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ALLAHABAD SERIES

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1. Hon'ble Mr. Justice Manoj Kumar Gupta (Sr. Judge, Alld.)	33. Hon'ble Mr. Justice Saurabh Lavania
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7. Hon'ble Mr. Justice Rajan Roy	39. Hon'ble Mr. Justice Rajeev Singh
8. Hon'ble Mr. Justice Yashwant Varma	40. Hon'ble Mrs. Justice Manju Rani Chauhan
9. Hon'ble Mr. Justice Siddhartha Varma	41. Hon'ble Mr. Justice Karunesh Singh Pawar
10. Hon'ble Mrs. Justice Sangeeta Chandra	42. Hon'ble Dr. Justice Yogendra Kumar Srivastava
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12. Hon'ble Mr. Justice Saumitra Dayal Singh	44. Hon'ble Mr. Justice Rohit Ranjan Agarwal
13. Hon'ble Mr. Justice Shekhar B. Saraf	45. Hon'ble Mr. Justice Raj Beer Singh
14 Hon'ble Mr. Justice Salil Kumar Rai	46. Hon'ble Mr. Justice Shekhar Kumar Yadav
15. Hon'ble Mr. Justice Jayant Banerji	47. Hon'ble Mr. Justice Deepak Verma
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79. Hon'ble Mr. Justice Anil Kumar-X
80. Hon'ble Mr. Justice Sandeep Jain
81. Hon'ble Mr. Justice Avnish Saxena
82. Hon'ble Mr. Justice Madan Pal Singh
83. Hon'ble Mr. Justice Harvir Singh

(2025) 7 ILRA 6
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 23.07.2025

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

First Appeal From Order No. 531 of 2025

Yudhisthir Yadav ...Appellant
Versus
Abhishek Kumar & Anr. ...Respondents

Counsel for the Appellant:
Dheeraj Singh (Bohra), Rituvendra Singh Nagvanshi, Sr. Advocate

Counsel for the Respondents:
Sarthak Varma

Issue for Consideration

Whether ex parte decree passed in plaintiff's suit for specific performance without framing issues, was valid in law, and whether defendant–appellant's application under Order IX Rule 13 of Civil Procedure Code for setting aside that decree had been wrongly rejected by trial court.

Head Notes

Code of Civil Procedure, 1908 - O. IX. R.13 - Plaintiff-respondent instituted suit for specific performance of contract before Civil Judge (Senior Division) - Suit was decreed ex parte on 12.11.2024 without framing of issues, as defendant-appellant did not appear - Defendant thereafter filed application under Order IX Rule 13 of Code of Civil Procedure on 21.11.2024 seeking to set aside ex parte judgment and decree - Application rejected by trial court vide order dated 20.02.2025 on grounds found to be misconceived by appellant - Aggrieved thereby, defendant preferred present First Appeal From Order praying for setting aside both order dated 20.02.2025 and ex parte decree dated 12.11.2024, and for restoration of suit for adjudication on merits after due framing of issues and affording opportunity to parties to lead evidence.

Held: There is no dispute that plaintiff's suit for specific performance, filed on 12.07.2024, was decreed ex parte on 12.11.2024, and that defendant's application under Order IX Rule 13 C.P.C. dated 21.11.2024 was rejected by trial court - Suit was decreed without framing issues and within-time application under Order IX Rule 13 C.P.C. rejected, as such, both impugned judgment should be set aside rather to remand matter for fresh consideration of application filed under Order IX Rule 13 C.P.C. - Trial court shall frame issues in suit, allow parties to lead evidence and decide suit expeditiously, preferably within six months, in accordance with law. [Paras 7, 14, 16] (E-13)

Case Law Cited

Balraj Taneja and another v. Sunil Madan and another, **AIR 1999 Supreme Court 3381;** Smt. Kaniz Fatima (deceased) and Another v. Mohd. Naim Ashraf, **AIR 1983 Allahabad 350;** Collector, Land Acquisition Anantnag and Another v. Mst. Kantiji & Others, **AIR 1987 SC 1353;** Rakesh Kumar Jain v. Zulfkar Ali, **2023 SCC Online All 2821 - referred to**

List of Acts

Code of Civil Procedure, 1908.

List of Keywords

Specific performance; Ex parte judgment and decree; Without framing issues; Restoration application; Fresh consideration; Records of the trial court be transmitted; Rejection of application under Order IX Rule 13 C.P.C.; Expeditious disposal; Opportunity to the parties to lead evidence; Remand the matter for fresh consideration

Case Arising From

APPELLATE JURISDICTION: First Appeal From Order No. - 531 of 2025

From the Judgment and Order dated 20.02.2025 of the Civil Judge (Senior Division), Court No. 2 Bulandshahar, Misc. Case No.217/2024

Appearances for Parties

Advs. for the Appellant:

Dheeraj Singh (Bohra), Rituvendra Singh Nagvanshi, Sr. Advocate

Advs. for the Respondent:
Sarthak Verma

(Delivered by Hon'ble Chandra Kumar Rai, J.)

1. Heard Sri R.C. Singh, learned Senior Counsel assisted by Sri N.D. Shukla, learned counsel for the defendant-appellant and Sri Anadi Krishna Narayan, learned counsel, holding the brief of Sri Sarthak Verma, learned counsel for the plaintiff-respondents.

2. Brief facts of the case are that suit for specific performance of contract filed by plaintiff-respondent, was decreed ex parte by the trial court vide judgment and decree dated 12.11.2024. Against the ex parte judgment and decree dated 12.11.2024, application under Order IX Rule 13 of Civil Procedure Code, 1908 (hereinafter referred to as the "C.P.C.") has been filed on behalf of the defendant-appellant on 21.11.2024. Against the application under Order IX Rule 13 of the C.P.C., an objection was filed on behalf of the plaintiff. The trial court vide judgment dated 20.2.2025, has rejected the application filed on behalf of the defendant under Order IX Rule 13 of C.P.C. Hence, the instant First Appeal From Order under Section 104 read with Order 43 Rule 1(d) of the Civil Procedure Code for following relief:-

"The relief sought by means of present FAFO is that the present appeal may be allowed, order dated 20.2.2025 passed by the Additional Civil Judge (Sr. Division), Court No.2, Bulandshahar in Misc. Case No.217 of 2024 in Original Suit No.784 of 2024 between Abhishek Kumar and another (plaintiffs) vs. Yudhisthir Yadav (defendant) and ex parte decree dated 22.11.2024 may be set aside and suit may be decided on merit after full trial".

3. This Court entertained the matter on 12.3.2025 and granted interim protection in the matter.

4. Learned Senior Counsel for the appellant submitted that suit for specific performance cannot be decreed without framing issues in the suit. He submitted that suit was decreed in ex parte manner vide judgment and decree dated 12.11.2024 within period of four months. He further submitted that within time application under Order IX Rule 13 of the C.P.C. has been rejected on misconceived grounds. He submitted that ex parte judgment and decree passed by the trial court as well as the order, rejecting the application under Order IX Rule 13 C.P.C., should be set aside and suit for specific performance should be decided afresh after framing issues, giving opportunity to parties to lead evidence in accordance with law.

5. On the other hand, Sri Anadi Krishna Narayan, learned counsel, holding the brief of Sri Sarthak Verma, learned counsel for the plaintiff-respondents submitted that the application under Order IX Rule 13 of the C.P.C. filed by the defendant-appellant has been rightly rejected under the impugned order. He further submitted that the suit was decreed as ex parte as the defendant was avoiding the service of notice. He submitted that no interference is required and the instant First Appeal From Order filed by the appellant should be dismissed. He further submitted that if the Hon'ble Court is of the view that application filed under Order IX Rule 13

C.P.C. requires fresh consideration, the matter may be sent back before trial court for fresh consideration of application under Order IX Rule 13 C.P.C.

6. I have considered the arguments advanced by learned counsel for the parties and perused the records of the trial court which was summoned vide order of this Court dated 12.3.2025.

7. There is no dispute about the fact that suit for specific performance filed on 12.7.2024 by the plaintiff-respondent has been decreed ex parte within a period of 4 months vide judgment and decree dated 12.11.2024. There is also no dispute about the fact that the application dated 21.11.2024 under Order IX Rule 13 of the C.P.C. filed on behalf of the defendant-appellant has been rejected.

8. The perusal of the ex parte judgment and decree dated 12.11.2024 passed by the trial court demonstrates that the suit for specific performance has been decreed without framing issues.

9. Hon'ble Supreme Court in the case reported in **AIR 1999 Supreme Court 3381, Balraj Taneja and another** versus Sunil Madan and another has held that suit for specific performance of contract cannot be decided without framing issues even the written statement has not been filed by defendants. Paragraph Nos. 28, 29, 41 & 43 of the judgment of the Hon'ble Apex Court rendered in **Balraj Taneja (supra)** will be relevant for perusal which are as under:-

"28. Having regard to the provisions of Order 12 Rule 6, Order 5 Rule 8, specially the proviso thereto, as also Section 58 of the Evidence Act, this Court in Razia Begum case [AIR 1958 SC 886 : 1959 SCR 1111] observed as under:

"In this connection, our attention was called to the provisions of Rule 6 of Order 12 of the Code of Civil Procedure, which lays down that, upon such admissions as have been made by the Prince in this case, the Court would give judgment for the plaintiff. These provisions have got to be read along with Rule 5 of Order 8 of the Code with particular reference to the proviso which is in these terms:

'Provided that the court may in its discretion require any fact so admitted to be proved otherwise than by such admission.'

The proviso quoted above, is identical with the proviso to Section 58 of the Evidence Act, which lays down that facts admitted need not be proved. Reading all these provisions together, it is manifest that the Court is not bound to grant the declarations prayed for, even though the facts alleged in the plaint, may have been admitted."

The Court further observed:

"Hence, if the court, in all the circumstances of a particular case, takes the view that it would insist upon the burden of the issue being fully discharged, and if the court, in pursuance of the terms of Section 42 of the Specific Relief Act, decides, in a given case, to insist upon clear proof of even admitted facts, the court could not be said to have exceeded its judicial powers."

29. As pointed out earlier, the court has not to act blindly upon the admission of a fact made by the defendant in his written statement nor should the court proceed to pass judgment blindly merely because a written statement has not been filed by

the defendant traversing the facts set out by the plaintiff in the plaint filed in the court. In a case, specially where a written statement has not been filed by the defendant, the court should be a little cautious in proceeding under Order 8 Rule 10 CPC. Before passing the judgment against the defendant it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. It is a matter of the court's satisfaction and, therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission, the court can conveniently pass a judgment against the defendant who has not filed the written statement. But if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. Such a case would be covered by the expression "the court may, in its discretion, require any such fact to be proved" used in sub-rule (2) of Rule 5 of Order 8, or the expression "may make such order in relation to the suit as it thinks fit" used in Rule 10 of Order 8.

41. There is yet another infirmity in the case which relates to the "judgment" passed by the Single Judge and upheld by the Division Bench.

43. In an old case, namely, Nanhe v. Saiyad Tasadduq Husain [(1912) 15 Oudh Cases 78] it was held that passing of a mere decree was a material irregularity within the meaning of Section 115 of the Code and that even if the judgment was passed on the basis of the admission made by the defendant, other requirements which go to constitute "judgment" should be complied with."

10. The ratio of the above mentioned judgment of Hon'ble Supreme Court in **Balraj Taneja (supra)** demonstrate that even in the case of admission court should pass the judgment which go to constitute "Judgment".

11. This Court in the case reported in **AIR 1983 Allahabad 350, Smt. Kaniz Fatima (deceased) and Another vs. Mohd. Naim Ashraf** has held that decree passed in suit without framing relevant issues, will be illegal. Paragraph Nos. 23 & 24 of the judgment rendered in the case of Smt. Kaniz Fatima (supra) will be relevant for perusal which is as under:-

"23. There is no dispute with the proposition of law laid down in the aforesaid decision, but the true scope of the said rule would be that where the parties have led their entire evidence on all the pleas raised by them, they cannot be permitted to urge at the conclusion of the proceedings or in appeal that they were taken by surprise by non-framing of an issue on that particular point on which they have already exhausted their evidence. In such a case it cannot be said that the parties are prejudiced in any manner whatsoever by non-framing of an issue. But the said rule cannot be construed to cover those cases as well where the evidence was led on issues on which the parties actually went to trial, because it is well settled that the evidence adduced on any particular issue by the parties cannot be made foundation for

decision of any other and different plea on which no issue has been framed, because in the absence of an issue on the point they cannot be said to have an opportunity of adducing evidence in support of it or in rebuttal of it. It cannot be assumed that the parties have exhaustively led evidence on all the pleas raised in the pleadings. A party is supposed to lead evidence only on the issues framed in the suit. The other party can object and the court can always refuse to re cord evidence which does not relate to the issues framed in the suit. Even if evidence has been led and brought on record, the court will not be justified to look into that evidence for deciding a point not covered by the issues. Thus, it cannot be said that if the parties had led evidence in the case it should be construed to cover all the pleas raised in the pleadings although no issue has been framed on that point.

24. The object of framing the issue is to direct the attention of the parties to lead evidence on that specific issue framed and if no evidence is led (one line obliterated Ed.) drawn against the concerned party for holding that it has no evidence to support or to rebut the plea covered by the issue in question. But in the absence of proper issues covering all the pleas raised in pleadings it cannot be said that the parties have exhausted all their evidence or all the pleas raised by them although the same are not covered by the issues framed. In this view of the matter, we find that in the present case since proper issues have not been framed, which arise out of the pleadings of the parties as well as in the statement of the case recorded under O. 10, R. 2 of the Code, it cannot be said that the defendants have led all their evidence which they would have led in support of the pleas which are not covered by the issues framed in the suit. The decision, recorded by the court below, therefore, cannot be sustained on the said ground urged by the learned counsel for the plaintiff. The case, therefore, deserves to be remanded to the trial court for decision afresh after framing proper additional issues in the suit and giving full opportunity to the parties to lead their evidence which they may like to produce in support of their case. Learned court below will carefully scrutinize pleadings and frame necessary additional issues."

12. The Apex Court in the case reported in **AIR 1987 SC 1353, Collector, Land Acquisition Anantnag and Another vs. Mst. Kantiji & Others** has held that in place of rejecting the matter on technical grounds, the matter should be decided on merits.

13. This Court in the case reported in **2023 SCC Online All 2821, Rakesh Kumar Jain vs. Zulfkar Ali** has set aside the orders passed, rejecting the application under Order IX Rule 13 C.P.C. as well as ex parte decree passed in Original Suit and directed the trial court to decide the original suit afresh.

14. In the instant matter the suit was decreed without framing issues and within-time application under Order IX Rule 13 C.P.C. has been rejected, as such, both the impugned judgement should be set aside rather to remand the matter for fresh consideration of application filed under Order IX Rule 13 C.P.C.

15. Considering the entire facts and circumstances of the case, the judgment and order dated 20.2.2025 passed by the

Civil Judge (Senior Division), Court No.2, Bulandshahar in Misc. Case No.217/2024 is set aside and restoration application dated 21.11.2019 (4C2), under Order 9 Rule 13 C.P.C. is allowed. Consequently the ex parte judgment and decree dated 22.11.2024, passed in Original Suit No.784/2024 is also set aside.

16. **The instant First Appeal From Order is allowed.** Original Suit No.784/2024 is restored to its original number. The trial court shall frame issues in the suit and afford opportunity to the parties to lead evidence in accordance with law. The trial court shall decide the suit expeditiously, preferably within a period of six months from the date of production of the certified copy of the order, in accordance with law.

17. Records of the trial court be transmitted to the court concerned forthwith.

(2025) 7 ILRA 11
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.07.2025

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE PRAVEEN KUMAR GIRI, J.

Civil Misc. Review Application No. 174 of 2025

Hindustan Petroleum Corporation Ltd. & Anr. ...Applicants

Versus

Fida Hussain ...Opposite Party

Counsel for the Applicants:
Komal Mehrotra

Counsel for the Opposite Party:
Yash Padia

Issue for Consideration

I. Whether The Court overlooked the fact that brochure for Dealer Selection provides for non rectifiable clause since 2023 advertisement

II. Whether The Court overlooked the fact that in contractual matters, the parties are bound by the terms and conditions of the advertisement/brochure and the Court cannot direct any party to act contrary to the terms and conditions of the brochure.

III. Whether In M/s Indian Oil Corporation Limited & others v. Raj Kumar Jha & Others reported in (2012) 2 PLJR 783, the Patna High Court has upheld the rejection of the application by corporation and directed strict adherence to the terms and conditions mentioned in the advertisement.

Head Notes

The Constitution of India, 1950-Article 226- The Code of Civil Procedure, 1908-Section 151 & Order 47 Rule 1- Court had gone into all the materials that were present before the Court - Court finding the defect in the PAN to be curable at the first instance had set aside the order rejecting the application for award of retail outlet dealership of the petitioner - Review application appears to be an appeal in disguise - Review application dismissed.

Held- The grounds in the present review application neither fall within the ambit of 'discovery of new and important matter or evidence' nor within 'mistake or error apparent on the face of record'. **(Para 3, 5 & 6)** (E-15)

Case Law Cited

State of West Bengal v. Confederation of State Government Employees; 2019 SCC Online Cal 9181; M/s Indian Oil Corporation Limited & others v. Raj Kumar Jha & Others reported in (2012) 2 PLJR 783

List of Acts

The Constitution of India, 1950- The Code of Civil Procedure, 1908

List of Keywords

Review jurisdiction is a limited jurisdiction; Discovery of new and important matter or evidence'; mistake or error apparent on the face of record; Review application appears to be an appeal in disguise

Case Arising From

Review application against the judgment/order dated 04.04.2025 passed in Writ-C No.5361 of 2025, wherein the writ petition was allowed setting aside the order dated 31.01.2025 passed by the Head of Regional Office, Meerut Retail Regional Officer, Hindustan Petroleum Corporation Limited.

Appearances for Parties

Counsel for Applicant :- Komal Mehrotra
Counsel for Opposite Party :- Yash Padia

Judgment/Order of the High Court

(Delivered by Hon'ble Shekhar B. Saraf, J.
&
Hon'ble Praveen Kumar Giri, J.)

1. This is a review application filed by the applicants (respondents in the writ petition) against the judgment/order dated 04.04.2025 passed in Writ-C No.5361 of 2025, wherein the writ petition was allowed setting aside the order dated 31.01.2025 passed by the Head of Regional Office, Meerut Retail Regional Officer, Hindustan Petroleum Corporation Limited.

2. Learned counsel appearing on behalf of the applicants has sought review of the order on several grounds as provided below:

a. The Court overlooked the fact that brochure for Dealer Selection provides for non rectifiable clause since 2023 advertisement and the respondent herein (petitioner in the writ petition) has never challenged the vires of the said guidelines.

b. The Court overlooked the fact that in contractual matters, the parties are bound by the terms and conditions of the advertisement/brochure and the Court cannot direct any party to act contrary to the terms and conditions of the brochure. Allowing respondent herein to rectify a non rectifiable mistake would frustrate the clauses of guidelines under the garb of human error.

c. In M/s Indian Oil Corporation Limited & others v. Raj Kumar Jha & Others reported in (2012) 2 PLJR 783, the Patna High Court has upheld the rejection of the application by corporation and directed strict adherence to the terms and conditions mentioned in the advertisement.

3. Upon perusal of the order sought to be reviewed, it is clear that this Court had gone into all the materials that were present before this Court at that time. Furthermore, this Court finding the defect in the PAN to be curable at the first instance had set aside the order rejecting the application for award of retail outlet dealership of the petitioner.

4. In the present case, the first two grounds of review have already been dealt with by this Court holding that the mistake was apparently a misspelling with regard to second letter in the PAN. The respondent herein also submitted a correct PAN and if clarification was sought by the Corporation, it would have been resolved by the respondent herein at the first instance. The writ Court decided the matter based on the peculiar facts and circumstances of the case and has expressly made it clear that the judgment shall not serve as a precedent for others. With regard to the third ground for review, the learned counsel has placed reliance on a judgment of Patna High Court in Raj Kumar Jha (Supra); however as it pertains to a Letters Patent Appeal, it cannot govern the limited scope of review.

5. It is to be noted that review jurisdiction is a limited jurisdiction and is

governed by certain principles that have been summarized in the judgment of Calcutta High Court in **State of West Bengal v. Confederation of State Government Employees;** 2019 SCC Online Cal 9181. The relevant paragraph of the judgment is quoted hereinbelow:

"On a reading and comprehension of the Supreme Court judgments on this issue the following principles emerges :-

A. The power to review is inherent in the High Court and the High Court can review its own order/judgment passed in a writ petition.

B. This power of review is a limited power and would be governed by the principles of section 151 read with Order 47 Rule 1 of the Code of Civil Procedure.

C. Firstly, a Court can review its own judgment when there is discovery of new and important matter or evidence that was in spite of exercise of due diligence not within the knowledge or could not be produced due to cogent reasons by the party seeking a review. Secondly, the Court may review its order or judgment on account of some mistake or error apparent on the face of the record. Thirdly, a residuary clause in rule 1 of Order 47 provides for a review 'for any other sufficient reason'. It is to be noted that the Apex Court on several occasions has hold that the third condition "for any other sufficient reason" has to be read within the four corners of the first to conditions.

D. An error which is not self-evident and has to be detected by a process of reasoning is not an error apparent on the face of the record.

E. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise". There is a sharp distinction between an erroneous decision that can be only appealed against and an error apparent on the face of the record that is subject to review.

[See Sasi (D through LRs v. Aravindakshan Nair reported in (2017) 4 SCC 692. Haridas Das v. Usha Rani Banik reported in (2006) 4 SCC 78, paras 15-18; Parsion Devi v. Sumitri Devi reported in (1997) 8 SCC 715, paras 7-10; Aribam Tuleshwar Sharma v. Aribam Pishak Sharma reported in (1979) 4 SCC 389, para3]"

6. In view of the principles enunciated above, the grounds in the present review application neither fall within the ambit of 'discovery of new and important matter or evidence' nor within 'mistake or error apparent on the face of record'.

7. The review application appears to be an appeal in disguise, and accordingly, the same is dismissed.

(2025) 7 ILRA 13
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 29.07.2025

BEFORE

THE HON'BLE RAJNISH KUMAR, J.

Application U/S 528 BNSS No. 862 of 2025

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

Counsel for the Applicant:
Shantanu Sharma, Anshuman Sharma, Athar Ali

Counsel for the Opposite Parties:
G.A.

Issue for consideration

Whether notice issued to the applicant in a complaint before taking cognizance is against the statutory provision made under Section 223 of the BNSS;validity of impugned order dated 10.02.2025 passed by learned Additional Chief Judicial Magistrate-II, Lucknow

Headnotes

Bharatiya Nagarik Suraksha Sanhita, 2023-sec. 223, 226-After filing of complaint u/s 210 BNSS-learned Magistrate has to first examine upon oath the complainant and the witnesses-such examination is to be reduced in writing-signed by the complainant and the witnesses and also by the Magistrate -if he finds no sufficient ground to proceed- he shall dismiss the complaint u/s226 BNSS - if he finds that it can not be dismissed -he shall afford opportunity to the accused- for which the notice of being heard shall be issued at that stage -only thereafter he would take cognizance after affording him opportunity of hearing-impugned order quashed-**W.P. allowed.** (E-9)

Case Law Cited

1. Prateek Agarwal Vs. State of U.P. and Another, Application under Section 482 Cr.P.C. No.10390 of 2024
2. Basanagouda R. Patil Vs. Shivananda S. Patil; 2024 SCC Online Kar 96
3. Suby Antony S/o Late P.D. Antony Vs. Judicial First-Class Magistrate passed in Crl. MC 508 of 2025 .

List of Acts

Bharatiya Nagarik Suraksha Sanhita, 2023

List of Keywords

Cognizance, opportunity of hearing, recording all the statements of the complainant and the witnesses

Appearance of Parties:

Counsel for Applicant :- Shantanu Sharma, Anshuman Sharma, Athar Ali
Counsel for Opposite Party :- G.A.

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

1. Heard Sri Shantanu Sharma, learned counsel for the applicant and Sri Anurag Verma, learned A.G.A. for the State.

2. The instant application under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (here-in-after referred as BNSS) has been moved with a prayer to quash/set aside the impugned order dated 10.02.2025 passed by learned Additional Chief Judicial Magistrate-II, Lucknow in Misc. Case No.807/2025 alongwith notice i.e. Annexure No.1.

3. Learned counsel for the applicant submits that the notice, which has been issued to the applicant by means of the impugned order dated 10.02.2025, is against the statutory provision made under Section 223 of the BNSS because before taking cognizance, the notices can be issued for affording the opportunity of hearing, but only after recording all the statements of the complainant and the witnesses, if required. He relies on a co-ordinate Bench decision dated 26.11.2024 passed **in Application under Section 482 Cr.P.C. No.10390 of 2024; Prateek Agarwal Vs. State of U.P. and Another,** decision of the High Court of Karnataka passed in the case of **Basanagouda R. Patil Vs. Shivananda S. Patil; 2024 SCC Online Kar 96** and judgment rendered by the High Court of Kerala at Ernakulam in the case of **Suby Antony S/o Late P.D. Antony Vs. Judicial First-Class Magistrate passed in Crl. MC 508 of 2025 on 22.01.2025**. Thus, the submission of learned counsel for the applicant is that the impugned notice is not sustainable under law and liable to be quashed.

4. Learned A.G.A. for the State, though opposed the prayer but he could not contradict the legal position. He further

submits that the impugned notice may be quashed and the matter may be remitted back, so that the learned Magistrate may proceed in accordance with law after recording the statements of the complainant and the witnesses and the respondent No.2 cannot be said to be prejudiced at this juncture because his statement has still not been recorded, to which, there is no objection by learned counsel for the applicant.

5. Having considered the submissions of learned counsel for the parties and on perusal of record, it is apparent that a complaint has been filed by the respondent No.2 and without recording any statement of the complainant or the witnesses, a notice has been issued to the applicant by means of impugned order dated 10.02.2025.

6. Section 223 BNSS provides that the Magistrate having jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate. The first proviso appended to the Section provides that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard. The second proviso appended to the Section provides certain contingencies under which, the Magistrate need not examine the complainant and witnesses, if complaint is in writing. The relevant Section 223(1) BNSS is extracted here-in-below:-

"223. Examination of complainant - (1) *A Magistrate having jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:*

Provided that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard:

Provided further that when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 212:

Provided also that if the Magistrate makes over the case to another Magistrate under section 212 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

(2)....."

7. In view of above, after recording statement of the complainant and the witnesses, if any, the Magistrate before taking cognizance in the matter, shall afford an opportunity of being heard to the accused. It is for the reason that if upon consideration of the statements and enquiry got conducted, if any, the Court finds that there is no sufficient ground to proceed, it can dismiss the complaint under Section 226 BNSS, which is extracted here-in-below:-

"226. Dismissal of complaint- *If, after considering the statements on oath (if*

any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 225, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing. Chapter XVII Commencement of Proceedings before Magistrates."

8. In view of above, after filing of complaint under Section 210 BNSS, the learned Magistrate has to first examine upon oath the complainant and the witnesses, if any, and the substance of such examination is to be reduced in writing, which shall be signed by the complainant and the witnesses and also by the Magistrate as per Section 223(1) of BNSS, thereafter, after considering the same, if he finds that there is no sufficient ground to proceed, he shall dismiss the complaint under Section 226 BNSS and if he finds that it can not be dismissed as such, he shall afford opportunity to the accused for which the notice of being heard shall be issued at that stage and only thereafter he would take cognizance after affording him opportunity of hearing. It is because, if the complaint is dismissed under Section 226 BNSS, the accused may not be harassed unnecessarily of appearing and the opportunity of hearing may not be a mere formality and it should be with material, which is required to be considered for taking cognizance. Thus, after recording of the statement under Section 223 BNSS and upon consideration that some sufficient ground is made out to proceed, learned Magistrate shall issue notice to the accused.

9. A co-ordinate Bench of the High Court of Karnataka has examined the legal position with regard to Section 223 BNSS and held that the Magistrate while taking cognizance of an offence should have with him the statement on oath of the complainant and if any witnesses are present, their statements. The taking of cognizance under Section 223 of the BNSS would come after the recording of the sworn statement, at that juncture a notice is required to be sent to the accused, as the proviso mandates grant of an opportunity of being heard. The relevant paras are being extracted hereinbelow:-

"8. The obfuscation generated in the case at hand is with regard to interpretation of Section 223 of the BNSS, as to whether on presentation of the complaint, notice should be issued to the accused, without recording sworn statement of the complainant, or notice should be issued to the accused after recording the sworn statement, as the mandate of the statute is, while taking cognizance of an offence the complainant shall be examined on oath. The proviso mandates that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard.

9. To steer clear the obfuscation, it is necessary to notice the language deployed therein. The Magistrate while taking cognizance of an offence should have with him the statement on oath of the complainant and if any witnesses are present, their statements. The taking of cognizance under Section 223 of the BNSS would come after the recording of the sworn statement, at that juncture a notice is required to be sent to the accused, as the proviso mandates grant of an opportunity of being heard.

10. Therefore, the procedural drill would be this way:

A complaint is presented before the Magistrate under Section 223 of the

BNSS; on presentation of the complaint, it would be the duty of the Magistrate / concerned Court to examine the complainant on oath, which would be his sworn statement and examine the witnesses present if any, and the substance of such examination should be reduced into writing. The question of taking of cognizance would not arise at this juncture. The magistrate has to, in terms of the proviso, issue a notice to the accused who is given an opportunity of being heard. Therefore, notice shall be issued to the accused at that stage and after hearing the accused, take cognizance and regulate its procedure thereafter.

11. The proviso indicates that an accused should have an opportunity of being heard. Opportunity of being heard would not mean an empty formality. Therefore, the notice that is sent to the accused in terms of proviso to sub-section (1) of Section 223 of the BNSS shall append to it the complaint; the sworn statement; statement of witnesses if any, for the accused to appear and submit his case before taking of cognizance. In the considered view of this Court, it is the clear purport of Section 223 of BNSS 2023."

10. A co-ordinate Bench of this Court has taken similar view and after considering the aforesaid judgment of the Karnataka High Court, has allowed petition filed under Section 482 Cr.P.C. in the case of **Prateek Agarwal (Supra).** Similar view has been taken by the High Court of Kerela at Ernakulam in the case of **Suby Antony S/o Late P.D. Antony (Supra).**

11. Adverting to the facts of the present case, it is apparent that notices have been issued to the applicant without recording the statements of the complainant and witnesses, which is against the prescribed procedure under the the BNSS, therefore, this Court is of the view that the impugned order is not sustainable in the eyes of law. It is also noticed that the notice issued to the applicant, contained as Annexure No.1 is a blank notice without filling the blanks and mentioning the name of the applicant only, whereas notice should have been issued properly after filling all the relevant blanks and the concerned Court shall ensure that such notice is not issued in future.

12. Since the prescribed procedure has not been followed and the statements of the respondent No.2 and witnesses still have not been recorded, it cannot be said that he will be prejudiced by quashing of the impugned order dated 10.02.2025 and the notice because after recording the statements of the complainant and the witnesses, the Court can issue notice to the accused in accordance with law before taking cognizance in the matter. Thus, notice to respondent No.2 is dispensed with.

13. The application is **allowed**. The impugned order dated 10.02.2025 passed by learned Additional Chief Judicial Magistrate-II, Lucknow in Misc. Case No.807/2025 is hereby **quashed.**

14. The trial court shall proceed to record statements of the complainant and witnesses and proceed accordingly in accordance with law and the observations made here-in-above.

(2025) 7 ILRA 18
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 03.07.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Application U/S 482 No. 5309 of 2025

Waseem @ Mohammad Waseem
...Applicant
Versus
State of U.P. & Ors. ...Opposite Parties

Counsel for the Applicant:
Avinash Shukla, Jyoti Tripathi

Counsel for the Opposite Parties:
G.A.

Issue for consideration
Pertains to Criminal proceedings u/s 366, 376 IPC and under POCSO Act if consented relation and age of victim is about 18 years.

Headnotes
Indian Penal Code-sec.363, 366, 376; Protection of Children from Sexual Offences Act, 2012-sec. 3/4-Victim at the time of incidence-aged about 18 years-statement u/s 164 Cr.P.C.-victim stated her consent-want to marry the accused-crime against society-but victim's welfare-as she wants to marry the accused-and is residing with him as his wife since past one and half years-proceedings quashed. **Application allowed.** (E-9)

Case Law Cited
1. Kapil Gupta vs. State (2022) SCC pg 44
2. Narendra Singh vs. State of Punjab (2014) 6 SCC 466

List of Acts
1. Indian Penal Code, 1860
2. Protection of Children from Sexual Offences Act, 2012

Appearance for parties-
Counsel for Applicant :- Avinash Shukla,Jyoti Tripathi,
Counsel for Opposite Party :- G.A

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. विपक्षीगण की तरफ से एक लघु प्रतिशपथ पत्र प्रस्तुत किया गया, जिसे अभिलेख पर लिया जाता है।

2. प्रार्थी के विद्वान अधिवक्ता श्री अविनाश शुक्ला तथा विद्वान अपर शासकीय अधिवक्ता श्री दिवाकर सिंह एवं विपक्षी संख्या 2 तथा 3 के विद्वान अधिवक्ता श्री अजीत कुमार को सुना तथा पत्रावली का अवलोकन किया।

3. धारा 482 दण्ड प्रक्रिया संहिता के अन्तर्गत प्रस्तुत इस प्रार्थना पत्र द्वारा प्रार्थी ने प्रथम सूचना रिपोर्ट संख्या 106 सन् 2022 अन्तर्गत धारा 363, 366, 376 भा०दं०सं० एवं लैंगिक अपराधों से बालकों का संरक्षण अधिनियम की धारा 3/4, थाना अहिरौली, जनपद-अम्बेडकर नगर के अनुक्रम में प्रस्तुत आरोप पत्र दिनांकित 25.06.2022 तथा उक्त के आधार पर उत्पन्न आपराधिक वाद संख्या 408 सन् 2022 के अनुक्रम में विद्वान मुख्य न्यायाधीश, लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, अम्बेडकर नगर द्वारा पारित आदेश दिनांक 09.09.2022, जिससे उक्त अपराध का संज्ञान लिया एवं प्रार्थी को विचारण के लिए तलब किया गया, के निरस्तीकरण की प्रार्थना इस आधार पर की गई है कि पक्षों के मध्य समझौता हो गया है।

4. दिनांक 30.05.2022 को विपक्षी संख्या 3 द्वारा लिखाई गई प्रथम सूचना रिपोर्ट में यह कहा गया था कि प्रार्थी शिकायतकर्ता की 17 वर्षीय पुत्री (विपक्षी संख्या 2) को दिनांक 28.05.2022 को बहला-फुसलाकर कहीं ले

5. धारा 161 तथा 164 दं०प्र०सं० के अन्तर्गत अंकित अपने बयानों में पीड़िता ने अपनी मर्जी से प्रार्थी के साथ जाना एवं उसके साथ उसकी पत्नी के रूप में रहने का कथन किया है।

6. चिकित्सकीय परीक्षण में पीड़िता की आयु लगभग 17 से 18 वर्ष बताई गई है।

7. पीड़िता (विपक्षी संख्या 3) का बयान विचारण न्यायालय में अंकित हो गया है तथा वह पक्षद्रोही घोषित हो गई है।

8. प्रार्थना पत्र के साथ पक्षों के मध्य निष्पादित मूल सुलहनामा संलग्न किया गया है, जिसमें यह कहा गया है कि प्रार्थी तथा विपक्षी संख्या 3 एक साथ एक घर में शांतिपूर्ण तरीके से लगभग 12 वर्षों से रह रहे हैं, दोनों आपस में शादी करना चाहते हैं तथा कोई भी पक्ष अब आपराधिक कार्यवाही नहीं चाहता है।

9. विपक्षी संख्या 2 तथा 3 की तरफ से संयुक्त रूप से प्रस्तुत लघु शपथ पत्र में विपक्षी संख्या 3 ने अपनी आयु 21 वर्ष दर्शाई है तथा उसने आपराधिक कार्यवाही के निरस्तीकरण की प्रार्थना का समर्थन किया है।

10. यद्यपि गंभीर प्रकरणों, जहाँ कारित किया गया अपराध मात्र एक व्यक्ति के विरुद्ध अपराध न होकर समाज के विरुद्ध अपराध की श्रेणी में आता है, सामान्यतः सुलह के आधार पर आपराधिक कार्यवाही समाप्त नहीं की जा सकती, न्यायालय को प्रत्येक प्रकरण के तथ्यों एवं परिस्थितियों को दृष्टिगत रखते हुए ही अपनी अन्तर्निहित शक्तियों का प्रयोग न्यायहित में करना चाहिए।

11. **कपिल गुप्ता बनाम राज्य (2022) 15 एस०सी०सी० पृष्ठ 44** में उच्च न्यायालय ने धारा 376 भा०दं०सं० के अपराध के प्रकरण में सुलह के आधार पर धारा 482 दं०प्र०सं० की शक्तियों का प्रयोग करते हुए आपराधिक कार्यवाही को निरस्त करने की मांग अस्वीकार कर दी थी। उच्च न्यायालय के आदेश के विरुद्ध प्रस्तुत अपील माननीय उच्चतम न्यायालय ने स्वीकार कर ली तथा बलात्कार के आरोप के संबंध में आपराधिक कार्यवाही सुलह के आधार पर समाप्त कर दी। इस निर्णय में माननीय उच्चतम न्यायालय ने **नरेंद्र सिंह बनाम पंजाब राज्य (2014) 6 एस०सी०सी 466** के निर्णय का आश्रय लिया, जिसमें माननीय उच्चतम न्यायालय ने यह अवधारित किया था कि जघन्य तथा गंभीर आपराधिक प्रकरणों में न्यायालय को आपराधिक कार्यवाही निरस्तीकरण की याचिका में यह देखने के विरुद्ध कोई बाधा नहीं है कि क्या कथित अपराध का आरोप लगाने के संबंध में कोई सामग्री है अथवा क्या ऐसा समुचित साक्ष्य उपलब्ध है, जिससे कि आरोपी को कथित अपराध का दोषी सिद्ध किया जा सके। न्यायालय को यह भी देखना चाहिए कि क्या पक्षों के मध्य समझौते से उनके बीच सौहार्द स्थापित होगा, जिससे उनके आपसी रिश्ते बेहतर बनेंगे। न्यायालय को यह भी देखना चाहिए कि

सुलह कार्यवाही के किस स्तर पर हुई है। यदि सुलह विचारण के अंतिम स्तर पर होती है तो न्यायालय को ऐसी सुलह के आधार पर कार्यवाही निरस्त करने में शीघ्रता नहीं दिखानी चाहिए, किन्तु यदि सुलह विचारण के प्रारंभिक स्तर पर होती है तो यह तथ्य न्यायालय की अंतर्निहित शक्तियों के प्रयोग में कार्यवाही निरस्तीकरण के पक्ष में होगा।

12. उपरोक्त निर्णय के दृष्टिगत मात्र बलात्कार अथवा बालकों के विरुद्ध यौन अपराध का आरोप अभिकथित होने के कारण आपराधिक कार्यवाही के निरस्तीकरण के विरुद्ध कोई सम्पूर्ण प्रतिबंध नहीं है तथा प्रत्येक प्रकरण अपने विशेष तथ्यों एवं परिस्थितियों के आधार पर निर्णीत होगा।

13. प्रस्तुत प्रकरण में जब कि पीड़िता के चिकित्सकीय परीक्षण में घटना के समय उसकी आयु लगभग 18 वर्ष आई, उसने अपनी मर्जी से प्रार्थी के साथ जाकर उसके साथ उसकी पत्नी के रूप में रहने का कथन किया है, वर्तमान में पीड़िता की आयु 21 वर्ष है तथा सुलहनामे में उसने कहा कि वह और प्रार्थी एक ही घर में एक साथ लगभग 12 वर्षों से रह रहे हैं तथा दोनों आपस में शादी करना चाहते हैं एवं कोई भी पक्ष अब आपराधिक कार्यवाही नहीं चाहता है, न्यायालय का स्पष्ट मत है कि आपराधिक कार्यवाही जारी रखने से पीड़िता के हितों पर भी विपरीत प्रभाव पड़ने की प्रबल सम्भावना होगी एवं आपराधिक कार्यवाही जारी रखना किसी भी प्रकार से न्यायहित में नहीं होगा।

14. उपरोक्त विवेचना के आलोक में प्रार्थना पत्र **स्वीकार** किया जाता है। प्रथम सूचना रिपोर्ट संख्या 106 सन 2022 अन्तर्गत धारा 363, 366, 376 भा०दं०सं० एवं लैंगिक अपराधों से बालकों का संरक्षण अधिनियम की धारा 3/4, थाना अहिरौली, जनपद-अम्बेडकर नगर के अनुक्रम में प्रस्तुत आरोप पत्र दिनांकित 25.06.2022 तथा उक्त के आधार पर उत्पन्न आपराधिक वाद संख्या 408 सन् 2022 के अनुक्रम में विद्वान मुख्य न्यायाधीश, लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, अम्बेडकर नगर द्वारा पारित आदेश दिनांक 09.09.2022, जिससे उक्त अपराध का संज्ञान लिया एवं प्रार्थी को विचारण के लिए तलब किया गया तथा उक्त आपराधिक वाद की संपूर्ण कार्यवाही **निरस्त** की जाती है।

(2025) 7 ILRA 20
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 03.07.2025

BEFORE

THE HON'BLE RAJNISH KUMAR, J.

Application U/S 482 No. 5317 of 2025

Dhanu Krishi Sewa Kendra & Anr.
...Applicants
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicants:
Shantanu Mishra, Mohd. Kaif Khan

Counsel for the Opposite Parties:
G.A.

ISSUE FOR CONSIDERATION

Whether the trial and revisional courts were justified in awarding interim compensation under Section 143A of the Negotiable Instruments Act, despite the applicant's objections regarding cheque loss, stop payment, and alleged absence of liability.

HEADNOTES

Criminal Law - Code of Criminal Procedure, 1973 - Section 482, - Bharatiya Nagarik Suraksha Sanhita, 2023 – Section – 528, - Negotiable Instruments Act, 1881 - Sections 138, 141, 143A, 118, 139 - Application under Section 482 CrPC (now Section 528 BNSS, 2023) - challenging the impugned orders – whereby the trial court allowed the application moved by the complainant under Section 143-A of the NI Act for interim compensation and the Revision filed against said order was dismissed by the Revisional Court – financial obligation – Cheque Dishonour – complaint - in defence, applicant taken plea that cheques in-question were lost and therefore a LAR was lodged with the bank, and on account of which bank stopped the payment – during pendency of complaint complainant moved an interim compensation – trial court awarded 15% compensation, within statutory limit of 20%, - against which revision filed - revisional court upheld the decision of trial court – whether the trial and revisional courts were justified in awarding interim compensation under Section 143A of the NI Act, despite the applicant's objections regarding cheque loss, stop payment, and alleged absence of liability – court observed that the applicant had admitted to issuing the cheques and signing them, - and the said compensation amount was appropriately awarded at the correct procedural stage - applicant's conduct, including absconding after bail, further justified the trial court's decision - court held that trial court can award the interim compensation but after considering the pleadings of the parties and other related facts – consequently, court does not find any illegality or infirmity in the impugned orders – accordingly, the Application found to be misconceived and dismissed. (Para – 11, 12, 14, 15)

Application Dismissed**.** (E-11)

CASE LAW CITED

Rakesh Ranjan Shrivastava vs. The State of Jharkhand and another (Criminal Appeal No. 741 of 2024 - order dated 15.03.2024)

LIST OF ACTS

Code of Criminal Procedure, 1973 - Bharatiya Nagarik Suraksha Sanhita, 2023 - Negotiable Instruments Act, 1881.

LIST OF KEYWORDS

Section 482 Cr.P.C. - Cheque Dishonour - Complaint – Interim Compensation - Section 143A NI Act - Lost Article Report (LAR) - Stop Payment - Absconding Accused - Prima Facie Case - Revision - Misconceived Application - Bail Violation -

CASE ARISING FROM

Orders dated 15.05.2025 passed in Case No. 111255 of 2023 (Raj Kishore Sharma vs. Dhanu Krishi Sewa Kendra and another) - and - order dated 28.05.2025 passed in Criminal Revision No. 282 of 2025 (Dhanu Krishi Sewa Kendra vs. Raj Kishore Sharma and others) – District – Lucknow.

APPEARANCE OF PARTIES

Counsel for Appellant: - Shri Shantanu Mishra,
Counsel for Respondent: - Sri Anurag Verma, AGA.

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

1. Heard Shri Shantanu Mishra, learned counsel for the applicants and Shri Anurag Verma, learned Additional Government Advocate.

2. This application under Section 482 CrPC (now Section 528 BNSS, 2023) has been filed assailing the order dated 15.05.2025 passed in Case No. 111255 of 2023; Raj Kishore Sharma vs. Dhanu Krishi Sewa Kendra and another by the Additional Court No. 9 (NI Act), Lucknow and order dated 28.05.2025 passed in Criminal Revision No. 282 of 2025; Dhanu Krishi Sewa Kendra vs. Raj Kishore Sharma and others by the Session Judge, Lucknow.

3. Learned counsel for the applicants submits that the application filed under Section 143A of Negotiable

Instruments Act (here-in-after referred as NI Act) for interim compensation by the respondent no. 2 has wrongly and illegally been allowed by the concerned court. He further submits that the presumption for payment of interim compensation could not have been drawn at this stage and it can be drawn only at the stage of trial after considering evidence. He further submits that the cheques-in-question were lost, therefore, a Lost Article Report (LAR) was lodged with the bank, on account of which, the stop payment was made and the cheques were returned on account of stop payment and not on account of insufficiency of funds. He further submits that the payment in cash has been said to have been made to the respondent no.2, whereas no proof thereof has been placed on record. He further submits that the total amount paid has been shown as Rs. 12,50,000/-, whereas the cheques-in-question are of Rs. 2,50,000 and Rs. 6,00,000/- i.e. total of Rs. 8,50,000/-. He further submits that being aggrieved by the order passed by the trial court, the applicants had filed a revision, which has also been dismissed without considering the grounds raised by the applicants. He relies on the judgment and order dated 15.03.2024 passed in **Rakesh Ranjan Shrivastava vs. The State of Jharkhand and another; Criminal Appeal No. 741 of 2024** by the Hon'ble Supreme Court.

4. Per contra, learned AGA submits that the impugned order has rightly been passed in accordance with law after considering the pleadings of the parties. He further submits that the interim compensation under Section 143A of NI Act can be awarded even at the threshold. Even otherwise the trial has commenced. He further submits that the presumption as to negotiable instruments can be drawn under Section 118 of NI Act and it can be even in regard to the part payment as per Section 139 of NI Act. He also submits that information was given to the police on 06.03.2023 and the intimation to the bank is undated, whereas the cheques-in-question are of 03.02.2023 i.e. prior to the date of alleged loss and the signatures on cheques have also been admitted by the applicants. He further submits that the conduct of the applicants has also been considered not only by the trial court but by the revisional court also, according to which, immediately after grant of bail by the concerned court, the applicant absconded and after recall of the order, again he absconded, therefore, non bailable warrant was issued. Thus, the submission is that the impugned order does not suffer from any illegality or infirmity, which may call for any interference by this Court. This application has been filed on misconceived and baseless grounds. It is liable to be dismissed.

5. Having considered the submissions of learned counsel for the parties, I have perused the records.

6. The complaint under Section 138 read with Section 141 of NI Act has been filed by the respondent no. 2 alleging therein that on account of need of money for start of business by accused, the applicant had given Rs. 12,65,000/- as loan in 2022 due to family relation, on promise of accused that he will return in 1-2 months but it was not returned. For clearing his liabilities, the accused i.e. the applicant gave two cheques of Rs. 4,15,000 vide cheque no. 000029 and Rs. 2,50,000 vide cheque no. 000030 dated 03.02.2023 and Rs. 6,00,000/- vide cheque no. 000032 dated 16.05.2023 of Bank of Baroda, Branch Chathuwa, Chathuwa against the

cash loan of Rs. 12,65,000/-. During pendency of the trial, an application under Section 143A of NI Act was moved by the respondent no. 2 for payment of 20% of amount of cheque(s) as interim compensation on the ground that he is in need of money as he is suffering a lot of inconvenience and financial loss as the accused person has adversely affected the business of the complainant by withholding such a huge amount. The applicant filed objection to the said application denying the allegations made in the application and stating therein that the burden of proof is entirely upon the complainant. However, the relations between the parties have not been denied. The applicants have also admitted the cheques and the signatures thereon. The trial court, after considering the pleadings of the parties and the grounds raised in the application and the conduct of the applicants after issuance of the summoning order and finding prima facie case in favour of the respondent no. 2, awarded the interim compensation of 15% of the amount of the cheques. Being aggrieved by the same, the applicant no. 2 filed a revision, which has been dismissed by the revisional court considering the grounds raised therein. Hence, this application has been filed.

7. Section 143A (1) of NI Act provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and in any other case, upon framing of charge. Sub-section 2 provides that the interim compensation under sub-section (1) shall not exceed twenty percent of the amount of the cheque. Sub-section 3 provides that the interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque. Section 143A is extracted here-in-below:

"Section 143A- Power to direct interim compensation

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant-

(a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and

(b) in any other case, upon framing of charge.

(2) The interim compensation under sub-section (1) shall not exceed twenty percent of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may cheque.

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.

(5) The interim compensation payable under this section may be

recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973.

(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973, shall be reduced by the amount paid or recovered as interim compensation under this section."

8. In view of above, the order of interim compensation to the extent of 20% of the amount of cheque(s) can be passed at any stage by the concerned court trying the offence under Section 138 of NI Act and there is no provision that it can be passed only at the stage of trial after recording of evidence. It is also not in dispute that the substance of the acquisitions have been denied by the applicant no. 2 and he has pleaded not guilty. It is also apparent from the impugned order, therefore, it has rightly been considered and allowed at appropriate stage in terms of Sub-section (a) of Section 143A (1), therefore, the contention of learned counsel for the applicants that the impugned order could not have been passed is misconceived and not tenable.

9. The trial court at this stage, after considering the pleadings of the parties, also finds that the cheques and the signatures thereon of the applicant no. 2 have been admitted by the applicant no. 2 as admitted in his objection against the application under Section 143A NI Act.

10. So far as the intimation given to the bank for making stop payment is concerned, the same is ambiguous, which is apparent from the perusal of the same, which has been placed on record at page No. 16 of application, which does not disclose the cheque numbers-in-question also. It is also noticed that in the intimation given to the police regarding loss of cheques on 06.03.2023, the time of loss is between 04:28 to 06:28 on 06.03.2023, whereas the cheques-in-question have been issued on 06.02.2023, therefore, the contention of learned counsel for the applicants in this regard is also misconceived and not tenable.

11. The learned trial court also recorded the conduct of the applicant no. 2 after he was admitted to bail after issuance of the summons, according to which, the case was filed on 29.02.2023 and the summoning order was issued on 07.12.2023. The accused was admitted on bail on 30.04.2024 and from the very next date, he absconded and the warrant was recalled on 09.07.2024. Again, the accused defied the orders passed by the concerned court on 18.11.2024, therefore, non bailable warrant was issued. The substance of accusations was denied on 01.08.2024. Thereafter, the complainant moved application for granting the interim maintenance. As per Sub-section (2) of Section 143 A, the trial is to be conducted as expeditiously as possible and an endeavour is to be made by the Court to conclude the trial within six months from the date of filing of the complaint, but on account of the aforesaid conduct of the applicant no. 2, the court also appears to be not in a position to proceed and conclude the trial as provided under law.

12. So far as the plea of the applicants is that the cheques are not of the total amount shown to have been lend by the respondent no. 2, Section 139 provides that it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge,

in whole or in part, of any debt or other liability, therefore, it is immaterial as to whether the cheques are of the whole amount or not and application can be filed for cheque(s) issued for part payment. Even otherwise three different cheques have been issued for the total payment and if the cheques would have been prepared after stealing, this Court failed to comprehend as to why a person will prepare three cheques. Since the applicant no. 2 has admitted the cheques-in-question and the signature thereon, therefore, the presumption under Section 139 of NI Act could have been drawn under Section 118 of the Act. Sections 139 and 118 of NI Act are extracted here-in-below:-

*"**Section 139**. Presumption in favour of holder.?*

It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.

Section 118 - Presumptions as to negotiable instruments

Until the contrary is proved, the following presumptions shall be made:

1. of consideration; that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

2. as to date; that every negotiable instrument bearing a date was made or drawn on such date;

3. as to time of acceptance; that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

4. as to time of transfer; that every transfer of a negotiable instrument was made before its maturity;

5. as to order of indorsements; that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

6. as to stamp; that a lost promissory note, bill of exchange or cheque was duly stamped;

7. that holder is a holder in due course; that the holder of a negotiable instrument is a holder in due course: Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an SP offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burthen of proving that the holder is a holder in due course lies upon him."

13. The Hon'ble Supreme Court, in the case of **Rakesh Ranjan Shrivastava vs. The State of Jharkhand and another (Supra),** has held in paragraph 14 that the power can be exercised at the threshold even before the evidence is recorded. In paragraph 16, the Hon'ble Supreme Court has disclosed the factors to be considered while exercising discretion. The Hon'ble Supreme Court has drawn the conclusions and summarised in paragraph 19 holding that the exercise of power under sub-section (1) of Section 143A is discretionary and while deciding the prayer made under Section 143A, the Court must record brief reasons indicating consideration of all relevant factors. The parameters for exercising discretion under Section 143A have been given in paragraph (c) of paragraph 19, according to which, the court will have to prima facie evaluate the merits of the case made out by the complainant

and the merits of the defence pleaded by the accused in the reply to the application. The financial distress of the accused can also be a consideration. A direction to pay interim compensation can be issued, only if the complainant makes out a prima facie case. Thus, the view taken by this Court is also covered by the said judgment of the Hon'ble Supreme Court. The relevant paragraph nos. 14 to 19 are extracted hereinbelow:-

*"14. In the case of Section 143A, the power can be exercised even before the accused is held guilty. Sub-section (1) of Section 143A provides for passing a drastic order for payment of interim compensation against the accused in a complaint under Section 138, even before any adjudication is made on the guilt of the accused. The power can be exercised at the threshold even before the evidence is recorded. If the word 'may' is interpreted as 'shall', it will have drastic consequences as in every complaint under Section 138, the accused will have to pay interim compensation up to 20 per cent of the cheque amount. Such an interpretation will be unjust and contrary to the well-settled concept of fairness and justice. If such an interpretation is made, the provision may expose itself to the vice of manifest arbitrariness. The provision can be held to be violative of Article 14 of the Constitution. In a sense, sub- section (1) of Section 143A provides for penalising an accused even before his guilt is established. Considering the drastic consequences of exercising the power under Section 143A and that also before the finding of the guilt is recorded in the trial, the word "may" used in the provision cannot be construed as "shall". The provision will have to be held as a directory and not mandatory. Hence, we have no manner of doubt that the word "may" used in Section 143A, cannot be construed or interpreted as "shall". Therefore, the power under sub-section (1) of Section 143A is discretionary. *

15. Even sub-section (1) of Section 148 uses the word ?may?.

In the case of Surinder Singh Deswal v. Virender Gandhi1, this Court, after considering the provisions of Section 148, held that the word ?may? used therein will have to be generally construed as ?rule? or ?shall?. It was further observed that when the Appellate Court decides not to direct the deposit by the accused, it must record the reasons. After considering the said decision in the case of Surinder Singh Deswal1, this Court, in the case of Jamboo Bhandari v. Madhya Pradesh State Industrial Development Corporation Limited & Ors.2, in paragraph 6, held thus:

?6. What is held by this Court is that a purposive interpretation should be made of Section 148 NI Act. Hence, normally, the appellate court will be justified in imposing the condition of deposit as provided in Section 148. However, in a case where the appellate court is satisfied that the condition of deposit of 20% will be unjust or imposing such a condition will amount to deprivation of the right of appeal of the appellant, exception can be made for the reasons specifically recorded.? (Emphasis added)

15.1. As held earlier, Section 143A can be invoked before the conviction of the accused, and therefore, the word ?may? used therein can never be construed as ?shall?. The tests applicable for the exercise of jurisdiction under sub-section (1) of Section148 can never apply to the exercise of jurisdiction under sub-section (1) of Section 143A of the N.I. Act.

FACTORS TO BE CONSIDERED WHILE EXERCISING DISCRETION

16. When the court deals with an application under Section 143A of the N.I. Act, the Court will have to prima facie evaluate the merits of the case made out by the complainant and the merits of the defence pleaded by the accused in the reply to the application under sub-section (1) of Section 143A. The presumption under Section 139 of the N.I. Act, by itself, is no ground to direct the payment of interim compensation. The reason is that the presumption is rebuttable. The question of applying the presumption will arise at the trial. Only if the complainant makes out a prima facie case, a direction can be issued to pay interim compensation. At this stage, the fact that the accused is in financial distress can also be a consideration. Even if the Court concludes that a case is made out for grant of interim compensation, the Court will have to apply its mind to the quantum of interim compensation to be granted. Even at this stage, the Court will have to consider various factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant and the paying capacity of the accused. If the defence of the accused is found to be prima facie a plausible defence, the Court may exercise discretion in refusing to grant interim compensation. We may note that the factors required to be considered, which we have set out above, are not exhaustive. There could be several other factors in the facts of a given case, such as, the pendency of a civil suit, etc. While deciding the prayer made under Section 143A, the Court must record brief reasons indicating consideration of all the relevant factors.

17. .....

18. .....

19. Subject to what is held earlier, the main conclusions can be summarised as follows:

a. The exercise of power under sub-section (1) of Section 143A is discretionary. The provision is directory and not mandatory. The word "may" used in the provision cannot be construed as "shall."

b. While deciding the prayer made under Section 143A, the Court must record brief reasons indicating consideration of all relevant factors.

c. The broad parameters for exercising the discretion under Section 143A are as follows:

i. The Court will have to prima facie evaluate the merits of the case made out by the complainant and the merits of the defence pleaded by the accused in the reply to the application. The financial distress of the accused can also be a consideration.

ii. A direction to pay interim compensation can be issued, only if the complainant makes out a prima facie case.

iii. If the defence of the accused is found to be prima facie plausible, the Court may exercise discretion in refusing to grant interim compensation.

iv. If the Court concludes that a case is made out to grant interim compensation, it will also have to apply its mind to the quantum of interim compensation to be granted. While doing so, the Court will have to consider several factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant, etc. v. There could be several other relevant factors in the peculiar facts of a given case, which cannot be exhaustively stated. The parameters stated above are not exhaustive."

14. It is also noticed that according to Section 143A, the court can award the interim compensation up to 20 percent of

the cheque amount, but the trial court, after considering the pleadings of the parties and their relations and facts of the case to be considered under law, has awarded only 15 percent as interim compensation, which appears to be adequate at this stage.

15. The revisional court also, after considering the grounds raised by the revisionist and considering the findings recorded by the trial court, has rejected the revision. This Court does not find any illegality or infirmity in the impugned orders, which may call for any interference by this Court.

16. In view of above, this application has been filed on misconceived and baseless grounds, which is liable to be dismissed. It is, accordingly, **dismissed.**

(2025) 7 ILRA 28
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 24.07.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Application U/S 482 No. 5510 of 2025

Ravindra @ Pappu ...Applicant
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicant:
Anuruddh Prasad

Counsel for the Opposite Parties:
G.A., Dharmendra Nath Verma

ISSUE FOR CONSIDERATION

Whether criminal proceedings against the applicant under Sections 498-A, 304-B IPC and Sections 3/4 of the Dowry Prohibition Act can be quashed under Section 482 Cr.P.C. on the basis of a compromise reached between the applicant and the complainant.

HEADNOTES

Criminal Law - Code of Criminal Procedure, 1973 – Section - 482, - Indian Penal Code, 1860 - Sections 498-A, 304-B, - Dowry Prohibition Act, 1961 – Sections - 3, 4 - Application under Section 482 Cr.P.C. – for quashing of Charge-sheet, Cognizance & Summoning Order on the ground of settlement – criminal proceedings arising in 2006 – offence of harassment and dowry death – opposite party no. 2 (brother of deceased) lodged an FIR - investigation – charge-sheet – cognizance and summoning order – trial starts - applicant remained absconding throughout – trial court, in 2009, convicted and sentenced all co-accused family members under Sections 498-A, 304-B IPC and Sections 3/4 of the DP Act – subsequent to conviction, applicant's parents passed away – in 2025, applicant and opposite party no. 2 entered into a compromise agreement – however, court observed that the applicant along with other accused family members were involved in harassment and dowry-related death of the complainant's sister – trial court had already found the co-accused guilty and convicted them, while the applicant continued to evade trial and remained absconding – the guilt of all accused persons, including the applicant, stood established by the trial court's findings – the offence in question is grave and heinous, involving mental depravity, and is not a private dispute – it has serious societal implications – held – criminal proceedings against the applicant cannot be quashed merely on the ground of a subsequent compromise, especially after conviction of co-accused – such quashing would defeat the ends of justice – accordingly, the application is dismissed. (Para – 15, 16)
Application Dismissed**.** (E-11)

CASE LAW CITED

Rajesh Kumari v. State of UP, 2024:AHC:26481 - Deepak Kumar and Another v. State of UP, 2024:AHC:135745 - Narinder Singh v. State of Punjab, (2014) 6 SCC 466 - Gian Singh v. State of Punjab, (2012) 10 SCC 303 - Parbatbhai Aahir v. State of Gujarat: (2017) 9 SCC 641.

LIST OF ACTS

Code of Criminal Procedure, 1973 – Indian Penal Code, 1860 – Dowry Prohibition Act, 1961.

LIST OF KEYWORDS

Quashing of proceedings under section 482 Cr.P.C. - Dowry Death – Compromise - Quashing of Proceedings - Heinous Offence - Absconding Accused - Mental Depravity - Societal Impact.

CASE ARISING FROM

Charge sheet No. 4-A of 2006 dated 21.06.2006 and Summoning order dated 25.09.2006 issued by trial court in Session Trial No. 116 of 2006 in FIR No. 11 of 2006, Police Station Bewana, District Ambedkar Nagar.

APPEARANCE OF PARTIES

Counsel for Appellant: - Sri Shri Anuruddh Prasad.

Counsel for Respondent: - Sri Rajesh Kumar Singh, AGA-1, Shri Pradeep Kumar Yadav.

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Shri Anuruddh Prasad, the learned counsel for the applicant, Shri Rajesh Kumar Singh, the learned AGA -I and Sri Pradeep Kumar Yadav, the learned counsel for opposite party no. 2 and perused the record.

2. By means of the present application filed under Section 482 of Cr.P.C., the applicant has prayed for quashing of the charge-sheet no. 4-A of 2006 dated 21.06.2006 filed in respect of FIR No. 11 of 2006 under Sections 498-A, 304-B of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act, Police Station Bewana, District Ambedkar Nagar and the cognizance and summoning order dated 25.09.2006 by which the accused was summoned to face the trial, on the ground that the parties have arrived at a settlement.

3. The aforesaid case was registered on the basis of an FIR lodged on 05.02.2006 by the opposite party no. 2 against the applicant, his parents, wife and brother Arvind Kumar Yadav, stating that the elder sister of the complainant had got married to the younger brother of the applicant on 28.06.2003. After her marriage, all the accused persons used to harass her for demanding dowry of Rs. 50,000/- in cash and a Hero Honda motorcycle. In the evening of 05.02.2006, when the complainant went to the matrimonial home of his sister, he found that his sister had been burnt to death. On enquiry, no one told him anything.

4. After investigation, a charge-sheet was filed against all the accused persons for the offences under Section 498-A, 304-B IPC and Section 3/4 of Dowry Prohibition Act. It is mentioned in the charge-sheet that the applicant was absconding. Since the applicant was absconding, the trial continued only against the other co-accused persons, viz. the applicant's father, mother, brother and wife, and all of them were convicted and sentenced by the trial Court by means of a judgment and order dated 15.01.2009 passed by the Additional Session Judge (FTC) Court No. 2, Ambedkar Nagar in Session Trial No. 116 of 2006.

5. On 03.07.2025 the applicant and the opposite party no. 2 have entered into a compromise stating that after conviction, the applicant's parents and younger brother have died. It is stated in the compromise that the opposite party no. 2 came to know later that the applicant had no role in the alleged incident and that he had gone out on the day of the incident and had never made any demand of dowry.

6. The judgment and order of the trial court states that the father of the deceased was examined as PW 1 and he has supported the prosecution version and has stated that the applicant also harassed the deceased for dowry and was involved in killing her. The opposite party 2, who is the complainant was examined as PW 2 and he also stated that the applicant had also demanded dowry and harassed the deceased for dowry, like all the other co-accused persons. Copies of statements of PW-1, PW-2 and PW-3 have been brought on record alongwith a supplementary affidavit.

7. For the aforementioned reasons, the trial court found the accused persons guilty of the offences under Sections 498-A, 304-B of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act and has convicted them.

8. The opposite party No. 2 has filed a short counter affidavit supporting the prayer for quashing of the criminal proceedings against the applicant on the basis of compromise.

9. The learned AGA– I has opposed the application and has stated that the offence under Section 304B of the Indian Penal Code is a heinous offence which cannot be quashed merely on the ground of compromise.

10. In reply to the above contention, learned counsel for the applicant has placed reliance upon the decisions of coordinate benches of this Court in **Rajesh Kumari v. State of UP**: 2024:AHC: 26481 and **Deepak Kumar and Another v. State of UP:** 2024:AHC:135745, by which this Court has quashed the offences under Sections 498-A, 304-B IPC and Section 3/4 of the Dowry Prohibition Acton the basis of compromise arrived at between parties. However, the issue that whether the prosecution relating to an offence under Section 304-B IPC can be quashed merely on the basis of compromise, has not been addressed in the aforesaid orders.

11. The Hon'ble Supreme Court has held that criminal proceedings in respect of serious and heinous offences cannot be quashed merely on the ground of compromise reached between the parties in…..

12. In **Gian Singh v. State of Punjab**: (2012) 10 SCC 303, the Hon'ble Supreme Court has referred to numerous precedents and has concluded 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 FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. ***Heinous and serious offences of mental depravity***

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

13. In Narinder Singh v. State of Punjab: (2014) 6 SCC 466, after considering the decision in Gian Singh (Supra), the Hon'ble Supreme Court summed up the principles and reiterated that Such a power is not to 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. Even in cases involving the offence punishable under Section 307 IPC, where the conviction is already recorded by the trial 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.

14. In **Parbatbhai Aahir v. State of Gujarat: (2017) 9 SCC 641,** after considering a catena of decisions on the point, the Hon'ble Supreme Court summarised the following propositions: -

"(1) Section 482 CrPC 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 CrPC. 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 insofar 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 the present case, the applicant and 4 other members of his family were accused of harassing and killing the sister of the complainant – opposite party no. 2 for dowry. During the trial, all the witnesses made similar allegations against all the accused persons. The Trial Court found all the other accused guilty and convicted them, while the applicant continued to evade the trial and remained absconding. The guilt of all the

accused persons against whom the same allegations were made as the applicant, has been established by the order of the trial court and all the other accused persons have been convicted. The offence in question is certainly a serious and heinous offence of mental depravity which is not a private offence and it has a serious adverse impact on the society, the commission whereof has already been established by the judgment and order dated 15.01.2009 passed by the Additional Session Judge (FTC) Court No. 2, Ambedkar Nagar in Session Trial No. 116 of 2006.

16. In view of the aforesaid facts, the criminal proceedings against the applicant cannot be quashed merely on the ground that subsequent to conviction and sentence of the co-accused persons, a compromise has been reached between the applicant and the complainant, who is the brother of the deceased, as this would defeat the ends of justice.

17. In view of the foregoing discussions, the application under Section 482 Cr.P.C. seeking quashing of criminal proceedings on the ground of compromise, is ***dismissed.***

(2025) 7 ILRA 33
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 25.07.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Application U/S 482 No. 5838 of 2025

Syed Raza Abbas ...Applicant
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicant:
Rakesh Kumar, Agendra Sinha

Counsel for the Opposite Parties:
G.A.

ISSUE FOR CONSIDERATION

Whether the Magistrate was justified in dropping proceedings under Section 145 Cr.P.C. despite allegations of illegal dispossession and pending civil litigation, and whether the revisional and subsequent orders suffer from legal infirmity.

HEADNOTES

Criminal Law - Code of Criminal Procedure, 1973 - Section - 145, 145(1), 145(4), 146, 482, - Bharatiya Nagarik Suraksha Sanhita, 2023 – Section – 528 - Application under Section 482 Cr.P.C. – Challenging the validity of an order passed by the Addl. City Magistrate, Lucknow, which had closed proceedings under Section 145 Cr.P.C. concerning a property dispute, citing absence of breach of peace and pendency of a civil suit – Application concerning possession of a Kothari - proceeding initiated under section 145 of Cr.P.C. – alleged illegal dispossession and title dispute - Magistrate court found that, no breach of peace, and title dispute can be decided by the adjudication before the Civil Court – hence, proceedings was dropped – Criminal Revision – dismissed – present application - court noted that no breach of peace had occurred in over two decades and emphasized that Section 145 Cr.P.C. is intended to prevent disturbances, not adjudicate ownership and Civil Suits have been filed by both parties - held - when civil suits are pending and if there is no likelihood of causing a breach of peace, the Magistrate would not be justified in exercising the power under section 145 Cr.P.C. – consequently, the court found no error in the Magistrate's decision and rightly dismissed the application under section 145 Cr.P.C. being lacking merit – accordingly, present application is dismissed. (Para – 13, 14, 18)

Application Dismissed**.** (E-11)

CASE LAW CITED

R.H. Bhutani v. Ms. Man. J. Desai (AIR 1968 SC 144) - Ram Sumer Puri Mahant v. State of U.P.

(1985) 1 SCC 427) - Ashok Kumar v. State of Uttarakhand (2013) 3 SCC 366) - Sri Siddeshwar Temple Trust Committee v. Sri Malingaraya Temple Charitable Trust (2020) 18 SCC 417).

LIST OF ACTS

ode of Criminal Procedure, 1973 (Cr.P.C.) - Bharatiya Nagarik Suraksha Sanhita (BNSS).

LIST OF KEYWORDS

Illegal dispossession - Breach of peace - Title dispute - Civil suit - Restoration of possession - Parallel proceedings - Magistrate's jurisdiction - Revisional order – Competent Court.

CASE ARISING FROM

Miscellaneous Case No. 03 of 2015, under Section 145 Cr.P.C., Police Station Sahadatganj, Lucknow.

APPEARANCE OF PARTIES

Counsel for Appellant: - Sri Agendra Sinha.
Counsel for Respondent: - Sri Rajesh Kumar Singh, AGA.

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Agendra Sinha, the learned counsel for the applicant and Sri. Rajesh Kumar Singh the learned AGA-I for the State.

2. By means of the instant application filed under Section 528 BNSS, the petitioner has challenged the validity of an order dated 07.09.2015 passed by the Addl. City Magistrate, Lucknow in Miscellaneous Case No.03 of 2015, which was instituted on the basis of the applicant's application under Section 145 Cr.P.C.

3. It is recorded in the impugned order dated 07.09.2015 that the Kothari in dispute is in possession of the opposite party No.2, there was no breach of peace and the matter related to title dispute which is pending adjudication before the Civil Court. The title can be decided by the Competent Court and the parties should seek relief from the Competent Court only. The Addl. City Magistrate accordingly closed the proceedings.

4. The applicant had challenged the aforesaid order dated 07.09.2015 by filing Criminal Revision no.441 of 2015, which has been dismissed by means of an order dated 22.10.2024 passed by the Learned Addl. District and Session Judge/Spl. Judge, P.C. Act, Court No.7, Lucknow, holding that there is no legal error in the order dated 07.09.2015 passed by the Addl. City Magistrate. The validity of the revisional order has also been challenged by the applicant.

5. Assailing validity of the aforesaid orders, Sri. Agendra Sinha, the learned counsel for the applicant, submitted that the applicant was dispossessed from the Kothari in question in an illegal manner in the night of 25/25.04.2002 and in these circumstances, the Magistrate ought to have restored possession of the property to the petitioner in exercise of the proviso appended to the sub-Section 4 of Section 145 of Cr.P.C.

6. Although a copy of the application under Section 145 Cr.P.C. on which the proceedings were instituted, has not been annexed with the application under Section 482 Cr.P.C., it appears that the applicant claims that he is the owner and is in possession of House No.403/238-239, Katra Bizenbeg, P.S.- Sahadatganj, Lucknow which consists of several houses under occupation of different tenants and only some portion of the property is in possession of the applicant. Husband of the opposite party No.2 had forcibly taken possession of a Kothari (store room) in the

night of 25/26.04.2002 by breaking the lock of the applicant. An FIR in this regard has been lodged on 28.04.2002 and the criminal case instituted thereon is still pending.

7. Pursuant to a police report dated 04.05.2002, proceedings under Section 145 Cr.P.C. were instituted and registered as Case No.71 of 2002. The Tehsildar had submitted a report dated 11.09.2003 in the aforesaid case stating that the applicant was in possession of the disputed premises prior to his unlawful dispossession. The Addl. City Magistrate passed an order dated 26.03.2003 directing restoration of possession of the applicant, subject to any order passed by the competent civil court. However, the order dated 26.09.2003 was set-aside by means of an order dated 29.11.2003 passed by the Addl. District Judge, Lucknow in Crl. Revision No.208 of 2003 on the ground that the Magistrate had not held an inquiry contemplated by Section 145 (4) Cr.P.C. and had not taken any evidence. The matter was remanded to the Magistrate who had decided afresh in accordance with the law.

8. After remand, the Addl. City Magistrate-III, Lucknow passed an order dated 15.09.2004 dropping the proceedings under Section 145 Cr.P.C. on the ground that a civil suit regarding the same property was already pending adjudication. The applicant challenged the order dated 15.09.2004 by filing Crl. Revision No.247 of 2004, which was allowed by means of an order dated 14.12.2004 passed by the learned Addl. District Judge, Court No.-2, Lucknow and the matter was again remanded for being decided afresh after determining whether the property involved in the proceedings under Section 145 Cr.P.C. was identical to or distinct from the property which is a subject matter of the civil dispute.

9. The Magistrate once again dropped the proceedings under Section 145 Cr.P.C. vide order dated 18.07.2005 on the ground that a civil suit regarding the property in dispute is pending.

10. It has been pleaded in the application under Section 482 Cr.P.C. that two civil suits between the parties are pending adjudication before the civil court. Regular Suit No.50 of 2001 has been filed by the applicant praying for declaration and mandatory injunction and the other suit No.277 of 2004 was filed by the predecessor in interest of the opposite party No.2.

11. Sri Agendra Sinha, the learned counsel for the applicant submitted that the aforesaid suit filed by the applicant is based on title whereas the opposite party No.2 is claiming possessory rights only. Sri Sinha has submitted that where the petitioner has claimed illegal dispossession by use of force, the Magistrate is obliged to ensure that the possession of the person who has been illegally ousted, be restored irrespective of adjudication of rival claims to title of the property. He has relied upon a judgment of the Hon'ble Supreme Court in the case of **R.H. Bhutani v. Ms. Man. J. Desai,** AIR 1968 SC 144, in which the Hon'ble Supreme Court has held that a reading of Section 145 Cr.P.C. as a whole makes it clear that even if the respondent has taken over possession of the property in dispute, if the incident took place within the prescribed period of two months, an aggrieved person would be deemed to be in possession on the date of the preliminary order and the Magistrate would be competent to pass the final order for

restoration of the possession. However, this judgment does not deal with the effect of pendency of civil suit regarding the property in question before the Competent Civil Court.

12. The relevant part of Section 145 Cr.P.C. provides as follows: -

145. Procedure where dispute concerning land or water is likely to cause breach of peace.—(1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that ***a dispute likely to cause a breach of the peace exists concerning any land*** or water or the boundaries thereof, within his local jurisdiction, ***he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.***

* * *

(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute:

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1).

* * *

(6)(a) If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

* * *

13. A bare perusal of Section 145 (1) Cr.P.C. makes it manifest that the first essential condition for invoking the powers under the aforesaid provision is the existence of a dispute concerning any land likely to cause a breach of peace. If there is no likelihood of causing a breach of peace, the Magistrate would not be justified in exercising the power under Section 145 Cr.P.C.

14. The alleged illegal dispossession in the present case took place in the night of 25/26.04.2002. The police report was lodged on 04.05.2002. The case under Section 145 Cr.P.C. was instituted thereafter. Civil Suits have been filed by both the parties and during the intervening period of more than 23 years since the alleged illegal dispossession, there has not been any instance of breach of peace due to

the alleged illegal dispossession of the applicant make in the year 2002.

15. In **Ram Sumer Puri Mahant v. State of U.P.:** (1985) 1 SCC 427, the Hon'ble Supreme Court held that parallel proceedings under Section 145 Cr.P.C. should not be permitted to continue when possession is being examined by the civil court. The Hon'ble Supreme Court further held that multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation.

16. In **Ashok Kumar v. State of Uttarakhand:** (2013) 3 SCC 366, the Hon'ble Supreme Court held that the object of Section 145 Cr.P.C. is merely to maintain law and order and to prevent breach of peace by maintaining one or other of the parties in possession, and not for evicting any person from possession.

17. In **Sri Siddeshwar Temple Trust Committee v. Sri Malingaraya Temple Charitable Trust:** (2020) 18 SCC 417, the Hon'ble Supreme Court has held that once a civil suit is pending between the parties and an injunction has been granted therein, a parallel proceeding under Sections 145 and 146 Cr.P.C. cannot, in law, take place.

18. In the present case, the Magistrate has come to the conclusion that there was no breach of peace, the matter related to title dispute which is pending adjudication before the Civil Court and the question of title can be decided by the Competent Court and has closed the proceedings for the aforesaid reasons. This Court finds no error or illegality in the view taken by the learned Magistrate.

19. The application under Section 482 Cr.P.C. lacks merit and the same is dismissed.

(2025) 7 ILRA 37
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 16.07.2025

BEFORE

THE HON'BLE ATTAU RAHMAN MASOODI, J.
THE HON'BLE SHREE PRAKASH SINGH, J.

Special Appeal Defective No. 280 of 2025

U.P. Jal Nigam Rural & Anr. ...Appellants
Versus
Tarun Kumar Sharma & Anr. ...Respondents

Counsel for the Appellants:
Aditya Mohan

Counsel for the Respondents:
Ajay Kishor Pandey

Issue for Consideration

Overriding effect of the Office Memorandum dated 06.06.2013, whereby the benefit of medical reimbursement was taken away, to the mandate of Rules and Regulation, which protect the allowance admissible to the members of service.

Headnotes

(A) Service law – Medical reimbursement – Entitlement – Pensioner's wife underwent medical treatment in the year 2015 – Claim for medical reimbursement was rejected on the ground that the Office Memorandum dated 06.06.2013 took away the benefit of medical reimbursement – Whereas the Rules of 2011, applicable to the employees of the Jal Nigam, provide for claim of the Medical Reimbursement – Validity of rejection challenged :

Held : Office memorandum dated 06.06.2013, as it appears, is nothing but a resolution of the

Board in its 160th meeting, whereby the benefit of medical reimbursement is said to have been taken away – By a simple resolution passed by the Board without prior approval of the State Government, no provision of Regulations, 1978 can be superseded or made redundant by U.P. Jal Nigam. Thus, the mere existence of the office memorandum dated 06.06.2013 cannot supersede the mandate of the regulations and the protection available to the respondents-petitioners under law remains intact – The Office Memorandum dated 06.06.2013 would not bar and cannot be construed against the mandate of Rule 11 of the Medical Reimbursement Rules 2011 as were applicable to the case at hand. The office memorandum dated 06.06.2013 was wrongly applied to reject the claim of the petitioners, being *non est*. [Paras 11, 18 and 19] (E-1)

Case Law Cited

Writ A No. 2000284 of 2014; Mohammad Aslam & Ors. v. State of U.P. and Ors. decided on 13.02.2023 **– referred to.**

List of Acts

U.P. Water Supply and Sewerage Act, 1975 – Ss. 37 and 97; U.P. Jal Nigam Service of Engineers (Public Health Branch) Regulations, 1978 – Reg. 31; Medical Reimbursement Rules, 2011 – Rule 11.

List of Keywords

Medical Reimbursement; Latches in filing writ petition; Impediment; Office Memorandum dated 06.06.2013; Allowance; Previous approval.

Case Arising From

Judgment and order dated 18.04.2025 passed by Single Judge in Writ A No. 4204 of 2025 arising out of an order dated 10.11.2015 rejecting the claim of the respondents-petitioners of medical reimbursement.

(Delivered by Hon'ble Attau Rahman Masoodi, J.
&
Hon'ble Shree Prakash Singh, J.)

1. Heard Sri Aditya Mohan, learned counsel for the appellants and Sri Ajay Kishor Pandey, learned counsel for the respondents.

2. This intra-court appeal filed under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 has assailed the judgment/order dated 18.04.2025 passed in Writ-A No. 4204 of 2025 filed by the respondents-petitioners, whereby, the medical reimbursement claim for a sum of Rs.7,09,032/- admissible to them was disposed off in light of the judgment passed in Writ-A No. 2000284 of 2014 (Mohammad Aslam & Ors. Vs State of U.P. and Ors).

3. Brief facts of the case are that the respondents-petitioners prior to filing of the present writ petition had filed a Writ-A No. 3641 of 2025 which was disposed of in terms of the following order dated 10.04.2025:-

"1. Heard Sri Ajay Kishor Pandey, learned counsel for the petitioners and Sri Madhav Om, holding brief of Sri Samir Om, learned counsel for the opposite parties.

2. At the very outset, Sri Om has informed that decision has been taken by the competent authority in the issue of the petitioners on 10.11.2015, however, copy thereof has not been addressed to the petitioners.

3. Copy of the aforesaid order has been provided to Sri Ajay Kishor Pandey, learned counsel for the petitioners. Sri Pandey has stated, on the basis of instructions, that copy of the aforesaid order has not been provided to the petitioners but that order will have to be challenged before this Court, therefore, he has requested that this writ petition may be

dismissed being not pressed with liberty to the petitioners to file a fresh writ petition challenging the aforesaid order making other prayers.

4. Accordingly, this writ petition is dismissed being not pressed with the aforesaid liberty."

4. On the liberty having been granted in terms of the aforementioned order, the second writ petition assailing the order dated 10.11.2015 came to be filed before this Court with the prayer as under:-

"(i) issue a writ, order or direction in the nature of certiorari quashing the impugned claim rejection order dated 21.11.2015 annexed as Annexure no.2 with the memo of writ petition.

(ii) issue a writ, order or direction in the nature of mandamus commanding the opposite parties to reimburse the medical expenses bills and also pay interest on the delayed payment at the rate of 10% p.a. to the petitioner within stipulated time frame.

(iii) Award costs in favour of the petitioner and against the opposite parties and to pass such further or any such orders as may be considered just and proper in the interest of justice and in the circumstances of the case."

5. The Writ Court having regard to the rules and regulations applicable on the subject of medical reimbursement, has proceeded to dispose of the writ petition in the light of the judgement dated 13.02.2023, wherein, the statutory provisions applicable to the claims of medical reimbursement have been referred to and considered. This Court at the cost of repetition would also visit the legal position as under.

6. The respondents-petitioners' father late Shiv Kumar Sharma was a Member of Engineering Service in Jal Nigam, Lucknow who, on attaining the age of superannuation, retired from service in 1993 while holding the post of Divisional Engineer. There is no dispute with respect to the retiral dues admissible to the father of the respondents-petitioners.

7. It appears from the record that in the year 2015, the mother of the respondents-petitioners fell ill as a consequence whereof, she was rushed to the hospital where, she underwent medical treatment. The mother of the respondents-petitioners was admitted to St. Joseph Hospital, Gomti Nagar, Lucknow on 18.06.2015 and she remained under treatment at the said hospital upto 19.06.2015. It appears and the record reveals that on 19.06.2015, the mother of the respondents-petitioners was shifted to Midland Healthcare & Research Centre, Near Kapurthala, Mahanagar, Lucknow where, she remained admitted from 19.06.2015 to 06.07.2015. She was discharged from the hospital on 07.07.2015 and was taken back to her residence where, she expired on the same date.

8. It is only thereafter, that the father of the respondents-petitioners who was a pensioner laid a claim for medical reimbursement to the tune of Rs.7,09,032/- on 09.09.2015. Necessary details regarding the medical expenditure were disclosed alongwith the representation claiming medical reimbursement. The medical reimbursement claimed by the father of the respondents-petitioners towards treatment of his wife, i.e., mother of the respondents-petitioners remained unattended. According to the respondents-petitioners, no order whatsoever was communicated to them

untill the death of their father on 09.01.2025. The record however, reveals otherwise. As per the documents placed on record, the medical claim was laid on 09.09.2015 which appears to have been rejected by the Jal Nigam on 21.11.2015. The father of the respondents-petitioners having received the order dated 21.11.2015 had made a representation against the aforementioned order on 20.12.2015. It is this protest through a representation which appears to have remained pending. Due to lack of knowledge, the respondents-petitioners under such circumstance appear to have instituted the previous writ petition no. 3641 of 2025 which was disposed of on 10.04.2025 in terms of the order extracted above. The respondents-petitioners having been granted liberty to institute the fresh proceedings filed the second writ petition before this Court praying for the relief as has been reproduced here-in-above. The writ court on being satisfied that the claim of the respondents-petitioners is squarely covered under the judgment rendered in Writ-A No. 2000284 of 2014 (Mohammad Aslam & Ors. Vs State of U.P. and Ors.) proceeded to decide the writ petition, in light of the said judgment without adverting to the merits of the order dated 21.11.2015. The order passed by the Writ Court disposing of the writ petition filed by the respondents-petitioners reads as under:-

"1. Heard Sri Ajay Kishor Pandey, learned counsel for the petitioners and Sri Aditya Mohan, who has filed his Vakalatnama on behalf of respondent nos.1 and 2. The said Vakalatnama is taken on record.

2. Present petition has been filed claiming that the petitioners are entitled for reimbursement of the medical expenses, which has not been paid by the respondents.

3. The said issue with regard to medical reimbursement was decided by this Court vide judgment dated 13.02.2023 passed in Writ - A No.2000284 of 2014 'Mohammad Aslam and 4 Ors. Vs. State of U.P. & Ors.' (Annexure - 11).

4. Considering the fact that the entitlement has already been decided by this Court in the case of Mohammad Aslam & Ors. (supra), the present petition is disposed off directing the respondents to process the medical claims made by the petitioners in accordance with law and in the light of the judgment in the case of Mohammad Aslam & Ors. (supra), and pay the same with all expedition, preferably within a period of two months from the date of production of a certified copy of this order."

9. Learned counsel for the respondents-petitioners has argued that the writ court firstly has not delved into the order passed on 21.11.2015 and secondly, the delay in instituting the proceedings has escaped the attention of the writ court and the aspect of heavy latches in institution of the writ petition after such a long delay was also not considered at all. It is thus argued that without dealing with the order dated 21.11.2015 on merit and without adverting to on the aspect of delay the writ court has decided the writ proceedings against the legal position. It is argued that the respondents-petitioners whose claim was not covered under the judgment placed reliance upon, are not entitled to the relief as has been granted by the Writ Court. The argument put forth by learned counsel for the petitioners is attractive, which deserves scrutiny. The legal position in this regard needs to be considered and appreciated.

10. It is not in dispute that the father of the respondents-petitioners was a pensioner who died in the month of January, 2025. It is equally undisputed that the mother of the petitioners who was entitled to medical reimbursement in the year 2015 had undergone the medical treatment. The only impediment according to the petitioners coming in the way of such a claim was an Office Memorandum dated 06.06.2013 which for ready reference is reproduced below:-

"प्रधान कार्यालय उ०प्र० जल निगम 6 राणा प्रताप मार्ग, लखनऊ।

पत्रांक-1114/ए०सी ले०सा०/ चि०

प्रति०/3091520/13 दिनांक-06/06/2013

कार्यालय ज्ञाप

(उ०५० जल निगम निदेशक मण्डल की 160 वीं बैठक के मद सं० 160.07 में लिये गये निर्णय के अनुपालन में विभाग के सेवारत / सेवानिवृत्त कार्मिकों द्वारा स्वयं के एवं अपने आश्रितों के प्रदेश के अन्दर एवं प्रदेश के बाहर सभी प्राईवेट (निजी) चिकित्सालयों में इलाज की सुविधा । प्रतिपूर्ति उ०प्र० जल निगम की खराब वित्तीय स्थिति को देखते हुये तत्काल प्रभाव से समाप्त की जाती है।

उक्त परिस्थितियों के परिपेक्ष्य में विभाग के सेवारत / सेवानिवृत्त कार्मिकों द्वारा स्वयं के एवं अपने आश्रितों के सरकारी अस्पतालों, मेडिकल कॉलेजों एवं सरकारी आयुर्विज्ञान संस्थानों में मात्र कैंसर एवं ब्रेन टियूमर (न्यूरो सर्जरी) के कराये गये इलाज में ऑपरेशन एवं दवाओं पर व्यय के विरूद्ध सरकारी दरो पर देय धनराशि का 50 प्रतिशत की ही प्रतिपूर्ति की जायेगी। वार्ड/रूम चार्ज तथा पैथालॉजी एवं अन्य जांचो पर किये गये किसी प्रकार के व्यय की प्रतिपूर्ति नहीं की जायेगी।

(ए०के० मित्तल)

"प्रबन्ध निदेशक"

11. The aforesaid memorandum, as it appears is nothing but a resolution of the Board in its 160th meeting, whereby, the benefit of medical reimbursement to the employees of U.P. Jal Nigam is said to have been taken away.

12. If the Office Memorandum dated 06.06.2013 is valid, the question of entitlement of the medical reimbursement on the basis of some claim laid in the year 2015 would obviously become non-maintainable. The position of statute and rules and regulation framed thereunder thus, becomes relevant. It may be gainful to bring on record that upon the constitution of U.P. Jal Nigam in the year 1975, under an Act known as U.P. Water Supply and Sewerage Act, 1975(hereinafter referred to as Act 1975) the services of the respondents-petitioners' father who was working in the erstwhile local Self Engineering Govt. Department stood protected by virtue of section 37 of the Act which for ready reference is extracted below:-

"Transfer of employees to Nigam. - (1) Save as otherwise provided in this section every person, who was employed in the Local Self Government Engineering Department of the State Government shall on and from the appointed date become employee of the Nigam and shall hold his office or service therein by the same tenure, at the same remuneration and upon same other terms and conditions, and with the same rights and privileges as to pension, gratulty and other matters as he would have held the same on the appointed date if this Act has not come into force, and shall

continue to do so until his employment in the Nigam is terminated or until his remuneration or other terms and conditions of services are revised or altered by the Nigam under or in pursuance of any law or in accordance with any provision which for the time being governs his service: Provided that nothing contained in this sub-section shall apply to any such employes, who by notice in writing given to the State Government within such time as the State Government may, by general or special order, specify, intimates his intention of not becoming an employee of the Nigam:

Provided further that the services of any employee referred to in the preceding proviso under the State Government shall stand terminated on account of abolition of the post held by him and he shall be entitled from the State Government to compensation equivalent –

(i) in the case of a permanent employee, to three month's remuneration

(ii) in the case of a temporary employee, to one month's remuneration.

(2) The sums standing to the credit of the employees referred to in sub-section (1) in any

pension. provident fund, gratuity or other like funds constituted for them shall be transferred by the State Government to the Nigam along with any accumulated interest due till the appointed date and with the accounts relating to such funds and the Nigam shall, to the exclusion of the State Government, be liable for payment of pension, provident fund, gratuity or other like sums as may be payable to such employees at the appropriate time in accordance with the conditions of their service.

(3) Notwithstanding anything contained in the U.P. Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of services of any employee to the Nigam under sub-section (1) shall not entitle any such employee to any compensation under that Act or such other law and no such claim shall be entertained by any court, tribunal or authority.

(4) Every permanent or temporary employee of the Local Self-Government Engineering Department of the State Government under sub-section (1) shall on and from the appointed date, be a permanent or temporary employee of the Nigam, as the case may be, against a permanent or temporary post which shall stand created in the establishment of the Nigam with effect from the appointed date.

(5) An employee referred to in the first proviso to sub-section (1) shall be deemed to have continued to be in the service of the State Government between the appointed date and the date of abolition of posts under the second proviso to that sub-section, but the State Government shall be entitled to reimbursement from the Nigam of the remuneration pald by it to such employee for that period and also of the compensation referred to in the second proviso to that sub-section.

(6) Nothing in para 426 or para 436 of the Civil Service Regulations as applicable to Government servants under the rule making control of the State Government in relation to retrenchment or abolition of posts shall, except to the extent provided in this section, apply to any employee referred to in sub-section (1).

(7) Notwithstanding anything contained in the foregoing sub-sections-

(a) the services of no person who was employed in the Local Self-Government Engineering Department of the State Government immediately before the appointed date against whom any disciplinary proceeding was pending or to

whom any notice or order of, termination of his services or compulsory retirement had been issued before the appointed date shall stand transferred to the Nigam on or from the appointed date and such persons may be dealt with after the appointed date in such manner and by such authority as the State Government may by general or-special order specify in this behalf;

(b) if the services of any employee of the State Government stand transferred under sub-section (1) to the Nigam, the Nigam shall be competent after such transfer to take such disciplinary or other action as it thinks fit against or in respect of such employee having regard to any act or omission or conduct or record of such employee while he was in service of the State Government."

13. The U.P. Jal Nigam in exercise of the powers under section 97 of the aforementioned Act further promulgated the regulations known as the U.P. Jal Nigam Service of Engineers(Public Health Branch) Regulations, 1978. As per Rule 31 of the aforementioned regulations, the allowances admissible to the members of service were protected therein. Regulation 31 for ready reference is extracted below:-

"Except as provided in these regulations the pay, allowance, pension, leave, imposition of penalties and other conditions of service of the members of the service shall be regulated by rules, regulations of the orders applicable generally to the Government servants serving in connection with the affairs of the State."

14. A plain reading of the aforesaid regulation makes it abundantly clear that the issues in respect of which no regulation was framed, were left open to be governed under the rules applicable to the Government Servant. In so far as the medical reimbursement is concerned, rules were framed by the State Government in the year 2011 under Article 309 of the Constitution of India. The first amendment made in the said Rules was notified on 04.03.2014. The amended Rule 11 of the medical reimbursement Rules 2011 reads as under:-

"तात्कालिक / आपातकालीन उपचार :-

किसी लाभार्थी को राज्य के भीतर या बाहर तात्कालिक / आपात स्थिति में या यात्रा पर किसी निजी चिकित्सालय या प्राधिकृत संविदाकृत चिकित्सालय में उपचार प्राप्त करने की अनुमन्यता होगी। उपचार की लागत राज्य के भीतर उपचार कराने की दशा में संजय गाँधी स्नातकोत्तर आयुर्विज्ञान संस्थान या राज्य से बाहर उपचार की दशा में अखिल भारतीय आयुर्विज्ञान संस्थान, नई 'दिल्ली की दरों पर प्रतिपूरणीय होगी और प्राधिकृत संविदाकृत चिकित्सालयों में उपचार कराने की दशा मे उपचार की लागत सी०जी०एच०एस० की दरों पर प्रतिपूरणीय होगी। प्रतिबन्ध यह है किः- (क) उपचारी चिकित्सक द्वारा आपात दशा प्रनाणित की जाय।

(ख) रोगी या उसके संबंधी द्वारा अपने उपचार प्रारम्भ होने के दिनांक से 30 दिनों के भीतर सूचित कर दिया जाय।

(ग) आपात स्थिति में एअर एम्बुलेन्स पर होने वाले व्यय की धनराशि भी प्रतिपूणीय होगी।"

15. The aforesaid rule became applicable to the employees of the Jal

Nigam by virtue of Regulation 31 which by reference makes the Medical Reimbursement Rules, 2011 applicable to the members of service past or present belonging to U.P. Jal Nigam. It is within the scope of aforesaid Rules that the medical reimbursement claim was put up by the father of the respondents-petitioners which has come to be rejected on the strength of the office memorandum dated 06.06.2013.

16. The order dated 21.11.2015 which was assailed in the writ petition is based on no other reason except the office memorandum dated 06.06.2013.

17. The question that crops up for consideration before this Court is as to whether the Office Memorandum dated 06.06.2013 would bar the maintainability of the medical reimbursement claim as has been laid by the respondents-petitioners. In order to understand the legal implications of the office memorandum dated 06.06.2013, it is desirable to refer to section 97(1) of the Act 1975 which for ready reference is extracted below:-

"97. Regulations. - (1) The Nigam and a Jal Sansthan may, with the previous approval of the State Government, make regulations, not inconsistent with this Act and the rules made thereunder, for the administration of the affairs of the Nigam or a Jal Sansthan."

18. A plain reading of section 97(1) clearly reveals that any regulations made by the U.P. Jal Nigam ought to have a previous approval of the State Government. In the present case, it is not the case of the petitioners that office memorandum dated 06.06.2013 which contains the resolution of the board adopted in its 160th meeting was approved by the State Government at any point of time. Unless the resolution passed by the Board was approved by the State Government, the same would not assume the sanctity of law as postulated under Section 37 of the Act, 1975. In other words, by a simple resolution passed by the board without prior approval of the State Government, no provision of Regulations, 1978 can be superseded or made redundant by U.P. Jal Nigam. Thus, the mere existence of the office memorandum dated 06.06.2013 cannot supersede the mandate of the regulations and the protection available to the respondents-petitioners under law remains intact.

19. On a conjunctive reading of Section 37 with Section 97 of the Act 1975 read alongwith Regulation 31, we come to an irresistible conclusion that the office memorandum dated 06.06.2013 would not override the provision of Regulations as well as the Medical Reimbursement Rules, 2011 unless the same was approved by the State Government which is not the case at hand. Thus, the Office Memorandum dated 06.06.2013 in our humble consideration would not bar and cannot be construed against the mandate of Rule 11 of the Medical Reimbursement Rules 2011 as were applicable to the case at hand. The office memorandum dated 06.06.2013 was wrongly applied to reject the claim of the petitioners, being *non est.* The order passed by the competent authority on 21.11.2015 on the premise of office memorandum dated 06.06.2013 in our humble consideration deserves to be set aside.

20. Having regard to the legal position discussed here-in-above, we are of the considered opinion that the writ petition deserves to be allowed and the special appeal arising from the judgment impugned

herein for the reasons recorded above, deserves to be rejected. The delay on the part of respondents was *bona fide* and a valid claim for reimbursement cannot be objected on such a premise.

21. We accordingly **allow** the writ petition and set aside the order dated 21.11.2015. The respondents are directed to consider the medical claim put up on 09.09.2015 and process the same in accordance with the rules. The amount admissible to the respondents-petitioners shall accordingly be released in their favour, expeditiously preferably within a period of three months from the date of service of a certified copy of this order.

22. The present Special Appeal is accordingly **dismissed**. No order as to costs.

(2025) 7 ILRA 45
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 03.07.2025
BEFORE
THE HON'BLE AJIT KUMAR, J.

Writ A No. 947 of 2024

Mahesh Kumar Chauhan ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Arun Kumar

Counsel for the Respondents:
C.S.C.

Issue for Consideration

Effect of pendency of criminal case on the claim of compassionate appointment, especially in the circumstances when there was no criminal history of the petitioner to his credit and the District Magistrate had also issued character certificate in his favour.

Headnotes

(A) Service Law – Compassionate appointment – Petitioner's father was died, while working as Group D employee – Character certificate in favour of petitioner was issued by competent authority with a rider that it would not be effective in the event petitioner was found subsequently convicted in the criminal case – The character certificate was valid on the date of its issuance – Old enmity of informant with petitioner was admitted in the F.I.R. and there is no criminal history of petitioner – Widow was not gainfully employer anywhere – However, claim for compassionate appointment was rejected only on the ground that there is criminal case pending against him and his claim for compassionate appointment could be reconsidered only after his acquittal in the pending criminal case – Validity challenged :

Held : Though there is no indefensible right vested in the candidate to seek appointment while he is implicated in the criminal case but mere pendency of criminal case itself cannot be a ground to generally deny appointment to a candidate more especially in a case of compassionate appointment – In matters where criminal case is pending and character certificate has been issued by the District Magistrate may be subject to the final outcome of the criminal case, it should not become a guiding factor for the employer to deny compassionate appointment to a candidate as the nature of compassionate appointment is quite distinguishable from general category appointment and also which are offered in service matters. [Paras 8 and 10] (E-1)

Case Law Cited

Avtar Singh v. Union of India, 2016 (8) SCC 471 – **referred to.**

List of Acts

Constitution of India.

List of Keywords

Compassionate appointment; Character certificate; Criminal history; Guilty of moral turpitude; Pendency of criminal case.

Case Arising From

Order dated 12.12.2023 rejecting the claim of appointment on the compassionate ground.

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

1. Heard Shri Arun Kumar, learned counsel for petitioner and learned Standing Counsel.

2. By means of this petition filed under Article 226 of the Constitution petitioner has assailed the order dated 19.12.2023 whereby his claim for compassionate appointment has been deferred only on the ground that there is criminal case pending against him and his claim for compassionate appointment could be reconsidered only after his acquittal in the pending criminal case and another order dated 02.01.2024 whereby the Executive Engineer has expressed view that his character certificate issued by the District Magistrate shall be liable to be considered only after his acquittal in the criminal case as the character certificate itself contained a rider that there was criminal case pending against the petitioner and upon his conviction in the said criminal case, the character certificate would loose its relevance. Copy of the character certificate on the basis of which the impugned orders have come to be passed has been brought on record as annexure No. 14 to the petition.

3. It is argued on behalf of the petitioner that in the criminal case in which the petitioner has come to be implicated was only on account old standing enmity between the families and there was no role assigned to the petitioner in the first information report which may have given an impression to the authorities that petitioner would be liable to be held guilty of moral turpitude so as to dis-entitle him for any appointment in government service. It is further argued that there is no criminal history to the credit of the petitioner and in the light of the guidelines laid down in the case of **Avtar Singh v. Union of India 2016 (8) SCC 471** petitioner's claim for compassionate appointment could have been considered, moreso in the circumstances when the District Magistrate has not recalled his character certificate issued to petitioner till date.

4. Learned Additional Chief Standing Counsel on the contrary tried to defend the impugned order for the reason assigned therein however, he could not dispute the fact that District Magistrate, Deoria while issuing the character certificate on 24. 07.2023 did not observe anywhere that the character certificate as on that date was meaningless or irrelevant for the purpose for which it was issued.

5. Having heard learned counsel for respective parties and having perused the records I find the only question arising for consideration of this Court is, whether only on the basis of criminal case being registered against the petitioner under certain sections of erstwhile Indian Penal Code, petitioner's claim for compassionate appointment could have been rejected, more especially in the circumstances when there was no criminal history to his credit and the District Magistrate had issued character certificate in his favour.

6. In order to find answer to this above question I am reminded of settled principle regarding the object for incorporation of the rule for compassionate

appointment and that is with the purpose to provide immediate succour to the bereaved family. If the appointment is deferred only for flimsy grounds or only on the ground that the employer does not find in its discretion it to be appropriate to issue appointment order and to defer it for a long period to wait till the final outcome of the criminal trial, the very purpose and object to provide compassionate appointment would get defeated. Petitioner's father died on 31.01.2023 while working with the respondent establishment as Group D employee and was the only earning member of his family. He was survived by his widow, present petitioner and one other son and a married daughter. Thus, there was liability of two sons upon a widow who herself was not gainfully employed anywhere. It is in this background if I proceed to examine the legal question that I have framed above, I find the character certificate issued by the District Magistrate should have carried weight more especially when character certificate was qualified only with a rider that it would not be effective in the event petitioner was found subsequently convicted in the criminal case so as on 24.7.2023. Thus on the date of consideration of the character certificate of the petitioner the character certificate was very much valid, it being duly issued by the competent authority. In these circumstances therefore, the applicant could have been offered compassionate appointment in order to provide immediate succour to the family and such appointment could have been made subject to the final outcome of the criminal case as was also observed by way of condition given in the character certificate issued by the District Magistrate, Deoria. For the purpose of appreciation the last two paragraphs of the character certificate are reproduced hereunder:

"मा० सर्वोच्च न्यायालय ने अवतार सिंह के मामले में पैरा 386 में स्पष्ट उल्लिखित किया है कि "In Cases when tact has been truthfully declared in character verification from Regarding Pendency of a Criminal Case of trivial nature, employer in facts and circumstances of the case, In its discretion, may appoint the candidate subject to decision of such case." में मा० न्यायालय के निर्णयाधीन के शर्त पर नियोक्ता प्राधिकारी द्वारा सहमति की दशा में उक्त मुकदमें के तथ्यों, परिस्थितियों, को दृष्टिगत व सेवा शर्तों को दृष्टिगत रखते हुए विचार कर सकते है।

अतः संयुक्त निदेशक अभियोजन देवरिया की विधिक अभिमत आख्या दिनांक 19.07.2023 कम में अभ्यर्थी श्री महेश कुमार चौहान पुत्र स्व० बैजनाथ चौहान ग्राम -मूडाडीह थाना कोतवाली सदर जिला देवरिया के चरित्र सत्यापन की संस्तुति इस प्रतिबन्ध के साथ की जाती है कि यदि उक्त मुकदमें में मा० न्यायालय द्वारा अभ्यर्थी श्री महेश कुमार चौहान को दण्डित किया जाता है तो यह चरित्र सत्यापन की संस्तुति मान्य नही होगी।। अग्रेत्तर नियुक्ति प्राधिकारी अपने स्तर से निर्णय / आवश्यक कार्यवाही करना सुनिश्चित करे।"

7. I have also perused the first information report which has been brought on record as annexure No. 8 and I find there to be no specific role assigned to

the petitioner for the alleged assault upon informant and his family. The informant himself admitted in the first information report that there was old enmity between the two families. It has come to be pleaded in the petition that there is no other criminal case in which the petitioner has been implicated and thus there is no criminal history to the credit of the petitioner. In such circumstances therefore, the principles as laid down to be the guiding factors for the employee to offer appointment to the candidate in the case of **Awtar Singh (supra)** becomes relevant and the same is reproduced hereunder:

"27. Suppression of ?material? information presupposes that what is suppressed that ?matters? not every technical or trivial matter. The employer has to act on due consideration of rules/instructions if any in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases."

8. Looking to the directions/ guidelines issued by the Supreme Court as above, I find that though there is no indefensible right vested in the candidate to seek appointment while he is implicated in the criminal case but mere pendency of criminal case itself cannot be a ground to generally deny appointment to a candidate more especially in a case of compassionate appointment. Thus, it becomes a so discretion of the employer to exercise power in offering appointment but exercise the same objectively.

9. In matters of general appointment it can of course be observed that discretion be exercised more stringently as many candidates are available to the employer to give employment and the person who is facing criminal case could be identified and singled out but where a candidate is seeking appointment on compassionate ground, the employer is supposed to take a pragmatic view of the matter. Thus, considering the guidelines if the pragmatic view had been taken in the mater by the respondent, the respondent would not have denied compassionate appointment to the petitioner.

10. From the recitals contained in the orders impugned, I find that the appointment of the petitioner has been deferred only on the ground of a pending criminal case and for the reason that the character certificate contains recital to the effect that character certificate was only subject to the final outcome of the criminal case.In such circumstances therefore, a candidate seeking appointment could have been offered appointment as the employer did not find any other reason to deny the same except the character certificate and the pending criminal case. Thus, I find the question framed above deserved to be answered in favour of the petitioner. In matters where criminal case is pending and character certificate has been issued by the District Magistrate may be subject to the final outcome of the criminal case, it should not become a guiding factor for the employer to deny compassionate appointment to a candidate as the nature of compassionate appointment is quite distinguishable from general category

appointment and also which are offered in service matters.

11. In view of the above, writ petition succeeds and is allowed. The orders dated 19.12.2023 and 02.01.2024 are hereby quashed. The matter is remitted to the authority to pass order afresh offering compassionate appointment to the petitioner on a suitable post. However, it is left upon for the authority to make appointment subject to final outcome of the criminal case. The appropriate orders shall be passed by the competent authority within a period of two months of presentation of certified copy of this order.

(2025) 7 ILRA 49
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 14.07.2025

BEFORE

THE HON'BLE ABDUL MOIN, J.

Writ A No. 4991 of 2023

Prabhat Mishra ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
I.M. Pandey Ist, Harsh Vardhan Kediya, Saubhagya Mishra, Snigdha Singh

Counsel for the Respondents:
C.S.C., Ashwani Kumar Agnihotri

Issue for Consideration

Legality of refusing to appoint the petitioner, who was the next meritorious candidates under the physically handicapped category, even after non-joining by the last selected candidate causing non-fulfillment of 4% quota.

Headnotes

(A) Service law – Selection – Post of Assistant Professor – Claim under physically handicapped category – Petitioner stood just below last selected physically handicapped candidate in merit list – Last selected candidate did not join – Petitioner was refused to be given appointment on the ground that there were only five reserved posts for physically handicapped candidates and name of petitioner did not find place amongst those five candidates – Validity challenged – Mandate of appointing not less than 4% of total vacancy in every Government establishment by person with benchmark disability was not fulfilled – Permissibility :

Held : Physically handicapped category is to be considered as a separate category and provided with reservations and it is indispensable on the part of the authorities to declare separate cut off marks for physically handicapped category for each stage – The respondents have patently erred in law in not appointing the petitioner against fifth reserved post for physically handicapped candidates of Assistant Professor (English). [Paras 34 and 39] (E-1)

Case Law Cited

In re: Recruitment of Visually Impaired in Judicial Services, 2025 INSC 300; Reserve Bank of India and others v. A. K. Nair and others, 2023 SCC Online SC 801; Rekha Sharma v. High Court of Judicature for Rajasthan and another, 2025 INSC 551; Saurav Yadav and others v. State of U.P. and others, (2021) 4 SCC 542; Dr Manoj Kumar Rawat v. State of U.P. and 5 others, 2025:AHC:71491 DB **– referred to.**

List of Acts

U.P. Higher Education Services Commission Act, 1980 **–** Ss. 13(1), 13(4), 12(3); U.P. Education Service Selection Commission Act, 2023 **–** S. 31(2); Right of Persons with Disabilities Act, 2016 **–** S. 34.

List of Keywords

Reservation; Physically handicapped candidate; Assistant Professor; Physically handicapped

certificate; Next selected candidate; 4% of total vacancies; Benchmark disability; Separate category; Cut off marks; Patent error in law.

Case Arising From

Order dated 19.6.2023 rejecting the claim of the petitioner for appointment on the post of Assistant Professor (English) under reserved quota of physically handicapped category.

(Delivered by Hon'ble Abdul Moin, J.)

1. Vakalatnama and counter affidavit filed today by Shri Ran Vijay Singh, learned counsel for the respondent no. 4 is taken on record.

2. Heard Shri Rahul Bajaj, assisted by Shri Taha Bin Tasneem and Shri Harsh Vardhan Kedia, learned counsels for the petitioner, learned Standing Counsel appearing for the respondents no. 1 & 3, Shri Ashwani Kumar Agnihotri, learned counsel for the respondent no.2 and Shri Ran Vijay Singh, learned counsel for the respondent no. 4.

3. At the very outset, learned counsel for the petitioner states that as there are no disputed questions raised in the counter affidavit, as such he does not intend to file reply thereto.

4. Under challenge is the order dated 19.6.2023, a copy of which is annexure 1 to the writ petition, whereby the claim of the petitioner for appointment on the post of Assistant Professor (English) under reserved quota of physically handicapped category has been rejected. Further prayer is for a writ of mandamus commanding the respondents to appoint the petitioner on the post of Assistant Professor (English) from final merit list of reservation quota of physically handicapped category.

5. Bereft of unnecessary details the facts set forth are that the petitioner suffers from 100% disability of optical atrophy of both eyes and is a hundred percent permanently physically handicapped person. Copy of the physical handicap certificate is annexure 3 to the writ petition.

6. The respondents had advertised vacancies of Assistant Professors vide advertisement, a copy of which is annexure 6 to the writ petition. So far as the dispute is concerned the same pertains to 5 posts of Assistant Professor (English) out of total 133 posts of Assistant Professor (English). The five posts are reserved for the physically handicapped candidates as per table 2 of the said advertisement which is part of annexure 6 of the writ petition and would relate to clause 3 of the advertisement. Thus out of 133 posts of Assistant Professor (English) five posts were reserved for physically handicapped candidates to which there is no dispute.

7. The petitioner applied for the post of Assistant Professor (English) in pursuance to the said advertisement. A final merit list was declared on 02.07.2022, a copy of which is annexure 2 to the writ petition, in which the name of the petitioner finds place at serial 345 having secured 127.22 marks against physically handicapped category.

8. It is contended that a perusal of the selected physically handicapped unreserved selected candidates (General Category) to the final merit list would indicate as per the table made in paragraph 20 of the writ petition the following position :

Name	Total Marks
Neha Kumari	154.84

Astha Singh	137.34
Vijay Bux Singh	136.40
Rishabh Mishra	132.40
Durgesh Mishra	129.22.

9. In paragraph 21 of the writ petition, it is stated that the petitioner stood just below last selected physically handicapped candidate namely Shri Durgesh Mishra in terms of his merit against unreserved physically handicapped category.

10. Incidentally, there is no denial to the aforesaid averment in paragraph 24 of the counter affidavit filed by respondent no. 4 wherein the reply to paragraphs 20 and 21 of the writ petition have been given.

11. As per the averments made both in the writ petition and in paragraph 5 of the counter affidavit dated 21.07.2023 the candidate whose name found place at the top of the merit list of physically handicapped unreserved category i.e. Ms Neha Kumari did not join in the allotted institution with the result that name of the petitioner would stand placed at serial no 5 in the list of unreserved physically handicapped candidates which would make the petitioner as an eligible candidate fit for being appointed against 5 reserved vacancies for physically handicapped category as per his merit position, he being placed at serial no. 6.

12. Placing reliance on the Section 13(1) of the U.P. Higher Education Services Commission Act, 1980 (hereinafter referred to as the Act, 1980) the contention is that the Commission i.e. respondent no.2 as soon as possible after notification of vacancies to it, hold an interview of the candidates and send to the Director a list recommending such number of names of candidates found most suitable in each subject as may be, so far as practicable, 25% more than the number of vacancies in that subject, such names to be arranged in order of merit shown in the interview or in the examination and interview.

13. Further placing reliance on Subsection (4) of section 13 of the Act, 1980 the argument is that said provision categorically provides that where a vacancy occurs due to death, resignation or otherwise during the period of validity of the list referred to in subsection (2) which provides that the list sent by the Commission shall be valid till the receipt of a new list from the Commission and such vacancies having not been notified to the Commission under Section 12(3) of the Act, 1980 the Director may intimate to the management the name of candidates from such list for appointment.

14. The argument is than when the person at serial no. 1 of the merit list of the physically handicapped unreserved category did not join and admittedly considering the provisions of Section 13 of the Act, 1980 as the respondents were enjoined to prepare a list of suitable candidates 25% more than the number of vacancies, as such, in case the Commission would have prepared the list in accordance with the provisions of the Act, 1980 and then the name of the petitioner would have found placed in the list against the reserved vacancies of physically handicapped candidates and consequently he should have been appointed.

15. Further argument is that even when the Commission as provided under the Act, 1980 has ceased to exist having been replaced by the U.P. Education

Service Selection Commission Act, 2003 (hereinafter referred to Act, 2003) with effect from 21.07.2023 yet considering that the selection was of the year 2022 and also considering the provisions of Section 31(2) of the Act, 2023, notwithstanding such repeal of the Act 1980, anything done or any action taken under the Act 1980 shall be deemed to have been done or taken under the Act 2023 and thus it is argued that irrespective of repeal of Act 1980 the respondents are required to appoint the petitioner on the vacant post of Assistant Professor (English).

16. Reliance has also been placed on the interim order of this Court dated 22.05.2025 to contend that keeping in view specific observations made in paragraph 5 the counter affidavit filed by the respondent no. 3 this Court had provided that till the next date of listing one post of Assistant Professor (English) if still vacant shall not be filled up.

17. Further without considering the aforesaid facts the representation of the petitioner was rejected by the respondents vide order impugned dated 19.06.2023 primarily on the ground that as there were only five reserved posts for physically handicapped candidates and name of petitioner did not find place amongst those five candidates as such he cannot be appointed.

18. Reliance has been placed on the judgements of Hon'ble Supreme Court in the case of in re: **Recruitment of Visually Impaired in Judicial Services, 2025 INSC 300, Reserve Bank of India and others vs A. K. Nair and others, 2023 SCC Online SC 801, Rekha Sharma vs High Court of Judicature for Rajasthan and another, 2025 INSC 551, Saurav Yadav and others vs State of U.P. and others, (2021) 4 SCC 542** and a division bench judgement of this Court in the case of Dr Manoj Kumar Rawat vs State of U.P. and 5 others, 2025:AHC:71491-DB.

19. On the other hand, learned Standing Counsel as well as Shri Ran Vijay Singh, learned counsel for the respondent no. 4 have supported the order impugned dated 14.06.2023 by which the claim of the petitioner has been rejected. It is contended that of the 133 posts of Assistant Professor (English) which were advertised, 5 posts were reserved for physically handicapped category. The other posts were bifurcated into unreserved, OBC, EWS and SC category but there was no separate category in the categorization for physically handicapped category candidates who were all to be treated as unreserved.

20. It is contended that the petitioner was not included as a selected candidate because he failed to cross the cut off marks / merit and that the 5 physically handicapped candidates as per the quota have been selected according to merit position.

21. So far as waiting list of 25% of total vacancies is concerned it is contended that 25% waiting list of each category was published but as the five candidates of physically handicapped category were selected under 133 posts of Assistant Professor (English) and these five posts were not independently requisitioned to the Commission therefore they were included in the unreserved 63 posts and against the unreserved 63 posts 25% i.e. 16 posts of waiting list was declared in which the petitioner's name was not present.

22. It is also contended that the last selected candidate of physically handicapped category has secured 129.22 marks vis a vis the petitioner who has only secured 127.22 marks while the general category list candidates who find place in the waiting list has secured 149.77 marks and therefore the petitioner has failed to secure the cut off marks / merit and thus the name has not been included neither in the final select list nor in the waiting list. However, it is not disputed that in terms of merit of physically handicapped unreserved candidates the name of petitioner would find place at serial no. 6.

23. Thus it is contended that no error has been committed by the respondents while rejecting the claim of the petitioner vide order impugned dated 19.06.2023.

24. Heard learned counsel for the parties and perused the record.

25. From the arguments as advanced by learned counsel for the parties and from perusal of record it emerges that the petitioner is a physically handicapped unreserved candidate suffering from 100% disability and is a 100% permanently handicapped person. An advertisement was issued for various vacancies of Assistant Professors. The petitioner finding himself eligible for the post of Assistant Professor (English) (to which the dispute also pertains to) applied for the same. Admittedly there were 133 posts of Assistant Professor (English) of which 5 posts were reserved for physically handicapped candidates as per table 2 of the advertisement. A final merit list was declared on 02.07.2022 in which name of the petitioner finds place at serial number 345 having secured 127.22 marks having physically handicapped unreserved category. As per final merit list, name of the petitioner would stand at serial number 6 in terms of merit for physically handicapped candidates to which there is no dispute. However considering that there are only five reserved posts for physically handicapped category, as such name of the petitioner did not find place against those five posts. One Ms Neha Kumari stood at serial number 1 in terms of merit for physically handicapped unreserved category. Admittedly, Ms Neha Kumari did not join in the allotted institution thus leaving only four persons in fray against five vacancies against physically handicapped unreserved category.

26. The grievance of the petitioner is that considering that there were five physically handicapped unreserved vacancies against 133 posts of Assistant Professor (English) and considering non joining of the person who stood first in the said category i.e. Ms Neha Kumari, name of petitioner should have been placed in the said final merit list which should have resulted him in he being appointed as an Assistant Professor (English). The representation filed in this regard was rejected by the respondents vide order impugned dated 19.06.2023 primarily on the ground that as there were only five reserved posts for physically handicapped candidates and name of petitioner did not find place amongst those five candidates as such he cannot be appointed.

27. The respondents have also supported the order impugned by contending that even while following the provisions of the Act, 1980 and after considering the 25% i.e. 16 posts of waiting list, name of the petitioner did not find place as he failed to secure requisite marks

in terms of merit and consequently he has not been appointed.

28. In this regard it would be apt to refer to provisions of Section 34 of the Right of Persons with Disabilities Act, 2016 (hereinafter referred to as the Act, 2016), which reads as under:

"Reservation: *(1) Every appropriate Government* ***shall appoint in every Government establishment, not less than four per cent. of the total number of vacancies in the cadre strength in each group of posts*** *meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:*

(a) blindness and low vision;

(b) deaf and hard of hearing;

(c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;

(d) autism, intellectual disability, specific learning disability and mental illness;

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit."

29. A perusal of Section 34 of the Act, 2016 would indicate that every appropriate government shall appoint in every government establishment not less than 4% of total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities. The word used by legislature is "shall appoint" meaning thereby that not less than 4% of total number of vacancies in cadre strength would be occupied by persons with benchmark disability by way of appointment.

30. There is no dispute to the fact that the petitioner is suffering from a benchmark disability rather is suffering from 100% disability of optical atrophy of both eyes and is duly certified to be a hundred percent permanently physically handicapped person as per physically handicapped certificate.

31. Hon'ble Supreme Court in the case of **Recruitment of Visually Impaired in Judicial Services (supra)** has held as under:

"63.3. Taking note of all these aspects, ***we are of the opinion that maintaining and operating a separate cut-off list is mandatory for each category, which axiomatically includes PwD category as well.*** *Non-declaration of cut-off marks affects transparency and creates ambiguity, and candidates being not informed about the basis of their results. Such candidates are left uninformed about the last mark scored by the qualifying candidate belonging to the particular category, to be able to get through to the next stage of selection process. In effect, it compels PwD candidates to compete with other category candidates on unequal terms.* ***Further, when the Rules referred to above, considered the PwD as a separate category and provided them with reservations, it is indispensable on the part of the authorities concerned to declare separate cut-off marks for PwD category at each stage to ensure that those similarly placed candidates are adequately represented in the service fulfilling the very purpose of reservation****. The non-disclosure of cut-off marks would lead to a situation, where such candidates may not be adequately represented in the judicial service, which is against the provisions of the RPwD Act, 2016. Therefore, we direct the authorities concerned to declare separate cut-off marks and publish separate merit list for the PwD category at every stage of the examination and proceed with the selection process accordingly. "*

(emphasis by Court)

32. Again Hon'ble Supreme Court in the case of **Rekha Sharma (supra)** has held as under:

"14. What emerges from the submissions made on behalf of the petitioner as well as the respondents herein is the fact that the petitioner herein has secured the minimum qualifying marks being 119 which is an undisputed fact. Secondly, although only two posts were reserved for persons with disability of being blind and having low vision, the fact remains that the candidate Anu Meena who has secured 137 marks belongs to the Scheduled Tribes category and she could have been considered in that category, in which event two posts would have been remained available for persons with blind and low vision disability and the petitioner herein could have been one of the persons who could have been accommodated. In this regard, our attention was drawn to the Office Memorandum dated 27.09.2022 and particularly paragraph ?4(i)? of the said Office Memorandum which reads as under:

(i). In line with the spirit of the O.M. No.36035/2/2017-Estt.(Res.), dated 15.1.2018, and O.M. No.36012/1/2020-Estt(Res-II), dated 17.5.2022 on the subject, the concept of own merit for PwBD shall be implemented in all direct recruitment examinations, including the CSE and promotions, wherever applicable. In other words, PwBD category candidates selected without relaxed standard, along with other unreserved candidates, will not be adjusted against the reserved share of

vacancies. The reserved vacancies will be filled up separately from amongst the eligible candidates with benchmark disabilities, who are lower in merit than the last unreserved candidate in general merit list, but otherwise found suitable for appointment, if necessary, by relaxed standards."

(emphasis by Court)

33. Hon'ble Supreme Court in the case of **Saurav Yadav (supra)** has held as under:

"60. Horizontal reservations on the other hand, by their nature, are not inviolate pools or carved in stone. They are premised on their overlaps and are ?interlocking? reservations 21. As a sequel, they are to be calculated concurrently and along with the inviolate ?vertical? (or ?social?) reservation quotas, by application of the various steps laid out with clarity in paragraph 11 of Justice Lalit?s judgement. They cannot be carried forward. The first rule that applies to filling horizontal reservation quotas is one of adjustment, i.e. examining whether on merit any of the horizontal categories are adjusted in the merit list in the open category, and then, in the quota for such horizontal category within the particular specified/social reservation. "

(emphasis by Court)

34. In view of the aforesaid judgements it clearly emerges that physically handicapped category is to be considered as a separate category and provided with reservations and it is indispensable on the part of the authorities to declare separate cut off marks for physically handicapped category for each stage to ensure that those similarly placed candidates are adequately represented in service fulfilling the very purpose of reservation.

35. The argument on the part of respondents that name of petitioner was not contained in the result of 25% waiting list is found misconceived considering the fact that when there were 5 posts reserved for physically handicapped candidates and the person at the serial number 1 of the merit namely Ms Neha Kumari did not join as such the respondents should have considered the others eligible towards physically handicapped posts also instead of declaring a general waiting list in terms of merit without considering merit towards reserved posts for physically handicapped candidates more particularly when the Hon'ble Supreme Court in the judgement of **Recruitment of Visually Impaired in Judicial Services (supra)** has observed regarding declaring of separate cut off marks for physically handicapped category.

36. A bald argument has also been advanced on behalf of respondent no. 4 and specific plea in this regard is taken on paragraph 11 of counter affidavit filed on behalf of respondent no. 4 that the petitioner failed to secure requisite marks/merit without in fact disclosing the cut off marks which were fixed for physically handicapped category.

37. The aforesaid argument has been sought to be supported on the ground that in the final result dated 02.07.2022 the last selected candidate of physically handicapped category had secured 129.22 marks (in paragraph 20 of the writ petition the name indicated is Shri Durgesh Mishra having 129.22 marks). However in the absence of any cut off marks being declared separately as directed by Hon'ble

Supreme Court in the case of **Recruitment of Visually Impaired in Judicial Services (supra)** it is apparent that the said argument is patently fallacious and misconceived particularity considering that the merit list of physically handicapped category included only five candidates, the last person in the merit list having secured 129.22 marks, there being no dispute to no other candidate of physically handicapped category in between Shri Durgesh Mishra and the petitioner meaning thereby that it is only the petitioner who should have been given fifth reserved post against physically handicapped category more particularly when Section 34 of the Act, 2016 specifically stipulates that the Government **shall appoint** not less than 4% of total number of vacancies meant to be filled with persons with benchmark disability. Thus non appointment of petitioner would be clearly violative of Section 34 of the Act, 2016.

38. Even though no argument has been raised by learned counsel appearing for the respondent no. 4 of the Act 1980 and theUttar Pradesh Secondary Education Services Selection Board Act, 1982, having been repealed (and the said selection having been carried out by respondent no. 2) and having been replaced by the Act, 2023 yet as an abundant precaution it is indicated that this aspect of matter has been considered by a Division Bench of this Court in the case of **Dr. Manoj Kumar Rawat (supra)** has held after considering the provisions of Section 31(2) of the Act, 2023 has held as under:

"17. A careful reading of sub-section (2) would reveal that notwithstanding repeal of the Act of 1980 anything done or any action taken under the acts referred to in sub-section (1) is to be deemed to have been done or taken under the new Act and for such purposes the new Act were to be treated to have been in force at all material times. Once we find that the new Act contains no power with the Director to fill up a substantive vacancy which has come into existence later, to be filled from a candidate selected in an earlier advertisement, the action of the Director would be without jurisdiction. This is particularly so as the powers of the Director under the previous Act would continue under the new Act by virtue of section 31(2) of the Act of 2023 insofar as it is not inconsistent with the Act. A power which is not conferred upon the Director during the currency of new Act cannot be exercised by tracing the source of such power from the previous Act, which has already been repealed."

39. Considering the aforesaid discussion it is thus apparent that the respondents have patently erred in law in not appointing the petitioner against fifth reserved post for physically handicapped candidates of Assistant Professor (English). The matter may have been sent for consideration of the petitioners appointment but at the same time considering that the objections and arguments of the respondents indicating as to why the petitioner was not appointed against fifth post have been considered threadbare and the fact that there is no dispute that the petitioner stood sixth in terms of merit of physically handicapped candidates and the fact that the respondents did not declare any cut off marks in the physically handicapped category as per judgement of Hon'ble Supreme Court in the case of **Recruitment of Visually Impaired in Judicial Services (supra)** and the mandatory provisions of Section 34 of the Act, 2016 which mandates every

appropriate government to appoint not less than 4% of total number of vacancies as such instead of sending the matter to the competent authority the Court while exercising powers under Article 226 of the Constitution of India deems it fit to pass the following orders.

40. Keeping in view the aforesaid discussion, the writ petition is **allowed.** The order impugned dated 19.06.2023, a copy of which is annexure 1 to the writ petition is quashed. A writ of mandamus is issued commanding the respondents to appoint the petitioner on the post of Assistant Professor (English) against physically handicapped category.

41. Let the order be complied within six weeks from the date of receipt of a certified copy of this order.

(2025) 7 ILRA 58
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 24.07.2025

BEFORE

THE HON'BLE MANISH MATHUR, J.

Writ A No. 5583 of 2024

Ram Prakash Mishra ...Petitioner
Versus
State of U.P. & Anr. ...Respondents

Counsel for the Petitioner:
Hari Prasad Gupta, Hari Ram Gup

Counsel for the Respondents:
C.S.C.

Issue for Consideration

Competence of the disciplinary authority in reiterating the charges and holding the petitioner guilty without discussing the findings and reasoning recorded by the Enquiry Officer in holding the charge against the petitioner not proved.

Headnotes

(A) Service law – Disciplinary proceeding – Punishment – Major penalty – Withholding of two increments with cumulative effect – Charge of deliberately issuing the fitness certificate against provisions was leveled – In inquiry report, the charge was not found proved against the petitioner – The disciplinary authority disagreed with the inquiry report and held petitioner guilty without discussing on the findings and reasoning recorded by the Enquiry Officer – Further the disciplinary authority reiterated the charges without adverting to any evidence – Permissibility :

Held : Rule 9 (2) of Rules, 1999 is clearly salutary in nature and is meant for protection of a delinquent employee in case the disciplinary authority disagrees with inquiry report. It is, therefore, incumbent upon a disciplinary authority to specifically record reasons for disagreeing with the inquiry report – It would be incumbent upon a disciplinary authority to advert to findings recorded in the inquiry report, material evidence, documentary or otherwise and to indicate how the reasons and findings recorded by the Enquiry Officer does not fulfill the relevant aspects required to be seen by the Enquiry Officer. [Paras 15, 16 and 18] (E-1)

Case Law Cited

Yoginath D. Bagde v. State of Maharastra and another, (1999) 7 SCC 739; Punjab National Bank and others v. Kunj Bihari Misra, (1998) 7 SCC 84; Baldev Singh Gandhi vs State of Punjab and others, AIR 2002 SC 1124; Noratanmal Chouraria v. M.R. Murli & another, (2004) 5 SCC 689; State of U.P. and others v. Raj Mani Singh and another, (2018) 36 LCD 644 – **referred to.**

List of Acts

U.P. Government Servant (Discipline and Appeal) Rules, 1999 **–** Rule 9.

List of Keywords

Major penalty; Withholding of two increment with cumulative effect; Charge of issuing the

fitness certificate against provisions; Inquiry report; Disciplinary proceeding; Non application of mind; Subjective satisfaction; Laconic reasoning; Delinquent employee; Opportunity of hearing.

Case Arising From

Order dated 18.05.2022 and endorsement letter dated 02.08.2023 punishing the petitioner with major penalty of withholding of two increments with cumulative effect.

(Delivered by Hon'ble Manish Mathur, J.)

1. Heard Mr. Hari Prasad Gupta, learned counsel for petitioner and Ms Parul Bajpai, learned Additional Chief Standing Counsel for the opposite parties.

2. Petition has been filed challenging order dated 18.05.2022 along with the endorsement letter dated 02.08.2023 whereby petitioner has been visited with major penalty of withholding of two increments with cumulative effect. Further prayer for a direction to concerned authorities to extend all the incidental and consequential service benefits withheld due to impugned punishment order has also been sought.

3. It has been submitted that an accident occurred on 19.07.2020 between a private vehicle and a private bus bearing registration no.UP17-AT4782. In pursuance of such an accident, petitioner was issued a charge sheet dated 21.06.2021 containing five charges with the primary charge that the aforesaid private bus had been inspected by petitioner in the course of his duties as Assistant Regional Transport Officer (Administration) in the year 2018 and a certificate of fitness was also issued by him which was valid from 24.02.2018 to 23.02.2020 and there were certain omissions on the part of petitioner due to which fitness certificate should not have been issued. Charge No.1 pertained to the offending bus having 12 more seats than were permissible; Charge no.2 pertained to excess length of the bus by 1000 m.m; Charge no.3 pertained to discrepancy in overhang of bus by 1080 m.m; Charge no.4 pertained to rear screen mirror being hidden by steel body and Charge no.5 pertained generally to petitioner issuing a certificate against provisions.

4. It is submitted that petitioner replied to the aforesaid charge sheet in letter dated 07.03.2022 denying charges levelled against him with the submission that discrepancies indicated in the charges were not present at the time of inspection and may have occurred subsequently with the connivance of bus owner. It is also submitted that after inquiry proceedings, inquiry report dated 24.05.2022 was submitted exonerating petitioner from all the charges whereafter a show cause notice dated 27.07.2022 was issued by the disciplinary authority indicating his disagreement with the inquiry report. It is submitted that aforesaid show cause notice was also replied to whereafter impugned punishment order has been passed.

5. Learned counsel for petitioner submits that the proceedings subsequent to submission of inquiry report are in violation of settled law as well as Rule 9 of U.P. Government Servant (Discipline and Appeal) Rules, 1999 (hereinafter referred to as 'Rules, 1999') inasmuch as show cause notice clearly indicates the disciplinary authority having made up its mind with regard to alleged misconduct of petitioner and also does not indicate any reasoning for disagreeing with the inquiry report.

6. It is further submitted that a perusal of aforesaid show cause notice would indicate that on the pretext of disagreeing with inquiry report, the

disciplinary authority in fact has merely reiterated charges levelled against petitioner. It is also submitted that even in the punishment order, aspects on which petitioner was exonerated in inquiry proceedings have not been considered. It is, therefore, submitted that for all practical purposes, impugned order is non speaking and indicates non application of mind by the disciplinary authority. Learned counsel for petitioner has placed reliance on judgments rendered in the cases of ***Yoginath D. Bagde vs. State of Maharastra and another, (1999) 7 SCC 739, Punjab National Bank and others vs. Kunj Bihari Misra (1998) 7 SCC 84, Baldev Singh Gandhi vs State of Punjab and others, AIR 2002 SC 1124, Noratanmal Chouraria vs. M.R. Murli & another (2004) 5 SCC 689 and State of U.P. and others vs. Raj Mani Singh and another (2018) 36 LCD 644.***

7. Learned State counsel on the basis of counter affidavit has refuted submissions advanced by learned counsel for petitioner with the submission that petitioner has been found responsible for not duly inspecting the bus and not conducting its fitness as per standards and due to his negligent discharge of duties, resulted in an accident leading to death of several persons apart from injuring others.

8. It is submitted that procedure as required to be followed in terms of Rule 9 of Rules 1999 has clearly been followed by the disciplinary authority in the show cause notice where he has expressly indicated reasons for disagreeing with the inquiry report whereafter a show cause notice has been issued to petitioner and his reply has also been duly considered in the punishment order.

9. It is therefore submitted that since procedure as required has been followed and ample opportunity of hearing has also been provided to petitioner, the impugned punishment order does not warrant any interference.

10. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is evident that petitioner was charge sheeted with regard to five charges as indicated hereinabove but inquiry report dated 25.05.2022 has clearly exonerated petitioner from all the charges primarily on the ground that alterations made in the offending vehicle may have taken place subsequent to grant of fitness certificate particularly since two years had elapsed from issuance of fitness certificate and the date of accident. The inquiry report specifically indicates that there is no material on record whereby petitioner can be held guilty of deliberately issuing the fitness certificate against provisions.

11. It is also evident that upon receipt of inquiry report, a show cause notice dated 27.07.2022 has been issued by disciplinary authority indicating disagreement with the inquiry report. However, a perusal of aforesaid show cause notice indicates that under the pretext of disagreeing with the inquiry report, the disciplinary authority has mainly quoted charges which had been levelled against petitioner in the charge sheet. There is absolutely no discussion with regard to findings of Enquiry Officer and as to reasons by the disciplinary authority for not agreeing with them. Show cause notice also does not indicate any factor that inquiry report is not based on any material evidence or ignores any material evidence.

12. Exfacie the show cause notice appears to be a result of non-application of mind. It is also evident that although the letter dated 27.07.2022 indicates it to be a show cause notice but the disciplinary authority clearly while disagreeing with inquiry report holds the petitioner guilty of charges levelled against him.

13. In considered opinion of this Court, once the disciplinary authority was disagreeing with inquiry report and in pursuance thereof was issuing a show cause notice, there was no occasion for the authority to have recorded a subjective satisfaction with regard to guilt of petitioner at that stage. The disciplinary authority having made up its mind at the stage of issuance of show cause notice itself, renders subsequent proceedings negatory.

14. It is also evident from record that while passing impugned order of punishment, the disciplinary authority while quoting reply submitted by petitioner has not adverted to the same at all and has mainly rejected it on the ground that it is not worthy of acceptance. Here again, the disciplinary authority has indicated a laconic reasoning without indicating any aspect as to why reply submitted by petitioner was unworthy of acceptance. The disciplinary authority thereafter has again reiterated charges levelled against petitoner without adverting to any evidence to hold him guilty of charges levelled against him.

15. Rule 9 (2) of Rules, 1999 prescribes procedure for action to be taken on inquiry report and stipulated that the disciplinary authority **'shall**, if it disagrees with the findings of the Inquiry Officer on any charge, record its own findings thereon for reasons to be recorded.

16. The aforesaid provision is clearly salutary in nature and is meant for protection of a delinquent employee in case the disciplinary authority disagrees with inquiry report. It is, therefore, incumbent upon a disciplinary authority to specifically record reasons for disagreeing with the inquiry report.

17. In the considered opinion of this Court, recording of reasons cannot be a empty formality whereunder the disciplinary authority merely re-quotes charges levelled as indicated in the charge sheet.

18. In such circumstances, it would be incumbent upon a disciplinary authority to advert to findings recorded in the inquiry report, material evidence, documentary or otherwise and to indicate how the reasons and findings recorded by the Enquiry Officer does not fulfill the relevant aspects required to be seen by the Enquiry Officer.

19. It is only thereafter that the disciplinary authority can specifically indicate his reasons for disagreeing with the inquiry report and for issuing a show cuase notice as prescribed under Rule 9 (2) of Rules 1999.

20. The aforesaid aspect has clearly been dealt with by Hon'ble Supreme Court in the case of ***Yoginath D. Bagde vs. State of Maharastra and another, (1999) 7 SCC 739*** in the following manner:-

30. Recently, a three-Judge Bench of this Court in Punjab National Bank & Ors. vs. Kunj Behari Mishra (1998) 7 SCC 84 = AIR 1998 SC 2713, relying upon the earlier decisions of this Court in State of Assam vs. Bimal Kumar Pandit (1964) 2 SCR 1 = AIR 1963 SC

1612; Institute of Chartered Acountants of India vs. L.K. Ratna & Ors. (1986) 4 SCC 537 as also the Constitution Bench decision in Managing Director, ECIL, Hyderabad & Ors. vs. B. Karunakar & Ors. (1993) 4 SCC 727 and the decision in Ram Kishan vs. Union of India (1995) 6 SCC 157, has held that :

"It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority."

The Court further observed as under :

"When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and inequitous that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed." The Court further held that the contrary view expressed by this Court in State Bank of India vs. S.S. Koshal 1994 Supp.(2) SCC 468 and State of Rajasthan vs. M.C. Saxena (1998) 3 SCC 385 was not correct.

31. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tenative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be

tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or Service Rule including Rules made under Article 309 of the Constitution".

21. It is therefore evident that Hon'ble Supreme Court has clearly enunciated that at the time of issuance of show cause notice issued by the disciplinary authority after submission of inquiry report that formation of opinion pertaining to the delinquent employee and charges levelled against him should be tentative and not final and it is at this stage that an opportunity of hearing is required to be given after informing such employee of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of Enquiry Officer.

22. The said aspect has again been considered by Hon'ble Supreme Court in the case of ***Punjab National Bank and others vs. Kunj Bihari Misra (1998) 7 SCC 84*** in the following manner:-

"19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority deagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinguent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusin of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

23. In the case of ***Baldev Singh Gandhi vs State of Punjab and others, AIR 2002 SC 1124***, Hon'ble Supreme Court has held as under:-

" 'Misconduct' has not been defined in the Act. The word 'misconduct' is

antithesis of the word 'conduct.' Thus, ordinarily the expression 'misconduct' means wrong or improper conduct, unlawful behaviour, misfeasance, wrong conduct, misdemeanour etc."

24. It is also relevant that aspect of misconduct has been defined by Hon'ble Supreme Court in the case of ***Noratanmal Chouraria vs. M.R. Murli & another (2004) 5 SCC 689*** in the following manner:-

Misconduct, inter alia, envisages breach of discipline, although it would not be possible to lay down exhaustively as to what would constitute conduct and indiscipline, which, however, is wide enough to include wrongful omission or commission whether done of omitted to be done intentionally or unintentionally. It means, "improper behaviour, intentional wrongdoing or deliberate violation of a rule or standard of behaviour".

Misconduct is said to be a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand, it is a violation of definite law."

25. The aforesaid judgements have been considered by a Division Bench of this Court in the case of ***State of U.P. and others vs. Raj Mani Singh and another (2018) 36 LCD 644*** in the following manner:-

"15. The allegations at the best show that the petitioner is a non serious or less efficient employee. He was not very alert or careful. It shows that he is less capable official but in the absence of anything further, mere carelessness or lack of seriousness of an employee or failure to show better efficiency upto desired level, ipso facto, would not amount to 'misconduct' warranting punishment under Rules. In J. Ahmed (supra) Court held that Lack of efficiency or failure to attain highest standards in discharge of duties attached to public office would not constitute 'misconduct', unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high, which is not the case in hand."

26. Upon applicability of said judgements in the facts and circumstances of the case, it is evident that the inquiry report has clearly adverted to the fact that there is no deliberate or intentional dereliction of duty on the part of petitioner in issuing the fitness certificate and specifically adverts to the time lapse between issuance of such a fitness certificate and the accident happening almost two years thereafter.

27. In view of aforesaid judgements rendered by Hon'ble Supreme Court as considered by a Division Bench of this Court in the case of ***Raj Mani Singh (supra)***, no aspect of misconduct can be attributed against petitioner.

28. In view of discussions made hereinabove, the impugned order dated 18.05.2022 along with the endorsement letter dated 02.08.2023 is hereby quashed by issuing a writ in the nature of certiorari. A further writ in the nature of mandamus is issued commanding opposite parties to provide benefit of withheld service benefits to petitioner. The relevant orders with regard to same shall be passed within a period of eight weeks from the date a certified copy of this order is produced before the authority concerned.

29. Resultantly, the writ petition succeeds and is allowed. Parties to bear their own costs.

(2025) 7 ILRA 65
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 29.07.2025

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No. 7181 of 2025

Akansh Choudhary ...Petitioner
Versus
Union of India & Ors. ...Respondents

Counsel for the Petitioner:
Naman Agarwal, Nipun Singh

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

ISSUE FOR CONSIDERATION

Whether interference under Article 226 of the Constitution of India is warranted in disciplinary proceedings where the inquiry was conducted in accordance with law and there is some legal evidence to support the findings of the Disciplinary Authority.

HEADNOTE

Service Law – Departmental Inquiry – Allegation of submission of fake experience certificate – Removal from service – Principles of Natural Justice – Scope of judicial review under Article 226 – Adequacy and reliability of evidence not open to re-appreciation

Held : High Court is not a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. Adequacy or reliability of evidence cannot be looked into.

Petitioner was alleged to have submitted a fake experience certificate for securing promotion to the post of Manager. Inquiry was conducted on eight dates; petitioner was granted opportunity to cross-examine witnesses and to submit his brief. The Inquiry Officer found the article of charge proved. The Disciplinary Authority, after considering the reply and report, imposed penalty of "removal from service which shall not be a disqualification for future employment", which was affirmed in appeal. Court found that the petitioner was granted full opportunity to place his case during inquiry. He cross-examined witnesses at length. There was no error in decision making process. The impugned order was passed on legal evidence, no interference warranted. Writ Petition dismissed. [Paras 13 - 17] (E-5)

CASE LAW CITED

State of Rajasthan & Ors. v. Bhupendra Singh, 2024 SCC OnLine SC 1908

State of Andhra Pradesh v. S. Sree Rama Rao, AIR 1963 SC 1723

List of Acts

Article 226, Constitution of India; Regulation 28 of AAI Employees (Conduct, Discipline & Appeal) Regulations, 2003

List of Keywords

Disciplinary proceedings; Article 226; judicial review; no evidence; natural justice; proportionality; removal from service.

CASE ARISING FROM

Order dated 10.05.2024 passed by Disciplinary Authority and order dated 16.01.2025 passed by Appellate Authority, Airports Authority of India.

APPEARANCES

For Petitioner: Sri Naman Agarwal, Sri Nipun Singh

For Respondents: A.S.G.I., Sri Santosh Kumar Singh, Sri Vivek Kumar Singh

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. Heard Sri Naman Agarwal, learned counsel for petitioner, Sri Vivek Kumar Singh, learned counsel for respondent No.1 and Sri Utkarsh Prakash Singh, holding brief of Sri Santosh Kumar Singh, learned counsel for respondent Nos. 2 and 3.

2. The petitioner is a 2013 graduate in B.Tech (Mining Engineering) from a prestigious institution, namely, IIT, (Indian School of Mines), Dhanbad, Jharkhand. He has claimed that from 01.07.2013 to 30.01.2014, he worked as a Management Trainee (Supply Chain) in a company named, M/s Hansa Management Services Pvt. Ltd. (hereinafter referred to as, 'M/s HMSPL') and subsequently, from 31.01.2014 till 18.011.2017, worked as a Trade Executive at another company named M/s Zicron Sugar Solutions Pvt. Ltd (hereinafter referred to as, 'M/s ZSSPL').

3. The dispute in present case is the experience certificate issued by M/s ZSSPL as it is alleged to be a fake experience certificate though disputed by the petitioner. The petitioner has applied for the post of Junior Executive (Commercial) at Airports Authority of India and at that stage, he has not disclosed about his experience as M/s ZSSPL and he cleared the examination, interview and joined as Junior Executive (Commercial) at Vadodara Airport with effect from 19.01.2017.

4. Later on in pursuance of an advertisement No.2 of 2018, issued by Airports Authority of India, the petitioner has applied for the post of Manager (Commercial), which requires a 5 years experience in executive cadre in the field of marketing. At this juncture, petitioner has submitted an experience certificate dated 22.02.2017 issued by M/s ZSSPL. The petitioner was successful in the examination process and an appointment letter dated 14.05.2019 was issued for the post of Manager (Commercial) at AAI, Coimbatore and he joined at said post on 03.06.2019.

5. It is further case of petitioner that an anonymous unsigned complaint dated 10.05.2019 was sent at the Office of respondents that experience certificate issued from M/s ZSSPL submitted by petitioner was fake. It is further case of petitioner that experience certificate was verified by M/s ZSSPL vide letter dated 16.03.2020 and 27.02.2021 in pursuance of communications made by the respondents, still a charge-sheet dated 03.11.2022 was issued against petitioner for submitting a fake experience certificate.

6. The petitioner has submitted a reply and participated in the inquiry also which is reflected from document annexed along with this writ petition that he was granted opportunity to cross examination of witnesses also. The Inquiry Officer submitted an inquiry report dated 06.11.2023, which refers that inquiry was conducted as many as on 8 dates and petitioner was allowed to participate and has cross-examined witnesses at length. The inquiry report is a detailed document, wherein after analysing statements of witnesses and their cross-examination and documents, it was finally concluded that article of charge No. 1 was proved that experience certificate submitted by petitioner that he has worked from

31.01.2014 to 18.01.2017 in M/s ZSSPL was a fake document. The relevant part of inquiry report is reproduced hereinafter :-

"VII. ANALYSIS OF STATEMENTS OF PROSECUTION WITNESSES MADE DURING THE INQUIRY/EXAMINATION- CROSS EXAMINATION:

Out of 4 Prosecution witnesses. 3 were present on tour while fourth witness(Sh. Kamlesh H Shah, SM(HR)) had been retired and went to abroad as informed by controlling station and could not joined the hearing.

During the inquiry, P.O. examined and CO cross examined the witnesses.

Sh. Hitesh Ratilal Vora, Mgr (HR) (Emp no 10014700) from Vadodara Airport, Sh. Sanjiv Dwivedi, Sr. Supdt (HR) (Emp no 10021633) from Indore airport and Sh. K Devadas, then CVO(I). now JtGM(E-E) (Emp no 10000270) Colmbatore Airport were the Prosecution Witnesses called on tour on 14 and 15 Sept 23 at Varanasi.

1. Sh. Hitesh Ratilal Vora, Mgr(HR) was examined and cross-examined by PO and CO respectively on 14th Sept 23.

He was asked by PO Sh. Abhay Sinha about the procedure of submitting an application to APD, Vadodara, prosecution witness replied that application is submitted directly to APD, Vadodara and there after it is marked to concerned section.

After not finding the entries in service book regarding previous experience prior to joining AAI, prosecution witness asked CO verbally to submit it by 26.02.2019 but CO didn't submit and prosecution witness filled the application in service book after discussion with APD, Vadodara.

It is to be noted that normally an applicant who applied for a vacancy is desirous to ensure that his credentials are submitted/updated but CO never enquired after submitting the application whether his experience certificate are updated. This creates doubt towards CO.

2. Sh. Sanjiv Dwivedi Sr. Supdt (HR) was examined and cross- examined on 14th Sept 23

He was asked by PO that any written instructions given to him by Sh. Hitesh Vora, then AM(HR), Vadodara airport regarding the application of Sh. Akansh Choudhary, Mgr(Commercial) dated 12/11/2/18. Prosecution witness replied that instruction was oral not written and same is mentioned in his statement dated 01.09.2020. He told that he received the application on 13.02.2019 marked to him. Further he kept the application pending till further orders to comply Sh. Hitesh Vora's instruction.

He further added that neither oral or written instruction was given to him to verify the experience related records regarding the said application (dtd. 12.11.2018 by Sh. Akansh Choudhary) from his service book/personal file.

