there existed any common intention. There can be no straight jacket formula. The absence of any overt act of assault, exhortation or possession of weapon cannot be singularly determinative of absence of common intention.***

10. Though judicial precedents with regard to common intention stand well entrenched, it will be sufficient to refer to State of Rajasthan vs. Shobha Ram, (2013) 14 SCC 732, observing as follows :-

"10. Insofar as common intention is concerned, it is a state of mind of an accused which can be inferred objectively from his conduct displayed in the course of commission of crime and also from prior and subsequent attendant circumstances. As observed in Hari Ram v. State of U.P.(2004)8SCC146, the existence of direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances. Therefore, in order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of mind of all the accused persons to commit the offence before a person can be vicariously convicted for the act of the other."

11. Motive for the assault existed because the accused were aggrieved by the meeting summoned. The assault was planned in a gathering, where escape would have been easy, in the chaos that would follow the assault. The accused persons came together in a car to facilitate a quick get-away. Exhortation was made by respondent no.2, when the accused were at very close quarters to the deceased. The firing was done from a distance of about 6 inches.Respondent no.2 and accused no.4

provided cover at this time. There is nothing in the conduct of respondent no.2 to draw any inference that he was taken by surprise, when the co-accused opened fire. Rather than provide help to the deceased and his relatives, respondent no.2 immediately escaped from the place of occurrence in the chaos that followed, indicative of his awareness of the common intention. ***The sequence of events, and the manner in which the occurrence took place, manifests a pre-concerted plan and a prior meeting of minds. It was not the case of respondent no.2 that he was taken by surprise and was unaware that the co-accused was carrying a revolver or that they had no intention to kill the deceased. If common intention by meeting of minds is established in the facts and circumstances of the case, there need not be an overt act or possession of weapon required, to establish common intention.***

12. In Ramaswami Ayyangar vs. State of Tamil Nadu, (1976) 3 SCC 779, explaining the essence and purport of common intention, it was observed as follows :-

"12.....The acts committed by different confederates in the criminal action may be different but all must in one way or the other participate and engage in the criminal enterprise, for instance, one may only stand guard to prevent any person coming to the relief of the victim, or may otherwise facilitate the [commission of crime]. Such a person also commits an 'act' as much as his co-participants actually committing the planned crime."

(emphasis supplied)

42. The Apex Court in ***Damodar Vs. State of U.P. (2005) 1 SCC 543*** while considering that whether only exhortation can attract application of Section 34 I.P.C., held as under:-

"5. It was argued before us that the mere fact that the appellant exhorted his companion to fire at the deceased is not sufficient for the application of Section 34 IPC. It was sought to be contended that there was no prior meeting of minds and, therefore, it cannot be said that what was done by Ravindra Singh was pursuant to the common intention of both the accused.

6. It is not possible to accept this contention. The facts of the case disclose that murders have taken place on both sides. While the deceased was being tried for the murder of the uncle of the appellant, Ravindra Singh was being tried for the murder of the son of the deceased. The parties are well-known to each other. It so happened that on the day of occurrence, while the deceased was proceeding ahead, he was noticed by the appellant herein who was in the company of Ravindra Singh, who was carrying a loaded country made pistol. He exhorted Ravindra Singh to kill the deceased whereafter Ravindra Singh fired at the deceased from behind and killed him. If these facts cannot be disputed, there can be no doubt about the application of Section 34 IPC. It was pursuant to the common intention of both that Ravindra Singh fired at the deceased resulting in his death. Having heard the parties and perused the records, we find nothing which may lead us to hold that the allegation of exhortation by the appellant is not true."

43. The Apex Court in the case of ***Gulab vs State of Uttar Pradesh (2022) 12 SCC 677*** (by 3 Judges) while considering the applicability of Section 34 I.P.C, held as under:-

"29. In Dhanpal v. State (NCT of Delhi) [Dhanpal v. State (NCT of Delhi), (2020) 5 SCC 705 : (2020) 3 SCC (Cri) 188] , the appellant had exhorted a co-accused to kill the deceased. The exhortation was not repeated by the eyewitnesses in identical terms. Further, it was also alleged that there was no neutral witness since all the eyewitnesses were related to the deceased and there was a delay in lodging the FIR. Aniruddha Bose, J. speaking for the two-Judge Bench of this Court observed : (SCC pp. 709-10, paras 8 & 11)

"8. There are sufficient materials, however, to establish that the three appellants had returned together to the place of occurrence and attacked the deceased victim with Dhanpal exhorting to kill Ajay. They had grappled the victim and said Kamal inflicted multiple injuries on him with the knife. On the basis of evidence disclosed, the trial court and the High Court [Sanjeev v. State, 2009 SCC OnLine Del 2868] found that there was prior meeting of minds of all the four convicts and all the three appellants had intention common with that of Kamal. On this point, the ratio of the judgment of this Court in Asif Khan v. State of Maharashtra [Asif Khan v. State of Maharashtra, (2019) 5 SCC 210 : (2019) 2 SCC (Cri) 484] is relevant. In an earlier case, Rajkishore Purohit v. State of M.P. [Rajkishore Purohit v. State of M.P., (2017) 9 SCC 483 : (2017) 3 SCC (Cri) 749] , it has been held that to establish common intention to cause murder, overt act or possession of weapons by all the accused persons is not necessary. In Richhpal Singh Meena v. Ghasi [Richhpal Singh Meena v. Ghasi, (2014) 8 SCC 918 : (2014) 6 SCC (Cri) 424] , the ratio is that in the event the nature of the assault is such that the target person is likely to die from the injuries resulting therefrom, the accused must be deemed to have known the consequences of his act.

11. We find the approach of the trial court and the High Court in appeal was proper in dealing with the discrepancies pointed out on behalf of the appellants. The delay in registering the FIR has been explained properly and judgment of conviction cannot fail for that reason. It is a fact that the eyewitnesses were known to the deceased and there was no neutral witness. But for that factor alone we cannot exonerate the appellants, particularly since the court of first instance and the first appellate court have already examined the evidence and given their findings in favour of the prosecution. We do not find any error in the judgment of conviction and order of sentence so far as the appellants are concerned. All the three appeals are dismissed.

***30.** Recently in Sandeep v. State of Haryana [Sandeep v. State of Haryana, (2022) 14 SCC 812 : 2021 SCC OnLine SC 642] , a two-Judge Bench of this Court held that an exhortation given by an accused immediately before a co-accused fired a shot killing the deceased would prove his involvement in the crime beyond reasonable doubt. Accordingly, this Court upheld the conviction of the accused under Sections 302 and 34IPC.*

31**. The evidence on the record clearly establishes a common intention in pursuance of which the appellant exhorted Idrish to kill the deceased. **The prosecution is not required to prove that there was an elaborate plan between the accused to kill the deceased or a plan was in existence for a long time. A common intention to commit the crime is proved if the accused

by their words or action indicate their assent to join in the commission of the crime. *The appellant reached the spot with a lathi, along with Idrish who had a pistol. The appellant's exhortation was crucial to the commission of the crime since it was only after he made the statement that the enemy has been found, that Idrish fired the fatal shot.* ***The role of the appellant, his presence at the spot and the nature of the exhortation have all emerged from the consistent account of the three eyewitnesses.****"*

(emphasis supplied)

44. From the above law laid down by the Apex Court, it is evident that the common intention is a state of mind of accused which can be inferred objectively from his conduct displayed in the course of commission of crime and also from prior and subsequent attendant circumstances. It has been further held that existence of direct proof of common intention is seldom available, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances. It is evident that in the case of **Raj Kishore Purohit (Supra)** all the accused came together in a car, exhortation was made by one accused from close quarters and thereafter another accused fired from a close distance and thereafter, all fled in a car. In such circumstances, it was held by the Apex Court that there was common intention among all the accused to commit the crime. It was further held that in such situation, there need not be an overt act or possession of weapon is required, to establish common intention.

45. Similarly, in the case of **Damodar (supra)** on the exhortation of the appellant, another accused Ravindra Singh fired from his country made pistol causing death and in such circumstance, it was held that the murder took place pursuant to the common intention of both the accused.

46. In the case of **Gulab(supra)**, the appellant reached the spot armed with a lathi, alongwith Idrish, who had a pistol. On the exhortation of appellant, Idrish fired the fatal shot. In such circumstance, it was held that the appellant had common intention with Idrish to commit murder.

47. The laid down by the Apex Court in the case of ***Damodar(supra), Rajkishore Purohit(supra) and Gulab(supra)*** is fully applicable on the facts of this case. From the evidence of P.W.-2 and P.W.-3, it is proved that accused Mahesh and Gore Lal knew prior to the commission of offence, that accused Umesh was having in his possession a country-made weapon (*tamancha*) and due to this specific knowledge, they gave an exhortation to accused Umesh to kill Ram Sharan Tiwari by saying that *'today is a good opportunity to kill, he should not escape, he be killed'* and acting on this exhortation, Umesh fired a single shot from his '*tamancha'* at Ram Sharan Tiwari, who died instantly on the spot. The accused Mahesh and Gore Lal, were in close proximity to accused Umesh, who neither prevented accused Umesh from shooting Ram Sharan Tiwari nor remained present at the spot, after the incident, who were chased by P.W.-2 and P.W.-3, during which a scuffle took place between accused Gore Lal and P.W.-2 and P.W.-3, as a result of which the slippers and *'angocha'* of accused Gore Lal were left behind, which were taken into possession in the next morning by P.W.-6. All the above facts and circumstances duly prove that accused Mahesh and Gore Lal

were having common intention with accused Umesh to murder Ram Sharan. As such, the trial court recorded a perverse finding, acquitting them, on the sole ground that they were not having any common intention with accused Umesh to murder Ram Sharan Tiwari.

48. The principles governing scope of interference by the High Court, in an appeal filed by the State for challenging acquittal of the accused, recorded by the trial court, has been considered by the Apex Court in the case of ***Babu Sahebagouda Rudragoudar and others vs. State of Karnataka (2024) 8 SCC 149,*** as under:-

"39. This Court in Rajesh Prasad vs. State of Bihar(2022)3SCC471 encapsulated the legal position covering the field after considering various earlier judgments and held as below:

"29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: [Chandrappa case(2007)4SCC415] SCC p. 432, para 42)

'42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

40. Further, in H.D. Sundara vs. State of Karnataka(2023)9SCC581, this Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal

under Section 378 Cr.P.C. as follows: (SCC p. 584, para 8)

"8. ... 8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."

41. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:

41.1 That the judgment of acquittal suffers from patent perversity;

41.2. That the same is based on a misreading/omission to consider material evidence on record; and

41.3. That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

42. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court."

49. It is clear that the Appellate Court can only interfere in the judgment of acquittal rendered by the trial court, if after appreciation of evidence on record, it is of the opinion that beyond reasonable doubt, only the conclusion of guilt of accused is possible, not otherwise. If the view taken by the trial court is a possible view, even then, the Appellate Court cannot over turn the order of acquittal on the ground that, another view is also possible.

50. From the discussion made herein before, it is proved that, on the basis of the evidence of P.W.-2 and P.W.-3 only one view is possible, that accused Mahesh and Gore Lal were having common intention with accused Umesh, to murder Ram Sharan Tiwari. As such, the trial court has recorded a perverse finding that they were not having common intention with the accused Umesh, to murder Ram Sharan Tiwari. The trial court committed grave illegality in acquitting the accused Mahesh and Gore Lal, which requires interference by this Appellate Court. Accordingly, the Government Appeal insofar as, it challenges unjustified acquittal of accused Mahesh and Gore Lal, deserves to be allowed.

51. The Government Appeal also challenges the acquittal of accused Umesh

by trial court for the offence under Section 504 and 506 I.P.C. The trial court acquitted the accused Umesh, only on the ground that the prosecution failed to prove the specific words of abuse uttered by him, and further he had not threatened to kill Ram Sharan.

52. The Apex Court in the case of ***B.V. Ram Kumar vs State of Telangana And Another (2025)3SCC475,*** while considering the applicability of Section 504 I.P.C to the facts of the case before the Court, held as under:-

"22*. For appreciating the necessary ingredients required to substantiate a charge under Section 504IPC, a reference in this regard may be made to the judgment of this Court in Fiona Shrikhande v. State of Maharashtra [Fiona Shrikhande v. State of Maharashtra, (2013) 14 SCC 44 : (2014) 1 SCC (Cri) 715] , wherein the Court discussed the essential ingredients of Section 504IPC. The Court held as follows : (SCC pp. 49-50, paras 13-14)*

"13. Section 504IPC comprises of the following ingredients viz. ***(a)intentional insult, (b)the insult must be such as to give provocation to the person insulted, and (c)the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence****. The person who intentionally insults intending or knowing it to be likely that it will give provocation to any other person and such provocation will cause to break the public peace or to commit any other offence, in such a situation, the ingredients of Section 504 are satisfied.* ***One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant, as such, is not sufficient by itself to warrant a conviction under Section 504IPC****.*

14. ***We may also indicate that it is not the law that the actual words or language should figure in the complaint.*** *One has to read the complaint as a whole and, by doing so, if the Magistrate comes to a conclusion, prima facie, that there has been an intentional insult so as to provoke any person to break the public peace or to commit any other offence, that is sufficient to bring the complaint within the ambit of Section 504IPC.* ***It is not the law that a complainant should verbatim reproduce each word or words capable of provoking the other person to commit any other offence. The background facts, circumstances, the occasion, the manner in which they are used, the person or persons to whom they are addressed, the time, the conduct of the person who has indulged in such actions are all relevant factors to be borne in mind while examining a complaint lodged for initiating proceedings under Section 504IPC"***

(emphasis supplied)

23. *Thus, upon reading the complaint as a whole, if the Magistrate comes to a conclusion, prima facie, that there has been an intentional insult made by the accused to the complainant so as to provoke the latter to break the public peace or to commit any other offence, then only the act complained of would fall within the ambit of Section 504IPC. The law does not mandate that the complainant should*

verbatim reproduce each word or words capable of provoking him/her to commit breach of peace or any other offence. The background facts, circumstances, the occasion, the manner in which the offending words are used, the person to whom they are addressed, the time, the conduct of the person who has indulged in such actions are all relevant factors to be borne in mind while examining a complaint lodged for initiating proceedings under Section 504IPC.

24. *Further, this Court in Mohd. Wajid v. State of U.P. [Mohd. Wajid v. State of U.P., (2023) 20 SCC 219] , while discussing Section 504IPC, propounded the test for considering the circumstances wherein, an abusive language takes the form and shape of an intentional insult and held thus : (SCC paras 29-31)*

"29. ***Section 504IPC contemplates intentionally insulting a person and thereby provoking such person insulted to breach the peace or intentionally insulting a person knowing it to be likely that the person insulted may be provoked so as to cause a breach of the public peace or to commit any other offence. Mere abuse may not come within the purview of the section.*** *But, the words of abuse in a particular case might amount to an intentional insult provoking the person insulted to commit a breach of the public peace or to commit any other offence.* ***If abusive language is used intentionally and is of such a nature as would in the ordinary course of events lead the person insulted to break the peace or to commit an offence under the law, the case is not taken away from the purview of the section merely because the insulted person did not actually break the peace or commit any offence having exercised self-control or having been subjected to abject terror by the offender.***

30. In judging whether particular abusive language is attracted by Section 504IPC, the court has to find out what, in the ordinary circumstances, would be the effect of the abusive language used and not what the complainant actually did as a result of his peculiar idiosyncrasy or cool temperament or sense of discipline. ***It is the ordinary general nature of the abusive language that is the test for considering whether the abusive language is an intentional insult likely to provoke the person insulted to commit a breach of the peace and not the particular conduct or temperament of the complainant.***

31. ***Mere abuse, discourtesy, rudeness or insolence, may not amount to an intentional insult within the meaning of Section 504IPC if it does not have the necessary element of being likely to incite the person insulted to commit a breach of the peace of an offence and the other element of the accused intending to provoke the person insulted to commit a breach of the peace or knowing that the person insulted is likely to commit a breach of the peace.*** *Each case of abusive language shall have to be decided in the light of the facts and circumstances of that case and there cannot be a general proposition that no one commits an offence under Section 504IPC if he merely uses abusive language against the complainant."*

(emphasis supplied)

25. *Needless to say, that mere abuse, discourtesy, rudeness or insolence does not amount to an intentional insult within the meaning of Section 504IPC.*

Furthermore, it would be immaterial that the person who has been insulted and provoked did not actually break the peace or commit any offence.

26. *Section 504IPC consists of two parts. Firstly, the actus reus—being the intentional insult which gives rise to the provocation. Secondly, the mens rea i.e. the intention or knowledge on the part of the accused that such intentional provocation is likely to cause the person insulted to break public peace or commit any other offence.* ***The animus nocendi in Section 504IPC is that the accused should "intentionally insult" the other person with the intention or knowledge that the provocation caused by such insult is likely to result in the commission of breach of public peace or any other offence by the person who has been so insulted. The offence is said to be complete once the accused person makes "intentional insult" with the aforesaid mens rea. Hence, intention or knowledge on the part of the accused person that his actions of making "intentional insult" have the potential to provoke the person insulted is sine qua non for the commission of the offence under Section 504IPC.***

27. *The natural corollary of the above discussion is that if the accused does not intend to give provocation, the offence is not made out. An insult without an "intention to insult" is not punishable under Section 504IPC. Further, "intentional insult" must be of such a degree that it has the potential to provoke a reasonable person to break the public peace or to commit any other offence.*

28. *It is trite that whether the person provoked further commits an illegal act or not is immaterial to draw the conclusion of culpability under Section 504IPC. The "intentional insult" and provocation must be so proximate and close that the accused has either the intention or the knowledge that the intentional insult made by him is likely to cause the provoked person to break public peace or commit some other offence. However, what would be the nature of "intentional insult" causing provocation, to draw culpability under Section 504IPC would depend upon the facts and circumstances of each case.*

29. *The test to be applied to determine if the intentional insult made by the accused is sufficient to cause provocation is that of a reasonable person i.e. if the insult is sufficient to provoke any reasonable person to break peace or commit any other offence, only then the accused will be liable for the offence under Section 504IPC."*

(emphasis supplied)

53. Criminal Intimidation is defined under Section 503 I.P.C, which reads as under:-

"Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in

whom the person threatened is interested, is within this section."

54. Punishment for Criminal Intimidation is prescribed under Section 506 I.P.C, which reads as under:-

"Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.*—And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."*

55. As per the law laid down by the Apex Court in the case of ***B.V. Ram Kumar(supra),*** it is clear that, it is not necessary for the prosecution to verbatim reproduce each word uttered by the accused while abusing the victim. The prosecution is only bound to prove that an intentional insult was made by the accused with the intention or knowledge, that the provocation caused by such insult is likely to cause any reasonable person to break the public peace or commit any other offence. It is immaterial that the person insulted and provoked, did not actually break the peace or commit any offence.

56. From the evidence of P.W.-2 and P.W.-3 it is proved that on the day of the incident at about 9:00 p.m. at liquor vend, accused Umesh abused Ram Sharan and threatened him with dire consequences. It is true that the above witnesses have not mentioned the specific words uttered in abuse, by Umesh, at that time but, it is proved that an intentional insult was committed by the accused with the knowledge that Ram Sharan could have broken public peace or committed any other offence. It is also true that Ram Sharan after the abuse, had not reacted to it, but this conduct of Ram Sharan is immaterial. We are of the opinion that, in the facts and circumstances of the case, the prosecution has proved beyond doubt, that an offence under Section 504 I.P.C was committed by Umesh.

57. As per the definition of Criminal Intimidation under Section 503 I.P.C., any threat given to a person to injure him, his property or reputation with intent to cause alarm to that person, amounts to Criminal Intimidation. It is not necessary that the threat should be to kill someone. From the evidence of P.W.-2 and P.W.-3, it is also proved that Umesh at the liquor vend threatened Ram Sharan with dire consequences, which falls within the definition of Criminal Intimidation. The trial court recorded a perverse finding that since neither specific words of abuse were proved by the prosecution nor accused Umesh threatened Ram Sharan to kill, as such the accused had not committed any offence under Section 504 and 506 I.P.C.

58. We are of the opinion that the prosecution has proved beyond reasonable doubt that accused Umesh also committed offence under Section 504 and 506 I.P.C., as such the Government Appeal insofar as it relates to acquittal of accused Umesh for offence under Section 504 and 506 I.P.C., also deserves to be allowed.

59. It is true that in the first information report, it is not mentioned that P.W.-2 and P.W.-3 saw the incident in the light of a bulb hanging on an electric pole, in the vicinity of the spot of occurrence and also, in the light of the torch held by accused Mahesh. It is well settled that F.I.R. is not an encyclopedia and as such, each and every minute detail of the occurrence, need not be elaborated in it.

60. In their testimony P.W.-2 and P.W.-3 specifically mentioned that they identified the accused persons in the light of a bulb which was hanging on an electric pole, in front of the house of Vasudev Kachi, as well as, in the torch light held by accused Mahesh. Both P.W.-2 and P.W.-3 admitted in their cross-examination that they had not told the above facts to the Investigating Officer because they were not asked in this regard. It is also proved that P.W.-2, P.W.-3 and accused are resident of the same village Pahadi Bhetari, who are well known to one another. It is also proved that just before the incident, both the accused Mahesh and Gore Lal had given a joint exhortation to accused Umesh, to kill Ram Sharan Tiwari and acting on this exhortation, accused Umesh shot dead Ram Sharan Tiwari with a '*tamancha'*. It is also proved that prior to the shooting, accused Umesh had verbally expressed his displeasure to Ram Saran regarding the attitude(*rangbazi*) shown by him at the liquor vend. It was not for the first time that P.W.-2 and P.W.-3 were meeting the accused, as such, in the facts and circumstances of the case, P.W.-2 and P.W.-3 could very well have identified them, from their voice, even if it is assumed that there was no source of light at the spot, at the time of occurrence.

61. It is also true that *Panchayatnama* of the deceased was prepared the next morning and according to P.W.-6, since there was no light at the spot of occurrence, as such, *Panchayatnama* could not be prepared in the night. But this statement of P.W.-6 cannot be read in the manner that, there was no source of light at all, at the place of occurrence. It is also possible that by the time P.W.-6 reached the spot in the night, there was no electric supply, or the available light was insufficient to prepare Panchayatnama in the night.

62. It is true that in the site map Ex.Ka-15, no electric pole or source of light is mentioned but, it is well settled that lapses conducted by the Investigating Officer cannot give any benefit to the accused, till such lapse is of such a consequence that the whole trial has been vitiated.

63. We are also conscious that the accused examined Jagdamba Prasad as D.W.-3, the operator of electric sub-station, Muskura in the trial court, in order to prove that at the time of incident, i.e. in the night of 08/09.09.2004, there was no electric supply in the village Pahadi Bhetari, as such, P.W.-2 and P.W.-3 could not have identified the accused in the light of an electric bulb.

64. We have perused the testimony of D.W.-3, who has mentioned in his examination-in-chief that there was no electric supply in village Pahadi Bhetari from his electric sub-station on 08.09.2004 at 10:30 p.m. In order to prove the above fact, he produced a register in which he admitted that the relevant entry was not in his hand writing. He also stated that electric supply was resumed in the night, but stopped at 5:05 a.m. He further deposed in his examination-in-chief that there was no electric supply from his electric sub-station

to village Pahadi between 01.09.2004 and 14.10.2004, but in cross-examination admitted that the pages of register, which he produced in the court, have neither been numbered nor been attested by any officer. He admitted that the entries made in the register on 08.09.2004 are not in his hand writing. He further admitted that it is mentioned in the register that on 08.09.2004, lineman Baijnath had gone to village Pahadi for checking the transformer at 9:35 p.m. According to the register, previously also Bhura, who worked as a patrol man in his department, had gone on 01.09.2004 for checking the transformer.

65. It is surprising that if the transformer supplying electricity to village Pahadi was damaged from 01.09.2004 till 14.10.2004, then, what was the need to get it checked on 08.09.2004, by the lineman Baijnath. Since neither the person making the entry dated 08.09.2004 in the register was examined in the trial court nor the number of pages in the register had been authenticated by a responsible officer of the electricity department, as such, the entries made in the register produced in the trial court, cannot be deemed credible. This is also proved from the observations recorded by trial court during examination of D.W.-3, that after initial entry dated 24.11.2004 and after the final entry dated 06.12.2004, ten pages were found torn in the register.

66. In view of the above facts, the evidence adduced by the accused, for proving that there was no electric supply in the night of 8/9.09.2004 in village Pahadi Bhetari is not reliable and as such needs to be discarded.

67. The accused also examined Maujilal as D.W.-1 in order to prove that the first informant Sushil Kumar P.W.-1 and others had not gone in his horse cart, neither in the night of 08/9.09.2004 nor in the next morning, to register FIR at police station Muskura. Sushil Kumar P.W.-1 stated in his cross-examination that the horse cart used by him belonged to his fellow villager Moti s/o Zeenat Kori. P.W.-1 was not suggested in cross-examination that he used the horse cart of D.W.-1, for going to the police station. D.W.-1 admitted in cross- examination that he was giving testimony in the Court on the request of accused Gore Lal and accompanied him to the Court. In view of this, the testimony of D.W.-1 cannot be deemed reliable and is liable to be discarded.

68. It is the case of the prosecution that deceased Ram Sharan, P.W.-2 and P.W.-3 were going to the house of Babbu Pandit to attend Ramayana recital, when the incident took place, but according to Babbu Pandit D.W.-2, neither on that day nor 2-3 days prior to it, any Ramayana recital was held at his house. D.W.-2 was examined to discredit the testimony of P.W.-2 and P.W.-3. He admitted in his cross-examination that he was not aware that Ramayana recital was held somewhere else in the village or not. He admitted that Ramayana recital is conducted in his village, but denied having organized any such recital at his house. He further admitted that he received the summon to appear in the Court from accused Mahesh. Although he denied the suggestion that he was giving testimony in the court, at the instance of accused Mahesh, but in the facts and circumstances of the case, the evidence of D.W.-2 cannot be deemed reliable and is liable to be discarded.

69. In this case, after the incident, the Investigating Officer S.I. Shailendra Singh

P.W.-6 collected plain soil and blood stained soil from the spot, as well as the bullet of 315 bore lying near the dead body of Ram Sharan Tiwari, and proved the recovery memo of the above objects as Ex.Ka-11 and Ex.Ka-12 and these objects as material Ex-12, 13 and 14. Besides this, a pair of slippers, blood stained pocket diary, a paper, a pen, Rs.155/- alongwith 4 coins, belonging to deceased Ram Sharan were also recovered from the spot of occurrence and the recovery memo was proved by P.W.-6 as Ex.Ka-13. The above objects belonging to the deceased were also produced in the trial court and proved as material Ex-7 to 11. All these objects prove the spot of occurrence.

70. From the perusal of the records, it is evident that the statement of P.W.-3 Rakesh Kumar under Section 161 Cr.P.C. was recorded on 11.09.2004 by Shailendra Singh P.W.-7. P.W.-7 also stated in the cross-examination that he searched P.W.-2 Ram Sajivan but he was not traceable and any information regarding him was also not available, as such, his statement could not be recorded.

71. Aditya Kumar Dwivedi P.W.-9 proved in examination-in-chief that statement of Ram Sajivan P.W.-2 under Section 161 Cr.P.C was recorded on 09.10.2004 at the police stattion. P.W.-2 Ram Sajivan stated in his cross-examination that on the second day after the incident, he left for the house of in-laws of his sister situated in village Bagra, tehsil Sarila, District Hamirpur, after the murder of Ram Sharan, because of fear and he returned to his village after about 15 days and thereafter, he remained present in the village.

72. We are of the opinion that, since P.W.-2 was not present in the village, hence his statement could not be recorded by the Investigating Officer. The prosecution has proved that there was no deliberate delay in recording his statement, as such, the testimony of P.W.-2 cannot be termed doubtful on this ground.

73. It is the case of the prosecution that accused Umesh was arrested on 14.09.2004 at about 06.00 a.m. on the basis of information provided by an informer. Thereafter, he made a disclosure statement, and at his pointing out a country made weapon (*tamancha*) of 315 bore alongwith an empty cartridge of 315 bore trapped in it's muzzle, wrapped in plastic, concealed beneath the straw, in the ruins of his house, was recovered at about 7:00 a.m., which was allegedly used in the commission of crime. The recovery memo of the above objects was proved by P.W.-7 as Ex.Ka-16. Besides this, P.W.-7 also proved the above country made weapon as material Ex-17(number of exhibit corrected by trial court from 12 to 17 in it's judgment), empty cartridge as material Ex-18(number of exhibit corrected by trial court from 13 to 18 in it's judgment). The country made weapon and empty cartridge recovered at the instance of the accused Umesh were sent for forensic examination to the Forensic Science Laboratory(FSL), Agra whose report dated 12.07.2005 is Ex.Ka-23 on record, according to which, the empty cartridge(EC-1) was found to have been fired from the country made weapon(*tamancha*) recovered at the instance of accused Umesh.

74. Learned counsel for the accused-appellant Umesh challenged the above recovery under Section 27 of the Evidence Act, on the ground that since no independent witness was examined to prove the recovery, as such the recovery

was wholly doubtful. He further submitted that recovery was not effected in accordance with the law laid down by the Apex Court in the case of ***Boby vs. State of Kerala (2023)15 SCC 760.*** He further submitted that since no empty cartridge was recovered from the spot, as such, it is not proved that the country made weapon recovered at the pointing out of the accused Umesh, was used to commit the offence, and as such the alleged recovery does not link the accused with the crime.

75. The Apex Court in the case of ***Boby(supra)*** while considering the recovery effected under Section 27 of the Evidence Act,held as under:-

"31*. It will also be relevant to refer to the following observations of this Court in State of Karnataka v. David Rozario [State of Karnataka v. David Rozario, (2002) 7 SCC 728 : 2002 SCC (Cri) 1852] : (SCC p. 733, para 5)*

"5. ... This information which is otherwise admissible becomes inadmissible under Section 27 if the information did not come from a person in the custody of a police officer or did come from a person not in the custody of a police officer. The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. ***It is, therefore, necessary for the benefit of both the accused and the prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence.*** *The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events.* ***The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature but if it results in discovery of a fact, it becomes a reliable information.*** *It is now well settled that recovery of an object is not discovery of a fact envisaged in the section. Decision of the Privy Council in Pulukuri Kotayya v. King-Emperor [Pulukuri Kotayya v. King-Emperor, 1946 SCC OnLine PC 47 : (1946-47) 74 IA 65 : AIR 1947 PC 67] is the most-quoted authority for supporting the interpretation that the "fact discovered" envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect. (See State of Maharashtra v. Damu [State of Maharashtra v. Damu, (2000) 6 SCC 269 : 2000 SCC (Cri) 1088] .)"*

32. *A three-Judge Bench of this Court recently in Subramanya v. State of Karnataka [Subramanya v. State of Karnataka, (2023) 11 SCC 255] , has observed thus : (SCC pp. 299-300, paras 76-78)*

"76. Keeping in mind the aforesaid evidence, we proceed to consider whether the prosecution has been able to prove and establish the discoveries in accordance with law. Section 27 of the Evidence Act reads thus:

'27. How much of information

received from accused may be proved.— *Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.'*

77. The first and the basic infirmity in the evidence of all the aforesaid prosecution witnesses is that none of them have deposed the exact statement said to have been made by the appellant herein which ultimately led to the discovery of a fact relevant under Section 27 of the Evidence Act.

78. If, it is say of the investigating officer that the appellant-accused while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence, the site of burial of the dead body, clothes, etc. then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses would arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence, etc. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or bloodstained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter."

(emphasis supplied)

76. From the perusal of the recovery memo Ex.Ka-16 proved by P.W.-7 in the trial court, it is evident that after the arrest of accused Umesh on 14.09.2004 at about 06:00 a.m., he disclosed that he shot dead Ram Sharan on 08.09.2004 in the presence of witness by a country made weapon (*tamancha*) and he placed that weapon in his dilapidated house, in a room having a khaprail roof and concealed that weapon beneath the straw by wrapping it in a plastic sheet.

77. On the basis of this specific information, P.W.-7, at the pointing out of the accused Umesh, recovered the country

made weapon(*tamancha*) of 315 bore and an empty cartridge of 315 bore was also found in its muzzle, from village Pahedi Bhetari, in the presence of independent witnesses Rambodh and Jagmohan Yadav. This recovery of '*tamancha'* was effected from the dilapidated house of accused Umesh, from a room having khaprail roof, which was filled with straw. The '*tamancha'* was found wrapped in plastic, concealed in straw, at about 07:00 a.m. The above recovery was not effected from an open public place. Moreover this recovery was effected in the presence of two independent witnesses Rambodh and Jagmohan Yadav, but it is also true, that the prosecution has not examined the above independent witnesses, in order to prove the above recovery, but non- examination of independent witness cannot make the recovery doubtful.

78. Further, from the perusal of recovery memo Ex.Ka-16, it is evident that, the first part of it discloses the specific statement made by the accused Umesh, after his arrest. After the disclosure, the police party alongwith two independent witnesses Rambodh and Jagmohan Yadav, were taken by accused to his house, from where recovery was effected at his pointing out. It is apparent that the procedure mandated by Apex Court in the case of ***Boby(supra),*** to be followed while effecting recovery under Section 27 of Evidence Act, has been followed by P.W.-7 while preparing recovery memo Ex.Ka-16 in this case, which he has also proved during trial.

79. We are of the considered opinion that the recovery of country made weapon(*tamancha*) at the instance of accused Umesh is credible.

80. The recovered country made weapon (*tamancha*) is of 315 bore and according to Doctor P.W.-4 the chest injury found on the body of the deceased Ram Sharan Tiwari, could have been caused by it. Since no empty cartridge was found at the spot, as such, it was impossible for the prosecution to prove scientifically that the country made weapon recovered at the pointing out of accused Umesh was the same, from which, shot was fired on Ram Sharan Tiwari. It is also true that a bullet was found on the spot, which corroborates the medical evidence that the bullet entered through chest and made an exit from the back side of the chest and dropped thereafter, on the ground. It is settled law that the prosecution is not bound to prove the impossible things.

81. It is true that there is no link evidence to connect the '*tamancha'* recovered at the pointing out of the accused Umesh, with the crime, because no empty cartridge was found on the spot. A bullet was found on the spot, which was sent to the Forensic Science Laboratory (FSL), Agra on which no blood was found, as per FSL report Ex.Ka-22. The bullet was never sent to the FSL, as such, there is no evidence to prove that the bullet was fired from the same '*tamancha'*, which was recovered at the pointing out of accused Umesh.

82. The Apex Court in the case of ***Rakesh and Another vs. State of Uttar Pradesh & Another, (2021) 7 SCC 188,*** while considering the ballistic expert report, held as under:

"12.Now so far as the submission on behalf of the accused that as per the ballistic report the bullet found does not match with the firearm/gun recovered and therefore the use of gun as alleged is doubtful and therefore benefit of doubt

must be given to the accused is concerned, the aforesaid cannot be accepted. At the most, it can be said that the gun recovered by the police from the accused may not have been used for killing and therefore the recovery of the actual weapon used for killing can be ignored and it is to be treated as if there is no recovery at all. ***For convicting an accused recovery of the weapon used in commission of offence is not a sine qua non.*** *PW 1 and PW 2, as observed hereinabove, are reliable and trustworthy eyewitnesses to the incident and they have specifically stated that A-1 Rakesh fired from the gun and the deceased sustained injury. The injury by the gun has been established and proved from the medical evidence and the deposition of Dr Santosh Kumar, PW 5. Injury 1 is by gunshot. Therefore, it is not possible to reject the credible ocular evidence of PW 1 and PW 2 — eyewitnesses who witnessed the shooting. It has no bearing on credibility of deposition of PW 1 and PW 2 that A-1 shot deceased with a gun, particularly as it is corroborated by bullet in the body and also stands corroborated by the testimony of PW 2 and PW 5.* ***Therefore, merely because the ballistic report shows that the bullet recovered does not match with the gun recovered, it is not possible to reject the credible and reliable deposition of PW 1 and PW 2.****"*

(emphasis supplied)

83. The Apex Court in the case of ***State through the Inspector of Police vs. Laly @ Manikandan & Another, 2022 SCC Online SC 1424,*** while considering the effect of non recovery of weapon on ocular evidence, held as under:

"20. The submission on behalf of the accused that as the original informant - Mahendran has not been examined and that the other independent witnesses have not been examined and that the recovery of the weapon has not been proved and that there is a serious doubt about the timing and place of the incident, the accused are to be acquitted cannot be accepted. Merely because the original complainant is not examined cannot be a ground to discard the deposition of PW1. As observed hereinabove, PW1 is the eye witness to the occurrence at both the places. Similarly, assuming that the recovery of the weapon used is not established or proved also cannot be a ground to acquit the accused when there is a direct evidence of the eye witness. ***Recovery of the weapon used in the commission of the offence is not a sine qua non to convict the accused. If there is a direct evidence in the form of eye witness, even in the absence of recovery of weapon, the accused can be convicted.*** *Similarly, even in the case of some contradictions with respect to timing of lodging the FIR/complaint cannot be a ground to acquit the accused when the prosecution case is based upon the deposition of eye witness."*

(emphasis supplied)

84. From the law laid down by the Apex Court in the case of **Rakesh (supra)** and **Laly @ Manikandan (supra),** it is evident that, recovery of the weapon used in the commission of offence is not a *sine-qua-non* to convict the accused. If there is credible ocular evidence, then even in the absence of recovery of weapon, the accused can be convicted. Similarly, even if according to the ballistic expert report, the recovered bullet does not match with the gun recovered, it is not possible to reject credible ocular evidence.

85. We are of the considered opinion that the prosecution case is based on

credible ocular testimony of PW-2 & PW-3, who are neither related to first informant or the deceased nor have any enmity with the accused, whose testimony is trustworthy. In view of this, even if it is not scientifically proved that the *tamancha* recovered at the pointing out of accused Umesh, was used in the commission of the offence, even then, credible ocular evidence of P.W.-2 & P.W.-3 cannot be rejected. In our opinion, the prosecution has succeeded in proving it's case against all the accused beyond reasonable doubt.

CONCLUSION

86. To sum up, the first informant Sushil Kumar P.W.-1 is not an eye witness of the incident. He was told about the incident by P.W.-2 and P.W.3 at about 10:35 p.m. on 08.09.2004, then on 09.09.2004 at about 00.15 hours, FIR regarding the incident was registered by P.W.-1 at police station Muskura, in which all the accused persons are named. It is also proved that P.W.-2 and P.W.-3 were present at the spot and witnessed the incident. It is also proved that prior to the incident about one and a half months back, an altercation took place between accused Umesh with deceased Ram Sharan Tiwari regarding breaking of a coal furnace, due to which accused Umesh harboured enmity towards Ram Sharan. It is also proved that just before the incident, at 09:00 p.m. on 08.09.2004, Ram Sharan, P.W.-2 and P.W.-3 had gone towards a liquor vend, where they met accused Umesh, who abused Ram Sharan Tiwari and threatened him with dire consequences, and thereafter Ram Sharan, P.W.-2 and P.W.-3 had gone to Chamardha pond for defecation and accused Umesh had proceeded to his house and when they were returning after defecation, in front of the house of Vasudev Kachi, accused met Ram Sharan Tiwari, P.W.-2 and P.W.-3 and from close proximity accused Mahesh and Gore Lal had jointly exhorted accused Umesh to kill Ram Sharan and acting on this exhortation, accused Umesh fired a single shot from country made weapon (*tamancha*) of 315 bore, which pierced the chest of Ram Sharan and made an exit from the back side, killing him instantaneously. It is also proved that the accused, P.W.-2 and P.W.-3 reside in the same village Pahadi Bhetari, who were known to each other, before the incident. P.W.-2 and P.W.-3 identified the accused from their voice and also in electric light. It is also proved that Mahesh and Gore Lal were having knowledge that accused Umesh was carrying a country made weapon and only because of this knowledge, they exhorted accused Umesh to kill Ram Sharan Tiwari. Accused Mahesh and Gore Lal neither made any attempt to prevent Umesh from committing the crime nor remained present at the spot, after the commission of offence, but instead they fled, which proves that they were having a common intention with accused Umesh to commit the crime. It is also proved that after the incident, P.W.-2 and P.W.-3 attempted to apprehend the accused Gore Lal but in this scuffle, the slippers and 'angocha' of accused Gore Lal were left behind, which were taken into possession by P.W.-6, the recovery memo of which was proved as Ex.Ka-14 and also, P.W.-2 and P.W.-3 identified their signatures on it. They also proved that these objects belonged to accused Gore Lal.

87. We are of the considered opinion that the place and the manner of the occurrence is proved beyond reasonable doubt. The Investigating Officer recovered blood stained soil, bullet, belongings of the deceased and a pair slipper and 'angocha' of accused Gore Lal from the spot. The named

FIR regarding the incident was lodged promptly. Although it was feebly submitted that the FIR was registered ante-time, we find that there is no evidence on record to suggest that FIR regarding the incident was lodged ante-time. It is proved that the Investigating Officer visited the spot just after registering the FIR, but the *Panchayatnama* of the deceased could not be prepared in the night, because light was not sufficient. It is also proved that P.W.-2 and P.W.-3 are neither related to first informant nor they were having any enmity with the accused persons. The trial court only acquitted accused Gore Lal and Mahesh on the ground that the prosecution failed to prove any common intention on their part to commit the offence, because neither they had the motive to commit the crime nor they were armed at the time of offence. In the light of the law laid down by the Apex Court and on the basis of the credible ocular evidence on record, this reasoning of the trial court is perverse. The conduct of the accused Mahesh and Gore Lal before and after the occurrence, duly proves, that they had common intention with accused Umesh to commit the murder of Ram Sharan. On the basis of credible ocular evidence on record, only one conclusion is possible, that accused Mahesh and Gore Lal had the common intention to commit the crime with accused Umesh, as such, the trial court committed grave illegality in acquitting them.

88. The trial court also committed grave illegality in acquitting accused Umesh of the offence under Section 504 and 506 of I.P.C.

89. In view of the above discussion, the Criminal Appeal filed by accused Umesh for his conviction for offence under Section 302 I.P.C and 25 Arms Act deserves to be dismissed and the Government Appeal against acquittal of Umesh for offence under Section 504 and 506 I.P.C. and against acquittal of accused Mahesh and Gore Lal for offence under Section 302/34 I.P.C., deserves to be allowed.

90. **Accordingly, Criminal Appeal No.4773 of 2005(Umesh Vs. State of U.P.) is dismissed.** The impugned judgment and order dated 14.09.2005 and 15.09.2005, of trial court, convicting him under Section 302 I.P.C and 25 Arms Act and sentencing him to undergo rigorous life imprisonment alongwith a fine of Rs.1,000/- and in default of payment of fine, to further undergo two months simple imprisonment, for offence of murder and to suffer two years rigorous imprisonment for offence under the Arms Act, is affirmed.

91. **Government Appeal No.114 of 2006(State of U.P. V. Umesh, Mahesh and Gore Lal) is allowed.** The impugned judgment and order dated 14.09.2005 of trial court in S.T. No.246/2004 acquitting Umesh under Section 504 and 506 I.P.C. and Mahesh and Gore Lal under Section 302/34 I.P.C. is set aside. The accused Mahesh and Gore Lal are convicted under Section 302/34 I.P.C, for having common intention to murder Ram Sharan Tiwari, and sentenced to undergo minimum sentence of simple life imprisonment alongwith a fine of Rs.1,000/- each and in default of payment of fine, to further undergo two months simple imprisonment.

92. Umesh is convicted under Section 504 and 506 I.P.C. and sentenced to undergo six months simple imprisonment for each offence. Both these sentences will run concurrently with the sentence earlier awarded to him by the trial court for

offence under Section 302 I.P.C. and 25 Arms Act. Appellant Umesh is in jail.

93. Since, accused Mahesh and Gore Lal are on bail, they are directed to surrender in the trial court within a period of one month from today, to undergo the remaining sentence under Section 302/34 IPC, failing which, the trial court is directed to adopt coercive measures for securing their presence in accordance with law.

94. A copy of this judgment be sent to the trial court and the concerned jail authorities for compliance, through Registrar (Compliance), forthwith.

95. Office is directed to send back the trial court record. The trial court is directed to submit it's Compliance report within 3 months.

(2025) 8 ILRA 1006
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 07.08.2025

BEFORE

THE HON'BLE SAMIT GOPAL, J.

Criminal Revision No. 2081 of 2018

Pancham Singh Chauhan ...Revisionist
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Revisionist:
Sudarshan Singh

Counsel for the Opposite Parties:
G.A.

Issue for Consideration

Whether conviction of the revisionist under Sections 7/16 of the Prevention of Food Adulteration Act, 1954 for selling paneer with milk fat content below the prescribed standard could be sustained when the courts below failed to consider the applicability of the **proviso to Section 2(ia)(m)** relating to deficiency caused solely due to natural factors beyond human control.

Headnotes

Prevention of Food Adulteration Act, 1954 — ss. 7, 16; s.2(ia)(m) proviso — Food adulteration — Paneer — Deficiency in milk fat — Primary food — Natural causes — Burden of proof — Failure to consider statutory exception — Acquittal in revision

Held:

Paneer is a primary food item governed by the standards prescribed in Appendix B to the Prevention of Food Adulteration Rules, 1955. Mere deficiency of milk fat below the prescribed minimum does not automatically constitute adulteration under Section 2(ia)(m) unless it is established that such deficiency was not solely due to natural causes beyond human control. [Paras 5–7, 9]

The proviso to Section 2(ia)(m) carves out a statutory exception in favour of the accused where the quality or purity of primary food falls below the prescribed standard solely due to natural causes. Neither the complaint nor the evidence led by the prosecution adverted to this aspect; nor was the issue examined by the trial court or the appellate court. [Paras 6, 9]

In absence of any consideration of the statutory proviso and without evidence to rule out natural variation in milk fat content, conviction of a petty shopkeeper for selling paneer deficient in milk fat cannot be sustained. Failure to examine applicability of the proviso vitiates the conviction. [Paras 6–10]

Judgment of the Supreme Court in *M/s Bhattacharjee Mahasya v. State of West Bengal* squarely applies. Impugned judgments of the courts below set aside; revisionist acquitted. [Paras 6, 10–11]

Revision allowed. (E-14)

Case Law Cited

***M/s Bhattacharjee Mahasya and another v. State of West Bengal and another*, Criminal Appeal No. 1800 of 2022 (SC) — applied.**

List of Acts / Statutes

Prevention of Food Adulteration Act, 1954; Prevention of Food Adulteration Rules, 1955; Code of Criminal Procedure, 1973

List of Keywords

Food adulteration; Paneer; Milk fat deficiency; Primary food; Natural causes; Section 2(ia)(m) proviso; Public analyst report; Burden of proof; Failure to consider statutory exception.

Case Arising From

Judgment and order dated **31.05.2018** passed by the Additional Sessions Judge / Special Judge, SC/ST Act, Chandauli in Criminal Appeal No. 03 of 2014, affirming the judgment and order dated **25.01.2014** passed by the Chief Judicial Magistrate, Chandauli in Case No. 460 of 2011 (State v. Pancham Singh Chauhan).

Appearance for Parties

For the Revisionist: Sri Sudarshan Singh
For the State : Learned Government Advocate

(Delivered by Hon'ble Samit Gopal, J.)

1. List revised.

2. Heard Sri Anurag Pandey holding brief of Sri Sudarshan Singh, learned counsel for the revisionist, Sri Birendra Pratap Singh, learned counsel for the State and perused the material on record.

3. The present revision under Sections 397/401 Cr.P.C. has been preferred by the revisionist-Pancham Singh Chauhan against the judgement and order dated 31.05.2018 passed by Additional Sessions Judge/Special Judge, SC/ST Act, Chandauli in Criminal Appeal No.03 of 2014 (Pancham Singh Chauhan Vs. State of U.P.) wherein the said appeal has been dismissed and the judgement & order of the trial court has been affirmed and further against the judgement and order dated 25.01.2014 passed by Chief Judicial Magistrate, Chandauli in Case No.460 of 2011 (State Vs. Pancham Singh Chauhan) whereby the accused-revisionist has been convicted and sentenced for offences under Sections 7/16 of Prevention of Food Adulteration Act, 1954 to six months rigorous imprisonment & fine of Rs. 1000/- and in default of payment of fine to further undergo one month additional rigorous imprisonment.

4. The trial court records have been received which have also been perused.

5. The facts arising out of the matter are as under:-

(i). On 20.11.2010, form-6 was prepared and paneer was taken from the revisionist (Exb. Ka-3).

(ii). A receipt dated 20.11.2010 was given by Pancham Singh Chauhan for the rate being Rs.100/- per kg. of paneer in which the sale was of 750 gram for Rs.75/- (Exb. Ka-4).

(iii). Memo was prepared by sending the sample to the Public Analyst, Government of U.P., Lucknow on 20.11.2010 (Exb. Ka-5).

(iv). The said sample was sent by a registered post to the public analyst on 20.11.2010 (Exb. Ka-6).

(v). The sample was tested/analyzed on 20.12.2010 by the public analyst and a report dated 29.12.2010 for the same was prepared (Exb. Ka-7).

(vi). In the present matter we are concerned with Item No. A.-11.02.05 of Appendix B to the Prevention of Food Adulteration Rules, 1955. Rule 5 prescribes the standards and limits for certain articles of food by specifying the same in Appendix B to the Rules which lays down the following standards:-

"A. 11.02.05 — CHHANNA OR PANEER means the product obtained from the cow or buffalo milk or a combination thereof by precipitation with sour milk, lactic acid or citric acid. It shall not contain more than 70.0 per cent moisture, and the milk fat content shall not be less than 50.0 per cent of the dry matter.

Provided that paneer or chhana when solid as low fat paneer or chhana, it shall confirm to the following requirements :-

(i) Moisture - Not more than 70.0 percent

(ii) Milk Fat - Not more than 15.0 percent of dry matter

Milk solids may also be used in preparation of this product."

(vii). The report of the public analyst reads as under:-

"1-Butyrorefractometer reading of the extracted fat at 40°c-40.5 A-11.02.05

2-Moisture ISI 40.48%

3- Milk fat (on dry weight basis) ISI 35.8%

4-Test for Sugar SOPM Negative

5-Test for Starch SOPM Negative

6-Test for urea & CO^3 SOPM Negative

7-Test for Casein I.S.I. Positive

Opinion: The Milk fat content is less than the prescribed minimum limit of 50% for Paneer. The sample is adulterated."

(viii). Sanction was applied to the District Magistrate concerned vide letter dated 5.2.2011 by the Food Inspector (Exb. Ka-8).

(ix). Sanction was granted by the District Magistrate vide letter dated 25.2.2011 (Exb. Ka-9).

(x). A complaint dated 28.2.2011 was filed by the Food Inspector before the court concerned against the revisionist for violation of offences under Sections 7(1) read with Section 2(1-a)(a) punishable under Section 16(1)(a)(1) of the Prevention of Food Adulteration Act, 1954 (Exb. Ka-10).

(xi). A notice under Section 13(2) of the Act was sent on 4.3.2011 (Paper No.133/2).

(xii). The statement under Section 244 Cr.P.C. was recorded of P.W.1 P.K. Rai, the Food Inspector.

(xiii). The charge was framed vide order dated 16.03.2012 by the Chief Judicial Magistrate, Chandauli against the revisionist for offences punishable under Section 7/16 of the Prevention of Food Adulteration Act.

(xiv). The accused was read and explained of it to which he denied the same and claimed to be tried.

(xv). P.W.1 P.K. Rai, the Food Inspector and P.W.2 Manoj Kumar Singh, the Food Clerk were examined under Section 246 Cr.P.C in support of the prosecution.

(xvi). The accused in his statement under Section 313 Cr.P.C. recorded on 2.4.2012, denied the prosecution case in full.

(xvii). The trial court then convicted the accused/revisionist as above against which an appeal was filed which was dismissed and thus the present revision before this Court.

6. Learned counsel for the revisionist argued that the item as allegedly collected by the Food Inspector from the shop of the revisionist is paneer. It is further submitted that there is no evidence whatsoever that the said place was a factory. It is further submitted that the report of the public analyst states that milk fat contained is less than the prescribed limit of 50% of paneer and thus the sample was declared to be adulterated. Learned counsel for the revisionist has relied upon the judgement and order of the Apex Court in the case of **M/S Bhattacharjee Mahasya and another Vs. The State of West Bengal and another : Crl. Appeal No. 1800 of 2022 (arising out of S.L. P. (Crl.) No. 5272 of 2022)** and while placing para nos. 8, 9 and 10 of the same, it is submitted that if the quality and purity of an article falls below the prescribed limit, the same would be an offence under Section 2(i-a)(m) of the Act but the proviso to it gives an exception. It is submitted that there is nothing on record to show that the case would fall under the proviso. It is submitted that the deficiency of milk fat depends on the quality of milk and this question has not been given into either in the evidence or by the trial court and the appellate court. The said paragraphs reads as under:-

"8. An offence under Section 2(ia) (m) will be made out if th quality or purity of the article falls below the prescribe standard. However, the proviso indicates an exception. Section 2(ia) (m) reads as follows:

*"2. **Definition**. In this Act unless the context otherwise requires.-*

(ia) "adulterated"-an article of food shall be deemed to be adulterated-

(m) if the quality or purity of the article falls below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health:

Provided that, where the quality or purity of the article, being primary food, has fallen below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability in either case, solely due to natural causes and beyond the control of human agency, then, such article shall not be deemed to be adulterated within the meaning of this sub-clause.

Explanation. Where two or more articles of primary food are mixed together and the resultant article of food-

(a) is stored, sold or distributed under a name which denotes the ingredients thereof; and

(b) is not injurious to health.

then, such resultant article shall not be deemed to be adulterated within the meaning of this clause;"

9. There was no whisper in the complaint or in the evidence as to whether the case would fall under the proviso. For instance, the report of the Public Analyst says that the moisture content was 77.6% and that as per the prescribed standard, it shall not contain more than 70%. But there is no indication as to whether the moisture content was more due to natural causes. Even, the milk fat content of the dry matter may depend upon the quality of the milk and this question was also not gone into.

10. Therefore, we are of the view that a petty shop owner has been prosecuted by making much ado about nothing. Hence, the appeal is allowed and the impugned order of the High Court confirming the order of the Sessions Court and the order of the Magistrate are set aside. There shall be no order as to costs."

7. As such the fact that the deficiency in milk food could have been due to natural reasons, has not been gone into throughout the records and thus the revisionist deserves benefit. He submits that the conviction and sentence of the revisionist by the trial court and the judgement and order of the appellate court deserves to be set-aside and the revisionist deserves to be acquitted of the charges levelled against him.

8. Learned counsel for the State opposed the prayer but could not dispute the arguments as aforesaid.

9. After having heard learned counsel for the parties and perusing the record, it is evident that the present case is a case in which sample of paneer was purchased from the shop of the revisionist. The same was sent for testing to the public analyst who found it deficient in milk fat contents which was less than the prescribed limit of 50% as it was found to be 35.8%. The sample was thus declared adulterated on which procedure was adopted and complaint was filed. The revisionist was tried and was convicted against which an appeal was filed which was also dismissed. The question regarding applicability of the proviso of Section 2(i-a)(m) of the Act has not been addressed at all at the stage of trial and at the appellate stage. The revisionist is entitled to the benefit of the same.

10. The present revision is **allowed**. The impugned judgement and order dated 31.05.2018 passed by Additional Sessions Judge/Special Judge, SC/ST Act, Chandauli and the impugned judgement and order dated 25.01.2014 passed by Chief Judicial Magistrate, Chandauli in the aforesaid case are hereby set aside.

11. The revisionist-**Pancham Singh Chauhan** is acquitted of the charges levelled against him. The revisionist is on bail, he need not surrender. His bail bond is cancelled and sureties discharged.

12. Office is directed to transmit the copy of this judgement along with the trial court records to the concerned trial court forthwith for its compliance and necessary action.

(2025) 8 ILRA 1011
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 06.08.2025

BEFORE

THE HON'BLE RAM MANOHAR NARAYAN MISHRA, J.

Criminal Revision No. 6354 of 2023

Madhu Yadav & Ors. ...Revisionists
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Revisionists:
Ashok Kumar Yadav, Prem Shankar

Counsel for the Opposite Parties:
G.A., Kedar Nath Mishra

Issue for Consideration

Whether the dismissal of an application under Section 125 Cr.P.C. on the ground that the applicant failed to strictly prove a valid marriage was sustainable, when evidence on record disclosed long cohabitation, admissions in departmental inquiry, and circumstances raising a presumption of marital relationship warranting a beneficial and purposive interpretation of the term "wife"**.**

Headnotes

Code of Criminal Procedure, 1973 — s.125 — Maintenance — Meaning of "wife" — Live-in relationship — Presumption of marriage — Beneficial construction — Strict proof of marriage not mandatory — Departmental inquiry admissions — Hyper-technical approach deprecated — Interim maintenance — Remand.

Held:

Section 125 Cr.P.C. is a social welfare provision intended to prevent vagrancy and destitution of women and children. The expression "wife" requires a **broad and purposive interpretation**, and strict proof of a legally valid marriage is not a sine qua non where evidence indicates long cohabitation and holding out as husband and wife. [Paras 16–20, 32]

Where parties lived together as husband and wife for a considerable period, a **presumption in favour of marriage** arises, rebuttable only by cogent evidence. Admissions made by the husband and his alleged first wife during a departmental inquiry, acknowledging solemnisation of marriage with the applicant, constitute strong prima facie material supporting such presumption. [Paras 25–29]

The Family Court erred in adopting a hyper-technical approach by insisting upon strict proof of marriage, ignoring documentary evidence, admissions in inquiry proceedings, and settled law that maintenance claims cannot be defeated on technicalities. [Paras 29–33]

Even assuming the applicant to be a second wife, where her earlier marriage had dissolved by death and no legal impediment existed on her part, denial of maintenance would defeat the object of Section 125 Cr.P.C. Respondent, being a salaried government employee, was held capable of maintaining the applicant. [Paras 30–32]

Impugned order dismissing the maintenance application set aside; matter remanded for fresh decision. Interim maintenance of ₹8,000/- per month directed to be paid to the applicant-wife during pendency of proceedings. [Paras 34–36].

Revision allowed. (E-14)

Case Law Cited

***Chanmuniya v. Virendra Kumar Singh Kushwaha,* (2011) 1 SCC 141 — applied; *Kamala and Others v. M.R. Mohan Kumar*, AIR 2018 SC 5218 — relied on; Badshah v. Urmila Badshah Godse, (2014) 1 SCC 188 — followed; Ramesh Chandra Kaushal v. Veena Kaushal, (1978) 4 SCC 70 — referred; Mohd. Abdul Samad v. State of Telangana, 2024 SCC OnLine SC 1686 — relied on; Smt. N. Usha Rani v. Moodudula Srinivas, judgment dated 30.01.2025 (SC) — referred.**

List of Acts / Statutes

Code of Criminal Procedure, 1973; Indian Penal Code, 1860; Dowry Prohibition Act, 1961; Protection of Women from Domestic Violence Act, 2005.

List of Keywords

Maintenance; Section 125 Cr.P.C.; Meaning of wife; Live-in relationship; Presumption of marriage; Beneficial interpretation; Social justice; Departmental inquiry admission; Hyper-technical approach; Interim maintenance.

Case Arising From

Judgment and order dated 18.10.2023 passed by the Additional Principal Judge, Family Court, Court No.3, Deoria in Maintenance Case No. 551 of 2022 under Section 125 Cr.P.C.

Appearance for Parties

For the Revisionists: Sri Ashok Kumar Yadav; Sri Prem Shankar

For the State: Learned Government Advocate

For Opposite Party No.2: Sri Kedar Nath Mishra

(Delivered by Hon'ble Ram Manohar Narayan Mishra, J.)

1. Heard learned counsel for the revisionists, learned counsel for the respondent no.2 and learned A.G.A. for the State.

2. Instant Criminal Revision has been directed against the judgment order dated 18.10.2023 passed by learned Additional Principal Judge, Family Court, Court No.3, Deoria in Maintenance Case No.551 of 2022, under Section 125 Cr.P.C. Whereby the application for maintenance filed by the applicants have been dismissed. The applicant No.1 Madhu Yadav claims himself to be wife of opposite party Gaurav Yadav and applicants No.2 and 3 are her minor children born out of her wedlock with previous husband Sriniwas.