He replied that as per written instruction dtd 26.02.2019 by Sh. Hitesh Vora the said application(dtd. 12.11.2018 by Sh. Akansh Choudhary) was filed in personal file. On 26.02.2019 he had put a note on the application "file in SB" so the application was filed in personal file.

3. Sh. K Devadas, JtGM(E-E) was examined and cross- examined on 15th Sept23.

Prosecution witness had visited the site of ZSSPL, Pitampura, Delhi. It was a room of size 3m X 4m having company name board with only one chaukidar.

Prosecution witness enquired chaukidar about the person who signed the certificate and asked him that he wanted to talk regarding emails/letter sent to the company Chaukidar directed him to another person from nearby place. But that person was not the person who had signed the certificate This person told that already the reply had been sent to Coimbatore airport and was not ready to explain further question of Prosecution witness.

CO cross examined all three Prosecution witnesses. But in his cross examination nowhere it seems that charges on him is not true.

Their deposition in brief is recorded in the Sheet dated 14/15 Sept 2023

The written statements of the three Prosecution Witnesses who appeared during the inquiry proceedings for their depositions are placed in the enclosed Folder No. 3 bearing No. PW-1, PW-2 and PW-3.

After all the documents were taken on record and the deposition of the all the Witnesses was complete, both the P.O. and the CO were advised to submit their briefs so that the same could also be taken into consideration while finalizing the report. Part of the delay in submission of the Inquiry Report was also on account of late submission of these briefs by the PO and the CO The briefs submitted by the PO and the CO are placed in the enclosed Folder No. 4

VIII. EVALUATION OF EVIDENCE:

In support of allegations, the Presenting Officer had produced all the listad documents indicated in Annexure-III of the Charge Sheet which were duly marked and taken on record in the inquiry as Ex-P- 01 to Ex-P-03. These documents have been examined and analysis there on has been recorded above where brief description and significance of each of the listed document taken on record has been given.

On the basis of these documents/statements the prosecution has established that the charges leveled against the CO seems true.

IX CONCLUSION & FINDINGS

I have carefully gone through all the Articles of Charges, the listed documents, statement of imputations of misconduct, written briefs of P.O. and CO., evidences, documents, statements and testimony of Witnesses and their cross examination during the inquiry. After examining and going through in detail all the above listed documents, evidences and statements of witnesses and submissions made during the hearings by the PO, CO and the Prosecution Witnesses, I have come to the conclusion that the Charges leveled against CO seems true therefore my findings are as under:

Article of Charge 1 - PROVED."

7. Thereafter, the Disciplinary Authority provided a copy of inquiry report vide memorandum dated 29.12.2023 to which petitioner has submitted reply and the Disciplinary Authority by order dated 10.05.2024 finds that charges levelled against him was rightly found to be proved and thereby imposed a penalty of 'Removal from service which shall not be a disqualification for future employment', in exercise of power conferred vide Regulation 28 of AAI Employees (Conduct, Discipline & Appeal) Regulations, 2003.

8. The petitioner submitted an appeal before the Appellate Authority,

however, it was dismissed by an order dated 16.01.2025.

9. Learned counsel for petitioner has submitted that due process of discplinary inquiry was not followed. The petitioner was provided only 7 days time to submit his reply. The inquiry has proceeded on basis of such documents, which were never confronted to him and explanation made by him was not considered. The experience certificate issued by M/s ZSSPL was verified. The inspection conducted by respondent at the office of M/s ZSSPL was an ex-parte inspection. The absence of details of salary received from M/s ZSSPL in Income Tax Return of relevant years could not be considered adverse to petitioner since it may be an error since he was not well versed about Income Tax Rules.

10. Per contra, learned counsels for respondents on basis of materials and documents available on record submitted that principle of natural justice were substantially followed. Petitioner has for the first time produced the experience certificate issued by M/s ZSSPL when he has applied for post of Manager (Commercial) and it was never disclosed on earlier occasion when he has applied in the same institution i.e. Airport Authority of India for the post of Junior Executive (Commercial). The petitioner was granted ample opportunity of cross-examination which he has availed also, therefore, orders impugned are justified. There is no legal error in decision making process. The punishment is not shockingly proportionate, therefore, this writ petition may be dismissed.

11. Heard counsel for parties and perused the record.

12. Before considering rival submissions, few paragraphs of judgment passed by Supreme Court in The **State of Rajasthan and others Vs. Bhupendra Singh, 2024 SCC OnLine SC 1908** being relevant are mentioned hereinafter :-

"23. The scope of examination and interference under Article 226 of the Constitution of India (hereinafter referred to as the 'Constitution') in a case of the present nature, is no longer res integra. In State of Andhra Pradesh v. S Sree Rama Rao, AIR 1963 SC 1723, a 3-Judge Bench stated:

'7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant : it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits

of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution.'

(emphasis supplied)"

13. Petitioner is an alumni of a very prestigious institution of this country, therefore, he ought to have been a bonafide person that for purpose of procuring appointment, he would not have mislead his employer. The allegations against applicant are very serious in nature that he has produced a fake experience certificate from M/s ZSSPL to get appointment.

14. On basis of record, it could be very safely concluded, that the petitioner was granted full opportunity to place his case during inquiry. He has cross-examined witnesses at length, therefore, there is no error in decision making process. Consequently, the Court is left with only consideration whether it was a case of no evidence or not. As referred in **The State of Rajasthan and others (supra)** that adequately and reliability of evidence can not be look into. In this regard, the Court takes note of the following circumstances :-

(a) The petitioner has not submitted experience certificate from M/s ZSSPL when he was initially appointed as Junior Executive Commercial at Vadodara Airport on 19.01.2017 and for the first time, it was produced when he has applied subsequently for the post of Manager Commercial in the year 2018.

(b) The proceedings were initiated on basis of anonymous complaint and that experience certificate was false. A verification report was sought from M/s ZSSPL, which has verified, however, in order to further verification, one of witnesses has visited the office of M/s ZSSPL and surprisingly it was found that it was one room office, having minimal staff of one or two persons, therefore, there was a substance in complaint that experience certificate issued was not genuine i.e. petitioner may have not worked with said company or existence of such company was under dispute.

(c) As referred above, petitioner has examined the said witness at length. A copy of which is annexed along with supplementary affidavit, however, there was no question about inspection of office of M/s ZSSPL, therefore, the said fact remained uncontroverted i.e. proved.

15. In above background, there are other adverse factors against petitioner also such as petitioner was not able to show mode of salary drawn from M/s ZSSPL for five years. The petitioner has admittedly not shown his salary from M/s ZSSPL in Income Tax Returns and explanation that he was not aware about income tax law was rightly not accepted since the petitioner is not a layman. He is graduate from a very prestigious institution. The Court is of opinion that since there is no error in decision making process and since the impugned order was passed on legal evidence, no interference is warranted.

16. In the aforesaid circumstances, taking note of limited scope available with

this Court to interfere with disciplinary proceedings, no case is made out to cause interference in the impugned order of punishment.

17. Accordingly, present Writ Petition is **dismissed.**

(2025) 7 ILRA 71
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 31.07.2025

BEFORE

THE HON'BLE AJIT KUMAR, J.

Writ A No. 9142 of 2025

Shambhoo Nath Kushwaha ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Siddhath Khare

Counsel for the Respondents:
C.S.C.

ISSUE FOR CONSIDERATION

Whether a transfer order by way of disciplinary action for violation or non-compliance of the directives issued by the higher authorities, amounts to a punitive and stigmatic transfer, vitiated by malice in law.

HEADNOTE

A. Service Law – Transfer – Punitive and Stigmatic Transfer – Clause 12 of Transfer Policy dated 06.05.2025 – Office bearers of Employees' Union – Scope – Whether transfer based on complaint alleging indiscipline amounts to punitive action – Held, yes.

Petitioner, an office bearer of the Employees' Union, challenged his transfer contending that it was based on a complaint alleging negligence and lack of interest in administrative duties.

Held: As laid down by the Supreme Court in Somesh Tiwari v. Union of India, AIR 2009 SC 1399, a transfer made by way of or in lieu of punishment attracts malice in law and is unsustainable. In the present case, the action to transfer was taken by way of punishment, as the authorities assigned reasons of indiscipline and violation of directives of the higher authorities by the petitioner. Transfer order dated 13.06.2025 quashed. Liberty reserved to the authorities to pass a fresh transfer order in administrative exigency for the session 2026–2027. (E-5)

CASE LAW CITED

***Somesh Tiwari v. Union of India and Ors.*, AIR 2009 SC 1399.**

List of Acts

— U.P. Transfer Policy dated 06.05.2025; Clause 12— Constitution of India, Article 226.

List of Keywords

Transfer – Punitive Transfer – Stigmatic Order – Malice in Law – Employees' Union – Office Bearer – Administrative Exigency – Clause 12 of Transfer Policy – Disciplinary Allegations – Service Law.

CASE ARISING FROM

Order dated 13 June 2025 challenged.

APPEARANCES

For the Petitioner : Sri Siddharth Khare, Advocate

For the Respondents : Standing Counsel.

JUDGMENT

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

1. Learned Standing Counsel has obtained instruction in the matter which is taken on record, copy whereof has been supplied to learned counsel for the petitioner.

2. Heard Sri Ashok Khare, learned Senior Advocate assisted by Sri Himanshu Singh, Advocate holding brief of Sri Siddharth Khare, learned counsel for the petitioner and learned Standing Counsel.

3. By means of this petition filed under Article 226 of the Constitution of India, petitioner has assailed the order dated 13.06.2025, whereby, he has been transferred from Siddharth Nagar to Ayodhya to be stigmatic in nature and hence punitive.

4. It Is submitted that very recitals contained in the order show that petitioner has been subjected to transfer by way of disciplinary action for alleged violation or non-compliance of the directives issued by the higher authorities, which was claimed to have amounted to an alleged misconduct. Learned counsel for the petitioner submits that transfer is bad for two obvious reasons: firstly, petitioner being office bearer of the Employees' Union ought not to have been transferred in the first instance in view of the relevant Clause 12 of the Transfer Policy dated 06.05.2025 that carves out union leaders to be exceptional cases; and secondly, transfer cannot be done by way of a punitive action.

5. In support of his above second submission, learned counsel for the petitioner has placed reliance upon the judgment of the Supreme Court in the case of **Somesh Tiwari vs. Union of India and Ors. AIR 2009 Supreme Court 1399.**

6. Learned Standing Counsel has obtained instructions in the matter and as per the instructions, petitioner has been subjected to transfer in full compliance of the provisions contained in the Clause 12 of the Transfer Policy dated 06.05.2025, according to which, if there are complaints against the office bearers and if they are found to be involved in an activity resulting in indiscipline and which affects the performance of duty and is also indication of misconduct, in such cases the office bearers can also be transferred. He has placed Clause 12 of the Transfer Policy dated 06.05.2025 before the court, which runs as under:

"12. सरकारी कर्मचारियों के मान्यता प्राप्त सेवा संघों के पदाधिकारियों के स्थानान्तरणः-

सरकारी सेवकों के मान्यता प्राप्त सेवा संघों के प्रदेश / मण्डल / जिला स्तर के अध्यक्ष एवं सचिव के स्थानान्तरण उनके द्वारा संगठन में पदधारित करने की तिथि से 2 वर्ष तक न किये जायें। किन्तु उक्त पदाधिकारियों को यह सुविधा देने का अर्थ यह नहीं है कि जनहित के विरुद्ध कार्य करने, कदाचार अथवा भ्रष्ट आचरण करने पर भी उनका स्थानान्तरण नहीं किया जा सकता।

लापरवाही, भष्टाचार व आपराधिक कृत्य, अनुशासनहीनता व दुराचरण में लिप्त होने के पुष्टिकारक

तथ्य लाये जाने पर या ऐसे मामलों में अनुशासनिक कार्यवाही प्रारम्भ होने पर निम्न प्रक्रिया का पालन करते हुये उक्त पदाधिकारियों को पूरे सत्र में कभी भी स्थानान्तरण किया जा सकेगाः-

1. जनपद में तैनात सेवा संघों के पदाधिकारियों का स्थानान्तरण संबंधित जिलाधिकारी एवं मण्डल में कार्यरत पदाधिकारी का स्थानान्तरण मण्डलायुक्त की संस्तुति पर सक्षम स्तर से किये जा सकेंगे।

ii. मुख्यालय स्तर पर सेवा संघों के पदाधिकारियों का स्थानान्तरण विभागाध्यक्ष की संस्तुति के उपरांत शासन स्तर से किया जा सकेगा।

उपरोक्त के अतिरिक्त सेवा संर्धा के उक्त पदाधिकारियों का शासनादेश दिनांक 13 मई, 2022 के अनुसार पटल / क्षेत्र परिवर्तन अवश्य किया जायेगा तथा इसकी संपूर्ण जिम्मेदारी नियंत्रक प्राधिकारी की होगी।"

(emphasis added)

7. From the instructions it further transpires that some work was allotted to the petitioner under the order of a higher authority dated 19.03.2025 for the purposes to construct a dam but instead of complying with the directives issued by the higher authority, petitioner wrote back to authority that such double duties and attachment orders have already been held to be not permissible and hence he cannot be forced to discharge duties as per the directives issued. Upon this letter being written the Executive Engineer took seriously and as an exception and required the petitioner to submit his explanation to which the petitioner states that he had offered his explanation by letter dated 29.05.2025 but that remained unanswered and, instead of holding meeting and cooperating with the employees, the authorities proceeded to recommend transfer of the petitioner.

8. It is thus contended that if the petitioner was to be transferred by way of punitive action then show cause notice was a must, inasmuch as the transfer can not be made by way of action as a result of some departmental proceedings. Paragraph 19 and 20 of the judgment that has been relied upon in the case of **Someshwar Tiwari (Supra)** is reproduced hereinunder:

"....19. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds - one malice in fact and the second malice in law.

20. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of

transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal."

(emphasis added)

9. Having heard learned counsel for the respective parties and having perused the record, pleadings raised in the writ petition and the instructions placed before the court, I find that it is because of certain correspondence that had taken place between the petitioner and respondent authorities in the District that spelled off the controversy leading to alleged indiscipline or misconduct on the part of the petitioner, moreso in the circumstances when he was office bearer of the Employees' Union. Ultimately instead of holding talks and peacefully resolving the issues, the authority proceeded to get rid of the office bearer and hence passed an order of transfer giving a reason therein that petitioner was guilty of gross indiscipline.

10. From the observations made by the Supreme Court as quoted above, there can be no doubt about this legal position that an action adverse to an employee as a result of authority forming a view qua such an employee to have committed misconduct, to transfer him, would render such an exercise of administrative power to be vitiated for malice in law. In the present case action to transfer taken appears to be clearly by way of punishment as the authorities being assigned reason of indiscipline and for violating directives of the higher authorities by the petitioner.

11. In the circumstances, therefore, the order of transfer would definitely fall within the mischief of principle of law laid down by the Supreme Court in the case of Somesh Tiwari and hence liable to be held unsustainable.

12. However, it is always open for the respondent authorities to transfer an employee in administrative exigency if they find such an employee has become a nuisance value but for this, only simple transfer order should be passed transferring an employee in administrative exigency. In such cases, therefore, even the office bearers of the Employees' Union would not fall in exception clause of the transfer policy and so they can also subjected to transfer taking the recourse to the Clause 12 of the Transfer Policy dated 06.05.2025.

13. In the circumstances, writ petition succeeds and is allowed.

14. Order dated 13.06.2025 is hereby quashed.

15. However, it will remain open for the authorities to pass transfer order in administrative exigency if it so desire in the next session 2026-2027.

(2025) 7 ILRA 74
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.07.2025
BEFORE
THE HON'BLE J.J. MUNIR, J.

Writ A No. 15765 of 2014
Connected with
Writ A No. 51031 of 2015
And
Writ A No. 20351 of 2022

Jai Prakash ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Pradeep Kumar Upadhyay, Vikaas Budhwar

Counsel for the Respondents:

K.R. Singh, Krishna Ji Khare, Sanjay Srivastava, Vimal Chandra Mishra

Issue for Consideration

The issue for adjudication in the connected writ petitions is the legality and sustainability of the petitioners' termination from service as Class-IV employees at Vikramaditya Inter College,Sikandara, Prayagraj, pursuant to disciplinary proceedings initiated on allegations of misconduct,including theft, forgery, breach of trust, and conspiracy in misappropriating and utilizing institutional documents.

Headnotes

Service law-Uttar Pradesh Intermediate Education Act,1921

a) Relief in Writ-A No.15765/2014-Allowed-removal quashed-immediate reinstatement as Class-IV employee with full back wages and consequential benefits-arrears payable within three months-current salary forthwith.

b) Relief in Writ A No. 51031/2015-Allowed partly-removal and appellate order quashed-immediate reinstatement-Back wages, 50% arrears pending outcome-Management may pursue fresh inquiry on Charges 1 & 2(forgery)-no inquiry on charges 3&4(theft/conspiracy).

c) Relief in Writ A No. 20351/2022-De-tagged-listed for hearing after three months before appropriate bench.

Held

The impugned order dated 01.02.2014 passed by the Principal of Vikramaditya Inter College, Sikandara Prayagraj removing the petitioner from service, is quashed-The Manager and Principal to ensure the immediate reinstatement of the petitioner as a Class-IV employee with all consequential benefits of seniority and emoluments-The impugned order dated 07.10.2013 passed by the Principal terminating the petitioner's service and the appellate order dated 19.07.2015 passed by the Committee of Management dismissing the appeal, are quashed-The petitioner shall be reinstated forthwith as a Class-IV employee, ensured by the DIOS, Manager and Principal without delay and paid current salary from the date of reinstatment-If fresh proceedings are pursued, arrears of emoluments shall be subject to their outcome-if not elected, the petitioner is entitled to 50% of arrears for the period out service.(Para 61 to 64) (E-6)

Case law cited

St. of U.P. & Ors Vs Saroj Kumar Sinha (2010) 2 SCC 772,Roop Singh Negi Vs PNB & Ors, (2009) 2 SCC 570, St. of U.K. & Ors Vs Kharak Singh (2008) 8 SCC 236 , St. of U.P. & Anr Vs Kishori Lal & Anr (2018) 9 ADJ 397 (DB) (LB), Smt.Karuna Jaiswal Vs St. of U.P. (2018) 9 ADJ 107 (DB) (LB), St. of U.P. Vs Aditya Prasad Srivastava & Anr (2017) 2 ADJ 554 (DB)(LB), Satyendra Singh Vs St. of U.P. & Anr (2024) SCC OnLine SC 3325-referred to.

List of Acts

Uttar Pradesh Intermediate Education Act,1921

List of Keywords

Vikramaditya Inter College; Sikandara; Class-IV employee; Chowkidar; Mali; Promotion; Daftari; Assistant Clerk;Banke Bihari Singh; Disciplinary proceedings; Termination; Charge sheet; Show cause notice; suspension; Malafide;Uttar Pradesh Intermediate Education Act,1921; DIOS; Committee of Management; Mutual transfer; Reinstatment; Back wages; Seniority list; Conspiracy; Breach of trust;U.P. Act No. 24 of 1971.

Case Arising From

Service Law :WRIT-A No. – 15765 of 2014
From the judgment and order dated 07.07.2025 of the High Court of Judicature at Allahabad.

Jai Prakash Vs. State of U.P. & Ors.

Appearances for parties

Advs.for Petitioner:
Pradeep Kumar Upadhyay, Vikas Budhwar
Advs. for Respondent:
K.R. Singh, Krishna Ji Khare, Sanjay Srivatava, Vimal Chandra Mishra

(Delivered by Hon'ble J.J. Munir, J.)

1. This judgment will dispose of Writ-A No.15765 of 2014 and Writ-A No.51031 of 2015 but not Writ-A No.20351 of 2022. Writ-A No.15765 of 2014 has been instituted by Jai Prakash, a class IV employee with the Vikramaditya Inter College, Sikandra, Allahabad (now Prayagraj), which was earlier called the Janta Inter College, Sikandra, Allahabad. The petitioner, Jai Prakash, questions through this writ petition the order dated 01.12.2014 passed by the Principal of the aforesaid College, removing him from service after holding disciplinary proceedings. Writ-A No.51031 of 2015 has been instituted by Nanku Ram, another Class-IV employee, a Mali, with the Vikramaditya Inter College, Sikandra, Allahabad (for short, 'the Institution'), impugning the order of the Principal of the Institution dated 07.10.2013, terminating his service, also after holding disciplinary proceedings. Also under challenge in this writ petition by the petitioner is the order of the Committee of Management of the Institution dated 19.07.2015, dismissing his appeal from the Principal's order, terminating his services. Writ-A No.20351 of 2022 has been instituted by Nanku Ram and Jai Prakash jointly, both dismissed employees of the Institution at the time of bringing this writ petition, seeking to quash the advertisement dated 08.10.2022, advertising for recruitment by direct appointment one post of Assistant Clerk with the Institution. The further relief that the petitioners jointly seek in this writ petition is to summon the record of proceedings held for promotion of Janardan Singh, respondent No.7, to the post of Assistant Clerk and quash the order of his promotion.

2. It must be remarked at the outset that though all the three matters are interconnected and involve some common questions of fact and law, on account of which these have been heard together, there are distinct and different features to each of them, requiring some separate consideration. It is also worthy of note that Writ-A No.20351 of 2022 can be determined at the instance of the petitioners, only if one or both of them succeed in their individual writ petitions, entitling them to reinstatement in service as Class-IV employees. The reason is that their claim for promotion to the two Class-III posts with the Institution, to one of which Janardan Singh, respondent No.7 in Writ-A No.20351 of 2022 has been promoted, and, the other, that has been advertised for direct recruitment, would arise if the one or both the petitioners are reinstated in the cadre of Class-IV employee/ employees in the Institution.

3. We propose to take up Writ-A No.15765 of 2014 for a first. It is common ground between parties that the Institution is recognized under the Uttar Pradesh Intermediate Education Act, 1921 (for short, 'the Act of 2021') and in receipt of a maintenance grant from the State Government under the U.P. Act No.24 of 1971. The Institution is managed by a Committee of Management, headed by a Manager. Bankey Bihari Singh is the Manager of the Institution. The petitioner was appointed a Class-IV employee with the Institution vide appointment letter dated 03.01.1995. He was assigned the duties of a *Chowkidar* (Watchman). The petitioner's

appointment was approved by the District Inspector of Schools, Allahabad (for short, 'the DIOS') *vide* order dated 16.01.1995. Ever since, he was discharging his duties as a Class-IV employee in the Institution regularly. The petitioner says that his service record is unblemished and he has always discharged duties assigned to him, without complaint by his superiors. So long as he was in service, he was in receipt of regular salary and other benefits payable from time to time, all borne on the exchequer. The petitioner claims to hold the certificate of intermediate earned from the U.P. Board of High School and Intermediate Education, an examination that he passed in the IInd Division. He was placed at serial No.5 in the seniority list of Class-IV employees of the Institution.

4. It is the petitioner's further case that employees placed at serial Nos.1, 2 and 3 of the seniority list of Class-IV employees, are barely literate and do not possess the requisite educational qualification for promotion to the post of *Daftari*. The employee at serial No.4 of the seniority list, Nanku Ram, who ranks above the petitioner, is also the holder of an Intermediate Certificate, but he has put in a 'no objection' in the petitioner's favour, saying that he would have no grouse if the petitioner were promoted to the position of a *Daftari*. The petitioner, accordingly, claimed promotion to the post of a *Daftari*, making an application dated 17.01.2012 for the purpose. The Principal of the Institution, after considering the seniority list and the no objection letter dated 07.05.2012, given by the other eligible Class-IV employee, Nanku Ram at serial No.4 of the list, was satisfied of the petitioner's claim. He, accordingly, forwarded the petitioner's papers for promotion to the DIOS vide his letter dated 14.05.2012. The petitioner asserts that though the DIOS has granted approval for the petitioner's promotion to the post of a *Daftari*, but a formal order could not be issued. The petitioner made representations dated 03.12.2012 and 03.06.2013, requesting the DIOS for the issue of early orders relating to his promotion.

5. Faced with inaction that persisted on the second respondent's part, the petitioner instituted Writ-A No.38533 of 2013 before this Court, praying that a *mandamus* be issued to the DIOS to consider his case for promotion on the post of *Daftari* on the basis of papers submitted by the Principal of the Institution. The petitioner also claimed payment of salary for the post of *Daftari* from the date that his case was recommended. This Court, by an order dated 18.07.2013, directed the DIOS to pass appropriate orders in accordance with law on the petitioner's papers, seeking promotion to the post of *Daftari*, preferably within a period of two months from the date of receipt of a certified copy of the order made in the aforesaid writ petition. But, before passing his orders, the DIOS was directed further to take into consideration the stand of Nanku Ram as well, a Class-IV employee, senior to the petitioner. The petitioner's claim was directed to be decided by a reasoned order.

6. A notice dated 11.07.2013 was issued by the DIOS upon the petitioner's claim for promotion to the four senior Class-IV employees, asking them if they would have any objection to the petitioner's promotion as a *Daftari*. While these proceedings for a consideration of the petitioner's promotion were afoot, the petitioner received a show cause notice dated 10.05.2013 from the Principal of the Institution, asking him to peruse a copy of

the Manager's memo enclosed, and disclose his stand in defence to the fact that according to the Manager, some papers belonging to the institution had been stolen. This show cause notice issued by the Principal is confounding, and, therefore, a reference has to be made to the Manager's memo dated 26.04.2013, which is on record at page 61 of the present writ petition's paper book.

7. A perusal of the Manager's memo dated 26.04.2013, which was the basis of the show cause notice issued to the petitioner regarding the case of misconduct imputed to him, alleges that in connivance with each other, the petitioner and Nanku Ram, the writ petitioner of Writ-A No.51031 of 2015, stole from the records of the Institution the letter of approval for appointment of one Brijesh Kumar Shukla, a Class-IV employee, now working with the Adarsh Inter College, Gheenpur, Mau Aima, Allahabad and the transfer order of another Class-IV employee, Janardan Singh dated 21.06.2008, working with the Institution, the transfer being made apparently from the Adarsh Inter College to the Institution with the DIOS's approval. The Manager imputes in his memo dated 26.04.2013 theft of copies of these documents to the petitioner, that were filed along with a PIL, bearing No.15464 of 2013 instituted before this Court, questioning, by mutual transfer, the appointment of Brijesh Kumar Shukla from the Institution to the Adarsh Inter College and that of Janardan Singh, vice versa. The Manager, apparently, in his letter dated 26.04.2013 imputed the misconduct of breach of trust to the petitioner and Nanku Ram, the writ petitioner of Writ-A No.51031 of 2015 in stealing copies of the said documents, and getting these filed as part of a PIL, to question the appointment of two other Class-IV employees in the Institution.

8. It is also said in the Manager's memo dated 26.04.2013 that the Principal of the Adarsh Inter College was also impleaded as a party respondent to the PIL. In substance, it is said, in the Manager's memo dated 26.04.2013, that is the basis of the show cause notice dated 10.05.2013, that the petitioner along with the petitioner of Writ-A No.51031 of 2015, Nanku Ram, stole the two documents, above referred, from the records of the Institution and got them annexed to the PIL filed by Kamlesh Kumar, questioning the appointments and the mutual transfer of the two Class-IV employees, to wit, Brijesh Kumar Shukla and Janardan Singh, between the Institution and the Adarsh Inter College, which constituted a cognizable offence. There is also an imputation in the Manager's memo dated 26.04.2013 that the documents under reference, allegedly stolen by the petitioner and the writ petitioner of Writ-A No.51031 of 2015, were utilized in the earlier Writ-A No.28856 of 2012 filed by Nanku Ram. Why the Managers of the Institution as well as Adarsh Inter College, and a *fortiori* their Principals, were so upset with the institution of PIL No.15464 of 2013 by a third party, Kamlesh Kumar, would be adverted to during the course of this judgment. It must, however, be remarked here that what commenced as a claim by the petitioner here for promotion to the post of a *Daftari*, turned to disciplinary action against him, the culmination whereof is impugned in the present writ petition.

9. Apart from details of the case, that would soon be referred to in the terms pleaded, it is also imperative to notice that the petitioner's case is that he suffered the impugned disciplinary action because he

staked his claim for promotion to the post of a *Daftari*, and, may be, later in the day, a further promotion to the post of an Assistant Clerk. Currently, it seems, that there are three posts of the Assistant Clerks in the Institution, to one of which the petitioner would have claimed. The petitioner, apart from pointing out unfair proceedings and procedural irregularities in the disciplinary proceedings, leading to his termination from service, urges a case of *mala fide* action, because he claimed promotion to a higher post, that is to say, an Assistant Clerk, which the Manager of the Institution eyed for accommodating Janardan Singh, serving at that time as a Class-IV employee, but the Manager's nephew after all. It is for this reason that the petitioner has impleaded Bankey Bihari Singh, Manager of the Institution and Karunesh Bahadur Singh, Principal of the said Institution as party-respondents to the writ petition *eo nomine.*

10. With so much background of the petitioner's case noticed to establish *mala fides* in fact, vitiating the disciplinary action against him, the Court would revert to the petitioner's case as to procedural validity of the proceedings themselves.

11. Upon receipt of the notice dated 10.05.2013 from the Principal of the Institution, based on the Manager's memo dated 26.04.2013, the petitioner was utterly shocked because he had no idea about the basis of the imputation, connecting him to the filing of a PIL in this Court by a third party. The petitioner made efforts to inquire into the matter, but nothing was found that would enable him to answer the show cause notice dated 10.05.2013. The petitioner personally requested the Manager of the Institution, as well as the Principal, to provide some detail or particulars of the imputations made against him in order to enable him to answer. Both the respondents did not oblige. While the petitioner was about his effort to know the correct facts, he received another notice/ warning letter dated 08.07.2013 from the Principal of the Institution, cautioning him about his visits to the office of the DIOS, without seeking the Principal's permission, after disclosing the object and purpose of the proposed visit.

12. The petitioner received still another show cause notice, also dated 08.07.2013, from the Principal of the Institution saying that he and Nanku Ram, writ petitioner of Writ-A No.51031 of 2015, in conspiracy with each other, stole papers from the Institution, committing breach of trust misusing their office, and in connivance with each other, got a photostat copy of these documents done, in particular, that of the mutual transfer order of Brijesh Kumar Shukla and Janardan Singh dated 21.05.2008, which the petitioner and Nanku Ram handed over to Kamlesh Kumar for the purpose of instituting PIL No.15464 of 2013, impleading the Principal of the Institution as a party. It was imputed in this notice to the petitioner that he was involved in activities prejudicial to the Institution and his integrity was doubtful. The petitioner was required to show cause within a week. The petitioner, vide his reply dated 29.07.2013, denied the allegations and demonstrated his non-complicity, as he pleads.

13. The petitioner was then served with another show cause notice dated 26.07.2013, also issued by the Principal of the Institution, carrying eight counts of imputations, similar to the earlier show cause notice. He submitted a para-wise

reply dated 05.08.2013, answering each of the allegations, rebutting and explaining them supported by affidavit, as the petitioner says. Once again, the petitioner was served with a letter dated 20.08.2013, calling for further explanation from him, substantially on the same allegations, but adding to them some imputations about the employment of impertinent language, approach to the DIOS, the filing of affidavits in support of his reply, sworn by himself and other peons as well etc. The petitioner submitted a reply to the letter dated 20.08.2013, clarifying his stand and also tendering unconditional apology, if his earlier reply had given some wrong impression to the Principal.

14. The petitioner was suspended from service pending inquiry and an Inquiry Officer appointed, both done vide order dated 31.08.2013. A charge-sheet, also dated 31.08.2013, was served upon the petitioner, which too finds mention in the suspension order. The petitioner submitted his reply to the charge-sheet vide his reply dated 23.09.2013, denying all the charges and substantiating his defence.

15. It is the petitioner's case that the Inquiry Officer proceeded with the inquiry not fairly, but in a manner that was one-sided to vindicate the Management and condemn the petitioner. It is also the petitioner's case that he appeared before the Inquiry Officer and did his best to submit a reply, which the Inquiry Officer did not accept. He was, therefore, compelled to send his reply, along with copies of previous letters dated 07.10.2013 and 09.10.2013, by registered post. At this stage, the petitioner says that he questioned the suspension as well as disciplinary proceedings, initiated on the basis of the charge-sheet dated 31.08.2013, by means of Writ-A No.55758 of 2013. This Court, on 25.10.2013, passed the following order:

"Supplementary affidavit filed today is taken on record.

Heard learned counsel for the parties.

The papers relating to the suspension of the petitioner are said to have been forwarded to the District Inspector of Schools, who is Authority competent under Regular 39 (3) of Chapter III of the Regulations framed under the U.P. Intermediate Education Act, 1921 either to approve or disapprove the suspension which are pending before the said Authority.

Sri S.C. Dwivedi, learned Additional Chief Standing Counsel may obtain instructions from the District Inspector of Schools, Allahabad as to what orders have been passed on the suspension matter of the petitioner.

List this case on 13.11.2013."

16. The writ petition aforesaid came up for hearing on 14.11.2013. The learned Additional Chief Standing Counsel produced an order dated 12.03.2013, passed by the District Inspector of Schools, under Regulation 39 (3) of Chapter III of the Regulations framed under the Act of 2021. The DIOS approved the petitioner's suspension by his order dated 12.11.2013. Accordingly, this Court proceeded to dismiss Writ-A No.55758 of 2013 vide order dated 14.11.2013, granting liberty to the petitioner to challenge the order of the DIOS, approving his suspension from service.

17. The Inquiry Officer then proceeded to submit his report before the Manager of the Institution on 08.01.2014, a copy of which was forwarded to the

petitioner along with a covering letter. The petitioner submitted a reply on 29.01.2014. The Principal vide order dated 01.02.2014, without considering the petitioner's reply or his defence, proceeded to order his removal from service.

18. Aggrieved by the order dated 01.02.2014, the present writ petition has been instituted.

19. A notice of motion was issued on 18.04.2014. Parties have exchanged affidavits, lavishly setting forth their case in the fullest measure. There is a supplementary affidavit filed by the petitioner dated 19.03.2014, a counter affidavit on behalf of respondent No.2 dated 25.07.2023, to which, there is a rejoinder dated 04.08.2023. There is a supplementary counter affidavit filed on behalf of respondent No.2 dated 25.07.2023, to which there is a supplementary rejoinder affidavit dated 11.09.2023. There is a counter affidavit filed on behalf of respondent Nos.3 and 5, which is a personal affidavit of the Manager of the Institution, that is to say, Bankey Bihari Singh. This affidavit is dated 25.07.2023. The petitioner has filed a rejoinder to the said counter affidavit on behalf of respondent Nos.3 and 5, the rejoinder being one dated 04.08.2023. There is a supplementary counter affidavit also filed on behalf of respondent Nos.3 and 5, which too is a personal affidavit of the Manager, Bankey Bihari Singh, to which the petitioner has filed a supplementary rejoinder dated 11.09.2023. There is a second supplementary counter affidavit filed on behalf of respondent Nos.3 and 5, which again is a personal affidavit of the Manager, Bankey Bihari Singh. To this second supplementary counter affidavit, the petitioner has filed a second supplementary rejoinder affidavit dated 12.12.2023. There is then a counter affidavit filed on behalf of respondent No.4, the Principal of the Institution, which is a personal affidavit of the Principal, Mukesh Kumar Saroj. To the said affidavit filed on behalf of the Principal of the Institution, Mukesh Kumar Saroj, a rejoinder affidavit dated 04.08.2023 has been filed.

20. This petition was admitted to hearing on 08.08.2023 and extensively heard on various dates. The personal affidavits of the Manager were required to be filed, giving ample opportunity, which he availed, because there are allegations of *mala fides* against him, in getting his nephew appointed with another institution, and then, getting the nephew transferred to his own. Later on, it is also said that the Manager's nephew, Janardan Singh was promoted to the post of Assistant Clerk and the sheet anchor of the petitioner's case is that his services were terminated mala fide, because he was staking claim to promotion, initially on the post of a *Daftari*, and ultimately, as an Assistant Clerk, a position which the Manager eyed for his nephew and whom he did promote to that post. It is said that the petitioner had to be got rid of, in order to pave way for the Manager's nephew, that led to all the disciplinary proceedings on charges that are virtually non-charges and incredulous. These were cooked up without basis in order to put the petitioner out of way of the Manager's nephew, Janardan Singh for promotion to the post of Assistant Clerk. These are indeed very sordid allegations, and, therefore, this Court permitted the Manager to file multiple affidavits, giving him the fullest opportunity.

21. Now, turning to the connected writ petition, being Writ-A No.51031 of 2015, the one that has been preferred by Nanku Ram, it must be said at the outset that substantially the same allegations, that

have been levelled by the Manager and the Principal of the Institution against Jai Prakash, too have been levelled against Nanku Ram. Nanku Ram too has been removed from service *vide* order dated 07.10.2013, after holding disciplinary proceedings against him on the basis of a charge-sheet dated 04.05.2013. The petitioner (Nanku Ram) submitted a reply to the charge-sheet on 14.05.2013. The Inquiry Officer submitted a report dated 05.09.2013. Nanku Ram was served with a second show cause, after which the impugned order of termination dated 07.10.2013 was passed. In this case, Nanku Ram carried a statutory appeal to the Committee of Management on 04.01.2014, followed by a representation dated 17.10.2014. The petitioner's appeal was dismissed by a resolution of the Committee of Management dated 19.07.2015, which was communicated to him vide order dated 30.07.2015.

22. In substance here as well, the petitioner's case is that he was at serial No.4 of the list of Class IV employees and senior to Jai Prakash. He had given a 'no objection' about Jai Prakash, staking claim to the post of *Daftari*, but the petitioner claimed the post of Assistant Clerk in the promotion quota, that was available at the time. His interest came in conflict with Janardan Singh, the Manager Bankey Bihari Singh's nephew. It is for this reason that Bankey Bihari Singh engineered the entire incredible allegations, which are in fact non-charges, to draw disciplinary proceedings against the petitioner and got an order of termination passed after securing a favourable inquiry report, paving way for Janardan Singh to be considered for promotion. It is pleaded that Janardan Singh, after removal of Jai Prakash and the petitioner, remained the only qualified candidate in the feeding cadre of Class-IV employees, eligible to be promoted.

23. In the present case also, a notice of motion was issued on 08.09.2015 and in course, parties have exchanged affidavits. There is a supplementary affidavit filed in support of the writ petition dated 02.09.2015. After issue of notice of motion, a counter affidavit has been filed on behalf of respondent No.3, the DIOS, to which, the petitioner has filed a rejoinder dated 11.09.2013. A supplementary counter affidavit on behalf of the DIOS, respondent No.3, dated 18.08.2023 was filed, to which the petitioner has filed a rejoinder dated 11.09.2023. There is then a counter affidavit filed on behalf of respondent Nos.4 and 6, that is to say, the Committee of Management represented by its Manager and Bankey Bihari Singh, the Manager, impleaded *eo nomine*. The aforesaid counter affidavit on behalf of respondent Nos.4 and 6 dated 25.07.2023 has been answered by the petitioner *vide* rejoinder dated 04.08.2023. A counter affidavit has been filed on behalf of respondent No.5, the Principal of the Institution as well, to which the petitioner has filed a rejoinder dated 04.08.2023. This petition too was admitted to hearing on 08.08.2023 and heard on various dates, along with Writ - A No. 15765 of 2014.

24. Heard Mr. Pradeep Kumar Upadhyay, learned Counsel for the petitioners, Mr. Vimal Chandra Mishra, learned Counsel appearing on behalf of the Principal and the Retd. Principal Karunesh Bahadur Singh, Mr. Sanjay Srivastava, learned Counsel for the Manager and the Committee of Management and Mr. Girijesh Kumar Tripathi, learned Additional Chief Standing Counsel

appearing on behalf of the State-respondents.

25. Upon hearing learned Counsel for the parties and perusing the record, we consider it expedient to quote the charges carried in the charge-sheet dated 31.08.2013, against Jai Prakash, the petitioner of Writ-A No.15765 of 2014, *verbatim*. These read:

"1. अभिलेखों एवं पत्रजातों की चोरी-आपने अपने पदीय दायित्वों का दुरूपयोग करते हुए इस विद्यालय में पूर्व में कार्यरत श्री बृजेश कुमार शुक्ल (परिचारक) सम्प्रति कार्यरत आदर्श इं0का0 धीनपुर इलाहाबाद का नियुक्ति अनुमोदन तथा श्री जर्नादन सिंह कार्यरत (परिचारक) विक्रमादित्य सिंह इं0का0 गोरापुर इलाहाबाद एवं उक्त श्री बृजेश कुमार शुक्ल के पारस्परिक स्थानान्तरण पृ0सं0/एस0/स्था0/1396-1402/2008-09 दिनांक 21.05.2008 को विद्यालय से चुराकर संस्था से विश्वासघात करते हुए नैतिक अपराध किया है। आप द्वारा चुराये गये पत्र आरोप के पुष्टि में संलग्नक (1) के रूप में पत्रांक अनु0/9678-80/2005-06 दिनांक 20.07.2005 एवं उक्त स्थानान्तरण आदेश दिनांक 21.05.2008 आपको प्रेषित है।

2. विद्यालय में गुटबाजी करना-आरोप एक के वर्णित पत्रजातों, अभिलेखों को निलम्बित माली श्री ननकू राम का सहयोग लेकर आपने गुटबाजी करते हुए उक्त पत्रजातों को आपने श्री ननकू राम माली (निलम्बित) द्वारा योजित याचिका सं0 14198/13 में संलग्न करवाने का षड़यंत्र किया। याचिका संख्या 14198/13 में आप द्वारा चुराए गए पत्रजात संलग्नक सं0 11 एवं 12 के रूप में लगाये गये संलग्नक की छायाप्रति आरोप के पुष्टि में आपको प्रेषित है।

(बी) आप विद्यालय में गुटबाजी करते हुए निलम्बित माली श्री ननकू राम के साथ आयेदिन जिला विद्यालय निरीक्षक इलाहाबाद कार्यालय में मेरे द्वारा कई बार देखे गये हैं। सक्षम अधिकारी से बिना पूर्व अनुमति प्राप्त किए हुए कार्यालय में आना जाना आपके स्वेच्छाचारिता का परिचायक है।

(सी) आप एवं निलम्बित माली श्री ननकू राम साजिश करके एवं गुटबाजी करते हुए चुराए गए पत्रजातों को श्री कमलेश कुमार ग्राम खोजापुर बरना इलाहाबाद को सुलभ कराकर मा0 उच्च न्यायालय में जनहित याचिका सं0 15464/13 योजित कराकर उक्त श्री कमलेश कुमार का साथ देकर अपने नियोक्ता एवं संस्था के विरूद्ध अनावश्यक रूप से एक वाद लम्बित कराया। ऐसा करके आपने विद्यालय की गरिमा को क्षति पहुंचाने का कुप्रयास किया है।

3. प्रकल्पित नाम से शिकायती पत्र पेश करना: आपने विद्यालयी अभिलेखों/ पत्रजातों को चुराकर स्वतः शिकायती पत्र तैयार कर तथा कथित जे0एन0 चौधरी के नाम से जिसका कोई वजूद ही नहीं है। जिसे विद्यालय प्रबन्धाधिकरण एवं शिक्षा विभाग के अधिकारियों को प्रेषित कर संस्था विरोधी कार्यो में संलिप्त पाए गए हैं। आरोप की पुष्टि में आप द्वारा तैयार किया गया है प्रकल्पित नाम से शिकायती पत्र एवं अधोहस्ताक्षरी द्वारा प्रेषित प्रकल्पित व्यक्ति एवं पते पर लौटती हुए पंजीकृत डाक की छायाप्रति प्रेषित है।

4. जिला विद्यालय निरीक्षक इलाहाबाद कार्यालय में कर्मचारियों का गलत हलफनामा प्रस्तुत करना- आपने अपने वरिष्ठ साक्षर परिचारकों एवं सर्वश्री तेज बहादुर, राम लखन एवं दिनेश को अपने षड़यंत्रकारी कार्यो में संलिप्त करने की मंशा से सुनियोजित साजिश करके उक्त तीनों को बहला फुसलाकर, डरवा, धमका कर एवं निरक्षरता का लाभ उठाते हुए स्वतः हलफनामा तैयार कराकर उक्त तीनों का हस्ताक्षर हलफनामें में कराया। प्रायोजित हलफनामें को जिला विद्यालय निरीक्षक कार्यालय में अपने पदोन्नति प्रकरण पत्रावली में संलग्न कराया। आरोप की पुष्टि में आप द्वारा तैयार कराए गए हलफनामें में (उक्त तीनों परिचारकों के हस्ताक्षर युक्त) की छायाप्रति संलग्नक प्रेषित।

5. मा0 उच्च न्यायालय को गुमराह करना: आपने अपने दफ्तरी पदोन्नति प्रकरण में मा0 उच्च न्यायालय में योजित याचिका सं0 38533/2013 में मा0 न्यायालय को गुमराह करते हुए, तथ्य को छिपाते हुए आपने कहीं भी उल्लेख नहीं किया कि आपकी पदोन्नति प्रकरण में जिला विद्यालय निरीक्षक इलाहाबाद के स्तर से प्रकरण में जिला विद्यालय निरीक्षक इलाहाबाद के स्तर से सुनवायी हो रही है। आरोप की पुष्टि में याचिका सं0 33533/2013 का स्वयं अध्ययन करें एवं आपके पदोन्नति प्रकरण जिला विद्यालय निरीक्षक इलाहाबाद का पत्रांक अनु0 फूलपुर/6852-56 /2013-14 दिनांक 11. 07.2013 की छायाप्रति आपको संलग्नक 5 के रूप में प्रेषित है।

6. आपने अधोहस्ताक्षरी द्वारा निर्गत कारण बताओ नोटिस पर मुझसे अभद्र भाषा का प्रयोग करते हुए प्रबन्धक को भी देख लेने की धमकी दी। आपने यह भी कहा कि सोसाइटीज रजिस्ट्रेशन कार्यालय से प्रबन्धाधिकरण से सम्बन्धित पत्रजात एक वकील के माध्यम से निकलवा लिया है। मेरे घर के लोग एवं मेरे रिश्तेदार सोसाइटी में सदस्य है और शीघ्र ही प्रबन्धक को बदल दूंगा। यह आपकी अनुशासनहीनता, अनधीनता एवं दुराचरण है तथा नियोक्ता के प्रति आपका कदाचार है।

आप अपने बचाव पक्ष में आरोप का उत्तर पत्र प्राप्ति के तीन सप्ताह के अन्तर्गत प्रेषित करें अन्यथा यह समझा जाएगा कि

आपको कुछ नहीं कहना है एवं उक्त आरोपों से आप पूरी तरह सहमत हैं।"

26. Likewise, it is also necessary to refer to the charges against Nanku Ram, the writ petitioner in Writ-A No.51031 of 2015. The charges against Nanku Ram carried in the charge-sheet dated 04.05.2013, read:

"1. आरोप सं0- आपने जि0वि0नि0 इलाहाबाद को सम्बोधित एवं अधोहस्ताक्षरी को पृष्ठांकित अपने पत्र दिनांक 3.10.12 में जि0वि0नि0 इला0 कार्यालय के प्राप्ति अनुभाग सहायक एवं विद्यालय के सहायक लिपिक श्री सुधाकर तिवारी का फर्जी हस्ताक्षर बनाकर आप द्वारा माननीय उच्च न्यायालय में योजित याचिका सं0 14198/2013 में संलग्नक 7 के रूप में लगाया गया है। यह आप द्वारा फ्राड किया गया है, जो कर्मचारी आचरण नियमावली के विरुद्ध है। आरोप के पुष्टि में आपके पत्र दिनांक 3.10.12 की प्रमाणित छाया प्रति संलग्नक 1 के रूप में संलग्न है।

2. आरोप सं0 2- आपने प्रबंधक/ प्रधानाचार्य, विक्रमादित्य सिंह इं0 कालेज गोरापुर, इला0 को सम्बोधित अपने पत्र दिनांक 17.9.10, 17.8.12, 7.9.12 एवं प्रधानाचार्य को सम्बोधित अपने पत्र दिनांक 5.2.11, 30.5.11 जो माननीय उच्च न्यायालय में आप द्वारा योजित उक्त याचिका सं0 14198/13 में संलग्नक 8 के रूप में लगाया है, पर विद्यालय के सहायक लिपिक श्री सुधाकर तिवारी का फर्जी हस्ताक्षर बनाकर माननीय उच्च न्यायालय में प्रस्तुत कर माननीय उच्च न्यायालय को गुमराह किया है, जो आप द्वारा किया गया धोखाधड़ी का कार्य है। आरोप के पुष्टि में आपके पत्र दिनांक 17.9.10, 17.8.12, 7.9.12, 5.2.11, 30.5.11 की प्रमाणित छाया प्रतिलिपि क्रमशः संलग्नक सं0 2, 3, 4, 5 एवं 6 के रूप में संलग्न है।

3. आरोप सं0 3- आपने अपने पदीय दायित्व का दुरूपयोग कर, विश्वासघात करते हुए विद्यालयीय अभिलेखों/ कागजातों (श्री बृजेश कुमार शुक्ल पूर्व परिचारक वि0दि0 सिंह इण्टर कालेज गोरापुर, इलाहाबाद का जि0वि0नि0 इला0 का पूर्वानुमोदन के सम्बन्ध में पत्रांक अनु0/9678-80/2005-06 दिनांक 20.7.2005 तथा श्री बृजेश कुमार शुक्ल एवं श्री जनार्दन सिंह परिचारक वि0दि0 सिंह इं0का0 गोरापुर, इला0 के पारस्परिक स्थानान्तरण के सम्बन्ध में संयुक्त शिक्षा निदेशक चतुर्थ मण्डल, इला0 का आदेश सं0/ एस/स्थाना/53/2008-09 दिनांक 21.5.08) को चुराकर श्री कमलेश कुमार ग्राम खोजापुर पो0 वरना जिला इलाहाबाद को सुलभ कराया है। आप एवं उक्त श्री कमलेश कुमार ने षडयंत्र पूर्ण कार्य करते हुए माननीय उच्च न्यायालय में जनहित याचिका सं. 15464/2013 योजित कराया है, जो आप द्वारा किया गया संस्था विरोधी कार्य है। आरोप के पुष्टि उक्त याचिका में संलग्नक के रूप में लगाये गये जि0वि0नि0 इलाहाबाद एवं संयुक्त शिक्षा निदेशक चतुर्थ मण्डल, इलाहाबाद के उक्त पत्रों की प्रमाणित प्रतिलिपि संलग्नक 7 एवं 8 के रूप में संलग्न है।

4. आरोप सं0 4 - आप द्वारा प्रेषित अनाहस्ताक्षरित पंजीकृत पत्र दिनांक 25.4.13 जिसकी पंजीकृत सं0 आर0एल0 644/27.4.13 है, मुझे दिनांक 29.4.13 को प्राप्त हुआ। उक्त आप द्वारा प्रेषित पत्र पर बिना अपना हस्ताक्षर किये हुए किस दूषित मानसिकता से आपने मुझे प्रेषित किया। यह आपकी घोर अनधीनता को परिलक्षित करती है। आपने जान बूझ कर कपटपूर्ण दुराचरण तथा कर्तव्य के प्रति उपेक्षा का कार्य किया है। आरोप के पुष्टि में आपका अनाहस्ताक्षरित पत्र दिनांक 25.4.13 की प्रमाणित छायाप्रति तथा पंजीकृत लिफाफे की छाया प्रति संलग्नक 9 एवं 10 के रूप में संलग्न है।

आरोप पत्र का उत्तर पत्र प्राप्ति के एक सप्ताह के अन्दर लिखित रूप से अधोहस्ताक्षरी को प्रेषित करें, अन्यथा यह समझा जाएगा कि आपको अपने बचाव पक्ष में कुछ भी नहीं कहना है तथा उक्त आरोपों से आप पूर्णतया सहमत हैं।"

27. A perusal of the charge-sheet relative to the findings of the Inquiry Officer against Jai Prakash shows that each of the charge has been held proved by the Inquiry Officer, without any evidence led on behalf of the establishment to prove the charges, and, a *fortiori* considered by the Inquiry Officer to hold these proved. The charges have been held proved on a presumption of their truth without the slightest of material to support the same. It must also be remarked that some of the charges are not charges at all. They are imputations of conduct; not misconduct. These involve no culpability at all.

28. As far as the first part of the remarks of ours about the charges not being

proved by any tangible evidence or material is concerned, we may say about Charge No.1 that it imputes theft to Jai Prakash of the letter of approval relating to the appointment of Brijesh Kumar Shukla (Peon) and the letter of approval dated 21.05.2008, sanctioning mutual transfer for Brijesh Kumar Shukla and Janardan Singh from Adarsh Inter College, Gheenpur, Allahabad to the Institution and *vice versa*. The findings relating to Charge No.1, or the conclusions drawn about use of these letters in complaints pseudonymously addressed to the officers of the Education Department and filed as annexures in writ petitions before this Court, are not at all imputations or subject matter of the first charge. The first charge is only about theft of the two documents. A perusal of the findings in the inquiry report shows that there is absolutely no material considered by the Inquiry Officer to hold the charge proved. There is no first information report of a theft of these documents nor testimony of witnesses, who might have seen the petitioner, Jai Prakash steal the documents or take out photocopies, or other tangible material, that may give rise to an inference about the case of a theft. The conclusions drawn by the Inquiry Officer on the first charge are bereft of any material at all.

29. The second charge has three parts to it, that is to say, Charge Nos.2, 2(b) and 2(c). So far as Charge No.2 is concerned, the imputation is that the petitioner, after stealing the two documents, mentioned in Charge No.1, handed over copies of these to Nanku Ram, a suspended gardener of the Institution (writ petitioner in Writ-A No.51031 of 2015) and entered into a conspiracy with him to use copies of these documents in Writ-A No.14198 of 2013, annexed to the aforesaid writ petition filed by Nanku Ram. The charge imputes to the petitioner the act that in conspiracy with Nanku Ram, he got copies of these documents annexed as Annexure Nos.11 and 12 to Writ-A No.14198 of 2013. All that is said for a finding on this charge is that theft of the two documents, according to Charge No.1, is self-proven. In the first place, it is said that the stolen documents were made use of in a pseudonymous complaint by Jai Prakash, portraying as one J.N. Chaudhary and when that effort failed, copies of these two documents were got annexed as Annexure Nos.11 and 12 to Writ-A No.14198 of 2013 instituted by Nanku Ram before this Court. It is then abruptly concluded that the second charge of conspiring with Nanku Ram is proved. The finding, again, is absolutely cryptic and sans the slightest of evidence.

30. Charge No.2(b) says that the petitioner, Jai Prakash connived with the suspended gardener of the Institution, Nanku Ram and seen in his company frequently, in the office of the DIOS, by the Principal of the Institution. The charge is that the act of visiting the office of the DIOS without permission of the competent Authority shows indiscipline *(swechchhacharita)* on the petitioner's part. The finding on this charge proceeds to hold it proved on the basis of contradictory replies furnished by the petitioner in his letters dated 29.07.2013, 23.09.2013 and 24.10.2013, and his stand during hearing on 30.10.2013. In the letter dated 29.07.2013, it is noticed that the petitioner said that he had a night duty to discharge and, therefore, never had the need to seek leave. In the letter dated 23.09.2013, the petitioner has been noticed by the Inquiry Officer to have said about Charge No.2(b) that he went to the DIOS's office in connection with work assigned by the Principal. In a still later letter dated 24.10.2013, submitted

in answer to the Principal's letter dated 07.10.2013, it has been recorded by the Inquiry Officer that the petitioner had said that if the Principal saw the petitioner in the DIOS's office, it would have been a matter of chance. The last of the petitioner's answer that the Inquiry Officer has noticed was one given during hearing at the inquiry, of whatever kind it was, where the petitioner said again that he had a night duty to discharge and would, therefore, sometimes accompany the suspended gardener, Nanku Ram (presumably to the DIOS's office). On the basis of the said answers, the Inquiry Officer remarked that the petitioner's replies are neither consistent nor has he sought permission to visit the office of the DIOS from the Principal, leading to the charge being proved. *Ex facie*, the charge and the findings are both perverse to their face. The charge is not that the petitioner went to the DIOS's office during duty hours, absenting himself without prior permission of the Principal. That alone could have been a charge in connection with visiting the DIOS's office. Else, the office of the DIOS is a public place and if the petitioner was visiting it outside duty hours, moreso as he was a watchman with a night duty, there is absolutely nothing to infer a charge about it, much less hold it proved.

31. Now, Charge No.2(c) is to the effect that the petitioner along with the suspended gardener, Nanku Ram, in connivance with each other, caused the stolen papers (those referred to in Charge No.1) to be given to Kamlesh Kumar, a resident of Village Khojapur, Barna, Allahabad, who instituted PIL No.15464 of 2013, aiding the said Kamlesh Kumar in bringing litigation against his employer. And, by doing this, the petitioner made an attempt to tarnish the image of the Institution. About the said charge, it is remarked in the inquiry report that the petitioner, Jai Prakash, in his reply dated 23.09.2013, has annexed as Annexure No.10 a document, in paragraph 1 whereof, in the second para (the way it is recorded in the inquiry report) he has admitted the fact that on 07.09.2013, he went to the house of Kamlesh Kumar. During hearing before the inquiry, he stated that he did not know Kamlesh Kumar. He further said that he did not handover the stolen papers to Kamlesh Kumar for filing it as part of the PIL. The finding on this charge is that the case of stealing the two documents, subject matter of the first charge, is already proved on the basis of findings vis-a-vis Charge No.1. It is then said that the petitioner, firstly, attempted to use the papers by addressing a pseudonymous complaint dated 17.08.2012, styling himself as J.N. Chaudhary. When he was not successful there, he gave copies of the documents to Nanku Ram, the suspended gardener, who annexed these as Annexure Nos.11 and 12 to Writ-A No.14198 of 2013 filed by him. When there was no success in the said writ petition, the petitioner gave away copies of the two documents to Kamlesh Kumar to enable him to file PIL No.15464 of 2013 against the Institution, which is still pending. From these remarks, it is abruptly concluded that Charge No.2(c) is proved.

32. Now, we have already noticed that there is no case of theft of the documents at all established against the petitioner. If that fact is not established, there is no question of the petitioner giving away copies of the two documents to any third person in order to facilitate that person in moving a PIL against the Institution. Even otherwise, the documents mentioned in Charge No.1, which are consistently mentioned in the inquiry

report, are public documents and would be available in the office of the Education Authorities as well. It must also be remarked here that the petitioner was not the custodian of these documents and, therefore, there cannot be any burden upon him to prove how these made their way to the hands of different persons. It is very exceptionable for the Institution to object to the use of copies of documents that are on the record of Education Authorities in writ petitions filed before this Court. After all, invocation of our writ jurisdiction by a citizen, annexing therewith necessary material, can neither be an offence nor misconduct. In fact, any objection or frown to the use of a document, that is otherwise public record in the sense of being letters of permission etc. by the DIOS is a very contumacious stance for the Institution to take. No government or officer of the government can object to a citizen, invoking our jurisdiction under Article 226 of the Constitution, and for the purpose, annexing all just and true record, without fabricating it. It is not the respondents' case that the petitioner had fabricated any document. The allegation of stealing copies of documents, that are public record, is *ex facie* without the slightest of tangible material.

33. So far as the third charge against Jai Prakash is concerned, it says that after stealing the two documents or copies of these (subject matter of the first charge), he drew up a complaint himself and sent it under a pseudonym J.N. Chaudhary, who is a non-existent person. The complaint was sent to the Institution's Management and the Authorities of the Education Department, which is a conduct of the petitioner's involving activities against the Institution's interest. The charge further says that in order to verify the fact, if the petitioner was the pseudonymous author, a letter was sent to the addressee J.N. Chaudhary, which was returned with an endorsement by the postal department proving the fact. The findings on Charge No.3 recorded by the Inquiry Officer would show that the Principal of the Institution had sent a letter dated 06.06.2013 to the addressee of the pseudonymous complaint, J.N. Chaudhary, "संयोजक, अनुसूचित जाति समाज, सिकन्द्रा, इलाहाबाद", which was returned with the following postal endorsement: "उपर्युक्त नाम का कोई पता नहीं चलता है, प्रेषित को वापस".

34. The charge, like others, was denied by the petitioner, and, it is recorded by the Inquiry Officer, that in his letter dated 24.10.2013, the petitioner has said that he does not know anyone by the name J.N. Chaudhary. The petitioner is also recorded by the Inquiry Officer to have said at the hearing before the inquiry that he did not imposter as J.N. Chaudhary nor sent the pseudonymous complaint, portraying himself as J.N. Chaudhary. The Inquiry Officer, in recording, his findings proceeded on the premise that the approval letter of Brijesh Kumar Shukla's appointment dated 20.07.2005 and the mutual transfer approval order dated 21.05.2008, relating to Brijesh Kumar Shukla and Janardan Singh, were stolen by the petitioner. Now, this is a premise based on the Inquiry Officer's conclusions recorded in his findings on Charge No.1, which we have found to be utterly without material to draw that conclusion. The further finding, therefore, that after stealing the aforesaid documents, the petitioner, impostering as J.N. Chaudhary, who is a non-existent person, sent a pseudonymous complaint dated 17.08.2012 to the Authorities of the Education Department, is without any basis. The finding, still further,

that he caused copies of these documents to be annexed to Writ-A No.14198 of 2013 and PIL No.15464 of 2013, is without basis for that reason. The finding holding Charge No.3 proved, is perverse for an added reason. And, it is this, that the mere fact that the letter addressed by the Principal to the pseudonymous author of the complaint returned with the postal remark, 'the addressee cannot be traced, returned to sender' can, in no way, lead to the inference that the petitioner was the pseudonymous author of the complaint. There is not the slightest of material noticed by the Inquiry Officer to infer that he was the author of the pseudonymous complaint addressed to functionaries of the Management or the Education Authorities against the Institution, the charge of stealing documents quite apart. The conclusions, therefore, on Charge No.3 are sans any material and also perverse.

35. The fourth charge against the petitioner is that he, with an intention to involve Class-IV employees, senior to himself, to wit, Tej Narain Bahadur, Ram Lakhan and Dinesh in his conspiratorial activities through persuasion, inducement, fear and threat, and taking advantage of these men's illiteracy, drew up an affidavit, making the three men named, sign it. He got the said affidavit included in his own promotion file. In disposing of this charge against the petitioner and holding it proved, the Inquiry Officer has reasoned that after securing an affidavit from the three senior Class-IV employees, forsaking their option to earn promotion, the petitioner got the affidavit signed by the said men placed on his promotion file. In order to sustain the charge, all that has been remarked by the Inquiry Officer is that the petitioner has changed his statement in relation to the said affidavit from time to time, after denying the charge. The contradictory statements noticed by the Inquiry Officer are that in his reply to the charge, being a memo dated 23.09.2013, it is said that the said affidavit has been got submitted by someone because of a conspiracy, who does not want him promoted to the post. During the hearing on 02.12.2013, the Inquiry Officer has noted that in an answer to questions put to him orally, the petitioner had said in a written answer that he had never threatened the said employees nor persuaded or induced them to file the affidavit. To draw from these statements the inference that Charge No.4 against the petitioner, about threatening or inducing employees, senior to him, and making them forego their chance of promotion, is proved, is a conclusion that is outrightly perverse. There are no contradictory statements at all to draw a conclusion of that kind by any yardstick or principle. The only evidence, on which the Management could have acted to bring home the charge, was by production of the three men as management witnesses during the inquiry, and, if the said witnesses had taken the stand that the affidavit filed by them, foregoing their chance of promotion, was the result of inducement or threat at the hands of the petitioner and stood by their statements in cross-examination by the petitioner, the Inquiry Officer could have legitimately drawn his conclusions, that would be beyond our pale of scrutiny in a secondary review. But, to act on non-existing material, no evidence or drawing patently perverse conclusions, is something which the respondents cannot shield from our scrutiny, even in a secondary review.

36. The fifth charge against the petitioner, Jai Prakash, is that in moving this Court by way of Writ-A No.38533 of 2013, for the purpose of enforcing his

claim to promotion to the post of *Daftari*, the petitioner suppressed the fact in the writ petition that his case for promotion was under consideration before the DIOS, where it was being heard. To prove the charge, a copy of the writ petition was annexed to the charge-sheet as Annexure No.5. In his findings on this charge, the Inquiry Officer has taken note of the petitioner's defence, regarding which, it is recorded that the petitioner in his letter dated 28.08.2013, has said that the writ petition aforesaid was filed for the purpose of ensuring an expeditious disposal of his claim by the DIOS. It is then noticed that in his reply to the charge-sheet made on 23.09.2013, in paragraph No.15, it is said that the petitioner had not received any letter from the office of the DIOS in regard to his case. In the hearing before the Inquiry Officer on 02.12.2013, he has noted that the petitioner had referred to Annexure No.13 to his letter dated 17.12.2013, where it is said that from a perusal of the documents, whatever provided to him relating to the matter pending hearing before the DIOS, it is evident that he had never been intimated of any date of hearing before the DIOS. In his conclusions on the charge, the Inquiry Officer has referred to some matters irrelevant to the charge in the opening paragraph by referring to the case about threatening or inducing his seniors by the petitioner to give an affidavit, forsaking their right to consideration before the DIOS in the matter of the petitioner's promotion. This is not at all the subject matter of the present charge. It is then remarked that the affidavit by the three senior Class-IV employees has made the matter suspicious. What is then remarked is that in the information sent from the office of the DIOS vide letter dated 28.05.2013, the date fixed in the matter of the petitioner's promotion was 31.05.2013. A second date was intimated to the petitioner vide letter of the DIOS dated 11.07.2013, scheduling 19.07.2013 as the date of hearing. The conclusion drawn is that without disclosing these facts, the petitioner has instituted Writ-A No.38533 of 2013. It is then remarked that the fact that the matter was being heard before the DIOS had been suppressed in the writ petition, whereas the fact was known to all the four Class-IV employees and the petitioner was duly informed of the date fixed through the four other Class-IV employees. On this reasoning, the charge has been held proved.

37. We are clear in our mind that the charge about not disclosing the fact of the promotion matter being pending before the DIOS, while filing Writ-A No. 38533 of 2013, even if true, is not a charge at all. It is no business of the employer to take cognizance of suppression of facts, or even material facts, from this Court in a writ petition as service misconduct. The respondents had to take that plea before us in the writ petition and test if the plea of suppression was upheld by this Court. In the event, it was upheld, may be there was some bleak possibility of classifying the act of deliberate suppression as some kind of a misconduct, if it fell within the mischief of the conduct rules applicable to the employee. But, it is not for the employer to conclude of their own that some fact had been suppressed on our record and proceedings, and punish it as a service misconduct. The charge itself is utterly misconceived and so are the findings. The findings, a *fortiori* on principle, would be without jurisdiction because the charge itself is a non-charge.

38. This brings us to the last charge against the petitioner, and that is about him using unparliamentary language when

served with a show cause notice by the Principal, and also, threatening to 'deal' with the Manager. The imputation is that on receipt of the show cause notice, he employed unparliamentary language while addressing the Principal and threatened that he would 'take care' of the Manager. It is also imputed that he said that he would take out papers relating to the Society running the Institution, through an Advocate, from the office of the Registrar of Societies, and further said, that his relatives were members of the Society, who would ensure that the Manager is soon changed. This charge, if true, might amount to misconduct. The Inquiry Officer has recorded that the petitioner, in his reply dated 23.09.2013, has stated that in his career of 18 years, he had never indulged in any kind of indiscipline or employed unparliamentary language or threatened anyone. The Inquiry Officer has also noticed that in his letter dated 24.10.2013 sent by registered post, annexed as Annexure No.22 to his reply, the petitioner says that the Principal himself had certified his integrity every year, but it is surprising that as soon as his case for promotion was forwarded, he was saddled with unfounded charges to exclude him from the zone of consideration. During hearing on 02.12.2013 before the Inquiry Officer, it is recorded that in his written reply, the petitioner has referred to a letter dated 17.12.2013, to which he has annexed a certain Annexure No.33, where it is said that he had never employed unparliamentary language or otherwise misbehaved with the Appointing Authority or any other employee, whomsoever. It is in his findings on the charge that the Inquiry Officer has remarked that the question arises that notwithstanding 18 years of earning excellent entries in the service record, after the petitioner's case was forwarded for promotion, why was he charged. It is remarked that the petitioner had obviously used unparliamentary language, else the Principal would not have come up with the allegation. It is then remarked by the Inquiry Officer that after a bitter experience, the Principal has come up with the allegation from his 'inner soul'. Virtually, the charge has been sustained without an iota of material or evidence before the Inquiry Officer to draw his conclusions. He has presumed it to be true on the reasoning that why would the Principal come up with a charge of this kind and gone on to remark that after a bitter experience, the Principal had arraigned the petitioner from the depth of his soul. These are hollow words, that may be of poetic worth, but cannot serve as evidence or valid material of the slightest kind to hold the charge proved. The only way this charge could have been proved, was for the establishment to produce the Principal as a witness, who alleged that the petitioner employed unparliamentary language with him, when served with the show cause notice. If he spoke for the charge and faced the petitioner's cross-examination, there would be material on record, on the basis of which, the Inquiry Officer could have drawn his conclusions, whichever way, that we would be forbidden from re-appreciating in the exercise of our power of Wednesbury review. This is not that case. This is a case of total absence of material or evidence to sustain the finding.

39. The findings on each of the six charges against Jai Prakash are not at all valid in law for all the reasons indicated, specifically appraising the relative findings on the charges, during the course of this judgment. The Disciplinary Authority, who has blindfoldedly accepted the findings of the Inquiry Officer by his order dated

01.02.2014, removing the petitioner from service, is bad, for all the reasons that vitiate the Inquiry Offier's finding.

40. This takes us to the findings of the Inquiry Officer and the order impugned passed in the other writ petition, that is to say, Writ-A No.51031 of 2015 preferred by Nanku Ram. He is the gardener and held guilty on somewhat similar charges as Jai Prakash in the disciplinary proceedings. He is said to have acted in conspiracy with Jai Prakash in the matter of seeking promotion to the higher post of an Assistant Clerk, for which, both of them have vied.

41. The first charge against the petitioner (Nanku Ram) is that he forged the signatures of the Assistant in the Receipt Section of the office of the DIOS and a Clerk in the Office of the Principal on the copy of a letter dated 03.10.2012 addressed to the DIOS, a copy of which was marked to the Principal of the Institution; and this document he annexed as Annexure No. 7 to Writ - A No. 14198 of 2013, instituted before this Court. It is imputed to the petitioner that by this act of his, he committed fraud, which is a misconduct under the service rules applicable to him. A photostat copy of the letter allegedly bearing the forged signatures of receipt from the Clerk of the DIOS was relied in support of the charge.

42. The second charge against the petitioner is to the effect that he addressed letters to the Manager/Principal of the Institution dated 17.09.2010, 17.08.2012 and 07.09.2012, and also addressed letters to the Principal of the Institution dated 05.02.2011 and 30.05.2011, which he annexed to his writ petition, being Writ - A No. 14198 of 2013 as Annexure No. 8, bearing forged signatures of receipt from Sudhakar Tiwari, a Clerk in the Institution, which constitutes an act of fraud. In support of the charge, copies of letters dated 17.09.2010, 17.08.2012, 07.09.2012, 05.02.2011 and 30.05.2011 were annexed.

43. As regards the first and the second charge, or for that matter, the remainder of the two charges as well, the Inquiry Officer devised a novel method to hold inquiry. He summoned the petitioner, who, no doubt, appeared, after much reluctance, and put questions to him about the veracity of the signatures of acknowledgment on the two sets of letters - one by the clerk concerned in the Office of the DIOS and the other, in the Office of the Principal of the Institution. The Inquiry Officer, more or less, based his findings on Charge Nos. 1 and 2 upon the answers given by the petitioner to the questions put to him by the Inquiry Officer. Question Nos. 1 to 14, put to the petitioner, relating to Charges Nos.1 and 2, have been set forth herein. Of these questions, Question Nos. 1 to 13 were put to the petitioner during the proceedings of the inquiry held on 16.07.2013, whereas Question No. 14 relating to Charge Nos. 1 and 2 was put to the petitioner in the next hearing before the Inquiry Officer on 12.08.2013 (the other questions put to the petitioner during the hearing on 12.08.2013 relate to the remainder of the two charges). The questions that were put to the petitioner during the hearing on 16.07.2013 and the answers given by him, extracted from the inquiry report, are shown in tabular form below :

प्रश्न नं०	प्रश्नावली	श्री ननकूराम माली (निलम्बित) का उत्तर (मौखिक)
1	श्री ननकूराम माली (निलम्बित) आप यह बतायें कि याचिका सं० 14198/2013 माननीय उच्च न्यायालय में किस आशय से योजित किया है?	जि०वि०नि० इलाहाबाद ने मेरे पदोन्नति प्रकरण में मेरे विरूद्ध निर्णय दिया है इसलिए माननीय उच्च

		न्यायालय की शरण में गये।
2	आपके समक्ष आप द्वारा योजित याचिका सं० 14198/2013 प्रस्तुत है। आप इसके अनुच्छेद 21 एवं 22 को पढ़कर सुनायें एवं उल्लिखित आशय से मुझे अवगत करायें।	मुझे अंग्रेजी पढ़नी नहीं आती है। वकील ने पता नहीं क्या लिखा है।
3	याचिका सं० 14198/2013 में संलग्नक 7 में आपने कहा है कि प्रबन्धक जी ने आप पर दबाव बनाकर लिखे हुए प्रार्थना पत्रों को हुबहू नकल करने के लिए कहा। इस सम्बन्ध में यदि कोई साक्ष्य है तो प्रस्तुत करें।	कोई गवाह नहीं है। घर पर बुलाकर मुझसे लिखवाये।
4	आप पर आरोप है कि संलग्नक 7 आपने जि०वि०नि० कार्यालय में प्राप्त दर्शित करने के लिए प्राप्ति सहायक का आपने स्वतः हस्ताक्षर बनाकर याचिका में संलग्न किया। ऐसा आपने क्यों किया?	मैंने हस्ताक्षर नहीं बनाया है। कार्यालय में मैंने प्राप्त कराया है।
5	जि०वि०नि० इलाहाबाद कार्यालय में प्राप्त कराये गये पत्रजातों में जि०वि०नि० कार्यालय की मुहर नहीं लगती है। लेकिन आपने मुहर बनवाकर संलग्नक 7 में लगाया। सफाई में आप क्या कहना चाहेंगे?	मुझे कुछ नहीं कहना है। आप जो चाहे समझें।
6	आप द्वारा याजिका में लगाये गये संलग्नक 7 के सम्बन्ध में प्रधानाचार्य ने सूचना अधिकार अधिनियम 2005 के आधार पर दिनाँक 20.04.2013 के अनुसार जि०वि०नि० इलाहाबाद से पृच्छा की है। प्रधानाचार्य का पत्र दिनांक 20.04.2013 आपके पास है, इस सम्बन्ध में आप क्या कहना चाहेंगे?	पूछे होंगे। इसमें मैं क्या करूं।
7	जि०वि०नि० इलाहाबाद पत्रांक/1442/2012-13 दिनाँक 01.05.2013 द्वारा उपलब्ध करायी गयी सूचना आपको दी गयी है एवं निम्नवत् उल्लेख किया है, "आपके पत्र दिनाँक 20.04.2013 के साथ संलग्न श्री ननकूराम माली का पत्र दिनाँक 03.10.2012 जो प्राप्ति पर जि०वि०नि० इलाहाबाद के कार्यालय हस्ताक्षर दर्शाया गया है, वह इस कार्यालय के किसी सहायक का हस्ताक्षर नहीं है और न ही रसीद पंजिका में कहीं भी प्रविष्टि अंकित है।"	इसे पढ़कर एवं सुनकर मौन रहे। बार-बार कुरेदने पर भी कोई उत्तर नहीं दिया।
8	आप पर दूसरा आरोप है कि "आपने प्रबन्धक/प्रधानाचार्य वि०दि० सिंह इण्टर कालेज गोरापुर, इलाहाबाद को सम्बोधित अपने पत्र दिनाँक 17.09.2010, 17.08.2012, 07.09.2012 एवं प्रधानाचार्य को सम्बोधित अपने पत्र दिनाँक 05.02.2011, 30.05.2011 जो माननीय उच्च न्यायालय में योजित उक्त याचिका सं० 14198/2013 में संलग्नक 8 के रूप में लगाया है, पर विद्यालय के सहायक लिपिक श्री सुधाकर तिवारी का फर्जी हस्ताक्षर बनाकर, माननीय उच्च न्यायालय में प्रस्तुत कर माननीय उच्च न्यायालय को गुमराह किया है जो आप द्वारा किया गया धोखाधड़ी का कार्य है।"	मैंने कोई धोखाधड़ी नहीं की है आप अपने मन में चाहे जो समझें।
9	आप पर लगे, दूसरे आरोप के सम्बन्ध में प्रधानाचार्य ने अपने पत्र दिनाँक 08.04.2013 द्वारा विद्यालय के सहायक लिपिक श्री सुधाकर तिवारी से संपुष्टि चाहा है। श्री तिवारी (स०लि०) ने अपने पत्र दिनाँक 22.04.2013 के अनुसार प्रधानाचार्य को उत्तर प्रेषित किया है, "श्री ननकूराम माली द्वारा संलग्नक 7 एवं 8 संलग्न किये गये पत्र दिनाँक 17.09.2010, 05.02.2011, 30.05.2011, 17.08.2012, 07.09.2012 एवं 03.10.2012 उक्त श्री ननकूराम माली द्वारा न तो मुझे प्राप्त कराया गया है और न ही उक्त पत्रों में मेरे हस्ताक्षर ही हैं।" प्रस्तुत पत्र आपको सुलभ कराया गया है। आप क्या कहना चाहेंगे?	
10	उक्त प्रश्न सं० 9 के सम्बन्ध में श्री सुधाकर तिवारी से जो सुनवायी में आपके समक्ष उपस्थित हैं, कुछ जिरह या प्रश्न करना चाहेंगे।	मुझे कुछ जिरह नहीं करनी है और न प्रश्न ही पूंछना है।
11	आपने अपने उत्तर में माननीय उच्च न्यायालय में याचिका सं० 14198/2013 में लगाये गये अपने ही संलग्नकों को तथाकथित/लगत संलग्नक कहकर दिग्भ्रमित करने का प्रयास किया है। ऐसा क्यों?	चुप रहे। कोई उत्तर नहीं दिया।
12	संलग्नक 7 एवं 8 (माननीय उच्च न्यायालय में योजित याचिका सं० 14198/2013) के सम्बन्ध में आप अपने कथन तथा जि.वि.नि. इलाहाबाद का पत्रांक 1442/2012-13 दिनाँक 01.05.2013 के अनुसार कथन तथा विद्यालय के सहायक लिपिक श्री सुधाकर तिवारी का प्रधानाचार्य को सम्बोधित पत्र दिनांक 22.04.2013 के अनुसार कथन से आप द्वारा की गयी कूट रचना का पर्दाफास हो रहा है। आप क्या कहना चाहेंगे?	सब हमें फंसा रहे हैं। सब की मेरे खिलाफ मिली भगत है।
13	सब आपको फंसा रहे हैं जि०वि०नि० इलाहाबाद एवं विद्यालय के सहायक लिपिक श्री सुधाकर तिवारी की मिली भगत है। अथवा आप द्वारा किया गया फ्राड स्पष्ट हो रहा है। आप क्या कहेंगे?	मैं क्या कहूं। मैंने वही कहा है, जिसमें मैं बच सकूंगा। बस और कुछ भी नहीं कहना है।

44. During the hearing, on 12.08.2013, one more question that was put to the petitioner and the way he answered it, is also shown in tabular form, quoted verbatim from the inquiry report :

प्रश्न नं०	प्रश्नावली	श्री ननकूराम माली (निलम्बित) का उत्तर
14	संलग्नक 7 एवं 8 के सम्बन्ध में आप अपने लिखित अभिकथन को बार-बार बदल रहें हैं। आपके ही कथनों में भिन्नता है। ऐसा क्यों?	मैं कोई बयान नहीं बदल रहा हूं। सब एक ही हैं।

45. Now, it is a salutary principle of the law that before the imposition of a major penalty, the Inquiry Officer has to follow a specific procedure. This requires the Inquiry Officer to presume that the charges are not at all proved and the burden initially rests upon the Establishment to prove these by evidence, both documentary

and oral, through a Presenting Officer. The evidence, that has to be produced, must include witnesses, apart from documents, who would prove the document and testify to other relevant facts. The witnesses, once they speak and give testimony in support of the charges for the Establishment, are to be made over to the delinquent to cross-examine. In case of the documents subject matter of the second charge, that is to say, the letters dated 17.09.2010, 17.08.2012, 07.09.2012, 05.02.2011 and 30.05.2011, that were filed before this Court as Annexure No. 8 to Writ - A No. 14198 of 2013 on behalf of the petitioner, the Clerk in the Office of the Principal, Sudhakar Tiwari, who was shown to have received papers, was present at the inquiry. However, he was not called upon to testify on behalf of the Establishment as a witness in the petitioner's presence, after placing before him the letters or copies of these shown to have been received by him. All that was said was in the form of a question (Question No. 9), where the fact was put to the petitioner that in response to the letter dated 08.04.2013 addressed by the Principal to the Assistant Clerk, Sudhakar Tiwari, he had denied receiving the letters, annexed as Annexure Nos. 7 and 8 to the writ petition and also disowned his signatures thereon. It was asked of the petitioner what had he to say in this regard. The petitioner's answer was that the fact would be known to Sudhakar Tiwari. In the next Question No. 10, the Inquiry Officer asked the petitioner if he wanted to cross-examine Sudhakar Tiwari, who was present, in answer to which, petitioner said that he did not want to cross-examine him or ask questions. In contrast, in answer to the question if he had forged the signatures of Sudhakar Tiwari on the copies of letters that were filed as Annexure Nos. 7 and 8 to Writ - A No. 14198 of 2013, subject matter of Question No. 8, the petitioner came up with the answer that he had not done any fraud and it is up to the Inquiry Officer to think whatever he wanted. So far as Charge No. 1 is concerned, that is to say, about forging the signatures of the Assistant in the Office of the DIOS, the proof of the charge depended upon a memorandum dated 01.05.2013 received from the Office of the DIOS, in response to the information sought by the Principal of the Institution under the Right to Information Act, 2005, where, signatures on the copy of the letter dated 03.10.2012 were denied in terms that the 'subject signatures' were not those of any Assistant in his office, nor was there any entry made in the receipts register regarding this letter, maintained with the Office of the DIOS. This fact too was put to the petitioner, as would appear from the questions in tabular form set out as hereinabove, as Question No. 7, in response to which, the petitioner remained quiet.

46. This Court is constrained to say that in keeping with the salutary principle, this is certainly not the procedure countenanced by the law to prove a charge against an employee, which may lead to the imposition of a major penalty. There cannot be questions put to the employee with reference to written documents, even by a witness, who is present, and findings recorded based on the charge-sheeted employee's answers. The findings have to be recorded on the basis of documentary evidence led during the hearing before the Inquiry Officer by the Establishment through a Presenting Officer, and then producing witnesses to prove the charge as regards other matters. The queer kind of offer made to the petitioner, after referring to the letter of the Clerk in the Principal's office, who was present, denying his signatures on the copies of letters annexed

as Annexure Nos. 7 and 8 to the writ petition to cross-examine him, would not suffice. After all, before Inquiry Officer, the witness has not spoken. A mute letter written by the witness was there. What prevented the Inquiry Officer from asking the witness, even if there was no Presenting Officer, to introduce the letter and say before the charge-sheeted employee whatever he had to about the letter. Relevant facts could have been spoken by way of examination-in-chief by Sudhakar Tiwari, who was present before the Inquiry Officer. Nothing was spoken by Sudhakar Tiwari before the Inquiry Officer by way of examination-in-chief or testimony. Of course, he was never cross-examined by the petitioner about his testimony that was not there.

47. In this case, more than the breach of salutary procedure is a further facet of denial of natural justice. If one looks to the question-answer mode of inquiry, it becomes apparent that whatever might be the educational qualifications of the petitioner, Nanku Ram, the way he answered the questions put to him by the Inquiry Officer, convinces this Court that he is not a man of refined learning; not even a man of average educational skills. After all, he is a Gardener by profession - not for a hobby, but a whole-timer. A charge-sheeted employee of the kind that Nanku Ram is, it was imperative for the Inquiry Officer to have offered him the services of a defence assistant, who might have been an employee of the same institution, better versed with the procedure of defending departmental inquiries. Neither Nanku Ram had the assistance of a domestic defence assistant like another employee, may be a co-employee, of better learning and understanding, nor was the salutary procedure at all followed to hold the inquiry, by requiring witnesses to testify on behalf of the Establishment. The nature of the charge in this case, particularly required witnesses, both from the Establishment of the DIOS and the Principal, to testify viva voce on behalf of the Establishment in support of the charges by way of examination-in-chief. Cross-examination was an opportunity then to be given to the petitioner, which, in the hands of a defence assistant, better skilled than the petitioner, would have made his defence meaningful. All these issues of procedural fairness have been observed in utter breach in the matter of holding the departmental inquiry against the petitioner. The salutary principles spoken of about the manner of holding a departmental inquiry in a major penalty matter are well-acknowledged by the Supreme Court in **State of Uttar Pradesh and others v. Saroj Kumar Sinha, (2010) 2 SCC 772, Roop Singh Negi v. Punjab National Bank and others, (2009) 2 SCC 570, State of Uttaranchal and others v. Kharak Singh, (2008) 8 SCC 236** and the Bench decisions of this Court in **State of U.P. and another v. Kishori Lal and another, 2018 (9) ADJ 397 (DB) (LB), Smt. Karuna Jaiswal v. State of U.P., 2018 (9) ADJ 107 (DB) (LB) and State of U.P. v. Aditya Prasad Srivastava and another, 2017 (2) ADJ 554 (DB) (LB).**

48. The position of the law in this regard, that has withstood the test of time, has recently been endorsed by the Supreme Court in **Satyendra Singh v. State of U.P. and another, 2024 SCC OnLine SC 3325**, where it is held:

"12. Learned counsel for the State was ad idem to the submissions of the appellant's counsel that no witness whatsoever was examined during the

course of the inquiry proceedings. On a minute appraisal of the Inquiry Report, it is evident that other than referring to the documents pursuant to the so-called irregular transactions constituting the basis of the inquiry, the Inquiry Officer failed to record the evidence of even a single witness in order to establish the charges against the appellant.

13. This Court in a catena of judgments has held that the recording of evidence in a disciplinary proceeding proposing charges of a major punishment is mandatory. Reference in this regard may be held to Roop Singh Negi v. Punjab National Bank, (2009) 2 SCC 570 and Nirmala J. Jhala v. State of Gujarat, (2013) 4 SCC 301."

49. The third charge against the petitioner is that in breach of his fidelity to the Institution and its records, the petitioner handed over a copy of the letter of approval of appointment dated 20.07.2025 relating to Brijesh Kumar Shukla in the Institution known as Adarsh Inter College, Gheenpur, Mau Aima, Allahabad, as well as another letter dated 20.07.2005, relating to the mutual transfer of Brijesh Kumar Shukla and Janardan Singh from Adarsh Inter College, Allahabad to the Institution and vice versa, to one Kamlesh Kumar, for annexing the same in Public Interest Litigation No. 15464 of 2013, which amounted to an action against the interest of the Institution, constituting misconduct. The only evidence in support of the said charge is a copy of Annexure Nos. 7 and 8 annexed to the PIL petition.

50. The fourth charge against the petitioner here is that he addressed a letter dated 25.04.2013 to the Principal of the Institution, that was received by him on 29.04.2013. The letter was not signed by him and written out of malice. The said act shows gross insubordination. It is charged that the petitioner has deliberately and fraudulently neglected the rightful purpose of his duties. In support of the charge, the unsigned letter dated 25.04.2013, along with a photostat copy of the registered postal cover, attributed to the petitioner's authorship and addressed to the Principal, was annexed to the charge-sheet. To prove the charges, the Inquiry Officer put Question Nos. 15 to 25 to the petitioner on 12.08.2013. These read :

प्रश्न नं०	प्रश्नावली	श्री ननकूराम माली (निलम्बित) का उत्तर
15	आप पर तीसरा आरोप है "आपने अपने पदीय दायित्व का दुरूपयोग कर, विश्वास घात करते हुए विद्यालयीय अभिलेखों/कागजातों (श्री बृजेश कुमार शुक्ल पूर्व परिचारक वि०दि० सिंह इण्टर कालेज गोरापुर, इलाहाबाद का जि०वि०नि०) इलाहाबाद का पर्वानुमोदन के सम्बन्ध में पत्रांक अनु/9678-80/2005-06 दिनाँक 20.07.2005 तथा श्री बृजेश कुमार शुक्ल एवं श्री जनार्दन सिंह परिचारक वि०दि० सिंह इण्टर कालेज का गोरापुर, इलाहाबाद के पारस्परिक स्थानान्तरण के सम्बन्ध में संयुक्त शिक्षा निदेशक चतुर्थ मण्डल इलाहाबाद का आदेश सं०/एस०/स्थाना०/53/2008-09 दिनाँक 21.05.2008) को चुराकर श्री कमलेश कुमार, ग्राम खोजापुर, पोस्ट बरना, जिला इलाहाबाद को सुलभ कराया। आप एवं उक्त श्री कमलेश कुमार ने षडयन्त्रपूर्ण कार्य करते हुए माननीय उच्च न्यायालय में जनहित याचिका सं० 15644/2013 योजित कराया है, जो आप द्वारा किया गया संस्था विरोधी कार्य है।"	मैंने कोई कागजात न तो चुराया है और न ही मैं किसी कमलेश कुमार को जानता हूँ।
16	आपको क्रमांक 15 में उल्लिखित पत्र जात कैसे प्राप्त हुए। आपको क्या यह ज्ञात है कि उक्त पत्र जात अनुमोदन/स्थानान्तरण विद्यालय कर्मचारी के आवश्यक अभिलेख है?	मुझे पता है। विद्यालय से मिला है।
17	आपने उक्त पत्र जातों को योजित याचिका सं० 14198/2013 में संलग्नक के रूप में लगाया है। इस सम्बन्ध में आप क्या कहना चाहेंगे।	हाँ मैंने रिट में लगाया है।
18	उक्त क्रमांक 15 में आपने चुराये हुए पत्रजातों को कमलेश कुमार को सुलभ कराया एवं उन्होंने योजित जनहित याचिका सं० 15644/2013 में संलग्नक के रूप में लगाया है। विद्यालय के अभिलेख उन्हें कैसे प्राप्त हुए?	मैंने अपने लिखित उत्तर में कह दिया है और मैं कुछ नहीं जानता।
19	आपने पत्रांक दिनाँक 25.04.2013 (अनहस्ताक्षरित) एवं आरोप पत्र के उत्तर दिनाँक 14.05.2013 में क्रमशः "इस तरह का पत्र देकर स्पष्टीकरण/जवाब मांगना मुझ जैसे अनुसूचित जाति के चतुर्थ श्रेणी कर्मचारी की	मेरे पास कोई साक्ष्य नहीं है।

	मानसिक प्रताड़ना है।" "मेरा अनुसूचित जाति चमार होने के कारण जबरदस्ती लगाया जा रहा है, जो विधि विरूद्ध है।" कोई साक्ष्य हो तो प्रस्तुत करें।	
20	क्या प्रधानाचार्य द्वारा मौखिक या लिखित पत्रों से कोई जातिपूरक कथन आपको कभी परिलक्षित हुई है?	नहीं, कभी नहीं।
21	फिर आप क्यों अपने मातहत धर्म के विपरीत कार्य कर रहें हैं।	अपने को बचाने के लिए।
22	आप पर चौथा आरोप है कि "आप द्वारा प्रेषित अनाहस्ताक्षरित पंजीकृत पत्र दिनांक 25.04.2013 जिसकी पंजीकृत सं० RL.644/27.04.2013 मुझे दिनाँक 29.04.2013 को प्राप्त हुआ। उक्त आप द्वारा प्रेषित पत्र पर बिना हस्ताक्षर किये हुए किस दूषित मानसिकता से आपने मुझे प्रेषित किया। यह आपकी घोर अनधीनता को परिलक्षित करती है।" प्रधानाचार्य के इस कथन पर क्या कहना चाहेंगे?	उनके माँगने पर दुबारा दिया।
23	आप अपने नियोक्ता के पत्र का उत्तर दे रहे हैं पंजीकृत डाक से और पत्र में अपना हस्ताक्षर नहीं किये है। क्या यह उचित है?	नहीं।
24	फिर आपने ऐसा कार्य क्यों किया? क्रमशः 23 के संदर्भ में अपना स्पष्ट उत्तर दें।	मेरी मानसिक स्थिति ठीक नहीं थी।
25	उक्त समस्थ के अतिरिक्त आपको अपने बचाव पक्ष में यदि कुछ मौखिक/लिखित कथन प्रस्तुत करना है तो आप स्वतः प्रस्तुत कर सकते हैं।	कुछ भी नहीं कहना है। मैंने लिखित रूप से सब कुछ भेज दिया है।

51. Again, as regards these two charges here, the salutary procedure to produce evidence, both oral and documentary, has been observed in breach. Since the disciplinary proceedings here involved the imposition of a major penalty, it was the burden of the Establishment to produce evidence through a Presenting Officer, which would include witnesses, to prove the charges. It is not on the basis of *viva voce* questions and answers that conclusions could be drawn regarding charges, that might lead to the imposition of a major penalty. The law in this regard has been consistent and reference to the same has been made hereinabove.

52. Therefore, the conclusions of the Inquiry Officer on Charge Nos. 3 and 4 would be procedurally bad like those in case of Charges Nos. 1 and 2. But, there is more to these charges than that. The third charge against the petitioner is substantially the same as Charge Nos. 1, 2, 2(b) and 2(c) carried in the charge-sheet dated 31.08.2013 against Jai Prakash, subject matter of Writ - A No. 15765 of 2014. Those charges have already been held by us to be absolutely without material or evidence to sustain and the conclusions of the Inquiry Officer, holding them proved, perverse. Here too, as regards Charge No. 3, apart from the procedural irregularities, the same inference is inescapable, because there is no material to show that the petitioner stole the two documents from the Institution's office. After all, he is a Gardener and there is no evidence *aliunde*, oral or documentary, to show that it was he who stole the documents or procured copies of the same or provided it to the PIL petitioner. Both the documents in question are, after all, part of public record and the original or copies of the same would be available in the Office of the DIOS as well. There is absolutely no material to conclude against the petitioner on the third charge by application of any standard of a plausible inference. The inference drawn by the Inquiry Officer on the basis that the Institution would not give away documents against itself for the purpose of enabling the petitioner to file his own Writ Petition No. 14198 of 2013 and providing it to the petitioner of PIL No. 15464 of 2013, is perverse, because, between the Institution not itself giving away these documents and the petitioner stealing it, there is a wide range of possibilities for a lawful or unlawful source of acquisition of these documents, as these are public documents available in the Office of the DIOS, which cannot lead to establishment of the allegation of theft against the petitioner by any plausible standard. The conclusions on this charge are sans material and perverse.

This is quite apart from the question of procedural irregularity, that vitiates findings on all charges.

53. So far as the fourth charge is concerned, the Inquiry Officer has concluded that the petitioner, with a hostile animus and displaying fraudulent behaviour, had addressed to the Principal a letter dated 25.04.2013 in reply to the Principal's letter dated 17.04.2013, without signing it. In reply, the petitioner has said, as noted by the Inquiry Officer, that his letter dated 25.04.2013 had been lost by the Principal, and therefore, he sent another, which was unsigned. From the said reply alone, the Inquiry Officer has drawn the conclusion that the fact is proved that the petitioner addressed an unsigned letter to the Principal, proving the charge. This charge, to our mind, quite apart from the procedural illegality in holding the inquiry, is not, at all, a charge. Even if one were to assume that the petitioner addressed a letter to the Principal, which he forgot to sign, no misconduct of any kind can be inferred on that basis. The fourth charge against the petitioner and the findings of the Inquiry Officer, holding him guilty of the said charge, are downrightly perverse and *non est*.

54. The Disciplinary Authority, that it to say, the Principal of the College, has accepted the inquiry report *vide* order dated 07.10.2013 and punished the petitioner with removal from service, without much application of mind. As regards findings on Charge Nos. 1 and 2, the impugned order is procedurally flawed from the stage of the charge-sheet, and, as regards Charges Nos. 3 and 4, the conclusions are absolutely sans material and perverse, on the foot of which, the order of punishment could never be sustained. Nevertheless, the petitioner's appeal from the order of removal too has been dismissed by the Committee of Management vide order dated 19.07.2015. The Committee of Management have dismissed the petitioner's appeal, adopting the same reasoning, more or less as the Disciplinary Authority, which suffers from the same flaws, as the findings of the Inquiry Officer and the conclusions of the Disciplinary Authority. The flaws remain procedural as regards Charge Nos. 1 and 2, where the respondents would have liberty to proceed afresh from the stage of the charge-sheet, but as regards Charge Nos. 3 and 4, there is absolutely no material to sustain the same or permit any kind of fresh proceedings to inquire into the validity of these two charges. The fourth charge, as already remarked, is a non-charge, on the basis of which, no inquiry could, at all, proceed.

55. For all these reasons alone, the impugned orders dated 07.12.2013 passed by the Disciplinary Authority and the appellate order dated 19.07.2015 passed by the Committee of Management of the Institution are both vitiated. But, this does not end the matter, because there are, to all this in the background, certain facts, that must be taken note of.

56. There is a case common to both the writ petitions, which is more eloquently pleaded in paragraph Nos.44 to 54 of Writ-A No.15765 of 2014. The substance of the allegations carried in these paragraphs relate to the appointments of Brijesh Kumar Shukla and Janardan Singh, Class-IV employees in the Institution and the Adarsh Inter College, Gheenpur, Mau Aima, Prayagraj, which strongly urge a case of mala fides in the matter of appointment of these two men as Class-IV employees in both the institutions. The

appointments are shown to be manipulated by the Managers of the Adarsh Inter College and the Institution in order to accommodate relatives of their bloodline in their own institutions, something forbidden by the law. The case to the above effect has been urged in the writ petition in order to show that a relative of the Manager of the Institution here, having been appointed to the post of a Class-IV employee through the mechanism of a insidious transfer from the Adarsh Inter College to his own Institution, the services of the petitioner have been terminated through a sham disciplinary proceedings, when the petitioners claim for promotion to a Class-III post was pressed, which the Manager of the Institution coveted for his relative, Janardan Singh.

57. Though the allegations in paragraph Nos.44 to 54 of Writ-A No.15765 of 2014 have not been specifically denied by the Manager of the Institution, Bankey Bihari Singh, in his counter affidavit *vide* paragraph Nos. 13 to 19, nor by the DIOS in paragraph Nos.27 of 32 of the counter affidavit, we do not propose to go into these allegations in the present writ petitions for more than one reason. The first is that these writ petitions are liable to be allowed on other points, entirely in the case of Writ-A No.15765 of 2014, and, partly, in Writ-A No.51031 of 2015, rendering an examination of the issue here unnecessary. The other is that the two Class-IV employees, around whose appointment the allegations of mala fides, manipulation and bias revolve, have not been impleaded as party respondents to either of the two writ petitions. Still more, the issue is already the subject matter of PIL No.15464 of 2013, which is pending before a Division Bench of this Court at the instance of one Kamlesh Kumar, and, above all, this question ought be gone into in Writ-A No.20351 of 2022, after impleadment of all necessary parties, a petition though heard along with the present writ petitions, but not proposed to be decided by this judgment for reasons to be shortly indicated.

58. This takes us to the last of the third connected matters, to wit, Writ-A No.20351 of 2022 filed by Nanku Ram and Jai Prakash together, joining as co-petitioners. We have already introduced the relief claimed in the said petition. It is true that Writ-A No.15765 of 2014 and Writ-A No.51031 of 2015 would meet with different measures of success by the order that we propose to pass in those writ petitions, shortly. But, the wholesome or partial success of Writ-A No.15765 of 2014 and Writ-A No.51031 of 2015 would not lead to the conferment of immediate, indefeasible and final reinstatement in service to the petitioners in the sense that it is not a state of things that would not be subject to any question or possible change. It is true that Writ-A No.15765 of 2014, we propose to allow, granting final reinstatement in service to the petitioner, Jai Prakash, as a Class-IV employee with the Institution, and to the writ petitioner of Writ-A No.51031 of 2015, we propose to quash his removal from service and grant reinstatement, but with election to the Management to proceed against him afresh on two of the four charges and pass fresh orders in accordance with law. Jai Prakash, whom we propose to reinstate in service finally without the peril of facing any further inquiry, still faces the prospect of our judgment being questioned in appeal. This is not normally a consideration for this Court at all to take into account in passing judgment in a matter before us. But, so far as this petition is concerned, we have to

take it into account, because the relief that the petitioners seek is one about undoing the seventh respondent's promotion to the post of Assistant Clerk, staking their own claim to the promotion post.

59. Before the validity of promotion to the post of Assistant Clerk, already held by the seventh respondent is considered by the Court, the petitioners' rights to occupy their substantive Class-IV posts should be placed beyond all cavil and vagaries of challenge in appeal or, in case of the writ petitioner of Writ-A No.51031 of 2015, the risk of an adverse event in fresh proceedings for inquiry permitted to the Management to pursue, on two of the charges against Nanku Ram. We must also remark that it would be open to the petitioners in Writ-A No.20351 of 2022 to implead the other employee appointed to the Class-IV post, who has been transferred to the Adarsh Inter College, where his father is the Manager as well as the Manager of the said College, with the introduction of such pleadings and further relief questioning the appointment of Janardan Singh and Brijesh Kumar Shukla, as advised.

60. In the totality of these circumstances, it would not be appropriate for this Court to decide Writ-A No.20351 of 2022 by this judgment, which must await the settlement of rights of parties, that is to say, Jai Prakash and Nanku Ram, pursuant to the orders that we make in Writ-A No.15765 of 2014 and Writ-A No.51031 of 2015.

61. In the result, Writ-A No.15765 of 2014 succeeds and is **allowed**. The impugned order dated 01.02.2014 passed by the Principal of the Institution is hereby **quashed.** A *mandamus* is issued to the DIOS, the Manager and the Principal of the Institution, to ensure amongst themselves the immediate reinstatement of the petitioner, Jai Prakash, in service as Class-IV employee with all consequential benefits of seniority and emoluments. The entire arrears of salary due to the petitioner for the period that he has remained out of service on account of the impugned order dated 01.02.2014, shall be paid to him within a period of three months of the date of receipt of a copy of this order by the respondents. The DIOS, in particular, shall ensure payment of arrears of salary to the petitioner. Current salary to the petitioner shall be paid forthwith.

62. Writ-A No.51031 of 2015 succeeds and is **allowed in part.** The impugned order dated 07.12.2013 passed by the Principal of the Institution and the order dated 19.07.2015 passed by the Committee of Management of the Institution are hereby **quashed.** The petitioner shall be reinstated in service as a Class-IV employee with the Institution forthwith, which shall be ensured amongst themselves by the DIOS, the Manager and the Principal, without any delay. He will be paid his current salary from the date of reinstatement. It will be open to the respondents to pursue fresh proceedings from the stage of the charge-sheet against the petitioner on Charges No.1 and 2 alone carried in the charge-sheet dated 04.05.2013, but not on the basis of Charges No.3 and 4, that figure there. The election to pursue fresh proceedings from the stage of charge-sheet is subject to the condition that such proceedings shall be taken, if elected to be pursued by the Principal of the Institution, strictly in the manner and by the procedure indicated in this judgment. The petitioner, Nanku Ram, shall be entitled to the arrears of his salary subject

to the event in fresh proceedings, if elected to be pursued by the Institution. In the event, no fresh proceedings are elected to be taken against Nanku Ram, he will be entitled to 50% of the arrears of his emoluments for the period that he has remained out of service on account of the orders impugned.

63. There shall be no order as to costs in both the writ petitions.

64. So far as Writ-A No.20351 of 2022 is concerned, the same shall be de-tagged and listed for hearing after three months before the appropriate Bench.

65. Let a copy of this order be communicated to the District Inspector of Schools, Prayagraj and the Manager and the Principal of the Vikramaditya Inter College, Sikandra, Prayagraj by the Registrar (Compliance).

(2025) 7 ILRA 100
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.07.2025

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

Writ B No. 4766 of 1984

Ajeet Singh ...Petitioner
Versus
D.D.C. ...Respondent

Counsel for the Petitioner:
Anurag Pathak, Randhir Singh, Shamim Ahmad

Counsel for the Respondent:
N.K. Rastogi, Sanjai Srivastava, Yamuna Pandey

Issue for Consideration

Whether the impugned orders have been passed by the Settlement Officer of Consolidation and the Deputy Director of Consolidation in illegal and arbitrary manner, as such the same cannot be sustained in the eye of law

Head Notes

The Constitution of India, 1950-Article 226 - The Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 9-A(2) & 11(1)- Petitioners impleaded in appeal and notices were issued but no claim was set up - Courts below properly considered the sale deed set up by the parties and recorded finding of fact - Sale deed set up by respondent No.4 has been properly proved -No interference under Article 226 of the Constitution of India - Petition dismissed.

Held- Petitioners were impleaded in Appeal No. 127 under Section 11(1) of the U.P.C.H. Act and notices were issued to the petitioners but no claim was set up on behalf of petitioners as such there was no option except to decide all the three appeals which were clubbed and decided together - That appellate court and revisional court have properly considered the sale deed set up by the parties and recorded finding of fact that sale deed set up by respondent No.4 is prior to the sale deed set up by petitioners and sale deed set up by respondent No.4 has been properly proved as such respondent no.4 was held to be recorded over 12/44 share of the plot in dispute which requires no interference - Original copy of sale deed dated 26.06.1968 has not been filed by petitioners before Consolidation authorities - Explanation given by petitioners for not filing the original copy of the sale deed dated 26.06.1968 cannot be accepted in the eye of law. **(Para 10, 11 & 12)** (E-15)

Case Law Cited

List of Acts

The Constitution of India, 1950 - The Uttar Pradesh Consolidation of Holdings Act, 1953

List of Keywords

Section 9-A(2) ; Section 11(1); Original copy of sale deed not filed ; sale deed set up by respondent properly proved;

Case Arising From

Revisions under Section 48 of the U.P.C.H. Act were filed before the Deputy Director of Consolidation which were dismissed vide order dated 19.2.1984

Appearances for Parties

Counsel for Petitioner :- Anurag Pathak, Randhir Singh, Shamim Ahmad Counsel for Respondent :- N.K. Rastogi, Sanjai Srivastava, Yamuna Pandey

Judgment/Order of the High Court

(Delivered by Hon'ble Chandra Kumar Rai, J.)

1. Heard Mr. R.C. Singh, learned Senior Counsel, assisted by Mr. Kamal Kumar Singh, learned Counsel for the petitioners; Mr. Vinod Kumar Upadhyay holding the brief of Mr. Sanjay Srivastava, learned counsel for respondent no. 4; and Mr. Ajai Kumar Baranwal, learned Standing Counsel for the State-respondents.

2. Brief facts of the case are that dispute relates to plots of khata no.54 situated in Village- Ahamadnagar alias Mohammadi, Tehsil-Suar, District - Rampur as mentioned in the order of the consolidation authorities. The names of Harmel Singh, Jageer Singh, sons of Santok Singh (respondent no. 7 & 8); Ajeet Singh, Kartar Singh, sons of Ajaib Singh (petitioners nos.2 and 3); Ajeet Singh, son of Sadho Singh (petitioner no.1), Bheem Singh, son of Ramnath Singh (respondent no.9) Bhagwandas, son of Jawaharlal (respondent no.5) were recorded over the aforementioned plots in the basic year of the consolidation operation. Against the basic year entry of the aforementioned plots, an objection under Section 9-A(2) of the U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the 'U.P.C.H. Act') was filed by Amar Singh and Jiwan Singh, sons of Saran Singh, on the basis of registered sale deed dated 26.06.1968 alleged to be executed in their favour in respect to 12 plots area 14-5-0 out of 19 plots area 26-19-0. Respondent no. 4/Surjeet Singh, son of Gunda Singh, also filed objection under Section 9-A(2) of the U.P.C.H. Act on the basis of a registered sale deed dated 6.3.1965, alleged to be executed in his favour in respect to 12/44 share of the total 19 plots area 26-19-0. The Consolidation Officer vide order dated 2.12.1981, dismissed the objection filed by respondent no. 4/Surjeet Singh and allowed the claim of Amar Singh and Jiwan Singh for recording of their names on the basis of the sale deed dated 26.6.1968. Against the order of the Consolidation Officer dated 2.12.1981, three appeals were filed under Section 11(1) of the U.P.C.H. Act before the Settlement Officer of Consolidation. Appeal No. 128 was filed by Surjeet Singh son of Indra Singh and Appeals No. 126 and 127 were filed by the respondent no.4. The Settlement Officer, Consolidation vide order dated 19.2.1982, allowed Appeals No. 126 and 127 filed by respondent no.4 and dismissed the appeal no.128 filed by Surjeet Son of Indra Singh modifying the order of the Consolidation Officer to the extent that name of respondent no.4/Surjeet Singh son of Gunda Singh shall be recorded as co-tenure holder to the extent of 12/44 share in Khata No.54 and remaining 32/44 share shall be recorded according to the order of the Consolidation Officer. Against the appellate order dated 19.2.1982, four revisions under Section 48 of the U.P.C.H. Act were filed before the Deputy Director of Consolidation, which were numbered as Revision Nos. 286, 287,

261, and 262 filed by Ajeet Singh/ Amar Singh. The aforementioned revisions were clubbed and heard together by the Assistant Director of Consolidation. All the abovementioned revisions were dismissed vide order dated 19.2.1984. Hence, this writ petition on behalf of the petitioners for following relief:-

"A: a writ, direction or order in the nature of certiorari quashing the impugned orders (Annexures 2 and 3) passed by opposite parties Nos.1 and 2.

B. a writ of mandamus commanding the opposite parties not to disturb the possession of petitioners over the plots in dispute.

C. Any other suitable writ, direction or order as this Hon'ble Court may deem fit and proper in the circumstances of the case.

D. Costs of the writ petition be awarded to the petitioners."

3. This Court entertained the matter on 28.3.1984 and stayed the dispossession of the petitioners.

4. In pursuance of the order dated 28.3.1984, parties have exchanged their pleading.

5. Learned Senior Counsel for the petitioners submitted that the impugned orders have been passed by the Settlement Officer of Consolidation and the Deputy Director of Consolidation in illegal and arbitrary manner, as such the same cannot be sustained in the eye of law. He further submitted that no notice or opportunity of hearing was afforded to the petitioners by Settlement Officer of Consolidation before passing the impugned appellate order as such revisions were filed before Deputy Director of Consolidation by petitioners but revisions have been dismissed on misconceived grounds. He submitted that sale deed set up by private respondents cannot be relied upon in view of the sale deed set up by the petitioners. He submitted that copy of the original sale deed executed in favour of petitioners was handed over to the counsel for the petitioners in revision under Section 48 of U.P.C.H. Act but the same was not filed in revision as such petitioners should not suffer for the fault of the counsel. He submitted that true copy of sale deed executed in favour of petitioners is annexed along with the writ petition as Annexure No.4 to the writ petition and original copy of the sale deed dated 25.06.1968 is in possession of the petitioners. He submitted that matter should be sent back before consolidation authorities for fresh adjudication of dispute and petitioners will produce the original copy of sale deed before the Consolidation authorities in accordance with law.

6. On the other hand, learned counsel for respondent no. 4 submitted that Gurnam Singh and Resham Singh, having 12/44 share in the property sold the entire land to respondent no. 4 by sale deed executed on 5.3.1965 which was registered on 3.4.1965. He further submitted that same land was again sold to the petitioners in illegal manner as such petitioners could not be given any right and title on the basis of sale deed alleged to be executed on 25.06.1968. He further submitted that respondent No.4 and after his death his legal heirs are in physical possession of the land in dispute. He submitted that appellate jurisdiction under Section 11 (1) of U.P.C.H. Act was properly exercised by Settlement officer of Consolidation granting 12/44 share to respondent No.4 on the basis of sale deed executed on

5.3.1965/3.4.1965. He further submitted that in appeal petitioners were impleaded and noticed but petitioners have not set up their case along with sale deed as such there is no illegality in exercise of appellate jurisdiction which has been maintained in revision. He submitted that petitioners have not filed the original sale deed alleged to be executed in their favour before the Consolidation authorities as such the claim set up by the petitioners cannot be allowed in any manner. He submitted that explanation given for not filing the original copy of alleged sale deed cannot be accepted as such writ petition filed by petitioners cannot be entertained. He placed reliance upon the following judgment in support of his arguments:-

"1. 2019 (143) Rev Dec 215 Gausul Azam Vs. State of U.P. thru Secretary Revenue LKO & Ors.

2. 2024 0 AIR (SC)238 Kanwar Raj Singh (D) through LRs vs. Gejo (D) through LRs. and others

3. 2024 (12) ADJ 298 Jamia Urdu Aligar (Regd) vs. Jamil Urdu Sanstha and others

4. 2000 (1) ARC 112 Saudul Azeez vs. District Judge, Gorakhpur

5. (2025) 3 Supreme Court Cases 266 Ajay Singh vs. Khacheru and others

6. 2016 (130) RD 730 Rakesh Mohindra vs. Anita Beri and others"

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 title objection filed by respondent No.4 as well as Amar Singh & Jiwan Singh were decided by Consolidation Officer rejecting the claim of respondent No.4 but in appeal the claim of respondent No.4 was allowed for recording of his name on the basis of sale deed executed on 06.03.1965. There is also no dispute about the fact that revision filed by petitioners were dismissed.

9. In order to appreciate the controversy involved in the matter and reason assigned under the impugned revisional order the perusal of the finding of fact recorded under the impugned revisional order will be relevant which is as under:

न्यायालय श्री जनकसिंह पुण्डीर, सहायक संचालक चकबन्दी, गाजियाबाद।

कैम्प - रामपुर

निगरानी संख्या 286 अजीत सिंह आदि बनाम सरजीत सिंह आदि

निगरानी संख्या 287 अजीत सिंह आदि बनाम सरजीत सिंह आदि

निगरानी संख्या 261 अमर सिंह आदि बनाम सुरजीत सिंह आदि

निगरानी संख्या 262 अमर सिंह आदि बनाम सुरजीत सिंह आदि

ग्राम- अहमदनगर उर्फ मडियान गोमदी

परगना - स्वार

धारा 48 जोत चकबन्दी अधिनियम

निर्णय

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…….

तीनों पक्षों के विद्वान अधिवक्तागण की बहस और पत्रावलियों के अवलोकन से मैंने पाया कि अपील नम्बर 126 व 127 का तथा अपील नम्बर 128 का तीनों का निस्तारण संहित आदेश दिनाँक 19-02-82

द्वारा किया गया था। अपील नम्बर 127 में अजीत सिंह आदि फरीक थे और अजीत सिंह पुत्र साधों सिंह को नोटिस दस्ती तामील था। अजीत सिंह आदि की ओर से विद्वान चकबन्दी अधिकारी के यहाँ भी विशेष रूप से पैरवी नहीं की गयी उसकी ओर से बहस में यह तो बताया गया कि उन्होंने भी दिनांक 25-6-68 ई० को बैनामा खरीदा था किन्तु कोई बैनामा आदि दाखिल नहीं किया। उसका यह कहना विशेष महत्व नहीं रखता कि उसको साक्ष्य दाखिल करने का अवसर नहीं मिला। यदि वास्तव में कोई बैनामा था तो उसे निगरानी पत्रावली में दाखिल कर देना चाहिए था किन्तु उसके द्वारा ऐसा भी नहीं किया गया इसके अलावा 25-6-68 को जिन व्यक्तियों के अधिकार भूमि में शेष रह गये हों उन्होंने अधिकार बेचा जा सकता है तथा खरीदा जा सकता है तथा खरीददारान को उसी हद तक अधिकार प्राप्त हो सकते हैं। बाद के बैनामे के मुकाबले में पहले किया हुआ बैनामा प्रभावी होगा। यदि पहले किया हुआ बैनाम सिद्ध कर दिया जाता है तो बाद में किये हुए बैनामे का प्रभाव नहीं रह जायेगा। श्री सरदार सिंह ने दि० 6-8-60 ई० को रजिस्ट्री शुदा बैनामा गुरमीत सिंह आदि के नाम मुकदमा नम्बर 180 निर्मित दिनाँक 18-7-61 द्वारा तहसील से नाम दर्ज हो गया। उक्त पत्रावली को भी तलब किया गया है जिससे स्पष्ट होता है कि आधार वर्ष में खाता नम्बर 54 में वर्ष 19 गाटे रकबा 26-19-0 सरदार सिंह पुत्र जयलाल सिंह के नाम दर्ज थे और तहसीलदार के आदेश दिनाँक 22-6-60 द्वारा खाता भूमिधरी में दर्ज हुआ तथा गुरमीत सिंह आदि ने बैनामा के आधार पर दिनाँक 22-11-60 ई० को नाम दर्ज करने की बावत वाद प्रस्तुत किया था उसका इस्तहार दिनांक 7-12-60 को जारी हुआ। उसमें नम्बर 216 रकबा 3-1-0 लिखा गया था। उस पत्रावली में लेखपाल के हस्तान्तरण रिपोर्ट दिनाँक 20-4-61 की लगायी है उसमें भी नम्बर 216 ब 3-1-0 दर्ज है और उसमें हस्तानान्तरण तिथि 30-6-60 लिखी है। नकल दस्तावेज नविस्ता सरदार सिंह बाहक गुरमीत सिंह आदि रजिस्ट्री दिनांक 30-06-60 ई० से भी स्पष्ट होता है कि यही 19 नम्बर रकबा 26-19-0 का बैनामा हुआ था। दोनों ही पक्षों को गुरमीत सिंह आदि द्वारा खरीदे गये बैनामे के आधार पर भूमि पर अधिकार प्राप्त होता है इसलिए दोनों ही फरीक सरदार सिंह द्वारा किये गये बैनामे को वास्तव में मानते हैं। इस बैनामें में चैन सिंह व अजमेर सिंह व हरनेक सिंह व जागरी सिंह व बलवीर सिंह का 6/44 व 6/44 भाग दिखाया गया है इसमें गुरमीत सिंह आदि का 8/44 भाग दिखाया है तथा निरन्जन सिंह व गुरूदेव सिंह व वीर सिंह का 19/32/44 भाग लिखाया है। यह हिस्से वास्तव में एक से अधिक हो जाते हैं किन्तु इसमें त्रुटि नाहर सिंह आदि के हिस्से में है जो 19/32/44 लिखा है में ही प्रतीत होती है

क्योंकि इसका नाम व हिस्सा तब से वाद में लिखा है और ऊपर लिखे नाम व हिस्से के बाद केवल 9/44 भाग बचता था जिसको 19/32/44 लिखा गया है। ऐसी दशा में चैन सिंह व अजमेर सिंह व हरनेक सिंह व जागीर सिंह व बलवीर सिंह का पांचों का 12/44 भाग लिया जाने में कोई त्रुटि नहीं थी। दिनांक 30-6-60 को 13 व्यक्तियों ने बैनामा खरीदा था यदि बैनामा में हिस्से का विवरण नहीं दिया गया होता तो चैन सिंह आदि 5 व्यक्तियों का हिस्सा 5/13 होता जबकि उसमें 12/44 भाग बेचा है और इस प्रकार से 64/572 बेचा गया है जिसका नतीजा यह निकाला जा सकता है कि हिस्सा 6/44 कुल 12/44 लिखा जाना सही इन्द्राज था। बैनाम दिनाँक 19.02.1963 तथा 6-03-65 ई० को कातिव देवकीनन्दन अग्रवाल द्वारा बैनामा साबित कराया गया था तथा बैनामा दिनाँक 6-3-65 ई० गवाह हासिया पुरन सिंह द्वारा साबित कराया गया है। सुरजीत सिंह खुद ने बयान किया है तथा चौथा गवाह मोहर सिंह को पेश किया गया है इस प्रकार से गवाहान के व्यानात से बैनामा साबित हो गये हैं और इस प्रकार से सुरजीत सिंह को दिनाँक 06-03-65 ई के आधार पर कुल खाते के 12/44 भाग पर अधिकार प्राप्त हो गये। खाते के 12 नम्बरान जिनका कि बैनामा दिनाँक 26-6-68 ई० को अमर सिंह व जीवन सिंह ने खरीदा उसमें चैनसिंह आदि का हक नहीं रह गया था इसलिए शेष 32/44 पर ही अमर सिंह व जीवन सिंह आदि को हक प्राप्त हुए। श्री अजीत सिंह आदि द्वारा बहस के समय अमर सिंह व जीवन सिंह के विरूद्ध कुछ नहीं कहा गया जबकि अमर सिंह व जीवन सिंह के हक में 26-6-68 ई० को बैनामा हुआ और अजीत सिंह आदि निगरानी कर्तागण की निगरानी 286 व 287 की ओर से पहले बैनामा दिनाँक 25-6-68 ई का होना बताया है। इस प्रकार से अजीत सिंह आदि की ओर से प्रस्तुत निगरानी आधारहीन है और अमर सिंह आदि की ओर से प्रस्तुत निगरानी भी आधारहीन है। विद्वान बन्दोबस्त अधिकारी चकबन्दी द्वारा पारित आदेश मेरे विचार से सही हैं और उसमें किसी प्रकार के परिवर्तन की आवश्यकता नहीं है।

आदेश

उपरोक्त विवेचना के अनुसार चारों निगरानियाँ खारिज की जाती हैं। यही आदेश निगरानी संख्या 287, 261, 262 पर भी मान्य होगा। पत्रावलियाँ वाद अमल दरामद दाखिल दफ्तर की जावें।

जनक सिंह पुण्डीर
सहायक संचालक चकबन्दी,
गाजियाबाद

दिनाँक 9-2-1984 ई०
कैम्प- रामपुर।

10. Perusal of the impugned revisional order as quoted above fully demonstrate that petitioners were impleaded in Appeal No. 127 under Section 11(1) of the U.P.C.H. Act and notices were issued to the petitioners but no claim

was set up on behalf of petitioners as such there was no option except to decide all the three appeals which were clubbed and decided together.

11. The perusal of impugned revisional order further demonstrate that appellate court and revisional court have properly considered the sale deed set up by the parties and recorded finding of fact that sale deed set up by respondent No.4 is prior to the sale deed set up by petitioners and sale deed set up by respondent No.4 has been properly proved as such respondent no.4 was held to be recorded over 12/44 share of the plot in dispute which requires no interference under Article 226 of the Constitution of India.

12. It is also material to mention that original copy of sale deed dated 26.06.1968 has not been filed by petitioners before Consolidation authorities as such adverse inference was drawn by Consolidation authorities. The explanation given by petitioners for not filing the original copy of the sale deed dated 26.06.1968 cannot be accepted in the eye of law and litigation cannot be sent back before consolidation authorities for further adjudication of dispute so that litigation may go on for another 50 years.

13. Considering the entire facts and circumstances of the case, no case for interference is made out against the impugned orders passed by Consolidation authorities in the title proceeding.

14. The writ petition is dismissed.

15. No order as to costs.

(2025) 7 ILRA 106
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 14.07.2025

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.

THE HON'BLE PRAVEEN KUMAR GIRI, J.

Writ C No. 38881 of 2019

Anubhav Jain ...Petitioner
Versus
Union of India & Anr. ...Respondents

Counsel for the Petitioner:
Mohammad Waseem

Counsel for the Respondents:
A.S.G.I., Prabhakar Tripathi

Issue for consideration

Pertains to rejection of issuance of passport; legality of impugned order dated 12.06.2019 passed by the respondent no.2.

Headnotes

Passport authority cannot refuse the renewal of the passport- on the ground of pendency of the criminal appeal-pending criminal case pertains to disputes of private or matrimonial in nature-cannot refuse the renewal of the passport on the ground of pendency of the criminal appeal-passport authority has acted beyond the law laid down by the Hon'ble Supreme Court-**W.P. disposed.** (E-9)

Case Law Cited

1. Vangala Kasturi Rangacharyulu Versus Central Bureau of Investigation, 2021 SCC OnLine SC 3549

2. Basoo Yadav Versus Union of India, 2022 SCC OnLine All 849

List of Acts

Nil

List of Keywords

Refuse the renewal of the passport; pendency of the criminal appeal

Appearance of the parties

Counsel for Petitioner :- Mohammad Waseem

Counsel for Respondent :- A.S.G.I.,Prabhakar Tripathi

(Delivered by Hon'ble Shekhar B. Saraf, J.
&
Hon'ble Praveen Kumar Giri, J.)

1. Heard Sri Hasan parvej, learned counsel for the petitioner and Sri Prabhakar Tripathi, learned counsel appearing for Union of India.

2. The matter is being heard after exchange of affidavits.

3. The present writ petition under Article 226 of the Constitution of India has been filed by the petitioner seeking the following reliefs:

"I. Issue a writ, order or direction in the nature of certiorari to quash the impugned order dated 12.06.2019 passed by the respondent no.2 (Annexure No. 6 to the writ petition)

II. Issue a writ, order or direction in the nature of mandamus commanding and directing the respondent no. 2 to renew the Passport No. H4969575 of the petitioner which has been expired on 06.08.2019 for which the petitioner submitted online application for renewal of Passport No. H4969575 dated 16.04.2019 before the respondent no. 2."

4. Upon perusal of the documents, it appears that by an order dated 12.06.2019, the grant of passport to the petitioner has been rejected. The relevant portion of the order is provided below:

"Sir,

Please refer to your letter dated 02.06.2019 regarding clarification given by you for issuance of passport wherein you have stated that case pending against you has been stayed by Hon'able High Court.

In this regard it is informed that as per section 6(2)(1) of the passport Act, 1967 "The Passport issuing authority shall refuse to issue a passport or travel documents for visiting any foreign country if the proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India.

As far as your case is concerned, the court proceedings as you stated have been stayed by Hon'able High Court, however stay order does not mean that the proceedings have been quashed/suspended or withdrawn. Hence the criminal proceedings are still pending against you and therefore Section 6(2) (1) is applicable in your case.

In view of the aforesaid rules your application for reissue of your Passport could not be agreed to until the case is disposed or Hon'able court gives you permission to travel abroad/grant of Passport."

5. The criminal proceeding such as Case No. 1686 of 2018, State Versus Anubhav Jain and others, arising out of Case Crime No. 0116 of 2017, under sections 498-A, 323, 406 I.P.C. and 3/4 D.P. Act, Police Station Mahila Thana, District Bareilly, has been stayed by this Hon'ble High Court vide order dated 21.08.2018 passed in Application U/S 482 No. 17705 of 2018. After perusal of section 198-A Cr.P.C. such disputes are of private or matrimonial in nature.

6. One may place reliance on the judgment passed by the Supreme Court in

Vangala Kasturi Rangacharyulu Versus Central Bureau of Investigation, 2021 SCC OnLine SC 3549, wherein, Hon'ble Supreme Court held that the passport authority cannot refuse the renewal of the passport on the ground of pendency of the criminal appeal. For ready reference, the operative portion of the order is reproduced herein below.

"The refusal of a passport can be only in case where an applicant is convicted during the period of 5 years immediately proceeding the date of application for an offence involving moral turpitude and sentence for imprisonment for not less than two years.

Section 6.2 (f) relates to a situation where the applicant is facing trial in a criminal court.

Admittedly, at present, the conviction of the appellant stands still the disposal of the criminal appeal. The sentence which he has to undergo is for a period of one year. The passport authority cannot refuse the renewal of the passport on the ground of pendency of the criminal appeal.

The passport authority is directed to renew the passport of the applicant without raising the objection relating to the pendency of the criminal appeal in this Court. Subject to the other conditions being fulfilled, the Interlocutory Application stands disposed of."

7. One may further also look into the judgment of Allahabad High Court in **Basoo Yadav Versus Union of India, 2022 SCC OnLine All 849**, wherein, the issue has been squarely covered. The relevant portion of the judgment is provided below:

"Having heard learned counsel for the petitioner and learned Standing Counsel and after having gone through the instructions which have been sent by the Director General of Police, the Court is definitely of the view that no non-cognizable report which was registered could be taken into cognizance if no investigation was ordered by the concerned Magistrate. Even though in the instant case, whether the passport can be refused on the basis of the pendency of the criminal case is not the question involved, we are of the view that even during the pendency of any criminal case, passport could be issued/renewed as per the Government Order dated 25.8.1993 if the Court passes orders for that purpose. In the instant case, we do find that the application of the petitioner was rejected on the basis of the two reports of non-cognizable cases namely NCR No.111/2012 and NCR No.114/2018. The Director General of Police has also given his view that the reports with regard to the non-cognizable cases could not be made the basis for rejecting an application for issuance of passport if they had not been investigated into.

Under such circumstances, we issue the following directions :-

(1) The passport form of the petitioner for the issuance of a passport be considered within a period of two weeks from the date of presentation of a certified copy of this order before the respondent no.2-Regional Passport Officer, Regional Passport Office, Vipin Khand, Gomti Nagar, Lucknow;

(2) Since we are finding that in quite a few cases the reports of non-cognizable cases in which the concerned Magistrate had not even ordered for investigation were being taken into account for rejection of passport, we issue a direction to the Director General of Police to instruct his officers to give a report with regard to the pendency of reports in non-

cognizable cases after appropriate and proper application of mind;

(3) Outright the passport applications be not rejected under section 6(2)(f) of the Passports Act if orders of the Court, where the criminal case is pending, have been passed as per the Government Order dated 25.8.1993. The Director General of Police to issue notification in this regard also.

With these observations, the writ petition is, accordingly, allowed."

8. In light of the above judgments, we have no hesitation in holding that in the present case, the passport authority has acted beyond the law laid down by the Hon?ble Supreme Court.

9. Accordingly, the writ petition is **disposed of** directing the respondent no. 2, Regional Passport Officer, to act in accordance with law and issue a fresh passport to the petitioner, if all other conditions are met, within a period of four weeks from the date of receipt of certified copy of this order.

(2025) 7 ILRA 109
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 21.07.2025

BEFORE

THE HON'BLE ARUN BHANSALI, C.J.
THE HON'BLE JASPREET SINGH, J.

Matters Under Article 227 No. 5685 of 2024

Surendra Kumar ...Petitioner
Versus
Shanti Devi ...Respondent

Counsel for the Petitioner:
Diwakar Pratap Pandey, Uday Kumar

Counsel for the Respondent:
Anand Kumar Singh, C.S.C.

Issue for Consideration

Whether an agreement to sell can be construed as an instrument securing money or other property so as to attract the provisions of Section 7(iv-A) of the Court Fees Act, 1870 as amended and applicable in the State of U.P., is in for consideration before this Court and if it is held that an agreement to sell is not an instrument securing money or other property then as a corollary whether in a suit for seeking cancellation of such an agreement to sell, the court fee payable would be in terms of Article 17(iii) of the Second Schedule of the Court Fees Act or as per or Section 7(iv-A) of the Court Fees Act.

Head Notes

The Constitution of India, 1950-Article 227 - The Court Fees Act, 1870 - Section 7(iv-A) & Article 17(iii) of the Second Schedule - It cannot be said that an agreement to sell does not secure either the money or property for the purposes of the Court Fees Act - An agreement to sell may not be an instrument by which a right in the property is created nor extinguishes it (as per T.P. Act), but at the same time, it is an instrument which does bring security and certainty and it does create obligations which are enforceable in law based upon which a party can seek an appropriate relief in a Court of law - Reference answered.

Held- An 'agreement to sell' will fall within the meaning of the word 'instrument' 'securing money or other property' having such value for the purposes of Section 7(iv-A) of the Court Fees Act - If a suit falls within Section 7(iv-A) of the Court Fees Act, consequently, the court fees payable would be on ad valorem basis taking note of the explanation appended to Section 7(iv-A) of the Court Fees Act. The moment a suit involves cancellation of either an instrument or a decree as the case may be and it is referable to Section 7(iv-A) of the Court Fees Act then the fee would necessarily be paid on ad valorem basis and that would ipso facto exclude the applicability of Article 17(iii) of the

Court Fees Act - Suit seeking cancellation of an agreement to sell would be governed by Section 7(iv-A) of the Court Fees Act and the court fees payable would be in terms of Section 7(v) as provided in the explanation to Section 7(iv-A) of the Court Fees Act and not under Article 17(iii) of the Second Scheduled.(**Para 79, 81 & 82)** (E-15)

Case Law Cited

Suman Lata Agrawal v. Uttar Pradesh State Industrial Development Corporation and others, 2020 SCC OnLine All 2785;Altaf Husain v. VIth Additional District Judge, Saharanpur and others, 2013 SCC OnLine All 13493;Purshottam H. Jaye v. V.B. Pottdar, AIR 1966 SC 856;Som Prakash Rekhi v. Union of India, AIR 1981 SC 212;Gopi Krishna Trivedi v. Sudama Prasad Ojha, (2008) 9 SCC 401;Udai Pratap Gir and another v. Shanta Devi and others, 1956 SCC OnLine All 318;Smt. Bishnu Shri v. Smt. Suraj Mukhi and others, AIR 1966 All 563 (FB);Chief Inspector of Stamps, Uttar Pradesh, Allahabad v. Vishnu Pratap Sugar Works, AIR 1967 All 242;Smt. Bibbi and another v. Sugan Chand and others, AIR 1968 All 216 [FB]

List of Acts

The Constitution of India, 1950 - The Court Fees Act, 1870

List of Keywords

Agreement to sell 'instrument' 'securing money or other property'; Section 7(iv-A) of the Court Fees Act; Suit seeking cancellation of agreement to sell; Court fees payable under Section 7(v) ; Not under Article 17(iii) of the Second Schedule

Case Arising From

Article 227 of the Constitution of India bearing No.5685 of 2024, the learned Single Judge referred two questions to be answered by a Larger Bench

Appearances for Parties

Counsel for Petitioner :- Diwakar Pratap Pandey, Uday Kumar

Counsel for Respondent :- Anand Kumar Singh, C.S.C.

Judgment/Order of the High Court

(Delivered by Hon'ble Jaspreet Singh, J.)

This judgment has been divided into segments to facilitate analysis. These are:-

A.	Introduction and Issues	1-3
B.	Submission on Behalf of the Petitioner	4-5
C.	Submissions on Behalf of the Respondents and State of U.P.	5-6
D.	Submissions on Behalf of the Members of the Bar.	6-8
E.	Discussions and Analysis	8-39
E-I	Answer to Question No.1	40
E-II	Answer to Question No.2	40-41
F.	Conclusion	41

A. Introduction and Issues:-

1. A question of seminal importance as to whether an agreement to sell can be construed as an instrument securing money or other property so as to attract the provisions of Section 7(iv-A) of the Court Fees Act, 1870 (for short, 'the Court Fees Act') as amended and applicable in the

State of U.P., is in for consideration before this Court. If it is held that an agreement to sell is not an instrument securing money or other property then as a corollary whether in a suit for seeking cancellation of such an agreement to sell, the court fee payable would be in terms of Article 17(iii) of the Second Schedule of the Court Fees Act or as per or Section 7(iv-A) of the Court Fees Act.

2. This issue arose before a learned Single Judge of this Court in **Surendra Kumar v. Shanti Devi,** a petition under Article 227 of the Constitution of India bearing No.5685 of 2024, wherein, the learned Single Judge doubted the view of another Single Judge of this Court in **Altaf Husain v. VIth Additional District Judge, Saharanpur and others, 2013 SCC OnLine All 13493 and also in Suman Lata Agrawal v. Uttar Pradesh State Industrial Development Corporation and others, 2020 SCC OnLine All 2785,** wherein it was held that an agreement to sell does not secure money nor any other property and that the court fee payable in a suit seeking cancellation of such an instrument would be governed by Article 17(iii) of the Court Fees Act and not as per Section 7(iv-A) of the Court Fees Act.

3. The learned Single Judge in **Surendra Kumar** (supra) noticed that the decision in **Altaf Husain** (supra) was based on a Full Bench decision of this Court in **Smt. Bibbi and another v. Sugan Chand and others, AIR 1968 All 216 [FB],** but in **Smt. Bibbi** (supra) the issue was as to whether a sale-deed would be an instrument securing property or not, however, the Full Bench had no occasion to consider the effect of the words 'instrument securing money or other property' in context with an agreement to sell. Thus, finding a dichotomy in the aforesaid decisions, the learned Single Judge referred two questions to be answered by a Larger Bench.

4. It is in this backdrop that this Larger Bench was constituted to consider and answer the following questions which read as under:-

"(I) Whether, an agreement to sale, which is duly registered, would amount to an instrument securing the money or other property as used in Section 7 (iv-a) of the Court Fees Act as applicable in the State of Uttar Pradesh?

(II) Whether, the court fees paid on the suit for cancellation of an agreement to sale would be governed by Section 7 (v) of the Court Fees Act or under Article 17 (iii) of the Second Schedule of the Court Fees Act?"

5. Considering the gravity of the questions so referred to this Larger Bench, this Court apart from hearing the learned counsel appearing for the parties in the petition also invited Members of the Bar to advance their submissions on the questions referred to this Larger Bench.

6. Learned counsel for the petitioner canvassed the proposition that an agreement to sell does not secure any property or money, hence, a suit seeking cancellation of an agreement to sell would not fall within the clutches of Section 7(iv-A) of the Court Fees Act rather it would be covered by Section 17(iii) of the Second Schedule appended to the Court Fees Act as applicable to the State of U.P.

7. The said proposition was also supported by Shri Pritish Kumar, Shri

S.M.S. Royekwar, Shri Ayush Tandon and Shri Reshu Sharma, Advocates and learned counsel, who advanced their submissions on behalf of the Bar.

8. On the other hand, Shri Anand Singh, learned standing counsel for the State and learned counsel appearing for the private-respondent submitted that an agreement to sell is definitely an instrument and it secures the property and/or money, hence, it will squarely fall within the ambit of Section 7(iv-A) of the Court Fees Act and further the court fee payable on a suit seeking cancellation of such an agreement to sell would be on *ad valorem* basis.

B. Submissions on Behalf of the Petitioner:-

9. Learned counsel for the petitioner submits that the word 'instrument' has not been defined in the Court Fees Act but if it is seen in context with the definition contained in certain other Acts then it will reveal that an agreement to sell is definitely an instrument as defined in terms of Transfer of Property Act, 1882 (for short, 'T.P. Act'). It has also been urged that the word 'instrument' has also been defined in the Indian Stamp Act, 1899 (for short, 'the Stamp Act'). Upon a bare perusal of the definition of the word 'instrument', as mentioned in the T.P. Act as well as in the Stamp Act it would reveal that it is very widely worded and so an agreement to sell would fall within the same and it cannot be said that an agreement to sell is not an instrument.

10. It is further urged that the transaction which is made through an agreement to sell creates obligations in between the contracting parties and it also brings certainty to the said transaction. The reciprocal obligations of contracting party are squarely relatable to the subject matter which could be the property and money, hence, an agreement to sell secures both the property and the money (as the case may be). Once, it is found that an agreement to sell is an instrument and it secures the property/money then as per the Scheme of the Court Fees Act, the suit filed seeking cancellation of such an agreement to sell would be squarely covered by Section 7(iv-A) of the Court Fees Act. It is, thus, submitted a suit seeking cancellation of agreement to sell falls under Section 7(iv-A) of the Court Fees Act and in terms of the aforesaid, the court fee payable is ad valorem considering the explanation appended to Section 7(iv-A) of the Court Fees Act, at the market value, and not as per Article 17(iii) of the Second Schedule of the Court Fees Act.

C. Submissions on Behalf of the Respondents and State of U.P.:-

11. Shri Anand Singh, learned standing counsel has forcefully submitted that in order to unravel the controversy, the provisions of Section 7(iv-A) of the Court Fees Act be noticed. It is urged that the said Section applies whenever a suit is filed for seeking a relief of cancellation. In terms of the said Section, cancellation can either be of (i) a decree for money or other property having a market value or (ii) an instrument securing money or other property.

12. It is urged that the agreement to sell would fall within the meaning of word 'instrument' and whenever a suit is filed for seeking cancellation of an instrument then in terms of the Scheme of the Court Fees Act, such a suit would fall in terms of Section 7(iv-A) of the Court Fees Act, hence, the plaintiff of a suit seeking of

cancellation would have to pay *ad valorem* court fee as per the explanation appended to the aforesaid section and not as per Article 17 of the Second Schedule of the Court Fees Act.

13. It is further urged that Article 17 of the Second Schedule of the Court Fees Act is a residuary article and only when a suit containing a relief which may not fall in any of the categories as provided under Section 7 of the Court Fees Act, only then it comes into play. However, in the present case, the agreement to sell being an instrument and falling squarely in terms of Section 7(iv-A) of the Court Fees Act, hence, the residuary Article cannot be invoked, accordingly, the court fees is to be paid in terms of the aforesaid Section 7(iv-A) of the Court Fees Act.

14. Learned counsel for the private-respondent has also by and large adopted the submissions of Shri Anand Singh, learned standing counsel for the State.

D. Submissions on Behalf of the Members of the Bar:-

15. The submissions have been advanced by Shri Pritish Kumar, Shri S.M.S. Royekwar, Shri Ayush Tandon and Shri Reshu Sharma, learned counsel and Members of the Bar.

16. Shri Pritish Kumar, learned counsel leading the submissions has vehemently urged that the Court Fees Act is a fiscal statute and it is to be strictly construed. The Scheme of the Court Fees Act is such that Section 7 itself has various sub-sections and they relate to different types of suits which can be filed before the Civil Court.

17. It is further submitted that it is only the plaint averments which are to be seen while determining the issue of court fees and in order to do so, the plaint averments have to be read as it is and nothing can be added or subtracted.

18. It is also urged that the terminology used in Section 7(iv-A) of the Court Fees Act reveals that it is attracted when a person approaches a Court for seeking cancellation or getting a decree or instrument adjudged void or voidable which secures money or property, having a market value. As far as a decree is concerned, there does not appear to be much of a problem because the decree being a formal adjudication of the rights of the parties it can explicitly be seen from the judgment from which the decree arises as to whether the said decree secures a property or money or not. In such circumstances, whenever, a suit for cancellation or getting such a decree adjudged as void or voidable is brought then Section 7(iv-A) of the Court Fees Act would clearly be attracted.

19. It is further urged that insofar as the latter part of said Section is concerned, the same is only applicable when a suit is filed seeking cancellation or getting an instrument adjudged void or voidable, however, the instrument itself should be capable of securing either the property or money, or both.

20. It is submitted that since an agreement to sell may not secure the property in light of Section 54 of the T.P. Act which states that a contract for sale of an immovable property does not by itself create any interest in or charge on such property, hence, an agreement to sell does not secure the property nor money coupled with the fact that an agreement to sell is not even an instrument which secures money,

hence, the said Section 7(iv-A) of the Court Fees Act is not attracted and as such a suit, which seeks to get an agreement to sell cancelled, would not fall under Section 7(iv-A) of the Court Fees Act rather it will fall within the residuary provision of Article 17(iii) of the Court Fees Act for the purposes of payment of Court Fee.

21. Shri Royekwar, learned counsel taking the submissions forward has urged that an instrument capable of securing money or property is one which by itself secures the said money or property. Instruments of such nature are *interalia* a promissory note, mortgage deed, bill of lading, cheques, negotiable instruments, a deed of hypothecation, a deed of charge, a deed of pledge. In contradistinction an agreement to sell only reflects the intention of the vendor to sell and acceptance of the vendee to purchase the property, on the terms and conditions as may be mentioned in the said agreement to sell. However, in no way, the property which may be the subject matter of the said agreement to sell is secured in any manner nor the money which may have been paid as earnest money or the remaining part consideration which may be paid at a future date is secured. Hence, neither the property nor the money is secured. Accordingly, an agreement to sell cannot be said to be an instrument securing either property or money. Hence, it would not attract Section 7(iv-A) of the Court Fees Act rather in a suit seeking cancellation of an agreement to sell it would be governed by Article 17(iii) of the Court Fees Act and to that extent the decision rendered by this Court in **Altaf Husain** (supra) reflects the correct position of law.

22. Shri Ayush Tandon and Shri Reshu Sharma, learned counsel also advanced their submissions and by and large supported the view as expressed by Shri Pritish Kumar and Shri Royekwar.

E. <u>Discussions and Analysis:-</u>

23. Having considered the wide spectrum of the arguments advanced and before proceeding further, it will be appropriate to reproduce the first question referred to this Larger Bench for consideration:-

"(I) Whether, an agreement to sale, which is duly registered, would amount to an instrument securing the money or other property as used in Section 7 (iv-a) of the Court Fees Act as applicable in the State of Uttar Pradesh?"

24. At the outset, it may be seen that the Court Fees Act, 1870 is a Pre-Independence Act. The said Act came to be amended in the year 1938. Section 7 of the Court Fees Act, which is under the scanner of this Court, has a nomenclature and it is further sub-divided in eleven sub-parts.

25. For the sake of convenience, the entire Section 7 as applicable to the State of U.P., along with its eleven sub-parts is reproduced here in order to get a complete overview of the said section, at one given place:-

"7. Computation of fees payable in certain suits for money.—The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:

For money.—(i) In suits for money including suits for damages or compensation, or arrears of maintenance, or annuities, or of other sums payable

periodically-according to the amount claimed;

***For maintenance and annuities.*—(ii) (a)** In suits for maintenance and annuities or other sums payable periodically, according to the value of the subject matter of the suit and such value shall be deemed to be ten times the amount claimed to be payable for one year:

Provided that in suits for personal maintenance by females and minors, such value shall be deemed to be the amount claimed to be payable for one year.

***For reduction or enhancement of maintenance and annuities.*—(b)** In suits for reduction or enhancement of maintenance and annuities or other sums payable periodically according to the value of the subject-matter of the suit and such value shall be deemed to be ten times the amount sought to be reduced or enhanced for one year;

***For other movable property having a market value.*—(iii)** In suits for movable property other than money, where the subject-matter has a market value-according to such value at the date of presenting the plaint;

***For a declaratory decree with consequential relief.*—(iv)** In suits-

(a) to obtain a declaratory decree or order, where consequential relief other than reliefs specified in sub-section (iv-A) is prayed; and

***For accounts.*-(b)** For accounts-according to the amount at which the relief sought is valued in the plaint or memorandum of appeal:

Provided that in suits falling under clause (a), where the relief sought is with reference to any immovable property, such amount shall be the value of the consequential relief and if such relief is incapable of valuation, then the value of the immovable property computed in accordance with sub-section (v), (v-A) or (v-B) of this section as the case may be :

Provided further that in all suits falling under clause (a), such amount shall in on case be less than Rs. 300:

Provided also, that in suits falling under clause (b), such amount shall be the approximate sum due to the plaintiff and the said sum shall form the basis for calculating or determining the valuation of an appeal from a preliminary decree passed in the suit.

(iv-A) ***For cancellation or adjudging void instruments and decree.*—(iv-A)** In suits for or involving cancellation of or adjudging void or voidable a decree for money or other property having a market value, or an instrument securing money or other property having such value:

(1) where the plaintiff or his predecessor-in-title was a party to the decree or the instrument, according to the value of the subject-matter, and

(2) where he or his predecessor-in-title was not a party to the decree or instrument, according to one-fifth of the value of the subject-matter, and such value shall be deemed to be-

if the whole decree or instrument is involved in the suit, the amount for which or value of the property in respect of which the decree was passed or the

instrument executed and if only a party of the decree or instrument is involved in the suit, the amount or value of the property to which such part relates.

Explanation.—The value of the property for the purposes of this sub-section shall be the market-value, which in the case of immovable property shall be deemed to be the value as computed in accordance with sub-sections (v), (v-A) or (v-B), as the case may be.

(iv-B) ***For easement.***—In suits—

(a) for a right to some benefit (not herein otherwise provided for) to arise out of land;

(b) ***For an injunction.***—to obtain an injunction;

(c) ***To establish an adoption.***—to establish an adoption or to obtain a declaration that an valid; alleged adoption is valid;

(d) ***To set aside an adoption.***—to set aside an adoption or to obtain a declaration that an alleged adoption is invalid or never, in fact, took place;

(e) ***To set aside an award other than awards mentioned in Section 8.***—to set aside an award not being an award mentioned in Section 8; according to the amount at which the relief sought is valued in the plaint:

Provided that such amount shall not be less than one-fifth of the market value of the property involved in or effected by the relief sought or Rs.200 whichever is greater :

Provided further that in the case of suits falling under clauses (a) and (b), the amount of court-fee leviable shall in no case exceed Rs.500.

Explanation 1.—When the relief sought is with reference to any immovable property the market-value of such property shall be deemed to be the value computed in accordance with sub-section (v) (v-A) or (v-B) of this section, as the case may be.

Explanation 2.—In the case of suits-(i) falling under clauses (a) and (b), the property which is affected by the relief sought, and where properties of both the plaintiff and defendant are affected, the property of the plaintiff so affected;

(ii) falling under clauses (c) and (d), the property to which title by succession or otherwise may be diverted or affected by the alleged adoption; and

(iii) falling under clause (e), the property which forms the subject matter of the award;

shall be deemed to be the property involved in or affected by the relief sought within the meaning of the proviso to this sub-section.

(iv-C) ***For restitution of conjugal rights.***—In suits-

(a) For the restitution of conjugal rights;

(b) ***For marital rights.***—for establishing dissolving a marriage; or annulling, or dissolving a marriage;

(c) ***For guardianship.***—for establishing custody or guardianship of any person such as s minor, including guardianship for the purpose of marriage;

according to the amount at which the relief sought is valued in the marriage; plaint but in no case shall such amount be less than Rs.200.

(v) ***For possession of lands, buildings or gardens.***—In suits possession of land, buildings or gardens—

according to the value of the subject-matter; and such value shall be deemed to be—

(I) Where the subject-matter is land, and—

(a) where the land forms an entire estate or a definite share of an estate paying annual revenue to Government, or forms part of such an estate, and is recorded in the Collector's register as separately assessed with such revenue and such revenue is permanently settled—

thirty times the revenue so payable;

(b) where the land forms an entire estate or a definite share of an estate paying annual revenue to Government, or forms part of such estate and is recorded as aforesaid and such revenue is settled but not permanently—

ten times the revenue so payable;

(c) where the lands pays no such revenue or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue, and net profits have arisen from the land during the three years immediately preceding the date of presenting the plaint-

twenty times the annual average of such net profits; but when no such net profits have arisen therefrom, the market value which shall be determined by multiplying by twenty the annual average net profits of similar land for the three years immediately preceding the date of presenting the plaint;

(d) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and does not come under clause (a), (b) or (c) above—

the market value of the land which shall be determined by multiplying by fifteen the rental value of the land, including assumed rent on proprietary cultivation, if any,

(II) where the subject-matter is a building or garden—

according to the market-value of the building or garden, as the case may be.

Explanation.—The word 'estate' as used in this sub-section, means any land subject to the payment of revenue for which the proprietor or farmer or raiyat shall have executed a separate engagement to Government or which, in the absence of such engagement, shall have been separately assessed with revenue.