3. The factual matrix of the case in brief are that the applicants moved an application under Section 125 Cr.P.C. before the Principal Judge, Family Court, Deoria dated 18.05.2022 with averments that applicant No.1 Madhu Yadav was initially married with Sriniwas, the elder brother of opposite party No.2, from whom she born two children namely Shiwangi and Shrayansh who were minor at the time of filing of maintenance application. The applicant No.1 contracted second marriage with her brother-in-law on 15.06.2020, after death of her husband, according to hindu rites and rituals. Her husband Gaurav was posted in police department at Azamgarh, and he took the applicants alongwith him at Azamgarh, where applicant No.1 lived with him alongwith her children and performed her matrimonial obligations. Her father had given sufficient cash and valuables in her second marriage with opposite party and his family members. However, they were not satisfied and started demanding Bullet Motorcycle, in view of non-fulfillment of demand of dowry they started harassing and beating applicant No.1. She was subjected to physical and mental cruelty by her second husband and in-laws. Opposite party used to threaten to contract remarriage with some other woman; he even contracted bigamous marriage with a girl namely Sangeeta with the consent of his family members. When she raised protest of remarriage of her husband, she was kicked out by opposite party and his family members alongwith her children on 22.11.2021. She went back to her parental home, she visited her husband's house alongwith her brother at his residence at Azamgarh, but he and his so called wife turned her out from their residence. She any how, went back to her parental house after saving her life. A Panchayat was also convened to reconcile the matter of matrimonial discord, but of no avail.

Applicant is not a skilled woman, she is not able to maintain herself and her minor children. Her husband is posted as Constable in U.P. Police, whose P.I. No.152052445, he is posted at Police Line, Azamgarh. He is able to maintain the applicants. His monthly salary is around Rs.70,000/- he also possesses agricultural land, from which he earns Rs.2 lakh annually.

4. The applicants prayed for providing Rs.30,000/- as maintenance to applicant No.1 and Rs.15,000/- to each of her minor children. Learned court below issued summon to opposite party Gaurav Yadav who appeared and file his written statement in the present case in which he admitted that applicant No.1 was married with his brother Sriniwas according to hindu rites and rituals and two children, a daughter Shiwangi and son Shreyansh were born out of their wedlock. Sriniwas the elder brother of opposite party died on 20.07.2017, on being effected by Japanese Encephalitis at Sahara Hospital, Lucknow and since then applicant No.1 is leading a widowed life alongwith her children. She is in possession of the ancestral property, which is lying in the share of his elder brother Sriniwas. Opposite party never received applicant No.1 as his wife and she was never performed matrimonial obligations with him. She was never married with the opposite party, therefore, no question of any demand or dowry, harassment or torture arises. No Panchayat as alleged by the applicant was ever convened. The opposite party was married with Sangeeta Yadav, daughter of Satish Yadav in the year 2017 and since then Sangeeta Yadav is cohabiting and lives with him as a wife. It is wrong to say that he has contracted second marriage with Sangeeta Yadav. He got married only once and not twice as alleged by applicant No.1. Applicant No.1 resides at his parental house in village Karaundi, Police Station Rudrapur, District Deoria and she was never turned out from her matrimonial home. The opposite party was working in police department, therefore, on account of family settlement he was entrusted the responsibility of applicant No.1 and her children, which he accepted on the ground of humanity. No marriage ever took place between applicant No.1 and opposite party, her children are not his biological offsprings. The applicants have no legal right to claim maintenance from him. The applicant No.1 had moved an application before the higher authorities for getting her name entered in service book of opposite party. The alleged marriage of opposite party and applicant No.1 is void ab *initio*, because in hindu law, remarriage in life time of spouse is not permissible. Opposite party has filed an application before the family court, Deoria which is registered as Case No.205 of 2022 **Gaurav Vs. Madhu Yadav** for getting decree of annulment of alleged marriage dated 15.06.2020 with applicant No.1.

5. With above averments the answering opposite party had prayed for dismissing the application for maintenance.

5(a). It appears that proceedings under Section 12 of the Domestic Violence Act were also instituted by applicant No.1 against opposite party before the Court of Magistrate in District Deoria, wherein opposite party also appeared and file his written statement on 02.11.2022. He denied the factum of marriage with the applicant in said proceedings also. According to geneological table given in written statement of opposite party in proceedings under Protection of Women from Domestic Violence Act, the opposite party has four

brothers, out of whom Sriniwas died and three brothers Vipin, Ramniwas and Babloo are surviving.

6. The learned court below has framed a point of determination to the effect that whether applicant Madhu Yadav is legally wedded wife of opposite party Gaurav and she is entitled to seek maintenance for herself and her minor children from Gaurav Yadav.

7. Learned court below has considered the evidence adduced by the applicant and opposite party together with documentary evidence filed by them and after appreciating oral evidence of PW-1 Madhu Yadav and DW-1 Gaurav Yadav together with the documents filed by the parties has given a finding that this is obvious that Madhu Yadav was married with Sriniwas which is admitted to both sides, but her second marriage with opposite party is not duly proved for want of sufficient evidence. No witness has been adduced by her, in support of her alleged marriage with opposite party. Opposite party has categorically denied to have ever married with the applicant. Applicant No.1 has admitted that what ever property was lying in the share of Sriniwas came to his children Shiwangi and Shreyansh. No evidence could be adduced in support of the contention of the applicants that marriage of applicant No.1 and opposite party was solemnized on 15.06.2020 according to hindu rites and rituals. Therefore, applicant No.1 Madhu Yadav had failed to prove her assertion that she was married with opposite party Gaurav according to hindu rites and rituals.

8. With above findings, learned court below has concluded in the impugned judgment that in view of finding of issue No.1, it is obvious that neither applicant No.1 is legally wedded wife of opposite party nor her children are his offsprings. This is admitted fact that applicant No.2 and 3 are biological children of Sriniwas, the deceased elder brother of opposite party.

9. Learned trial court has dismissed the maintenance petition filed by the applicants with above observations and finding.

Learned counsel for the revisionist submitted that impugned judgment and order passed by learned court below is against the strength of evidence on record and suffers from illegality. Learned court below has dismissed the maintenance petition filed by the applicants in cursory manner, without appreciating the evidence on record in proper perspective.

10. The learned court below has over-sighted the admission of opposite party that he accepted the responsibility of applicant No.1 and her children born out of her wedlock with Sriniwas, on asking of his family members. In fact, he contracted remarriage with applicant No.1 after death of her husband Sriniwas who was admittedly elder bother of opposite party. He had also adopted his children as his own and contracted marriage with applicant No.1. Applicant No.1 substituted the name of her previous husband Sriniwas by opposite party Gaurav Yadav, in her Aadhar Card, Caste Certificate, Bank Account and opening form and residential certificate issued on 10.10.2021, which indicate that revisionist is a valid spouse of opposite party No.2. They live and cohabited together after marriage for long time. Revisionist No.1 had filed a complaint on 07.02.2022 against opposite

party Gaurav Yadav, before DIG Azamgarh regarding his bigamous marriage with Sangeeta Yadav, on which DIG, Azamgarh Range instituted an inquiry in the matter. Police Circle Officer, conducted the inquiry and submitted his report before S.S.P., Azamgarh on 20.03.2022 which reflects that the inquiry officer found opposite party Gaurav Yadav being guilty of bigamous marriage, in said inquiry opposite party and his second wife Sangeeta Yadav, admitted the fact that opposite party was married with Madhu Yadav. On the basis of documentary evidence at the admission stage it is proved that after the death of Sriniwas his widowed wife got married with Gaurav Yadav her brother-in-law and lived with him as his spouse. Inasmuch as opposite party admitted the factum of marriage with Madhu Yadav in implicit manner in departmental inquiry which reflects from his statement recorded before the Circle Officer, Sadar, Azamgarh.

11. He lastly submitted that this is trite law, that when the man and woman lived together has husband and wife for longtime a presumption is raised, they are legally married couple and this is sufficient for claim of maintenance by a wife under Section 125 Cr.P.C.. The maintenance claim made by his wife or children should not be frustrated by adopting hyper technical approach, because this is a beneficial legislation providing maintenance for wife, minor children an old and infirm parents. He also submitted that Sangeeta Yadav who holds out as wife of opposite party was married with Ranjeeet Yadav, who is his legally wedded wife and she has purchased a vehicle Bolero Car bearing Registration No. UP50BW0497 in which name of registered owner is shown as Sangeeta Yadav wife of Ranjeet Yadav.

12. The concerned village Pradhan has also issue a certificate on 29.01.2022 to the effect that Madhu Yadav was married with Gaurav Yadav on 15.06.2020. Applicant no.1 lodged an FIR vide Case Crime No.17 of 2022, under Section 323, 494, 498A IPC against opposite party with allegation of matrimonial cruelty, causing physical assault and contracting remarriage with another woman.

13. With above submissions, learned counsel prayed for setting-aside the impugned judgment and order providing maintenance to the revisionist.

14. Per contra, learned counsel for the respondent No.2 submitted that learned trial court has rightly given a finding that on the basis of evidence adduced by the parties, the factum of marriage of applicant No.1 with respondent No.2 is not proved. This is admitted fact that revisionist Nos.2 and 3 were born out of wedlock of revisionist No.1 with her previous husband Sriniwas. They are admittedly not biological children of opposite party No.2. Therefore, he is neither under obligation to pay maintenance to applicant No.1 nor her children. It is wrong to say that respondent No.2 had adopted her children as his own. He had undertaken responsibility of the revisionist to look after them on persuasion of family members on humanitarian consideration and only for that reason he cannot be saddled with legal responsibility to maintain them. The revisionist No.1 has filed several legal proceedings against him only to harass him. Revisionist No.1 is already in possession of the ancestral property lying to the share of her deceased husband Sriniwas, his father is alive. This is wrong to say that revisionist No.1 was ever restrained by his family members to stay in the home. Revisionist No.1 was

residing at his family residence as widowed wife of his elder brother. The respondent No.2 has filed a suit for annulment and marriage against Madhu Yadav only to avoid legal complications created by him, otherwise no marriage ever took place between them.

15. I have gone through the lower court record as well as record of present revision in the light of submissions made by learned counsel for the contesting parties.

16. Learned counsel for the revisionist placed reliance on a judgment of Hon'ble Supreme Court in **Chanmuniya Vs. Virendra Kumar Singh Kushwaha and another (2011) 1 SCC 141**, wherein Hon'ble Supreme Court in a matter under Section 125 Cr.P.C. observed as under:-

" 33.We are inclined to take a broad view of the definition of `wife' having regard to the social object of Section 125 in the Code of 1973. However, sitting in a two-Judge Bench, we cannot, we are afraid, take a view contrary to the views expressed in the abovementioned two cases.

46.We are of the opinion that a broad and expansive interpretation should be given to the term `wife' to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time, and strict proof of marriage should not be a pre-condition for maintenance under Section 125 of the Cr.P.C, so as to fulfil the true spirit and essence of the beneficial provision of maintenance under Section

47.We also believe that such an interpretation would be a just application of the principles enshrined in the Preamble to our Constitution, namely, social justice and upholding the dignity of the individual."

17. In another judgment **Kamala and others Vs. M.R. Mohan Kumar AIR 2018 SC 5218** Hon'ble Court observed as under:-

16. It is fairly well settled that the law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for a number of years. After referring to various judgments, in Chanmuniya v. Virendra Kumar Singh Kushwaha (2011) 1 SCC 141, this Court held as under:-

"11. Again, in Sastry Velaider Aronegary v. Sembecutty Vaigalie (1881) 6 AC 364, it was held that where a man and woman are proved to have lived together as man and wife, the law will presume, unless the contrary is clearly proved, that they were living together in consequence of a valid marriage, and not in a state of concubinage.

12. In India, the same principles have been followed in Andrahennedige Dinohamy v. Wijetunge Liyanapatabendige Balahamy AIR 1927 PC 185, in which the Privy Council laid down the general proposition that where a man and woman are proved to have lived together as man and wife, the law will presume, unless, the contrary is clearly proved, that they were living together in consequence of a valid marriage, and not in a state of concubinage.

13. In Mohabbat Ali Khan v. Mohd. Ibrahim Khan AIR 1929 PC 135 the Privy Council has laid down that the law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for number of years.

14. In Gokal Chand v. Parvin Kumari AIR 1952 SC 231, this Court held that continuous cohabitation of man and woman as husband and wife may raise the presumption of marriage, but the presumption which may be drawn from long cohabitation is rebuttable and if there are circumstances which weaken and destroy that presumption, the Court cannot ignore them.

15. Further, in Badri Prasad v. Director of Consolidation (1978) 3 SCC 527, the Supreme Court held that a strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin.

16. Again, in Tulsa v. Durghatiya (2008) 4 SCC 520, this Court held that where the partners lived together for a long spell as husband and wife, a presumption would arise in favour of a valid wedlock." This Court in Chanmuniya case further held as under:-

"24. Thus, in those cases where a man, who lived with a woman for a long time and even though they may not have undergone legal necessities of a valid marriage, should be made liable to pay the woman maintenance if he deserts her. The man should not be allowed to benefit from the legal loopholes by enjoying the advantages of a de facto marriage without undertaking the duties and obligations. Any other interpretation would lead the woman to vagrancy and destitution, which the provision of maintenance in Section 125 is meant to prevent."

18. In another judgment of Hon'ble Supreme Court in respect of matter in issue in present case **Smt. N. Usha Rani and another Vs. Moodudula Srinivas in Criminal Appeal arising out of SLP (Crl.) No. 7660 of 2017**, wherein vide judgment dated 30.01.2025 the Apex Court considered its earlier judgment Rameshchandra Rampratapji Daga Vs. Rameshwari Rameshchandra Daga (2005) 2 SCC 33 ; Chanmuniya vs. Virendra Kumar Singh Kushwaha and another (2011) 1 SCC 141; Savitaben Somabhai Bhatiya Vs. State of Gujarat and others (2005) 3 SCC 636 ; Captain Ramesh Chander Kaushal vs. Veena Kaushal and Others (1978) 4 SCC 70; Vimala (K) vs. Veeraswamy (K) (1991) 2 SCC 375; Dwarika Prasad Satpathy vs. Bidyut Prava Dixit and Another (1999) 7 SCC 675; Yamunabai Anantrao Adhav vs. Anantrao Shivram Adhav and Another (1988) 1 SCC 530; Bakulabai and Another vs. Gangaram and Another (1988) 1 SCC 537. Hon'ble Court held that this diversion in judicial opinion has also been noted by Apex Court in Chammuniya (supra) and therefore, the question of whether women in livein relationship can claim maintenance under Section 125 Cr.P.C. was referred to larger bench.

19. Hon'ble Court in **Smt. N. Usha Rani (supra)** reproduced paragraph 24 and 24 as follows:-

"24. Thus, in those cases where a man, who lived with a woman for a long

time and even though they may not have undergone legal necessities of a valid marriage, should be made liable to pay the woman maintenance if he deserts her. The man should not be allowed to benefit from the legal loopholes by enjoying the advantages of a de facto marriage without undertaking the duties and obligations. Any other interpretation would lead the woman to vagrancy and destitution, which the provision of maintenance in Section 125 is meant to prevent.

25. The Committee on Reforms of Criminal Justice System, headed by Dr. Justice V.S. Malimath, in its Report of 2003 opined that evidence regarding a man and woman living together for a reasonably long period should be sufficient to draw the presumption that the marriage was performed according to the customary rites of the parties. Thus, it recommended that the word "wife" in Section 125 CrPC should be amended to include a woman who was living with the man like his wife for a reasonably long period…"

20. Hon'ble Court further observed as under:-

16. Most recently, in Badshah vs. Urmila Badshah Godse and Another (2014) 1 SCC 188, this Court granted maintenance to a second wife who was kept in the dark about her husband's first subsisting marriage. The Court noted:

"13.3. Thirdly, in such cases, purposive interpretation needs to be given to the provisions of Section 125 CrPC. While dealing with the application of a destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalised sections of the society. The purpose is to achieve "social justice" which is the constitutional vision, enshrined in the Preamble of the Constitution of India. The Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the courts to advance the cause of social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society."

18. In the opinion of this Court, when the social justice objective of maintenance u/s. 125CrPC is considered against the particular facts and circumstances of this case, we cannot, in good conscience, deny maintenance to Appellant No. 1. It is settled law that social welfare provisions must be subjected to an expansive and beneficial construction and this understanding has been extended to maintenance since Ramesh Chander (supra). An alternate interpretation would not only explicitly defeat the purpose of the provision by permitting vagrancy and destitution, but would also give legal sanction to the actions of the Respondent in knowingly entering into a marriage with Appellant No.1, availing its privileges but escaping its consequent duties and obligations. The only conceivable mischief that could arise in permitting a beneficial interpretation is that the Appellant No.1 could claim dual maintenance--however, that is not the case under the present facts. We are aware that this Court has previously denied maintenance in cases of subsisting marriages (See Yamunabai (supra) and Bakulabai (supra)). However, a plea of separation from the first marriage was not made in those cases and hence,

they are factually distinguishable. It must be borne in mind that the right to maintenance u/s. 125 CrPC is not a benefit received by a wife but rather a legal and moral duty owed by the husband. A recent landmark judgement of this Court in Mohd. Abdul Samad vs. State of Telangana and Another (2024) SCC OnLine SC 1686 has shed greater light on this duty in the Indian context:

"43. In this context, I would like to advert to the vulnerability of married women in India *who do not have an independent source of income or who do not have access to monetary resources in their households particularly for their personal expenses. In Indian society, it is an established practice that once a daughter is married, she resides with her husband and/or his family unless due to exigency of career or such other reason she has to reside elsewhere. In the case of a woman who has an independent source of income, she may be financially endowed and may not be totally dependent on her husband and his family. But what is the position of a married woman who is often referred to as a "homemaker" and who does not have an independent source of income, whatsoever, and is totally dependent for her financial resources on her husband and on his family? It is well-known that such an Indian homemaker tries to save as much money as possible from the monthly household budget, not only to augment the financial resources of the family but possibly to also save a small portion for her personal expenses. Such a practice is followed in order to avoid making a request to the husband or his family for her personal expenses. Most married men in India do not realise this aspect of the predicament such Indian homemakers face as any request made for expenses may be bluntly turned down by the husband and/or his family. Some husbands are not conscious of the fact that the wife who has no independent source of finance is dependent on them not only emotionally but also financially. On the other hand, a wife who is referred to as a homemaker is working throughout the day for the welfare of the family without expecting anything in return except possibly love and affection, a sense of comfort and respect from her husband and his family which are towards her emotional security. This may also be lacking in certain households.*

21. On perusal of evidence adduced by the parties, it appears that respondent No.2 has denied the factum of marriage asserted by the revisionist No.1 with him, he categorically denied in his sworn testimony before the court below that on 15.06.2020 no marriage between Madhu and him took place according to hindu rites and rituals. In fact she was married with his elder brother Sriniwas who died in the year 2017 and Madhu is in possession of property of Sriniwas. In ancestral house at Karaundi, Police Station Rudrapur, Madhu is in possession of the share of his brother. She was never turned out from his ancestral home. She was never harassed or tortured, he never contracted second marriage with Madhu. She is studied up to B.A. Madhu and her children have received maintenance from the property of his brother. He was married with Sangeeta according to hindu rites and rituals and blessed with two children from her. This marriage took place on 07.05.2017, he works in U.P. Police, he bears responsibility of maintaining his parents, wife and two children and ailing brother whose kidney has become dis-functional. He has taken Rs. 9 lakh as loan from Bank. Thus, half of his salary is

deducted for repayment of loan. Madhu has wrongly got his name entered in her Aadhar Card. The agricultural land is lying in the name of his father, which is cultivated by his elder brother Ram Niwas. Chargesheet has been filed case under Section 498A IPC, he has assailed the chargesheet before the High Court, he was also challaned under Section 146 Cr.P.C. by the police due to his verbal altercation with Madhu, at Police Station. He had never moved any application before B.D.O. Rudrapur for getting name of Sangeeta Yadav entered in records. He was not aware that Sangeeta Yadav was previously married with Ranjeet, he is not aware that Sangeeta Yadav has stated in her statement in inquiry that she was married with Ranjeet and from whom she has not taken divorce. He is not aware that in inquiry conducted by Senior Police Officer is against him. He admitted that he got married with Madhu Yadav after the death of his brother. This wrong to say that Madhu is his wife, his net monthly salary is Rs.32,000/-The departmental inquiry was conducted against him on complainant of Madhu.

22. PW-1 Madhu Yadav has stated in her statement before the Court that her husband Sriniwas died on 19.07.2017, and thereafter she contracted marriage with Gaurav who was his brother-in-law on 15.06.2020 with consent of both families. She was harassed by Gaurav and his family members after marriage with him for non-fulfillment of demand of dowry and ultimately she was turned out from her matrimonial home on 22.11.2022 after giving her beating. Her stridhan has been grabbed by Gaurav and his family members. Gaurav solemnized second marriage with Sangeeta, she came to know this fact when she went to Azamgarh, Sangeeta is also resident of Azamgarh. She has studied up to Class-8th only, all her relatives assembled in her second marriage with Gaurav. She can produce them as witness of her marriage with Gaurav was solemnized with seven rounds ceremony. Gaurav undertook the responsibility of her children at the time of her marriage. In lower court record, a copy of the sale deed dated 12.05.2020 is attached which reveals that Sangeeta Yadav the wife of Gaurav purchased a plot from its previous owner Bharat Bhushan Pandey for Rs.5,85,000/-. The area of the land is 96.87 Sq. mts., which is non-agricultural in nature and situates at Jafarpur, District Azamgarh. Sangeeta Yadav has shown herself as wife of Ranjeet Yadav in this sale deed and not as wife of Gaurav Yadav.

23. Revisionist has filed affidavit of disclosure of assets and liabilities before the court below on 18.05.2022, in which she has not shown any income of her own. She has shown two minor children being dependent on her. She has shown her qualification as graduation. Sangeet Yadav who claims to be a wife of respondent No.2 has filed an affidavit before the court below on 17.04.2023, in which she has stated that she solemnized marriage with opposite party Gaurav on 07.05.2017 in Vandevi temple and since then she has been living as his wife.

24. It is further stated by the respondent No.2 that Madhu Yadav was never married with Gaurav Yadav, she is rightful owner of the property left behind her husband Sriniwas alongwtih her children. In Kutumb Register, revisionist Madhu Yadav is shown as wife of Sriniwas, who died on 20.06.2017. In ration card dated 21.08.2018 she is shown as wife of Sriniwas. However, the case of

revisionist is that she contracted second marriage with Gaurav in the year 2020. Revisionist has also filed some photographs in support of her version that she was married with Gaurav, which is annexed as Ext. 17 Kha/17 in lower court court record.

25. An inquiry was conducted by the Circle Officer, Police District Azamgarh, on the complaint of revisionist No.1. Ms. Saumya Singh Circle Officer, Sadar Azargarh who recorded statements of Madhu Yadav wife of Constable Gaurav Yadav, Constable Gaurav Yadav, Sangeeta Yadav wife of Gaurav Yadav. Revisionist Madhu Yadav stated in said inquiry that after being thrown out from her matrimonial home she resides in a rented house at Sidhari, District Azamgarh, her husband Gaurav often states to landlord Ballu Sonkar, that he would not pay the rent. Gaurav contracted second marriage with Sangeeta Yadav in the year 2021, who is resident of Chaffarpur, District Azamgar. She is suffering from acute financial crisis.

26. Constable Gaurav Yadav has stated in the inquiry that he solemnized marriage with Sangeeta Yadav in the year 2017 with consent of her parents and would stay with her at pvt. quarter. He contracted second marriage with Madhu Yadav with consent of his wife Sangeet Yadav and family members of Madhu Yadav, every thing was fine up to June, 2020 to December 2021. Thereafter at the instance of SHO Mahila Thana a compromise arrived at between him and his wifes Madhu Yadav and Sangeeta Yadav, wherein it was agreed that he would pay Rs.8,000/- to Madhu Yadav and Rs.7,000/- to Sangeeta Yadav for their expenses.

27. It is difficult for him to pay Rs.8,000/- as maintenance to Madhu Yadav, as she has filed several cases against him. Sangeeta Yadav has also stated in the inquiry that she was married with Gaurav in the year 2017 and on 15.06.2020 second marriage was solemnized between Madhu and Gaurav with consent of both the family members, but due to harsh and abusive attitude of Madhu Yadav, the spouse got separated. She also stated that she was married with Ranjeet Yadav in the year 2009, but the said marriage was dissolved in the year 2014 on the basis of compromise, she got separated from her husband, but divorce has not taken place between them.

28. On the basis of above statements of the parties, the inquiry officer concluded that Gaurav Yadav being a Government Servant contracted second marriage with the complainant Madhu Yadav with consent of her parents on 15.06.2020 at his parental place village Karaundi, Police Station Rudrapur, District Deoria. Thus, he is guilty of bigamy. This conclusion of Inquiry Officer has been communicated by S.P. Azamgarh to DIG Azamgarh Bench vide letter dated 01.04.2022.

29. On the basis of statements given by the parties in departmental inquiry against respondent No.2 on complaint of revisionist, this fact is prima facie proved that respondent No.2 contracted second marriage with revisionist No.1 in the year 2020, with the consent of both the families. This fact is also prima facie proved that prior to second marriage with revisionist No.1, respondent No.2 was married with one Sangeeta Yadav and revisionist Nos. 2 and 3 are offsprings of previous husband of Madhu Yadav. Therefore, the finding of lower court that this fact is not proved that applicant Madhu Yadav is legally wedded wife of opposite party and she is not

entitled to seek maintenance from him cannot be countenanced. Learned trial court has taken a hyper technical approach while rejecting the claim of maintenance raised by applicant No.1 Madhu Yadav. This is admitted case that revisionist No.1 is not employed any where, even if, it is assumed that she is in possession of the ancestral property of her previous husband Sriniwas, on account of his death, it cannot be assumed that it is sufficient for maintenance of the applicants.

30. This fact is also noticeable that even if it is assumed that the revisionist No.1 is second wife of the respondent No.2. Keeping in view admission of his wife Sangeeta that no decree of divorce was passed in respect of her earlier marriage with Ranjeet. On the other hand there was no legal impediment in the marriage between revisionist No.1 and respondent No.2, previous husband of the revisionist No.1 had already died. Therefore, claim of the revisionist No.1 as wife of the respondent No.2 lies on higher footing than that of said Sangeeta Yadav.

31. On the other hand, respondent No.2 is employed in police department as Constable. He is possessed of sufficient income to maintain the applicant No.1 who is bearing responsibility of her two minor children also born out of her wedlock with Sriniwas.

32. Adverting to the dicta of Hon'ble Supreme court in **Chanmuniya** (supra) it can be held that a very broad and expansive interpretation is required to be given to term 'wife' for maintenance under Section 125 Cr.P.C. so as to include those cases where a man and woman have been living together as husband and wife a reasonable long period of time, and strict proof of marriage should not be a precondition for maintenance in such cases. Therefore, the impugned judgment and order is not sustainable.

33. Learned court below has committed legal and factual error while dismissing the application under Section 125 Cr.P.C. on the technical ground that factum of marriage of applicant No.1 and opposite party is not duly proved.

34. Consequently, the impugned judgment and order dated 18.10.2023 passed by learned Additional Principal Judge, Family Court No.3, Deoria is set-aside and matter is remitted to court below for decision afresh in light of observations made herein above treating the revisionist as wife of the respondent No.2. Respondent No.2 shall pay Rs.8,000/- as interim monthly maintenance to applicant No.1 during the pendency of the maintenance case from today which stands restored on the strength of this revisional order.

35. Let record of learned court below be transmitted with a copy of this judgment for further proceedings.

36. The revision stands **allowed**, accordingly with above observations.

(2025) 8 ILRA 1022
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 20.08.2025

BEFORE

THE HON'BLE RAJAN ROY, J.
THE HON'BLE MANJIVE SHUKLA, J.

Writ A No. 2001460 of 2015

State Of U.P. & Ors. ...Petitioners
Versus
Satya Prakash Chaube & Anr. ...Respondents

Counsel for the Petitioners:
C.S.C.

Counsel for the Respondents:
C.S.C., Yogesh Chandra Srivastava

Issue for consideration

Whether lapse of time in filing application for substitution of legal heirs/representatives of contesting parties, can be a ground for dismissal of petition?

Headnotes

A. Civil Procedural Law – Code of Civil Procedure: Section 141, Order 22; Allahabad High Court Rules, 1952: Chapter VIII: Rule 38-A – In view of the provisions of Section 141 of the CPC, 1908, the provisions of Order XXII CPC, 1908 would not apply to writ proceedings but it does not mean that a writ petition can continue against a dead person, therefore, the law was crystallized and harmonized by Hon'ble the Supreme Court to the effect that though the provisions of Order XXII of CPC, 1908 did not apply to writ proceedings the consequences of it would be that there would be no automatic abatement of a writ proceedings in terms of the provisions contained in Order XXII of CPC, 1908 but writ proceedings cannot continue against a dead person for the reasons which are quite obvious and have been detailed in the said judgment. **If** such **an application for substitution of legal heirs/representatives of the deceased party is filed in writ proceedings within a reasonable time then that can be considered by the Court. The Court, however, put in a caveat that it will be unreasonable on part of the Court to implead the legal heirs/representatives of the deceased respondent after lapse of several months or years and then to direct them to contest the claim of the petitioner merely on the ground that after the death of the original respondent, the right, title or interest of such respondent has devolved on them.** (Para 3)

Limitation Act, 1963 does not apply to writ proceedings a preposition which is so well settled that no further elaboration is required. Even if principles contained in Order XXII r/w Section 120 and 121 of Limitation Act are applied based on Rule 38-A contained in Chapter VIII of the Rules, 1952, this writ petition stands abated long back as the period of 90 days prescribed from the date of death expired on 11.03.2021 and further period of 90 days' also expired long back but till date no application for substitution or setting aside abatement has been filed by the petitioners State, although, the said provisions or principles contained therein are not applied, rather, explanation to Section 141 CPC, 1908 and the law declared by Hon'ble Supreme Court in *Puran Singh* (*infra*) are relied upon. (Para 6)

In this case till date no application for substitution has been filed by the petitioners-State although information about death of the opposite party No.1 was given to them way back in 2021 and in fact they responded to the said information vide letter dated 26.02.2021, in spite of it, they have not bothered to file an application for substitution of legal heirs/representatives of the opposite party No.1. (Para 7)

Considering the lapse of more than 4 and half years from the date of information referred hereinabove and also considering the fact that even today there is no such application for substitution. The proceedings cannot be allowed to continue any further. Writ petition, for non substitution of the legal heirs/representatives of the opposite party No.1., is accordingly dismissed (Para 8)

Writ petitions dismissed. (E-4)

Case Law Cited

Puran Singh vs. State of Punjab, 1996 (2) SCC 205 (Para 3)

List of Acts/Statutes

Code of Civil Procedure, 1908; Allahabad High Court Rules, 1952; Limitation Act, 1963.