(v-A) For possession of superior proprietary and under-proprietary land. In suits for possession—

(1) of superior proprietary rights where under-proprietary or sub-proprietary rights exist in the land-

according to the market-value of the subject-matter, and such value shall be determined by multiplying by fifteen the annual ne profits of the superior proprietary;

(2) of under-proprietary or sub-proprietary land as such.—

according to the value of the subject-matter, and such value shall be determined by multiplying by ten the annual under-proprietary on sub-proprietary rent, as the case may be, recorded in the Collector's register as payable for the land for the year next before the presentation of the of the plaint.

If no such rent is recorded in the Collector's register the value shall be determined in the manner laid down in clause (c) of sub-section (v of this section save that the multiple will be ten.

Explanation.—Land held by any permanent lessees shall b treated for the purposes of this sub-section, as under-proprietary o sub-proprietary land.

(v-B) ***Possessory suits between tenants.***—In suits for possession land between rival tenants and by tenants against trespasser according to the value of the subject-matter and such value shall b determined if such land is the land of-

(a) ***a permanent tenure-holder or a fixed rate tenant.***—by multiplying by twenty the annual rent recorded in the Collector's register as payable for the land for the year next before the presentation of the plaint;

(b) ***an ex-proprietary or occupancy tenant.***—by multiplying by two such rent in case of suits for possession of land between rival tenants, and by annual rent in suits by tenants again trespassers;

(c) ***any other tenant.—by annual rent.***

If no such rent is recorded in the Collector's register, the value shall be determined in the manner laid down in clause (c) of sub-section (v) of this section save that the multiple shall be that entered in clauses (a), (b) and (c) of this sub-section according as the class tenancy affected is governed by clause (a), (b) or (c) of this sub-section.

(vi) ***To enforce a right of pre-emption.***—In suits to enforce a right of pre-emption—according to the value computed in accordance with paragraph (v) of this section of land, [building) or garden in respect of which the right is claimed.

(vi-A) ***for partition.—In suits for partition.***—

according to one-quarter of the value of the plaintiff's share of the property;

and according to the full value of such share if on the date of presenting the plaint the plaintiff is out of possession of the property of which he claims to be a co-parcener or co-owner, and his claim to be a co-parcener or co-owner on such date is denied.

Explanation.—The value of the property for the purposes of this sub-section shall be the market-value which in the case of immovable property shall be deemed to be the value as computed in accordance with sub-sections (v), (v-A) or (v-B), as the case may be.

(vii) ***For interest of assignee of land revenue.***—In suit for the interest of an assignee of land revenue-fifteen times his net profits as such for the year next before the date of presenting the plaint.

(viii) ***To set aside or to restore an attachment.***—In suits to set aside or to restore an attachment including suits to set aside an order passed under Order XXI, Rules 60, 61 or 62 of the Code of Civil Procedure according to half of the amount for which attachment was made, or according to half of the value of the property or interest attached, whichever is less.

Explanation.—The value of the property or interest for the purposes of this sub-section shall be the market-value which in the case of immovable property or interest in such property shall be deemed to be the value as computed in accordance with sub-sections (v), (v-A) or (v-B), as the case may be.

(ix) ***To redeem.***—In suits against a mortgagee, for the recovery of the property mortgaged-according to the principal money expressed to be secured by the instrument of mortgage.

(ix-A) ***To foreclose.***—In suits by mortgagee to foreclose the mortgage, or where the mortgage is made by conditional sale, to have the sale declared solute-according to the total amount claimed by way of principal and interest.

(x) ***To specific performance.***—In suits for specific performance—

(a) of a contract of sale—according to the amount of the consideration;

(b) of contract of mortgage—according to the amount agreed to be secured;

(c) of a contract of lease—according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term;

(d) of an award—according to the amount or value of the property in dispute, and such value shall be the market-value which in the case of immovable property shall be deemed to be the value as computed in accordance with sub-sections (v), (v-A) or (v-B), as the case may be.

(xi) ***Between landlord and tenant.***—In the following suits between landlord and tenant—

(a) for the delivery by a tenant of the counterpart of a lease;

(b) to enhance the rent of a tenant having a right of occupancy;

(c) for the delivery by a landlord of a lease;

(cc) for the recovery of immovable property from a tenant, including a tenant holding over after the determination of a tenancy;

(d) to contest a notice of ejectment;

(e) to recover the occupancy of immovable property from which a tenant has been illegally ejected by the landlord;

(f) for abatement of rent;

(g) for determination of rent; and

(h) for determination of rent.

according to the amount of the rent of immovable property to which the suit refers, payable for the year next before the date of presenting the plaint, except in the case of suits falling under clause (h) in which, according to twice the amount claimed by the plaintiff to be the annual rent."

26. From a perusal of the aforesaid Section, it would reveal that sub-part (i) relates to suits for money; (ii) relates to maintenance of annuities; (iii) is relatable to movable properties having market value; (iv) relates to suits for declaratory decree with consequential reliefs; (iv-A) relates to suits seeking cancellation or adjudging void instruments and decrees; (iv-B) relates to suits for easement and it further has five sub-divisions which inter alia refers even to suits for injunction; (iv-C) relates to suits for restitution of conjugal rights and inter alia also brings within its fold suits relating to marital rights and guardianship; (v) relates to suits for possession of land, buildings or gardens; (v-A) for possession of superior proprietary and under proprietary rights in the land; (v-B) possessory suits between tenants; (vi) to enforce a right of preemption; (vi-A) for partition; (vii) for interest of assignee of land revenue; (viii) to set aside or to restore to an attachment; (ix) to redeem against a mortgagee for recovery of mortgaged property; (ix-A) to foreclose a mortgage; (x) for specific performance and (xi) suits between landlord and tenants. This would primarily indicate the broad classification of Section 7 which encompasses almost all types and nature of suits, which may be filed. It also indicates the court fee which may be payable depending upon the nature of relief sought in a suit and which may fall in any of the aforesaid classifications.

27. For a better appreciation of the controversy, it will be appropriate to take a closer look at Section 7(iv-A) of the Court Fees Act, which reads as under:-

***"For cancellation or adjudging void instruments and decree.*—(iv-A)** In suits for or involving cancellation of or adjudging void or voidable a decree for money or other property having a market value, or an instrument securing money or other property having such value:

(1) where the plaintiff or his predecessor-in-title was a party to the decree or the instrument, according to the value of the subject-matter, and

(2) where he or his predecessor-in-title was not a party to the decree or instrument, according to one-fifth of the value of the subject-matter, and such value shall be deemed to be-

if the whole decree or instrument is involved in the suit, the amount for which or value of the property in respect of which the decree was passed or the instrument executed and if only a party of the decree or instrument is involved in the suit, the amount or value of the property to which such part relates.

Explanation.—The value of the property for the purposes of this sub-section shall be the market-value, which in the case of immovable property shall be deemed to be the value as computed in accordance with sub-sections (v), (v-A) or (v-B), as the case may be."

28. On the perusal of the aforesaid section, it would indicate that any suit filed which involves cancellation or adjudging void or voidable, a decree for money or

other property or an instrument securing money or other property, would fall in the aforesaid category. So far as a decree for money or other property is concerned that may not pose much of a problem since the decree in itself is a formal adjudication of rights of the litigating parties which emerges from the judgment of a Court, it can shed light as to whether it relates to money or other property or both. Hence, in respect of this part generally there may not be much difficulty to ascertain the correctness of the court fee payable.

29. However, the core question to be answered is whether an agreement to sell is an instrument or not. In case, if it is such then whether it secures money or other property. If the two conditions are met that is to say that an agreement to sell is an instrument and it secures either money or other property or both, then it would fall within the aforesaid provision of Section 7(iv-A) of the Court Fees Act.

30. The first condition to be ascertained is whether an agreement to sell is an 'instrument' or not. In order to discern the same, it will be relevant to find out the appropriate meaning of the word 'instrument' for the purposes of the Court Fees Act.

31. The word 'instrument' is a generic word and unless it is read in context to a particular subject matter or perspective, it may give rise to different meanings which may not be helpful to understand the subject and context in which it is used.

32. Since, the word 'instrument' is not defined in the Court Fees Act, accordingly, it will be prudent to notice the meaning of the word 'instrument' with the aid of legal dictionary and contemporaneous Acts and then put it a context with reference to the subject.

33. In Stroud's Judicial Dictionary 'Words and Phrases', Eighth Edition, the word 'instrument' as applicable in different contexts has been mentioned as:-

"INSTRUMENT. An "instrument" is a writing, and generally imports a document of a formal legal kind. Semble, the word may include an Act of Parliament (see DEED OF SETTLEMENT) and in s.68 of the Trustee Act 1925 (c. 18), it was specifically defined as including an Act of Parliament. But in Canada a statute was held not to be an "instrument" within r.607 (Ont.) (Re Mann Const. 51 D.L.R. (2d) 580), and it is doubtful whether a by-law is an "instrument" within r.611 (Ont.) (Re Mosport Park and Clarke [1970] 3 O.R.94).

"The words 'instrument of foundation or statutes', Endowed Schools Act 1869 (c.56), s.19, and Endowed Schools Act 1873 (c.87), s.7, point with great distinctness to written instruments" (per Selborne C., St. Leonards Trustees Charity Commissioners, 10 App. Cas. 304); and "entitled under any instrument", Malins' Act (c.57) s.1, did not include an intestacy (Allcard v Walker [1896] 2 Ch. 369; see Re Elcom [1894] 1 Ch. 303).

A power by "deed, instrument, or will" is well executed by a mere writing which is neither a deed nor a will, provided the document refers to the power, or can only have effect by operating on a fund which is subject to the power, e.g. an order, a letter, or a cheque on the fund; and this is not altered by the power providing that the "deed, instrument, or will" shall not be "executed" until after a stated event

(Brodrick v Brown, 1 K. & J. 328). See WRITING; INSTRUMENT IN WRITING; TESTAMENTARY INSTRUMENT.

Orders of Court were not "instruments" within Apportionment Act 1834 (c.22) 5.2 (*Jodrell v Jodrell*, L.R. 7 Eq. 461).

A post office telegram accepting a wager was an "instrument" within Forgery Act 1861 (c.98) s.38 (R. v Riley [1896] 1 Q.B. 309), and where an envelope was sent through the post and postmarked and a betting slip was subsequently placed in the envelope after the time when a race had been run (though the postmark on the envelope was anterior to the running of the race) held that the envelope and betting slip were a "forged instrument" within the section (R. v Howse, 107 L.T. 239). Under Forgery Act 1913 (c.27) s.7. a letter might be an instrument, that expression not being confined to a document having legal effect (R. v Cade [1914] 2 K.B. 209).

A deed relating to a partnership business, executed by one partner who forged his partner's signature thereto and kept the document from his partner's knowledge, was an "instrument", within Partnership Act 1890 (c.39) s.6 (*Re Briggs* [1906] 2 K.B. 209).

Instrument whereby any property is transferred to, or vested in, any person" (Stamp Act 1891 (c.39) s.62): see Kemp v *Inland Revenue Commissioners* [1905] 1 K.B. 581, cited ASSENT.

"Instrument", in the phrase "bond, covenant, or instrument" (Stamp Act 1870 (c.97) Sch.) meant an instrument of the same nature as "bond" or "covenant" with which it was associated. i.e. one which was a security for money (*Thames Conservators v Inland Revenue Commissioners*, 18 Q.B.D. 279, cp. *Limmer Asphalte Co v Inland Revenue Commissioners* L.R. 7 Ex. 211; and *Sweetmeat Co v Inland Revenue Commissioners* [1895] 1 Q.B. 484; See PERLODICAL). A document whereby money was made payable for a telephone service was an "instrument" for the "security" of money within the phrase, and required the bond ad valorem duty on the aggregate amount necessarily payable thereunder, i.e. the whole of the payments for the period for which the service must necessarily continue *(National Telephone Co v Inland Revenue* [1900] A.C. 1). See further *Durham Electrical Power Co v Inland Revenue Commissioners* [1909] 1 K.B. 787; [1909] 2 K.B. 604.

"Instrument executed" (Stamp Act 1891 (c.39) s.14(4)). The judge's order by which the court sanctioned a scheme of arrangement for taking over outstanding minority shares, was a written document and therefore an "instrument" within this section (*Sun Alliance Insurance v IRC* [1971] 2 W.LR. 432).

"Instrument" in Exemption 11 to receipt, Stamp Act 1891 (above) Sch.: see *London & Westminster Bank v Inland Revenue Commissioners* [1900] 1 Q.B. 166.

"Instrument", under r.30 of the Public Trustee Rules 1912; see *Re Cherry's Trusts* [1914] 1 Ch. 83.

Any document which, if it is to be a valid document, must have a seal on it at the time of execution (e.g. under s.52 of the Law of Property Act 1925 (c.20)), is an "instrument" within the meaning of s.47(4) of the Solicitors Act 1932 (c.37), now s. 22

of the Solicitors Act 1974 (c.47) (*Kushner v Law Society* [1952] 1 K.B. 264).

"Instrument" (Landlord and Tenant Act 1954 (c.56) s.38(4), as amended by Law of Property Act 1969 (c.59) s.5)). An order of the county court made by consent of the parties, in the precise terms of a compromise agreement between the landlord and tenant can constitute an "instrument" for the purposes of this section; even though no formal lease is executed (*Tottenham Hotspur Football Co v Princegrove Publishers* [1974] 1 W.L.R. 113)."

34. In Wharton's Law Lexicon, the word 'instrument' has been shown to mean as under:-

"Instrument [instrumentum, Lat., fr. instruo, to prepare or provide], a formal legal writing-e.g., a record, charter, deed or transfer, or agreement. By s.205(1)(viii) of the (English) Law of Property Act, 1925, 'Instrument' (for the purposes of the Act) 'does not include a Statue, unless the Statute creates a Settlement.' See also Settled Land Act, 1925, S.117; see also TRUST INSTRUMENT; VESTING INSTRUMENT. A telegram and an envelope with a falsified postmark have been held to be 'instruments' within the meaning of the Forgery Act, 1861, s. 38, now replaced by s.7, (English) Forgery Act, 1913 [R. v. Riley, (1896) 1 QB 309; *R. v. House,* 28 TLR 186]; also an engine.

Includes every document by which any right or liability is, or purports to be, created, transferred, modified, limited, extended, suspended, extinguished or recorded. [Notaries Act, 1952 (53 of 1952), s. 2(b)]."

35. It will be apposite to notice the meaning of the word 'instrument', as defined in certain contemporaneous Acts to get a clearer perspective as to what meaning should be ascribed to and be adopted for the Court Fees Act.

36. In the T.P. Act, the word 'instrument' has been defined in Section 3 as under:-

"3. Interpretation clause.- x x x

"Instrument".-"Instrument" means a non-testamentary instrument."

Apparently, if the word 'instrument' is seen in context of the T.P. Act, then an agreement to sell which is nothing but a contract wherein one party agrees to sell and the other party agrees to buy and it gives rise to obligations which are enforceable in law and it apparently is a non-testamentary document too, hence, can certainly qualify to be an instrument.

37. Similarly, the word 'instrument' has been defined in Section 2(14) of the Indian Stamp Act, 1899 [which needless to say is also a fiscal statute as similar to the Court Fees Act] as under:-

"Instrument".-"Instrument" includes every document and record created or maintained in or by an electronic storage and retrieval device or media by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded."

This would indicate that the word 'instrument' has been defined in very wide terms and if an agreement to sell is tested on the aforesaid anvil, it definitely would fall within the aforesaid four corners of the word 'instrument'.

38. It will be relevant to notice Article 5 of Schedule-I B of the Stamp Act as applicable to the State of U.P., which indicates the nature of the Instrument and the stamp duty payable thereon and the said Article relating to an agreement (as a type of an instrument) is being reproduced here for ease of reference:-

"5	**Agreement or memorandum of an agreement**		
	(a) If relating to the sale of a bill of exchange;	[Ten rupees]	
	(b) If relating to the sale of a Government security or share in an incorporated company or other body corporate;	Subject to a maximum of [one thousand rupees; ten rupees for every Rs.20,000] or part thereof of the value of the security or share.	
	[b-1] If relating to the sale of an immovable property where possession is not admitted to have been delivered without executing the conveyance:-	The same duty as on Conveyance [No.23 clause (a)] on one half of the amount of consideration as set forth in the agreement.	
	Provided that when conveyance in pursuance of such agreement is executed, the duty paid under this clause in excess of the duty payable under clause (c) shall be adjusted towards the total duty payable on the conveyance.]		
	[(b-2)] if relating to the construction of a building on a land by a person other than the owner or lessee of such land and having a stipulation that after construction, such building shall be held jointly or severally by that other person and the owner or lessee, as the case may be, of such land, or tuat it shall be sold jointly or severally by them or that a part of it shall be held jointly or severally by them and the remaining part thereof shall be sold jointly or severally by them.	The same duty as a Conveyance [No.23 clause (a)] for a consideration equal to the amount or value of the land.	
	Explanation For the purposes of this clause- (1) the expression "land" shall include things attached to the earth, or permanently fastened to anything attached to the earth. (2) the expression "lessee" shall mean a holder of a lease in perpetuity or for a period of thirty years or more. (3) the expression "building" shall mean a building having more than one flat or office accommodation or both and the expression "flat" shall have the meaning assigned to it in the Uttar Pradesh Ownership of Flats Act, 1975.]		
	(c) if not otherwise provided for		[One hundred rupees]
	Exemption Agreement or memorandum of agreement- (a) [***] (b) made in the form of tenders to the		

Central Government for, or relating to, any loan.]"

Article 5[b-1] clearly refers to an agreement to sell and thus the Stamp Act engulfs an agreement to sell within its domain.

39. At this stage, it will be relevant to notice certain decisions of the Apex Court wherein the word 'instrument' has been interpreted. **(i)** In **Purshottam H. Jaye v. V.B. Pottdar, AIR 1966 SC 856,** it was held that the word instrument would refer to a document executed by the parties and it also included an award. **(ii)** While in **Som Prakash Rekhi v. Union of India, AIR 1981 SC 212,** the Apex Court categorically held that the expression instrument certainly covers a trust deed. **(iii)** In **Gopi Krishna Trivedi v. Sudama Prasad Ojha, (2008) 9 SCC 401,** the Apex Court held that the document containing the terms and conditions of agreement and receipts whereby the liability and rights have been created or purported to have been transferred and extended or created, would come within the meaning of the word 'instrument' in context with Section 2(14) of the Indian Stamp Act.

40. In light of the aforesaid decisions and considering Article 5(b-1) and 5(b-2) of the Stamp Act, there can be no doubt that an agreement to sell is definitely an instrument and it can so be held even for the purposes of the Court Fees Act.

41. Having come to a conclusion that an agreement to sell is an instrument for the purposes of the Court Fees Act, now, it will be apposite to ascertain whether an 'agreement to sell' secures money or property or both or nothing at all.

42. Now, insofar as an agreement to sell, if noticed, it would reveal that primarily it is an agreement between two parties wherein one agrees to sell and other agrees to buy at a future date on the terms and conditions as agreed, for a consideration mentioned therein. Thus, it is a contract between the parties which results in creating a jural relationship between the contracting parties and in case of breach, the aggrieved party has a legal right to have it enforced against the other party.

43. In this regard, it will be relevant to notice Section 2 of the Indian Contract Act, 1872 (for short, 'the Contract Act'), which is the interpretation clause and it gives a clear indication as to what is an agreement. For ready reference, Section 2 of the Contract Act is being reproduced hereinafter:-

"2. **Interpretation clause.**—In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

(a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a "proposal";

(b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a "promise";

(c) The person making the proposal is called the "promisor", and the person accepting the proposal is called the "promisee";

(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;

(e) Every promise and every set of promises, forming the consideration for each other, is an agreement;

(f) Promises which form the consideration or part of the consideration for each other, are called reciprocal promises;

(g) An agreement not enforceable by law is said to be void;

(h) **An agreement enforceable by law is a contract;**

(i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract;

(j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable."

44. From a perusal of the above Section 2(a) to (h), it would indicate that every promise and every set of promises, forming the consideration for each other, is an agreement and an agreement enforceable by law is a contract.

45. In the Sale of Goods Act, 1930 (for short, 'the Act of 1930') formation of a contract has been provided in Chapter II and Section 4 of the Act of 1930 provides for sale and agreement to sell for ease of reference the said provision is reproduced as under:-

"CHAPTER II

FORMATION OF THE CONTRACT

Contract of sale

4. **Sale and agreement to sell**.—(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred."

From a perusal of the aforesaid Section 4(4), it would indicate that so far as the Act of 1930 is concerned, the term contract of sale includes an agreement to sell.

46. An agreement to sell, if examined, has attributes of a contract and it gives rise to jural relationship between the contracting parties and it also gives rise to obligations and liability on the contracting parties and needless to say that such rights can relate to a property or money and it can also even relate to tangible or intangible property and rights which are recognized in law and in case of breach or infringement of the rights and obligations created it can be enforced in law.

47. The word 'sale' relating to an immovable property, is defined in Section 54 of the T.P. Act and it reads as under:-

"CHAPTER III

OF SALES OF IMMOVABLE PROPERTY

54. **"Sale" defined**.—"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.—Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a

reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.—A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property."

From the above, it would be clear that so far as Section 54 of the T.P. Act is concerned, it relates only to immovable property and it states that it is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. In the aforesaid Section, it also provides that a contract for sale of an immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property.

48. Though an agreement to sell relating to an immovable property in terms of Section 54 of the T.P. Act may not amount to a transfer of ownership, immediately which is only possible upon execution of the sale-deed in terms of Section 54 of the T.P. Act, however, conspicuously an agreement to sell acts as vital preliminary document that secures and makes certain, the obligations and the transactions relating to the property and the money or consideration involved, which is the basis for any future legal recourse for the contracting parties, in case of a breach.

49. From the point of view of the T.P. Act, in essence, it may not directly secure the property as in context of a mortgage (where the property is collateral for a loan) but nevertheless an agreement to sell definitely provides a robust contractual framework that protects the interest of both the contracting parties. Moreover, such an agreement lays down the terms agreed between the contracting parties including the details of the subject matter of the agreement, which may be a movable or an immovable, tangible or intangible property including the terms of payment, which makes certain and safe the rights and obligations of the contracting parties.

50. Now seen from the point of view of the buyer, the agreement to sell brings in security, commitment and certainty that the seller shall sell the property to the buyer on the given terms and subject to fulfillment of the obligation by the buyer. At the same time, it also amounts to protecting the advance money paid as not only the entire sale consideration is clearly set out but it also acknowledges the receipt of the advance money and that the remaining part of the consideration left, would be payable at what stage and time. Moreover, the buyer is assured that in case of breach, he has the right to get the agreement enforced through law.

51. Similarly, if seen from the point of view of the seller, it clearly delineates the time span within which he is assured of receiving the entire consideration and till such time the said contract (agreement to sell) is in force as per the settled terms and time, the seller holds the property in trust for the buyer, whereafter the seller if may so choose can repudiate the contract and can even forfeit the consideration or may seek damages as the case may be.

52. At this stage itself, it will be apposite to notice the meaning and connotation of the word 'obligation'. In Blacks Law Dictionary, Eighth Edition - 'Obligation' is defined as under:-

"**Obligation**, n. **1.** A legal or moral duty to do or not do something. The word has many wide and varied meanings. It may refer to anything that a person is bound to do or forbear from doing, whether the duty is imposed by law, contract, promise, social relations, courtesy, kindness, or morality. **2.** A formal, binding agreement or acknowledgment of a liability to pay a certain amount or to do a certain thing for a particular person or set of persons; esp., a duty arising by contract.-Also termed (in sense 2) *civil obligation*. See DUTY (1); LIABILITY (1). [Cases: Contracts 1. C.J.S. Contracts 2-3, 9, 12.] 3. *Civil law*. A legal relationship in which one person, the obligor, is bound to render a performance in favor of another, the obligee. La. Civ. Code art. 1756."

"The primary meaning given to the word by the Oxford English Dictionary is - The action of binding oneself by oath, promise or contract to do or forbear something. The word 'obligation' is not limited to a contractual obligation or the payment or non-payment of money undertaking given to the Courts is an obligation. Re. British *Concrete Pipe Association*, (1983) 1 All ER 203, 205. [Iron and Steel Act, 1969, S. 8(1)]"

53. Thus from the above, it is clear that an agreement to sell does give rise to reciprocal obligations. Now, it will be pertinent to notice what does the word 'secure' connotes. The word 'secure' is also a generic word and would have different meaning depending upon the context and object where the said word occurs and is used.

In Advance Law Lexicon, 5 Edition by P. Ramanatha Aiyar's, the word 'secure' is explained as under:-

"**Secure**". Webster defines "secure" to mean "to make certain; to put beyond hazard." To secure "is to make safe, to put beyond hazard of losing or of not receiving, as to secure a debt by a mortgage; it also means to get safely in possession, to obtain, to acquire certainly, as to secure an inheritance or a price."

"**Secures**" as used in a contract whereby a vendor agrees to execute a conveyance thereof as soon as the vendee secures the payment of purchase money, means not a payment in money but given by the vendees of something by means whereof payment at some future time can be procured or compelled. [Words and Phrases Permanent Edition, Vol. 38, page 45-8 as cited in *Kailash Chand v. Vth A.C. Judge, Meerut*, 1999 ALL LJ 940: AIR 1999 All 151]."

54. In Stroud's Judicial Dictionary of Words and Phrases Eighth Edition, the word 'secure' has been mentioned as under:-

"**SECURE**. The direction in Matrimonial Causes Act 1857 (c.85) s.32 to "secure" a gross or annual sum to a wife, did not authorise an order for payment direct to the wife, but meant that the sum was to be secured in such a way as to provide for her (*Medley v Medley*, 7 P.D. 122). " 'An order to secure seems to suggest a disposition or obligation of some sort, made or entered into pursuant to the order, as opposed to a mere direction to pay contained in the order itself" (per Jenkins L.J.. in *Yates v Starkey* [1951] Ch. 465). Se further *Twentyman v Twentyman* [1903] P.86, cited GROSS: *Barker v Barker* [1952] 1 All E.R. 1128.

"Securing" the payment of royalties (Copyright Act 1911 (c.46) s.19(6): see *Monckton v Pathé Frères Pathéphone, Ltd* [1914] 1 K.B. 395."

55. From the perusal of the above, it would indicate that the word 'secure' is also to be understood in context with the object of the enactment where it is used. Hence, the meaning of a word should not be taken in abstract and regard must be had to the settings in which the word occurs as well as keeping in mind the object and the subject matter.

56. Thus, considering the Court Fees Act, it would reveal that it has no interpretation or definition clause, hence,

the Court Fees Act never intended to give any specific or special meaning to any word used in the Court Fees Act nor its usage was intended to be restricted. In such circumstances, the words used in the Court Fees Act, are to be interpreted widely as per its natural meaning.

57. In **Principles of Statutory Interpretation by Justice G.P. Singh, 15th Edition**, it has been provided that while interpreting any provision of an Act, the subject and the object must be kept in mind so that expressions used in the Act should ordinarily be understood in the sense in which they can best be harmonized with the object of the Act. The object and reason of a statute signifies the intention of Legislature behind the enactment and is useful in understanding the impact of the provision while interpreting the same. The principle is that object of the statute must be kept in mind and the word from the expression used in the Act must be understood in the sense that would be natural and proper.

58. Similarly, in another celebrated treatise **by Bennion, Bailey and Norbury on Statutory Interpretation, Eighth Edition**, it states that ordinary terms and phrases must be ascribed and understood according to its usage. The Courts should generally not supply their own definition and when there are several ordinary meaning to a word or phrase then as a starting point, the most common and well established meaning must be taken. Thus, any word, term or phrase should not be given a technical meaning which should be reserved only for technical words and where the common term is used in context with any expertise, only than a technical meaning can be given to a word having several meaning. In the aforesaid treatise, it has been stated that the principle being, that words are to be understood in their natural, ordinary or popular sense and it has been well expressed by **Justice Frankfurter, "After all legislative when not expressed in technical term is addressed to common run of men and is, therefore, to be understood according to the sense of the things, as the ordinary man has a right to rely on ordinary words addressed."**

59. Now in the above discussed background, if Section 7(iv-A) of the Court Fees Act is seen, the words used therein 'instrument securing money or other property', must be given its general meaning and noticing the definition and meaning of the word 'instrument', 'securing money' or 'other property', would indicate that these words as used by the legislature while enacting the law, are all generic in nature and when these words are used in a context, it can divulge its true meaning.

60. Significantly, the Court Fees Act is a statute which was made to include all types of suits within its fold and put them under any one of the said categories as provided under Section 7(i) to 7(ix) of the Court Fees Act. In case if any specific technical meaning is ascribed to the words 'instrument' or 'securing money' or 'property', then it may give rise to a situation where any one particular suit may not fall in any of the categories as mentioned in the Court Fees Act considering the sea change which has occurred in the legal field and with emphasis on specialization and complex contracts relating to transfer of highly sophisticated technology, computers, softwares, accessories, other products and machines including technical knowhow, patents, designs, intellectual property

rights, amongst others, which may result in defeating the purpose of the Court Fees Act. Such an interpretation which defeats the purpose cannot be accepted.

61. As a common person, who is interested in purchasing or selling a property (which could be of any type) and in furtherance thereof a contract is drawn. This is done primarily for the purposes of expressing in writing the unequivocal intention of the contracting parties, their terms on which they propose to purchase or sell, the property. It also brings certainty to the terms and conditions agreed which reduces the scope of ambiguity and chances of resiling from the terms agreed to, which leads to securing money or property or both as the case may be and the parties are confident that if any of the contracting party defaults then the aggrieved party has remedy of enforcing the contract through the Court of law.

62. In this regard, the Specific Relief Act, 1963 (for short, 'the Act of 1963') was enacted to provide remedies to persons whose civil or contractual rights are violated and the Act of 1963 *interalia* provides remedies for recovery of possession of property, specific performance of contracts, rectifications of instrument, recession of contracts, cancellation of instruments, declaratory decrees, reliefs and injunctions.

63. If the Scheme of the Specific Relief Act, 1963 is seen, it would indicate that remedy for specific performance of contract has been provided in Chapter II which takes within its folds Sections 9 to 25. Chapter III has only one Section i.e. Section 26 which relates to rectification of instruments. Chapter V comprises of Sections 31 to 33 relating to cancellation of instruments.

64. The aforesaid provisions have been noticed by this Court only to amplify that the contractual rights of a person has been made enforceable in terms of Sections 10, 13, 15 to 17, 19 to 21 of the Act of 1963 which upon perusal permits specific enforcement of a contract both relating to movable and immovable property. So much so, that a person, who promises to sell, if breaches the said term of contract, it gives a right to the buyer to compel the seller to perform his part of the contract specifically by compelling him to sell the agreed property to the buyer off course subject to fulfilling his obligations under the contract.

65. Now, in this background, if any party who wishes to buy or sell a property, as the case may be, and the sale is to take place in future and yet any of the parties wishes to create a jural relationship relating to the subject matter of proposed sale and also get the terms certain, secured including the subject matter then in the given circumstances, apart from an agreement to sell, there does not exist any other mode to get the terms secured, certain and keep the property safe, till such time, the sale-deed is executed.

66. Now, let us consider the word 'property' and its meaning. <u>The word 'property' as generally understood, can take and include within its fold, all that a person has control and dominance over it. 'Property' is a word of widest import and its meaning can be limited or expanded in the context of its usage. Generally, it may signify every possible interest which a person can clearly hold or enjoy.</u>

67. At this stage, it will also be pertinent to notice that the word 'property' used in Section 7(iv-A) of the Court Fees Act does not in any manner exclude 'movable property' nor it is confined to an immovable property. If the word 'property' is considered, it would reveal that it is generic in nature and unless the said word is put in context, its various and multiple meanings can be incoherent.

68. The T.P. Act in Section 5 clearly provides that transfer of property can relate to both movable and immovable and Section 6 indicates what may be transferred. For ease of reference, Sections 5 and 6 of the T.P. Act is being reproduced hereinafter:-

"5. **"Transfer of property" defined.**—In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons; and "to transfer property" is to perform such act.

In this section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals."

6. **What may be transferred.**—Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force,—

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred;

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby;

(c) An easement cannot be transferred apart from the dominant heritage;

(d) All interest in property restricted in its enjoyment to the owner personally cannot be transferred by him;

(dd) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred;

(e) A mere right to sue cannot be transferred;

(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable;

(g) Stipends allowed to military naval, air-force and civil pensioners of the Government and political pensions cannot be transferred;

(h) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872 (9 of 1872), or (3) to a person legally disqualified to be transferee;

(i) Nothing in this section shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate, under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee."

69. In contradistinction, the word 'property' as defined in the Act of 1930 means a general property in goods and not merely a special property. The word 'goods' has also been defined in the Act of 1930. In Section 2(7) which primarily relates to movable property other than actionable claims and money, however, it includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

70. In continuation, the word 'property' has also been defined in the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, 'the Act of 2007').

Section 2(f), defines the word 'property' to mean property of any kind, whether movable or immovable, ancestral or self-acquired, tangible or intangible and includes rights or interests in such property.

71. Thus, from the above, it would be clear that depending upon the context and the purpose of the subject, the word 'property' can be construed differently, that is to say it can either be construed widely as seen in the Act of 2007 and somehow in a restricted manner as per the Act of 1930 while it would take within its fold, as per the T.P. Act, both movable and immovable property which is transferable in terms of Section 6 of the T.P. Act.

72. In light of detailed contemplation, it can clearly be ascertained that the word 'property' used in terms of Section 7(iv-A) of the Court Fees Act cannot be narrowly construed and it includes within its ambit both movable and immovable, tangible or intangible and all such rights and obligations including actionable claims which arise out of contracts and can be transferred or assigned and all would constitute 'property'.

73. In the aforesaid backdrop, now it will be appropriate to take note of certain decisions, relating to Section 7(iv-A) of the Court Fees Act.

(i) A Division Bench of this Court in **Udai Pratap Gir and another v. Shanta Devi and others, 1956 SCC OnLine All 318** taking note of Section 7(iv-A) of the Court Fees Act as applicable in the State of U.P., found that a Will is an instrument which after the death of the testator secures property. It further held that the word 'to secure', as used in Section 7(iv-A) of the Court Fees Act has a wide meaning and the definition most appropriate would be in the context in which it is to be adopted. The relevant paragraphs 4, 5 and 6 are being reproduced hereinafter:-

> "4. As has been pointed out in several cases this section is not aptly worded, the phrase "instrument securing money or other property" in particular being obscure: but it is that expression which has to be construed in this appeal.
>
> 5. The word 'instrument' in our opinion means a legal document. We can see, with respect, no I sufficient justification for the view expressed by a learned single Judge in a recent case, *Gulab Chand v. Jaswant Singh*, 1956 All 71 (A), that 'instrument' has the same meaning here as is assigned to it in the Indian Stamp Act. The real difficulty centres around the meaning of the word 'securing'. To lawyers and laymen alike an instrument securing money will at once suggest a mortgage or charge; but what is an instrument securing property?
>
> 6. The verb 'to secure' has a wide meaning, and we think that the definition most appropriate in the present context is to make secure or certain (Murray) or to make safe (Oxford). Such also was the view of Venkataramana Rao, J. in *C. Sodemma v. P. Krishnamurthy*, 1938 Mad 824 (AIR V25) (B) and of Sapru J. In *Kamla Devi v. Sunni Central Board of Waqfs*, U.P., 1949 All 62 (AIR V36) (C)."

(ii) In **Smt. Bishnu Shri v. Smt. Suraj Mukhi and others, AIR 1966 All 563 (FB)**, the issue before the Full Bench of this Court was as to whether a 'Will' secures the property or money. Dealing with the aforesaid issue, the Full Bench of this Court referred to Section 7(iv-A) of the Court Fees Act and after taking note of the word 'instrument' and the word 'secure', and concluded that a Will after the death of the testator is an instrument which secures the property or money and it also noticed a proposition that the applicability of the provision is to be seen on the date of institution of the suit. The relevant portion reads as under:-

"(6) The word instrument in S.7 (iv-A) includes formal or legal documents in writing. It is sufficiently broad to include wills also (Words and Phrases (Permanent Edition), Vol. 214, p.521). The word "securing" is the present participle from verb "to secure". It has got various meanings (Words and Phrases (Permanent Edition), Vol. 38. p. 458) "Secures", as used in a contract whereby a vendor agrees to execute a conveyance thereof as soon as the vendee secures the payment of purchase money. means not a payment in money, but the giving by the vendees of something by means whereof payment at some future time can be procured or compelled (Ibid. Webster defines "secures" to mean "to make certain", "to put beyond hazard" "To secure" is to make safe, to put, beyond hazard of losing or of not receiving, as to secure a debt by a mortgage; it also means to get safely in possession, to obtain to acquire certainly, as to secure an inheritance or a price (ibid. 459)

(7) The question is whether a will can be regarded as a legal document which makes any property secure or safe. Section 2 (h) of the Indian Succession Act defines a will as a "legal declaration of the intention of the testator with respect to his property which he desires to be carried into effect after his death. "It is well known that during the life-time of the executant, the will is ambulatory It could be revoked by him at his will. Accordingly a will does not secure any property during the lifetime of the executant. Section 7 (iv-A) does not require that an instrument should secure money or property having money value from the moment of its birth. It seems to us that whether an instrument secures money or property having money value within the meaning of S. 7 (iv-A) is to be decided with reference to the date of the institution of the suit. It is to be seen whether a particular instrument secures on the date of the institution of the suit money or property having money value. This reference necessarily follows from a collocational reading of this section with S. 39 of the Specific Relief Act. If this is so, as we think, then there is little doubt that on the date of the institution of the suit in this case the will did secure property. Ganga Prasad the testator had died, and after his death the will became irrevocable. Upon his death his estate would be disposed of in accordance with his directions in the will. Accordingly it can be said that on the death of the testator the will secures money or property having money value. We, therefore, hold that the court-fee paid on the plaint and the memorandum of appeal is insufficient. The amount of deficiency mentioned in the office report should now be paid by the plaintiff within three months."

(iii) In **Chief Inspector of Stamps, Uttar Pradesh, Allahabad v. Vishnu Pratap Sugar Works, AIR 1967 All 242**, considering the provision of Section 7(iv-A) of the Court Fees Act, a learned Single Judge of this Court in Paragraphs 14, 15 and 16 held as under:-

"14. The meaning of the term "securing money or other property having such value" has been the subject of consideration by this Court in numerous: cases and I may say, this Court has consistently taken one view. It was in one single Judge decision atone that a contrary view was expressed. That is the case of *Chief Inspector of Stamps* v. *Jash Pal Singh* [A.I.R. 1956 Alld. 168.] . Further, in *Mohd. Habibur Rahman Khan v. Abdul Qadir Faruqi*, I.L.R. (1961) 1 Alld. 17, the above single Judge decision was held not to lay down the correct law. It will, therefore, be proper to make a reference to only a few Division Bench decisions of this Court.

15. The meaning of the term "securing property" was considered at length in *Udai Pratap Gir v. Shanti Devi*, AIR 1956 Alld. 492 and it has been made clear that where the instrument makes a property secure or safe, as far as the beneficiary is concerned, it is an instrument securing property it is not necessary that any mortgage or charge is created under the instrument. With regard to a deed of will it was observed that it was not an instrument securing property during the life time of the testator as he had the power to revoke the will or to make another will and, consequently, during the life time of the testator the will cannot be said to secure property for or in favour of anyone. The will comes into effect after the death of the testator, and the executor or the legatee immediately becomes entitled to the property which was the subject matter of the will. Consequently it was clearly laid down in para. 8 of the Report that, in their opinion, the death of the testator made secure to the executor the former's property and that a testamentary disposition was a form of gift and stood substantially on the same footing as a gift. It was further held that a will was an instrument securing property within the meaning of the Court Fees Act. Similarly, the word "secure" was not given a restricted' meaning in *Mohammad Habibur Rahman Khan v. Abdul Qadir Furuqi* ILR (1961) 1 Alld. 17 (supra) and it was held that a sale deed, and also deed of waqf came within the category of instrument securing property.

16. However, what is necessary is that the instrument should secure some property and not that the property would be secured on the existence of some contingency, as in the case of a will on the death of testator. Con sequently the enactment shall have to be construed in determining whether a property can be said to have been secured forthwith will cannot be deemed to secure property during the life time of the testator for the simple reason that he can revoke the will. Similarly in the case of an enactment levying a tax, though payable only after assessment, it cannot be said that the tax levied has been secured forthwith. When the tax is not immediately payable, it cannot be deemed to have been secured forthwith The recovery can be made only after an assessment order under the enactment has been passed. Thus the money is secured by the assessment order though such eider is passed under the enactment. In other words, in such circumstances, the enactment alone does not secure any money. Consequent-lv. the provisions of the enactment shall have to be looked into in determining whether there. under money has been secured. If not the enactment shall be an instrument but not one securing money"

(iv) In **Smt. Bibbi and another v. Sugan Chand and others, AIR 1968 All 216 [FB]**, a Full Bench of this Court while considering the issue whether a 'Will' it was an instrument securing money or property or not relied upon the earlier decisions of this Court and clearly opined that a 'Will' after the death of the testator is an instrument securing money or property, within the meaning of Section 7(iv-A) of the Court Fees Act. The relevant Paragraphs 7 to 12 of the aforesaid report reads as under:-

"7. The Bench referred, in support of its view, to *Jonnavaram Balireddi v. Khatipulal Sah* [A.I.R. 1935 Mad. 863.] and *Kolachala Kutumba Sastri v. Lnkkaraju Bala Tripura Sundaramma* [A.I.R. 1939 Mad. 462 (F.B.).] in both of which the Madras High Court had to deal with a somewhat similar provision introduced into the Court Fees Act by a Madras Act. In the latter case the point whether a sale deed is an instrument securing property does not appear to have been disputed but the Full Bench which decided the case accepted the view taken in the former case where the point was specifically raised and considered. The learned Judge who decided the former case held that a mortgage deed is a 'document securing money' and a sale deed is a 'document securing other property', and referred to the observations made by him in an earlier decision, *Doria Swami v. Rangevelu* [A.I.R. 1929 Madras 668.]. These observations may well be quoted here:

"The words 'securing money' or other property are not happy but the question is; Is this or not a suit for cancellation of a document securing property having money value? I think it clearly is. I have no doubt that the release deed in question is a document securing property; in other words, 'that document, the property covered by it is made secure to the defendants. Can there be any doubt that a sale deed conies within the terms of this section? The present instrument does not materially differ from a kale deed. By that, the rights of the plaintiffs in the partnership and its property have been transferred for consideration to the defendants. The word, 'secure' may mean according to the Oxford Dictionary, 'to make the tenure of a property secure to a person.' I am, therefore, of the opinion that the proper section applicable is Sec. 7(iv-A)."

8. In *Smt. Kamala Devi v. Sunni Central Board of Waqfs*, *U.P., Lucknow, through its Secretary* [A.I.R. 1919 Alld. 63.] the question whether a waqfnama is an instrument securing property came up for decision before a Division Bench of this Court. The learned Judges constituting the Bench were not agree in one particular which is not relevant for the purpose of the present case, but they agreed in holding that a waqfnama which operates as an extinguishment of the right of the executant in a property and conveys it to the donee is an instrument securing property within the meaning of Sec. 7(iv-A).

9. None of the obovementioned cases was, however, brought to the notice of the court in *Chief Inspector of Stamps v. Jashpal Singh* [A.I.R. 1956 Alld. 168.] . In a subsequently decided case also a Division Bench of this Court dealt with the meaning of the expression 'securing property'. The question in that case was whether a will is, after the death of the testator an instrument securing property within the meaning of Sec. 7(iv-A). The Bench held that it was such an instrument and observed:—

"The verb 'to secure' has a wide meaning and we think that the definition most appropriate in the present context is to make secure or certain (Murray) or to make safe (Oxford)." *Udai Pratap Gir v. Shanta Devi* [A.I.R. 1956 Alld. 492.] .

10. Except for *Chief Inspector of Stamps v. Jashpal Singh* [A.I.R. 1956 Alld. 168.] . I do not find any case in which it has been held that a sale deed is not an instrument securing property and, as I have shown above, the view taken in that case is contrary to three Division Bench decisions of this Court. It is true that in only one of these three decisions the instrument involved was a sale deed, and out of the remaining two one dealt with a waqfnama and the other with a will. But that does not affect the value of the latter two decisions in the determination of the question whether a sale deed is an instrument securing property, because, to my mind, all that may be said for treating a waqfnama or a will as an instrument securing property may be said with equal, if not greater, force for treating a sale deed as such.

11. It appears to be clear that the expression 'securing' in Sec. 7(iv-A) of the Court Fees Act connotes making safe or certain. Surely, the expression must have the same connotation in relation to all the things spoken of in the section, and if it is the above connotation that has to be ascribed to it in relation to 'money' it must bear a similar connotation in relation also to 'other property having such value'. Further, the words 'other property having such value' obviously cover immovable property as well, and the explanation appended to the section puts that beyond doubt. The only sense in which an instrument may be regarded as securing immovable property is that it makes the title thereto or its possession and enjoyment safe or certain. Even according to the learned Judge who decided the case of *Chief Inspector of Stamps v. Jashpal Singh* [A.I.R. 1956 Alld. 168.] 'an instrument securing money' obviously means a document intended to 'assure' payment of money and the expression 'an instrument securing other property' should have, unless the context does not permit it, a similar meaning. He, however, did not regard a sale deed as 'an instrument security property' because it, conveys property and transfers the title of the property to the transferee. I may, with great respect to the learned Judges, say that what has been regarded by him as taking away from a sale deed the character of an instrument securing property, seems to me as imparting to it that character in the highest degree. A sale deed 'assures' in the most effective manner the divesting of the title of the transferor in a property and the vesting of that title in the transferee; and where the sale of a property can take place only by means of a deed it is the sale deed alone that 'assures', the extinction of the transferor's interest and the acquisition of that interest by the transferee. In my opinion, therefore, a sale deed is 'an instrument securing property' within the meaning of Sec. 7(iv-A) of the Court Fees Act.

12. The next thing to be seen is whether the suits fall within any of the categories mentioned in the first portion of Sec. 7(iv-A). In what circumstances a suit has to be regarded as one for cancellation of an instrument and in what others as one for merely obtaining a declaratory decree has been a matter on which there has been considerable divergence of view in the decided cases. The divergence has, however, lost its significance in the State of U.P., in view of Sec. 7(iv-A) introduced into the Court Fees Act by U.P. Act XIX of 1938. The section has a very wide compass. It covers not merely suits for cancellation of instruments described therein but also for adjudging them void or voidable, and it goes further and embraces not only suits for cancellation of such instruments or adjudging them void or voidable but also suits involving such cancellation or adjudging. On the scope of the first portion of the section, therefore, it is not necessary to refer to authorities. I may, however, mention a Division Bench case of this Court, Mst. *Jileba v. Parmeshara* [A.I.R. 1949 Alld. 641.] , where it was held that Sec. 7(iv-A) has been so worded that even though the plaintiff has not claimed the relief of cancelling or adjudging void or voidable an instrument, if the suit involves such cancellation or adjudging void or voidable such instrument, court-fee under Sec. 7(iv-A) is payable."

74. Now, if the decision of the learned Single Judge of this Court in **Altaf Husain** (supra) is seen, it would reveal that the reasons why agreement to sell was not considered to be an instrument securing property has been indicated in Paragraphs 14 and 15, which for ease of reference is being reproduced hereinafter:-

"14. Admittedly an agreement to sell cannot be said to be "Instrument securing property" or it does not assure vesting of that title in the transferee or extinction of transferor's interest. The transferee can also file proceeding for re-turning the earnest money given by him under the agreement against the transferor.

15. In view of the same, agreement to sell cannot be treated at par with sale-deed. The suit for cancellation of same would not fall within the meaning of "instrument securing property" as per

section 7 (iv-A.), therefore, suit cannot be valued on the value of the immovable property as computed in accordance with sub-section (v) of section 7 of the Act."

75. The premise of the said judgment is the fact that an agreement to sell does not assure vesting of title or extinction of transferor's interest and a comparison was made between an agreement to sell and a sale-deed. However, what is significant to note that the sale-deed may be an instrument or a document of conveyance which vests title of the property from one to the other. At the same time, if an agreement to sell is examined, it has the impact of keeping safe and certain the terms and subject matter of the agreement till such time the agreement is in force. The seller in law, is deemed to hold the property in trust for the purchaser and the purchaser who has parted with part consideration is also assured that within the time frame as agreed and upon making the payment of the balance consideration as per the agreement, to the seller, he will be entitled to have the property. The sale-deed is a document executed which completes the entire process and culminates in transfer of title from the seller to the buyer.

76. As from a perusal of the word 'property' noticed in the preceding paragraphs, it is clear that sofar as the Section 7(iv-A) of the Court Fees Act is concerned, the word 'property' used therein is of a wide import and it is not confined only to movable or immovable property rather it can encompass even such rights and obligations which can be a subject matter of a valid contract and can be transferred or assigned. Therefore, this aspect was not considered by this Court in **Altaf Husain** (supra). Moreover, if the reasoning in **Altaf Husain** (supra) is adopted then it would amount to ascribing a narrow meaning to the words used in the Court Fees Act. Moreover, a Division Bench of this Court as way back in 1956 in **Udai Pratap Gir** (supra), had already noticed that the word 'secure' must be given a wider interpretation.

77. Thus, it cannot be said that an agreement to sell does not secure either the money or property for the purposes of the Court Fees Act, hence, this Court is of the opinion that the decision of **Altaf Husain** (supra) does not lay down the correct proposition. For the aforesaid reasons, the decision of another Single Judge of this Court in **Suman Lata Agrawal** (supra) which has merely followed the decision of **Altaf Husain** (supra) also does not express the correct proposition of law.

78. An agreement to sell may not be an instrument by which a right in the property is created nor extinguishes it (as per T.P. Act), but at the same time, it is an instrument which does bring security and certainty and it does create obligations which are enforceable in law based upon which a party can seek an appropriate relief in a Court of law. The words used in Section 54 of the T.P. Act are in a different context, which cannot be imported for the purposes of interpreting the Court Fees Act, which needless to say covers all sorts of transactions and suits relating to both movable or immovable, tangible or intangible while Section 54 of the T.P. Act is only confined to an immovable property.

E-1 <u>Answer to Question No.I:-</u>

79. For the detailed discussions as noticed above, this Court is of the firm view that an 'agreement to sell' will fall within the meaning of the word 'instrument' 'securing money or other property' having

such value for the purposes of Section 7(iv-A) of the Court Fees Act. Question No.1 is answered accordingly.

E-II Answer to Question No.2:-

80. Now, in light of the answer to Question No.1, it would be apposite to consider the Question No.2 referred to this Court which is reproduced as under:-

> "(II) Whether, the court fees paid on the suit for cancellation of an agreement to sale would be governed by Section 7 (v) of the Court Fees Act or under Article 17 (iii) of the Second Schedule of the Court Fees Act?"

81. Considering the provisions of Section 7(iv-A) of the Court Fees Act and noticing the explanation appended thereto, it is no more in dispute that if a suit falls within Section 7(iv-A) of the Court Fees Act, consequently, the court fees payable would be on *ad valorem* basis taking note of the explanation appended to Section 7(iv-A) of the Court Fees Act. The moment a suit involves cancellation of either an instrument or a decree as the case may be and it is referable to Section 7(iv-A) of the Court Fees Act then the fee would necessarily be paid on *ad valorem* basis and that would *ipso facto* exclude the applicability of Article 17(iii) of the Court Fees Act.

82. In light of the aforesaid, it would be clear that a suit seeking cancellation of an agreement to sell would be governed by Section 7(iv-A) of the Court Fees Act and the court fees payable would be in terms of Section 7(v) as provided in the explanation to Section 7(iv-A) of the Court Fees Act and not under Article 17(iii) of the Second Scheduled of the Court Fees Act. The question No.2 is answered accordingly.

F. Conclusion:-

83. This Court holds that an agreement to sell is an 'instrument securing money or other property' for the purposes of Section 7(iv-A) of the Court Fees Act. A fortiori in a suit seeking cancellation of an agreement to sell, the court fee payable would be in terms of Section 7(iv-A) and its explanation, referable to Section 7(v) of the Court Fees Act, 1870 and not in terms of Article 17(iii) of the Second Schedule of the Court Fees Act.

84. This Court also holds that the decisions of this Court in **Altaf Husain** (supra) and **Suman Lata Agrawal** (supra) do not lay down the correct law and accordingly, they are overruled.

85. The reference is answered in the aforesaid terms.

86. The matter may now be placed before the Court concerned for deciding the petition on its own merits.

87. Before parting, this Court records it appreciation for the learned counsel and members of the Bar namely Shri Pritish Kumar, Shri S.M.S. Royekwar, Shri Ayush Tandon and Shri Reshu Sharma, who gave their valuable assistance to the Court.

(2025) 7 ILRA 137
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 18.07.2025
BEFORE

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

Matters Under Article 227 No. 6435 of 2025

Nitin Kumar Jain ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Gaurav Srivastava, Rajesh Kumar Srivastava

Counsel for the Respondents:
G.A.

Issue for Consideration

Matter pertains to the legality of the order passed by the Revisional Court (District & Sessions Judge), whereby the criminal revision was dismissed for want of prosecution, without adjudication on merits, in light of the principle laid down by the Hon'ble Supreme Court in *Taj Mohammad v. State of Uttar Pradesh & Another*, 2023 LiveLaw (SC) 689, which emphasizes that even in the absence of a party or his counsel, a revision petition must be considered on merits.

Headnotes

Constitution of India - Article 227 - Supervisory Jurisdiction - Scope and Interference - Criminal Procedure Code, 1973 – SS. 397/401 - Revision - Dismissal for want of prosecution - Impermissibility - Even in the absence of a party or his counsel, a revision petition calls for consideration on merits in accordance with the parameters for consideration of a revision petition.

Held: Revisional Court erred in dismissing the revision petition for non-prosecution - Following Supreme Court precedent, the Court held that a revision petition requires consideration on merits - Order dated 20.05.2024 passed by the Sessions Judge, Agra dismissing the revision for want of prosecution set aside - Matter remitted to the Revisional Court to rehear and decide the case afresh on merits, in accordance with law, after giving opportunity of hearing to both parties - Petition allowed. **(Paras 4 ,5,6,7,8)** (E-7)

Case Law Cited

Taj Mohammad v. State of Uttar Pradesh & Another, **2023 LiveLaw (SC) 689**

List of Acts

Constitution of India; Code of Criminal Procedure, 1973; Indian Penal Code, 1860;

List of Keywords

Criminal Revision; Dismissed for want of prosecution; Consideration on merits; Mandate of law; Re-hear the matter.

Case Arising From

Order dated 20.05.2024 of the Sessions Judge, Agra in Criminal Revision No. 82 of 2024, arising out of Case No. 15385 of 2022 under SS. 420, 406 IPC, Police Station Sikandara, District Agra.

Appearances for Parties

Advs. for the Appellant: **Gaurav Srivastava, Rajesh Kumar Srivastava**

Advs. for the Respondents: **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 instant petition under Article 227 of the Constitution of India has filed seeking the following relief:

"(i) Issue an order or directing setting aside the order dated 20.05.2024 passed by Sessions Judge, Agra in Criminal Revision No. 82 of 2024 (Nitin Jain Vs. State of U.P. and and Another).

(ii) Issue an order or directing setting aside the order dated 08.12.2023 passed by Additional Chief Judicial, Court No. 01, Agra in Case No. 15385 of 2022 (Nitin Kumar Vs. Abhishek Ahuja and Others) u/s 420, 406 IPC, Police Station Sikandara, District Agra.

(iii) Issue any suitable order or direction as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case existing the present case;

(iv) Award the cost of the abovenoted petition in favor of the plaintiffs/petitioners."

3. It has been submitted by learned counsel for the petitioner that the petitioner lodged a complaint bearing Complaint Case No. 5385 of 2022 against the respondent-accused which was dismissed by the Additional Chief Judicial Magistrate, Court No. 01, Agra vide order dated 08.12.2023 under Section 203 Cr.P.C.

4. Being aggrieved by the said order, the petitioner preferred a criminal revision before the learned District & Sessions Judge, Agra wherein the criminal revision was dismissed for want of prosecution vide order dated 20.5.2024, passed by the learned Revisional Court.

5. Learned counsel for the petitioner has relied upon the judgement of Hon'ble Supreme Court in **Taj Mohammad vs. State of Uttar Pradesh & Another, 2023 LiveLaw (SC) 689** wherein the Hon'ble Supreme Court emphasised that: "even in the absence of a party or his counsel, a revision petition calls for consideration on merits in accordance with the parameters for consideration of a revision petition".

6. It has been emphasized that the Revisional Court had dismissed the revision for want of prosecution which is against the mandate of law as discussed above.

7. Accordingly, considering the aforesaid facts and circumstances of the case as well as in light of the observations as discussed above, the order dated 20.5.2024 passed by Sessions Judge, Agra is hereby set aside and the matter is remitted back to the Revisional Court to re-hear the matter and pass a fresh order on merit in accordance with law after giving opportunity of hearing to both the parties and subject to their cooperation if, there is no other legal impediment.

8. With the aforesaid directions, the writ petition is allowed.

(2025) 7 ILRA 139
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 17.07.2025

BEFORE

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

Matters Under Article 227 No. 7176 of 2025

Lavkush Yadav ...Petitioner
Versus
State Of U.P. & Anr. ...Respondents

Counsel for the Petitioner:
Suneel Kumar Yadav

Counsel for the Respondents:
G.A.

Issue for Consideration

Whether the rejection of the petitioner's application under S.173(4) BNSS, alleging medical negligence by a government doctor, leading to the death of petitioner's two-month-old daughter. was justified.

Headnotes

Medical Negligence – Criminal Liability – Petition under Article 227 – S.173(4) BNSS – Allegations against a government doctor for not being present during emergency treatment of petitioner's child - Doctor was present in the hospital premises, engaged in official duties; patient attended by junior doctors - Criminal negligence of a medical practitioner must be clearly established before prosecution.

Held: No illegality in the orders impugned - Evidence showed that the doctor was present in the hospital and performing official duties; the patient was treated by competent staff - No negligence on the part of the medical staff - No case of criminal rashness or negligence was made out - Rejection of the application under S.173(4) BNSS and the revision therefrom was justified. (Paras 11,12,13,14,15) (E-7)

Case Law Cited

Jacob Mathew v. State of Punjab and Another, **(2005) 6 SCC 1**

List of Acts

Constitution of India; Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS)

List of Keywords

Medical negligence; Emergency; Inquiry report; biometric system; Child death; No gross medical negligence.

Case Arising From

Application No. 475 of 2024 under S. 173(4) BNSS before the Chief Judicial Magistrate, Azamgarh, rejected by order dated 10.10.2024; Criminal Revision No. 363 of 2024 before the District and Sessions Judge, Azamgarh, dismissed by order dated 11.3.2025.

Appearances for Parties

Advs. for the Appellant/Petitioner: Suneel Kumar Yadav

Advs. for the Respondents: Government Advocate (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 a prayer to set aside the impugned order dated 11.3.2025 in Criminal Revision No. 363 of 2024 (Lavkush Yadav vs. State of U.P. and another) passed by District and Session Judge, Azamgarh as well as order dated 10.10.2024 in Application No. 475 of 2024 under Section 173(4) BNSS (Lavkush Yadav vs. Deepak Pandey) passed by CJM Azamgarh, P.S. Jahanaganj, District Azamgarh.

3. It has been submitted by learned counsel for the petitioner that the petitioner moved an application under Section 173(4) BNSS for lodging of the FIR but the same has been rejected by the Chief Judicial Magistrate, Azamgarh vide order dated 10.10.2024.

4. Being aggrieved by the said order, the petitioner preferred a revision which was also dismissed on 11.3.2025, hence the present petition has been preferred.

5. The main contention of learned counsel for the petitioner is that the daughter of the petitioner, aged about 2 months, was suffering from pneumonia and was in a critical condition. She needed urgent medical aid. The petitioner contacted the Chief Medical Officer for her treatment who advised to approach the Child Specialist Dr. Deepak Pandey, Rajkiya Medical College, Chakrapanpur, Azamgarh who was also the Head of the Child Department. The petitioner hired 108 Ambulance and went to the Rajkiya Medical College where his daughter was attended by Junior Doctors. It was informed by junior doctors that Dr. Deepak Pandey runs a private hospital and can be consulted at Rainbow Hospital, Sidhari, Azamgarh. Knowing this fact, the petitioner got annoyed and complained the Chief Medical Officer that the doctor concerned runs a private hospital, therefore, some action needs to be taken against him. The ailing daughter was then referred by

the junior doctors to the IMS BHU, whereby she died on the way.

6. The main grievance of the petitioner is that the daughter of the petitioner died due to the negligence on the part of Dr. Deepak Pandey who was not available in the hospital to perform his official task and was busy earning double income through other sources.

7. After moving an application under Section 173(4) BNSS before the concerned Chief Judicial Magistrate, a police report was sought from Police Station Jahanaganj. An enquiry was conducted. It was found that attendance of the official and staff was recorded through biometric system and Dr. Deepak Pandey was present within the premises on 20.4.2024 for OPD and from 2.00 P.M. to 3.00 P.M. he was engaged in delivering lectures to the students of MBBS (Final Year). The daughter of the petitioner was referred by junior doctors to IMS BHU at 02.45 P.M. At the time of referral, Dr. Deepak Pandey was busy delivering lectures to the medical students.

8. The learned Magistrate, after considering the enquiry report of the concerned Police Station, found that prima facie no offence was made out against the alleged doctor. Accordingly, the application moved under Section 173(4) BNSS was rejected and the revision filed by the petitioner against the said impugned order was also rejected.

9. From the perusal of records, it transpires that as per the report dated 14.5.2024 uploaded on the IGRS Portal the baby girl of Lavkush (Petitioner) was admitted in the Emergency Department at 12.15 P.M. and during medical investigation it was found that there was a hole in her heart (VSD) due to which she was suffering from CHF and Perfumeries. All these symptoms were informed to the petitioner. Looking to her critical condition, the petitioner was advised to refer the baby to IMS-BHU at 2.45 P.M. on the same day.

10. Learned AGA for the State could not dispute the aforesaid facts.

11. It is undisputed that the petitioner remained at the Emergency Ward for 2 hours and Dr Deepak Pandey was in the OPD and delivering lecture to the Medical Student. The Junior Doctors, Dr. Narendra Yadav, Senior Resident and Dr. Akhilesh Kumar Varma, Junior Resident were available in the Emergency Ward and attended the patient.There was no negligence on the part of the medical staff.

12. Thus, the contents of the application moved under Section 173(4) BNSS does not make out a case of criminal rashness or negligence on the part of respondent no. 2.

13. The Hon?ble Supreme Court in **Jacob Mathew vs. State of Punjab and Another (2005) 6 SCC 1** has laid down a detailed guidelines to protect the interest of doctors and to save them from unwarranted and malicious proceedings. Elaborating the same, it was observed that:- *"Indiscriminate prosecution of medical professionals for criminal negligence is counter-productive and does no service or good to society. A medical practitioner faced with an emergency ordinarily tries his best to redeem the patient out of his suffering. He does not gain anything by acting with negligence or by omitting to do an act. Obviously, therefore, it will be for the complainant to clearly make out a case of negligence before a medical practitioner*

is charged with or proceeded against criminally. A surgeon with shaky hands under fear of legal action cannot perform a successful operation and a quivering physician cannot administer the end-dose of medicine of his patient. If the hands be trembling with the dangling fear of facing a criminal prosecution in the event of failure for whatever reason whether attributable to himself or not, neither can a surgeon successfully wield his life-saving scalpel to perform an essential surgery, nor can a physician successfully administer the life-saving dose of medicine. Discretion being the better part of valour, a medical professional would feel better advised to leave terminal patient to his own fate in the case of emergency where the chance of success may be 10% (or so), rather than taking the risk of making a last ditch effort towards saving the subject and facing a criminal prosecution if his effort fails. Such timidity forced upon a doctor would be a disservice to society."

14. Considering the material available on record, this Court finds that the relevant inquiry was already conducted. The daughter of the petitioner was admitted in a critical condition in the Emergency Ward and was attended by two junior doctors and thereafter was referred to IMS-BHU. The respondent No. 2 was in OPD and was delivering lectures to the medical students from 2.00 P.M to 3.00 P.M. There was no gross medical negligence in her treatment.

15. Consequently, this Court does not find any illegality in the orders impugned, therefore, no interference is required.

16. Accordingly, the writ petition is dismissed.

(2025) 7 ILRA 142

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 01.07.2025
BEFORE

THE HON'BLE NEERAJ TIWARI, J.

Matters Under Article 227 No. 8521 of 2024

M/S Sterling Irrigations And Ors. ...Petitioners

Versus

Ms Bharat Industries ...Respondent

Counsel for the Petitioners:
Prateek Kumar

Counsel for the Respondent:
Ajay Kumar Pandey, Chhaya Gupta, Sujeet Kumar

Issue for Consideration

Matter pertains to the applicability and interpretation of SS.124 ,125 of the Trade Marks Act, 1999 in a suit filed for injunction, and the legality of stay granted by the Commercial Court on the basis of pending rectification proceedings.

Headnotes

Trade Marks Act, 1999 – SS.124 & 125 – Stay of proceedings where validity of registration is questioned – Suit and counter-claim filed only for permanent/prohibitory injunction and not for infringement – validity of registration not challenged – S.124 not attracted – stay of proceedings bad in law - Rectification Application – Proper forum – S.125 – Rectification application in pending suit for infringement must be filed before the High Court, not before the Registrar – O.14 R.1 CPC – Framing of issues – Issues framed earlier under O.14 R. 1 CPC are distinct from issues required to be framed under S.124 – absence of such issue fatal to stay order.

Held: Suit and counter claim being for injunction only, not for infringement of trade mark, provisions of S.124 of the Trade Marks Act, 1999 were not applicable – Even if treated

as a suit for infringement, the Commercial Court erred in staying the proceedings without framing issue as required under S.124(1)(b)(ii) of the Act -Rectification applications filed before Registrar, Trade Mark, Calcutta and Delhi were not maintainable under S.125(1), being required to be filed before the High Court - During the pendency, if rectification application is to be filed, same has only been filed before the High Court and not before the Registrar - In case it is pending before the Registrar, he is required on his part to transfer the same before the High Court - Law is very well settled that only High Court is having authority to decide the rectification application filed under SS. 124 & 125 of Act, 1999 - Impugned order dated 6.5.2024 passed by the Commercial Court No.2, Agra was quashed - Petition allowed - No order as to costs. (Paras 20,21,26,27,28,29,30,31,32) (E-7)

Case Law Cited

Umesh Kumar Gupta and another v. M/s Shree Girraj Food Products, **2013 (2) AII WC 2023***; Patel Field Marshal Agencies & Ors. v. P.M. Diesels Ltd. & Ors.,* **AIR 2017 SC 5619***; Abbott Healthcare Pvt. Ltd. v. Raj Kumar Prasad & Ors.,* **2017 DHC 7479-DB***; Jagatjit Industries Ltd. v. Intellectual Property Appellate Board & Ors.,* **(2016) 4 SCC 381***; Nedunuri Kameswaramma v. Sampati Subba Rao,* **AIR 1963 SC 884***; Kannan (dead) by Lrs. v. V.S. Pandurangam (dead) by Lrs.,* **(2007) 15 SCC 157***; Asia Match Company Pvt. Ltd. v. Deputy Registrar of Trade Marks & GI,* **2023: MHC:5361***.*

List of Acts

The Trade Marks Act, 1999; Code of Civil Procedure, 1908; Commercial Courts Act, 2015

List of Keywords

Registered Trademark – injunction – infringement of trademark – permanent injunction – prohibitory injunction – rectification application – validity of registration – stay of proceedings – framing of issues – Registrar – counter claim – Commercial Court.

Case Arising From

Impugned order dated 6.5.2024 passed by the learned Commercial Court No.2, Agra in Original Suit No. 04 of 2015 (*M/s Bharat Industries v. M/s Sterling Irrigation and others*).

Appearances for Parties

Advs. for the Petitioners: Prateek Kumar
Advs. for the Respondent: Ajay Kumar Pandey, Chhaya Gupta, Sujeet Kumar

(Delivered by Hon'ble Neeraj Tiwari, J.)

1. Heard Sri Prateek Kumar, learned counsel for the petitioners and Ms. Chhaya Gupta, learned counsel for the respondent.

2. Present petition has been filed for setting aside the impugned order dated 6.5.2024 passed by the learned Commercial Court No.2, Agra in Original Suit No. 04 of 2015 (M/s. Bharat Industries vs. M/s Sterling Irrigation and others)

3. Pleadings are exchanged between the parties. With the consent of parties, writ petition is being decided at the admission stage itself.

4. Brief facts of the case are that petitioners-defendants has published notice in Amar Ujala on 18.6.2015 for transfer of registered trademark. Feeling aggrieved by that, respondent-plaintiff has filed Original Suit No. 4 of 2015 under Section 134 of The Trade Marks Act, 1999 (hereinafter referred to as Act, 1999) upon which petitioners-defendants have filed written submission alongwith counter claim on 15.12.2015. Thereafter, respondent-plaintiff filed reply to the counter claim on 31.5.2016. On the basis of pleadings made by both the parties, learned trial Court vide its order dated 22.8.2016 had framed issues. During the pendency of suit, petitioner-defendant has filed rectification application on 1.8.2019 under Section 25(a) of Act, 1999 before the Registrar, Trademark, Kolkata whereas respondent-

plaintiff has also filed rectification application under Section 25(a) of Act, 1999 before the Registrar, Trademark, Delhi on 16.11.2023. Thereafter, respondent-plaintiff has filed Application No.196 C on 1.3.2024 to stay the defendants' counter claim (paper no. 20Ga) bearing case no. 11 of 2023. Petitioner-defendant has filed reply to the said application on 6.3.2024 and thereafter respondent-plaintiff has also filed rejoinder reply to the defendants' reply dated 6.3.2024 on 21.3.2024. Learned Commercial Court vide impugned order dated 6.5.2024 has stayed the proceedings of counter claim No. 11 of 2023 as well as Original Suit No. 4 of 2015. Hence, the present petition.

5. Learned counsel for the petitioners-defendants submitted that present suit has not been filed for infringement of trademark rather it has been filed for permanent injunction. Likewise, counter claim has also not been filed for infringement of trademark rather it was filed for prohibitory injunction whereas Section 124 of Act, 1999 is only applicable in case suit is filed for infringement of trademark, therefore, provision of Section 124 of Act, 1999 shall not be applicable in the present case. He also pointed out that nature of suit has to be seen from the prayer i.e. relief clause and from perusal of the prayer, it is apparently clear that counter claim and suit were filed for permanent injunction as well as prohibitory injunction and not for infringement of trademark. In support of his contention, he has placed reliance upon the judgment of this Court in the case of ***Umesh Kumar Gupta and another vs. M/s Shree Girraj Food Products*** reported as ***2013 (2) AII WC 2023.***

6. He next submitted that Section 124 of Act, 1999 is applicable for stay of proceedings, where the validity of registration of trade mark is questioned. In the present case, from perusal of the pleadings as well as prayer either in the suit or in the counter claim, validity of registration of trademark has not been challenged by either side, therefore, this provisions would also not applicable.

7. He next submitted that assuming it not admitting, if it is the case of suit for infringement of trademark, as per Section of 124(1)(b)(i) of Act, 1999, if the proceedings is pending for rectification of the register of trademark before the Registrar or the High Court before filing of suit, proceedings shall be stayed till final disposal of such proceedings. Further, as per Section 124(1)(b)(ii), if no such proceedings is pending and same has been filed during the pendency of suit, In that case, if the Court is satisfied that the plea regarding the invalidity of registration of trademark is prima facie tenable, Court shall frame an issue regarding the same and adjourn the case for a period of three months from the date of framing the issue in order to enable the party concerned to apply before the High Court for rectification of the register. In the present case, no issue has been framed by the Commercial Court, while staying the proceedings under Section 124 of Act, 1999. In support of his contention he has placed reliance upon the judgment of Apex Court as well as Delhi High Court in the cases of ***Patel Field Marshal Agencies (Supra) and Ors. vs. P.M. Diesels Ltd. And others*** reported as ***AIR 2017 SC 5619*** and ***Abbott Healthcare Pvt. Ltd. Vs. Raj Kumar Prasad and others*** reported as ***2017 DHC 7479-DB.***

8. Learned counsel for the petitioner further submitted that in case of suit for infringement of registered trademark in terms of Section 125 of Act, 1999, rectification application can only be filed before the High Court and not before the Registrar, but in the present case, undisputedly it has been filed before the Registrar. In support of his contention, he has placed reliance upon the judgment of Apex Court in the case of ***Jagatjit Industries Limited vs. Intellectual Property Appellate Board and others reported as 2016 (4) SCC 381.*** He lastly submitted that in light of above facts as well as law laid down, order impugned is bad and liable to be set aside.

9. Per contra, Ms. Chhaya Gupta, learned counsel for the respondent vehemently opposed the submission and submitted that undisputedly at the time of filing of suit and counter claim, it was not for infringement of trade mark rather it was filed for injunction as earlier stated, but after filing of rectification application, in light of Section 29 and 30(2)(e) of Act, 1999, it shall be treated to be suit for infringement of trade mark. She also pointed that in light of Order 7 Rule 7 of CPC, while deciding the nature of suit, entire plaint is required to be seen and not only prayer. Undisputedly, in paragraph 30 of the plaint, defendant plaintiff has mentioned the word 'infringement'. Likewise petitioner-claimant has also mentioned the word 'infringement' at least in three paragraphs, therefore, in light of such facts as well as legal position, suit has to be treated for infringement of trade mark and Section 124 of Act, 1999 would be applicable.

10. She has also opposed the second argument made by the learned counsel for the petitioner and submitted that issues were already framed much earlier on 22.8.2016 and issue nos. 9 and 16 are relevant for this purpose, therefore, there is no occasion for the Court to frame the issue again. She also submitted that even if issues are not framed, suit cannot be dismissed in light of Order 14 Rule 1 of CPC. In support of his contention, she has placed reliance upon the judgment of Apex Court in the cases of ***Nedunuri Kameswwaramma vs. Sampbba Rao*** reported in ***1963 0 AIR (SC) 884*** and ***Kannan (dead) by Lrs. And other vs. V.S. Pandurangam (dead) by Lrs and others*** reported as ***(2007) 15 SCC 157.***

11. Demolishing the third argument of learned counsel for the petitioner, she submitted that undisputedly rectification application has to be filed before the High Court, but in case it has been filed before the Registrar and if Registrar thinks fit, he may refer the application at any stage of proceedings before the High Court, therefore, once rectification application may be sent to High Court at any stage, argument of learned counsel for the petitioner is not sustainable. In support of her contention, she has placed reliance upon the judgment of Madras High Court in the case of ***Asia Match Company Pvt. Ltd., vs Deputy Registrar of Trade Marks & GI, Trade Marks Registry, Intellectural Property Office Building G.S.T. Road, Guindy and another*** reported as ***2023:MHC:5361.***

12. In the rejoinder argument, learned counsel for the petitioner reiterated that it is not the suit for trade mark rather it was filed for prohibitory injunction and mere filing of any application under any provision of law before the Commercial Court, that can not change the nature of

suit. So far as framing of issues on 22.8.2016 is concerned, he pointed out that those issues were framed after filing of written submission under Order 14 Rule 1 of CPC. In the present case, issues has to be framed by the Commercial Court after filing of application under Section 124 of Act, 1999. Both the issues framed under Order 14 Rule 1 of CPC and Section 124 of Act, 1999 are entirely different, therefore, issue so framed earlier is having no concern with the issue required to be framed under Section 124 of Act, 1999. So far as third argument of learned counsel for the respondents is concerned, he submitted that undisputedly Registrar may refer the application before the High Court under Section 125(2) of Act, 1999, but undisputedly, till date reference has not made to the High Court, therefore, rectification application itself is not maintainable.

13. I have considered the rival submissions advanced by the learned counsel for the parties and perused the record as well as judgment relied upon.

14. The basic issue before this Court is about the applicability and interpretation of Sections 124 & 125 of Act, 1999. For ready reference Sections 124 & 125 are being quoted below:-

"124. Stay of proceedings where the validity of registration of the trade mark is questioned, etc.— (1) Where in any suit for infringement of a trade mark—

a) the defendant pleads that registration of the plaintiff's trade mark is invalid; or

(b) the defendant raises a defence under clause (e) of sub-section (2) of section 30 and the plaintiff pleads the invalidity of registration of the defendant's trade mark,

the court trying the suit (hereinafter referred to as the court), shall,—

(i) if any proceedings for rectification of the register in relation to the plaintiff's or defendant's trade mark are pending before the Registrar or the Appellate Board, stay the suit pending the final disposal of such proceedings;

(ii) if no such proceedings are pending and the court is satisfied that the plea regarding the invalidity of the registration of the plaintiff's or defendant's trade mark is prima facie tenable, raise an issue regarding the same and adjourn the case for a period of three months from the date of the framing of the issue in order to enable the party concerned to apply to the Appellate Board for rectification of the register.

(2) If the party concerned proves to the court that he has made any such application as is referred to in clause (b) (ii) of sub-section (1) within the time specified therein or within such extended time as the court may for sufficient cause allow, the trial of the suit shall stand stayed until the final disposal of the rectification proceedings.

(3) If no such application as aforesaid has been made within the time so specified or within such extended time as the court may allow, the issue as to the validity of the registration of the trade mark concerned shall be deemed to have been abandoned and the court shall proceed with the suit in regard to the other issues in the case.

(4) The final order made in any rectification proceedings referred to in sub-section (1) or sub-section (2) shall be binding upon the parties and the court shall dispose of the suit conformably to such order in so far as it relates to the issue as to the validity of the registration of the trade mark.

(5) The stay of a suit for the infringement of a trade mark under this section shall not preclude the court from making any interlocutory order (including any order granting an injunction directing account to be kept, appointing a receiver or attaching any property), during the period of the stay of the suit.

125. Application for rectification of register to be made to Appellate Board in certain cases.—

(1) Where in a suit for infringement of a registered trade mark the validity of the registration of the plaintiff's trade mark is questioned by the defendant or where in any such suit the defendant raises a defence under clause (e) of sub-section (2) of section 30 and the plaintiff questions the validity of the registration of the defendant's trade mark, the issue as to the validity of the registration of the trade mark concerned shall be determined only on an application for the rectification of the register and, notwithstanding anything contained in section 47 or section 57, such application shall be made to the Appellate Board and not to the Registrar.

2) Subject to the provisions of sub-section (1), where an application for rectification of the register is made to the Registrar under section 47 or section 57, the Registrar may, if he thinks fit, refer the application at any stage of the proceedings to the Appellate Board.

15. First argument of learned counsel for the parties is about the nature of suit, as to whether it is suit for infringement of trade mark or not. From the perusal of the prayer of the suit as well as counter claim, it is apparently clear that both are only for permanent injunction as well as prohibitory injunction and opposite to that learned counsel for the respondents relying upon the Order VII Rule 7 of CPC, submitted that nature of suit has to be seen from the plaint not from the prayer. From the headlines of Section 124 of Act, 1999, it is clear that to invoke the provision of Section 124 of Act, 1999 there must have been challenge the validity of registration of trade mark. In the present case, it is apparently clear that nothing has been challenged in the suit as well as counter claim rather injunctions have only been sought.

16. I have perused the Order VII Rule 7 of CPC, which is being quoted hereinbelow:-

" "7. Relief to be specifically stated.-Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement."

17. From perusal of the same, it is apparently clear that relief clause in the plaint should be specific either simply or alternative in the plaint as well as counter claim. It does not say to go through the

pleadings for ascertaining the nature of suit rather it only clarifies that relief clause should be specific.

18. I have also perused the prayer of the plaint as well as counter claim. Same are being quoted hereinbelow:-

Prayer of Plaint:-

"A. The defendants be restrained by means of permanent injunction from using the trade name/ trade mark 'Bharat Industries' or any other identical or deceptively similar names in their business or their products in any manner whatsoever either in making advertisements of their business or by printing or putting or affixing levels or otherwise the above name 'Bharat Industries' on their polythene bags, boxes, containers in which they sell their products or on the products and the defendants be restrained from passing off their goods as those of the plaintiffs.

B. The defendants be directed to deliver up for description all the polythene bags, boxes, containers & levels, etc. on which the name 'Bharat Industries' or other identical or deceptively similar names have been used by the defendants and to remove such names also from their products and if they fail to do so, such polythene bags, containers, levels & products, ete. of the defendants be confiscated & destroyed.

C. Costs of the suit be awarded to the plaintiff as against the defendants.

D. Any other relief, which the court thinks fit, be also granted to the plaintiff

Prayer of counter claim:-

"A. That a decree of permanent prohibitory injunction be passed in favour of the defendants are against the plaintiff, restraining the plaintiff from using the trade mark 'Bharat' or identical & deceptively similar trade mark including 'Bharat Industries' or 'Bharat Industries ESTD 1972' on their products in any manner whatsoever.

B. That the plaintiff be ordered to render true & proper accounts of profits earned by it during last three years by use of trade m ark 'Bharat Industries or 'Bharat Industries ESTD 1972' and after proper calculation, decree be passed in favour of the defendants against the plaintiff. The remaining court fees on more than Rs. 10 Lakh will be paid in execution side.

C. That the plaintiff be ordered to deliver/destroy all the Labels, Stickers, Letter Heads, etc. containing Mark 'Bharat Industries or 'Bharat Industries ESTD 1972'.

D. That the costs of the counter claim be awarded to the defendants as against the plaintiff.

E. That any other relief; which the Hon'ble Court may deem fit & propert in the circumstances of the counter claim, be also granted to the defendants as against the plaintiff."

19. From perusal of the prayers of the plaint as well as counter claim, it is clear that there is no prayer questioning the validity of registration of trade mark rather it has been filed only for injunction. The identical issue has been considered by this Court in the judgment of ***Umesh Kumar Gupta (Supra)***. Relevant paragraph Nos.

20, 21 and 29 of the said judgment are quoted below:-

"20. The entire reading of the plaint and relief claimed therein demonstrates that it is a suit for decree of permanent injunction restraining the defendants to the suit from marketing their Namkeen products under the name "Chacha Aur Chaudhary" which is identical and deceptively similar to the registered trademark of the plaintiff "Chacha Chaudhary".

The relief clause as contained in the plaint reads as under:-

अ–यह कि जरिये निषेधा स्थाई, प्रतिवादीगण एवं उनके एजेन्टों, सहायकों एवं माल विक्रेताओं को वर्जित किया जावे कि वो वादी के नमकीन उत्पाद चाचा चौधरीईत्त के पैक एवं पैकेज से मिलते जुलते एवं डिसैटिवली नमकीन उत्पाद ईŽचाचा और चौधरीईत्त के पैक एवं पैकेज मे बनाने और बेचने तथा वादी के उक्त उत्पादो को अपने छदम उत्पाद से पासिंग आफ करने से एवं वादी के ट्रेड पंजीकरण अधिकारो मे कोई भी हस्तक्षेप करने से बाज रहे।

ब–यह कि प्रतिवादीगण को निर्देश दिया जावे कि वो वादी के नमकीन उत्पाद चौधरीईत्त से मिलते जुलते एवं डिसैप्टिवली सिमिलर और चौधरीईत्त से समस्त भरे व खाली पाउच उनके डिब्बे तथा उन्हे बनाने के सम्बन्ध मे प्रयुक्त समस्त माल मैटेरियल एवं स्टेशनरी वादी के हवाले कर दे हर सूरत कासिर रहने उनका नकली व छदम माल और मैटेरियल जबत किया जाकर वादी को हस्तगत कराया जावे।

21. The plaintiff in the relief clause has clearly asked for the passing off the goods and services and an injunction in that regard.

29. In the totality of the above facts and circumstances, notwithstanding the other reasons recorded by the court below in rejecting the application under Section 124 of the Act, I am of the opinion that as the suit in question is not one for infringement of the trademark, it is not liable to be stayed in exercise of power under Section 124 C.P.C."

20. From perusal of the aforesaid judgment, it is clear that nature of suit has to be ascertained from the prayer and in light of prayer of suit and counter claim, there is no doubt that it has been filed for injunction only. Even after going through the contents of plaint and counter claim, not a single word has been stated questioning the validity of registration of trade mark, therefore, this Court is of the view that suit in question is not for the infringement of trade mark, therefore, Section 124 of Act, 1999 is not applicable. In light of such fact, stay of proceedings is also bad and liable to be set aside.

21. Now coming to the second argument, treating this case as suit for infringement of trade mark. Section 124(1)(b)(I) of Act, 1999 clearly provides that in case at the time of filing of suit, any proceedings for rectification of register of plaintiff defendant's trade mark is pending before the Registrar or the High Court, proceedings shall be stayed. In the present case, at the time of filing of suit, undisputedly no such proceedings was pending, therefore, this would not be applicable. Now coming to the Section 124(1)(b)(II) of Act, 1999, here again it is undisputed that during the pendency of suit, rectification application has been filed by both the parties i.e. plaintiff and defendant, therefore, Section 124(1)(b)(II) would also not applicable in the present case, which says that in case initiation of such proceedings, it is required on the part of Court to frame issues and stay the proceedings for three months to enable the party concerned to apply before the Court for rectification of register. Once the

application 196-C was filed before the Commercial Court, it is also required on the part of Court that after taking cognizance of rectification proceedings pending before the Registrar, issues should have been framed prior to staying the proceedings, but undisputedly no issues have been framed. Therefore, argument of learned counsel for the respondents is not sustainable, which refers about the framing of issue vide order dated 22.8.2016.

22. I have perused the order of Commercial Court dated 22.8.2016 in which issues were framed under Order 14 Rule 1 of CPC after filing of written submission. Those are issues, while deciding the same, Court is required to return his findings. So far as issue, which is to be framed under Section 124 of Act, 1999 is entirely different. It has to be framed only after taking cognizance of proceedings of rectification application and Court while framing the issues is not supposed to decide the same, but only stay the proceedings. In fact, framing of issue is only for the purpose of staying the proceedings. Therefore, once it is brought into knowledge of Court through application No.196-C, it is mandatory on the part of Court to frame issues first and then stay the proceedings, but undisputedly issues have not been framed. This point has also considered by the Apex Court in the matter of **Patel Field Marshal Agencies (Supra).** Relevant paragraph of the said judgement is being quoted hereinbelow:-

"30. The intention of the legislature is clear. All issues relating to and connected with the validity of registration has to be dealt with by the Tribunal and not by the civil court. In cases where the parties have not approached the civil court, Sections 46 and 56 provide an independent statutory right to an aggrieved party to seek rectification of a trade mark. However, in the event the Civil Court is approached, inter alia, raising the issue of invalidity of the trade mark such plea will be decided not by the civil court but by the Tribunal under the 1958 Act. The Tribunal will however come into seisin of the matter only if the Civil Court is satisfied that an issue with regard to invalidity ought to be framed in the suit. Once an issue to the said effect is framed, the matter will have to go to the Tribunal and the decision of the Tribunal will thereafter bind the Civil Court. If despite the order of the civil court the parties do not approach the Tribunal for rectification, the plea with regard to rectification will no longer survive.

23. The Delhi High Court in the matter of ***Abbott Healthcare Pvt. Ltd. (Supra)*** has followed the judgment of Apex Court in the matter of ***Patel Field Marshal Agencies (Supra).*** Relevant paragraph of the said judgment is quoted hereinbelow:-

"28. From the aforesaid analysis of the dicta of the Supreme Court in Patel Field Marshal Agencies supra, my view is re-enforced that without an issue having been urged and framed, this Court cannot in exercise of powers under Section 124 stay the proceedings in the suit as is the want of the plaintiff. It is only after an issue qua invalidity of registration is framed that the legislature has provided for stay of proceedings in the suit to avoid the Civil Court as well as IPAB both adjudicating the same question and to avoid duplicity/multiplicity. To the said extent, Section 124 is akin to Section 10 of the CPC albeit that even if proceedings before the IPAB have not been instituted prior to the institution of the suit, IPAB is given

supremacy in deciding the question of rectification.

24. I have also perused the judgment of Apex Court in the cases of ***Nedunuri Kameswwaramma (Supra)*** and ***Kannan (dead) (Supra)*** placed by the learned counsel for the respondent. Relevant paragraph of the aforesaid judgments are being quoted hereinbelow:-

Nedunuri Kameswwaramma (Supra):-

"6.On the first point, we do not see how the suit could be ordered to be dismissed, for, on the facts of the case, a remit was clearly indicated. The appellant had already pleaded that this was jeroyti land, in which a patta in favour of her predecessors existed, and had based the suit on a kadapa, which showed a sub-tenancy. It was the respondent who had pleaded that this was a Dharmila inam and not jeroyti land, and that he was in possession of the kudiwaram rights though his predecessors for over a hundred years, and had become an occupancy tenant. Though the appellant had not mentioned a Karnikam service inam, parties well understood that the two cases opposed to each other were of Dharmila Sarvadumbala inam as against a Karnikam service inam. The evidence which has been led in the case clearly showed that the respondent attempted to prove that this was a Dharmila inam and to refute that this was a Karnikam service inam. No doubt, no issue was framed, and the one, which was framed, could have been more elaborate ; but since the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mis-trial which vitiates proceedings. We are, therefore, of opinion that the suit could not be dismissed on this narrow ground, and also that there is no need for a remit, as the evidence which has been led in the case is sufficient to reach the right conclusion. Neither party claimed before us that it had any further evidence to offer. We therefore, proceed to consider the central point in the case, to which we have amply referred already."

Kannan (dead) (Supra)

11. By a series of decisions of this Court it has been settled that omissions to frame an issue as required under Order XIV Rule 1 C.P.C. would not vitiate the trial in a suit where the parties went to trial fully knowing the rival case and led evidence in support of their respective contentions and to refute the contentions of the other side vide Nedunuri Kameswaramma vs. Sampati Subba Rao 4, AIR 1963 SCC 884."

25. From perusal of the judgment, it is apparently clear that issue so referred hereinabove, having no concern with Section 124 of Act, 1999 rather it refers issues framed under Order 14 Rule 1 of CPC. As discussed earlier, issues framed under Section 124 of Act, 1999 and under Order 14 Rule 1 of CPC are entirely different and having different meaning, therefore, this would not come into the rescue of learned counsel for the respondents.

26. Therefore, in light of facts as well as provisions of law laid down by the Court even in case suit is treated to be suit for infringement of trade mark, issues have not been framed as required under Section

124(1)(b)(II), therefore, order is bad on this ground and liable to be set aside.

27. Now the other argument made by the learned counsel for the parties about the filing of rectification application for register of trade mark before the High Court as provided Under Section 125 of Act, 1999. From perusal of Section 125 of Act, 1999, it is apparently clear that it has to be filed before the High Court and not before the Registrar. In the present case, it is also undisputed between the parties that applications were filed before the Registrar, Trade Mark, Calcutta & Delhi, which are having no authority in light of Section 125 of Act, 1999. Therefore, such filing is not in accordance with law and applications are not maintainable.

28. So far section 125(2) is concerned, in case applications has been filed before the Registrar for trade mark as the present case is, it is required on the part of Registrar to refer the application to High Court . Here again undisputedly, same has not been referred to the High Court, therefore, once the application is pending before the Registrar, those are not maintainable in terms of Section 125 of Act, 1999. Therefore, in such facts as well as provision of law, proceedings cannot be stayed under Section 124 of Act, 1999.

29. I have perused the judgment of Apex Court in the matter of ***Jagatjit Industries Limited (supra)*** relied by learned counsel for the petitioners. Relevant paragraph of the said judgment is being quoted hereinbelow:-

"23. The scheme under Section 124 is of great importance in understanding the scope of Section 125. It is clear that where proceedings for rectification of the register are pending before the filing of the suit for infringement in which the defendant pleads that the registration of the plaintiff's trademark is invalid, such proceedings may be made either before the Registrar or before the Appellate Board, in view of Section 57(1) and (2) of the Act. But, if rectification proceedings are to be instituted after the filing of such suit for infringement in which the defendant takes the plea that registration of the plaintiff's trademark is invalid, then rectification proceedings can only be taken before the Appellate Board and not before the Registrar.

30. I have also perused the judgment of Madras High Court in the case of ***Asia Match Company Pvt. Ltd. (Supra)*** placed by the learned counsel for the respondent. Relevant paragraphs of the said judgments are being quoted hereinbelow:-

5. This case hinges on the interpretation of Section 125 of the Trade Marks Act. Section 125 is set out below:

125. Application for rectification of register to be made to High Court in certain cases:

(1) Where in a suit for infringement of a registered trade mark the validity of the registration of the plaintiff-s trade mark is questioned by the defendant or where in any

such suit the defendant raises a defence under clause (e) of sub~section (2) of section 30 and the plaintiff questions the validity of the registration of the defendant-s trade mark, the issue as to the validity of the registration of the trade mark concerned shall be determined only on an application for the rectification of the

register and, notwithstanding anything contained in section 47 or section 57, such application shall be made to the High Court and not to the Registrar.

(2) Subject to the provisions of sub~section (1), where an application for rectification of the register is made to the Registrar under section 47 or section 57, the Registrar may, if he thinks fit, refer the application at any stage of the proceedings to the High Court.

Sub Section (1) of Section 125 applies in two situations. The first of these is when the defendant in a suit for infringement questions the validity of registration of the plaintiff-s trade mark. The second situation is where the defendant in a suit for infringement raises a defence on the basis of clause (e) of sub~section (2) of Section 30 by relying on the registration of such defendant. In both the above situations, if a rectification petition were to be filed subsequently, such rectification petition would only lie before the High Court and not before the Registrar. Therefore, learned counsel for the 2nd respondent is correct in submitting that sub~section (1) of Section 125 applies when the rectification petition is filed subsequent to the civil suit. The provision clearly prescribes that the rectification petition shall only be filed before the High Court in that situation.

8. In a situation where the rectification petition was filed prior to the institution of the civil suit, sub~section (2) of Section 125 undoubtedly empowers the Registrar to transfer the application at any stage of the proceedings to the High Court. By referring to the pending civil suit, the petitioner made such request to the Registrar in September 2023. Especially in view of the fact that the final order made in the rectification proceeding is binding on the civil court in terms of sub~section (4) of Section 124 of the Trade Marks Act, in situations where a civil suit is pending, it is appropriate that the Registrar exercises discretionary power under sub~section (2) of Section 125 by acceding to a request for transfer. Therefore, this is a fit case to direct the Registrar to transfer the rectification petition.

31. From perusal of the both the judgments, it is clear that during the pendency, if rectification application is to be filed, same has only been filed before the High Court and not before the Registrar. Not only this, in case it is pending before the Registrar, he is required on his part to transfer the same before the High Court. Law is very well settled that only High Court is having authority to decide the rectification application filed under Sections 124 & 125 of Act, 1999.

32. Therefore, under such facts and circumstances of the case as well as law laid down by the Apex Court as well as this Court, impugned order dated 6.5.2024 is not sustainable and hereby quashed. Petition is **allowed**.

33. No order as to costs.

(2025) 7 ILRA 153
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 07.07.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI , J.

Application U/S 482 No. 2141 of 2025

Sachin Kumar Verma @ Sachin Kumar Soni @ Pawan Soni ...Applicant
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicant:

Anil Kumar Yadav, Devansh Singh Chauhan, Manoj Kumar

Counsel for the Opposite Parties:
G.A., Vikas Vikram Singh

Issue for consideration

Matter pertains to rejecting an application u/s233 Cr.P.C. filed by the applicant for summoning some police persons for being examined as defence witnesses as also summoning some documents in evidence; validity of order dated 13.02.2025 passed by the Session Judge, Raebareli rejecting application u/s 233 Cr.P.C.

Headnotes

Code of Criminal procedure-sec. 233- Applicant an accused – allegation- commission of murder – seeks summoning some police persons for being examined as defence witnesses as also summoning some documents in evidence- the statements referred to in the preliminary inquiry report-appear to be relevant regarding presence of the applicant at a place other than the place of the incident- statements of the said police persons would be relevant - would enable the court to arrive at a just decision of the case-trial court rejected the application u/s 233 Cr.P.C.- that the said police officials have not witnessed the incident -and the application for summoning those persons under been filed merely in order to cause delay -expeditious decision of a criminal trial is essential - while striking a balance between expedition and justice- impugned order set aside and the application u/s 233 Cr.P.C. deserves to be allowed in part. **Application partly allowed.**

Held:

When an accused person whose personal liberty is at stake, seeks production of some police persons as defence witnesses, who had witnessed that the Dhaba remained open till 02:00 a.m. and the staff members were present at the Dhaba, this would be relevant for a just decision of the case as it would prove the applicant's presence at the Dhaba and obviously, the applicant cannot be present at the same time at another place about 6 kilometers away from the Dhaba, where the incident allegedly took place. However, the show cause notice and the preliminary enquiry report forming a part of the disciplinary action taken against the police persons, which preliminary enquiry report does not establish anything conclusively, would not establish anything Pagein the criminal trial also and, therefore, the production thereof will not be relevant for the trial. The presence of the police persons at the Dhaba can be proved by their oral testimony and the production of general diary of the police station will also not be relevant for this purpose. (E-9)

Case Law Cited

1. Kusha Duruka v. State of Odisha: (2024) 4 SCC 432,
2. Chandra Shashi v. Anil Kumar Verma: (1995) 1 SCC 421
3. K. D. Sharma v. SAIL: (2008) 12 SCC 481
4. Dalip Singh v. State of U.P.: (2010) 2 SCC 114

5. Moti Lal Songara vs Prem Prakash @ Pappu & Anr : (2013) 9 SCC 199,

List of Acts

Code of Criminal procedure

List of Keywords

Production of a preliminary inquiry report; application under Section 233 Cr.P.C.; personal liberty

Appearance of Parties

Counsel for Applicant :- Anil Kumar Yadav,Devansh Singh Chauhan,Manoj Kumar

Counsel for Opposite Party :- G.A.,Vikas Vikram Singh

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Devansh Singh Chauhan, learned counsel for the applicant, Sri Anurag Verma, learned AGA-I for the State, Sri Vikas Vikram Singh, learned counsel for opposite party no. 2 and perused the records.

2. By means of the instant application filed under Section 482 Cr.P.C./Section 528 BNSS, the applicant has challenged validity of an order dated 13.02.2025 passed by the Session Judge, Raebareli in Session Trial No. 11 of 2020 rejecting an application under Section 233 Cr.P.C. filed by the applicant for summoning some police persons for being examined as his defence witnesses as also summoning some documents in evidence.

3. The aforesaid case was instituted on the basis of an FIR lodged on 10.10.2019 against the proprietor and staff members of Somu Dhaba at Raebareli stating that the dead body of the informant's son was found by the police near a godown near Garhi Khas. Upon making an inquiry, the informant came to know that his son had gone to Somu Dhaba along with some other persons for having dinner. The proprietor and staff members of Somu Dhaba had assaulted the informant's son with sticks and iron bars. The informant expressed an apprehension that his son had been killed and the dead body had been thrown near a godown to give it a semblance of an accident. The post-mortem examination report mentions as many as ten injuries on the dead body.

4. After investigation, the Investigating Officer submitted a charge-sheet dated 25.12.2019. The trial court took cognizance of the offences and summoned the accused persons to face trial by means of an order dated 10.01.2020. The trial court framed charges by means of an order dated 16.09.2022. On 12.02.2025, the applicant filed an application before the trial court under Section 233 Cr.P.C. requesting for production of a preliminary inquiry report dated 18.11.2019 and a show cause notice dated 19.11.2019 issued by the Superintendent of Police, as defence evidence stating that those are relevant as per the provisions contained in Section 9 of the Evidence Act. The applicant sought production of the relevant extract of the general diary of Police Station Mill Area, Raebareli which contains entries to the effect that a police constable was instructed to go and get the Eatery Somu Dhaba closed. The applicant sought production of the then Circle Officer, Dalmau, Raebareli as a witness, as he had submitted the preliminary inquiry report dated 18.11.2019 finding certain police persons guilty of negligence in performing their official duties concerning the incident in question. The applicant also sought production of the Inspector in-charge of the

Police Station, who had instructed some police officials to go and get the Eatery closed. Further, he sought production of a police constable and a head constable who had gone to the eatery and who had come back after getting the eatery closed.

5. The aforesaid application under Section 233 Cr.P.C. has been rejected by means of the impugned order dated 13.02.2025 on the ground that the preliminary inquiry report is not essential for a just decision of the matter and its production has been sought to cause delay in disposal of the trial. Regarding production of the police persons named in the application, the trial Court stated that they have not been made prosecution witnesses and those persons had not witnessed the incident, therefore, production of these persons as witnesses is not necessary for a just decision of the case. The trial court came to a conclusion that the application under Section 233 Cr.P.C. has been filed with the objective of causing delay in disposal of the trial and to defeat the ends of justice.

6. A copy of the preliminary inquiry report dated 18.11.2019 submitted by the Circle Officer, Dalmau to the Superintendent of Police, Raebareli has been annexed with the application and this preliminary inquiry report mentions that Constable Virendra Bhargava (under suspension), Head Constable Suresh Chandra (under suspension), Head constable Jagdish Prasad (under suspension), Constable Amit Rajak (under suspension) are guilty in the matter and Sri Raj Kumar Pandey, Inspector in-charge Mill Area, Sri. Raj Kumar Singh, the Inspector in-charge Harchandpur and Sub-Inspector Pramod Kumar, the Chowki in-charge Tripula had acted negligently in the matter. The concerned Circle Officer was found guilty of laxity in supervising the performance of duties by his subordinates.

7. The aforesaid preliminary inquiry report dated 18.11.2019 refers to the statements of Inspector of Police Sri Raj Kumar Pandey, Head Constable Suresh Chandra and Constable Virendra Bhargava. The aforesaid police officials had stated that a telephonic information was received at 00:09 Hrs. on 10.10.2019 that some boys were fighting at Somu Dhaba. Two police persons reached Somu Dhaba on a motorcycle. Constable Virendra Bhargava informed at 00:26 Hrs. that the boys who were fighting at the Dhaba had already gone away. Thereafter the police persons remained there till 02:00 a.m. and they left only after getting the Dhaba closed.

8. The learned Counsel for the applicant has submitted that the aforesaid statements of some police persons that they remained present at the Dhaba till 02:00 a.m., the Dhaba was open and they left at 02:00 a.m. after getting the Dhaba closed, would be relevant to prove that the staff members of the Dhaba were present at the Dhaba till 02:00 a.m. It is alleged that the deceased was killed at a place about 6 kilometers away from the Dhaba. The facts that the Dhaba remained open till 02:00 a.m. and the staff members were present at the Dhaba would prove the applicant's presence at the Dhaba and obviously, the applicant cannot be present at the same time at another place about 6 kilometers away from the Dhaba, where the incident allegedly took place.

9. The opposite party no. 2 has filed a counter affidavit annexing therewith a copy of an order dated 20.02.2025 passed by the Session Judge, Raibareli closing the

defence evidence. This order has been passed keeping in view an endorsement made by the learned counsel for the applicant that defence evidence on behalf of the applicant Sachin Soni and co-accused Vinay Kumar is closed. The endorsement has been signed by the accused persons Vinod Kumar, Sachin Soni (the applicant) and another co-accused Jai Chand had put his thumb impression under it.

10. The State has also filed a counter affidavit annexing therewith a copy of an order dated 21.02.2025 wherein the Sessions Judge had recorded that an endorsement of closure of defence evidence has been made by the accused persons Abhitej Singh, R. K. Yadav alias Ram Krishna Yadav, Suresh Yadav, Harshit Verma, R. P. Yadav alias Ram Pratap Yadav, Sumer alias Ram Sumer, Jai Chand alias Jurha, Vinod and Sachin (the applicant). The accused persons Saurabh Sharma, Gaya Bux alias Deepu and Manu Bari have stated in their statements under Section 313 Cr.P.C. that they will not produce any defence evidence.

11. The counsel for the co-accused persons Luvkush, Atul Tiwari, Ramesh Yadav and Arpit stated that co-accused Luvkush has filed Criminal Revision No. 157/2025, which is pending in this Court. Till decision of the criminal revision, the said co-accused persons did not close their evidence as there was a possibility of the said co-accused persons getting relief from this Court. The trial court accordingly, gave opportunity to co-accused persons Arpit Yadav, Ramesh Yadav, Atul Tiwari and Luvkush to produce evidences.

12. The learned counsel for opposite party no. 2 as well as the learned AGA-I have submitted that the applicant has concealed this order dated 20.02.2025 while filing the instant petition under Section 482 Cr.P.C., which was presented on 05.03.2025.

13. Learned AGA has also pointed out that in the order dated 01.03.2024 passed by this Court in Bail Application No. 2431 of 2024 filed by the co-accused persons Suresh Yadav, this Court had issued a direction to the Sessions Judge for holding day-to-day trial of the case, without granting any adjournment to any of the parties. Co-accused Suresh Yadav had challenged the order dated 01.03.2024 by filing SLP (Criminal) No. 6746 of 2024 which was dismissed by means of an order dated 16.05.2024 and the Hon'ble Supreme Court had also requested the trial court to proceed with the trial expeditiously.

14. The applicant has filed the instant application and sought stay of proceedings of trial and has succeeded in getting an interim order dated 23.04.2025 passed by this Court staying the proceedings of the trial, without disclosing the aforesaid orders passed by this Court as well as by the Hon'ble Supreme Court. Seeking stay of proceedings without disclosing that the proceedings had been expedited by this Court and by the Supreme Court, also amounts to concealment of material fact.

15. The learned Counsel for the opposite parties have submitted that the inherent power of this Court recognized by Section 482 Cr.P.C. is a discretionary power and while approaching to seek invocation of the discretionary inherent power, a litigant must approach this Court with clean hands and must disclose all the relevant facts. Any concealment of any material fact would disentitle an applicant

from seeking any discretionary relief from this Court.

16. The learned AGA-I has placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Kusha Duruka v. State of Odisha:** (2024) 4 SCC 432, wherein the Hon'ble Supreme Court referred to the precedents in the cases of **Chandra Shashi v. Anil Kumar Verma:** (1995) 1 SCC 421; **K. D. Sharma v. SAIL:** (2008) 12 SCC 481, **Dalip Singh v. State of U.P.**: (2010) 2 SCC 114 and **Moti Lal Songara vs Prem Prakash @ Pappu & Anr** : (2013) 9 SCC 199, and has concluded as follows: -

"6. It was held in the judgments referred to above that one of the two cherished basic values by Indian society for centuries is "satya" (truth) and the same has been put under the carpet by the petitioner. Truth constituted an integral part of the justice-delivery system in the pre-Independence era, however, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In the last 40 years, the values have gone down and now litigants can go to any extent to mislead the court. They have no respect for the truth. The principle has been evolved to meet the challenges posed by this new breed of litigants. Now it is well settled that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final. Suppression of material facts from the court of law, is actually playing fraud with the court. The maxim suppressio veri, expressio falsi i.e. suppression of the truth is equivalent to the expression of falsehood, gets attracted. It is nothing but degradation of moral values in the society, may be because of our education system. Now we are more happy to hear anything except truth; read anything except truth; speak anything except truth and believe anything except truth. Someone rightly said that:"Lies are very sweet, while truth is bitter, that's why most people prefer telling lies."

17. Replying to the aforesaid objection, the learned counsel for the applicant has submitted that as the applicant has assailed validity of the impugned order dated 13.02.2025 only, the order dated 20.02.2025 is not relevant for the present case and the applicant cannot be said to be guilty of concealment of any material fact. He has submitted that the applicant has filed a supplementary affidavit on 01.04.2025 annexing therewith the entire order sheet, including the order dated 20.02.2025 and, therefore, he has not concealed any fact.

18. The submission of the learned counsel for the applicant is that the order dated 20.02.2025 was not relevant for the present case, is not acceptable and the same is turned down for the reason that when the applicant is challenging the validity of the order dated 13.03.2025 rejecting the prayer for production of further defence evidence, the fact that he and his Counsel have made an endorsement on 20.02.2025 that they do not want to produce any defence evidence at this stage, is certainly relevant for the case.

19. The subsequent order dated 21.02.2025 passed by the Sessions Judge,

Raebareli was in fact also relevant for the present case wherein the Sessions Judge had recorded that the counsel for the co-accused persons Luvkush, Atul Tiwari, Ramesh Yadav and Arpit stated that co-accused Luvkush has filed Criminal Revision No. 157/2025, which is pending in this Court. Till decision of the criminal revision, the said co-accused persons could not close their evidence as there was a possibility of the said co-accused persons getting relief from this Court. The trial court accordingly, gave opportunity to co-accused persons Arpit Yadav, Ramesh Yadav, Atul Tiwari and Luvkush to produce evidences.

20. Like co-accused Luvkush, the applicant could also have sought time to adduce evidence or while making an endorsement that they did not want to adduce any defence evidence at this stage, they could have informed the trial Court that they were challenging the order dated 13.02.2025 before this Court and they hoped to get permission for production of further evidence from this Court, but they chose not to do so.

21. Although the learned counsel for the applicant had tried to refute the submission of the applicant by stating that the applicant had filed a supplementary affidavit on 01.04.2025 annexing therewith the entire order sheet, this supplementary affidavit runs into 1671 pages and there is no mention in the supplementary affidavit about the order dated 20.02.2025. A copy of the order forms a part of 1671 pages and it finds place at page 1539 of the supplementary affidavit.

22. In para 11 of the supplementary affidavit it has been stated that *"after recording statement of the accused persons under Section 313 Cr.P.C., the aforesaid case was fixed for defence evidence and the trial court has illegally and arbitrarily closed the stage of defence evidence and the case has been fixed for final argument and since then the final arguments are going on till date"*. Even in this paragraph, although the applicant has alleged that the learned trial court has closed the defence evidence illegally and arbitrarily there is no mention that the applicant and his counsel both had made an endorsement on the order sheet stating that defence evidence on behalf of the applicant is closed at this stage.

23. This supplementary affidavit is a classical example of crafty drafting by an advocate, which has never been appreciated by the courts. All the relevant facts have to be pleaded clearly and categorically. The conduct of the applicant in not making averments regarding the aforesaid endorsement made by the applicant and his counsel on 20.02.2025 and about the orders dated 20.02.2025 and 21.02.2025 in the petition and thereafter filing a supplementary affidavit running into 1671 pages and not making any averment regarding this in the body of the supplementary affidavit, annexing the order dated 20.02.2025 at page 1539 of the supplementary affidavit and not pointing out the same during submissions, till an objection regarding concealment was made by the learned Counsel for the opposite parties, is nothing but concealment of a relevant fact which concealment has been given a semblance of disclosure by a crafty drafting. This conduct of the applicant or his counsel cannot be appreciated by the Court, to say the least. The applicant and his counsel both are advised to be careful in future and to ensure non recurrence of such incidents which may invite severe action from the Court.

24. However, this Court is also of the view that the quality of drafting of petition

or any concealment made therein, would not prevail over the cause of justice where the question of personal liberty of a person is involved and the facts of the case warrant giving opportunity of further defence to an accused person for a just decision of the case.

25. As the applicant is an accused in a case alleging commission of murder and the statements referred to in the preliminary inquiry report appear to be relevant regarding presence of the applicant at a place other than the place of the incident, statements of the said police persons would be relevant and it would enable the court to arrive at a just decision of the case.

26. The trial court has rejected the application under Section 233 Cr.P.C. for the sole reason that the said police officials have not witnessed the incident and the application for summoning those persons under Section 233 Cr.P.C. has been filed merely in order to cause delay in disposal of the trial.

27. Although expeditious decision of a criminal trial is essential and the courts must make every endeavor to ensure expeditious disposal of the trial, while striking a balance between expedition and justice, the cause of justice has to be given precedence even if it causes some delay in disposal of the matter.

28. When an accused person whose personal liberty is at stake, seeks production of some police persons as defence witnesses, who had witnessed that the Dhaba remained open till 02:00 a.m. and the staff members were present at the Dhaba, this would be relevant for a just decision of the case as it would prove the applicant's presence at the Dhaba and obviously, the applicant cannot be present at the same time at another place about 6 kilometers away from the Dhaba, where the incident allegedly took place. However, the show cause notice and the preliminary enquiry report forming a part of the disciplinary action taken against the police persons, which preliminary enquiry report does not establish anything conclusively, would not establish anything in the criminal trial also and, therefore, the production thereof will not be relevant for the trial. The presence of the police persons at the Dhaba can be proved by their oral testimony and the production of general diary of the police station will also not be relevant for this purpose.

29. In view of the aforesaid discussion, I am of the view that the impugned order dated 13.02.2025 deserves to be set aside and the application under Section 233 Cr.P.C. deserves to be allowed in part.

30. Accordingly, the application is ***partly allowed.***

31. The preliminary inquiry report dated 18.11.2019 and the show cause notice dated

19.11.2019 do not prove anything conclusively and the request for summoning the preliminary report is turned down. The request for summoning the entry made in General Diary of the police station is also turn down. The request for summoning the Inspector in-charge, Police Station Mill Area, Raebareli Sri Raj Kumar Pandey, Constable Virendra Bhargava and Head Constable Suresh Chandra is allowed.

32. The Superintendent of Police, Raebareli shall ensure production of these witnesses without any delay.

33. The counsel for the applicant shall ensure examination of the aforesaid

witnesses on the date of their production and no adjournment whatsoever shall be granted for this purpose.

(2025) 7 ILRA 161
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 07.07.2025

BEFORE

THE HON'BLE SANJAY KUMAR SINGH, J.

Application U/S 528 BNSS No. 3242 of 2025

M/S Asm Traxim Pvt. Ltd. & Ors.
...Applicants
Versus
Union Of India. & Ors. ...Opposite Parties

Counsel for the Applicants:
Ishan Deo Giri, Sarvesh Pandey, Shad Khan, Shishir Prakash, Sr. Advocate

Counsel for the Opposite Parties:
A.S.G.I., Ashish Agrawal, G.A., Manu Vardhana, Sanjay Kumar Yadav

Issue for Consideration
Matter pertains to the question as to whether, upon a one-time settlement of the loan (CC Limit) between the borrower and the bank, the criminal proceedings instituted against accused–applicant, who is neither a borrower nor guarantor but had business relations with the borrower, are liable to be quashed.

Head Notes
Penal Code, 1860 - ss. 420,471,468,467,120-B - Prevention of Corruption Act, 1988 - ss. 13(1)(d),13(2) - FIR registered by C.B.I. on complaint of Union Bank of India alleging that M/s Govinda International, in conspiracy with certain firms including applicant, fraudulently obtained credit facilities and created fictitious sale-purchase transactions causing financial loss to bank - Applicants, directors of M/s ASM Traxim Pvt. Ltd., arrayed as accused - Appellants sought quashing of entire criminal proceedings - Justification:

Held: It is undisputed that applicants are neither borrowers nor guarantors - Dispute regarding non payment of loan (CC Limit) between the borrower and the bank, being predominantly civil in nature, has been settled through One-Time Settlement - Bank now has no subsisting grievance, and possibility of conviction is remote an bleak - Applicants' case stands on a better footing than that of the borrower - Hence, continuation of criminal proceedings would amount to undue oppression and prejudice - **Impugned charge sheet,** cognizance/summoning order, criminal proceedings quashed. [Paras 11, 13] (E-13)

Case Law Cited
K.Bharthi Devi and Another v. State of Telangana, **(2024) 10 SCC 384;** Tarina Sen v. Union of India and Another, **2024 SCC OnLine SC 2696;** N.S.Gnaneshwaran Etc. v. The Inspector of Police & Another, **2025 SCC OnLine SC 1257**; Anil Bhavarlal Jain & Another v. The State of Maharashtra & Others, **2024 SCC OnLine SC 3823;** Raman Gopi & Another v. Kunju Raman Uthaman, **2011 SCC OnLine Ker 4028 - referred to.**

List of Acts
Penal Code, 1860, Prevention of Corruption Act, 1988

List of Keywords
Quashing of charge-sheet; Cognizance / Summoning order; Civil dispute; One-Time Settlement of Loan; Non-Performing Asset; Hypothecation of goods; Entrustment; Borrower and lender relationship; Fraudulent intention; Forged / fabricated documents; Criminal conspiracy; Consent terms; Public servant; Bank officer liability; Procedural lapses; Remote possibility of conviction.

Case Arising From
ORIGINAL JURISDICTION: Application U/s 528 BNSS No. - 3242 of 2025

From the Judgment and Order dated 31.01.2024 of the Additional Special Judge, C.B.I., Court Ghaziabad in Misc. Criminal Case No. 5 of 2024.

Appearances for Parties

Advs. for the Applicant:
Ishan Deo Giri, Sarvesh Pandey, Shad Khan, Shishir Prakash, Sr. Advocate

Advs. for the Opposite Party:
A.S.G.I., Ashish Agrawal, G.A., Manu Vardhana, Sanjay Kumar Yadav

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

1-Heard Mr. G.S. Chaturvedi, learned Senior Advocate assisted by Mr. Ishan Deo Giri and Mr. Shad Khan, learned counsel for the applicants, Mr. Rahul Srivastava, learned counsel appearing on behalf of opposite party nos. 1 and 3, Mr. Rabindra Kumar Singh, learned Additional Government Advocate for the State of U.P./opposite party no. 2 and Mr. Ashish Agarwal, learned counsel appearing on behalf of complainant/opposite party no. 4.

2- The instant application U/s 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 has been preferred by the applicant-M/s ASM traxim Pvt. Ltd., Himanshu Garg and Vipul Agarwal with a prayer to quash the charge-sheet no. 3 of 2024 dated 31.01.2024, cognizance / summoning order dated 19.11.2024 under Section 120-B read with 420 I.P.C. and consequential criminal proceedings of Misc. Criminal Case No. 5 of 2024 arising out of F.I.R. No. RC 0072020A007 dated 18.11.2020 under Sections 120B r/w 420, 467, 468 and 471 I.P.C. and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act registered at Police Station C.B.I., A.C.B., Dehradun pending in the court of learned Additional Special Judge, C.B.I., Court No. 1, Ghaziabad, U.P.

Factual Matrix of the Case

3-Brief facts of the case, which are required to be stated are that on the written complaint dated 02.10.2020 of Mr. Saroj Kumar Dash, Regional Head, Union Bank of India, Regional Office, Ghaziabad, an F.I.R. was registered by C.B.I. on 18.11.2020 against M/s Govinda International, Keshav Joshi, Pawan Kumar Sharma, M/s Agson Global Pvt. Limited, M/s ASM Traxim Pvt. Limited, M/s R. M. & Associates, M/s Global Valuers & Associates, unknown public servants and other unknown persons U/s 120-B, 420, 467, 468 & 471 of I.P.C., 1860 and 13(2) r/w 13(1)(d) of PC Act, 1988.

3.1-The allegations, as levelled in the FIR, are as under:

a. That M/s. Govinda International, a proprietorship firm of Keshav Joshi, availed CC limit of Rs. 15 crores against hypothecation of stocks and Book debts on 31.03.2017 and further availed ad-hoc limit of Rs. 3.75 crores on 01.11.2017 from Union Bank of India, Mid Corporate Branch, Kaushambi, Ghaziabad, on the basis of submission of forged financial documents to the bank. The borrowers closed down their business by selling out all the hypothecated stocks without depositing the sale proceeds in the loan account.

b. That the Borrower firm in collusion with the Valuers firms namely M/s RM & Associates and M/s Global Valuers & Associates got done inflated valuation of the property offered as collateral security and thereby fraudulently induced the bank to sanction loan and thus caused huge wrongful financial loss to the Bank to the tune of about Rs. 19 crore 59 Lacs as on 31.10.2019.

c. That sale and purchase transactions were made with the same group of companies namely M/s. Agson Global Pvt. Ltd. and M/s, ASM Traxim Pvt. Ltd. for creating fake/suspicious transaction in the account to show/create turnover through sale.

4-Filtering out unnecessary details, relevant facts, which have come out during investigation as per case of C.B.I. are as under:-

4.1- M/s Govinda International is proprietorship concern of Keshav Joshi, which was actually being managed and controlled indirectly by Pawan Kumar Sharma, who is real maternal uncle of Keshav Joshi.

4.2- M/s Kajuwalla is proprietorship concern of Jatin Sharma S/o Pawan Kumar Sharma. M/s Jagannatlı Traders is partnership firm under partnership of Jatin Sharma and Pawan Kumar Sharma. M/s Kajuwalla and M/s Jagannath Traders have also availed CC limits of Rs. 20 Crores each from UBI, Mid Corporate Branch, Ghaziabad.

4.3-Keshav Joshi submitted Loan Application Form dated 10.03.2017 to Chief Manager, UBI, MCB, Ghaziabad, for sanction of Cash Credit Limit of Rs. 20 Crores against hypothecation of stocks and book debt, to meet out the working capital requirement of M/s Govinda International.

4.4- On 24.03.17 recommendation was made to sanction CC Limit of Rs. 20 Crores to M/s. Govinda International but subsequently on the basis of their assessment, the CC limit was reduced from Rs. 20 Crores to Rs. 15 Crores and recommendation for sanction of Rs. 15 Crores was made to M/s Govinda International, which was approved by Credit Approval Committee (CAC), ZLCC, Lucknow held on 31.03.2017.

4.5- Initially, amount of Rs. 10 Crores was released to M/s Govinda International (borrower).

4.6- In order to achieve sales of M/s Govinda International to the tune of Rs. 40 Crores, Keshav Joshi and Pawan Kumar Sharma entered into criminal conspiracy with Sharad Gupta of M/s SAR Enterprises and M/s Vivek Trading Company, M/s Agson Global Pvt. Limited and its Director Apresh Garg and M/s ASM Traxim Pvt. Limited and its Directors Vipul Agarwal (applicant no. 3) and Himanshu Garg (applicant no. 2) and in furtherance of the said criminal conspiracy, Keshav Joshi and Pawan Kumar Sharma reflected fake and bogus purchases in its books of accounts to the tune of Rs. 43.22 Crores (Approximately) from M/s SAR Enterprises, M/s Vivek Trading Company and M/s Agson Global Pvt. Limited and thereafter the goods so purchased from the said three firms/companies were falsely shown to have been sold at the cost of Rs. 43.74 Crores (Approximately). The large part of goods was falsely shown to have been sold to M/s ASM Traxim Pvt. Limited. In this way, Keshav Joshi and Pawan Kumar Sharma falsely shown to have achieved sales of Rs. 40 Crores in books of accounts. Sharad Gupta, Vipul Agarwal, Himanshu Garg, Apresh Garg, M/s Agson Global Pvt. Limited and M/s ASM Traxim Pvt. Limited, all with the dishonest and fraudulent intention, facilitated Keshav Joshi and Pawan Kumar Sharma by making accommodative false entries in their respective books of accounts.

4.7-Ms. Shefali Sharma, Chief Manager succeeded Anil Kumar Rawat and joined UBI, MCB, Ghaziabad on 22.05.17 as Branch Head. Keshav Joshi again submitted a letter dated 02.08.17 to the UBI, MCB, Ghaziabad to release remaining amount of CC limit of Rs. 5 Crores. Ms. Shefali Sharma, the then Branch Head approved the same and allowed release of additional amount of Rs. 5 Crores M/s Govinda International on 03.08.2017.

4.8- Thereafter Ms. Shefali Sharma, the then Branch Head, UBI, MCB, Ghaziabad again recommended for sanction of ad-hoc limit of Rs. 3.75 Crores to M/s. Govinda International, which was sanctioned on 01.11.17 and the same was released on 02.11.2017.

4.9- There were only few transactions in the CC Account of M/s Govinda International during 01.12.2017 to 31.03.2018. The interest amount was not paid during December, January and February, hence the account was declared as Non Performing Asset (NPA) on 31.03.2018.

4.10- The funds received from CC Limit of Rs. 15 Crores and Ad-hoc limit of Rs. 3.75 Crores have been diverted to different firms adopting different modus operandi.

4.11-Pawan Kumar Sharma and Keshav Joshi submitted false Stock Statements with false and inflated financial figures of Sale/Purchase/Debtors/Creditors in order to avail and justify drawing power and they in criminal conspiracy with M/s. Agson Global Pvt. Ltd. and its Director Apresh Garg, M/s ASM Traxim Pvt. Limited and its Directors Himanshu Garg and Vipul Agarwal and Sharad Gupta, with dishonest and fraudulent intention, created fake and bogus sale and purchase in books of accounts in order to show turnover in the account and thus to justify drawing power. Anil Kumar Rawat did not verify or cross check the genuineness of the stock statements and thus dishonestly and fraudulently facilitated Keshav Joshi and Pawan Kumar Sharma in justifying the Drawing Power and released the limit.

4.12- Thus, in view of facts and circumstances detailed as above paras, Keshav Joshi and Pawan Kumar Sharma in conspiracy with Anil Kumar Rawat, the then Chief Manager and Branch Head and Agam Mohan Kulshreshtha, the then Regional Head got sanctioned credit facilities on the basis of forged and fabricated documents and thereafter in conspiracy with other accused persons utilized the loan amount for purposes other than for which the loan was sanctioned and thus caused wrongful loss of 28.77 Crores as on 31.12.2023 (including principal outstanding of Rs.15.72 Crores) to Union Bank of India and corresponding wrongful gain to themselves and other accused person as noted above.

4.13- After culmination of investigation, C.B.I. submitted charge-sheet no. 3 of 2024 dated 31.01.2024 against following persons and entities:-

1. Anil Kumar Rawat u/s 120-B, 420, 468, 471 IPC and section 13(2) r/w 13(1)(d) of PC Act, 1988 and substantive offences U/s 13(2) r/w 13(1)(d) of PC Act, 1988.

2. Agam Mohan Kulshrestha u/s 120-B r/w 420 IPC and section 13(2) r/w 13(1)(d) of PC Act, 1988 and substantive offences U/s 13(2) r/w 13(1)(d) of PC Act, 1988.

3. Keshav Joshi u/s 120-B r/w 420, 468 and 471 of IPC and section 13(2) r/w 13(1)(d) of PC Act, 1988 and substantive offences u/s 420, 468 and 471 of IPC.

4. Pawan Kumar Sharma u/s 120-B r/w 420, 468 and 471 of IPC and section 13(2) r/w 13(1)(d) of PC Act, 1988 and substantive offences u/s 420, 468 and 471 of IPC.

5. M/s Agson Global Pvt. Limited u/s 120-B r/w 420 of IPC.

6. M/s ASM Traxim Private Limited u/s 120-B r/w 420 of IPC.

7. Nanak Chand Gupta u/s 120-B r/w 420 of IPC.

8. Apresh Garg u/s 120-B r/w 420 of IPC.

9. Himanshu Garg u/s 120-B r/w 420 of IPC.

10. Vipul Agarwal, Director u/s 120-B r/w 420 of IPC.

11. Sharad Gupta u/s 120-B r/w 420 of IPC.

12. Yogender Mohan Rustagi u/s 120-B r/w 420 of IPC.

13. M/s AKG Exim Limited u/s 120-B r/w 420 of IPC.

14. Rajeev Goel u/s 120-B r/w 420 of IPC.

15. Manav Arora u/s 120-B r/w 420 of IPC.

16. Smt. Anu Arora u/s 120-B r/w 420 of IPC.

4.14- In the investigation, procedural lapses have been found on part of bank officers namely (1) M. N. K. Chaitanya, the then Chief Manager (Credit), UBI, Regional Office, Meerut. (2) Ms. Shefali Sharma, the then Chief Manager and Branch Head, UBI, Mid Corporate Branch, Ghaziabad. (3) Ankit Tomar, the then Manager, UBI, Mid Corporate Branch, Ghaziabad and (4) Smt. Asha Sinha, the then Manager (Credit), UBI, Regional Office, Meerut.

4.15- On the aforesaid charge-sheet dated 31.01.2024, Special Judge, Anti-Corruption C.B.I, Court No. 1, Ghaziabad registered the case as Misc. Case No. 05 of 2024 and took cognizance of the offence and summoned the accused persons vide order dated 19.11.2024, which is the subject matter of challenge in the present case.

5- It is argued by learned counsel for the applicant that the applicant no. 1 namely M/s ASM Traxim Pvt. Ltd. is a company incorporated under the provisions of Company's Act. Applicant nos. 2 and 3 namely Himanshu Garg and Vipul Agarwal, were erstwhile directors of M/s. ASM Traxim Pvt. Lt. came in contact of Keshav Joshi, who was a business man dealing in dry fruits through his firm M/s Govinda International. The applicants started business relationship with his firm M/s Govinda International and over the years, they entered into several transactions for both sales as well as purchase. The applicants were completely unknown that M/s Govinda International had availed loan credit facilities from Union Bank and on default, account of M/s Govinda International was declared as NPA. The gist of the allegation against the applicants that sale and purchase transactions made

between the firm of applicants and M/s Govinda International was bogus transaction with a view to show / create big turn over of M/s Govinda International. The said allegations are completely false and frivolous. Much emphasis has been given by contending that all transactions are fully genuine and on the said transaction, GST/VAT amounting Rs. 1,99,45,071/- has also been paid on all the transactions made between M/s. ASM Traxim Pvt. Ltd. and M/s Govinda International. The relevant documents in this regard are also in existence which proves the genuineness of the said transactions / business relationship between them. It is also pointed out that M/s Govinda International, the original borrower which has availed the loan facilities has entered into one time settlement with the bank and the liabilities of the bank has already been paid. It is not a case of cheating or fraud with the bank on the part of the applicants. Maximum it might be a case of breach of condition on the part of borrower. The hypothecation of goods is not entrustment but it is a charge on the goods. The relationship between borrower and banker is not an entrustment. On the strength of aforesaid facts, it is also argued that in fact, main allegation in the present case relates to a borrower and lender, hence, primarily it is a civil dispute which has already been settled between the borrower and the bank. Hence, criminal proceeding against the applicants is liable to be quashed in the light of law laid down by the Apex Court in the following cases:-

(i) **K.Bharthi Devi and Another vs. State of Telangana**, (2024) 10 SCC 384.

(ii) **Tarina Sen vs. Union of India and Another**, 2024 SCC OnLine SC 2696.

(iii) **N.S.Gnaneshwaran Etc. vs. The Inspector of Police & Another**, 2025 SCC OnLine SC 1257.

6- On the other hand, Mr. Rahul Srivastava, learned counsel appearing on behalf of C.B.I. reiterating the prosecution case and facts discovered during investigation as mentioned in charge-sheet submitted that it is a case of triangular transaction. In-fact fake transactions have been shown by the applicants with a view to enhance the turn over of M/s Govinda International on paper, therefore, even after one time settlement of borrower (M/s Govinda International) with the bank and payment of all dues to the concerned bank by the borrower, the criminal proceeding against the applicant is not liable to be quashed in the light of judgment of the Apex Court in the case of **Anil Bhavarlal Jain & Another vs. The State of Maharashtra & Others**, 2024 SCC OnLine SC 3823. He further submits that in the case of K.Bharthi Devi and Another vs. State of Telangana (Supra) and in the case of Anil Bhavarlal Jain & Another vs. The State of Maharashtra & Others (Supra) contrary view has been expressed by the Apex Court, therefore, in the light of principles laid down by the Full Bench judgment of Kerala High Court in the case of **Raman Gopi & Another vs. Kunju Raman Uthaman**, 2011 SCC OnLine Ker 4028, this application is liable to be dismissed considering the principles laid down by the Apex Court in the case of Anil Bhavarlal Jain (Supra).

7-Mr. Ashish Agarwal, learned counsel appearing on behalf of the complainant /respondent no. 4 submits that during the pendency of criminal proceedings against the accused persons, a one time settlement has been entered into

between the bank and the borrowers (Proprietor/partner and Guarantor of M/s Jagannath Traders, M/s Kajuwalla and M/s Govinda International). The settlement amount was fixed at Rs. 43 crores as well as legal expenses and interest, which was additionally payable over and above OTS amount. The said amount of Rs. 43 crores was deposited by the borrowers in different steps and finally, they have paid the entire settlement amount of Rs. 43 crores, which have been accepted by the bank. Now only legal expenses and interest, which was additionally payable over and above OTS scheme are to be paid. It is also pointed out that the Chief Manager/Branch Head, Union of India, SAM Branch Lucknow, after depositing One Time Settlement amount of Rs. 43 crores, by the borrowers also wrote a letter on 29.03.2025 to the Deputy Superintendent of Police, C.BI., Special Crime Branch, Hazratganj, Lucknow mentioning therein to release of mortgaged properties and original property papers seized by C.B.I.

8- Now the moot question involved in the matter for consideration before this Court is "whether after one time settlement of loan (CC Limit) between borrowers and guarantors with bank, the criminal proceeding against the accused-applicant, who is neither borrower nor guarantor but was having business relation with borrower is liable to be quashed or not."

9- Here it would be apposite to discuss the legal position that emerges from judgments of the Hon'ble Apex Court relied upon by the parities concerned.

9.1- Brief facts in the case of **K. Bharthi Devi** (Supra) are as under :-

(i) In the above case, the Sole Proprietor of M/s Sirish Traders was granted various credit facilities in the group loan account by Indian Bank, which were secured by collateral security executed by the accused persons. Since the borrowers/mortgagors failed to service the interest and re-pay the dues, the group loan account was declared a Non-Performing Asset. To realize the outstanding amount, Bank approached Debts Recovery Tribunal. During the pendency of the proceedings before the DRT, Bank came to know that some of the title documents executed by the accused persons by virtue of which equitable mortgage was created were not original documents, rather the same were fake, forged and fabricated. Thereafter, on the complaint of Bank, C.B.I. registered an FIR and after investigation prima facie it was found that offences punishable under Sections 120-B read with 420, 409, 467, 468 and 471 of I.P.C. and Section 13(1)(d) and 13(2) of the Prevention of Corruption Act have been committed. Accordingly, CBI filed charge-sheet against the accused persons. During the pendency of the proceedings before DRT, One Time Settlement ("OTS" for short) has been done between the borrower and the bank. The OTS amount was paid, and the Bank issued a No Dues Certificate to the borrowers/guarantors. Thereafter, matter before DRT has been disposed in the light of OTS.

(ii) The accused persons preferred a criminal petition U/s 482 Cr.P.C. before the High Court seeing quashing of the charge sheet but the same was dismissed vide order dated 01.09.2017by the High Court holding that settlement arrived at was only a private settlement and was not a part of any decree given by any court. The charges include the use of fraudulent, fake and forged documents that were used to embezzle public money and if these are

proved, they would be grave crimes against the society as a whole and hence, merely due to a private settlement between the Bank and the accused, it cannot be said that the prosecution of the accused persons would amount to abuse of process of the court.

(iii) The said judgment of the High Court was challenged by two accused persons before the Hon'ble Apex Court, wherein, the Hon'ble Apex Court has framed the issue by mentioning that "the only question would be, as to whether the continuation of the criminal proceedings against the present appellants would be justified or not".

(iv) The Hon'ble Apex Court after wholesome treatment, discussing and considering previous judgments, has made following observations:

"44.The facts in the present case are similar to the facts in the case of Sadhu Ram Singla and Others (Supra) wherein a dispute between the borrower and the Bank was settled. In the present case also, undisputedly, the FIR and the chargesheet are pertaining to the dispute concerning the loan transaction availed by the accused persons on one hand and the Bank on the other hand. Admittedly, the Bank and the accused persons have settled the matter. Apart from the earlier payment received by the Bank either through Equated Monthly Instalments (EMIs) or sale of the mortgaged properties, the borrowers have paid an amount of Rs.3,80,00,000/- under OTS. After receipt of the amount under OTS, the Bank had also decided to close the loan account. The dispute involved predominantly had overtures of a civil dispute.

45. Apart from that, it is further to be noted that in view of the settlement between the parties in the proceedings before the DRT, the possibility of conviction is remote and bleak. In our view, continuation of the criminal proceedings would put the accused to great oppression and prejudice.

46. ……..

47. In the result, we find that this was a fit case wherein the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quash the criminal proceedings.

48. We are therefore inclined to allow the present appeal.

49. We accordingly pass the following order:

(i) The appeal is allowed.

(ii) The impugned judgment and order dated 1st September 2017 passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in Criminal Petition No. 5778 of 2016 is quashed and aside.

(iii) The criminal proceedings against the appellants in C.C. No. 16 of 2014 on the file of Principal Special Judge for CBI Cases, Nampally, Hyderabad is also quashed and set aside."

9.2- Brief facts in the case of **Tarina Sen vs. Union of India and Another** (Supra) are as under :-

(i) In the above case fact was that on the basis of information received from a reliable source, the C.B.I. has registered an F.I.R. against the accused persons for the offences punishable under Sections 120-B,

420, 468 and 471 of Indian Penal Code & Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act. As per the allegation, the Branch Manager of the concerned bank entered into a criminal conspiracy with other accused persons. At that time, Surjit Sen and Kaushik Nath Ojha were the Directors of M/s Indo Global Projects Ltd., Bhubaneswar and the appellants who have filed SLP before the Hon'ble Apex Court were Partners in M/s Clarion Travels, Bhubaneswar. A loan application was submitted on behalf of Clarion Travels for the purpose of securing funds to purchase new cars. Against the said loan application, Branch Manager Ajay Kumar Behera sanctioned a loan of Rs. 8,40,000/- without keeping any security or post-dated cheques. No repayment was ever made, and Ajay Kumar Behera did not pursue the same. A similar loan application was submitted on behalf of IGPL for the same purpose of securing funds to purchase new cars at a cost of Rs. 11,84,600/-. Against the said loan application, Ajay Kumar Behera sanctioned the loan for the said amount. The money was received by the Directors of IGPL. In furtherance of the loan application after depositing 36 post-dated cheques, which when they were sent for clearance, at a later stage, by the successor of Ajay Kumar Behera bounced. The office address disclosed by both IGPL and Clarion Travels was one and the same.

(ii) The Central Bureau of Investigation after culmination of investigation, filed the charge-sheet against the accused persons, on which trial court took cognizance and issued summons to the accused persons.

(iii) Bank also filed two Original Applications before the Debt Recovery Tribunal for recovery of dues in respect of the loans advanced to IGPL and Clarion Travels. During the pendency of said proceedings, IGPL and Clarion Travels reached a One-Time-Settlement with the Bank, which was accepted, and the loan account was declared as being closed. In view of the OTS, the recovery proceedings pending before the DRT were disposed of.

(iv) Having settled the matter thus, the accused persons filed separate applications under Section 482 of Cr.P.C. before the High Court seeking quashing of all the proceedings pending before the trial Court. The High Court disposed of the applications under Section 482 of Cr.P.C. by permitting them to urge all the pleas raised in their application before the trial Court at the appropriate stage.

(v) Being aggrieved thereby, the accused Tarina Sen approached the Hon'ble Apex Court, wherein, the Hon'ble Apex Court has framed the issue by mentioning that "the only question would be, as to whether the continuation of the criminal proceedings against the present appellants would be justified or not".

(vi) The Hon'ble Apex Court considering the previous judgments as well as judgment passed in Criminal Appeal arising out of Special Leave Petition (Criminal) No. 4353 of 2018 has made following observations:

"14. By a separate judgment of the even date in Criminal Appeal arising out of Special Leave Petition (Criminal) No.4353 of 2018 wherein similar facts arose for consideration, we have held that when the matter has been compromised between the borrower and Bank, the continuation of the criminal proceedings would not be justifiable.

15. Relying on the earlier judgments of this Court, we have held that in the matters arising out of commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute, the High Court should exercise its powers under Section 482 CrPC for giving an end to the criminal proceedings. We have held that the possibility of conviction in such cases is remote and bleak and as such, the continuation of the criminal proceedings would put the accused to great oppression and prejudice.

16. We find that for the aforesaid reasons the present appeals also deserve to be allowed.

17. In the result, we pass the following order.

(i) Criminal Appeal arising out of Special Leave Petition (Criminal) No.1415 of 2024 is allowed.

(ii) The impugned order dated 4th July 2023 passed by the High Court of Orissa at Cuttack in CRLMC No.34 of 2022 is quashed and set aside.

(iii) Criminal Appeal arising out of Special Leave Petition (Criminal) No.1416 of 2024 is allowed.

(iv) The impugned order dated 4 th July 2023 passed by the High Court of Orissa at Cuttack in CRLMC No.33 of 2022 is quashed and set aside

(v) The criminal proceedings against the appellants in T.R. No. 28 of 2002 pending in the Court of Special Judge (CBI) Bhubaneswar is also quashed and set aside."

9.3- Brief facts in the case of **N.S. Gnaneshwaran Etc. vs. The Inspector of Police & Another**, (Supra) are as under:

In the said case, allegations against accused-applicant was that he was instrumental in orchestrating the fraudulent diversion of funds sanctioned to M/s Vinayaka Corporation as he facilitated the encashment of multiple cheques drawn from fraudulent obtained credit limit using a network of relatives, employees and fictitious identities. Another co-accused is alleged to have assisted in the scheme by operating a bank account in the name of Bharathi Traders along with his wife through which cheques were deposited and funds were withdrawn. Parallel to criminal proceedings, the bank initiated recovery proceedings before DRT. Subsequently bank floated a one time settlement (OTS) scheme and upon full payment of the dues, recovery proceedings were dismissed as settled but the High Court dismissed the petition under Section 482 Cr.P.C. on the ground that the stage of trial was advanced and held that the criminal proceedings could not be quashed merely on the basis of OTS when a prima-facie case was made out. But the Hon'ble Apex Court taking note of the fact that dispute between the parties have already been resolved through full and final settlement, quashed the criminal proceedings against the accused. The operative part of the said judgment has mentioned in paragraph nos. 9 and 10, which are being quoted as under:-

9. In our view, allowing the present criminal proceedings to continue would serve no meaningful purpose,

particularly when the dispute between the parties has already been resolved through a full and final settlement. The settlement between the parties having taken place after the alleged commission of the offence, and there being no continuing public interest we see no justification for allowing the matter to proceed further.

10. In view of the above discussion, we find it appropriate to quash the proceedings pending in C.C. No. 16 of 2006 against the appellants herein. Consequently, the appeals are allowed.

9.4- Brief facts in the case of Anil Bhavarlal Jain & Another vs. The State of Maharashtra, 2024 SCC OnLine SC 3823 are as under:

(i) In the year of 2013, appellants who were Directors of the Company, had obtained sanction for a building permit and commencement certificate for plot in question. On 15.02.2014, State Bank of India had sanctioned a loan of Rs. 50 crores to the Company. On 30.10.2014, the Company opened a collateral security and mortgaged the commercial land. The appellant had made timely payments till 2017, while on 28/11/2017 the bank declared the loan account of the Company as Non-Performing Asset with an outstanding amount of Rs. 23.86 crores.

(ii) The bank also started a recovery process and filed an application before the Debt Recovery Tribunal. The Company and the Bank filed consent terms before the DRT amounting to Rs. 15 Crore. According to the consent terms, the Company paid Rs. 20 lacs on 16.06.2020. Remaining amount of Rs. 14.88 crore was subsequently paid by the Company with interest and the loan account was closed as per the one-time settlement. Accordingly, the application before the DRT came to be disposed of.

(iii) The Bank filed a complaint with Central Bureau of Investigation, against the appellants for diverging the funds from the loan account of SICOM Ltd. from whom they had allegedly availed a loan of Rs. 25 Crores in 2013 and against the Company for changing the building plans of the project which resulted in the reduced value of the collateral security, without the consent of the Bank. On 24.07.2022, an FIR came to be registered against the appellants by Central Bureau of Investigation, Anti-Corruption Bureau, Mumbai. After investigation, charge sheet dated 31.12.2021 was filed by the C.B.I.

(iv) The appellants preferred a Writ Petition before the High Court under Section 482 of Cr.P.C. seeking quashing of the FIR and chargesheet.

(v) Vide order dated 26.07.2023, High Court rejected the said Writ Petition observing that the appellants have a substantive alternative remedy under the provisions of the Code of Criminal Procedure before the High Court.

(vi) The appellants who were the Directors of M/s Sun Infrastructure Pvt. Ltd. filed an appeal being SLP(Crl.) No. 10078 of 2023 and appellants who were the employees of Bank filed an appeal being SLP (Crl.) No. 12776 of 2023.

(vii) The Hon'ble Apex Court has framed the issue by mentioning that "the moot question which arises for our consideration in the present case is whether the criminal proceedings can be quashed based upon a settlement arrived at between

the parties as per the consent terms drawn and submitted before the DRT."

(viii) The Hon'ble Apex Court considering the facts of the case as well as previous judgments Gian Singh vs. State of Punjab, (2012) 10 SCC 303, State vs. R Vasanthi Stanley, 2015 SCC OnLine SC 815 and Parbatbhai Aahir vs. State of Gujrat and Another, 2017 SCC OnLine SC 1189 has made following observations:

"16. Another reference can be made to the judgment of this Court in Parbatbhai Aahir v. State of Gujrat wherein it was observed that, economic offenses involving financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between the 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. Thus, it can be concluded that economic offences by their very nature stand on a different footing than other offences and have wider ramifications. They constitute a class apart. Economic offences affect the economy of the country as a whole and pose a serious threat to the financial health of the country. If such offences are viewed lightly, the confidence and trust of the public will be shaken.

17. A profitable reference in this regard can be made to the judgment in State v. R Vasanthi Stanley wherein this Court declined to quash the proceedings in a case involving alleged abuse of the financial system. It was observed as under:

"15. ……. A grave criminal offence or serious economic offence or for that matter the offence that has the potentiality to create a dent in the financial health of the institutions is not to be quashed on the ground that there is delay in trial or the principle that when the matter has been settled it should be quashed to avoid the head on the system. That can never be an acceptable principle or parameter, for that would amount to destroying stem cells of law and order in many a realm and further strengthen the marrow of unscrupulous litigations. Such a situation should never be conceived of.

18. In the instant case, it is on record that consent terms were submitted by the parties before the DRT. It is admitted that the bank had suffered losses to the tune of Rs. 6.13 Crores approximately. Hence, a substantial injury was caused to the public exchequer and consequently it can be said that public interest has been hampered. Keeping in view the fact that in the present case a special statute i.e. PC Act has been invoked, we are of the view that quashing of offences under the said Act would have a grave and substantial impact not just on the parties involved, but also on the society at large. As such the High Court committed no error in declining to exercise its inherent powers in the present case, thereby refusing to quash the criminal proceedings.

19. For the reasons stated above, we are of the view that the High Court was justified in not exercising its jurisdiction under Section 482 of CrPC. The appeals are accordingly dismissed."

9.5- Here it is also relevant to mention the Full Bench judgment of Kerala High Court in the case of **Raman Gopi and Another vs. Kunju Raman Uthaman**

(Supra) wherein following question was referred before the Full Bench for its opinion.

"Where the judgments of the Supreme Court rendered by coequal benches express conflicting principles of law, which cannot stand together and, thus, present a serious problem to the High Courts and subordinate Courts, what are the principles to be followed in choosing one or other of the conflicting judgments by the High Court when in a case the applicability of the conflicting decisions rendered by the apex court has decisive impact in its disposal."

The Full Bench after wholesome treatment has held as under:

77.The legal position, which therefore emerges on a discussion and analysis of the principles stated in various decisions of the Apex Court and other High Courts including this Court, so as to act as guidance to the High Courts and Subordinate Courts, when faced with a conflicting decisions, are summarised below:—

(i) In case of conflicting views taken in the decisions of two Benches of equal strength of the Apex Court, the decision later in point of time, will prevail over the earlier one;

(ii) What is binding is the ratio decidendi. A decision is only an authority for what it actually decides.

(iii) A decision which is not expressed and is not found on reasons nor proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Art. 141 of the Constitution. Similarly, any declaration made or conclusion arrived at without application of mind or preceded without a reason, cannot be a declaration of law, or authority as a binding precedent;

(iv) It is well settled that what is the essence of a decision is the ratio and not every observation, nor what logically follows from various observations made in it.

(v) The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution.

(vi) A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind.

(vii) A Division Bench, in case of conflict between the decision of a Division Bench of two Judges and the decision of a larger Bench and in particular, a Constitution Bench, would be bound by the latter decision.

(viii) Per incuriam means a decision rendered by ignorance of a previous binding decision such as a decision of its own or of a court of coordinate or higher jurisdiction or in

ignorance of the terms of a statute or of a rule having the force of law. A ruling making a specific reference to an earlier binding precedent may or may not be correct, but cannotbe said to be per incuriam.

78.Therefore, when confronted with a like situation wherein the decisions of coequal benches are of conflicting nature on a legal issue, the law laid down by the Full Bench in Joseph's case, 2001 (1) KLT 958 will have to be followed. The later decision will prevail. A decision of the Apex Court on a declaration of law is binding on all High Courts and subordinate courts, in the light of Article 141 of the Constitution, of course, what is relevant is the ratio decidendi. The judgments of the Apex Court which have followed the binding decisions of the Constitution Bench or other Benches will thus be binding on oilier courts. The only exception pointed out is wherein a Bench of smaller strength did not follow an earlier binding decision, in a situation wherein the binding decisions of the earlier benches of the Apex Court are not brought to its notice. It is apparent that in such cases the decision of the Bench of smaller strength will be without the colour of a binding precedent under Article 141 of the Constitution. It may not be proper for the High Courts or subordinate courts to criticise and characterise a decision of the Apex Court which has laid down a point of law as per incuriam. Such is not the function of the High Court or subordinate courts. In the light of the decision of the Supreme Court in Bengal Immuntty Co. Ltd.'s, AIR 1955 SC 661 the law declared by the Supreme Court is binding in all courts in India except the Supreme Court. The decisions of the Apex Court in Raghubir Singh's case, (1989) 2 SCC 754 and Central Board of Dawoodi Bohra Community's case, (2005) 2 SCC 673 have laid down the circumstances wherein the decisions of larger Benches will have to be followed by Benches of lesser strength. Therefore, those guidelines will act as a pointer for the High Courts and subordinate courts while examining the binding nature decision of the Apex Court, under Article 141 of the Constitution whenever there are conflicting decisions. The caution expressed by the Apex Court in various cases mentioned above, that the High Court cannot refuse to follow a binding decision of the Apex Court, is Important in this context. The application of the rule of subsilentio and that of per incuriam should be guarded and the courts cannot criticise the decisions of the Apex Court merely on the assumption that an earlier binding decision of the Apex Court was not brought to the notice of a later Bench. We, therefore, answer the reference accordingly. The matter will be placed before the appropriate Bench for hearing of the Civil Revision Petition.

10- After going through the aforesaid judgments relied upon by the learned counsel for the parties, I find that the judgments of the Apex Court dated 03.10.2024 in the case of K.Bharthi Devi (Supra),Tarina Sen (Supra) and N.S. Gnaneshwaran (Supra) are more closure to the facts of the present case. I also find that the aforesaid judgments in the case of K.Bharthi Devi (Supra) and Tarina Sen (Supra) have not been considered in the subsequent judgment dated 20.12.2024 of the Hon’ble Apex Court in the case of Anil Bhavarlal Jain (Supra), which is also distinguishable on the facts of the case in hand. In the case of Anil Bhavarlal Jain (Supra), the Hon’ble Apex Court was of the view that since a special statute i.e. PC Act

has been invoked, hence quashing of offences under the said Act would have a grave and substantial impact not just on the parties involved, but also on the society at large. As such the judgment in the case of Anil Bhavarlal Jain (Supra) is not helpful to the prosecution/C.B.I. This Court is of the view that every case turns on its own facts. Even one additional or different fact may make a big difference between the conclusion in two cases, because even a single significant detail may alter the entire aspect. Apart from this, it is also relevant to mention that the judgment in the case of N.S. Gnaneshwaran (Supra) is a later and recent judgment dated May 28, 2025, which is in consonance with the judgment of the Apex Court in the case of K.Bharthi Devi (Supra) and Tarina Sen (Supra) also.

11- Having heard the learned counsel for the parties and going through the record of the case, I find that it is not in dispute that applicant is neither borrower nor guarantor. The dispute regarding non payment of loan (CC Limit) between the borrower and bank involved predominantly had overtures of a civil dispute, which has been settled under One Time Settlement (OTS). Now after one time settlement, the concerned bank has no grievance. In view of the settlement between the borrower and bank, the possibility of conviction is remote and bleak. The case of the applicants is distinguishable from borrower and stands on better footing than that of borrower. Hence after settlement as noted above, continuation of the criminal proceedings would put the applicant to grate oppression and prejudice.

12- Considering the facts and circumstances of the case in the light of dictum and guidelines laid down by the Apex Court in cases of **K.Bharthi Devi** (Supra),**Tarina Sen** (Supra) and **N.S. Gnaneshwaran** (Supra), this Court feels that this is a fit case, where this Court can exercise its inherent power to secure the ends of justice.

13- As a fallout and consequence of the above discussion, impugned charge sheet dated 31.01.2024, cognizance / summoning order dated 19.11.2024 and criminal proceedings of aforesaid Case No. 05 of 2024 (C.B.I. vs. Anil Kumar Rawat and Others) against the applicants namely M/s ASM traxim Pvt. Ltd., Himanshu Garg and Vipul Agarwal under Sections 120-B read with 420 I.P.C. are hereby quashed.

14- This application under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 is **allowed** in view of one time settlement of borrower and bank as mentioned above.

(2025) 7 ILRA 175

ORIGINAL JURISDICTION

CRIMINAL SIDE

DATED: LUCKNOW 25.07.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Application U/S 482 No. 4169 of 2025

Sayem Yazdani ...Applicant

Versus

State Of U.P. & Anr. ...Opposite Parties

Counsel for the Applicant:

Prabhat Kumar Mishra, Abdul Ahad, Jatin Raheja, Shobhit Harsh

Counsel for the Opposite Parties:

G.A.

ISSUE FOR CONSIDERATION

Whether the criminal proceedings against the applicant should be quashed under Section 482

Cr.P.C./Section 528 BNSS, considering the dispute alleged to be civil in nature, and no direct allegations are made against the applicant in the FIR.

HEADNOTES

Criminal Law - Code of Criminal Procedure, 1973 – Section - 397, 482, - Indian Penal Code, 1860 - Sections 406, 420, 504, 506, - Bharatiya Nagarik Suraksha Sanhita, 2023 - Section – 528 - Application U/section 482 Cr.P.C./Section 528 BNSS – for quashing the entire criminal proceedings - FIR - lodged against six accused, including the applicant, for duping flat buyers by collecting money without delivering possession and selling the same flat to multiple parties – investigation - Charge-sheet - Applicant arguing that all the allegations are against the co-accused and informant has taken recourse to proceedings before the RERA and the applicant cannot be prosecuted for a dispute which essentially is of civil nature – Court finds that though informant has approached the RERA for redressal of grievance, however the accused allegedly took money from multiple buyers for flats they failed to deliver, despite RERA orders for repayment remaining unfulfilled – allegations have been established during investigation and only thereafter a charge-sheet has been filed against the applicant - Court held that prima facie offences of cheating and criminal breach of trust were made out from distinct actions – consequently, the applicant has failed to demonstrate that continuation of criminal proceedings would undermine the interests of justice – hence, the facts presented do not justify invoking the Court's inherent powers to quash the proceedings – accordingly, application is dismissed. (Para – 7, 12, 14, 15)

Appeal Dismissed**.** (E-11)

CASE LAW CITED

Priti Saraf v. State (NCT of Delhi) - (2021) 16 SCC 142, Amit Kapoor v. Ramesh Chander - (2012) 9 SCC 460, Delhi Race Club (1940) Ltd. Vs. State of Uttar Pradesh & Another - (2024) 10 SCC 690, Rikhab Birani & Another Vs. State of Uttar Pradesh & Another - 2025 SCC OnLine SC 823.

LIST OF ACTS

Code of Criminal Procedure, 1973**;** Indian Penal Code, 1860; Juvenile Justice Act, 1986; Probation of Offenders Act, 1958.

LIST OF KEYWORDS

Quashing of proceedings - Criminal breach of trust – Cheating - Real estate fraud - Organized gang – distinct action - RERA complaint - Inherent powers - Charge-sheet – Civil and Criminal dispute – interest of justice.

CASE ARISING FROM

Misc. Case No. 35791/2025 (State of UP Vs. Fahad Yajadani & others) in the court of Additional Chief Judicial Magistrate, CBI (AP), Lucknow on the basis of FIR No. 0189/2023 lodged at Police Station Mahanagar, Lucknow.

APPEARANCE OF PARTIES

Counsel for Appellant: - Sri Prabhat Kumar Mishra,

Counsel for Respondent: - Sri Rajesh Kumar Singh, AGA-1.

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Prabhat Kumar Mishra, the learned counsel for the applicant and Sri Rajesh Kumar Singh, the learned A.G.A.-I for the State and perused the record.

2. The instant application under Section 482 Cr.P.C./Section 528 BNSS has been filed seeking quashing of the entire criminal proceedings of Criminal Misc. Case No.35791/2025 (State of U.P. Vs. Fahad Yajadani and others) in the Court of Additional Chief Judicial Magistrate, C.B.I. (A.P.), Lucknow, which arises out of FIR No.0189/2023 under Sections 406, 420, 504 and 506 IPC lodged at Police Station Mahanagar, District Lucknow, so far as it relates to the applicant.

3. The aforesaid case was instituted on the basis of an FIR lodged by the opposite

party no. 2 on 24.08.2023 against six persons, including the applicant, stating that she had entered into an agreement with co-accused - Fahad Yajadani, builder of Alaya Aftek Residency, Mahanagar for purchase of a 3 BHK Flat No. H-208, measuring 1675 sq. ft. She had paid Rs.44,74,934/- through cheques but possession of the flat was not handed over to her and later the flat was sold away to one Uma Shanker. Subsequently, the same flat was again sold to another person Yuvraj Verma. The FIR states that several other persons have also been duped by the accused persons in similar manner by an organized gang of Fahad Yajadani, in which the other accused persons, including the applicant, are involved. They allure the persons for purchasing flats and thereafter grab their money and do not hand over the flats. The informant further stated that she has taken a loan from ICICI Bank, Hazratganj for purchasing the flat and that she had filed a complaint before the RERA also.

4. After investigation, initially a charge sheet dated 01.08.2024 was submitted against co-accused-Fahad Yajadani and the investigation against the other accused persons continued. Thereafter, another charge-sheet has been submitted on 27.01.2025 against five persons, including the applicant, for offences under Sections 406, 420, 504 and 506 IPC.

5. Assailing validity of the charge-sheet, the learned counsel for the applicant has submitted that the FIR does not contain any allegation against the applicant and all the allegations are against co-accused Fahad Yajadani. He has further submitted that from the allegations leveled by the informant, no case for trial of the applicant is made out. He next submitted that the dispute is essentially of civil nature regarding which the FIR itself states that the informant has taken recourse to proceedings before the RERA and the applicant cannot be prosecuted for a dispute which essentially is of civil nature. In support of this contention, the learned counsel for the applicant has placed reliance upon a judgment of the Hon'ble Supreme Court rendered in the case reported in **Rikhab Birani & Anr. Vs. State of Uttar Pradesh & Anr.**: 2025 SCC OnLine SC 823, wherein it has been held that the offence of cheating is not made out from a mere breach of contract and a mere breach of contract cannot lead to prosecution of the accused person. In **Rikhab Birani** (Supra), the Hon'ble Supreme Court had examined the facts of the case in detail and had concluded that the ingredients of the offences were not made out.

6. The learned counsel for the applicant has also relied upon a judgment of the Hon'ble Supreme Court in the case of reported in **Delhi Race Club (1940) Ltd. Vs. State of Uttar Pradesh & Anr:** (2024) 10 SCC 690, wherein it has been held that a person cannot be tried for the offences under Sections 406 and 420 simultaneously.

7. From the contents of the FIR, it appears that the accused persons have taken money from several persons for selling away flats built by their company and they have not handed over the flats to numerous persons, including the applicant, after receiving the amount of sale consideration. The informant has approached the RERA also for the same grievance. Although the learned counsel for the applicant has submitted that the fact that the informant

has approached the RERA for redressal of grievance, fortifies his submission that the dispute between the parties is essentially of a civil nature, but the learned counsel for the applicant has admitted that the amount ordered by the RERA has not been paid to the informant. He has submitted that there are numerous orders against the accused persons for payment of money and they are not in a position to comply with the orders and money has not been paid to the flat-buyers.

8. In **Amit Kapoor v. Ramesh Chander**:, (2012) 9 SCC 460, the Hon'ble Supreme Court referred to various precedents on the point and enlisted the following principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

"27.1. *Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers.* ***The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.***

27.2. *The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.*

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5*. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.*

27.6*. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.*

27.7*. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.*

27.8*. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a "civil wrong" with no "element of criminality" and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge.*

Even in such cases, the court would not embark upon the critical analysis of the evidence.

***27.9**. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.*

***27.10**. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.*

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

***27.12**. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.*

***27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at **that initial stage**. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.*

***27.14**. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.*

27.15**. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. **The power is to be exercised ex debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist.

[Ref. State of W.B v. Swapan Kumar Guha [(1982) 1 SCC 561]; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692]; Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305]; Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194]; G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636]; Ajay Mitra v. State of M.P. [(2003) 3 SCC 11]; Pepsi Foods Ltd. v. Special Judicial Magistrate [(1998) 5 SCC 749]; State of U.P. v. O.P. Sharma [(1996) 7 SCC 705]; Ganesh Narayan Hegde v. S. Bangarappa [(1995) 4 SCC 41]; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122]; Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269]; Shakson Belthissor v. State of Kerala [(2009) 14 SCC 466]; V.V.S. Rama Sharma v. State of U.P. [(2009) 7 SCC 234]; Chunduru Siva Ram Krishna v. Peddi Ravindra Babu [(2009) 11 SCC 203];

Sheonandan Paswan v. State of Bihar [(1987) 1 SCC 288]; State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222]; Lalmuni Devi v. State of Bihar [(2001) 2 SCC 17]; M. Krishnan v. Vijay Singh [(2001) 8 SCC 645]; Savita v. State of Rajasthan [(2005) 12 SCC 338] and S.M. Datta v. State of Gujarat [(2001) 7 SCC 659] .]

27.16. *These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court.* ***Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence."***

(Emphasis added)

9. In **Priti Saraf v. State (NCT of Delhi)**: (2021) 16 SCC 142, it was held that:—

"31. In the instant case, on a careful reading of the complaint/FIR/charge-sheet, in our view, it cannot be said that the complaint does not disclose the commission of an offence. The ingredients of the offences under Sections 406 and 420IPC cannot be said to be absent on the basis of the allegations in the complaint/FIR/charge-sheet. We would like to add that whether the allegations in the complaint are otherwise correct or not, has to be decided on the basis of the evidence to be led during the course of trial. ***Simply because there is a remedy provided for breach of contract or arbitral proceedings initiated at the instance of the appellants, that does not by itself clothe the court to come to a conclusion that civil remedy is the only remedy, and the initiation of criminal proceedings, in any manner, will be an abuse of the process of the court for exercising inherent powers of the High Court under Section 482CrPC for quashing such proceedings."***

(Emphasis added)

10. The complainant alleges that the applicant has committed offences of criminal breach of trust and cheating and dishonestly inducing delivery of property. It would be appropriate to have a look as the definitions of the offences, which are being reproduced below:—

"405. Criminal breach of trust.—*Whoever, being in any manner entrusted with property, or with any dominion over property,* ***dishonestly misappropriates*** *or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".*

* * *

415. Cheating.—*Whoever, by deceiving any person,* ***fraudulently or dishonestly induces the person so deceived to deliver any property to any person,*** *or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if*

he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations…

* * *

***420. Cheating and dishonestly inducing delivery of property.**— Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

11. The FIR alleges that the complainant and several other persons had paid money for purchasing flats in the project of the accused persons, but none of them were handed over the flats. The flat in respect of which the accused persons had taken money from the complainant, was sold away to another person and thereafter it was again sold away to yet another person. I am of the view that the aforesaid factual allegations prima facie make out the commission of the offences of Criminal breach of trust and cheating.

12. The material collected during investigation has not been annexed with the application under Section 482 Cr.P.C. and the learned Counsel for the applicant has not submitted that there is no material to support the allegations leveled in the FIR. The allegations have been established during investigation and only thereafter a charge-sheet has been filed against the applicant.

13. In **Delhi Race Club (1940) Ltd**. (Supra) it has been held that a person cannot be tried for the offences under Sections 406 and 420 simultaneously on the same set of facts. However, it does not hold that even if the offence of criminal breach of trust and cheating arise of different facts forming a part of a series of events, the accused cannot be tried for both the offence. In the present case, the offence of criminal breach of trust is alleged to be made out from the payment of sale consideration of the flat by the complainant and non-delivery of the flat to him. The offence of cheating is prima facie made out from the allegation that the accused persons have sold away the same flat to three persons. Thus, the offences under Section 406 and 420 IPC are made out from different actions of the accused persons and, in these circumstances, they can be prosecuted for both the offences.

14. Section 482 Cr.P.C. recognizes the inherent powers of the High Court to make such orders as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice. This power should not be exercised on mere technicalities where the ends of justice would be defeated by the exercise of this power. The facts of the case, noted above, prima facie, indicate that the accused persons are collectively responsible for the affairs of M/s Yajdan Constructions, which had constructed Alaya Aftek Residency. In spite of the informant having paid Rs.44,74,934/- for purchasing a flat, the flat

was not given to her and it was sold away to some other person and thereafter it was again sold to yet another person. In spite of the informant having approached the RERA and obtained an order in her favaour, her money has not been paid to her. The informant has alleged that similar misdeeds have been committed against numerous other flat-buyers and the learned counsel for the applicant is not in a position to dispute this assertion.

15. The aforesaid facts, besides prima facie making out commission of cognizable offences by the accused persons, do not in any manner make out that continuance of criminal proceedings against the applicant would defeat the ends of justice and, therefore, these facts do not warrant exercise of this Court's inherent power to quash the criminal proceedings against the applicant.

16. In view of the foregoing discussions, the application is **dismissed**.

(2025) 7 ILRA 182
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 22.07.2025

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.

Application U/S 482 No. 5511 of 2024

Sangram Singh ...Applicant
Versus
State Of U.P. & Anr. ...Opposite Parties

Counsel for the Applicant:
Aseem Goswami, Azhar Ikram

Counsel for the Opposite Parties:
G.A.

ISSUE FOR CONSIDERATION

Whether the application under Section 482 Cr.P.C./528 B.N.S.S., 2023 for quashing the proceedings in Criminal Case No.1172/2018 is maintainable when an alternative remedy of revision is available under the Code of Criminal Procedure.

HEADNOTES

Criminal Law - Code of Criminal Procedure, 1973 – Section - 482, - Indian Penal Code, 1860 - Sections 406, - Bharatiya Nagarik Suraksha Sanhita, 2023 - Section – 528 - Application under Section 482 Cr.P.C. – for quashing discharge order – criminal proceeding – summoning order – discharge application – impugned order – application against discharge order - strong preliminary objection raised by the AGA regarding aavailability of a statutory remedy like revision – citing Supreme Court judgments including *Vipin Sahni v. CBI* and *Mohit alias Sonu v. State of U.P.*, court held that when a statutory remedy like revision is available, the inherent jurisdiction under Section 482 Cr.P.C. should not be invoked except in compelling circumstances – hence, the applicant should approached the revisional court by filing revision – application disposed of, with direction to the revisional court, the delay in filing revision may be condoned, to decide the matter expeditiously and no coercive action to be taken against the 92-year-old applicant if revision is filed within ten days. (Para – 6, 7, 8)
Application Disposed of**.** (E-11)

CASE LAW CITED

Vipin Sahni & Another Vs. CBI (2024 (2) ACR 952 (SC) - Mohit alias Sonu v. State of U.P. (2013) 7 SCC 789) - Prabhu Chawla v. State of Rajasthan(MANU/SC/0979/2016) - Madhu Limaye v. State of Maharashtra (1977) 4 SCC 551) - Satender Kumar Antil v. CBI (2022) 10 SCC 733).

LIST OF ACTS

Code of Criminal Procedure, 1973 (Cr.P.C.) - Bharatiya Nagarik Suraksha Sanhita, 2023 (B.N.S.S.) - Indian Penal Code, 1860 (IPC).

LIST OF KEYWORDS

Application under section 482 Cr.P.C. - Inherent jurisdiction –- Discharge order – Revision - Non-bailable warrant - Condonation of delay -

Judicial discretion - Alternative remedy - Expeditious disposal.

CASE ARISING FROM

Criminal Case No. 1172/2018 – (Jasbeer Singh vs. Sardar Jasvender Singh and others) – under section - 406 IPC - Police Station - Alambagh, District – Lucknow.

APPEARANCE OF PARTIES

Counsel for Appellant: - Sri Azhar Ikram and Sri Aseem Goswami

Counsel for Respondent: - Sri Nikhil Singh - AGA-1, Sri Jasveer Singh Bakshi, Sri Anil K. Tripathi.

(Delivered by Hon'ble Rajesh Singh Chauhan, J.)

1. Heard Sri Azhar Ikram and Sri Aseem Goswami, learned counsels for the applicant, Sri Nikhil Singh, learned AGA, Sri Jasveer Singh Bakshi/complainant appear in person and Sri Anil K. Tripathi, who has filed Vakalatnama today on behalf of complainant, same is taken on record.

2. By means of this application filed under Section 482 Cr.P.C./528 B.N.S.S., 2023, the applicant prayed that the proceeding of Criminal Case No.1172/2018; Jasbeer Singh vs. Sardar Jasvender Singh and others, under Section 406 I.P.C., Police Station Alambagh, District Lucknow be set-aside/ quashed and during the pendency of this application, the aforesaid proceeding may be stayed.

3. Strong objection has been raised by Sri Nikhil Singh, learned AGA placing reliance on the judgment of Hon'ble Apex Court in re **Vipin Sahni and another vs. Central Bureau of Investigation 2024 (2) ACR 952 (SC)** referring paras- 15, 23, 25 & 26, whereby the Apex Court considering various dictums of the Apex Court, precisely held that when the specific remedy of revision is available, it could not have been ignored and have filed a petition under Section 482 Cr.P.C.. The Apex Court in re: *Mohit alias Sonu and another vs. State of U.P. and another, (2013) 7 SCC 789,* vide para- 28 has held that the inherent power of the Court can be exercised when there is no remedy provided in the Code of Criminal Procedure for redressal of the grievance. Supreme Court further held that it is well settled that the inherent power of the Court can ordinarily be exercised when there is no express provision in the Code under which order impugned can be challenged.

4. Precisely, the view of the Hon'ble Court in the aforesaid judgments is that if there is alternative, statutory and efficacious remedy available, that should not be ignored and though the inherent power of the High Court is unlimited, but at the same time the Apex Court has held in Catena of cases that the remedy under Section 482 Cr.P.C. should be invoked sparingly and with caution.

5. Replying the aforesaid contention, learned counsel for the applicant has drawn attention of this Court towards the dictum of Apex Court in re: **Prabhu Chawla vs. State of Rajasthan and others; MANU/SC/0979/2016** wherein the Apex Court in paras- 4, 5 & 6 has observed that though on account of revisional power being available to the litigant, he may approach the Court under Section 482 Cr.P.C. but such power of the High Court should be invoked sparingly. In para-5 in re: Prabhu Chawla **(Supra)** referring para-10 in re: **Madhu Limaye vs. the State of Maharashtra; (1977) 4 SCC 551** the Apex Court has observed that "even so, a general principle pervades this branch of law when a specific provision is made: easy resort to

inherent power is not right except under compelling circumstances, not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code."

6. The perusal of both the aforesaid judgments make it crystal clear that in a recent judgment in re: Vipin Sahni vs. Central Bureau of Investigation **(Supra)** the Apex Court has clearly held that ignoring the revisional jurisdiction one should not approach the High Court under Section 482 Cr. P. C. invoking inherent jurisdiction. The Apex Court in catena of cases has held that the alternative, statutory and efficacious remedy may not be circumvented in normal circumstances and if there is any extreme and unavoidable circumstances, the litigant appears to be remedy-less, the inherent power of the High Court under Section 482 Cr.P.C. is always available. Those extreme circumstances are not visible in the present case, therefore, I find that this application challenging the discharge order and summoning order being passed by the learned trial court is not maintainable and instead of approaching this Court under Section 482 Cr.P.C., the applicant should approach the revisional court by filing his revision.

7. It is needless to say that since there is some delay in approaching the revisional court, therefore, it is expected that the revisional court may dispose of the revision if filed by the revisionist, within a period of ten days from today, on merits and the applicant may file appropriate application for condonation of delay. The revisional court shall decide the revision strictly in accordance with law by affording an opportunity of hearing to the parties, with expedition preferably within a period of six weeks from filing of such revision by fixing short date and no unnecessary adjournment shall be given to any of the parties.

8. Notably, the present applicant is aged about 92 years and presently non-bailable warrant has been issued against him, therefore, if the aforesaid revision is filed within time so stipulated i.e. ten days, no coercive steps may be taken against him but alongwith his revision application, he may file his bail application before the competent court of law and the same shall be disposed of in the light of **Satender Kumar Antil Vs. Central Bureau of Investigation and another; 2022 (10) SCC 733.**

9. In view of the aforesaid, the present application is finally **disposed of.**

(2025) 7 ILRA 184
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 16.07.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Application U/S 482 No. 5589 of 2025

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

Counsel for the Applicant:
Digvijai Singh, Pradeep Rai

Counsel for the Opposite Parties:
G.A.

Issue for Consideration

Court is to determine whether trial Court acted correctly in summoning the applicant as additional accused u/s 319 Cr.P.C. in Session Trial to face trail.

Head Notes

Penal Code, 1860 - ss. 307 r/w 34, 323 r/w 34, 324, 504, 506 - Code of Criminal Procedure, 1973 - ss. 161, 319 - Case arises out of FIR, wherein informant alleged that due to property dispute, applicant and co-accused attacked his residence, also abused and assaulted him, suffered injuries - Investigation initially exonerated applicant, but based on statements of PW-1 and PW-2, trial Court summoned applicant u/s 319 Cr.P.C. as additional accused - Applicant seeks quashing of summoning order and entire proceedings u/s 482 Cr.P.C. - Justification:

Held: Applicant ought not to have annexed copy of precedent relied upon with supplementary affidavit, it should have been produced during submissions - Verification clause of affidavit ought to have been prepared carefully and verification of averments made regarding present case being covered by precedent of this Court made on basis of personal knowledge of merely literate deponent indicates that supplementary affidavit drafted in casual manner - Swearing or affirmation of affidavit is not a mere formality, oath or solemn affirmation should not be taken lightly, especially in proceedings decided solely on affidavits without any other evidence - Trial court has not merely recorded a prima facie case against applicant but has specifically noted that PW-1 and PW-2 have stated regarding applicant's involvement in offence, and their cross-examinations have revealed no circumstance casting doubt on such involvement - Trial court recorded satisfaction that there exists ample evidence indicating more than prima facie case for summoning applicant u/s 319 Cr.P.C - Impugned order suffers from no defect warranting interference, and decision in *Ashok Kumar Singh (infra)* is inapplicable, as ratio laid down in precedent must be applied keeping in view the factual background of case, and little difference in facts, the case would make the precedent inapplicable. [Paras 23, 25] (E-13)

Case Law Cited

Sarabjit Singh v. State of Punjab: **(2009) 16 SCC 46;** Mohan Lal Rathi v. Union of India: **2023 SCC OnLine All 4667;** Ashok Kumar Singh v. State of U.P.: **2023 SCC OnLine All 4715;** Hardeep Singh v. State of Punjab: **(2014) 3 SCC 92;** Brijendra Singh v. State of Rajasthan: **(2017) 7 SCC 706 - referred to.**

List of Acts

Penal Code, 1860, Code of Criminal Procedure, 1973

List of Keywords

Quashing of charge-sheet; Summoning order; Medico-legal examination report; CT examination; Informant/victim; Supplementary affidavit; Cross-examination; Prima facie case; Cogent evidence; Strong suspicion; Civil dispute/Property dispute; Verification clause; Affidavits and Oath Commissioners.

Case Arising From

ORIGINAL JURISDICTION: Application U/s 482 No. - 5589 of 2025

From the Judgment and Order dated 05.06.2025 of the Additional Session Judge V/Special Judge, Gangsters Act, Gonda in Session Trial No.1150 of 2022

Appearances for Parties

Advs. for the Applicant:
Digvijai Singh, Pradeep Rai

Advs. for the Opposite Party:
G.A.

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Digvijai Singh, the learned counsel for the applicant, Sri Rajesh Kumar Singh, the learned AGA-I for the State, and perused the record. Supplementary affidavit filed on behalf of the applicant is taken on record.

2. By means of the instant application filed under Section 482 Cr.P.C., the applicant has prayed for quashing of the order dated 05.06.2025 passed by the learned Additional Session Judge V/Special Judge, Gangsters Act, Gonda in Session Trial No.1150/2022 (State Vs. Vijay Singh

and others) arising out of Case Crime No.0148/2022, under Sections 307 r/w 34, 323 r/w 34, 324 and r/w 504 and 506 IPC, Police Station Paraspur, District Gonda, whereby the applicant has been summoned under Section 319 Cr.P.C. to face the trial and he has also sought quashing of the entire proceeding of the aforesaid case.

3. The aforesaid case was instituted on the basis of an F.I.R. lodged by the opposite party no. 2 on 23.06.2020 against four persons, including the applicant, stating that because of a property dispute all the accused persons attacked the informant's house on 23.06.2020, they abused and assaulted the informant with sticks and *banka*.

4. The medico legal examination report of the informant mentions two lacerated wounds on his head besides complain of pain on right shoulder, left wrist joint and right lower limb.The CT examination report of the informant mentions few hemorrhagic contusions and mildly displaced fracture of right parietal bone.

5. In the statement of the informant recorded under Section 161 Cr.P.C., he reiterated the FIR version. Some family members of the informant reiterated the FIR version but some independent witnesses stated that the applicant was not present at the time of the incident.

6. After investigation, the investigating officer submitted a charge-sheet on 04.09.2020 against the other three accused persons only and he exonerated the applicant.

7. The trial Court has recorded statement of the informant/victim as PW-1 and he stated about involvement of the applicant along with other accused persons in assaulting him. PW-1 has been cross-examined but no such fact has come to light during his cross-examination as may belie the statement given in examination-in-chief. Even during cross-examination, PW-1 categorically stated that all the accused persons had beaten him up and he had suffered five injuries in the incident. He stated that two accused persons had assaulted him with sticks and two accused had assaulted him with *farsa*.

8. PW-2 (Reeta Singh) is daughter-in-law of the informant/victim and she stated that Vijay and Ankur had assaulted her father-in-law with Farsa and the applicant and co-accused Amit had assaulted him with sticks. She raised a hue & cry whereupon some persons came there, saved her father in-law and took him for treatment.

9. After examination of PW-1 and PW-2, an application under Section 319 Cr.P.C. was filed on 14.02.2024 which has been allowed by the impugned order dated 05.06.2025 passed by the trial Court.

10. Assailing validity of the aforesaid order, the learned counsel for the applicant has submitted that for summoning an accused person under Section 319 Cr.P.C., it is necessary that the trial Court should record a satisfaction that the material that has come on record is sufficient to give rise to more than prima facie satisfaction that the persons sought to be summoned is guilty of the offence. He has relied upon a decision of the Hon'ble Supreme Court in the case of **Sarabjit Singh v. State of Punjab**: (2009) 16 SCC 46.

11. The learned counsel for the applicant has next submitted that the FIR

itself states about existence of a civil dispute between the parties. He has drawn the attention of this Court towards the documents annexed with the supplementary affidavit of the applicant as per which there is civil a dispute between the parties regarding which the S.D.M. Karnailganj, Gonda has passed an order dated 09.02.2024 in Case No.8896 of 2023 under Section 145 Cr.P.C..

12. Without going into merit of the civil dispute, suffice it to say that mere existence of a civil dispute is not sufficient for quashing of an order summoning an accused person under Section 319 Cr.P.C. as the existence of the civil dispute in the present has categorically been stated to be the motive for commission of the offence. Therefore, the mere existence of a civil dispute between the parties would not give rise to a ground for quashing of the impugned order passed under Section 319 Cr.P.C. after taking into consideration the statements of PW-1 and PW-2 which made out a case for summoning the applicant.

13. In **Sarabjit Singh** (Supra) the Hon'ble Supreme Court has held as follows: -

*"**18**. There is no gainsaying that the power under Section 319 of the Code is an extraordinary power which in terms of the decision of this Court in MCD [(1983) 1 SCC 1] is required to be exercised sparingly and if compelling reasons exist for taking cognizance against whom action has not been taken. The provision of Section 319 of the Code, on a plain reading, provides that such an extraordinary case has been made out must appear to the court. Has the criterion laid down by this Court in MCD [(1983) 1 SCC 1] been satisfied is the question?*

***19**. Indisputably, before an additional accused can be summoned for standing trial, the nature of the evidence should be such which would make out grounds for exercise of extraordinary power. The materials brought before the court must also be such which would satisfy the court that it is one of those cases where its jurisdiction should be exercised sparingly.*

***20**. We may notice that in Y. Saraba Reddy v. Puthur Rami Reddy [(2007) 4 SCC 773] this Court opined:*

"11. ... Undisputedly, it is an extraordinary power which is conferred on the court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier. The word 'evidence' in Section 319 contemplates the evidence of witnesses given in court."

***21**. An order under Section 319 of the Code, therefore, should not be passed only because the first informant or one of the witnesses seeks to implicate other person(s). Sufficient and cogent reasons are required to be assigned by the court so as to satisfy the ingredients of the provisions. Mere ipse dixit would not serve the purpose. Such an evidence must be convincing one at least for the purpose of exercise of the extraordinary jurisdiction. For the aforementioned purpose, the courts are required to apply stringent tests; one of the tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned.*

***22**. The observation of this Court in MCD and other decisions following the*

same is that mere existence of a prima facie case may not serve the purpose. Different standards are required to be applied at different stages. Whereas the test of prima facie case may be sufficient for taking cognizance of an offence at the stage of framing of charge, the court must be satisfied that there exists a strong suspicion. While framing charge in terms of Section 227 of the Code, the court must consider the entire materials on record to form an opinion that the evidence if unrebutted would lead to a judgment of conviction."

14. In the present case, both PW-1 and PW-2 have categorically stated that the applicant and co-accused Amit Singh had assaulted the opposite party no.2 with sticks and the other two accused persons had assaulted him with *farsa*. The opposite party no. 2 had suffered two lacerated wounds on his head, besides complaint of pain in some other parts of the body. The trial Court has referred to the statements of PW-1 and PW-2 and has concluded that even in the cross-examination of PW-1 and PW-2, no such fact has come to light, as may raise a suspicion against involvement of the applicant in commission of the offence. The trial Court has recorded satisfaction that there is ample evidence for recording more than a prima facie satisfaction regarding involvement of the applicant in commission of the offence. Nothing more is required to be done by the trial Court while deciding an application for summoning an accused person under Section 319 Cr.P.C.

15. The statements of PW-1 and PW-2 recorded by the trial Court, which have been referred to above, are sufficient for drawing a reasonable satisfaction that the same may lead to conviction of the applicant.

16. The impugned order dated 05.06.2025 satisfies the test of law laid down by the Hon'ble Supreme Court in **Sarabjit Singh** (Supra).

17. The learned counsel for the applicant has next submitted that he has annexed a copy of the judgment and order dated 27.04.2023 passed by a coordinate Bench of this Court in an application U/s 482 No.4003 of 2023 (Ashok Kumar Singh Vs. State of U.P. & Anr.)

18. Averments regarding the aforesaid application have been made in para-18 of the supplementary affidavit wherein it has been stated that in similar facts and circumstances of the case the aforesaid judgment and order was passed quashing the summoning order and the aforesaid judgment and order completely applies to the present matter. In description of the deponent given in the supplementary affidavit, his qualification disclosed is merely literate. In the verification clause, paras 1 to 21 have been verified to be true on the basis of personal knowledge of the deponent who is merely literate.

19. Chapter IV of the Allahabad High Court Rules, 1952 deals with "Affidavits and Oath Commissioners". Rule 8 of Chapter IV provides that "The affidavit shall contain no statement which is in the nature of an expression of opinion or argument" The averments made in para 18 of the supplementary affidavit are in the nature of arguments, which certainly is in violation of Rule 8 aforesaid.

20. Rule 12 of Chapter IV of the Allahabad High Court Rules provides that "Except on interlocutory applications, an affidavit shall be confined to such fact as the deponent is able of his own knowledge to prove."

21. Application under Section 482 Cr.P.C. is certainly not an interlocutory application and the supplementary affidavit filed in the present case should have been confined to facts within the personal knowledge of the deponents of the respective affidavits.

22. In **Mohan Lal Rathi v. Union of India**: 2023 SCC OnLine All 4667, this Court has observed that: -

***"21**. Although the above referred Rules are being followed generally, in some cases a new emerging practice has been observed where Advocates refer to numerous case-laws in the affidavits and counter affidavits, although the same is prohibited in the High Court Rules. The case-laws should not be incorporated in the affidavits, but those should be placed by the learned Counsel while advancing submissions, with reference to the specific passage containing the ratio decidendi of the judgment. The practice of mentioning case-laws in the affidavits filed before the Courts, and that too in a casual manner without even mentioning the citation or other complete particulars such as the name of the Court, case number and date of decision, and the relevant paragraph containing the ratio decidenei of the judgment results in wastage of the Court's time. Such a practice is deprecated and it should stop."*

23. The applicant should not have annexed a copy of the precedent on which he is relying, with the supplementary affidavit and it ought to have been supplied during submissions. Moreover, the verification clause of the affidavit ought to have been prepared carefully and verification of the averments made regarding the present case being covered by a precedent of this Court made on the basis of personal knowledge of a merely literate deponent indicates that the supplementary affidavit has been drafted in a casual manner. Swearing or affirmation of an affidavit is not an empty formality and the oath or solemn affirmation should not be taken lightly, more particularly in proceedings which are decided on the basis of affidavits only, without taking any other evidence.

24. Now I proceed to examine to applicability of the judgment in the case of **Ashok Kumar Singh v. State of U.P.**: 2023 SCC OnLine All 4715. In this case, the coordinate bench has referred to the decisions in the cases of **Hardeep Singh v. State of Punjab**: (2014) 3 SCC 92 and **Brijendra Singh v. State of Rajasthan**: (2017) 7 SCC 706 and has set aside the order passed under Section 319 Cr.P.C. on the ground that: -

"it emerges from the order itself that the learned Additional District & Sessions Judge, has found prima-facie, a case against the applicant and there is no such finding or the degree of satisfaction recorded that there are much stronger case available against the applicant and as such, this court finds that the learned trial court has ignored the law enunciated by the Apex Court."

25. In the present case, the trial Court has not recorded that merely a prima facie case is made out against the applicant,

rather it has been recorded that PW-1 and PW-2 have stated about involvement of the applicant in commission of the offence and even in the cross-examination of PW-1 and PW-2, no such fact has come to light, as may raise a suspicion against the applicant's involvement in commission of the offence. The trial Court has recorded satisfaction that there is ample evidence for recording more than a prima facie satisfaction regarding involvement of the applicant in commission of the offence. Nothing more is required to be done by the trial Court while deciding an application for summoning an accused person under Section 319 Cr.P.C. Therefore, there is no such defect in the impugned order, as had given a rise of interference in the case of **Ashok Kumar Singh** (Supra) and the aforesaid judgment annexed with the supplementary affidavit would not apply to the facts of the present case, as it is a well settled principle of the law of precedents that the ratio laid down in a precedent should be understood and applied keeping in view the factual background of the case and a little difference in facts the case would make the precedent inapplicable.

26. In view of the foregoing discussion, this Court is of the considered view that the impugned order does not suffer from any error or illegality warranting interference by this Court.

27. The application lacks merit and is **dismissed**.

(2025) 7 ILRA 190
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 17.07.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Application U/S 482 No. 5761 of 2025

Ram Pramesh Gupta @ Ram Pramesh Pno No. 212761283 ...Applicant
Versus
State Of U.P. & Anr. ...Opposite Parties

Counsel for the Applicant:
Sanjay Kumar Rao

Counsel for the Opposite Parties:
G.A.

ISSUE FOR CONSIDERATION

Whether the applicant can be simultaneously tried under Section 509 of I.P.C. and under section 67 of the I.T. Act for posting offensive and obscene content about a woman on social media?

HEADNOTES

Criminal Law - Code of Criminal Procedure, 1973 – Section – 164, 482, - Indian Penal Code, 1860 – Section – 509, - Information Technology (Amended) Act, 2008 – Section 67, 81 - Application under Section 482 Cr.P.C. – for quashing of the charge-sheet as well as summoning order – FIR lodged by opposite party no. 2 – alleged that an unknown person having a fake Facebook profile and posted some obscene photographs of informant's daughter on his Facebook account with objectionable comments – investigation – Charge-sheet u/s 509 of the IPC & u/s 67 of IT Act – trial court taken cognizance and summoned the applicant - applicant taken plea that when he had charged for commission of offence u/s 67 of IT Act, he cannot simultaneously be tried for the offence u/s 509 of IPC – Evaluation of Evidence – court finds that section 67 of the IT Act and Section 509 IPC cover distinct legal domains: electronic obscenity and insult to modesty, respectively, - sufficient prima facie evidence supports the charges and trial court acted within its jurisdiction in taking cognizance and summoning the applicant – held that, both provisions can be invoked concurrently if the facts support both offences – accordingly, application stands dismissed. (Para – 13, 14, 15, 17)
Application Dismissed**.** (E-11)

CASE LAW CITED

Sharat Babu Digumarti v. Government (NCT of Delhi), (2017) 2 SCC 18.

LIST OF ACTS

Indian Penal Code, 1860 – Information Technology (Amended) Act, 2008 - Code of Criminal Procedure, 1973.

LIST OF KEYWORDS

Fake Facebook profile - Obscene content - Modesty of woman - Electronic transmission – Cognizance - Charge-sheet - Prima facie evidence.

CASE ARISING FROM

Charge-sheet dated 02.10.2024 and Summoning order dated 10.02.2025 - Criminal Case No. 4321 of 2025 - Case Crime No. 0349 of 2023 - FIR dated 21.12.2023 lodged at Police Station Chhapiya, District Gonda.

APPEARANCE OF PARTIES

Counsel for Appellant: - Sri Sanjay Kumar Rao.
Counsel for Respondent: - Sri Avishesh Kumar Singh, AGA.

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Sanjay Kumar Rao, the learned counsel for the petitioner, Sri Avishesh Kumar Singh, the learned A.G.A. for the State and perused the records.

2. By means of the instant application filed under Section 482 Cr.P.C./Section 528 BNSS, the applicant has prayed for quashing of the impugned charge-sheet dated 02.10.2024 arising out of Case Crime No.0349 of 2023, under Section 509 I.P.C. and Section 67 of Information Technology (Amendment) Act, 2008, Police Station Chhapiya, District Gonda, cognizance and summoning order dated 10.02.2025 passed by the learned Additional Civil Judge (Junior Division), Room No.2, Gonda in Criminal Case No.4321 of 2025, along with entire proceedings of the aforesaid case.

3. The aforesaid case was instituted on the basis of an F.I.R. lodged by the opposite party no.2 on 21.12.2023 stating that some unknown person had created a facebook account in the name of Dev Gautam. He has prepared some obscene photographs of the informant's daughter and is posting the same along with objectionable comments causing a serious mental agony to the informant and his daughter.

4. Assailing the validity of the charge-sheet and the summoning order, the learned counsel for the applicant has submitted that the Information Technology Act is a special Act. He has drawn attention of the court to the statutory provisions contained in Sections 67 & 81 of the Act. Relying upon a judgment of the Hon'ble Supreme Court in the case of **Sharat Babu Digumarti Vs. Government (NCT of Delhi)**: (2017) 2 SCC 18, the learned counsel for the applicant has submitted that when the applicant is charged for commission of offence under Section 67 of Information Technology Act, he cannot simultaneously be tried for the offence under Section 509 I.P.C., which is a general provision.

5. At the stage of examining the validity of charge sheet and the summoning order the court has merely to examine whether the allegations leveled in the F.I.R. and the material collected during investigation make out a case for trial of the accused person for the alleged offences.

6. A copy of the material posted by the applicant on social media site has been annexed with the application, which shows that the content of message posted by the applicant is intended to insult the modesty of daughter of the opposite party no.2. This

material exhibits an obscene photograph of the daughter of opposite party no.2 and it can be seen by any person connected to the social media, including the daughter of the applicant.

7. In the statements of the informant and the victim they have stated that a fake id has been created on facebook in the name of Dev Gautam and edited obscene photograph and objectionable story have been posted thereon causing a serious mental agony to the informant and his daughter. The victim further stated that she does not know any person named Dev Gautam and she had not shared her photo with any person.

8. In the statement of the victim recorded under Section 164 Cr.P.C. she stated that a wedding proposal of her elder sister was settled with the applicant but it could not get materialized. Due to the aforesaid reason the applicant has created the fake facebook profile in the name of Dev Gautam and has posted obscene photographs and objectionable comments thereon and he has tagged several persons residing in the informant's village in that post.

9. After investigation the Investigating Officer has submitted a charge sheet dated 02.10.2024 for commission of offences under Section 509 I.P.C. and Section 67 of the Information Technology Act. The trial has taken cognizance of the aforesaid offences by means of an order dated 10.02.2025 and has summoned the applicant to face trial.

10. Section 67 of I.T. Act provides as follows: -

"67. Punishment for publishing or transmitting obscene material in electronic form. –

Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees."

11. Section 509 I.P.C. reads as under: -

"509. Word, gesture or act intended to insult the modesty of a woman.—

Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine."

12. A bare perusal of the aforesaid provisions makes it clear that Section 67 I.T. Act contains provisions regarding publication or transmission of any material in the electronic form, which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely to read, see or hear the matter contained or embodied in

it. Section 509 IPC contains provisions regarding utterance of any word, making any sound or gesture, or exhibition of any object, intending to insult the modesty of any woman, or intruding upon the privacy of such woman. The scope of the aforesaid two provisions is different and distinct and both the offences can be attracted on the basis of one set of facts.

13. A bare perusal of the allegations leveled in the F.I.R., which have been referred to above make out commission of the offences under Section 67 of I.T. Act as also under Section 509 I.P.C. There is sufficient material in the form of the photographs and the message posted on facebook and the statements of the complainant and the victim, which prima facie establish commission of offences under Section 509 I.P.C. as also under Section 67 of I.T. Act.

14. In **Sharat Babu Digumarti** (Supra), a charge-sheet was filed and the Magistrate had taken cognizance of the offences punishable under Sections 292 and 294 IPC and Section 67 of the IT Act. On a petition filed by a co-accused Avnish Bajaj, the High Court held that a prima facie case was made out under Section 292 IPC, but Avnish Bajaj was not liable to be proceeded under Section 292 IPC and he was discharged of the offence under Sections 292 and 294 IPC. However, he was prima facie found to have committed offence under Section 67 read with Section 85 of the IT Act and the trial court was directed to pass order of charge. Sharat Babu Digumarti challenged the order for framing of charge through a revision filed in the High Court but the High Court declined to interfere on the ground that there was sufficient material to proceed against him for the offence under Section 292 IPC. The issue before the Hon'ble Supreme Court was that whether the appellant who has been discharged under Section 67 of the IT Act could be proceeded under Section 292 IPC, which deals with sale etc. of obscene books. In the aforesaid background, the Hon'ble Supreme Court held in **Sharat Babu Digumarti** that: -

"...if the alleged offence pertains to offence of electronic record. It has to be borne in mind that IT Act is a special enactment. It has special provisions. Section 292 IPC makes offence sale of obscene books, etc. but once the offence has a nexus or connection with the electronic record the protection and effect of Section 79 cannot be ignored and negated. We are inclined to think so as it is a special provision for a specific purpose and the Act has to be given effect to so as to make the protection effective and true to the legislative intent. This is the mandate behind Section 81 of the IT Act. The additional protection granted by the IT Act would apply."

15. The offence punishable under Section 509 IPC was not involved in **Sharat Babu Digumarti** (Supra) and, therefore, this judgment is not an authority on the point whether a person can be tried for the offence under Section 509 IPC alongwith Section 67 of the I.T. Act.

16. In view of the aforesaid discussions, I am of the view that the ratio of law laid down in **Sharat Babu Digumarti** (Supra) would not apply to the facts of the present case.

17. As this Court has arrived at the view that the allegations leveled in the FIR and the material collected during

investigation in the form of the pictures and the message posted on facebook and the statements of the informant and the victim recorded by the investigating officer prima facie make out commission of offences punishable under Section 509 IPC and Section 67 of the I.T. Act, there is no error or illegality in the charge-sheet submitted against the applicant for the aforesaid two offences. The trial court has not committed any error of illegality in taking cognizance of the offences and in summoning the applicant to face trial.

18. The application lacks merit and the same is accordingly ***dismissed***.

(2025) 7 ILRA 194
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 03.07.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI , J.

Application U/S 482 No. 9555 of 2022

Pranay Krishna ...Applicant
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicant:
Rajendra Prasad Mishra

Counsel for the Opposite Parties:
G.A.

ISSUE FOR CONSIDERATION

Whether a separate application under Section 482 Cr.P.C. is maintainable for recalling an ex-parte order passed by a Co-ordinate Bench in a criminal revision, or whether such recall must be sought through a miscellaneous application in the same proceeding.

HEADNOTES

Criminal Law - Code of Criminal Procedure, 1973 – Section – 362, 482 - Application under Section 482 Cr.P.C. – seeking recall of an ex-parte order - in Criminal Revision, on the ground that the applicant was not personally served notice and thus could not appear - Preliminary objection regarding maintainability of a separate application under Section 482 Cr.P.C. for recalling an ex-parte order passed in a criminal revision – and the applicant ought to have filed a miscellaneous application for recalling the order in Criminal Revision – Court observed that although it possesses inherent powers under Section 482 Cr.P.C. to prevent abuse of process and secure justice, such powers must be exercised within the same proceeding and not through a separate application - citing precedents like Tribhuvan v. State of U.P. and Badloo v. State, the Court held that, for seeking recall of an ex-parte order passed in a Criminal Revision, the petitioner should approach the same court by fling an application for recall of the order and a separate application under section 482 Cr.P.C. cannot be entertained for this purpose - consequently, the application is dismissed, with liberty to the applicant, to file a suitable application in the criminal revision. (Para – 7, 8, 9)

Application Dismissed**.** (E-11)

CASE LAW CITED

Tribhuvan v. State of U.P., (1992) L.Cr.R. 165) - Badloo v. State (1999 SCC OnLine All 644 = (1999) L.Cr.R. 275).

LIST OF ACTS

Code of Criminal Procedure, 1973.

LIST OF KEYWORDS

Section 482 Cr.P.C. - Inherent powers - Ex-parte order - Criminal Revision - Recall application - Co-ordinate Bench - Abuse of process - Ends of justice

CASE ARISING FROM

Order dated 24.03.2022 passed by a co-ordinate bench of this court in Criminal Revision No. 584/2016.

APPEARANCE OF PARTIES

Counsel for Appellant: - Sri Rajendra Prasad Mishra.
Counsel for Respondent: - Sri Hans Raj Verma – AGA.

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Rajendra Prasad Mishra, the learned counsel for the applicants and Sri Hans Raj Verma, the learned A.G.A. and perused the record.

2. By means of the present application filed under Section 482 Cr.P.C., the applicant has sought recall of an order dated 24.03.2022 passed by a Co-ordinate Bench of this court in Crl. Revision No.584 of 2016 whereby the revision filed by the opposite party No.2 was allowed after hearing submissions of the learned Counsel for the revisionist and the learned Additional Government Advocate, recording that nobody had put in appearance on behalf of the opposite party no.2 (the applicant in the present case). The learned Counsel for the applicant is seeking recall of the order dated 24.03.2022 on the ground that notice of the revision had not been served on the applicant personally and, therefore, the applicant could not appear in that revision and the order was passed ex-parte against him.

3. The learned AGA has raised a preliminary objection that for recall of an order passed by a Co-ordinate Bench in a Criminal revision, a separate application under Section 482 Cr.P.C. will not be maintainable and the applicant ought to have filed a miscellaneous application for recall of the order in the Criminal Revision itself.

4. Replying to the aforesaid objection, the learned counsel for the applicant has relied upon a decision rendered by a Division Bench of this Court in **Tribhuvan v. State of U.P.,** (1992) L.Cr.R. 165 wherein this Court held that the bar contained under Section 362 Cr.P.C. will not apply against recall of a judgment and this Court has inherent power under Section 482 Cr.P.C. to recall an order passed without hearing a party. The order in the case of **Tribhuvan** (Supra) was passed on Criminal Miscellaneous Application No. 646 of 1984 filed in Criminal Appeal No. 95 of 1977, which appeal had been decided without hearing a party and not on a separate application filed and registered afresh under Section 482 Cr.P.C.

5. The learned counsel for the applicant next relied upon a decision rendered by a Co-ordinate Bench of this Court in Badloo v. State, 1999 SCC OnLine All 644 = *(1999)* L.Cr.R. 275 wherein this Court held that the power of recall is different from the power of altering or reviewing a judgment and the Court has inherent powers under Section 482 Cr.P.C. to recall a judgment passed without hearing a party. This judgment was also given upon in Criminal Miscellaneous Application No. 2746 of 1998 filed in Criminal Revision No. 612 of 1982 which had been decided without hearing a party and not in a separate fresh application filed under Section 482 Cr.P.C.

6. *Section 482 Cr.P.C. provides that "Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."*

7. The inherent powers inhere in this Court, i.e., these powers exist essentially and permanently. The exercise of the inherent powers is not limited to a separate application filed under Section 482 Cr.P.C.

and such power can be exercised by this Court in any proceeding before it, to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

8. In exercise of its inherent powers recognized under Section 482 Cr.P.C. this Court can recall an order passed in any case ex-parte, upon sufficient cause being shown for non-appearance, when the case was decided. However, in exercise of the inherent powers, a Bench of this Court cannot interfere in any order passed by another Bench of the Court. The applicant seeking recall of an order passed in any case has to file a miscellaneous application in the same case and he cannot file a fresh case for this purpose.

9. Accordingly, I am of the considered view that for seeking recall of an ex-parte order passed in a Criminal Revision, the petitioner should approach the same Court by filing an application for recall of the order and a separate application under Section 482 cannot be entertained for this purpose.

10. In view thereof, the application under Section 482 Cr.P.C. is hereby **dismissed** leaving it open to the petitioner to file a suitable application in the Criminal Revision which is said to have been decided ex-parte.

(2025) 7 ILRA 196

ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 25.07.2025

BEFORE

THE HON'BLE DINESH PATHAK, J.

Application U/S 528 BNSS No. 25348 of 2025

Kamlesh Meena & Ors. ...Applicants
Versus
State of U.P. & Ors. ...Opposite Parties

Counsel for the Applicants:
Ravi Kant, Vatsala

Counsel for the Opposite Parties:
Dharmendra Shukla, G.A., Sunil Kumar Singh

Issue for Consideration

Issue arose for consideration whether prospective accused against whom only direction has been issued by Magistrate u/s 173(4) read with Section 175(3) of B.N.S.S. 2023, for registration of F.I.R. and investigation, prior to stage of cognizance or issuance of process, possesses any locus standi or legal right to invoke inherent jurisdiction u/s 528 B.N.S.S. to challenge such order, and whether Magistrate, while directing registration of F.I.R., had complied with procedural safeguards and applied judicial mind in accordance with statutory mandate.

Head Notes

Bharatiya Nagarik Suraksha Sanhita, 2023 - ss. 173(4), 175(3) - Applicants invoked inherent jurisdiction of u/s 528 of B.N.S.S, 2023, seeking quashing of order dated 05.07.2025 passed by learned Special Judge (S.C./S.T. Act)/Additional Sessions Judge, whereby, in exercise of powers u/s 173(4) B.N.S.S., Station House Officer, was directed to register F.I.R. and conduct investigation on complaint of respondent no. 2, a retired Bank Manager belonging to Scheduled Caste community, alleging that applicants, in conspiracy with others, had fabricated and forwarded forged complaint and documents in name of one other person to higher bank authorities with intent to defame and falsely implicate him - Applicants contended that no cognizable offence was made out and that proceedings were instituted to obstruct ongoing departmental action against complainant for alleged embezzlement committed by him during his service period whereas complainant maintained that materials disclosed

commission of serious and cognizable offences warranting investigation.

Held:
Contention that procedure u/s 173 B.N.S.S. was not followed or that Magistrate failed to apply judicial mind is untenable - Record shows that before moving application u/s 173(4) B.N.S.S, respondent no. 2 approached concerned police station and subsequently to Commissioner of Police - Failed to get any relief, he moved application u/s 173(4) B.N.S.S. supported by affidavit – Learned Magistrate, exercising discretion u/s 175(3) B.N.S.S. (corresponding to Section 156(3) Cr.P.C.), conducted inquiry, called for police report, concerned police station reported that no F.I.R. registered regarding offence alleged in application u/s 173(4) B.N.S.S. and Magistrate further issued notice to Chief General Manager u/s 175(4) B.N.S.S to submit his report with regard to incident as mentioned in complaint moved by respondent no. 2. - In response, General Manager, who was arrayed as opposite party no. 1 in complaint, submitted detailed reply denying allegations - Upon consideration, Magistrate came to conclusion that investigation, if conducted by police, would not affect official duty of opposite parties arrayed in complaint and that all procedural requirements u/s 173(4) and 175(3) B.N.S.S. have fulfilled - No illegality committed in entertaining application - Difficult to infer that order was passed mechanically or perfunctory without application of mind - Upon considering complaint, documents, and submissions, Magistrate's reasons for directing investigation u/s 173(3) B.N.S.S. are clearly reflected in impugned order, supported by cogent reasons - Applicants, being prospective accused, lack locus standi to challenge direction for investigation u/s 173(4) and 175(3) B.N.S.S. prior to summoning / cognizance stage. [Paras 12, 13, 20, 21] (E-13)

Case Law Cited
Om Prakash Ambadkar v. The State of Maharashtra & Ors. **(Criminal Appeal No.352 of 2020)** decided by Supreme Court on January 16, 2025**;** Anil Kumar and others v. M. K. Aiyappa, and others, **(2013) 10 SCC 705;** Inspector Kamlesh Kumar Misra and another v. State of U.P. and 9 others), **u/a 227 No. 2138 of 2025**, decided on dated 12.3.2025 - **relied on**
Father Thomas v. State of U.P. and another, **2011 (1) ADJ 333 (FB);** Lalita Kumari v. Government of Uttar Pradesh, **(2014) 2 SCC 1;** Jagannath Verma and others v. State of UP and another**, AIR 2014 Allahabad 214 (FB);** Kailash Vijayvargiya v. Rajlakshmi Chaudhuri and Others, **2023 SCC Online SC 569 - referred to**

Ravinder Lal AIRI v. S. Shalu Construction PVT. LTD and others , decided by Single Bench, Delhi High Court, vide order dated January 24, 2023 in **W.P. (CRL) 209/2023, CRLMA 1951 of 2023;** Imran Pratapgadhi v. State of Gujarat and another, **2025 SCC Online SC 678 - distinguished**

List of Acts
Bharatiya Nagarik Suraksha Sanhita, 2023.

List of Keywords
Direction for registration of F.I.R. and investigation; Maintainability; Complainant; Scheduled Caste community; Travel bills; Travel agency owner; Forged signature; Bank authorities; Criminal conspiracy; Prima facie cognizable offence; Application of judicial mind; Perfunctory or mechanical manner; Competent police officer; Locus standi; Conspired to humiliate complainant and falsely implicated; False and forged complaint; Embezzlement; Departmental proceedings; Summoning/ cognizance stage.

Case Arising From
ORIGINAL JURISDICTION: Application U/s 528 B.N.S.S. No. - 25348 of 2025

From the Judgment and Order dated 05.07.2025 of Special Judge (S.C./ S.T. Act)/ Additional Session Judge, Agra, in Criminal Misc. Case No.3140 of 2025

Appearances for Parties
Advs. for the Applicant:
Ravi Kant, Vatsala

Adv. for the Opposite Party:
Dharmendra Shukla, G.A., Sunil Kumar Singh

(Delivered by Hon'ble Dinesh Pathak, J.)

1. Heard Ms Vatsala, learned counsel for the applicants and Sri Anil Tiwari, learned Senior Advocate, assisted by Sri Dharmendra Shukla, learned counsel for the respondent no.2 and learned AGA for the State respondent no.1, and perused the record.

2. The applicants have invoked the inherent jurisdiction of this Court under Section 528 B.N.S.S. for quashing the impugned order dated 05.07.2025 passed by the learned Special Judge (S.C./S.T. Act)/ Additional Session Judge, Agra, passed in Criminal Misc. Case No.3140 of 2025 (Criminal Misc. Application No.251 of 2025) (Veerendra Singh Vs. G.M. Amrendra Kumar & Another), under Section 173(4) of B.N.S.S., 2023, Police Station- Etmaauddaulaa, District Agra, whereby SHO Etmaauddaulaa, Police Commissionerate, Agra, has been directed to register an F.I.R. against the present applicants and investigate the same.

3. Learned Senior Counsel for respondent No. 2 has raised a preliminary objection with regard to maintainability of the instant application at the behest of the prospective accused, assailing the order dated 5.7.2025, whereby a simple direction has been issued for registration of the F.I.R. and investigation of the matter. Thus, with the consent of the parties, maintainability of the instant application at the behest of the prospective accused, before issuance of process or taking of cognizance, is being heard and decided.

4. Record evinces that the respondent no. 2 (complainant) has moved an application under Section 173(4) B.N.S.S. with the prayer that Station House Officer (SHO), Police Station- Etmaauddaulaa, Agra, may be directed to investigate the matter after registering the written complaint of the applicant/complainant. In his application, the respondent no.2 came with the plea that:-

(i) He retired from the post of Manager in January 2019 after rendering 39 years of service in the Bank of India, and belongs to the Scheduled Caste community.

(ii) The opposite party, Amrendra Kumar (accused), harbours a long-standing enmity against the applicants and, in conspiracy with other opposite parties, namely, Jeevan Kamle, Kamlesh Meena and Anjani Kumar, attempted to defame and falsely implicated him in a fabricated case. To that end, a false, fabricated and forged complaint letter was sent in the name of one Ramesh Chand, bearing his forged signature, to the Chairman and Managing Director of the Bank, requesting an inquiry.

(iii) Additionally, the travel bills sanctioned by the Bank in favour of the applicants were sent for verification to Sri Sanjeet Kumar, Assistant General Manager, Field General Manager, and others. After verification, the travel agency owner, Jitendra Singh, was allegedly coerced by the said officers to declare the bills as forged, but Jitendra Singh stated that no forged bill had ever been prepared at his establishment.

(iv) In support of the complaint, the complainant has attached the copies of the forged and fabricated applications, affidavits of Ramesh Chandra and Jitendra Singh and other relevant documents.

5. The learned Special Judge (S.C./S.T. Act)/Additional Session Judge, Agra, after perusal of the documents and the statement of witnesses, came to the conclusion that the complainant is a member of the Scheduled caste community and had retired from the post of Bank Manager in the year 2019 after 39 years of service. The opposite parties (applicant herein), who are also officers and employees of the bank, conspired to humiliate the complainant and falsely implicated him in criminal cases by fabricating and filing a false and forged complaint under the name of one Ramesh Chand, whose identity could not be verified. Regarding the alleged fake bills, it is clear that such complaints could only have been made by bank authorities themselves, as the documents in question were in the custody of the bank. Thus, learned court concerned has finally concluded that, in such a situation, it is evident that a criminal conspiracy was committed by the opposite parties/accused with the intention to cheat, forge documents, to use forged documents as genuine, defame the complainant, and commit offences under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

6. In this backdrop of the facts, the learned court concerned was of the view that these offences are of a serious and cognizable nature; therefore, it is deemed necessary that an investigation into the allegations against the opposite parties be conducted by a competent police officer. As such, the court concerned has allowed the application under Section 173 (4) of B.N.S.S., treating it as maintainable and issued a direction for registration of an F.I.R. at the concerned police station and to conduct a proper investigation, vide his order dated 05.07.2025, which is under challenge before this court.

7. Learned counsel for the applicants submits that the procedure as enunciated under Sections 173 and 175 of B.N.S.S. has not properly been followed by the learned court below before issuing a direction to lodge an F.I.R. and investigate the same; therefore, the instant application under Section 528 of B.N.S.S. is maintainable. It is further submitted that departmental proceedings are going on against the respondent No. 2 for the alleged embezzlement committed by him during his service period, and the application under Section 173(4) of B.N.S.S. has been moved to impede the departmental proceedings. Therefore, in the light of the facts that no cognizable offence is made out against the present applicants for issuing a direction to register an F.I.R. and investigate the matter, there is no legal sanctity in moving the application under Section 173(4) B.N.S.S. In support of her submission, learned counsel for the applicants has placed reliance upon the case of **Om Prakash Ambadkar v. The State of Maharashtra & Ors. (Criminal Appeal No.352 of 2020)** decided by the Hon'ble Supreme Court on January 16, 2025, the case of **Imran Pratapgadhi v. State of Gujarat and another, Criminal Appeal No. 1545 of 2025,** decided by the Hon'ble Supreme Court on March 28, 2025, reported in 2025 SCC Online SC 678, the case of **Anil Kumar and others Vs. M. K. Aiyappa, and others,** decided by Hon'ble Supreme Court reported in **(2013) 10 SCC** 705, and case of Hon. Delhi High Court, decided by Single Bench, vide order dated January 24, 2023 in W.P. (CRL) 209/2023, CRLMA 1951 of 2023 in **Ravinder Lal AIRI Vs. S. Shalu Construction PVT. LTD and others** and the Matters under

Article 227 No. 2138 of 2025 **(Inspector Kamlesh Kumar Misra and another Vs. State of U.P. and 9 others),** decided by the Hon'ble coordinate bench of this court, vide order dated 12.3.2025.

8. Per contra, learned Senior Counsel for the respondent no. 2 has vehemently opposed the submissions advanced by learned counsel for the applicant and contended that in view of the ratio decided by the full bench of this court in the matter of **Father Thomas v. State of U.P. and another,** reported in **2011 (1) ADJ 333 (FB)** instant application under Section 528 B.N.S.S. is not maintainable against the direction of the court concerned for lodging an F.I.R. and conducting an investigation. It is next submitted that at this juncture, nothing has been decided finally against the present applicants who are the prospective accused; therefore, they have no right to impede the investigation as per the direction of the court concerned. It is further submitted that on the face of the complaint moved by the respondent no. 2, a cognizable offence is made out against the present applicants. Thus, the learned court concerned has rightly acknowledged the same and issued a direction for lodging an F.I.R. and conducting an investigation. Present applicants still have an opportunity to cooperate with the investigation and put up their defence. Mere a direction for lodging of an F.I.R. does not confer any legal right in favour of the present applicants to invoke the inherent jurisdiction of this Court. There is no abuse of the process of court or apparent illegality in the order passed by the court concerned to entertain the instant application in exercise of powers under Section 528 B.N.S.S. He has tried to distinguish the case laws, as mentioned above, cited on behalf of the applicants.

9. Having considered the rival submissions advanced by learned counsel for the parties and upon the perusal of record it is manifest that having been aggrieved with the false, fabricated and forged complaint moved against the respondent no. 2 to the higher bank authorities under the name of one Ramesh Chandra, he has approached to the police officer in charge of the concerned police station to lodge an F.I.R. However, while the police report has not been lodged, he has made the complaint dated 7.2.2025 to the Commissioner of Police at Agra. When the respondent no.2 has not received any response from the higher police authority, he has moved an application under Section 173(4) of B.N.S.S. Having found that a cognizable offence is made out against the prospective accused (applicants herein), learned Special Judge, S.C./S.T. Act/Additional Sessions Judge, Agra has issued a direction for registration of the F.I.R. and investigation of the case. Based on the submissions advanced by learned counsel for the parties, question involved in the instant application lies in a narrow compass as to whether the prospective accused, the person, who is suspected of having committed the crime is entitled to an opportunity of being heard against the order of lodging an F.I.R. and investigation of the matter passed by learned Magistrate in deciding the application under Section 173 (4) of B.N.S.S. Needless to say, that in the previous law, i.e. Criminal Procedure Code (hereinafter referred to as 'Cr.P.C.'), the duty was entrusted upon the police authorities to lodge an F.I.R. under Section 154 Cr.P.C. In the case of **Lalita Kumari vs. Government of Uttar Pradesh, (2014) 2 SCC 1,** the Hon'ble Supreme Court has elucidated the scope of Section 154 Cr.P.C. in detail, pointing out the solemn duty of

the police authorities. Paragraph 119 of the aforesaid judgment is quoted hereinbelow:

"Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an F.I.R. is mandatory. However, if no cognizable offence is made out in the information given, then the F.I.R. need not be registered immediately, and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an F.I.R. forthwith. Other considerations are not relevant at the stage of registration of F.I.R., such as whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the F.I.R. At the stage of registration of F.I.R., what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false F.I.R."

10. Under the new law i.e. Bharatiya Nagrik Suraksha Sanhita, 2023 (in brevity, 'B.N.S.S.'), the corresponding provisions of the aforesaid Section 154 Cr.P.C. are enunciated under Section 173 of B.N.S.S. Likewise, previous provisions under Section 156(3) of Cr.P.C., in relation to entertaining the complaint by the learned Magistrate, are enunciated under Section 175(3) of B.N.S.S. While comparing both sections i.e. 156 Cr.P.C. and 175 B.N.S.S., Hon'ble Supreme Court in the case of **Om Prakash Ambadkar (supra)** has expounded the provisions of Section 175 B.N.S.S. which corresponds to Section 156 Cr.P.C. Relevant paragraph Nos. 29 and 30 of the aforesaid judgment are quoted herein below:

"29. Section 175 of the B.N.S.S. corresponds to Section 156 of the Cr.P.C. Sub-section (1) of Section 175 of the B.N.S.S. is in pari materia with sub-section 156(1) of the Cr.P.C. except for the proviso which empowers the Superintendent of Police to direct the Deputy Superintendent of Police to investigate a case if the nature or gravity of the case so requires. Sub-section (2) of Section 175 the B.N.S.S. is identical to Section 156(2) of the Cr.P.C. Section 175(3) of the B.N.S.S. empowers any Magistrate who is empowered to take cognizance u/s210 to order investigation in accordance with Section 175(1) and to this extent is in pari materia with Section 156(3) of Cr.P.C. However, unlike Section 156(3) of the Cr.P.C., any Magistrate, before ordering investigation u/s175(3) of the B.N.S.S., is required to:

a. Consider the application, supported by an affidavit, made by the complainant to the Superintendent of Police under Section 173(4) of the B.N.S.S.;

b. Conduct such inquiry as he thinks necessary; and

c. Consider the submissions made by the police officer.

30. Sub-section (4) of Section 175 of the B.N.S.S. is a new addition to the

scheme of investigation of cognizable cases when compared with the scheme previously existing in Section 156 of the Cr.P.C. It provides an additional safeguard to a public servant against whom an accusation of committing a cognizable offence arising in the course of discharge of his official duty is made. The provision stipulates that any Magistrate who is empowered to take cognizance under section 210 of the B.N.S.S. may order investigation against a public servant upon receiving a complaint arising in course of the discharge of his official duty, only after complying with the following procedure:

a. Receiving a report containing facts and circumstances of the incident from the officer superior to the accused public servant; and

b. Considering the assertions made by the accused public servant as regards the situation that led to the occurrence of the alleged incident."

11. However, in paragraph No. 31 of the case of **Om Prakash Ambadkar (supra),** Hon'ble Supreme Court, while comparing section 175(3) of BNSS with Section 156(3) Cr.P.C., has pointed out three prominent changes that have been introduced by the enactment of the B.N.S.S., which is quoted hereinbelow:

"31. A comparison of Section 175(3) of the B.N.S.S. with Section 156(3) of the Cr.P.C. indicates three prominent changes that have been introduced by the enactment of B.N.S.S. as follows:

a. First, the requirement of making an application to the Superintendent of Police upon refusal by the officer in charge of a police station to lodge the F.I.R. has been made mandatory, and the applicant making an application u/s 175(3) is required to furnish a copy of the application made to the Superintendent of Police under Section 173(4), supported by an affidavit, while making the application to the Magistrate u/s 175(3).

b. Secondly, the Magistrate has been empowered to conduct such enquiry as he deems necessary before making an order directing registration of F.I.R.

c. Thirdly, the Magistrate is required to consider the submissions of the officer in charge of the police station as regards the refusal to register an F.I.R. before issuing any directions u/s 175(3)."

12. I am sceptical of the submissions advanced by the learned counsel for the applicants that proper procedure as enunciated under Section 173 of B.N.S.S. has not been followed, and the learned Magistrate, while passing the order for registration of the F.I.R. and investigation of the matter, has not applied his judicial mind. It is evident from the record that before moving an application under Section 173(4) B.N.S.S., the respondent no. 2 had approached the police station concerned and subsequently to the Commissioner of Police, Commissionerate Agra. Having failed to get any relief, ultimately, he has moved the application under Section 173(4) B.N.S.S., supported with an affidavit narrating the details of his plight.

13. The learned Magistrate, in exercise of his discretionary power under Section 175(3) of B.N.S.S. (old provision 156(3) Cr.P.C.), has conducted an inquiry. He has called for a report from the concerned police station. In response to the query made by learned magistrate, a report has

been submitted by the concerned police station that no F.I.R. has been lodged with respect to the occurrence of offence as mentioned in the application under Section 173(4) B.N.S.S. Notice has been issued to the Chief General Manager of the bank as well, in pursuance of Section 175(4) of B.N.S.S., to submit his report with regard to the incident as mentioned in the complaint moved by the respondent no. 2. However, in place of the Chief General Manager, the General Manager of the bank, namely, Amrendra Kumar, who was arrayed as opposite party no. 1 in the complaint, has submitted a detailed reply in the form of a report and denied all the allegations as made in the complaint. Learned Magistrate has discussed in detail the objection/reply submitted by the General Manager, Amrendra Kumar (opposite party no. 1 in complaint) and came to the conclusion that investigation, if conducted by the police, would not affect the official duty of the opposite parties arrayed in the complaint. Prima facie, all the essential conditions, as required to entertain the application under Section 173(4) read with Section 175(3) B.N.S.S., have been fulfilled; therefore, the learned Magistrate has not committed any illegality in entertaining said application.

14. Learned counsel for the applicants has emphasized on the judgment of **Om Prakash Ambadkar (supra)** and submits that Hon'ble Apex Court has set aside the order passed by the Magistrate concerned directing the police investigation under Section 156(3) of Cr.P.C.; thus, order passed under Section 173 (4) to register an F.I.R. and for investigation is open to be assailed at the behest of the person who is suspected of having committed the crime. In the cited case, the application moved under Section 156(3) Cr.P.C. has been allowed with a direction for registration of the F.I.R. and investigation of the matter under Sections 323, 294, 500, 504 and 506 IPC. Aforesaid order was affirmed by Hon'ble High Court in application under Section 482 Cr.P.C. Hon'ble Supreme Court, having considered the entire case in detail, came to the conclusion that learned Magistrate has not properly applied his judicial mind in allowing the application under Section 156(3) Cr.P.C., and has succinctly observed that no cognizable offence is made out in the facts and circumstances of the case as averred by the applicant in his application under Section 156(3) Cr.P.C. Thus, in this backdrop of the case, Hon'ble Supreme Court has set aside the order passed by the learned Magistrate as well as the order passed by the Hon'ble High Court.

15. It is apposite to mention that locus standi of the prospective accused to assail the order for registration of the F.I.R. and investigation of the matter under section 156(3) Cr.P.C. (new section 175(3) B.N.S.S.), before cognizance and issuance of process, was neither in question nor discussed by the Hon'ble Apex Court in the case of **Om Prakash Ambadkar (supra)**. The full Bench of this Court in the case of **Father Thomas v. State of UP and another, 2011(1) ADJ 33 (FB),** while replying the question No. 1, came to the conclusion that the prospective accused have no locus to challenge the order passed under Section 156(3) Cr.P.C. before cognizance or issuance of process against him. Paragraph No. 32 of the aforesaid judgment is quoted hereinbelow:

"32. In the light of the aforesaid discussion, it is abundantly clear that the prospective accused has no locus standi to challenge a direction for investigation of a

cognizable case under Section 156(3) Cr.P.C before cognizance or issuance of process against the accused. The first question is answered accordingly."

16. More so, on the flip side, while the rejection of the application under Section 156(3) Cr.P.C. is assailed by the applicant/complainant, the prospective accused has full right to contest the case at the higher stage, as per ratio decided by Hon'ble Full Bench of this Court in the matter of **Jagannath Verma and others vs. State of UP and another, AIR 2014 Allahabad 214 (FB).**

17. In the case of **Kailash Vijayvargiya Vs. Rajlakshmi Chaudhuri and Others,** decided on May 4, 2023, in **Criminal Appeal No. 1581 of 2021,** reported in **2023 SCC Online SC 569,** the Hon'ble Supreme Court has elucidated the pre-cognizance stage and post-cognizance stage. It has been observed that if the Magistrate finds that the allegation made before him discloses the commission of cognizable offence, he can forward the complaint to the police for investigation under Section 156(3) Cr.P.C. and, thereby, save valuable time of the Magistrate from being wasted in inquiry as it is preliminary duty of the police to investigate. In paragraph No. 84 of the aforesaid judgment, the Hon'ble Supreme Court has unequivocally observed that the accused does not have any right to appear before the Magistrate before summons are issued. Relevant paragraph Nos. 69, 73, 74, 75, 80, 81 and 84 of the aforesaid judgment are quoted herein below:

"69. *In Ramdev Food Products Private Limited (supra), examining whether discretion of the Magistrate to call for a report u/s202 instead of directing investigation under Section 156(3) is controlled by any defined parameters, it was held thus:*

"22. *Thus, we answer the F.I.R.st question by holding that:*

22.1*. The direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone the issuance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued.*

22.2. *The cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed". Category of cases falling under para 120.6 in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] may fall u/s202.*

22.3. *Subject to these broad guidelines available from the scheme of the Code, exercise of discretion by the Magistrate is guided by interest of justice from case to case."*

73. *As to the scope of power of the Magistrate to direct an FIR under Section 156(3), this court in Mohd. Yusuf v. Afaq Jahan (Smt), (2006) 1 SCC 627 opined that:*

"11. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was

not taking cognizance of any offence therein. For the purpose of enabling the Police to start investigation it is open to the Magistrate to direct the Police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the Police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the Police station to register the FIR regarding the cognizable offence disclosed by the complainant because that Police officer could take further steps contemplated in Chapter XII of the Code only thereafter."

74. *In Anju Chaudhary (supra), this court analysing the power of the Magistrate under Section 156(3) observed:*

"41. Thus, the Magistrate exercises a very limited power under Section 156(3) and so is its discretion. It does not travel into the arena of merit of the case if such case was fit to proceed further. This distinction has to be kept in mind by the court in different kinds of cases…."

75. *In HDFC Securities Ltd. v. State of Maharashtra, (2017) 1 SCC 640, this court while interpreting the words "may take cognizance" and Section 156(3), held:*

"24. Per contra, the learned counsel for Respondent 2 submitted that the complaint has disclosed the commission of an offence which is cognizable in nature and in the light of Lalita Kumari case [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524], registration of F.I.R. becomes mandatory. We observe that it is clear from the use of the words "may take cognizance" in the context in which they occur, that the same cannot be equated with "must take cognizance". The word "may" give discretion to the Magistrate in the matter. If on a reading of the complaint he finds that the allegations therein disclose a cognizable offence and that the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter, which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence, himself. It is settled that when a Magistrate receives a complaint, he is not bound to take cognizance if the facts alleged in the complaint, do not disclose the commission of an offence."

80. *The State of West Bengal has drawn our attention to the judgment of this Court in Gopal Das Sindhi v. State of Assam, AIR 1961 SC 986 to the effect that even when a private complaint is filed, the Magistrate is not bound to take cognizance u/s190 as the word used therein is 'may', which should not be construed as 'must' for obvious reasons. The Magistrate may well exercise discretion in sending such complaint under Section 156(3) to the police for investigation. However, when a Magistrate chooses not to proceed under Section 156(3), he cannot simply dismiss the complaint if he finds that resorting to Section 156(3) is not advisable. Reference in this regard can also be made to Suresh*

Chand Jain v. State of M.P., (2001) 2 SCC 628 which distinguishes between the power of the police to investigate u/s156, the direction of the Magistrate for investigation under Section 156(3) and post-summoning inquiry and investigation after cognizance u/s190 and Section 202 of the Code. When a Magistrate orders investigation under Section 156(3), he does so before cognizance of the offence. If he takes cognizance, he needs to follow the procedure envisaged in Chapter XV (see Afaq Jahan (supra).

***81.** The decision in Mona Panwar v. High Court of Judicature of Allahabad through its Registrar, (2011) 3 SCC 496 is rather succinct. This Court held that when a complaint is presented before a Magistrate, he has two options. One is to pass an order contemplated by Section 156(3). The second one is to direct examination of the complainant on oath and the witness present, and proceed further in the manner provided by Section 202. An order under Section 156(3) is in the nature of a peremptory reminder or intimation to the police to exercise its plenary power of investigation u/s156(1). However, once the Magistrate has taken cognizance u/s190 of the Code, he cannot ask for an investigation by the Police. After cognizance has been taken, if the Magistrate wants any investigation, it will be u/s202, whose purpose is to ascertain whether there is prima facie case against the person accused of the offence and to prevent issue of process in a false or vexatious complaint intended to harass the person named. Such examination is provided, therefore, to find out whether there is or not sufficient ground for proceeding further.*

***84.** We would refrain and not comment on the allegations made as this may affect the case put up by either side. The accused do not have any right to appear before the Magistrate before summons are issued. However, the law gives them a right to appear before the revisionary court in proceedings, when the complainant challenges the order rejecting an application under Section 156(3) of the Code. The appellants, therefore, had appeared before the High Court and contested the proceedings. They have filed several papers and documents before the High Court and this Court. To be fair to them, the copies of the papers and documents filed before the High Court and this Court would also be forwarded and kept on record of the Magistrate who would, thereupon, examine and consider the matter. However, the complainant/informant would be entitled to question the genuineness and the contents of the said documents."*

18. In the latter part of Section 173(4) of B.N.S.S., it is provided that "failing which such aggrieved person may make an application to the Magistrate". Aforesaid phrase used in Section 173(4) of B.N.S.S., in my opinion, clearly denotes that in case all the remedies as mentioned under sub-section 1, sub-section 3 and initial part of sub-section 4 of Section 173 B.N.S.S. are exhausted, applicant/aggrieved person has a right to move an appropriate application before the Magistrate, who, in turn, either proceed on the aforesaid application and issue a direction for police investigation after registering the F.I.R., or treat it as a complaint and proceed accordingly, or reject the same on merits. In the instant matter, learned Magistrate came to conclusion that the cognizable offence is made out against the opposite parties in the complaint, thus, it would be justified to issue a direction for registration of an F.I.R. and investigation of the matter.

19. The view expressed by learned Single Judge of Delhi High Court in the matter of **Ravinder Lal Airi (supra),** cited by learned counsel for the applicants, is contrary to the Full Bench decision of this Court in the matter of **Father Thomas (supra)**, therefore, in my opinion, same is not liable to be considered. Facts and circumstances of the case of **Imran Pratapgadhi (supra),** cited by learned counsel for the applicants are quite distinguishable from the given circumstances of the present case.

20. Having considered the impugned judgment passed by the learned Magistrate, I am of the view that it would be difficult to infer that the order has been passed in a perfunctory or mechanical manner without application of mind. He has discussed the case in detail, having considered the reply submitted by General Manager of the Bank, namely, Amrendra Kumar (opposite party no.1 in the complaint), police report and other documents, and expressed his view that *prima facie* cognizable offence appears to have committed by the opposite parties and in such a case registration of an F.I.R. at the concerned police station and conducting appropriate investigation is justified. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order an investigation under 173(3) B.N.S.S., has succinctly been reflected in the order under challenge. He has assigned cogent reasons for the requirement of investigation of the matter.

21. In this conspectus, as above, I am of the considered view that the present applicants, who are the prospective accused, have no locus standi to assail the direction for investigation under Section 173(4) read with 175 (3) B.N.S.S. before the summoning/cognizance stage. There is neither any abuse of process of court nor any ground made out to pass an order to interfere with the complaint u/s 173(4) for securing the ends of justice, in exercise of the inherent jurisdiction of this Court under Section 528 B.N.S.S.

22. Resultantly, instant application at the behest of the prospective accused, the person who is suspected to have committed the crime, is **dismissed** as not maintainable.

(2025) 7 ILRA 207
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 03.07.2025

BEFORE

THE HON'BLE CHANDRA DHARI SINGH, J.

Criminal Misc. Anticipatory Bail Application U/S 482 B.N.S.S. No. 2756 of 2025

Abdul Hameed ...Applicant
Versus
State of U.P. ...Opposite Party

Counsel for the Applicant:
Pradeep Kumar Rai, Prakhar Saran Srivastava

Counsel for the Opposite Party:
G.A.

Issue for Consideration

Whether applicant's present second anticipatory bail application u/s 482 of BNSS, is maintainable and sustainable in law, notwithstanding earlier rejection of anticipatory bail u/s 438(6) of CrPC (as amended by U.P. Act No. 4 of 2019), and whether subsequent enactment of BNSS, coupled with dismissal of SLP, issuance of fresh non-bailable warrant and proclamation constitute 'changed circumstances' warranting reconsideration of anticipatory bail.

Head Notes

Indian Penal Code, 1860 - ss.302, 307, 323, 504 - Code of Criminal Procedure, 1973 - ss.82/83, 161, 319, 438(6) - Present case arises out of incident dated 13.08.2011, wherein at about 08:15 A.M., assault was allegedly committed by certain accused persons armed with licensed pistols on informant and his family members, resulting in death of one Guddu @ Zakir Husain, uncle of informant, succumbed to gunshot injury, leading to registration of FIR u/s 302, 307, 323, and 504 IPC - During investigation, Investigating Officer found allegations against applicant to be false, as injured witnesses and villagers' affidavits corroborated his absence from scene, and accordingly, he was not charge-sheeted - During trial, on basis of deposition of informant (PW-1), learned Additional Sessions Judge vide order dated 22.05.2019, summoned applicant u/s 319 CrPC - Applicant's subsequent efforts to seek discharge and quashment u/s 482 CrPC were rejected up to Supreme Court, where his SLP was dismissed on 10.12.2024, vacating the stay earlier granted on trial - Thereafter, trial court issued non-bailable warrant on 01.02.2025, prompting applicant, aged 78 years and suffering from serious ailments, to file present second anticipatory bail application u/s 482 of BNSS asserting changed circumstances and contending that statutory bar u/s 438(6) CrPC stood removed under new enactment, thereby entitling him to anticipatory relief.

Held: Upon due consideration of record and rival submissions, Court finds that second anticipatory bail application u/s 482 BNSS is manifestly maintainable - Enactment of BNSS has created material changed circumstances, both in law and fact, that justify fresh consideration on merits - Removal of statutory bar contained in Section 438(6) of CrPC represents fundamental change in legal framework that obliterates foundation upon which first application was rejected - Doctrine of beneficial legislation and presumption favoring retrospective application of procedural law supports applicant and entitled him to liberal provisions of BNSS, regardless of when alleged offence was committed - Applicant has established prima facie case for anticipatory bail, given his peripheral role, absence of credible evidence, non-inclusion in initial charge sheet, advanced age, medical condition and delay in proceedings, coupled with IO's initial finding of false allegations - Supervening circumstances - BNSS enactment, Supreme Court stay vacated and fresh issuance of non-bailable warrant - justify fresh consideration on merits. [Paras 50 to 54] (E-13)

Case Law Cited

Anurag Dubey v. State of UP, Order dated 20.09.2022, **passed in ABAIL No.1327/2022- relied on**

Asha Dubey v. State of MP, Judgment dated 12.11.2024, **Criminal Appeal no. 4564/2024;** Lavesh v. State (NCT of Delhi), **[(2012) 8 SCC 730];** Sudhir Kumar Chaurasia v. State of U.P., **(Cri. Misc. Anti. Bail Appl. No. 447/2025);** T. Barai v. Henry Ah Hoe, **(1983) 1 SCC 177;** Trilok Chand v. State of Himachal Pradesh, **(Cri. Appeal No. 1831/2010);** M. Ravindran v. Intelligence Officer, Directorate of Revenue Intelligence, **(2021) 2 SCC 485**; Tatheer Jafri & Ors. v. State of U.P., **decided on 01.04.2025; referred to**

Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav, **[(2005) 2 SCC 42];** Deepu & others v. State of U.P. & others., **2024 (10) ADJ 370 -** Hitendra Vishnu Thakur & Others v. State of Maharashtra & Others, **(1994) 4 SCC 602; followed**

List of Acts

Penal Code, 1860; Code of Criminal Procedure, 1973; Criminal Procedure (Uttar Pradesh Amendment) Act, 2018.

List of Keywords

Summoning Order; Discharge Application; Non-bailable Warrant; Proclamation u/s 82 CrPC; Surrender; Interim Protection; Anticipatory Bail; Successive Bail Application; Maintainability; Procedural Law ; Doctrine of Changed Circumstances; Doctrine of Beneficial Legislation; Doctrine of Finality; Judicial Discipline; Statutory Bar; Legislative Intention; Procedural Mechanism; Prima facie Case;

Material Change in Law / Facts; Peripheral Role; Substantive Right; Retrospective Applicability; Legislative Benevolence; Personal Bail Bond; Absence of credible evidence; Vague and general allegations; Vacating of the stay; Issuance of proclamation.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Anticipatory Bail Application U/s 482 BNSS No. - 2756 of 2025

From the Judgment and Order dated 10.03.2025 of Additional Sessions Judge, Court No.3, District Bareilly, in Case Crime No. 647 of 2011

Appearances for Parties

Advs. for the Applicant:
Pradeep Kumar Rai, Prakhar Saran Srivastava

Adv. for the Party:
G.A.

(Delivered by Hon'ble Chandra Dhari Singh, J.)

FACTUAL MATRIX

Occurrence of the Offence and FIR Lodging

1. On 13.08.2011, at approximately 08:15 AM, an incident occurred in Village Girdharpur, Police Station Devrania, District Bareilly, Uttar Pradesh , leading to the lodging of FIR No. 647/2011 under Sections 302, 307, 323, and 504 the Indian Penal Code, 1860 (hereinafter "IPC"). The FIR was lodged by the informant, Firoz , alleging that the accused persons, including Abdul Hameed (applicant herein), along with one Javed Anwar, Anwar Jameer, and Babu, armed with licensed pistols, attacked the informant and his family members. The FIR alleged that the accused fired indiscriminately, resulting in the death of Guddu @ Zakir Husain, the informant's uncle, who succumbed to a gunshot injury. The motive was attributed to prior animosity arising from Zila Panchayat elections and contractual disputes. The deceased was declared dead at Shri Ram Murti Hospital, and the postmortem conducted on 13.08.2011 revealed a single bullet injury with entry and exit wounds.

Investigation and Charge Sheet

2. The investigation was conducted by the police, and the charge sheet was filed on 07.11.2011 under Sections 302, 307, 323, and 504 of the IPC against three accused persons (Javed Anwar, Anwar Jameer, and Babu). Notably, the applicant, Abdul Hameed , was not charge-sheeted as the investigating officer found the allegations against him to be false. During further investigation, villagers submitted affidavits stating that the applicant was not present at the scene, and their statements were recorded under Section 161 of the Code of Criminal Procedure, 1973 (hereinafter "CrPC"), corroborating his absence.

Trial Proceedings and Summoning Under Section 319 of the CrPC.

3. The trial commenced, and the informant was examined as PW-1. During his cross-examination, he allegedly introduced a new version of events, alleging that the accused fired from a rooftop, contradicting the FIR and his earlier statements. Based on this testimony, an application was filed under Section 319 of the CrPC. to summon the applicant as an additional accused. Accordingly, the learned ASJ, Court No. 3, Bareilly, allowed the application on 22.05.2019, summoning the applicant to face trial.

Litigation History

4. Application under Section 482 of the CrPC bearing No. 23900/2019 was filed whereby the applicant challenged the summoning order dated 22.05.2019 before the Coordinate Bench of this Court. On 28.06.2019, the Coordinate Bench disposed of the said application, directing the applicant to file a discharge application before the trial court and granted interim protection from coercive measures until its disposal.

5. Thereafter, it appears from the record that the applicant filed a discharge application, which was rejected by the learned Trial Court on 12.05.2022. This rejection was challenged before a Coordinate Bench of this Court in Application under Section 482 of the CrPC bearing No. 18901/2022, which was dismissed on 16.09.2022, upholding the Trial Court's order.

6. Subsequent to the aforesaid events, on 14.10.2022, the learned Trial Court issued a non-bailable warrant against the applicant. This was challenged in another Application under Section 482 of the CrPC bearing No. 12669/2023, wherein a Coordinate Bench of this Court, on 12.04.2023, directed the applicant to surrender and apply for bail, staying the warrant for two weeks.

7. Meanwhile, in Special Leave Petition (Criminal) No. 21956/2023, the applicant approached the Hon'ble Supreme Court against the High Court's order dated 16.09.2022. The Hon'ble Supreme Court initially stayed the trial on 10.07.2023 but ultimately dismissed the said SLP on 10.12.2024, vacating the stay.

Anticipatory Bail Applications

8. The applicant filed his first anticipatory bail application (ABAIL No. 1554/2023), under Section 438 of the CrPC before a Coordinate Bench of this Court, which was rejected on 10.02.2023 as barred under Section 438(6) of the CrPC (since Section 302 IPC attracts punishment up to death, therefore, the application being not maintainable).

9. After the enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS"), the applicant filed a anticipatory bail application under Section 482 of BNSS before the Sessions Judge, Bareilly, which was rejected on 10.03.2025.

Submissions on behalf of the applicant/petitioner

10. The applicant has now filed the present second anticipatory bail application under Section 482 of the BNSS before this Court, registered as Criminal Misc. 2nd Anticipatory Bail Application No. of 2765/2025. The grounds contended on behalf of the applicant include:

I. Learned counsel appearing on behalf of the applicant/petitioner submitted that during the course of investigation, while the informant reiterated the version of the FIR in his statement (Annexure A-5), the injured witnesses namely Zamiul Hasan and Zakir Ali did not name the applicant. A perusal of the statements of the injured witnesses makes it evident that the applicant was neither present nor was a part of the alleged incident. Accordingly, the IO found the allegations against the applicant to be false and thus, he was not chargesheeted.

II. The applicant has been assigned an ornamental role as per the FIR

and statement of the informant. There is no specific allegation in the FIR or the statement of the informant that the applicant mounted any assault. The deceased suffered a single bullet injury with one entry and one exit wound. The evidence recorded during the trial was nothing more than the statement which was already there under Section 161 of the CrPC, at the time of investigation of the case. As such, no fresh material was before the learned Trial Court, on the basis of which it could have summoned the applicant under Section 319 of the CrPC.

III. It is submitted that earlier, the applicant had filed his anticipatory bail application, however, it was rejected being barred by Section 438 (6) of the CrPC. After the enactment of BNSS, w.e.f., 01.07.2024, the applicant's right to file such anticipatory bail application prevails as there is no such bar under Section 482 (4) of the BNSS. Moreover, no State Amendment has been brought in force amending the provisions of Section 482 of the BNSS.

IV. It is further submitted that maintainability of second anticipatory bail application is no longer *res integra.* The Coordinate Benches of this Court has, in various decisions, held that subsequent anticipatory bail application may be filed under changed circumstances. Reliance has been placed upon ***Anurag Dubey v. State of UP***[1]**.**

V. It is vehemently submitted that the present application is being filed under changed circumstances. On 10.02.2023, the first anticipatory bail was dismissed being not maintainable as was filed prior to the enactment of the BNSS. Thereafter, the trial was stayed by the Hon'ble Supreme Court thereby culminating the apprehension of arrest. It is only when the said SLP was dismissed on 01.12.2024, that the warrants were issued on 01.02.2025, giving rise to the apprehension of arrest. As such, the present anticipatory bail application, being filed under the changed circumstances and the reason for rejecting the first anticipatory bail application has been washed off.

VI. It is contended that as per the judgment of the Division Bench of this Court in ***Deepu & others us. State of U.P. & others.***[2]**,** any application filed after 01.07.2024 will have to be proceeded as per the BNSS. Since the present application has been instituted much after 01.07.2024, it will be governed by provisions of Section 482 of the BNSS. Learned counsel avers that the aforesaid decision supports the applicant's case as the Division Bench in the said case granted benefit of anticipatory bail provided by the CrPC, Criminal Procedure (Uttar Pradesh Amendment) Act, 2018 (UP Act No. 4 of 2019), notified on 06.06.2019, in a case where the incident occurred on 27.04.2014. The Court held that being a beneficial legislation, it cannot be restricted in its operation to offences committed subsequent to enactment of Act, 2019 and it will be available to all the persons 'apprehending arrest' after enactment of the Amendment Act, 2018, even if the offence was committed prior to enactment of the Amendment Act, 2018.

VII. Bail and anticipatory bail, being matters of procedural law, are by nature applied retrospectively. However, if the right to seek bail is recognized as a substantive right, even then, it would apply retrospectively being advantageous to the accused applicant. The law in this regard is fairly well settled. The rule of beneficial

construction requires that even *ex post facto* law providing benefit to the accused should be applied to mitigate the rigor of the law. If any subsequent legislation downgrades the harshness of the sentence for the same offence, it is the salutary principle for administration of criminal justice to suggest that the said legislative benevolence can be extended to the accused who awaits judicial verdict regarding sentence.

VIII. It is submitted that the applicant has no criminal antecedents, and no useful purpose would be served by his incarceration as police investigation has already been concluded, and he is not a flight risk. Additionally, issuance of proclamation under Section 82 of the CrPC shall not be a bar to grant anticipatory bail in terms of ***Asha Dubey v. State of MP***[3]**.** Further, he could not surrender because of his illness since the applicant is 78 years old man suffering from lung failure and other old age ailments, however, upon instructions, the learned counsel undertakes that if granted bail, the applicant shall abide by all the terms and conditions imposed upon him by this Court.

Submissions on behalf of the State of UP/respondent

11. *Per Contra,* learned AGA appearing on behalf of the State of UP, vehemently opposed the instant bail application submitting to the effect that present second anticipatory bail application is not maintainable either in law or on facts and deserves outright rejection by this Court. The applicant, Abdul Hameed, is facing trial in respect of heinous and grave offence punishable under Section 302 of the IPC. The following contentions have been advanced:

I. It is pertinent to note that following the examination of witnesses during trial, the learned Trial Court vide order dated 22.05.2019, acting upon the material brought on record during the deposition of PW-1, summoned the present applicant under Section 319 CrPC, having found prima facie involvement in the offence. Thereafter, the applicant's challenge under Section 482 of the CrPC was rejected and the matter even reached the Hon'ble Supreme Court which stood dismissed on 10.12.2024, thus affirming the validity of the summoning order and refusal to discharge.

II. It is submitted that after the rejection of the first anticipatory bail application on 10.02.2023 under Section 438 of the CrPC, the present second application is a clear attempt to re-litigate the same issue under the guise of changed circumstances.

III. The Coordinate Bench of this Court had earlier rejected the bail plea relying upon the statutory bar contained in Section 438(6) CrPC, introduced by the U.P. State Amendment Act No. 4 of 2019, which prohibits grant of anticipatory bail in cases punishable with death or life imprisonment, such as offences under Section 302 IPC. The applicant now seeks to circumvent this statutory embargo by invoking Section 482 of the newly enacted BNSS, which does not contain a similar bar. However, it is submitted that the offence in question was committed in 2011, and the charge sheet was filed under the CrPC regime, and the entire proceedings are governed by CrPC and not the BNSS, as cognizance was taken well prior to the BNSS coming into force on 01.07.2024. Therefore, BNSS cannot retrospectively override the bar under Section 438(6) of the

CrPC applicable through the U.P. State Amendment.

IV. Furthermore, mere change in law does not automatically revive a right once extinguished by a judicial order, especially in a case where the first anticipatory bail application was rejected specifically on grounds of non-maintainability. Once the application is rejected under a statutory bar, the maintainability of a second application under a different statute (BNSS) would offend the doctrine of finality and judicial discipline, unless there is an amendment to that effect, which does not exist in the present case. It is further submitted that no amendment has been introduced in BNSS adopting or harmonizing the U.P. State Amendment Act No. 4 of 2019, and therefore, Section 438(6) CrPC continues to operate in the State of U.P. in respect of prosecutions already initiated under the CrPC.

V. Reliance placed by the applicant on ***Deepu (Supra),*** is misplaced and distinguishable, as in that case, the Court was concerned with proceedings initiated post 01.07.2024, and the question of retrospective applicability of BNSS to cases already governed by CrPC was not conclusively adjudicated. Moreover, the applicantâ€™s argument of 'changed circumstances' stemming from the dismissal of SLP and issuance of fresh NBW and proclamation under Sections 82/83 of the CrPC is not a ground for the grant of anticipatory bail, especially in view of well-established precedents such as ***Lavesh v. State (NCT of Delhi)***[4] , which clearly lays down that once a person is declared an absconder under Section 82 of the CrPC, his entitlement to anticipatory bail is negated. The issuance of proclamation under Section 82 CrPC on 01.03.2025 is a statutory acknowledgment that the applicant is deliberately evading the process of law.

VI. The State further relies upon the principle laid down by the Hon'ble Supreme Court in ***Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav***[5]***,*** which states that successive bail applications are maintainable only if there is a substantial change in circumstances or law, neither of which is truly demonstrated in the present case. The applicant seeks to take benefit of Section 482 BNSS, while the trial is still governed by the CrPC, and the offence continues to remain triable under CrPC, as the offence occurred and cognizance was taken well before 01.07.2024.

VII. Finally, it is submitted that the merits of the case remain grave and serious. The applicant was summoned under Section 319 of the CrPC on the basis of sworn evidence in court, where the eyewitnesses attributed a direct role to him. The reliance placed on the age and health of the applicant or absence of criminal antecedents cannot override the nature of the offence (Section 302 IPC), the postmortem findings, and the gravity of allegations, which involve cold-blooded murder by firearm. The applicant's conduct in evading process and delaying surrender also militates against any grant of discretionary relief. Hence, in these circumstances, the State opposes the grant of anticipatory bail and prays for dismissal of the present application.

Analysis

12. Heard the learned counsel for the parties and perused the material placed on record. From the above submissions, the

issues that emerge for adjudication by this Court are '(i) whether the second anticipatory bail application is maintainable under the BNSS given the prior rejection under Section 438 (6) CrPC and the absence of explicit retrospective applicability of BNSS to pending CrPC proceedings?, '(ii) whether Section 482 BNSS can be invoked for an offence (2011) and proceedings (summoning in 2019) initiated under CrPC, absent explicit legislative clarity?', '(iii) whether the dismissal of the SLP, enactment of BNSS, and issuance of NBW qualify as 'substantive changed circumstances' to justify a second bail application?, and '(iv) whether the applicant's health and post-proclamation conduct justify overriding the strictures of Section 82 of the CrPC?'

ISSUE NO. 1: Whether the present second anticipatory bail application under Section 482 of the BNSS is maintainable in view of the earlier rejection of the first anticipatory bail application under Section 438(6) of the CrPC?

13. The maintainability of the present second anticipatory bail application presents a complex legal question that requires examination through the lens of statutory interpretation, judicial precedent, and the doctrine of changed circumstances.

14. The applicant's first anticipatory bail application bearing ABAIL No. 1554/2023 was rejected on 10.02.2023 by a Coordinate Bench of this Court. The rejection was not on merits but purely on the grounds of maintainability due to the statutory prohibition contained in Section 438(6) of the CrPC, as introduced by the Uttar Pradesh State Amendment Act No. 4 of 2019. This provision categorically prohibits the grant of anticipatory bail in cases where the offence is punishable with death or imprisonment for life, including offences under Section 302 of the IPC.

15. The legal landscape underwent a fundamental transformation with the enactment of the BNSS w.e.f. 01.07.2024, which repealed the CrPC in its entirety. Section 482 of the BNSS, which governs anticipatory bail applications, significantly does not contain any prohibition akin to Section 438(6) of the CrPC. This omission cannot be considered inadvertent but appears to be a conscious legislative decision to remove the bar that existed under the earlier State Amendment. The absence of such prohibition in the new enactment assumes greater significance when viewed against the backdrop of the specific inclusion of this bar in the State Amendment to CrPC.

16. The Hon'ble Supreme Court in ***Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav***[6]**,** has established the settled legal position regarding subsequent bail applications. The Hon'ble Court observed that while the filing of successive bail applications on the same facts and circumstances is impermissible and constitutes an abuse of the process of law, subsequent bail applications are maintainable where there is a material change in the fact situation or in law which requires the earlier view to be interfered with, or where the earlier finding has become obsolete. The Court specifically noted that 'even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with.'

17. In the present case, the enactment of BNSS constitutes a fundamental change in law that satisfies the test laid down in ***Kalyan Chandra Sarkar (Supra).*** The earlier rejection was predicated solely on the statutory bar under Section 438(6) of the CrPC, which bar no longer exists under the new statutory regime. The legal foundation upon which the first application was rejected has been completely obliterated by the subsequent legislation.

18. This is not merely a procedural modification but a substantive change in the statutory framework governing anticipatory bail applications.

19. This Court also finds persuasive support from the Coordinate Bench decision in ***Sudhir Kumar Chaurasia vs State of U.P.***[7] **,** wherein, it was specifically observed that 'there is no specific intention indicated in the subsequent enactment of BNSS 2023 to continue with the State amendment made by means of Act No.4 of 2019' and that it was consciously decided by the Parliament to do away with the prohibitions indicated in Section 438(6) of the CrPC. The Court further held that the re-enacted provisions can be said to have been deliberately obliterated by Parliament while enacting Section 482 in the BNSS.

20. The factual matrix of the present case also demonstrates clear changed circumstances that warrant fresh consideration. When the first anticipatory bail application was filed and rejected, the applicant's apprehension of arrest had subsequently subsided when the Hon'ble Supreme Court stayed the trial proceedings vide order dated 10.07.2023 in SLP (Criminal) No. 21956/2023.

21. However, upon dismissal of the said SLP on 10.12.2024 and consequent vacation of the stay, fresh warrant proceedings were initiated, culminating in the issuance of non-bailable warrant on 01.02.2025. This renewed apprehension of arrest under the new statute constitutes a material change in circumstances that justifies fresh consideration of the application for anticipatory bail.

ISSUE NO. 2: Whether the provisions of Section 482 BNSS would apply retrospectively to cases where the offence was committed prior to its enforcement, and the doctrine of beneficial legislation?

22. The question of retrospective application of procedural law and the *doctrine of beneficial legislation* forms the cornerstone of this analysis. The Hon'ble Supreme Court in ***Hitendra Vishnu Thakur & Others vs. State of Maharashtra & Others***[8]**,** laid down comprehensive principles governing the retrospective application of statutory provisions. The Hon'ble Court categorically held that *'a statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application."* The Court further observed that '*every litigant has a vested right in substantive law but no such right exists in procedural law.'*

23. The distinction between substantive and procedural law assumes critical importance in the present context. Section 482 of the BNSS, being a procedural provision governing anticipatory bail applications, falls squarely within the ambit of procedural law.

24. The provision does not create new offences, prescribe punishments, or alter the substantive rights of the parties.

Instead, it provides the procedural mechanism for seeking anticipatory bail. Therefore, following the principle established in ***Hitendra Vishnu Thakur (Supra),*** Section 482 of the BNSS would apply retrospectively unless there is a contrary legislative intention explicitly expressed or necessarily implied from the statutory scheme.

25. The absence of any saving clause or transitional provision in BNSS indicating continuation of the Section 438(6) of the CrPC bar demonstrates that Parliament intended the new regime to apply universally, irrespective of when the offence was committed. Had the Parliament intended to preserve the effect of State amendments to the CrPC, specific provisions to that effect would have been incorporated in the BNSS or in the accompanying notification or rules.

26. The *doctrine of beneficial legislation,* as enunciated by the Hon'ble Supreme Court in ***T. Barai v. Henry Ah Hoe[9],*** mandates that when a later statute imposes different punishment or varies the procedure, the accused must have the benefit of the reduced punishment or ameliorated procedure. This principle recognizes that the law should evolve in favour of the liberty of the individual, and when Parliament enacts more liberal provisions, the benefit thereof should be available to all persons who may be affected, regardless of when their cases originated.

27. The Hon'ble Supreme Court in ***Trilok Chand v. State of Himachal Pradesh.[10]*** reiterated this principle, observing that the rule of beneficial construction requires that even *ex post facto* law of such a type should be applied to mitigate the rigour of the law. The Court emphasized that where the subsequent legislation provides more favourable treatment to accused persons, they are entitled to claim the benefit of such provisions even if the offence was committed under the earlier regime.

28. More recently, in ***M. Ravindran v. Intelligence Officer,*** Directorate of Revenue Intelligence11, the Hon'ble Supreme Court emphasized that in case of any ambiguity in the construction of a penal statute, the courts must favour the interpretation which leans towards protecting the rights of the accused' and that this principle is applicable not only in the case of substantive penal statutes but also in the case of procedures providing for the curtailment of the liberty of the accused.

29. The present case presents a paradigmatic example of beneficial legislation. The removal of the statutory bar contained in Section 438(6) of the CrPC from the new statutory framework under the BNSS represents a conscious legislative decision to expand the scope of anticipatory bail and enhance the protection of personal liberty.

30. The applicant, whose offence was committed on 13.08.2011, with FIR No. 647/2011 lodged under Sections 302, 307, 323, and 504 of the IPC, is entitled to the benefit of the more liberal provisions introduced by BNSS. The charge sheet was filed on 07.11.2011, and the applicant was subsequently summoned under Section 319 of the CrPC on 22.05.2019. The procedural framework governing bail applications has undergone transformation with BNSS, and the applicant cannot be denied the benefit of these beneficial changes merely because

the offence antedated the enactment of the new law.

31. At this juncture, this Court finds it imperative to the decision of the Division Bench of this Court in ***Deepu & others vs. State of U.P. & others,***[12] which has been relied upon by both the parties to support their respective arguments. The said judgment provides crucial guidance on the application of BNSS to cases where offences were committed prior to its enforcement.

32. In ***Deepu (Supra)***, the Division Bench was confronted with the question of whether BNSS provisions would apply to cases pending at the time of its enforcement, particularly where the offences had been committed under the earlier statutory regime. The Court, after extensive analysis of the statutory scheme and relevant precedents, held that any application filed after 01.07.2024 shall be proceeded with as per BNSS, regardless of when the underlying offence was committed. This ruling was based on the fundamental principle that procedural laws apply to pending proceedings unless specifically excluded by the legislature.

33. In the context of the present case, the ***Deepu (Supra)*** judgment provides direct support for the applicant's contention. The present application, filed after 01.07.2024, falls squarely within the ambit of BNSS, and the applicant is entitled to the benefit of the more liberal provisions thereof. The absence of the Section 438(6) bar in BNSS, as interpreted in ***Deepu (Supra),*** removes the primary impediment that led to the rejection of the first anticipatory bail application.

ISSUE NO. 3: Whether the changed circumstances subsequent to dismissal of the first anticipatory bail application justify fresh consideration on merits?

34. The doctrine of changed circumstances, as crystallized in ***Kalyan Chandra Sarkar (supra),*** finds complete application in the present case. The Supreme Court's jurisprudence recognizes that the law is not static and that changed circumstances, whether factual or legal, may warrant reconsideration of earlier judicial decisions.

35. Multiple factors constitute changed circumstances that warrant fresh consideration in the present case. First and foremost, the legislative change brought about by BNSS has fundamentally altered the legal landscape governing anticipatory bail applications. The statutory bar under Section 438(6) of CrPC, which was the sole ground for rejection of the first application, no longer exists under the new statutory framework. This constitutes a material change in law that renders the earlier finding completely obsolete. The legal foundation upon which the first application was rejected has been entirely removed by subsequent legislation, creating a situation where the earlier order has lost its legal basis.

36. Second, the factual circumstances have undergone significant transformation since the rejection of the first application. When the first anticipatory bail application was rejected on 10.02.2023, the applicant's immediate apprehension of arrest was subsequently allayed by the stay granted by the Hon'ble Supreme Court on 10.07.2023 in SLP (Criminal) No. 21956/2023. This stay provided temporary relief to the applicant and removed the immediate threat of arrest that necessitated the filing of the anticipatory bail application.

37. However, the situation changed dramatically upon dismissal of the said SLP on 10.12.2024 and consequent vacation of the stay. Following the dismissal of the SLP, fresh warrant proceedings were initiated by the trial court, culminating in the issuance of non-bailable warrant on 01.02.2025. This development has created renewed and immediate apprehension of arrest, which is the foundational requirement for maintaining an anticipatory bail application. The fresh issuance of non-bailable warrant represents a material change in the factual matrix that justifies the filing of a fresh application.

38. Third, the procedural posture of the case has changed significantly. The first application was dismissed on purely maintainability grounds without any consideration of merits. The Court was precluded from examining the substantive aspects of the case due to the statutory bar contained in Section 438(6) of CrPC. The present application, being filed under a different statutory regime (BNSS), presents an opportunity for adjudication on merits for the first time. This represents a fundamental change in the procedural context that justifies fresh consideration.

39. The coordinate bench decisions in ***Anurag Dubey v. State of UP13*** and ***Tatheer Jafri & Ors. vs. State of U.P.***[14] have recognized that subsequent anticipatory bail applications may be filed under changed circumstances, particularly where there is a change in the statutory framework or where new facts emerge that were not available at the time of the earlier application.

40. The principle underlying the doctrine of changed circumstances is rooted in the concept of fairness and the recognition that the law must be capable of adapting to evolving situations. Where the legal or factual foundation of an earlier decision has been altered by subsequent developments, the doctrine permits fresh consideration of the matter. This principle ensures that individuals are not permanently prejudiced by earlier adverse orders that have been rendered obsolete by changed circumstances.

ISSUE NO. 4: Whether the applicant has made out a prima facie case for grant of anticipatory bail considering the role attributed to him and the evidence on record?

41. The examination of the role attributed to the applicant in the alleged offence reveals several mitigating factors that weigh significantly in favour of grant of anticipatory bail. The investigation conducted by the police presents a compelling narrative that supports the applicant's case for anticipatory relief.

42. The investigating officer, after thorough investigation, found the allegations against the applicant to be false and consequently did not include his name in the charge sheet filed on 07.11.2011. This initial exoneration by the investigating agency assumes critical importance as it indicates the absence of credible evidence against the applicant at the stage of investigation. The investigating officer's decision not to chargesheet the applicant was based on the material collected during investigation, including witness statements and other evidence. This professional assessment by the investigating agency cannot be lightly disregarded when considering the merits of the anticipatory bail application.

43. The applicant was subsequently summoned, at a later stage, under Section 319 of the CrPC vide order dated 22.05.2019, based on the testimony of PW-1 (the informant Firoz) during cross-examination. However, a careful analysis of the evidence reveals several factors that cast doubt on the reliability and sufficiency of this testimony. The injured witnesses, namely Zamiul Hasan and Zakir Ali, in their statements under Section 161 CrPC recorded during investigation, did not name the applicant as one of the assailants. This omission is significant because these witnesses, being injured in the incident, would have been in the best position to identify the perpetrators of the offence.

44. The FIR itself assigns what can be characterized as an 'ornamental role' to the applicant, with no specific allegation of direct assault by him. The FIR does not attribute any specific overt act to the applicant that would constitute his active participation in the commission of the offence. The vague and general allegations in the FIR, without specific details of the applicant's role, suggest that his inclusion may have been more a matter of suspicion rather than concrete evidence.

45. The post-mortem examination conducted on 13.08.2011 revealed that the deceased suffered a single bullet injury with one entry and one exit wound. This medical evidence is relevant to understanding the nature of the incident and the manner of commission of the offence. The fact that the fatal injury was caused by a single bullet raises questions about the number of active participants in the commission of the offence and the specific role attributed to the applicant herein.

46. The evidence recorded during trial, which formed the basis for summoning under Section 319 of the CrPC, was essentially the same as the statement already on record under Section 161 of the CrPC during investigation. No fresh material evidence emerged during trial and it does not appear to have added any new dimension to the case that was not already available during investigation.

47. The Hon'ble Supreme Court in a catena of judgments has laid down important guidelines for grant of anticipatory bail. The Court has held that while considering anticipatory bail applications, the court must examine the nature of the offence, the role of the applicant, and whether the accused was added in supplementary charge sheet with no further investigation or custodial interrogation required. In the present case, the facts for primary consideration are that the applicant was initially found to be falsely implicated during investigation and was later introduced based on testimony that did not add substantial new evidence to the prosecution case.

48. The applicant's personal circumstances also merit serious consideration. Abdul Hameed is a 78-year-old man suffering from lung failure and other age-related ailments. His advanced age and medical condition, coupled with the absence of any criminal antecedents, indicate that no useful purpose would be served by his custodial interrogation, particularly when the police has already filed its final report under Section 173 of the CrPC.

49. Moreover, the delay factor assumes significance in the present case. The incident occurred on 13.08.2011, over

thirteen years ago, and the FIR was registered the same day. The charge sheet was filed on 07.11.2011, and the applicant was summoned only on 22.05.2019, indicating substantial delay in proceedings. Such prolonged delay in itself creates a case for bail, as the applicant has been living under the shadow of criminal proceedings for an extended period.

Conclusion

50. Upon comprehensive analysis of the legal and factual matrix, this Court concludes that the present second anticipatory bail application under Section 482 of BNSS is manifestly maintainable.

51. The enactment of BNSS has created material changed circumstances, both in law and fact, that justify fresh consideration on merits. The removal of the statutory bar contained in Section 438(6) of CrPC represents a fundamental change in the legal framework that obliterates the foundation upon which the first application was rejected.

52. The doctrine of beneficial legislation and the presumption in favour of retrospective application of procedural law strongly support the applicant's case. The applicant is entitled to the benefit of the more liberal provisions introduced by BNSS, regardless of when the alleged offence was committed.

53. The applicant has made out a *prima facie* case for grant of anticipatory bail, considering his peripheral role in the alleged offence, the absence of credible evidence during investigation as evidenced by his non-inclusion in the initial charge sheet, his advanced age and medical condition, and the substantial delay in proceedings. The fact that the IO initially found the allegations to be false and did not charge-sheet the applicant weighs heavily in his favour.

54. The changed circumstances subsequent to the dismissal of the first application, including the enactment of BNSS, vacation of the stay by the Hon'ble Supreme Court, and fresh issuance of non-bailable warrant, justify fresh consideration on merits.

55. Accordingly, the instant bail application is allowed. It is held that in the event of arrest in the instant Case Crime No. 647 of 2011, the applicant shall be released on bail, upon him furnishing a personal bail bond in the sum of Rs. 1,00,000/- along with two solvent sureties of like amount subject to the satisfaction of the concerned trial Court i.e. Additional Sessions Judge, Court No.3, District Bareilly on the following terms and conditions:

I. Applicant shall not leave the territory of Uttar Pradesh without prior permission of this Court and shall ordinarily reside at the address as per the Trial Court records. If he so wishes to change his residential address, he shall immediately intimate about the same to the concerned trial Court by way of an affidavit.

II. Applicant shall surrender his Passport to the trial Court concerned, within three days. If he does not possess the same, he shall file an affidavit before the trial Court concerned to that effect within the stipulated time.

III. Applicant shall appear before the Court concerned as and when the matter is taken up for hearing.

IV. Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the victim or any member of the victim's family or tamper with the evidence of the case.

V. Applicant shall provide all his mobile numbers to the I.O. concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the I.O. concerned.

56. It is clarified that the observations made herein are *prima facie* in nature only for the purposes of deciding the present application for grant of anticipatory bail and thus, need not be construed as an expression on merits of the matter.

57. Copy of the present order be sent to the concerned IO for necessary information and compliance thereof.

(2025) 7 ILRA 221
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 10.07.2025

BEFORE

THE HON'BLE SANJAY KUMAR SINGH, J.

Criminal Misc. Bail Application No. 10553 of 2025

Tej Pratap Singh @ Ashish Chauhan ...Applicant

Versus

State of U.P. ...Opposite Party

Counsel for the Applicant:
Dharmendra Kumar Singh, Raj Kumar Mishra

Counsel for the Opposite Party:
G.A

Issue for Consideration

Issues for consideration are whether applicant, in view of statutory provisions contained u/s 37 of NDPS Act, 1985, can be held entitled to bail despite recovery of commercial quantity of contraband; whether alleged recovery was effected in due compliance with mandatory provisions of Sections 50 and 57 of Act; whether plea of false implication and absence of independent public witnesses is sufficient to cast doubt upon prosecution version at stage of bail.

Head Notes

Narcotic Drugs and Psychotropic Substances Act, 1985 - ss. 8/20, 37, 54 - As per prosecution case, on 03.02.2025, during patrolling, informant/Station House Officer, along with other police personnel, intercepted Eicher Truck - Driver and two others attempted to flee but were apprehended and identified as Ranjeet Singh, Sonu Chauhan, and applicant - Upon interrogation, they disclosed that truck contained Ganja - After being informed of their legal rights u/s 50 of N.D.P.S Act, they consented to search before Gazetted Officer, accordingly consent letter was prepared, whereupon Circle Officer arrived and supervised search - From cabin of truck, five plastic bags containing 112.360 kg of Ganja recovered - Contraband was duly weighed, sampled, sealed on spot, as no public witnesses came forward - Applicant, owner of truck, seeks enlargement on bail under N.D.P.S Act.

Held: Considering the quantity of recovered Ganja, Section 20(ii)(C) of N.D.P.S. Act is applicable, hence alleged offence is punishable with rigorous imprisonment for a term which shall not be less than 10 years but which may extend to 20 years - In the present case, as recovery of 112.360 kg of Ganja was made from truck and not from accused persons, Section 50

of N.D.P.S Act is not attracted - Nevertheless, accused were duly informed of their legal rights and they consented to search before Gazetted Officer, pursuant to which Circle Officer who was Gazetted Officer, supervised proceedings - Accordingly, there is no violation of Section 50, and no material exists to indicate any breach of Section 57 of N.D.P.S Act - No material is on record to indicate any prior enmity of applicant with concerned police personnel - Huge quantity of Ganja cannot be planted - On interrogation, apprehended persons disclosed modus operandi adopted by them in illicit trafficking of recovered Ganja - Recovery of Ganja was videographed and photographed, and recordings uploaded on eEvidence App as per recovery memo - Prima facie, Section 37(1)(b)(ii) of N.D.P.S. Act is not attracted, accordingly, bail application lacks merit, dismissed. [Paras 6.4, 6.7, 6.8, 6.13, 6.14, 7, 8] (E-13)

Case Law Cited

Dehal Singh v. State of Himanchal Pradesh, **2011 (72) ACC 661;** State by the Inspector of Police v. B. Ramu, **2024 SCC OnLine SC4073; - referred to**

List of Acts

Narcotic Drugs and Psychotropic Substances Act, 1985

List of Keywords

Narcotic Drugs and Psychotropic Substances Act; Conscious possession; Constructive possession; Presumption shall also be drawn against accused; Illicit trafficking; Organized crime; Modus operandi; False implication; Stereotype defence; Official duties; Huge recovery of contraband; Want of independent public witnesses; Prosecution case shall not be vitiated; Recovery memo; Commercial quantity; Mandatory provisions have been complied; Consent letter was prepared; Disclosed that they were carrying Ganja; Recovered from cabin of truck; Videography and photography; Uploaded on e-Evidence App; Search by Gazetted Officer or Magistrate; Recovery shown from public place; No criminal history; Rigorous imprisonment; Police personnel; Official duties.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc Bail Application No. - 10553 of 2025

From the Judgment and Order in Case Crime No. 08 of 2025, Police Station Basrehar, District Etawah

Appearances for Parties

Advs. for the Applicant:
Dharmendra Kumar Singh, Raj Kumar Mishra

Adv. for the Opposite Party:
G.A.

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

1. Heard learned counsel for the applicant as well as learned Additional Government Advocate representing the State.

2. By means of this bail application, applicant-Tej Pratap Singh alias Ashish Chauhan, who is involved in Case Crime No. 08 of 2025, under Sections 8/20 of the Narcotic Drugs and Psychotropic Substances Act, Police Station Basrehar, District Etawah, is seeking enlargement on bail during the trial.

3. As per prosecution case, in brief, on 03.02.2025 informant Samit Chaudhary, who is Station House Officer got a first information report lodged at 15:28 hours against the applicant Tej Pratap Singh alias Ashish Chauhan and two others, namely, Ranjeet Singh and Sonu Chauhan, under Sections 8/20 of the N.D.P.S. Act alleging inter alia that on 03.02.2025, when he along with S.I. Saurabh Rana, S.I. Jaswant Singh, Head Constable Sandeep Kumar, Head Constable Mohit Kumar and Constables Vinod Kumar and Anoop Kumar, was on patrolling in village Patapur, they saw one Eicher Truck DCM coming from Bhadramai. On indication by the police, the driver stopped the vehicle, two persons got down and started running away but the police personnel apprehended

the driver as well as the other two persons. On questioning, they told their names as Ranjeet Singh, Sonu Chauhan and Tej Pratap Singh alias Ashish Chauhan. They disclosed that they were carrying Ganja in the truck. Thereafter, they were informed about their legal rights under Section 50 of N.D.P.S. Act and were given option for getting their search by a Gazetted Officer or Magistrate, on which they gave their consent for their search by the Magistrate or Gazetted Officer. Accordingly, consent letter was prepared and Circle Officer Pahup Singh (Gazetted Officer) was informed and called, who reached at the spot. Thereafter, said Truck No. UP84 AT 3521 was searched by the police personnel in the presence of Circle Officer Pahup Singh. Five plastic bags were recovered from the cabin of truck, which were kept behind the driver seat. On opening said bags, four packets were found in each of four bags and six packets were found in fifth bag, to which they told that it was Ganja. On demanding authorization of keeping and transportation of recovered Ganja, they could not show the same. On weighing the recovered Ganja, it was found 112.360 Kg. All the 22 packets of Ganja were sealed after sampling at the spot. An attempt was made to testify the public witnesses but they did not come forward to become witness. Videography and photography of said recovered Ganja were done and the same were also uploaded on e-Evidence App.

4. It is submitted by learned counsel for the applicant that the applicant is being prosecuted on account of recovery of 112.360 Kg Ganja from Truck No. UP84 AT 3521, in fact, nothing has been recovered from the truck in question. There is no independent witness of the said recovery, whereas recovery has been shown from the public place. The provisions of Sections 50 and 57 of N.D.P.S. Act have not been followed by the prosecution. Lastly it is submitted that the applicant has been falsely implicated in this case, who is languishing in jail since 03.02.2025 having no criminal history to his credit. In case he is released on bail, he will not misuse the liberty of bail. No other point has been pressed.

5. Learned Additional Government Advocate representing the State opposed the prayer of bail of the applicant by contending that all the mandatory provisions of the N.D.P.S. Act have been complied with. There is no illegality in search and seizure of recovered Ganja. Considering the huge quantity of Ganja, bail application is liable to be rejected.

6. Having heard learned counsel for the parties and examined the matter in its entirety, I find that:-

6.1. Applicant is the owner of Truck No. UP84 AT 3521 and he was apprehended at the spot along with co-accused.

6.2. From the cabin of the truck in question, total 112.360 Kg Ganja have been recovered, which is much more than commercial quantity.

6.3. Section 37 of N.D.P.S. Act is fully attracted.

6.4. Considering the quantity of recovered Ganja in this case, Section 20(ii)(C) of the N.D.PS. Act is applicable, hence alleged offence is punishable with rigorous imprisonment for a term which shall not be less than 10 years but which may extend to 20 years.

6.5. The Apex Court in the case of **Dehal Singh vs. State of Himanchal Pradesh**, 2011 (72) ACC 661, has again considered the issue of "conscious possession". In the said case, two accused persons were travelling in a car and they knew each other. From the windows/door of the said car, recovery of 27 Kg and 800 gm of Charas was made, which were found concealed between the shields and doors of the car. The Apex Court in the said case taking into consideration the provisions of Sections 35 and 54 of the N.D.P.S. Act has held that accused was not only in possession, but conscious possession of recovered contraband also.

6.6. Under the facts of the case, the conscious and constructive possession of the accused applicant over the recovered Ganja is apparent on record. In view of Section 54 of the N.D.P.S. Act presumption shall also be drawn against the accused unless and until the contrary is proved.

6.7. So far as provisions of Section 50 of the N.D.P.S. Act are concerned, it is well settled that Section 50 of N.D.P.S. Act can be invoked only in cases where narcotic drugs or psychotropic substances are recovered as a consequence of body search of the accused. In the present case, recovery of 112.360 Kg of Ganja has been made from the truck, hence in the present case, Section 50 of the N.D.P.S. Act would not be attracted. However, the accused persons were informed about their legal rights to be searched in presence of a Gazetted Officer or a Magistrate, on which they gave consent for taking search of truck by any Magistrate/Gazetted Officer. Accordingly, Circle Officer Pahup Singh, who was Gazetted Officer, was called and further procedure of search etc. was done in his presence. Hence, there is no violation of said provisions. So far as Section 57 of N.D.P.S. Act is concerned, I do not find any material on record to indicate the violation of Section 57 of N.D.P.S. Act.

6.8. No material has been brought on record by the applicant to show that there was any prior ill-will or enmity of the applicant with the police personnel concerned.

6.9. Illicit trafficking is an organized crime and are done adopting different modus operandi by a group of persons with their different roles.

6.10. So far as plea of false implication is concerned, in my view, it is a stereotype defence raised in every case, where accused are found in possession of contraband. Experience shows that such statements are made in almost every case, therefore, such kind of plea of false implication without any basis is not liable to be accepted at this stage.

6.11. Nowadays, totally unconcerned people do not dare to become witness against criminals, as they have a lot of financial and political patronage as well as muscle power. Public witnesses against the criminals and drug traffickers are always under the threat, therefore, police personnel cannot be seen with the eye of suspicion particularly when there is a huge recovery of contraband and there is no prior ill-will of police personnel with the accused and they are discharging their official duties. In recovery memo, proper explanation about the want of independent public witnesses, has been given.

6.12. It is well settled that in the cases of huge recovery of contraband, the

prosecution case shall not be vitiated due to want of the public witnesses.

6.13.Huge quantity of 112.360 Kg Ganja cannot be planted. On interrogation, the apprehended persons disclosed the modus operandi adopted by them in illicit trafficking of recovered Ganja.

6.14. As per the recovery memo, the videography and photography of said recovery of Ganja were done and the same were also uploaded on e-Evidence App.

6.15. In the case of **State by the Inspector of Police Versus B. Ramu**, 2024 SCC OnLine SC 4073, there was recovery of 232.5 kg of ganja on search of the house of the accused Nos. 1 and 2. The third accused was indicated as being the conspirator for procurement/supply of ganja so recovered, who had preferred anticipatory bail under Section 438 of Cr.P.C., which was allowed by the High Court, thereafter, State of Tamil Nadu preferred a Special Leave Petition (Cri.) against the order of the High Court before Hon'ble the Apex Court, which has been allowed vide order dated 12.02.2024 setting aside the order of the High Court making following observations in Paragraph Nos. 11 and 12:-

"11. In case of recovery of such a huge quantity of narcotic substance, the Courts should be slow in granting even regular bail to the accused what to talk of anticipatory bail more so when the accused is alleged to be having criminal antecedents.

12. For entertaining a prayer for bail in a case involving recovery of commercial quantity of narcotic drug or psychotropic substance, the Court would have to mandatorily record the satisfaction in terms of the rider contained in Section 37 of the NDPS Act."

7. Considering the facts of the case as noted above, this Court finds that prima-facie Section 37(1)(b)(ii) of the N.D.P.S. Act does not stands satisfied.

8. In view of the above, the instant bail application lacks merit and is accordingly **dismissed**.

(2025) 7 ILRA 225
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 28.07.2025

BEFORE

THE HON'BLE SANJAY KUMAR SINGH, J.

Criminal Misc. Bail Application No. 25687 of 2025

Tahir Mewati ...Applicant
Versus
State of U.P. ...Opposite Party

Counsel for the Applicant:
Rajesh Chandra Jaiswal, Sachchida Nand Ojha, Vikas Srivastava

Counsel for the Opposite Party:
G.A

Issue for consideration
Whether the applicant should be granted bail or not?

Headnotes
A. Criminal Law – Bharatiya Nyaya Sanhita, 2023: Sections 152, 352, 197(1)(c), 353(1)(c) - It is beyond the shadow of doubt that social media is a global platform for exchange of thoughts, opinions and ideas. The internet and social media has become an important tool

through which individuals can exercise their right to freedom of expression but the right to freedom of expression comes with its own set of special responsibilities and duties. It does not confer upon the citizens the right to speak without responsibility nor does it grant unfettered licence for every possible use of language. There is an immediate need to check the exploitation of social media platforms that has political and societal reverberations that go well beyond hacked systems and stolen identities. Use of Cyberspace by some people to vent out their anger and frustration by travestying the Prime Minister, Key-figures holding the highest office in the country or any other individual is abhorrent and violates the right to reputation of others.

High Courts are sentinels of justice with extraordinary and inherent power to ensure that rights and reputation of people are duly protected. Considering the gravity and nature of offence as well as misuse of social media platforms, this Court cannot shut its eyes. The Government is also not expected to act as a silent spectator. (Para 7)

In the present case, the screenshots taken from the applicant's Facebook account shows objectionable visual captions, such as depictions of Hon'ble Prime Minister, Shri Narendra Modi touching the feet of Imran Khan, being tied with a rope and dragged by Imran Khan and captions like "Modi Maafi Maangta Hai" along with Urdu texts allegedly glorifying Pakistan. The said contents appears to be aimed at ridiculing the Indian leadership and promoting a narrative contrary to the interest of national sovereignty, unity and integrity. The said material shared by the applicant through his Facebook account is provocative, objectionable and capable of inciting communal disharmony and disturbing public peace and order. The themes and language used in the post indicate inclination towards glorification of anti-national ideology, which cannot be ignored. (Para 6)

Keeping in view the submissions advanced on behalf of parties, nature of the contents allegedly shared by the applicant, gravity of offence and their potential impact on societal harmony, role assigned to applicant and severity of punishment, there is no good ground to release the applicant on bail. (Para 8)

Bail application rejected. (E-4)

Case Law Cited

Niyaz Ahmad Khan Vs. State of U.P. and another, MANU/UP/0417/2022; 2022 SCC OnLine All 105 (Para 7)

List of Acts

Bharatiya Nyaya Sanhita, 2023.

List of Keywords

Criminal Law; bail; social media; facebook account; objectionable; inflammatory.

Appearances for Parties

For Applicant: Rajesh Chandra Jaiswal, Sachchida Nand Ojha and Vikas Srivastava

For Opposite Party: G.A.

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

1. By means of this bail application, applicant Tahir Mewati, who is involved in Case Crime No. 139 of 2025, under Sections 152, 352, 197(1)(c), 353(1)(C) of BNS, 2023, police station Salempur, district Bulandshahar, seeks enlargement on bail during the pendency of trial.

2. Brief facts of the case, which are required to be stated are that complainant-Vishal Chaudhary, Sub Inspector, police station Salempur, District Bulandshahar got a First Information Report lodged on 14.05.2025 for the offence under Sections 152, 352, 197(1)(c), 353(1)(C) of BNS, 2023 against the applicant-Tahir Mewati stating inter alia that he came to know through social media post that a person is running a Facebook account/ ID in the name of Tahir Mewati, who is making objectionable videos of Hon'ble Prime Minster of India, Shri Narendra Modi viral

on social media from his Facebook account. When he checked the ID of Tahir Mewati, it was revealed that Tahir Mewati from his Facebook ID URL ID https//www facebook.com/profile. Php?id 100084509229593 is making objectionable contents and Pakistan supported videos of Hon'ble Prime Minster of India, Shri Narendra Modi viral and posting from his Facebook ID. In follow-up action, it was found that the person running the above Facebook ID in the name of Tahir Mewati is Tahir, son of Ikramuddin, resident of Parigram Rasidpur, police station Salempur, District Bulandshahar. The said video in question could potentially disrupt the social harmony and spoil the atmosphere in the society.

3. Heard Mr. Vikas Srivastava, learned counsel for the applicant, Mr. Rabindra Kumar Singh, learned Additional Government Advocate assisted by Mr. Prashant Kumar Singh, learned Brief Holder representing the State of U.P.

4. It is contended by learned counsel for the applicant that a fake Facebook ID has been created by someone else in the name of applicant, which was being operated by that unknown person with a view to tarnish his good image in the society. The applicant neither posted anything on social media nor made any video viral against Shri Narendra Modi, Hon'ble Prime Minster of India. Hence, the applicant, who is languishing in jail since 14.05.2025 and having no criminal history to his credit is liable to be enlarged on bail. Lastly, it is submitted that in case, applicant is released on bail, he will not misuse the liberty of bail.

5. Per contra, learned Additional Government Advocate appearing for the State refuting the above submissions made on behalf of the applicant opposed the prayer for bail of the applicant by contending that :

5.1. The factual stand taken by the applicant before this Court and before the Sessions Judge are entirely different. In this regard, it is further pointed out that before the Court of Sessions judge, it was submitted on behalf of the applicant that he has not created or posted any objectionable contents or video with malicious intent. Only certain memes were uploaded on the Facebook account of the applicant. The applicant did not share any material, which could disturb public peace or tranquillity. Now before this Court, the applicant has come up with a different plea that he neither posted anything on social media nor made any video viral against Shri Narendra Modi, Hon'ble Prime Minster of India, which is against the evidence on record.

5.2. Much emphasis has been given by contending that the applicant posted objectionable and inflammatory videos on the social media platform-Facebook, which were clearly intended to glorify violent extremism and promote anti-national sentiments.

5.3. The materials, which have been posted on social media to be aimed at disturbing communal harmony and public order.

5.4. Such conduct of the accused-applicant also poses a threat to the sovereignty and unity of the country.

5.5. The other corroborative digital evidences, like, recovery of the mobile phone allegedly used in operating the account, IP address logs traced to the

applicant's residence, account recovery email and phone number linked to the applicant and metadata and digital time stamps indicating login activity coinciding with the applicant's location are also on record.

5.6. Lastly, it is submitted that there exists sufficient material on record to indicate the seriousness of the allegations, including digital evidences which prima facie connect the applicant to the objectionable content shared by him. Hence, the bail application of the applicant is liable to be rejected, otherwise a wrong signal will go to the public at large, which may encourage others to indulge in similar unlawful activities.

6. Having heard learned counsel for the parties and examined the matter in its entirety, I find that the screenshots which were taken from the applicant's Facebook account shows objectionable visual captions, such as depictions of Hon'ble Prime Minister, Shri Narendra Modi touching the feet of Imran Khan, being tied with a rope and dragged by Imran Khan and captions like "Modi Maafi Maangta Hai" along with Urdu texts allegedly glorifying Pakistan. The said contents appears to be aimed at ridiculing the Indian leadership and promoting a narrative contrary to the interest of national sovereignty, unity and integrity. This Court is also of the view that said material shared by the applicant through his Facebook account is provocative, objectionable and capable of inciting communal disharmony and disturbing public peace and order. The themes and language used in the post indicate inclination towards glorification of anti-national ideology, which cannot be ignored.

7. Here, it would also be apposite to mention the observations made by this Court in similar matter in the case of **Niyaz Ahmad Khan versus State of U.P. and another, 2022 SCC OnLine All 105**, which are as under:-

"9- Having examined the matter in its entirety, here it would be apposite to mention that this Court is of the view that it is beyond the shadow of doubt that social media is a global platform for exchange of thoughts, opinions and ideas. The internet and social media has become an important tool through which individuals can exercise their right to freedom of expression but the right to freedom of expression comes with its own set of special responsibilities and duties. It does not confer upon the citizens the right to speak without responsibility nor does it grant unfettered licence for every possible use of language. There is an immediate need to check the exploitation of social media platforms that has political and societal reverberations that go well beyond hacked systems and stolen identities. Use of Cyberspace by some people to vent out their anger and frustration by travestying the Prime Minister, Key-figures holding the highest office in the country or any other individual is abhorrent and violates the right to reputation of others. These kind of acts, posting and sharing unhealthy materials with unparliamentary language and remarks, etc. on social media without any solid basis cause a deleterious effect on the society at large, ergo in order to protect the reputation and character of individuals, it should be completely stopped. Since such incidents are on rise in a civilized society day by day and are polluting the minds of people, therefore, now it is high time to evolve some more and full proof screening mechanism to regulate, check and control the unhealthy posts on social media. It would be fair enough to state that such

persons who are deliberately involved in such acts directly or behind the curtain with oblique motive or to settle their score adopting different modus-operandi are hazardous to the civilized society and they are not entitled for any sympathy in justice delivery system. High Courts are sentinels of justice with extraordinary and inherent power to ensure that rights and reputation of people are duly protected. Considering the gravity and nature of offence as well as misuse of social media platforms, this Court cannot shut its eyes. The Government is also not expected to act as a silent spectator.

10- Accordingly, Government is directed to take appropriate remedial measures/steps in order to control and eradicate such proliferating and booming devastating menace, to stop the misuse of social media platforms and to maintain healthy atmosphere in the society, which is the most important and essential factor for a civilized society."

8. As a fall out and consequence of above discussions as well as considering the overall facts and circumstances of the case, keeping in view the submissions advanced on behalf of parties, nature of the contents allegedly shared by the applicant, gravity of offence and their potential impact on societal harmony, role assigned to applicant and severity of punishment, I do not find any good ground to release the applicant on bail.

9. Accordingly, the bail application of applicant is **rejected**.

10. It is made clear that the observations contained in the instant order are confined to the issue of bail.

(2025) 7 ILRA 229
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 23.07.2025

BEFORE

THE HON'BLE VIVEK KUMAR BIRLA, J.
THE HON'BLE JITENDRA KUMAR SINHA, J.

Criminal Appeal No. 540 of 1984

Dault Ram & Ors. ...Appellants
Versus
State of U.P. ...Respondent

Counsel for the Appellants:
Sandeep Kumar Dubey, Kundan Singh

Counsel for the Respondent:
D.G.A.

ISSUE FOR CONSIDERATION

Whether the conviction of appellants under Sections 302, 302/34, 307, 307/34, and 323 IPC was sustainable in light of alleged inconsistencies and doubts raised by the defence and Amicus Curiae.

HEADNOTES

Criminal Law - Indian Penal Code, 1860 - Section – 34, 302, 307, 323 - Code of Criminal Procedure, 1973 - Section 313 - Criminal Appeal – aagainst Conviction and Sentence – FIR lodged alleging commission of offences of Murder with Common Intention, Attempt to Murder with Common Intention, and Voluntarily Causing Hurt – Accused's Statement recorded under Section 313 CrPC – Investigation completed – Charge-sheet filed – Sessions Trial commenced – Conviction and Sentence awarded – Appreciation of Evidence – Amicus Curiae raised concerns regarding delay in FIR, inconsistencies in witness testimonies, and absence of physical evidence – Court's finds that - (i) Testimonies of injured witnesses placed on higher evidentiary footing; one prosecution witness remained consistent throughout cross-examination on material particulars; defence failed to elicit any material contradiction - (ii) Minor contradictions and

improvements noted in witness statements, however, on material aspects, the testimonies found to be wholly reliable - (iii) Motive established through prior enmity between parties, lending credence to prosecution's case - (iv) Trial Court rightly relied upon consistent eyewitness accounts and corroborating medical evidence; findings supported by cogent reasoning – held – testimonies are wholly reliable and the defence has not been able to extract any material contradiction – hence, court did not find any illegality or perversity in the judgement and charges were proven beyond reasonable doubt – consequently, Appeal is dismissed. (Para – 29, 30, 31, 33, 35, 40, 41)
Appeal Dismissed**.** (E-11)

CASE LAW CITED

Rakshpal and Another vs. State of U.P. 2025 (2) ADJ 462 (DB); Dheer Singh and Others vs State of U.P. , 2025 (4) ADJ 791; Baljinder Singh @ Ladoo vs The State Of Punjab, AIR 2024 SC 4810; Criminal Reference No.1 of 2024, In Re-Procedure to be followed In Hearing of Criminal Appeals vs. State of U.P., decided on 22.01.2025; K.S. Panduranga v. State of Karnataka, (2013) 3 SCC 721; Surya Baksh Singh vs. State of Uttar Pradesh, (2014) 14 SCC 222; *State of U.P. v. Kishan Chand*, AIR 2004 SC 1490); Neeraj Sharma vs. State of Chhattisgarh, (2024) 3 SCC 125;

LIST OF ACTS

Indian Penal Code, 1860 (IPC) and Code of Criminal Procedure, 1973 (CrPC).

LIST OF KEYWORDS

Murder - with common intention; Attempt to murder with common intention; Voluntarily causing hurt; conviction and sentence; Life Imprisonment; Injured Witness; FIR Timing; Eyewitness Testimony; Medical Corroboration; Common Intention; Postmortem Report; Enmity; Contradictions; Appeal Dismissed.

CASE ARISING FROM

From Judgment and order dated 10.02.1982 of Session Trial Court Etah in Session Trial No. 545/1981.

APPEARANCE OF PARTIES

Advocates for the Appellants: Sandeep Kumar Dubey, Kundan Singh, Amicus Curiae.
Advocates for the Respondents: DGA, AGA.

(Delivered by Hon'ble Jitendra Kumar Sinha, J.)

1. Heard Shri Sandeep Kumar Dubey, learned Amicus Curiae, appearing on behalf of the appellants, Shri O.P. Dwivedi, learned AGA-Ist, for the State and perused the record.

2. By means of this criminal appeal, the appellants have challenged their conviction under Sections 302, 302/34, 323/34 of IPC, whereas appellant Daulat Ram and Makrand alias Mukandi have been convicted under Sections 307/34, 307 and 323 IPC. Both the appellants have been sentenced to undergo life imprisonment under Sections 302, 302/34 IPC and 5 years RI for the charge under Section 307/34 and 307 IPC respectively and 6 months RI for the charge under Section 302 IPC. All the sentences have been directed to run concurrently.

3. In **Surya Baksh Singh vs. State of Uttar Pradesh, (2014) 14 SCC 222,** the Hon'ble Apex Court has held that it is always not necessary to adjourn the matter in case both appellants or his counsels/lawyers are absent and the Court can decide the appeal on merits after perusal of the record and the judgement of the trial Court. It has further been observed that if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation. It has also been observed that appointment of Amicus Curiae is also on the discretion of the court. In paragraph 26 of the said judgement, it was held that it is always not essential for

the High Court to appoint an Amicus Curiae, paragraphs 24 and 26 of the said judgement whereof are quoted as under:

"24. It seems to us that it is necessary for the Appellate Court which is confronted with the absence of the convict as well as his Counsel, to immediately proceed against the persons who stood surety at the time when the convict was granted bail, as this may lead to his discovery and production in Court. If even this exercise fails to locate and bring forth the convict, the Appellate Court is empowered to dismiss the appeal. We fully and respectfully concur with the recent elucidation of the law, profound yet perspicuous, in ***K.S. Panduranga v. State of Karnataka, (2013) 3 SCC 721.*** *After a comprehensive analysis of previous decisions our learned Brother had distilled the legal position into six propositions:-*

"19.1. that the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;

19.2. that the Court is not bound to adjourn the matter if both the Appellant or his Counsel/lawyer are absent;

19.3. that the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;

19.4. that it can dispose of the appeal after perusing the record and judgment of the trial court.

19.5. that if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the Appellant-accused if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and

19.6. that if the case is decided on merits in the absence of the Appellant, the higher court can remedy the situation.

25…..

26. Reverting back to the facts of the present case a perusal of the impugned order makes it abundantly evident that the High Court has considered the case in all its complexities. The argument that the High Court was duty-bound to appoint an amicus curiae is not legally sound. Panduranga correctly considers Mohd. Sukur Ali v. State of Assam (1996) 4 SCC 729 as per incuriam, inasmuch as the latter mandates the appointment of an amicus curiae and is thus irreconcilable with Bani Singh vs. State of U.P. (1996) 4 SCC 720. In the case in hand the High Court has manifestly discussed the evidence that have been led, and finding it of probative value, has come to the conclusion that the conviction is above Appellate reproach correction and interference. In view of the analysis of the law the contention raised before us that it was essential for the High Court to have appointed an amicus curiae is wholly untenable. The High Court has duly undertaken the curial responsibility that fastens upon the Appellate Court, and cannot be faulted on the approach adopted by it. In this respect, we find no error."

4. The aforesaid view has been followed by the Hon'ble Full Bench in **Criminal Reference No.1 of 2024, In Re-Procedure To Be Followed In Hearing Of Criminal Appeals vs. State of U.P.,**

decided on 22.01.2025, paragraph Nos. 151 and 152, whereof are quoted as under:

"151. The crux of the aforesaid observations of the three celebrated judgments rendered by the Hon'ble Supreme Court in Bani Singh and others Vs. State of U.P. 11, Surya Baksh Singh Vs. State of Uttar Pradesh 12 and K.S. Panduranga Vs. State of Karnataka 13, thus, covers the entire length and breadth of Question No. 5 formulated by the Division Bench at Lucknow for consideration by this Bench and no fresh exercise, in our considered opinion, is required to be undertaken by this Bench, including on one point which has been highlighted by the Division Bench at Lucknow i.e. whether the amicus curiae may be appointed even when the presence of the convict, appellant or accused-respondent may be secured and without his consent.

152. The aforesaid legal precedents would evidently canvass that the emphasis of the Apex Court has been on providing opportunity of being heard to the appellant who is willing to cooperate with the appellate court or his counsel and in this regard a process to cause his presence for the purpose of giving opportunity of being heard is required to be issued to him and when the court is satisfied that such appellant is deliberately avoiding his presence before the court, in such a situation, the court may dispose of the appeal in the manner approved by the Hon'ble Supreme Court in Bani Singh and others Vs. State of U.P. 11, Surya Baksh Singh Vs. State of Uttar Pradesh 12 and K.S. Panduranga Vs. State of Karnataka 13 (i.e. after perusing the record/evidence vis-a-vis judgment of the trial court with the assistance of prosecutor and Amicus, if appointed) and we do not have any reason to deviate from the settled proposition laid down by the Apex Court in the above mentioned cases, moreover, the appointment of amicus is only for the purpose to provide fair trail to the appellant and also for rendering the assistance to the Court."

5. We, therefore, proceed to consider the appeal on merits with the help of learned Amicus Curiae and learned AGA for the State.

6. The prosecution story in brief is that Raj Kumar Singh, the deceased, Raghuveer Singh, PW-1 complainant lived in the rented house and the accused Daulat Ram lived in the house adjacent to their house. On the previous night at about 8 o'clock he and Raj Kumar Singh Pradhan were sitting on the roof and talking when Daulat came to the roof in the state of intoxication and started abusing both of them. Raj Kumar Singh objected to this, on which Daulat abused and kicked the Pradhan, on which the Pradhan himself slapped him thrice. On this Daulat said that he will see in the morning. This morning he and Raj Kumar Singh Pradhan came to Panchayat Udyog Nangaon at GT Road Etah, Raj Kumar Singh took off his clothes and started bathing and he sat on the takhat in front and started reading the newspaper, when at about 7:30 in the morning Daulat, Makarand alias Mukandi started hurling abuses. They came inside and Makrand challenged him saying that Daulat you will not get such a good chance. On this Daulat took out a knife and attacked Raj Kumar Singh. The informant ran to save Raj Kumar Singh while screaming. On this Makrand alias Mukandi stabbed him in the back. On his screaming Ram Pal, Chowkidar, residnet of village Nabada,

police station Bagwala, Ram Chandra son of Ratanlal Brahmin village Nagariya police station Nidholi Kal Lal Saheb son of Layak Singh Thakur village Nabada police station Bagwala, Lal Saheb son of Layak Singh Thakur village Chintapur and Ramveer Singh son of Chhote Singh resident presently Shikohabad Road Etah reached there. Ram Pal Chowkidar also got injured while trying to save Raj Kumar Singh. All these people have seen the incident and saved them. Daulat and Makrand alias Mukandi stabbed and ran away showing the knife. Pradhan Raj Kumar died while being taken to the hospital due to severe injuries.

7. The investigation of the case was conducted by the investigating officer and after conclusion of the investigation he submitted charge sheet against the accused Daulat Ram and Makrand alias Mukandi in the Court.

8. The learned Magistrate took cognizance on the charge sheet submitted to the Court of Session for trial. The learned trial Court framed charge against the appellants accused under Sections 302, 302/34, 307, 307/34 IPC. The appellants accused pleaded not guilty and claimed for trial.

9. The prosecution has examined eight witnesses before trial Court, namely, PW-1 Raghuveer Singh, PW-2 Rampal Singh, PW-3 Ram Chandra, PW-4 Naseem Ahmad, PW-5 Bhagwan Singh, PW-6 S.K. Singh, PW-7 Mashoor Murtza, PW-8 Dr. M. Sharma. The prosecution has proved Written Report as Ext. Ka1, FIR as Ext. Ka2, Site plan with index as Ext. Ka4, Injury Report as Ext. Ka5, Panchayatnama as Ext. Ka6, Recovery memo of blood stained and plaint shirt & Baniyan as Ext. Ka10, P.M. Report as Ext. Ka28, Charge sheet Mool as Ext. Ka29 as documentary evidence.

10. PW-6, Swatantra Kumar Singh M.O. City Hospital Etah examined the injured Raghuveer Singh and found the following injuries on his person:-

"1- Khass 1 cm x 1/4 cm on the nose on the left side 1 cm below the bridge of the nose.

2- Cut wound 2 cm x 3/4 cm deep up to the flesh on the left side of the back and 4 cm below the back fold of the armpit on the outer side.