List of Keywords

death, substitution.

Appearances for Parties

For Appellant: C.S.C.

For Respondent: C.S.C.,Yogesh Chandra Srivastava

(Delivered by Hon'ble Rajan Roy, J.
&
Hon'ble Manjive Shukla, J.)

1. Heard Shri Nishant Shukla, learned Counsel for the petitioners and Shri Yogesh Chandra Srivastava, learned Counsel for the respondent.

2. By means of this petition which was filed on 19.09.2015, the State has challenged the judgment and order dated 13.04.2015 passed in Claim Petition No.1727 of 2012 by which the claim petition of the claimant, was allowed. Subsequently, the claimant-Satya Prakash Chaube-opposite party No.1 died on 11.12.2020 during pendency of this petition. Thereafter, an application dated 15.02.2021 was filed on behalf of the legal heirs/representatives of opposite party No.1-Satya Prakash Chaube before the petitioner No.4 informing about death of the opposite party No.1 and receipt of this application is not denied by the petitioners, in fact, postal receipts of having sent the said application are on record and the petitioner No.4 vide its letter dated 25.02.2021 responded to the aforesaid application of wife of opposite party No.1 stating therein that till disposal of this writ petition, no action can be taken in the matter. An application dated 27.09.2024 has been filed on behalf of wife of opposite party No.1 in this Court bearing C.M.Application No.IA/5/2024 seeking dismissal of the writ petition as abated.

3. During hearing, a question arose as to whether a writ petition abates. In this context, we have perused the decision of Hon'ble the Supreme Court reported in ***1996 (2) SCC 205; Puran Singh vs. State of Punjab*** wherein this issue came up for consideration and Hon'ble the Supreme Court opined that in view of the provisions of Section 141 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC, 1908') the provisions of Order XXII CPC, 1908 would not apply to writ proceedings but it does not mean that a writ petition can continue against a dead person, therefore, the law was crystallized and harmonized by Hon'ble the Supreme Court to the effect that though the provisions of Order XXII of CPC, 1908 did not apply to writ proceedings the consequences of it would be that there would be no automatic abatement of a writ proceedings in terms of the provisions contained in Order XXII of CPC, 1908 but writ proceedings cannot continue against a dead person for the reasons which are quite obvious and have been detailed in the said judgment. It was provided that if such an application for substitution of legal heirs/representatives of the deceased party is filed in writ proceedings within a reasonable time then that can be considered by the Court. The Court, however, put in a caveat that it will be unreasonable on part of the Court to implead the legal heirs/representatives of the deceased respondent after lapse of several months or years and then to direct them to contest the claim of the petitioner merely on the ground that after the death of the original respondent, the right, title or interest of such respondent has devolved on them. We may in this context refer to relevant extract of aforesaid judgment in the case of ***Puran Singh (supra)*** which reads as under:-

"11. As such even if it is held that Order 22 of the Code is not applicable to writ proceedings or writ appeals, it does not mean that the petitioner or the

appellant in such writ petition or writ appeal can ignore the death of the respondent if the right to pursue remedy even after death of the respondent survives. After the death of the respondent it is incumbent on the part of the petitioner or the appellant to substitute the heirs of such respondent within a reasonable time. For purpose of holding as to what shall be reasonable time, the High Court may take note of the period prescribed under Article 120 of the Limitation Act for substituting the heirs of the deceased defendant or the respondent. However, there is no question of automatic abatement of the writ proceedings. Even if an application is filed beyond 90 days of the death of such respondent, the Court can take into consideration the facts and circumstances of a particular case for purpose of condoning the delay in filing the application for substitution of the legal representative. This power has to be exercised on well known and settled principles in respect of exercise of discretionary power by the High Court. If the High Court is satisfied that delay, if any, in substituting the heirs of the deceased respondent was not intentional, and sufficient cause has been shown for not taking the steps earlier, the High Court can substitute the legal representative and proceed with the hearing of the writ petition or the writ appeal, as the case may be. At the same time the High Court has to be conscious that after lapse of time a valuable right accrues to the legal representative of the deceased respondent and he should not be compelled to contest a claim which due to the inaction of the petitioner or the appellant has become final."

4. We have also perused Rule 38-A under the heading Section P-Miscellaneous which is a part of Chapter VIII of the Allahabad High Court Rules 1952 (hereinafter referred to as 'Rules, 1952') which reads as under:-

"[38-A :- Adjustment of appeals, petitions and references etc.

The provisions contained in Rules 1 to 6 and 9 of Order XXII and in Order XXXII of the Code of Civil Procedure shall, so far as may be and with necessary modifications and adaptations, apply to special appeals, writ petitions under Article 226 of the Constitution and Tax Acts references [and revisions] falling under Chapter IX, XXII and XXVII of these rules.]"

5. This provision was inserted vide notification No.310/VIII-C169 dated 03.08.1964 which was published in the Gazette of Uttar Pradesh Part-2 on 05.12.1964, however, thereafter, CPC, 1908 has been amended and an explanation has been added to Section 141 vide Section 47 of the Act 104 of 1976 which came into force with effect 01.02.1977. By the said amendment, the words 'Proceedings' occurring in Section 141 of CPC, 1908 has been explained to include 'Proceedings' under Order IX of CPC, 1908 but with a further clarification that it does not include any proceedings under Article 226 of the Constitution of India. Apparently, Rule 38-A contained in Chapter VIII of the Rules, 1952 made by this High Court was inserted prior to the said amendment. We in this context may refer to Article 225 of the Constitution of India under which the Rules, 1952 have been framed. The said provision reads as under:-

"225. Jurisdiction of existing High Courts

Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution:

Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction."

6. The said Rules, 1952 framed by the Allahabad High Court in 1952 as amended from time to time are subject to the provisions of the Constitution of India and to the provisions of any law of the appropriate legislature made by virtue of powers conferred on that legislature by the Constitution of India. The CPC, 1908 though it is a Pre-Independence legislation, any amendment to it subsequently falls within the concurrent list and, therefore, the Union Parliament as also the State Legislature can amend it. In this case the explanation was inserted by an Act of the Central Legislation, which was competent to do so, therefore, the Rule is in conflict with the explanation to Section 141 CPC, 1908. Limitation Act, 1963 does not apply to writ proceedings a preposition which is so well settled that no further elaboration is required. Even if principles contained in Order XXII read with Section 120 and 121 of Limitation Act are applied based on Rule 38-A contained in Chapter VIII of the Rules, 1952, this writ petition stands abated long back as the period of 90 days prescribed from the date of death expired on 11.03.2021 and further period of 90 days' also expired long back but till date no application for substitution or setting aside abatement has been filed by the petitioners-State, although, we do not apply the said provisions or principles contained therein, rather, we rely on explanation to Section 141 CPC, 1908 and the law declared by Hon'ble Supreme Court in ***Puran Singh (supra).***

7. When we consider the issues in the light of the law elucidated by Hon'ble the Supreme Court, as aforesaid, we find that in this case till date no application for substitution has been filed by the petitioners-State although information about death of the opposite party No.1 was given to them way back in 2021 and in fact they responded to the said information vide letter dated 26.02.2021, in spite of it, they have not bothered to file an application for substitution of legal heirs/representatives of the opposite party No.1.

8. Considering the lapse of more than 4 and half years from the date of information referred hereinabove and also considering the fact that even today there is no such application for substitution. We do not see as to how we can allow these proceedings to continue any further. We, accordingly, **dismiss** this writ petition for non substitution of the legal heirs/representatives of the opposite party No.1.

(2025) 8 ILRA 1027
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 01.08.2025

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE PRAVEEN KUMAR GIRI, J.

Special Appeal Defective No. 456 of 2025

Kesar Singh ...Appellant
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Appellant:
Ajay Mishra, Sri Krishna Mishra

Counsel for the Respondents:
Abhishek Kumar Pandey, Bhagwan Das, C.S.C., Mohammad Zunaid Khan, Ranjana

Issue for consideration

Whether the Special Appeal is maintainable against an order passed by the learned Single Judge that merely directs certain officers to submit a report with regard to the Public Interest Litigation that has been filed and directed the appellant herein to file a counter affidavit?

Headnotes

A. Allahabad High Court Rules, 1952: Chapter VIII Rule 5 - If an order of the Court is in the nature of a final order, it could be appealable and not otherwise. When an order is passed by the Court affects valuable rights which amounts to pre- hearing of the judgment, it could be appealable. (Para 14)

Unless an order has the trappings of a final order and/ or affects the valuable rights of a party causing serious injustice to a party, no appeal would lie before the Division Bench from the order passed by a Single Judge of this Court. (Para 16)

It is patently clear that an interlocutory order to be appealable under Chapter VIII Rule 5 of the Rules must adversely affect the valuable right of a party or decide an important aspect. In order to constitute 'appealable order', the adverse effect on a party must be direct and immediate and not indirect or remote. Furthermore, routine orders passed by Single Judge of seeking reports and/or directing affidavits to be exchanged that would facilitate the progress of a case even though may cause some element of inconvenience or prejudice to a party would not constitute a judgment as the same does not finally determine the rights and obligations of the parties. (Para 17)

In the present case, the order passed is neither an interim nor a final order affecting the interest of any party. The learned single judge has simpliciter sought for reports to determine the truthfulness of the allegations made in the PIL. Under no circumstances, such directions can be termed as judgment and/or an interim order that decides the vital and valuable rights of any of the parties. (Para 18)

The issue of maintainability of the writ petition was never raised by the appellant herein before the learned Single Judge. The only ground raised was that the petitioner in the said petition wanted to withdraw the said petition (PIL) which was rejected by the Hon'ble Judge. Such a rejection order does not in any manner impact any valuable rights of the appellant herein. The appellant shall be at liberty to raise the point of maintainability as a preliminary issue before the Hon'ble Single Judge. (Para 19)

In the impugned order, no decision has been taken by the learned Single Judge with regard to the maintainability of the PIL not does it in any manner negatively impact the valuable rights of any party including the appellant at this stage. (Para 23)

B. The present appeal has not been filed by the petitioner who had wished to withdraw the petition, but has been filed by the respondent no. 5 in the writ petition against whom several allegations have been made by the writ petitioner. This itself raises questions on the maintainability of the special appeal.

The appellant here emphasizes the point that the Court must encourage only genuine and bonafide PIL and effectively discourage the PIL filed for extraneous consideration. It is held that the question whether the Public Interest Litigation is a bonafide exercise or not is to be decided by the Hon'ble Single Judge as and when the issue is raised before him. (Para 21, 22)

Special appeal dismissed. (E-4)

Case Law Cited

1. Shah Babulal Khimji Vs. Jayaben D. Kania, (1981) 4 SCC 8 (Para 13)
2. Sandeep Agarwal and others Vs. Adarsh Chaddha and others, 2002 (4) AWC 3083 (Para 14)
3. Society Madarasa Mazahir Uloom Mubarak Shah, Saharanpur Vs. Muzaffar Hussain, (1994) 1 AWC 55 (Para 14)
4. Ashutosh Shrotiya and Others Vs. Vice Chancellor, Dr B R Ambedkar University & Others, (2015) 6 All LJ 383 (Para 15)
5. State of Uttaranchal Vs. Balwant Singh Chaufal and Others, (2010) 3 SCC 402 (Para 21)

List of Acts/Statutes

Allahabad High Court Rules, 1952.

List of Keywords

maintainable, special appeal.

Appearances for Parties

For Appellant: Ajay Mishra, Shri Krishna Mishra

For Respondent: Abhishek Kumar Pandey, Bhagwan Das, C.S.C., Mohammad Zunaid Khan, Ranjana

(Delivered by Hon'ble Shekhar B. Saraf, J.)

Order on Delay Condonation Application

1. Heard Mr. Shri Krishna Mishra, learned counsel appearing on behalf of appellant and learned standing counsel appearing on behalf of State.

2. This special appeal is reported to be beyond time by 10 days.

3. We have perused the delay condonation application and the affidavit filed in support thereof. Cause shown is sufficient. Delay in filing the special appeal is condoned. Application stands allowed.

Order on Special Appeal

4. This special appeal has been filed against the order dated May 26, 2025 passed by learned Single Judge in Public Interest Litigation (P.I.L.) No. 1375 of 2025.

5. The impugned order is a brief order and we are accordingly reproducing the same hereinbelow:

"When this matter has come up for admission, Mr. V.C. Srivastava, Advocate says that the petitioner may be permitted to withdraw this petition with liberty to file a fresh petition. Mr. Irfan Ali, Advocate holding brief of Mr. Abhishek Kumar Pandey, learned counsel for the petitioner, who have filed this petition along with Mr. Alok Singh and Mr. Mohd. Zunaid Khan, Advocates, submits that this prayer for withdrawal is a result of pressure brought upon the petitioner by respondent no. 5, Kesar Singh, who is an ill reputed land Mafia with a criminal history of 16 cases registered against him in district Fatehpur, He has invited the attention of the Court to the criminal history of respondent no. 5 summarized at page no. 66 of the paper book. The offences there are under the Gunda Act, more than one cases of attempt to murder, mischief, ublic property and criminal intimidation. Mr. Irfan Ali submits that it is on account of the threats extended by respondent no. 5

that the petitioner is attempting to withdraw this petition through Mr. V.C. Srivastava, Advocate.

Be that as it may, this Public Interest Litigation and the petitioner does not have an indefeasible right for withdrawing a PIL. Once a public cause is brought to this Court's notice, the petitioner if he abandons it, leaves the Court with the option to direct the petitioner to be substituted by some other public spirited person ready and willing to espouse the cause or the matter may be converted Suo Motu Into action. Let the Secretary (Home), Government of U.P., Lucknow and the Director General of Police, Government of U.P., Lucknow be made parties to this petition during the course of the day.

What has been brought to the notice of this Court is that respondent no. 5 has encroached into the land comprising Gata No. 276, Gata No. 294 and 308 besides Gata Nos. 292, 298 and 299 as also Gata Nos. 295 and 296, all situate in Village Rakshapalpur, Pargana Ekhla and Tehsil Khaga, District Fatehpur. These plots are all public utility land and recorded as Khalihan, Manure Pit besides Banjar which is Goon Sabha land.

Let the Collector, Fatehpur and the Sub Divisional Officer, Khaga, District Fatehpur submit a report on or before 29.05.2025, if the plot numbers aforesaid are indeed Gaon Sabha land or public utility land encroached by respondent no. 5.

Notice on behalf of respondent no. 5, who is present in Court, is accepted by Mr. Sharad Chand Rai, Advocate. He will file a counter affidavit by the next date fixed. He will explain his criminal history also and categorically explain the case that has been put forward by Mr. Irfan Ali that the petitioner has been threatened into withdrawing the PIL.

Lay as fresh on 29.05.2025.

Let this order be communicated to the Collector, Fatehpur and the Sub Divisional Officer, Khaga, District Fatehpur through the Chief Judicial Magistrate, Fatehpur by the Registrar (Compliance) within 24 hours."

6. Shri Krishna Mishra, Advocate appearing on behalf of the appellant herein (respondent no. 5 in the Public Interest Litigation) submits that the learned Single Judge exceeded his jurisdiction by passing the orders in the the said petition when the petitioner himself wanted to withdraw the petition. He further submits that learned Single Judge has granted certain reliefs to the petitioner that would have a negative impact upon his valuable rights.

7. The question that arises before this Court is primarily whether the Special Appeal is mainatainable against an order passed by the learned Single Judge that merely directs certain officers to submit a report with regard to the Public Interest Litigation that has been filed and directed the appellant herein to file a counter affidavit.

8. Before delving into the issue, it is pertinent to look into the provision of Special Appeal in the Allahabad High Court Rules, 1952 (hereinafter referred to as the 'Rules').

Chapter VIII Rule 5:

"**5. Special appeal** :- *An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of appellate jurisdiction) in respect of a decree or order made by a Court subject to*

the superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of superintendence or in the exercise of criminal jurisdiction [or in the exercise of the jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award--(a) of a tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution, or (b) of the Government or any officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act of one Judge.]"

9. The present special appeal is directed against a Public Interest Litigation which in its essence is a writ petition filed under Article 226 of the Constituion of India for the protection of fundamental rights of the public at large.

10. From the perusal of Chapter VIII Rule 5 of the Rules a special appeal shall lie before this Court from the judgment passed by single Judge of the Court. However, such special appeal will not lie in the following circumstances:

(i) the judgment passed by one Judge in the exercise of appellate jurisdiction, in respect of a decree or order made by a Court subject to the Superintendence of the Court;

(ii) the order made by one Judge in the exercise of revisional jurisdiction;

(iii) the order made by one Judge in the exercise of the power of Superintendence of the High Court;

(iv) the order made by one Judge in the exercise of criminal jurisdiction;

(v) the order made by one Judge in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution of India in respect of any judgment, order or award by

(a) the tribunal,

(b) Court or

(c) statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution of India;

(vi) the order made by one Judge in the exercise of jurisdiction conferred by Article 226 or 227 of the Constitution of India in respect of any judgment, order or award of

(a) the Government or

(b) any officer or

(c) authority,

made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act, i.e. under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution of India."

11. Upon perusal of the order, it is clear that the learned Single Judge was of the view that the petitioner has been intimidated in some manner and was accordingly seeking to withdraw the writ petition. Furthermore, the Hon'ble Single Judge held that there is no indefeasible

right for a petitioner to withdraw a Public Interest Litigation once the same has been brought to the knowledge of the Court.

12. In view of the same, the learned Single Judge has passed certain orders seeking report from the Collector, Fatehpur and the Sub Divisional Officer, Khaga, District Fatehpur with regard to the plot numbers (that was supposedly encroached) as to whether certain plot numbers are Gaon Sabha Land or public utility land. Direction has also been given to the respondent no.5 (appellant herein) to explain his criminal history, by way of filing a counter affidavit.

13. The Supreme Court in **Shah Babulal Khimji v. Jayaben D. Kania**, reported in (1981) 4 SCC 8 has laid down various principles as to when a 'judgment' would be appealable under letters patent appeal and also delineated the interlocutory order which would be appealable. The relevant paragraphs of the judgment are quoted hereinelow:

"120. Thus, these are some of the principles which might guide a Division Bench in deciding whether an order passed by the trial Judge amounts to a judgment within the meaning of the letters patent. We might, however, at the risk of repetition give illustrations of interlocutory orders which may be treated as judgments:

(1) An order granting leave to amend the plaint by introducing a new cause of action which completely alters the nature of the suit and takes away a vested right of limitation or any other valuable right accrued to the defendant.

(2) An order rejecting the plaint.

(3) An order refusing leave to defend the suit in an action under Order 37, of the Code of Civil Procedure.

(4) An order rescinding leave of the trial Judge granted by him under clause 12 of the letters patent.

(5) An order deciding a preliminary objection to the maintainability of the suit on the ground of limitation, absence of notice under Section 80, bar against competency of the suit against the defendant even though the suit is kept alive.

(6) An order rejecting an application for a judgment on admission under Order 12 Rule 6.

(7) An order refusing to add necessary parties in a suit under Section 92 of the Code of Civil Procedure.

(8) An order varying or amending a decree

. (9) An order refusing leave to sue in forma pauperis.

(10) An order granting review.

(11) An order allowing withdrawal of the suit with liberty to file a fresh one.

(12) An order holding that the defendants are not agriculturists within the meaning of the special law.

(13) An order staying or refusing to stay a suit under Section 10 of the Code of Civil Procedure.

(14) An order granting or refusing to stay execution of the decree.

(15) An order deciding payment of court fees against the plaintiff."

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151. An order which is appealable under the Code or under any other statute becomes appealable as the statute confers a right on the litigant to prefer an appeal against such an order. Such an order may or may not be appealable as "judgment" under clause 15 of the letters patent. An order which may be appealable under clause 15 of the letters patent as a "judgment" becomes appealable as letters patent confers on the litigant a right of appeal against such an

order as "judgment". An order appealable under the letters patent may or may not be appealable under the Code. A right of appeal is a creature of statute. A litigant does not have an inherent right to prefer an appeal against an order unless such a right is conferred on the litigant by law. Certain orders become appealable under the Code, as the Code makes such orders appealable. Other statutes may confer a right of appeal in respect of any order under the statute. The letters patent by clause 15 also confers a right to prefer an appeal against a "judgment". An order which satisfies the requirements of 'judgment' within the meaning of clause 15 becomes appealable under the letters patent. What kind of an order will constitute a judgment within the meaning of clause 15 of the letters patent and will become appealable as such must necessarily depend on the facts and circumstances of each case and on the nature and character of the order passed. The question whether a particular order constitutes a judgment within the meaning of clause 15 of the letters patent to be appealable under the provisions thereof has come up for consideration before the various courts in a number of decisions. Very many decisions have been cited in the present case and they have been considered by my learned brother, Fazal Ali, J. in his judgment. The question indeed, is not free from difficulties and divergent views have been expressed by different courts and by various learned judges. This Court had also the occasion to consider as to what may constitute a judgment within the meaning of clause 15 of the letters patent in certain cases. In the case of Shanti Kumar R. Canji v.The Home Insurance Co. of New York [(1974) 2 SCC 387 : AIR 1974 SC 1719 : (1975) 1 SCR 550] this Court referring to the earlier decision of this Court in the case of Asrumati Devi v. Kumar Rupendra Deb Raikot [(1953) 1 SCC 333 : AIR 1953 SC 198 : 1953 SCR 1159] observed at p. 550:"

14. The Division Bench of this Court in **Sandeep Agarwal and others v. Adarsh Chaddha and others** reported in 2002 (4) AWC 3083 has categorically held that if an order of the Court is in the nature of a final order, it could be appealable and not otherwise. The Division Bench of this Court has also held in **Society Madarasa Mazahir Uloom Mubarak Shah, Saharanpur v. Muzaffar Hussain** reported in (1994) 1 AWC 55 that when an order is passed by the Court affects valuable rights which amounts to pre-hearing of the judgment, it could be appealable.

15. The Full Bench judgment of this Court penned by the then Chief Justice Hon'ble D.Y. Chandrachud in **Ashutosh Shrotiya and Others v. Vice-Chancellor, Dr B R Ambedkar University & Others** reported in (2015) 6 All LJ 383 after considering the judgment of Supreme Court in **Shah Babulal Khimji** (supra) specifically dealt with the issue of maintainability of a Special Appeal and culled out principles as to what constitute 'judgments'. The relevant paragraphs of the judgment are quoted hereinbelow:

"30. We now formulate the governing principles:

(i) The expression 'judgment' was advisedly not defined in the Letters Patents of various High Courts which conferred a right of appeal against a judgment of a Single Judge to a Division Bench of that Court;

(ii) The expression 'judgment' is not to be construed in the narrower sense in which the expression 'judgment', 'decree'

or 'order' is defined in the CPC, but must receive a broad and liberal construction;

(iii) Every order passed by a trial Judge on the Original side of a High Court exercising original jurisdiction or, for that matter, by a learned Single Judge exercising the writ jurisdiction, would not amount to a judgment. If every order were construed to be a judgment, that would result in opening a flood of appeals and there would be no end to the number of orders which could be appealable under the Letters Patent;

(iv) Any interlocutory order to constitute a judgment, must possess the characteristic of finality in the sense that it must adversely affect a valuable right of a party or decide an important aspect of the trial in an ancillary proceeding. In order to constitute a 'judgment', the adverse effect on a party must be direct and immediate and not indirect or remote;

(v) In order to constitute a judgment, an interlocutory order must: (a) decide a matter of moment; or (b) affect vital and valuable rights of the parties and must also work serious injustice to the party concerned:

(vi) On the other hand, orders passed in the course of the proceedings of a routine nature, would not constitute a judgment even if they result in some element of inconvenience or hardship to one party or the other. Routine orders which are passed by a Single Judge to facilitate the progress of a case may cause some element of inconvenience or prejudice to a party but do not constitute a 'judgment' because they do not finally determine the rights or obligations of the parties. Procedural orders in aid of the progression of a case or to facilitate a decision are not judgments.

***

44. In view of the aforesaid discussions, we answer the question of law referred to the Full Bench by holding that, an order of a learned Single Judge upon a petition under Articles 226 or 227 of the Constitution only calling for counter and rejoinder affidavits is merely a procedural order in aid of the progression of the case. An order of this nature which is purely of a procedural nature in aid of the progression of the case and to enable the Court to form a considered view after a counter affidavit and a rejoinder are filed would not be amenable to a special appeal under Chapter VIII Rule 5. Such an order does not decide anything nor does it have the trappings of finality. If a party to the proceedings seeks to press an application for ad interim relief of a protective nature even before a counter affidavit is filed, on the ground that a situation of irretrievable injustice may result or that its substantive rights would be adversely affected in the meantime, such an argument must be addressed before the Single Judge. If such an argument is urged, it should be dealt with however briefly, consistent with the stage of the case, by the Single Judge. It is for the Division Bench hearing the special appeal to consider whether the order decides mattes of moment or is of such a nature that would affect the vital and valuable rights of the parties and causes serious injustice to the concerned party."

(Emphasis added)

16. From the perusal of the above judgments, the ratio is crystal clear that unless an order has the trappings of a final order and/ or affects the valuable rights of a party causing serious injustice to a party, no appeal would lie before the Division Bench from the order passed by a Single Judge of this Court. The Full Bench in

Ashutosh Shrotiya (supra) has categorically concuded as follows:

"31. Now, it is in the background of these principles that we need to deal with the issue as to whether an order of a Single Judge, in the exercise of writ jurisdiction, calling for the filing of a counter affidavit and a rejoinder, must in all circumstances without exception be treated as orders merely facilitating the progress of the case and not constituting a judgment. Where a judge requires the filing of a counter affidavit by the respondent and a rejoinder by the petitioner in response, this is in the nature of a procedural direction to enable the Court to have a full disclosure of the underlying facts and issues so as to facilitate a decision. The object of such a direction is to enable the Single Judge to be apprised of facts relevant and material to arriving at a considered view. Such a direction is in aid of the progression of the case. It does not decide the matter or issue in controversy. The lis continues to remain pending before the Single Judge. The Court would apply its mind to the merits of the controversy, for the purpose of deciding an application for interim relief and eventually for the final disposal of the writ proceedings after affidavits are filed. This is a procedural order and not a judgment."

(Emphasis added)

17. Applying the ratio of the above discussed judgments, it is patently clear that an interlocutory order to be appealable under Chapter VIII Rule 5 of the Rules must adversely affect the valuable right of a party or decide an important aspect. In order to constitute 'appealable order', the adverse effect on a party must be direct and immediate and not indirect or remote. Furthermore, routine orders passed by Single Judge of seeking reports and/or directing affidavits to be exchanged that would facilitate the progress of a case even though may cause some element of inconvenience or prejudice to a party would not constitute a judgment as the same does not finally determine the rights and obligations of the parties.

18. From a perusal of the order passed, it appears that it is neither an interim nor a final order affecting the interest of any party. The learned single judge has simpliciter sought for reports to determine the truthfulness of the allegations made in the Public Interest Litigation. Under no circumstances, such directions can be termed as judgment and/or an interim order that decides the vital and valuable rights of any of the parties.

19. It is to be noted that the issue of maintainability of the writ petition was never raised by the appellant herein before the learned Single Judge. The only ground raised was that the petitioner in the said petition wanted to withdraw the said petition (Public Interest Litigation) which was rejected by the Hon'ble Judge. Such a rejection order does not in any manner impact any valuable rights of the appellant herein. The appellant shall be at liberty to raise the point of maintainability as a preliminary issue before the Hon'ble Single Judge.

20. It is to be further noted that the present appeal has not been filed by the petitioner who had wished to withdraw the petition, but has been filed by the respondent no. 5 in the writ petition against whom several allegations have been made by the writ petitioner. This itself raises questions on the maintainability of the special appeal.

21. Learned Counsel for the appellant has referred to the judgment of Supreme Court in **State of Uttaranchal v. Balwant Singh Chaufal and Others** reported in (2010) 3 SCC 402 emphasizing the point that the Court must encourage only genuine and bonafide Public Interest Litigation and effectively discourage the Public Interest Litigation filed for extraneous consideration. He relies upon paragraph 181 of the said judgment to buttress the argument that the Public Interest Litigation which has been sought to be withdrawn by the petitioner itself is an abuse of the process of Court.

22. We once again emphasise that the question whether the Public Interest Litigation is a bonafide exercise or not is to be decided by the Hon'ble Single Judge as and when the issue is raised before him. Ergo, the judgment in **Balwant Singh Chaufal (supra)** is not relevant to decide the issue herein.

23. It is also to be noted that in the impugned order which is under challenge before us, no decision has been taken by the learned Single Judge with regard to the maintainability of the Public Interest Litigation not does it in any manner negatively impact the valuable rights of any party including the appellant at this stage.

24. Accordingly, the present special appeal is dismissed as not maintainable.

25. As the counter affidavit has not been filed by the appellant in the Public Interest Litigation, the time to file counter affidavit therein is extended by three weeks.

(2025) 8 ILRA 1035
APPELLATE JURISDICTION

CIVIL SIDE
DATED: ALLAHABAD 14.08.2025

BEFORE

THE HON'BLE ARUN BHANSALI, C.J.
THE HON'BLE KSHITIJ SHAILENDRA, J.