3- The injuries were ordinary, injury no. 1 was caused by rubbing and injury no. 2 was caused by a sharp weapon and was fresh at the time of inspection. The injured was brought to Kotwali police station by constable no. 724 Dhaniram.

On the same day at 10.30 am, he examined the injuries of Rampal Singh son of Daulat Singh. The following injuries were found on his person :-

"1- Khass 5 cm x 1/4 cm on the chest on the left and downwards going up to the stomach from Navel (broken) towards the point above 13 cm.

2- The injuries were simple and caused by rubbing and were fresh at the time of inspection. He had prepared the injury report of both the injured at the time of inspection. It is in front of me and my signature is there. The thumb impressions and identification marks of the injured are there on them. Ex. 4 and Ex. 5 were put on them.

3- The injuries of both the injured could have been caused on 18.4.81 up to 7-1/2.

4- Injury no. 2 of Raghuveer Singh could have been caused by a knife. Injury no. 1 could have been caused by rubbing of nails, rubbing of a piece of wood or the blunt part of the knife.

5- There could be a difference of 5 hours between the injuries of both the injured, not more than that.

11. PW-8, Dr. Shri M. Sharma was posted as Medical Officer, E.S.I., Hospital, Agra was conducted the postmortem of the deceased and following injuries were found on his person :-

"1. Cut wound just above the navel in 12 O, clock position 5 cm x 1.5 cm x cavity deep. From which strands of intestines were coming out.

2. Cut wound 9 cm away from navel and 4 cm x 1.5 cm x cavity deep in 11 O clock position. Strands of intestines were coming out.

3. Scratched bruise marks 4 cm x 3 cm on left shoulder in front. On internal examination of the dead body:

4. Abdominal wall was cut at the place of injury in stomach and blood was present. Pritom was also cut at the place of injury. There was about 15 oz blood in the cavity. Teeth were 16 by 16 and the larynx was empty, small intestine was also empty and cut at four places. There was stool in the large intestine.

5. In my opinion the cause of death was due to shock and bleeding due to above mentioned 1 and 2 injuries. And these injuries 1 and 2 were sufficient to cause the death of the deceased. These injuries 1 and 2 were caused by knife and injury no. 3 by blunt object on 18.4.81 at 9.00 a.m. he had prepared the postmortem report on the same day and time. It is in my handwriting and signature. Ex. K-28 was put on it.

6. The clean clothes recovered from the body of the deceased, dhoti, Ex. K4, towel, Ex. K3 were stamped and handed over to the above mentioned constable.

7. Injury no. 3 could have been caused by falling and rubbing on the iron railing.

8. The death of the deceased could have occurred on 17/18.8.81 at 3-4 a.m.

12. After closure of prosecution evidence the statement of appellants-accused was recorded under Section 313 Cr.P.C., in which the accused denied their involvement in the case. The appellants accused also stated in their statements under Section 313 Cr.P.C. that they were roped in this case due to enmity.

13. The learned trial Court after hearing the arguments of prosecution and the defence and on perusal of the records passed the judgment of conviction and order of sentence impugned.

14. Learned Amicus Curiae submits that the first information report is ante-time as the incident took place at 07:30 a.m. and the first information report has been lodged at 08:00 a.m. It does not look probable as to the lodging of the first information report in such a short period of time.

15. Learned Amicus Curiae further submits that the first information report

does not find mention on the inquest and the letter referring the injured to the hospital by the police.

16. Learned Amicus Curiae further submits that it is highly unbelievable that a person would take bath in a factory where there is no tab and the investigating officer has not shown any tab in the premises of the factory.

17. Further submission of learned Amicus Curiae is that the stab wound injuries are said to have been caused on the person of the deceased Raj Kumar Singh but there is no hole in the 'Baniyan' (vest) which raises doubt on the veracity of the prosecution case.

18. Learned Amicus Curiae further submits that the statements of PW-1 and PW-2 are contradictory on the point of deceased falling on the ground. Further PW-3, who is said to be an eye witness has deposed to the effect that the incident took place at 09:30 a.m. which is contradictory to the prosecution story and the statements of PW-1 and PW-2.

19. Learned Amicus Curiae further submits that the prosecution has failed to establish the charge against the appellants beyond the shadow of reasonable doubt and they are liable to be acquitted of the charge levelled against them.

20. Per contra, learned AGA for the State has supported the judgment of the learned trial Court and has submitted that the case is of the direct evidence and PW-1 and PW-2 are wholly reliable and their reliability is of higher decree as they are injured witnesses as they have received the injuries in the incident.

21. Learned AGA further submits that motive for the commission of offence is fully established as prior to the incident an altercation had taken place between the deceased and the accused Daulat Ram and the accused/ appellants have admitted in the statement recorded under Section 313 Cr.P.C. before the learned trial Court that they have been roped in this case due to enmity.

22. Learned AGA further submits that the testimonies of PW-1 and PW-2 are corroborated by the medical evidence of PW-6 and PW-8, who have conducted the postmortem of the deceased Raj Kumar Singh and medically examined the injured complainant Raghuveer Singh and Ram Pal Singh.

23. Learned AGA further submits that though the time of the incident as deposed by the PW-3 is contradictory to the time as mentioned in the first information report but since PW-1 and PW-2 are wholly reliable then this contradiction does not go to the root of the case.

24. Learned AGA has argued that the prosecution has been able to prove this case against the appellants beyond reasonable doubt and the judgement of conviction and order of sentence recorded by the learned trial Court is just and proper and it does not call for any interference by this Court in appeal.

25. Before proceeding further, it would be appropriate to take note of law laid down by Hon'ble Apex Court in respect of reliability of testimony of injured witness, in the case of **Baljinder Singh @ Ladoo vs The State Of Punjab, AIR 2024 SC 4810,** paragraph no.12 and 13 whereof are quoted below:-

"*12. Also, it is worth indicating that P.W.3, P.W.4, and P.W.5 are "injured*

witnesses" or "injured eye-witnesses" in this case. The sworn testimonies provided by injuredwitnesses generally carry significant evidentiary weight. Such testimonies cannot be dismissed as unreliable unless there are pellucid and substantial discrepancies or contradictions that undermine their credibility. If there is any exaggeration in the deposition that is immaterial to the case, such exaggeration should be disregarded; however, it does not warrant the rejection of the entire evidence. Therefore, the suspicion raised by the appellants regarding the genesis of the case is rendered unfounded.

13. The abovementioned conclusion stands fortified with reference to paragraph 26 of the decision of this Court in Balu Sudam Khalde and Anr. vs. State of Maharashtra12. *The relevant passage is reproduced as under:*

"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."

26. 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." In Shivalingappa Kallayanappa v. State of Karnataka, 1994 Supp (3) SCC 235 : 1994 SCC (Cri) 1694, the 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.

It has been held that 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."

(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."

27. In the case of **Rakshpal and Another vs. State of U.P. 2025 (2) ADJ**

462 (DB), it was observed in paragraph no.24 as under: -

"24. 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)

28. PW-1 Raghuveer Singh, the complainant and PW-2 Ram Pal Singh are eye witnesses as well as injured witnesses.

29. It is well settled that the testimonies of the injured witnesses stand on higher pedestal than any of the witnesses.

30. PW-1 has supported the prosecution case in his examination-in-chief and has stated that on the date of occurrence at about 07 and half hours he was reading newspaper while he was sitting on a *takhat* and deceased Raj Kumar Singh was having bath inside the factory and witness Ram Pal Singh brought a bucket of water for Raj Kumar Singh to take bath and at this accused Daulat Ram and Makrand reached there. This witness has further stated that the accused Makarand exhorted

accused Daulat Ram to kill Raj Kumar Singh and on this exhortation Daulat Ram inflicted several stab wounds on Raj Kumar Singh. He said Raj Kumar Singh fell on the ground after receiving two stab wound on his stomach. When the witness raised alarm, PW-2 Ram Pal reached there and PW-1 and PW-2 also received injuries when they tried to save Raj Kumar Singh. They received stab injuries on their back. This witness has further stated that other persons, namely, Ram Chandra, Chhotey Singh, Ramveer Singh also reached there and saw the incident.

31. This witness has also given detailed account of the incident and has further stated that he along with other persons tied a dhoti on the injuries of Raj Kumar Singh and took him to Hospital and while being taken to the Hospital, Raj Kumar Singh succumbed to his injuries. Sleepers and sandals of the accused were found left at the place of occurrence. This witness has further stated that he reached the police station to get the case registered. This witness is consistent in his cross-examination regarding the material particulars and the defence has not been able to be extract any material contradiction in his cross-examination.

32. Similarly, PW-2, Ram Pal Singh who is also an injured witness has fully supported the prosecution case in his examination-in-chief. He, in his cross-examination, has stated that he did not see the accused persons entering into the premises of the factory but has further stated that it is possible that the accused persons might have entered the factory when he had gone to bring water from the northern gate of the factory. This witness has further stated that Raj Kumar Singh used to visit the factory twice in a week and occasionally used to take bath there.

33. This witness has further stated that he had gone to the Hospital along with the deceased and he had also been examined medically between 10-11 A.M. Though, there are some contradiction and improvements in the statement of the witnesses but on material particulars, this witness is wholly reliable.

34. PW-3 Ram Chandra has stated in his examination-in-chief that the incident took place at 09:30 A.M. on the date of occurrence and when he reached the place of occurrence from Railway Bus Station. He saw hue and cry being raised and the accused Daulat Ram was giving knife blow to a person whose name he did not know but later on he came to know that his name was Raj Kumar Singh. This witness has further stated that he along with Ramveer Singh, Nand Lal Yadav and Ram Pal Singh intervened to save Raj Kumar Singh. This witness further stated that he had gone to the Hospital along with deceased and he had tied dhoti on the wounds of the deceased. This witness has stated in his cross-examination that the deceased was given two stab wounds on his left side of the stomach. This witness has further stated that he did not tell the Sub Inspector that Chaukidar Ram Pal also received injuries in the incident and he was also present at the time of occurrence because the Sub Inspector did not ask him. This witness is contradictory regarding time of the incident but apart from the above, his testimony cannot be said to be tainted as a whole.

35. The testimony of this witness is partly reliable and partly unreliable.

36. PW-6 Dr. Swatantra Kumar Singh has medically examined Raghuveer Singh and Ram Pal Singh and found the injuries on their person as already noticed in the earlier part of the judgment.

37. They have received injuries in the same transaction could not be dislodged by the defence.

38. PW-8 Dr. Shree M. Sharma has conducted postmortem of the deceased Raj Kumar Singh and found the ante-mortem injuries as already noticed in the earlier part of the judgement. In the opinion of this witness, the death of the deceased Raj Kumar Singh could have taken place between 02:00 A.M. to 07:00 A.M. on the date of occurrence.

39. Other witness, namely, PW-4 Naseem Ahmad is a formal witness, who has proved the written report as Ext. Ka1 and chik FIR as Ext. Ka2 and the entry in the general diary, whereas PW-5 Bhagwan Singh has deposed that he had taken the dead body of Raj Kumar Singh for postmortem and PW-7 is the investigating officer of the case, who has given testimony regarding the investigation being done by him and has proved various police papers.

40. On careful appreciation of the testimony of PW-1 and PW-2, who are injured witnesses, it is amply clear that their testimonies are wholly reliable and the defence has not been able to extract any material contradiction, in their statements and PW-3 is partly reliable and partly unreliable. The testimonies of PW-1 and PW-2 find corroboration from the medical evidence of PW-8 and PW-6.

41. Thus, on careful appreciation of the evidence on record, we do not find any illegality or perversity in the judgement impugned regarding appreciation of evidence and application of law by the learned trial Court.

42. In view of the above, the appeal is devoid of merit and deserves to be dismissed.

43. The appeal is **dismissed**.

44. Let a copy of this order be communicated by the Registrar (Compliance) to the Chief Judicial Magistrate, Etah for compliance forthwith.

45. The Chief Judicial Magistrate, Etah is also directed to send his compliance report within two months to the Court from the date of receipt of copy of the judgment.

46. Registrar General of this Court is also directed to pay an honorarium of Rs. 15,000/- to Shri Sandeep Kumar Dubey, learned Amicus Curiae for rendering effective assistance in the matter.

(2025) 7 ILRA 248
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 01.07.2025

BEFORE

THE HON'BLE RAJNISH KUMAR, J.

Criminal Appeal No. 889 of 2009

Pradeep Kumar @ Pappu @ Bhuriya ...Appellant

Versus

State of U.P. ...Respondent

Counsel for the Appellant:
B.S. Patel, Ashutosh Singh (Amicus)

Counsel for the Respondent:

G.A.

ISSUE FOR CONSIDERATION

Whether the conviction of the appellant under Sections 363, 366, 376/511, and 354 IPC was legally sustainable based on the evidence, including the victim's testimony, medical report, and delay in lodging the FIR, and whether the plea of consent or false implication holds merit.

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 – Section – 164, 207, 313, 374(2), - Indian Penal Code, 1860 – Section - 363, 366, 354, 376, 511- Criminal Appeal – against conviction and sentenced – complaint filed by mother regarding missing of her 16 years old minor daughter – with she alleged that appellant has abducted her by alluring and he is also missing – search – custody of minor girl from appellant – FIR – offence of kidnapping and unlawful confinement of minor girl for 20 days – attempt to commit rape and outraging of modesty – statements recorded – investigation – medical examination report - charge-sheet – conviction – plea taken, FIR lodged with delay, - witness given false evidence, - victim given statement under press of her family – court finds that - lodging delay in FIR has been properly explained, - prosecution proved that victim was forcibly kidnapped, - victim reiterated and supported her statement given u/s 164 CrPC during trial, - appellant tried to established prior relationship but no cogent material could be placed on record to prove the same, - plea of implication of the applicant on the ground of enmity couldt not be proved by the appellant - held – after considering the evidence and material on record, appellant has rightly and in accordance with law been convicted and punished u/s 363, 366, 376/511 and 354 IPC – hence, Trial court's judgment upheld - with observation that appeal has been filed on misconceived and baseless grounds - consequently, Appeal is dismissed. (Para – 28, 29)

Appeal Dismissed**.** (E-11)

CASE LAW CITED

Darshan Singh vs. State of Punjab in Criminal Appeal No. 163 of 2010; 2024 INSC 19 by the Hon'ble Supreme Court of India, judgment and order dated 07.01.2025 passed in State (GNCT of Delhi) vs. Vipin @ Lalla; Criminal Appeal No. 94 of 2025 by the Hon'ble Supreme Court of India, judgment and order dated 29.09.2006 passed in the case of Tarkeshwar Sahu vs. State of Bihar (Now Jharkhand); AIRONLINE 2006 SC 383; Himachal Pradesh vs. Prem Singh; 2009 (64) ACC 287, Satpal Singh vs. State of Haryana; 2010 CRI. L. J. 4283, Pandharinath vs. State of Maharashtra; (2009) 14 SCC 537, State of Himachal Pradesh vs. Shree Kant Shekari; 2004 CRI. L. J. 4232, Koppula Venkat Rao vs. State of Andhra Pradesh; (2004) 3 SCC 602, State of Bihar and others vs. Tabarak Hussain; MANU/BH/0131/1982, Ganga Singh vs. State of Madhya Pradesh; AIR 2013 SC 3008, Roop 4 Singh vs. State of Madhya Pradesh; (2013) 7 SCC 89, Kalu Alias Laxminarayan vs. State of Madhya Pradesh; (2019) 10 SCC 211; Chaitu Lal vs. State of Uttarakhand; (2019) 20 SCC 272 and the judgment and order dated 12.11.2013 passed in Israil vs. State of Uttar Pradesh.; Criminal Appeal 40 of 2001; Neutral Citation No. - 2013:AHC-LKO:14455 by a co-ordinate Bench of this Court.

LIST OF ACTS

Code of Criminal Procedure, 1973**;** Indian Penal Code, 1860.

LIST OF KEYWORDS

Criminal Appeal, Kidnapping, Minor Girl, Attempt to Rape, Outraging Modesty, Consent, FIR Delay, Section 164 CrPC, Medical Evidence, False Implication, Enmity, Credibility of Testimony**,** baseless grounds.

CASE ARISING FROM

Judgment dated 06.02.2009 passed in Session Trial No. 391/2008 - Case Crime No. 266/2004 **-** Police Station Aliganj, District Lucknow.

APPEARANCE OF PARTIES

Counsel for Appellant: - B S Patel, Ashutosh Singh (Amicus).

Counsel for Respondent: - G.A., AGA.

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

1. Heard Sri Ashutosh Singh, learned counsel for the appellant and Shri Badrul

Hasan, learned Additional Government Advocate (here-in-after referred as AGA).

2. This Criminal Appeal under Section 374(2) of Code of Criminal Procedure Code (here-in-after referred as CrPC) has been filed for setting aside the conviction and sentence awarded by Additional Sessions Judge/Fast Track Court No. 2, Lucknow by means of the judgment and order dated 06.02.2009 passed in Session Trial No. 391/2008: State Vs. Pradeep Kumar @ Pappu @ Bhuriya arising out of Case Crime No. 266/04 under Section 363/366/376/511/354 of Indian Penal Code (here-in-after referred as IPC), Police Station Aliganj, District Lucknow, by which the appellant has been convicted and awarded sentence of 10 years rigorous imprisonment and Rs. 5000 fine under Section 376/511 IPC and in default of payment of fine one year additional imprisonment and sentence of 7 years simple imprisonment and Rs. 3000 fine under Section 366 IPC and in default of payment of fine, six months additional imprisonment and sentence of 5 years simple imprisonment and Rs. 2000 fine under Section 363 IPC and in default of payment of fine, four months additional imprisonment and sentence of 1 year simple imprisonment and Rs. 1000 fine under Section 354 IPC and in default of payment of fine, two months additional imprisonment. It has further been provided that, from the fine deposited by the appellant, Rs. 5000/- shall be paid to the victim as compensation and all the sentences shall run concurrently.

3. Learned counsel for the appellant submitted that there is a delay of 21 days in lodging FIR because it was a case of consent by the victim, on account of an affair between the appellant and the victim, therefore FIR was not lodged for a period of twenty days. On coming to know that the appellant and the victim were going out, the FIR was lodged and the victim was recovered from the crossing, whereas no alarm was raised by the victim. Even otherwise the submission was that the charge of Section 376 has not been proved on account of fact that the victim, who appeared as P.W. 2 has not made any such allegation and in fact denied the same. He further submitted that the medical age of the victim has come as 18 years. He next submitted that the learned trial court, without considering the above and the evidence and material on record, passed the impugned judgment and order convicting and punishing the appellant, which is not sustainable in the eyes of law and is liable to be set aside. He relied on judgment and order dated 04.01.2024 passed in **Darshan Singh vs. State of Punjab in Criminal Appeal No. 163 of 2010; 2024 INSC 19** by the Hon'ble Supreme Court of India, judgment and order dated 07.01.2025 passed in **State (GNCT of Delhi) vs. Vipin @ Lalla; Criminal Appeal No. 94 of 2025** by the Hon'ble Supreme Court of India, judgment and order dated 29.09.2006 passed in the case of **Tarkeshwar Sahu vs. State of Bihar (Now Jharkhand); AIRONLINE 2006 SC 383.**

4. Per contra, learned AGA submitted that the victim was kidnapped forcefully and in custody of the appellant for a period of twenty days and there is no denial of the recovery of the victim from the custody of accused i.e. the appellant. He next submitted that the explanation for delay in lodging the FIR has been given in the FIR itself. Even otherwise delay is immaterial in such cases. He further submitted that there is no proof of marriage and in the statement under Section 313 CrPC also,

there is no plea of affair between the parties and the plea of implication of the appellant is due to enmity, which could not be proved. He further submitted that the burden to prove the consent was on the accused but he failed to do so. He also submitted that the FIR and medical report have been proved, according to which, hymen was found torn. Even otherwise attempt for rape has been proved beyond doubt. Thus, learned AGA submitted that the appellant has rightly been convicted by passing a reasoned and speaking order on the basis of evidence and material on record and adequate punishment has been awarded. There is no illegality or infirmity in it. The appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed. He relied on State of **Himachal Pradesh vs. Prem Singh; 2009 (64) ACC 287, Satpal Singh vs. State of Haryana; 2010 CRI. L. J. 4283, Pandharinath vs. State of Maharashtra; (2009) 14 SCC 537, State of Himachal Pradesh vs. Shree Kant Shekari; 2004 CRI. L. J. 4232, Koppula Venkat Rao vs. State of Andhra Pradesh; (2004) 3 SCC 602, State of Bihar and others vs. Tabarak Hussain; MANU/BH/0131/1982, Ganga Singh vs. State of Madhya Pradesh; AIR 2013 SC 3008, Roop Singh vs. State of Madhya Pradesh; (2013) 7 SCC 89, Kalu Alias Laxminarayan vs. State of Madhya Pradesh; (2019) 10 SCC 211; Chaitu Lal vs. State of Uttarakhand; (2019) 20 SCC 272** and the judgment and order dated 12.11.2013 passed in **Israil vs. State of Uttar Pradesh.; Criminal Appeal 40 of 2001; Neutral Citation No. - 2013:AHC-LKO:14455** by a co-ordinate Bench of this Court.

5. I have heard learned counsels for the parties and perused the records.

6. The prosecution case, as per the first information report is that a written complaint was given by the complainant; Shanti Devi wife of Ramdularey Nai on 31.08.2004 in the Police Station- Aliganj, District-Lucknow stating therein that her daughter, who is aged about 16 years, has been missing since 10.08.2004. She is being searched by her with the help of her relatives till today and she has come to know from reliable sources that Pappu @ Bhuri son of Motilal Kashyap of her Mohalla abducted her by alluring and he is also missing since 10.08.2004, therefore, an FIR may be lodged against Pappu @ Bhuriya and recover her daughter. On 31.08.2004 at 12:35, the case vide Case Crime No. 266 of 2004 under Sections 363/366 IPC was registered and the investigation was handed over to Shri Ram Vachan Prasad, Investigating Officer. The victim was recovered at 16:30 on the same day i.e. 31.08.2004 from the custody of the appellant. Thereafter, after preparing the recovery memo before the witnesses, custody of the girl was given to her natural guardian i.e. her mother and the accused was arrested. A statement of the victim, under Section 164 CrPC, was recorded before the Magistrate. The matter was investigated by the Investigating Officer and on the basis of statements recorded in the investigation and the medical examination report of the victim, chargesheet under Sections 363/366/354 and 376/511 IPC was submitted. The copies of prosecution papers were provided to the accused under Section 207 CrPC and the matter was committed to the Session for trial. The charge under Sections 363/366/354 and 376/511 IPC was framed against the appellant. The appellant denied the charges and prayed for trial.

7. The prosecution produced Smt. Shanti Devi, the complainant as P.W. 1, the victim as P.W. 2., Dr. Shobha Rani

Dwivedi as P.W. 3, Constable Moharir Harivansh as P.W. 4 and Investigating Officer Ramswaroop as P.W. 5. After the conclusion of the evidence of prosecution witnesses, the statement of the accused under Section 313 CrPC was recorded. In his statement, the appellant stated that the witnesses have given false evidence. The statement of the victim under Section 164 CrPC before the Magistrate was given by the victim under the pressure of family members and the prosecution witnesses have given false and wrong evidence. Lastly, he stated that he is innocent and he has been falsely implicated, on account of the enmity, whereas he has not committed any crime. He also prayed for adducing evidence in defence. In defence, he produced certain letters along with a list of documents and an application sent to the District Magistrate, Gonda. Learned trial court, after hearing learned counsels for the parties and considering the evidence and material on record, convicted the appellant and punished with the aforesaid punishments.

8. The complainant Shanti Devi appeared as P.W. 1 to prove the prosecution case. She stated that Beenu is her daughter and lives with her. She was missing since the afternoon of 10.08.2004. For her search, help of the relatives were sought as there was no male member in her home because her husband had died. The girl could not be traced. Subsequently, it came to knowledge from the persons in the vicinity that her daughter has been abducted by Pappu alias Bhuria of her Mohalla by alluring her, therefore, a report was lodged in Police Station Aliganj. He proved the report contained in Paper No. A5/2 as Pradarsh Ka-1. She also stated that the girl was recovered on 31.08.2004 by the police and handed over to her.

9. The victim appeared as P.W. 2. She stated that she knows Pappu @ Bhuria, whose name is also Pradeep. He resides in Pandey Tola. She further stated that about 3 years ago, the date is not remembered to her, when she was going to market from her house, the accused met her on the way and asked her to go with him for a stroll. She denied. Then, she forcibly got her sit on vehicle and took her towards Sitapur. He kept her at the residence of some of his relative for about 20 days. She was kept forcibly. She next stated that she had made noise. She also stated that the accused had done bad work with her. The bad work was done against her wish. Her statement was recorded before the Magistrate, which is available in the file. She reiterated the statement made under Section 164 CrPC before Magistrate. The Daroga had also recorded her statement.

10. Dr. Shobha Rani Dwivedi appeared as P.W. 3. She stated that she was posted on 31.08.2004 as Medical Officer in Veerangana Avanti Bai Hospital, Lucknow. On the said date, the victim Km. Beenu was examined by her with the consent of her mother Shanti Devi. She proved the medical examination report. In the internal examination, she found that there was no injury mark on the private parts, stomach and thighs. The hymen was torn and the injury was old. Her medical age was found to be about 18 years. However, no definite opinion could be given in regard to rape. He proved the medical report as Paper No. A8/4 and supplementary report as Paper No. A8/3, which have been marked as Pradarsh Ka-2 and Pradarsh Ka-3. X-ray report is Paper No. A8/1, which was marked as Pradarsh Ka-4.

11. Constable Moharir Harikesh appeared as P.W. 4, who proved the chick

FIR and GD, which have been marked as Pradarsh Ka-5 and Pradarsh Ka-6.

12. Ramswaroop, who appeared as P.W. 5, stated that the Investigating Officer of the case Ram Achal Prasad had died. He was posted with him. He recognizes his handwriting and his signature. He also stated that he was with the Investigating Officer at the time of recovery of the victim. He proved the recovery memo, site plan, site plan of place of recovery and chargesheet as Pradarsh Ka-6, Pradarsh Ka-7, Pradarsh Ka-8 and Pradarsh Ka-9.

13. P.W. 1-Shanti Devi ie. mother of the victim, stated in her evidence on oath that the accused had abducted the victim by alluring her, who was recovered from the custody of the accused on 31.08.2004. P.W. 2-the Victim herself had also stated in her examination-in-chief that she was coming from her house to market when the accused met her on the way and asked her to go with him, but she denied to do so, therefore, the accused forcefully got her sit on the vehicle. She further stated that she was kept forcibly by the appellant at the residence of some of his relative for about 20 days. In cross-examination also she reiterated the same. Considering the evidence of P.W. 1 and P.W. 2, the learned trial court has recorded a finding that the victim had not gone with her will with the accused rather she was forcibly taken away by the accused.

14. P.W. 2 i.e. the victim had stated in her statement under Section 164 CrPC before Magistrate that she was forcibly got her sit in Maruti Van and taken away by the appellant. She had cried but none had heard. He had taken her to the house of his relative, who resides at Sitapur Road. She was kept by the appellant there for about 20 days forcibly. The appellant had done bad work with her there. He tried to do bad work, however, the same was not done on her protest. He had tried to do it twice, however, he had not done the penetration. P.W. 2 in her evidence before the trial court also supported the aforesaid statement given before the Magistrate under Section 164 CrPC. She had stated that the statement given by her that the accused had done bad work with her is the correct statement. Thus, the charges under Sections 363, 366, 376/511 and 354 IPC have been proved.

15. Section 363 IPC provides punishment for kidnapping. It provides that 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. Section 366 IPC provides kidnapping, abducting or inducing woman to compel her marriage, etc. It 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. The definition of rape has been given in under Section 375 IPC. Section 376 provides the punishment for rape. Section 354 provides assault or criminal force to woman with intent to outrage her modesty. It provides that whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for

a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine. Section 511 IPC provides punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment. It provides that whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both. Thus, where a person attempts to commit an offence punishable by this Code, he can be punished for a term which may extend to one half of the imprisonment provided for the offence or with fine or both.

16. The Hon'ble Supreme Court, in the case of **Satpal Singh vs. State of Haryana (Supra)**, considering the judgment of Hon'ble Supreme Court in the case of State of Himachal Pradesh vs.Prem Singh (Supra), has held that in case of sexual offence, the criteria may be different altogether. As honour of the family is involved, its members have to decide whether to take the matter to the court or not. In such a fact-situation, near relations of the prosecutrix may take time as to what course of action should be adopted. Thus, delay is bound to occur. The relevant paragraphs 15, 16 and 17 are extracted hereinbelow:-

"15. However, no straight jacket formula can be laid down in this regard. In case of sexual offences, the criteria may be different altogether. As honour of the family is involved, its members have to decide whether to take the matter to the court or not. In such a fact-situation, near relations of the prosecutrix may take time as to what course of action should be adopted. Thus, delay is bound to occur. This Court has always taken judicial notice of the fact that "ordinarily the family of the victim would not intend to get a stigma attached to the victim. Delay in lodging the First Information Report in a case of this nature is a normal phenomenon" [vide Satyapal Vs. State of Haryana AIR 2009 SC 2190].

16. In State of Himachal Pradesh Vs. Prem Singh AIR 2009 SC 1010, this Court considered the issue at length and observed as under :-

"So far as the delay in lodging the FIR is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR."

17. Thus, in view of the above, the delay in lodging FIR in sexual offences has to be considered with a different yardstick."

17. The Hon'ble Supreme Court, in the case of **Tarkeshwar Sahu vs. State of**

Bihar (Now Jharkhand) (Supra), has held that the important ingredient of the offence under Section 375 punishable under Section 376 IPC is penetration. No offence under Section 376 IPC can be made out unless there was penetration to some extent. It has further been held that the ultimate test for ascertaining whether the modesty of a woman has been outraged, assaulted or insulted is that the action of the offender should be such that it may be perceived as one which is capable of shocking the sense of decency of a woman. The word 'modesty' is not to be interpreted with reference to the particular victim of the act, but as an attribute associated with female human beings as a class. It is a virtue which attaches to a female on account of her sex. In the said case, the Hon'ble Supreme Court set aside the conviction under Section 376, 511 IPC therein recording a finding that the appellant had neither undressed himself nor even asked the prosecutrix to undress so there was no question of penetration. In the absence of any attempt to penetrate, the conviction under Section 376/511 IPC is wholly illegal and unsustainable. This case is not applicable on the facts and circumstances of the present case as in the present case, the victim has stated not only in her statement under Section 164 CrPC before the Magistrate but in evidence before the trial court also that the appellant had undressed her, however on her protest, he could not do intercourse but he could not done bad work with her.

18. The Hon'ble Supreme Court, in the case of **Pandharinath vs. State of Maharashtra (Supra),** has held that if the accused- appellant had removed her clothes and he had not rebutted this statement of the prosecutrix in his examination-in-chief, it is definitely a case of attempt to rape.

19. The Hon'ble Supreme Court, in the case of **Koppula Venkat Rao vs. State of Andhra Pradesh (Supra)**, has held that the plea relating to applicability of Section 376 read with Section 511 IPC needs careful consideration. In every crime, there is first, intention to commit, secondly preparation to commit it, thirdly, attempt to commit it. If the third stage, that is, attempt is successful, then the crime is complete. If the attempt fails the crime is not complete, but law punishes the person attempting the Act under Section 511 IPC The relevant paragraphs 8, 11, 12 and 13 are extracted hereinbelow:-

"8. The plea relating to applicability of Section 376 read with Section 511 IPC needs careful consideration. In every crime, there is first, intention to commit, secondly preparation to commit it, thirdly, attempt to commit it. If the third stage, that is, attempt is successful, then the crime is complete. If the attempt fails the crime is not complete, but law punishes the person attempting the Act, Section 511 is a general provision dealing with attempts to commit offences not made punishable by other specific sections. It makes punishable all attempts to commit offences punishable with imprisonment and not only those punishable with death. An attempt is made punishable, because every attempt, although it falls short of success, must create alarm, which by itself is an injury, and the moral guilt of the offender is the same as if he had succeeded. Moral guilt must be united to injury in order to justify punishment. As the injury is not as great as if the act had been committed, only half the punishment is awarded.

11. The sine qua non of the offence of rape is penetration, and not

ejaculation. Ejaculation without penetration constitutes an attempt to commit rape and not actual rape. Definition of "rape" as contained in Section 375 IPC refers to "sexual intercourse" and the Explanation appended to the Section provides that penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Intercourse means sexual connection.

12. In the instant case that connection has not been established. Courts below were not correct in their view.

13. When the evidence of the prosecutrix is considered in the proper perspective, it is clear that the commission of actual rape has not been established. However, the evidence is sufficient to prove that attempt to commit rape was made. That being the position, conviction is altered from Section 376 IPC to Section 376/511 IPC. Custodial sentence of 3 and '/2 years would meet the ends of justice. The accused who is on bail shall surrender to custody to serve remainder of his sentence."

20. The Hon'ble Supreme Court, in the case of **Chaitu Lal vs. State of Uttarakhand (Supra)**, held that the attempt to commit an offence begins when the accused commences to do an act with the necessary intention.

21. A coordinate Bench of this Court, in **Israil vs. State of Uttar Pradesh (Supra),** has held that for the commission of every offence there are three stages, the first is the intention to commit the offence, thereafter comes the preparation to commit the offence and third is attempt to commit offence. If the attempt succeeds, he has committed the offence, if it fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence. Thereafter, considering several reports of the Hon'ble Supreme Court on the issue, the Court observed that in view of the case laws referred, it is clear that in order to hold the accused guilty of an attempt to commit rape the Court has to be satisfied that the accused, when he laid down the prosecutrix not only desired to gratify the passion upon her but that he intended to do so in all events, notwithstanding any resistance on her part. The Court after dealing with situation to the facts of the present case held that the conclusion is irresistible when the offence committed by the accused falls within the category of attempt of rape and it cannot, by any stretch of imagination, be said to be an offence under Section 354 IPC. The relevant paragraphs 14 and 21 are extracted hereinbelow:-

"14. For the commission of every offence there are three stages, the first is the intention to commit the offence, thereafter comes the preparation of commit the offence and third is attempt to commit offence. If the attempt succeeds, he has committed the offence, if it fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence

and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence. The word "attempt" is not itself defined and must, therefore, be taken in its ordinary meaning. This is exactly what the provisions of Section 511 require. An attempt to commit a crime is to be distinguished from an intention to commit an offence, not followed by any act, cannot constitute an offence. The will is not to be taken for the deed unless there be some external act which shows that progress has been made in the direction of it, or towards maturing and effecting it. Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice. Preparation consists in devising or arranging the means or measures necessary for the commission of the offence. It differs widely from attempt which is the direct movement towards the commission after preparations are made. The point as to what would amount to attempt to rape has been considered by Hon'ble Apex Court in several cases.

21. In view of the aforementioned case laws it is clear that in order to hold the accused guilty of an attempt to commit rape the Court has to be satisfied that the accused, when he laid down the prosecutrix not only desired to gratify the passion upon her but that he intended to do so in all events, notwithstanding any resistance on her part. Indecent assaults are often magnified into attempts of rape. In order to come to a conclusion that the conduct of the accused was suggestive of determination to gratify his passion at all events and inspite of all resistance, there must be material on record. The offence under Section 354 IPC is much lesser than the offence under Sections 376/511 IPC. Even if a person gives slight slap in public view on the posterior of a lady with a culpable intention, then the offence under Section 354 IPC is complete. But in order to commit an offence under Section 376 read with Section 511 IPC, as stated above, there must be evidence on record to show that the accused had all the intention to satisfy his lust. When the aforesaid settled legal position is applied to the facts of the present case then the conclusion is irresistible then the accused has committed an offence to commit rape because he has not only undressed the victim but has also undressed himself, took her inside the Arhar field and laid on the victim. He was moving his waist at that time. He left the victim only when her grand mother reached on the place of occurrence and pulled him by holding his hairs. It is only thereafter he ran away from the place of occurrence. Therefore, the offence committed by the accused falls within the category of attempt of rape and it cannot, by any stretch of imagination, be said to be an offence under Section 354 IPC. A half hearted argument regarding the false implication of the appellant has also been raised but there is nothing on record to support such false implication. The victim has stated that the accused was his uncle and this fact has not been challenged in the cross-examination. It is absolutely unbelievable that the grand father would involve his grand daughter aged about 9 years in such an offence and thereby he would destroy her future because the stigma attached with the victim of offence of rape, in the Indian perspective, remains attached with her throughout her life and a great damage is done not only to the victim but to the entire family of the victim. No specific enmity, nor any other material is on record to justify the theory of false implication due to enmity"

22. The Hon'ble Supreme Court dismissed the case of **State (GNCT of Delhi) vs. Vipin @ Lalla (Supra)** filed against the order of High Court by which the judgment of trial court of acquittal was confirmed on the ground that it is not believable that when the prosecutrix was caught by the accused who is known to the prosecutrix, she went with him quite a distance in the Bazaar and then to a shop, she never raised any alarm. This case is not applicable on the facts of the present case because in the present case, there is specific case of the victim that she was forcibly kidnapped by the appellant and kept in the house of a relative and tried to do bad work with her forcibly and had also undressed her.

23. The Hon'ble Supreme Court, in the case of **Roop Singh vs. State of Madhya Pradesh (Supra),** has held that unless there is volunatry participation by the woman to a sexual act after fully exercising the choice in favour of the assent, the Court cannot hold that the woman gave consent to the sexual intercourse.

24. The Hon'ble Supreme Court, in the case of **State of Himachal Pradesh vs. Shree Kant Shekari (Supra),** has held that the question of consent is really a matter of defence by the accused and it was for him to place materials to show that there was consent. It is significant to note that during cross-examination and the statement recorded under Section 313 of the Code of Criminal Procedure, 1973 (in short the 'Code') plea of consent was not taken or pleaded. In fact in the statement under Section 313 of the Code the plea was complete denial and false implication. It has further been held that it is well settled that a prosecutrix complaining of having been a victim of the offence of rape stands at a higher pedestal than an injured witness and there is no rule of law that her testimony cannot be acted without corroboration in material particulars.

25. The Hon'ble Supreme Court, in the case of **Kalu Alias Laxminarayan vs. State of Madhya Pradesh (Supra),** held that once the prosecution established a prima facie case, the appellant was obliged to furnish some explanation under Section 313, Cr.P.C. with regard to the circumstances. His failure to offer any explanation whatsoever therefore leaves no doubt for the conclusion of his being the assailant of the deceased.

26. The Hon'ble Supreme Court, in the case of **Ganga Singh vs. State of Madhya Pradesh (Supra),** has held that if the prosecution in a given case adduces evidence to establish the guilt of the accused beyond reasonable doubt, the court cannot acquit the accused on the ground that there are some defects in the investigation, but if the defects in the investigation are such as to cast a reasonable doubt in the prosecution case, then of course the accused is entitled to acquittal because of such doubt.

27. In the judgment in the case of **State of Bihar and others vs. Tabarak Hussain (Supra)** by a co-ordinate Bench of the Jharkhand High Court (Ranchi Bench) is not applicable to the facts of the present case.

28. Adverting to the facts of the present case, this Court finds that it has been proved by the prosecution that the victim of the crime was forcibly kidnapped by the appellant with intention to marry and intercourse with her. He with the said

motive kept her at the residence of his relative for about 20 days, where he not only outraged the modesty of the victim but also attempted rape by undressing her. However, he could not commit intercourse on account of her protest. The victim has stated that the appellant had done bad work with her. The victim reiterated and supported the statement given under Section 164 CrPC before the Magistrate in her evidence during trial also. Nothing could be extracted from her in cross-examination, which may create any doubt on her version or about the veracity of her evidence. The appellant also tried to establish prior relationship with the victim by producing certain letters, which have been denied to be written by the victim by her in evidence and no cogent material could be placed on record to prove the same. The delay in lodging the FIR has properly been explained in the FIR itself and in view of law laid down by the Hon'ble Apex Court as discussed above, the delay is immaterial in such cases, particularly when the prosecution has proved its case. The plea of implication of the applicant on the ground of enmity could not be proved by the appellant and no evidence could be adduced to prove any enmity. Thus, the impugned judgment and order has been passed after considering the evidence and material on record and the appellant has rightly and in accordance with law been convicted and punished under Sections 363, 366, 376/511 and 354 IPC, therefore it does not call for any interference by this Court. The appeal has been filed on misconceived and baseless grounds and it is liable to be dismissed.

29. The appeal is, accordingly, **dismissed**.

(2025) 7 ILRA 259

APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 10.07.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Jail Appeal No. 1192 of 2020

Ram Sanehi **...Appellant**

Versus

State of U.P. **...Respondent**

Counsel for the Appellant:
Jail Appeal, Rehan Ahmad Siddiqi A C

Counsel for the Respondent:
G.A.

ISSUE FOR CONSIDERATION

Whether the conviction of the appellant under Sections 376(3), 342 IPC and Section 3/4 of the POCSO Act was sustainable in light of serious discrepancies in witness testimonies, lack of corroborative medical and forensic evidence, and absence of independent witnesses.

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 – Section – 161, 164, 313, 383, - Indian Penal Code, 1860 – Section – 352, 376, 376(3), 504, - Protection of Children from Sexual Offences (POCSO) Act, 2012 – Section – 3, 4, 4(2)- Jail Appeal – conviction and sentenced – offence of Rape and threat – FIR – Minor victim alleged that the appellant raped her after confining her in his room, threatened to kill her if she spoke out, and was rescued six hours later by family and neighbors – statements recorded – custody - investigation and Trial – Statement - medical examination report - charge-sheet – conviction – during trial pprosecution examine nine witnesses and relied upon the medical reports, school records, site plan, recovery memo – in defence appellant denied all charges and claimed false implication by police – Trial court convicted & sentenced the appellant u/Sections 376(3), 342 IPC and Section 3/4(2) POCSO Act relying primarily on witness testimonies and circumstantial evidence,

but acquitted u/Section 504 IPC – Appeal - Court finds that - prosecution's case unreliable, especially – (i) minor contradictions in witnesses' statements and site plan were deemed natural - Medical report showed no recent sexual activity, but court prioritized witness testimonies - alleged motive of animosity (burning of saree) was dismissed as insufficient for false implication - (ii) appellant had languished in jail for over nine years without support or legal aid, and suspecting possible property-related motives behind the false implication – (iii) Moreso, the courts cannot shut their eyes to the ground realities from the fact that now a days it has become very common to level allegations of commission of serious and heinous offences – held – Trial court has convicted the appellant without proper appreciation of evidence on record and without giving due weight to the medico-legal examination report and the pathological examination report of the victim – hence, the finding of guilt recorded by the trial court are unsustainable in the eyes of law – consequently, the appeal is allowed – appellant is acquitted of all the charges - direction issued for his immediate release, and to restore possession of his house. (Para – 49, 50, 52, 53, 54,55, 56)
Appeal Allowed**.** (E-11)

CASE LAW CITED

Raj Kumar @ Raju Yadav vs. State of Bihar, (2006) 9 SCC 589, Manoj Mishra @ Chhotkau vs. State of U.P., (2021) 10 SCC 763.

LIST OF ACTS

Code of Criminal Procedure, 1973 **-** Indian Penal Code, 1860 - Protection of Children from Sexual Offences (POCSO) Act, 2012.

LIST OF KEYWORDS

Jail Appeal - Amicus Curiae - Appellant – Victim – custody - False implication - Medico-legal contradiction - Minor discrepancies - Independent witness absence - Tarpaulin concealment - Loft recovery - Property dispute motive - Judicial scrutiny - Wrongful incarceration - Bail neglect - - Sentence reduction – Acquittal – restoration of possession of house.

CASE ARISING FROM

Judgment Dated 03.11.2020 passed by Special Judge, POCSO Act, Hardoi in Special Session Trial No. 329/2016 - Case Crime No. 81/2016, Police Station Harpalpur, District Hardoi.

APPEARANCE OF PARTIES

Counsel for Appellant: - Rehman Ahmad Siddiqui Amicus Curiae.
Counsel for Respondent: - G.A. Mohd. Asif Khan AGA

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Rehan Ahmad Siddiqui, the learned Amicus Curiae appearing for the appellant, Sri Mohd. Asif Khan, the learned Additional Government Advocate-I appearing for the State and perused the records.

2. By means of the instant jail appeal filed under Section 383 Cr.P.C., the appellant has challenged the validity of a judgment and order dated 03.11.2020, passed by Smt. Deepa Rai, the learned Special Judge, POCSO Act, Hardoi in Special Sessions Trial No.329 of 2016, arising out of Case Crime No.81 of 2016, under Sections 376, 342, 504 Indian Penal Code and Section 3/4 of Protection of Children from Sexual Offences Act, Police Station Harpalpur, District Hardoi.

3. The aforesaid case was instituted on the basis of an F.I.R. lodged on 18.03.2016 alleging that at about 9.30 p.m. on 17.03.2016 the informant had gone to attend the call of nature in the latrine constructed near her house, the appellant caught hold of her with evil intention, locked her inside his room and raped her. The appellant threatened that in case victim told about the incident to her parents he would kill her. The F.I.R. alleged that the door of the room was opened with the intervention of the family members of the

informant and some neighbours. Thereafter, she could come out of the house after about six hours.

4. The appellant had filed an application for his release on bail but the said application was rejected by the trial Court by means of an order dated 17.10.2016.

5. The prosecution examined nine witnesses during trial and produced the statement of the victim under Section 164 Cr.P.C., medical examination report and the supplementary report, copy of F.I.R., transfer certificate of the victim issued by school, scholar's register, site plan, recovery memo of a tarpaulin and X-Ray examination report as documentary evidence.

6. The appellant denied the charges in his statement under Section 313 Cr.P.C. He stated that the Sub-Inspector of Police Sri Manoj Kumar Awasthi had called him from his home for checking his inverter and thereafter he challaned him in the present case. However, no defence witness was examined by the trial Court.

7. The learned trial court held that the incident took place on 17.03.2016 and the medico-legal examination of the victim was conducted on 20.03.2016. In these circumstances, the finding recorded in the medico-legal examination report that there was no evidence of recent sexual penetration, was merely an opinion and when the victim and other witnesses had stated that the appellant had raped her, those statements have to be given precedence over the medical report. It was contended on behalf of the appellant that the witnesses had stated that the latrine where the incident took place, is constructed in front of the victim's house whereas the site plan shows that it is constructed in front of house of Ram Gopal, and this contradiction in the statements of the witnesses and the site plan regarding the place of the incident shows that the accused has been falsely implicated. The trial Court rejected this contention stating that an accused person cannot be acquitted merely on the ground of some defects in investigation.

8. It was also submitted on behalf of the appellant that the victim (PW-1) has stated that she had gone to attend the call of nature at about 09:30 p.m., her father (PW-2) has stated that she had gone at about 10:00 p.m. whereas her mother (PW-3) has stated that she had gone between 08 and 09 p.m. PW-3 stated that no family member had gone to the police station to lodge the report whereas the father of the informant (PW-2) has stated that the victim, her mother and her father had gone to lodge the report. The police constable – moharrir (PW-5) has stated that the victim had come to lodge the report alongwith her mother. The victim (PW-1) has stated that her legs had got swollen and her hands had turned red and her mother (PW-2) has stated that the victim had suffered injuries. However, the medico-legal examination report mentions no injury on any part of the victim's body. It was submitted that the aforesaid facts indicated that the accused has been falsely implicated due to animosity. The trial Court rejected this submission on the ground that the statements have been recorded about one year after the incidents and some minor discrepancies are natural to occur and these do not affect the prosecution case that the accused had raped the victim.

9. Regarding the allegation of animosity due to burning of the saree by the appellant, the trial court held that it was not such an incident as may lead the victim to falsely implicate the accused in a rape

case. The learned trial court held the appellant guilty of offences under Sections 376 (3), 342 I.P.C. and Section 3/4(2) of POCSO Act and he was acquitted of the charges under Section 504 I.P.C. The appellant was sentenced to undergo twenty years rigorous imprisonment and to pay Rs.10,000/- as fine for the offence under Section 376(3) I.P.C. and to undergo simple imprisonment for an additional period of one and half years in case of failure to pay fine. He was sentenced to undergo imprisonment for one year for the offence under Section 342 I.P.C. No sentence was awarded for the offence under Section 4(2) of POSCO Act. The amount was fine was ordered to be paid to the victim and it was ordered that all the punishments will run concurrently.

10. As per the office report dated 16.03.2021, notice of the appeal was served upon the informant personally, but he has not put in appearance for opposing the appeal. On 09.08.2021, this Court had appointed Sri. Rehan Ahmad Siddiqui as Amicus Curiae for doing Pairvi on behalf of the appellant.

11. On 10.06.2021, the following order was passed in this appeal: -

"Though the name of Sri Rehan Ahmad Siddiqui, learned Amicus Curiae for the appellant has been printed in the cause list but he is not present today.

Sri Manoj Kumar Singh, learned Additional Government Advocate is present.

It transpires from the record that there is no application for bail on behalf of the appellant.

Learned Amicus Curiae is permitted to file application for bail. However, taking into consideration that the appellant is confined in jail, affidavit in support of application for bail is dispensed with.

Office is directed to send the reminder to the Court concerned for transmitting the lower Court record in pursuance of the earlier order dated 09.08.2021.

Let the matter be listed in the month of July, 2022."

12. It appears from the record that Sri Rehan Ahmad Siddiqui, the learned Amicus Curiae, did not file any application for release of the appellant on bail in terms of the aforesaid order dated 10.06.2021 and the appellant continues to languish in Jail since 22.03.2016.

13. During hearing of this appeal, Sri Rehan Ahmad Siddiqui, the learned Amicus Curiae representing the appellant, did not make any submissions challenging the findings of the trial Court and he has confined his submission for reduction of the sentence awarded to the appellant to the period already undergone in custody stating that the appellant has been sentenced to undergo imprisonment for twenty years, he is languishing in jail since 22.03.2016 and he has already undergone about nine years and four months period in jail.

14. The learned Amicus Curiae has relied upon a judgment of Hon'ble Supreme Court in the case of **Raj Kumar @ Raju Yadav @ Raj Kumar Yadav Vs. State of Bihar:** (2006) 9 SCC 589, wherein the Hon'ble Supreme Court reduced the sentence of seven years rigorous

imprisonment awarded to the appellant to the period already undergone in custody. He has also relied upon a judgment of Hon'ble Supreme Court in the case of **Manoj Mishra @ Chhotkau Vs. The State of U.P.**: (2021) 10 SCC 763, wherein the Hon'ble Supreme Court reduced the sentence to the period already undergone in custody. The only other submission advanced by Sri. Siddiqui was that this Court should make an order for payment of his fee.

15. The learned Additional Government Advocate-I appearing on behalf of the State has responded to the limited submission made by the learned Amicus Curiae and he stated that in view of the aforesaid judgments passed by the Hon'ble Supreme Court he has no objection to the reduction of period of sentence of the appellant.

16. In this appeal filed from jail by the appellant himself, he has stated that he is a poor person and there is no one in his family to look after his case, a jail appeal should be filed and he should be provided with the services of an advocate by the Government.

17. As the aforesaid facts indicate that the appellant is a poor person and no person from his family has come forward to make any effort to get him out of jail and even the learned Amicus Curiae has not filed any application for the appellant's release on bail in spite of the order dated 10.06.2021 and he has not advanced any submissions in support of the appeal, this Court went through the record of the case to ascertain as to whether the order of conviction and sentence passed by the learned trial court deserves to be upheld or it needs any interference.

18. The record reveals that the F.I.R. was lodged on the basis of a written complaint filed by the victim herself on 18.03.2016 stating that when she had gone to attend the call of nature at about 09.30 p.m. on 17.03.2016 in a latrine constructed near her house, her neighbor Ram Sanehi (the appellant) forcibly caught hold of her with evil intention, locked her in a room and raped her. The appellant threatened her that in case she tells about the incident to her parents, he would kill her. The door was opened with the intervention of her family members and neighbors and she could come out of the room after about 6 hours and thereafter she came to the police station to lodge the F.I.R.

19. In the statement of the victim recorded under Section 161 Cr.P.C. she stated that she had gone to attend the call of nature at about 9.30 p.m. on 17.03.2016. The appellant is her cousin, he shut her mouth, took her to his house and raped her. She stated that the appellant kept her locked inside his room for six hours and he raped her thrice during this period. Her mother started searching for her and got the room of the appellant opened with the help of neighbors. The appellant had hidden her beneath a tarpaulin upon the loft inside the room. The persons searching for her found her on the loft and made her get down from the loft. She went to the police station with her parents on the following day and lodged the report.

20. Strangely, the statement of the victim recorded under Section 161 Cr.P.C. bears her signature whereas the statement recorded under Section 161 Cr.P.C. should not be signed by the person making the statement.

21. The medico-legal examination report of the victim mentions that a Home-guard had taken her to the District Women

Hospital, Hardoi for medical examination. The medico-legal examination was conducted on 20.03.2016 at 11.30 a.m., and the report mentions that the date and time of the incident was not known. No mark of injury was seen on any part of the victim's body. The genito-anal examination revealed that all the internal parts of her body were normal, the hymen was found old torn and healed and hemorrhage or any other discharge was not present. There were no signs suggestive of recent penetration of the vagina. The pathological examination report of the vaginal smear slides revealed that no spermatozoa or gonococci were present in the vaginal smear of the victim and the pregnancy test was also negative. As per radiological examination report, age of the victim was opined to be between 16-17 years.

22. In the statement of the victim recorded under Section 164 Cr.P.C. she stated that she was aged about 15 years, she had studied up to Class VIII, the appellant is son of the elder brother of her father. While she had gone to attend the call of nature in a latrine constructed in front of her house at about 09.30 p.m. on 17.03.2016 the appellant shut her mouth, dragged her to his room and raped her. When her parents came there the appellant tied her mouth with a cloth, wrapped her in a polythene sheet and put her upon a loft. Her brother and aunt Kajal brought her down the loft and they took the appellant to the police station. She also stated that about ten days ago, the appellant had burnt her mother's saree and had entered into a quarrel. Her mother had given information of the incident to the police and the appellant was keeping animosity since then.

23. A site plan prepared by the Investigating Officer has been marked as Exhibit Ka-10, which shows that the latrine is constructed towards the south of the informant's house, in front of the house of Ram Gopal, whereas the appellant's house is situated towards the north of the victim's house after the latrine where the appellant is said to have caught hold of the victim and dragged her to his room. There is some open space. Thereafter, there is house of the informant, then there is a shop, thereafter there is some open space through which one can enter the house of the appellant which falls at the rear of the shop. The loft has been shown in the site plan and it is mentioned that it is the place where the appellant had made the victim ride up and had covered her with a tarpaulin after committing the misdeed. The room where the incident took place has a door in its northern wall.

24. The recovery memo of the plastic tarpaulin is Ex. Ka-11 and it mentions that the appellant had covered the victim with the tarpaulin on the loft after the incident. The only persons who have witnessed recovery of the tarpaulin from the appellant's room are the victim and her father.

25. On 02.06.2016 the appellant had given an application to the trial court requesting for safety and security of his family and property stating that he is lodged in District Jail Hardoi since 22.06.2016, the passage to his house has been closed, his father is being threatened to be killed, he belongs to a poor family and he requested that a case be registered against the persons who are harassing his father and who have implicated the appellant in the false case. The appellant further stated that he has absolutely no knowledge about the present case and the true purport of the appellant's writing

appears to be that he has no knowledge about the allegations leveled in the present case.

26. The victim has been examined as PW-1 and she has reiterated her earlier version in her examination-in-chief. During cross-examination PW-1 stated that the appellant is son of the elder brother of her father, the appellant would be presently aged about 45 years, father of the appellant is alone but he does not live with the appellant. Initially the house of the appellant and the victim was one. After partition it was divided into two separate houses. About 10-15 days ago a saree of her mother had flown to the house of the appellant and the appellant had burnt the saree. Since then an animosity was simmering amongst them and the parties were not o talking terms. They were on talking terms prior to the aforesaid incident. She stated that her portion of the house is larger and the portion of the appellant's house is smaller. The portion of the appellant consists of one room and a shop. She had gone to the room of the appellant only once when the incident took place. The room has its ingress and egress towards the East and West. The victim stated that at the time of the incident her mother had gone to sleep, but the other family members were awake. At the time of incident her mouth was shut so she could not shout. The appellant kept her mouth shut with one hand for 4-5 hours and he was holding her hands with his other hand. Initially the victim stated that the appellant was pressing her mouth with his hand but subsequently she stated that the appellant had tied a cloth on her mouth. She stated that she did not know after how long the appellant had removed his hand from her mouth but even after the appellant had removed his hand she could not shout. She stated that the appellant had tied her hands but he did not tie her legs. She had moved her legs in her defence and her legs had got swollen and hands had turned red. She further stated that first her mother, father and brother had come to save her. Then, she stated that her uncles Jitendra and Ram Gopal had also come to save her.

27. The father of the victim has been examined as PW-2 and he stated that the appellant is his nephew (son of his brother). About two years prior to the incident the appellant had enticed away a girl, whereafter the police had caught him and the appellant had to spend about 18 months in jail. The appellant suspected that PW-2 had got him arrested due to which he kept animosity. On the date of the incident his daughter had gone to latrine at about 10.00 p.m. When she did not come back after quite some time his wife went to look after her in the latrine. When she could not find her there, PW-2 got suspicious against the appellant. He went to the appellant's house along with his neighbors Ram Gopal, Kamlesh, Kajal Kinnar and Jitendra. The appellant opened the door of his house after about ten minutes. The aforesaid persons entered the room and found that the victim was lying on the loft, wrapped in a tarpaulin. She told that the appellant had raped her. The girl was recovered at about 2.30 a.m. PW-2 stated that he had gone to the police station for lodging the F.I.R. at about 1.30 p.m.

28. During cross-examination PW-2 stated that he did not know particulars of the girl in relation to which the earlier F.I.R. was lodged against the appellant and he had not told this thing to the Investigating Officer. In the earlier incident the police had recovered the girl from the appellant's house after entering the same

through the house of PW-2. He stated that the portion of his house consists of five rooms and a verandah. He did not know as to how many rooms were there in the portion of the appellant. PW-2 also stated that the appellant has a brother, his mother has died, his father is alive, his step mother is alive and his family lives in another house about 200 meters away. There is an agency of Parle-G in the house of the appellant and no person lives in it. The lock and key of the house remains with the persons running Parle-G agency. They do not stay there and they used leave the place after their work. He stated that about two to four days prior to the incident saree of his wife had fallen in the house of the appellant and the appellant had burnt it. He stated that he was not in talking terms with the family of the appellant for the past six months. PW-2 stated that there is only a wall between his house and the house of the appellant and in case any person makes a sound in his room it will be heard in the house of the appellant.

29. The mother of the victim was examined as PW-3 and she stated that her daughter had gone to latrine situated outside her house at about 9.00-9.30 p.m. on the date of the incident. When she did not come back for quite some time she and her family members had gone to look for her but they could not find her. Thereafter, a police constable was called from the police station and they went to the house of the appellant and knocked his door. The appellant opened the door after ten minutes and her daughter was found wrapped in a tarpaulin lying on the loft. Some neighbors had gathered there. Her daughter told her that the appellant had shut her mouth, taken her to his home and had threatened her. Initially her husband had given a report of the incident at the police station but when no heed was paid to it, thereafter a report was registered by her daughter.

30. During cross-examination, PW-3 denied that earlier her house and the house of the appellant was one. She stated that about 10-15 days prior to the incident her saree had fallen from her rooftop in the house of the appellant and the appellant had burnt it, due to which an altercation had taken place. She stated that she did not know as to how many rooms are there in the house where the incident took place. She stated that when they were on talking terms she used to visit the said house. They were not on talking terms for about four to six months since prior to the incident. She stated that the appellant's mother has died. His step mother and father are alive. The appellant has two brothers and there are three houses. She stated that her daughter had gone to latrine between 8.00 to 9.00 p.m. She came back home between 12.00 and 01.00 in the night and the police persons had brought her home from the room of appellant. The police had gone there at about 11.00 p.m. PW-3 and Kajal (Kinner) had brought police from the police station. A constable and a chowkidar had come. The door was closed from the inside. The girl was recovered after getting the door opened. Nothing was done in writing at that time. The girl stayed at the house during night. Her daughter and some neighbors had gone to the police station and no family members had gone there. She did not know as to which of the neighbors had gone there. When the report was not registered at the police station, she took her daughter to Hardoi and stayed in the Mahila Thana for three days. The report was lodged at Hardoi. At the time of incident it was dark but the neighbors had woke up and had gone to the police station. She stated that she did not know the names of neighbors.

31. The doctor who had medically examined the victim was examined as PW-

4. She proved the medical report which has already been referred to above. During cross examination she stated that she cannot say whether the victim was used to sexual intercourse but there was no sign of recent sexual intercourse.

32. The Police Constable who had registered the F.I.R was examined as PW-5 and he stated that he did not know as to what clothes were worn by the informant. The police had not taken any clothes in possession. The informant had come to the police station along with her mother and father and there was no other person.

33. PW-6 had conducted the investigation of the case and he stated in his cross-examination that prior to him Sri Manoj Kumar Awasthi was the Investigating Officer. He had not visited the place of incident and he had not met the informant. He had met the victim in the Court on 07.06.2016. He had met the victim earlier also. The victim was always accompanied by lady police and no family members used to accompany her. Statements under Section 161 Cr.P.C. of the victim or any other person were not recorded by PW-6. He stated that he had forwarded the charge-sheet as per the statement of the victim recorded under Section 164 Cr.P.C.

34. The Principal of the school where the victim had studied was examined as PW-7 and she stated that as per the school records the victim's date of birth is 10.02.2000.

35. Investigating Officer Sub-Inspector Manoj Kumar Awasthi has been examined as PW-8 and he stated that he was entrusted with the investigation on 18.03.2016. On 19.03.2016 he had looked for the accused and the prosecution witnesses but could not meet any one of them. He had recorded statement of the victim. A lady constable and a lady home guard had recorded the statement of the victim's mother. The victim's mother was asked to hand over the clothes worn by the victim but she told that clothes had been washed away. He had recorded the statement of the informant's father and a witness Kajal Kinnar on 20.03.2016. On 22.03.2016 he had inspected the place of incident on the pointing out of the victim and had prepared a site plan. During inspection of place of incident the police had taken possession of a tarpaulin with which the accused had covered the victim. The statement of the accused was recorded on 22.03.2016 in the lock-up of the police station.

36. The sealed packet containing the tarpaulin was opened in the court in presence of PW-8 and after seeing it he stated that although it was mentioned that the bundle contained a tarpaulin, in fact it was a tarpaulin of polythene. The sealed packet containing the tarpaulin/polythene had not been signed by any witness. He did not know the length and breadth of the tarpaulin and he stated that he had found it above the loft. The length of tarpaulin turned out to be lessor by one foot compared to height of PW-8. PW-8 denied the suggestion that he had procured the polythene from the market and had sealed the same at the police station.

37. The Radiologist who had conducted the radiological examination for ascertainment of the victim's age was examined as PW-9 and he stated that as per radiological examination age of the victim was about 16-17 years. During cross-examination he stated that X-ray

examination reports of a healthy person and a sick person would be different. He did not remember whether the victim was healthy or sick. He stated that there can be a difference of two years on either side in the age opined by the radiological examination.

38. In the statement recorded under Section 313 Cr.P.C. the appellant denied the allegations.

39. From the testimonies of prosecution witnesses as referred to above, it appears that the victim has not disclosed the relationship between herself and the appellant in the F.I.R. and she later on disclosed that the appellant is son of her father's brother, who was aged about 45 years at the time of the incident. The victim has alleged that the appellant had shut her mouth, dragged her inside his house, kept on shutting her mouth with one hand and holding her hands with his other hand continuously for about 5-6 hours and during this period he raped her thrice. However, her medico-legal examination report did not reveal any mark of injury on any part of her body. At one place the victim stated that the appellant had shut her mouth with his hand, whereas at another place she stated that the appellant had tied her mouth with a cloth.

40. After the incident the victim is said to have been recovered from a loft in the appellant's house and she was covered by a polythene sheet. Nobody has stated that when the victim was recovered from the loft, her mouth was shut or tied with a cloth and that she was not able to raise her voice. Nobody has stated that her hands were tied. The tarpaulin referred by several prosecution witnesses turned out to be polythene sheet, size of which was not stated by any witness and when the court measured it in comparison to the height of PW-8, it turned out that it was about a foot shorter than his height. At one place the victim has stated that the appellant had covered her with a tarpaulin and another place she stated that the appellant had wrapped her in the tarpaulin.

41. No reasonable person of ordinary prudence would believe that a person aged 45 years kept on shutting the mouth of his minor cousin with one hand and holding her hands with his other hand, continuously for 5-6 hours, he raped her thrice, thereafter he put her upon a loft, even after the victim was put on the loft, she did not raise her voice till her family members recovered her from the loft.

42. Keeping in view the nature of allegations, the finding recorded in the medico-legal examination report that there was no evidence of recent sexual penetration, cannot be brushed aside. Moreover, even if the aforesaid observation is merely an expert opinion, the finding that the pathological examination of the vaginal smear slide showed absence of spermatozoa and gonococci, is not an opinion and it is a finding recorded upon a scientific test.

43. When a 45 years old person is accused of raping his minor cousin, the allegations are not supported by the findings of the medico-legal examination report and the prosecution relies upon oral evidence of the victim, her father and mother only and no independent witness is examined, although it is said that several neighbors had gathered at the time of the incident, it becomes necessary to scrutinize the oral evidence carefully. The victim (PW-1) has stated that she had gone to attend the call of nature at about 09:30

p.m., her father (PW-2) has stated that she had gone at about 10:00 p.m. whereas her mother (PW-3) has stated that she had gone between 08 and 09 p.m. PW-3 stated that no family member had gone to the police station to lodge the report whereas the father of the informant (PW-2) has stated that the victim, her mother and her father had gone to lodge the report. The police constable – moharrir (PW-5) has stated that the victim had come to lodge the report alongwith her mother.

44. PW-3 stated that the police had come to her house at 11.00 p.m. in the night, the girl was recovered by the police, whereas the victim and her father have not said so.

45. It is significant to mention that in the statement recorded under Section 164 it is written that "जब मेरे मां बाप पुलिस वालों के साथ आए, मुझे मुंह पर कपड़ा बांध कर, पन्नी में लपेटकर टांड पर डाल दिया" but the words "पुलिस वालों के साथ" have been struck out subsequently.

46. The victim stated in her examination-in-chief that her mother, brother and uncle had brought her down from the loft and they had caught hold of the appellant and had taken him to the police station, whereas the police claimed to have arrested the appellant on 22.03.2016.

47. The aforesaid discrepancies relating to the description of the offence are not minor discrepancies and these raise a serious doubt against correctness of the allegations leveled in the statements.

48. The motive about the incident alleged by the prosecution witnesses is that a saree of the victim's mother fell down in the appellant's house and it had been burnt by him. The victim and her father stated that the incident took place about 10 to 15 days ago, whereas the victim's mother stated that the incident took place about 4 days prior to the incident. The trial court held that it was not such an incident as may lead the victim to falsely implicate the accused in a rape case, but at the same time, it was not such an incident which may lead the accused to rape her minor cousin, particularly when there is no allegation that the accused had suffered any harm in that incident.

49. Although, it is correct that minor discrepancies in the statements of the witnesses are natural to occur and these should not lead to acquittal of an accused person, it is equally true that the prosecution has to prove its case beyond reasonable doubt and when there are serious discrepancies regarding important and crucial facts relating to the incident, the same would render the statements of the witnesses untrustworthy.

50. All the aforesaid discrepancies in the statements of the prosecution witnesses have been lightly brushed aside by the learned trial court, whereas these discrepancies clearly make the statements of the prosecution witnesses unbelievable, more particularly when the same are not corroborated by the findings of the medico-legal examination report of the victim and the pathological examination report of the vaginal smear slide.

51. The aforesaid facts indicate that the appellant has been falsely implicated by the informant and the police in the present case.

52. In view of the foregoing discussion, this court is of the considered

opinion that the evidence on record does not prove that the appellant had raped the victim who is his cousin. The trial court has convicted the appellant without proper appreciation of evidence on record and without giving due weight to the medico-legal examination report and the pathological examination report of the victim. The findings of guilt recorded by the trial court are unsustainable in the eyes of law.

53. Accordingly, the criminal appeal is ***allowed***. The judgment and order dated 03.11.2020, passed by Smt. Deepa Rai, the learned Special Judge, POCSO Act, Hardoi in Special Sessions Trial No.329 of 2016, arising out of Case Crime No.81 of 2016, under Section 376, 342, 504 Indian Penal Code and Section 3/4 of Prevention of Children from Sexual Offices Act, registered at Police Station Harpalpur, District Hardoi, whereby the appellant has been held guilty of offences under Sections 376 (3), 342 I.P.C. and Section 3/4(2) of POCSO Act and he has been sentenced to undergo twenty years rigorous imprisonment and to pay Rs.10,000/- as fine for the offence under Section 376(3) I.P.C. and to undergo simple imprisonment for an additional period of one and half years in case of failure to pay fine and to undergo imprisonment for one year for the offence under Section 342 I.P.C, is set aside and the appellant is acquitted of all the charges. The appellant shall be set at liberty forthwith, subject to his submitting a personal bond for his appearance in case an appeal is filed against this order. The amount of fine paid by the appellant, if any, shall be refunded to him within a period of 30 days from the date of this judgment.

54. It is indeed very disturbing that a 45 years old person who had nobody to look after his interest was taken into custody on 22.03.2016 on the allegation of committing rape of his minor cousin. His bail application was rejected by the trial Court. Nobody came forward to do pairavi of his case on his behalf. He gave an application to the learned trial court requesting for protection of his family and property but it appears that no action was taken on this application.

55. The courts cannot shut their eyes to the ground realities apparent from the fact that now a days it has become very common to level allegation of commission of serious and heinous offences, including offence of rape or sexual abuse of a child by the family members, in petty disputes or in order to grab property. In one page jail appeal written in the handwriting of the appellant, he has stated that there is nobody to look after his interest and he is a poor person. It has come to light during evidence that the appellant used to reside alone. In these circumstances, there is a reasonable apprehension that the property of the appellant might have been taken possession of by the persons from the informant's side or by any other person.

56. As the appellant used to reside alone in his house and he has been lodged in jail and although he had sought protection of his property by the court, it appears that no action was taken in this regard. The appellant has been made to languish in jail for more than nine years in a case in which there is no evidence to prove his guilt. This court finds it appropriate to exercise its inherent powers to order that the appellant would be released from custody forthwith and the Superintendent of Police, Hardoi shall ensure that after his release from the jail, the appellant is put in possession of his house from where he was taken in custody.

(2025) 7 ILRA 271
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 11.07.2025

BEFORE

THE HON'BLE SAUMITRA DAYAL SINGH, J.
THE HON'BLE ANIL KUMAR - X, J.

Criminal Appeal No. 2999 of 1984

Radhey Shyam & Anr. ...Appellants
Versus
State of U.P. ...Respondent

Counsel for the Appellants:
Bhaskar Bhadra, Subodh Kumar

Counsel for the Respondent:
D.G.A.

ISSUE FOR CONSIDERATION

Whether the prosecution has been able to prove the motive imputed against the appellants?
Whether conviction of appellant u/Section 302 r/w Section 34 IPC, based solely on circumstantial evidence and the "last seen" theory, was sustainable in the absence of a strong and immediate motive?

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 – Section – 313, 437-A, - Indian Penal Code, 1860 – Section – 34, 302- Criminal Appeal - conviction and Sentence – FIR – offence of murder – investigation – chargesheet - Trial - multiple witnesses - corroborated the timeline and presence of the accused - Postmortem revealed fatal head injuries leading to death by shock and haemorrhage - The accused denied the charges, citing enmity and land disputes as motives for false implication - The appeal regarding second appellant abated due to his death during pendency of appeal - Trial court convicted the appellants solely on circumstantial evidence and based on consistent testimonies from three sets of witnesses and also found sufficient motive for the murder, stemming from a prior quarrel before the incident – appeal – The court finds that the prosecution failed to establish a strong and immediate motive for the alleged murder of deceased, relying only on vague and second-hand accounts of a prior quarrel between the deceased and appellant, which had reportedly been resolved - The testimonies lacked clarity and direct knowledge, and no compelling evidence was presented to prove that the quarrel was serious enough to incite murder - While the appellants were last seen with the deceased, mere proximity without further incriminating evidence was deemed insufficient for conviction in a case based solely on circumstantial evidence - held – alleged motive put forth by the prosecution is weak and the appellants cannot be convicted on the basis of mere last seen with the deceased - and there is no other circumstance of recoveries etc. to link the appellants with the occurrence – therefore, appellant deserve to be acquitted, on a benefit of doubt, thus exists - consequently, the appeal is allowed – accordingly, the impugned conviction and sentence is set aside. (Para – 29, 30, 31, 32, 33)
Appeal Allowed. (E-11)

CASE LAW CITED

Rishi Pal v. State of Uttarakhand, (2013) 12 SCC 551, Kanhaiya Lal v. State of Rajasthan, (2014) 4 SCC 715, Jai Mohammad Vs. State of Bihar (1953 vol. 1 SCC 5, Sakharam Vs. State of M.P., (1992) 2 SCC 153, Arjun Marik Vs. State of Bihar, 1994 Supp (2) SCC 372.

LIST OF ACTS

Indian Penal Code, 1860 - Code of Criminal Procedure, 1973.

LIST OF KEYWORDS

Circumstantial Evidence - Last Seen Theory – Motive – Acquittal - Benefit of Doubt - Postmortem Report - Witness Credibility - Ramleela Fair - Quarrel over Sister -

CASE ARISING FROM

Judgment dated 15.10.1984 passed by the learned court of VIIth Additional District and Sessions Judge, Bareilly in Sessions Trial No. 646 of 1983 – Case crime No. 178 of 1983, Police Station – Aonla, District – Bareilly.

APPEARANCE OF PARTIES

Counsel for Appellant: - Shri Bhaskar Bhadra.
Counsel for Respondent: - Shri Vikas Goswami, AGA-I

(Delivered by Hon'ble Anil Kumar - X, J.)

1. Heard Shri Bhaskar Bhadra, learned counsel for the appellants and Shri Vikas Goswami, learned AGA-I for the State.

2. By earlier order, living status report was called to ascertain the living status of the appellant no. 2 Dharam Pal.

3. The appeal in respect of appellant no. 2 has abated vide order dated 9.7.2018.

4. Appellants have preferred this criminal appeal against the judgment dated 15.10.1984 passed by VIIth Additional District and Sessions Judge, Bareilly in Sessions Trial No. 646 of 1983 wherein they have been convicted under Section 302 IPC read with Section 34 IPC and sentenced to undergo imprisonment for life.

5. Prosecution story, in nutshell, is that informant Rampal along with Krishna Kumar and Dhanpati (mother of Roop Kishore) went to watch Ramleela at 9:00 pm on 13.10.1983. They stayed there till 01:00 am. In the meantime, they also met Roop Kishore, who was also roaming along with Dharam Pal and Radhey Shyam. At about 01:00 am, they asked Roop Kishore to return home. Dharam Pal and Radhey Shyam said that they will visit their fields and guava orchard with Roop Kishore. Roop Kishore was not willing, but they took him along with them. When informant and his family members woke up in the morning, Roop Kishore was not present in home. The informant in search of Roop Kishore went at appellant's home, but they were not present at home. Subsequently he went to guava orchard where dead body of Roop Kishore was lying and, his neck and hands were tied. Some times later, Shiv Shankar told him that he had met Dharam Pal and Radhey Shyam in the morning at about 4:00 a.m who were coming from orchard side and were nervous. Informant firmly believed that his nephew Roop Kishore had been murdered by the appellants. Radhey Shyam and Dharam Pal are fast friends. Certain quarrel between Radhey Shyam and Roop Kishore arose over Radhey Shyam's sister. But their relations became normal from past 4-5 days .

6. Written Report (Ex. Ka. 1 at the trial) was submitted by informant Rampal on 14.10.1983 and F.I.R (Ex. Ka. 3 at the trial) was registered at Case Crime No. 178 of 1983, P.S. Aonla, District Bareilly on 14.10.1983 at 9:15 am. After conclusion of investigation, charge sheet under Section 302 IPC was submitted against the accused namely Dharam Pal and Radhey Shyam. Case was committed to Sessions Court for trial and charges against accused were framed under Section 302 IPC read with Section 34 IPC. Accused denied charges and claimed trial.

7. Eight witnesses were examined by the prosecution. Informant-Rampal was examined as P.W.-1 and he has proved his Written Report which is Ex. Ka.1. He has supported the version of FIR. PW-2 Krishna Kumar, who is cousin of deceased-Roop Kishore, has also corroborated the prosecution version. P.W.-3 Devidas, father of deceased, has stated that he was posted as Cabin Man at Aonla Railway Station. On the alleged day of murder, he was on duty from 8:00 p.m to 8:00 a.m. He reached at Railway Station at about 7:30 p.m. and there he saw Roop Kishore wandering

around with Radhey Shyam and Dharam Pal. When he inquired them, they told that they have come there for walk. On next morning when he returned, he came to know about murder. PW-4 Kali Charan has stated that at about 4:00 a.m., when he was on his way towards his fields, he met Dharam Pal and Radhey Shyam near tube well of Devi Das. When he inquired them as to where from they are coming, Dharam Pal said that they are coming from the fields. Later, at about 11:00 in the morning, he came to know that the dead body of Roop Kishore was found in orchard. PW-5 Constable Jakir Ali, has stated that sealed dead body of Roop Kishore was handed over to him by the Investigating Officer and he along with Constable Ram Dayal produced it before the doctor who conducted the postmortem. Dead body was delivered to family members after postmortem was over. PW-6 Shiv Shankar Lal has stated that on the date of incident, he was going towards his fields at about 4:00 am in the morning. He met the accused near the tube-well of Devi Das. When he inquired them as to where they are coming from, they said that they are coming from their fields. Later in the day, at about 10:00 am in the morning, when he came to know about the incident, he told Rampal that he had met with the accused, who were coming from tube-well. PW-7 Dr. Adarsh Sanghi has conducted postmortem of deceased Roop Kishore and has found following ante-mortem injuries:

"1. Contusion 3 cm x 2 Cm over right temporal region of scalp extending up to right eye brow.

2. Multiple abrasion 2 cm x 2 cm over the left side neck.

3. Multiple abrasion 11/2 cm x 1 cm over right side neck.

4. Abraded contusion on 1 cm x 1 cm over right side face over zygomatic bone."

On internal examination the right temporal and frontal bones were found fractured and clotted blood was found in the right temporal region in an area of 5 cm x 3 cm. Semi digested food was found in the stomach. According to PW-8 the death was caused due to shock and hemorrhage as a result of injury no. 1.

8. PW-8 S.O. Mohd. Anis has proved Ex. chick Ka.3 which was prepared by H.M. Rajesh Singh and a case was registered in the G.D. marked as Ext. Ka-4. The rope and the nara of the dead body was taken into police custody by S.I. Ram Chandra Singh vide fard Ex. Ka-5. He has also proved inquest report as Ex. Ka-6. Along with it, he has proved nakal report G.D., report R.I. photo nash, site plan marked as Ex. Ka. 7. He has also recorded statements of Devi Das, Smt. Dhanpati, Kali Charan, Krishna Kumar, Sri Jagpal etc. He arrested Dharam Pal on 17.10.1983 and Radhey Shyam on 21.10.1983 and after completing the investigation, submitted charge sheet against the accused persons.

9. After prosecution evidence was over, statements of the accused were recorded under Section 313 Cr.P.C. Accused Dharam Pal has denied all the allegations levelled against him and has stated that he was working under Ram Pal, but when he left there, Rampal became inimical and has falsely implicated him. Radhey Shyam stated that litigation pertaining to partition of land was pending between Nemchand and his father Sundar Lal. His father has mortgaged his land to Devi Das, who paid its rent. Nemchand was inimical towards him and got him falsely

implicated through Devi Das. The accused have produced DW-1 Fakirchand in their defence.

Finding of learned trial court

10. Learned trial court, on the premise that case is based entirely on circumstantial evidence, has held that three sets of witnesses have proved that deceased Roop Kishore was last seen alive in the company of two accused who were seen going with them towards the orchard. Firstly it has relied upon the testimony of PW-3 Devi Das, father of deceased,who has stated that he saw Roop Kishore roaming along with accused Dharam Pal and Radhey Shyam at the Railway Station. Secondly, it has referred to testimony of PW-1 Rampal Singh and PW-2 Krishna Kumar, who have stated that they had seen the deceased in the company of accused at about 1:00 on the night of the alleged incident. The third set of witnesses relied upon are PW-4 Kali Charan and PW-6 Shiv Shankar Lal, who have seen the accused returning from the side of the orchard at about 4:00 am. It was concluded by learned trial court that above witnesses have proved this fact that the deceased Roop Kishore was last seen with the accused soon before his dead body was recovered from the orchard.

11. The motive for the murder of Roop Kishore was discussed. The prosecution presented evidence from PW-1 Rampal, PW-2 Krishna Kumar, and PW-3 Devidas, who stated that Radhey Shyam and Roop Kishore quarrelled over an affair involving Radhey Shyam's sister. The accused Dharam Pal intervened four to five days before the incident. The court found that Radhey Shyam didn't reconcile and kept a grievance, which was the motive for the murder. The testimony of the three witnesses was sufficient to establish the motive as alleged in the FIR.

Argument by appellant's counsel

12. Learned counsel has submitted that prosecution claims Dhanpati, the deceased's mother, also accompanied PW-1 Rampal and PW-2 Krishna Kumar to Ramleela where they met the deceased and the appellants. However, she was not produced by the prosecution and deliberately withheld, casting doubt on the prosecution's version. Dhanpati was an important witness, and there was no reason for withholding her unless the prosecution could prove she was dead or incapacitated to testify. PW-1 Rampal and PW-2 Krishna Kumar's testimony is unreliable as they have made contradictory statements or improved their earlier versions. PW-1 Rampal initially in F.I.R has not stated that the appellants took the deceased to their field of groundnut, but later stated during his examination. PW-2 has also improved his earlier version.

13. Similarly, Rampal has stated that he personally went to search Roop Kishore in the morning, contrary to his examination-in-chief where he claimed to have done so on Dhanpati's direction. This discrepancy suggests that none of the witnesses were aware of the body lying in the orchard when they lodged the FIR. It also indicates that the prosecution witnesses were unaware of the actual culprits until the body was recovered, implicating the appellants based on mere suspicion. PW-6 Shiv Shankar Lal testified that he met the appellants while they were coming from the side of Devidas' tube well. However, no tube well is mentioned in the site plan. The prosecution has failed to provide an explanation for the absence of a

tube well at the site where the body was recovered and where PW-6 Shiv Shankar Lal met the accused. During his cross-examination, PW-6 Shiv Shankar Lal admitted that the accused were not alone at the time of the meeting, as other villagers were also there to answer nature's call. He also clarified that the accused were not residents of his mohalla but resided in another mohalla. Additionally, PW-6 Shiv Shankar Lal admitted to seeing the accused from their backside and identifying them based on their voice. However, the time of this meeting is relevant, as it was early morning, and it must have been dark at that time. Furthermore, PW-6 Shiv Shankar Lal admitted that he was not carrying a torch or any other light source, making it unlikely that he could have identified the accused by their voice in the dark.

14. The learned counsel for the appellants has pointed out that the prosecution has failed miserably to prove motive in this case. PW-1 Rampal, in his FIR, stated that there was a quarrel between Radhey Shyam and Roop Kishore about Radhey's sister, which was settled a few days ago. However, when PW-1 was examined by the prosecution, he claimed that the incident occurred a month before Roop Kishore's murder. However, accused Dharam Pal, settled the dispute. Other witnesses have also made similar statements. If this alleged incident between Radhey Shyam and Roop Kishore is admitted, it cannot be held as the motive for murder. The prosecution witnesses themselves have admitted that the matter was settled. Any minor quarrel or scuffle between two people cannot be imputed as the motive for committing a grave offence like murder. This fact is corroborated by the testimony of PW-1 Rampal and PW-6 Shiv Shankar Lal. PW-1 Rampal stated in the FIR that PW-6 Shiv Shankar Lal told him that the accused persons were nervous when he met them in the morning. However, PW-6 himself has not stated anything like that. If we consider PW-6's entire testimony, it becomes evident that when PW-6 Shiv Shankar Lal met the accused in the early morning, it was a normal meeting in the field where both the accused and other people were going to answer the call of nature.

15. Learned counsel for the appellants has placed reliance upon judgment **Rishi Pal vs. State of Uttrakhand (2013) 12 SCC 551** and **Kanhaiya Lal vs. State of Rajasthan (2014) 4 SCC 715**. It was submitted that present case hinges upon circumstantial evidence. In cases where there is no direct evidence and prosecution proceeds to prove its case upon circumstantial evidence, then it is mandatory for prosecution to prove that accused persons and deceased were last seen together before the occurrence. Apart from it, prosecution is bound to prove strong motive impelling the accused to commit murder if it desires conviction. Motive plays significant role in cases that rest entirely upon circumstantial evidence. Witnesses produced by the prosecution to prove that accused persons were accompanying the deceased before his dead body was recovered are not reliable and their testimony suffers from material discrepancies. Similarly, motive imputed upon accused persons is a weak motive and appellants cannot be convicted on the basis of a quarrel which was settled a month ago before the alleged incident took place.

Arguments of learned AGA-I

16. Learned AGA-I has submitted that prosecution from the very beginning has

come up with a case that the deceased Roop Kishore along with the appellants was seen by PW-1 Rampal and PW-2 Krishna Kumar in Ramleela fair. Their testimony is unblemished and proves that when PW-1 Rampal, PW-2 Krishna Kumar along with Dhanpati were at Ramleela fair, they met with deceased along with appellants. They also stated that they have stayed there till 1:00 am in the night and when they asked the deceased Roop Kishore to return home along with them, accused persons took Roop Kishore on the pretext of visiting their fields even when Roop Kishore was not inclined to accompany. Prosecution story is also consistent on this point that earlier to this incident, certain quarrel over Radhey Shyam's sister had occurred between Roop Kishore and Radhey Shyam. Dead body of Roop Kishore was found some hours later after the accused persons and deceased were seen together. Therefore, it could not be a co-incidence that dead body of the deceased was found on the very next day when the appellants, despite unwillingness of Roop Kishor, took him away with them. It can not be ruled out that the appellants driven by the motive, as stated by prosecution witnesses, took Roop Kishore with them and committed his murder.

Conclusion

17. After hearing the learned counsel for the appellants at length, we have carefully perused the judgment of the trial court and considered the arguments advanced by the learned counsel. The prosecution case is based upon circumstantial evidence. It is bound to prove that none except the accused persons committed murder as they were last seen with the deceased. Said circumstance alone may not be sufficient to convict the accused person unless prosecution is able to prove that accused persons also had motive to kill the deceased person and/or there are other attending facts and circumstances to establish that the appellants alone could have caused that occurrence, and that the occurrence may not have been caused in any other way. To that extent, the evidence of last seen is one of the links in the chain of circumstances that the prosecution must prove.

18. In these circumstances, first, it is necessary to examine the testimony of those witnesses who claim to have seen the accused persons along with the deceased before the alleged murder was committed. As per FIR, informant Rampal and PW-2 Krishna Kumar had last seen the appellants in the company of the deceased Roop Kishore. Learned trial court has examined their testimony. Both witnesses are consistent from the very beginning that they had gone to Ramleela fair along with Dhanpati where they met the appellants and the deceased in the night at 9:00 pm as well as at 1:00 am in the night when they left. They have also stated that though they asked Roop Kishore to return along with them, but he went along with the appellants.

19. The appellants' counsel challenged their testimony regarding certain statements made during trial. Both witnesses claimed that the appellants asked Roop Kishore to accompany them to their fields to look after their guava grove and groundnut crop, fearing villagers might damage them. Yet, this statement does not spring from the FIR version. It was first made before the trial court. Even if it is considered an improvement, it may not be enough to discard the testimony of those witnesses. It may be an omission. Yet, Rampal (PW-1)

maintained - when he discovered (the next morning) that the deceased was not at home, he went to check if, the deceased was in the hut situated on his agricultural field. During his cross-examination, he also described wholly normal behaviour of the accused at the Ramlila where he met them with the deceased. All three were roaming together, and he had a normal conversation with them. The accused and the deceased remained together over a long period of four hours. It clearly suggests, no unnatural or unusual or suspicious behaviour was noted by him, at that time. In that circumstance, he returned home leaving the deceased in the company of his friends. That is a wholly normal and natural occurrence disclosed. The fact that he went in search of the deceased to their hut located on the agricultural field coupled with the fact that his dead body was found on that field may indicate that the occurrence was caused after the deceased may have gone to rest there, after returning from the Ramlila. Notably, his dead body was not recovered from the agricultural filed of the accused.

20. Then Krishna Kumar (PW-2) also proved similar occurrence. In that, he specified, when the deceased was asked [by him, Rampal (PW-1) and Dhanpati (not examined)], to return home with them, the appellants suggested they would first go to their agricultural filed. Also, he proved, the next date it was learnt that the deceased had been murdered, after the discovery of his dead body in the orchard. He too proved wholly normal behaviour noticed by him - between the accused and the deceased. All being friends were seen roaming around and sitting by the stage watching enactment of the Ramlila.

21. Dhapati, the mother of the deceased, who also described to have last seen her son in the company of the appellants, was not examined at the trial. No reason exists for the same.

22. One more witness i.e., PW-3 Devi Das, who is father of the deceased, has deposed that he reached the Railway Station at 7:30 pm on 13.10.1983 where he found Roop Kishore wandering with the appellants. As far as this witness is concerned, his testimony does not further support the prosecution case. Yet, it extends the normal/uneventful company to five and half hour. It is settled law that theory of "last seen together" comes into play, where time gap between point of time when deceased was last seen alive with accused and when deceased was found dead, is so small that possibility of any person other than accused being author of crime becomes impossible. In this particular case, PW-3 Devi Das, had seen the appellants with Roop Kishore at least 12:00 hours before his dead body was found.

23. Testimony of PW-4 Kali Charan and PW-6 Shiv Shankar Lal, produced by prosecution to prove that appellants were seen by above witnesses near the place of occurrence at about 4:00 am in the morning, is also not significant. Firstly, because they have not seen the appellants and the deceased together, rather they have only stated that both appellants were found by them in the morning coming from the side of orchard i.e. the place where dead body was found. Secondly, even their said deposition up to that extent is not much reliable. PW-4 Kali Charan in his examination-in-chief has stated that he met Dharam Pal near tube well of Devi Das at about 4:00 am, but after a pause has stated that Radhey Shyam was also accompanying Dharam Pal. Uncertainty in examination-

in-chief of this witness about presence of both appellants at the time he met them itself casts doubt. Similarly, PW-6 Shiv Shankar Lal has stated that he could identify persons from 10-15 paces. He has also stated that it was dark when he met the accused and he was not carrying any source of light with him. Interestingly he has also admitted that appellants were 20-25 paces away from him when he met them and he identified them from backside. Further he has stated that he identified them through their voice not by looking at them from backside. He has also admitted that both appellants are residents of different mohallas. Testimony of this witness regarding the way he identified the appellants is contradictory and does not inspire confidence. Therefore, on one hand, above witnesses have no relevance because they have not seen the appellant along with the deceased and on the other hand, their testimony itself is contradictory and unreliable. Therefore, prosecution cannot claim these witnesses who have lastly seen the appellants with the deceased before the alleged incident.

24. Therefore, testimony of PW-1 Rampal and PW-2 Krishna Kumar is relevant for consideration as to whether they can be held to be the persons who had last seen the deceased and the appellants together. Both witnesses have stated that they saw the appellants and the deceased together in night at 1:00 am before they departed while the dead body of the deceased was discovered at 7:00 am on 14.10.1983. Postmortem of deceased was conducted on 15.10.1983 at 4:00 pm. Dr. Adarsh Sanghi, who conducted postmortem, opined that death might have occurred 36 hours ago. It means that the alleged murder was committed in between 2:00-3:00 am. Therefore, above two witnesses could be safely held as the persons who have lastly seen the deceased in the company of the appellants. Testimony of above witnesses is unblemished on this particular aspect that they were the persons who saw the deceased in the company of the appellants soon before his murder. From the foregoing discussions, it is concluded that prosecution has proved that PW-1 and PW-2 have witnessed the appellants along with deceased Roop Kishore soon before his murder.

25. Now the next point for consideration is whether prosecution has been able to prove the motive imputed against appellants ?

26. In **Jan Mohammad Vs. State of Bihar, (1953) 1 SCC 5,** it was held, motive is important element in chain of presumptive proof where the prosecution story is based purely on circumstantial evidence. In that context, it was observed as below :

"17. Motive is a relevant fact under the Evidence Act (Section 8). It is an important element in a chain of presumptive proof where the evidence is purely circumstantial, but it may lose importance in a case where there is direct evidence by witnesses implicating the accused. In a case such as the present where the prosecution evidence itself shows that the relations between the deceased and the appellants were cordial, the absence of an apparent motive, though not necessarily fatal to the prosecution case, may reasonably be regarded as a fact in favour of the accused. We think, therefore, that the attempt to prove a motive against any of the appellants has failed."

(emphasis supplied)

27. Similarly, in **Sakharam Vs. State of M.P., (1992) 2 SCC 153**, it was observed, lack of motive in a prosecution case conferred that circumstantial evidence may lose relevance only where evidence is overwhelming. Otherwise lack of motive may be a factor that may work to the benefit of the defence. In that regard, it was observed as below :

"9. There is absolutely no motive on the part of the appellant to murder the deceased. Absence of motive may not be relevant in a case where the evidence is overwhelming but it is a plus point for the accused in a case where the evidence against him is only circumstantial."

(emphasis supplied)

28. Then, in **Arjun Marik Vs. State of Bihar, 1994 Supp (2) SCC 372,** it was again observed that conclusion of innocence may not be reached merely because there is lack of evidence of motive, if the involvement of the accused is otherwise established. At the same time, the Supreme Court cautioned, in cases of circumstantial evidence existence of strong motive is important to exclude reasonable possibilities of anyone else being the perpetrator of the crime. In that regard, it was observed as below :

"10. Learned counsel for the appellants first contended that the motive for the crime is said to be the greed for wealth and reluctance of deceased Sitaram to advance further loan to the appellant, Arjun Marik but in fact there is no material on record either to suggest that the deceased Sitaram was carrying on money lending business or that the appellant Arjun Marik was indebted to him or ever took any sums on loan from the deceased. In this connection it may first be pointed out that mere absence of proof of motive for commission of a crime cannot be a ground to presume the innocence of an accused if the involvement of the accused is otherwise established. But it has to be remembered that in incidents in which the only evidence available is circumstantial evidence then in that event the motive does assume importance if it is established from the evidence on record that the accused had a strong motive and also an opportunity to commit the crime and the established circumstances along with the explanation of the accused, if any, exclude the reasonable possibility of anyone else being the perpetrator of the crime then the chain of evidence may be considered to show that within all human probability the crime must have been committed by the accused."

(emphasis supplied)

29. Motive for alleged murder in this case is said to be a quarrel between deceased Roop Kishroe and Radhey Shyam, a month prior to alleged incident. All the witnesses i.e., PW-1 Rampal, PW-2 Krishna Kumar and PW-3 Devi Das have consistently stated that Radhey Shyam and Roop Kishore were friends and both quarrelled on certain issue which was related to sister of Radhey Shyam. Informant Rampal in the FIR has stated that said issue occurred but the deceased and Radhey Shyam again became friendly 4-5 days before the incident. Neither he has given any details of quarrel nor has stated about the time of its occurrence. During his examination-in-chief, he stated that the said incident occurred one month before the incident. He has further stated that said dispute was settled after Dharam Pal intervened. PW-2 Krishna Kumar has also

said the same fact. When PW-2 Krishna Kumar was cross examined, he said that he was not aware of the quarrel but Dhanpati informed him about it. He has also stated that said quarrel occurred as sister of Radhey Shyam was molested. He further stated, he had disclosed it to the I.O. and if I.O. has not mentioned in his statement, he cannot tell the reason for it. Similarly, PW-3 Devi Das has also stated similar facts in his examination. In his cross-examination, he has stated that he became aware of the said fact one month prior to the incident after it was told to him by his family members. Testimony of PW-2 Krishna Kumar and PW-3 Devi Das reveals that said fact was not in their personal knowledge but they were told of it by their family members.

30. Therefore, only one witness PW-1 Rampal remains who has alleged that a quarrel had occurred because of the sister of the deceased. If statement of this witness is considered, it becomes apparent that he has only made a reference of a simple quarrel, without disclosing the reason behind it. He has not disclosed the details and particulars of the incident as well as the quarrel which occurred as a consequence. Hence, the alleged motive as relied upon by the prosecution cannot be accepted. Before imputed, motive is held as an important link in cases of circumstantial evidence, it is necessary for the prosecution to prove that said motive was so strong and immediate that it could instigate the accused to commit the crime. In this case, prosecution witnesses have alleged about a simple quarrel between the deceased and Radhey Shyam. None of the witnesses have disclosed the degree of dispute which occurred between the two. Even the alleged cause-molestation has not been proven by PW-1. It is not clear whether said molestation was committed by the deceased or someone else as it is difficult to infer from their statement as to who committed it. In absence of specific details, no inference can be drawn. Before it can be held that motive put forth by prosecution is sufficient to hold the appellants guilty, it is imperative for the prosecution to lead evidence of such quality from which it can be inferred that a particular incident was of such nature which could compel the accused persons to commit the murder. Even if version of prosecution is accepted then also motive could be imputed only against Radhey Shyam and Dharam Pal does not have any motive to do so as alleged.

31. From the foregoing discussions, it is evident that prosecution has been successful in proving that appellants are the persons who were last seen with the deceased. But it is trite law that circumstances of last seen together does not by itself necessarily lead to an inference that it was accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. In this reference it will be relevant to note that in this particular case which is squarely covered by circumstantial evidence it was necessary for the prosecution to establish a strong enough motive behind the alleged murder along with the fact that accused and the deceased were last seen together. But prosecution has miserably failed to prove motive advanced by it. Alleged motive is weak and the appellants cannot be convicted on the basis of mere last seen with the deceased. There is no other circumstance of recoveries etc. to link the appellants with the occurrence. Therefore, appellants deserve to be acquitted, on a benefit of doubt, thus exists.

32. In view of the above, the present appeal is **allowed** and the appellant no. 1 Radhey Shyam is acquitted of the charges.

33. Accordingly, judgment of conviction and order of sentence is set aside. The appellant Radhey Shyam is on bail and his personal bond is cancelled and sureties are discharged and further directed to furnish bail bond in compliance of Section 437-A Cr.P.C. to the satisfaction of the Court concerned within two month from today.

34. The Trial Court's record be remitted back along with copy of this judgment.

35. Compliance report be submitted to this Court at the earliest. Office is directed to keep the compliance report on record.

(2025) 7 ILRA 281
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 07.07.2025

BEFORE

THE HON'BLE NALIN KUMAR SRIVASTAVA, J.

Criminal Appeal No. 5718 of 2025

Lalit Kumar ...Appellant
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Appellant:
Maha Prasad, Sunil Kumar I

Counsel for the Respondents:
G.A., Kameshwar Singh

ISSUE FOR CONSIDERATION

Whether the Special Judge erred in refusing to direct police investigation and instead registering the application as a complaint case?

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 - Section 156(3), 202(1) - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 14-A(1) - Criminal Appeal u/s 14-A(1) of the SC/ST Act, - challenging the impugned order passed by the Special Judge (SC/ST Act), whereby the trial court treated the application of the appellant under Section 156(3) Cr.P.C. for lodging of FIR against the accused persons as a complaint case – and dismissed the prayer for police investigation - plea taken that, the Magistrate was obligated to direct FIR registration for cognizable offences - court finds that - A Magistrate or Special Judge has judicial discretion under Section 156(3) Cr.P.C. to either direct police investigation or treat the application as a complaint – and If the complainant is aware of all facts, parties, and evidence, and no recovery or police assistance is required, the court may proceed under Chapter XV of Cr.P.C. – further, the presence of CCTV footage does not mandate police investigation if the court can obtain it during inquiry under Section 202 Cr.P.C. – held – court, relying on authoritative judgments, upheld the Magistrate's discretion to proceed under the complaint procedure when circumstances do not necessitate police investigation – further, concluded that, it was not a case which requires any investigation by the police and it ought to be registered as a complaint case – court founds no illegality or impropriety in the impugned order – consequently, that may require any interreference through exercise of appellate jurisdiction of this court – accordingly, appeal is dismissed. (Para – 15, 16, 17, 18)
Appeal Dismissed**.** (E-11)

CASE LAW CITED

Suresh Chand Jain v. State of Madhya Pradesh, AIR 2001 SC 571 - Ram Babu Gupta v. State of U.P., (2001) 43 ACC 50 (F.B.) - Sukhwasi v. State of U.P., (2007) 59 ACC 739.

LIST OF ACTS

Code of Criminal Procedure, 1973 (Cr.P.C.), Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

LIST OF KEYWORDS

Criminal complaint case, element of cognizable offence, Judicial discretion, Police investigation, refuse to registration of FIR, Res integra, clunky plea, relevant evidence.

CASE ARISING FROM

Judgment dated 23.09.2024 passed by the Special Judge (SC/ST)/Additional Session Judge, Ballia in Criminal Misc. Case No. 130 of 2024 - Police Station – Kotwali, District – Ballia.

APPEARANCE OF PARTIES

Counsel for Appellant: - Shri Maha Prasad.
Counsel for Respondent: - Shri Kameshwar Singh, AGA.

(Delivered by Hon'ble Nalin Kumar Srivastava, J.)

1. This criminal appeal under Section 14-A (1) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (in short 'the SC/ST Act') has been preferred by the appellant - Lalit Kumar challenging the order dated 23.09.2024 passed by the Special Judge (SC/ST Act) / Additional Session Judge, Ballia in Criminal Misc. Case No.130 of 2024 (Lalit Kumar Vs. Kaushal Kumar Singh, Advocate and others), Police Station Kotwali, District Ballia whereby the application moved by the appellant under section 156 (3) Cr.P.C. was ordered to be registered as a complaint case.

2. Heard Sri Maha Prasad, learned counsel for the appellant, Sri Kameshwar Singh, learned counsel for the opposite party nos.2 to 6 as well as the learned A.G.A. for the State and perused the entire record.

3. It is submitted by learned counsel for the appellant that he had moved an application under section 156 (3) Cr.P.C. for lodging of the F.I.R. against the accused persons but the learned trial court by passing an illegal order committed gross mistake and ordered the said application to be treated as complaint case. It is also submitted that the appellant belongs to the weaker section of the society and is a member of SC/ST community. The opposite party nos.2 to 6 are also advocate along with the appellant in the District Court at Ballia but they are very powerful and influential persons and always use to threaten the appellant. On 1.3.2024 at about 12:00 Noon, the appellant saw the opposite parties making assault upon the librarian Shivji Singh, who is an employee in Criminal & Revenue Bar Association, Ballia and when he himself protested the same they hurled abuses by caste related remarks and also made assault upon him by kicks and fists and in the meanwhile, on exhortation of opposite party no.2, the opposite party no.3 kicked him over his chest and he sustained serious injuries. The incident was recorded in the CCTV camera. The matter was reported to the police station and he was medically examined but the police subsequently did not lodge the F.I.R. and when an application was moved to the senior police officials and other authorities on 6.3.2024, the S.H.O., P.S. Kotwali called him and pressurized to make compromise with the opposite parties and refused to lodge his F.I.R. Ultimately an application under section 156 (3) Cr.P.C. alongwith the medical papers, the copy of the application given to the S.P., Ballia and other relevant documents was moved to the court but the learned court declined to pass an order for the registration of the F.I.R. The learned Special Judge completely ignored the fact that the appellant was not capable of collecting the evidence of CCTV footage and other relevant evidence and expressed its view that since the appellant is fully acquainted with the opposite parties and no

serious injuries were found in the supplementary medical report, the matter was not of such kind that required an F.I.R. to be registered. It is further submitted that the impugned order has been passed in an arbitrary manner ignoring the settled legal principles for the disposal of an application under section 156 (3) Cr.P.C. There is illegality and perversity in the said order and the same is liable to be quashed by this Hon'ble Court.

4. Per contra, learned counsel for the opposite party nos. 2 to 6 as well as learned A.G.A. opposed the appeal.

5. The core issue involved in this matter is that whether a Special Judge has power to treat the application under section 156 (3) Cr.P.C. as a complaint and secondly if it is so, whether in the instant case the Court concerned committed error for not passing an order to lodge a police case on the application under section 156 (3) Cr.P.C. but passed an order of treating it as a criminal complaint. As contended by learned counsel for the appellant, the learned Special Judge had no power to treat his application under section 156 (3) Cr.P.C. as a complaint. He also assailed the impugned order on the ground that the Special Judge (SC/ST Act) merely impressed upon the fact that since the appellant was fully aware of all the facts relating to the incident and he was also acquainted with the opposite parties by their names and address, a Police investigation in the present case was never necessitated and passed the impugned order to treat the application under section 156 (3) Cr.P.C. as a complaint, which was an erroneous view taken by the learned Special Judge (SC/ST Act).

6. The Court firstly enters into the dispute relating to the power of the Magistrate to register an application under section 156 (3) Cr.P.C. as a criminal complaint. The learned counsel for the appellant proceeds with the plea that since the allegations made in the said application disclosed the commission of a cognizable offence, the Magistrate was bound to pass an order directing to the police to register F.I.R. in this matter.

7. The said dispute has no more Res integra and on the basis of relevant judicial pronouncements it can be averred that the law recognises the power of the Court to treat an application under section 156 (3) Cr.P.C. as a criminal complaint.

8. The Hon'ble Supreme Court got an opportunity to deal with the issue in **Suresh Chand Jain Vs. State of Madhya Pradesh & Another, A.I.R. 2001 Supreme Court 571** and the legal dictum promulgated by the Hon'ble Supreme Court is extracted here-in-below :

"But a magistrate need not order any such investigation if he proposes to take cognizance of the offence. Once he takes cognizance of the offence he has to follow the procedure envisaged in Chapter XV of the Code. A reading of Section 202 (1) of the Code would convince that the investigation referred to therein is of a limited nature. The magistrate can direct such an investigation to be made either by a police officer or by any other person. Such investigation is only for helping the magistrate to decide whether or not there is sufficient ground for him to proceed further. This can be discerned from the culminating words in Section 202 (1) i.e. or direct an investigation to be made by a police officer or by such other persons as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for

proceeding. This is because he has already taken cognizance of the offence disclosed in the complaint, and the domain of the case would thereafter vest with him."

9. Further, a Full Bench of this High Court in **Ram Babu Gupta and another Vs. State of U.P. and others, (2001) 43 ACC 50 (F.B.)** held that when a complaint containing elements of a cognizable offence is received by a Magistrate, different courses are open to him. He may with the aid of power conferred by Section 156 (3) Cr.P.C. direct the police to register a case and investigate in the manner as provided in Chapter XII or he may treat the same as complaint and proceed in the manner contemplated in Chapter XV of the Code. It was further held that if he adopts the second mode in terms of Chapter XV, his decision cannot be faulted with for not acceding to the request of the complainant for an investigation by the police.

10. A Division Bench of this Court in **Sukhwasi Vs. State of Uttar Pradesh, (2007) 59 ACC 739** also held in specific terms that a Magistrate can treat an application under section 156 (3) Cr.P.C. as a complaint and the Magistrate besides even after taking congnizance and proceeding under Chapter XV of the Code order investigation even though of a limited nature.

11. All the three judgments quoted above are mentioned in the impugned order passed by the learned Special Judge, Ballia. The legal position was further clarified in **Rameshbhai Pandurao Hedau Vs. State of Gujarat, (2010) 4 Supreme Court Cases 185** wherein the power of the Magistrate to treat an application under section 156 (3) Cr.P.C. as a complaint has been reiterated by the Hon'ble Supreme Court and the same echoes in the findings given by the Hon'ble Supreme Court in Priyanka Srivastava and Another Vs. State of U.P. and others, 2015 (6) SCC 287.

12. From the above, no doubt remains that if the Magistrate receives an application under section 156 (3) Cr.P.C. disclosing a cognizable offence, he is fully empowered to treat it as a private criminal complaint and an argument contrary to that is a clunky plea.

13. Another issue to be examined is as to what type of applications moved under Section 156 (3) Cr.P.C. may be treated as a complaint case.

14. The authority judgment on the issue was passed by the learned Single Judge of this Court in **Gulab Chand Upadhyaya Vs. State of U.P. and others, 2002 All LJ 1225.** While dealing with such issue, certain suggestions were given to the Magistrate in the aforesaid pronouncement. The relevant portion of the said judgment is extracted as here-in-below :

"21. The scheme of Cr.P.C. and the prevailing circumstances require that the option to direct the registration of the case and its investigation by the police should be exercised where some "investigation" is required, which is of a nature that is not possible for the private complainant, and which can only be done by the police upon whom statute has conferred the powers essential for investigation, for example

(1) where the full details of the accused are not known to the complainant and the same can be determined only as a result of investigation, or

(2) where recovery of abducted person or stolen property is required to be

made by conducting raids or searches of suspected places or persons, or

(3) where for the purpose of launching a successful prosecution of the accused evidence is required to be collected and preserved. To illustrate by example cases may be visualised where for production before Court at the trial (a) sample of blood soaked soil is to be taken and kept sealed for fixing the place of incident; or (b) recovery of case property is to be made and kept sealed; or (c) recovery under Section 27 of the Evidence Act; or (d) preparation of inquest report; or (e) witnesses are not known and have to be found out or discovered through the process of investigation.

22. But where the complainant is in possession of the complete details of all the accused as well as the witnesses who have to be examined and neither recovery is needed nor any such material evidence is required to be collected which can be done only by the police, no "investigation" would normally be required and the procedure of complaint case should be adopted. The facts of the present case given below serve as an example. It must be kept in mind that adding unnecessary cases to the diary of the police would impair their efficiency in respect of cases genuinely requiring investigation. Besides even after taking cognizance and proceeding under Chapter XV the Magistrate can still under Section 202(1) Cr. P.C. order investigation, even though of a limited nature (see para 7 of JT (2001) 2 (SC) 81 : ((2001) 2 SCC 628 : AIR 2001 SC 571)"

15. If the aforesaid principle of law is translated into the facts and circumstances of the instant case, the incident has taken place in the Court campus in the day time, when the Court was open. It is pertinent to note that both the sides the appellant as well as the respondents no.2 to 6 are advocates in the same Civil Court at District Ballia. The proposed accused persons and the appellant are very well acquainted with each other. The appellant is fully aware of the names and addresses of the proposed accused persons. The witnesses of the incident are also known to him and their names have been specifically mentioned in the application under Section 156 (3) Cr.P.C. The contents of the said application show that no issue of recovery of any property or other incriminating article is required to be collected in a police investigation, hence no evidence has to be collected by the police and the complainant is competent enough to adduce relevant evidence before the Court at his own level.

16. Learned counsel for the appellant has made a submission that since the incident has been captured in CCTV camera installed in the Court campus, the appellant is not capable of taking the extracts of the CCTV footage and since in a police investigation the police may easily collect the same which is a relevant piece of evidence against the proposed accused persons, the matter should have been sent to the police for investigation after lodging of an F.I.R. Per contra, the learned State counsel has made a convincing submission that the copy of the CCTV footage may be obtained by the Court itself if it proceeds to conduct an enquiry under Section 202 (1) Cr.P.C. either itself or directs an investigation by the police in a complaint case. I find myself in complete agreement with what was pleaded by the learned State counsel.

17. The copies of the medical reports have been filed by the appellant alongwith

his application under Section 156 (3) Cr.P.C. and further he has submitted his caste certificate as well before the Court. Hence, there appears no need for passing an order for registration of F.I.R. and investigation by the police because the appellant himself is fully aware with the names and addresses of the accused persons and he is also having entire relevant evidence pertaining to the alleged incident. Hence, the learned Special Judge applying the correct approach rightly held that it was not a case which requires any investigation by the police and it ought to be registered as a complaint case. The abovementioned issue is decided in the aforesaid manner.

18. Hence, from the above discussion and relying upon the pronouncements made by the Hon'ble Supreme Court and by this Court as well, I do not find any illegality or impropriety in the impugned order that may require any interference through exercise of appellate jurisdiction of this Court. The correctness of the impugned order is not liable to be questioned. The learned Magistrate has committed no mistake in passing the order to treat the application under Section 156 (3) Cr.P.C. moved by the appellant as a criminal complaint. The appeal lacks merit and is liable to be dismissed.

19. The appeal is accordingly **dismissed**.

(2025) 7 ILRA 286
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 17.07.2025

BEFORE

THE HON'BLE ARINDAM SINHA, J.

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

First Appeal No. 285 of 2025
&
First Appeal No. 249 of 2025

Dr. Prakhar Kumar ...Appellant
Versus
Dr. Aditi Dhaundiyal ...Respondent

Counsel for the Appellant:
Hemant Kumar

Counsel for the Respondent:
Piyush Shukla, Suresh Kumar Gupta, Vashishtha Narayan Tripathi

Issue for Consideration

Matter pertains to interim custody/visitation rights passed by Family Court u/s 12 of the Guardians and Wards Act, directing father to have visitation rights and video conferencing with children, is appealable u/s 19 of Family Courts Act, and if so, whether appeals filed by father and mother seeking exclusive custody of children should be allowed or dismissed in light of subsequent modifications of interim custody by Family Court and pendency of main petition for guardianship and permanent custody.

Head Notes

Guardians and Wards Act, 1890 - s. 12(1) - Family Courts Act , 1984 - s. 19 - Code of Civil Procedure, 1908 - Order XXXIX - Husband and wife, filed cross-appeals against Family Court's order passed u/s 12 of Guardians and Wards Act, 1890, granting father visitation rights thrice a month and video contact with minor children - Husband and wife sought exclusive custody - During pendency, Family Court modified interim custody orders several times and both parties also approached Supreme Court through SLPs - High Court considered whether such interlocutory order was appealable u/s 19 of Family Courts Act - Justification:

Held: Order of interim custody, was modified by Family Court by order dated 30.05.2025 on

application made by appellant-father - It was modified by Family Court again on 18.06.2025 on another application made by father - Respondent-mother also sought modification and upon her application, previous orders modified by Family Court by order dated 23.06.2025 - Factual position indicates that matter relating to interim custody still being contested by parties before Family Court and has not attained finality - Impugned order has been rendered ineffective due to supervening events obviating need for any intervention by Court at this stage - Later developments changed circumstances in such a way that any adjudication on merits of impugned order would have no meaningful effect on rights of parties - In view of changed circumstances, both appeals have lost efficacy and accordingly dismissed [Paras 21, 25, 28, 30] (E-13)

Case Law Cited

Savitha Seetharam v. Rajiv Vijayasarathy Rathnam, 2020 SCC OnLine Kar 2747- relied on

Valliamma Champaka Pillai v. Sivathanu Pillai, (1979) 4 SCC 429; Dr. Geetanjali Aggarwal v. Dr. Manoj Aggarwal, 2024 SCC Online Del 7220 - referred to.

List of Acts

Family Courts Act , 1984; Guardians and Wards Act, 1890; Code of Civil Procedure, 1908

List of Keywords

Custody of minor children; Interim custody; Visitation rights (physical and virtual contact); Maintainability of Appeal; Revision jurisdiction; Interim protection of person and property; Interlocutory order; Welfare of the child; Legal guardian; Reconciliation between parents; Consent order; Modification of custody order; Liberty to approach Family Court.

Case Arising From

APPELLATE JURISDICTION: First Appeal No. - 285 of 2025

Connected with

First Appeal No. 249 of 2025

From the Judgment and Order dated 19.02.2025 of the Family Court, Gautam Buddh Nagar in GW. No. 159 of 2024

Appearances for Parties

Advs. for the Appellant:
Hemant Kumar.

Advs. for the Respondent:
Piyush Shukla, Suresh Kumar Gupta, Vashishtha Narayan Tripathi.

(Delivered by Hon'ble Arindam Sinha, J.)
&
(Hon'ble Dr. Yogendra Kumar Srivastava, J.)

1. Two appeals have been listed together. In both stand impugned order dated 19th February, 2025 made by the Family Court directing visitation, three times a month, for the father to have physical contact with the children in presence of the mother and also video conferencing with conditions. Father of the children has preferred First Appeal no.285 of 2025 and the mother, First Appeal no.249 of 2025. We note that the mother's appeal was filed prior in time. English Translation made by the father, of impugned order dated 19th February, 2025, is reproduced below.

"The said file is fixed for order. Both the parties have been heard on the application for interim custody 6C. ***I also spoke to the minor children Khwaish and Praditya separately in my chamber. After talking to the minor children, it was found that they have no knowledge of any dispute going on between their parents and they are well connected with their parents, maternal and paternal grandparents.*** *Both the children are young at present and they need the company of both parents. Therefore, the opposite party Mrs. Aditi is ordered to ensure that the minor children meet the petition for 2 hours*

on the second, third and fourth Sunday of every month at any public place or any place of the children's choice where CCTV cameras are present. During the meeting, the paternal grandparents of the minor children will also be free to meet them. Mrs. Aditi is free to be present at the said place by maintaining proper distance. Mrs. Aditi is also ordered to ensure that the minor children talk to their father and paternal grandparents on video call every Tuesday and Thursday of the week between 7:00 pm and 8:00 pm. Both the parties are ordered not to say any negative thing in front of the minor children during the meeting and conversation. Accordingly, the interim custody application 6c is disposed of. The file may be presented on 29.03.2025 for reply."

(emphasis supplied)

2. Section 12(1) in Guardians and Wards Act, 1890 is reproduced below.

***"Section 12(1)** The Court may direct that the person, if any, having the custody of the minor shall produce him or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper"*

3. An earlier Bench, to which one of us was party (Arindam Sinha, J.) had made order dated 16th April, 2025 on the husband's appeal moved. Text of the order is reproduced below.

"1. Mr. Mishra, learned advocate appears on behalf of appellant, who is father of two children, a little boy and girl. He submits, his client had filed for custody of the children, as against the mother. On query he submits, there has not yet been any matrimonial litigation.

2. His client made application under section 12 in Guardians and Wards Act, 1890 for visitation including overnight stay by the children, with him. By impugned order dated 19.02.2025, the Family Court directed visitation, three times a month for physical contact in presence of the mother and video conferencing with conditions. There is no mention regarding his client's claim for overnight stay with the children. Respondent no.2 (the mother) has also filed appeal against said order.

3. He relies on view taken by a Division Bench of the High Court of Karnataka in Savitha Seetharam versus Rajiv Vijayasarathy Rathnam, available at 2020 SCC OnLine Kar 2747, inter alia, paragraph 16. He seeks direction in modification of impugned order for his client to have substantial visitation and contact rights.

4. Mr. Shukla, learned advocate appears on behalf of respondent, whose client has filed First Appeal no.249 of 2025 (Dr. Aditi Dhaundiyal versus Dr. Prakhar Kumar) and submits, welfare of the children lies in total custody of his client. He relies on judgment of the Supreme Court in Yashita Sahu versus State of Rajasthan, reported in (2020) 3 SCC 67, paragraph no.20.

5. On query, Mr. Shukla submits, his client is ready to reconcile with appellant. Mr. Mishra submits likewise.

6. It is unfortunate that the children are deprived of having both their parents. In view of submission at the Bar

regarding reconciliation, list as fresh on 02.05.2025 marked at 02:00 p.m. The parties (husband and wife) may be present in Court, for us to ascertain if reconciliation or otherwise agreement between them for purpose of the appeal, is possible. Till then direction made in impugned order be complied with. Respondent might allow some further contact, if she will."

Appellant father filed special leave to appeal petition (SLP) in the Supreme Court against above order dated 16th April, 2025, disposed of by said Court on order dated 29th May, 2025. Text of the order is reproduced below.

"We dispose of this Special Leave Petition by reserving liberty to the petitioner herein to seek appropriate orders with regard to interim custody of the minor children for the purpose of exercising interim custody during summer vacation.

It is needless to observe that if such a prayer is made by the petitioner herein before the concerned Family Court, the same shall be considered expeditiously and in accordance with law having regard to the fact that presently summer vacation is on.

The aforesaid order has been made being mindful of the fact that the matter is pending before the High Court and bearing in mind that presently the summer vacation is on.

Pending application(s), if any, shall stand disposed of"

4. This Court re-opened after its summer vacation, on 1st July, 2025. We passed order dated 8th July, 2025. Reproduced below are few paragraphs from our said order.

"Pursuant to aforesaid order of the Supreme Court, appellant approached the Family Court. Said Court passed order dated 30th May, 2025, directing interim custody of the children to be with appellant between 1st and 16th June, 2025, during their summer vacation. Dr. Mishra submits, the order was not complied with by respondent. His client again applied to the Family Court. There was modification on direction for interim custody between 20th and 30th June, 2025. This direction was also not complied with by respondent, who also applied for modification. Ultimately, there was order dated 23rd June, 2025 by the Family Court on consent of the parties, to have day custody for ten days thereafter.

Dr. Mishra submits further, in the meantime, respondent had filed for special leave to appeal (SLP) before the Supreme Court against order dated 30th May, 2025, by which interim custody of fifteen days had been initially directed. ***Respondent's SLP was dismissed as withdrawn on order dated 30th June, 2025 of the Supreme Court. Text of said order dated 30th June, 2025 is reproduced below.***

"The Special Leave Petition is filed questioning the order of the Family Court dated 30.05.2025.

Learned counsel for the petitioner does not press the Special Leave Petition seeks liberty to withdraw and workout the available remedies either before the High Court or before the Family Court*.*

By granting liberty as prayed for, the Special Leave Petition stands dismissed as withdrawn*.*

Pending application(s), if any, shall stand disposed of.

xxx xxx xxx"

(emphasis supplied)

5. Impugned order was made under section 12. There is no doubt it is an interlocutory order because appellant husband's prayer in his petition was for custody, in which he had applied for interim custody, dealt with by impugned order. The main prayer is reproduced below.

"A. Declare/appoint the petitioner who is the natural Guardian/Father of the minor children as the legal guardian of the minor children.

B. ***Direct custody of the minor child i.e. Praditya Gupta and Khwahish be given permanently with the petitioner/father.***

C. Pass any further order(s) as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case."

(emphasis supplied)

6. It will also appear from aforesaid order dated 29th May, 2025 of the Supreme Court that said Court granted liberty to appellant's father to approach the Family Court with further prayer for purpose of exercising interim custody during the summer vacation. Dr. Mishra laid extra emphasis on 'summer vacation' happening after impugned order was passed on 19th February, 2025. The Family Court had, in impugned order, recorded that interaction with the children revealed they were not aware of any dispute between their parents.

7. Interim orders can be varied. It is also trite that an interim order cannot contain or direct such as to amount to the final relief. Order XXXIX in Code of Civil Procedure, 1908 bears heading, 'Temporary injunctions and interlocutory orders'. It is noteworthy that rule 4 provides for order of injunction as may be discharged, varied or set aside. The Legislature used word 'interlocutory' in the heading of said order. Order XLIII in the Code, by clause (r) under rule 1 provides for appeals from orders made under rules 1, 2, 2A, 4 or rule 10 in order XXXIX. By the Code, interlocutory orders were provided with statutory right of appeal therefrom. Section 12 in Guardian and Wards Act, 1890 bears heading, 'Power to make interlocutory order for production of minor and interim protection of person and property'. Family Courts Act, 1984 by section 19 provides for appeal. The provision is clear in restricting appeals to all orders passed by said Court, except 'interlocutory orders'.

8. An exception was carved out by section 19(4) in the Act of 1984, on amendment, to provide for the High Court to exercise power of revision in respect of orders made under chapter IX in Code of Criminal Procedure, 1973, such order 'not being an interlocutory order'. Chapter IX in said Code provides by section 125, power to the Magistrate to direct maintenance and, during pendency of the proceeding, interim maintenance. Section 127 in said Code provides for alteration in the allowance to be made, on proof of change of circumstances. Amendment to the Act of 1984, to section 19, was necessitated because by sub-section (3) in section 1 of

said Act, it was kept open for the States to appoint different dates for commencement of it. Those States, who did not appoint the commencement continued to have their Court's exercise revisional jurisdiction over orders made under chapter IX in the Code of 1973. It is clear, under amended section 19(4) in the Act of 1984, revision from order of maintenance is maintainable but not from order of interim maintenance, awaiting determination on the claim for maintenance.

9. The spouses have preferred their respective appeals, wherein both seek exclusive custody. The children have said to the Family Court, they are happy with both. Impugned order is interlocutory in nature and, as such, no appeal lies therefrom under section 19 in Family Courts Act, 1984. On query Mr. Shukla submits, his client is ready to approach the Family Court. Dr. Mishra relies on view taken by a Full Bench of the Delhi High Court on **judgment dated 16th October, 2024 in MAT. APP. (FC) 126/2019 (X vs. Y),** paragraphs 34 and 35. Paragraph 34 is reproduced below.

"As we have already held hereinabove that the powers exercisable under the FC Act, could not be controlled by the provisions of other statutes, we are of the view that the criteria prescribed under the GW Act, could not be applied to test whether an order should be treated as an interlocutory order for the purposes of the FC Act. The mere fact that an order under Section 12 of the GW Act has been labelled as an interlocutory order under the said Act, cannot, therefore, be a ground to hold the same as an interlocutory order under the FC Act, which Act was enacted 94 years later and was intended to provide a much wider window for appeal. ***In our view, in every case, when an order passed by the Family Court, is taken in appeal before the High Court, it would be incumbent upon the Court to examine the nature of the impugned order in its entirety to determine whether the same is in the nature of an adjudicatory order which decides valuable rights of the parties.*** *Whenever the Court finds that an order touches upon the vital rights of the parties in contradistinction to an order which is merely a procedural order, an appeal ought to be entertained, irrespective of the fact that the order was passed during the pendency of the proceedings before the learned Family Court."*

(emphasis supplied)

Reasons for my above view is on examination of nature of the order impugned in the appeals. There is no impediment for me to take the view in spite of answer in the reference on **judgment dated 16th October, 2024** (supra), as law declared by the Supreme Court in **Valliamma Champaka Pillai v. Sivathanu Pillai** reported in **(1979) 4 SCC 429** is that judgment of a High Court has only persuasive value before other High Courts.

10. Guardians and Wards Act, 1890, as aforesaid, has section 12 providing for power to make 'interlocutory order'. Then came legislation by the Act of 1984. Parliament in the 35th year of the Republic of India acted upon the bill bearing statement of objects and reasons saying, *inter alia,* the need was, therefore, felt, in the public interest, to establish Family Courts for speedy settlement of family disputes. By clause 2(i) in the statement of objects and reasons it was said, the bill sought to, *inter alia*, provide for only one

right of appeal, which shall lie to the High Court. It was one of the objects of the bill, enacted by Parliament. Section 19 as amended stands in the statute by the Act of 1984. To say section 12 in the Act of 1890 cannot control section 19 in the Act of 1984 would lead to presumption that the Legislature attached different meanings for word 'interlocutory' as appearing in the Act of 1890, the Code of 1908 and the Act of 1984.

11. The appeals are **dismissed** as not maintainable.

12. It is to be noted, I had dictated the judgment in Court on impression I was speaking for the Bench and Court Master had accordingly marked the appeals as dismissed on 17th July, 2025, for purpose of the disposal record. Subsequently, my learned brother said he will give his separate view. Hence, in the meantime, I modified the transcription to be my reasoning for appreciating impugned order to be an interlocutory/interim order.

(Per : Dr. Yogendra Kumar Srivastava, J.)

1. While concurring with the view taken by my esteemed brother (Hon'ble Arindam Sinha, J.) regarding the dismissal of the two appeals, I consider it appropriate to record my opinion in the following manner.

2. The two appeals have arisen out of a common order dated 19.02.2025 made by the Family Court exercising powers under Section 12 of the Guardian and Wards Act, 18901, in terms of which there was a direction granting visitation rights three times a month for the father to have physical contact with the children in presence of the mother and also video conferencing, with certain conditions.

3. The father of the children is the appellant in First Appeal No. 285 of 2025, and the mother is the appellant in First Appeal No. 259 of 2025. The order under Section 12 of the GW Act, has been made in the main proceedings of Case No. GW. No.159/2024 which had been filed before the Family Court, by the father, under Sections 7, 8, 9 and 10 of the GW Act for appointment as guardian of two minor children.

4. We have heard Dr. Anagh Mishra, learned counsel appearing for the father of the children, and Sri Piyush Shukla, learned counsel appearing for the mother.

5. The impugned order granting interim custody has been passed under Section 12 of the GW Act, wherein an order of this nature is described as interlocutory order. The question of maintainability of the two appeals under Section 19 of the Family Court Act, in terms of which an interlocutory order is not amenable to appeal, has been addressed by the counsel appearing for the appellant in First Appeal No. 285 of 2025 by referring to a Full Bench judgment of the High Court of Delhi, in **Dr. Geetanjali Aggarwal Vs. Dr. Manoj Aggarwal**[2]. The reference to the Full Bench was on the question as to whether an order passed by the Family Court under Section 12 of the GW Act, granting or refusing visitation/interim custody would be appealable under Section 19 of the Family Court Act3. The reference was answered by holding that orders passed under Section 12 of the GW Act would be appealable under Section 19 of the FC Act.

6. Counsel appearing for the appellant mother in First Appeal No. 249 of 2025 has not disputed the enunciation of the law laid

down by the Full Bench of the High Court of Delhi.

7. Counsel for the parties have submitted that the question of maintainability of the appeals had been addressed earlier also, when the appeals were first moved, by referring to the aforesaid Full Bench judgment. The order sheet indicates that the appeals have thereafter been heard on number of occasions.

8. The father's appeal (First Appeal No. 285 of 2025) was moved on 16.04.2025, on which date counsel for the parties expressed their readiness for reconciliation, and in view thereof an order was passed directing listing of the case on 02.05.2025 to ascertain if reconciliation or otherwise agreement between the parties was possible. The order dated 16.04.2025 is extracted below:

"1. Mr. Mishra, learned advocate appears on behalf of appellant, who is father of two children, a little boy and girl. He submits, his client had filed for custody of the children, as against the mother. On query he submits, there has not yet been any matrimonial litigation.

2. His client made application under section 12 in Guardians and Wards Act, 1890 for visitation including overnight stay by the children, with him. By impugned order dated 19.02.2025, the Family Court directed visitation, three times a month for physical contact in presence of the mother and video conferencing with conditions. There is no mention regarding his client's claim for overnight stay with the children. Respondent no.2 (the mother) has also filed appeal against said order.

3. He relies on view taken by a Division Bench of the High Court of Karnataka in ***Savitha Seetharam versus Rajiv Vijayasarathy Rathnam, available at 2020 SCC OnLine Kar 2747****, inter alia, paragraph 16. He seeks direction in modification of impugned order for his client to have substantial visitation and contact rights.*

4. Mr. Shukla, learned advocate appears on behalf of respondent, whose client has filed First Appeal no.249 of 2025 (Dr. Aditi Dhaundiyal versus Dr. Prakhar Kumar) and submits, welfare of the children lies in total custody of his client. He relies on judgment of the Supreme Court in ***Yashita Sahu versus State of Rajasthan****, reported in* ***(2020) 3 SCC 67****, paragraph no.20.*

5. On query, Mr. Shukla submits, his client is ready to reconcile with appellant. Mr. Mishra submits likewise.

6. It is unfortunate that the children are deprived of having both their parents. In view of submission at the Bar regarding reconciliation, list as fresh on 02.05.2025 marked at 02:00 p.m. The parties (husband and wife) may be present in Court, for us to ascertain if reconciliation or otherwise agreement between them for purpose of the appeal, is possible. Till then direction made in impugned order be complied with. Respondent might allow some further contact, if she will."

9. Subsequently, on 19.05.2025, when the appeal was taken up, the Court, after interacting with the parties, passed the following order:

"1. Mr. Hemant Kumar, learned advocate appears on behalf of petitioner. Mr. Piyush Shukla, learned advocate appears on behalf of respondent. There are two children, of whom appellant is the father and respondent, mother.

2. Submission at the Bar is with reference to order dated 16th April, 2025 that both parties are present in Court. We are told further that they had appeared before co-ordinate Bench on 2nd May, 2025. Perused order made that day.

3. We have interacted with the parties. We request them to attempt a fresh beginning. For the purpose, this is all that we record.

4. We are hopeful of being able to dispose of the appeal without adjudication. Whatever be, parties will convey their respective positions through their learned advocates. They need not be present in Court.

5. List on 8th July, 2025 as fresh."

10. The appellant-father filed a Special Leave to Appeal (SLP), against the aforesaid order dated 19.05.2025, and as pointed out by Dr. Mishra, learned counsel for the appellant-father, the SLP was disposed of by the Supreme Court by an order dated 29.05.2025 reserving liberty to the petitioner therein to seek appropriate orders for the purpose of exercising interim custody during the summer vacations. The order is reproduced below:

"We dispose of this Special Leave Petition by reserving liberty to the petitioner herein to seek appropriate orders with regard to interim custody of the minor children for the purpose of exercising interim custody during summer vacation.

It is needless to observe that if such a prayer is made by the petitioner herein before the concerned Family Court, the same shall be considered expeditiously and in accordance with law having regard to the fact that presently summer vacation is on.

The aforesaid order has been made being mindful of the fact that the matter is pending before the High Court and bearing in mind that presently the summer vacation is on.

Pending applications(s), if any, shall stand disposed of."

11. In pursuance of the aforesaid order, the appellant approached the Family Court, and an order dated 30.05.2025 was passed by the Family Court directed interim custody of the two children to be with the appellant during their summer vacations i.e. for the period from 01.06.2025 to 15.06.2025.

12. As per counsel for the appellant-father, the said order was not complied by the mother and his client again made application seeking interim custody of the children. The Family Court, on 18.06.2025, passed another order modifying the previous order dated 30.05.2025, and directing interim custody of the children to be given to their father for the period 20.06.2025 to 30.06.2025.

13. Thereafter, an application was moved by the respondent-mother seeking modification of the order dated 18.06.2025, whereupon the Family Court, after obtaining consent of the parties, passed yet

another order on 23.06.2025, which again modified the previous order dated 18.06.2025 and directed that custody of the minor children be given to the appellant-father from 9 a.m. to 9 p.m. with a stipulation that the children would be permitted the facility of video call with their mother at any time, as they desired.

14. The respondent-mother, at this stage preferred a first appeal, First Appeal Defective No.625 of 2025, before this Court, challenging the orders dated 30.05.2025 and 18.06.2025 passed by the Family Court. The said appeal was dismissed on 26.06.2025, upon a statement made by learned counsel for the appellant that he did not wish to press the appeal.

15. Counsel for the appellant-father has pointed out that the respondent-mother had also raised a challenge to the order dated 30.05.2025 passed by the Family Court by filing petition for Special Leave to Appeal No.16631/2025. The SLP was not pressed and liberty was sought to withdraw and work out available remedies before the High Court or before the Family Court. The SLP stood dismissed as withdrawn.

16. The main petition bearing G.W.No.159/2024 filed by the appellant-father seeking an order appointing him as guardian of minor children and also for their permanent custody, is pending.

17. The order dated 19.02.2025, passed by the Family Court on an application made by the appellant-father under Section 12 of the GW Act, which is subject matter of the two appeals before us, had directed visitation rights to the appellant three times a month in the presence of the wife and also video conferencing with certain conditions.

18. Upon the appeal being moved before this Court, on 16.04.2025, counsel for the parties submitted that their clients were ready for reconciliation, and on the basis thereof the case was directed to be listed on 02.05.2025 so that the parties may be present in Court, for ascertaining if reconciliation or otherwise agreement between them was possible.

19. Subsequently, on 19.05.2025, the Court after interacting with the parties, directed the case to be listed on 08.07.2025, and expressed hope of disposing of the appeal without adjudication.

20. It has been brought to our notice that during interregnum, the order dated 19.02.2025, which is subject matter of the two appeals before us, has been modified on multiple occasions, at the behest of the parties.

21. The order of interim custody dated 19.02.2025, was modified by the Family Court by an order dated 30.05.2025 on an application made by the appellant-father. It was modified by the Family Court again on 18.06.2025 on another application made by the father. The respondent-mother also sought modification and upon her application the previous orders were further modified by the Family Court by an order dated 23.06.2025.

22. The aforesaid developments and the orders passed by the Family Court on applications moved by either of the parties from time to time, have been brought before us by means of supplementary affidavit dated 06.07.2025 filed by the appellant-father.

23. These subsequent developments indicate that the order of interim custody

dated 19.02.2025, which is sought to be impugned in two appeals has been varied on multiple occasions by the Family Court, on applications moved by either of the parties. This fact is not disputed by the counsel appearing for the parties.

24. On a query Sri Shukla, learned counsel appearing for the respondent-mother (the appellant in First Appeal No.249 of 2025), submits, his client is ready to approach the Family Court.

25. The factual position that has been unfolded before us indicates that the matter relating to interim custody is still being agitated by the parties before the Family Court, and the same has not attained any degree of finality.

26. The main petition for guardianship, and custody also remains pending before the Family Court.

27. The impugned order of interim custody dated 19.02.2025 having been varied on multiple occasions, the same does not stand in its terms.

28. The resultant position is that the order impugned has been rendered ineffective due to the supervening events obviating the need for any intervention by the Court at this stage. The later developments have changed the circumstances in such a way that any adjudication on the merits of the order impugned would have no meaningful effect on the rights of the parties.

29. In a situation where an appeal has lost its efficacy, the Court is empowered – indeed, often expected – to dismiss the appeal as such. This general principle is applied when, due to later developments, circumstances have changed in such a way that a decision by appeal Court would have no practical effect on the rights of the parties involved.

30. The two appeals, in light of the changed circumstances, have lost their efficacy. Accordingly, the appeals are **dismissed**.

31. The parties are at liberty to pursue their remedies before the Family Court.

(2025) 7 ILRA 296
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 01.07.2025

BEFORE

THE HON'BLE IRSHAD ALI J.

Civil Misc. Review Application No. 110 of 2024

Anil Kishore ...Petitioner
Versus
State Bank Of India & Ors. ...Opposite Parties

Counsel for the Petitioner:
Amit Kr. Singh Bhadauriya, Ram Achal Gupta

Counsel for the Opposite Parties:
Anurag Srivastava

Issue for Consideration

That once the main writ petition, was decided finally and was allowed quashing the impugned orders, why the consequential relief may not be granted.

Head Notes

The Constitution of India, 1950-Article 226- The Code of Civil Procedure, 1908-Order 47 Rule 1- Writ A No.6758 of 2004 allowed and connected Writ A No.6145 of 2002 was also allowed but no consequential relief granted to the

petitioner - The consequential prayer made in paragraph 3 of the present judgment is to be granted, in case the petition is allowed - Review application allowed.

Held- Writ of mandamus is issued holding and declaring that the petitioner shall be deemed to have been promoted as Trainee Officer with effect from 01.08.2001 the date when persons of lesser merit than to him were promoted by the respondent - Bank, without calling the petitioner to appear in the interviews-in pursuance of the written Exams held on 10.03.2002 and shall also be entitled to all consequential benefits as a result thereof.**(Para 9 & 10)** (E-15)

Case Law Cited

List of Acts

The Constitution of India, 1950, The Code of Civil Procedure, 1908

List of Keywords

Main petition allowed; Consequential reliefs not granted; Review applicant has merit; Consequential reliefs are granted

Case Arising From

Review application in the writ petition Writ A No.6758 of 2004; Anil Kishore Gupta Vs. State Bank of India through its C.G.M. and 4 others

Appearances for Parties

Counsel for Applicant :- Amit Kr. Singh Bhadauriya, Ram Achal Gupta
Counsel for Opposite Party :- Anurag Srivastava

Judgment/Order of the High Court

(Delivered by Hon'ble Irshad Ali , J.)

1. Heard Sri Sudeep Seth, learned Senior Counsel assisted by Sri Amit Kumar Singh Bhadauriya, learned counsel for the review applicant, Sri Anurag Srivastava, learned counsel for respondent Nos.1 to 4 and Sri Gopal Srivastava, learned counsel for respondent No.5.

2. The ground for review in the present review application is that once the main writ petition i.e. Writ A No.6758 of 2004; Anil Kishore Gupta Vs. State Bank of India through its C.G.M. and 4 others, was decided finally and was allowed quashing the impugned orders, why the consequential relief may not be granted to him.

3. Learned Senior Counsel for the review applicant invited attention of this Court on the prayer made in the subsequent writ petition i.e. Writ A No.6145 of 2002; Anil Kishor Vs. State Bank of India thru Chairman and 3 others, which is as follows:

"i) by a suitable writ, order of direction or by a writ, order or direction in the nature of Mandamus hold and declare that the petitioner shall be deemed to have been promoted as Trainee Officer with effect from 01.08.2001 the date when persons of lesser merit than to him were promoted, as such, by the respondent - Bank, without calling the petitioner to appear in the interviews-in pursuance of the written Exams held on 10.03.2002 and shall also be entitled to all consequential benefits as a result thereof;
ii) by a writ, order or direction in the nature of Mandamus command the respondent authorities:

a) to issue formal promotion order in favour of the petitioner - promoting him as Trainee Officer with effect from 01.08.2001, as a result of the above deemed promotion and issue posting orders to the said effect forthwith;

b) to allow the petitioner all consequential benefits as a result of the above viz. arrears of pay, seniority, etc. etc.

c) to pay the petitioner interest at the rate of 24% per annum on the aforesaid arrears of pay etc.

iii) by a suitable writ, order or direction in the nature of interim Mandamus command the respondent authorities to at least issue, forthwith, formal posting orders in favour of the petitioner as Trainee Officer, and pay him his current and future salary of the said post of Trainee Officer, without any interruption or hindrance, whatsoever in view of his deemed promotion as Trainee Officer with effect from 01.08.2001;

iv) to issue such other writ, order or direction as may be deemed fit and proper in the facts and circumstances of the case and, in the interest of justice, and

v) to allow exemplary costs of the petition, to the petitioner, against the respondents."

4. Sri Gopal Srivastava, learned counsel for respondent No.5 submitted that in view of provisions contained under Chapter 9 Rule XIV of Rule of the Court, the entire facts and circumstances are to be placed and the diligence in regard to overlook the material on record only, the review application can be maintained.

5. Sri Anurag Srivastava, learned counsel for respondent Nos.1 to 4 submitted that in view of judgment in the case of State Bank of India Vs. K.K. Gautam, the judgment passed in the writ petition is not sustainable in law. The argument advanced by Sri Gopal Srivastava, learned counsel for respondent No.5 is also misplaced as while deciding the review petition, the material placed before the Court, if not considered, then it is left open to the Court to decide the review petition in accordance with that.

6. Writ A No.6758 of 2004 was allowed by means of judgment rendered in the present case and connected Writ A No.6145 of 2002 was also allowed but no consequential relief has been granted to the petitioner, therefore, in view of above material, the consequential prayer made in paragraph 3 of the present judgment is to be granted, in case the petition is allowed.

7. In this regard, against the judgment dated 16.08.2023, respondent Nos.1 to 4 have filed special appeal before Division Bench of this Court, which is sub judice and no final order has been passed till date, therefore, the argument advanced by him is misplaced.

8. In view of above, the submission advanced by learned Senior Counsel for the review applicant has merit in the case and therefore, the consequential reliefs are granted to him.

9. Accordingly, a writ of mandamus is issued holding and declaring that the petitioner shall be deemed to have been promoted as Trainee Officer with effect from 01.08.2001 the date when persons of lesser merit than to him were promoted by the respondent - Bank, without calling the petitioner to appear in the interviews-in pursuance of the written Exams held on 10.03.2002 and shall also be entitled to all consequential benefits as a result thereof.

10. In view of reasons recorded above, the review application is allowed.

(2025) 7 ILRA 299
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 08.07.2025
BEFORE

THE HON'BLE ASHWANI KUMAR MISHRA, J.
THE HON'BLE PRAVEEN KUMAR GIRI, J.

Special Appeal No. 41 of 2025

Bindra Prasad Patel ...Appellant
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Appellant:
Quazi Mohammad Akaram, Shoar Mohammad Khan

Counsel for the Respondents:
Kushmondeya Shahi

Issue for Consideration

(A) Entitlement of a teachers of basic institution to get gratuity under Gratuity Act, 1972.

(B) Permissibility of a teacher of basic institution to be covered within the definition of *employee* u/s 2(e) of the Gratuity Act, 1972 so as to extend the benefit of gratuity to them.

Headnotes

(A) Service Law – Gratuity – Entitlement – Prayer sought for release of gratuity was rejected by writ court – Validity challenged – Appeal was opposed on the ground that the appellant holds a post under the State Government and since is governed by scheme for payment of gratuity, framed by the State as such he would be excluded from the purview of S. 2(e) and so benefit of gratuity under the Gratuity Act, 1972 would not be available to the appellant – It was contended on behalf of appellant that for excluding a person from the definition of employee u/s 2(e), such person, in addition to holding a post under Central or State Government, must also be governed by a scheme for gratuity under any other Act or Rules – Applicability of Gratuity Act to a teacher of basic institution felt into consideration :

Held : A headmaster or assistant teacher appointed in an educational institution established by the Board holds a post under the State Government – Non specification of Act or Rules in the exclusion clause contained in Section 2(e) and the use of expression "*any other act or by any rules*" essentially conveys that such scheme for payment of gratuity must be backed by requisite force of law – Reference to scheme for gratuity made under any other act or by any rules conveys expressions of wide magnitude. It cannot be restricted only to scheme for gratuity made under any specific Act or Rules, *per se*. Such scheme for gratuity for a person holding post under State Government can also be by way of Rules made in exercise of executive powers of State. This is so as the power with the State Government to frame scheme for payment of gratuity by way of executive instructions would be co-extensive with the legislative powers of State. (See: Article 162 of the Constitution of India). The argument of appellant's counsel that scheme for gratuity framed by the State in respect of teachers of basic institution since are not under any other Act or by any specific Rules made under any Act, therefore, the benefits under Gratuity Act, 1972 would be available to the appellant cannot be accepted – The benefits available to an employee under the Gratuity Act, 1972 would thus not be available to a teacher of a basic institution. [Paras 24, 27, 28 and 29] (E-1)

Case Law Cited

District Basic Education and another v. Shivkali and others, 2021 (10) ADJ 23 (DB); Ahmedabad Private Primary Teachers' Association Vs. Administrative Officer and others, (2004) 1 SCC 755; Independent Schools'Federation of India (Registered) Vs. Union of India and another, 2022 SCC OnLine SC 1113; Writ A No. 5724 of 2024; University College Ret. Teachers Welfare Asso. Lko. Thru. its President Dr. S.S. Chauhan and another v. State of U.P. and others; Biharilal Dobray Vs. Roshan Lal Dobray, (1984) 1 SCC 551 **– referred to.**

List of Acts

Constitution of India – Article 162; Gratuity Act, 1972 – S. 2(e); UP Basic Education Act, 1972.

List of Keywords

Teacher of basic institution; Gratuity; Triple Benefit Scheme; Death-cum-retirement gratuity; Superannuation; Office of profit; Post under State Government; Executive instruction; Co-extensive wit legislative power of State.

Case Arising From

Judgment and order dated 06.02.2024 passed in Writ A no. 18971; Smt. Usha Verma and another Vs. State of UP and 3 others.

(Delivered by Hon'ble Ashwani Kumar Mishra, J.)

1. This intra court appeal arises out of a composite judgment passed by learned Single Judge in a bunch of writ petitions, including Writ-A No.5588 of 2023, whereby petitioner's claim for payment of gratuity is rejected.

2. The petitioner-appellant in the present case was employed as Headmaster in a junior high school. He (petitioner) received National Teachers' Award which entitled him to two years extension in service. The age of superannuation was otherwise 62 years under the applicable rules. As such, the appellant has superannuated on 31.3.2017 after availing session's benefit at the age of 64 years. The writ petition came to be filed by the appellant with the prayer to direct the District Basic Education Officer, Prayagraj to release gratuity to him alongwith interest. It is this claim which came to be rejected by the learned Single Judge.

3. In order to appreciate the controversy raised in the matter it would be necessary to refer to the background in which the dispute has arisen. The State of Uttar Pradesh enacted U.P. Basic Education Act, 1972 (hereinafter referred to as the 'Act of 1972') primarily for establishing a Board of Basic Education (hereinafter referred to as the 'Board') and for matters connected therewith. The Board is a body corporate having perpetual succession and common seal and has the power to acquire and hold property. Its constitution and powers are specified in the Act of 1972. The 'Board' has established various educational institutions upto Junior High School level (hereinafter referred to as 'Basic Institutions'). The appointment and conditions of service of the teachers of the Basic Institutions are governed by statutory service regulations, namely U.P. Basic Education (Teacher) Service Rules, 1981 (hereinafter referred to as the 'Rules of 1981'). The Rules of 1981 contained no provision regarding payment of pension or gratuity.

4. Payment of pension to a teacher in a basic institution was earlier governed by the Triple Benefit Scheme, 1965 issued under the provisions of U.P. Retirement Benefit Rules, 1961. On 8.3.1978 a Government Order came to be issued by the State of Uttar Pradesh introducing new pension scheme in respect of teachers of educational institution established by the board. This Government Order expressly excluded death-cum-retirement gratuity to the teachers. It also denied benefit of family pension to the dependents of teachers after their death. This Government Order came to be amended vide Government Order dated 31.3.1982. Benefit of family pension was allowed to the dependents of teachers of basic institutions. However, death-cum-

retirement gratuity, continued to be eluded to the teachers of basic institutions.

5. On 23.11.1994 a new government order was issued extending the benefit of gratuity to the teachers and other employees of basic institutions. This benefit, however, was dependent upon an exercise of option by the teacher/employee concerned to retire at the age of 58 years. The age of superannuation was otherwise 60 years. The Government Order dated 23.11.1994 is reproduced hereinafter:-

"58 वर्ष की आयु पर ग्रेच्युटी की सुविधा

संख्या-6369/15-5-93-55/89

प्रेषक, सेवा में,

श्री सुभाष चन्द्र बहुखण्डी 1. शिक्षा निदेशक (बेसिक), उ०प्र० लखनउ ।

विशेष सचिव, उत्तर प्रदेश शासन। 2. शिक्षा निदेशक (मा०), उ०प्र० लखनउ।

शिक्षा (5) अनुभाग लखनऊः दिनांकः 23 नवम्बर, 1994

विषय- उत्तर प्रदेश बेसिक शिक्षा परिषद के शिक्षकों/शिक्षणेत्तर कर्मचारियों, तथा सहायता प्राप्त गैर सरकारी जूनियर हाईस्कूलों के शिक्षक एवं शिक्षणेत्तर कर्मचारियों को 58 वर्ष की आयु पर सेवा निवृत्त किये जाये पर ग्रेच्युटी की सुविधा अनुमन्य किया जाना।

महोदय,

उपर्युक्त विषयक सचिव उत्तर प्रदेश बेसिक शिक्षा परिषद, इलाहाबाद के पत्रांक बे०शि०प०/पेंशन 3166/92-93 दिनांक 30-10-1992 के सन्दर्भ में मुझे यह कहने का निर्देश हुआ है कि उत्तर प्रदेश बेसिक शिक्षा परिषद के अध्यापकों एवं शिक्षणेत्तर कर्मचारियों सहायता प्राप्त गैर सरकारी जूनियर हाईस्कूलों शिक्षकों एवं शिक्षणेत्तर कर्मचारियों को माध्यमिक शिक्षको की भांति 58 वर्ष की आयु पर सेवा निवृत्त होने का विकल्प देने की स्थिति में ग्रेच्युटी की सुविधा दिये जाने की मांग की है। सम्यक विचारोंपरान्त श्री राज्यपाल यह आदेश प्रदान किये हैं कि जिस प्रकार राज्य सहायता प्राप्त माध्यमिक विद्यालयों के शिक्षकों को 58 वर्ष की आयु पर सेवा निवृत्त होने का विकल्प देने पर राजकीय कर्मचारियों की भाति ग्रेच्युटी की सुविधा अनुमन्य है, उसी प्रकार उ०प्र० बेसिक शिक्षा परिषद के अध्यापकों एवं शिक्षणेत्तर कमचारियों, सहायता प्राप्त गैर सरकारी माध्यमिक विद्यालयों के शिक्षणेत्तर कर्मचारियों की 68 वर्ष की आयु में सेवानिवृत्त होने की दशा में ग्रेच्युटी की सुविधा प्रदान की जाये। यह सुविधा उन्ही अध्यापकों एवं कर्मचारियों को अनुमन्य होगी जो 58 वर्ष की आयु पर सेवा निवृत्त होने का विकल्प निर्धारित प्रपत्र पर प्रस्तुत होने एवं यह सुविधा उपरोक्त वर्णित सभी शिक्षकों/कर्मचारियों पर इन आदेशों के जारी होने की तिथि से लागू होगी।

2. मुझे यह भी कहना है कि प्रश्नगत लाभ उन्ही अध्यापकों / कर्मचारियों को अनुमन्य होगा जो संलग्न निर्धारित प्रपत्र पर शासनादेश जारी होने के दिनांक से 90 दिन के अन्दर दो प्रतियों में संस्था में माध्यम से पेन्शन स्वीकृत करने वाले अधिकारी के पास अपना विकल्प पत्र प्रेषित करेंगे। निर्धारित तिथि तक विकल्प पत्र न प्रस्तुत किये जाने पर यह स्वतः मान लिया जाएगा कि सम्बन्धित अध्यापक या कर्मचारी इस राजाज्ञा में स्वीकृत सुविधा का लाभप्राप्त नहीं करना चाहता। एक बार प्रस्तुत किया गया विकल्प अन्तिम तथा अपरिवर्तनीय होगा।

3. बेसिक शिक्षा परिषदीय शिक्षक / शिक्षणेत्तर कर्मचारियों, सहायता प्राप्त गैर सरकारी जूनियर हाईस्कूलों के शिक्षक एवं शिक्षणेत्तर कर्मचारियों तथा सहायता प्राप्त गैर सरकारी उच्चतर माध्यमिक विद्यालयों के शिक्षणेत्तर कर्मचारियों के विकल्प की पहली प्रति पेन्शन स्वीकृत अधिकारी के प्रति हस्ताक्षरों के बाद उसकी सेवा पुस्तिका में चिपकायी जायेगी। दूसरी प्रति पेन्शन स्वीकृत अधिकारी के प्रति हस्ताक्षरों के बाद उससे अगले उच्च अधिकरी के कार्यालय में सुरक्षित रखी जायेगी।

4. यह आदेश वित्त विभाग की उनके अ० श० सं० ई-11/3483/X-94 दिनांक 23 नवम्बर, 1994 द्वारा प्राप्त सहमति से निर्गत किये जा रहे था।

भवदीय
सुभाष चन्द्र बहुखण्डी
विशेष सचिव ।"

6. A subsequent Government Order came to be issued on 10.6.2001, permitting the teacher/employees of the basic institutions to revise the option to retire upto 1st July of the year of their superannuation. This Government Order was prospective and is reproduced hereinafter:-

"140] शिक्षा अनुभाग-5 संख्या-5491/15-5-2002-212/2001, दिनांक 10 जून, 2002

प्रेषक,

दिनेश चन्द्र कनौजिया,

विशेष सचिव,

उत्तर प्रदेश शासन,

इलाहाबाद।

सेवा में,

शिक्षा निदेशक, (बेसिक) एवं अध्यक्ष,

उत्तर प्रदेश बेसिक शिक्षा परिषद्,

इलाहाबाद।

विषय : उत्तर प्रदेश बेसिक शिक्षा परिषदीय शिक्षक/ शिक्षणेत्तर कर्मचारियों के सेवानिवृतिक लाभों में परिवर्तन हेतु विकल्प की सुविधा दिये जाने के संबंध में नीति निर्धारण।

महोदय,

उपर्युक्त विषयक शासनादेश संख्या-6369/15-5-93-55/89, दिनांक 23-11-1994 के अनुक्रम में मुझे यह कहने का निदेश हुआ है कि उक्त शासनादेश द्वारा प्रदत्त विकल्प को सुविधा के लाभ से वंचित रह गये बेसिक शिक्षा परिषद् शिक्षक/शिक्षणेत्तर कर्मचारियों के संबंध में विकल्प परिवर्तन की सुविधा प्रदान किये जाने की मांग पर सम्यक विद्यारोपरान्त श्री राज्यपाल यह आदेश प्रदान करते हैं कि उ.प्र. बेसिक शिक्षा परिषदीय शिक्षकों/ शिक्षणेत्तर कर्मचारियों द्वारा सेवानिवृत्ति के एक वर्ष अर्थात् जिस शैक्षिक सत्र में उनकी सेवानिवृत्ति होगी, उसको पहली जुलाई तक विकल्प परिवर्तन कर सकते हैं। किन्तु ऐसे कर्मचारी जो 58 वर्ष की आयु पर सेवानिवृत्ति का विकल्प देते हैं, को सेवानिवृत्ति के पूर्व तक विकल्प परिवर्तन की सुविधा अनुमन्य होगी। यह व्यवस्था इस शासनादेश के जारी होने की तिथि से लागू होगी।

2. यह आदेश वित्त विभाग के अशासकीय संख्या-ई-11/753 वस-2002, दिनांक 4-6-2002 में प्राप्त उनकी सहमति से जारी किये जा रहे हैं।

भवदीय

(दिनेश चन्द्र कनौजिया)

विशेष सचिव।"

7. The age of superannuation of teachers/employees of basic institutions was enhanced to 62 years from erstwhile 60 years vide Government Order dated 4.2.2004. The entitlement to receive gratuity on opting to retire at the age of 58 years was altered to 60 years. Teachers and employees who were continuing in service on account of sessions benefit were also extended the benefit of gratuity under the scheme. Rules of 1981 were also directed to be amended accordingly within a month. The Government Order dated 4.2.2004 is reproduced hereinafter:-

"बेसिक एवं सहायता प्राप्त उच्च प्राथमिक विद्यालयों के शिक्षकों की सेवा निवृत्ति आयु 60/62 वर्ष

संख्या 289/79-6-04-28(5)/2004

प्रेषक,

सेवा में,

श्री हरिराज किशोर

शिक्षा निदेशक (बेसिक)

सचिव,

उत्तर प्रदेश लखनऊ।

उत्तर प्रदेश शासन।

शिक्षा अनुभाग-6 लखनऊ: दिनांक 4 फरवरी, 2004

विषय: परिषदीय प्राथमिक विद्यालय, परिषदीय उच्च प्राथमिक विद्यालय तथा उच्च प्राथमिक विद्यालयों से अध्यापकों की अधिवर्षता आयु वर्तमान 60 वर्ष से 62 वर्ष किये जाने के सम्बन्ध में। महोदय,

शासन द्वारा सम्यक विचारोपरान्त यह निर्णय लिया गया है कि परिषदीय प्राथमिक विद्यालय, परिषदीय उच्च प्राथमिक विद्यालय तथा सहायता प्राप्त उच्च प्राथमिक विद्यालयों में शासन द्वारा सृजित पदों पर नियमानुसार कार्यरत अध्यापकों की वर्तमान अधिवर्षता आयु में वृद्धि कर दी जाये।

अतः श्री राज्यपाल महोदय तात्कालिक प्रभाव से परिषदीय प्राथमिक विद्यालय, परिषदीय उच्चा प्रामिक विद्यालय तथा सहायता प्राप्त उच्च प्राथमिक विद्यालयों में शासन द्वारा सृजित पदों पर नियमानुसार कार्यरत अध्यापकों की वर्तमान अधियर्षता आयु को 60 वर्ष से बढ़ाकर 62 वर्ष किये जाने की सहर्ष स्वीकृति प्रदान करते हैं। फलस्वरूप 58 वर्ष की अधिवर्षता आयु पर मिलने वाले सेवा नैवृत्तिक लाभ अब 60 वर्ष की अधिवर्षता आयु पर तथा 60 वर्ष की अधिवर्षता आयु पर मिलने वाले सेया नैवृत्तिक लाभ 62 वर्ष की अधिवर्षता आयु पर अनुमन्य होंगे।

श्री राज्यपाल महोदय यह भी आदेश प्रदान करते हैं कि जो शिक्षक जुलाई, 2003 के पश्चात् अधिवर्षता आयु पूर्ण कर सत्रान्त लाम पर चल रहे हैं उन्हें भी अधिवर्षता आयु वृद्धिः सम्बन्धी लाभ प्रदान किया जायेगा।

इस सम्बन्ध में पूर्व में निर्गत समस्त शासनादेश उक्त सीमा तक संशोधित समझे जायेंगे तथा उनकी शेष शर्तें यथावत् रहेंगी।

उत्तर प्रदेश बेसिक शिक्षा (अध्यापक) सेवा नियमावली, 1981 के संगत नियमों में आवश्यक संशोधन की कार्यवाही शासनादेश जारी होने के तीस दिन के अन्दर सुनिश्चित कर ली जायेगी।

यह आदेश वित्त विभाग के अशासकीय पत्र संख्या यू०ओ०ई०-11-207/2004 दिनांक 04-2-2004 में प्राप्त सहमति के अन्तर्गत निर्गत किये जा रहे हैं।

भवदीय

ह०/- हरिराज किशोर,
सचिव।"

8. On acceptance of the recommendation made by Pay Committee U.P., 2008, with effect from 1.1.2006, the rate of gratuity was revised upto Rs. 10 lakhs. This scheme relating to payment of gratuity to the teachers and other employees of basic institutions continues to subsist, with subsequent revision of rate on acceptance of later Pay Committee Reports etc.

9. A controversy arose in respect of claim of gratuity for the teachers who had not exercised the option to retire at the age of 58/60 years but died before it. In Writ-A No.40568 of 2016 (Noor Jahan vs. State of U.P. and 4 others) the claim of the widow of deceased teacher namely, Noor Jahan, for payment of gratuity was allowed on 4.1.2018. This judgment of learned Single Judge was followed in Writ-A No.17399 of 2019 (Usha Rani vs. State of U.P. and others). The judgment in Usha Rani (supra) was unsuccessfully challenged in special appeal. The State Government then challenged the Division Bench judgment in Usha Rani (supra) before the Supreme Court in Special Leave to Appeal (C) No(s).19089 of 2021, which was dismissed vide following orders passed on 29.4.2022:-

"Learned counsel for the petitioners does not want to press the instant petition.

We find no reason to interfere in the order impugned in our jurisdiction under Article 136 of the Constitution.

Accordingly, the Special Leave Petition is dismissed.

We direct the State Authority to make the payment of gratuity in terms of order of the High Court impugned in the instant proceedings to the respondent within a period of four weeks from today failing which that amount shall carry further interest at the rate of 18% p.a. until payment and a report of compliance be sent to this Court.

Pending application(s), if any, shall stand disposed of."

10. In District Basic Education and another vs. Shivkali and others 2021 (10) ADJ 23 (DB) a Division Bench of this Court crystallised the issue on the above aspect and held as under in para 11 to 13 of the judgment:-

"11. The issue that arises for our consideration is whether an employee who, by a certain a date, could exercise an option to retire early to avail the benefit of gratuity, dies before that date, and prior to his death had not exercised that option, should his heirs be denied the benefit of death gratuity which, atherwise, would have been available to them had that employee died at that age after exercising the option.

12. To have an answer to the issue we would have to examine as to- (a) what had been the purpose of conferment of such benefit on exercise of the option; and (b) whether the Government Orders that conferred the benefit had fixed a time period by which that option was to be exercised, if so, whether the incumbent i.e. first respondent's husband had crossed the time limit by which he could have exercised that option. In so far as the purpose of conferring such benefit is concerned the same is obvious, which is to provide social security to those who forego two years of additional service. There could be a latent purpose as well, which is to encourage people to seek early retirement may be to streamline the organization. Be that as it may, it is a beneficial provision to accord social security to the employee and his or her dependents therefore, an interpretation that promotes and serves the purpose for which it is crafted must be preferred. Under the circumstances, whatever the purpose might be, the same is subserved where the nature exercises the option on behalf of the incumbent by letting him not survive even upto the last day by which he could have exercised the option. Therefore, denying the heirs/dependents of such an incumbent the benefit of social security that, otherwise, would have been available to them had the incumbent

exercised his option would defeat the very purpose for which the policy was made. Thus, to ensure that the policy serves its purpose fully, in our view, where a last date for exercise of the option is yet to arrive and before that date the incumbent dies, without exercising his option, his dependents should not be deprived of the benefit which they would have been otherwise entitled to had the incumbent exercised his option.

13. In so far as the contention of the learned counsel for the appellants that by Government Order dated June 10, 2002 the option could have been exercised only upto first day of July in which the incumbent was to attain the age of 58 years is concerned, the same is not acceptable. Because a plain reading of the Government Order dated June 10, 2002 would reflect that it is in two parts. The first part is in respect of fixing the last date for exercise of option to retire early to avail the benefits of early retirement whereas the second relates to the last date for change of the option submitted earlier. In the first part, the age of retirement is not mentioned. What is stated in the first part is that those who could not exercise their option to avail the benefits under the earlier Government Order dated 23.11.1994 may exercise their option by the first day of July of the year in which they attain the age of superannuation. The second part gives option to those, who had already opted to retire at the age of 58 years, to change their option before they retire. Meaning thereby that if suppose a person has given an option to retire at the age of 58 years, before he attains the age of 58 years, he can change the option. Thus, as by Government Order dated February 4, 2004 the age of superannuation was enhanced from 60 years to 62 years by specifically providing that the benefits that were available on retirement at the age of 58 years would now be available upon completion of the age of 60 years and those that were to be available at the age of 60 years, would now be available on completion of the age of 62 years, by necessary implication, the option that could earlier be exercised upto the first day of July in which the incumbent was to attain the age of 58 years became exercisable upto the first day of July in which the incumbent would attain the age of 60 years."

11. It is in the above backdrop that the claim of appellant for payment of gratuity required consideration. Undisputedly, the appellant did not exercise any option to retire at the age of 60 years and thereby claim gratuity. In fact the appellant continued to work uptill the age of superannuation i.e. 62 years. His working in fact was upto 64 years. In such circumstances, claim of the appellant for payment of gratuity under the applicable scheme for gratuity, enforced in the Basic Institutions, is clearly not made out.

12. Learned counsel for the appellant has, however, pressed appellant's claim for gratuity on the basis of provisions contained in the Payment of Gratuity Act, 1972. Learned counsel has placed Section 1(3) of the Payment of Gratuity Act, 1972 as also the notification issued by Ministry of Labour, dated April 3, 1997, whereby the Central Government has extended the provisions of the Payment of Gratuity Act, 1972 (hereinafter referred to as the 'Gratuity Act, 1972') upon the educational institution in which 10 or more persons are employed or were employed on any day preceding 12 months as a class of establishment to which the act applied, with effect from the date of publication of notification.

13. A controversy arose in respect of the teachers of private schools regarding applicability of the provisions of the Act of 1972. This issue came to be resolved by the Supreme Court in Ahmedabad Private Primary Teachers' Association Vs. Administrative Officer and others, (2004) 1 SCC 755. In this judgment the Full Bench Judgment of Gujrat High Court rendered in Special Civil Application No. 5272 of 1987 holding the teachers of private schools not to be covered under the Act was affirmed. Only the employees (other than teachers) were held covered by the Gratuity Act, 1972.

14. The Gratuity Act, 1972 was later amended vide Payment of Gratuity

(Amendment) Act, 2009. The constitutional validity of the amending act was challenged before the Supreme Court. The issue came to be resolved by the Hon'ble Supreme Court in Independent Schools' Federation of India (Registered) Vs. Union of India and another, 2022 SCC OnLine SC 1113. The challenge to the amendment made in the Gratuity Act, 1972 vide 2009 Amendment, by private schools, was rejected. The Court held as under in paragraph 19:-

"19. The provisions of the PAG Act, even post the retrospective amendments, will apply only to those teachers who were in service as on 3rd April 1997, and at the time of termination have rendered service of not less than 5 years. The period of 5 years may be partly before 3rd April 1997, as the date on which the person was employed does not determine the applicability of the PAG Act. The date of termination of service, in the form of superannuation, retirement, or resignation, or death or disablement due to accident or disease, should be post the enforcement date, which in the present case is 3rd April 1997. The entire length of service, including the service period prior to 3rd April 1997, is to be counted for the purpose of computing the entitlement condition of 5 years of service. This is the correct effect of the ratio and decision in Management of Goodyear India Limited. (supra) and the decisions explaining retroactive effect of a statute. This legal position would be equally true and correct when the PAG Act was first enforced with effect from 16th September 1972, and when Notification No. S-42013/1/95-SS.(II) under Section 1(3)(c) of the PAG Act was issued and enforced with effect from 3rd April, 1997. It would be the position in case of all notifications issued under Section 1(3)(c) of the PAG Act, unless a contrary intention is expressed, which is not the situation in the present case and thus need not be examined."

15. Reliance is placed by learned counsel for the appellant on the aforesaid judgment to contend that the provisions of the Gratuity Act, 1972 would be applicable upon the basic institutions and the denial of gratuity to appellant is bad in law. Learned counsel has also placed reliance upon Section 14 of the Gratuity Act, 1972 to contend that the provisions of the Gratuity Act, 1972 or any rule made thereunder will have overriding effect, inasmuch as, any inconsistent provision therewith would be invalid. Learned counsel further submits that the scheme for payment of gratuity applicable upon the basic institutions do not extend benefits as are available under the Gratuity Act, 1972, inasmuch as, the payment of gratuity under the applicable scheme is available only if the teacher opts to retire two years prior to attaining the age of superannuation whereas gratuity under the Gratuity Act, 1972 is available on attaining the age of superannuation. Submission is that superior benefits extended to the teacher under the Gratuity Act, 1972 cannot be denied to him.

16. Sri Quazi Mohammad Akaram, learned counsel for the appellant also places reliance upon a judgment of Lucknow Bench of this Court in Writ – A No. 5724 of 2024 (University College Ret. Teachers Welfare Asso. Lko. Thru. Its President Dr. S.S. Chauhan and another Vs. State of U.P. and others) to contend that the gratuity will be payable to the teachers of basic institution.

17. Per contra, Sri Sri Kushmondeya Shahi learned counsel appearing for the respondent Board and the Basic Institution submits that the provisions of the Gratuity Act, 1972 will not be applicable upon the teachers of basic institution in view of the definition of 'employee' contained in Section 2(e) of the Gratuity Act, 1972. He also places reliance upon judgment of Supreme Court in Biharilal Dobray Vs. Roshan Lal Dobray, (1984) 1 SCC 551 to contend that a teacher of basic institution holds a post under the State Government and since is governed by scheme framed by the State for payment of gratuity to such teachers, as such, the Gratuity Act, 1972 would not be applicable. Sri Shahi, therefore, contends that the provisions of the Gratuity Act, 1972 cannot be pressed into service by the appellant to claim gratuity.

18. On the basis of rival submissions made by the respective counsel for the parties the

moot question that arises for our consideration, in the facts of the present case, is as to whether a teacher of a basic institution would be covered within the definition of *employee*, as is contained under Section 2(e) of the Gratuity Act, 1972 so as to extend the benefit of gratuity thereunder to such teacher?

19. Section 2(e) of the Gratuity Act, 1972 is reproduced hereinafter:-

"Section 2(e) *"employee" means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity."*

20. Employee under the Gratuity Act, 1972 would be a person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

21. Appellant's claim for benefit under the Gratuity Act, 1972 is primarily resisted on the ground that the appellant holds a post under the State Government and since is governed by scheme for payment of gratuity, framed by the State as such he would be excluded from the purview of Section 2(e) of the Gratuity Act, 1972. Benefit of gratuity under the Gratuity Act, 1972 would thus not be available to the appellant.

22. We are, therefore, required to consider as to whether (i) a teacher employed in a basic institution holds a post under State Government and (ii) is governed by any other Act or by any Rules providing for payment of gratuity?

23. On the first aspect relating to a teacher of a basic institution holding a post under State Government is concerned, the issue is no longer *res-integra.* In Biharilal Dobray (supra) a question arose before the Supreme Court as to whether an Assistant Teacher of a Basic Primary School run by U.P. Board of Basic Education under U.P. Basic Education Act, 1972 was holding office of profit under the State Government so as to incur disqualification under Article 191(1)(a) of the Constitution of India. The Court examined the provisions of the Act of 1972 to determine the status of board constituted under the Act of 1972. The statement of objects and reasons of the Act of 1972 were noticed by the Court in paragraph 12 of the judgment. In paragraph 13, the Court noted the functions of the Board as were set out in Section 4 of the Act of 1972. After elaborately examining the scheme of the Act the Hon'ble Supreme Court rejected the argument of the respondent that an Assistant Teacher appointed in the institution set up by the Board is not holding an office of profit. In Paragraphs 23 and 24, the Court held as under:-

"23. The contention of the respondent is that the Board being an authority subject to the control of the Government cannot be considered as the Government itself as otherwise Article 58(4) and Article 66(4) of the Constitution which refer to the Government as well as other authority subject to the control of any Government would have to be treated as suffering from the vice of redundancy. It is further argued that when the Constitution itself has made a distinction between the Government and other authority subject to the control of the Government, in the absence of any reference to any other authority subject to the control of the Government in Article 191(1)(a) of the Constitution, the holding of an office of profit under the Board which is only an authority under the control of the Government would not

amount to a disqualification. The argument is indeed quite attractive. But it is difficult to accept it having regard to the provisions of the Act and the rules. We have already shown that the Board is not an authority which is truly independent of the Government and that every employee of the Board is in fact holding his office under the Government. This is not even a case of attempting to pierce the veil and trying to find out the true nature of something after uncovering it but a case where its true nature i.e. the subordination of the Board and its employees to the Government is writ large on the face of the Act and the rules made thereunder.

24. Having considered all aspects of the question in the light of the high purposes underlying Article 191(1)(a) of the Constitution, we are of the view that the respondent was holding an office of profit under the State Government and his nomination was rightly rejected by the Returning Officer. The judgment of the High Court is, therefore, liable to be reversed."

24. Judgment of Supreme Court in Biharilal Dobray (supra) has held the field for the last more than four decades. We have, therefore, no hesitation in coming to the conclusion that a headmaster or assistant teacher appointed in an educational institution established by the Board holds a post under the State Government. The first issue is answered, accordingly.

25. This takes us to the second part of the appellant's contention that the scheme for payment of gratuity framed in respect of teachers of basic institution since is not governed by any other Act or by any Rules providing for payment of gratuity, as such, the Teacher of a basic institution would not be excluded from the ambit of Gratuity Act, 1972. For excluding a person from the definition of employee under Section 2(e) of the Gratuity Act, 1972 such person in addition to holding a post under Central or State Government must also be governed by a scheme for gratuity under any other Act or Rules.

26. What is important is that such employee holding a post under Central or State Government must be governed by any other scheme providing for payment of gratuity under any other Act or Rules. The Act or Rules whereunder such scheme for gratuity is framed is not specified.

27. Ordinarily, a scheme for payment of gratuity would be made under any Act or Rules when it comes to a person holding a post under Central or State Government is concerned. Non specification of Act or Rules in the exclusion clause contained in Section 2(e) and the use of expression *"any other act or by any rules"* essentially conveys that such scheme for payment of gratuity must be backed by requisite force of law.

28. Reference to scheme for gratuity made under any other act or by any rules conveys expressions of wide magnitude. It cannot be restricted only to scheme for gratuity made under any specific Act or Rules, per se. Such scheme for gratuity for a person holding post under State Government can also be by way of Rules made in exercise of executive powers of State. This is so as the power with the State Government to frame scheme for payment of gratuity by way of executive instructions would be co-extensive with the legislative powers of State. (See: Article 162 of the Constitution of India). The argument of appellant's counsel that scheme for gratuity framed by the State in respect of teachers of basic institution since are not under any other Act or by any specific Rules made under any Act, therefore, the benefits under Gratuity Act, 1972 would be available to the appellant cannot be accepted.

29. We, accordingly, hold that a teacher (including Headmaster) of a basic institution cannot be held to be an *employee* under Section 2(e) of the Gratuity Act, 1972. The benefits available to an employee under the Gratuity Act, 1972 would thus not be available to such a teacher. The claim of appellant for extending the benefit of gratuity under the Gratuity Act, 1972, accordingly, fails.

30. Special Appeal is, therefore, dismissed.

(2025) 7 ILRA 308
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 21.07.2025
BEFORE

THE HON'BLE ARUN BHANSALI, C.J.
THE HON'BLE JASPREET SINGH, J.

Special Appeal No. 120 of 2025
&
Special Appeal No. 122 of 2025

State Of U.P. & Ors. ...Appellants
Versus
Shiv Datt Joshi & Ors. ...Respondents

Counsel for the Appellants:
C.S.C.

Counsel for the Respondents:
Gaurav Mehrotra, Akhilesh Kumar Kalra, Rajesh Chandra Mishra, Ritika Singh

Issue for Consideration

(A) Effect of not impleading all the affected parties and not providing them opportunity of hearing in compliance of the principle of natural justice, particularly in the light of fact that few similarly situated affected parties were impleaded and had contested the matter before the learned Single Judge.

(B) Legality of the promotion granted from anti-date.

(C) Impact and purpose of 'Proviso'.

(D) Applicability of doctrine of *Ut Res MagisValeat Quam Pereat*.

(E) Use of the word 'Person', whether it connotes singular or plural.

(F) Meaning of the word 'Adjudication'.

Headnotes

(A) Service law – Constitution of India,1950 – Article 14 – Principle of natural justice – Non-joinder of all the affected parties – Seniority list was finalized after considering the objections – In writ petition arising out of challenge to seniority list, it is claimed that the appellant, who are the direct recruits, were not afforded a reasonable opportunity of hearing, though few affected parties belonging to the direct quota groups were impleaded as private respondents and they were represented through their respective counsel – Effect :

Held : Impleadment of a few affected employees would be sufficient compliance relating to the principles of joinder of parties as they are in a position to defend the interest of all other affected parties in representative capacity and non-joining of all the parties would not be fatal – If the party raises a plea of non-compliance of principles of natural justice, this in itself may not always work for setting aside a judgment unless it is shown that the party raising such an objection has suffered consequential failure of justice – This Court does not find much substance in the submissions of the learned Senior Counsel seeking to set aside the order passed by the learned Single Judge solely on the ground of not being provided with an opportunity of hearing especially when no prejudice could be established. [Paras 42, 43 and 49]

(B) Service Law – Promotion – Granted from an ante-date – Validity challenged – It is claimed that the promotion could have been made only from the date of issuance of the order – Earlier objections of directly appointed employee regarding date of promotion was rejected thrice – Raising of same issue after 7 years – Permissibility – Relevancy of Proviso to R. 8 of the Rules of 1991 considered:

Held: The proviso carves an exception and it is an indicator of the fact that the Rules reserves the power or rather it enabled the employer to invoke the said proviso and provide appointment on the promoted post from a particular back date, if required. If at all, the promotions were to be covered only from the

date on which the promotion order was to take effect and it was to apply uniformally then there was no purpose of incorporating the proviso – Where the objections regarding the date of promotion of the writ petitioners was raised by the persons belonging to the direct quota on 3 different occasions and after considerations, they were rejected by the State and never assailed by the aggrieved party before any court of law. After 7 years, now taking a ground that the writ-petitioners were granted promotion erroneously appears to be arbitrary, inasmuch as, this error, if at all, as stated by the State, was in their knowledge and it was considered on three different occasions. [Paras 61 and 87]

(C) Interpretation of statute – 'Proviso' to any general provision – Impact and purpose:

Held : In the words of Lord Macmillan the purpose of a proviso is expressed as 'the proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is to confine it to that case – The purpose of incorporating a proviso is to qualify the main provision or to create an exception to what is in the enactment. [Paras 55 and 59]

(D) Interpretation of statute – Doctrine of *Ut Res MagisValeat Quam Pereat* – Applicability:

Held : One of the cardinal principles of interpretation is that nothing should be read in an enactment and the use of the words in the enactment should not be interpreted in such a manner that the words used in the enactment are made superfluous. [Para 62]

(E) Word 'Person' – Meaning – Whether it connotes singular or plural:

Held : Use of the phrase in singular would also include its plural. Thus, to state that merely because the word 'person' has been used in the singular context, it would not include several persons, in plurality, cannot be accepted. [Para 63]

(F) Word 'Adjudication' – Meaning:

Held : Adjudication is a legal process by which a neutral authority/court or Tribunal resolves a dispute between the parties by considering the material, evidence and by applying the law and then issue a binding decision. [Para 81] (E-1)

Case Law Cited

P. Sudhakar Rao v. U. Govinda Rao, (2013) 8 SCC 693; Vinod Kumar v. State of Haryana and Others, (2013) 16 SCC 293; Union of India and Another v. Narendra Singh, (2008) 2 SCC 750; State W.B. v. Amal Satpathi, 2024 SCC OnLine SC 3512; Ashok Kumar Das v. University of Burdwan, (2010) 3 SCC 616; Vikas Pratap Singh v. State of Chhattisgarh, (2013) 14 SCC 494; Union of India v. Manpreet Singh Poonam; (2022) 6 SCC 105; P.S. Sadasivaswamy v. State of T.N., (1975) 1 SCC 152; Union of India v. C. Girija, (2019) 15 SCC 633; Ajay Kumar Shukla v. Arvind Rai, (2022) 12 SCC 579; Prabodh Verma v. State of U.P., (1984) 4 SCC 251; Amit Singh v. Ravindra Nath Pandey, (2022) 20 SCC 559; Durgawati Singh v. Deputy Registrar, Firms Societies and Chits, Lucknow, 2022 (2) ALJ 200; State of U.P. v. Sudhir Kumar, 2020 SCC OnLine SC 847; Sundaram Pillai V. VR. Pattabiraman, AIR 1985 SC 582; Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector & ETIO, (2007) 5 SCC 447; Indore Development Authority v. Manoharlal and Others, (2020) 8 SCC 129 – **referred to.**

List of Acts

Uttar Pradesh Government Servants Seniority Rules, 1991 – Rule 8 and its proviso.

List of Keywords

Seniority; Promotion; Direct recruit; Tentative Seniority List; Reasonable opportunity of hearing; Principle of natural justice; Cursory order; non-speaking order; non-reasoned order; Impleadment; Impleadment in a representative capacity; Non-impleading all the parties; Non-joinder of necessary parties; Principle of joinder of parties; Principle of interpretation; Superfluous; Proviso; Person; Singular; Plural; State; Model employer; Doctrine of res-judicata; Adjudication.

Case Arising From

Judgment and order dated 24.02.2025 passed in Writ A No. 9193 of 2023, and Writ A No. 5381 of 2024

(Delivered by Hon'ble Jaspreet Singh, J.)

1. In these two intra-court appeals, the dispute of seniority between the direct recruits and promotees of the Secretariat, Administration Department is in question. Two writ petitions were filed before the learned Single Judge by the promotees wherein they had challenged the orders impugned by which the date of appointment of the writ-petitioners was changed from 30.06.2016 to 13.07.2016 as well as the subsequent seniority list issued on 06.09.2023 wherein the writ petitioners were placed lower in seniority.

2. Since the issue involved in both the petitions was identical, hence, both the writ petitions were decided by a common judgment/order dated 24.02.2025 whereby the writ petitions were allowed and the order dated 09.08.2023, the seniority list dated 06.09.2023 and the consequential promotion order dated 25.10.2023 were set aside and the State-respondents was directed to prepare a fresh seniority list. The aforeasaid judgment and order dated 24.02.2025 corrected on 28.02.2025 passed in Writ-A No. 9193 of 2023 and Writ-A No. 5381 of 2024 has been put to challenge in the instant two intra-court appeals.

3. The State has preferred intra-court appeal No. 120 of 2025 which arises out of Writ-A No. 9193 of 2023. Sri Mukesh Pradhan and Mukesh Chandra Yadav, as appellants of the connected intra-court appeal no. 122 of 2025, who were the respondent nos. 5 and 7 respectively in Writ-A No. 5381 of 2024, too have assailed the same judgment and order dated 24.02.2025 corrected on 28.02.2025. Since the issue in both the appeals is common, hence, both the intra-court appeal are being decided by this common judgment.

4. Sri Kuldeep Pati Tripathi, learned Additional Advocate General and Sri Vivek Shukla, learned Additional Chief Standing Counsel for the State have challenged the order of the writ court urging that the order impugned does not take note of the relevant Service Rules. It was urged that the learned Single Judge fell in error in upholding an ante-dated promotion order which was de-hors the rules. The seniority is to be granted from the date of the promotion order which is provided in the Service Rules and the State having corrected an error, by correcting the date from which the promotion was to take effect in sync with the date of the promotion order, actually amounted to setting right, a wrong done earlier and in such circumstances there was not much scope for interference in writ jurisdiction but the learned Single Judge failed to consider this aspect of the matter, which has resulted in sheer miscarriage of justice.

5. It was urged that the State could not have granted retrospectivity to the promotions and in the aforesaid backdrop the grant of promotion to the respondents from a date earlier than the date of the promotion order could not be justified, however, the learned Single Judge did not appreciate this aspect and has applied the principles of res-judicata which was not applicable, hence, the order impugned cannot be sustained and it deserves to be set aside.

6. The learned counsel for the State-appellants in support of their submissions has relied upon the following decisions:-

(i) **P. Sudhakar Rao v. U. Govinda Rao, (2013) 8 SCC 693;**

(ii) **Vinod Kumar v. State of Haryana and Others; Vinod Kumar v. State of Haryana, (2013) 16 SCC 293;**

(iii) **Union of India and Another v. Narendra Singh; (2008) 2 SCC 750;**

(iv) **State W.B. v. Amal Satpathi, 2024 SCC OnLine SC 3512;**

7. Sri H.G.S. Parihar, learned Senior Counsel assisted by Ms. Meenakshi Parihar Singh, learned counsel for the appellants of the connected intra-court appeal No. 122 of 2025 has primarily supported the aforesaid submissions advanced by the learned Additional Advocate General, however, in addition, it was urged that the appellants who were respondent nos. 5 and 7 in the connected petition no. Writ-A No. 5381 of 2024 were not given an opportunity of hearing and they have been castigated without an opportunity which has caused sheer miscarriage of justice. Neither notices were issued nor the appellants were granted an opportunity to file their response, hence, as far as the appellants of the intra-court appeal No. 122 of 2025 are concerned, the order impugned passed by the learned Single Judge practically is an ex-parte order and in such circumstances, it would be appropriate for the impugned order to be set aside while remanding the matter before the learned Single Judge with liberty to the appellants of Intra-court Appeal No. 122 of 2025 to file their response and the matter be re-considered and decided on merits.

8. Sri Gaurav Mehrotra, learned counsel assisted by Ms. Ritika Singh and Mr. Ahad Abdul Moin, learned counsel appearing for the writ petitioners in both the connected petitions and the respondents herein, has refuted the aforesaid contentions and submitted that the issue of seniority had come to be settled in the year 2016. No challenge was ever raised to the said seniority list, however, later again in April, 2019 an attempt was made to challenge the seniority of the writ-petitioners which again was turned down. Finally in the year 2022, once again an attempt was made to challenge the seniority which did not find favour with the State.

9. Almost after 7 years, upon an indirect attempt made by certain persons of the direct recruit quota, the issue relating to promotion date of the writ petitioners was raised once again and the State considering the same passed the impugned order dated 09.08.2023 unsettling the seniority which was settled 7 years ago. This came to be challenged by the respondents herein, before the writ court who after hearing the parties and after meticulously considering the records, set aside order dated 09.08.2023.

10. It was further urged that the submissions advanced by the State that the service rule was violated, is misconceived as the rules clearly provided the requisite power to the State to grant seniority from a date prior to the date of the order. After complying with the necessary formalities and in accordance with the relevant rule, the order of promotion was issued and then the seniority list was prepared, hence, it cannot be said that the learned Single Judge has ignored the applicable rules.

11. It was also submitted that the State had issued a notice calling upon the writ-petitioners to furnish their reply as to why their date of appoitnmnet on the promotion post, may not be changed and despite

having submitted a detailed reply, the State did not consider the same and rejected it by a cursory, non-speaking and a non-reasoned order.

12. It was further submitted that the appellants of the connected intra-court appeal were duly represented as respondents in the writ petitions and they were represented by their counsel. Ample opportunity was available with them to furnish their replies but they chose not to do so and in such circumstances, it cannot be said that the appellants of the connected appeal were not given any opportunity to place their submissions or contest the peittion on merits.

13. It was urged that in matters relating to seniority, where large number of persons may be affected, in such cases even if few persons are impleaded and they represent the cause which is under consideration of the court then it would not hamper the rights of the some persons concerned who may not have personally contested the matter.

14. It was further urged that as far as the appellants of the connected intra-court appeal are concerned namely Mukesh Pradhan and Mukesh Chandra Yadav, they were both impleaded as respondent nos. 5 and 7 in the writ petition which was filed by Sri Sanjeev Kumar Sinha and 2 Others i.e. Writ-A No. 5381 of 2024. The other respondents of Writ-A No. 9193 of 2024 i.e. the respondent no. 4 to 11 though affected, have not assailed the order passed by the writ court though they are in the same bracket as the appellants of the intra-court appeal No. 122 of 2025.

15. Similarly, the respondents in Writ-A No. 5381 of 2024 i.e. respondent nos. 4, 6, 8 to 11 have also not assailed the order passed by the learned Single Judge and it is only the respondent no. 5 and 7 who have filed the intra-court appeal bearing No. 122 of 2025.

In such circumstances where the parties were adequately represented and the issue of seniority had been decided, hence, no interference was required from this Court on the ground that the appellants of the connected intra-court appeal were not provided any personal opportunity. For the aforesaid reasons, it was urged that the intra-court appeals deserve to be dismissed.

16. The learned counsel for the respondents relied upon the following decisions:-

(i) **Ashok Kumar Das v. University of Burdwan, (2010) 3 SCC 616;**

(ii) **Vikas Pratap Singh v. State of Chhattisgarh, (2013) 14 SCC 494;**

(iii) **Union of India v. Manpreet Singh Poonam; (2022) 6 SCC 105;**

(iv) **P.S. Sadasivaswamy v. State of T.N., (1975) 1 SCC 152;**

(v) **Union of India v. C. Girija, (2019) 15 SCC 633;**

(vi) **Ajay Kumar Shukla v. Arvind Rai, (2022) 12 SCC 579;**

(vi) **Prabodh Verma v. State of U.P., (1984) 4 SCC 251;**

(vii) **Amit Singh v. Ravindra Nath Pandey, (2022) 20 SCC 559;**

17. The Court had heard the learned counsel for the respective parties and has

also perused the material available on record.

18. In order to appreciate the controversy involved in the instant intra-court appeals, certain brief facts may be noticed which are as under:-

19. The original writ-petitioners before the writ court were appointed on the post of Junior Grade Clerk in the year 1990 in the Secretariat Administration Department. In the year 2005, they were promoted to the post of Assistant Review-Officer. After satisfactory performance of their duties on the post of Assistant Review-Officer and having served on the said post for substantial length of time, they were eligible to be promoted to the post of Review-Officer.

20. The exercise for promotion of the writ petitioners commenced with issuance of letter dated 26.07.2016, to the Secretary of the Uttar Pradesh Public Service Commission requiring it to convene the meeting of the Selection Committee for the purposes of conducting selections for the vacant and newly created posts of Review-Officer in the promotion quota for the selection year 2015-16.

21. The Departmental Promotion Commitee held its meeting on 30.06.2016 and intimated the result to the State-Government. Thereafter the matter was sent to the Uttar Pradesh Public Service Commission to give its approval. The approval was received by the State on 13.07.2016 in respect of 144 persons and their promotion orders were issued on 13.07.2016 w.e.f. 30.06.2016. The persons so promoted were placed on probation for a period of two years and their seniority in the cadre of review-officers was to be considered.

22. In the aforesaid backdrop, a tentative seniority list was issued on 23.07.2016, upon which objections were invited and several objections were received from the direct recruits of 2013 Batch wherein the specific issue raised was regarding the grant of promotion to the writ-petitioners from 30.06.2016 even though their promotion orders were dated 13.07.2016.

23. In order to consider the said objections, a 3 member Committee was constituted who after due consideration rejected the objections and the final seniority list was published on 05.08.2016.

24. On 18.08.2018, a tentative seniority list was once again published for the purposes of inviting objections. This time too a four member Committee was constituted. The recruits of the 2013 Batch again raised the same objections regarding the date of promotion given to the writ-petitioners w.e.f. 30.06.2016 instead of 13.07.2016. These objections were once again considered and rejected and then the final seniority list was published on 03.04.2019 and this time too the same was never challenged before any judicial forum.

25. On 15.07.2022, yet again a tentative seniority list was published against which objections were invited wherein similar objections as were raised earlier were filed by the direct recruits relating to the date of grant of appointment to the writ-petitioners from 30.06.2016 instead of 13.07.2016.

26. Again a 3 member Committee was constituted which did not find favour with

the objections so raised and the date of promotion given to the writ petitioners was upheld vide order dated 11.08.2022.

27. However, on 14.07.2023, notices were issued to the writ-petitioners informing them that they had been erroneously promoted w.e.f. 30.06.2016 whereas they ought to have been promoted w.e.f. 13.07.2016, while calling for a response from the writ-petitioners. The writ petitioners furnished their detailed reply which did not find favour with the State-Authorities who rejected the same vide order dated 06.09.2023. Immediately at the said stage, a writ petition was filed by the writ-petitioners, however, since the final seniority list was issued, the same was withdrawn and the instant two writ-petitions bearing Writ-A No. 9193 of 2023 and Writ-A No. 5381 of 2024 came to be filed assailing the promotion order dated 25.10.2023, the office memorandum dated 06.09.2023 and the order rejecting the objections of the writ petitioners dated 09.08.2023.

28. Both the writ petitions were connected and have been allowed by the common order passed by the writ court dated 24.02.2025. Since there was a typographical error in the impugned order, hence, the same was corrected vide order dated 28.02.2025.

29. At the outset, this Court finds that it will be appropriate to first take up the issue as raised by the appellants of connected intra-court appeal no. 122 of 2025 who are the direct recruits canvassing the proposition that the said appellants were not afforded a reasonable opportunity of hearing and that they must be granted an opportunity to contest the matter.

30. In this regard, if the record along with the undisputed facts are perused, it would indicate that Writ-A No. 5381 of 2024 came to be filed by Sanjeev Kumar Sinha and 2 Others, who were the writ-petitioners and belonging to the promotee quota. In the said writ petition, apart from the State-respondents, the appellants of intra-court appeal no. 122 of 2025 were impleaded as private respondents nos. 5 and 7.

31. The record would indicate that the writ court in its order dated 16.07.2024 had noticed that the State had raised a preliminary objection regarding maintainability whereas some of the advocates had also raised an objection that some parties were not impleaded in the writ petition and, therefore, liberty be granted to them to file their impleadment application. The writ Court noticed and directed the State to file a detailed counter affidavit raising all pleas including the issue of maintainability and the matter was directed to be listed on 05.08.2024. The order dated 16.07.2024 is being reproduced hereinafter for ready reference:-

"Heard Sri Gaurav Mehrotra, assisted by Ms. Ritika Singh, learned counsel for the petitioners, Sri Kuldeep Pati Tripathi, learned Additional Advocate General of Uttar Pradesh and Sri Vevek Kumar Shukla, learned counsel for the private respondents.

At the very outset, Sri Kuldeep Pati Tripathi raised preliminary objection regarding the maintainability of the writ petition by submitting that this writ petition is not maintainable on various grounds which may be indicated in his affidavit and prays that for the same, some reasonable time may be given to him.

Some of advocates have raised objection to the effect that some parties have not been impleaded in the writ petition, therefore, liberty may be granted to them to file impleadment application.

Sri Gaurav Mehrotra has informed this Court that the identical issue is pending consideration before this Court wherein pleadings are complete and hearing is going on, therefore, this matter may be adjudicated on merits.

Let a detailed counter affidavit be filed by the State respondent taking therein additional plea regarding the maintainability of the writ petition and the objection regarding maintainability would be heard and disposed of first and after disposal of pleas regarding the maintainability of the writ petition, the matter may be proceeded further on merits.

Therefore, the detailed counter affidavit would be filed within a period of two weeks from today.

List this case in the week commencing 05.08.2024 as fresh. This matter may be taken up immediately after fresh."

32. The record would further indicate that when the matter was taken up on 06.08.2024 before the writ court, the State was granted three week's time to file a counter affidavit. The matter was thereafter listed on several dates and on 30.10.2024, the writ court directed the said Writ-A No. 5381 of 2024 to be connected with Writ-A No. 9193 of 2023 and it is in this fashion that both the writ petitions came to be connected which were finally heard at a later date and came to be decided on 24.02.2025.

33. The record also indicates that in Writ-A No. 5381 of 2024, the State had filed its detailed counter affidavit and the petitioners were granted a week's time to file its rejoinder as indicated in the order of the writ court date 28.08.2024.

34. Thus, it would be seen that as far as the both the writ petitions are concerned, the affected parties belonging to the direct quota groups were already impleaded as private respondents and they were represented through their respective counsel, as well.

35. The record further indicates that as far as the private respondents in both the writ petitions are concerned, they all have been joined and impleaded in a representative capacity and all the said persons, though juniors to the writ petitioners have been placed at a higher rank above the writ petitioners in the impugned final seniority list dated 11.08.2023 and 06.09.2023.

36. It could not be disputed that all such person who were higher in rank than the writ petitioners as indicated in the seniority list dated 11.08.2023 and who have been promoted in terms of the final seniority list dated 06.09.2023, would not be affected by the outcome of the present controversy as in any case they were already higher in rank and it is only those persons who as per the petitioners were lower in rank but for the seniority list dated 06.09.2023 have been placed higher than the writ petitioners would be the ones actually aggrieved.

37. It is also not disputed that the private respondent nos. 10 and 11 namely Vipul Singh and Manas Kumar Pandey (relating to Writ-A No. 9193 of 2024) are

of 2014 Batch and were appointed on 28.03.2017 and 16.05.2017 respectively and they too belonged to the same batch as that of Sri Mukesh Pradhan and Mukesh Chadra Yadav, who are the appellants of the connected intra-court appeal no. 122 of 2025 were issued notices and they had ample time to file their response.

38. Thus, on the basis of the aforesaid undisputed facts as reflected from the records, it cannot be said that the direct recruits of 2014 Batch were not noticed or that they were not granted any opportunity to contest the case on merits.

39. The record would further indicate that certain other persons who were the beneficiaries of the final seniority list had moved their applications for impleadment and they were allowed to contest the proceedings. Thus, there is no dispute in so far as the presence of such contesting parties being on record and who were the beneficiaries of the impugned seniority list. As indicated above, the State had filed its detailed counter affidavit which was on the record.

40. At this stage, it will be worthwhile to examine as to whether any prejudice has been caused to the appellants of the intra-court appeal No. 122 of 2025 for non-impleading all the parties of the impugned seniority list. In this regard, it will be relevant to notice the decision of the Apex Court in **Pramod Verma (supra)**, wherein in paragraph 28, the Apex Court flagged an issue relating to non-joinder of necessary parties in context of a litigation relating to promotion. Thereafter in paragraph 50, it noticed that a writ court under Article 226 of the Constitution of India ought not to hear and dispose of the writ petitions without the persons who are vitally affected by the judgment being made parties or being before the court or at least some of them being before the court in a representative capacity if their numbers are too large to join them as respondents individually.

41. In **Ajay Kumar Shukla (supra)**, the Apex Court was faced with a similar situation and considering the earlier decisions on the said subject, the Apex Court in paragraph 45 to 51 held as under:-

"45. The other ground taken by the High Court for non-suiting the appellants were that they had not impleaded all the affected Junior Engineers. For the said proposition, the Division Bench [Rajesh Kumar Singh v. Rajeev Nain Upadhyay, 2019 SCC OnLine All 4782] of the High Court has placed reliance upon the judgment of this Court in Ranjan Kumar v. State of Bihar (2014) 16 SCC 187 . The above case was in respect of selection and appointment on the ground that the same had been made only on the basis of interview without holding any written test. The High Court had quashed [Vinay Kumar v. State of Bihar, 2003 SCC OnLine Pat 960] such selection and appointments even of those appointees who were not even parties to the petition. It was in these circumstances that this Court held that the appointments of non-parties could not be quashed. Facts of the said case are clearly distinguishable.

46. The Division Bench of the High Court also relied upon another judgment of this Court in Prabodh Verma v. State of U.P. (1984) 4 SCC 251. This case again related to challenge to appointments and in the said case there was no impleadment even in the representative capacity. In such

circumstances, this Court said that the petition was liable to be dismissed for non-joinder of necessary parties. In fact, this judgment helps the appellants. Para 50 thereof is reproduced below : (SCC pp. 288-89)

"50. ... (1) A High Court ought not to hear and dispose of a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as the respondents or at least some of them being before it as the respondents in a representative capacity if their number is too large to join them as the respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties."

(emphasis supplied)

47. The third case relied upon by the Division Bench for the above proposition, namely, State of Uttaranchal v. Madan Mohan Joshi (2008) 6 SCC 797 was again a case where none of the affected parties were impleaded not even in the representative capacity. In such circumstances, this Court remanded the matter to the High Court leaving it open to the original petitioners therein to move an appropriate application for impleading some of the affected teachers in their representative capacity.

48. The fourth case relied upon by the Division Bench on the above proposition is Indu Shekhar Singh v. State of U.P. (2006) 8 SCC 129. In this case also, the affected parties were not impleaded and this Court relied upon the judgment of this Court in Prabodh Verma [Prabodh Verma v. State of U.P., (1984) 4 SCC 251] .

49. In Tridip Kumar Dingal v. State of W.B. (2009) 1 SCC 768, C.K. Thakker, J., held that the case falls within the ambit of non-joinder of necessary parties as none of the 66 candidates against whom the complaint was made, were made parties. It further held that some of the respondents should have been arrayed in representative capacity. Para 41 is reproduced below : (SCC p. 780)

"41. Regarding protection granted to 66 candidates, from the record it is clear that their names were sponsored by the employment exchange and they were selected and appointed in 1998-1999. The candidates who were unable to get themselves selected and who raised a grievance and made a complaint before the Tribunal by filing applications ought to have joined them (selected candidates) as the respondents in the original application, which was not done. In any case, some of them ought to have been arrayed as the respondents in a "representative capacity". That was also not done. The Tribunal was, therefore, wholly right in holding that in absence of selected and appointed candidates and without affording opportunity of hearing to them, their selection could not be set aside."

(emphasis supplied)

50. In the recent case of Mukul Kumar Tyagi v. State of U.P. (2020) 4 SCC 86, Ashok Bhushan, J., laid emphasis that when there is a long list of candidates against whom the case is proceeded, then it becomes unnecessary and irrelevant to implead each and every candidate. If some of the candidates are impleaded then they will be said to be representing the interest of rest of the candidates as well. The relevant portion of para 81 from the

judgment is reproduced below : (SCC p. 119)

"81. ... We may further notice that the Division Bench [Deepak Sharma v. State of U.P., 2019 SCC OnLine All 5970] also noticed the above argument of non-impleadment of all the selected candidates in the writ petition but the Division Bench has not based its judgment on the above argument. When the inclusion in the select list of large number of candidates is on the basis of an arbitrary or illegal process, the aggrieved parties can complain and in such cases necessity of impleadment of each and every person cannot be insisted. Furthermore, when select list contained names of 2211 candidates, it becomes unnecessary to implead every candidate in view of the nature of the challenge, which was levelled in the writ petition. Moreover, few selected candidates were also impleaded in the writ petitions in representative capacity."

51. The present case is a case of preparation of seniority list and that too in a situation where the appellants (original writ petitioners) did not even know the marks obtained by them or their proficiency in the examination conducted by the Commission. The challenge was on the ground that the Rules on the preparation of seniority list had not been followed. There were 18 private respondents arrayed to the writ petition. The original petitioners could not have known who all would be affected. They had thus broadly impleaded 18 of such Junior Engineers who could be adversely affected. In matters relating to service jurisprudence, time and again it has been held that it is not essential to implead each and every one who could be affected but if a section of such affected employees is impleaded then the interest of all is represented and protected. In view of the above, it is well settled that impleadment of a few of the affected employees would be sufficient compliance of the principle of joinder of parties and they could defend the interest of all affected persons in their representative capacity. Non-joining of all the parties cannot be held to be fatal....."

42. The aforesaid decision clearly lays down that impleadment of a few affected employees would be sufficient compliance relating to the principles of joinder of parties as they are in a position to defend the interest of all other affected parties in representative capacity and non-joining of all the parties would not be fatal.

43. There is another way to look at this issue and i.e. if the party raises a plea of non-compliance of principles of natural justice, this in itself may not always work for setting aside a judgment unless it is shown that the party raising such an objection has suffered consequential failure of justice.

44. It will also be relevant to point out that the learned Senior Counsel on behalf of the appellants of the connected intra-court appeal no. 122 of 2025 could not indicate as to what additional material or additional submissions could have been made by the appellants, had they contested the proceedings before the writ court, as all possible submissions raised by the said appellants were already advanced by the State and it was the State who was to defend the impugned order.

45. A coordinate Bench of this Court in Durgawati Singh V. Deputy Registrar, Firms Societies and Chits, Lucknow; 2022

(2) ALJ 200 wherein one of us (Jaspreet Singh, J.) had the occasion to consider as to whether an order passed without affording an opportunity of hearing can be set aside simplicitor on the aforesaid ground or the person seeking the indulgence of the Court must also establish real prejudice or consequential failure of justice.

46. This Court in **Durgawati (supra)** in para 33 considering the decision of the Apex Court in **State of U.P. v. Sudhir Kumar, 2020 SCC OnLine SC 847** wherein the Apex Court after considering the large number of authorities culled out principles which have been noted in para-39 of the decision of **Sudhir Kumar (supra)** which was relied upon by the Division Bench of this Court in para-33 in **Durgawati (supra)** which reads as under:-

"33. Lately, the Apex Court in State of U.P. v. Sudhir Kumar, 2020 SCC OnLine SC 847 had the occasion to consider the issue once again and after noticing a large number of authorities and previous decisions, culled out the following principles noted in Para 39, which reads as under:—

"39. An analysis of the aforesaid judgments thus reveals:

(1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

(2) Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

(3) No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

(4) In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

(5) The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice."

47. Now, applying the aforesaid principles to the instant case, this Court finds that first and foremost, some persons from the impugned seniority list were impleaded as a party in the two writ petitions and they had contested the matter before the learned Single Judge.

48. The matter was contested tooth and nail along with the State by their side and merely because the appellants of the

intra court appeal No. 122 of 2025 were not granted any personal opportunity as alleged but they have not pleaded any prejudice which has been caused as their rights were common and duly represented by the others who were similarly situate respondents in the two writ petitions and had contested the matter.

49. Hence, this Court does not find much substance in the submissions of the learned Senior Counsel seeking to set aside the order passed by the learned Single Judge solely on the ground of not being provided with an opportunity of hearing especially when no prejudice could be established and moreover the law as laid down in **Pramod Vema (supra)** and **Ajay Shukla (supra)** also does not aid the learned Senior Counsel hence, for the aforesaid reasons, the submissions of the learned Senior Counsel for the appellants of Intra-Court Appeal No. 122 of 2025 is turned down.

50. Now, reverting to the submissions advanced by the learned Additional Advocate General in Intra Court Appeal No. 120 of 2025 wherein it was urged that the learned Single Judge did not consider the rules applicable to the parties which did not not envisage granting promotion from an ante-date rather the promotion could have been made only from the date of issuance of the order.

51. Taking the submissions forward, the learned Additional Advocate General had also submitted that the proviso to Section 8 of the Rules of 1991 uses the word 'person' which primarily connotes a singular. It was urged that the said proviso preserves the power to grant any promotion from back date only in such cases where certain consequences/directions emanate from a decision rendered by a Competent Tribunal/Court. It was thus urged that this aspect has not been noticed by the learned Single Judge while passing the impugned order.

52. On the other hand, the learned counsel for the respondents had argued that the proviso to the aforesaid sections of the Rules of 1991 saves the power of the State (employer) to provide the promotion from a prior date.

53. In order to test the veracity of the aforesaid submissions, it will be relevant to notice the said Rule 8 of Rules of 1991 and the same reads as under:-

"8. Seniority where appointments by promotion and direct recruitment.- *(1) Where according to the service rules appointments are made both by promotion and by direct recruitment, the seniority of persons appointed shall, subject to the provisions of the following sub-rules, be determined from the date of the order of their substantive appointments, and if two or more persons are appointed together, in the order in which their names are arranged in the appointment order:*

Provided that if the appointment order specifies a particular back date, with effect from which a person is substantively appointed, that date will be deemed to be the date of order of substantive appointment and, in other cases, it will mean of issuance of the order :

Provided further that a candidate recruited directly may lose his seniority, if he fails to join without valid reasons, when vacancy is offered to him the decision of the appointing authority as to the validity of reasons, shall be final.

(2) The seniority inter se of persons appointed on the result of any one selection,-

(a) through direct recruitment, shall be the same as it is shown in the merit list prepared by the Commission or by the Committee, as the case may be;

(b) by promotion, shall be as determined in accordance with the principles laid down in Rule 6 or Rule 7, as the case may be, according as the promotion are to be made from a single feeding cadre or several feeding cadres.

(3) Where appointments are made both by promotion and direct recruitment on the result of any one selection the seniority of promotees vis-a-vis direct recruits shall be determined in a cyclic order (the first being a promotee) so far as may be, in accordance with the quota prescribed for the two sources.

Illustrations

(1) Where the quota of promotees and direct recruits is in the proportion of 1 : 1 the seniority shall be in the following order-

First... Promotee

Second… Direct recruits

and so on.

(2) Where the said quota is in the proportion of 1 : 3 the seniority shall be in the following order-

First… Promotee

Second to Fourth…

Direct recruits

Fifth… Promotee

Sixth to eight…

Direct recruits

and so on:

Provided that-

(i) where appointment from any source are made in excess of the prescribed quota, the persons appointed in excess of quota shall be pushed down, for seniority, to subsequent year or years in which there are vacancies in accordance with the quota;

(ii) where appointments from any source fall short of the prescribed quota and appointment against such unfilled vacancies are made in subsequent year or years, the persons so appointed shall not get seniority of any earlier year but shall get the seniority of the year in which their appointments, are made, so however, that their names shall be placed at the top followed by the names, in the cyclic order of the other appointees;

(iii) where, in accordance with the service rules the unfilled vacancies from any source could, in the circumstances mentioned in the relevant service rules be filled from the other source and appointment in excess of quota are so made, the persons so appointed shall get the seniority of that very year as if they are appointed against the vacancies of their quota."

54. From a perusal of the aforesaid rule, it would indicate that it clearly states that the seniority of a person (s) shall be

subject to the provisions of the sub-rules and it is to be determined from the date of the order of their substantive appointments. Thus, the aforesaid rule clearly indicates that the seniority shall be considered from the order of their substantive appointment.

55. Before considering this aspect of the matter, it will be relevant to notice the impact of a proviso which is appended to a particular section. In the words of Lord Macmillan the purpose of a proviso is expressed as 'the proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is to confine it to that case'.

56. The purpose of proviso was considered by the Apex Court in **Sundaram Pillai V. VR. Pattabiraman, AIR 1985 SC 582,** and it was expressed that by and large a proviso may serve the following four different purposes:-

"(i) qualifying or excepting certain provisions from the main enactment:-

(ii) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;

(iii) it may be so embedded in the Act itself as to become an integral part of the enactment, and thus acquire the tenor and colour of the substantive enactment itself; and

(iv) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."

57. Similarly, the Apex Court in **Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector & ETIO, (2007) 5 SCC 447** in paragraph 98 it followed the observations in Sundaram Pillai (supra) and has observed as under:-

"98. Once the aforementioned conclusion is arrived at, it would not be necessary to construe the proviso appended to sub-section (1) of Section 20 in its own language. Proviso, as is well known, has four functions, as has been noticed by this Court in S. Sundaram Pillai v. V.R. Pattabiraman [(1985) 1 SCC 591] , in the following terms : (SCC p. 610, para 43)

"43. (1) qualifying or excepting certain provisions from the main enactment;

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."

In a case of this nature, the proviso restricts the operation of the repeal clause. It seeks to protect the matter specified thereunder despite such repeal. Section 6 of the General Clauses Act seeks to achieve the same purpose, subject of course, to the repealing Act having no

provision inconsistent with the repealed Acts. The 1962 Act provided for grant of exemption from payment of electricity tax levied on consumption of electricity. When a notification was issued by the appropriate authority, the same had to be given a purpose. A notification issued thereunder could be an act which would come within the purview of the words "anything duly done."

58. The Apex Court in **Indore Development Authority v. Manoharlal and Others; (2020) 8 SCC 129** had the occassion to consider the manner in which the proviso is to be interpreted and it also relied upon an earlier Authority of S. Sunderam Pillai (supra) and in paragraphs 193 to 195, it has been expressed as under:-

"193. In S. Sundaram Pillai v. V.R. Pattabiraman [S. Sundaram Pillai v. V.R. Pattabiraman, (1985) 1 SCC 591] , the scope of a proviso was clarified. The relevant discussion is quoted as under : (SCC pp. 606-10, paras 27, 29-30, 35-37 & 43)

"27. The next question that arises for consideration is as to what is the scope of a proviso and what is the ambit of an Explanation either to a proviso or to any other statutory provision. We shall first take up the question of the nature, scope and extent of a proviso. The well-established rule of interpretation of a proviso is that a proviso may have three separate functions. Normally, a proviso is meant to be an exception to something within the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. In other words, a proviso cannot be torn apart from the main enactment nor can it be used to nullify or set at naught the real object of the main enactment.

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29. Odgers in Construction of Deeds and Statutes (5th Edn.) while referring to the scope of a proviso mentioned the following ingredients:

'P. 317. Provisos —These are clauses of exception or qualification in an Act, excepting something out of, or qualifying something in, the enactment which, but for the proviso, would be within it.

P. 318. Though framed as a proviso, such a clause may exceptionally have the effect of a substantive enactment.'

30. Sarathi in Interpretation of Statutes at pp. 294-95 has collected the following principles in regard to a proviso:

(a) When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso.

(b) A proviso must be construed with reference to the preceding parts of the clause to which it is appended.

(c) Where the proviso is directly repugnant to a section, the proviso shall stand and be held a repeal of the section as the proviso speaks the latter intention of the makers.

(d) Where the section is doubtful, a proviso may be used as a guide to its interpretation : but when it is clear, a proviso cannot imply the existence of words of which there is no trace in the section.

(e) The proviso is subordinate to the main section.

(f) A proviso does not enlarge an enactment except for compelling reasons.

(g) Sometimes an unnecessary proviso is inserted by way of abundant caution.

(h) A construction placed upon a proviso which brings it into general harmony with the terms of section should prevail.

(i) When a proviso is repugnant to the enacting part, the proviso will not prevail over the absolute terms of a later Act directed to be read as supplemental to the earlier one.

(j) A proviso may sometimes contain a substantive provision.

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35. A very apt description and extent of a proviso was given by Lord Loreburn in Rhondda Urban District Council v. Taff Vale Railway Co. [Rhondda Urban District Council v. Taff Vale Railway Co., 1909 AC 253 (HL)] , where it was pointed out that insertion of a proviso by the draftsman is not always strictly adhered to its legitimate use and at times a section worded as a proviso may wholly or partly be in substance a fresh enactment adding to and not merely excepting something out of or qualifying what goes before. To the same effect is a later decision of the same Court in Jennings v. Kelly [Jennings v. Kelly, 1940 AC 206 (HL)] , where it was observed thus:

We must now come to the proviso, for there is, I think, no doubt that, in the construction of the section, the whole of it must be read, and a consistent meaning, if possible, given to every part of it. The words are:… 'provided that such licence shall be granted only for premises situate in the ward or district electoral division in which such increase in population has taken place…' There seems to be no doubt that the words "such increase in population" refer to the increase of not less than 25% of the population mentioned in the opening words of the section.

36. While interpreting a proviso care must be taken that it is used to remove special cases from the general enactment and provide for them separately.

37. In short, generally speaking, a proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself.

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43. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:

(1) qualifying or excepting certain provisions from the main enactment:

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable:

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."

(emphasis supplied)

194.Craies on Statute Law, 7th Edn., p. 218 has observed, with respect to the construction of provisos thus:

"The effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it; and such a proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect."

(emphasis supplied)

R. v. Dibdin [R. v. Dibdin, 1910 P 57 (CA)] , held as under : (P p. 125)

"The fallacy of the proposed method of interpretation is not far to seek. It sins against the fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso. It treats it as if it were an independent enacting clause instead of being dependent on the main enactment. The courts ... have refused to be led astray by arguments such as those which have been addressed to us, which depend solely on taking words absolutely in their strict literal sense, disregarding the fundamental consideration that they are appearing in the proviso."

(emphasis supplied)

195.Ishverlal Thakorelal Almaula v. Motibhai Nagjibhai [Ishverlal Thakorelal Almaula v. Motibhai Nagjibhai, (1966) 1 SCR 367 : AIR 1966 SC 459] considered the effect of a proviso and said that its function is

"to except or qualify something enacted in the substantive clause, which but for the proviso would be within that clause. It may ordinarily be presumed in construing a proviso that it was intended that the enacting part of the section would have included the subject-matter of the proviso." (AIR p. 465, para 8)

Similar observations and considerations weighed in Haryana State Coop. Land Development Bank Ltd. v. Employees Union [Haryana State Coop. Land Development Bank Ltd. v. Employees Union, (2004) 1 SCC 574 : 2004 SCC (L&S) 257] and other decisions noted below. [Shimbhu v. State of Haryana, (2014) 13 SCC 318 : (2014) 5 SCC (Cri) 651; Kedarnath Jute Mfg. Co. Ltd. v. CTO, (1965) 2 SCR 626 : AIR 1966 SC 12; Shah Bhojraj Kuverji Oil Mills & Ginning Factory v. Subbash Chandra Yograj Sinha, AIR 1961 SC 1596; Dwarka Prasad v. Dwarka Das Saraf, (1976) 1 SCC 128; CIT

v. Indo-Mercantile Bank Ltd., 1959 Supp (2) SCR 256 : AIR 1959 SC 713; Romesh Kumar Sharma v. Union of India, (2006) 6 SCC 510 : 2006 SCC (L&S) 1430] In Subbash Chandra Yograj Sinha [Shah Bhojraj Kuverji Oil Mills & Ginning Factory v. Subbash Chandra Yograj Sinha, AIR 1961 SC 1596] it was observed that : (AIR p. 1600, para 9)

"9. The law with regard to the provisos is well settled and well understood. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule. But, the provisos are often added not as exceptions or qualifications to the main enactment but as savings clauses, in which cases they will not be construed as controlled by the section. The proviso which has been added to Section 50 of the Act deals with the effect of repeal. The substantive part of the section repealed two Acts which were in force in the State of Bombay. If nothing more had been said, Section 7 of the Bombay General Clauses Act would have applied, and all pending suits and proceedings would have continued under the old law, as if the repealing Act had not been passed. The effect of the proviso was to take the matter out of Section 7 of the Bombay General Clauses Act and to provide for a special saving. It cannot be used to decide whether Section 12 of the Act is retrospective. It was observed by Wood, V.C., in Fitzgerald v. Champneys [Fitzgerald v. Champneys, (1861) 2 J&H 31 : 70 ER 958] that saving clauses are seldom used to construe Acts. These clauses are introduced into Acts which repeal others, to safeguard rights which, but for the savings, would be lost. The proviso here saves pending suits and proceedings, and further enacts that suits and proceedings then pending are to be transferred to the courts designated in the Act and are to continue under the Act and any or all the provisions of the Act are to apply to them. The learned Solicitor General contends that the savings clause enacted by the proviso, even if treated as substantive law, must be taken to apply only to suits and proceedings pending at the time of the repeal which, but for the proviso, would be governed by the Act repealed. According to the learned Attorney General, the effect of the savings is much wider, and it applies to such cases as come within the words of the proviso, whenever the Act is extended to new areas."

(emphasis supplied)

"27. The next question that arises for consideration is as to what is the scope of a proviso and what is the ambit of an Explanation either to a proviso or to any other statutory provision. We shall first take up the question of the nature, scope and extent of a proviso. The well-established rule of interpretation of a proviso is that a proviso may have three separate functions. Normally, a proviso is meant to be an exception to something within the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. In other words, a proviso cannot be torn apart from the main enactment nor can it be used to nullify or set at naught the real object of the main enactment.

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29. Odgers in Construction of Deeds and Statutes (5th Edn.) while

referring to the scope of a proviso mentioned the following ingredients:

'P. 317. Provisos —These are clauses of exception or qualification in an Act, excepting something out of, or qualifying something in, the enactment which, but for the proviso, would be within it.

P. 318. Though framed as a proviso, such a clause may exceptionally have the effect of a substantive enactment.'

30. Sarathi in Interpretation of Statutes at pp. 294-95 has collected the following principles in regard to a proviso:

(a) When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso.

(b) A proviso must be construed with reference to the preceding parts of the clause to which it is appended.

(c) Where the proviso is directly repugnant to a section, the proviso shall stand and be held a repeal of the section as the proviso speaks the latter intention of the makers.

(d) Where the section is doubtful, a proviso may be used as a guide to its interpretation : but when it is clear, a proviso cannot imply the existence of words of which there is no trace in the section.

(e) The proviso is subordinate to the main section.

(f) A proviso does not enlarge an enactment except for compelling reasons.

(g) Sometimes an unnecessary proviso is inserted by way of abundant caution.

(h) A construction placed upon a proviso which brings it into general harmony with the terms of section should prevail.

(i) When a proviso is repugnant to the enacting part, the proviso will not prevail over the absolute terms of a later Act directed to be read as supplemental to the earlier one.

(j) A proviso may sometimes contain a substantive provision.

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35. A very apt description and extent of a proviso was given by Lord Loreburn in Rhondda Urban District Council v. Taff Vale Railway Co. [Rhondda Urban District Council v. Taff Vale Railway Co., 1909 AC 253 (HL)] , where it was pointed out that insertion of a proviso by the draftsman is not always strictly adhered to its legitimate use and at times a section worded as a proviso may wholly or partly be in substance a fresh enactment adding to and not merely excepting something out of or qualifying what goes before. To the same effect is a later decision of the same Court in Jennings v. Kelly [Jennings v. Kelly, 1940 AC 206 (HL)] , where it was observed thus:

We must now come to the proviso, for there is, I think, no doubt that, in the construction of the section, the whole of it must be read, and a consistent meaning, if possible, given to every part of it. The words are:… 'provided that such licence shall be granted only for premises

situate in the ward or district electoral division in which such increase in population has taken place…' There seems to be no doubt that the words "such increase in population" refer to the increase of not less than 25% of the population mentioned in the opening words of the section.

36. While interpreting a proviso care must be taken that it is used to remove special cases from the general enactment and provide for them separately.

37. In short, generally speaking, a proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself.

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43. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:

(1) qualifying or excepting certain provisions from the main enactment:

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable:

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."

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"9. The law with regard to the provisos is well settled and well understood. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule. But, the provisos are often added not as exceptions or qualifications to the main enactment but as savings clauses, in which cases they will not be construed as controlled by the section. The proviso which has been added to Section 50 of the Act deals with the effect of repeal. The substantive part of the section repealed two Acts which were in force in the State of Bombay. If nothing more had been said, Section 7 of the Bombay General Clauses Act would have applied, and all pending suits and proceedings would have continued under the old law, as if the repealing Act had not been passed. The effect of the proviso was to take the matter out of Section 7 of the Bombay General Clauses Act and to provide for a special saving. It cannot be used to decide whether Section 12 of the Act is retrospective. It was observed by Wood, V.C., in Fitzgerald v. Champneys [Fitzgerald v. Champneys, (1861) 2 J&H 31 : 70 ER 958] that saving clauses are seldom used to construe Acts. These clauses are introduced into Acts which repeal others, to safeguard rights which, but for the savings, would be lost. The proviso here saves pending suits and proceedings, and further enacts that suits and proceedings then pending are to be transferred to the courts designated in the Act and are to continue under the Act and any or all the provisions of the Act are to apply to them. The learned Solicitor General contends that the savings clause enacted by the proviso, even if treated as substantive law, must be taken to apply only to suits and proceedings pending at

the time of the repeal which, but for the proviso, would be governed by the Act repealed. According to the learned Attorney General, the effect of the savings is much wider, and it applies to such cases as come within the words of the proviso, whenever the Act is extended to new areas."

(emphasis supplied)

59. From the perusal of the aforesaid decisions, it would be clear that the purpose of incorporating a proviso is to qualify the main provision or to create an exception to what is in the enactment.

60. If the aforesaid principle is applied in the instant Rule of 1991, it would be clear that in so far as the main part of Section 8 of Rules of 1991 is concerned, it definitely provides that ordinarily the date of promotion would be considered from the date of the order of their substantive appointments.

61. Needless to say that the proviso carves an exception and it is an indicator of the fact that the Rules reserves the power or rather it enabled the employer to invoke the said proviso and provide appointment on the promoted post from a particular back date, if required. If at all, the promotions were to be covered only from the date on which the promotion order was to take effect and it was to apply uniformally then there was no purpose of incorporating the proviso.

62. In so far as the contention that the proviso has been appended to consider cases in exceptional cases where a Court or a Tribunal gives directions in context of one particular person and in order to give effect to the said directions, the said proviso to Section 8 has been appended. This submission does not satisfy the confidence of this Court, for the reason that in case if the said exception was only in context of giving effect to any decision or a direction by a court of law then the same could easily have been incorporated in explicit language in the said proviso itself. However, the language used in the proviso does not give any indication as such, which is sought to be urged by the State. Moreover, the Court while considering a provision has to take the provision as it is and one of the cardinal principles of interpretation is that nothing should be read in an enactment and the use of the words in the enactment should not be interpreted in such a manner that the words used in the enactment are made superfluous. Thus, the reasoning of the learned counsel for the appellant-State does not find favour with this Court.

63. There is another reason to eschew the submissions on behalf of the State-appellant and that is, the word 'person' as used in the proviso to Section 8 cannot mean only in respect of one person. Now, it is well settled to be disputed that the use of the phrase in singular would also include its plural. Thus, to state that merely because the word 'person' has been used in the singular context, it would not include several persons, in plurality, cannot be accepted.

64. Be that as it may, a very important aspect that needs to be seen is the fact that the State had issued a letter dated 27.06.2016 (a copy of which has been placed on record as Annexure No. 4 to the writ petition) addressed to the Secretary, Public Service Commission indicating that the promotions to the vacant seats of Review Officers is to be done and the same

is to be concluded as that the said promotions can be made prior to 30.06.2016 for the current selection year (referrable to the year commencing 01.07.2015 till 30.06.2016).

65. The text of the said letter is being reproduced hereinafter for ready reference:-

"उपर्युक्त विषय पर अवगत कराना है कि चयन वर्ष 2015-16 में उपलब्ध पदोन्नति कोटे की स्थित एवं नवसृजित पदों के सापेक्ष पदोन्नति कोटे पर चयन/प्रोन्नति हेतु अधिनियम निर्धारित प्रारूप में, निर्विवादित वरिष्ठता सूची, पात्रता सूची, संगत सेवा नियमावली की प्रति के साथ प्रेषित की जा रही है। चयन समिति के 02 सदस्यों का विवरण निम्नवत् हैः-

क्रमांक	*नाम*	*पदनाम*	*मो०नं०*
1	*श्री धन्य कुमार*	*विशेष सचिव, सचिवालय प्रशासन विभाग, उ० प्र० शासन।*	*9454413670*
2	*श्री अजीत प्रकाश*	*संयुक्त सचिव, व्यवसायिक शिक्षा एवं कौशल विकास, उ०प्र० शासन*	*9454413352*

2. उपरोक्त यो सम्बंध में मुझे यह कहने का निर्देश हुआ है कि कृपया चयन समिति की बैठक इस प्रकार तिथि निर्धारित कराने का कष्ट करें कि वर्तमान चयन वर्ष में 30 जून के पूर्व संस्तुत कार्मिकों की पदोन्नति की जा सके।"

66. This letter is indicative of the fact that the State was desirous of completing the exercise of promotion upto 30.06.2016 i.e. prior to the new selection year. The said letter was issued on 27.06.2016 i.e. 3 days prior to the commencement of the new selection year. If at all, the State did not intend to provide the promotion to the said incumbents prior to 30.06.2016, then there was no requirment to incorporate the desire and the intention (which was in the nature of a direction) in the said letter dated 27.06.2016.

67. It is not disputed or controverted by the learned Additional Advocate General for the State that the person who had issued the said letter was not authorized to do so or that he has exceded his powers by incorporating certain text in the said letter without authority.

68. In view thereof where the State is considered as the model employer and is expected to be fully acquainted with the Rules and even while issuing the letter dated 27.06.2016 expressed its intention to the Commission to give its recommendation prior to 30.06.2016 which manifest its clear intention what it desired to achieve.

69. At this stage, this Court also records a statement of fact, that we had called upon the learned Additional Advocate General to furnish the records regarding the appointment. The originals were placed before the Court which after perusal was returned, whereas a photocopy of the said record was retained and is part of these appeals, now.

70. From the perusal of the original records which were placed before the Court, there is no indication that any point of time prior to the passing of the impugned order, any deliberation was held that the promotion orders issued to the writ petitioners were contrary to law or the rules.

71. The record of this intra-court appeal indicates that the entire exercise was

done in accordance with the rules which culminated in the promotion orders issued to the writ-petitioners specifically incorporating the date of promotion i.e. 30.06.2016. The chronology as well as the record reflects that the promotion orders issued on 30.07.2016 were consistent with the intention reflected in the letter dated 27.06.2016.

72. It would have been a different thing to state, that even though such letter was issued and in furtherance thereof the order of promotion dated 13.07.2016 was issued but had there been no provision to grant promotion from an earlier date then the submissions of the appellant could have been appreciated, however, the Rules on the other hand does provide an exception and it is perhaps for the said reason that the State issued the letter dated 27.06.2016 being fully acquainted with the provisions of the Rules, 1991.

73. Moreover, it was not the case of the State that the letter dated 27.06.2016 was issued without authority. Even otherwise there is a presumtion of officials acts being done in a proper manner as per law. In case if any party seeks to dispute it then the burden is on such party to raise such plea and establish it. In this case it was for the State to have pleaded and proved that the letter dated 27.06.2016 and thereafter promotion order were bad and the State ought to have proved why it was bad in law. However, it was not done.

74. There is another important aspect of the matter which is again not disputed by the appellants, that the members belonging to the direct quota had raised the issue of granting promotion from an earlier date three times before the State. It is also not disputed that on all 3 occasions, at different points of times, a decision was taken rejecting the objections of the members of the direct quota and most importantly none of the said decisions of the State were ever challenged by the members of direct quota before any court of law.

75. In absence of any challenge to the earlier 3 orders, now after 7 years whether the State can be permitted to tinker with the seniority list, after conforming the writ-petitioners (who were on probation for two years) is a fact which reflects poorly on the appellant-State.

76. The record reflects that vide order dated 05.08.2016, the State had formed a 3 Member Committee to examine the objections raised against the promotions of the writ-petitioners (a copy of the same has been placed on record as Annexure No. 9 with the writ petition). In the said order, in paragraph 6, it is clearly indicated that the objections raised by the respective parties were considered and the recommendations given in favour of the writ-petitioners was accepted. There is no dispute to the fact that the recommendations of the 3 Member Committee was never challenged.

77. Once again, similar objections were raised relating to the date of promotion of the writ-petitioners which were placed before a 4 Member Committee, who again considered the same but did not deem approrpriate to give any recommendations contrary to the earlier recommendation and it was turned down.

78. On the third occasion, the same issue was raised and a 3 Member Committee once again taking note of the facts and circumstances vide its order dated 11.08.2022 rejected the objections (a copy of which is on record with the writ petition as as Annexure No. 11).

79. This Court further takes note of the submissions that State has been non-suited by the learned Single Judge by invoking the principles of res-judicata in context with the fact that on 3 occasions, objections raised were rejected.

80. The learned Single Judge found that the objections raised by the candidates who belonged to the direct quota, was in context with the date of promotion given to the writ petitioners w.e.f. 30.06.2017 and it was upheld by the State after taking into consideration the objections of the two contesting parties and after having arrived at a conscious decision, it became a quasi-judicial order which at best could have been assailed before a Judicial Forum by the aggrieved party and not having done so it attained finality and later it could not be set aside as the earlier decision would operate as res-judicata.

81. This Court is of the opinion that adjudication is a legal process by which a neutral authority/court or Tribunal resolves a dispute between the parties by considering the material, evidence and by applying the law and then issue a binding decision. The Government may make decisions or issue orders which can be administrative or executive in nature and may not be necessarily adjudicatory because it does not act as a neutral body while making decisions nor do they follow the adversarial process. For the aforesaid reasons, an order of the Government is typically an administrative or an executive order and since it does not arise from any judicial determination in the sense that it does not follow the adversarial process by applying the law (as understood in the classical sense), hence, such orders do not meet the test of adjudication. Moreover, the decisions of the Government through administrative or executive orders often reflects the administrative convenience or policy considerations rather that the determination of legal rights or obligations. For the aforesaid reasons, generally the orders passed by the State lacks the procedural and substantive hallmarks of an adjudication, hence, they may not be adjudicatory acts, accordingly, it may not attract the doctrine of res-judicata. Though, the proposition of invoking the principles of res-judicata in the instant case may be debatable but then there are several other reasons mentioned in this opinion of this Court which may lead to the same conclusion as arrived at by the learned Single Judge. This Court may not entirely agree with the reasons of the learned Single Judge but for our own separate reasons as recorded hereinabove, this Court does not find any fault with the conclusion arrived at by the learned Single Judge. Hence, this aspect also does not impress this Court.

82. In so far as the present writ-petitioners are concerned, their grievances accrued when notices dated 14.07.2023 were issued calling upon the writ-petitioners to show cause as to why the date of their promotion may not be made in consonance with the date of issuance of the order i.e. 13.07.2016 instead of a prior date 30.06.2016 (a copy of the aforesaid notice is on record as of the writ petition as Annexure No. 12). The aforesaid notice reveals that the State took a ground that on account of some error, the date of promotion had been made applicable from 30.06.2016 instead of 13.07.2016.

83. The record also reflects that some of the writ petitioners had filed their detailed objections which are on record of the writ petition as Annexure No. 13 but the same came to be rejected vide order

dated 09.08.2023 which was impugned in the writ petition and is at running page 221 and 222 of the intra-court appeal.

84. The ground taken to reject the objections of the writ-petitioners was that the Committee which had been constituted to consider the recommendations for promotion was to examine only as to whether the persons concerned were eligible for promotion or not and not to consider whether the promotion could be given from a date prior to the date of the issuance of the promotion order.

85. A specific plea was taken by the writ petitioner that Rule 8 did confer power on the State to provide promotion from an earlier date, however, that was not considered or dealt with while rejecting the objections of the writ-petitioners.

86. At this juncture, it will be relevant to state that an order passed by an Executive Authority is to be tested on the basis of the reasons incorporated therein and the said order cannot be defended or justified by subplanting reasons at a subsequent stage.

87. In the aforesaid facts and circumstances where the objections regarding the date of promotion of the writ petitioners was raised by the persons belonging to the direct quota on 3 different occasions and after considerations, they were rejected by the State and never assailed by the aggrieved party before any court of law. After 7 years, now taking a ground that the writ-petitioners were granted promotion erroneously appears to be arbitrary, inasmuch as, this error, if at all, as stated by the State, was in their knowledge and it was considered on three different occasions from the year 2016 till the year 2022 and a positive stand was taken.

88. Now, what was that material which came to the notice of the State which persuaded it to take a different stand and what was considered just and right suddenly after 7 years became erroneous. The only submission regarding this aspect as made by the learned counsel for the State was that there is no power in the Rules which can confer promotion from a back date. This aspect has already been considered in the earlier paragraphs, hence, for the said reasons, it does not find favour with this Court.

89. Significantly, the law is now too well settled that an employer/an employee cannot be permitted to assail the issues relating to seniority after long durations. Moreover, in writ-jurisdiction when the Court exercises its powers of judicial review, it takes into account the decision making process and not only the merits of the decision itself.

90. As already noticed above, since the issue of the date of promotion of the writ-petitioners was considered by the State on 3 different occasions and having found itself to be satisfactory, the decision making process has been complete and it cannot be said that it was influenced by any extraneous considerations nor can it be said that any of the writ-petitioners had attempted to influence the said decision of the Committee constituted by the State on 3 occasions at different point of times which may create a suspicion on the decision making process.

91. Having said that this Court finds that the findings recorded by the learned Single Judge cannot be said to be arbitrary

or against the material on record so as to take a different view than the one subscribed by the learned Single Judge. This Court while exercising its power as an Appellate Court, is not required to upturn a well reasoned order under challenge merely because another view may be possible unless the perversity in the order impugned can be pointed out.

92. As far as the decisions cited by the learned Additional Advocate General for the State is concerned, suffice to state that in **P. Sudhakar Rao (supra)**, the issue before the Apex Court was regarding the promulgation of the Rules with retrospective effect, however, the same does not in any manner deal with applicability of the Rules and making it applicable with retrospective effect. In the instant case, the redeeming feature is that the Rules of 1991 do permit the State to provide promotion from an earlier date which is not akin to apply a Rule which comes into being at a later stage with retrospective effect, hence, the same does not aid the case of the appellants.

93. In **Narendra Singh (Supra)**, the facts of the said case are also quite at variance with the case in hand, inasmuch as, the issue before the Apex Court was regarding the grant of promotion in absence of adhering to the mandatory requirement as mentioned in the Rules. In the instant case, it is not the case of the State that the writ petitioners who were granted the promotion lacked any qualification for being considered for promotion, hence, the said case also does not help the appellant.

94. The State had also relied upon the decision of the Apex Court in **Dr. Amal Satpati (supra)** wherein the issue of grant of promotion from a retrospective date. From the perusal of the aforesaid decision, it would reveal that the Apex Court has reiterated the principle that as far as possible the safest way to determine the issue of promotion is on the date when the order is passed, however, the same has been made subject to any Rule governing the parties and in the instant case at hand the Rules of 1991 does create an exception and which is also reflected from the letter dated 27.06.2016, manifesting the intent which was evident, thereafter the order was passed specifically noticing that the promotion would take effect from 30.06.2016, hence, the said decision in **Dr. Amal Satpati (supra)** also does not come to the aid of the appellants.

95. This Court from the perusal of the decision rendered by the learned Single Judge finds that adequate reasons have been indicated to disapprove the contention of the State while passing the judgment and order dated 24.02.2025 corected vide order dated 28.02.025.

96. This Court is satisfied that the reasons recorded by the learned Single Judge does not suffer from any patent illegality which may persuade this Court to take any different view or to interfere with the judgment and order dated 24.02.2025 corrected vide order dated 28.02.2025, accordingly, both the intra-court appeals bearing No. **120 of 2025 (State of U.P. and Others v. Shiv Dutt Joshi and Others)** as well as Intra Court Appeal No. **122 of 2025 (Mukesh Pradhan & Another v. Sanjeev Kumar Sinha And 11 Others)** are **dismissed**. Costs are made easy.

(2025) 7 ILRA 336
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 14.07.2025

BEFORE

THE HON'BLE AJIT KUMAR, J.

Writ A No. 2377 of 2024

Dharm Dev Maurya ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Raghavendra Singh, Suvarna Singh, Upendra Singh

Counsel for the Respondents:
C.S.C.

Issue for Consideration

(A) Justification of imposing penalty of 'warning' by the disciplinary authority as a sequel to domestic inquiry and that too without giving any notice.

(B) Competence of the disciplinary authority to impose a penalty of 'warning', even when this kind of penalty is not provided under the relevant Rules.

Headnotes

(A) Service law – Disciplinary proceeding – The delinquent employee was exonerated of the charges in domestic inquiry report – Disciplinary authority, though accepted this report and directed for reinstatement of the petitioner revoking the order of suspension, but issued 'warning' as punishment – Validity challenged – In the absence of any provision regarding the penalty of Warning, how far it can be imposed – No show cause notice was given before imposing the penalty of warning – Effect :

Held : Proper approach ought to have been for the disciplinary authority to have issued a show cause notice in the first instance to the writ petitioner expressing its view as to why it was disagreeing with the finding part of the report of the inquiry officer – Disciplinary authority while holding disciplinary inquiry into the charges leveled against the delinquent employee in a duly drafted and approved charge sheet, can impose only those punishments that are prescribed under the Discipline and Appeal Rules – Since the 'warning' as such is no punishment prescribed under the Discipline and Appeal Rules 1999, therefore, the authority could not have imposed this warning to the petitioner by way of punishment. [Paras 8 and 9] (E-1)

Case Law Cited

Vijay Singh v. State of Uttar Pradesh and others, (2012) 5 SCC 242 – **referred to.**

List of Acts

Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999; Government order dated 27.09.2019.

List of Keywords

Disciplinary proceeding; Domestic inquiry; Punishment; Warning; Reinstatement; Revocation of suspension; Delinquent employee; Minor penalty; Major penalty; Negligence; Show cause notice; Issue no more res integra.

Case Arising From

Order dated 03.12.2020 of the Under Secretary, Government of Uttar Pradesh punishing the petitioner with 'Warning'.

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

1. Heard Shri Vibhu Rai and Shri Upendra Singh, learned counsel appearing for the petitioner and learned Additional Chief Standing Counsel appearing for the State-respondent.

2. By means of this petition filed under Article 226 of the Constitution, petitioner has assailed the order dated

03.12.2020 passed by the Under Secretary, Government of Uttar Pradesh issuing him warning as a sequel to the disciplinary proceeding accepting the domestic inquiry report and directing for reinstatement of the petitioner revoking the order of suspension. Assailing the order dated 03.12.2020, three fold arguments have been advanced by learned counsel for the petitioner:

(A) Once the disciplinary authority has proceeded to accept the domestic inquiry report in which the delinquent employee was exonerated of the charges leveled in the charge sheet, there was no occasion for the respondent disciplinary authority to have issued warning to such delinquent employee as a consequence to the domestic inquiry;

(B) The disciplinary authority was not justified even in issuing warning without disagreeing with the findings of inquiry report submitted by the inquiry officer in the domestic inquiry and that too without issuing any notice to the petitioner, delinquent employee to show cause as to why the domestic inquiry report may not be partially rejected to issue such a warning;

(C) There is no punishment as such prescribed under punishment and appeal rules namely Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 (hereinafter referred to as 'The Rule, 1999') either by way of minor penalty or major penalty and hence the order is bad for want of authority in law, inasmuch as for want exercise of lawful authority by the disciplinary authority.

Sufficient pleadings have came to be raised qua above grounds in various paragraphs of the petition and more specifically in paragraph nos. 46, 47, 48, 49 and 50 that run as under:-

"46. That the impugned order itself is non speaking order and the same is baseless and without any reason and the grounds and reasons as given by the petitioner in his representation dated 11.10.2022 as well as 11.11.2022 has not been considered and without considering the reasons and grounds in regard to cancel the 'Chetawani' against the petitioner has been decided.

47. That the said impugned order dated 24.05.2023 is not speaking and liable to be set aside.

48. That the impugned order dated 24.05.2023 is arbitrary and illegal.

49. That there is no reason and occasion to give the 'Chetawani' being no fault of the petitioner, however the inquiry report as well as request of the respondent no. 2 itself is clear that the petitioner is not guilty and as such he has been exonerated from all charges by the inquiry officer and letter of the respondent no. 2 to the respondent no. 2 in regard to revoking the suspension of the petitioner is very clear.

50. That the disciplinary authority cannot punish anyone without reason or material on record but in the present case the respondent has given the 'Chetawani' against the petitioner merely on the basis of surmises and conjectures, the said action of the respondent is illegal arbitrary and baseless and not sustainable in the eyes of law."

3. It is next contended by learned counsel appearing for the petitioner that in view of the Government order dated

27.09.2019 for the purposes of consideration of promotion and allotment of marks five marks may be deducted qua punishment of 'warning' issued to an employee. He contends further that according to government order five marks could be deducted only for the warning issued but with a prior show cause notice, which discloses this aspect of the matter that every such warning needed to be issued only after a show cause notice. However, the order impugned is absolutely silent as there is no recital to the effect that petitioner was ever issued with the notice much less a show cause notice prior to 'warning' under the order impugned.

4. Defending the order assailed in the writ petition, learned Additional Standing Counsel submits that the disciplinary authority can always take a different view from the one taken by the domestic inquiry officer and the order impugned specifically assigns reasons for issuing warning to the petitioner. However, on the question of show cause notice he would concede that recitals in the order impugned do not refer to any such notice ever issued to the petitioner prior to passing of the order, inasmuch as in none of the paragraphs of counter affidavit a stand has been taken by the State-respondents that any notice was ever issued to the petitioner prior to passing of the order dated 03.12.2020. Insofar as reply to various paragraphs quoted above is concerned learned Standing Counsel has drawn attention towards paragraph nos. 28 & 29 to suggest that department has proceeded to place more reliance upon the order in meeting the arguments recorded in the relevant paragraphs.

5. Having heard learned counsel for the respective parties and having perused the material available on records, I find the points that arises for consideration of the court is, as to whether disciplinary authority is justified in issuing a 'warning' to the petitioner as a sequel to domestic inquiry while accepting the domestic inquiry report and directing for reinstatement of the petitioner and that too without giving any notice prior to issuing such warning; and as to whether the disciplinary authority could have issued warning by way of punishment as a result of the domestic inquiry even though there is no such penalty prescribed under the relevant Discipline and Appeal Rules.

6. In order to find answer to the first point as to whether the authority could have issued or could have taken a different view from the one taken by the domestic inquiring authority, I see Rule, 1999 provides sufficient discretion to be exercised by the authority to take a different view from the one taken by the inquiry officer or even reject the findings returned by the inquiry officer in his inquiry report. However, the relevant provisions provide that either the disciplinary authority would order for re-inquiry by the same inquiry officer or shall appoint inquiry officer afresh or otherwise if it satisfied that no further inquiry is required may issue notice to the delinquent employee assigning reasons seeking for no explanation before taking different view from the one taken by the inquiry officer. The relevant provisions of the Rules (9) is reproduced hereunder:-

"9. Action on Inquiry Report- (1) The Disciplinary authority may, for reason to be recorded in writing, remit the case for re-enquiry to be same or any other Inquiry Officer under intimation to the charged Government Servant the Inquiry Officer shall thereupon proceed to

hold the inquiry from such stage as directed by the Disciplinary Authority, according to the provisions of Rule 7.

(2) The Disciplinary Authority shall, if it disagrees with the finding of the Inquiry Officer on any charge, record its own finding thereon for reasons to be recorded.

(3) In case the charges are not proved, the charged Government Servant shall be exonerated by the Disciplinary Authority of the charges and inform him accordingly.

(4) If the Disciplinary Authority, having regard to its finding on all or any of charges is of the opinion that any penalty specified in Rule 3 should be imposed on the charge Government Servant, he shall give a copy of the inquiry report and his finding recorded under sub-rule (2) to the charged Government Servant and require him to submit his representation if he so desires, within a reasonable specified time. The Disciplinary Authority shall having regard to all the relevant records relating to the inquiry and representation of the charge Government Servant, if any, and subject to the provisions of Rule 16 of these rules, pass a reasoned order imposing one or more penalties mentioned in Rule 3 of these and communicate the same to the charged Government Servant."

(Emphasis Supplied....)

7. From the perusal of the order impugned dated 03.12.2020, it does not transpire that the disciplinary authority proposed to disagree with the findings reached by the inquiry officer while issuing a show cause notice or while taking final decision. Insofar as the recitals contained in paragraph no. 3 of the order are concerned that petitioner was assigned duties in relation to Home-guard Office, Gautam Buddha Nagar and, therefore, even if he had not been found guilty of the charges but his dereliction in discharge of duties, are concerned, was apparent, it is a kind of finding that could have been returned only after disagreeing with the findings of the inquiry officer and that too by giving a notice in the nature of show cause as why in the given facts and circumstances petitioner may not be held guilty of negligence even though findings were to the contrary arrived by the inquiry officer. Comparing the finding part of the inquiry report in its concluding paragraphs and the one returned in paragraph no. 3 of the order impugned, I find the paragraph no. 3 of the order impugned runs absolutely in counter to the findings return by inquiry officer. Conclusion part of the inquiry officer's report dated 19.02.2020 as well as paragraph no. 3 of the order impugned are reproduced hereunder:-

Inquiry officers' conclusion:

"शासन द्वारा निर्गत अनुमोदित आरोप पत्र दिनांक 26.11.2019 एवं उसके साथ संग्लग्र पढ़े जाने वाले साक्ष्य, श्री धर्मदेव मौर्य तत्कालीन मंडलीय कमांडेंट मेरठ सम्प्रति निलंबित सम्बद्ध होमगार्ड्स मुख्यालय, उत्तर प्रदेश लखनऊ द्वारा उपलब्ध कराई गयी आख्या दिनांक 30.12.2019 एवं संग्लग्र साक्ष्यों व ऊपर वर्णित जांच आख्या आदि के विधिवत अध्ययन के पश्चात् श्री धर्मदेव मौर्य के विरूदध संस्थित अनुशासनिक कार्यवाही में अंकित आरोप संख्या 1 एव 2 प्रमाणित नहीं पाए गए है।"

View formed in the impugned order:

" जांच अधिकारी की जांच आख्या के परीक्षणोपरांत पाया गया कि दिनांक 19.11.2019 की घटित घटना के मात्र 18 दिन पूर्व ही श्री धर्मदेव मौर्य, तत्कालीन मंडलीय कमांडेंट

होमगार्ड्स द्वारा दिनांक 31.10.2019 को जिला कमांडेंट होमगार्ड्स द्वारा गौतमबुद्धनगर का अतिरिक्त प्रभार ग्रहण किया गया था। श्री धर्मदेव मौर्य के पास जिला होमगार्ड्स कार्यालय, गौतमबुद्धनगर के अतिरिक्त प्रभार की अवधि में कार्यालय के अभिलेख जलाये गए थे। यद्यपि जांच में श्री धर्मदेव मौर्य की प्रत्यक्षतः संलिप्तता नहीं पायी गयी, फिर भी लापरवाही व शिथिल पर्यवेक्षण स्पष्ट है।

अत: श्री धर्मदेव मौर्य तत्कालीन मंडलीय कमांडेंट होमगार्ड्स, मेरठ अतिरिक्त प्रभार जिला कमांडेंट होमगार्ड्स, गौतमबुद्धनगर सम्प्रति निलंबित सम्बद्ध होमगार्ड्स मुख्यालय लखनऊ को लापरवाही एवं शिथिल पर्यवेक्षण हेतु चेतावनी देते हुए उनके विरूद्ध संस्थित अनुशासनिक कार्यवाही को एतत्द्वारा समाप्त कर बहाल किये जाने की श्री राज्यपाल महोदय सहर्ष स्वीकृति प्रदान करते है।"

8. In the considered view of the Court proper approach ought to have been for the disciplinary authority to have issued a show cause notice in the first instance to the writ petitioner expressing its view as to why it was disagreeing with the finding part of the report of the inquiry officer. This, I find to be absolutely lacking in the order impugned and therefore, the first point stands answered in favour of the petitioner and the authority has proceeded without due application of mind in forming an independent view. While doing so it was imperative on its part to at least deal with the subject matter which was subjected to inquiry as well as the charges leveled in the charge sheet. Here it also becomes relevant to quote relevant paragraph nos. 26 to 29 of the counter affidavit, which are absolutely sketchy and vague. Paragraph nos. 26 to 29 of the counter affidavit are held as under:---

" 26. That the contents of paragraph no. 42 of the writ petition are not admitted for the reasons stated in the preceding paragraphs.

27. That the content of paragraph no. 43, 44 & 45 of the writ petition need no comments.

28. That the contents of paragraph no. 46 to 50 of the writ petition are not admitted for the reasons stated in the preceding paragraphs.

29. That the content of paragraph no. 51 to 55 of the writ petition need no comments.

9. In dealing with the specific allegations made in the relevant paragraphs of the writ petition insofar as the second argument is concerned that the authority could not have imposed a penalty which was not prescribed under the relevant rules, the counter affidavit should have dealt with it exclusively. In my considered view, this issue is no more res integra. It is very well settled legal position that disciplinary authority while holding disciplinary inquiry into the charges leveled against the delinquent employee in a duly drafted and approved charge sheet, can impose only those punishments that are prescribed under the Discipline and Appeal Rules. Since the 'warning' as such is no punishment prescribed under the Discipline and Appeal Rules 1999, therefore, the authority could not have imposed this warning to the petitioner by way of punishment. If it was not satisfied with the inquiry report, it could have re-enquired the charges before passing an order of penalty. For appreciation of this point qua major and minor penalties as prescribed in para 3 of Rules 1999 are held as under:-

3. Penalties

The following penalties may, for good and sufficient reasons and as

hereinafter provided, be imposed upon the government servants;

Minor Penalties

(i) Censure

(ii) Withholding of increments for a specified period.

(iii) Stoppage at an efficiency bar.

(iv) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of order.

(v) Fine incase of persons in holding Group D posts. Provided that the amount of such fine shall in no case exceed twenty five percent of the months pay in which the fine is imposed.

Major Penalties

(i) Withholding of increments with cumulative effect;

(ii) Reduction to a lower post or grade time scale or to a lower stage in a time scale;

(iii) Removal from the service which does not disqualify from future employment;

(iv) Dismissal from the service which disqualify from future employment.

Explanation- The following shall not amount to penalty within the meaning of this rule, namely:

(i) Withholding of increment of a Government Servant for failure to pass a departmental examination or for failure to fulfill any other condition in accordance with the rules or orders governing the service:

(ii) Stoppage at the efficiency bar in the time scale of pay on account of ones not being found fit to cross the efficiency bar;

(iii) Reversion of a person appointed to probation to the service during or at the end of the period of probation in accordance with the terms of appointment or the rules and orders governing such probation.

(iv) Termination of the service of a person appointed on probation during or at the end of period of probation in accordance with the term of the service or the rules and order governing such probation.

10. In the case of **Vijay Singh v. State of Uttar Pradesh and others, (2012) 5 SCC 242,** Hon'ble Supreme Court has held paragraph nos. 21, 22 and 23 as under:-

"21. Undoubtedly, in a civilised society governed by the Rule of Law, the punishment not prescribed under the statutory rules cannot be imposed. Principle enshrined in criminal jurisprudence to this effect is prescribed in the legal maxim nulla poena sine lege which means that a person should not be made to suffer penalty except for a clear breach of existing law.

22. In S. Khushboo v. Kanniammal this Court has held that a person cannot be tried for an alleged offence unless the legislature has made it punishable by law and it falls within the

offence as defined under Sections 40, 41 and 42 of the Penal Code, 1860, Section 2(n) of the Code of Criminal Procedure, 1973, or Section 3(38) of the General Clauses Act, 1897. The same analogy can be drawn in the instant case though the matter is not criminal in nature.

23. Thus, in view of the above, the punishment order is not maintainable in the eye of the law. In the result, the appeal succeeds and is allowed. The impugned order dated 8-7-2010 withholding the integrity certificate for the year 2010 and all subsequent orders in this regard are quashed. The respondents are directed to consider the case of the appellant for all consequential benefits including promotion, etc. if any, afresh taking into consideration the service record of the appellant in accordance with law."

11. I may further take notice of the Government order which directs for deduction of five marks for warning issued to employee by considering promotion and I find that the Government Order dated 27.09.2019, prescribes for deduction of marks in the event warning issued to an employee after issuing the show cause notice. Thus, in the considered view of the Court, this type of punishment even if conceived of otherwise by means of any circular or Government Order, it could not have been imposed without giving notice and opportunity of hearing to the delinquent employee.

12. In view of the above, writ petition succeeds and is **allowed**. The order dated 03.12.2020 passed by respondent no. 2, is hereby quashed.

(2025) 7 ILRA 342
ORIGINAL JURISDICTION

CIVIL SIDE
DATED: ALLAHABAD 09.07.2025

BEFORE

THE HON'BLE AJIT KUMAR, J.

Writ A No. 2479 of 2025

Smt. Munni ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Pankaj Kumar Rai, Sandeep Maniji Bakhshi

Counsel for the Respondents:
C.S.C.

Issue for Consideration

(A) Right of successor to get decided the departmental appeal on merit even after the death of the delinquent employee.

(B) Applicability of law of abatement in the matter relating to the service jurisprudence.

Headnotes

(A) Service law – Departmental appeal – The delinquent employee was died during the pendency of appeal – Effect – Right of employee's successor to get the appeal decided on merit – Entitlement :

Held : It is true that in service jurisprudence employer and employee relationship ceases to exist the moment contract of employment ceases but where the service conditions are governed by statutory rules, mere recitals contained in the appointment order would not govern service conditions – An employee if is working in establishment, which may be a pensionable establishment and where the family pension rights are also vested with the dependents of the family or otherwise also where the dues are inherited by the dependents of the employee by succession, such cause of action would survive till the last available statutory remedy is exhausted – Even an employee's successor is entitled to question an

order of the disciplinary authority as it has serious adverse civil consequences – The appellate authority was not justified in rejecting the appeal following the principles of civil law of abatement. [Paras 7 and 10] (E-1)

List of Acts

UP Government Servant (Discipline and Appeal) Rules, 1999.

List of Keywords

Departmental appeal; Punishment order; Death of delinquent employee; Abatement; Service jurisprudence; Law of substitution; Employee's successor; Right of compassionate appointment; Family pension.

Case Arising From

Order of Commissioner dated 08.01.2025 dismissing the departmental appeal as abated.

(Delivered by Hon'ble Ajit Kumar J.)

1. Heard SRi Sandeep Maniji Bakhshi, learned counsel for the petitioner and learned Additional Chief Standing Counsel for the State.

2. By means of this petition filed under Article 226 of the Constitution of India, petitioner has challenged the order dated 08.01.2025 passed by the Commissioner, Varanasi Division, Varanasi dismissing the departmental appeal of husband of the petitioner on the ground that appeal would abate on account of death of the petitioner's husband.

3. The submission advanced by learned counsel for the petitioner is that departmental appeal preferred under Rule 11 of the U.P. Government Servant (Discipline and Appeal) Rules, 1999 which only provides for certain considerations on points that may emerge out in the appeal and hence the appeal would not be dismissed as to have got abated on account of death of her husband namely appellant in the said appeal.

4. It is argued that no law of abatement is attracted in the matter of service jurisprudence as the incidence of service which may entail monitory consequences are inherited by the heirs accordingly and in that event appeal had stood allowed, then order of termination from service would have stand set aside and all consequential benefits would have been conferred upon to the late husband of the petitioner and in turn to be succeeded by the present petitioner.

5. Learned Standing Counsel has obtained instructions in the matter and the instructions are absolutely silent to justify the order passed by the appellate authority namely Commissioner, Varanasi Division, Varanasi.

6. Having heard learned counsel for the respective parties and having perused the records, I proceed to consider the arguments of learned counsel for the petitioner after appreciating the relevant provisions as contained under Rule 11 and 12 of the 1999 Rules. The provisions are reproduced hereinunder:

".....11. Appeal. -

(1)Except the orders passed under these rules by the Governor, the Government servant shall be entitled to appeal to the next higher authority from an order passed by the disciplinary authority.

(2)The appeal shall be addressed and submitted to the appellate authority. A Government servant preferring an appeal

shall do so in his own name. The appeal shall contain all material statements and arguments relied upon by the appellant.

(3)The appeal shall not contain any intemperate language. Any appeal, which contains such language may be liable to be summarily dismissed.

(4)The appeal shall be preferred within 90 days from the date of communication of impugned order. An appeal preferred after the said period shall be dismissed summarily.

12. Consideration of Appeals. –

The appellate authority shall pass such order as mentioned in clauses (a) to (d) of Rule 13 of these rules, in the appeal as he thinks proper after considering.

(a)Whether the facts on which the order was based have been established;

(b)Whether the facts established afford sufficient ground for taking action; and

(c)Whether the penalty is excessive, adequate or inadequate;"

7. Upon bare reading of the aforesaid provisions of Rules, It becomes explicit that a government servant is entitled to prefer a statutory appeal against the order passed by the disciplinary authority within a period of 90 days and then upon reading Rule 12, I find that the appellate authority is required to look into and consider key points that were given while testing the order passed by the disciplinary authority. Thus, there is no procedure prescribed, as such, in the relevant provisions quoted that may require delinquent employee to appear and participate mandatorily so as to get the appeal disposed off on merits. It is true that in service jurisprudence employer and employee relationship ceases to exist the moment contract of employment ceases but where the service conditions are governed by statutory rules, mere recitals contained in the appointment order would not govern service conditions.

8. In service matters where official records are maintained, heirs automatically succeed to get the dues and no law of substitution would be applicable. Contract of appointment ceases with death of the employee and appointment therefore, is not succeeded by rules.

9. Here, in the case in hand, I find that the U.P. Government has framed rules namely 1999 Rules providing for disciplinary actions to be taken against an employee charged for any misconduct in discharge of duties and in the event, the charges are proved, the employee is liable to be visited with such penalties which may have adverse civil consequences.

10. In the circumstances, therefore, an employee if is working in establishment, which may be a pensionable establishment and where the family pension rights are also vested with the dependents of the family or otherwise also where the dues are inherited by the dependents of the employee by succession, such cause of action would survive till the last available statutory remedy is exhausted. Even an employee's successor is entitled to question an order of the disciplinary authority as it has serious adverse civil consequences resulting in the denial of post terminal dues including right of compassionate appointment. Accordingly, the Court is of this considered view that the appellate

authority was not justified in rejecting the appeal following the principles of civil law of abatement where upon the death of a party, the actionable claim comes to an end unless and until heirs in succession pursued the same.

11. In view of the above, the Court finds the order passed by the appellate authority to be unsustainable. Accordingly, the writ petition succeeds and is allowed. The order dated 08.01.2025 passed by the Commissioner, Varanasi Division, Varanasi, is hereby quashed.

12. The departmental appeal of the deceased employee stands restored before the appellate authority with a direction to dispose of the pending appeal on merits within a maximum period of two months from the date of production of certified copy of this order.

(2025) 7 ILRA 345
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 22.07.2025

BEFORE

THE HON'BLE AJIT KUMAR, J.

Writ A No. 2983 of 2023

Neelesh Kumar Verma ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Ashwani Kumar Yadav, Yakub Ali

Counsel for the Respondents:
C.S.C., Pranjal Mehrotra

Issue for Consideration

(A) Legality of the termination of contractual employee, which was made on the basis of recommendation of a Committee, not constituted as per the prevailing law.

(B) Scope of writ power under Article 226 of the Constitution to interfere in the matter of contractual appointment.

(C) Applicability of Administrative Circular and Government Order, when either Rule is absent or Rule is silent on the concern issue.

Headnotes

(A) Service law – Termination – Contractual appointment – Termination is based on a recommendation made by the District Health Committee – Earlier also recommendation was made, but not resulted into termination – No specific charge except for the vague charges regarding dereliction in discharge of duties by the petitioner was made – Circular prescribing for constitution of District Health Committee to be consisting of four members to assess the work of a contractual employee and also to examine the report of enquiry, was not followed – Effect :

Held : The constitution of the District Health Committee itself was *de hors* the rules/ circular. It is a settled principle of law and so held by the judgments of the Supreme Court and of this Court where rules are silent or rules have not been framed the administrative circular and the Government Order shall prevail and the authorities are hide bound in law to follow these procedure prescribed under the rules and the circular letter – When rules require a particular thing to be done in a prescribed manner, it should be done in that manner alone – The recommendations made by the committee which was not duly constituted as per the circular letter, should not have been considered and ought not to have been made a ground to rescind the contract of appointment of the petitioner**.** [Paras 8, 9 and 11]

(B) Constitution of India,1950 – Article 226 – Writ – Scope of interference – Matter relating to termination of contractual appointment – Fairness in the

procedure adopted by the authority – Relevance :

Held : Where the State and its instrumentalists are employers, they must ensure not only fairness in procedure by following their own circulars and instructions but should also be fair in their assessment of work and conduct of the contract based employees. If an experienced employee's work and conduct can be ensured to be smooth and in an orderly manner by issuing warning to him, such employer should refrain from undergoing fresh exercise of selection which will cause further burden upon public exchequer. [Para 10] (E-1)

Case Law Cited

Sant Ram Sharma v. State of Rajasthan and others, (1967) SCC Online SC 16: AIR 1967 SC 1910; Union of India and Another v. Ashok Kumar Agarwal, (2013) 16 SCC 147; M/s Tata Chemicals v. Commissioner of Customs (Preventive) Jamnagar, (2015) 11 SCC 628; Krishna Rai (dead) through LRs and others v. Banaras Hindu University through Registrar and others, (2022) 8 SCC 713 **– referred to.**

List of Acts

Constitution of India, Article 226; Circular dated 07.03.2019.

List of Keywords

Contractual appointment; Termination; District Health Committee; Recommendation; Charges; Dereliction in discharge of duty; Misconduct; Administrative Circular; Government Order.

Case Arising From

Order dated 11.01.2023 terminating the service of the petitioner, a contractual employee.

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

1. Heard Shri Archit Madhyan, learned counsel for petitioner, Shri Ashish Kumar Gupta, learned Advocate holding brief of Shri Pranjal Mehrotra, learned counsel for respondent no.2 and learned Additional Chief Standing Counsel representing state respondents.

2. By means of this petition filed under Article 226 of the Constitution petitioner has assailed the order dated 11.01.2023 terminating the contract of appointment of the petitioner which has continued to operate ever since 13.07.2016.

3. The submission advanced by learned counsel for petitioner is that the charges that are sought to be levelled against the petitioner are absolutely vague, inasmuch as the recitals contained in the order impugned itself reflect that earlier some recommendation was made by the District Health Committee on 24.01.2018 but the respondents themselves decided not to terminate the contract of appointment of the petitioner. Now again on the basis of some enquiry report and the recommendation made by the District Level Committee on 31.12.2022 contract of appointment has come to be rescinded whereas as it is contended, the recommendations made by the District Health Committee does not refer to any specific charge except dereliction in discharge of duty by the petitioner and showing a little bit of disobedience in the matter of directions issued by the authorities but there is no specific incident recorded to the effect that petitioner committed any misconduct. It is further contended that the enquiry report which has been relied upon while passing the order independent of the recommendations made by the District Health Committee, the charge basically of extortion committed by the petitioner vide charge No. 2, was not found proved and the other charges related to the period 2016-17 relating to which earlier recommendations made by the District Health Committee in the year 2018

were acted upon so proceedings stood dropped.

4. It is further contended by learned counsel appearing for petitioner that circular letter issued in the matter of terms and conditions of the contractual appointees provides that the termination of contract of such contractual employees should be a last resort and there are other punishments minor in nature which have been recommended to be imposed vide clause 1 to 6. It is also contended that the District Level Committee which as is contemplated for the purposes of assessment of records and performance of contractual employees, should consist of four members whereas the District Health Committee that made recommendations in 2018 consisted of two members and the recent recommendations that were made by another committee consisted of two members only and, hence, District Health Committee was also not validly constituted as per the circular letter dated 07.03.2019.

5. Learned Additional Chief Standing Counsel on the contrary sought to defend the impugned order for the reasons assigned therein. Shri Gupta, learned Advocate holding brief of Shri Pranjal Mehrotra, learned counsel for respondent No. 2 submits that respondent No. 2 has no role to play and to this effect a short counter affidavit has been filed.

6. Having heard learned counsel for respective parties and having perused the records, I find it to be quite established that earlier recommendations made by the District Health Committee on 24.11.2018 was not acted upon which related to certain irregularities in the discharge of duties by the petitioner in the relevant year 2016-17-18. This also comes to be reflected in the enquiry report which has been heavily relied upon while passing the impugned order. It also further transpires and clearly so from the records that the recommendations made by the District Health Committee in the year 2022 did not refer to any specific charge except for the vague charges regarding dereliction in discharge of duties by the petitioner, inasmuch as the committee's recommendations are signed only by the Chief Medical Officer who is the coordinator of the District Health Committee and the District Health Officer. From the enquiry report also it is quite apparent that the charge No. 2 which was a basic charge drawn against the petitioner of extortion by way of corruption was also not established. The other charges are vague and the charges that relate to the year 2018 ought not to have been taken into consideration in view of the subsequent report sbmitted by the District Health Committee in the year 2018 having not been acted upon.

7. I further notice that the circular letter dated 07.03.2019 provides a procedure to be followed in the matter of action to be taken against a contractual employee and prescribed for constitution of District Health Committee to be consisting of four members to assess the work of a contractual employee and also to examine the report of enquiry if submitted against the such employee so as to warrant any action disciplinary in nature. The relevant circular letter dated 07.03.2019 is reproduced hereunder in its entirety:

"मिशन निदेशक,
राष्ट्रीय स्वास्थ्य मिशन,
उतार प्रदेश।

समस्त मुख्य चिकित्साधिकारी,

समस्त जनपद,

एजांक 197/SPMU/DAP-HR/GRC/2018-19/दिनांक 07- 03.2019

विषय राष्ट्रीय स्वास्थ्य मिशन के अन्तर्गत जनपदों में कार्यरत संविदा कर्मचारियों द्वारा कार्य में अनियमितता पाये जाने के विरुद्ध कार्यवाही प्रक्रिया हेतु।

महोदय/महोदया,

उपरोक्त विषयक अवगत कराना है कि राष्ट्रीय स्वास्थ्य मिशन के अंतर्गत जनपदों में कार्यरत संविदा कर्मचारियों द्वारा कार्य में अनियमितता पाये जाने के विरुद्ध निम्न प्रक्रिया का पालन करना सुनिश्चित करें

अ जिला स्तरीय संविदा कर्मी (जिसकी नियुक्ति प्राधिकारी जिला स्वास्थ्य समिति है)

संविदा कर्मी द्वारा किसी भी अनियमितता होने पर सर्वप्रथम कर्मी को लिखित चेतावनी व स्पष्टीकरण लिया जाये और उससे संतुष्ट न होने की दशा में जिला स्तर पर मुख्य चिकित्साधिकारी की अध्यक्षता में गठित समिति के समक्ष रखा जायेगा। समिति के सदस्य निम्नवत् है :-

1. जिलाधिकारी द्वारा नामित अधिकारी।

2. अपर मुख्य चिकित्साधिकारी नोडल अधिकारी सम्बंधित जिला।

3. जिलाधिकारी द्वारा वित्त विभाग का नामित अधिकारी।

4. चिकित्सा अधीक्षक अगर अनियमितता सम्बन्धित इकाई से है।

यदि उपरोक्त समिति द्वारा कर्मचारी दोषी पाया जाता है तो आरोप की गंभीरता को देखते हुए समिति द्वारा निम्न बिन्दुओं में से अपनी संस्तुति जिला स्वास्थ्य समिति को निर्णय हेतु अग्रसारित की जायेगी।

1. 15 दिन की वेतन कटौती।

2. 01 वर्ष के वार्षिक बढ़ोत्तरी की कटौती।

3. यदि ब्लॉक स्तरीय. कर्मचारी हो तो अन्य ब्लॉक में स्थानान्तरण की संस्तुति।

4. यदि जिला स्तरीय कर्मचारी हो तो अन्य जिला में स्थानान्तरण की संस्तुति।

5. समिति द्वारा अन्य कोई नियमानुसार देय दण्ड।

6. यदि आरोप अत्यंत गंभीर हो तो संविदा समाप्ति की संस्तुति।

जिला स्वास्थ्य समिति द्वारा लिया गया निर्णय ही अंतिम निर्णय माना जायेगा।

"नोट- यदि जनपद में कार्यरत संविदा कर्मी प्रदेश स्तर से नियुक्त हैं एवं नियुक्ति प्राधिकारी राज्य स्तर पर है अथवा जनपद से स्थानांतरण प्रस्तावित है तो जिला स्वास्थ्य समिति अपनी संस्तुति मिशन निदेशक, राष्ट्रीय स्वास्थ्य मिशन को निर्णय हेतु प्रेषित करेगी।"

8. Thus comparing the District Health Committee report and signatories thereupon both of 2018 and 2022 qua the provisions contained in the circular letter dated 07.03.2019, I find that the constitution of the District Health Committee itself was de hors the rules/ circular. It is a settled principle of law and so held by the judgments of the Supreme Court and of this Court where rules are silent or rules have not been framed the administrative circular and the Government Order shall prevail and the authorities are hide bound in law to follow these procedure prescribed under the rules and the circular letter **Sant Ram Sharma v. State of Rajasthan and others (1967) SCC Online SC 16: AIR 1967 SC 1910 and Union of India and Another v. Ashok Kumar Agarwal (2013) 16 SCC 147**.

9. The law is equally well settled that when rules require a particular thing to be done in a prescribed manner, it should be done in that manner alone; **M/S Tata Chemicals v. Commissioner of Customs (Preventive) Jamnagar (2015) 11 SCC 628, Krishna Rai (dead) through LRs and others v. Banaras Hindu University through Registrar and others (2022) 8 SCC 713.**

10. There may be a question that contract employees are not protected under government service rules and hence, this Court may not exercise its power under Article 226 of the Constitution, but in my considered view, where State and its instrumentalists are employers, they must ensure not only fairness in procedure by following their own circulars and instructions but should also be fair in their assessment of work and conduct of the contract based employees. If an experienced employee's work and conduct can be ensured to be smooth and in an orderly manner by issuing warning to him, such employer should refrain from undergoing fresh exercise of selection which will cause further burden upon public exchequer.

11. In these circumstances, therefore, the recommendations made by the committee which was not duly constituted as per the circular letter, should not have been considered and ought not to have been made a ground to rescind the contract of appointment of the petitioner. Further I notice that the charge of extortion by way of corruption has not been proved in the enquiry report and, therefore, the action ultimately rescinding the contract should not have been taken and petitioner should have been issued with a warning to be sincere in his work assigned to him.

12. In view of the above discussions therefore, the order impugned cannot be sustained in law.

13. Accordingly writ petition succeeds and is allowed. The order terminating the contract appointment of the petitioner dated 11.01.2022 is hereby quashed.

14. Petitioner shall be reinstated and shall be paid his remuneration.

15. Appropriate order shall be passed by the authority within a period of one month reinstating the petitioner into employment, reviving his contract employment within two weeks' time, however, petitioner shall not be entitled for any back wages.

(2025) 7 ILRA 349
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 21.07.2025

BEFORE

THE HON'BLE MANISH MATHUR, J.

Writ A No. 4360 of 2023

Taru Kashyap ...Petitioner
Versus
Union Of India & Ors. ...Respondents

Counsel for the Petitioner:
Dheeraj Awasthi, Devak Vardhan

Counsel for the Respondents:
A.S.G.I., Harsha Yadav

Issue for Consideration

(A) Applicability of the welfare provisions regarding maternity leave to a woman employed on contractual basis.

(B) Overriding effect of the engagement letter dated 03.09.2021, which prohibit the maternity benefit, to the Maternity Benefit Act, 1961.

Headnotes

(A) Service law – Right of woman to bear child – Maternity leave – Entitlement – Petitioner was initially engaged on contractual basis – Earlier engagement letter did not prohibit grant of maternity benefit, but subsequent engagement letter dated 03.09.2021 imposes prohibition through its clause (7) – Validity challenged :

Held : The provisions of Act of 1961 would be applicable even on ladies who are employed on contractual basis – In case, clause (7) of the letter dated 03.09.2021 is held to be maintained, it would definitely defeat provisions of Act of 1961 and therefore, the consideration and object of clause (7) would definitely be against principles and objects of the Act of 1961 which are beneficial in nature and would have reference to the right of a lady to bear children which would come within realm of a Fundamental Right under Article 21 of the Constitution of India. [Paras 9 and 12] (E-1)

Case Law Cited

Dr. Kavita Yadav v. Secretary, Ministry of Health and Family Welfare Department and others, 2023 SCC OnLine SC 1067; Dr. Rachna Chaurasiya v. State of U.P. and others, 2017 SCC OnLine ALL 4396 – **referred to.**

List of Acts

Constitution of India – Article 21, 39 and 42; Maternity Benefit Act, 1961 – S. 12(2) (a) and 27; Contract Act, 1872 – S. 23.

List of Keywords

Maternity leave; Service on contractual basis; Prohibition; Principle of estoppel; Disparity in maternal protection; Mandamus.

Case Arising From

Challenge to Clause (7) of the engagement letter dated 02/03.09.2021 to the extent it denies maternity leave to female employees in the establishment.

(Delivered by Hon'ble Manish Mathur, J.)

1. Heard Mr. Devak Vardhan, learned counsel for petitioner and Ms. Harsha Yadav, learned counsel for opposite parties.

2. Petition has been filed challenging Clause 7 of the engagement letter dated 02/03.09.2021 to the extent it denies maternity leave to female employees in the establishment. Quashing of order dated 03.05.2023 granting matrimonial leave to petitioner without pay has also been sought alongwith a direction to concerned authority to grant maternity benefit to petitioner with full wages as applicable.

3. It has been submitted that petitioner was initially engaged on contractual basis on the post of Special Educator vide letter dated 08.10.2020 on a fixed honorarium for a period of 89 days. It is submitted that subsequently upon completion of the aforesaid tenure, the petitioner was again re-engaged on the said post on contractual basis vide letter dated 03.09.2021, again for a period of 89 but with a new addition of Clause 7 which denied benefits of maternity leave to petitioner. It is submitted that subsequently petitioner submitted an e-mail application dated 20.04.2023 seeking maternity leave in terms of Section 10 of the Maternity Benefit Act, 1961 for a period of two weeks w.e.f. 20.04.2023 till 04.05.2023. The said application was granted partly granting leave for the aforesaid time period without pay on medical grounds.

4. Learned counsel has adverted to the Maternity Benefit Act, 1961 to submit that the Act by its very nature applies even to contractual engagement in any establishment including the one under which petitioner was engaged. He has

adverted to various sections of the Act of 1961 to submit that petitioner had a right to be granted the aforesaid benefit particularly those indicated in Sections 5, 8 and 10 of the Act. He has also placed reliance on judgment rendered by Hon'ble Supreme Court in the case of **Dr. Kavita Yadav** versus **Secretary, Ministry of Health and Family Welfare Department and others**, 2023 SCC OnLine SC 1067 as well as Division Bench of this Court in the case of **Dr. Rachna Chaurasiya** versus **State of U.P. and others**, 2017 SCC OnLine ALL 4396.

5. Learned counsel for opposite parties on the basis of counter affidavit has refuted submissions advanced by learned counsel for petitioner and has adverted to paragraphs 4 to 6 of the counter affidavit indicating the time periods whereunder petitioner was engaged on contractual basis. It is submitted that the aforesaid benefit could not be extended to petitioner in view of specific stipulation indicated in paragraph-7 of the letter dated 03.09.2021 whereby petitioner was re-engaged in service on contractual basis.

6. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is evident that petitioner was initially engaged in service on contractual basis on the post of Special Educator for a period of 89 days vide order dated 08.10.2020. It is noticeable that the aforesaid letter of engagement did not contain any such prohibition in grant of maternity benefit to petitioner and it is only in the subsequent engagement letter dated 03.09.2021 where such a prohibition was indicated for the first time in Clause 7.

7. In view thereof, the question requiring adjudication would be whether petitioner would be governed by provisions of the Act of 1961 or the specific stipulation prohibiting maternity benefit as indicated in the engagement letter dated 03.09.2021 particularly in view of principles of estoppel.

8. With regard to aforesaid, a perusal of the Act of 1961 specifically in the statement of objects and reasons indicates that maternity protection is provided under different acts under the Central and State Governments and due to considerable diversity in provisions relating to qualifying conditions etc., the existing disparities in that respect were required to be removed. Section 2 of the Act clearly indicates its application to every shop or establishment within meaning of any law for the time being in force in which ten or more persons are employed, or were employed, on any day of preceding twelve months. The right to payment of maternity benefit has thereafter been indicated in Section 5 of the Act with qualifying period being indicated in Sub Section 2 thereof whereby no woman is to be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than 80 days in the 12 months immediately preceding the date of her expected delivery. The definition clause indicated in Section 3 of the Act as defined employer and establishment which does not exclude any contractual engagement on behalf of the State. The explanation clause thereafter also indicates methodology of calculation of the 80 days. Sub-clause 3 indicates the maximum period of 26 weeks for entitlement of maternity benefit. The aspect of applicability of the aforesaid Act to persons engaged on contractual basis has been adjudicated by Hon'ble Supreme Court in the case of **Dr.**

Kavita Yadav (supra) in the following manner:-

"5. The main question which falls for determination in this appeal is as to whether the maternity benefits, as contemplated in the 1961 Act, would apply to a lady employee appointed on contract if the period for which she claims such benefits overshoots the contractual period. Ms. Rachita Garg, learned counsel appearing for the respondent-employer, sought to defend the reasoning given in the judgment under appeal. Her main argument is that once the term or tenure of the contract ends, there cannot be a notional extension of the same by giving the employee the benefits of the 1961 Act in full, as contemplated in Section 5(2) thereof. It is her submission that any benefits that the appellant would be entitled to ought to be within the contractual period.

6. We have reproduced earlier in this judgment the provisions of Section 12(2)(a) of the 1961 Act. The aforesaid provision contemplates entitlement to the benefits under the 1961 Act even for an employee who is dismissed or discharged at any time during her pregnancy if the woman, but for such discharge or dismissal, would have been entitled to maternity benefits or medical bonus. Thus, continuation of maternity benefits is in-built in the statute itself, where the benefits would survive and continue despite the cessation of employment. In our opinion, what this legislation envisages is entitlement to maternity benefits, which accrues on fulfillment of the conditions specified in Section 5(2) thereof, and such benefits can travel beyond the term of employment also. It is not co-terminus with the employment tenure. A two Judge Bench of this Court in the case of Municipal Corporation of Delhi v. Female Workers (Muster Roll) [(2000) 3 SCC 224], while dealing with a similar claim by female muster roll workers who were employed on daily wages, opined that the provisions relating to maternity benefits in the 1961 Act would be applicable in their cases as well. That dispute had reached this Court through the Industrial Tribunal and the High Court. Before both these fora, the Union espousing the cause of the female workers was successful. In that case, point of discrimination was highlighted as regular women employees were extended the benefits of the said Act but not those who were employed on casual basis or on muster roll on daily wage basis. This Court observed, in paragraph 27 of the said judgment: -

"27. The provisions of the Act which have been set out above would indicate that they are wholly in consonance with the Directive Principles of State Policy, as set out in Article 39 and in other articles, specially Article 42. A woman employee, at the time of advanced pregnancy cannot be compelled to undertake hard labour as it would be detrimental to her health and also to the health of the foetus. It is for this reason that it is provided in the Act that she would be entitled to maternity leave for certain periods prior to and after delivery. We have scanned the different provisions of the Act, but we do not find anything contained in the Act which entitles only regular women employees to the benefit of maternity leave and not to those who are engaged on casual basis or on muster roll on daily-wage basis.""

9. It has, thus, been held in the aforesaid judgment taking recourse to

Section 12 (2) (a) of the Act of 1961 that the provisions of Act of 1961 would be applicable even on ladies who are employed on contractual basis.

10. The aforesaid reasoning has also been adopted by Division Bench of of this Court in the case of Dr. Dr. Rachna Chaurasiya (supra) in the following manner:-

"Maternity benefit is a social insurance and the Maternity Leave is given for maternal and child health and family support. On a perusal of different provisions of the Act, 1961 as well as the policy of the Central Government to grant Child Care Leave and the Government Orders issued by the State of U.P. adopting the same for its female employees, we do not find anything contained therein which may entitle only to women employees appointed on regular basis to the benefit of Maternity Leave or Child Care Leave and not those, who are engaged on casual basis or on muster roll on daily wage basis.

The aforesaid view taken by us find full support from the dictum of Hon'ble Apex Court in the case of Municipal Corporation of Delhi Vs. Female Workers (Muster Roll) & Anr., (2000) 3 SCC 224. It may be relevant to produce paragraph 27 from the said report.

"The provisions of the Act which have been set out above would indicate that they are wholly in consonance with the Directive Principles of State Policy, as set out in Article 39 and in other Articles, specially Article 42. A woman employee, at the time of advanced pregnancy cannot be compelled to undertake hard labour as it would be detrimental to her health and also to the health of the foetus. It is for this reason that it is provided in the Act that she would be entitled to Maternity Leave for certain periods prior to and after delivery. We have scanned the different provisions of the Act, but we do not find anything contained in the Act which entitles only regular women employees to the benefit of Maternity Leave and not to those who are engaged on casual basis or on muster roll on daily wage basis."

We are of the considered opinion that the benefit under the Act as well as the Rules of the Government Orders providing for grant of Maternity benefits and Child Care leave are applicable to all female employees, irrespective of their nature of employment whether permanent, temporary or contractual."

11. The aforesaid aspect may also be required to be considered in view of Section 23 of the Contract Act which prohibits unconscionable contracts, which are required to be seen in terms of Articles 39 and 42 of the Constitution of India pertaining to directive principles in a welfare society.

12. Upon examination of Section 23 of the Contract Act, it would be evident that in case Clause 7 of the letter dated 03.09.2021 is held to be maintained, it would definitely defeat provisions of Act of 1961 and therefore, the consideration and object of paragraph-7 of the letter dated 03.09.2021 would definitely be against principles and objects of the Act of 1961 which are beneficial in nature and would have reference to the right of a lady to bear children which would come within realm of a Fundamental Right under Article 21 of the Constitution of India.

13. The aforesaid aspect is also required to be considered in the light of Section 27 of the Act of 1961, which clearly indicates as follows:-

"21. Penalty for contravention of Act by employer - (1) If any employer fails to pay any amount of maternity benefit to a woman entitled udner this Act or discharges or dismisses such woman during or on account of her absence from work in accordance with the provisions of this Act, he shall be punishable with imprisonment which shall not be less than three months but which may extend to one year and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees :

Provided that the court may, for sufficient reasons to be recorded in writing, impose a sentence of imprisonment for a lesser term or fine only in lieu of imprisonment.

(2) If any employee contravenes the provisions of this Act or the rules made thereunder, he shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both :

Provided that where the contravention is of any provision regarding maternity benefit or regarding payment of any other amount and such maternity benefit or amount has not already been recovered, the court shall, in addition, recover such maternity benefit or amount as if it were a fine and pay the same to the person entitled thereto."

14. The aforesaid statutory provision, therefore, clearly enunciates that the provisions of Act of 1961 would have precedence over any terms of agreement or contract of service whether made before or after coming in force of the Act. The proviso thereto would be applicable only where the contract of engagement would have any provision which is more beneficial to an employee than the provisions of Act of 1961.

15. It is also evident from a perusal of counter affidavit, specifically paragraph 6 (7) thereof that petitioner was under contract of engagement from 31.03.2023 till 30.05.2023 and had sought maternity benefit during subsistence of her contract.

16. As has already been held hereinabove, the beneficial provisions of Act of 1961 would have preference over any prohibition of such maternity benefit as indicated in Clause-7 of the letter dated 03.09.2021.

17. In view thereof, petitioner would definitely be entitled to all the benefits accruing to her in terms of the Act of 1961 specifically those indicated in Sections 5, 8 and 10 of the Act of 1961.

18. Although it appears that subsequently petitioner has not been re-engaged in under contract but the aforesaid aspect also becomes irrelevant in view of enunciation of law in the case of Dr. Kavita Yadav (supra) in the following manner:-

"9. The respondents sought to distinguish the present dispute from the case of Female Workers (Muster Roll) (supra) on the ground that the said case arose from an award of the Industrial Tribunal and that there was a finding by the Tribunal that the muster roll lady workers were working for a long period of time. But the fact remains that in law, daily-wage workers cannot be said to have continuity of service for an unlimited period. The effect of that judgment was that

their tenure also stood notionally extended so far as application of maternity benefits under the 1961 Act was concerned.

10. Our independent analysis of the provisions of the 1961 Act does not lead to an interpretation that the maternity benefits cannot survive or go beyond the duration of employment of the applicant thereof. The expression employed in the legislation is maternity benefits [in Section 2(h)] and not leave. Section 5(2) of the statute, which we have quoted above, stipulates the conditions on the fulfilment of which such benefits would accrue. Section 5(3) lays down the maximum period for which such benefits could be granted. The last proviso to Section 5(3) makes the benefits applicable even in a case where the applicant woman dies after delivery of the child, for the entire period she would have been otherwise entitled to. Further, there is an embargo on the employer from dismissing or discharging a woman who absents herself from work in accordance with the provisions of the Act during her absence. This embargo has been imposed under Section 12(2)(a) of the Act. The expression "discharge" is of wide import, and it would include "discharge on conclusion of the contractual period". Further, by virtue of operation of Section 27, the Act overrides any agreement or contract of service found inconsistent with the 1961 Act."

19. In view of discussions made hereinabove, Clause 7 of letter dated 03.09.2021 is hereby held not only to be unconstitutional but also against provisions of the Act of 1961. The opposite parties are hereby directed not to incorporate any such clause in any engagement on contractual basis even in future.

20. Accordingly, a writ in the nature of mandamus is issued commanding the opposite parties to ensure maternity benefits to petitioner in accordance with Sections 5, 8 and 10 of the Act of 1961 within a period of six weeks from the date a certified copy of this order is produced before the concerned authority.

21. Resultantly, petition succeeds and is **allowed**. Parties to bear their own cost.

(2025) 7 ILRA 355
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 24.07.2025

BEFORE

THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Writ A No. 5545 of 2021

Urmila Singh ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Jitendra Prasad, Niraj Kumar Singh, Rajesh Kumar Singh

Counsel for the Respondents:
C.S.C., Jay Ram Pandey

Issue for consideration

Eligibility of wife for family pension if nomination is otherwise; correctness of order dated 21.09.2020 passed by respondent no. 3 – Finance and Accounts Officer, Basic Education, Mirzapur.

Headnotes

U.P. Retirement Benefit Rules, 1961-Rules 3, 6, 7- petitioner is legally wedded wife of the deceased government servant- nomination was

in favor of the elder son –who was nearly 32 years of age at the time of death of his father- the age, and the fact that the son might have been earning at that stage makes him ineligible for the family pension- the petitioner is legally wedded wife -has no other source of her livelihood-petitioner is entitled for family pension. **W.P. allowed.**

Held: The petitioner is legally wedded wife of late Prabhu Narayan Singh who has no other source of her livelihood, this Court finds that the petitioner is entitled for family pension. (E-9)

Case Law Cited

Union of India v. Sathikumari Amma2025 SCC OnLine Ker 539: 2025: KER:2184

List of Acts

U.P. Retirement Benefit Rules, 1961

List of Keywords

family pension; 'family' includes spouse, wife or husband; sons (including step and adopted), unmarried and widowed daughters (including step and adopted), brothers below the age of 18 years; unmarried and widowed sisters (including step-brothers and step-sisters); father, mother, married daughters (including step-daughters) and children of pre-deceased son; nomination.

Appearances of parties

Counsel for Petitioner :-Jitendra Prasad, Niraj Kumar Singh, Rajesh Kumar Singh

Counsel for Respondent :- C.S.C., Jay Ram Pandey

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. The petitioner has preferred this writ petition challenging an order dated 21.09.2020 passed by respondent no. 3 – Finance and Accounts Officer, Basic Education, Mirzapur, vide which the claim of the petitioner for payment of family pension has been rejected.

2. Brief facts of the case are that the petitioner's husband was appointed as an Assistant Teacher in a Basic School run by Basic Shiksha Parishad and was superannuated on 31.03.2016, after which he was getting pension. He passed away on 29.11.2019, therefore, his wife (petitioner herein) became entitled for family pension. The petitioner (wife) moved an application requesting for sanction of family pension. However, her claim of family pension been rejected vide order impugned dated 21.09.2020 on the ground that in the application requesting for payment of pension as moved by the petitioner's husband, in the column 'details of family' in Part-I, name of the petitioner has not been mentioned. As neither in Part-III of the application, photo of the petitioner has been pasted nor her name finds place in the earlier pension papers which were submitted by her husband for sanction of pension.

3. Learned counsel for the petitioner submits that, admittedly, the petitioner is wife of late Prabhu Narayan Singh, which has been certified by the Gram Pradhan of the village. Name of petitioner's husband has been mentioned in the passbook of the bank account of the petitioner. Even in the proceedings under Section 125 Cr.P.C., the petitioner has been granted maintenance of Rs. 8,000/- per month which proves that she is the wife of late Prabhu Narayan Singh, hence she is entitled for family pension.

4. Learned counsel for the petitioner contends that in the special circumstances, where it is an admitted fact that the petitioner is wife of late Prabhu Narayan Singh and the son, who was 34 years old at the time of death of Prabhu Narayan Singh, was not entitled for family pension, the respondent authorities ought to have verified the fact, which has already been certified by the Gram Pradhan and the judgement dated 20.08.2015 passed by Principal Judge, Family Court, Mirzapur in Application No. 404 of 2014, Smt. Urmila Singh v. Prabhu Narayan Singh, and should have released the family pension in favour of the petitioner. However, the respondent authority without taking note of the said relevant material, has proceeded to reject the petitioner's claim sans application of mind.

5. Placing reliance upon the Pension Payment Rules, learned counsel for the petitioner submits that the petitioner, being the wife of late Prabhu Narayan Singh, is entitled for pension.

6. Learned counsel for the Basic Education Department i.e. respondent nos. 2, 3 & 4, submits that there is no illegality or infirmity in the order impugned as the deceased government servant has not mentioned name of the petitioner in his application requesting for pension. In Part-III of the pension application, name of Atul Kumar Singh has been mentioned as the applicant for family pension, therefore, the petitioner is not entitled for any such claim being sought for in the writ petition.

7. Heard learned counsel for the petitioner, Sri Shailendra Singh, learned Standing Counsel for the State, Sri Sunil Kumar Dubey, learned counsel for respondent nos. 2, 3 & 4, and perused the record.

8. The family pension is governed by the provisions of the Civil Service Regulations and the U.P. Retirement Benefit Rules, 1961[1]. 'Family' is defined under Sub-Rule (3) of Rule 3, which reads thus:

"(3) "Family" means the following relatives of an officer:

(i) wife, in the case of any male officer;

(ii) husband, in the case of a female officer;

(iii) sons (including step-children and adopted children)

(iv) unmarried and widowed daughters. (Including step-children and adopted children)

(v) brothers below the age of 18 years and unmarried and widowed sisters (including step-brothers and step-sisters);

(vi) father;

(vii) mother;

(viii) married daughters (including step-daughters), and

(ix) children of a pre-deceased son"

9. Rule 6 of the Rules, 1961 provides for nomination of one or more persons, and right to receive any gratuity that may be sanctioned. The proviso clarifies that at the time of making nomination if the officer has a family, the nomination shall not be in favour of any person other than one or more members of the family. Rule 6 is extracted:

*"**6. Nomination.** – (1) A Government Servant shall, as soon as he acquires or if he already holds a lien on a permanent pensionable right to receive any grauity that may be sanctioned under sub-rule (2) or sub-rule (3) of rule 5 and gratuity which after becoming admissible to him under sub-rule (1) of that rule is not paid to him before death :*

Provided that if at the time of marking the Nomination the officer has a family, the nomination shall not be in favour of any person other than one or more of the members of the family."

10. Rule 7 of Part-III of the Rules, 1961 provides that family pension may be granted to the family of an officer who dies, whether after retirement or while still in service after completion of not less than twenty years' qualifying service. Sub-Rule (4) of Rule 7 provides who shall be entitled to receive the pension in the event the deceased employee had two wives. Sub-rule (4) is extracted below:

***(4)** "Except as may be provided by a nomination under sub-rule (5) below:*

***(a)** a pension sanctioned under this Part shall be granted—*

(i) to the eldest surviving widow, if the deceased was a male officer or to the husband, if the deceased was a female officer;

(ii) failing the widow or husband, as the case may be, to the eldest surviving son;

(iii) failing (i) and (ii) above, to the eldest surviving unmarried daughter;

(iv) these failing, to the eldest widowed daughter; and

***(b)** in the event of the pension not becoming payable under clause (a) the pension may be granted—*

(i) to the father;

(ii) failing the father, to the mother;

(iii) failing the father and mother both, to the eldest surviving brother below the age of 18;

(iv) these failing, to the eldest surviving unmarried sister;

(v) these failing (i) to (iv) above, to the children of a predeceased son in the order it is payable to the children of the deceased officer under clause (a) (ii), (iii) and (iv), above.

Note.—The expression "eldest surviving widow" occurring in clause (a) (i) above, should be construed with reference to the seniority according to the date of marriage with the officer and not with reference to the age of surviving widows."

11. From the arguments as placed by learned counsel for the parties, it is not disputed that the petitioner is legally wedded wife of the deceased government servant. The same is evident from the certificate as issued by by the concerned Gram Pradhan and the judgement dated 20.08.2015 passed by Principal Judge, Family Court, Mirzapur in Application No. 404 of 2014, Smt. Urmila Singh v. Prabhu Narayan Singh, and the same is not disputed.

12. A bare perusal of the Rules, 1961 is indicative of the fact that the definition of 'family' includes spouse, wife or husband, as the case may be, sons (including step and adopted), unmarried and widowed daughters (including step and adopted), brothers below the age of 18 years and unmarried and widowed sisters (including step-brothers and step-sisters), father, mother, married daughters (including step-daughters) and children of pre-deceased son.

13. In the present case, the petitioner is legally wedded wife of the deceased government servant. Sub-rule (5) of Rule-6 of the Rules, 1961 requires government servants to make a nomination indicating the order, in which pension, sanctioned, would be payable to the members of their family. Provided the nominee is not ineligible on the date on which the pension may become payable to him or her to receive the pension under the provisions of sub-rule (3) of Rule-7 of the Rules, 1961. Thus, the scheme of the Rules, 1961 provides that in case a government servant leaves behind any of the family members, there should be a nomination in favour of them and the pension would accordingly be payable, provided the nominee is not ineligible on the date, on which the pension became payable to her in sub-rule (3) of Rules-7.

14. In the present case, the nomination was in favour of the elder son who was nearly 32 years of age at the time of death of his father, therefore, it was the petitioner who was legally wedded wife, and was entitled for the family pension. The age, and the fact that the son might have been earning at that stage makes him ineligible for the family pension.

15. This Court feels that the family pension is a statutory right of a wife under the Rules, 1961. The aforesaid fact has been affirmed by Kerala High Court in the case of **Union of India v. Sathikumari Amma**[2], wherein the Court held that family pension is not a part of employee's estate and cannot be revoked via any declaration or nomination by the deceased. It further observed that the employee cannot exclude legally wedded spouse from receiving pension, such departure is constitutionally invalid.

16. It is now a well-settled legal principle, as affirmed by the Kerala High Court in **S. Sathikumari Amma (supra),** that family pension is a statutory entitlement of the legally wedded spouse and cannot be revoked or excluded by any declaration, nomination or action of the deceased employee.

17. This Court finds that admittedly the petitioner was the wife of late Prabhu Narayan Singh. Said fact is also proved from the judgement dated 20.08.2015 passed by Family Court in Application No. 404 of 2014, Smt. Urmila Singh v. Prabhu Narayan Singh. The ground taken in the maintenance application shows that there were some differences between the applicant and her husband, therefore, she was residing at her parental place and as soon as she came to know about the death of her husband, she moved an application mentioning therein the details of family. In the application for family pension, the date of birth of the petitioner is mentioned as 01.01.1962, date of birth of Atul Kumar is 20.07.1985 and that of Sandeep is 05.12.1987. Accordingly, at the time of death of petitioner's husband, Atul Kumar Singh, whose name was mentioned in pension papers, was nearly 34 years old

and another son was 32 years old. The petitioner not being aware of the conduct of her husband, who nominated one of his sons, for family pension as required under law, had no other remedy but to move an application, to which proper decision should have been taken, keeping in mind the provisions of the Pension Rules, 1961. However, the respondent authority has rejected the application only on one ground that name of the petitioner was not mentioned in pension papers as required under law.

18. From the record, it is evident that the petitioner was getting Rs. 8,000/- per month from her husband to maintain herself, however, after his death, when she was 62 years old, there was nothing to maintain herself except family pension, therefore, the impugned order is liable to be set aside.

19. This Court feels that the family pension is statutory and beyond the employee's unilateral control. Family pension is recognized as a legal entitlement, not charity.

20. Having considered the submissions of learned counsel for the parties and peculiar facts and circumstances of the case, and in view of the admitted fact that the petitioner is legally wedded wife of late Prabhu Narayan Singh who has no other source of her livelihood, this Court finds that the petitioner is entitled for family pension. Thus, the impugned order dated 21.09.2020 is quashed. The respondent no. 3 is directed to release family pension in favour of the petitioner, forthwith.

21. The writ petition stands allowed accordingly.

22. There shall be no order as to costs.

(2025) 7 ILRA 360
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 04.07.2025

BEFORE

THE HON'BLE AJIT KUMAR, J.