Special Appeal No. 652 of 2025

Committee of Management & Anr ...Appellants
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Appellant:
Ved Byas Mishra

Counsel for the Respondents:
C.S.C., Ankit Gaur (S.C.), Prabhakar Awasthi

Issue for consideration

Whether the present special appeal is maintainable under Rule 5 of Chapter VIII of the Allahabad High Court Rules, 1952?

Headnotes

A. Societies Registration Act, 1860: Section 25(1); Allahabad High Court Rules, 1952: Chapter VIII Rule 5 - Special appeal is not maintainable against the order passed by the writ court in a challenge laid to the order passed u/s 25(1) of the Act passed by the Prescribed Authority, (Para 15)

A perusal of the said Rule (Rule 5 of Rules, 1952) reveals that restriction on maintainability of special appeal inter alia has been provided with regard to the order passed 'in the exercise of the jurisdiction conferred by Article 226 or Article 227 of the Constitution' in respect of any judgment, order or award of a tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution. (Para 17)

It would be seen that the statutory provision prescribes a bar *qua* the orders passed 'in exercise of jurisdiction under Article 226 and 227 of the Constitution of India'. No distinction can be made with regard to the nature of the order passed, i.e., interim or final, for the purpose of examining the maintainability of the appeal u/Rule 5 of Chapter VIII of the Rules. (Para 18)

Special appeal dismissed. (E-4)

Case Law Cited

1. Jai Prakash Agarwal Vs. Prescribed Authority, (1999) 1 UPLBEC 697 (Para 6)
2. Mohd Talib Khan Vs. State of U.P. and others, (2008) 1 UPLBEC 538 (Para 6)
3. Bhupendra Singh Vs. State of U.P. and others, (2010) 3 UPLBEC 2009 (Para 6)
4. Abul Kaish Khan and others Vs. Assistant Registrar, Firms Societies and Chits and others, Special Appeal No. 214 of 2009, decided on 07.04.2011 (Para 6)
5. Ashutosh Shrotriya and others Vs. Vice-Chancellor, Dr. B.R. Ambedkar University and others, (2015) 4 UPLBEC 2673 (Para 7)
6. Smt. Surati Devi and 3 others Vs. Inderjeet and 3 others, Special Appeal No. 452 of 2016, decided on 20.07.2016 (Para 8)

List of Acts/Statutes

Societies Registration Act, 1860; Allahabad High Court Rules, 1952.

List of Keywords

Maintainability, validity.

Appearances for Parties

For Appellant: Ved Byas Mishra

For Respondent: C.S.C., Ankit Gaur (S.C.), Prabhakar Awasthi

(Delivered by Hon'ble Arun Bhansali, C.J.
&
Hon'ble Kshitij Shailendra, J.)

1. This appeal is directed against the order dated 08.04.2025 passed by learned Single Judge in Writ-C No. 8908 of 2025, whereby the learned Single Judge has stayed the operation of the order dated 22.01.2025 passed in Case No. 5419 of 2024 by the Prescribed Authority/Sub-divisional Magistrate under Section 25(1) of the Societies Registration Act, 1860 ('the Act').

2. The subject matter of the writ petition pertains to the election of a Society, namely, Dr. Sudama Prasad Bal Vidya Mandir, Vigyan Kanan Kutir, Kutchery Road, Khirni Bagh Shahar, District Shahjahanpur, whose elections were held on 27.09.2020, in which respondents no. 4 and 5 were elected as Manager and President, respectively. The Committee of Management of the Society was recognized by the Assistant Registrar. Subsequently, the order was reviewed by the Assistant Registrar by order dated 27.01.2023, which came to be challenged before this Court, which allowed the writ petition referring the matter to the Prescribed Authority under Section 25(1) of the Act. Against the order passed, special appeal was filed wherein interim order was granted, however, the appeal came to be decided on 20.02.2024.

3. On reference being made, the Prescribed Authority passed the order dated 22.01.2025, whereby the appellants herein were recognized as President and Manager of the Society. Feeling aggrieved, the writ petition was filed.

4. Based on the contentions raised before learned Single Judge, as noticed in the order impugned, learned Single Judge found that the matter required consideration and granted four weeks time to the appellants and other respondents to file counter affidavit and four weeks' for filing rejoinder affidavit and passed the interim order staying the order dated 22.01.2025. Feeling aggrieved, the present special appeal has been filed.

5. Learned counsel for the respondents raised preliminary objection that the special appeal is barred under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 ('the Rules'), as the order passed under Section 25(1) of the Act is that of the Tribunal and as the orders passed under Article 226/227 against the orders passed by the Tribunal are not open to special appeal under the Rules, the appeal deserves dismissal.

6. Reliance was placed on **Jai Prakash Agarwal Vs. Prescribed Authority : (1999) 1 UPLBEC 697, Mohd Talib Khan Vs. State of U.P. and others : (2008) 1 UPLBEC 538, Bhupendra Singh Vs. State of U.P. and others : (2010) 3 UPLBEC 2009 and Abul Kaish Khan and others Vs. Assistant Registrar, Firms Societies and Chits and others : Special Appeal No. 214 of 2009**, decided on 07.04.2011.

7. Learned counsel for the appellants made submissions that the plea raised pertaining to the maintainability of the appeal has no substance as the appeal has been filed against the interim order. Submissions have been made that the judgments in the case of **Mohd Talib Khan (supra), Bhupendra Singh (supra)** and **Abul Kaish Khan (supra)** arose out of the final orders passed in writ petitions regarding which it was held that special appeal is not maintainable, however, a Larger Bench in **Ashutosh Shrotriya and others Vs. Vice-Chancellor, Dr. B.R. Ambedkar University and others : (2015) 4 UPLBEC 2673** has held that the appeal under Chapter VIII Rule 5 of the Rules would be maintainable against an interim order and, therefore, the plea raised in this regard has no substance.

8. Further submissions have been made that this Court in **Smt. Surati Devi and 3 others Vs. Inderjeet and 3 others : Special Appeal No. 452 of 2016**, decided on 20.07.2016, relying on the order in the case of **Ashutosh Shrotriya (supra)** has laid down that as the power to grant a direction in the writ petition is referable to exercise of constitutional power under Article 226/227 of the Constitution of India by the Court, such interim order does not eminate from the order of the lower authority and, therefore, the appeal would be maintainable and, therefore, the plea raised in this regard has no substance.

9. We have considered the submissions made by counsel for the parties and have perused the material available on record.

10. Undisputed facts are that the respondents no. 3, 4 and 5 have questioned the validity of the order passed by the Prescribed Authority/ Sub-divisional Magistrate under Section 25 (1) of the Act.

11. A Division Bench of this Court in the case of **Jai Prakash Agarwal (supra)**, which judgment arose out of an interim order, whereby learned Single Judge had stayed the operation of the order passed by the Prescribed Authority, elaborately dealt with the issue of maintainability of the special appeal against the order passed in a writ petition questioning the validity of the order passed by Prescribed Authority and, inter alia, came to the following conclusion:

"(14) For the reasons stated above, our conclusion is that the Prescribed authority under Section 25 of the Societies Registration Act, 1860, as applicable in Uttar Pradesh, is a tribunal and if the orders passed by the Prescribed authority is challenged in a writ

petition under Article 226 of the constitution, the special appeal under Rule 5 of Chapter VIII of the Rules of the Court will not lie against the order of the learned single Judge passed in such a writ petition.

(15) The special appeal is, accordingly, dismissed as not maintainable. There will be no order as to costs."

12. The said view was followed by another Division Bench in the case of Mohd Talib Khan (supra) in the following manner:

"26. We are in full agreement with the judgment and order of the Division Bench of this Court in the case of Jai Prakash Agarwal (supra) and that the Full Bench of this Court has not laid down any law to the controversy in the case of Sri Kashi Raj Mahavidyalay, Aurai (supra) and therefore, hold that the present special appeal which has been filed under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 against the judgment and order of the learned Single Judge arising out of an order of the Prescribed Authority under Section 25(1) of the Societies Registration Act is legally not maintainable."

13. In the case of **Bhupendra Singh (supra)**, another Division Bench following the order in the case of **Mohd Talib Khan (supra)**, came to the following conclusion:

"10. In the instant case the order of the Prescribed Authority has been challenged by way of writ petition which has been disposed of by the learned Single Judge, therefore, the judgment and order passed by the learned Single Judge cannot be challenged by way of special appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952.

11. Keeping in view the law laid down by this Court in Mohd. Tabib Khan's case (supra), we are of the view that this special appeal is not maintainable.

12. Therefore, the special appeal is dismissed as not maintainable, however, without imposing any cost."

14. Yet another Division Bench, in the case of **Abul Kaish Khan (supra)** reiterated non maintainability of the appeal and observed as under:

"We find that in the case of Mohd. Talib Khan (supra) this Court has considered the question in detail and has come to the conclusion that the Prescribed Authority while deciding the reference under Section 25(1) acts as a Tribunal, therefore, the special appeal under Chapter VIII, Rule 5 of the Rules of the Court is not maintainable.

We are in respectful agreement with the view taken by the Division Bench of this Court in Mohd. Talib Khan (supra) and hold that the present special appeal is not maintainable. We may mention here that Sri M.A.Khan, learned counsel for the appellant has also argued the matter on merit. We have not gone into the merit of the case as we have come to the conclusion that the appeal is not maintainable.

The special appeal fails and is dismissed as not maintainable."

15. From the above judgments, it is more than apparent that against the order passed by the writ court in a challenge laid to the order passed under Section 25(1) of the Act passed by the Prescribed Authority, special appeal is not maintainable.

16. The relevant provisions under Rule 5 of Chapter VIII of the Rules, inter alia, read as under:

"5. Special appeal. ? An appeal shall lie to the Court from a judgment (not

being a judgment passed in the exercise of appellate jurisdiction) in respect of a decree or order made by a Court subject to the superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of superintendence or in the exercise of criminal jurisdiction or in the exercise of the jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award--(a) of a tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution, or (b) of the Government or any officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act of one Judge."

17. A perusal of the said Rule reveals that restriction on maintainability of special appeal inter alia has been provided with regard to the order passed 'in the exercise of the jurisdiction conferred by Article 226 or Article 227 of the Constitution' in respect of any judgment, order or award of a tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution.

18. It would be seen that the statutory provision prescribes a bar qua the orders passed 'in exercise of jurisdiction under Article 226 and 227 of the Constitution of India'. No distinction can be made with regard to the nature of the order passed, i.e., interim or final, for the purpose of examining the maintainability of the appeal under Rule 5 of Chapter VIII of the Rules. The submissions made, in case accepted, would lead to contradiction in terms that though qua the final order passed in the writ petition, special appeal would not be maintainable, qua the interim order passed in such writ petition, special appeal can be maintained. Though specific time was granted to the counsel for the appellants to make submissions on the said aspect, he has failed to produce anything in support.

19. Besides the above, as noticed hereinbefore, the first judgment on the subject matter in the case of **Jai Prakash Agarwal (supra)** arose out of grant of an interim order of identical nature, as in the present case and, therefore, the plea sought to be raised seeking a distinction between the 'order interim in nature' and 'final order' cannot be countenanced.

20. So far as judgment in the case of **Ashutosh Shrotriya (supra)** is concerned, the reference before the Larger Bench pertained to maintainability of the appeal, wherein counter and rejoinder affidavits are called, but no order is passed on the stay application, either granting or refusing to grant a stay order, which was dealt with by the Full Bench, which aspect has no relevance to the issue raised in the present special appeal.

21. In the case of **Smt. Surati Devi (supra)**, the contention raised was noticed and without discussing any provision and/or implication thereof, the special appeal was entertained, which judgment does not lay down any law of general application so as to make the present appeal maintainable, despite the consistent unanimous opinion pertaining to the maintainability of the appeal qua the order of present nature, as notice hereinbefore.

22. In view of the above discussion, we are firmly of the opinion that the present special appeal under Rule 5 of Chapter VIII of the Rules is not maintainable. The same is, therefore, dismissed.

(2025) 8 ILRA 1040
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 07.08.2025

BEFORE

THE HON'BLE ABDUL MOIN, J.

Writ A No. 1152 of 2005

Uma Shanker Upadhyaya & Ors. ...Petitioner
Versus
State of U.P. Through Princ. Secy. Deptt. Of Finance & Anr. ...Respondents

Counsel for the Petitioner:
Yogendra Misra, Pankaj Kumar Pandey

Counsel for the Respondents:
C.S.C., M.M. Asthana, Vivek Shukla

Whether a particular cut off date can be fixed by the Government on the ground of financial constraints while extending financial benefits?

Headnotes

A. Service Law - Once no challenge has been raised to the GO dated 20.07.2001 as modified on 08.08.2001 and the subsequent GO dated 03.09.2001 only being in consequence to the earlier GOs and providing certain benefits which have also not been claimed by the petitioners as such no benefit can be extended to the petitioners of the revised pay scales at par with the Central Government Teachers w.e.f. 01.01.1996 even on notional basis.

No challenge has been raised to the GO dated 20.07.2001 which provided for the revised pay scales at par with the Central Government Teachers w.e.f. 01.07.2001. The GO which has been challenged by the petitioners is of 03.09.2001 which only gives the benefit of the revised pay scales at par with the Central Government Teachers on notional basis w.e.f. 01.01.1996 to only those Teachers who were in service on 01.07.2001. No prayer has been made even for grant of revised pay scales w.e.f. 01.01.1996. Thus, (Para 14)

From a perusal of the three GOs (dated 20.07.2001, 08.08.2001 and 03.09.2001), it is apparent that the revised pay scales at par with the Central Government Teachers was only to be given w.e.f. 01.07.2001. Notional fixation has been extended to only those Teachers who were in service as on 01.07.2001. (Para 8 to 11, 13)

All the petitioners had retired prior to 01.07.2001. (Para 12)

B. For the grant of additional benefit, which had financial implications, the prescription of a specific future date for conferment of additional benefit, could not be considered arbitrary. (Para 17)

Petitioners argue that the proforma fixation for the petitioners can be considered inasmuch as even by the subsequent GOs it is only the proforma fixation which has been extended to those Teachers who were in service on 01.07.2001 and thus, the said cut off date has been fixed arbitrarily by the respondents. (Para 15)

Respondents contend that not only in the case of the petitioners but also in the cases of other departments many times decisions are taken as to from which date the benefit of any revised/upgraded pay structure should be given notionally and from which date actually and therefore if the petitioners are allowed the benefits as per their demand then it will have adverse effect on the exchequer and consequently the cut off date has correctly been fixed. (Para 16)

Writ petition dismissed. (E-4)

Case Law Cited

1. Om Prakash Saxena and another Vs. State of U.P. and others, Writ Petition No.1743 (SB) of 2011, decided on 13.05.2019 (Para 17)
2. D.S. Nakara and others Vs. Union of India, (1983) 1 SCC 305 (Para 17)

List of Keywords

Service, pay parity, retirement.

Appearances for Parties

For Appellant: Yogendra Misra,Pankaj Kumar Pandey
For Respondent: C.S.C.,M M Asthana,Vivek Shukla

(Delivered by Hon'ble Abdul Moin, J.)

1. Heard learned counsel for the petitioners and Sri Vivek Shukla, learned Additional Chief Standing Counsel appearing on behalf of the respondents.

2. The facts of the case have already been set forth in detail in the order dated 04.07.2025. The relevant extract of the order dated 04.07.2025 is reproduced below:-

"1. Heard.

2. The petitioners, all retired Teachers of Basic Shiksha Parishad having retired prior to 01.07.2001, are aggrieved by the Government Order dated 29.06.2004, a copy of which is Annexure-2 to the petition, whereby their claim for grant of revised pay scales, so far as pay parity has been granted at par with the Central Government Teachers w.e.f. 01.07.2001, has been rejected. The petitioners are also aggrieved by the portion of the Government Order dated 03.09.2001, a copy of which is Annexure-1 to the petition, where in paragraph 2(1) it has been provided that the benefit of the earlier Government Order shall only be extended to those primary teachers and headmasters who are in service on 01.07.2001. A further prayer is for a mandamus commanding the respondents to grant the pay scales as given to the Central Government teachers to the petitioners also w.e.f. 01.01.1996.

3. Bereft of unnecessary details the facts as urged by the learned counsel for the petitioners are that all the petitioners were primary teachers having retired prior to 01.07.2001. A government order dated 20.07.2001, a copy of which is Annexure-4 to the petition, was issued in pursuance to the Fifth Pay Commission whereby the pay scales of the Fifth Pay Commission were granted to all the primary and secondary school teachers w.e.f. 01.01.1996. At the same time, considering the parity as had been claimed by the said teachers with the Central Government teachers, a revised pay scale was granted w.e.f. 01.07.2001 to the said teachers which, as already indicated above, was at par with the Central Government teachers. The Government Order dated 20.07.2001 provided in Clause 3 that a separate order would be issued for the purposes of admissibility of the pay scales, pay fixation and payment of arrears.

4. Considering clause 3 of the Government Order dated 20.07.2001 another Government Order dated 08.08.2001, a copy of which is Annexure-5 to the writ petition, was issued which, according to the petitioners, extended the benefit of pay scale which had been provided w.e.f. 01.07.2001 w.e.f. 01.01.1996 itself.

5. However, even before the petitioners could be granted the benefit of the said government order dated 08.08.2001 the government order impugned dated 03.09.2001, a copy of which is Annexure-1 to the petition, was

issued which provided that the benefit of the revised pay scale, as provided vide government order dated 20.07.2001 i.e. at par with the Central Government teachers to the primary and secondary teachers, would only be admissible to those teachers who are in service on 01.07.2001.

6. The grievance of the petitioners is that once the government order dated 20.07.2001 had in fact granted parity to the teachers of the primary and secondary with the Central Government teachers yet the same was provided w.e.f. 01.07.2001 but subsequent thereto vide government order dated 08.08.2001 the benefit of the said pay scales was extended w.e.f. 01.01.1996 consequently there cannot be any occasion for issuance of the government order dated 03.09.2001 whereby restricting the said pay scales to only those teachers who were in service on 01.07.2001 more particularly when the petitioners had already retired on attaining the age of superannuation prior to 01.07.2001 and thus the impugned government order dated 03.09.2001 tends to create a class in the class of the teachers.

7. On the other hand, Sri Vivek Shukla, learned Additional Chief Standing Counsel, while placing reliance on the averments made in the counter affidavit filed on behalf of respondent no.1 has argued that as the petitioners are retired teachers between 01.01.1996 to 01.07.2001 consequently there are not entitled to the benefit of the Government Order dated 03.09.2001 and that the government order dated 03.09.2001 has correctly been passed.

8. Elaborating the same, the argument of Sri Shukla is that once the petitioners had retired prior to the said pay scale at par with the teachers of the Central Government coming into force i.e. w.e.f. 01.07.2001 as such the pension of the petitioners is to be fixed on the basis of the last drawn salary that had been drawn by them and thus there cannot be any occasion for extension of the said revised pay scale as has come into force w.e.f. 01.07.2001 to the petitioners who are all retired teachers.

9. However, before proceeding further the effect of the Government Order dated 08.08.2001 would have to be considered more particularly when the government order dated 20.07.2001 categorically provided in Clause 3 that a separate order would be issued pertaining to pay fixation, payment of arrears etc. and the government order dated 08.08.2001 has been issued considering Clause 3 of the government order dated 20.07.2001. Thus, it would have to be considered as to whether the government order dated 08.08.2001 would only be restricted to Clause 3 of the government order dated 20.07.2001 and not to the actual fixation of revised pay at par with Central Government teachers w.e.f. 01.01.1996, as has been urged by the learned counsel for the petitioners."

3. From perusal of the aforesaid order it thus emerges that the interpretation of the Government Orders dated 20.07.2001, 08.08.2001 and 03.09.2001 is to be considered i.e. as to whether the revised pay scales at par with the Central Government Teachers would be admissible w.e.f. 01.01.1996 or 01.07.2001.

4. Admittedly, all the petitioners retired prior to 01.07.2001.

5. The Government order dated 20.07.2001 on reproduction reads as under:-

"Announcement of giving Pay Scale to teachers as per Fifth Pay Commission

No.- Ve.Aa.-2-1262/Das-2001-53/2001

From,
V.K. Sharma,
Secretary, Finance,
U.P. Govt.

To,

1- Principal Secretary, Education, U.P. Govt.

2- Secretary, Secondary/Basic Education, U.P. Government

3- Director, Secondary/Basic Education, U.P. Govt.

Finance(Finance Commission) Section-2 Lucknow: Date: 20 July, 2001

***Subject:-** Regarding granting the same pay scale to the teachers of primary and secondary educational institutions of the State as that of the teachers of equivalent level at the Centre, on the basis of the recommendations of the Fifth Central Pay Commission.*

Sir,

I am directed to state that on the basis of the decision taken on the recommendations made in the Second Report (Partial)/Sixth Report of Pay Committee (1997-99), revised pay scales have been approved for the teachers of educational institutions of the State w.e.f 1-1-1996 vide Government Order No.- Ve.Aa.-2-1007/Das-17G-98, dated: 10th July, 1998 and Government Order No.- Ve.Aa.-2-1282/Das-17 (G)-98, dated: 07th October, 1998.

2. After due consideration of the demand of teachers of primary and secondary educational institutions of the State regarding granting pay scale equal to that of the equivalent teachers of Central Government on the recommendations of Fifth Central Pay Commission, the Governor is pleased to accord his approval for amending the pay scale of teachers mentioned in Column-1 of the annexed table from the pay scales admitted to them from 1.1.1996, mentioned in Column-2, as per the pay scales mentioned in Column-3, w.e.f. 01st July, 2001.

3. As per above, the necessary government orders will be issued separately for the concerned teachers regarding admissibility of Regular Grade/ Selection Grade and Promotional Grade, process of pay fixation and payment of arrears etc. in the amended pay scales.

Enclosures:- As above

Sincerly,
V.K. Sharma,
Secretary, Finance

Annexure to Government Order No.- Ve.Aa.2-1262/ Das-2001-53/2001, Dated: July 20, 2001

Designation	***Pay Scale applicable from 1-1-1996 (Rs.)***	***Amended Pay Scale applicable from 1-7-2001 (Rs.)***
Basic Education		
1- Primary Teacher *A- Regular Grade* *B- Selection Grade*	*3600-85-4450-100-5350* *4000-85-4680-100-5780*	*4500-125-7000* *5000-150-8000*
2- Principal of Primary/ Teacher of Upper Primary *A- Regular Grade* *B- Selection Grade*	*4250-100-5150-125-6400* *4625-125-6750*	*5500-175-9000* *6500-200-10500*
3- Headmaster of Upper Primary *A- Regular Grade* *B- Selection Grade*	*4625-125-7000* *4800-150-7650*	*6500-200-10500* *7500-250-12000*
Secondary Education		
1- L.T. Teacher *A- Regular Grade* *B- Selection Grade* *C-Promotional Grade*	*4500-125-7000* *5500-175-8650* *6500-200-10500*	5500-175-9000 6500-200-10500 7500-250-12000
2- Lecturer *A- Regular Grade* *B- Selection Grade* *C-Promotional*	*5500-175-8650* *6500-200-10500* *8000 -275 - 13500*	*6500-200-10500* *7500-250-12000* *8000-275-13500*

Grade		
3- Headmaster of High School *A- Regular Grade* *B- Selection Grade*	*6500-200-10500* *8000-275-13500*	*7500-250-12000* *8000-275-13500*
4- Principal *A- Regular Grade* *B- Selection Grade*	*8000-275-13500* *10000-325-15200*	*10000-325-15200*

R.S. Singh
Special Secretary, Finance."
(Translation by the Court)

6. The Government order dated 08.08.2001 on reproduction reads as under:-

"Procedure for Pay Fixation of Teachers
No.: Ve.Aa.-2-1432/Das-2001-53/2001
From,
V.K. Sharma,
Secretary, Finance,
Government of Uttar Pradesh.

To,
1. *The Principal Secretary, Education, Government of Uttar Pradesh*
2. *The Secretary, Secondary /Basic Education, Government of Uttar Pradesh*

3. *The Director, Secondary/Basic Education, Uttar Pradesh*
. *Finance (Pay Commission) Section-2*
Lucknow: Date: 08 August 2001
Subject: *Procedure for fixation of pay in the amended pay scales*
sanctioned w.e.f. 01 July 2001 for the teachers of primary and secondary
educational institutions of the State.
Sir,
I am directed to state in reference to the aforementioned subject that vide Government Order No. Ve.Aa.-2-1262/Das-2001-53/2001 dated 20 July 2001, orders have been issued for amending the pay scales of primary and secondary school teachers of the State w.e.f. 01 July 2001. In continuation of Para 3 of the aforesaid Government Order dated 20 July 2001 and in accordance with the Annexure thereto, the Hon'ble Governor is pleased to accord approval for the admissibility of the sanctioned amended pay scales (Regular Grade/ Selection Grade / Promotional Grade) subject to the following conditions :

(1) The amended pay scale shall be admissible only to those teaching posts which are mentioned in Column-1 of the Annexure to aforesaid Government Order dated 20 July 2001.

(2) All conditions and restrictions prescribed in the pay scale applicable from 01.01.1996 for the admissibility of the Selection Grade/Promotional Grade shall continue to remain applicable for the admissibility of the amended Selection Grade/Promotional Grade.

(3) If there exists a combined cadre of teaching and non-teaching posts, and the pay scale of the teaching post has been upgraded under the aforementioned Government Order dated 20 July 2001, then the upgraded pay scale shall be admissible to the incumbents of the combined cadre only upon assuming the teaching post on the basis of seniority.

(4) If the pay scale of any post of a feeding cadre, under the above Government Order dated 20 July 2001, becomes higher than that of its promotional post, then under the existing provisions, the incumbents officiating on the promotional post shall have the option to revert to their previously held post.

2. *I am further directed to state that following procedure shall be adopted for fixation of pay and payment of arrears*

in the above sanctioned amended pay scales :

(1) The pay of concerned incumbent in the pay scale amended w.e.f. 01 July 2001, shall be fixed in accordance with Audit Instruction No. 4 given below to Fundamental Rule 22 of the Financial Handbook, Volume II, Part 2–4. The concerned incumbent shall have the right to exercise an option under Fundamental Rule 23(1) i.e. he may opt for the amended pay scale either from 01 July 2001 or from the date of any subsequent increment in the existing pay scale. However, the option once exercised in this regard, shall be treated as final. The last date for exercising the option shall be within a period of 90 days from the date of issuance of this Government Order. If no option is submitted by any teacher within the stipulated time period, it shall be deemed that he has opted to receive the amended pay scale w.e.f. 01 July 2001 subject to admissibility.

(2) As a result of pay scale fixation in the amended pay scale, the increased amount of salary (if any) for the period from 01 July 2001 to 31 December 2001 shall be deposited in the Provident Fund account of the concerned incumbent. If any incumbent is not a member of the Provident Fund, the said amount shall be given to him in the form of National Savings Certificate (NSC); however, the portion of the amount for which NSC is not available, shall be paid in cash.

(3) The cash payment of enhanced pay shall be made along with the salary for the month of January 2002 (which will be payable in February 2002).

Sincerely,
V.K. Sharma
Secretary, Finance"

(Translation by the Court)

7. The Government order dated 03.09.2001 on reproduction reads as under:-

"Fifth Central Pay Commission- Equal pay scales to be provided at equivalent levels.

Number - Ve.Aa.-2-1650/Das -2001-53/2001

From,
Anand Mishra,
Secretary, Finance,
Government of Uttar Pradesh.

To
, 1- Principal Secretary, Education, Government of Uttar Pradesh.
2- Secretary Secondary Education/Basic Education,Government of Uttar Pradesh.
3- Director, Secondary Education/Basic Education, Uttar Pradesh.

Finance (Pay Commission) Section – 2
Lucknow: Dated 03 September, 2001

Subject: *Regarding granting the same pay scale to the teachers of primary and secondary educational institutions of the State as that of the teachers of equivalent level at the Centre on the basis of the recommendations of the Fifth Central Pay Commission.*

Sir,

With reference to the above-mentioned Government Order No. Ve.Aa.-2-2162/Das-2001-53/2001, dated 20 July, 2001 and Government Order No. Ve.Aa.-2-1432/Das-2001-53/2001, dated 08 August, 2001, I am directed to convey that after due consideration the Governor is pleased to approve the amendment of pay scales for Basic Education teachers mentioned in the table annexed to the Government Order dated 20 July 2001, according to the table annexed with this Government Order.

2. Paragraph 2(1) of Government Order No. Ve.Aa.-2-1432/Das-2001-

53/2001, dated 8 August, 2001, regarding the pay fixation of Primary and Secondary Education teachers of the State in the amended pay scales effective from 01 July, 2001, shall stand amended as follows:

(1) The pay of such teachers of Primary Education, mentioned in Column 1 of the Annexure to this Government Order, who were in service on 01 July, 2001, shall be fixed from the pay scales shown in Column 2 to the pay scales mentioned in Column 3 on notional basis from 01.01.1996 or afterwards date of appointment. Similarly, the pay of such teachers of Secondary Education, who were in service on 01 July, 2001, shall be fixed from the pay scale shown in Column 2 of the Annexure to Government Order No. Ve.Aa.-2-1262/Das-2001-53/2001, dated 20 July, 2001 to the pay scale in Column 3, on notional basis from 01.01.1996 or the afterwards actual date of appointment. Thus the payment of pay calculated after pay fixation on notional basis w.e.f. 01 July 2001 shall be made as per the provisions of Paragraphs 2(2) and 2(3) of Government Order No. Ve.Aa.-2-1432/Das-2001-53/2001, dated 08 August, 2001. As per above arrangement, no arrear shall be payable for the period from 01 January, 1996 to 30 June, 2001 in consequence of notional pay fixation w.e.f. 01.01.1996.

(2) Government Orders regarding amendment/admissibility in the current provisions of selection grade and promotional grade for Basic Education teachers will be issued separately.

3. The above-mentioned Government Orders be presumed amended up to above extent, and all their other terms and conditions shall remain applicable as these are.

Enclosure: As above.

Sincerely

Anand Mishra,
Secretary, Finance.