Writ A No. 5667 of 2015

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

Counsel for the Petitioner:
Satya Prakash Pandey

Counsel for the Respondents:
Ajay Kumar, C.S.C., Nisheeth Yadav, Nishith Yadav

Issue for consideration

Whether qualification of the petitioner as bachelor in Physiotherapy, decree of which has been conferred by the State Integral University, Lucknow to meet qualification prescribed under the Service Rules, 2012. (Para 17)

Headnotes

A. Service Law – Qualification – Permission to participate - U.P. Food Safety and Drug Administration Department (Food Safety Cadre) (Group-'A','B', and 'C') Service Rules, 2012: Rule 8; Indian Medical Council Act, 1956: Section 2-f - Providing equivalence to qualification prescribed in the rules is essentially a job of experts in the field and for the State Government to formulate on its own volition with regard to such equivalence. (Para 23)

B. Selection and appointment should be made strictly in terms of advertisement and recruitment rules issued. The question as to whether particular post- graduate decree would be equivalent to the one prescribed under

the rules, would fall within the domain of the State Government it being a policy matter. (Para 24)

It is either for the State Government to recognize such degree of Physiotherapy as equivalent to the bachelor's degree in medicine or for Medical Council of India to recognize course of Physiotherapy as of medicine and unless and until State Government recognizes so or the appointing authority admits such degree to be degree required under the Service Rules as an academic qualification, this Court will not direct the authority to consider degree in question as a qualification at par with graduate bachelors degree in medicine as required under the relevant Service Rules. (Para 25)

C. In the event of confusion, the Commission will always seek clarification from the appointing authority or the State Government and appointing authority being Food Safety Commissioner, it is claimed that Commission was justified for having relied upon the said opinion. **The opinion obtained from the Central Government also holds that MBBS degree recognized by Medical Council of India would only constitute the bachelors degree in 'medicine'.** (Para 26)

D. As per the appendix of Medical Council Act, 1956, U.P. State Integral University Lucknow is not a recognized institution to award degree in medicine. Therefore, **the bachelor's degree issued by the University in Physiotherapy would not amount to degree in medicine as the degree in Physiotherapy is not recognized by Medical Council of India.** (Para 27, 28, 29)

E. University-Grants-Commission recognizes university for the purposes of awarding degrees at macro level whereas Medical Council of India Science is confined to Medical Science only. Therefore, a University even if recognized by University-Grants- Commission to confer degrees in medicine that are recognized by Medical Council of India under the Act, 1956, it would not amount to academic qualification as prescribed under the Service Recruitment Rules, 2012. Admittedly, Public Service Commission as a selecting and recommending authority has no business to interpret qualifications. (Para 30)

Degree possessed by the petitioner, being bachelor in Physiotherapy, is not a degree of bachelor in medicine, a requisite academic qualification under Service Recruitment Rules, 2012. (Para 31)

Writ petition dismissed. (E-4)

Case Law Cited

1. Anoop Kumar and 135 Others Vs. State of U.P. and Another, Writ-A No. 63851 of 2014, decided on 23.12.2014 (Para 11)

2. Virendra Kumar Yadav (PIL) Vs. Union of India through the Chairperson Food Safety and Standards Authority and Others, Misc. Bench No. 1717 of 2013, decided on 25.4.2014 (Para 12)

3. Smita Shrivastava Vs. State of Madhya Pradesh and Others, 2024 SCC Online SC 764 (Para 15)

4. Km. Pratima Gupta Vs. State of U.P and 2 Others, Writ-A No. 25238 of 2016, decided on 09.01.2019 (Para 23)

5. Alok Shukla and Another Vs. State of U.P. and 2 Others, Order dated 24.02.2022, Writ-A No. 1984 of 2022 (Para 24)

List of Acts

U.P. Food Safety and Drug Administration Department (Food Safety Cadre) (Group-'A','B', and 'C') Service Rules, 2012; Indian Medical Council Act, 1956.

List of Keywords

Service Law; Permission to participate; equivalent qualification

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

1. Heard Sri Ashok Khare, learned Senior Advocate assisted by Sri S.P. Pandey, learned counsel for the petitioner, Sri Nisheeth Yadav, learned counsel for the contesting respondent U.P. Public Service

Commission and Sri Vishal Singh, learned Standing Counsel for the State respondents.

2. Briefly stated facts of the case are that U.P. Public Service Commission issued an advertisement on 14th July, 2014 bearing advertisement No. A-2/E-1/2014 inviting application on the post of Food Safety Officer prescribing certain qualifications for a candidate to apply against the same.

3. The petitioner appeared in the written examination held by Public Service Commission and for having passed out successfully in the written examination she was issued with call letter dated 5.12.2014 for the interview scheduled on 19.12.2014. However, when the petitioner approached the Commission to participate in the interview, she was not permitted to participate. Final results came to be declared on 29th January, 2015 and the petitioner's candidature having been rejected, she filed petition before this Court on 28th January, 2015 itself. The grievance of the petitioner is that she possessed requisite qualification as prescribed for under the advertisement and accordingly she was permitted to participate in the written examination, however, when she came to participate in interview, she was not permitted to participate for the reason that she did not possess bachelo's decree in medicine. It was argued on behalf of the petitioner that Integral University of Lucknow was a recognized university by the University-Grants-Commission and hence courses conducted by University including the bachelor in Physiotherapy, which was a four years course, were also taken to be recognized one.

4. It was argued on behalf of the petitioner that bachelor in Physiotherapy was a degree conferred upon a candidate who underwent four years' course by rigorous study of various subjects that included theory in General Surgery, clinical Neurology & Neurosurgery, Clinical Orthopaedics, Biomechanical & Kinesiology, Physical Medicine & Rehabilitation, Physiotherapy Ethics and Laws as practical subjects under General Surgery Lab, Clinical Neurology & Neurosurgery Lab, Clinical Orthopaedics Lab and Biomechanics & Kinesiology Lab.

5. It was argued that Section 2-f of the Indian Medical Counsel Act, 1956 defined medicine which meant Modern Scientific Medicine in all its branches and included in it surgery bio-statics, but did not include veterinary medicine and surgery. Thus, according to learned Senior Advocate, the curriculum that was prescribed for degree of bachelor in Physiotherapy as referred to hereinabove, would be sufficient to hold it to be category of medicine. It was argued that all the branches that prescribed for course of bachelor in Physiotherapy were all related to Modern Scientific Medicine in its different branches and included medicine study and surgery also.

6. Sri Khare also placed before the Court the notification of the University-Grants-Commission dated March, 2014 that defines various degrees and recognizes degree of bachelor of Physiotherapy as degrees relating to medicine in Surgery /Ayurveda /Unani /Homeopathic /Health and Allied Sciences /Paramedical /Nursing. Sri Khare further submitted that there being no quarrel about status of the University and the degree obtained by the petitioner, the respondent Commission was not justified in rejecting the candidature of the petitioner for the post in question holding that petitioner did not possess required

degree as per qualification prescribed for under the relevant service rules. .

7. Meeting the above submissions advanced by Sri Khare, learned counsel for the respondent Sri Nisheeth Yadav submitted that petitioner's application was initially entertained because she filled up form declaring herself to be eligible candidate having requisite qualification, but since there arose some doubt about degrees which may be "N" number and which where claimed to falling within the definition of bachelor's degree in medicine, for determination, commission was justified in getting confirmation from State Government, and the appointing authority, namely, Commissioner, Food and Drugs Administration, U.P. Mr. Yadav submitted further that upon query being made by the Commission from the Commissioner, Food and Safety Drugs Administration, U.P. Lucknow vide letter dated 27th August, 2014, he apprised the Commission vide letter dated 11th September, 2014 that qualifications given under the U.P. Food Safety and Drug Administration Department (Food Safety Cadre) (Group A,B and C) Service Rules, 2012 in relation to Group A,B,C categories employees of department of Food, Safety and Drugs Administration of U.P., the same were to be enforced as applicable. It also apprised the Commission that Central Government had not notified any other equivalent qualification to the qualification prescribed under the Rules and thus on the basis of information received from the Director (Enforcement) for the Food Safety and Standards Authority dated 30th June, 2014, the Commission concluded the bachelor's degree in Physiotherapy would not count to degree in medicine/ medical science, a requisite qualification.

8. In support of his above argument, Mr. Yadav further draw the attention of the Court towards letter dated 15th December, 2014 written by Commissioner, Food Safety and Drug Administration, in which it was stated that degree means degree recognized under the Indian Medical Council Act, 1956 and as per letter written by Director General, Medical Health Education and Training, Government of U.P. dated 10.12.2014, only MBBS degree is recognized under the Indian Medical Council Act, 1956.

9. Sri Yadav has further placed before the Court the letter of the Director, Indian Food Safety and Standard Authority dated 26th November, 2014 that degree in medicine means degree recognized under the Indian Medical Council Act, 1956. Sri Yadav has also drawn attention of the Court to the letter of the State Government written to the Commissioner, Food, Safety and Drug Administration, U.P. Lucknow dated 11th December, 2014 that a candidate who possessed bachelor's degree in medicine, was eligible. Letter of the Director General of Medical Education and Training, U.P. Lucknow dated 10th December, 2014 has also been brought on record alongwith supplementary counter affidavit.

10. Sri Yadav further took the Court to academic qualification given under the Service Rules, 2012 applicable to the department, in which it required degree in medicine from a recognized university or any other recognized qualification notified by the Central Government. Sri Yadav submitted that it very clearly demonstrated that any bachelor's degree in medicine shall be sufficient for the purposes of qualification or any degree recognized /notified by Central Government as the Central Government has the authority to provide for equivalence in matter of qualification. Sri Yadav submitted that it

had already come from Central Government that there was no such degree recognized and Medical Council of India recognized bachelor's degree in medicine only for it was mentioned in the Indian Medical Council Act, 1956. Sri Yadav further submitted before the Court that qualification and its equivalence could only be prescribed by the State Government or appointing authority by framing rules and no court in exercise of power under Article 226 of the Constitution could hold a bachelor qualification to be equivalent to the one required under the rules.

11. Mr. Yadav has placed reliance upon the judgment of the coordinate bench of this Court in the case of **Anoop Kumar and 135 Others v. State of U.P. and Another (Writ A No. 63851 of 2014), decided on 23.12.2014.** He has placed the relevant para of the judgment, which runs as under:

"Sri Radha Kant Ojha, learned Senior Counsel as well as Sri Alok Mishra, learned counsel for the petitioners in both the writ petitions very fairly stated that the controversy in the present writ petitions had arisen earlier in Writ Petition No.65506 of 2010, Anand Kumar Rai Vs. State of U.P. and Others and in Writ Petition No.8736 of 2011, Vijay Kumar Kamley Vs. State of U.P. and Another and the question as to whether the qualification of B.Tech. in the Agriculture Engineering was equivalent to Bachelor's Degree in Agriculture had been considered by the Division Bench of this Court and the Division Bench had held in paragraph 8 that prima facie, without going into the details, the syllabus for Agriculture for which the qualifications in the prescribed code is B.Sc. (Agriculture) as in Item No.1 is different than the Agricultural Engineering in Item No.33. The Division Bench had further held that the Courts do not possess the expertise to compare the equivalence of educational qualifications, to make comparisons for eligibility for the posts in the statutory rules. Reliance was placed upon a judgment of the Supreme Court reported in AIR 2002 SC 2642, State of Rajasthan & Ors. Vs. Lata Arun, in which it was held by the Supreme Court that it was not for the Court to decide whether a particular educational qualification should or should not be accepted as equivalent to the qualification prescribed by the Authority. Similar view was expressed by the High Court in 2012 (90) ALR 314, Urmila Devi Vs. State of U.P. and Another, wherein the High Court held that the Courts do not have the Authority to do the job of experts and grant such equivalence. The equivalence to the examination can only be allowed by the State Government after consulting the experts."

12. He placed reliance upon another division bench judgment in the case of **Virendra Kumar Yadav (PIL) v. Union of India through the Chairperson Food Safety and Standards Authority and Others, (Misc. Bench No. 1717 of 2013 decided on 25.4.2014.** He has placed reliance the relevant portion of the judgment, which runs as under:

"7. As regards the posts of Food Safety Officer, there are 662 posts of which 287 have been filed up, resulting in 375 vacancies. These posts are to be filled up by direct recruitment through the Commission. The State Government has informed the Court that the requisition for recruitment on the posts of Food Safety Officer was not sent to the Commission since it was felt that there was a need to

modify the service rules which provide the qualification for the post of Food Safety Officer. In this regard, it would be necessary to note that Rule 2.1.3 of the Food Safety and Standards Rules, 2011 provides for the following qualification for the post of Food Safety Officer:

"1. Qualification - Food Safety Officer shall be a whole time officer and shall, on the date on which he is so appointed, possesses the following:

(i) a degree in Food Technology or Dairy Technology or Biotechnology or Oil Technology or Agricultural Science or Veterinary Sciences or Bio-Chemistry or Microbiology or Masters Degree in Chemistry or degree in medicine from a recognized University, or

(ii) any other equivalent/recognized qualification notified by the Central Government, and

(iii) has successfully completed training as specified by the Food Authority in a recognized institute or Institution approved for the purpose:

Provided that no person who has any financial interest in the manufacture, import or sale of any article of food shall be appointed to be a Food Safety Officer under this rule."

8. The difficulty which has been faced by the State Government, is in respect of the qualification provided in clause (iii) pertaining to conditions of training as specified by the Food Authority in a recognized institute or institution approved for the purpose. The Uttar Pradesh Food Safety and Drug Administration Department (Food Safety Cadre) (Group 'A', 'B' and 'C') Service Rules, 2012, inter alia, provide in Rule 5, that the Food Safety Officers will be recruited directly through the Commission in accordance with the Act of 2006 and Rules of 2011, as amended from time to time. The process of specifying a recognized institute or an institution approved for the purpose by the Food Authority has not been concluded. On 31 July 2013, a letter was addressed by the Food Authority to the Commissioner (Food Safety) of the State Government stating that the process of designating two institutes in Uttar Pradesh has been initiated and, in the meantime, steps may be taken by the State Government for going ahead with the selection, subject to the condition that the selected candidates must complete the training before appointment. This exercise seems to be based on the provisions of Rule 2.1.3 which specify that the Food Safety Officer has to hold the prescribed qualification on the date on which he is so appointed. In view of this clarification which has been issued by the Food Authority, it is now clear that the State Government can proceed ahead for completing the selection process by moving a requisition to the Commission. In the meantime, the process of designating the recognized institutes should be completed expeditiously, so that the selected candidates can undergo training before formal letters of appointment are issued. The Commission is directed to ensure that the recruitment of Food Safety Officers is carried out separately and with utmost priority. The State Government has informed the Court that it would submit a requisition to the Commission within a period of two weeks from today. The recruitment process, as stated before the Court by the learned counsel appearing on behalf of the Commission on instructions,

shall be initiated within a period of six weeks of the receipt of the requisition. The Court has been informed that the recruitment process would be completed within a period of four months from the date of the advertisement. The State Government shall, in terms of the statement made before the Court, complete the process of appointment within a period of two months (including of the period of training) from the date of receipt of the recommendation from the Commission. The Food Authority has informed the Court through Mr. Sanjay Gupta, Assistant Director (Enforcement), that the process of granting approval/recognition to the training institutes under the provisions of Rule 2.1.3 shall be completed within a period of two months from today. We record the assurance and direct that the statement be adhered to. "

13. Sri Yadav further submitted before the Court that advertisement was issued in the year 2014, in respect of which entire selection had stood concluded in the year 2015 and recommendations were made and appointments had also been made, and therefore, it was too late in the day to ask for participation in interview in respect of vacancies advertised in the year 2014 and to demand for a further chance of selection.

14. Meeting the counter, in rejoinder Sri Khare, learned Senior Advocate submitted that if the petitioner possessed requisite qualification and Commission was at fault in not permitting the petitioner to participate in the interview by the Commission question here qualification for the post in question, it was the Commission to be blamed in the matter and not the petitioner. It was submitted that in public law remedies, it was a primary duty under the Constitution of a Court to arrest any miscarriage of justice by exercising discretionary power and thus according to him delay itself cannot be a ground to deny the benefit to which petitioner was otherwise entitled.

15. Mr. Khare placed reliance upon the judgment of the Supreme Court in the case of **Smita Shrivastava v. State of Madhya Pradesh and Others, 2024 SCC Online SC 764.** He has placed reliance of paragraph 9 of the judgment, which runs as under:

"9. Learned counsel for the appellant has drawn our attention to the judgment of this Court in the case of Manoj Kumar v. Union of India and Others. The relevant extracts of which are quoted hereinbelow for the sake of ready reference: -

19. Within the realm of judicial review in common law jurisdictions, it is established that constitutional courts are entrusted with the responsibility of ensuring the lawfulness of executive decisions, rather than substituting their own judgment to decide the rights of the parties, which they would exercise in civil jurisdiction. It has been held that the primary purpose of quashing any action is to preserve order in the legal system by preventing excess and abuse of power or to set aside arbitrary actions. Wade on Administrative Law states that the purpose of quashing is not the final determination of private rights, for a private party must separately contest his own rights before the administrative authority. Such private party is also not entitled to compensation merely because the administrative action is illegal. A further case of tort, misfeasance, negligence, or breach of statutory duty must be established for such person to receive compensation.

20. We are of the opinion that while the primary duty of constitutional

courts remains the control of power, including setting aside of administrative actions that may be illegal or arbitrary, it must be acknowledged that such measures may not singularly address repercussions of abuse of power. It is equally incumbent upon the courts, as a secondary measure, to address the injurious consequences arising from arbitrary and illegal actions. This concomitant duty to take reasonable measures to restitute the injured is our overarching constitutional purpose. This is how we have read our constitutional text, and this is how we have built our precedents on the basis of our preambular objective to secure justice. [The Preambular goals are to secure Justice, Liberty, Equality, and Fraternity for all citizens.] (2024) 3 SCC 563 21. In public law proceedings, when it is realised that the prayer in the writ petition is unattainable due to passage of time, constitutional courts may not dismiss the writ proceedings on the ground of their perceived futility. In the life of litigation, passage of time can stand both as an ally and adversary. Our duty is to transcend the constraints of time and perform the primary duty of a constitutional court to control and regulate the exercise of power or arbitrary action. By taking the first step, the primary purpose and object of public law proceedings will be subserved.

22. The second step relates to restitution. This operates in a different dimension. Identification and application of appropriate remedial measures poses a significant challenge to constitutional courts, largely attributable to the dual variables of time and limited resources.

23. The temporal gap between the impugned illegal or arbitrary action and their subsequent adjudication by the courts introduces complexities in the provision of restitution. As time elapses, the status of persons, possession, and promises undergoes transformation, directly influencing the nature of relief that may be formulated and granted."

16. Sri Khare has drawn attention of the Court towards information obtained under Right to Information Act, 2005 by the petitioner, according to which 430 total vacancies were advertised whereas appointments were given only to 390 candidates and out of 390 candidates only 289 candidates had joined. It was further submitted that as per information 86 females were issued with the appointment orders whereas 73 females only joined. Thus, according to him vacancy did exist and petitioner could have been adjusted.

17. Having heard learned counsel for the respective parties and having perused the records, the only question arises for consideration of this Court as to *whether qualification of the petitioner as bachelor in Physiotherapy, decree of which has been conferred by the State Integral University, Lucknow to meet qualification prescribed under the Service Rules, 2012.*

18. In Order to find answer to this question, I first proceed to examine the rules that prescribed for the post of Food Safety Officer. The relevant provision in this regard as contained in Rule 8 of the U.P. Food Safety and Drug Administration Department (Food Safety Cadre) (Group-'A','B', and 'C') Service Rules, 2012 is reproduced hereunder:

"8. Academic qualification- A candidate for direct recruitment to the various posts in the service must possess the following qualifications:

Post	*Qualification*
(1)Food Safety Officer	*(1)A Bachelor's Degree in Food Technology or Dairy Technology or Biotechnology or Oil Technology or Agricultural Science or Veterinary science or Bio-Chemistry or Microbiology or lost-Graduate Degree in Chemistry or Degree in Medicine from recognised University of any other equivalent recognised qualification notified by the Central-Government; and (ii).....has successfully completed training as specified by the Food Authority in a recognised Institute or Institution approved for the purpose: Provided that no person who has any Financial interest in the manufacture, import or sale of any article of food shall be appointed to be a Food Safety Officer-under these rules:*
(2) Designated Officer	*(i)Post Graduate Degree in Chemistry is one of the subjects from a University established by Law in India or a qualification recognised by the Government as equivalent thereto or (II)At least one of the qualifications prescribed for direct recruitment to the post of Food Safety Officer under these rules:*

9. Preferential qualification- A candidate who has-

(1) served in the Territorial Army for a minimum period of two years; or

ii) obtained a 'B' Certificate of National Cadet Corps, shall, other things being equal, be given preference in the matter of direct recruitment.

10. Age- A candidate for direct recruitment must have attained the age of 21 years and must not have attained the age of more than 35 years din the first day of July of the Calendar year Sin which vacancies for direct recruitment are advertised by the Commission:"

(emphasis added)

19. For the purpose of this case and to determine the question framed the words and *expression bachelor degree in medicine from a recognized university or any other equivalent/recognized qualification notified by the Central Government* are only to be taken into consideration. From a bare reading of the aforesaid provisions as quoted, it is clear that if candidate possesses bachelors degree in medicine obtained from a recognized University or any other relevant/recognized qualification notified by Central Government would be eligible for the post of Food and Safety Officer. Petitioner is admittedly having bachelor's degree from the State Integral University, Lucknow in Physiotherapy. The said university is recognized by the University-Grants-Commission to run this course and confer degree in that regard. Therefore, it cannot be doubted that petitioners bachelor's degree in Physiotherapy is a degree obtained from a recognized University. The question for consideration is only whether this degree amounts to bachelor degree in medicine/medical science or not.

20. In so far as equivalent qualification/recognized qualification alternatively provided under the Rules is concerned, from the information given in letter by the Additional Director (Enforcement) of the department of Indian Food Safety and Standard Authority, New Delhi dated 26th November, 2014, it is clear that no degree in medicine/medical science is recognized by the Central Government except degree of medicine recognized by the Indian Medicine Council under the Act of 1956. The letter written by the Additional Director (Enforcement) of the department of Indian Food Safety and Standard Authority Ministry of Health and Welfare, New Delhi dated 26th November, is reproduced hereunder:

"सेवा में,

आयुक्त खाद्य सुरक्षा,

खाद्य सुरक्षा एवं औषधि प्रशासन,

उत्तर प्रदेश, 9,जगत नारायण रोड,

लखनऊ, उत्तर प्रदेश-226017

विषयः खाद्य सुरक्षा एवं औषधि प्रशासन विभाग, उ. प्र. के अधीन खाद्य सुरक्षा अधिकारी के 430 पदों पर सीधी भर्ती के माध्यम से चयन हेतु प्राप्त अधियाचन के विसंगति के संबंध में।

महोदय,

कृपया उपरोक्त विषयक पत्रांक एफ.एस.डी.ए./2014-15/6959, दिनांक 10 नवंबर, 2014 जो इस कार्यालय में दिनांक 17 नवंबर, 2014 को प्राप्त हुआ है, का संदर्भ ग्रहण करने का कष्ट करें। इस संबंध में कृपया अवगत हों की खाद्य अधिनियम, 2006 एवं नियम 2011 के अनुसार चिकित्सा मे

डिग्री भारतीय चिकित्सा परिषद अधिनियम 1956 के तहत डिग्री का मतलब होगा।

धन्यवाद

भवदीय
संजय
(संजय गुप्ता)
सहायक निदेशक (प्रवर्तन)"
(emphasis added)

21. I find that Director General Medical Health and Education, Government of U.P. Lucknow also wrote a letter to the Commissioner, Food Safety and Medicine Administration U.P. on 10th December, 2014, in which it has been in an unequivocal terms has come to be stated that only degree recognised by the Medical Council of India 1956 will constitute an academic qualification required under the Rules. The letter of the Director General dated 10th December, 2014 is reproduced hereunder:

"प्रेषक,

"महानिदेशक,
चिकित्सा शिक्षा एवं प्रिशिक्षण,
उत्तर प्रदेश, लखनऊ।

सेवा में,
आयुक्त,
खाद्य सुरक्षा एवं औषधि प्रशासन, उ०प्र०,
09 जगत नरायण रोड लखनऊ।
संख्या- एम० ई०/03/2014/4277
लखनऊः दिनांक 10 दिसम्बर, 2014

विषय- भारतीय चिकित्सा परिषद अधिनियम 1956 के तहत औषधि में उपाधि के अन्तर्गत बी० फार्मा, एम० बी० बी० एस०, बी० डी० एस०, बी० ए० एम० एस०, बी० एच० एम० एस०, बी०यू०एम० एस० डिग्री की मान्यता के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक अपने कार्यालय के पत्र संख्या- एफ०एस०डी०ए०/209/2914/7356 दिनांक 03 दिसम्बर 2014 का कृपया संदर्भ ग्रहण करें, जिसके द्वारा खाद्य सुरक्षा एवं औषधि प्रशासन विभाग उत्तर प्रदेश के अधीन खाद्य सुरक्षा अधिकारियों के पदों पर सीधी भर्ती के माध्यम से चयन हेतु भेजे गये अधियाचन के अनुक्रम में लोक सेवा आयोग उत्तर प्रदेश ने खाद्य सुरक्षा एवं मानक अधिनियम 2006 एवं नियम 2011 के अनुसार औषधि के उपाधि के अन्तर्गत बी० फार्मा, एम० बी० बी० एस०, बी० डी० एस०, बी० ए० एम० एस०, बी० एच० एम० एस०, बी०यू०एम० एस० डिग्री मान्य होगी अथवा नही के सम्बन्ध में वास्तुस्थित की सूचना चाही गयी है।

उक्त के सम्बन्ध में आपको अवगत कराना है कि भारतीय चिकित्सा परिषद अधिनियम 1956 के तहत मात्र एम० बी० बी० एस० पाठ्यक्रम की डिग्री मान्य है, इस सम्बन्ध में अधिक जानकारी हेतु भारतीय चिकित्सा परिषद अधिनियम 1956 जो एम० सी० आई० की बेब- साइट www.mciindia.org पर उपलब्ध है, का अवलोकन करने का कष्ट करें।

भवदीय
(के०के० गुप्ता)
महानिदेशक"
(emphasis added)

22. Commissioner, Food Safety and Drug Administration, U.P. Lucknow, the appointing authority has also relied upon the letter of the Director General dated 10.12.2014. Thus, information given to the Public Service Commission clearly provided that only those confer degree but a degree in this subject Medical Science course would be conferred only in the event such a course in recognized by Medical Council of India as per parameters laid down by it and the institution like such Universities have been permitted to run courses by it. The question whether the word 'medicine' would include Physiotherapy or not, and even if Medical Council of India is silent, considering the definition given under Section 2-f of the Medical Council Act, 1956, if degree claimed as at par with medicine if so held,

in my considered view, this would amount an act of holding a particular degree equivalent to degree required under the Service Rules, which certainly fall outside the scope of jurisdiction of this Court under Article 226 of the Constitution.

23. I find myself in full agreement with view expressed by Coordinate bench of this Court in the case of **Km. Pratima Gupta v. State of U.P and 2 Others, passed in Writ A No. 25238 of 2016, decided on 09.01.2019,** wherein the Court has held that providing equivalence to qualification prescribed in the rules is essentially a job of experts in the field and for the State Government to formulate on its own volition with regard to such equivalence.

24. Similar view has been expressed by another coordinate bench in its judgment and **order dated 24th February, 2022 passed in Writ A No. 1984 of 2022 (Alok Shukla and Another v. State of U.P. and 2 Others)**, wherein the Court held that selection and appointment should be made strictly in terms of advertisement and recruitment rules issued. The question as to whether particular post- graduate decree would be equivalent to the one prescribed under the rules, would fall within the domain of the State Government it being a policy matter.

25. Thus it is either for the State Government to recognize such degree of Physiotherapy as equivalent to the bachelorâ€™s degree in medicine or for Medical Council of India to recognize course of Physiotherapy as of medicine and unless and until State Government recognizes so or the appointing authority admits such degree to be degree required under the Service Rules as an academic qualification, this Court will not direct the authority to consider degree in question as a qualification at par with graduate bachelors degree in medicine as required under the relevant Service Rules.

26. Mr. Yadav, appearing for Public Service Commission, submitted that in the event of confusion, the Commission will always seek clarification from the appointing authority or the State Government and appointing authority being Food Safety Commissioner, it is claimed that Commission was justified for having relied upon the said opinion. The opinion obtained from the Central Government also holds that MBBS degree recognized by Medical Council of India would only constitute the bachelors degree in ‘medicine’. Thus, this opinion is liable to be taken as valid enough to rely upon and Commission cannot be treated to have committed any manifest error in relying upon this opinion. Interestingly these opinions are not under challenge before this Court.

27. Coming to the aspect of the matter that bachelor’s degree issued by a recognized University in Physiotherapy would also amount to degree in medicine despite the opinion rendered by the authorities, I proceed to examine whether bachelor’s degree in Physiotherapy is recognized by Medical Council of India or not. Going through the appendix of Medical Council Act, 1956, I do not find U.P. State Integral University Lucknow to be a recognized institution to award degree in medicine.

28. Learned Senior Advocate has sought to urge that looking to the curriculum prescribed for the course of bachelors degree for Physiotherapy, it can

be said that subjects are of advance medical science, and therefore, relying upon the definition as contained under Section 2-f of the Indian Medical Council Act, 1956. It is contended that â€˜medicineâ€™ being a wide term, it may include various branches of Modern Science. It is true that definition is broad enough to bring in its fold various branches of medicine, which may include Physiotherapy, but for that the concerned University must be recognized by Medical Council of India for running such a course to be termed as course of medical science/medicine. Unfortunately the course in question, of which petitioner has the certificate, is not recognized by Medical Council of India as course of Medicine for awarding such a degree.

29. In the considered view of the Court, Medical Council of India is the ultimate statutory body, which recognizes courses of Medical Science, and therefore, in absence of recognition of a course to award degree in the subject of Medical Science, which may include Physiotherapy, petitioner's qualification, cannot be said to be a requisite qualification under the Service Recruitment Rules, 2012.

30. Learned Senior Advocate of-course has referred to the notification of the University-Grants-Commission, 2014 which has recognized bachelor's degree in Physiotherapy, but I find that to be having different degrees referred right from item no. 73 to 110 and there are various heads like the one "Medicine and Surgery/ Ayurveda/ Unani/Homoeopathic/ Health and Allied Science/Paramedicals/ Nursing" . Item No. 73 refers to MBBS that is bachelor in medicine and bachelor in surgery. It is further expanded as bachelor of medicine and biometric surgery as specified degree, then I find there to be other degrees of different disciplines. Looking to various subjects referred to in the title clause for item no. 73 to 110, a bachelor's degree in Physiotherapy can be referable only to Allied Science/Paramedical/Nursing, and certainly not referable to medicine and surgery. I, therefore, do not find any supportive material in the notification issued by the University-Grants-Commission, 2014 brought on record as S.A.-1 to find favour with argument of learned Senior Advocate. Still further, I may observe that University-Grants-Commission recognized various courses for which University can confer degree. However, University where teaching in Medical Science or any other discipline is perused, it shall have to have recognition from University-Grants-Commission, but the courses regarding medical science are prescribed only by the Medical Council of India and of-course, degrees recognized by Medical Council of India would be necessary for the purposes of appointment in the field of Medical Science. In other words University-Grants-Commission recognizes university for the purposes of awarding degrees at macro level whereas Medical Council of India Science is confined to Medical Science only. Therefore, a University even if recognized by University-Grants-Commission to confer degrees in medicine that are recognized by Medical Council of India under the Act, 1956, it would not amount to academic qualification as prescribed under the Service Recruitment Rules, 2012. Admittedly, Public Service Commission as a selecting and recommending authority has no business to interpret qualifications.

31. In view of the above, therefore, I hold that degree possessed by the petitioner, being bachelor in Physiotherapy,

is not a degree of bachelor in medicine, a requisite academic qualification under Service Recruitment Rules , 2012. The Court could have considered the prayer of the petitioner and refer the matter to the State Government for considering and passing appropriate orders regarding equivalence qua bachelors in medicine degree or for that matter to the Central Government, but I find that there is no such prayer made. I further find that this selection pertains to the year 2014 advertisement, which has been completed. Once selection process has come to an end, now this Court cannot permit reopening of selection at this stage.

32. Thus, petition lacks merit and is accordingly dismissed.

(2025) 7 ILRA 373
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.07.2025

BEFORE

THE HON'BLE AJAY BHANOT, J.

Writ A No. 6617 of 2025

Smt. Babita Kumari @ Babita Devi ...Petitioner

Versus

U.P. Rajya Vidyut Utpadan Nigam Limited & Ors. ...Respondents

Counsel for the Petitioner:
Praveen Kumar Srivastava

Counsel for the Respondents:
Shad Khan, Shishir Prakash

ISSUE FOR CONSIDERATION

Whether the office memorandum dated 16.07.2024 pertaining to appointments on compassionate grounds shall apply prospectively or will operate retrospectively.

HEADNOTE

Service Law – Compassionate Appointment – Retrospective or Prospective Operation – Applicability of Modified Scheme.

The office memorandum dated 16.07.2024 barred compassionate appointments on Class IV posts and confined such appointments to Class III posts only. Petitioner's husband, a Class IV employee, died in harness on 22.10.2023. Petitioner, qualified only for a Class IV post, had applied in February 2024, before the issuance of the memorandum.

Held: By barring compassionate ground appointment on Class IV posts, the office memorandum dated 16.07.2024 effectively precludes the said marginalized class of citizens from the benefits of appointments on compassionate grounds. The interpretation as to the applicability of a modified Scheme should depend only upon a determinate and fixed criteria such as the date of death and not an indeterminate and variable factor. Hence, "the office memorandum dated 16.07.2024 shall apply prospectively and only to applications for grant of compassionate appointments which were filed after 16.07.2024. - Case of the petitioner shall be covered by the earlier provisions for grant of compassionate ground appointments which permitted appointment on Class IV posts. The office memorandum dated 16.07.2024 shall not be applicable to the case of the petitioner. Writ petition allowed; matter remitted to respondents to process appointment within three months. (E-5)

CASE LAW CITED

***The Secretary to Government (Department of Education – Primary) & Ors. v. Bheemesh @ Bheemappa*, Civil Appeal No. 7752 of 2021; *Canara Bank v. Ajith Kumar G.K.*, 2025 SCC OnLine SC 290; *Indian Bank v. Promila*, (2020) 12 SCC 767;*N.C. Santhosh v. State of Karnataka*, (2020) 7 SCC 617; *State of Madhya Pradesh v. Amit Shrivas*, (2020) 10 SCC 496; *State of Madhya Pradesh v. Ashish Awasthi*, (2021) 11 SCC 656.**

ACTS REFERRED TO

Constitution of India — Article 226.

Office Memorandum dated 16.07.2024 issued by U.P. Rajya Vidyut Utpadan Nigam Ltd. regarding compassionate appointments.

KEYWORDS

Compassionate appointment, retrospective operation, prospective application, Class IV post, marginalized dependants, poverty and illiteracy, welfare measure, Bheemesh principle, date of death criterion, hand-to-mouth cases.

CASE ARISING FROM

APPEARANCES

For Petitioner — Shri Praveen Kumar Srivastava.
For Respondents — Shri Shad Khan and Shri Shishir Prakash.

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

1. Heard Shri Praveen Kumar Srivastava, learned counsel for the petitioner and Shri Shad Khan, learned counsel for the respondent.

2. By the impugned order dated 22.04.2025, the claim of the petitioner for grant of appointment on compassionate grounds on Class IV post has been rejected.

3. The impugned order dated 22.04.2025 finds that the resolution of the Board and the office memorandum of 16.07.2024 bars compassionate appointments on Class IV posts, and confines such appointments to Class III posts only. As per the aforesaid circular/OM dated 16.07.2024 the said policy of barring appointments on Class IV posts shall be applicable to the pending applications as well. The impugned order records that the application of the petitioner for appointment on compassionate ground was submitted prior to the aforesaid office memorandum dated 16.07.2024. However, since no administrative approval for appointment of the petitioner was forthcoming, her case shall be covered by the office memorandum dated 16.07.2024. On this footing the petitioner is not entitled to appointment on a Class IV post. The petitioner's case for compassionate appointment was accordingly declined by the impugned order.

4. The husband of the petitioner died in harness on 22.10.2023. The petitioner made an application for grant of appointment on a Class IV post on compassionate ground in February, 2024. The office memorandum on the footing barring appointments on Class IV posts came into existence on 16.07.2024. The petitioner is only qualified for appointment on a Class IV post and does not possess educational qualifications for appointment on a Class III post.

5. The question which arises for consideration in this case is whether the said office memorandum dated 16.07.2024 pertaining to appointments on compassionate grounds shall apply prospectively or will operate retrospectively.

6. The issue regarding prospective or retrospective application of schemes for grant of appointment on compassionate grounds arose for consideration before the Supreme Court in **The Secretary to Govt. Department of Education (Primary) & Ors. V. Bheemesh @ Bheemappa in Civil Appeal No. 7752 of 2021.** After noticing the apparent divergence of views on the issue, the Supreme Court in **Bheemesh(supra)** held as under:

"16. It was only after the aforesaid reference to a larger Bench that this Court decided at least four cases, respectively in (i) Indian Bank vs. Promila;

(ii) N.C. Santhosh vs. State of Karnataka; (iii) State of Madhya Pradesh vs. Amit Shrivas; and (iv) State of Madhya Pradesh vs. Ashish Awasthi. Out of these four decisions, N.C. Santosh (supra) was by a three member Bench, which actually took note of the reference pending before the larger Bench.

17. Keeping the above in mind, if we critically analyse the way in which this Court has proceeded to interpret the applicability of a new or modified Scheme that comes into force after the death of the employee, we may notice an interesting feature. In cases where the benefit under the existing Scheme was taken away or substituted with a lesser benefit, this Court directed the application of the new Scheme. But in cases where the benefits under an existing Scheme were enlarged by a modified Scheme after the death of the employee, this Court applied only the Scheme that was in force on the date of death of the employee. This is fundamentally due to the fact that compassionate appointment was always considered to be an exception to the normal method of recruitment and perhaps looked down upon with lesser compassion for the individual and greater concern for the rule of law.

18. If compassionate appointment is one of the conditions of service and is made automatic upon the death of an employee in harness without any kind of scrutiny whatsoever, the same would be treated as a vested right in law. But it is not so. Appointment on compassionate grounds is not automatic, but subject to strict scrutiny of various parameters including the financial position of the family, the economic dependence of the family upon the deceased employee and the avocation of the other members of the family. Therefore, no one can claim to have a vested right for appointment on compassionate grounds. This is why some of the decisions which we have tabulated above appear to have interpreted the applicability of revised Schemes differently, leading to conflict of opinion. Though there is a conflict as to whether the Scheme in force on the date of death of the employee would apply or the Scheme in force on the date of consideration of the application of appointment on compassionate grounds would apply, there is certainly no conflict about the underlying concern reflected in the above decisions. Wherever the modified Schemes diluted the existing benefits, this Court applied those benefits, but wherever the modified Scheme granted larger benefits, the old Scheme was made applicable.

19. The important aspect about the conflict of opinion is that it revolves around two dates, namely, (i) date of death of the employee; and

(ii) date of consideration of the application of the dependant. Out of these two dates, only one, namely, the date of death alone is a fixed factor that does not change. The next date namely the date of consideration of the claim, is something that depends upon many variables such as the date of filing of application, the date of attaining of majority of the claimant and the date on which the file is put up to the competent authority. There is no principle of statutory interpretation which permits a decision on the applicability of a rule, to be based upon an indeterminate or variable factor. Let us take for instance a hypothetical case where 2 Government servants die in harness on January 01, 2020. Let us assume that the dependants of

these 2 deceased Government servants make applications for appointment on 2 different dates say 29.05.2020 and 02.06.2020 and a modified Scheme comes into force on June 01, 2020. If the date of consideration of the claim is taken to be the criteria for determining whether the modified Scheme applies or not, it will lead to two different results, one in respect of the person who made the application before June 1, 2020 and another in respect of the person who applied after June 01, 2020. In other words, if two employees die on the same date and the dependants of those employees apply on two different dates, one before the modified Scheme comes into force and another thereafter, they will come in for differential treatment if the date of application and the date of consideration of the same are taken to be the deciding factor. A rule of interpretation which produces different results, depending upon what the individuals do or do not do, is inconceivable. This is why, the managements of a few banks, in the cases tabulated above, have introduced a rule in the modified scheme itself, which provides for all pending applications to be decided under the new/modified scheme. Therefore, we are of the considered view that the interpretation as to the applicability of a modified Scheme should depend only upon a determinate and fixed criteria such as the date of death and not an indeterminate and variable factor.

20. Coming to the case on hand, the employee died on 8.12.2010 and the amendment to the Rules was proposed by way of a draft notification on 20.06.2012. The final notification was issued on 11.07.2012. Merely because the application for appointment was taken up for consideration after the issue of the amendment, the respondent could not have sought the benefit of the amendment. The Judgment of the Division Bench of the Karnataka High Court in Akkamahadevamma on which the Tribunal as well as the High Court placed reliance, was not applicable to the case of compassionate appointments, as the amendment in Akkamahadevamma came as a result of the existing rule being declared to be ultra vires Articles 14 and 16 of the Constitution."

7. The modified scheme of compassionate appointment introduced by the office memorandum dated 16.07.2024 works to the detriment of the petitioner as it restricts compassionate appointments to Class III posts only. Class III posts obviously require a higher level of educational qualifications. Persons like the petitioner at the bottom of the social heap often live at the intersection of disabilities like acute poverty and total illiteracy. Often the said class of persons are only eligible for appointment on Class IV posts. Further these classes of citizenry are simply unable to acquire higher qualifications for Class III posts due to their socioeconomic marginalization. By barring compassionate ground appointment on Class IV posts the office memorandum dated 16.07.2024 effectively precludes the said marginalized class of citizens to which the petitioner belongs from the benefits of appointments on compassionate grounds.

8. Appointments on compassionate grounds are a welfare measure mooted by model employers primarily for the benefit of the employees. The said beneficent schemes particularly secure families of the employees on lower category posts who come from marginalized segments of the society. Compassionate ground appointments protect the said families

already reeling under the weight of social inequities from the wages of financial destitution and uncertain future after the death of the earning member. The pre 16.07.2024 compassionate ground appointment scheme permitted appointment on Class IV posts. Consequently the dependents of deceased employees belonging to said marginalized classes could freely access the welfare measures contemplated in the earlier scheme for compassionate appointment.

9. Under the office memorandum dated 16.07.2024 even if additional time is given to acquire higher qualifications for appointment to Class III posts, the same will be an exercise in futility. The low educational levels of the petitioner and utter financial destitution render acquisition of higher qualifications in any reasonable time virtually impossible. The direction in the impugned order permitting the petitioner to acquire higher qualifications for Class III appointment is redundant being impossible to achieve, and seeks to cloak the actual denial of the benefit of compassionate appointment to the petitioner. The petitioner is only eligible for appointment on a Class IV post.

10. The regime of compassionate ground appointments in the respondent Corporation existing prior to the office memorandum/circular dated 16.07.2024 which permitted appointment on Class IV posts on compassionate grounds was more beneficial to the petitioner who belongs to the marginalized section of the society and is weighed down by other disabilities like lack of literacy and extreme poverty.

11. In light of the judgement rendered by the Supreme Court in **Bheemesh @ Bheemappa(supra),** the office memorandum dated 16.07.2024 shall apply prospectively and only to applications for grant of compassionate appointments which were filed after 16.07.2024. The case of the petitioner shall be covered by the earlier provisions for grant of compassionate ground appointments which permitted appointment on Class IV posts. The office memorandum dated 16.07.2024 shall not be applicable to the case of the petitioner.

12. There is another facet to the matter. The compassionate ground appointments are a welfare measure intended to enable the family of the deceased employee to immediately tide over the sudden financial crisis caused by the death of the earning member.

13. The object sought to be achieved by granting compassionate appointments was enunciated by the Supreme Court in **Canara Bank v. Ajithkumar G.K.** reported at **2025 SCC OnLine SC 290** as follows:

"29. The second sub-issue pertains to the real objective sought to be achieved by offering compassionate appointment. We have noticed the objectives of the scheme of 1993 and construe such objectives as salutary for deciding any claim for compassionate appointment. The underlying idea behind compassionate appointment in death-in-harness cases appears to be that the premature and unexpected passing away of the employee, who was the only bread earner for the family, leaves the family members in such penurious condition that but for an appointment on compassionate ground, they may not survive. There cannot be a straitjacket formula applicable uniformly to all cases of employees dying-

in-harness which would warrant appointment on compassionate grounds. Each case has its own peculiar features and is required to be dealt with bearing in mind the financial condition of the family. It is only in "hand-to-mouth" cases that a claim for compassionate appointment ought to be considered and granted, if at all other conditions are satisfied. Such "hand-to-mouth" cases would include cases where the family of the deceased is 'below poverty line' and struggling to pay basic expenses such as food, rent, utilities, etc., arising out of lack of any steady source of sustenance. This has to be distinguished from a mere fall in standard of life arising out of the death of the bread earner."

14. Class IV appointments made on compassionate grounds satisfy the aforesaid tests laid down in **Ajithkumar G.K.(supra)** more creditably than appointments on higher posts.

15. The authorities below misdirected themselves in law by applying the office memorandum dated 16.07.2024 to the case of the petitioner even though she is liable to be considered under the previous scheme for appointment on a Class IV post on compassionate grounds.

16. The impugned order dated 22.04.2025 is liable to be set aside and is set aside.

17. The petitioner is held entitled to be considered for appointment on Class IV post on compassionate ground.

18. Matter is remitted to the respondents to process the appointment of the petitioner within a period of three months and pass appropriate orders consistent with the observations made in this judgement.

19. The writ petition is allowed.

(2025) 7 ILRA 378
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 03.07.2025

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.

Writ A No. 6678 of 2023
&
Connected With Other Cases

Sanjay Kumar Chaurasiya & Ors.
...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioners:
Vikas Yadav, Shivam Srivastava, Utkarsh Misra

Counsel for the Respondents:
C.S.C., Madhukar Ojha, Nishant Shukla, Satya Prakash, Shikhar Srivastava

ISSUE FOR CONSIDERATION

Whether contractual employees engaged as *Arogya Mitra / Prime Minister Arogya Mitra (PMAM)* under the Ayushman Bharat-Prime Minister Jan Arogya Yojna (AB-PMJAY) have a right to get their contract necessarily renewed and also as to whether their rights would be governed by the terms of the project/contract or otherwise and whether the policy of outsourcing such engagements is open to judicial review.

HEADNOTE

Contract Employment – Outsourcing – Ayushman Bharat Scheme – No Right to Renewal – Fraud on the Court – Judicial Review of Policy – Dismissed

Petitioners were contractual employees engaged between 2017–2018 as Arogya Mitra under the Central Project "Ayushman Bharat–Prime Minister Jan Arogya Yojna (AB–PMJAY)". Their contracts were for fixed terms and were not renewed. They challenged order dated

22.08.2023 issued by the CEO, State Health Agency (SACHIS) directing engagement of Prime Minister Arogya Mitra (PMAM) through a Beneficiary Facilitation Agency (BFA) as outsourcing agency, and order dated 29.02.2024 stopping further renewal of earlier contracts. Under amended guidelines of the Government of India dated 13.10.2021 and the Government Order dated 21.02.2024, PMAMs were henceforth to be engaged only through outsourcing agencies/BFAs. Petitioners had no constitutional or statutory right to seek renewal of their contracts or continuance under the unamended project.

Held : Contractual employees have got no right to get their contract necessarily renewed, and as such contracts have not been renewed, the writ court cannot issue any direction to renew their contract. The policy of outsourcing is outside the scope of judicial review. Outsourcing per se is not prohibited in law. Non-disclosure and misrepresentation of material facts to obtain favourable interim orders amounts to playing fraud upon the Court. Petitioners did not disclose the complete and correct facts before the Court and, by apprising wrong facts, obtained interim order; therefore, this fact alone was a ground to dismiss the writ petitions. The writ petitions seeking continuance of contractual employment and renewal of contracts under a Government Project are dismissed. Interim orders stand vacated. Honorarium already paid to the petitioners shall not be recovered. (Para 33) (E-5)

CASE LAW CITED

Yogesh Mahajan v. Professor R.C. Deka, Director, AIIMS, (2018) 3 SCC 218; *GRIDCO Ltd. and Another v. Sadananda Doloi and Others*, (2011) 15 SCC 16; *Director, Institute of Management Development, U.P. v. Pushpa Srivastava (Smt.)*, (1992) 4 SCC 33; *State of U.P. and Others v. Principal, Abhay Nandan Inter College and Others*, (2021) 15 SCC 600; *Uttar Pradesh Power Corporation Contract Employees Sangh v. State of U.P. and 5 Others*, 2023:AHC:145507; *Famina Singh v. State of U.P. and 2 Others*, 2022 SCC OnLine All 1203

List of Acts

Government Order dated 27.07.2018 and 16.08.2018 – Ayushman Bharat Scheme

Government Order dated 21.02.2024 – PMJAY Guidelines

Office Memorandum dated 13.10.2021 – Government of India (AB-PMJAY)

Constitution of India – Article 226

List of Keywords

Contractual employment – Arogya Mitra – Ayushman Bharat Scheme – PMJAY – Outsourcing policy – No right to renewal – Misrepresentation – Fraud on Court – Interim order vacated – Honorarium not recoverable – Writ dismissed.

CASE ARISING FROM

Common challenge to orders dated 22.08.2023 and 29.02.2024 issued by the CEO, State Health Agency (SACHIS), U.P., directing engagement of Prime Minister Arogya Mitra (PMAM) through outsourcing agencies under the Ayushman Bharat-PMJAY scheme.

Appearances for Parties

Advs For Petitioner: Vikas Yadav, Shivam Srivastava, Utkarsh Misra, Anubhav Awasthi, Pankaj Kumar, Rahul Kumar Shukla, Prabhat Kumar Mishra, Rashmi Pandey, Shashank Singh, and others.

Advs For Respondents:C.S.C., Madhukar Ojha, Nishant Shukla, Satya Prakash, Shikhar Srivastava; Sri Upendra Nath Mishra, Senior Advocate (CEO SACHIS); Sri Ran Vijay Singh, A.C.S.C.

(Delivered by Hon'ble Rajesh Singh Chauhan, J.)

1. Heard Sri Vikas Singh, learned counsel for the petitioners, Sri Ran Vijay Singh, learned Additional Chief Standing

Counsel for the State-opposite parties, Sri Upendra Nath Mishra, learned Senior Advocate, assisted by Sri Madhukar Ojha, learned counsel for the Chief Executive Officer, State Health Agency, Ayushman Bharat, Pradhan Mantri Jan Arogya Yojna, Hazratganj, Lucknow and Sri Satya Prakash Srivastava, learned counsel, assisted by Sri Shikhar Srivastava, learned counsel for the Beneficiary Facilitation Agency.

2. Since grievance of all the petitioners in the bunch of connected writ petitions is similar and question of facts and law is also similar, therefore, with the consent of learned counsel for the parties, all the aforesaid writ petitions have been connected and are being decided by a common order.

3. Notably, first interim order has been granted by this Court on 03.10.2023 in Writ-A No.7401 of 2023, Aman Kumar and 16 Others Vs. State of U.P. and Others. Thereafter, interim order has been granted on 04.10.2023 in leading Writ-A No.6678 of 2023, Sanjay Kumar Chaurasiya and 36 Others Vs. State of U.P. and Others, which has been followed in some of the writ petitions connect with this bunch of writ petitions. The order dated 03.10.2023 passed in re; Aman Kumar (supra) reads as under:-

"1. Heard learned counsel for petitioners and learned State Counsel for opposite parties.

2. Petition has been filed challenging order dated 22.08.2023 whereby petitioners who have been employed as contractual workers on the post of Arogya Mitra have been required to be employed through an outsourcing agency.

3. It has been submitted that petitioners were initially appointed on contract basis for one year but their services were renewed in pursuance of terms of contract which is still subsisting since petitioners are being paid their honourarium till date in terms of the contractual employment although they have not been provided the latest order renewing their contract services.

4. Learned State Counsel however on the basis of written instructions dated 30.09.2023 submitted by Chief Medical Officer, Raebareli submits that petitioners have been employed on contract basis on the post of Arogya Mitra. Impugned order/letter dated 22.08.2023 in fact pertains to engaging persons through outsourcing on the post of Ayushman Mitra, which is completely a different programme and therefore petitioners would not be affected by the impugned order.

5. In regard to aforesaid, learned State Counsel is granted four weeks' time to file counter affidavit.

6. In view of submissions advanced by learned State Counsel on the basis of instructions, it is directed that until further orders of this Court, petitioners shall not be replaced by outsourcing nor shall they be compelled to provide their services through outsourcing in pursuance of impugned order/letter dated 22.08.2023 till they continue on contract basis.

7. List on 07.11.2023."

4. The order dated 04.10.2023 passed in re; Sanjay Kumar Chaurasiya (supra) reads as under:-

"1. Heard learned counsel for petitioners, learned State Counsel for opposite parties no. 2 and 4 to 11 as well as opposite party no. 3.

2. On 15.09.2023, the following orders were passed:-

"1. Heard learned counsel for petitioners and learned State Counsel for the opposite parties.

2. Present petition has been filed seeking quashing of the order dated 22.08.2023 whereby directions have been issued for engaging 'Pradhan Mantri Arogya Mitra (PMAM)' under the scheme of "Pradhan Mantri Rashtriya Swashthya Mission".

3. Learned counsel for the petitioners submitted that petitioners were initially appointed as 'Arogya Mitra' in the year 2017-2018 after following due process by the District Health Society established under the State Government and petitioners are still working on the post in pursuance of their initial contractual appointment. It is submitted that by means of impugned order, the directions have been issued for engagement of 'Arogya Mitra' by out sourcing which will adversely affect the continuance of petitioners on the said post although there is no illegality or irregularity in their appointments.

4. Learned State Counsel on the basis of instructions, however, submits that at present the implementation of impugned order would not adversely affect the petitioners' continuance as a contractual employee in case the contracts are subsisting.

5. In view of aforesaid, learned State Counsel is granted two weeks' time to seek instructions either to seek the instructions or to file short affidavit with regard to submissions advanced by learned counsel for the petitioners.

6. List this case on 04.10.2023 as fresh."

3. In pursuance of said directions, learned State Counsel has been provided instructions dated 29.09.2023, which are taken on record. As per instructions, it is admitted that the petitioners are currently working on contract basis with the department. The written instructions issued by the Chief Medical Officer, Sultanpur indicate that services of petitioners are not being dispensed with nor is any other person being appointed on their place by outsourcing.

4. In view of the aforesaid, the opposite parties are granted four weeks' time to file their counter affidavits.

5. Until further orders of this Court, it is provided that the petitioners' services on the basis of their existing contract shall not be interfered with in any manner till the subsistence of their contract.

6. List this case on 7.11.2023."

5. This Court vide para-3 in re; Aman Kumar (supra) has noted a fact that the petitioners were initially appointed on contract basis for one year and their services could have been renewed as the petitioners have not been provided the latest order renewing their contract services, meaning thereby the petitioners could not demonstrate any order renewing the contract of the petitioners. This Court

granted interim order on the submission so made by the learned State Counsel to the effect that by means of impugned order, the petitioners would not be affected. Though the aforesaid contention of learned State Counsel was not correct as has been considered herein below. Further, learned State Counsel has again submitted before this Court in leading writ petition i.e. Sanjay Kumar Chaurasiya (supra) that the petitioners are currently working on contract basis with the department and their services would not be dispensed with nor any other person would be appointed on their place by outsourcing. Again, the aforesaid submission of learned State Counsel was not correct inasmuch as in absence of any order renewing their contract services, the petitioners could have not continued in appointment but considering the contention of learned State Counsel and written instructions, interim order has been granted in favour of the petitioners.

6. Learned counsel for the petitioners have been asked to show petitioners' right or claim to be retained as contractual employee without having the renewal of their contractual services, no document has been shown by the learned counsel for the petitioners strengthening their right or claim to that effect. However, they have submitted that petitioners were initially appointed as 'Arogya Mitra' in the year 2017-2018 after following due process by the District Health Society established under the State Government and the petitioners are working on the post in pursuance of their initial contractual appointment. They have also submitted that by means of impugned orders, the directions have been issued for engagement of 'Arogya Mitra' by outsourcing which will adversely affect the continuance of petitioners on the said post although there is no illegality or irregularity in their appointments. Though Sri Upendra Nath Mishra, learned Senior Advocate, assisted by Sri Madhukar Ojha, learned counsel for the Chief Executive Officer, State Health Agency, Ayushman Bharat, Pradhan Mantri Jan Arogya Yojna, Hazratganj, Lucknow (hereinafter referred to as "SACHIS") has clarified the controversy apprising all relevant facts and circumstances of the issue from the very beginning.

7. Sri Mishra has submitted that the instant bunch of writ petitions have been filed by the petitioners/contractual employees of a Central Project primarily against an order dated 22.08.2023 issued by the answering opposite party no.3 i.e. CEO, SACHIS whereby all the District Magistrates of State of U.P. were directed to ensure that in compliance of the office memorandum dated 13.10.2021 of Government of India, the engagement of Prime Minister-Arogya Mitra (PMAM) in the empanelled hospitals under a Central project, namely, Ayushman Bharat-Prime Minister Jan Arogya Yojna (hereinafter referred to as "AB-PMJAY") shall henceforth be ensured through the Beneficiary Facilitation Agency (hereinafter referred to as "BFA") empanelled by National Health Agency (NHA), Government of India and PMAMs currently working on contract basis shall be engaged through the BFA by giving preference to them, if they are otherwise eligible but BFA shall henceforth, have complete authority to engage and deploy the PMAMs in nine empanelled Government Hospitals. Out of the nine writ petitions connected with this bunch, seven petitions bearing Writ-A No. 6678 of 2023; 7401 of 2023, 8528 of 2023, 8203 of 2023,

7951 of 2023, 297 of 2024 and 593 of 2024 have been filed against the aforesaid order dated 22.08.2023 of CEO, SACHIS.

8. The 8th and 9th petitions bearing Writ-A No.2612 of 2024, Ajeet Kumar Verma and Others Vs. State U.P. and 3 Others, and Writ-A No.2823 of 2024, Birendra Kumar and 4 Others Vs. State U.P. and 5 Others, have been filed against the order dated 29.02.2024 issued by CEO, SACHIS, whereby it was directed that in view of the change introduced in the method of engagement of PMAMs by the NHA of Government of India in the Central project, i.e. AB-PMJAY, i.e. engagement through an outsourcing agency/BFA, which in the instant case is "Writers Business Services Pvt. Ltd.", all the District Magistrates of the State were directed to ensure that the written contracts of the PMAMs currently engaged and deployed in the empanelled Government Hospitals shall not be renewed/extended beyond the end of March, 2024 in any manner whatsoever, because under the change guidelines of Government of India and the Government Order dated 21.02.2024, there is no arrangement for directly paying any honorarium to the currently engaged Arogya Mitra from the funds of the PMJAY project payable to the hospitals, as all the PMAMs are henceforth to be engaged through an outsourcing agencies/BFAs.

9. As per Sri Mishra, the writ petitioners, by resorting to misrepresentation of facts i.e. stating incorrect facts on affidavit regarding alleged subsistence and continued renewal of their contractual employment under the Central project (PMJAY), till the date of filing of their writ petition, obtained an interim order dated 04.10.2023 in the writ petition bearing Writ-A No.6678 of 2023 (followed in other connected writ petitions), which was to the effect that *"petitioners services on the basis of their existing contract shall not be interfered with in any manner till the subsistence of their contract"*. Since this interim order was obtained on the basis misrepresentation and concealment of correct fact and by playing fraud upon the Court by the petitioners, therefore, application for dismissal of the writ petition, which was initially filed alongwith the detailed counter affidavit dated 07.11.2023 (to which RA was filed on 12.12.2023), has again been filed alongwith a short counter affidavit dated 17.04.2025 and that application has not been decided.

10. Brief facts of the case are that Government of India introduced a very ambitious Health Mission for providing free health care facility upto Rs.5.0 lakh per family in the entire country called "Ayushman Bharat-National Health Protection Mission (hereinafter referred to as “AB-NHPM”) on 23.07.2018. The initial unamended project i.e. AB-NHPM conceptualized engagement of support workers called "Ayushman Mitra" at each public hospitals/Empanelled Health Care Provider/EHCP for facilitation of the patients/beneficiaries, claim submissions and their pre-authorizations under the scheme. The object of the scheme was to provide health care services upto Rs.5.00 lakh to the beneficiaries identified by Socio Economic Caste Census (SECC). The State Health Agency, (which in the instant case was "SACHIS") had to ensure deployment of Ayushman Mitras and their payment through third party agencies. The State Health Agency (hereinafter referred to as “SHA”) was also authorized to directly hired Ayushman Mitras at

State/District Hospitals.

11. Government Order dated 27.07.2018 of the State provided that the Ayushman Mitras to be engaged under the aforesaid Central scheme/project and deployed at Government Hospitals shall be selected by the District Health Committee headed by either DM or CMO and these Ayushman Mitras shall be paid honorarium of Rs.5000/- per month from the fund under the project called Rogi Kalyan Nidhi. The Government Order dated 16.08.2018 of the State clarified the earlier Government Order dated 27.07.2018, whereby it was provided that Ayushman Mitras can be engaged through outsourcing as well as by District Committee.

12. On 13.09.2018, with the Cabinet approval, the aforesaid Central scheme/AB-NHPM was implemented in the State for providing health care facility upto Rs.5 lakh per family as pre-medical aid for curing extremely serious disease of the identified beneficiaries. For implementation of the said Central scheme, a society known as U.P. Swathya Bima Kalyan Samiti (for short "UPSBKS"), which later on adopted a brand name called SACHIS (State Agency for Comprehensive Health and Integrated Services) was appointed as its Nodal Agency.

13. In compliance of the directions of Central Government dated 20.12.2018, the name of the aforesaid Central project was changed from AB-NHPM to AB-PMJAY (Ayushman Bharat-Prime Minister Jan Arogya Yojna). The name of Ayushman Mitra was changed to Prime Minister Arogya Mitra.

14. Advertisement was issued for engagement of Ayushman Mitra on contract basis under AB-NHPM in the year 2018-19. Selection on the post of Ayushman Mitra under the project was to be made only on contract basis. Thereafter, the petitioners were engaged on contract basis for a fixed period. Letter of the concerned CMO dated 20.03.2020 has been enclosed with the supplementary counter affidavit regarding payment of fixed honorarium to the Ayushman Mitra engaged on contract basis only from the Rogi Kalyan Nidhi of the hospital created under the project. Vide Government Order dated 16.10.2020, the State Government enhanced the monthly honorariums payable to PMAMs under AB-PMJAY from Rs.5,000/-to Rs.10,000/-. In the year 2019-21, the Ayushman Mitras engaged under the then existing/unamended AB-PMJAY continued to work as contract employee under the Central project.

15. Government of India after reviewing the aforesaid Central Scheme i.e. AB-PMJAY, found that one of the main reason behind the low uptech of patients under the project was poor deployment of PMAMs resulting in Poor Beneficiary Facilitation, pre-authorisation and claim submission. Therefore, it was decided that henceforth States should hire a centralized outsourcing agency/BFAs from amongst these seven BFAs empanelled by Government of India through RFQs. These BFAs (Beneficiary Facilitation Agency) which are outsourcing agency shall be solely responsible for engagement and deployment of PMAMs at public hospitals. These BFAs shall be paid from a deduction of a fixed amount made from each patient claim, which is being paid to the hospitals.

16. On 14.07.2023, SACHIS i.e. the Nodal Agency ensured appointment of Writer Business Services Pvt. Ltd. as BFA

for the State of U.P. for providing PMAMs and their deployment in all public hospitals under PMJAY. A service agreement was executed between the State Health Agency and the BFA on 14.08.2023 for providing PMAMs to the State hospitals under AB-PMJAY. BFA started engaging eligible persons as PMAMs while giving preference to the earlier contract employees, if they were found eligible. On 22.08.2023, State Health Agency/SACHIS, being the Nodal Agency, issued the compliance order under the amended provisions of AB-PMJAY and directed all the District Magistrates to ensure that since outsourcing agency/BFA has been appointed for the State of U.P., as per the directions of the Government of India vide notification dated 13.10.2021, all PMAMs shall henceforth be engaged and deployed in Government Hospitals of the State, only through BFA. It was also observed that though the BFA has the exclusive authority to engage PMAMs under the Central project but the BFA has been requested to give preference to the already engaged/working PMAMs while engaging them through the outsourcing agency/BFA, if they are otherwise found suitable. Payment to the BFA shall be made only from the deductions of a fixed amount made from each medical claim of the patient, which is payable to the hospital. Thus, there is no separate financial source existing for making any payment to the PMAMs under the amended AB-PMJAY and they will get their honorarium only from the outsourcing agency.

17. In the month of October, 2023, several writ petitions were filed by the existing PMAMs for challenging the validity of the order dated 22.08.2023 passed by CEO, SACHIS with a prayer that they may be allowed to continue and may not be replaced by the new PMAMs engaged by the BFA and they may be continued under the unamended/non-existing project called National Health Mission.

18. Sri Mishra, learned Senior Advocate, has submitted that since the petitioners had made a false statement that their contract was renewed and is still subsisting, this Court directed that *"the petitioners' services on the basis of their existing contract shall not be interfered with in any manner till the subsistence of their contract."*

19. Further submission of Sri Mishra is that on 07.11.2023, a detailed counter affidavit of opposite party no.No.3/SACHIS was filed in the leading petition bearing Writ-A No. 6678 of 2023 and in paras 20 and 38, it was explained that Ayushman Mitra and Arogya Mitra are not two different posts but the same post has the changed nomenclature. The petitioners, who are contract employees, have no right to work under their previous contract, which is not subsisting. Only the outsourcing agency/BFA is competent to engaged PMAMs on the post of Arogya Mitra under the amended directions of the project. So the petitioners should approach the BFA for being engaged as PMAMs.

20. Further submission is that rejoinder affidavit was filed on 12.12.2023 and misleading statements were made in paras-17, 19, 20, 23, 26 and 43 that the petitioners' engagement as PMAMs in the year 2018 to 2020 was prior to the issuance of the Office Memorandum dated 13.10.2021 of the Government of India, hence it has no effect on the contractual services of the petitioners. During the subsistence of their contract, petitioners cannot be forced to join the private

agency/BFA under the amended project guidelines of the Government of India dated 13.10.2021, as if their earlier contract is still subsisting. BFA/outsourcing agency has no power to change the appointing authority of the petitioners i.e. the concerned Chief Medical Officer.

21. Further, the Nodal Agency/SACHIS issued an order dated 29.02.2024 directing all the District Magistrates to ensure that the contracts of the earlier PMAMs under the unamended AB-PMJAY may not be extended beyond a period of March, 2024 as there are no financial sources available for payment of honorarium directly to PMAMs under the amended project i.e. AB-PMJAY. This order was also challenged in Writ-A 2612 of 2024, Ajeet Kumar Verma and others Vs. State of U.P. and others.

22. Further submission is that during pendency of the bunch of writ petitions, the petitioner no.1 of the connected writ petition bearing Writ-A No.7401 of 2023, Sri Aman Kumar obtained his engagement on 30.04.2024 as PMAM under the BFA as the salary prospects under the BFA were improved. Gross salary of PMAMs got increased under the BFA from the earlier honorarium of Rs.10,000/- to Rs.13,760/- per month.

23. Sri Mishra has further submitted that supplementary counter affidavit alongwith application for dismissal of the writ petition was filed by the opposite party no.3/SACHIS on 17.04.2025 in the leading writ petition, raising preliminary objections regarding misrepresentation of facts about subsistence of their contract, concealment of fact by not annexing either copies of their contract or extensions/renewal of their contract and non-maintainability of the writ petition for seeking continuance of their contractual employment under a project, that too by an order of this Court as they don't have any constitutional or statutory right to maintain such writ petition. Since the petitioners do not have any constitutional or statutory right to maintain the instant bunch of petitions, hence the same being not tenable in law, deserves to be dismissed.

24. When learned counsels for the petitioners have again been confronted on the aforesaid facts, it has been informed that the petitioners have not received any order of renewal of their contract but they have been discharging their duties since their initial engagement and have been paid their honorarium, though most of the petitioners have been paid honorarium after filing contempt petitions and after the direction having been issued by the Hon'ble Contempt Court.

25. On the aforesaid submissions of learned counsel for the petitioners, learned counsels for the opposite parties have stated that in view of the given facts and circumstances, the petitioners do not have any constitutional or statutory right to maintain the instant bunch of writ petitions, hence the same being not tenable in the eyes of law, deserve to be dismissed.

26. Heard learned counsel for the parties and perused the material available on record.

27. The question before this Court is as to whether the contractual employees have a right to get their contract necessarily renewed and also as to whether their rights would be governed by the terms of the project/contract or otherwise.

28. The next question is as to whether the policy of outsourcing is outside the scope of judicial review.

29. The Apex Court in re; **Yogesh Mahajan v. Professor R.C. Deka, Director, All India Institute of Medical Sciences, (2018) 3 SCC 218, GRIDCO Ltd. and Another v. Sadananda Doloi and Others, (2011) 15 SCC 16** and **Director, Institute of Management Development, U.P. v. Pushpa Srivastava (Smt), (1992) 4 SCC 33,** and this Court in re; **Uttar Pradesh Power Corporation Contract Employees Sangh v. State of U.P. and 5 Others, 2023: AHC: 145507 and Famina Singh Vs. State of U.P. and 2 Others, 2022 SCC OnLine All 1203,** have held that the contractual employees do not have a right to get their contract necessarily renewed and their rights are governed by the terms of the project/contract only.

30. Para-6 in re; **Yogesh Mahajan** (supra) reads as under:-

"6. *It is settled law that no contract employee has a right to have his or her contract renewed from time to time. That being so, we are in agreement with the Central Administrative Tribunal and the High Court that the petitioner was unable to show any statutory or other right to have his contract extended beyond 30-6-2010. At best, the petitioner could claim that the authorities concerned should consider extending his contract. We find that in fact due consideration was given to this and in spite of a favourable recommendation having been made, the All India Institute of Medical Sciences did not find it appropriate or necessary to continue with his services on a contractual basis. We do not find any arbitrariness in the view taken by the authorities concerned and therefore reject this contention of the petitioner."*

31. Para-31 in re; **GRIDCO Ltd.** (supra) reads as under:-

"31. Taking note of the decision of this Court in Shrilekha Vidyarthi case [Shrilekha Vidyarthi v. State of U.P., (1991) 1 SCC 212 : 1991 SCC (L&S) 742] this Court held that (Issac Peter case [Excise Commr. v. Issac Peter, (1994) 4 SCC 104] , SCC p. 125, para 26) there was

"no room for invoking the doctrine of fairness and reasonableness against one party to the contract (State), for the purpose of altering or adding to the terms and conditions of the contract, merely because it happens to be the State".

The Court said: (Issac Peter case [Excise Commr. v. Issac Peter, (1994) 4 SCC 104] , SCC p. 125, para 26)

*"26. ... It was a case of termination from a post involving public element. It was a case of non-government servant holding a public office [**Ed**.: The word "public office" is emphasised in original.] , on account of which it was held to be a matter within the public law field. This decision too does not affirm the principle now canvassed by the learned counsel [that being of incorporating the doctrine of fairness in contracts where State is a party]. We are, therefore, of the opinion that in case of contracts freely entered into with the State, like the present ones, there is no room for invoking the doctrine of fairness and reasonableness against one party to the contract (State), for the purpose of altering or adding to the terms and conditions of the contract, merely because it happens to be the State. In such cases, the mutual rights and liabilities of the parties are governed by the terms of the contracts (which may be statutory in some cases) and the laws relating to contracts. It must be remembered that these contracts are*

entered into pursuant to public auction, floating of tenders or by negotiation. There is no compulsion on anyone to enter into these contracts. It is voluntary on both sides."

(emphasis supplied)

32. Paragraphs no.20 & 23 in re; **Pushpa Srivastava** (supra) read as under:-

"20. *Because the six months' period was coming to an end on February 28, 1991, she preferred the writ petition a few days before and prayed for mandamus which was granted by the learned Judge under the impugned judgment. The question is whether the directions are valid in law. To our mind, it is clear that where the appointment is contractual and by efflux of time, the appointment comes to an end, the respondent could have no right to continue in the post. Once this conclusion is arrived at, what requires to be examined is, in view of the services of the respondent being continued from time to time on 'ad hoc' basis for more than a year whether she is entitled to regularisation? The answer should be in the negative. However, reliance is placed by learned counsel on behalf of the respondent on the case in Jacob v. Kerala Water Authority [(1991) 1 SCC 28 : 1991 SCC (L&S) 25 : (1991) 15 ATC 697 : 1990 Supp (1) SCR 562] ."*

23. *In the instant case, there is no such rule. The appointment was purely ad hoc and on a contractual basis for a limited period. Therefore, by expiry of the period of six months, the right to remain in the post comes to an end."*

33. In view of what has been considered above, when the contractual employees have got no right to get their contract necessarily renewed as such contracts have not been renewed, therefore, the writ court cannot issue direction to renew their contract. This is also settled law that the policy of outsourcing is outside the judicial review inasmuch as the Apex Court in re; **State of Uttar Pradesh and Others v. Principal, Abhay Nandan Inter College and Others, (2021) 15 SCC 600,** in paragraphs no.42 and 46 has held as under:-

"42. *The Division Bench in considering the view has entered into an arena which was not required to be done. Much labouring was done in interpreting the word "outsourcing", however, such an exercise ought to have been avoided as it stands outside the scope of judicial review. We have already noted the fact that "outsourcing" as a matter of policy is being introduced throughout the State. It is one thing to say that it has to be given effect to with caution as recommended by the Seventh Central Pay Commission, and another to strike it down as unconstitutional. "Outsourcing" per se is not prohibited in law. It is clear that a recruitment by way of "outsourcing" may have its own deficiencies and pitfalls, however, a decision to take "Outsourcing" cannot be declared as ultra vires the Constitution on the basis of mere presumption and assumption. Obviously, we do not know the nature of the scheme and safeguards attached to it.*

46. *The entire issue has to be looked at from different perspective as well. By the policy decision made, the appellants have abolished the post though in an indirect way by providing for "outsourcing". Now, a court cannot create or sustain the aforesaid post. There is nothing on record to hold that the decision*

made is extraneous as it is obviously made applicable not only to the aided institutions but also to all Government Departments as well."

34. Besides, the petitioners did not disclose the complete and correct facts before this Court and apprising wrong facts got interim order, therefore, this fact alone may be the reason to dismiss these writ petitions.

35. It has been consistent view of the Apex Court that non-disclosure of material facts and non-disclosure of relevant and material documents with a view to obtain undue advantage and favourable orders from the Court amounts to deception and playing fraud on the Court and such orders would be nullity in the eyes of law.

36. Further, it is the duty of the petitioners to disclose all the complete and correct facts and annex all the relevant documents before the Court and it is not open for the petitioners to selectively disclose facts and deliberately conceal and suppress inconvenient facts from the Court.

37. In view of the facts and circumstances as well as the case laws so cited by the parties, these writ petitions seeking continuance of contractual employment of the petitioners, granting extension/ renewal of contractual engagement under a Government project, in violation of provisions of the amended project, is not sustainable in the eyes of law, therefore, these bunch of writ petitions having no merits deserve to be dismissed and the interim orders granted by this Court deserve to be vacated.

38. It is made clear that whatever honorarium has been paid to the petitioners of the bunch of writ petitions would not be recovered from them for the reason that pursuant to the interim orders, they have discharged their duties and received honorarium.

39. Accordingly, these writ petitions are **dismissed**.

40. Interim orders granted in the aforesaid writ petitions shall stand vacated.

41. No order as to costs.

(2025) 7 ILRA 389
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.07.2025

BEFORE

THE HON'BLE J.J.MUNIR, J.

Writ A No. 6849 of 2022
Connected With
Writ A No. 14778 of 2019

Dr. Vikas Yadav ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Hritudhwaj Pratap Sahi, Pradeep Kumar Rai, Sankalp Narain

Counsel for the Respondents:
Avneesh Tripathi, C.S.C.

ISSUE FOR CONSIDERATION

Whether a Physical Training Instructor, serving in the Harcourt Butler Technical University, Kanpur, belongs to the academic cadre and a teacher, entitling him to the benefit of Career Advancement Scheme.

HEADNOTE

University Law - Harcourt Butler Technical University Act, 2016 - Sections 3(5) and

46(1) - Bylaws of 1990 – Physical Training Instructor – Classification – Whether Teacher – Promotion under CAS – Held, Yes – Mandamus issued.

The petitioner was appointed as a Physical Training Instructor on 18.01.2007 in the then Harcourt Butler Technological Institute, Kanpur. Under the bylaws of 26.03.1965, the post fell under the Technical Cadre. By amendment dated 27.11.1990, the Board of Governors re-classified Physical Training Instructor under Bylaw 2(b)(vii) as part of the Academic Cadre. The Institute was incorporated as a University under the U.P. Harcourt Butler Technical University Act, 2016. Sections 3(5) and 46(1) mandated that, until the First Ordinances are made, the Rules, Memorandum and Bylaws of the Society shall remain in force. Consequently, employees of the erstwhile Institute continued on the same terms and conditions.

Held, since the petitioner was appointed under the 1990 Bylaws classifying the post of Physical Training Instructor as Academic, he continues to hold that status as a member of the academic staff and a teacher within the meaning of Section 3(5) read with Section 46(1) of the Act of 2016. The contrary definition of "teacher" in Section 2(20) must yield to the *non obstante* clause in Section 46(1). Mandamus issued to the University as well as the State Government to extend the benefit of the CAS to the petitioner, treating him as a member of the academic staff and a teacher of the University. *(Paras 25 to 49) (E-5)*

CASE LAW CITED

Managing Committee, Khalsa Middle School v. Mohinder Kaur (Smt.) and Another, 1993 Supp (4) SCC 26; *P.S. Ramamohana Rao v. A.P. Agricultural University and Another*, (1997) 8 SCC 350; *Malik Mazhar Sultan v. U.P. Public Service Commission*, (2006) 9 SCC 507; *Smt. Madhumita Pandey v. Union of India*, 2024 (12) ADJ 466 (DB)

List of Acts

U.P. Harcourt Butler Technical University Act, 2016, Ss. 2(20), 3(5), 46(1);

Societies Registration Act, 1860;

AICTE Regulations and Career Advancement Scheme Guidelines

List of Keywords

University – HBTU Act 2016 – Physical Training Instructor – Academic Cadre – Teacher – Career Advancement Scheme – Bylaws of 1990 – Non-registration – Legal force – Section 3(5) – Section 46(1) – Mandamus – Re-classification

CASE ARISING FROM

Challenge to order dated 19.04.2022 of Vice Chancellor, Harcourt Butler Technical University, Kanpur, excluding petitioner and his Department from consideration for promotion under CAS.

Appearances for Parties

Advs For Petitioner: V.K. Singh (Senior Advocate), Pradeep Kumar Rai, Hritudhwaj Pratap Sahi, Sankalp Narain, Devendra Kumar, Krishna Mohan Misra, Kunal Ravi Singh, Manjari Singh, Shivam Yadav.

Advs For Respondents: Avneesh Tripathi, C.S.C., Girijesh Kumar Tripathi (Additional Chief Standing Counsel).

(Delivered by Hon'ble J.J. Munir, J.)

1. By this common judgment, we propose to decide the present writ petition and connected Writ-A No.14778 of 2019. Writ-A No.6849 of 2022 has been heard as the leading case. Facts shall be noticed from the leading case.

2. This petition is directed against an order of the Vice Chancellor, Harcourt Butler Technical University, Kanpur dated 19.04.2022, to the extent alone that it excludes the petitioner and his Department wholesomely from the benefit of consideration for promotion under the

Career Advancement Scheme (for short, 'CAS'). The petitioner has further prayed that this Court do issue a mandamus, commanding the Vice Chancellor to consider his case for extension of the benefit of CAS, in the same manner, as in the case of teaching staff of other Departments of the University.

3. The Harcourt Butler Technical University, Kanpur (for short, 'the University') was established by an Act of the State Legislature, called the Uttar Pradesh Harcourt Butler Technical University Act, 2016 (U.P. Act No.11 of 2016) (for short, 'the Act of 2016'). Prior to its incorporation, the University had a predecessor establishment, called the Harcourt Butler Technological Institute, Kanpur (for short, 'the Institute'). The Institute was affiliated to the Kanpur University. The affairs of the Institute were controlled and regulated by a Society, called the Harcourt Butler Technological Institute (Kanpur) Society (for short, 'the Society'). The Society was registered under the Societies Registration Act, 1860 and had its bylaws to manage its affairs, including the Institute.

4. The petitioner applied for the post of a Physical Training Instructor advertised by the Institute vide advertisement dated 27.01.2006. In due course, he was selected and appointed as a Physical Training Instructor with the Institute vide letter of appointment dated 18.01.2007. At the time, the petitioner was selected and appointed, the bylaws of the Institute included the post of the Physical Training Instructor in the cadre of the academic staff. There were broadly five cadres of staff serving the Institute. These were — (a) academic and administrative; (b) academic; (c) teaching supporting; (d) technical; and, (e) administrative non-teaching. A moreful reference to the relevant bylaw, defining the posts included within the cadre of the academic staff and the other cadres, shall be made later in this judgment.

5. According to the petitioner, he joined service on 03.02.2007 and his record is unblemished. The cause of action for the petitioner arose as he was denied the same benefits, including the pay-scale that were given to the other teaching staff of the University. Aggrieved by this denial, which the petitioner calls arbitrary, he instituted Writ-A No.14778 of 2019 (the connected writ petition) against the University, praying that a mandamus be issued to the University to grant the petitioner status/ designation as per U.G.C./ A.I.C.T.E. norms, including the grade pay of Rs.6000/- (Sixth Pay Commission). He also claimed arrears, promotion etc. and other benefits, attached to the post, since the time of his initial appointment. These benefits were all claimed by the petitioner, treating himself to be a part of the cadre of the teaching staff.

6. A notice of motion was issued in the said writ petition, but no counter affidavit was filed, in answer, on behalf of any of the respondents.

7. Writ-A No.14778 of 2019 was directed to come up along with the leading writ petition vide order dated 12.05.2022 and treated as a connected case vide order dated 12.12.2022. The said writ petition is still pending.

8. Pending the last mentioned writ petition, on 06.02.2020 a letter was sent by the Vice Chancellor of the University to all Heads of the Departments saying that they were required to submit the details of all

teaching staff serving in their respective Departments in the proper format, so that benefit of the CAS may be extended to them. Acting on the Vice Chancellor's letter of 6th February, last mentioned, the petitioner moved a representation dated 29.02.2020 to the Registrar of the University, filling in his application/ representation in the requisite format; by this application/ representation, the petitioner sought extension of benefit of the CAS.

9. No action was taken by the Vice Chancellor or any other Authority of the University on the above mentioned application. The Registrar of the University addressed a letter to all Heads of Departments of the University, requiring them to submit details of all the teaching staff serving in their respective Departments, for the purpose of consideration under the CAS, as directed by the Vice Chancellor. The petitioner made a representation dated 10.09.2021 in the prescribed format, seeking extension of the benefit of the CAS. The petitioner says that much to his dismay, the Vice Chancellor passed an order dated 19.04.2022, requiring the Registrar to issue interview letters to teaching staff of all Departments, excluding the petitioner's Department, to wit, the University's Student Activity Council, calling those invited to interview to appear before the Selection Committee for a consideration for promotion under the CAS. The petitioner was excluded from the list of interviewees for the CAS. It is to the extent that the Department, which the petitioner serves, has been excluded from consideration for promotion under the CAS, including the petitioner that he seeks to challenge the Vice Chancellor's order dated 19.04.2022.

10. It may be remarked here that for reasons, more than obvious, the cause of action involved in Writ-A No.14778 of 2019 stands subsumed in that involved in the present writ petition.

11. A notice of motion was issued vide order dated 12.05.2022. In course of time, parties have exchanged affidavits. The petition was admitted to hearing on 26.04.2024, which proceeded forthwith on that day, and, thereafter, on a number of days. On 08.01.2025, judgment was reserved.

12. Heard Mr. V.K. Singh, learned Senior Advocate assisted by Mr. Pradeep Kumar Rai, learned Counsel for the petitioner, Mr. Avneesh Tripathi, learned Counsel appearing on behalf of respondent Nos.2 and 3 and Mr. Girijesh Kumar Tripathi, learned Additional Chief Standing Counsel appearing on behalf of the State.

13. The moot question involved in this petition is whether a Physical Training Instructor, serving in the University, belongs to the academic cadre and a teacher, entitling him to the benefit of CAS.

14. Mr. V.K. Singh, learned Senior Advocate has advanced elaborate submissions to canvass the point that the post of a Physical Training Instructor, though prior to 27.11.1990, was a technical post under the bylaws of the Institute then in force, the bylaws were amended by the Board of Governors on 27.11.1990, including it in the cadre of teaching posts. The Institute, at the relevant time, was governed by the Society and the amended bylaws were sent to the Registrar, Firms, Societies and Chits. He submits that there is no requirement of registration of the bylaws and upon communication of the

amended bylaws by the Board of Governors, acting for the Society, then governing the University's predecessor, to wit, the Institute, the bylaws came into force. He has been at pains to point out that after the incorporation of the Institute and its Society into a University under the Act of 2016, Section 46(1) provides that the First Ordinance of the University shall be made by the Executive Council, and so long as the First Ordinance is not made, the rules, memorandum and bylaws of the Society shall have legal force. The bylaws etc. of the Society, that would have force in the University, would be those as were immediately in force before the commencement of the Act of 2016.

15. He has further drawn the Court's attention to Section 3(5) of the Act of 2016 to submit that except for the posts of the Director, the Deputy Director, the Registrar, the Deputy Registrar and the Assistant Registrar of the Institute, all other persons employed by the Institute shall continue on the same terms and conditions, notwithstanding anything to the contrary contained in any other provisions of the Act of 2016. He also emphasizes that under Section 3(5), the changed terms of employment under the Act would apply to an employee of the Institute, who becomes an employee of the University upon incorporation under the Act of 2016, only if he opts for the University's terms and conditions of employment.

16. It is submitted by the learned Senior Advocate that since the University have still not made their First Ordinance, the effect of Section 46(1) of the Act of 2016 would be that the bylaws of the Institute would continue to govern and regulate the service conditions and status etc. of the petitioner and other employees of the University. Since, the petitioner, under the bylaws dated 27.11.1990 framed by the Institute, stands included in the academic staff, the petitioner's status as a member of the academic staff of the University, would continue. It could change only if the University were to frame ordinances and regulations different from the bylaws and the petitioner opted to be governed by the University's terms and conditions of employment. Since neither of the things have happened, the petitioner is entitled to be treated as part of the University's academic staff, that is to say, a teacher and dealt with as such in the matter of his service entitlement as to promotion etc.

17. It is particularly argued by Mr. V.K. Singh that the petitioner's appointment was made after enforcement of the new bylaws made by the Institute, i.e. on 27.11.1990, and according to the classifications of posts mentioned under the amended bylaws, the post of a Physical Training Instructor would fall in the category of academic staff, a status that is protected for the petitioner by virtue of Section 46(1) of the Act of 2016. It is also argued by the learned Senior Advocate that the duties and functions assigned to the petitioner are akin to those of the teaching staff in the University. He has enumerated during the hearing some of those functions and duties in order to drive home the point that the petitioner is substantially, after all, a teacher — a part of the academic staff of the University.

18. Resisting the petitioner's claim, it is submitted by Mr. Girijesh Kumar Tripathi, learned Additional Chief Standing Counsel, appearing on behalf of the State and Mr. Avneesh Tripathi, learned Counsel appearing on behalf of the University, that

the petitioner has been appointed on 19.10.2006 in terms of Advertisement No.2 of 2006 to a non-teaching post in the pay scale of Rs.8000-275-13500/-. He has received salary all along relating to a non-teaching post approved by the Finance Department of the State Government. It is argued that despite classification of the posts, to which the petitioner was appointed as a non-teaching post, he claims benefit of the CAS, which is meant exclusively for teachers. The petitioner is in no way a teacher under the Act of 2016 nor the post sanctioned by the State Government, to which he has been appointed a teaching post. The impugned order dated 19.04.2022, excluding the petitioner from consideration under the CAS, regarding him a non-teacher, is perfectly valid in law. It is emphasized by Mr. Girijesh Kumar Tripathi that the post of Physical Training Instructor was advertised and classified as a non-teaching and non-academic post in the year 2006, when the petitioner was appointed. The petitioner accepted these terms at the time of joining. He is now estopped from saying that he, under the bylaws which have force of law, entitled to be treated a teacher and considered for promotion under the CAS.

19. It is argued by Mr. Girijesh Kumar Tripathi that the petitioner's claim is untenable as the post of Physical Training Instructor has already been classified as non-teaching and non-academic. Any amendment or decision by the University to re-classify the post as academic lacks validity, inasmuch as no prior approval from the State Government, which is mandatory for such a change, was ever sought or granted. The State Government is not liable for the University's unilateral change in status of the post, without the Government's consent. The matter of the post of Physical Training Instructor being re-classified as an academic post, through an amendment to the Society's bylaws in the year 1990, which govern the Institution, was never brought before the State Government for approval, much less approved. The post of Physical Instructor has remained a non-teaching and non-academic post under the State Government's classification. It is also emphasized that in the year 2015, a proposal by the University to re-name the post of Physical Instructor as Assistant Director (Physical Education) was rejected by the State Government through their order dated 09.07.2015. It is, in the last, submitted that the petitioner, who holds a non-teaching post, is ineligible for promotion under the CAS or to receive any remuneration as such, which is reserved exclusively for the teaching staff.

20. We have carefully considered the submissions advanced on behalf of the learned Counsel for the parties.

21. It is true that in the advertisement dated 21.07.2006, the petitioner's post was advertised as part of teaching supporting/ administrative post and not a teaching post. Rather, the teaching posts were separately advertised in the same advertisement in Part A whereas teaching supporting/ administrative post, to which the petitioner belonged, was advertised in Part B. The petitioner was appointed apparently, according to the advertisement, on a non-teaching post. But the question is, would the advertisement be conclusive about the nature of the post held. If under the Act, Ordinance, Regulations applicable to the University or the bylaws applicable to the Institute when the petitioner was appointed, the post against which the petitioner was appointed, is a teaching post, its description

in the advertisement would apparently not prevail.

22. The principle that in case of an inconsistency between an advertisement and the recruitment rules, the rules prevail, has come to be well accepted. Reference in this connection may be made to **Malik Mazhar Sultan and another v. U.P. Public Service Commission and others, (2006) 9 SCC 507,** where it has been held:

"21. The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 1-7-2001 and 1-7-2002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisement but the recruitment to the service can only be made in accordance with the Rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules. The relaxation of age can be granted only if permissible under the Rules and not on the basis of the advertisement. If the interpretation of the Rules by PSC when it issued the advertisement was erroneous, no right can accrue on basis thereof. Therefore, the answer to the question would turn upon the interpretation of the Rules."

(emphasis by Court)

23. Malik Mazhar Sultan *(supra)* has been followed by a Bench of our own Court in **Smt. Madhumita Pandey v. Union of India and others, 2024 (12) ADJ 466 (DB),** where it has been held:

***"15.** To address the said question, we are required to have a quick survey of the statutory rules, advertisement and the notifications issued from time to time on the said subject. Record reveals there exist Service Rules for Postal Gramin Dak Sevak for recruitment of Sub Postmasters and Branch Postmasters prescribing qualification of matriculation or equivalent examination. Though we find that the advertisement does not speak about any equivalence barring the qualification of matriculation but what is relevant is the statutory rules which would in all eventualities prevail in case of any inconsistency with the advertisement where the recruitment rules prescribe for equivalent qualification. The said aspect is no more res integra as the same stands crystallized in the case of **Ashish Kumar v. State of Uttar Pradesh, 2018 (3) SCC 55,** wherein the following was observed.-*

"27. Any part of the advertisement which is contrary to the statutory rules has to give way to the statutory prescription. Thus, looking to the qualification prescribed in the statutory rules, the appellant fulfils the qualification and after being selected for the post denying appointment to him is arbitrary and illegal. It is well-settled that when there is variance in the advertisement and in the statutory rules, it is the statutory rules which take precedence."

***16.** Recently the Hon'ble Supreme Court in the case in **Civil Appeal No. 152 of 2022 the Employee State Insurance Corporation Ltd. v. Union of India** decided on 20.1.2022 held as under :*

*"It is settled law that if an advertisement is inconsistent with the recruitment rules, the rules would prevail, as held by this Court in **Malik Mazhar Sultan and another v. U.P. Public Service***

Commission and others, 2006 (9) SCC 507."

17. Applying the principles of law as culled out in the above noted decision in the facts of the present case, an irresistible conclusion stands drawn that the recruitment rules will have precedence over the advertisement and the advertisement is to yield before the recruitment rules."

24. It is true that the above principles have been laid down in the context of a conflict about the prescribed qualification or the eligibility age between the recruitment rules and the advertisement and here the conflict is between the advertisement and rules that speak about the nature of the post, to which the petitioner was appointed. If the rules say that the nature of the post is of one kind and the advertisement says it is of the other, the principle as to overriding effect of the recruitment rules as to qualification etc., vis-a-vis the advertisement, would equally apply to a case of this kind.

25. The next question to be examined is: What is the nature of the post held by the petitioner, teaching or non-teaching? It is not in cavil of any kind that the petitioner was appointed a Physical Training Instructor after applying on the basis of an advertisement that mentioned the post to be a non-teaching one. We have already noticed that the University had for its predecessor the Institute, which was governed by a Society registered under the Societies Registration Act. It is not in dispute also that the bylaws of the Society, registered on 26.03.1965, provided for classification of members of the staff, marshalling them into five categories. Bylaws 2(a), 2(b), 2(c), 2(d) and 2(e) spelt out these five categories as: (a) Academic & Administrative; (b) Academic; (c) Industrial Research Wing; (d) Technical; and, (e) Administrative, respectively. The post of a Physical Training Instructor, under the bylaws dated 26.03.1965, fell under the Technical Category. A copy of the relevant part of these bylaws are annexed as Annexure No.1 to the supplementary rejoinder affidavit. The classification of the Institute's staff was re-structured vide bylaws dated 27.11.1990 passed by the Board of Governors of the Institute, which were duly submitted to the Registrar, Firms, Societies and Chits. A perusal of bylaw 2 of the amended bylaws of the Institute dated 27.11.1990 shows the changed classification of members of the staff as follows:

"2. CLASSIFICATION OF MEMBERS OF THE STAFF OF THE INSTITUTE

Except in Case of employees paid from contingencies, the members of the staff of the Institute shall be classified as follows:

(a) Academic and Administrative.

i) Principal/Director

(b) Academic

i) Professor including Professor, Training & Placement

ii) Associate Professor, if any,

iii) Reader/Assistant Professor,

iv) Lecturer,

v) Workshop Superintendent,

vi) Asstt. Workshop Superintendent

vii) Physical Training Instructor, if any

viii) Teaching/Research Assistant

ix) Such other academic staff as may be decided by the Board.

(c) Teaching supporting

i) Computer Systems Manager

ii) Computer Programmer

iii) Technical Assistants

iv) Demonstrators

v) Workshop Instructors/Instructors

vi) Computer Operators

vii) Computer Data Operators

(d) Technical

i) Forman,

ii) Supervisor (Workshop),

iii) Mechanics

iv) Horticultural Assistant, if any

v) Draftsman, and

vi) Such other technical staff as may be decided by the Board.

(e) Administrative (Non-Teaching)

i) Registrar

ii) Deputy Registrar

iii) Assistant Registrar/Head Assistant

iv) Accounts Officer,

v) Audit Officer, if any,

vi) Stores or Purchase Officer, if any,

vii) Estate Officer, if any,

viii) Medical Officer, if any,

ix) Engineer (Executive/Assistant)

x) Librarian,

xi) Deputy Librarian, if any,

xii) Assistant Librarian, if any,

xiii) Such other administrative staff as may be decided by the Board."

26. It is evident that under the amended bylaws of the Institute, amended way back on 27.11.1990, the post of Physical Training Instructor was included in the cadre of teaching staff after removing it from the Technical Cadre. It is not disputed by either party that these amended bylaws of 1990 were framed by the Institute. It is, however, strenuously argued on behalf of the State and the University by their learned Counsel that the bylaws dated 27.11.1990 never took effect for reason that these were not registered by the Registrar, Firms, Societies and Chits. In the counter affidavit, that has been filed by the University, a photostat copy of a certified

copy of the bylaws issued by the Deputy Registrar, Firms, Societies and Chits, Kanpur has been appended. A perusal of this copy shows that while this document was on record of the Deputy Registrar, Firms, Societies and Chits, Kanpur, there is a rubber stamp seal, endorsing the fact that this document is placed on the Society's file, but not registered under the relevant sections of the Societies Registration Act, 1860.

27. Now, an amendment to the bylaws once duly passed, if not registered by the Registrar of Societies, would render them without legal force, is the next issue to be examined. The question, which this issue postulates, is no longer *res integra* in view of **Managing Committee, Khalsa Middle School and another v. Mohinder Kaur (Smt) and another, 1993 Supp (4) SCC 26.** In **Khalsa Middle School** *(supra)*, it has been held by the Supreme Court:

"10. Apart from the requirement contained in Section 12-A for registration of the change of name of a society with the Registrar, there is no requirement in the Societies Registration Act which requires registration of any amendment in the Memorandum of Association or the Rules and Regulations of a society to be registered with the Registrar. Even in the Companies Act, 1956 a distinction is made in the matter of alteration of the Memorandum of Association and alteration of the Articles of Association. Under Section 18 of the Companies Act, it is necessary that the alteration of Memorandum of Association be registered with the Registrar of Companies within the prescribed period and the alteration takes effect from the date of its registration and under Section 19(1), it is provided that the alteration shall have effect only if it has been duly registered in accordance with the provisions of Section 18. There is no such requirement with regard to registration of the alteration in the Articles of Association of the company. Here we are concerned with the amendment in the Rules and Regulations of the Society. In the absence of any requirement in the Societies Registration Act that the alteration in the Rules and Regulations must be registered with the Registrar, it cannot be held that registration of the amendment is a condition precedent for such an alteration to come into effect. ... ."

28. There is nothing brought to the notice of the Court about any statutory change in the State of Uttar Pradesh to Sections 12A to 12D or elsewhere, that may have the effect of altering the statutory basis in the context whereof the Supreme Court laid down the above noted principle in **Khalsa Middle School**. The inevitable consequence is that there is no requirement whatsoever for the Registrar to register a change to the bylaws of the Society or its rules or regulations by whatever name called. Also, the absence of registration of any amendment to the bylaws of a Society, made by its managing body would not deprive the amended bylaws of their legal efficacy and force. We, therefore, have to conclude that the bylaws dated 27.11.1990, notwithstanding non-registration by the Registrar, Firms, Societies and Chits, would still have legal force and bind parties as well as Authorities obliged to act under the amended bylaws.

29. When the Institute was effaced out of existence and born as a University upon incorporation under the Act of 2016, the bylaws in force in the Institute, relating to classification of members of the staff, were those made on 27.11.1990, which classified

Physical Training Instructor under bylaw 2(b) vii) under the category of academic staff.

30. Section 46(1) of the Act of 2016 provides:

"46. (1) The First Ordinances of the University shall be made by the Executive Council, and so long as the First Ordinances are not made, the Rules, Memorandum, Leave Regulations Conduct Rules and Bye Laws of Harcourt Butler Technological Institute (Kanpur) Society shall be in force before the commencement of this Act. The students rules shall be same as those mentioned in Information Brochure of the preceding Academic Session just before the commencement the Act in the absence of First Ordinances."

31. At the same time, Section 3(5) of the Act of 2016 says:

"3. Incorporation of the University. -

(5) Every person employed by Harcourt Butler Technological Institute, Kanpur, immediately before the commencement of this Act, shall hold his office or service in the University, except to Director, the Deputy Director, the Registrar, the Deputy Registrar and the Assistant Registrar, on the same terms and conditions, notwithstanding anything to the contrary contained in any other provisions of this Act and unless changed, including leave, pension, gratuity, provident fund etc. and other matters, as he would have held by him before the commencement of this Act, shall continue to hold as such unless and until his employment is terminated or he opts for the University's terms and conditions of employment;"

32. A conjoint read of bylaws 2. (b) vii) of the bylaws of 1990 made by the Institute, together with Sections 46(1) and 3(5) of the Act of 2016, would lead to the inevitable conclusion that so long as the First Ordinances of the University are not made, the rules, memorandum and bylaws of the Institute, as in force before the commencement of the Act of 2016, shall continue to remain in force in the University. As far as an employee appointed to the Institute, immediately before the commencement of the Act of 2016 is concerned, he will hold office or service in the University on the same terms and conditions as he would have held before commencement of the Act, notwithstanding anything to the contrary contained in any other provision of the Act of 2016. There are, thus, two distinct propositions that emerge from a conjoint reading of the bylaws and the two provisions of the Act of 2016. The first is about the conditions of service of persons in the University, who were employed before incorporation of the Institute into the University under the Act of 2016, and, the other, is about persons, who were employed in the University after its incorporation. We need not go into the question as to what would be the effect of the bylaws relating to service as regards persons who were employed by the University after its incorporation for that does not arise on the facts here.

33. So far as persons employed by the Institute before incorporation thereof as a University under the Act of 2016 are concerned, the provisions of Section 3(5) of the Act of 2016 are unambiguous. The terms and conditions of service for persons employed in the Institute after incorporation into the University would remain unchanged and they would hold

their post on the same terms and conditions as applicable prior to incorporation. The terms and conditions of service of employees of the Institute, who have subsequently become employees of the University, are insulated from any change to their conditions of service, provided under the Act of 2016, by a non obstante clause occurring in Section 46(1). Thus, for employees of the Institute, who have come into harness of the University upon the Institute's incorporation under the Act of 2016, the bylaws governing their terms and conditions are unaffected by any provision of the Act, providing to the contrary. The bylaws governing their terms and conditions of service are immutable.

34. Since the petitioner, under the amended bylaws of 1990, held a post that was classified as academic, the provisions to the contrary in the Act would not affect the petitioner's status. It is no doubt true that under Section 2(20) of the Act of 2016, a teacher is defined as follows:

"2. Definitions. *- In this Act, unless the context otherwise requires,-*

(20) "Teacher" means a Professor, Associate Professor or Assistant Professor working in the University;"

35. The said definition would not certainly include a Physical Training Instructor, but, as already remarked, the petitioner's position as a member of the academic staff and a fortiori a teacher in the University, cannot be questioned because for him being under bylaw 2. (b) vii), classed as a member of the academic staff along with professors, associate professors, assistant professors, lecturers etc. To the above extent, the definition of a teacher under Section 2 (20) of the Act of 2016 would have to yield to the non obstante clause under Section 46(1) of the said Act.

36. There is no doubt, a very persuasive submission made by Mr. Girijesh Kumar Tripathi, learned Additional Chief Standing Counsel on behalf of the State, when he says that there are no lectures or teaching activity, or teaching assignments given to a Physical Training Instructor in the University, which does not run a course in Bachelor of Physical Education (BPEd) or Master of Physical Education (MPEd). He submits that the University is an all out technical University, which teaches engineering alone to their students, leading to degrees in engineering; not physical education. The argument though attractive, a little more than on the first blush, but, regrettably, cannot be accepted.

37. Physical education may not be a subject, which is of the essence of a degree in engineering of any grade, which the University confers after a candidate has successfully pursued his course of study, but it is nevertheless a part of the academic curriculum. Education is not acquisition of proficiency in a particular subject, but a process which leads to realization of the individual's personality. It is a multifaceted process; not a commando target to be hit and won. In paragraph No.43 of connected Writ-A No.14778 of 2019, the petitioner has pleaded specifically the nature and particulars of his duties. Paragraph No.43 of Writ-A No.14778 of 2019 reads:

"43. That petitioner respectfully submits that the duties and functions assigned to him are akin to the duties of the teaching staff in the institution he has multifarious duties some of which are as under:-

A) To arrange games and sports daily in the evening for the students.

B) To look after the procurement of sports materials and maintenance of the sports grounds.

C) To arrange inter branch and Inter collegiate tournaments.

D) To accompany the students teams of Inter University/Inter Club/ District Level Tournaments

E) To teach the students about the rules of various games and sports

F) To teach the students various skills technique and tactics of these games apart from the rules applicable to these games.

G) Conduct Induction programme (As per AICTE Mandate) of new entrant of institutions/ Universities. The programme is compulsory for (Improving Student learning (1.1.2.1) for first year B.Tech in sports classes of 1.30 hours daily and compulsory for all 1st Year B.Tech Students.

H) Award General Proficiency marks to students on the basis of evaluation in sports and related games and activity which is mentioned in every B.Tech Student mark sheet in term of G.P. Marks in support of above said contention petitioner is herewith attaching correspondents between him and University authority whereby he is being asked to provide G.P. Marks this correspondence is dated 4.6.2018, 21.06.2018, 11.12.2018 and 2.1.2019 which all are jointly being attached herewith and marked as ***Annexure No.27*** *to this petition."*

38. A letter dated 02.01.2019, annexed to the aforesaid writ petition as Annexure No.27, shows that the petitioner evaluates students of the B.Tech. and MCA courses of the University for general proficiency under student activities, awarding them marks, which are claimed to be in partial fulfillment of their courses leading to a degree. The letter dated 02.01.2019, addressed by the petitioner to the Dean Student's Welfare of the University, reads:

"University Students Activity Council

Harcourt Butler Technical University

Kanpur-203002

Ref. No. 869/USAC/2019

Date: 02/01/2019

Dean Students' Welfare
H.B.T.U., Kanpur

In partial fulfilment of Academic Programmes (B.Tech. & MCA) of our university, the evaluation of general proficiency marks under student activities is attached herewith in compliance to your letter no. 72/अ 0 छा 0 क 0/2018 dated 11/12/2018.

The award of these marks are based on student participation/performance in Inter University/ University/ Club/ Inter Branch level competition, through out odd semester 2018-19.

Sd./- illegible

02/01/18

(Dr. Vikas Yadav) Physical Instructor

Enclosure: General proficiency marks list of students (odd semester 2018-19"

39. No counter has been filed by the respondents in the connected writ petition, controverting the allegations in paragraph No.43 or the contents of the letter carried in Annexure No.27 to the connected writ petition. In the various affidavits filed in the present writ petition also, the nature of duties, that fall on the petitioner's shoulder, have not been enumerated much less to show that these are absolutely non-academic and do not contribute towards the students' education, who are otherwise pursuing courses in engineering. It would be apposite to refer here to **P.S. Ramamohana Rao v. A.P. Agricultural University and another, (1997) 8 SCC 350,** where the definition of a teacher fell for consideration of the Supreme Court in the context if a Physical Education Director in the Andhra Pradesh Agricultural University was a teacher within the meaning of Section 2(n) of the Andhra Pradesh Agricultural University Act, 1963. The question arose in the context of a cause, where the writ petitioner, who was a Physical Education Director, claimed that he was entitled to continue in service till the age of 60 years, the prescribed age of superannuation for teachers, but was being wrongfully made to retire at the age of 58 years, treating him as an officer of the non-teaching staff. No doubt, in P.S. Ramamohana Rao (supra), the definition of a teacher under Section 2(n) of the Andhra Pradesh Agricultural University Act, 1963 was wide like many other statutes and noticed by their Lordships in paragraph No.5 of the report, in the following words:

"5. For the purpose of deciding the above issue arising between the parties, it is necessary to refer to the relevant provisions of the Act and the Regulations. Clause (n) of Section 2 defines 'teacher' as follows:

"2. (n) 'teacher' includes a professor, reader, lecturer or other person appointed or recognised by the University for the purpose of imparting instruction or conducting and guiding research or extension programmes, and any person declared by the statutes to be a teacher;

The definition does not say what the word 'teacher' means but includes certain categories within the meaning of the said word."

40. In P.S. Ramamohana Rao, it was held by the Supreme Court:

***"8.** Neither the Act nor the rules and regulations specify the duties and functions of a Physical Director. We have, therefore, to go by the material available in the affidavits filed by the parties to decide that question. In the additional counter-affidavit filed on behalf of the University in the High Court, it is stated in para 7 as follows:*

"I further submit that the duties of the Physical Directors in this University, in brief, are as follows:

(a) to arrange games and sports daily in the evenings for the students,

(b) to look after the procurement of sports material and the maintenance of the sports grounds,

(c) to arrange inter-class and inter-collegiate tournaments,

(d) to accompany the student teams for the inter-university tournaments,

(e) to guide the students about the rules of the various games and sports."

9. *From the aforesaid affidavit, it is clear that a Physical Director has multifarious duties. He not only arranges games and sports for the students every evening and looks after the procurement of sports material and the maintenance of the grounds but also arranges inter-class and inter-college tournaments and accompanies the students' team when they go for the inter-university tournaments. For that purpose it is one of his important duties to guide them about the rules of the various games and sports. It is well known that different games and sports have different rules and practices and unless the students are guided about the said rules and practices they will not be able to play the games and participate in the sports in a proper manner. Further, in our view, it is inherent in the duties of a Physical Director that he imparts to the students various skills and techniques of these games and sports. There are a large number of indoor and outdoor games in which the students have to be trained. Therefore, he has to teach them several skills and techniques of these games apart from the rules applicable to these games.*

10. *Having regard to the abovesaid material before us, we are clearly of the view that the appellant comes within the definition of a teacher in sub-clause (n) of Section 2 of the Act.*

17. *In our view, the learned Judges did not go into the meaning of the word 'teacher' in the main part of the clause nor assessed correctly the effect of the material evidence on record. The learned Judges observed that assuming Physical Directors imparted instructions to their students, unless the University recognised them as teachers they could not claim the benefit of Section 2(n) of the Act. Obviously the learned Judges were referring to the last part of Section 2(n) which includes persons other than those enumerated in the inclusive part if so recognised by the University. As we have held that the Physical Directors come within the main part of the definition of 'teacher', it is in our opinion not necessary that they should be separately recognised as teachers by an order or statute of the University.*

18. *In the additional affidavit of the University, referred to earlier, it is no doubt contended that a semester course in the University means a unit of instruction and devotes a segment of the subject-matter to be covered in a semester. Under such a system a person has to get a specific number of credits. A credit hour "means one hour lecture or two to three hours of laboratory or fieldwork" in practicals. It is contended that the student undergoes a course of study leading to various undergraduate programmes in the University and has to pass courses and complete the minimum number of credit hours prescribed therefor from time to time. So far the games and sports are concerned, it is contended, that there is no weightage of credit hours and there are also no theoretical and practical courses prescribed for the students. It is contended that for the said reasons Physical Directors cannot be treated as teachers.*

19. *We are unable to agree. It may be that the Physical Director gives his guidance or teaching to the students only in the evenings after the regular classes are over. It may also be that the University has not prescribed in writing any theoretical and practical classes for the students so far as physical education is concerned. But as pointed by us earlier, among various duties*

of the Physical Director, expressly or otherwise, are included the duty to teach the skills of various games as well as their rules and practices. The said duties bring him clearly within the main part of the definition as a 'teacher'. We, therefore, do not accept the contention raised in the additional counter-affidavit of the University."

41. It is true that there is much difference in the wide definition of a teacher under the Andhra Pradesh Statute, which is an inclusive definition and the exclusive definition of a teacher under the Act of 2016, which limits it to Professors, Associate Professors and Assistant Professors, and nothing more. But, we cannot ignore the non obstante clause in Section 3(5) of the Act of 2016, which gives overriding effect in case of persons employed with the Institute immediately before the commencement of the Act, to their right to hold office in the University, amongst other matters, on the same terms (of service) as they were holding with the Institute before the commencement of the Act. The terms of service can be changed if such an employee opts for the University's terms and conditions of employment. Since under bylaw 2. (b) vii), a Physical Training Instructor in the Institute, at the time of its incorporation as a University under the Act, was the holder of an academic post, placed in the cadre of teachers in the Institute, it is difficult to ignore the petitioner's status as a member of the academic staff and a teacher, going by an isolated reading of the definition in Section 2(20) of the Act of 2016. The definition in Section 2(20) has to be harmoniously read together with bylaw 2. (b) vii) of the bylaws of the Institute, bearing in mind the provisions of Section 3(5) of the Act of 2016. The petitioner, therefore, has to be regarded a member of the academic staff and a fortiori a teacher.

42. It may be added here that in view of the principles in **P.S. Ramamohana Rao,** notwithstanding the wider definition of a teacher under the statute, that fell for consideration before their Lordships of the Supreme Court, the general principle, unmistakably discernible, is that a functionary, who imparts physical education and instruction to students, can well be regarded a teacher, unless that inference is forbidden by the law. On the existing law, as we have noticed, far from being forbidden for Physical Education Instructors, who joined service of the Institute and then became employees of the University, it is a logical consequence of the principle about protection of terms and conditions of service with the Institute by virtue of Section 3(5) of the Act of 2016.

43. This takes us to the last submission advanced by Mr. Girijesh Kumar Tripathi. And, that is about the change of a Physical Training Instructor from a non-teaching and non-academic member of the staff to a teacher under the amended bylaws of 1990 by the Institute without prior approval being secured from the State Government, which is said to be mandatory for such a change. No provision of the law or principle has been shown to us, which obliged the Society governing the Institute to secure prior approval of the State Government to bring about that change in the bylaws. Rather, we have already held that a change to the bylaws, re-classifying the post of a Physical Training Instructor from a non-teaching or technical post to an academic post and including it in the cadre of teachers, did not require registration of the amended bylaws by the Registrar,

Firms, Societies and Chits in view of the law down in **Khalsa Middle School.**

44. There is also no material shown to us that back in the year 1990, when the bylaws of the Society were amended, re-classifying the post of Physical Training Instructor as an academic post, including it in the cadre of teachers, there was any objection or frown by the State Government to the change. Nevertheless, it is pointed out by Mr. Girijesh Kumar Tripathi that the petitionerâ€™s pay all along has been disbursed, treating him to be the holder of a non-teaching post. This makes some difference for the petitioner, but only to the extent of abridgment of his rights to be paid as a teacher. Since, he was part of the cadre of teachers under the amended bylaws of the year 1990, he was entitled to salary as a teacher and not as a non-teaching and non-academic member of the staff. When he joined service in the year 2006, he was a teacher at the inception under the bylaws, but going by the terms of the advertisement, as it seems, and the appointment letter, he accepted the salary of a member of the non-teaching staff without demur. He did not raise objection that his letter of appointment or the advertisement, pursuant to which he was recruited, was contrary to the bylaws of the Society governing the Institute, which would prevail. He ought have asserted his right then and claim both his status and emoluments. He did not do that.

45. The earliest that this issue arose was at a time when the Director of the Institute *vide* his letter dated 27.05.2015, close in point of time to the incorporation of the Institute as a University, asked for the petitioner's re-designation as an Assistant Director, Physical Education and Games. In response, the Government objected and disapproved. The disapproval came on 09.07.2015, when a Joint Secretary to the Government in the Department of Technical Education declined to re-designate the petitioner, like a government servant as a Lecturer, Physical Education.

46. We think that the Government and the petitioner were both at fault — the petitioner in not claiming his rightful status, including emoluments, that a member of the teaching staff of the Institute was entitled to when appointed, and the Government in not taking cognizance of the amended bylaws of the Society governing the Institute, an aided institution, that classified a Physical Training Instructor as a teacher way back in the year 1990. The issue should have been taken note of by the Government at that stage and appropriate measures taken, settling the controversy either way. Now, that the Institute has graduated into a University under a statute incorporating it, Section 3(5) of the Act of 2016 read with bylaw 2(b) vii) of the bylaws of the Institute, would bind the Government into regarding the petitioner a teacher.

47. At the same time, the petitioner having never claimed the emoluments of a teacher, there is clearly an acquiescence on his part in asserting his status and entitlement to be regarded as one under the bylaws while still in the employ of the Institute before its incorporation. It would, therefore, be rather inequitable to straightaway extend the benefit of Section 3(5) of the Act of 2016, read with bylaw 2(b) vii) of the bylaws of the erstwhile Society, governing the Institute, for the purpose of granting the petitioner all financial and other benefits of a teacher that he himself did not claim. But, what cannot

be denied to the petitioner is the status of a teacher and consideration of his case as such under the CAS, which is a direct consequence of Section 3(5) of the Act of 2016 read with bylaw 2(b) vii) of the bylaws.

48. More than anything else, since the petitioner has all along been treated as a member of the non-teaching and non-academic staff, it would be necessary for the State Government to re-classify the petitionerâ€™s post as a teaching post in order to extend to him the benefit of the CAS. We make it clear that we have not at all pronounced about the rights of employees, who were appointed after incorporation of the Institute into the University under the Act of 2016. Not speaking about the rights of employees, who were appointed after incorporation of the Institute into the University under the Act of 2016, the petitioner, who has since long been included under the amended bylaws of 1990 in the academic staff and grouped along with other teachers of the Institute vide bylaw 2. (b) vii) of the bylaws, must be regarded as a teacher in view of all that we have said about his rights, upon transition of harness from the Institute to the University.

49. In the result, Writ-A No.6849 of 2022 succeeds and is **allowed**. The impugned order dated 19.04.2022 passed by the Vice Chancellor of the University, to the extent it declines to call the petitioner for interview under the CAS is **quashed**. A *mandamus* is issued to the University as well as the State Government to extend the benefit of the CAS to the petitioner, treating him as a member of the academic staff and a teacher of the University, after re-classifying his post in such manner as under the Rules might be appropriate. The re-classification will not entitle the petitioner to claim any higher emoluments or financial benefits for his past services, either with the Institute or the University.

50. In view of the orders made in the leading writ petition, no orders are required to be made in connected Writ-A No.14778 of 2019, which stands consigned to record.

51. There shall be no order as to costs.

52. Let a copy of this judgment be communicated to the Principal Secretary, Technical Education, Government of U.P., Lucknow, the Vice Chancellor and the Registrar of the Harcourt Butler Technical University, Kanpur by the Registrar (Compliance).

(2025) 7 ILRA 406
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 15.07.2025

BEFORE

THE HON'BLE AJIT KUMAR, J.

Writ A No. 7430 of 2025

Babita @ Babita Chandra ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Braj Mohan Singh

Counsel for the Respondents:
C.S.C.

ISSUE FOR CONSIDERATION

Whether petitioner, having applied for direct recruitment to the post of *Mukhya Sevika* issued by the U.P. Subordinate Services Selection Commission, could challenge the selection process by invoking Rule 4(2) of the U.P. Child Development and Nutrition (Subordinate) Service Rules, 1992, meant for promotion from amongst Anganbari Workers possessing High School qualification and ten years' service.

HEADNOTE

U.P. Child Development and Nutrition (Subordinate) Service Rules, 1992 - Rr. 4(2), 17 & 18 - Recruitment on the post of Mukhya Sewika - Direct recruitment and promotion - Distinction - Challenge to direct recruitment by candidate who applied thereunder - Estoppel against challenge.

Held : In the present case, vacancies falling in the fifty per cent direct recruitment quota were advertised for direct recruitment to the post of Mukhya Sevika. it being a case of direct recruitment through examination by Commission as contemplated under Rule 17 of the Rules, it cannot be be confused with recruitment through Departmental Selection Committee as contemplated under Rule 18. Rule 17 lays down the procedure for direct recruitment through the Commission on the basis of Competitive examination and interview, whereas Rule 18 provides for the procedure for recruitment by promotion through the Selection Committee. Petitioner having applied against vacancy so advertised could not have questioned the qualification prescribed under the advertisement for she herself had submitted to the advertisement by moving application as per qualification mentioned therein. Petitioner cannot be permitted to take plea that selection process is de hors the procedure as 10 years' experience on the post of Anganbari Worker which is prescribed under Rule 4(2) has not been taken into consideration. Petition dismissed. [Paras 12–15] (E-5)

CASE LAW CITED

List of Acts

The U.P. Child Development and Nutrition (Subordinate) Service Rules, 1992; Constitution of India, Article 226

List of Keywords

Recruitment — Direct recruitment — Promotion — Anganbari Worker — Mukhya Sevika — Qualification — Advertisement — Rule 4(2) — Rule 17 — Departmental Selection Committee — Commission — Estoppel — *De hors* procedure — Challenge to qualification.

CASE ARISING FROM

Writ petition under Article 226 of the Constitution seeking to set aside the entire selection process undertaken by the U.P. Subordinate Services Selection Commission pursuant to Advertisement No. 5-Examination/2022 dated 4 July 2022 for recruitment to the post of Mukhya Sevika.

Appearances for Parties

Advs. For Petitioner: Sri Braj Mohan Singh

Advs. **For Respondents:** Sri M.C. Chaturvedi, learned Additional Advocate General, assisted by Sri Gaurav Singh, Standing Counsel

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

1.Instructions filed today are taken on record.

2.Heard Sri Braj Mohan Singh, learned counsel for the petitioner and Sri M.C.Chaturvedi, learned Additional Advocate General assisted by Sri Gaurav Singh, learned Standing Counsel appearing for the State respondents.

3.By means of present petition filed under Article 226 of the Constitution, petitioner has prayed for a writ of certiorari

to set aside the entire selection process undertaken by respondent Commission pursuant to Advertisement no. 5-Examination/ 2022 dated 4th July, 2022.

4.The argument advanced by learned counsel for the petitioner is that list of selection pursuant to the selection held is in total *de hors* the procedure laid down in Rule 5(4)(2) of the U.P. Child Development and Nutrition (Subordinate) Service Rules, 1992 (For short Rules, 1992) on the post of Mukhya Sewika so advertised.

5.Learned counsel for the petitioner has taken the Court to the relevant rule 4(2) of the relevant rules that provides for 50 per cent of the recruitment on the post of Angarnbari Worker to be made through Selection Committee in accordance with Rule 15 B of Rules from amongst Anganwari Worker who are having high school certificate or equivalent examination certificate and have 10 years of continuous service as such and have attained the age of 45 years as on first day of the year of recruitment. It is further contended that since petitioner has discharged her duties as Anganbari Worker since 2007, her candidature ought to have been considered under said Rule 4(2) and hence any select list if prepared ignoring experience of Anganbari Worker, then selection would be bad and would be liable to be set aside.

6.*Per contra*, learned Additional Advocate General has argued that Rule 1992 that have been cited before the Court provided two mode of selection one by way of direct recruitment and the order by way of promotion through Selection Committee which is apparent from Rule 4(1) and Rule 4(2) itself. He has further taken the Court to the Rule 8 of the Rules that provide for academic qualification and submits that for the post of Mukhya Sewika, the essential qualification is bachelor's degree in Arts, Sociology, Social Science or Home Science as one of the subjects or Nutrition and Child Development or a degree recognized by Government as equivalent thereto. He submits that for promotion, as provided, qualification is only high school or equivalent and 10 years experience as Anganbari Worker. According to him in the present case by advertising vacancies falling in 50 per cent direct recruitment quota vide advertisement no. 5 Examination/2022 applications for direct recruitment have been invited and the academic qualifications prescribed was graduate degree recognized from a recognized University in the subject of Social Science or Social Worker or Home Science as one of the subjects or Nutrition and Chief Development or any degree recognized by Government as equivalent thereto.

7.He has taken the Court to Clause 6 of the advertisement that prescribe for academic qualification. He further submits that petitioner had applied for direct recruitment, and therefore, she could not have pressed into service Rule 4(2) to ask the Commission to count her experience as Anganbari Worker because such experience deserves to be counted when vacancy is sought to be filled up by way of promotion.

8.Meeting the above arguments, learned counsel for the petitioner sought to contend in rejoinder that all the posts of Anganbari Worker have been advertised instead of 50 per cent quota but upon query being put to him, he could not give any details or statistics in support of his

argument, nor could show anything from pleadings as supportive of his argument.

9.Having heard learned counsel for the respective parties and having perused the records, I find that Rule 1992 vide its Rule 4 provide for direct recruitment against 50 percent vacancies of Mukhya Sevika and provide 50 per cent recruitment by way of promotion through Selection Committee in accordance with Rules. Rule 4 of the said rules are reproduced hereunder:

"4. Mukhya Sevika- (1) Fifty per cent through the Selection Committee from amongst female candidates on the basis of competitive examination and interview.

(2) Fifty per cent by direct recruitment through the Selection Committee in accordance with Rule 15-B from amongst High School or equivalent examination pass. Anganwadi Workers who have competed ten years continuous service as such and have not attained the age of more than forty five years on the first day of the year of recruitment."

10.Rule 15 provides procedure for direct recruitment through Departmental Selection Committee. Rules 15 is reproduced hereunder in its entirety:

"15. Procedure for direct recruitment through the Departmental Selection Committee. (1) For the purpose of direct recruitment there shall be constituted a Departmental Selection Committee comprising:

(a) Appointing authority, or

(b) An officer belonging to Scheduled Castes or Scheduled Tribes, nominated by the District Magistrate if the appointing authority does not belong to Scheduled Castes or Scheduled Tribes: If the appointing authority belongs to Scheduled Castes or Scheduled Tribes an officer other than belonging to Scheduled Caste or Scheduled Tribe, to be nominated by the District Magistrate.

(c) Two officers nominated by the appointing authority, one of whom shall be an officer belonging to minority community and the other one to the backward caste. If such suitable officers are not available in his department such suitable officers shall on the request of the appointing authority, by nominated by District Magistrate and on his failure to do so, by reason of non-availability of suitable officers, such officers shall be nominated by the Divisional Commissioner.

(2) The Departmental Selection Committee shall scrutinize the applications and having regard to the need for securing due representation of the candidates belonging to Scheduled Castes, Scheduled Tribes and other categories under rule 6, call for interview such number such number of candidates, who fulfil the requisite qualifications, as it considers proper.

(3) The Departmental Selection Committee shall prepare a proficiency list of candidates in order of merit as disclosed by the marks obtained in the interview. If two or more candidates obtain equal marks, the Selection Committee arrange their names in order of merit on the basis of their general suitability for the post. The number of the names in the list shall be larger (but not larger by more than 25 per cent) than the number of vacancies the Departmental Selection Committee shall forward the list to the appointing authority."

11.Then I find Rules 16 provides for direct recruitment thorough Commission on

the basis of competitive examination and Rule 17 lays down the same procedure: Rules 16 and 17 are reproduced hereunder:

"16. Procedure for direct recruitment through the Commission on the basis of Competitive examination. (1) Applications for permission to appear in the competitive examination shall be invited by the Commission in the Prescribed pro forma published in the advertisement issued by them.

(2) No candidate shall be admitted to the examination unless he holds a certificate of admission, issued by the Commission.

(3) After the results of the written examination have been received and tabulated the Commission shall, having regard to need for securing due representation of the candidates belonging to the Scheduled Castes, Scheduled Tribes and other categories mentioned in rule 6, prepare a list of candidates who have come up to the standard fixed by the Commission in this respect.

(4) The Commission shall prepare a list of candidates in order of their proficiency as disclosed by the marks obtained by each candidate at the written examination and recommend such number of candidates as they consider fir for appointment. If two or more candidates obtain equal marks in the written examination, the names of the candidates will be arranged viewing their general suitability. vacancies. The commission shall forward the list to the appointing authority.

17. Procedure for direct recruitment through the Commission on the basis of Competitive examination and interview.-- (1) Applications for permission to appear in the competitive examination shall be invited by the Commission in the prescribed Pro forma published in the advertisement issued by the Commission.

by more than 25 per cent) than the number of

(2) No candidate shall be admitted to the examination unless he holds admit card issued by the Commission.

(3) After the results of the written examination have been received and tabulated. The Commission shall having regard to the need for securing during representation of the candidates belonging to the Scheduled Castes, Scheduled Tribes and other categories under rule 6, summon for interview such number of candidates as, on the result of the written examination have come up to the standard fixed by the Commission in this respect. The marks awarded to each candidate at the interview shall be added to the marks obtained by him in the written examination.

(4) The Commission shall prepare a list of candidate in order of their proficiency as disclosed by the aggregate of marks obtained by each candidates in order of their proficiency as disclosed by the aggregate of marks obtained by each candidate at the written examination and interview and recommend such number of candidates as they consider fit for appointment. If two or more candidates obtain equal marks in the aggregate, the name of the candidate obtaining higher marks in the written examinatio.. shall be placed higher in the list. The number of names in the list shall be larger (but not larger by more than 25 per cent) than the

number of vacancies. The Commission shall forward the list to the appointing authority."

12.Rules 18 provides for recruitment through Selection Committee, which runs as under:

"18. Procedure for recruitment by promotion through the Selection Committee. (1) Recruitment by promotion shall be made on the basis of seniority subject to the rejection of unfit through the Selection Committee to be consisted in accordance with the provisions of the Uttar Pradesh Constitution of Departmental Promotion Committee (for posts outside the purview of the Public Service Commission) Rules. 1992

(2) The appointing authority shall prepare eligibility lists of the candidates in accordance with the Uttar Pradesh Promotion by Selection (on posts outside the purview of the Public Service Commission) Eligibility List rules, 1986, and place the same before the Selection Committee along with their character rolls and such other record, pertaining to them, as may be considered proper.

(3) The selection committee shall consider the cases of candidate on the basis of the records, referred to in sub-rule (2), and. if it considers necessary. it may interview the candidate also.

(4) The selection Committee shall prepare a list of selected candidates arranged in order of seniority as it stood in the cadre from which they are to be promoted and forward the same to the appointing authority."

13.Rule 20 also provides that appointment, both in matter of direct recruitment and through promotion:

"20. Appointment. (1) Subject to the provisions of sub-rule(2) the appointing authority shall make appointment by taking the names of candidates in the order in which they stand in the lists prepared under rules 15, 16, 17, 18 or 19 as the case may be.

(2) Where, in any year of recruitment appointments are to be made both by direct recruitment and by promotion regular appointment shall not be made unless selections are made from both the sources and a combined list is prepared in accordance with rule 19.

(3) If more than one order of appointment are issued in respect of any one selection a combined order shall also be issued mentioning the names of persons in order of seniority as determined in the selection or as the case may be as it stood in the cadre from which they are promoted if the appointments are made both by direct recruitment and by promotion names shall be arranged in accordance with the cyclic order referred to in rule 19."

14.In order to appreciate the arguments advanced by learned counsel appearing for the petitioner, it is necessary to appreciate various provisions contained under Part-III of the Rules that provide for recruitment on different posts either by inviting applications from open market through Commission on the basis of competitive examination or by promotion through Selection Committee or even by Departmental Selection committee through open interview.

Rule 5 of the part-III of recruitment as prescribed under Rules are reproduced hereunder:

PART III-RECRUITMENT

5. Source of recruitment.—*Recruitment to the various categories of posts in the service shall be made from the following sources :*

1. Field Reporter—*(1) 50 per cent by direct recruitment through the Commission on the basis of competitive examination and interview.*

(2) 50 per cent by promotion through the Selection Committee from amongst substantively appointed Social Worker, Instructors who have completed eight years service, as such, on the first day of the year of recruitmert.

2. Nutritionist.—*(1) 50 per cent by direct recruitment through the Commission on the basis of competitive examination and interview.*

(2) 50 per cent by promotion through the Selection Committee from amongst substantively appointed Health Instructors who have completed eight years service, as such on the first day of the year of recruitment.

3. Law Assistant*.-By direct recruitment through the Commission on the basis of competitive examination.*

4. Mukhya Sevika.—*(1) Fifty per cent through the Selection Committee from amongst female candidates on the basis of competitive examination and interview.*

(2) Fifty per cent by direct recruitment through the Selection Committee in accordance with Rule 15-B from amongst High School or equivalent examination pass, Anganwadi Workers who have completed ten years continuous service as such and have not attained the age of more than forty five years on the first day of the year of recruitment.

Rule 5(4)-*Mukhya Sevika-Advertisement in the order 1995--Amendment in 1996 and 1998 will not apply--Selection is valid. Munni Pal...k (Sm.) and others Vs. Director Mahila and Bal Vikash Vabhag, U.P. Lucknow and others (1999) 2 U.P.L.B.E.C. 1275*

NOTES. *Only women candidates shall be eligible for appointment to the post of Mukhya Sevika:*

5. Social Work Instructor. *—By direct recruitment through the Commission on the basis of competitive examination and interview.*

6. Health Instructor. *—By direct recruitment through the Commission on the basis of competitive examination and interview.*

7. Pre-School Instructor.—*-By direct recruitment through the Commission on the basis of competitive examination and interview.*

STATISTICAL WING

8. Statistical Assistant.—*By promotion through the Selection Committee from amongst substantively appointed investigators-cum-Computers who have*

completed seven years service, as such, on the first day of the year of recruitment.

9. Investigator-cum-Computer.— *By direct recruitment through the Commission on the basis of Competitive Examination.*

AUDIT WING

10.Senior Auditor-*By promotion through the Selection Committee from amongst substantively appointed auditors, who have completed seven years service, as such, on the first day of the year of recruitment.*

11. Auditor.*—By direct recruitment through the Commission on the basis of competitive examination and interview.*

ACCOUNT WING

12. Assistant Accountant. (Headquarters).*—(1) 50 per cent by direct recruitment through the Departmental Selection Committee on the basis of interview.*

(2) 50 per cent by promotion through the Selection Committee from amongst substantively appointed Accounts Clerks who have completed seven years service, as such on the first day of the year of recruitment.

13. Accounts Clerk.*—By promotion through the Selection Committee from: amongst substantively appointed Junior Accounts Clerk who have completed seven years service, as such on the first day of the year of recruitment.*

14 Junior Accounts Clerk.- *By direct recruitment through the Departmental Selection Committee on the basis of the interview.*

15.Upon reading of the aforesaid provisions, it clearly transpires that in the matter of Field Reporter, 50 percent posts are to be filled up by direct recruitment through Commission on the basis of competitive examination and interview whereas appointments on 50 percent posts are to be made by promotion through Departmental Selection Committee and so also in the case of Nutritionist and Mukhya Sevika , Assistant Accountant (Headquarters), whereas in the matter of Law Assistant, the vacancy is to be filled by direct recruitment through Commission on the basis of Competitive Examination and so also appointment on the post of Social Worker Instructor, Health Instructor Pre- School Instructor- Cum-Computer Operator.

16.In so far as post of Statistical Assistant, Senior Auditor, Accounts Clerk are concerned, appointments are to be made by promotion through Departmental Selection Committee whereas in the matter of Junior Accounts Clerk, the appointment has to be made by direct recruitment through Departmental Selection Committee on the basis of interview. This three modes of selection have been provided:

(i). direct recruitment through Commission on the basis of Competitive Examination and/or interview;

(ii). by way of promotion through Departmental Selection Committee on the basis of competitive examinations and/ or interview; and

(iii). through Departmental Selection Committee on the basis of interview.

17.In so far as Rule 15 is concerned as already produced above in this judgment, I find that this Departmental Promotion Committee is for direct recruitment which provides for scrutinising the application form in the first instance and then calling for interview [15 (2)] and thereafter it will prepare for proficiency list of candidates in order of merit merit to make recommendations to the appointing authority for the purposes of appointment [15(3)] the post of Junior Accounts Clerk and Mukhya Sevika [5(4) (14)] only provides for selection through interview to be conducted by Departmental Selection Committee, and therefore, in the matter of Mukhya Sevika, 50 precent post would be filled up from amongst Anganbari Workers through Selection Committee under Rule 15-B and not by way of competitive examination to be conducted by Commission. Admittedly in the present case, an advertisement has been issued by the Commission, hence Rule 16 and 17 would be attracted in the matter and not Rule 15-B.

18.It is worth noticing that vide Rule 4(2), the academic qualification for the purposes of promotion through selection is high school with 10 years' experience as Angabari Worker whereas Rule 8(4) for the post of Mukhya Sewika, the essential qualification is bachelors' degree. Rule 8 (4) is reproduced hereunder:

"4. Mukhya Sevika : Essential qualification- Must possess Bachelor's degree in Arts with Sociology or Social Work or Home Science as one of the subjects or Nutrition and Child India or degree recognize by the government as equivalent thereto."

19.Now when there are two modes of recruitment provided, it is required to be seen as to what mode of recruitment process was undertaken in the present case and whether petitioner has made out a case for consideration as per Rule 4(2). The advertisement was issued in the year 2022 vide Rule 5-Examination/2022, requiring candidates to apply online and prescribing academic qualification vide clause 6 is as under:

"6- अनिवार्य अर्हता **(**शैक्षिक**)-**

उपर्युक्त सारिणी-1 में उल्लिखित मुख्य सेविका के रिक्त पदों पर चयन के लिए अभ्यर्थी को निम्नलिखित अनिवार्य अर्हताएं (शैक्षिक व अन्य) आवेदन की अंतिम तिथि तक धारित करना अपरिहार्य है-

अनिवार्य अर्हता (शैक्षिक)- उत्तर प्रदेश बाल विकास सेवा एवं पुष्टाहार (अधीनस्थ) सेवा नियमावली, 1992 (यथोसंशोधित) के अनुसार अनिवार्य अर्हता निम्न प्रकार है-

अभ्यर्थी, भारत में विधि द्वारा स्थापित किसी विश्वविद्यालय से एक विषय के रूप में समाजशास्त्र या समाज कार्य या गृह विज्ञान या पोषण और बाल विकास के साथ कला में स्नातक उपाधि या सरकार द्वारा उसके समकक्ष मान्यता प्राप्त कोई उपाधि रखती हो।

अधिमानी अर्हता-

अन्य बातों के समान होने पर ऐसे अभ्यर्थी को सीधी भर्ती के मामले में अधिमान दिया जाएगा, जिसने-

(एक) ग्रामीण क्षेत्रों में बच्चों और महिलाओं में कल्याण कार्य करने का व्यावहारिक अनुभव हो।

(दो) प्रादेशिक सेना में न्यूनतम दो वर्ष की अवधि तक सेवा की हो, या

(तीन) राष्ट्रीय कैडेट कोर का बी प्रमाण-पत्र प्राप्त किया हो।"

(emphasis added)

20.Petitioner having applied against vacancy so advertised, in the first instance, could not have questioned the qualification prescribed under the advertisement for She

herself had submitted to the advertisement by moving application as per qualification mentioned therein and secondly, this being a case of direct recruitment through competent examination by Commission as contemplated under rule 17 of the Rules, it cannot be said to be confused with recruitment through Departmental Selection Committee as contemplated under Rule 18.

21.In view of above, therefore, petitioner cannot be permitted to take plea that selection process is *de hors* the procedure as 10 years experience on the post of Anganbari Worker which is prescribed under Rule 4(2) has not been taken into consideration.

22.Petition thus being devoid of merits, is accordingly dismissed.

(2025) 7 ILRA 415
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.07.2025
BEFORE
THE HON'BLE AJIT KUMAR, J.

Writ A No. 7443 of 2025

Aish Mohammad ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Shiv Sagar Singh

Counsel for the Respondents:
C.S.C.

ISSUE FOR CONSIDERATION

Whether a disciplinary proceedings qua charges that may invite major penalty, in the absence of oral inquiry is per se bad and, therefore, any consequential action pursuant thereto is liable to be held void ab initio.

HEADNOTE

Service Law - U.P. Government Servant (Discipline and Appeal) Rules, 1999 – Rule 7 – Disciplinary proceedings – Requirement of oral inquiry – Non-compliance – Charges related to the discharge of quasi judicial exercise of power of the petitioner as Consolidation Officer in the matter of objection being decided under Sections 9 and 12 of the U.P. Consolidation of Holdings Act, 1953 – No date for personal hearing or for inviting any departmental witness to be examined was fixed – Inquiry Officer held the petitioner guilty only on his own assessment of records.

Held: Authority was to consider and appreciate the documents available on record relating to the disposal of the proceedings and then the relevant departmental witnesses ought to have been examined – As per Rule 7, in the event the delinquent employee refuses to accept the charge and even if he does not submit or offer his explanation, the Inquiry Officer is still bound in law to hold an oral inquiry in terms of the examination of departmental witnesses – Oral inquiry is sine qua non in the matter of disciplinary proceedings if drawn against the delinquent employee for major penalty – Disciplinary proceedings in the absence of oral inquiry is per se bad and any consequential

action pursuant thereto is void ab initio – Impugned order dated 27th March, 2025 quashed – Respondent directed to appoint new Inquiry Officer within four weeks and the Inquiry Officer directed to hold oral inquiry – Writ petition allowed. [Paras 6, 7, 8, 9, 10, 12, 13, 14] (E-5)

CASE LAW CITED

Salahuddin Ansari v. State of U.P. & Others, (2008) 4 ADJ 58 ; *Kishor Kumar v. State of U.P. & Others*, Writ-A No. 10177 of 2019, decided on 9 October 2023; *Tata Chemicals Ltd. v. Commissioner of Customs*, (2015) 11 SCC 628 ; *Krishna Rai v. Banaras Hindu University*, (2022) 8 SCC 713 ; *Managing Director, ECIL, Hyderabad v. B. Karunakar*, (1993) 4 SCC 727

List of Acts

U.P. Government Servant (Discipline and Appeal) Rules, 1999, Rule 7; U.P. Consolidation of Holdings Act, 1953, Sections 9, 12

List of Keywords

Disciplinary proceedings; Oral inquiry; Quasi-judicial function; Major penalty; Void *ab initio*; Departmental witnesses; Consolidation Officer; Rule 7 compliance.

CASE ARISING FROM

Appearances for Parties

Advs. For Petitioner: Shri Shiv Sagar Singh,

Advs. For Respondents: Standing Counsel

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

1. Heard learned counsel for the parties and perused the records.

2. Learned Standing Counsel has placed before this Court the original records relating to the disciplinary proceedings drawn against the petitioner pursuant to the order dated 1st July, 2025 and before the Court opens the original records, learned Standing Counsel fairly concedes that no oral hearing was conducted in the matter of departmental inquiry/ domestic inquiry conducted by the inquiry officer.

3. Upon perusal of the records it transpires that petitioner was issued with a chargesheet on 6th December, 2022 inviting his explanation by the inquiry officer vide letter dated 25th March, 2023. Since petitioner did not submit any reply, therefore, departmental inquiry was proceeded with against him on the basis of records available and report was submitted on 6th October, 2023.

4. Upon perusal of the records I further find that on 31st October, 2022, Consolidation Commissioner appointed Deputy Director Consolidation, Basti as inquiry officer to conduct the domestic inquiry in terms of Rule 7 of the U.P. Government Servant (Discipline and Appeal) Rules, 1999 (herein after referred to as 'Rules, 1999'). Thereafter a letter was written as a reminder by the Deputy Director, Consolidation, Basti to Mr. Aish Mohammad, namely the petitioner, the then consolidation officer to submit his reply as more than four months have passed, failing which the Deputy Director Consolidation during this inquiry has proceeded *ex parte* and thereafter inquiry report got submitted on 6th October, 2023.

5. Upon perusal of the record it transpires that the Deputy Director Consolidation, Basti wrote a letter to the Settlement Officer, Maharajganj and as a consequence thereto it appears that Deputy Director Consolidation, Basti proceeded to conclude the inquiry and submit report on 6th October, 2023.

6. Upon perusal of the report dated 6th October, 2023 which is available on record

in original, I do not find there to be any reference of any letter fixing a date for personal hearing or inviting any departmental witness to be examined, before the inquiry officer proceeded to submit report bringing home the charge in respect of all the allegations and charges framed against the petitioner. I find that he has held petitioner guilty on the basis of his own assessment of records.

7. It is interesting to notice that the charges relate to the discharge of quasi judicial exercise of power of the petitioner and consolidation officer in the matter of objection being decided under Sections 9 and 12 the U.P. Consolidation of Holdings Act, 1953 and therefore, the authority was to consider and appreciate the documents available on record relating to the disposal of the proceedings and then the relevant departmental witnesses ought to have examined. For ready reference, Rule 7 of the Rules, 1999 is reproduced hereunder:

"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 as 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 charge-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 the witnesses proposed to prove the same alongwith 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 in- formed 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 which 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 refuse 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 pleases, at any time of any witness or from person charged with a view to dis- cover 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 in- spite 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, may, 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 Presenting Officer appointed by the disciplinary authority is a legal practitioner of the disciplinary authority having regard to the circumstances of the case so permits:

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 manner provided in these rules."

8. Upon a bare reading of the aforesaid rule it clearly transpires that in the event the delinquent employee refuses to accept the charge, in other words, denies the same and even if he does not submit or offer his explanation, the inquiry officer is still bound in law to hold an oral inquiry in terms of the examination of departmental witnesses. The chargesheet itself relies upon documents in the form of the report of Deputy Director Consolidation, Siddharth Nagar and also records relating to the proceedings concerned and, therefore, in the considered view of the Court, the Deputy Director Consolidation, Siddharth Nagar, who had submitted report ought to have examined and recorded the statement of the person on the basis report was submitted.

9. In the case of **Salahuddin Ansari v. State of U.P. & others, (2008) (4) ADJ 58,** the Court has very clearly held that oral inquiry is sine qua non in matter of disciplinary proceedings if drawn against the delinquent employee for major penalty. This Court in the case of Kishor Kumar v. State of U.P. and others (Writ - A No.- 10177 of 2019) decided on 9th October, 2023 has held vide paragraph 12 thus:

"12. In my above view, I find support in the division bench judgment of this Court in the case of Salahuddin Ansari vs. State of UP & ors; 2008 (4) ADJ 58, wherein the Bench has relied upon an earlier division bench judgment in the case of Subhash Chandra Sharma vs. Managing Director & anr, MANU/UP/0757/1999 in which it was held that imposition of penalty in the nature of major penalty without holding inquiry was bad. The said judgment came to be affirmed by Supreme Court in SLP as the SLP against the judgment stood dismissed on 16.08.2000. Citing the aforesaid judgment and another judgment of the Supreme Court in the case of State of UP & anr vs. T.P. Lal Srivastava; 1997 (1) LLJ 831, the Division Bench in the case of Salahuddin Ansari (supra) vide paragraphs 11, 13 and 14, held thus:

"11. A Division Bench of this Court in Subhash Chandra Sharma Vs. Managing Director & another, 2000 (1) U.P.L.B.E.C. 541, considering the question as to whether holding of an oral inquiry is necessary or not, held that if no oral inquiry is held, it amounts to denial of principles of natural justice to the delinquent employee. The aforesaid view was reiterated in Subhash Chandra Sharma Vs. U.P. Cooperative Spinning Mills & others, 2001 (2) UPLBEC 1475 and Laturi Singh Vs. U.P. Public Service Tribunal & others, Writ Petition No. 12939 of 2001, decided on 06.05.2005.

13. The aforesaid exposition of law makes it clear that the delinquent employee has a right to defend himself at different stages. When the charge sheet is served upon him, he has a right to submit his reply and in case he does not submit reply, that itself would not amount to admission of guilt or that the charge stand proved. If the allegations are serious and may result in major penalty, the disciplinary authority may appoint Inquiry Officer. Such Inquiry Officer, thereafter would have to fix a date for oral evidence. At this stage the delinquent employee has a right to participate in the oral inquiry, examine witnesses, if produced by the department, and after the evidence of the department is completed, the delinquent employee may produce evidence in his defence. During the course of oral inquiry, the delinquent employee has right to

participate at every stage and date and if there is any failure in participation on one or more occasions, the Inquiry Officer cannot deny him participation from the subsequent stage. The delinquent employee can participate at subsequent other stage also. The Inquiry Officer, after completion of oral inquiry, will submit its report after discussing the entire material and if any charge is proved, the disciplinary authority shall supply a copy of the inquiry report to the delinquent employee and he would again have a right to submit reply to the inquiry report.

14. Non holding of oral inquiry, therefore, is a serious flaw which vitiates the entire disciplinary proceeding including the order of punishment."

10. Thus a disciplinary proceedings qua charges that may invite major penalty, in the absence of oral inquiry is per se bad and, therefore, any consequential action pursuant thereto is liable to be held void ab initio. In other words, the Court holds that in the matters where the rule contemplates full fledged inquiry inclusive of oral inquiry even in the cases where the replies to the chargesheet have not been submitted it is imperative on the part of the inquiry officer to hold oral enquiry and, therefore, in the absence of oral enquiry, inquiry report if submitted, it deserves to be quashed and so also the resultant action. In the case of **Satyendra Singh v. State of U.P. and another, 2024 SCC OnLine SC 3325**, the Supreme Court vide paragraphs 13, 14, 15 and 16 has held thus:

"13. This Court in a catena of judgments has held that the recording of evidence in a disciplinary proceeding proposing charges of a major punishment is mandatory. Reference in this regard may be held to Roop Singh Negi v. Punjab National Bank (2009) 2 SCC 570 and Nirmala J. Jhala v. State of Gujarat (2013) 4 SCC 301.

14. In the case of Roop Singh Negi (supra), this Court held that mere production of documents is not enough, contents of documentary evidence have to be proved by examining witnesses. Relevant extract thereof reads as under:–

"14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in

stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

...

19. The judgment and decree passed against the respondent in Narinder Mohan Arya case [(2006) 4 SCC 713 : 2006 SCC (L&S) 840] had attained finality. In the said suit, the enquiry report in the disciplinary proceeding was considered, the same was held to have been based on no evidence. The appellant therein in the aforementioned situation filed a writ petition questioning the validity of the disciplinary proceeding, the same was dismissed. This Court held that when a crucial finding like forgery was arrived at on evidence which is non est in the eye of the law, the civil court would have jurisdiction to interfere in the matter. This Court emphasised that a finding can be arrived at by the enquiry officer if there is some evidence on record. ..."

15. Same view was reiterated in State of Uttar Pradesh v. Saroj Kumar Sinha (2010) 2 SCC 772, wherein, this Court held that even in an ex-parte inquiry, it is the duty of the Inquiry Officer to examine the evidence presented by the Department to find out whether the unrebutted evidence is sufficient to hold that the charges are proved. The relevant observations made in Saroj Kumar Sinha13 are as follows: –

"28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. ***His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.***

....

33. As noticed earlier in the present case not only the respondent has been denied access to documents sought to be relied upon against him, but he has been condemned unheard as the inquiry officer failed to fix any date for conduct of the enquiry. ***In other words, not a single witness has been examined in support of the charges levelled against the respondent. The High Court, therefore, has rightly observed that the entire proceedings are vitiated having been conducted in complete violation of the principles of natural justice and total disregard of fair play.*** *The respondent never had any opportunity at any stage of the proceedings to offer an explanation against the allegations made in the charge-sheet."*

16. In the case of Nirmala J. Jhala (supra, this Court held that evidence recorded in a preliminary inquiry cannot be used for a regular inquiry as the delinquent is not associated with it and the opportunity to cross-examine persons

examined in preliminary inquiry is not given. Relevant extract thereof reads as under: –

"42. A Constitution Bench of this Court in Amalendu Ghosh v. North Eastern Railway [AIR 1960 SC 992], held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.

43. Similarly in Champaklal Chimanlal Shah v. Union of India [AIR 1964 SC 1854] a Constitution Bench of this Court while taking a similar view held that preliminary inquiry should not be confused with regular inquiry. The preliminary inquiry is not governed by the provisions of Article 311(2) of the Constitution of India. Preliminary inquiry may be held ex parte, for it is merely for the satisfaction of the Government though usually for the sake of fairness, an explanation may be sought from the government servant even at such an inquiry. But at that stage, he has no right to be heard as the inquiry is merely for the satisfaction of the Government as to whether a regular inquiry must be held. The Court further held as under : (AIR p. 1862, para 12)

"12. ... There must therefore be no confusion between the two enquiries and it is only when the government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishments indicated in Article 311 that the government servant is entitled to the protection of that article [, nor prior to that]."