Annexure to Government Order No. Ve.Aa.-2-1650/Das-2001-53/2001, dated 03 September, 2001

Designation	**Existing Pay Scale applicable w.e.f. 01-01-1996 (Rs.)**	**Amended pay scale w.e.f. 1-7-2001 (Rs.)**
1	2	3
Basic Education		
1- Primary Teacher		
(a) Regular Grade	*3600-85-4450-100-5350*	*4500-125-7000*
(b) Selection Grade	*4000-85-4680-100-5780*	*5000-150-8000*
(c) Promotional Grade		*5500-175-9000*
2- Headmaster Primary / Teacher Upper Primary		
(a) Regular Grade	*4250-100-5150-125-6400*	*5500-175-9000*
(b) Selection Grade	*4625-125-6750*	*6500-200-10500*
(c) Promotional Grade	*4625-125-7000*	*7500-250-12000*
3- Headmaster Upper	*4800-150-7650*	*8500-200-10500*
		7500-250-12000
		8000-275-13500

Primary *(a) Regular Grade* *(b) Selection Grade* *(c) Promotional Grade*		

R.S. Singh
Special Secretary, Finance."
(Translation by the Court)

8. From perusal of the Government Order dated 20.07.2001, it emerges that the said Government Order had been issued on the demand of the Teachers of Primary and Secondary Education Institutions regarding granting pay scales equal to that of equivalent level Teachers of the Central Government on the recommendation of the 5th Central Pay Commission. His Excellency the Governor had accorded approval for amending the pay scales of the Teachers mentioned in Column 1 of the annexed table from the pay scales applicable to them from 01.01.1996 mentioned in Column 2 w.e.f. **01.07.2001**. However, Clause 3 of the Government Order dated 20.07.2001 provided that the necessary government orders would be issued separately for the concerned teachers regarding admissiblity of regular scale/selection grade and promotional grade. However, there cannot be any dispute that the said pay scales were to come into force w.e.f. 01.07.2001.

9. So far as the petitioners are concerned their pay scales as applicable w.e.f. 01.01.1996 was Rs.3600-5350 to be amended to Rs.4500-7000 but w.e.f. 01.07.2001.

10. Vide Government Order dated 08.08.2001 the earlier government order was reiterated i.e. the pay scales being brought at par with those of the Central Government Teachers w.e.f. **01.07.2001**. Thus, even this Government Order dated 08.08.2001 indicates that the said amended pay scales were to come into force w.e.f. 01.07.2001.

11. The aforesaid two government orders were followed by the Government Order dated 03.09.2001 which specifically provided that the pay scales of Teachers of Primary Education mentioned in Column 1 of the Annexure to the Government Order dated 20.07.2001 would be given only to those Teachers who were in service on 01.07.2001. However, notional fixation shall be given w.e.f. 01.01.1996 to such Teachers who were in service as on 01.07.2001.

12. As already indicated above, all the petitioners had retired prior to 01.07.2001.

13. Thus, from a perusal of the aforesaid three government orders it is apparent that the revised pay scales at par with the Central Government Teachers was only to be given w.e.f. 01.07.2001. Notional fixation has been extended to only those Teachers who were in service as on 01.07.2001.

14. No challenge has been raised to the Government Order dated 20.07.2001 which provided for the revised pay scales at par with the Central Government Teachers w.e.f. 01.07.2001. The Government Order which has been challenged by the petitioners is of 03.09.2001 which only gives the benefit of the revised pay scales at par with the Central Government Teachers on notional basis w.e.f.

01.01.1996 to only those Teachers who were in service on 01.07.2001. No prayer has been made even for grant of revised pay scales w.e.f. 01.01.1996. Thus, once no challenge has been raised to the Government Order dated 20.07.2001 as modified on 08.08.2001 and the subsequent Government Order dated 03.09.2001 only being in consequence to the earlier government orders and providing certain benefits which have also not been claimed by the petitioners as such no benefit can be extended to the petitioners of the revised pay scales at par with the Central Government Teachers w.e.f. 01.01.1996 even on notional basis.

15. At this stage, learned counsel for the petitioners argues that the proforma fixation for the petitioners can be considered inasmuch as even by the subsequent government orders it is only the proforma fixation which has been extended to those Teachers who were in service on 01.07.2001 and thus, the said cut off date has been fixed arbitrarily by the respondents.

16. Responding to the said argument regarding fixing of the cut off date for grant of even proforma benefit Sri Vivek Shukla, learned Additional Chief Standing Counsel has referred to the averments made in paragraph 8 of the counter affidavit to contend that not only in the case of the petitioners but also in the cases of other departments many times decisions are taken as to from which date the benefit of any revised/upgraded pay structure should be given notionally and from which date actually and therefore if the petitioners are allowed the benefits as per their demand then it will have adverse effect on the exchequer and consequently the cut off date has correctly been fixed.

17. However, even though no case has been set forth in the entire writ petition pertaining to the said argument as raised by the learned counsel for the petitioners yet as to whether a particular cut off date can be fixed by the Government on the ground of financial constraints while extending financial benefits has been considered threadbare by this Court in the case of **Om Prakash Saxena and another vs. State of U.P. and others** in Writ Petition No.1743 (SB) of 2011 decided on 13.05.2019 wherein after considering various judgments of Hon'ble Supreme Court including the judgment of **D.S. Nakara and others vs. Union of India – (1983) 1 SCC 305** it has been held as under:-

*"35. The argument raised by learned State Counsel that financial constraints would be a valid ground for fixation of a cut off date for grant of benefits as has been done with the issue of the Government Order dated 28.02.2007 with prospective effect. Though this ground has not been specifically taken by the respondents in the counter affidavit, as correctly pointed out by the learned counsel for the petitioners, yet the said ground has been taken during the course of argument and consequently can very well be considered by a Court of law while deciding the case keeping in view the law laid down by Hon'ble Supreme Court in the case of **N. Subbarayudu (supra)** wherein Hon'ble Supreme Court has held as under:-*

"5. In a catena of decisions of this Court it has been held that the cut off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut off dates is within the domain of the executive authority and the Court should not

normally interfere with the fixation of cut off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary. (See State of Punjab v. Amar Nath Goyal)

6. No doubt in D.S. Nakara v. Union of India this Court had struck down the cut off date in connection with the demand of pension. However, in subsequent decisions this Court has considerably watered down the rigid view taken in Nakara's Case, as observed in para 29 of the decision of this Court in State of Punjab v. Amar Nath Goyal.

7. There may be various considerations in the mind of the executive authorities due to which a particular cut off date has been fixed. These considerations can be financial, administrative or other considerations. The Court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut off date. The Government must be left with some leeway and free play at the joints in this connection.

8. In fact several decisions of this Court have gone to the extent of saying that the choice of a cut off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter affidavit filed by the Government, (unless it is shown to be totally capricious or whimsical) vide State of Bihar v. Ramjee Prasad , Union of Indian v. Sudhir Kumar Jaiswal (Vide SCC Para 5), Ramrao v. All India Backward Class Bank Employees Welfare Assn. (Vide SCC Para 31), University Grants Commission v. Sadhana Chaudhary etc. ***It follows, therefore, that even if no reason has been given in the counter affidavit of the Government or the executive authority as to why a particular cut off date has been chosen, the Court must still not declare that date to be arbitrary and violative of Article 14 unless the said cut off date leads to some blatantly capricious or outrageous result."***

36. The ground raised on behalf of the respondents that extending of the benefit of the Government Order dated 28.02.2007 to the petitioners who received end of session benefit in terms of the earlier Government Order would put a large financial burden on the State inasmuch as all such teachers who were also given end of session benefit in terms of the earlier Government Orders would also stake their claim for extension of the benefit of the Government Order dated 28.02.2007 and thus consciously the Government Order dated 28.02.2007 has been given prospective effect is a valid ground. In this regard, the position of law is no longer res-integra keeping in view the various judgments of Hon'ble Supreme Court which are being discussed below which have clearly held that a cut off date can be introduced on the ground of financial implication.

37. Hon'ble the Supreme Court in the case of ***Amar Nath Goyal (supra)*** *has upheld the cut off date which was introduced on the ground of financial implication. For the sake of convenience, relevant observations of Hon'ble Supreme Court are reproduced as under:-*

"26. It is difficult to accede to the argument on behalf of the employees that a decision of the Central Government/ State Governments to limit the benefits only to employees, who retire or die on or after 1.4.1995, after calculating the financial implications thereon, was either irrational or arbitrary. Financial and economic implications are very relevant and germane for any policy decision touching the administration of the Government, at the center or at the State level.

27. Even by O.M. dated 19.10.1993, all that happened was that a

portion of the dearness allowance linked to average Consumer Price Index of 729.91 obtaining as on 1.3.1988 (i.e. 20% of the basic pay) was treated as dearness pay. This would count only for reckoning the emoluments for the purpose of calculating retirement-cum-death gratuity under the applicable rules and for no other purpose. This change was brought into effect from 16.9.1993.

28. Even at that time, interestingly, the benefits were not made admissible from 1.3.1988, i.e. the date of the Average Consumer Price Index of 729.91, but from a much further date i.e. 16.9.1993. The Central Government adopted the same policy while issuing the O.M. dated 14.7.1995. Although, dearness allowance linked to the All India Average Consumer Price Index 1201.66 (as on 1.7.1993), was treated as reckonable part of dearness allowance for the purpose of calculating the death-cum-retirement gratuity, the benefit was actually made available to the employees who retired or died on or after 1.4.1995. Similarly, the increase in the ceiling of gratuity was a mere consequential step, which was also made applicable from 1.4.1995. As we have already noticed, 1.4.1995 was the date suggested by the Fifth Central Pay Commission ("Pay Commission") in its Interim Report. The Central Government took a conscious stand that the consequential financial burden would be unbearable. It therefore, chose to taper down the financial burden by making the benefits available only from 1.4.1995.

It is trite that, the final recommendations of the Pay Commission were not ipso facto binding on the Government as the Government had to accept and implement the recommendations of the Pay Commission consistent with its financial position. This is precisely what the Government did. Such an action on the part of the Government can neither be characterized as irrational, nor as arbitrary so as to infringe Article 14 of the Constitution.

29. D.S. Nakara (supra), which is the mainstay of the case of the employees, arose under special circumstances, quite different from the present case. It was a case of revision of pensionary benefits and classifications of pensioners into two groups by drawing a cut-off line and granting the revised pensionary benefits to employees retiring on or after the cut-off date. The criterion made applicable was "being in service and retiring subsequent to the specified date". This Court held that for being eligible for liberalised pension scheme, application of such a criterion is violative of Article 14 of the Constitution, as it was both arbitrary and discriminatory in nature. The reason given by the Court was that the employees who retired prior to a specified date, and those who retired thereafter formed one class of pensioners. The attempt to classify them into separate classes/ groups for the purpose of pensionary benefits was not founded on any intelligible differentia, which had a rational nexus with the object sought to be achieved. However, it must be noted that even in cases of pension, subsequent judgments of this Court have considerably watered down the rigid view taken in D.S. Nakara as we shall see later in T.N. Electricity Board v. R. Veerasamy ("Veerasamy"). In any event this is not a case of a continuing benefit like pension; it is a one-time benefit like gratuity.

30. In Union of India v. P.N. Menon, while implementing the recommendations of the Third Pay Commission with regard to dearness pay linked to average index level 272, which was to be counted as emoluments for

pension and gratuity under Central Civil Services (Pension) Rules, 1972, the Central Government had fixed a certain cut-off date and directed that only officers retiring on or after the specified date were entitled to the benefits of the dearness pay being counted for the purpose of retirement benefits. This was challenged as arbitrary and violative of Article 14 of the Constitution. This Court turned down the challenge and observed:

"Not only in matters of revising the pensionary benefits, but even in respect of revision of scales of pay, a cut-off date on some rational or reasonable basis, has to be fixed for extending the benefits. This can be illustrated. The Government decides to revise the pay scale of its employees and fixes the 1st day of January of the next year for implementing the same or the 1st day of January of the last year. In either case, a big section of its employees are bound to miss the said revision of the scale of pay, having superannuated before that date. An employee, who has retired on 31st December of the year in question, will miss that pay scale only by a day, which may affect his pensionary benefits throughout his life. No scheme can be held to be foolproof, so as to cover and keep in view all persons who were at one time in active service. As such the concern of the court should only be, while examining any such grievance, to see, as to whether a particular date for extending a particular benefit or scheme, has been fixed, on objective and rational considerations."

31. In Action Committee South Eastern Railway Pensioners v. Union of India, it was held that, on merger of a part of dearness allowance as dearness pay on average price index level at 272 with reference to different pay ranges, fixing a cut-off date in such a manner was not arbitrary and the principle enunciated in D.S. Nakara was not applicable. In this connection, the ratios in Krishena Kumar v. Union of India, Indian Ex-Services League v. Union of India, State Government Pensioners' Assn. v. State of A.P., and All India Reserve Bank Retired Officers' Assn. v. Union of India, are apt. In all these cases, the prescription of a cut-off date for implementation of such benefits was held not to be arbitrary, irrational or violative of Article 14 of the Constitution.

32. The importance of considering financial implications, while providing benefits for employees, has been noted by this Court in numerous judgments including in the following two cases. In State of Rajasthan v. Amritlal Gandhi, this Court went so as far as to note that:

"...Financial impact of making the Regulations retrospective can be the sole consideration while fixing a cut-off date. In our opinion, it cannot be said that this cut-off date was fixed arbitrarily or without any reason. The High Court was clearly in error in allowing the writ petitions and substituting the date of 1.1.1986 for 1.1.1990.

33. More recently, in Veerasamy, this Court observed that financial constraints could be a valid ground for introducing a cut-off date while implementing a pension scheme on a revised basis. In that case, the pension scheme applied differently to persons who had retired from service before 1.7.1986, and those who were in employment on the said date. It was held that they could not be treated alike as they did not belong to one class and they formed separate classes.

34. In State of Punjab v. Boota Singh ("Boota Singh") after considering several judgments of this Court in D.S. Nakara to K.L. Rathee v. Union of India, it was held that D.S. Nakara should not be interpreted to mean that the emoluments of

persons who retired after a notified date holding the same status, must be treated to be the same.

35. In State of Punjab v. J.L. Gupta where one of us was on the Bench (Sabharwal, J.), the views expressed in Boota Singh were reiterated, and it was held that for the grant of additional benefit, which had financial implications, the prescription of a specific future date for conferment of additional benefit, could not be considered arbitrary.

36. In Ramrao v. All India Backward Class Bank Employees Welfare Assn., a Division Bench of this Court said, even for the purpose of effecting promotion, the fixing of a cut-off date was neither arbitrary, unreasonable nor did it offend Article 14 of the Constitution. Moreover, the Court held that possible hardship to be endured by a person as a result did not make cut-off dates violative of Article 14.

37. In the instant case before us, the cut-off date has been fixed as 1.4.1995 on a very valid ground, namely, that of financial constraints. Consequently, we reject the contention that the fixing of the cut-off date was arbitrary, irrational or had no rational basis or that it offends Article 14."

*38. Hon'ble Supreme Court in the case of **Rajesh Chander Sood (supra)** has held as under:-*

"75. Having given our thoughtful consideration to the issue canvassed, and having gone through the judgments cited, we are of the considered view, that this Court has repeatedly upheld a cut-off date, for extending better and higher pensionary benefits, based on the financial health of the employer. A cut-off date can therefore legitimately be prescribed for extending pensionary benefits, if the funds available cannot assuage the liability, to all the existing pensioners. We are therefore satisfied to conclude, that it is well within the authority of the State Government, in exercise of its administrative powers (which it exercised, by issuing the impugned repeal notification dated 2.12.2004) to fix a cut-off date, for continuing the right to receive pension in some, and depriving some others of the same. This right was unquestionably exercised by the State Government, as determined by this Court, in the R.R. Verma case, wherein this Court held, that the Government was vested with the inherent power to review. And that the Government was free to alter its earlier administrative decisions and policy. Surely, this is what the State Government has done in the present controversy. But this Court in the above mentioned judgment, placed a rider on the exercise of such power by the Government. In that, the exercise of such power, should be in consonance with all legal and statutory obligations.

76. It is equally true, that the power of administrative review can only be exercised, for a good and valid justification. Such justification besides being founded on reasonable consideration, should also not be violative of any legal right - statutory or constitutional, vested in the affected employees. Insofar as the permissibility of the administrative action taken, in issuing the impugned repeal notification dated 2.12.2004 is concerned, whether the said power was exercised by the State Government for good and valid reasons, and/or whether the same violated any statutory or constitutional right vested in the respondent-employees, shall be examined by us in the succeeding paragraphs."

*39. Hon'ble Supreme Court in the case of **T.M. Sampath (supra)** has held as under:-*

"40. We have carefully perused the judgment of the High Court of Jharkhand in P.N. Mishra v. Union of India against which SLP(C) No.19102 of 2012 has been filed and we concur with the view of the High Court. The cut-off date is a domain of the employer and so the introduction of new scheme of pension will be done considering all the relevant factors including financial viability of the same. No interference is warranted unless there is gross injustice is perpetrated. The Appellants have failed to prove any arbitrariness and discrimination with respect to the New Pension Scheme.

41. In the light of the discussion in the foregoing paragraphs, the writ petitions and the appeal are also dismissed. However, there shall be no order as to costs."

40. Likewise, Hon'ble Supreme Court in the case of ***Ratan Behari Dey (supra)*** *has held as under:-*

"7. In our opinion, the principle of Nakara has no application to the facts of this case. The precise principle enunciate in Nakara has been duly explained in Krishena Kumar by a coordinate Bench. For reasons to be assigned hereinafter, it cannot be said that prescribing April 1, 1977 as the date from which the new Regulations were to come into force is either arbitrary or discriminatory. Now, it is open to the State or to the Corporation, as the case may be, to change the conditions of service unilaterally. Terminal benefits as well as pensionary benefits constitute conditions of service. The employer has the undoubted power to revise the salaries and/or the pay-scales as also terminal benefits/pensioners benefits. The power to specify a date from which the revision of pay scales or terminal benefits/pensionary benefits, as the case may be, shall take effect is a concomitant of the said power. So long as such date is specified in a reasonable manner, i.e. without bringing about a discrimination between similarly situated persons, no interference is called for by the Court in that behalf. It appears that in the Calcutta Corporation, a pension scheme was in force prior to 1914. Later, that scheme appears to have been given up and the Provident Fund Scheme introduced Under the Provident Fund Scheme, a certain amount was deducted from the salary of the employees every month and credited to the Fund. An equal amount was contributed by the employer which too was credited to the Fund. The total amount to the credit of the employee in the Fund was paid to him on the date of his retirement. The employees, however, were demanding the introduction of a pension scheme. The demand fell on receptive years in the year 1977 may be because in that-year the Left Front Government came to power in that State, as suggested by the writ petitioners. The State government appointed a Commission to examine the said demand and to recommend the necessary measures in that behalf. The three members constituting the Commission differed with each other in certain particulars. The Government examined their recommendations and accepted them with certain modifications in the year 1981. After processing the matter through relevant departments, the Regulations were issued and published in the year 1982. In the above circumstances, the State Government thought that it would be appropriate to give effect to the said Regulations on and from April 1, 1977 i.e., the first day of the financial year in which the Pay Commission was appointed by the Government - a fact which could not have been unknown to the Corporation employees. We cannot say that the Government acted unreasonably in

specifying the said date. It may also be said that, that was the year in which the Left Front came into power in that State, but that does not detract from the validity of the aforesaid reasons assigned by the State in its counter-affidavit filed before the Division Bench of the High Court. We are not in agreement with the opinion expressed by the High Court that the reasons assigned by the State Government are neither relevant not acceptable

8. In this context, it may be remembered that the power of the State to specify a date with effect from which, the Regulations framed, or amended, as the case may be, shall come into force is unquestioned. A date can be specified both prospectively as well as retrospectively. The only question is whether the prescription of the date in this case is neither arbitrary now unreasonable, the complaint of discrimination must fail.

9. Now coming to the argument of Sri P.P. Rao that the Regulations bring about an unreasonable classification between similarly placed employees in concerned, we must say that we are not impressed by it. It is not submitted that the Corporation had no power to give retrospective effect to the Regulations. It was within the power of the Corporation to enforce the Regulations either prospectively or with retrospective effect from such date as they might specify. Of course, as repeatedly held by this Court, in such cases the State cannot, as the expression goes, pick a date out of its hat. It has to prescribe the date in a reasonable manner, having regard to all the relevant facts and circumstances. Once this is done, question of discrimination does not arise. Reference in this behalf may also be had to the decision of this Court in Sushma Sharma v. State of Rajasthan , a decision of the Division Bench comprising E.S. Venkataramiah and Sabyasachi Mukherji, JJ. "

18. Thus, considering the law laid down by this Court in the case of **Om Prakash Saxena (supra)** the said argument of learned counsel for the petitioners is also rejected.

19. Keeping in view the aforesaid discussion, no case for interference is made out. The writ petition is accordingly **dismissed**.

(2025) 8 ILRA 1054
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 05.08.2025

BEFORE

THE HON'BLE ABDUL MOIN, J.

Writ A No. 1887 of 2014

Arpit Khanna ...Petitioner
Versus
Chief General Manager State Bank of India Lucknow & Anr. ...Respondents

Counsel for the Petitioner:
Surya Narayan Mishra, Jyoti Sikkanee Mehrotra, Kuldeep Kumar Awasthi

Counsel for the Respondents:
Anurag Srivastava, Durga Prasad Dwivedi, Sharad Dwivedi

Issues for consideration

(a) Whether appointment can be cancelled on the ground of misconduct (impersonation) after lapse of a certain period of time?
(b) Whether such cancellation amounts to violation of principles of natural justice?

Headnotes

A. Service Law - From the expert's report, it is apparent that impersonation has been carried out at the time of selection which

has resulted in the petitioner being selected. (Para 37)

The first ground raised by the petitioner for raising a challenge to the order impugned is that at the time of the written examination neither any signature nor thumb impression was made by the petitioner on any paper. (Para 26)

The said ground is found to be patently fallacious and misconceived and hence rejected. The reason is that a copy of the attendance list has been filed by the respondent as part of Annexure CA-1 (Page 26 of the counter affidavit) which indicates both the thumb impression and the signature of the petitioner. (Para 27)

The petitioner had applied for appointment in clerical cadre for the post of Assistant under the petitioner had tried to procure appointment by impersonation and thus in terms of the Clause 12 of the offer of appointment, his offer of appointment has been cancelled. (Para 23)

In support of there being difference in the signature and thumb impression of the petitioner as made in the call letter and the attendance list at the time of the written examination as well as scrutiny of the documents, the matter had been referred by the respondents for an expert opinion. The hand writing expert has submitted his report dated 28/29.06.2013 which clearly indicates the difference in the signatures and thumb impression of the petitioner in the call letter *vis a vis* the attendance list and scrutiny of the documents. Incidentally, **no challenge has been raised to the handwriting expert's report on the basis of which the respondent-Bank has passed the order impugned and has held that there had been impersonation on the part of the petitioner.** (Para 24, 29)

B. The other ground taken by the petitioner is that the petitioner had been sent for training and the offer of appointment is dated 27.11.2012 as such there cannot be any occasion for the respondents to have cancelled the offer of appointment after a period of more than 9 months. The said ground is also found to be misconceived inasmuch as whenever the fraud has been detected by the respondents and that too after obtaining the expert's report dated 28/29.06.2013 that the impugned order cancelling the offer of appointment of the petitioner had been passed on 12.08.2013 and thus **merely because 9 months lapsed between the offer of appointment and cancellation, the same cannot be considered to be a valid ground and hence rejected.** (Para 28)

C. To sustain the allegation of violation of principles of natural justice, one must establish that prejudice has been caused to him for non-observance of principles of natural justice. Thus, even if in a given case there has been some deviation from the principles of nature justice, the court is not bound to interfere. (Para 32 to 35)

Nowhere in the entire petition has the petitioner indicated as to what prejudice has been caused to him on account of violation of the principle of natural justice and consequently keeping in view the law laid down by the Hon'ble Supreme Court that **in case only one conclusion is possible then the court may not issue its writ to compel the observance of natural justice**, no interference is required. (Para 30, 36)

respondent-Bank. He had appeared in the written examination and was declared successful. He appeared for the interview and was thereafter declared selected for the said post. Subsequent thereto he was called for scrutiny of his documents, which were scrutinized by the respondents. Offer of appointment dated 27.11.2012 had been issued to the petitioner. However, vide the order impugned dated 12.08.2013 his selection for the post of Assistant has been cancelled and the offer of appointment has been revoked. (Para 22)

The respondents have indicated that the signatures and thumb impressions obtained at the time of scrutiny and written examination are different and thus the Bank concluded that the

Writ petition dismissed. (E-4)

Case Law Cited

1. In Re Sashi Bhushan Kumar & Ors vs Union of India & Ors., W.P.C.T. 178 of 2012 (Para 13)
2. S.L.Kapoor Vs. Jagmohan and Ors., MANU/SC/0036/1980 (Para 30)
3. Aligarh Muslim University Vs. Mansoor Ali Khan, MANU/SC/0533/2000 (Para 31)
4. Syndicate Bank Vs. Venkatesh Gururao Kurati, (2006) 3 SCC 150 (Para 32)
5. Haryana Financial Corpn. Vs. Kailash Chandra Ahuja, (2008) 9 SCC 31 (Para 33)
6. State of U.P. Vs. Om Prakash Gupta, (1969) 3 SCC 775 (Para 34)
7. U.P. Junior Doctors' Action Committee Vs. B. Sheetal Nandwani (Dr), 1992 Supp (1) SCC 680 (Para 38)
8. C. Kamalakkannan Vs. State of Tamil Nadu, (2025) 4 SCC 487 (Para 40)
9. Murari Lal Vs. State of Madhya Pradesh, (1980) 1 SCC 704 (Para 41)

List of Keywords

Service, selection, appointment, revoked, cancelled.

Appearances for Parties

For Appellant: Surya Narayan Mishra,Jyoti Sikkanee Mehrotra,Kuldeep Kumar Awasthi

For Respondent: Anurag Srivastava,Durga Prasad Dwivedi,Sharad Dwivedi

(Delivered by Hon'ble Abdul Moin, J.)

1. Heard.

2. Under challenge is the order dated 12.08.2013, a copy of which is Annexure-1 to the petition, whereby the selection of the petitioner on the post of Assistant in State Bank of India has been cancelled and the offer of appointment has been revoked/cancelled.

3. Bereft of unnecessary details, facts of the case as set forth by the petitioner are that the petitioner had appeared in a examination for the clerical cadre in State Bank of India. The written examination took place on 27.05.2012. The petitioner was declared successful and thereafter he appeared for an interview on 12.09.2012. On being successful, an offer of appointment dated 27.11.2012, a copy of which is Annexure-7 to the petition, was issued whereby the petitioner was informed that he had been selected for appointment in the Bank in the clerical cadre as "Assistant" subject to completion of required formalities. The petitioner was required to appear on 11.02.2013 for completion of joining formalities.

4. Condition No.12 of the said offer clearly provided that in the event of any of information/declaration/certificate or document being found false, forged or fabricated at a later date, the offer of appointment shall be deemed to have been cancelled.

5. The petitioner appeared for the scrutiny of documents on the said date and had thereafter been sent for one day training. Thereafter, vide the order impugned dated 12.08.2013, the offer of appointment of the petitioner has been cancelled.

6. A perusal of the said order would indicate that the respondents have stated that during scrutiny of the documents/credentials of the petitioner, serious discrepancies were detected in the signature and thumb impression as appear in the call letter as against the signature and thumb impression of petitioner at the time of scrutiny. On account of such discrepancy, relevant evidences were referred to the Forensic Expert and it transpired that the thumb impression and signature obtained at the time of written examination were different from the thumb impression and signature obtained at the

time of scrutiny and consequently the offer of appointment of the petitioner had been cancelled.

7. Being aggrieved, the instant writ petition has been filed.

8. Specific averment has been made by the learned counsel for the petitioner in paras 15 & 16 of the writ petition that at the time of written examination neither any signature nor thumb impression was made by the petitioner on any paper nor the invigilator was instructed to take signature or thumb impression at any paper consequently there cannot be any occasion for the petitioner to have signed and affixed his thumb impression in the attendance sheet which has prevailed on the respondents while passing the order impugned to indicate that the petitioner has tried to secure appointment by impersonation.

9. The other ground taken by the petitioner is that once the petitioner had been sent for training and offer of appointment is of 27.11.2012 as such there cannot be any occasion for the respondents to have cancelled the offer of appointment after a period of more than 9 months.

10. Learned counsel for the petitioner has argued that the respondents in their counter affidavit have indicated that the petitioner had appeared in the written examination and thus there cannot be any occasion now for the respondents to indicate that there was impersonation so as to cancel the offer of appointment of the petitioner.

11. Another ground taken by the learned counsel for the petitioner is that the order impugned has been passed in gross violation of the principle of natural justice, which thus renders the order vitiated in the eyes of law.

12. Learned counsel for the petitioner has also argued that the petitioner has represented against the order impugned but the same has not been considered.

13. Learned counsel for the petitioner in support of her arguments has placed reliance on the judgment of Calcutta High Court in **W.P.C.T. 178 of 2012 In Re Sashi Bhushan Kumar & Ors vs Union of India & Ors**

14. No other ground has been urged by the learned counsel for the petitioner.

15. On the other hand, Shri Sharad Dwivedi, learned counsel appearing for the respondents-Bank has argued on the basis of averments contained in the counter affidavit that it was only during the scrutiny of the documents/credentials that serious discrepancies were detected in the signature and thumb impression taken at the time of written examination in the attendance sheet as against the signature and thumb impression obtained at the time of scrutiny of documents and noticing the said discrepancies, the matter had been referred for a report of the handwriting expert, which was submitted vide report dated 28/29.06.2013, a copy of which is Annexure-CA1 to the counter affidavit, which clearly indicates the difference in signatures and thumb impression of the petitioner which has thus prevailed on the competent authority to hold that there was impersonation committed by the petitioner and thus, there is no infirmity or illegality in the offer of appointment of the petitioner having been withdrawn.

16. Shri Sharad Dwivedi, learned counsel for the respondents-Bank also invites attention of the Court towards the attendance sheet, a copy of which is part of Annexure-CA1 (Page-26) of the counter affidavit, to indicate that all the candidates who had appeared in the written examination on the said date i.e. 27.05.2012 had signed and affixed their thumb impressions and as such there cannot be any occasion for the petitioner to contend in the writ petition that the petitioner did not sign at the time of written examination nor any thumb impression or signature was been made by the petitioner.

17. Placing reliance on the report of the handwriting expert, the contention of the learned counsel appearing for the respondent is that Handwriting Expert has examined both the verification form and call letter vis a vis signature and thumb impression of the petitioner on the attendance sheet to arrive at a conclusion that the person who appeared in the written examination had signed and affixed the thumb impression differently from that of the petitioner and thus it is clearly apparent that somebody impersonated the petitioner at the time of the written examination and thus once a fraud has been committed by the petitioner consequently there cannot be any occasion even for issuance of a show cause notice inasmuch as once there is only one conclusion possible there cannot be any occasion for issuance of the show cause notice to the petitioner.

18. Heard learned counsel for the parties and perused the record.

19. At the very outset, it may be indicated that the Court had required the respondents to produce the records.

20. Today, Shri Sharad Dwivedi, learned counsel for the respondents-Bank has stated that on account of reconstruction that was taking place in the premises of the bank, the records appear to have been shifted and he prayed for sometime to produce the records.

21. The same was strongly opposed by the learned counsel for the petitioner by contending that there cannot be any occasion for production of records inasmuch as the entire evidence is on record. Thus, the Court has proceeded to hear the counsels for the parties on the basis of material available on record.

22. From the arguments as raised by the learned counsel for the parties and perusal of record, it emerges that the petitioner had applied for appointment in clerical cadre for the post of Assistant under the respondent-Bank. He had appeared in the written examination and was declared successful. He appeared for the interview and was thereafter declared selected for the said post. Subsequent thereto he was called for scrutiny of his documents, which were scrutinized by the respondents. Offer of appointment dated 27.11.2012 had been issued to the petitioner. However, vide the order impugned dated 12.08.2013 his selection for the post of Assistant has been cancelled and the offer of appointment has been revoked.

23. A perusal of the impugned order would indicate that the respondents have indicated that the signatures and thumb impressions obtained at the time of scrutiny and written examination are different and thus the Bank concluded that the petitioner had tried to procure appointment by impersonation and thus in terms of the

Clause 12 of the offer of appointment, his offer of appointment has been cancelled.

24. In support of there being difference in the signature and thumb impression of the petitioner as made in the call letter and the attendance list at the time of the written examination as well as scrutiny of the documents, the matter had been referred by the respondents for an expert opinion. The hand writing expert has submitted his report dated 28/29.06.2013 which clearly indicates the difference in the signatures and thumb impression of the petitioner in the call letter vis a vis the attendance list and scrutiny of the documents. Incidentally, no challenge has been raised to the handwriting expert's report on the basis of which the respondent-Bank has passed the order impugned and has held that there had been impersonation on the part of the petitioner.

25. The impugned order has been challenged by the petitioner on various grounds, which the Court now proceeds to consider.

26. The first ground raised by the learned counsel for the petitioner for raising a challenge to the order impugned is that at the time of the written examination neither any signature nor thumb impression was made by the petitioner on any paper.

27. The said ground is found to be patently fallacious and misconceived and hence rejected. The reason is that a copy of the attendance list has been filed by the respondent as part of Annexure-CA-1 (Page 26 of the counter affidavit) which indicates both the thumb impression and the signature of the petitioner. The argument of the learned counsel for the petitioner could only have been accepted had the attendance list contained various blanks i.e. against the names of the candidates who had not appeared on the said date the column had been left blank. However, the fact is otherwise inasmuch as in case a candidate has not appeared, as is clearly apparent from a perusal of the attendance list at Sl.N.299 the said candidate has been marked as 'absent'. Thus, all the candidates, who had appeared on that particular date have in fact signed and affixed their thumb impression on the attendance list and thus, there cannot be any occasion for the petitioner to have not been asked to sign on the attendance sheet and to have not affixed his thumb impression and signatures on the attendance sheet. Incidentally, the attendance sheet is also having a column as 'sign (in presence of invigilator)' in which all the candidates whose names are indicated on the said page of the attendance list have signed or upon being absent, have been marked 'absent'.

28. The other ground taken by the learned counsel for the petitioner is that the petitioner had been sent for training and the offer of appointment is dated 27.11.2012 as such there cannot be any occasion for the respondents to have cancelled the offer of appointment after a period of more than 9 months. The said ground is also found to be misconceived inasmuch as whenever the fraud has been detected by the respondents and that too after obtaining the expert's report dated 28/29.06.2013 that the impugned order cancelling the offer of appointment of the petitioner had been passed on 12.08.2013 and thus merely because 9 months lapsed between the offer of appointment and cancellation, the same cannot be considered to be a valid ground and hence rejected.

29. So far as the argument that the respondents in the counter affidavit have indicated that the petitioner had appeared in the written examination is concerned, the same has been stated on the basis of attendance sheet which clearly contains the thumb impression and signature of the petitioner. However, the respondents on the basis of expert's report have indicated that it was a case of impersonation and consequently once it was a case of impersonation, as clearly proved by means of the expert's report, clearly the said ground merits to be rejected and is rejected.

30. So far as the ground that the order impugned has been passed in gross violation of rules of natural justice is concerned, the Hon'ble Supreme Court in the case of **S.L.Kapoor Vs. Jagmohan and ors-MANU/SC/0036/1980** has held that where only one view is possible there would not be any requirement of even issuing a show cause notice. The Hon'ble Supreme Court has held as under:-

"17. Linked with this question is the question whether the failure to observe natural justice does at all matter if the observance of natural justice would have made no difference, the admitted or indisputable facts speaking for themselves. Where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it approves the nonobservance of natural justice but because Courts do not issue futile writs. But it will be a pernicious principle to apply in other situations where conclusions are controversial, however, slightly, and penalties are discretionary."

31. The said judgment has also been considered subsequently by the Hon?ble Supreme Court in the case of **Aligarh Muslim University Vs. Mansoor Ali Khan- MANU/SC/0533/2000.**

32. In this regard, it would be apt to refer to the judgment of the Hon'ble Supreme Court in the case of **Syndicate Bank v. Venkatesh Gururao Kurati, (2006) 3 SCC 150** wherein it has been held as under:-

".....To sustain the allegation of violation of principles of natural justice, one must establish that prejudice has been caused to him for non-observance of principles of natural justice."

33. Likewise, the Hon'ble Supreme Court in the case of **Haryana Financial Corpn. v. Kailash Chandra Ahuja : (2008) 9 SCC 31** has held that a party must satisfy the court as to what prejudice has been caused to it by non observance of the principle of natural justice.

34. Similarly, the Hon'ble Supreme Court in the case of **State of U.P. v. Om Prakash Gupta : (1969) 3 SCC 775** has observed that the Courts have to see whether the non-observance of any of the principles enshrined in statutory rules or principles of natural justice have resulted in deflecting the course of justice.

35. Thus, even if in a given case there has been some deviation from the principles of nature justice, the court is not bound to interfere.

36. Nowhere in the entire petition has the petitioner indicated as to what prejudice has been caused to him on account of violation of the principle of natural justice

and consequently keeping in view the law laid down by the Hon'ble Supreme Court in the case of **S.L.Kapoor (supra)** wherein in case only one conclusion is possible then the court may not issue its writ to compel the observance of natural justice, no interference is required.

37. From the expert?s report, it is apparent that impersonation has been carried out at the time of selection which has resulted in the petitioner being selected.

38. Hon?ble Supreme Court in the case of **U.P. Junior Doctors' Action Committee v. B. Sheetal Nandwani (Dr), 1992 Supp (1) SCC 680** where the students had got admission in MBBS course by making misrepresentation, has rejected the plea of applicability of the rules of natural justice observing that under the circumstances in which such benefit had been taken by the candidates concerned do not justify attraction of rules of natural justice by providing them an opportunity of hearing.

39. Considering the aforesaid judgment in the case of **S.L.Kapoor (supra)** as well as expert's report dated 28/29.06.2013 which has conclusively concluded that the thumb impression of the petitioner taken at the time of examination does not match with the thumb impression of the petitioner in the bio-data cum attestation form and that his signature on the call letter and the attendance list do not match with the other standard signatures which all clearly indicate of there being impersonation by the petitioner and thus keeping in view the expert's report which has also not been rebutted by the petitioner no other view in the matter is possible and thus, the said ground is also rejected.

40. In this regard, it would be apt to refer to the recent judgement of the Hon'ble Supreme Court in the case of **C.Kamalakkannan vs State of Tamil Nadu : (2025) 4 SCC 487** wherein the Hon'ble Supreme Court with respect to the evidence of an expert has held as under:-

"13. The locus classicus on this issue is Murari Lal v. State of M.P. [Murari Lal v. State of M.P., (1980) 1 SCC 704 : 1980 SCC (Cri) 330] , wherein this Court laid down the principles with regard to the extent to which reliance can be placed on the evidence of an expert witness and when corroboration of such evidence may be sought. The relevant paragraphs are extracted hereinbelow : (SCC pp. 707-709, 711-12, paras 4, 6 & 11)

4. We will first consider the argument, a stale argument often heard, particularly in criminal courts, that the opinion-evidence of a handwriting expert should not be acted upon without substantial corroboration. We shall presently point out how the argument cannot be justified on principle or precedent. We begin with the observation that the expert is no accomplice. There is no justification for condemning his opinion-evidence to the same class of evidence as that of an accomplice and insist upon corroboration. True, it has occasionally been said on very high authority that it would be hazardous to base a conviction solely on the opinion of a handwriting expert. But, the hazard in accepting the opinion of any expert, handwriting expert or any other kind of expert, is not because experts, in general, are unreliable witnesses ? the quality of credibility or incredibility being one which an expert shares with all other witnesses ? but because all human judgment is fallible and an expert may go wrong because of some defect of observation, some error of premises or honest mistake of conclusion.

The more developed and the more perfect a science, the less the chance of an incorrect opinion and the converse if the science is less developed and imperfect. The science of identification of finger-prints has attained near perfection and the risk of an incorrect opinion is practically non-existent. On the other hand, the science of identification of handwriting is not nearly so perfect and the risk is, therefore, higher. But that is a far cry from doubting the opinion of a handwriting expert as an invariable rule and insisting upon substantial corroboration in every case, howsoever the opinion may be backed by the soundest of reasons. It is hardly fair to an expert to view his opinion with an initial suspicion and to treat him as an inferior sort of witness. His opinion has to be tested by the acceptability of the reasons given by him. An expert deposes and not decides. ?

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6. Expert testimony is made relevant by Section 45 of the Evidence Act and where the court has to form an opinion upon a point as to identity of handwriting, the opinion of a person ?specially skilled? ?in questions as to identity of handwriting? is expressly made a relevant fact. ? So, corroboration may not invariably be insisted upon before acting on the opinion of an handwriting expert and there need be no initial suspicion. But, on the facts of a particular case, a court may require corroboration of a varying degree. There can be no hard-and-fast rule, but nothing will justify the rejection of the opinion of an expert supported by unchallenged reasons on the sole ground that it is not corroborated.The approach of a court while dealing with the opinion of a handwriting expert should be to proceed cautiously, probe the reasons for the opinion, consider all other relevant evidence and decide finally to accept or reject it.

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11. We are firmly of the opinion that there is no rule of law, nor any rule of prudence which has crystallised into a rule of law, that opinion-evidence of a handwriting expert must never be acted upon, unless substantially corroborated. But, having due regard to the imperfect nature of the science of identification of handwriting, the approach, as we indicated earlier, should be one of caution. Reasons for the opinion must be carefully probed and examined. All other relevant evidence must be considered. In appropriate cases, corroboration may be sought. In cases where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of an handwriting expert may be accepted. There cannot be any inflexible rule on a matter which, in the ultimate analysis, is no more than a question of testimonial weight. We have said so much because this is an argument frequently met with in subordinate courts and sentences torn out of context from the judgments of this Court are often flaunted.

(emphasis supplied)"

41. Likewise, the Hon'ble Supreme Court in the case of Murari Lal vs State of Madhya Pradesh : (1980) 1 SCC 704 has held as under:-

"4. We will first consider the argument, a stale argument often heard, particularly in Criminal Courts, that the opinion-evidence of a handwriting expert should not be acted upon without substantial corroboration. We shall presently point out how the argument

cannot be justified on principle or precedent. We begin with the observation that the expert is no accomplice. There is no justification for condemning his opinion-evidence to the same class of evidence as that of an accomplice and insist upon corroboration. True, it has occasionally been said on very high authority that it would be hazardous to base a conviction solely on the opinion of a handwriting expert. But, the hazard in accepting the opinion of any expert, handwriting expert or any other kind of expert, is not because experts, in general, are unreliable witnesses the quality of credibility or incredibility being one which an expert shares with all other witnesses ? but because all human judgment is fallible and an expert may go wrong because of some defect of observation, some error of premises or honest mistake of conclusion. The more developed and the more perfect a science, the less the chance of an incorrect opinion and the converse if the science is less developed and imperfect. The science of identification of finger-prints has attained near perfection and the risk of an incorrect opinion is practically non-existent. On the other hand, the science of identification of handwriting is not nearly so perfect and the risk is, therefore, higher. But that is a far cry from doubting the opinion of a handwriting expert as an invariable rule and insisting upon substantial corroboration in every case, howsoever the opinion may be backed by the soundest of reasons. It is hardly fair to an expert to view his opinion with an initial suspicion and to treat him as an inferior sort of witness. His opinion has to be tested by the acceptability of the reasons given by him. An expert deposes and not decides. His duty ?is to furnish the Judge with the necessary scientific criteria for testing the accuracy of his conclusion, so as to enable the Judge to form his own independent judgment by the application of these criteria to the facts proved in evidence? [Vide Lord President Cooper in Davis v. Edindurgh Magistrate, 1953 SC 34 quoted by Professor Cross in his Evidence] .

5. From the earliest times, courts have received the opinion of experts. As long ago as 1553 it was said in Buckley v. Rice-Thomas [(1554) 1 Plowden 110] :

If matters arise in our law which concern other sciences or faculties, we commonly apply for the aid of that science or faculty which it concerns. This is a commendable thing in our law. For thereby it appears that we do not dismiss all other sciences but our own, but we approve of them and encourage them as things worthy of commendation.

6. Expert testimony is made relevant by Section 45 of the Evidence Act and where the Court has to form an opinion upon a point as to identity of handwriting, the opinion of a person ?specially skilled? ?in questions as to identity of handwriting? is expressly made a relevant fact. There is nothing in the Evidence Act, as for example like Illustration (b) to Section 114 which entitles the Court to presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars, which justifies the court in assuming that a handwriting expert's opinion in unworthy of credit unless corroborated. The Evidence Act itself (Section 3) tells us that ?a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists?. It is necessary to occasionally remind ourselves of this interpretation clause in the Evidence Act

lest we set an artificial standard of proof not warranted by the provisions of the Act. Further, under Section 114 of the Evidence Act, the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to facts of the particular case. It is also to be noticed that Section 46 of the Evidence Act makes facts, not otherwise relevant, relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant. So, corroboration may not invariably be insisted upon before acting on the opinion of an handwriting expert and there need be no initial suspicion. But, on the facts of a particular case, a court may require corroboration of a varying degree. There can be no hard and fast rule, but nothing will justify the rejection of the opinion of an expert supported by unchallenged reasons on the sole ground that it is not corroborated. The approach of a court while dealing with the opinion of a handwriting expert should be to proceed cautiously, probe the reasons for the opinion, consider all other relevant evidence and decide finally to accept or reject it.

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12. The argument that the court should not venture to compare writings itself, as it would thereby assume to itself the role of an expert is entirely without force. Section 73 of the Evidence Act expressly enables the court to compare disputed writings with admitted or proved writings to ascertain whether a writing is that of the person by whom it purports to have been written. If it is hazardous to do so, as sometimes said, we are afraid it is one of the hazards to which Judge and litigant must expose themselves whenever it becomes necessary. There may be cases where both sides call experts and two [Vide Correction slip No. F. 3/79 (Ed.J) dt. 21-8-80] voices of science are heard. There may be cases where neither side calls an expert, being ill able to afford him. In all such cases, it becomes the plain duty of the court to compare the writings and come to its own conclusion. The duty cannot be avoided by recourse to the statement that the court is no expert. Where there are expert opinions, they will aid the court. Where there is none, the court will have to seek guidance from some authoritative textbook and the court's own experience and knowledge. But discharge it must, its plain duty, with or without expert, with or without other evidence. We may mention that Shashi Kumar v. Subodh Kumar [AIR 1967 SC 1326 : 1967 Cri LJ 1197] and Fakhruddin v. State of M.P. [AIR 1967 SC 1326 : 1967 Cri LJ 1197] were cases where the Court itself compared the writings."

42. Incidentally, in the judgment of **C.Kamalakkannan (supra)** the Hon'ble Supreme Court had also tested the veracity of the finding of the handwriting expert.

43. This Court has also gone through the signatures as made by the petitioner in the bio-data cum attestation form, a copy of which is Annexure-5 to the petition, vis a vis his signatures in the attendance sheet and even to the naked eye, the said signatures are completely different although an attempt has been made in the attendance list to give some semblance of similarity to the earlier signature.

44. So far as the ground that the petitioner has represented against the order impugned but the said representation was

not considered or decided is also rejected inasmuch as the petitioner being aggrieved by the order impugned has filed the said petition which itself is being decided now.

45. So far as judgment of the Calcutta High Court in the case of **Sashi Bhushan Kumar (supra)** is concerned, although the said judgment would not be binding on this Court, yet a perusal of the same indicates that the writ court has not considered the aforesaid judgments of the Hon'ble Supreme Court pertaining to expert's opinion as well as the judgment of the Hon'ble Supreme Court in the case of **S.L.Kapoor (supra)** pertaining to the fact that when only one view is possible, there would not be any requirement of even giving a notice. Thus, the said judgment would have no applicability to the facts of the instant case.

46. Keeping in view the aforesaid discussion, no case for interference is made out. The writ petition stands **dismissed**.

47. The Court also records the assistance extended by Mr. Mohd Azam Siddiqui, Research Associate of this Court.

(2025) 8 ILRA 1065
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 22.08.2025

BEFORE

THE HON'BLE AJIT KUMAR, J.

Writ A No. 11008 of 2025

Munni Lal Patel ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Anil Kumar, Syed Wajid Ali

Counsel for the Respondents:
C.S.C.

Issue for consideration

Whether the order of the punishment is sustainable when the enquiry is in violation of the procedure prescribed?

Headnotes

A. Service Law - U.P. Government Servant (Discipline and Appeal) Rules, 1999: Rule 7 - When a thing is required to be done in a particular manner then that thing should be done in that manner alone. The inquiry being *de hors* the Rules, is flawed one and is deserved to be quashed. (Para 14, 15)

Since the procedure prescribed u/Rule 7 of the 1999 rules makes it mandatory for the inquiry officer to conduct oral inquiry, the inquiry officer was hidebound in law to hold oral inquiry unless and until he had recorded that it was for certain reasons that he could not summon the witnesses. The inquiry officer failed to even call the charged officer to give his oral evidence for which a specific prayer was made in the reply. The documents examined by the inquiry officer may not be sufficient to prove all the charges unless and until those documents are duly proved and recitals contained therein also stand duly corroborated in the oral inquiry. (Para 16)

B. The inquiry officer has the status of adjudicatory authority who is adjudicating upon the charges after not only duly evaluating and appreciating the documentary evidence produced in support of the charge and the reply made by the charged officer but also by getting those documents duly proved by the officers who had issued it. The dispatch register, etc. and summoning of the concerned clerk or officer was a basic thing which ought to have been satisfied before bringing home the charge by the inquiry officer, but unfortunately this procedure has not been adopted and the inquiry officer on his own by way of subjective satisfaction without giving any objective consideration to the material placed and the request made by the charged officer proceeded

to bring home the charges. **Such procedure is definitely a flawed procedure which cannot be approved**. (Para 16)

C. In absence of an oral inquiry the charges if proved the inquiry report cannot be sustained in law and, hence, the order of punishment based upon the same as well as the order of the appellate authority are also liable to be held unsustainable. Once this Court finds that the procedure has not been followed and the orders impugned are liable to quashed, the matter is to be remanded for decision afresh from the stage from where the procedure has gone flawed. (Para 17)

Writ petition allowed. (E-4)

Case Law Cited

1. TATA Chemicals Limited Vs. Commissioner of Customs (Preventive), Jamnagar (2015) 11 SCC 628 (Para 14)
2. Prem Lata Mishra Vs. State of U.P., Writ A No. 44 of 2024, decided on 03.07.2025 (Para 15)
3. State of Uttar Pradesh and others Vs. Saroj Kumar Sinha, (2010) 2 SCC 772 (Para 16)
4. Jay Singh Vs. State of U.P and 2 others, Writ A No. 19047 of 2023 (Para 17)
5. Managing Director ECIL Hydrabad etc Vs. B. Karunakar etc., AIR 1994 SC 1074 (Para 17)

List of Acts/Statutes

U.P. Government Servant (Discipline and Appeal) Rules, 1999.

List of Keywords

service, enquiry, charge-sheet, punishment.

Appearances for Parties

For Appellant: Anil Kumar, Syed Wajid Ali
For Respondent: C.S.C.

(Delivered by Hon'ble Ajit Kumar, J.)

1. Heard Shri Syed Wajid Ali, learned counsel for petitioner and Shri Sanjeev Singh, learned Additional Advocate General assisted by Shri R.S. Umrao, learned Standing Counsel appearing for State respondents.

2. This petition under Article 226 of the Constitution questions the propriety of the disciplinary authority in passing the order of punishment dated 24.07.2024 as well as the order dated 15-16/5/2025 passed by the appellate authority affirming the order of punishment. By the order of punishment the disciplinary authority has reverted the petitioner from the post of Joint Block Development Officer to Assistant Block Development Officer while revoking the suspension order and reinstating him in service under the order dated 24.07.2024.

3. The disciplinary authority has relied upon the findings returned by the inquiry officer bringing home the charges levelled against the charged officer in the charge-sheet and thereby holding the charged officer to be guilty of indiscipline and dereliction in discharge of official duty, inasmuch as he was held guilty for not obeying the directives issued by the higher officers as well as wantonness in his character.

4. While the petitioner was issued with show cause notice and he submitted reply, the reply was also not found to be satisfactory and accordingly the explanation offered was brushed aside while accepting the report of the inquiry officer.

5. While assailing the orders impugned herein this petition petitioner has chiefly taken a ground and so also it has been argued by learned counsel appearing for the petitioner that the entire domestic enquiry was conducted by the inquiry officer in a slipshod manner, inasmuch as *de hors* the procedure prescribed under Rule 7 of the U.P. Government Servant (Discipline and Appeal) Rules, 1999 (for short ?Discipline and Appeal Rules, 1999).

6. It is submitted that after the petitioner was served with the charge-sheet on 21.08.2023 containing as many as five articles of charges, he submitted a detailed reply to the inquiry officer to each charge on 04.12.2023 and further demanded personal hearing in the matter of inquiry into the charges, also requested for production of documents that had been used as evidence in support of the charges relating to the same i.e. 'list of dispatch register, receipt register and administrative register of the concerned desk clerk of the office of Block Development Officer' should also be placed in the inquiry. It was further demanded in the reply that in respect of the charge no.1 and 4 that related to the petitioner's conduct in not complying with the directives and order issued by the higher officer that he had not been participating in the meetings organized, such persons who corroborated the evidence should also be summoned. However, the inquiry officer neither fixed any date, time or place to hold oral inquiry, nor summoned the concerned persons and by appreciating the documents and evidence of the petitioner *ex parte*, on its own, proceeded to finalize inquiry and submitted inquiry report.

7. Shri Syed Wajid Ali, learned counsel for petitioner has vehemently argued that the inquiry officer was not justified in conducting the inquiry without following the procedure prescribed under Rule 7 of the Discipline and Appeal Rules, 1999 which required production of evidence not only at the end of the delinquent employee but also oral examination of delinquent employee and departmental witnesses. It is argued that specially in the circumstances when petitioner himself demanded for oral inquiry by the domestic inquiry officer, the inquiry officer was not justified in not fixing time, date and place for holding such inquiry. Thus, the manner in which the domestic inquiry was conducted, according to learned counsel was a procedure to be described as a flawed one resulting in an unsustainable inquiry report. Replying to the show cause notice Shri Syed Wajid Ali, learned counsel for petitioner has questioned the inquiry report on various grounds particularly for non-appreciation of the highlighted portion of his reply and not permitting the examination of a crucial witness by summoning him. It is argued by Shri Wajid Ali, learned counsel that the findings returned bringing home the charges are vitiated for want of compliance of statutory procedure prescribed under Rule 7 of the Discipline and Appeal Rules, 1999 and so also the order of punishment is bad and also the order passed by the appellate authority affirming the order of punishment.

8. Shri Syed Wajid Ali, learned counsel for petitioner has placed reliance upon the following authorities:

9. Before the Court could have examined the records, Shri Sanjeev Singh, learned Additional Advocate General assisted by Shri R.S. Umrao, learned Standing Counsel fairly concedes that records do not reveal factum of oral inquiry, nor the records show any order sheet/ note sheet of inquiry proceedings indicative of any time and date fixed by the inquiry officer requiring participation of the charged officer and his examination and examination of witnesses. He argues that though inquiry report is absolutely silent on that count, but since the documents that were placed before the inquiry officer were not specifically denied and the petitioner?s reply has been duly considered and discussed by the inquiry officer, the

domestic inquiry cannot be claimed to be vitiated in law just for want of oral inquiry. Shri Sanjeev Singh, learned Additional Advocate General has argued that even the disciplinary authority had also given ample opportunity to the petitioner by way of show cause notice and petitioner?s reply has been duly considered vis a vis the charges levelled in the charge-sheet and the findings returned by the inquiry officer in its report and, hence, it cannot be said that there was no reasonable opportunity of hearing afforded to the petitioner. However, Shri Sanjeev Singh, learned Additional Advocate General could not dispute that oral examination is mandatory requirement under Rule 7(4) of the Discipline and Appeal Rules, 1999 which should be adhered to in matters of domestic inquiry.

10. Having heard learned counsel for the respective parties and having perused the records, I find this to be admitted position of fact that in the domestic enquiry conducted by the inquiry officer in respect of the charges levelled in the charge-sheet framed and issued setting into motion the disciplinary proceedings under the the inquiry officer did not follow the procedure by holding any oral inquiry in order to appreciate this, Rule 7 of the Discipline and Appeal Rules, 1999 in its entirety is reproduced below:

"7. ***Procedure for imposing major penalties-*** *Before imposing any major penalty on a Government servant, an inquiry shall be held in the following manner:*

(i) The disciplinary authority may himself inquire into the charges or appoint an authority subordinate to him an Inquiry Officer to inquire into the charges.

(ii) The facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge-sheet. The chage-sheet shall be approved by the disciplinary authority.

Provided that where the appointing authority is Governor the charge-sheet may be approved by the Principal Secretary or the Secretary; as the case may be , of the concerned department.

(iii) The charges framed shall be so precise and clear as to give sufficient indication to the charged Government Servant of the facts and circumstances against him. The proposed documentary evidence and the name of witnesses proposed to prove the same along with oral evidence, if any, shall be mentioned in the charge-sheet.

(iv) The charged Government servant shall be required to put in a written statement of his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge-sheet and to state whether he desires to cross-examine any witness mentioned in the charge-sheet and whether desires to give or produce evidence in his defence. He shall also be informed that in case he does not appear or file the written statement on the specified date, it will be presumed that he has none to furnish and Inquiry Officer shall proceed to complete the inquiry ex parte.

(v) The charge-sheet, alongwith the copy of the documentary evidences mentioned therein and list of witnesses and their statements, if any, shall be served on the charged Government servant personally or by registered post at the address mentioned in the official records. In case the charge-sheet could not be served in aforesaid manner, the charge-sheet shall be served by publication in a

daily newspaper having wide circulation: Provided that where the documentary evidence is voluminous, instead of furnishing its copy with charge-sheet, the charged Government servant shall be permitted to inspect the same before the Inquiry Officer.

(vi) Where the charged Government servant appears and admits the charges, the Inquiry Officer shall submit his report to the disciplinary authority on the basis of such admission.

(vii) Where the charged Government servant denies the charges, the Inquiry Officer shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charged Government servant who shall be given opportunity to cross-examine such witnesses. After recording the aforesaid evidence, the Inquiry Officer shall call and record the oral evidence with the charged Government servant desired in his written statement to be produced in his defence:

Provided that the Inquiry Officer may for reasons to be recorded in writing to call a witness.

(viii) The Inquiry Officer may summon any witness to give evidence or require any person to produce documents before him in accordance with the provisions of the Uttar Pradesh Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1976.

(ix) The Inquiry Officer may ask any question he pleased, at any time of any witness or from person charged with a view to discover the truth or to obtain proper proof of facts relevant to charges.

(x) Where the charged Government servant does not appear on the date fixed in the inquiry or at any stage of the proceeding inspite of the service of the notice on him or having knowledge of the date, the Inquiry Officer shall proceed with the inquiry ex parte. In such a case the Inquiry Officer shall record the statement of witnesses mentioned in the charge-sheet in absence of the charged Government servant.

(xi) The disciplinary authority, if it considers it necessary to do so, many, by an order appoint a Government servant or a legal practitioner, to be known as "Presenting Officer" to present on its behalf the case in support of the charge.

(xii) The Government servant may take the assistance of any other Government servant to present the case on his behalf but not engage a legal practitioner for the purpose unless the Presiding Officer appointed by the disciplinary authority is a legal practitioner of the disciplinary having regard to the circumstances of the case so permit:

Provided that this rule shall not apply in following cases:

(i) Where any major penalty is imposed on a person on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) Where the disciplinary authority is satisfied that for reason to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

(iii) Where the Governor is satisfied that, in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules. "

(Emphasis added)

11. The relevant provisions quoted and highlighted hereinabove, clearly provide for inquiry officer to follow the procedure,

like for instance (i) where the charged officer admits the charge, the inquiry officer shall submit report to the disciplinary authority on the basis of such admission, (ii) whereas in the event charged officer denies the charges then the inquiry officer shall have to call the witnesses given in the charge-sheet and record their oral evidence in presence of the charged officers, (iii) after recording evidence of the departmental witnesses the charged government servant shall also be required to give his oral evidence, (iv) however proviso to rule 7 permits the inquiry officer to exercise its discretion to summon any witnesses to give evidence or any person to produce document in accordance with the provisions of U.P. Departmental Inquiry (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1976, (v) the proviso also permits the inquiry officer to refuse to call a witness for reasons to be recorded by him in writing, (vi) the inquiry officer may further ask any question at any time from a witness or from the charged officer with a view to discovering the truth or obtain proof of fact relevant to the charges; and (vii) in the event the charged government servant does not appear on the date fixed in inquiry despite service of notice, the inquiry officer may proceed with inquiry ex parte and in such case he may record statement of witnesses mentioned in the charge-sheet even in the absence of charged government servant.

12. Testing the facts of the case upon rule 7 of the Discipline and Appeal Rules, 1999 as discussed above, I find that the petitioner had made specific prayer in his reply to the inquiry officer that he should be afforded opportunity of personal hearing and persons who made statement that the petitioner would not be participating in the meeting organized or the higher officers should also be summoned. The intention, therefore, was clear that petitioner wanted oral examination and also production of witnesses so as to cross-examine them. I further find from the charge-sheet issued to the petitioner that letter of Block Development Officer concerned dated 12.07.2023 was evidence in support of charge No. 1, again the same letter is used as evidence in support of charge No. 2, whereas the letter of Chief Development Officer dated 09.04.2023 was used as his evidence in support of the charge No.3, and again another letter by the same officer dated 02.05.2023 was used as evidence in support of charge No. 4 and yet another letter of the District Development Officer dated 04.05.2023 was taken as evidence in support of charge no. 5. Petitioner gave detailed reply to each of the charges highlighting that forged and manipulated letters were prepared to falsely frame him into charges of negligence, disobedience and to prove him as man of wanton character. The relevant part of his reply dated 04.12.2023is reproduced below:

"व्यक्तिगत सुनवाई के अवसर-

इस सम्बन्ध में अनुरोध है कि मैं व्यक्तिगत सुनवाई का अवसर चाहता हूँ जिनके बिन्दु निम्नवत् हैं-

1. आरोप संख्या 1,2,3,4,5 में दर्शाये गये पत्रों जिन्हे आरोपों में साक्ष्य के रूप में प्रयोग किया गया है उक्त निर्गत पत्रों से सम्बन्धित अधिकारी खण्ड विकास अधिकारी, सम्बंधित पटल सहायक को पत्रों से सम्बन्धित डिस्पैच रजिस्टर, रिसीट रजिस्टर, वितरण रजिस्टर के साथ सुनवाई में उपस्थित रहनें के निर्देश देना चाहें।

2. आरोप संख्या 01 से 04 में लगाये गये के अतिरिक्त संख्या 5 में किया गया कमन कि इसव पूर्व भी आदेशों/निर्देशों का परिपालन नहीं किया गया एवं उच्चधिकारियों की बैठक में प्रतिभग नहीं किय गया, की छायाप्रतियाँ, जिनका अनुपालन अधेहस्ताक्षरी द्वारा नहीं किया गया तथा कथित आदेश/निर्देश उच्चधिकारियों की बैठक के आदेश अधोहस्ताक्षरी को प्राप्त करानें के प्रमाण के साथ सम्बन्धित व सुनवाई में उपस्थित रहनें के निर्देश देना चाहें।

उल्लेखनीय है कि जनपद में ख0वि0अ0/संयुक्त ख0वि0अ0 के उपलब्ध होते हुए भी शासना संख्या 2983 दिनांक 27 जून 2006, पत्र संख्या R-408 दिनांक 27 मई 2019 एवं शासनादेश दिनांक जनवरी 2023 में उल्लिखित निर्देशों के विरूद्ध विकास खण्ड का प्रभार जनपद स्तरीय अधिकारियों स्वयं अधिग्रहीत कर लिया गया है तथा शासकीय कार्य करने के वाजिब हक एवं अवसर से संयुक्त ख विकास अधिकारियों को वंचित किया गया, जो जाँच का विषय है।

आरोप पत्र का उत्तर/ स्पष्टीकरण मय साक्ष्यों सहित आपकी सेवा में आवश्यक कार्यवाही हेतु प्रे है।"

13. In view of the above discussions qua the charge sheet issued and the reply submitted by the petitioner and upon perusal of the last three paragraphs of reply of the petitioner, even a man of ordinary prudence would conclude that petitioner wanted certain documents to be produced in inquiry in his presence and also wanted that certain officers to be summoned for oral examination. However, the inquiry officer in total violation of the procedure prescribed under Rule 7 proceeded to hold inquiry and submitted a report dated 18.04.2024 bringing home the charges.

14. This Court as well as the Supreme Court has repeatedly held that when a thing is required to be done in a particular manner then that thing should be done in that manner alone. In the case of **TATA Chemicals Limited v. Commissioner of Customs (Preventive), Jamnagar (2015) 11 Supreme Court Cases 628** the Court has held thus:

"The Tribunal's judgment has proceeded on the basis that even though the samples were drawn contrary to law, the appellants would be estopped because their representative was present when the samples were drawn and they did not object immediately. This is a completely perverse finding both on fact and law. On fact, it has been more than amply proved that no representative of the appellant was, in fact, present at the time the Customs Inspector took the samples. Shri K.M. Jani who was allegedly present not only stated that he did not represent the Clearing Agent of the appellants in that he was not their employee but also stated that he was not present when the samples were taken. In fact, therefore, there was no representative of the appellants when the samples were taken. In law equally the Tribunal ought to have realized that there can be no estoppel against law. <u>If the law requires that something be done in a particular manner, it must be done in that manner, and if not done in that manner has</u>

no existence in the eye of law at all. The Customs Authorities are not absolved from following the law depending upon the acts of a particular assessee. Something that is illegal cannot convert itself into something legal by the act of a third person."

(Emphasis added)

15. Considering the above judgment and having found the departmental inquiry to be de hors the procedure prescribed under Rule 7 of the 1999 Rules in the matter of Prem **Lata Mishra v. State of U.P. Writ A No. 44 of 2024** decided on 03.07.2025 I have held that the inquiry being de hors the Rules, was flawed one and deserved to be quashed.

16.Since the procedure prescribed under Rule 7 of the 1999 rules makes it mandatory for the inquiry officer to conduct oral inquiry, the inquiry officer was hidebound in law to hold oral inquiry unless and until he had recorded that it was for certain reasons that he could not summon the witnesses. There is no such recitals contained in the inquiry report which may justify non-summoning of witnesses and non-production of demanded documents like dispatch register, etc in inquiry proceedings proceedings held to investigate /inquire into the charges levelled against the petitioner that were demanded. Still further what is very astonishing that the inquiry officer failed to even call the charged officer to give his oral evidence for which a specific prayer was made in the reply. The documents that have been relied upon has been claimed to be admitted one as those documents were used as evidence in support of the charges in the charge-sheet. The documents examined by the inquiry officer may not be sufficient to prove all the charges unless and until those documents are duly proved and recitals contained therein also stand duly corroborated in the oral inquiry. It has been held in the case of **State of Uttar Pradesh and others v. Saroj Kumar Sinha (2010) 2 Supreme Court Cases 772** that the inquiry officer is having the status of adjudicatory authority which is adjudicating upon the charges after not only duly evaluating and appreciating the documentary evidence produced in support of the charge and the reply made by the charged officer but also by getting those documents duly proved by the officers who had issued it. The dispatch register, etc. and summoning of the concerned clerk or officer was a basic thing which ought to have been satisfied before bringing home the charge by the inquiry officer, but unfortunately this procedure has not been adopted and the inquiry officer on his own by way of subjective satisfaction without giving any objective consideration to the material placed and the request made by the charged officer proceeded to bring home the charges. Such procedure is definitely a flawed procedure which cannot be approved.

17. In the judgment of this Court in the case of **Jay Singh v. State of U.P and 2 others Writ A No. 19047 of 2023**, this Court has dealt with this aspect of the matter and held that in the absence of an oral inquiry the charges if proved the inquiry report cannot be sustained in law and, hence, the order of punishment based upon the same as well as the order of the appellate authority are also liable to be held unsustainable. However, the Court is conscious of the fact that once this Court finds that the procedure has not been followed and the orders impugned are liable to quashed, the matter is to be remanded for decision afresh from the

stage from where the procedure has gone flawed. In the case of **Managing Director ECIL Hydrabad etc v B. Karunakar etc etc AIR 1994 SC 1074** . Constitution Bench of Supreme Court has very categorically held that in matter of disciplinary proceedings if the proceedings have to be set aside then it should be remanded from the stage from which it has become erroneous and the status of the employee should be such as was on the date of passing of the impugned order.

18. In view of the above, writ petition succeeds and is allowed.

19. The inquiry report dated 18.04.2024 and the order of punishment dated 15-16/5/2025 are hereby quashed with all consequential benefits in the sense that status of petitioner shall remain the same as was on the date of passing of the order impugned. The matter is remanded for fresh inquiry from the stage of reply to the charge sheet submitted by the petitioner. The disciplinary authority shall appoint a new inquury officer within a period of four weeks from the production of certified copy of this order to hold domestic inquiry afresh. This time the inquiry officer shall give due participation of hearing to the delinquent employee namely the petitioner in the inquiry and petitioner shall be permitted to examine the departmental witness in support of the documentary evidence. In the event inquiry officer does not want to summon any particular witness even upon the request being made by the petitioner, he shall record reasons for the same.

20. The domestic enquiry as directed above shall be concluded within a maximum period of two months upon notice issued to the petitioner to participate in the inquiry by the inquiry officer. Soon after the report is submitted the disciplinary authority shall proceed to conclude the proceedings as per the findings returned in the inquiry report in due compliance of principles of natural justice within next one month's time.

(2025) 8 ILRA 1073
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 19.08.2025

BEFORE

THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Writ A No. 11846 of 2025

Virendra Kumar Mishra ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Mahendra Singh, Santosh Kumar Mishra

Counsel for the Respondents:
Ashish Kumar (Nagvanshi), C.S.C.

Issue for consideration

Whether a regular departmental enquiry is required in cases where the petitioner has submitted forged documents?

Headnotes

A. Service Law - U.P. Basic Educational Staffs Rules, 1973: Rule 3(v)(vi) - In case the employment has been obtained based on fraudulent documents on concealing material facts, the beneficiary of such fraud cannot seek that proper procedure as prescribed under Rule 1999 must be followed. (Para 26)

Fraudulently obtained order of appointment or approval can be recalled by the authority concerned. In such cases **merely because the employee continued in service for a number of years, on the basis**

of fraudulently obtained orders, cannot create any equity in his favour or any estoppel against the employer/authority. When an appointment or approval has been obtained by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer. It would create no equity in his favour or any estoppel against the employer to cancel such appointment or approval since **"Fraud and justice never dwell together."** (Para 24)

When any selection/recruitment or appointment to some post was made illegally and it is noticed on the complaint or at subsequent stage that illegalities, irregularities, improprieties, procedural infirmities and deficiencies and defects have occurred, forgery or foul-play adopted or non observance of Act, rules, norms were made in process then **the beneficiary candidate, who has become output and product of** such **defective and bad selection or outcome of spoiled system process, shall have no right or claim to the post or salary or any consequential benefits in the service.** (Para 25)

In the present case, charges levelled against petitioner were found proved that he has committed forgery and submitted forged documents. Petitioner has failed to bring on record any document which could contradict the reasons given in inquiry report as well as in impugned order. The issue of not providing inquiry report of STF as well as charge sheet to petitioner, though it has been denied by respondents, does not exist as in the order impugned itself it has been mentioned that notices as well as proper opportunities were provided to the petitioner, nonetheless, the petitioner has failed to demonstrate the authenticity of his educational documents. Therefore, a person such as petitioner, who has procured appointment as Teacher on basis of forged educational documents, cannot be entitled for any sympathy and he is required to be dealt with strictly. (Para 27, 28)

Writ petition dismissed. (E-4)

Case Law Cited

1. Union of India and others Vs. Mohd. Ramzan Khan, (1991) 1 SCC 588 (Para 7)
2. Smt. Alpana Tiwari and others Vs. State of U.P. and others, Writ Petition No. 17553 of 2011 (Para 9)
3. Vashishth Kushwaha And Another Vs. State Of U.P. And 5 Others, Writ A No.9445 of 2020 (Para 9)
4. Vasundhara Yadav Vs. State Of U.P. And 4 Others, Writ Petition No. 10044 of 2020 (Para 9)
5. Deepak Kumar Mishra Vs. State Of U.P. And 4 Others, Writ A No. 10324 of 2020 (Para 9)
6. State of U.P. Vs. Vijay Shanker Tripathi (2005) 6 SCC 135 (Para 12)
7. Rajasthan Rajya Vidyut Prasaran Nigam Limited and another Vs. Anil Kanwariya, 2021 (10) SCC 136 (Para 20)
8. Indian Oil Corporation Ltd. Vs. Rajendra D. Harmalkar, 2022 SCC OnLine SC 486 (Para 20)
9. Usha Singh Vs. State of U.P. and another, 2017 SCC Online All 6109 (Para 21)
10. Nageswar Sonkesri Vs. State of M.P. and another, 2020 SCC Online MP 4461 (Para 21)
11. Vijay Krishnarao Kurundkar and another Vs. State of Maharashtra and Others, 2020 SCC Online SC 834 (Para 22)
12. Jainendra Singh Vs. State of U.P., 2012 (8) SCC 748 (Para 23)
13. Union of India Vs. Prohlad Guha etc. 2024, SCC OnLine SC 1865 (Para 26)

List of Acts/Statutes

U.P. Basic Educational Staffs Rules, 1973; U.P. Basic Education (Teachers) Service Rules, 1981;

List of Keywords

Service Law, appointment, salary, reinstate, forged, departmental enquiry.

Appearances for Parties

For Appellant: Mr. Mahendra Singh, Mr. Santosh Kumar Mishra

For Respondent: Mr. Ashish Kumar (Nagvanshi), C.S.C.

(Delivered by Hon'ble Mrs.Manju Rani Chauhan, J.)

1. The instructions passed on to the Court today, are kept on record.

2. Heard Mr. Mahendra Singh and Mr. Santosh Kumar Mishra, learned counsel for

the petitioner, Mr. Ashish Kumar Nagvanshi, learned counsel for the respondent nos.2, 4&5 and Mr. Shailendra Singh, learned counsel for the State-respondent.

3. By means of the present writ petition, the petitioner has challenged the impugned order dated 20.11.2024 passed by respondent no.4, whereby initial appointment of the petitioner as an Assistant Teacher has been cancelled and a further prayer to direct the respondents to reinstate the petitioner and release the salary month to month as well as arrears of the salary.

4. The brief facts relevant for the purpose of the present case are that:-

a) the petitioner completed the requisite qualifications provided under the U.P. Basic Education (Teachers) Service Rules, 1981, i.e. High School and Intermediate from the U.P. Secondary Education Board and B.T.C. as a regular student from Government Training College, Allahabad.

b) as he possessed the requisite qualifications required for appointment to the post of Assistant Teacher, he was initially appointed as Assistant Teacher on 23.12.1998.

c) On 12.07.2007, the petitioner was transferred from Junior Basic School, Bhattuwa, Block Korao, to Junior Basic School Maharaha in the same Block. Later, at his request, the petitioner was transferred from Allahabad to District Deoria, submitting a notary affidavit stating that he would not claim seniority. During this period, the petitioner's work and conduct were unblemished, there being no complaint by any authority.

d) Surprisingly, after the petitioner's transfer from Allahabad to Deoria, on a complaint regarding his High School and Intermediate certificates, an inquiry was conducted behind the petitioner's back, without providing him any notice or opportunity of hearing. Relying upon the ex-parte report of the STF, the petitioner was placed under suspension by order dated 22.12.2023, passed by the District Basic Education Officer, Deoria (respondent No. 4).

e) After the inquiry, a charge sheet was submitted on 28.12.2023, but a copy of the same was not provided to the petitioner. However, in response to the notice dated 22.05.2024 issued by respondent No. 5, the petitioner submitted a brief reply on 09.07.2024. Subsequently, the impugned order dated 20.11.2024 was passed.

5. Learned counsel for the petitioner submits that the impugned order dated 20.11.2024 was passed in violation of the principles of natural justice, as it relies on an ex-parte report submitted by the Special Task Force (hereinafter referred to as 'the STF'). The petitioner was placed under suspension based on the aforesaid report, and without being served a charge sheet or considering the petitioner's reply, the impugned order was passed.

6. Learned counsel for the petitioner further submits that the petitioner, having completed his High School, Intermediate, and B.T.C., was appointed as an Assistant Teacher in 1998. After so many years of service, on a baseless complaint, an inquiry was conducted behind the back of the petitioner, without notice or opportunity to respond and the order impugned has been passed. The report of the Additional Superintendent of Police, S.T.F. dated

25.12.2023, has not been served upon the petitioner.

7. Relying on the judgment of Union of India and others vs. Mohd. Ramzan Khan1, learned counsel for the petitioner submits that it is mandatory to provide the inquiry report to the delinquent employee and without furnishing the inquiry report, any major punishment awarded would be unsustainable in law.

8. The impugned order has been passed without following the proper procedure as prescribed under the relevant Rules, i.e. Rules 1999, particularly Rule 7, which mandates a specific procedure that has not been followed in the present case.

9. Identical matters were filed in Smt. Alpana Tiwari and others vs. State of U.P. and others2, Vashishth Kushwaha And Another vs. State Of U.P. And 5 Others3 Vasundhara Yadav vs. State Of U.P. And 4 Others4, and Deepak Kumar Mishra vs. State Of U.P. And 4 Others5. In these cases, this Court was pleased to remit the matters back to the respondent authorities with directions to provide a copy of the STF report to the petitioners and pass appropriate orders after affording them an adequate opportunity of hearing.

10. The petitioner's case is squarely covered by the judgments rendered in the aforesaid matters.

11. The U.P. Basic Educational Staffs Rules, 1973, specifically Rule 3(v)(vi), provides for the imposition of major punishment in cases where there is a significant loss caused by negligence, breach, or misconduct. However, upon a bare perusal of the conduct of the petitioner, it appears that there is only a minor negligence or breach, which may not warrant such a severe penalty.

12. Relying upon the judgment of the Apex Court in the case of State of U.P. vs. Vijay Shanker Tripathi6, learned counsel for the petitioner submits that the termination order based on ill-founded allegations of misconduct without any regular departmental inquiry and without securing adequate evidence resulting in any major penalty is invalid. He, therefore, submits that the punishment order is illegal and liable to be set aside.

13. Per contra, Sri Ashish Kumar Nagvanshi, Advocate appearing for Respondent nos.2,4&5, on the basis of instructions, submitted that the inquiry was conducted in accordance with due procedure. The charge sheet as well as enquriy report were served upon the petitioner, who submitted his reply, therefore, on basis of material available, the Inquiry Officer assigned reasons for holding that charges were proved and thereafter, appointment of petitioner was cancelled by disciplinary authority. He further submitted that even a proper inquiry may not be required in cases where the petitioner has submitted forged documents. In the present case, the petitioner failed to submit any reply to the pointed queries raised in the charge sheet and notices, despite repeated notices.

14. Heard learned counsel for parties and perused the material available on record.

15. The facts of the case and arguments advanced by learned counsel for the parties, germinate two issues for consideration, that would conclude the controversy concisely in precision. The

first issue before this Court is to consider that whether the petitioner's appointment was obtained through fraudulent means? The second issue before this Court is to consider that whether the respondent was justified in cancelling the petitioner's appointment without conducting proper inquiry?

16. Perusal of the records as well as the instructions passed on to the Court today, it is found that on the basis of STF report, the petitioner was placed under suspension and a departmental inquiry was initiated based on the STF report. Pankaj Kumar Singh, Block Education Officer, Desahi, Deoria was nominated as the Inquiry Officer. The petitioner was served with a copy of the charge sheet and notice on 28.12.2023, directing him to submit his reply within five days. The petitioner submitted his reply, requesting verification of his educational certificates from the Secretary, Basic Education Board, U.P., Prayagraj. Subsequently, the Inquiry Officer/Block Education Officer, Desahi, Deoria, wrote to the Secretary, Board of Secondary Education, U.P. (Respondent No. 2) on 08.02.2024, for verification of the petitioner's High School and Intermediate marksheets. Pursuant to this, Respondent No. 2 submitted a report dated 15.04.2024, which reads as follows:-

"हाईस्कूल परीक्षा वर्ष 1983, अनुक्रमांक-695179, परीक्षार्थी का नाम एवं पिता का नाम KM. NIRMALA D/o RAM AWADHD VERMA जन्मतिथि-01.01.69, श्रेणी-द्वितीय, परीक्षाफल-231/500 व इण्टरमीडिएट परीक्षा वर्ष-1985, अनुक्रमांक 359930, परीक्षार्थी का नाम एवं पिता का नाम MANZOOR ANSARI S/O HAKIM ANSARI श्रेणी-द्वितीय परीक्षाफल-245/500, परिषदीय अभिलेखानुसार परीक्षार्थियों का सत्यापन विवरण है।

नोट-हाईस्कूल परीक्षा वर्ष-1983, अनुक्रमांक-695179 एवं इण्टर परीक्षा वर्ष-1985, अनुक्रमांक-359930 का परिषदीय अभिलेखानुसार VIRENDRA KUMAR के स्थान पर किसी अन्य छात्र का विवरण अंकित है। उक्त छात्र द्वारा प्रस्तुत अंकपत्र/प्रमाण पत्र कूटरचित है।"

17. Following the report submitted by Respondent No. 2, the Inquiry Officer/Block Education Officer, Desahi, Deoria, submitted the inquiry report dated 02.05.2024, which reads as follows:-

"उपरोक्तानुसार वर्णित पत्रों, सत्यापन आख्याओं व अपचारी कर्मचारी के स्पष्टीकरण से यह साबित हो रहा है कि श्री वीरेन्द्र कुमार मिश्र, स०अ० (निलम्बित), कम्पोजिट विद्यालय जरार मानिक, वि०शे०-भलुअनी, जनपद-देवरिया द्वारा तथ्यों का गोपन कर षड्यन्त्र करते हुए फर्जी हाईस्कूल एवं इण्टरमीडिएट अंकपत्र / प्रमाण पत्र के आधार पर बेसिक शिक्षा विभाग में नौकरी प्राप्त किये हैं, जो एक गम्भीर अपराध की श्रेणी में है।"

18. Subsequently, a notice dated 22.05.2024, was served upon the petitioner, affording him a last opportunity to submit his reply within a period of seven days. Notwithstanding the same, the petitioner submitted his reply on 09.07.2024, wherein

he mentioned different roll numbers for his High School and Intermediate marksheets. This endeavour on the part of the petitioner appears to be a deliberate attempt to obfuscate the issue. In light of the documentary evidence on record, it is manifestly clear that the petitioner's appointment was procured through fraudulent means, and the respondents were fully justified in arriving at this conclusion.

19. The law is well-settled on this issue, with numerous judicial pronouncements emphasizing the importance of integrity and honesty in public appointments. Courts have consistently held that fraudulent appointments are void ab initio and must be set aside, regardless of the consequences.

20. It is well settled that fraud vitiates all solemn acts. Petitioner has not submitted any document which could contradict the findings recorded by Inquiry Officer as well as by disciplinary authority that forged educational documents were provided by petitioner at the time of his appointment. At this stage, it would be relevant to mention relevant paragraphs of the judgments passed by Supreme Court in Rajasthan Rajya Vidyut Prasaran Nigam Limited and another vs. Anil Kanwariya7 and Indian Oil Corporation Ltd. vs. Rajendra D. Harmalkar8.

i) Rajasthan Rajya Vidyut Prasaran Nigam Limited (supra);

"14. The issue/question may be considered from another angle, from the employer's point of view. The question is not about whether an employee was involved in a dispute of trivial nature and whether he has been subsequently acquitted or not. The question is about the credibility and/or trustworthiness of such an employee who at the initial stage of the employment, i.e., while submitting the declaration/verification and/or applying for a post made false declaration and/or not disclosing and/or suppressing material fact of having involved in a criminal case. If the correct facts would have been disclosed, the employer might not have appointed him. Then the question is of TRUST. Therefore, in such a situation, where the employer feels that an employee who at the initial stage itself has made a false statement and/or not disclosed the material facts and/or suppressed the material facts and therefore he cannot be continued in service because such an employee cannot be relied upon even in future, the employer cannot be forced to continue such an employee. The choice/option whether to continue or not to continue such an employee always must be given to the employer. At the cost of repetition, it is observed and as observed hereinabove in catena of decision such an employee cannot claim the appointment and/or continue to be in service as a matter of right."

ii) Indian Oil Corporation Ltd. vs. Rajendra D. Harmalkar (supra);

"22. In the present case, the original writ petitioner was dismissed from service by the Disciplinary Authority for producing the fabricated/fake/forged SSLC. Producing the false/fake certificate is a grave misconduct. The question is one of a TRUST. How can an employee who has produced a fake and forged marksheet/certificate, that too, at the initial stage of appointment be trusted by the employer? Whether such a certificate was material or not and/or had any bearing on the employment or not is immaterial. The question is not of having an intention or mens rea. The question is producing the fake/forged certificate. Therefore, in our

view, the Disciplinary Authority was justified in imposing the punishment of dismissal from service."

21. If an appointment is found to be based on forgery, the authority has the right to recall the appointment. The individual appointed under such circumstances cannot claim any equity or rights based on their continued service, as the appointment is fundamentally flawed. The aforesaid has been held by the Co-ordinate Bench of this Court in the case of Usha Singh vs. State of U.P. and another9. Also the same has been held by Madhya Pradesh High Court in the case of Nageswar Sonkesri vs. State of M.P. and another10.

22. In the case of Vijay Krishnarao Kurundkar and another vs. State of Maharashtra and Others11, the Apex Court has consistently held that appointments made on the basis of forged documents are invalid and such appointments are void ab initio and cannot be legitimized by any subsequent actions.

23. In the case of Jainendra Singh vs. State of U.P.12, Hon'ble Supreme Court considered the fact of appointment obtained by fraud and held in para 29.1 to 29.10 as under :-

"29.1 Fraudulently obtained orders of appointment could be legitimately treated as voidable at the option of the employer or could be recalled by the employer and in such cases merely because the respondent employee has continued in service for a number of years, on the basis of such fraudulently obtained employment, cannot get any equity in his favour or any estoppel against the employer.

29.2 Verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to the post under the State and on account of his antecedents the appointing authority if find not desirable to appoint a person to a disciplined force can it be said to be unwarranted.

29.3 When appointment was procured by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer and, therefore, it would create no equity in his favour or any estoppel against the employer while resorting to termination without holding any inquiry.

29.4 A candidate having suppressed material information and/or giving false information cannot claim right to continue in service and the employer, having regard to the nature of employment as well as other aspects, has the discretion to terminate his services.

29.5 Purpose of calling for information regarding involvement in any criminal case or detention or conviction is for the purpose of verification of the character/antecedents at the time of recruitment and suppression of such material information will have clear bearing on the character and antecedents of the candidate in relation to his continuity in service.

29.6 The person who suppressed the material information and/or gives false information cannot claim any right for appointment or continuity in service.

29.7 The standard expected of a person intended to serve in uniformed service is quite distinct from other services and, therefore, any deliberate statement or omission regarding a vital information can be seriously viewed and the ultimate decision of the appointing authority cannot be faulted.

29.8 An employee on probation can be discharged from service or may be

refused employment on the ground of suppression of material information or making false statement relating to his involvement in the criminal case, conviction or detention, even if ultimately he was acquitted of the said case, inasmuch as such a situation would make a person undesirable or unsuitable for the post.

29.9 An employee in the uniformed service pre-supposes a higher level of integrity as such a person is expected to uphold the law and on the contrary such a service born in deceit and subterfuge cannot be tolerated.

29.10 The authorities entrusted with the responsibility of appointing Constables, are under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of a Constable and so long as the candidate has not been acquitted in the criminal case, he cannot be held to be suitable for appointment to the post of Constable."

24. Thus, the law in case of appointment obtained fraudulently is well settled. Fraudulently obtained order of appointment or approval can be recalled by the authority concerned. In such cases merely because the employee continued in service for a number of years, on the basis of fraudulently obtained orders, cannot create any equity in his favour or any estoppel against the employer/authority. When an appointment or approval has been obtained by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer. It would create no equity in his favour or any estoppel against the employer to cancel such appointment or approval since "Fraud and justice never dwell together."

25. In view of the foregoing analysis and observations, now, it is clear that when any selection/recruitment or appointment to some post was made illegally and it is noticed on the complaint or at subsequent stage that illegalities, irregularities, improprieties, procedural infirmities and deficiencies and defects have occurred, forgery or foul-play adopted or non observance of Act, rules, norms were made in process then the beneficiary candidate, who has become output and product of such defective and bad selection or outcome of spoiled system process, shall have no right or claim to the post or salary or any consequential benefits in the service.

26. In the case of Union of India Vs. Prohlad Guha etc.13, it has been clearly held by the Apex Court that in case the employment has been obtained based on fraudulent documents on concealing material facts, the beneficiary of such fraud cannot seek that proper procedure as prescribed under Rule 1999 must be followed.

27. In the present case charges levelled against petitioner were found proved that he has committed forgery and submitted forged documents. Petitioner has failed to bring on record any document which could contradict the reasons given in inquiry report as well as in impugned order. The issue of not providing inquiry report of STF as well as charge sheet to petitioner, though it has been denied by respondents, does not exist as in the order impugned itself it has been mentioned that notices as well as proper opportunities were provided to the petitioner, nonetheless, the petitioner has failed to demonstrate the authenticity of his educational documents. Therefore, a person such as petitioner, who has procured appointment as Teacher on basis of forged educational documents, cannot be entitled for any sympathy and he is required to be dealt with strictly.

28. In this view of the matter, when the petitioner had produced forged documents for getting appointment and nothing has been pointed out to controvert the findings recorded in the impugned order, the petitioner is not entitled to grant any relief as prayed.

29. For all the reasons aforestated, I do not find any error of law in the impugned order dated 20.11.2024 passed by respondent no.4. Therefore, the writ petition is, accordingly, dismissed.