44. In Narayan Dattatraya Ramteerthakhar v. State of Maharashtra [(1997) 1 SCC 299 : 1997 SCC (L&S) 152 : AIR 1997 SC 2148] this Court dealt with the issue and held as under:

"... a preliminary inquiry has nothing to do with the enquiry conducted after issue of charge-sheet. The preliminary enquiry is only to find out whether disciplinary enquiry should be initiated against the delinquent. Once regular enquiry is held under the Rules, the preliminary enquiry loses its importance and, whether preliminary enquiry was held strictly in accordance with law or by observing principles of natural justice of (sic) nor, remains of no consequence."

45. ***In view of the above, it is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice.***

(emphasis supplied)

11. The principle of compliance of prescribed procedure and to act in the same manner as prescribed under the rules, is a well settled legal position in matters of discharge of duties by administrative authorities. In the case of **Tata Chemical Ltd. v. Commissioner of Customs (2015) 11 SCC 628** and **Krishna Rai v Banaras**

Hindu University (2022) 8 SCC 713, it has been held that when a procedure is laid down to do a thing then it should be done in that manner alone.

12. In view of the above, the order impugned dated 27th March, 2025 is hereby quashed, however, Petitioner's status will be the same as was at the time of inquiry till the fresh inquiry report is submitted and consequential action is taken in the light of the judgment of Supreme Court in the case of **Managing Director, ECIL, Hyderabad and others v. B. Karunakar and others (1993) 4 SCC 727.**

13. Accordingly, the respondent is directed to appoint new inquiry officer within a period of four weeks from the date of production of certified copy of this order. Soon after the appointment of inquiry officer as directed herein above, the petitioner shall be submiting reply to the chargesheet within a further period of four weeks. The inquiry officer thereafter shall proceed to hold oral inquiry and petitioner shall be participating in the same. The oral inquiry would include the oral examination of the petitioner as well as the departmental witness, if any. After the oral examination is completed, the inquiry report shall be submitted within a maximum period of two months from the date of reply submitted by the petitioner and thereafter the disciplinary authority shall proceed to pass final order in the matter strictly in accordance with law and as per the procedure prescribed under the Discipline and Appeal Rules, 1999 within a further period of two months.

14. Thus, the writ petition succeeds and is allowed as above.

15. The original records are returned.

(2025) 7 ILRA 423
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 04.07.2025
BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Writ A No. 8120 of 2025

Smt. Archana Sahu ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Avijit Saxena

Counsel for the Respondents:
C.S.C.

ISSUE FOR CONSIDERATION

Whether the penalty of withholding of one increment with cumulative effect under the U.P. Basic Education Staff Rules, 1973, is appealable, or whether the aggrieved employee has the remedy of representation under Rule 5(2) of the said Rules.

HEADNOTE

A. Service Law – U.P. Basic Education Staff Rules, 1973 – Rule 3 and Rule 5 – Remedy against minor and major penalties – "Appeal" and "Representation" – Held, appeal lies only against major penalties enumerated under Rule 5(1), whereas for minor penalties such as censure or withholding of increment, remedy is by way of representation under Rule 5(2).

Petitioner, a primary school teacher challenged the order dated 09.04.2025 passed by the District Basic Education Officer, withholding one increment with cumulative effect and transferring her. ***Held:*** Penalty of withholding of one increment with cumulative effect falls under minor penalties and is not appealable under Rule 5(1). Remedy available is to make a representation before the officer specified by the Director of Education (Basic)

under Rule 5(2). Petition disposed of granting liberty to the petitioner to file representation and the authority directed to decide the same within four weeks thereafter. (E-5)

CASE LAW CITED

None

LIST OF ACTS

Uttar Pradesh Basic Education Act, 1972, S. 19
Uttar Pradesh Basic Education Staff Rules, 1973, Rules 3 and 5

LIST OF KEYWORDS

Service Law – Minor Penalty – Withholding of Increment – Representation – Appeal – Rule 5(1) – Rule 5(2) – Basic Education Officer – Primary Teacher – Disciplinary Action – Uttar Pradesh Basic Education Staff Rules, 1973

CASE ARISING FROM

Order dated 09.04.2025 passed by District Basic Education Officer, Bhadohi

APPEARANCES

For the Petitioner : Sri Avijit Saxena, Advocate
For the Respondents : C.S.C., Sri Shrinath

JUDGMENT

(Delivered by Hon'ble Dr. Y.K. Srivastava, J.)

1. Heard Sri Avijit Saxena, learned counsel for the petitioner, Sri L.M. Singh, learned Standing Counsel appearing for the State-respondents and Sri Shrinath, learned counsel appearing on behalf of respondent nos.2 and 3.

2. The present petition has been filed seeking to assail the order dated 09.04.2025 passed by respondent no.3, District Basic Eduction Officer, Bhadohi, in terms of which one increment of the petitioner has been withheld with cumulative effect, and the petitioner has also been transferred from the place of her posting in Primary School, Bhawapur, Block Deegh, District Bhadohi.

3. The petitioner claims to have made a representation against the aforesaid order before the respondent no.3.

4. Counsel for the petitioner prays for a direction to the concerned respondent to decide the said representation.

5. It is pointed out that the services of the petitioner are governed by the Uttar Pradesh Basic Education Staff Rules, 1973 (hereinafter referred to as 'Rules, 1973'). The provisions relating to punishment and appeal are provided under Rules 3 and 5 of the aforesaid Rules, 1973. For ease of reference, Rules 3 and 5 are being extracted below:-

"3. Punishment.—The appointing authority may, for good and sufficient reasons, impose the following penalties upon the officers, teachers and other employees of the Board :

(i) Censure;

(ii) withholding of the increments including stoppage at an efficiency bar;

(iii) Reduction to a lower post of time scale, or to a lower stage in a time scale;

(iv) Recovery from pay of the whole or part of any pecuniary loss caused to the Board by negligence or breach of orders;

(v) Removal from the service of the Board which does not disqualify him from future employment;

(vi) Dismissal from the service of the Board which ordinarily disqualifies him from future employment.

5. Appeal.—(1) An appeal shall lie from an order passed by the appointing authority in respect of the posts mentioned in Column 1 of the Schedule appended to these rules, imposing upon any officer, teacher or other employee of the Board any of the penalties mentioned below, to the appellate authority mentioned in column 3 of the said schedule:-

(a) Reduction to a lower post or time scale or to a lower stage in a time-scale;

(b) Removal from service of the Board which does not disqualify for future employment;

(c) Dismissal from the service of the Board, which ordinarily disqualifies from future employment.

(2) In case of other penalties against which no appeal is provided in this rule, the punished officer, teacher or other employee of the Board may make a representation against the imposition of any of these penalties to such officer as the Director of Education (Basic) may by general orders from time to time specify in this behalf.

(3) The procedure laid down in Civil Services (Classification, Control and Appeal) Rules, as applicable to servants of the Uttar Pradesh Government shall, as far as possible, be followed in disciplinary proceedings, appeals and representations under these rules."

6. The Uttar Pradesh Basic Education Staff Rules, 1973, have been made by the State Government in exercise of powers conferred by sub-section (1) of Section 19 of the Uttar Pradesh Basic Education Act, 1972, and apply to the officers, teachers and other employees of the Uttar Pradesh Board of Basic Education.

7. Rule 5 of the Rules, 1973 provides the remedy of appeal in regard to imposition of the penalties specified under sub-rule (1) of Rule 5. Further, under sub-rule (2) of Rule 5, in case of other penalties for which no appeal is provided in the rule, the punished officer, teacher or other employee of the Board has been given the option to make a representation against imposition of the penalty to such officer as the Director of Education (Basic) may specify.

8. An appeal under sub-rule (1) of Rule 5 would lie against imposition of the following penalties; (i) reduction to a lower post or time scale or to a lower stage in a time scale; (ii) removal from service of the Board which does not disqualify for future employment; (iii) dismissal from the service of the Board, which ordinarily disqualifies from future employment. The appellate authority before whom the appeal is to be preferred has been specified in the schedule appended to the rules.

9. The remedy of filing a representation is available in case of other penalties against which no appeal is provided. The other penalties against which a representation may be made are as follows: (i) censure; (ii) withholding of the increments including stoppage at an efficiency bar; (iii) recovery from pay of the whole or part of any pecuniary loss caused to the Board by negligence or breach of orders. The representation is to be made to such officer as the Director of Education (Basic) may by general orders from time to time specify in this behalf.

10. The right to invoke the remedy of an appeal, or alternatively to prefer a representation under Rule 5 of the Rules 1973 is, therefore, dependant on the nature of penalty that has been imposed. The distinction between an appeal and a representation lies primarily on the nature of penalty imposed and the authority to whom the grievance is to be addressed. While an appeal would serve as a more formal legal challenge to an order imposing any of the major penalties specified under sub-rule (1), the remedy of a representation would be available in case of other penalties against which appeal is not provided.

11. In the instant case the order impugned has imposed the penalty of withholding of one increment with cumulative effect.

12. The aforesaid penalty is not specified under sub-rule (1) of Rule 5 and therefore no appeal would lie against the imposition of the said penalty. However, in terms of sub-rule (2), against the aforesaid order of penalty, the petitioner would have a right to make a representation before the officer specified in regard to the same.

13. Counsel for the petitioner seeks to invoke sub-rule (2) of Rule 5 to prefer a representation before the authority specified for the purpose.

14. Counsel appearing for the respondent nos.2 and 3 submits that in case the petitioner prefers a representation in terms of sub-rule (2)

of Rule 5, the same would be considered appropriately and an order would be passed.

15. The petitioner, would therefore be at liberty to invoke the remedy of making a representation in terms of sub-rule (2) of Rule 5 of the Rules, 1973, within a period of two weeks from today, and in the event such representation is moved, the specified authority would accord consideration to the same and pass a reasoned order within a period of four weeks thereafter.

16. With the above observations, the petition stands disposed of.

(2025) 7 ILRA 426
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 15.07.2025
BEFORE
THE HON'BLE AJIT KUMAR, J.

Writ A No. 9604 of 2025

Sunil Kumar ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Shyam Lal

Counsel for the Respondents:
C.S.C.

Issue for consideration

Whether a delinquent employee may directly approach the state government against the order of punishment without exhausting first the remedy of statutory appeal?

Headnotes

A. U.P. Government Servants (Discipline and Appeal) Rules, 1991: Rules 4, 7, 13, 20, 23 - The power vested with the State Government u/s 13 of the Rules, 1991 are power of revision and a delinquent employee may directly approach the state government against the order of punishment without exhausting first the remedy of statutory appeal. (Para 5)

Power of revision cannot be equated with the power of statutory appellate authority even in service jurisprudence. Both the disciplinary authority as well as the appellate authority are subordinate authorities to the State Government being functionaries of police department of the State Government. Such authorities being subordinate to the state Government, are subject to extraordinary power vested with the State Government. An employee, therefore, can always apply to the State Government directly against the final order of disciplinary authority and/ or appellate authority without exhausting the alternative remedy. However, the powers of the state government u/Rule 23 are only discretionary, may be exercised *suo motu* or on an application being filed and shall not be confused with vide power vested with the appellate authority under punishment and appeal rules. Thus, ordinarily power of appeal be first exhausted and state government should also encourage while dealing with representations directly made against punishment orders that aggrieved employee should approach it only exceptionally. (Para 7)

B. Supreme Court though has discussed 1999 Rules but Rule 13 of 1999 Rules and rule 23 of 1991 rule are *pari materia* and hence principles regulating the field would dependent upon the same analogy. (Para 9)

Since power is there with the State Government and representation has been made by the petitioner, this petition is disposed of with the direction to the respondent No. 1 to decide the representation of the petitioner dated 16.05.2025 in accordance with law, as expeditiously as possible within a period of two months from the production of certified copy of this order. (Para 10)

Writ petition disposed of with directions. (E-4)

Case Law Cited

1. Munna Lal Vs. State of U.P. Through Principal Secretary Home Department Lko and 2 others Writ A No. 2359 of 2025 (Para 4)

2. Prachand Sharma Vs. State of U.P. and others, (2004) 4 SCC 113 (Para 8)

List of Acts

U.P. Government Servants (Discipline and Appeal) Rules, 1991.

List of Keywords

Service Law; adverse entries; withholding salary; penalty; disciplinary authority.

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

1. Heard learned counsel for petitioner and learned Standing Counsel.

2. By means of this petition filed under Article 226 of the Constitution petitioner though has prayed for quashing of various orders passed by the authorities imposing penalty in the nature of adverse entries of censure, withholding of salary for certain period, etc, however, now learned counsel for the petitioner submits that petitioner is confining his prayer for a writ of mandamus to command the state Government to consider and decide the representation made by the petitioner on 17.05.2025.

3. Learned Standing Counsel has raised preliminary objection as to the maintainability of this petition on the ground that petitioner should have first exhausted alternative statutory remedy of appeal before preferring revision.

4. Meeting the preliminary objection learned counsel for petitioner has placed reliance upon Division Bench judgment of this Court at Lucknow in the case of ***Munna Lal vs. State of U.P. Through Principal Secretary Home Department Lko and 2 others Writ A No. 2359 of 2025*** wherein meeting the similar objection the Court vide paragraphs 13, 14, 15,16,17, 23, 25, 26 and 28 has held thus:

"13. Rule 25 of the Rules, 1991, operates in a different field and for a definite purpose, both for the State as well as for an aggrieved person. Two aspects of the rule are evident. Firstly, the rule provides for a remedy notwithstanding anything envisaged under any other rules of the Rules, 1991. Secondly, this provision is invoked by the State suo moto or otherwise where an appeal is not instituted by an aggrieved person. The power under Rule 25 of the Rules, 1991, has been conferred for definite purposes mentioned in the statutory rules itself, which are of wide import.

14. Learned counsel for the petitioner, in the backdrop of the aforesaid facts, has argued that the representation dated 25.04.2016, which was preferred under Rule 25 of the Rules, 1991, has been decided by the competent authority by passing a detailed and reasoned order on merit. It is, thus, argued that once a statutory representation was decided by the State by passing an order on merit, the principle of merger would apply insofar as the period of limitation against the cause of action, which had initially accrued to him against the order dated 28.11.2013, merged into the order dated 05.06.2017. The submission is that once the competent authority proceeded to decide the representation on merit, the matter was again looked into at the higher level and the whole cause assumed a new frame and form. That being so, the learned Tribunal, while rejecting the claim petition on the ground of limitation computed with effect from the date of the original order dated 28.11.2013, fell in error, and therefore, the impugned judgment passed by the Tribunal purely on the ground of limitation suffers from an apparent error of law, calling for interference in the exercise of jurisdiction vested in this Court by virtue of Article 227/226 of the Constitution of India.

15. Learned counsel for the petitioner, to buttress his argument, has placed reliance upon a judgment rendered by Hon'ble the Apex Court in the case of S.S. Rathore vs. State of Madhya Pradesh : (1989) 4 SCC 582.

16. Per contra, learned counsel for the State, placing reliance upon a Division Bench judgment of this Court rendered in the case of Amol Kumar Sharma v. Uttar Pradesh Public Service Tribunal, 2021 SCC OnLine All 457, has argued that once the remedy under Rule 25 of the Rules, 1991, was held to be a non-statutory remedy, the principle of merger, as put forth by the learned counsel for the petitioner, would not be applicable in the facts and circumstances of the present case.

17. Learned counsel for the State, on the basis of instructions, has further argued that a copy of the order dated 18.11.2013 was served upon the wife of the petitioner on 04.12.2013, and any averment to the contrary made in the representation or claim petition is wholly unfounded. It has also been argued that the view taken by the learned Tribunal does not suffer from any illegality and the judgment so rendered deserves affirmation

23. Though it has been acknowledged by the Tribunal that no limitation is provided in Rule 25 of the Rules, 1991, but the claim petition preferred by the petitioner stands rejected solely on the ground that the representation was preferred by the petitioner without availing the statutory remedy of appeal/ revision. The representation was held to be non-statutory which on its rejection would not enable the petitioner to claim the benefit of limitation from a subsequent date, the tribunal has opined.

25. When the petitioner approached the Tribunal second time against the rejection of his representation decided on merit, the claim petition was rejected by computing the period of limitation from the date of original order passed in 2013 rather looking into the consequence of merger, which Rule - 25 of the Rules, 1991 is capable to bring about. Such a provision operates as a residuary power with the state to nullify the actions which do not stand in conformity with law by taking suo motu notice and exceptionally the jurisdiction is available to the aggrieved person as well in appropriate cases, as at hand.

26. The second claim petition could not be thrown out simply because the petitioner had not availed statutory remedies available under law, inasmuch as, the order dated 28.11.2013 had not been supplied to the petitioner till 09.02.2016 when he approached the Nodal Officer, Firozabad for its supply. Thereafter, the petitioner immediately approached the Tribunal as noted here-in-above. The doctrine of merger came into operation to subsume a lower authority?s decision into that of the higher authority when a remedy was pursued and dealt with on merit exhaustively.

28. It follows, therefore, that the period of limitation ought to have been reckoned not from the date of the original dismissal order but from the date when the statutory representation was decided. The Tribunal erred in dismissing the claim petition solely on the ground of limitation without appreciating that the petitioner had diligently pursued his remedies and the doctrine of merger had come into effect."

5. From the observations made above by the Division Bench while dealing with issue of limitation whether to run from the date of order of punishment or from the date of order passed upon representation of the petitioner. A conclusion can be clearly drawn that power vested with the State Government under Section 13 of the Rules, 1991 are power of revision and a delinquent employee may directly approach the state government against the order of punishment without exhausting first the remedy of statutory appeal. Rules 13 of the 1999 Rules is reproduced as under:

"13. Revision.- Notwithstanding anything contained in these rules, the Government may of its own motion or on the representation of concerned Government Servant call for the record of any case decided by an authority subordinate to it in the exercise of any power conferred on such authority by these rules; and

(a) confirm, modify or reverse the order passed by such authority; or

(b) direct that a further inquiry be held in the case, or

(c) reduce or enhance the penalty imposed by the order; or

(d) make such other order in the case as it may deem fit".

6. Upon a bare reading of the above provisions, it becomes explicit that power vested with the State Government is with a very wide discretion to call for and examine the records of any case decided by an authority subordinate to it. The question may be as to whether authority sitting in revision will examine order of another immediate subordinate to it or even appellate and disciplinary authority. The words and expression "in exercise of power conferred on such authority by these rules" the words "such authority" that exercises power duly vested under the rules, would include all the authorities that have been entrusted with the power to decide a case. Rule 7 of 1991 Rules provides for an officer of police department not below the rank of Deputy Inspector General to be disciplinary authority to accord punishments specified under Rule 4 of the said rules. Similarly Rule 20 of the 1991 rules prescribe for statutory appeal against the order of the disciplinary authority and appellate authority, a next superior authority to the disciplinary authority in different rank of officers who have been inflicted upon with

punishment. Rules 7 and 20 of the 1991 Rules are reproduced hereunder:

"7. Powers of punishment.- (1) The Government or any officer of police department not below the rank of the Deputy Inspector General may award any of the punishments mentioned in Rule 4 on any Police Officer.

(2) The Superintendent of Police may award any of the punishments mentioned in sub-clause (iii) of Clause (a) and Clause (b) of sub-rule (1) of Rule 4 on Inspector and Sub-Inspectors.

(3) The Superintendent of Police may award any of the punishments mentioned in Rule 4 on such Police Officers as are below the rank of Sub-Inspectors.

(4) Subject to the provisions contained in these rules all Assistant Superintendents of Police and Deputy Superintendents of Police who have completed two years of service as Assistant Superintendents of Police and Deputy Superintendents of Police as the case may be, may exercise powers of Superintendent of Police except the power to impose major punishments under Rule 4.

(5) Notwithstanding anything contained in these rules Reserve Inspector, Inspector or Station officer may award punishments of drill and fatigue duty to any constable under his charge for a period not exceeding three days but he shall inform the Superintendent of Police concerned of his order immediately and in any case within 24 hours of passing the order."

"20. Appeals.- (1) Every Police Officer, against whom an order of punishment mentioned in sub-clauses (i) to (iii) of Clause (a) and sub-clauses (i) to (iv) of Clause (b) of rule 4 shall be entitled to prefer an appeal against the order of such punishment to the authority mentioned below:

(a) to the Police Officer, who is the immediate jurisdictional superior authority to the Police Officer who passed the order of punishment.

(b) to the Director General of Police who may either decide the appeal himself or nominate any Additional Director General for deciding it;

(c) to the State Government against the order passed under Clause (b).

(2) No appeal shall lie against the order inflicting any of the petty punishments enumerated in sub-rules 92) and (3) of Rule 4.

(3) Every officer desiring to prefer an appeal shall do so separately.

(4) Every appeal preferred under these rules shall contain all materials, statements, arguments relief on by the Police Officers preferring the appeal, and shall be complete in itself, but shall not contain disrespectual or improper language. Every appeal shall be accompanied by a copy of final order which is the subject of appeal.

(5) Every appeal, whether the appellant is still in service of Government or not, shall be submitted throguh the Superintendent of Police of the district or in the case of Police Officers not employed in district work through the head of the office to which the appellant belongs or belonged.

(6) An appeal will not be entertained unless it is preferred within three months from the date on which the Police Officer concerned was informed of the order of punishment.

Provided that appellate authority may at his discretion, for good cause shown extend the said period up to six months.

(7) If the appeal preferred does not comply with the provisions of sub-rule (4) the appellate authority may require the appellant to comply with the provisions of the said sub-rule within one month of the notice of such order to him and if the appellant fails to make the above compliance the appellate authority may dispose of the appeal in the manner as it deems fit.

(8) The Director- General or an Inspector General may for reasons to be recorded in writing, either on his own motion or on request from an appellate authority before whom the appeal is pending transfer the same to any other officer of corresponding rank "

7. Thus both the disciplinary authority as well as the appellate authority are subordinate authorities to the State Government being functionaries of police department of the State Government. However State Government may also be an appellate authority for the purposes of Rule 23 of the 1991 Rules the discretion to

impose punishment by disciplinary authority and discretion to affirm or reverse such decision by appellate authority, such authorities being subordinate to the state Government, are subject to extraordinary power vested with the State Government. An employee, therefore, can always apply to the State Government directly against the final order of disciplinary authority and/ or appellate authority without exhausting the alternative remedy. However, I may hasten to add, the powers of the state government under Rule 23 are only discretionary, may be exercised suo motu or on an application being filed and shall not be confused with vide power vested with the appellate authority under punishment and appeal rules. Thus, ordinarily power of appeal be first exhausted and state government should also encourage while dealing with representations directly made against punishment orders that aggrieved employee should approach it only exceptionally. Power of revision cannot be equated with the power of statutory appellate authority even in service jurisprudence.

8. In the case of **Prachand Sharma v. State of U.P. and others (2004) 4 SCC 113** Supreme Court has held that government authorities under U.P. Government Servants (Discipline and Appeal) Rule 1999 if pass orders would be an authority subordinate to the state government within the meaning of Rule 13 of the 1999 rules but the authority even if on deputation to any corporation where 1999 rules are applicable by adoption, while exercising power of disciplinary authority/ appellate authority- revisional authority, such authority would not be an authority subordinate to government under Rule 13 of the 1999 rules for mere adoption of 1999 rules. Vide paragraph 8 the Court has held thus:

> "8. The learned counsel for the appellant also draws our attention to Rule 13 to indicate that if the rule is to be applicable, as it is, then the Government will have power to revise the order only in case it has been passed by an authority subordinate to it. The Managing Director or the Chairman are the authorities and functionaries of the corporation. Incumbent of such officers may even though sometimes be government servants on deputation but while working as Chairman or the Managing Director or any authority in the organization or the corporation, the would not be subordinate to the Government. It is again to be noticed that then perhaps the right to invoke the revisional powers may be available only to the "government servant concerned" as provided under Rule 13 and may not be available to the employee of the corporation. Therefore, it is submitted and in our view, rightly, the adoption of rules is implemented in a manner as they fit in the structure of the adopting organization and not as a straitjacket application to the adopting organization. It has also been pointed out that according to the provisions of Rule 13, as it is, an order can be subjected to the revisional power of the State only if the order has been passed in exercise of any power conferred under the Rules of 1999. It is submitted that the order passed by the Managing Director or the Chairman cannot be said to be orders passed under the U.P. Rules of 1999 and not under the Rules as adopted by the Corporation "

9. Supreme Court though has discussed 1999 Rules but Rule 13 of 1999 Rules and rule 23 of 1991 rule are *pari materia* and hence principles regulating the field would dependent upon the same analogy.

10. In view of the above discussions, since power is there with the State Government and representation has been made by the petitioner, I dispose of this petition with the direction to the direction to the respondent No. 1 to decide the

representation of the petitioner dated 16.05.2025 in accordance with law, as expeditiously as possible within a period of two months from the production of certified copy of this order

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(2025) 7 ILRA 431
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 24.07.2025
BEFORE
THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Writ A No. 9632 of 2025

Dharvendra Pal Singh ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Prabhakar Awasthi, Rohit Upadhyay

Counsel for the Respondents:
Bhanu Pratap Singh kachhawah, C.S.C.

Issue for Consideration

The petitioner was appointed as an Assistant Teacher in 2007 and later transferred to Upper Primary School ,Kangarpur,Block-Marhera, District-Etah. On August 27,2024, during an inspection, he was found absent without authorization. this led to his suspension and a departmental enquiry proceeded ex-parte.

Headnotes

Uttar Pradesh Government Servant (Discipline and Appeal) Rules,1999-The petitioner challenged an order dated May 28,2025, by District Basic Education Officer Etah which stopped one of his increments and transferred him Upper Primary School-The court found no significant procedural lapses causing prejudice, relying on Supreme Court Judgments-The transfer based on the August 20,2022 circular and linked to the January 17,2023 order was valid posting to a vacancy after suspension revocation, not requiring interference-Petition dismissed.

Held:

A charge sheet was issued, petitioner submitted a reply but inquiry proceeded ex parte-A second show cause notice followed in January 2025, and despite requests for the inquiry report, the process continued-The District Basic Education Officer revoked suspension but imposed a minor penalty: stoppage of one annual increment and transfer to Composite Institution-Petitioner claimed violations of natural justice and procedural defects i.e. charge sheet and inquiry report not served properly and inquiry not conducted fairly under Rules 4,7, 8, 9, 10 of the 1999 Rules-Petitioner sought quashing of order dated 28 May 2025 and referenced a similar case(Special Appeal No. 208 of 2025) for interim relief-The State and BSA argued the process followed the 1999 Rules, and the Transfer was administrative, justified by judicial precedents and government orders dated 17 January 2023-the court found no significant procedural lapses causing prejudice relying on Supreme Court judgments-No interference was warranted-The writ petition was dismissed.(Para 21 to 33) (E-6)

Case Law Cited

St. of U.P. & Anr. Vs Johri Mal (2004) AIR SC 3800; Public Services Tribunal Bar Assn. Vs St. of U.P. & Anr.(2003) 4 SCC 104; Param Singh & 4 Ors Vs St. of UP & 5 Ors.(2018) SCC Online All 5677;Kul Bhushan Mishra & Anr Vs St. of UP & Ors (2023) SCC OnLine ALL 286; St. of UP Vs. Saroj Kumar Sinha(2010) 2 SCC 772; UOI Vs Tulsiram Patal(1985) 3 SCC 398; Chairman,LIC Vs A.Masilamani(2023) 6 SCC 530; St. of Ori. VS Bidyabhushan Mohapatra(1963)AIR SC 779;M.D. ECIL Vs B. Karunakar(1993) 4 SCC 727-reffered to.

List of Acts/Rules

Uttar Pradesh Government Servant(Discipline and Appeal) Rules of 1973 read with Rules 1999.

List of Keywords

Uttar Pradesh Government Servant (Discipline and Appeal) Rules,1999; Suspension; Inquiry Report, Ex-parte inquiry; Charge sheet ;Procedural fairness; Minor Penalty; Transfer; Increment; Judicial review; Prejudice ;Government Order (17.01.2023); Assistant Teacher; Circular.

Case Arising From

Service matter: WRIT-A No. – 9632 of 2025

From the Judgment and Order dated 24.07.2025 of the High Court of Judicature at Allahabad.

Dharvendra Pal Singh Vs.State of U.P. &3 Others

Appearances for Parties

Advs. for the petitioner:
Prabhakar Awasthi, Rohit Upadhyay

Adv. for the Respondents:
Bhanu Pratap Singh Kachhawah, C.S.C.

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. Heard Mr. Prabhakar Awasthi, learned Counsel assisted by Mr. Rohit Upadhyay, learned counsel for the petitioner, Mr. Anoop Trivedi, learned Additional Advocate General assisted by Mr. Hare Ram, learned counsel for the State-respondents and Mr. Bhanu Pratap Singh Kachhawah, learned counsel for the respondent-BSA.

2. The instant writ petition has been filed with the prayer to quash the impugned order dated 28.05.2025 passed by respondent no.2 -District Basic Education Officer, Etah, vide which, one increment of the petitioner has been stopped and he has been transferred from Upper Primary School, Kangarpur, Etah to Composite Institution, Nawar, in District Etah.

3. Learned counsel for the petitioner submits that the petitioner was appointed on the post of Assistant Teacher and was posted at Junior Primary School, Milawali, Sheetalpur, District- Etah, through appointment letter dated 19.05.2007. There was no complaint against him as he continued to discharge his duties to the utmost satisfaction of the authorities concerned.

4. Learned counsel for the petitioner further submits that the petitioner under the State Government policy was transferred from the post of Head Teacher, Junior Primary School, Block- Jaithra, District- Etah to his position as Assistant Teacher in Upper Primary School, Khangarpur, Block- Marhera, District- Etah, by order dated 18.09.2013.

5. The Block Education Officer, Marhera, District- Etah under the directions issued by the District Basic Education, Officer, Etah, made an inspection in the institution on 27.08.2024 at 1:50 P.M., wherein the petitioner was found absent and the inspection report dated 27.08.2024 was prepared to the aforesaid effect. On the basis of the said report, the petitioner was placed under suspension vide order dated 30.08.2024, contemplating an inquiry.

6. Aggrieved by the aforesaid order, the petitioner filed Writ A No.18500 of 2024 (Dharvendra Pal Singh vs. State of UP and 3 Others), which was disposed of by the co-ordinate Bench of this Court, vide order dated 25.11.2024, directing the respondent authorities to conclude the enquiry proceedings within a period of three months from the date of receipt of certified copy of the order. The Court also did not interfere in the suspension order dated 30.08.2024. After conclusion of the inquiry, the charge sheet dated 04.11.2024 was served upon the petitioner on 25.11.2024 and reply to the same was

submitted on 26.11.2024 before the inquiry officer, about which the petitioner came to know on 25.11.2024 as informed by the learned counsel for the respondent while appearing in Writ A No.18500 of 2024, thus, the orders accordingly were passed to conclude the inquiry.

7. It appears that on 19.11.2024, some letter was issued by respondent no.2 District Basic Education Officer to the respondent no.4-Block Education Officer/Inquiry Officer, directing him to complete the inquiry within 15 days. Another letter dated 20.11.2024 was issued by the respondent no.4 to the petitioner, directing him to submit his reply within two days. On 21.11.2024, petitioner sent a letter to the Inquiry Officer requesting him for a week's time to submit his reply, which was turned down by the respondent no.4/Inquiry Officer by letter dated 23.11.2024 and on the same day, respondent no.4 gave a letter to the petitioner, which was in the form of threat stating that if he failed to submit a reply to the charge sheet, the matter would proceed *ex-parte*. It appears that an ex-parte inquiry report dated 28.12.2024 was submitted by the respondent no.4/Inquiry Officer, which was not provided to the petitioner.

8. On 07.01.2025, the respondent no.2-District Basic Education Officer, issued a second show cause notice to the petitioner, mentioning about the charge sheet dated 28.12.2024 and required him to be present in person in his office on 10.01.2025 to submit his reply.

9. On 10.01.2025, the petitioner represented before respondent no.4/Inquiry Officer, requesting him to supply a copy of Inquiry Report. The petitioner sent another letter dated 20.03.2025 to the District Basic Education Officer, demanding a copy of the inquiry report.

10. Instead of providing the inquiry report, the respondent no.4/Inquiry Officer, submitted a letter to the respondent no.2, dated 02.05.2025 referring about some letter dated 26.04.2025, vide which the respondent no.2 had directed for conducting an inquiry again as some objection was raised by the petitioner. In his letter, the respondent no.4 has mentioned that the inquiry report dated 28.12.2024 had already been submitted before respondent no.2, therefore, in case of dissatisfaction on the part of petitioner, direction may be issued to get the inquiry conducted by some other agency.

11. Learned counsel for the petitioner submits that the impugned order dated 28.05.2025 has been passed in violation of the principles of natural justice, as the inquiry report was never served upon the petitioner. Pointing out the procedural defects under Rule 4 of Uttar Pradesh Government Servant (Discipline and Appeal) Rules 1999, "in short 'Rules of 1999", in consonance of which the inquiry was conducted, learned counsel for the petitioners submits that the order impugned has been passed in an arbitrary manner without adhering to the procedure as prescribed under Rule 7 of Rules of 1999. He further submits that once the inquiry has been started under Rule 4 of the Rules of 1999 and the petitioner has been placed under suspension, the inquiry was to be conducted under Rule 7 and, accordingly, the report was to be submitted under Rule 8 of Rules of 1999 and after submission of the inquiry report, the action was to be taken on the inquiry report as per procedure prescribed under Rule 9 of the Rules of 1999. According to which, in the case of

the petitioner, as per Rule 9(4) of the aforesaid Rules, if the Disciplinary Authority, having regard to its finding on all or any of the charges, is of the opinion that any of the penalties specified in Rule 3 of the 1999 Rules should be imposed on the charged Government servant, he shall furnish a copy of the inquiry report, if he disagrees with the finding of the Inquiry Officer on any of the charges, after recording his finding thereon for reasons to be recorded and shall require the charged Government servant to submit his representation, if he so desires, within a reasonable specified time. After receiving the representation of the charged Government servant, a reasoned order has to be passed imposing one or more penalties mentioned in Rule 3 of Rules of 1999 and the same has to be communicated to the charged Government servant.

12. In the present case, the charge sheet has been submitted on 04.11.2024, which was never served upon the petitioner, however, information was given by the concerned about the aforesaid before the Writ Court on 25.11.2024, and reply to the same was submitted on 26.11.2024. Without discussing about the same, the order impugned has been passed, which is the violation of principles of natural justice.

13. The order should have been passed taking recourse to Rule 10(2) of Rules of 1999 as the same provides the procedure applicable for imposing minor penalties for which the Government servant has to be informed by giving a notice mentioning the substance of the imputations against him and calling upon him to submit a reply within a reasonable time. Due to the aforesaid procedural defects, the order impugned cannot be sustained.

14. The order impugned speaks about some circular dated 20.08.2022, considering which, the petitioner has been shifted from his assumption of duties as Assistant Teacher from Upper Primary School, Kangarpur, Marhera, District-Etah to Composite Institution, Nawar, Block- Aliganj, District Etah, which is approximately 70 kilometres away. However, perusal of the aforesaid does not mention about any such posting to be done after any inquiry being conducted against the petitioner.

15. Learned counsel for the petitioner further contends that despite repeated requests, the inquiry report was not provided to the petitioner. He has also tried to draw the attention of the Court to the communication letter dated 02.05.2025 whereby respondent no.4 has refused to make any further inquiry and has also informed the respondent no.2 that in case any further inquiry is required, some other inquiry officer be appointed.

16. Learned counsel for the petitioner has also placed reliance upon the order passed in Special Appeal No.208 of 2025 (Smt. Tripti Tripathi Vs. State of U.P. and Others) wherein the effect and operation of the order impugned therein i.e. dated 27.01.2025 has been kept in abeyance and the petitioner, Smt. Tripti Tripathi has been allowed to continue at the place where she was previously working. Therefore, the petitioner is also entitled for the same relief.

17. Learned Standing Counsel as well as learned counsel for the respondent-BSA, on the other hand, submit that there is no illegality or infirmity in the order impugned. All the procedure as required under law has been followed. The petitioner has been served with the charge sheet as well as inquiry report and the punishment order has also been served upon the petitioner on 29.05.2025 about which he was informed when he filed Writ A No.7813 of 2025 (Dharvendra Pal Singh Vs. State of U.P. and 3 Others).

18. It is evident from the records that from the representation dated 10.01.2025

submitted before respondent no.2 requesting for the inquiry report and subsequently the letter dated 02.05.2025 by respondent no.4 addressed to the respondent no.2, wherein it has been mentioned by the BSA in his letter dated 26.04.2025 that some objection to the inquiry report is there from the side of petitioner, therefore, inquiry may be conducted again. The aforesaid letter has not been denied by the petitioner which means that he was provided with the copy of the inquiry report.

19. Learned counsel for the State as well as learned counsel for respondent-BSA, submit that no procedural defect occurred and the Rules of 1999 were followed, wherein after following the procedure under Rule 7, may be with some flaws the inquiry report has been submitted under Rule 8 and punishment order has been passed under Rule 9(4), which says that after the inquiry report is given to the petitioner, representation is submitted, the order imposing penalty as mentioned in Rule 3 (major or minor) is to be imposed upon the charged government servant, which has been done in the present case. The concerned authority after revoking the suspension order has imposed the penalty by the impugned order by stopping one increment and posting the petitioner at some other place. Thus there was no occasion to take recourse to Rule 10(2) of Rules 1999 for passing the order impugned.

20. As regards the circular dated 20.08.2022, considering which the petitioner has been transferred from his place of posting to some other place, in case it is considered as a transfer order, no interference is required as per settled positing of law, which have been discussed in the following judgements:-

(1). The Supreme Court in the case of **State of U.P. and another v. Johri Mal, AIR 2004 SC 3800,** has held that even if there is wrong order the Court is not bound to interfere under Article 226 of Constitution of India unless the order is in violation of the Statutes or it causes some miscarriage of justice. Relevant part of the order in **Johri Mal (supra)** reads as under:-

"28. The scope and extent of power of the judicial review of the High Court contained in Article 226 of the Constitution of India would vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi judicial or administrative. The power of judicial review is not intended to assume a supervisory role or done the robes of omnipresent. The power is not intended either to review governance under the rule of law nor do the Courts step into the areas exclusively reserved by the supreme lex to the other organs of the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review Court. The limited scope of judicial review succinctly put are:

(i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies.

(ii) A petition for a judicial review would lie only on certain well-defined grounds.

(iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.

(iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a Court is limited to seeing that Tribunal functions within the limits of its authority and that its decisions do not occasions miscarriage of justice.

(v) The Courts cannot be called upon to undertake the Government duties and functions. The Court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a Judge should not be invoked as a substitute for the

judgment of the legislative bodies. (See Ira Munn v. State of Ellinois, 1876 (94) US (Supreme Reports) 113)."

(2). The Supreme Court in the case of **Public Services Tribunal Bar Association Vs. State of U.P. and another, (2003) 4 SCC 104,** has held that ordinarily the High Court should not stay suspension, transfer and termination orders.

(3). **Param Singh and 4 Others vs. State of UP and 5 Ors., 2018 SCC OnLine ALL 5677.**

(4). **Kul Bhushan Mishra and Another Vs. State of UP and 4 Others, 2023 SCC OnLine ALL 286.**

21. Learned counsel for the State as well as learned counsel for respondent-BSA, submit that if the same is considered as posting, it is in view of the judgement as discussed in the circular dated 20.08.2022, which has not been placed on record by the petitioner. The order has been passed in terms of Uttar Pradesh Government Servants (Discipline and Appeal) Rules of 1973 read with Rules 1999, wherein the procedure as required under law has been followed, therefore, there is no illegality or infirmity in the order impugned.

22. The communication letter dated 02.05.2025, whereby respondent no.4 has refused to make any further inquiry, has been wrongly understood by learned counsel for the petitioner as the same mentions that as the petitioner is not satisfied by the inquiry report, the same can be conducted by some other agency as he has already submitted the inquiry report on 28.12.2024 before BSA. Even otherwise, there is provision of filing an appeal against the punishment order wherein minor penalty of stopping one increment has been passed, which should have been availed by the petitioner prior to approaching this Court.

23. Learned counsel for the State has placed the order passed in Special Appeal No.790 of 2024 (Secretary Basic Education Board And Another Vs. Smt. Suman (In-charge) and Another) wherein the Division Bench of this Court vide interim order dated 05.03.2025 has directed the petitioner therein to join the institution where she has been transferred/posted.

24. Learned counsel for the State further submits that the Government order dated 20.08.2022 refers about the order dated 14.09.2021 passed in Special Appeal No.274 of 2020 (Amit Sekhar Bhardwaj Vs. State of UP and 2 Others), according to which random allotment has to be done while posting or transferring any Assistant Teacher. Accordingly, the Government order dated 17.01.2023 has been issued, taking into consideration the posting of the petitioner has been done. He further submits that once the petitioner was placed under suspension, he/she is attached to some other place and on suspension being revoked the attachment order also ceases to operate, accordingly, the person concerned has to be posted to the place where a vacancy exists and this is as per the Government order dated 17.01.2023, which has been done in the present case. He further submits that the order impugned has been passed taking into consideration the Rules of 1973 read with Rules of 1999, therefore, there is no illegality or infirmity in the order impugned.

25. Heard learned counsel for the parties.

26. It has been brought to the notice of this Court that certain objections have been raised pertaining to the absence of specific dates and ancillary procedural references in the order impugned. The learned counsel has contended that such omissions vitiate

the impugned order hence the same is liable to be set aside.

27. The Court is referring some relevant judgements passed by Hon'ble Apex Court, which are as follows:-

1. In the case of **State of Uttar Pradesh v. Saroj Kumar Sinha, (2010) 2 SCC 772,** the Supreme Court has held that a disciplinary authority must provide reasons and discuss the reply to the show cause notice, but a punishment order is not vitiated merely due to absence of detailed reproduction if it reflects application of mind.

2. The Constitution Bench in the case of **Union of India v. Tulsiram Patel, (1985) 3 SCC 398,** has emphasized that minor procedural lapses that do not cause prejudice to the delinquent employee or violate the principles of natural justice would not invalidate the order.

3. The Hon'ble Supreme Court in the case of **Chairman, LIC v. A. Masilamani, (2013) 6 SCC 530,** it was held that non-mentioning of every document or minor procedural lapses cannot by themselves be grounds to invalidate a disciplinary order unless it causes demonstrable prejudice.

4. The Apex Court in **State of Orissa v. Bidyabhushan Mohapatra, AIR 1963 SC 779,** held that substance must prevail over form; non-mentioning of certain procedural steps would not vitiate the order if the essence of natural justice is maintained.

5. While dealing with disciplinary proceedings, the Apex Court in the case of **Managing Director, ECIL v. B. Karunakar, (1993) 4 SCC 727,** reiterated that procedural fairness is essential, but a disciplinary order will not be set aside unless the procedural irregularity has caused prejudice.

28. It is imperative to underscore that the solemn purpose of any order is not the pedantic perfection of form, but the faithful administration of justice by adhering to principles of natural justice and application of mind. The adjudicatory process is guided by the substance of justice rather than the superficialities of procedure.

29. The essence of any order lies in its ability to address the core legal and factual controversies, to apply the law with judicious reasoning, and to render an equitable resolution. In the instant matter, the punishment order has comprehensively dealt with the determinative issues, examined the evidence on record, and applied the governing legal principles with due care and deliberation.

30. Mere clerical or peripheral omissions such as inadvertent exclusion of dates or formal particulars do not, in any measure, impinge upon the legitimacy or efficacy of the order impugned, unless it is demonstrated that such omissions have caused prejudice or miscarriage of justice. No such prejudice has been pleaded or established before this Court.

31. Courts are not expected to exhibit technical exactitude in form to the exclusion of justice. The doctrine of substantial compliance applies with full vigour in such circumstances. As long as any order fulfils its constitutional and legal mandate namely, the fair discussion of facts with application of mind incidental lacunae in presentation or form cannot be permitted

to defeat the ends of justice. It would be appropriate to mention that "justice is not a slave to format, but a servant of truth."

32. This Court is of the opinion that a punishment order cannot be held invalid merely on the ground that it does not specifically mention the details of the show cause notice or the written reply submitted by the petitioner, if the substance of both is duly considered and discussed in the order. Unless there is a manifest procedural irregularity or a clear illegality apparent on the face of the record, such minor omissions would not render the order unsustainable in the eyes of law.

33. In view of above, no interference is called for and the writ petition is **dismissed** accordingly.

(2025) 7 ILRA 438
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.07.2025
BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No. 12082 of 2018

Anand Prakash Tripathi & Ors. **...Petitioners**

Versus

State Of U.P. & Ors. **...Respondents**

Counsel for the Petitioners:
Ajay Kumar Srivastava, Samir Sharma (Senior Adv.)

Counsel for the Respondents:
C.S.C., Sunil Kumar Misra

Issue for consideration

Petitioners were employees of the UPSRTC, appointed between September 1981 and May 1982-Employees who were appointed on non-pensionable posts in the corporation after 19.06.1981 and were promoted on pensionable posts in the department even between 1.06.1971 and 28.07.1982 were entitled to get pension, however, petitioners who were appointed between the said period i.e. after 19.06.1981 but before 28.07.1982 were held to be not entitled for pension and as such it creates two service conditions for the same post.

Headnotes

Uttar Pradesh State Road Corporation Employees (Other Than Officers) Service Regualtion,1981-Pension-Validity of Cut-off Date-petitioners challenged a policy decision after an unexplained delay of nearly 18 years-Employees absorbed from a pensionable establishment cannot be equated with employees appointed under a non-pensionable regime after the Regulations came into force-Fixation of cut-off date 19.06.1981 for grant of pension to employees of UPSRTC, corresponding to the date of enforcement of the UPSRTC Employees(Other than officers) Service Regualtions,1981, held valid.

Held

The petitioners sought pension benefits, challenging the Government order dated 23.10.2004, which limited pension entitlement to employees appointed between 01.06.1972 and 19.06.1981(the date when the Service Regualtions,1981 came into force)-Employees granted pension were already in service before that date and later absorbed up to 28.07.1982, their inclusion was part of the absorption process, not new recruitment-Petitioners were fresh appointees, not absorbed employees, and thus formed a separate class-The distinction was reasonable and based on intelligible differentia, satisfying Article 14-The court cited State of Uttarakhand Vs. Sudhir Budakoti emhasizing that a reasonable classification based on the source and timing of appointment does not violate Article14-Court will not interefere unless the classification is arbitrary-petition dismissed.(Para 11 to 16) (E-6)

Case law Cited

All Manipur Pensioners Assn. by its Secy. Vs St. of Manipur & Ors (2020) 14 SCC 625, Ramesh

Chandra Sharma & Ors Vs St. of U.P. & Ors, 2023 (2) ADJ 223 SC, Dr. Surendra Pratap Yadav Vs St. of U.P. & Anr, 2023 (2) ADJ 488, UOI Vs SPS Vains (2008) 9 SCC 125, Writ (S S) No. 2306 of 2004 Ram Dular & 13 Ors Vs St. of U.P. & Ors decided on 25.08.2021, St. of U.K. Vs Sudhir Budakoti (2022) 13 SCC 256-reffered to.

List of Acts/Rules

Uttar Pradesh State Road Corporation Employees (Other Than Officers) Service Regulations, 1981.

List of Keywords

Pension entitlement; Cut-off date-19.06.1981-UPSRTC; U.P. Government roadways; Absorbtion ; Non-pensionable cadre; Reasonable classification; Hostile discrimination; intelligible differentia; Rational nexus test;Delay and laches; Recurring cause of action; Financial implications in pension; Public Employment Service benefits;Service Regulation,1981.

Case Arising From

Service Law: WRIT-A No. – 12082 of 2018
From the Judgment and order dated 10.07.2025 of the High Court of Judicature at Allahabad.

Anand Prakash Tripathi & 4 Ors. Vs. State of U.P. & 5 Ors.

Appearances for the parties

Advs. for Petitioners:
Ajay Kumar Srivastava, Samir Sharma (Senior Adv.)

Advs.for Respondents:
C.S.C., Sunil Kumar Misra

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. Heard Sri Samir Sharma, learned Senior Counsel assisted by Sri Ajay Kumar Srivastava, learned counsel for the petitioners and Sri Ayush Mishra, holding brief of Sri Sunil Kumar Misra learned counsel for respondents.

2. The petitioners (5 in number) were appointed at Uttar Pradesh State Road Transport Corporation by respective orders dated 06.09.1981, 27.03.1982, 22.05.1982 and 26.09.1981. Some of the petitioners were already retired when this writ petition was filed in the year 2018 and remaining petitioners must have retired during pendency of this writ petition.

3. They were well aware from very inception of recruitment that they were not benefited with any pension scheme still they have approached this Court at the fag end of their respective service, when some of petitioners have already got retired with following prayers :-

"(i) issue a writ, order or direction in the nature of CERTIORARI, calling for the record and quashing the impugned Government Order No. dated 1470-30-2-2004-218/96 dated 23.10.2004 to the extent it has fixed the cut-off date i.e. 19.06.1981, providing for payment of pension to only those employees who were appointed on those posts of the UPSRTC, which were pensionable in U. P. Government Roadways, between 01.06.1972 to the date of coming into force of the Service Regulations, 1981, i. e. 19.06.1981.

ii) issue a writ, order or direction in the nature of MANDAMUS commanding the opposite parties to treat the cut-off date as 28.07.1982, instead of 19.06.1981, and accordingly pay the pension and other retirement benefits to the petitioners consequent upon their retirement from

service after attaining the age of superannuation of 60 years and pay the same as and when it falls due, including arrears thereof along with interest at the current market rate, within a specified period of two months."

4. Sri Sameer Sharma, learned Senior Counsel assisted by Sri Ajay Kumar Srivastava, learned counsel for petitioners argued at length and his submissions and arguments on facts and law are briefly mentioned hereinafter :-

(a) Initially the transport services in the State of U.P. were provided by a department namely, U.P. Government Roadways and thereafter U.P. State Road Transport Corporation was created with effect from 01.06.1972 under Section 3 of Road Transport Act, 1950.

(b) The employees of erstwhile U.P. Government Employees Transport Corporation, U.P. Government Roadways were treated to be on deputation to the Corporation.

(c) The process of framing service regulation were finally crystallized in the year 1981, viz Uttar Pradesh State Road Corporation Employees (Other Than Officers) Service Regulation, 1981, notified in U.P. Gazette dated 19.06.1981.

(d) In pursuance of said regulations options were invited for absorption and erstwhile employees were absorbed with effect from 28.07.1982.

(e) The Board of Director of Corporation in its 124th meeting held on 29.10.1992 granted approval of payment for pension to all those employees who were appointed between 01.06.1972 upto 28.07.1982 on posts which were pensionable in the U.P. Government Board Roadways.

(f) Similarly a G.O. dated 19.08.1993 was passed that the employees of erstwhile U.P. Government Roadways, who had worked on pensionable post prior to their absorption in the Corporation (i.e. with effect from 28.07.1982) would be entitled for payment of pension subject to certain conditions. Similarly a circular dated 20.04.1999 was also passed.

(g) On 23.10.2004, a Government order was passed, whereby State Government granted approval for payment of pension to those employee who were appointed in Corporation (on posts which which were pensionable in U.P. Government Roadways) between 01.06.1972 to date when the Service Regulation, 1981 came into force i.e. 19.06.1981 and since all the petitioners were appointed subsequent to the aforesaid date, therefore, they were not entitled for pension. The aforesaid cut off dates are essentially impugned in present writ petition after many years i.e. 18 years.

5. Learned Senior Counsel has further vehemently argued that aforesaid classification amounts to hostile discrimination and vehemently submitted that all employees who were appointed on non-pensionable posts in the corporation after 19.06.1981 and were promoted on pensionable posts in the department even between 01.06.1971 and 28.07.1982 were entitled to get pension, however, petitioners who were appointed between the said period i.e. after 19.06.1981 but before 28.07.1982 were held to be not entitled for pension and as such it creates two service conditions for the same post, therefore, it

was argued that it amounts to hostile discrimination. The cut-off date ought to be 28.07.1982

6. Learned Senior Counsel for petitioner submits that twin test of a classification to be reasonable are that classification must be based on intelligible differentia which must have a reasonable nexus to the object sought to be achieved, however, both parameters were missing in present case and he placed reliance on judgment passed in **All Manipur Pensioners Association by its Secretary Versus State of Manipur and others (2020) 14 SCC 625, Ramesh Chandra Sharma and others vs. State of U.P. and others, 2023 (2) ADJ 223 SC, Dr. Surendra Pratap Yadav Vs. State of U.P. and another, 2023 (2) ADJ 488, Union of India v SPS Vains (2008) 9 SCC 125, Writ (S S) No. 2306 of 2004 Ram Dular and 13 others vs. State of U.P. and others decided on 25.08.2021.**

7. Learned Senior Counsel also referred that Employee Service Regulation, 1981, notified on 09.06.1981 are applied uniformly to existing employees i.e. those even appointed prior to 19.06.1981 and also on existing employees i.e. petitioners. He further submits that even though Regulation 39(1) applies to all employees of the Corporation appointed after 01.06.1972, yet the G.O. dated 20.10.2004 grants pension to employees of the Corporation appointed from 01.06.1972 till 19.06.1981. Thus, the cut-off date 19.06.1981 is discriminatory and in teeth of Regulation 39(1) read with Regulation 4(2).

8. Learned Senior Counsel in order to defend that there is no delay in approaching this Court has placed reliance on Asgar Vs. LIC, (2016) 13 SCC 797 that in case of recurring service claims i.e. pension, mere delay alleged will not be fatal as it does not have any adverse effect on third party rights.

9. Per contra, learned counsel appearing on behalf of corporation submits that not only petitioners have approached this Court at a very belated stage despite they were well aware about the impugned notification passed in the year 2004 and since admittedly all petitioners were appointed after cut off date i.e. date when regulations of 1981 came into force, therefore, they are not entitled for pension. The petitioners are of a group which were appointed after the regulations of 1981 came into force whereas the other employees were already entered into service much prior to the appointment of petitioners, therefore, they form a separate group and since they were born in a pensionable cadre or post, therefore, pension was protected even on promotion, their source of appointment were different, therefore, there is no arbitrariness. The classification has intelligible differentia as well as that matter of pension has financial implication, therefore, the same may not be granted contrary to existing provisions. Petitioners are trying to create an artificial similarity with the erstwhile employee who were promoted between 19.06.19811 to 27.07.1982

10. Heard counsel for parties and perused the record.

11. As referred above, all the petitioners were appointed after cut off date i.e. 19.06.1981, when the Uttar Pradesh State Road Transport Corporation employees (Other Than Officers Service Regulation, 1981), came into force with effect from 19.06.1981.

12. Petitioners are essentially aggrieved that employees of erstwhile U.P. Government Roadways who were absorbed till 28.07.1982 i.e. after the cut off date as

well as promoted on post where petitioners were appointed were granted pension, however, petitioners who were directly appointed to the said post between the said period i.e. 19.06.1981 to 27.07.1982 were not granted pension.

13. It is not under much dispute that said employees were appointed much prior to petitioners between 01.06.1972 to 19.06.1981 before the regulations of 1981 came into force with effect from 19.06.1981. A process was initiated to absorb such employees with the Roadways Corporation and for that purpose, date was extended and they were finally absorbed with effect from 28.07.1982, whereas petitioners are appointed by fresh recruitment process and they were not gone through the process of absorption.

14. The said process of absorption has no relation even remotely with the appointments of petitioners which were made subsequently as well as said erstwhile employees were given benefit of pension probably on a ground that they were born in a pensionable cadre or post, therefore, promotion of some of employees on basis of their early service on post of which the petitioners were subsequently appointed also become entitle for pension.

15. As referred above, employees who were appointed between 01.06.1972 to 19.06.1981 on pensionable posts were declared to be entitled for pension and petitioners being subsequent to the said date were not entitled for pension. The benefit was granted to such old employee whose absorption was delayed and finally date was extended upto 28.07.1982. There is no ambiguity in the contents of said notification. The classification is based on two separate groups which has no interconnection between them. It is not under dispute that petitioners were born in a non pensionable post or cadre.

16. The Court is placing reliance on following paragraphs of State of **State of Uttarakhand v. Sudhir Budakoti, (2022) 13 SCC 256 :-**

"Classification test & Policy Decisions of the State

14. *A mere differential treatment on its own cannot be termed as an "anathema to Article 14 of the Constitution". When there is a reasonable basis for a classification adopted by taking note of the exigencies and diverse situations, the Court is not expected to insist on absolute equality by taking a rigid and pedantic view as against a pragmatic one.*

15. *Such a discrimination would not be termed as arbitrary as the object of the classification itself is meant for providing benefits to an identified group of persons who form a class of their own. When the differentiation is clearly distinguishable with adequate demarcation duly identified, the object of Article 14 gets satisfied. Social, revenue and economic considerations are certainly permissible parameters in classifying a particular group. Thus, a valid classification is nothing but a valid discrimination. That being the position, there can never be an injury to the concept of equality enshrined under the Constitution, not being an inflexible doctrine.*

16. *A larger latitude in dealing with a challenge to the classification is mandated on the part of the Court when introduced either by the Legislature or the*

Executive as the case may be. There is no way, courts could act like appellate authorities especially when a classification is introduced by way of a policy decision clearly identifying the group of beneficiaries by analysing the relevant materials

17. *The question as to whether a classification is reasonable or not is to be answered on the touchstone of a reasonable, common man's approach, keeping in mind the avowed object behind it. If the right to equality is to be termed as a genus, a right to non-discrimination becomes a specie. When two identified groups are not equal, certainly they cannot be treated as a homogeneous group. A reasonable classification thus certainly would not injure the equality enshrined under Article 14 when there exists an intelligible differentia between two groups having a rational relation to the object. Therefore, an interference would only be called for on the Court being convinced that the classification causes inequality among similarly placed persons. The role of the court being restrictive, generally, the task is best left to the authorities concerned. When a classification is made on the recommendation made by a body of experts constituted for the purpose, Courts will have to be more wary of entering into the said arena as its interference would amount to substituting its views, a process which is best avoided.*

18. *As long as the classification does not smack of inherent arbitrariness and conforms to justice and fair play, there may not be any reason to interfere with it. It is the wisdom of the other Wings which is required to be respected except when a classification is bordering on arbitrariness, artificial difference and itself being discriminatory. A decision made sans the aforesaid situation cannot be tested with either a suspicious or a microscopic eye. Good faith and intention are to be presumed unless the contrary exists. One has to keep in mind that the role of the Court is on the illegality involved as against the governance."*

17. In the aforesaid circumstances, the Court is of the view that there is no arbitrariness in the action of respondents. An artificial similarity has no legal basis, therefore, the prayer in this writ petition is rejected and accordingly, instant writ petition is **dismissed**.

(2025) 7 ILRA 443
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 16.07.2025
BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No. 12790 of 2024

Kanchan Kumar Gupta ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Siddharth Khare, Sr. Advocate

Counsel for the Respondents:
Anand Prakash Paul, C.S.C., Pradeep Kumar Tripathi

Issue for consideration

The key issue involved in this case whether the impugned dismissal order dated june21,2024, passed by the Vice Chairman, Kanpur development authority, imposing the major penalty of dismissal from service on the petitioner is legally sustainable-Petitioner charged with the serious misconduct for allegedly preparing duplicate files and forged

freehold sale deeds for non-allottees of plots in KDA, causing financial loss.

Headnotes

Service Law-Disciplinary proceedings-U.P. Government Servants (Discipline and Appeal) Rules,1999-Major penalty of dismissal upheld-remand directions complied with-no violation of natural justice or 1999 Rules/G.O. 2015-Punishment justified for substantial loss-petition dismissed.

Held

Dismissal from service for proven charges of forgery, cheating and conspiracy(causing Rs. 600lakhs via forged freehold deeds for non-allottees) is sustainable under Rule 3 of Rules 1999-Appellate authority were complied with-petitioner was granted opportunity to submit his reply-reply filed by petitioner was considered but found inadequate-petitioner was afforded opportunity for personal hearing and was satisfied with it-the findings returned against each charge are based on material on record and all charges were rightly proved-Punishment proportionate for grave misconduct-Hence, no interference is required-the writ petition is dismissed.(Para 21 to 25) (E-6)

Case law Cited

Kaptan Singh Vs St. of U.P. & Anr (2014): AHC:95008-DB, St. of Raj. Vs Bhupendra Singh (2024) SCC OnLine SC 1908-referred to.

List of Acts

U.P. Government Servants (Discipline and Appeal) Rules,1999

List of Keywords

U.P. Government Servants (Discipline and Appeal) Rules,1999; disciplinary proceedings; ;charge; suspension; misconduct; dismissal; nautral justice; non-allottees; freehold deeds; forgery; departmental enquiry.

Case Arising From

Service Law**:** WRIT-A No. – 12790 of 2024
From the judgment and order dated 16.07.2025 of the High Court of Judicature at Allahabad.

Kanchan Kumar Gupta Vs. State of U.P. & Ors.

Appearances for Parties

Advs. for Petitioner:
Siddharth Khare, Sr. Advocate

Advs. for Respondent:-
Anand Prakash Paul,C.S.C.,Pradeep Kumar Tripathi

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. Petitioner was appointed as Clerk Grade-II in Kanpur Development Authority on 30.04.1990. In the year 2010 he was granted promotion on the post of Clerk Grade-I.

2. Petitioner was put under suspension vide order dated 26.02.2020 on ground that he, on basis of forged documents, prepared freehold sale deeds in favour of such persons, who were not actual allottees, which has also caused financial loss running into crores of rupees.

3. Aforesaid order was challenged by way of filing Writ-A No. 5888 of 2021, however, meanwhile inquiry report was submitted, therefore, the writ petition was dismissed being infructuous vide order dated 16.09.2021.

4. Earlier petitioner was issued a charge sheet dated 30.05.2020 on six charges. On receipt of charge sheet, it is the case of petitioner that, he has submitted repeated applications that respondents may supply relied on documents but the same were not supplied. Accordingly, he filed a short reply dated 16.08.2021. Thereafter inquiry report dated 02.09.2021 was submitted and relevant part thereof is mentioned hereinafter:

"पत्रावली पर उपलब्ध अभिलेखों एवं आरोप पत्र के परीशीलन से यह स्पष्ट हो रहा है कि छः प्रकरणों से सम्बन्धित आरोपों में अपचारी कर्मचारी पर मुख्यतः आरोप यह है कि अपचारी कर्मचारी सम्बन्धित व्यक्तियों के साथ षडयंत्र एंव दुरभिसन्धि कर प्रश्नगत भूखण्डों का फ्री होल्ड डीड विभिन्न तिथियों को फर्जी एवं कूटरचित दस्तावेज तैयार करके कराया गया, जबकि उक्त भूखण्ड का आवंटन संबन्धित व्यक्तियों के पक्ष में कभी नहीं किया गया था। धनराशि सत्यापन का उत्तरदायित्व लेखा विभाग के कार्मिकों का होता है, परन्तु बिना आवंटन हुए उक्त भूखण्डों के आवंटन के फर्जी अभिलेखों के आधार पर फ्री-होल्ड/निबन्धन किये जाने विषयक पत्रावली तैयार करना तथा मूल अभिलेखों का भली-भाँति जॉच किये बिना तथा कतिपय प्रकरणों में डुप्लीकेट पत्रावली खुलवाकर प्राधिकरण को वित्तीय हानि पहुँचाते हुये अनियमित रूप से रजिस्ट्री की कार्यवाही पूर्ण करवायी गयी, इस हेतु विक्रय लिपिक उत्तरदायी है।

अपचारी कर्मचारी को पर्याप्त समय देने के बाद भी अभी तक किसी भी आरोप के सम्बन्ध में कोई तथ्यात्मक साक्ष्य/अभिलेख/जवाब प्रस्तुत नहीं किया गया है। अपितु सरसरी/सतही तथा आरोप के प्रत्युत्तर में न होकर मात्र कथात्मक जवाब बार-बार प्रस्तुत कर जॉच को विलम्बित करने का प्रयास किया जाता रहा है। साथ ही प्रकारान्तर में जन सूचना अधिकार अधिनियम के तहत नए-नए प्रार्थना पत्र लगाकर एवं प्रारम्भिक जॉच हेतु गठित कमेटी की आख्या पर अनावश्यक सूचना मांग कर जॉच को विलम्बित करने तथा जॉच में कोई भी साक्ष्य / संतोषजनक प्रत्योत्तर / जवाब प्रस्तुत न करने का कार्य किया गया है। अपचारी कर्मचारी द्वारा अपने अन्तरिम उत्तर दिनांक 07.04.2021 एवं दिनांक 16.08.2021 में भी मात्र पूर्व प्रेषित विभिन्न प्रपत्रों का उल्लेख किया गया है तथा उक्त पत्र में भी किसी भी आरोप के सम्बन्ध में कोई भी तथ्यात्मक साक्ष्य अथवा प्रतिरक्षा हेतु समुचित जवाब प्रस्तुत नहीं किया गया है इससे यह विदित होता है कि अपचारी कर्मचारी को अपनी प्रतिरक्षा में कहने हेतु कोई साक्ष्य/प्रमाण/अभिलेख नहीं है। इस कारण समुचित जवाब प्रस्तुत न कर विभिन्न प्रकार के नये-नये पत्र संलग्न कर जॉच को गुमराह करने तथा विलम्बित करने का प्रयास किया जा रहा है। जॉच में अपचारी कर्मचारी को प्रतिरक्षा हेतु पर्याप्त समय एवं अवसर प्रदान किया गया। जाँच में वांछित समस्त पत्रावली अवलोकित करायी गयी एवं उक्त पत्रावलियों पर उपलब्ध वांछित समस्त अभिलेखों की फोटोप्रति उपलब्ध करायी गयी इसके बावजूद प्रतिरक्षा में प्रस्तुत जवाब में ऐसा कोई तथ्य/साक्ष्य / अभिलेख प्रस्तुत नहीं किया जा सका, जिससे लगाया गया आरोप खण्डित/अपुष्ट होता हो, अतः अपचारी कर्मचारी पर आरोपित समस्त छः आरोप सिद्ध होते हैं।

उपरोक्तानुसार जॉच आख्या सादर प्रेषित है।"

5. A copy of inquiry report was supplied alongwith show cause notice dated 14.09.2021, to which petitioner filed a detailed reply dated 04.10.2021. The Vice Chairman, Kanpur Development Authority vide order dated 21.05.2022 passed punishment order whereby petitioner was dismissed from service.

6. Aforesaid order, thereafter, was challenged by way of departmental appeal and Commissioner, Kanpur Division, Kanpur vide order dated 15.04.2024 has set aside punishment order dated 21.05.2022 with certain directions. Relevant part of order dated 15.04.2024 is reproduced hereinafter:

"विभागीय कार्यवाही पत्रावली पर उपलब्ध दण्डादेश दिनांक 21-5-2022 से विदित होता है कि अपचारी कर्मचारी द्वारा प्रस्तुत किये गये उक्त विस्तृत लिखित अभिकथनों का तथ्यात्मक विश्लेषण/विवेचना न करके दंडादेश में मात्र यह उल्लेख किया गया है कि "कार्यालय की रिपोर्ट के अनुसार पूर्व में दिये गये प्रत्युत्तर से कोई अलग तथ्य नहीं दिया गया है। इस प्रकार सभी आरोप सिद्ध पाये गये है तथा सभी आरोप गम्भीर प्रकृति के हैं।" इसी दण्डादेश दिनांक 21-5-2022 में आगे एक स्थान पर यह भी उल्लेख किया है कि "उक्त कारण बताओ नोटिस के उपरान्त अपचारी कर्मचारी द्वारा अपना उत्तर प्रस्तुत किया गया परन्तु अपचारी कर्मचारी के द्वारा प्रस्तुत उत्तर में कोई नया तथ्य प्रस्तुत नहीं किया गया है बल्कि पूर्व में दिये गये उत्तरों को बढ़ा-चढ़ा कर लिखा गया है।"

अपचारी कर्मचारी द्वारा जांच कार्यवाही के दौरान निर्गत कारण बताओ नोटिस दिनांक 14-9-2021 के क्रम प्रस्तुत जवाब दिनांक 04-10-2021 के अवलोकन से विदित होता है कि अपचारी कर्मचारी द्वारा विस्तृत जवाब दाखिल किया गया है तथा आरोपवार लिखित उत्तर भी दिया गया है। जैसा कि ऊपर विवेचना की जा चुकी है कि जांच अधिकारी द्वारा जांच आख्या प्रस्तुत करने के दिनांक 02-9-2021 तक अपचारी कर्मचारी द्वारा आरोपवार कोई उत्तर प्रस्तुत नहीं किया गया था और न ही जांच अधिकारी द्वारा कोई विवेचना की गयी थी। अतः ऐसी स्थिति में

अनुशासनिक / दण्डन अधिकारी को अपचारी कर्मचारी द्वारा प्रस्तुत कारण बताओ नोटिस के लिखित उत्तर/आरोपवार लिखित उत्तर दिनांक 04-10-2821 के क्रम में विवेचना कर निष्कर्ष निकालना चाहिए था जबकि आदेश में मात्र यह उल्लेख किया गया है कि पूर्व में प्रस्तुत उत्तर को अपचारी कर्मचारी द्वारा बढ़ा-चढ़ा कर प्रस्तुत किया गया है। यह निष्कर्ष भी उनके द्वारा अपने विवेक के आधार पर न देकर कार्यालय की आख्या के आधार पर दिया गया है। दण्डन अधिकारी को अभिलेखों का सम्यक परीक्षण करके ही निष्कर्ष निकालना चाहिए था। अपचारी कर्मचारी के निलम्बन अवधि में भुगतान किये जा चुके जीवन निर्वाह भत्ता के अतिरिक्त अवशेष बकाया वेतन व भत्ते आदि के सम्बन्ध में उ०प्र० सरकारी सेवक (अनुशासन एवं अपील) नियमावली, 1999 के नियम-5 में निहित प्रावधानानुसार "सम्बन्धित सरकारी सेवक के वेतन और भत्तों के बारे में विनिश्चय और उक्त अवधि को ड्यूटी पर बिताया गया माना जायेगा अथवा नहीं पर विचार करते हुए उक्त सरकारी सेवक को नोटिस देकर फाइनेन्शियल हैण्ड बुक, खण्ड दो, भाग-दो से चार के नियम-54 के अधीन विनिर्दिष्ट अवधि के भीतर स्पष्टीकरण मांगने के पश्चात् अनुशासनिक अधिकारी द्वारा किया जायेगा।" चूंकि जांच अधिकारी द्वारा अपचारी कर्मचारी को आरोप का लिखित उत्तर प्रस्तुत करने का पर्याप्त मौका दिया गया था, किन्तु प्रकरण में उक्त संगत नियमों का पालन नहीं किया गया है। ऐसी स्थिति में प्रकरण प्रत्यावर्तित किये जाने योग्य है। अतः दण्डादेश दिनांक 21-05-2022 निरस्त किया जाता है और प्रकरण इस निर्देश के साथ प्रत्यावर्तित किया जाता है कि अनुशासनिक अधिकारी/दण्डाधिकारी अपचारी कर्मचारी के जवाब दिनांक 04-10-2021 का परीक्षण कर तथा आरोपवार विवेचना कर स्वयं के हस्ताक्षर से आदेश पारित करें। अनुशासनिक/दण्डन अधिकारी आवश्यकतानुसार अपचारी कर्मचारी को व्यक्तिगत सुनवायी का अवसर दे सकते हैं और यदि किसी बिन्दु पर दोबारा जांच की आवश्यकता समझते हैं, तो जांच करा सकते हैं।

अपीलकर्ता के मामले में उ०प्र० सरकारी सेवक (अनुशासन एवं अपील) नियमावली, 1999 के नियम-4 के उप नियम-5 में निहित व्यवस्थानुसार "जैहो किसी सरकारी सेवक पर आरोपित पदच्युति या सेवा से हटाये जाने की शारित को इस नियमावली या इस नियमावली द्वारा विखण्डित नियमावली के अधीन अपील मे पुनर्विलोकन में अपास्त कर दिया जाय और मामले की अग्रतर जांच या कार्यवाही के लिए किसी अन्य निर्देशों के साथ प्रेषित कर दिया जाय वहाँ उप नियम-5(क) के अनुसार "यदि वह शास्ति दिये जाने के ठीक पूर्व निलम्बन के अधीन था, तो उसके निलम्बन के आदेश को, उपर्युक्त किन्हीं ऐसे निर्देशों के अध्यधीन रहते हुए, पदच्युति या हटाने के मूल आदेश के दिनांक को और से, निरन्तर प्रवृत्त हुआ समझा जायेगा।" के दृष्टिगत उक्त प्रावधान के अनुरूपं अपचारी कर्मचारी को अनुशासनिक कार्यवाही पूर्ण किये जाने के दिनांक तक निलम्बित समझा जायेगा।

अपीलकर्ता पर लगाये गये सभी आरोप गम्भीर प्रकृति के हैं और ऐसे गम्भीर आरोपों में जांच प्रक्रिया में संगत नियमों के अनुसार पालन न किये जाने की दशा में भी अपचारी कर्मचारी दोषी साबित होने के उपरान्त भी जांच कार्यवाही में प्रक्रियात्मक त्रुटि होने की वजह से उच्च स्तर से उसे लाभ मिल सकता है। अतः यह आवश्यक है कि अनुशासनिक आं अधिकारी/उपाध्यक्ष, कानपुर विकास प्राधिकरण, कानपुर जांच कार्यवाही में सुसंगत नियमों का पूर्णतः अनुपालन करते हुए विभागीय कार्यवाही का निस्तारण सुनिश्चित करें।

अतः प्रकरण इस निर्देश के साथ प्रेतिप्रेषित किया जाता है कि अनुशासनिक अधिकारी / उपाध्यक्ष, कानपुर विकास प्राधिकरण, कानपुर प्रश्नगत विभागीय कार्यवाही में उ०प्र० सरकारी सेवक (अनुशासन एवं अपील) नियमावली, 1999 के नियम-7 तथा उक्त नियमावली के अनुक्रम कार्मिक विभाग से निर्गत शासनादेश संख्या 1/2015/13/9/98/का-1-2015, दिनांक 22-4-2015 में निहित प्रक्रियाओं का पालन करते हुए अपीलकर्ता द्वारा प्रस्तुत कारण बताओ नोटिस/आरोप पत्र के आरोपवार लिखित उत्तर दिनांक 04-10-2021 का विश्लेषण/विवेचना कर निष्कर्ष निकालते हुए प्रश्नगत अनुशासनिक कार्यवाही में गुण-दोष के आधार पर सकारण एवं मुखरित आदेश (Speaking Order) स्वयं के हस्ताक्षर से 01 माह (एक माह) में पारित करें।"

7. In pursuance of above order dated 15.04.2024, concerned respondent issued show cause notice dated 26.04.2024 to petitioner to submit his reply as well as fixed 30.04.2024 for personal appearance. Contents of notice are reproduced hereinafter:

"कृपया कानपुर विकास प्राधिकरण द्वारा जारी आदेश सं0-194/का०वि०प्रा० / कार्मिक /2022-23 दिनांक 21.05.2022 के विरूद्ध आप द्वारा आयुक्त, कानपुर मण्डल, कानपुर के समक्ष दाखिल अपील में आयुक्त महोदय द्वारा पारित आदेश संख्या-1055/21-133/2022-23 दिनांक

15.04.2024 के माध्यम से आप द्वारा नियुक्ति प्राधिकारी द्वारा निर्गत कारण बताओं नोटिस के क्रम में प्रस्तुत उत्तर दिनांक 04.10.2021 का विश्लेषण/विवेचना कर निष्कर्ष निकालते हुए प्रश्नगत अनुशासनिक कार्यवाही में गुण-दोष के आधार पर सकारण एवं मुखरित आदेश पारित किये जाने हेतु आदेशित किया गया है।

मा० आयुक्त महोदय के उपरोक्त आदेश के कम में जांच अधिकारी की जांच आख्या सलग्न कर पुनः इस आशय से प्रेषित की जा रही है कि जांच अधिकारी के निष्कर्षों के क्रम में अन्य कोई अभ्यावेदन प्रस्तुत करना चाहते है तो अपना अभ्यावेदन दिनांक 30.04.2024 के पूर्व अधोहस्ताक्षरी के कार्यालय में प्रस्तुत कर सकते हैं तथा यदि व्यक्तिगत सुनवाई एवं साक्ष्य प्रस्तुत करने का अवसर चाहते है तो दिनांक 30.04.2024 को सायं 04:00 बजे अधोहस्ताक्षरी के कार्यालय में उपस्थित होकर व्यक्तिगत रूप से अपना पक्ष एवं साक्ष्य प्रस्तुत कर सकते हैं।

यदि निर्धारित तिथि के पूर्व आपका अन्य कोई अभ्यावेदन प्राप्त नहीं होता है तथा निर्धारित तिथि व समय पर आप उपस्थित नहीं होते है तो यह समझा जायेगा कि आपको अन्य कोई अभ्यावेदन प्रस्तुत नहीं करना है तथा आप व्यक्तिगत सुनवाई एवं साक्ष्य प्रस्तुत करने का अवसर नहीं चाहते हैं, जिसके लिये आप स्वयं उत्तर दायी होगें।"

8. Petitioner appeared on 30.04.2024 and filed his written objections. Concerned respondent after considering reply of petitioner, passed impugned order dated 21.06.2024 whereby again petitioner was terminated from service and it was held that Kanpur Development Authority has suffered loss of Rs. 600 lacs. Relevant part of impugned order is mentioned hereinafter:

"8.7 उपरोक्तानुसार परीक्षण से स्पष्ट रूप से स्थापित एवं सिद्ध होता है कि श्री कंचन गुप्ता, प्रथम श्रेणी लिपिक (निलम्बित) अपने कर्तव्यों का निर्वहन सत्यनिष्ठा एवं ईमानदारी से करने में सर्वथा असफल रहे हैं। इनके द्वारा अपने पदीय दायित्वों के विपरीत कानपुर विकास प्राधिकरण के साथ विश्वासघात करते हुये कुटरचित एवं फर्जी अभिलेखों के आधार पर, बिना किसी वैधानिक आवंटन के एवं बिना भूखण्डों का मूल्य जमा कराये कतिपय व्यक्तियों के पक्ष में प्राधिकरण के 06 मूल्यवान भूखण्डों जिनका वित्तीय वर्ष 2019-20 की प्राधिकरण दर से कुल मूल्य रु0 600.32 लाख था, का फ्री होल्ड विलेख निष्पादित कराये जाने के दोषी हैं। कूटरचित प्रपत्रों के आधार पर निष्पादित फ्री होल्ड विलेखों तथा प्राधिकरण को हुई उपरोक्तानुसार करोड़ों की क्षति में इनकी संलिप्तता स्पष्ट रूप से प्रमाणित होती है। ऐसी स्थिति में श्री कंचन गुप्ता, प्रथम श्रेणी लिपिक (निलम्बित) कानपुर विकास प्राधिकरण की सेवा में बने रहने योग्य नहीं है।

8. अतः उक्त के आलोक में अपचारी कर्मचारी श्री कंचन गुप्ता पर सिद्ध पाये गये आरोपों के दृष्टिगत उ०प्र० सरकारी सेवक (अनुशासन एवं अपील) नियमावली 1999 के नियम-3 की प्राविधानित व्यवस्थाओं के आलोक में सम्यक् विचारोपरान्त अपचारी कर्मचारी श्री कंचन गुप्ता, प्रथम श्रेणी लिपिक, कानपुर विकास प्राधिकरण, कानपुर (निलंम्बित) को एतद्वारा "सेवाच्युत" (डिसमिशल) किये जाने का वृहद् दण्ड अधिरोपित करते हुये विभागीय कार्यवाही समाप्त की जाती है।

उपरोक्त भूखण्डों का कूटरचित प्रपत्रों के आधार पर किये गये विक्रय से प्राधिकरण को हुई क्षति अपचारी कर्मचारी से समानुपातिक रूप से वसूली किये जाने हेतु नियमानुसार कार्यवाही सम्पादित की जाये। श्री कंचन गुप्ता को निलम्बन अवधि में जीवन निर्वाह भत्ते के अतिरिक्त अन्य कोई वेतन एवं भत्ते आदि का भुगतान नहीं किया जायेगा।"

9. Aforesaid order was not challenged before Appellate Authority and instead petitioner has filed present writ petition impugning aforesaid order.

10. During arguments this Court has specifically asked from Sri Ashok Khare, learned Senior Advocate assisted by Sri Siddharth Khare, learned counsel for petitioner that, whether petitioner wants to file an appeal against impugned order, to which on basis of instructions, learned Senior Advocate as well as his assisting counsel has specifically denied and prays that writ petition be decided on merit.

11. Learned Senior Advocate for petitioner submitted that in first round of litigation the Appellate Authority has set aside punishment order with specific observations that inquiry has to be

commenced de novo, petitioner ought to have been provided all documents so that a detailed reply can be submitted as well as an opportunity of oral hearing be provided. However, no witness was examined and in a very cursory manner, impugned order was passed.

12. Learned Senior Advocate for petitioner further submitted that the Disciplinary Authority has again proceeded on basis of report of a Committee without applying independent mind and without any material that petitioner has committed any act of embezzlement, a major punishment was awarded. There is no material on record that Kanpur Development Authority has suffered loss of about Rs. 600 lacs. Learned Senior Advocate referred a judgment passed by a Division Bench of this Court in **Kaptan Singh vs. State of U.P. and another, 2014:AHC:95008-DB** and vehemently referred following part of said judgment:

"We are unable to accept the contention of the learned Additional Chief Standing Counsel. Even if the delinquent employee does not request for personal hearing the burden of proving the charges normally being upon the department, the enquiry officer was under obligation to fix a date for such enquiry, with information to the delinquent and to conduct enquiry wherein he was required to examine documentary as well as oral evidence, if any, in support of the charges. Even if the delinquent employee did not participate in the enquiry, the enquiry officer was duty bound to discharge his obligation as an enquiry officer of ascertaining the truth in respect of the charges levelled against him, on the basis of evidence, as to whether the same are proved against him or not.

Even if the delinquent does not demand personal hearing or does not give the names of witnesses with brief synopsis of points on which he wishes to examine or cross-examine the witnesses, the Inquiry Officer is not absolved from fixing a date of enquiry, with intimation to the delinquent and if he does not appear on the date fixed to either adjourn the enquiry to some other date or to proceed exparte, as he deems fit. In either eventuality, he is required to hold inquiry, if delinquent is present, in his presence, if he is absent, exparte. If oral evidence is referred in the charge-sheet, same is required to be recorded/examined, if not, even then the documentary evidence is required to be examined in the light of the charges for ascertaining the truth in respect thereof. The delinquent is also entitled to be intimated the date for oral enquiry, wherein the Inquiry Officer should confront the delinquent with the charges and the evidence in support thereof, put relevant queries to him, elicit and record his replies/response in respect thereof. Such oral enquiry is necessary as it gives an opportunity, to the delinquent to explain his conduct and to the Inquiry Officer to have a better perspective of the controversy, as, it is not always possible to discern the truth from written replies and documents which may not necessarily convey the complete truth. Even where the delinquent does not dispute the veracity of the documentary evidence, oral enquiry is necessary as he may still have an explanation to offer."

13. Per contra, Sri Amrendra Nath Singh, learned Senior Advocate assisted by Sri P.K. Tripathi, learned counsel for Respondents-Kanpur Development Authority, submitted that in pursuance of direction passed by Appellate Authority vide order dated 15.04.2024, the Disciplinary Authority sought reply of petitioner and also granted opportunity to appear in person and on basis of material available as well as earlier reply dated 04.10.2021 he proceeded and on basis of record, the allegations against petitioner were found proved. It was also proved that Kanpur Development Authority has suffered loss of Rs. 600 lacs. Learned

Senior Advocate also referred that there was an alternative remedy, however, petitioner has directly rushed this Court.

14. I have heard learned counsel for parties and perused the material available on record.

15. It is well settled that in normal circumstances, Courts are slow in causing interference in the orders passed in departmental proceedings. For reference relevant part of a judgment passed by Supreme Court in the case of **State of Rajasthan v. Bhupendra Singh, 2024 SCC OnLine SC 1908** is mentioned hereinafter:

"23.The scope of examination and interference under Article 226 of the Constitution of India (hereinafter referred to as the 'Constitution') in a case of the present nature, is no longer res integra. In State of Andhra Pradesh v.S Sree Rama Rao, AIR 1963 SC 1723, a 3-Judge Bench stated:

'7.... The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant:it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution.'

24. The above was reiterated by a Bench of equal strength in State Bank of India v. Ram Lal Bhaskar, (2011) 10 SCC 249. Three learned Judges of this Court stated as under in State of Andhra Pradesh v. Chitra Venkata Rao, (1975) 2 SCC 557:

'21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723:(1964) 3 SCR 25:(1964) 2 LLJ 150]. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal

trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

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25. In State Bank of India v. S.K. Sharma,(1996) 3 SCC 364, two learned Judges of this Court held:

'28. The decisions cited above make one thing clear, viz., principles of natural justice cannot be reduced to any hard and fast formulae. As said in Russell v. Duke of Norfolk [[1949] 1 All ER 109 : 65 TLR 225] way back in 1949, these principles cannot be put in a strait-jacket. Their applicability depends upon the context and the facts and circumstances of each case. (See Mohinder Singh Gill v. Chief Election Commr. [(1978) 1 SCC 405 : (1978) 2 SCR 272]) The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. (See A.K. Roy v. Union of India [(1982) 1 SCC 271:1982 SCC (Cri) 152] and Swadeshi Cotton Mills v. Union of India [(1981) 1 SCC 664].) As pointed out by this Court in A.K. Kraipakv. Union of India [(1969) 2 SCC 262], the dividing line between quasi-judicial function and administrative function (affecting the rights of a party) has become quite thin and almost indistinguishable — a fact also emphasised by House of Lords in Council of Civil Service Unions v. Minister for the Civil Service [[1984] 3 All ER 935 : [1984] 3 WLR 1174 : [1985] A.C. 374, HL] where the principles of natural justice and a fair hearing were treated as synonymous. Whichever the case, it is from the standpoint of fair hearing — applying the test of prejudice, as it may be called — that

any and every complaint of violation of the rule of audi alteram partem should be examined. Indeed, there may be situations where observance of the requirement of prior notice/hearing may defeat the very proceeding — which may result in grave prejudice to public interest. It is for this reason that the rule of post-decisional hearing as a sufficient compliance with natural justice was evolved in some of the cases, e.g., Liberty Oil Mills v. Union of India [(1984) 3 SCC 465]. There may also be cases where the public interest or the interests of the security of State or other similar considerations may make it inadvisable to observe the rule of audi alteram partem altogether [as in the case of situations contemplated by clauses (b) and (c) of the proviso to Article 311(2)] or to disclose the material on which a particular action is being taken. There may indeed be any number of varying situations which it is not possible for anyone to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries : a distinction ought to be made between violation of the principle of natural justice, audi alteram partem, as such and violation of a facet of the said principle. In other words, distinction is between "no notice"/"no hearing" and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity". To illustrate — take a case where the person is dismissed from service without hearing him altogether (as in Ridge v. Baldwin [[1964] A.C. 40 : [1963] 2 All ER 66 : [1963] 2 WLR 935]). It would be a case falling under the first category and the order of dismissal would be invalid — or void, if one chooses to use that expression (Calvin v. Carr [[1980] A.C. 574 : [1979] 2 All ER 440 : [1979] 2 WLR 755, PC]). But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report (Managing Director, ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704]) or without affording him a due opportunity of cross-examining a witness (K.L. Tripathi [(1984) 1 SCC 43 : 1984 SCC (L&S) 62]) it would be a case falling in the latter category — violation of a facet of the said rule of natural justice — in which case, the validity of the order has to be tested on the touchstone of prejudice, i.e., whether, all in all, the person concerned did or did not have a fair hearing. It would not be correct — in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e., adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone of prejudice as aforesaid."

16. In the present case, there were very serious charges against petitioner that in the garb of preparing duplicate papers, by cheating and forgery, he prepared documents in favour of third parties and executed sale deeds in as many as six matters, which has caused financial loss of about Rs. 600 lacs.

17. In earlier round of litigation, Appellate Authority has set aside order of

dismissal and matter was remitted back with a specific direction that Disciplinary Authority will consider the earlier reply dated 04.10.2021 and pass a speaking order on merit.

18. It is not in dispute that subsequently a notice was issued by Disciplinary Authority inviting reply from petitioner as well as he was asked to appear before Disciplinary Authority. On basis of record it is also clear that petitioner has filed reply as well as he has appeared before Disciplinary Authority and during inquiry petitioner has endorsed on 29.06.2021 that he has received all relevant documents. Therefore, an argument that petitioner was not provided all relevant documents, is contrary to record. Petitioner has submitted his reply dated 30.04.2024 and has appeared on same date and made a specific endorsement and he was satisfied with procedure. For reference contents of endorsement are reproduced hereinafter:

"आज दिनांक 30.04.24 को उपाध्यक्ष महोदय के समक्ष सुनवाई हेतु उपस्थित हुआ। प्रार्थी द्वारा पूर्व में दिए गए आरोपवार जवाब दिनांक 4.10.21 एवं अभ्यावेदन दिनांक 30.4.24 द्वारा समस्त तथ्यों एवं साक्ष्यों सहित प्रस्तुत कर दिए गए हैं। प्रार्थी अब सुनवाई नहीं चाहता है उपरोक्त वर्णित अभ्यावेदनों के आधार पर कृपया न्यायोचित आदेश पारित करने की कृपा करें। "

19. Therefore, the Court is of the opinion that direction passed by Appellate Authority was complied with and followed in its letter and spirit and petitioner was provided full opportunity to place his case.

20. The argument of learned Senior Advocate for petitioner that Appellate Authority has directed for de novo inquiry is contrary to record since as referred above it was a direction to Disciplinary Authority to decide case considering earlier reply filed by petitioner whereas the Disciplinary Authority has provided a fresh opportunity to petitioner to submit reply as well as asked the petitioner to appear in person and from the contents of endorsement of petitioner, as referred above, there is no doubt that not only principles of natural justice were followed but directions of Appellate Authority were also completely followed.

21. I have also carefully perused the impugned order, which is a very detailed order. Reply to each charge on basis of material was considered in detail and only thereafter it was concluded that petitioner has prepared forged documents in favour of persons, who were neither actual allottees nor have deposited money towards registration and, therefore, petitioner has caused a huge financial loss to Kanpur Development Authority.

22. An argument that impugned order was passed only on basis of report of Committee is also contrary to record since it was passed not only on basis of Committee's report but documents placed in support of charges as well as the reply submitted by petitioner during earlier inquiry as well as submitted after the order was passed by Appellate Authority. For reference the relevant findings returned with regard to each charges are reproduced hereinafter:

Charge No. 1

"उपरोक्त कथन स्वीकार नहीं है। वस्तुस्थिति यह है कि रेफरेन्स रजिस्टर नाम का कोई भी रजिस्टर प्राधिकरण में संचालित नहीं होता है। अपचारी कर्मचारी द्वारा जिस रजिस्टर को मात्र रेफरेन्स रजिस्टर कहा जा रहा है, उसमें वर्ष 2005 के काफी वर्ष पूर्व की entries है। यह रजिस्टर काफी पहले से है जो निश्चित रूप से इनको पूर्व लिपिक द्वारा हस्तगत किया गया होगा। यदि

अपचारी कर्मचारी द्वारा प्राधिकरण के प्रति सही निष्ठा व नियत से कार्य किया गया होता तो डुप्लीकेट पत्रावली खोले जाने से पूर्व यह विचार अवश्य किया गया होता कि इस भूखण्ड के समक्ष श्री सती प्रसाद दिनांक 04.08.1990 क्यों अंकित है तथा श्रीमती विद्या देवी का नाम अंकित क्यों नहीं है। यदि अपचारी कर्मचारी को पक्ष द्वारा प्रस्तुत कूटरचित प्रपत्र सही प्रतीत हो रहे थे तो भी इस रजिस्टर में श्रीमती विद्या देवी के नाम की इन्ट्री न होने के कारण अन्य किसी अभिलेख में प्रश्नगत भूखण्ड के समक्ष अंकन को देखा जाना चाहिए था अथवा अपने उच्चाधिकारी को इस सम्बन्ध में अवगत कराते हुये उनसे स्पष्ट मार्गदर्शन प्राप्त किया जाना चाहिए था किन्तु अपचारी कर्मचारी द्वारा उपरोक्त में से कोई कार्यवाही नहीं की गई एवं पक्ष द्वारा प्रस्तुत अभिलेखों को ही सत्य मानते हुये विक्रय विभाग के अभिलेखों से बिना किसी आवंटन सत्यापन के पत्रावली अग्रसारित कर दी गई। श्री कंचन गुप्ता द्वारा समिति के मन्तव्य को कल्पनाशीलता से परे बताया गया है, जबकि उपरोक्त वर्णित तथ्यों से स्पष्ट है कि समिति एवं जांच अधिकारी का कथन कल्पनाशीलता से परे न होकर श्री गुप्ता द्वारा अपने गलत कृत्यों को सही ठहराने हेतु कल्पनाशीलता से युक्त रेफरेन्स रजिस्टर आदि से सम्बन्धित उत्तर दिया गया है।"

Charge No. 2

"उपरोक्त आदेश के अनुसार, पिटीशनर के प्रत्यावेदन को respondent no. 1 अर्थात उपाध्यक्ष द्वारा निस्तारित किया जाना था, जबकि अपचारी कर्मचारी द्वारा प्रस्तुत छायाप्रति के अनुसार इनके द्वारा जोनल स्तर से ही निबन्धन कार्यवाही सम्पादित करा दी गयी, उपाध्यक्ष के समक्ष निर्णयार्थ पत्रावली प्रेषित किये जाने हेतु आख्या प्रस्तुत ही नहीं की गयी। अपचारी कर्मचारी द्वारा पहले प्रत्यावेदन के निस्तारण हेतु आख्या प्रस्तुत की जानी चाहिए थी किन्तु मा० उच्च न्यायालय के आदेश की उपेक्षा करते हुये विक्रय पत्र निष्पादन हेतु आख्या प्रस्तुत कर दी गयी, जो मा० उच्च न्यायालय, इलाहाबाद के उपरोक्त आदेश की अवमानना के समान है। उपरोक्त तथ्य से ही अपचारी कर्मचारी की निष्ठा संदिग्ध हो जाती है।"

Charge No. 3

"उपरोक्त दोनों अलग-अलग अधिकारियों की समितियों द्वारा प्रश्नगत जांच से सम्बन्धित भूखण्डों से इतर भूखण्डों के कूटरचित निबन्धन में श्री कंचन गुप्ता, अपचारी कर्मचारी को दोषी मानते हुये एफ०आई०आर० दर्ज कराने की संस्तुति की गयी। जांच हेतु विभिन्न स्तरों पर गठित समस्त समितियों को पूर्वाग्रह से ग्रसित नहीं माना जा सकता है। स्पष्ट है कि श्री गुप्ता का यह कथन कि वास्तविक रूप से प्रार्थी को कभी भी फर्जी निबन्धन हेतु दोष सिद्ध नहीं किया गया है व समिति द्वारा उक्त कथन कदाचित अतिरंजना एवं पूर्वाग्रह से ग्रसित होकर लिखा गया है, पूर्णतया भ्रामक एवं वरिष्ठ अधिकारियों पर की गयी गम्भीर टिप्पणी है।"

Charge No. 4

"अपचारी कर्मचारी द्वारा स्वयं यह लिखा गया है कि मूल अभिलेख पक्ष अवलोकित कराता है, न कि कार्यालय में हमेशा के लिये जमा कर देता है, जबकि प्रस्तुत प्रकरण में मूल अभिलेख कार्यालय में जमा है। इससे भी इन अभिलेखों की कूटरचिता सिद्ध होती है एवं अपचारी कर्मचारी का कथन गलत सिद्ध होता है।"

Charge No. 5

"उपरोक्त कथन स्वीकार नहीं है। वस्तुस्थिति यह है कि रेफरेन्स रजिस्टर नाम का कोई भी रजिस्टर प्राधिकरण में संचालित नहीं होता है। अपचारी कर्मचारी द्वारा जिस रजिस्टर को मात्र रेफरेन्स रजिस्टर कहा जा रहा है, उसमें वर्ष 2005 के काफी वर्ष पूर्व की entries है। यह रजिस्टर काफी पहले से है जो निश्चित रूप से इनको पूर्व लिपिक द्वारा हस्तगत किया गया होगा। यदि अपचारी कर्मचारी द्वारा प्राधिकरण के प्रति सही निष्ठा व नियत से कार्य किया गया होता तो डुप्लीकेट पत्रावली खोले जाने से पूर्व यह विचार अवश्य किया गया होता कि इस भूखण्ड के समक्ष इण्ट्री रिक्त क्यों है जबकि अधिकांश अन्य भूखण्डों के समक्ष इण्ट्री पूर्व से है। यदि अपचारी कर्मचारी को पक्ष द्वारा प्रस्तुत कूटरचित प्रपत्र सही प्रतीत हो रहे थे तो भी इस रजिस्टर में कोई इन्ट्री न होने के कारण अन्य किसी अभिलेख में प्रश्नगत भूखण्ड के समक्ष अंकन को देखा जाना चाहिए था अथवा अपने उच्चाधिकारी को इस सम्बन्ध में अवगत कराते हुये उनसे स्पष्ट मार्गदर्शन प्राप्त किया जाना चाहिए था किन्तु अपचारी कर्मचारी द्वारा उपरोक्त में से कोई कार्यवाही नहीं की गई एवं पक्ष द्वारा प्रस्तुत अभिलेखों को ही सत्य मानते हुये विक्रय विभाग के अभिलेखों से बिना किसी आवंटन सत्यापन के पत्रावली अग्रसारित कर दी गई। श्री कंचन गुप्ता द्वारा समिति के मन्तव्य को कल्पनाशीलता से परे बताया गया है, जबकि उपरोक्त वर्णित तथ्यों से स्पष्ट है कि समिति एवं जांच अधिकारी का कथन कल्पनाशीलता से परे न होकर श्री गुप्ता द्वारा अपने गलत कृत्यों को सही ठहराने हेतु कल्पनाशीलता से युक्त रेफरेन्स रजिस्टर आदि से सम्बन्धित उत्तर दिया गया है।"

Charge No. 6

"उपरोक्त कथन स्वीकार नहीं है। वस्तुस्थिति यह है कि रेफरेन्स रजिस्टर नाम का कोई भी रजिस्टर प्राधिकरण में संचालित नहीं होता है। अपचारी कर्मचारी द्वारा जिस रजिस्टर को मात्र रेफरेन्स रजिस्टर कहा जा रहा है, उसमें वर्ष 2005 के काफी

वर्ष पूर्व की entries है। यह रजिस्टर काफी पहले से है जो निश्चित रूप से इनको पूर्व लिपिक द्वारा हस्तगत किया गया होगा। यदि अपचारी कर्मचारी द्वारा प्राधिकरण के प्रति सही निष्ठा व नियत से कार्य किया गया होता तो डुप्लीकेट पत्रावली खोले जाने से पूर्व यह विचार अवश्य किया गया होता कि इस भूखण्ड के समक्ष इण्ट्री रिक्त क्यों है जबकि अधिकांश अन्य भूखण्डों के समक्ष इण्ट्री पूर्व से है। यदि अपचारी कर्मचारी को पक्ष द्वारा प्रस्तुत कूटरचित प्रपत्र सही प्रतीत हो रहे थे तो भी इस रजिस्टर में कोई इन्ट्री न होने के कारण अन्य किसी अभिलेख में प्रश्नगत भूखण्ड के समक्ष अंकन को देखा जाना चाहिए था अथवा अपने उच्चाधिकारी को इस सम्बन्ध में अवगत कराते हुये उनसे स्पष्ट मार्गदर्शन प्राप्त किया जाना चाहिए था किन्तु अपचारी कर्मचारी द्वारा उपरोक्त में से कोई कार्यवाही नहीं की गई एवं पक्ष द्वारा प्रस्तुत अभिलेखों को ही सत्य मानते हुये विक्रय विभाग के अभिलेखों से बिना किसी आवंटन सत्यापन के पत्रावली अग्रसारित कर दी गई। श्री कंचन गुप्ता द्वारा समिति के मन्तव्य को कल्पनाशीलता से परे बताया गया है, जबकि उपरोक्त वर्णित तथ्यों से स्पष्ट है कि समिति एवं जांच अधिकारी का कथन कल्पनाशीलता से परे न होकर श्री गुप्ता द्वारा अपने गलत कृत्यों को सही ठहराने हेतु कल्पनाशीलता से युक्त रेफरेन्स रजिस्टर आदि से सम्बन्धित उत्तर दिया गया है।"

23. Petitioner is not able to contradict the aforesaid findings either on fact or on law.

24. In aforesaid circumstances, this Court is of the considered opinion that, the directions given by Appellate Authority were complied with; petitioner was granted opportunity to submit his reply; reply filed by petitioner was considered but found inadequate; petitioner was afforded opportunity of personal hearing and was satisfied with it; the findings returned against each charge are based on material on record and all the charges were rightly proved.

25. So far as punishment is concerned, since it is a case of forgery and huge financial loss was caused, therefore, p unishment of dismissal is not shockingly disproportionate to the proved charges. Accordingly no interference is required under writ jurisdiction.

26. Writ petition is accordingly dismissed.

(2025) 7 ILRA 454
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 17.07.2025
BEFORE
THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No. 18067 of 2024

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

Counsel for the Petitioner:
Ashok K Pandey, Shrish Kumar Jaiswal

Counsel for the Respondents:
C.S.C., Santosh Kumar Singh, Sri A.B. Paul

Issue for consideration

The core issue revolves around the interpretation and applicability of the U.P. Development Authorities (Non-Centralized Services) Retirement Benefits Rule 2011 in determining pension eligibility for employees of Development Authorities who were initially engaged as daily wagers and later regularized- After regularization he has rendered service much less than 20 years.

Headnotes

Service Law-U.P. Development Authorities (Non-Centralized Services) Retirement Benefits Rule 2011-Pension-Qualifying Service-Petitioner seeking mandamus for payment of pension and retiral benefits under (Rule 2011) including counting of pre-regularization daily wage service towards "qualifying service" is dismissed.

Held

Petitioner has not completed qualifying service of 20 years, as required under "Rules 2011" after he got regularized, therefore, in strict interpretation of said Rules, no relief granted to the petitioner- As the "qualifying service" Rule 2(i) for pension demands 20 years of substantive/regular/permanent employment under the Authority, excluding daily wage/temporary/ad hoc periods unless continuous and immediately followed by

confirmation without interruption-Pre-regularization daily wage service does not count towards this threshold, as it is non-substantive/non-permanent, rendering post-regularization service alone (13 years 4 months 6 days) insufficient for eligibility-Prem Singh Vs. St. of UP (extending work-charged service for qualifying eligibility) inapplicable to daily wagers under Rules,2011, as clarified in Uday Pratap Thakur Vs. St. of Bihar-limited to counting for eligibility, not quantum and not retroactive regularization-Jai Prakash Tripathi Vs.St.of UP (granting relief via reading down) stayed pending reference-Issue of reading down statutes without vires challenge in Kanhai Ram Vs. St.of UP before Division Bench-reference undecided-Thus, writ petition is accordingly disposed of with an observation that on basis of outcome of reference pending, the petitioner will have a liberty to avail legally available remedy.(Para 13 to 19) (E-6)

Case law Cited

Prem Singh Vs St. of U.P. & Ors (2019) 10 SCC 516 , Anand Prakash Mani Tripathi Vs St. of U.P. & Ors (Civil Appeal No. 6118 of 2024),decided on 07.05.2024; Gorakhpur Development Authority & Anr Vs St. of U.P. & Ors (Special Appeal No. 237 of 2023). decided on 18.07.2023 & Jai Prakash Tripathi Vs St. of U.P. & Ors 2023: AHC:57303, Uday Pratap Thakur & Anr. Vs The St. of Bih. & Ors (2023) INSC 461, Ram Sewak Yadav Vs St. of U.P. & Ors (2024) :AHC:17407, Kanhai Ram & Ors Vs St. of U.P. & Ors (2024):AHC:52835-referred to.

List of Acts

U.P. Development Authorities (Non-Centralized Services) Retirement Benefits Rule 2011

List of Keywords

Pension; Qualifying Service; Daily Wager; Regularization; Retiral Benefits; Gorakhpur Development Authority; Azamgarh Development Authority; Retrenchment; Reinstatment; Superannuation; Model Employer; U.P. Development Authorities (Non-Centralized Services) Retirement Benefits Rule 2011.

Case arising From

Service Law :WRIT-A No. – 18067 of 2024
From the Judgment and Order dated 17.07.2025 of the High Court of Judicature at Allahabad

Rambachan Yadav Vs. State of U.P. & 2 Ors.

Appearances for Parties

Advs. for Petitioner
Ashok K Pandey, Shrish Kumar Jaiswal
Advs. for Respondent
C.S.C.,Santosh Kumar Singh

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. Petitioner was appointed on the post of Chowkidar as a Daily Wager with Gorakhpur Development Authority on 06.08.1988. He was retrenched by an order dated 10.03.1993, therefore, he filed Writ-A No. 25931 of 1993, which was disposed of vide order dated 19.05.1993 with liberty to represent before concerned authority against order of retrenchment with further direction that said representation be decided by a reasoned and speaking order.

2. It is the case of petitioner that thereafter he has filed an application against order of retrenchment, however, no decision was taken, therefore, he has filed a contempt petition which was disposed of to consider the case of petitioner. Still thereafter representation of petitioner was not considered, therefore, he has filed a fresh writ petition being Writ-A No. 26246 of 1994. Said writ petition was allowed vide order dated 17.05.1999 and impugned order dated 10.03.1993 as well as orders dated 10.11.1993 and 31.03.1994 were quashed and a direction was passed that

petitioner be reinstated with all consequential benefits of service with payment of arrears of salary w.e.f. 10.03.1993. A further direction was passed to consider the services of petitioner for regularization.

3. Gorakhpur Development Authority again failed to follow the direction referred above, therefore, petitioner filed a contempt petition and finally the order dated 17.05.1999 was complied on 22.09.2003 and petitioner joined after a decade of his order of retrenchment.

4. It is further case of petitioner that later on he has moved an application on 24.12.2010 to allow him to join as regular employee and he placed reliance on an Office Memorandum dated 24.12.2010. Said Office Memorandum is not annexed alongwith the writ petition.

5. Petitioner thereafter transferred from Gorakhpur Development Authority to Azamgarh Development Authority on 22.10.2014 and he joined at his transferred place and attained age of superannuation on 30.04.2024. During period of service, an Authority of Azamgarh Development Authority issued a communication dated 09.03.2015 to Branch Manager of State Bank of India, Azamgarh to allow petitioner and other employees to open their respective pension fund account.

6. In aforesaid circumstances, petitioner has approached this Court by way of filing present writ petition seeking following reliefs:

"1. Issue a writ, order or direction in the nature of mandamus directing to the respondent no. 2 & 3 to pay the retiral benefit of the petitioner including the pension and other consequential benefits in accordance to the Rule Uttar Pradesh Development Authorities Non-Centralized Services Retirement Benefits Rules, 2011.

2. Issue a writ, order or direction in the nature of mandamus commanding to the respondents-authority to count his services as daily wagers prior to his regularization and fix pension with consequential benefits accordingly the Rule Uttar Pradesh Development Authorities Non-Centralized Services Retirement Benefits Rules, 2011.

3. Issue a writ, order or direction in the nature of mandamus directing to the respondent no. 2 to decide the representation dated 22.07.2024 moved by the petitioner. (ANNEXURE NO. 7 to this Writ Petition).

4. Issue any other writ, order or direction which this Hon'ble Court may deem fit and proper under the circumstance of the case.

5. Award the cost of the petition in favour of the petitioners."

7. This Court has passed following order on 19.11.2024:

"(Order on the memo of Writ Petition)

Learned Counsel for the petitioner has placed reliance upon a decision of mine in Ram Sewak Yadav v. State of U.P. and others, 2024:AHC:17407. On the other hand, learned Counsel appearing for the Azamgarh Development Authority has placed reliance upon an interim order passed by the Division Bench

in Special Appeal No. 415 of 2024, Meerut Development Authority, Meerut v. Azad Singh and another, where, taking note of another order of mine, where I had made a reference to a larger Bench, to wit, Kanhai Ram and others v. State of U.P. and others, 2024:AHC:52835, the direction of the learned Single Judge to reckon ad hoc services rendered prior of regularization was stayed.

Prima facie, it appears that Kanhai Ram (supra) is a case relating to government servants, where the Uttar Pradesh Qualifying Service for Pension and Validation Act, 2021 ('Act of 2021' for short) squarely applies. Unless the vires of the said act is challenged, the provisions of the Act of 2021 can neither be struck down nor read down.

By contrast, prima facie, in case of local bodies like a Development Authority or a Nagar Nigam, the Act of 2021 does not apply. The following remarks of mine ins Ram Sewak Yadav (supra) are very relevant :

15. Now, the definition of 'qualifying service' in Regulation 2(m) of the Regulations of 1984 is almost cast in the same terms as that in Rule 3(8) of the Rules of 1961, that were read down by the Supreme Court in Prem Singh to hold that services rendered in the work-charged establishment would be treated as 'qualifying service' under the last mentioned Rules for the purpose of grant of pension. The principle in Prem Singh, to reckon continuous service in the work-charged establishment as 'qualifying service' under Rule 3(8) of the Rules of 1961, has been extended in its application to continuous service of any kind, such as those rendered on daily-wages or ad hoc basis, followed by regularization, on the same post and in the same capacity. These principles have been adopted, particularly, in case of long retention in service on daily-wages or ad hoc basis or work-charged establishment, followed by regularization. Without reference to much authority on this point, it would suffice to refer to a decision of this Court in Kallu Ali v. State of U.P. and others, 2022 (4) AWC 3840, a case relating to an employee of a Development Authority, who had worked for a long time on daily-wages and then regularized in service. The issue had arisen in Kallu Ali (supra) in the context of his qualifying service for the purpose of entitlement to pension. After a copious review of authority on the point in Kallu Ali, it was held:

"28. The authorities referred to herein above and those of this Court clearly hold that if an employee has discharged duties whether temporarily or as a daily wager or on ad hoc basis on a post for which requirement was there and services of such an employee have come to be regularized on the said post or in the same capacity, the period spent before regularization should be considered and added to pensionable services. The courts have not approved the act and conduct of the employer to deny pension to its employee if he has rendered a number of substantial year of continuous service in an establishment leading to his / her regularization if such an establishment holds a pensionable service. The State Government has been taken to be a model employer and a State being a welfare State, the courts have shown serious concern in the event an employee who has spent all his life in the service of such establishment, stands denied pension on his attaining the age of superannuation and being retired as such."

Therefore, prima facie, the issues that have arisen in Kanhai Ram would not, at all, be attracted to the case of a Development Authority.

Issue notice.

Notice on behalf of respondent No. 1 is accepted by Mr. Girijesh Kumar Tripathi, learned Additional Chief Standing

Counsel, whereas that on behalf of respondents Nos. 2 and 3, by Mr. Utkarsh Prakash Singh, Advocate holding brief of Mr. Santosh Kumar Singh, learned Counsel. Both the learned Counsel are granted two weeks' time to file a counter affidavit.

Adjourned to 03.12.2024.

To be taken up in the additional cause list for admission, along with a report regarding regarding status of pleadings.

(Order on Civil Misc. Stay Application No. 1 of 2024)

Issue notice."

8. Sri Ashok Kumar Pandey, learned counsel for petitioner has reiterated the arguments noted in above referred order that petitioner's due retiral benefits be paid taking note of service prior to his regularization also and accordingly fix the pension in terms of U.P. Development Authorities Non-Centralized Services Retirement Benefits Rules, 2011 *(hereinafter referred to as "Rules, 2011").* Learned counsel for petitioner has placed reliance on the judgments passed by Supreme Court in **Prem Singh vs. State of U.P. and others, 2019(10) SCC 516** and **Anand Prakash Mani Tripathi vs. State of U.P. and others (Civil Appeal No. 6118 of 2024), decided on 07.05.2024** as well as this Court's judgments in **Gorakhpur Development Authority and another vs. State of U.P. and others (Special Appeal No. 237 of 2023), decided on 18.07.2023** and **Jai Prakash Tripathi vs. State of U.P. and others, 2023:AHC:57303.**

9. Per contra, Sri A.B. Paul, Advocate and Sri J.N. Maurya, learned Chief Standing Counsel, appearing for respondents have referred following paragraph of counter affidavit:

"4. That before proceeding to give para-wise reply to the various averments made in the writ petition, at the very outset, the answering-respondents crave to bring on record following relevant facts for proper adjudication of the controversy involved in the aforesaid writ petition:-

(1) In exercise of the powers under sub-section (7) of section 4 of the Uttar Pradesh Town Planning and Development Act, 1973 (President's Act No. 11 of 1973), as re-enacted and amended by the Uttar Pradesh 725 President's Act (Re-enactment with Modifications) Act, 1974 (Uttar Pradesh Act No. 30 of 1974) the Governor is hereby constituted an authority for the Azamgarh Development Area declared as such under Government Notification No. 1744/8-6-08-259 DA/90, dated the 20th June, 2008, from the date of publication of this notification in the Gazette, to be called the Azamgarh Development Authority, Azamgarh.

(ii) Any law pertaining to appointment or payment of salary or pension or retirement benefit etc., of the employees prevailing before or after constitution of the development authority doesn't automatically applies on it until and unless, the same is circulated by department of House & urban planning, Government of UP, to the development authorities and Development Authorities unless adopts its.

(iii) ADA is authorized to appoint such number of officers and employees as may be necessary for the efficient performance of its function. (Section 5 (2) of the Uttar Pradesh Urban Planning and Development Act, 1973).

(iv) In the Compliance of the Government order dated 21.10.2010 and

letter dated 21.12.2010 issued by Uttar Pradesh Housing and Urban Planning Department for regularization of the petitioner and pursuant to that office Memorandum dated 24.12.2010 was issued by the Gorakhpur Development Authority and the finally petitioner offered his joining on 24.12.2010 before Vice Chairman GDA.

(v) After Appointment of the petitioner, a regulation named as Uttar Pradesh Development Authority Non-Centralized Retirement benefit Rules, 2011 (now herein referred as Retirement Rules 2011) was promulgated by the Governor of Uttar Pradesh on 11.09.2011 for grant of retirement benefits to the Non-Centralized employees of the Development Authorities. The essential requirement which the present Retirement Rules 2011 requires for getting benefit retirement benefits are as following:

xxxx

Therefore as per the provision Retirement Rules 2011, the petitioner is not entitled to avail retirement benefits as:

1. He was appointed on the post of 'Chaukidar' in Non-Centralized Cadre on 24.12.2010 in the GDA after the Government order dated 21.10.2010. Therefore, as per the rule 1(3) proviso Retirement Rules 2011, he is barred to avail the benefit.

2. His total service which can be commutated after his appointment (24.12.2010) till superannuation (30.04.2024) is of total 13 year 04 months 06 days. Therefore, as per the proviso to Rule 2(Jha)(6) of Retirement Rules 2011, he did not qualify the criteria of 20 years of regular service in the ADA."

10. Learned counsel for respondents have placed reliance on a judgment passed by Supreme Court in **Uday Pratap Thakur and another vs. The State of Bihar and others, 2023 INSC 461.**

11. I have heard learned counsel for parties and perused the material available on record.

12. The above referred facts are not under much dispute, except that order of regularization dated 24.10.2010, as claimed by petitioner, since it is not on record, though it has not been specifically denied by respondents that petitioner was treated as regular employee with effect from said date.

13. It is the case of both parties that petitioner's pension will be determined in terms of Rules, 2011 and it would be applicable to the employees appointed on or order 1st April, 2005. For the purpose of present case, it would be appropriate to reproduced the definition of the terms "pensionable post" and "qualifying service", as provided in Rules, 2011, hereinafter:

"(h) "Pensionable post" means a post which fulfills the following three conditions, namely-

(i) the post is in any cadre of the Uttar Pradesh Development Authorities Non-Centralized Services

(ii) the employment is substantive and permanent, and

(iii) the service is paid by any Authority,

(i) "Qualifying service" means the service of a member of service which conforms to the following conditions :-

(i) The service must be under an Authority,

(ii) The employment must be substantive /regular/ permanent.

(iii) The service must be paid by an Authority excluding the following periods of:

(i) temporary or officiating service in a non-pensionable establishment under any Authority.

(ii) service in a work charged establishment, and

(iii) service in a post paid from contingencies:

Provided that the service of a member of service does not qualify for pension and gratuity, except compensation gratuity, until he has completed twenty years of age.

Provided further that period of continued temporary or officiating service under any Improvement Trust, Authority, Palika Board, Nigam, Central or State Government shall count. as qualifying service if it is followed by confirmation on the same post or any other post without any interruption of service.

Note: If service rendered in a non-pensionable establishment, work charged establishment or in a post paid from contingencies falls between two periods of temporary service in a pensionable establishment or between a period of temporary service and permanent service in a pensionable establishment, it will not constitute an interruption of service but shall not count towards qualifying service." (Emphasis supplied)

14. The aforesaid definition of "qualifying service" has provisos and its first proviso says that the service of a member of service does not qualify for pension and gratuity, except compensation gratuity, until he has completed twenty years of age. Therefore, service of 20 years would fall within the meaning of "qualifying service" and facts of present case are tested accordingly.

15. In the present case petitioner was appointed on 06.08.1988 as a Daily Wager and he was retrenched vide order dated 10.03.1993. Much later, i.e., after a decade a writ petition filed by petitioner was allowed and retrenchment order was quashed with direction that he may be allowed to join w.e.f. 10.03.1993 and accordingly he was allowed to join. It is further case of petitioner that he was regularized on 24.12.2010 and got retired on 30.04.2024. Therefore, as per the case of petitioner, after regularization he has rendered service only for 13 years, 4 months and 6 days, i.e., much less than 20 years.

16. The interpretation of application of aforesaid Rules, 2011 were not considered by Coordinate Bench of this Court in **Ram Sewak Yadav vs. State of U.P. and others, 2024:AHC:17407** though it was considered by another Coordinate Bench in **Jai Prakash Tripathi (supra)** and relief was granted. However, as referred above, an off shoot of aforesaid order, i.e., a Reference to a Division Bench in **Kanhai Ram and others vs. State of U.P. and others, 2024:AHC:52835** is under consideration before a Division Bench of this Court and the question for reference is as follows:

"The moot question in this matter, therefore, is if in the absence of a challenge to the vires of a statute, can it be read down or virtually declared unconstitutional, without being formally struck down. Before embarking on the enterprise to find an answer to this question, it would be apposite to refer to a matter of determination and cognizance by Single Judges and Benches of this Court, where the issue of vires of a statute is involved."

17. The judgment passed by Supreme Court in **Prem Singh (supra)** is further clarified by Supreme Court in **Uday Pratap Thakur (supra)** and relevant paragraphs thereof are reproduced hereinafter:

"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 and 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."

18. In aforesaid circumstances, the relief sought by petitioner cannot be granted on following grounds:

(a) Admittedly petitioner has not completed qualifying service of 20 years, as required under Rules, 2011 after he got regularized, therefore, in strict

interpretation of said Rules, no relief can be granted to petitioner.

(b) In **Prem Singh (supra)** the Supreme Court has considered the issue of qualifying service of Work-charged employees and it was further clarified in **Uday Pratap Thakur (supra),** whereas admittedly petitioner was a Daily Wager. Otherwise also, interpretation of Rules, 2011 were not in issue in **Prem Singh (supra)** and an attempt made by Coordinate Bench in **Jai Prakash Tripathi (supra)** has already taken note by a Division Bench considering a reference and question involve therein has already been reproduced in earlier paragraph of judgment. Therefore, when the issue is already before Larger Bench, any other interpretation would not be legally permissible.

19. In view of above, the prayer sought in this writ petition cannot be allowed. The writ petition is accordingly disposed of with an observation that on basis of outcome of reference pending in **Kanhai Ram (supra)** the petitioner will have a liberty to avail legally available remedy, if so advised.

(2025) 7 ILRA 462
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 09.07.2025
BEFORE

THE HON'BLE AJAY BHANOT, J.

Writ A No. 18224 of 2024

Muhammad Naeem ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Santosh Kumar Mishra

Counsel for the Respondents:
C.S.C., Sheo Ram Singh

Issue for consideration

Claim for allocation of light duties on account of disability ; declined by impugned order dated 04.10.2024 by respondent Corporation

Headnotes

Rights of Persons with Disabilities Act, 2016 –sec.-20,21,33-Petitioner suffered disability during his service period- Court ordered independent examination by medical board-recorded that the petitioner suffers from a locomotor disability to the extent of 40%-impugned order invalidated the claim for light duties-ground -that there is no provision for grant of light duties to drivers in the Corporation-an imperative duty upon the respondents to identify posts to be held by respective categories of persons with disabilities-rights of persons with disabilities –cannot be transgressed –cannot be allowed-impugned order set aside- directed to permit the petitioner to continue on the post with light duties. **W.P. allowed.**

Held:

The impugned order neglects to consider relevant facts and document which attest the disability of the petitioner and disclose the recommendations of competent authorities. The said action of the respondent employers subverts the intent of Rights of Persons with Disabilities Act, 2016 and is contrary to the provisions of the enactment. (E-9)

Case Law Cited

Nil

List of Acts

Rights of Persons with Disabilities Act, 2016

List of Keywords

locomotor disability; disability during his service period; light duties.

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

1. The petitioner is a bus driver in the respondent Corporation.

2. By means of the impugned order dated 04.10.2024 the petitioner's claim for allocation of light duties on account of his disability has been declined. The impugned order records that there is no light duty available for drivers in the respondent Corporation apart from the normal job of driving buses.

3. The petitioner suffered a disability during his service period. The petitioner had made a representation on 28.03.2022 before the respondent authorities regarding his disability and consequent inability to undertake rigorous work. The said claim of the petitioner and his request for allocation of light duties began to be processed by the respondent Corporation from the aforesaid date. The competent authority of the Corporation by communication dated 28.03.2022 requested the Chief Medical Officer, Hamirpur to medically examine the petitioner and draw up a report regarding his disability. A medical board constituted by the CMO, Hamirpur comprising of three specialist doctors examined the petitioner. The report of the said medical board which was countersigned by the CMO, Hamirpur on 04.04.2022 opined that the petitioner suffered from 40% disability.

4. Consequent to the aforesaid opinion of the medical board a disability certificate was issued by the competent authority to the petitioner on 04.04.2022. The disability certificate issued by the competent medical authorities dated 04.04.2022 records that the petitioner is a case of locomotor disability and he has 40% permanent disability in relation to Left Arm, Left Leg as per the guidelines (Guidelines for the purpose of assessing the extent of specified disability in a person included under the RPwD Act, 2016 notified by Government of India vide S.O. 76(E) dated 04/01/2018).

5. The CMO, Hamirpur in his letter/medical opinion dated 25.04.2022 addressed to the competent authority of the respondent Corporation stated that the disability of the petitioner was temporary and a cure was possible. However, the said letter categorically recommended that the petitioner would be unable to perform the duties of driver and hence should be allocated light work.

6. Yet again the respondent Corporation directed the petitioner to face a medical board. The petitioner had appeared before the medical board which was comprised of three specialist doctors nominated by the CMO, Lucknow. The opinion of the medical board dated 05.05.2023 which was duly countersigned by the CMO, Lucknow reiterated the said disability suffered by the petitioner and advised light duties in view of the same.

7. The petitioner claims that despite repeated medical confirmations of his disability and in the teeth of medical advice the authorities of respondent Corporation did not assign light duties to the petitioner. Being thus aggrieved the petitioner approached this Court by instituting Writ A No. 12227 of 2024 (Muhammad Naeem Vs. State of U.P.). This Court by order dated 14.08.2024 passed the following orders:

> "5. In view of the above, this petition stands disposed of with direction to the petitioner to move an appropriate application within four weeks from today before the competent authority-respondent no.4 and in the event any such application is filed the competent authority shall dispose of the same within a period of six weeks from the date of production of certified copy of this order by means of reasoned and speaking order."

8. The application of the petitioner has now been rejected by the impugned order dated 04.10.2024.

9. This Court by order dated 20.02.2025 directed the constitution of medical board to examine the medical condition/disability of the petitioner and submit a report. The medical board constituted by the CMO, Lucknow was comprised of three specialist doctors from King

George's Medical University, Lucknow. After independent examination of the petitioner the said medical board in its report dated 12.03.2025 recorded that the petitioner suffers from a locomotor disability to the extent of 40% as contemplated in the Rights of Persons with Disabilities Act, 2016. In effect the medical board only reiterated the opinion of the earlier boards.

10. The petitioner is a person with disability under the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as the "Disabilities Act") and his rights are governed and regulated by the Disabilities Act. The objects sought to be achieved by the legislature while enacting the Disabilities Act are disclosed in the Rights of Persons with Disabilities Bill, 2014. The relevant objections sought to be achieved by the enactment are extracted hereunder:

"4 (ii) the persons with disabilities enjoy various rights such as right to equality, life with dignity, respect for his or her integrity etc. equally with others;

(iii) duties and responsibilities of the appropriate Government have been enumerated."

11. Some of the relevant definitions under the Disabilities Act are discussed below. Section 2(r) and Section 2(s) respectively define person with benchmark disability, person with disability, while Section 2(i) defines establishment. The said provisions are reproduced below:

"2 (i) "establishment" includes a Government establishment and private establishment;

(r) "person with benchmark disability" means a person with not less than forty percent 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:

(s) "person with disability" means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;

12. The respondent authorities clearly come within the ambit of the "establishment" under the Disabilities Act.

13. The disabilities covered under the Disabilities Act are detailed in Schedule I to the Act. The relevant parts of the provision state thus:

"1. Physical disability.— A. Locomotor disability (a person's inability to execute distinctive activities associated with movement of self and objects resulting from affliction of musculoskeletal or nervous system or both), including— (a) "leprosy cured person" means a person who has been cured of leprosy but is suffering from— (i) loss of sensation in hands or feet as well as loss of sensation and paresis in the eye and eye-lid but with no manifest deformity;

(ii) manifest deformity and paresis but having sufficient mobility in their hands and feet to enable them to engage in normal economic activity;

(iii) extreme physical deformity as well as advanced age which prevents him/her from undertaking any gainful occupation, and the expression "leprosy cured" shall construed accordingly."

14. Section 20 of the Disabilities Act prohibits discrimination against a person with disability in any government establishment in any manner relating to employment. The provision being relevant is extracted hereunder:

"20. Non-discrimination in employment.—(1) No Government establishment shall discriminate against any person with disability in any matter relating to employment: Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section. (2) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability. (3) No promotion shall be denied to a person merely on the ground of disability. (4) No Government establishment shall dispense with or

reduce in rank, an employee who acquires a disability during his or her service: Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits: Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. (5) The appropriate Government may frame policies for posting and transfer of employees with disabilities."

15. Section 21 of the Disabilities Act contemplates the an equal opportunity policy to be followed by all establishments and the provision is reproduced hereunder:

"21. Equal opportunity policy.—(1) Every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it in pursuance of the provisions of this Chapter in the manner as may be prescribed by the Central Government.

(2) Every establishment shall register a copy of the said policy with the Chief Commissioner or the State Commissioner, as the case may be."

16. Section 33 of the Disabilities Act obligates the government to identify the posts in the establishment which can be held by respective categories of persons with benchmark disabilities. Section 33 speaks thus:

"33. Identification of posts for reservation.—The appropriate Government shall— (i) identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34; (ii) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and (iii) undertake periodic review of the identified posts at an interval not exceeding three years."

17. Section 33 of the Disabilities Act pivots the implementation of the said enactment in the respondent Corporation. The process under Section 33 contemplates that the identified post aligns with the respective disability in a manner that holder of the post can discharge the duties attached to the post without being impeded by the disability. When the respective disability ceases to be a factor in the efficient execution of the identified post, the person with disability realizes his/her true potentialities and the legislative object of the Disabilities Act is fully realized. The said identification of posts for persons with disabilities is indispensable for the creation of a discrimination free work environment for persons with disabilities.

18. Failure of the respondents to identify posts which can be held by respective categories of persons with disabilities will not only violate Section 33 of the Disabilities Act which is a mandatory provision of law, but will have a further cascading effect. Non compliance of Section 33 of the Disabilities Act will also create a discriminatory regime against persons with disabilities, which is contrary to the avowed object of the Disabilities Act. The said omission of the respondents will flagrantly transgress Section 20 of the Disabilities Act. Further more the absence of clearly identified posts for persons with disabilities, will negate the equal opportunity which is contemplated in Section 21 of the Disabilities Act. In short the scheme of equality in employment for persons with disabilities under the Disabilities Act will be subverted if the mandate of Section 33 is frustrated.

19. The pleadings and materials in the record establish that the petitioner has been suffering from physical disability in the nature of locomotor disability to the extent of 40% from March 2022, which is depicted in the said disability is depicted in the Disability Certificate issued under the Disabilities Act. The said disability comes within the ambit of "locomotor disability" defined in Schedule I of the Disabilities Act. The petitioner had first made a representation to the respondent Corporation on 28.03.2022 for being allocated duties commensurate with his disabilities. It is also undisputed that the petitioner was not given light duties nor paid his salary since March 2022. The correspondences of the department not only disclose non application of mind, but also display callous attitude to the plight of an employee who is suffering from disability, and a disconcerting disregard for the law.

20. The impugned order neglects to consider relevant facts and document which attest the disability of the petitioner and disclose the recommendations of competent authorities.

The said action of the respondent employers subverts the intent of Rights of Persons with Disabilities Act, 2016 and is contrary to the provisions of the enactment.

21. The impugned order had invalidated the claim of the petitioner for light duties on the footing that there exists no provision for grant of light duties to drivers in the Corporation. The aforesaid assertions in the impugned order are in the teeth of the provisions of Rights of Persons with Disabilities Act, 2016. As discussed earlier an imperative duty is cast upon the respondents to identify posts to be held by respective categories of persons with disabilities. The rights of persons with disabilities cannot be transgressed on account of the failure of the respondent authorities to comply with the said provisions of the Disabilities Act. The respondent authorities cannot take advantage of their omissions to deny rights vested in the petitioner by law.

22. The impugned order dated 04.10.2024 is liable to be set aside and is set aside.

23. The matter is remitted to the respondent authorities with the following directions:

I. The respondents are directed to permit the petitioner to continue on the post with light duties which he has joined pursuant to directions issued by this Court. The petitioner shall be regularly paid his salary as and when it becomes due.

II. The respondents are directed to pay the arrears salary of the petitioner from March, 2022 till his salary was released last. The petitioner shall be entitled to interest @ 7% for the period of unpaid arrears of salary. The amount shall be paid within four months of the date of receipt of a certified copy this order.

III. The Managing Director, U.P. State Road Transport Corporation, Lucknow shall ensure that all officers are duly sensitized to the rights of persons with disabilities under the Disabilities Act and the legislative intent of the Disabilities Act is brought to fruition by faithful implementation of the Rights of Persons with Disabilities Act, 2016 in the respondent Corporation. To this end the following shall be executed within a period of six months:

A) Appropriate orders shall be issued and training be conducted by the competent authority.

B) Regular audits shall be conducted to oversee status of implementation of the disabilities in the respondent-Corporation.

IV. In the event of failure to pay the amount of arrears of salary and interest as directed above the respondents shall pay further penalty of Rs. 50,000/-. The Managing Director, UPSRTC shall fix responsibility for non payment of the said amount and may direct recovery of the amount from the concerned officers.

24. The writ petition is allowed.

(2025) 7 ILRA 466

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 08.07.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ A No. 19325 of 2019

Kanak Srivastava ...Petitioner

Versus

The Vice Chancellor, Banaras Hindu University, Varanasi & Ors. ...Respondents

Counsel for the Petitioner:

Mr. Siddharth Khare

Counsel for the Respondents:

Mr. Ajit Kumar Singh, Senior Advocate along with Mr. Madan Mohan

Issue for Consideration

The present case pertains to the computation of "qualifying service" for pensionary benefits under the Banaras Hindu University (BHU) Statute and Ordinances, particularly Statute

1264 governing retirement benefits. The late employee's services in the CBD Project (a project funded by a private association and not part of the University's regular establishment) were excluded for pension fixation-The exclusion was discriminatory, as a similarly situated or junior employee was paid a higher pension based on a higher pay scale, thus violating Article 14 of the Constitution.

Headnotes

Service Law-Central Civil Services (Pension) Rules, 1972-Rule 13- Pension Computation-Qualifying Service-University Employees-Project/Temporary Service Prior to Regularization- Fresh recruitment, Not continuation-The petitioner challenged exclusion of deceased/husband CBD project service from pension fixation-Service rendered in a privately funded project that is outside the regular establishment, where the employee is later appointed through fresh recruitment, cannot be counted for quantification (upward revision) of the pension-The Case of M.C. Joshi was held to be distinct, as he was appointed to the regular establishment and not a project, thus eliminating any basis for a claim of hostile discrimination-Petition dismissed.

Held

The petitioner asserted that the service rendered in the CBD Project, prior to her husband's regular appointment as a Medical Social Worker on 28.08.1986, ought to be included as "qualifying service" in accordance with Rule 13 of the CCS Rules,1972-A further claim of hostile discrimination was raised alleging denial of the higher pay scale and pension (2000-3500) granted to a similarly situated colleague, M.C. Joshi-The BHU submitted that the CBD project was externally funded by a private association and was not part of the University's regular establishment , thus petitioner's husband ineligible to be counted under CCS Rules,1972-Parity with M.C. Joshi was denied as he was appointed earlier i.e. 06.04.1979 in the regular establishment on a temporary basis and retired later 31.03.2010 in a higher pay scale-The employee's entry into the University's regular cadre on 28.08.1986,following an advertisement and selection , constituted a fresh recruitment, not a transition or absorption from the project service-The plea of hostile discrimination was factually ill-founded –Thus they were not "similarly circumstanced" for the purpose of quantifying pension-The court found no fit case for the exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution of India-The petition is dismissed.(Para 17 to 37) (E-6)

Case law Cited

Dr. Umesh Kumar Vs St. of H.P. & Anr(2023) SCC Online HP 350, Praduman Kumar Jain Vs UOI & Anr (1994) Supp 2 SCC 548, Mahesh Chandra Verma (1) Vs St. of Jhar. & Ors.(2018) 7 SCC 270, Vijay Narayan Singh Vs UOI & Ors (2022): AHC: 105657, Krishna Deo Mishra & Ors Vs UOI &Ors (2022): AHC:127726, Om Prakash Chaturvedi Vs St. of U.P. & Ors (2023): AHC: 84304, Prem Singh Vs St. of U.P. & Ors (2019) 10 SCC 516, Punj. St. Electricity Board & Anr Vs Narata Singh & Anr.(2010) 4 SCC 317, Uday Pratap Thakur & Ors Vs St. of Bih. & Ors (2023) SCC OnLine SC 527, Lakshmi Ram & Anr Vs UOI & Ors (2022): AHC: 138740, Brij Mohan Lal (1) Vs UOI (2002) 5 SCC 1, Brij Mohan Lal (2) Vs UOI (2012) 6 SCC 502, Mahesh Chandra Verma (2) Vs St. of Jhar.(2012) 11 SCC 656

List of Acts

Central Civil Services (Pension) Rules, 1972

List of Keywords

CCS Rules, 1972; BHU; IMS ; CBD Project; hostile discrimination; qualifying service; Medical Social Worker; IMD; Retirement benefits; Old Pension Scheme; Quantum of pension; Higher pay scale; Non-Teaching Staff Grievance; Vice Chancellor.

Case Arising From

Service Law –WRIT -A No. – 19325 of 2019
From the Judgment and order dated 08.07.2025 of the High Court of Judicature at Allahabad.
Kanak Srivastava Vs. The Vice Chancellor Banaras Hindu University, Varanasi & Ors

Appearances for Parties

Advs. for Petitioner
Mr. Siddharth Khare, Advocate
Advs. for Respondent
Mr. Ajit Kumar Singh, Senior Advocate along with Mr. Madan Mohan, Advocate.

(Delivered by Hon'ble J.J. Munir, J.)

1. The petitioner, Kanak Srivastava, is the widow of the late Prakash Chandra Srivastava, a Junior Medical Social Worker in the Department of Preventive and Social Medicine, Institute of Medical Sciences[1], Banaras Hindu University[2]. The late Prakash Chandra Srivastava retired from service, upon attaining the age of superannuation, on 31.08.2005. He was sanctioned a retirement pension, reckoning his services from 28.08.1986 until the date of his retirement i.e. 31.08.2005. The respondents did not take into consideration the services rendered by Prakash Chandra Srivastava from 01.11.1981 to 07.08.1986 in the CBD Project, Department of Preventive and Social Medicine, IMS, BHU that he had rendered prior to joining regular service as a Medical Social Worker in the Department of Preventive and Social Medicine, last mentioned. The petitioner thinks that her husband was unfairly treated during his lifetime in the matter of fixation of his pension, for, according to the petitioner as well as her late husband, a junior to him, M.C. Joshi, who had been appointed as Junior Medical Social Worker along with the petitioner, was paid a higher pay scale and higher pension upon retirement, bringing about hostile discrimination. It is on the foot of this cause of action broadly that the petitioner, after her husband's demise, has instituted this writ petition, initially challenging an order dated 31.07.2019 passed by the Deputy Registrar (Admin-NT), excluding the petitioner's husband's services rendered in the project for the purpose of fixation of his pension and another order dated 05.01.2016 passed by the Registrar of the BHU, annexed as Annexure CA-5 to the counter affidavit dated 02.02.2020, which the petitioner has challenged through an amendment. The petitioner further prays that a *mandamus* be issued, directing the respondents to pay pension to the petitioner in the pay scale of ₹2000-3500 in the same terms as paid to M.C. Joshi, who retired from the same post and in the same pay scale as Prakash Chandra Srivastava. The petitioner also seeks payment of arrears of retirement pension on account of the difference in pension, to which her husband was entitled and that paid to him since 31.08.2005.

2. Now, a detailed statement of the petitioner's case would show that her husband, Prakash Chandra Srivastava, was appointed initially as a Case Worker in the Rural Health Training Centre, Chiraigaon, Department of Preventive and Social Medicine, IMS, BHU, where he worked from 24.04.1978 to 06.06.1978. Next, he was employed as a Social Scientist with the University Health Centre, BHU from 20.07.1978 to 28.10.1979. Srivastava was then employed in the CBD Project, Department of Preventive and Social Medicine, IMS, BHU, where he worked from 01.11.1981 to 07.08.1986. Subsequently, he was appointed on regular basis as a Medical Social Worker on 28.08.1986 with the Department of Preventive and Social Medicine, IMS, BHU in the pay scale of ₹550-900. Next, he was appointed as a Junior Medical Worker in the Department of Preventive Social Medicine in the pay scale of ₹1640-2900 with effect from 01.07.1993.

3. According to the petitioner, Srivastava was appointed a Junior Medical Social Worker along with one M.C. Joshi on the same post and placed in the same

pay scale. Srivastava superannuated on 31.08.2005, and, according to the petitioner, he was paid his pension in the pay scale of ₹1640-2900, whereas, M.C. Joshi, who was appointed on the same post and placed in the same scale, is being paid pension worked out on the basis of the pay scale of ₹2000-3500 provided to a Senior Medical Social Worker. It is in this manner that Srivastava was discriminated against by the respondents, violating the equality clause enshrined under Article 14 of the Constitution. Srivastava, while alive, represented his cause to the BHU, saying that his services rendered prior to 28.08.1986, while serving the CBD Project, Department of Preventive and Social Medicine from 01.11.1979 to 07.08.1986, should be taken into reckoning in order to fix his pension, counting those six years and nine months of service, of which, he had been deprived. In the event, the said services were taken into reckoning, he would be entitled to the same pay scale as Joshi, to wit, ₹2000-3500, leading to an upward revision and re-fixation of pension for him.

4. The petitioner represented to the Registrar of the BHU on 26.10.2013, seeking to reckon eight years of his services rendered in the project in order to remove anomalies and the difference in pension paid to his contemporaries like M.C. Joshi on one hand, and Srivastava on the other. He sought a revision of his pension and claimed parity with the similarly circumstanced. Srivastava sent successive reminders to the Vice Chancellor of BHU, one of them being dated 21.07.2015. This did not move the respondents.

5. Aggrieved by inaction on the respondents' part, Srivastava instituted Writ - A No. 53016 of 2015 before this Court, praying that his services with the BHU as a Case Worker in the Rural Health Centre from 24.04.1978 to 06.06.1978, as a Social Scientist in the University Health Centre from 20.07.1978 to 28.10.1979 and as a Field Supervisor in the CBD Project from 01.11.1979 to 07.08.1986, totalling a period of eight years, be taken into reckoning for the purpose of re-fixation and revising his pension. The learned Single Judge, before whom the writ petition came up, dismissed it on the ground of laches. The petitioner appealed the judgment to the Division Bench, which set aside the judgment of the learned Single Judge and directed respondent No. 2 to the writ petition, some officer of the University, to look into the grievance of the petitioner in relation to his claim for pension equal to similarly circumstanced employees on a plea of discrimination.

6. The order dated 30.10.2015 passed by the Division Bench passed in Special Appeal No. 781 of 2015 was served upon the Registrar of the BHU along with a representation dated 07.11.2015. Despite lapse of time, the University and their functionaries do not seem to have paid heed or decided the petitioner's claim in accordance with the orders of the Division Bench. This led Srivastava into instituting a fresh writ petition, to wit, Writ - A No. 6052 of 2019, seeking to enforce the directions for consideration of the petitioner's case and necessary orders regarding parity in emoluments and revision of pension, as directed by the Division Bench. Writ - A No. 6052 of 2019 was disposed of *vide* order dated 17.05.2019, with a direction to the respondents to decide the matter relating to promotion of the petitioner to the post of Senior Medical Social Worker within a

period of twelve weeks from the date of receipt of a certified copy of the order. This is a matter which would be alluded to a little later in this judgment, for it has great and material bearing on the rights of parties involved in this petition.

7. Srivastava's claim for promotion to the position of a Senior Medical Social Worker and consequent provision of the still higher pay scale of ₹2200-4000 was rejected by the respondents *vide* order dated 31.07.2019 issued by the Deputy Registrar (Admin-NT), BHU. While this order was made on 31.07.2019, a few days preceding it, on 22.07.2019, Srivastava passed away. Cudgels were thereafter taken on his behalf by the petitioner, his widow, upon whom, his estate devolved. The petitioner, therefore, instituted the present writ petition, seeking to quash the order dated 31.07.2019 on ground of hostile discrimination between her husband and similarly circumstanced employees like Joshi, besides other grounds.

8. A notice of motion was issued *vide* order dated 05.12.2019 and a counter affidavit was filed on behalf of respondents on 06.10.2021, being an affidavit dated 02.02.2020. In the said affidavit, a copy of the order dated 05.01.2016 was annexed as Annexure CA-5, rejecting the petitioner's claim for inclusion of service rendered in the CBD Project for the purpose of computation of his pension described as "qualifying service for the purpose of pensionary benefits". The petitioner filed a rejoinder dated 17.11.2022 on 17.02.2023. The order dated 05.01.2016 was challenged by amendment, which was granted. In course of time, multiple affidavits - supplementaries, supplementary counters and supplementary rejoinders were exchanged. When the writ petition came up on 21.05.2024, the parties having exchanged affidavits, it was admitted to hearing, which proceeded forthwith. It was adjourned to 15.07.2024. It was heard on 17.10.2024 and finally, on 09.01.2025, when judgment was reserved.

9. Heard Mr. Siddharth Khare, learned Counsel for the petitioner and Mr. Ajit Kumar, learned Senior Advocate assisted by Mr. Madan Mohan, learned Counsel appearing on behalf of the respondent-Banaras Hindu University and their various officials.

10. It is submitted by the learned Counsel for the petitioner that the services rendered by Srivastava (husband of the petitioner) between 24.04.1978 and 27.08.1986 in the CBD Project are liable to be reckoned for the purpose of pension and other retiral benefits in accordance with Rule 13 of the Central Civil Services (Pension) Rules, 1972[3]. In support of his submission, learned Counsel for the petitioner has placed reliance upon **Dr. Umesh Kumar v. State of Himachal Pradesh and another[4] and Praduman Kumar Jain v. Union of India and another[5]**. It is next submitted that the respondents have come up with an objection that the services of Srivastava between 24.04.1978 and 27.08.1986 for the purpose of reckoning his entitlement to pension cannot be counted on the ground that during the aforesaid period of time, he was serving in a project of the Department of Preventive and Social Medicine; not as a regular employee of the University. It is argued that the services of Srivastava rendered in the Project are eligible to be counted as resolutions were passed by the respondents to compute the services rendered in the CBD Project by O.P. Singh, Kedar Nath Gupta, Krishna Tiwari, R.K.

Ram, Kamla Shankar Mishra, Vijay Narain Singh, Hanuman Ji, besides others who have similarly served, for the purpose of determining their entitlement to pension. The Court's attention in this regard is drawn to the minutes of a meeting of the respondents held on 26.05.2017 and 09.09.2017. It must be remarked that copies of these minutes that were placed before the Court are not part of the record.

11. The learned Counsel for the petitioner, in order to buttress his contention that the project services of Srivastava are eligible to reckon towards his entitlement to pension, has invited the Court's attention to **Mahesh Chandra Verma (1) v. State of Jharkhand and others**[6]. It is emphasized that **Mahesh Chandra Verma (1)** *(supra)* lays down that services rendered by employees in the Fast Track Courts are required to be counted for the purpose of qualifying service, noticing that Fast Track Courts were constituted for a limited period and services rendered by the Fast Track Court Judges were to be taken into reckoning as services rendered in a project. There is a reference then made to orders of this Court in **Vijay Narayan Singh v. Union of India and others**[7], **Krishna Deo Mishra and others v. Union of India and others**[8] and **Om Prakash Chaturvedi v. State of U.P. and others**[9]. Reliance is also placed by the learned Counsel for the petitioner upon the celebrated decision of the Supreme Court in **Prem Singh v. State of U.P. and others**[10] and lastly upon the authority in **Punjab State Electricity Board and another v. Narata Singh and another**[11]. It is emphasized that in **Om Prakash Chaturvedi** (*supra*) this Court and in **Narata Singh** (*supra*), the Supreme Court held that services rendered in a project would be reckoned for determination of pension.

12. The learned Senior Advocate, appearing for the respondents, on the other hand, submits that Srivastava was appointed with the University for the first time on 28.08.1986 as a cadre employee, after he applied pursuant to an advertisement, leading to his selection and appointment. His services rendered with the CBD Project had nothing to do with the service of the University. The CBD Project is funded by a private association, to wit, the Family Planning Association, Bombay. The appointment in that project was not in accordance with any service rules in the regular establishment. It is emphasized that Rule 13 of the CCS Rules would not be attracted, because Srivastava was not working in a temporary capacity before his regular appointment. Learned Senior Advocate for the respondents has placed strong reliance upon the authority of the Supreme Court in **Uday Pratap Thakur and others v. State of Bihar and others**[12]. Reliance is also placed upon the judgment of this Court in **Lakshmi Ram and another v. Union of India and others**[13].

13. The learned Senior Advocate for the respondents has pointed out that the plea of parity and/or discrimination raised, *vis-à-vis* M.C. Joshi, is factually ill-founded, because Joshi was appointed on a temporary basis in the regular pay scale of ₹425-700 on the post of a social worker in the Centre of Radiotherapy & Radiation Medicine, IMS *vide* letter No. EST/12359 dated 31.03.1979 w.e.f 06.04.1979 against a post sanctioned by the University Grants Commission under the 5th Five Year Plan. He was not an employee of the CBD Project, who later on joined the University service, but commenced service in the establishment of the University, may be on a temporary basis. It is emphasized that Srivastava joined the regular establishment on 28.08.1986, whereas Joshi joined it on 06.04.1979. There is, thus, no case of parity between Srivastava and Joshi, or any kind of hostile discrimination practised by the respondents.

14. It is argued that the last pay drawn by Srivastava, the petitioner's husband, was

in the pay scale of ₹6500-10500, the scale corresponding to ₹2000-3500 (pre-revised). Srivastava's pension was, therefore, fixed on the last pay drawn in the aforesaid pay scale when he retired from service on 31.08.2005. It is urged that Srivastava is not entitled to claim parity with Joshi or plead discrimination on a comparison with him, as Srivastava was appointed on 28.08.1986 and retired on 31.08.2005, whereas Joshi was appointed on 06.04.1979 and retired on 31.03.2010, much after Srivastava. Joshi did not retire in the same pay scale as Srivastava.

15. It is submitted further that Srivastava's pension was correctly fixed on the basis of his last pay drawn in the pay scale of ₹6500-10500, corresponding to the pre-revised pay scale of ₹2000-3500. He was, therefore, granted pension, if one were to see matters in the right perspective, according to the learned Senior Advocate, which he has claimed in the writ petition. The orders dated 05.01.2016 and 31.09.2019 passed by the respondents, impugned in the writ petition, carry sound reasoning, which do not call for interference. It is, particularly, pointed out by the learned Senior Advocate appearing for the respondents that reliance placed by the petitioner on the case of **Vijay Narayan Singh** (*supra*), an employee of the CBD Project, whose services in the project were emphasized to have been resolved by the respondents to be computed with his regular service in the establishment of the University for the purpose of determination of pension, is misconceived. He points out that what the petitioner has emphasized is a recommendation made by the Non-Teaching Staff Grievance Committee on 06/07.04.2017, that was considered and rejected by the Vice Chancellor, the competent Authority of the University, *vide* order dated 30.09.2022, annexed as Annexure No. IInd SCA-4 to the second supplementary counter affidavit filed on behalf of the respondents.

16. We have bestowed careful consideration to the rival submissions advanced on behalf of parties by learned Counsel, perused the record and the law that would govern their rights, which was extensively cited at the Bar.

17. There is no cavil about the fact that Srivastava was appointed to the regular establishment of the University as a Medical Social Worker on 28.08.1986 with the Department of Preventive and Social Medicine, IMS, BHU. To begin with, the case of Srivastava was to take into reckoning service rendered by him as a Case Worker in the Rural Health Training Centre, Chiraigaon, Department of Preventive and Social Medicine, IMS, BHU from 24.04.1978 to 06.06.1978 and then as a Social Scientist with the University Health Centre, BHU from 20.07.1978 to 28.10.1979, besides the period of service, where the petitioner was employed in the CBD Project, Department of Preventive and Social Medicine, IMS, BHU from 01.11.1981 to 07.08.1986. All this engagement for the petitioner was prior to his appointment as a Medical Social Worker on 28.08.1986 in the regular establishment of the BHU in their Department of Preventive and Social Medicine, IMS. During hearing, the submissions, that have been advanced, have limited Srivastava's claim to the period of time that he spent in the service of the CBD Project, Department of Preventive and Social Medicine, IMS, BHU from 01.11.1979 to 07.08.1986. This is a time period of about six years and nine months.

Based on Srivastava's claim, the question that would arise is, if the period of service rendered by him with the CBD Project can be taken into consideration for computing the total length of service with the BHU and fixing his pension on that basis. In support of the proposition that service rendered in a project with the same employer, that is followed by absorption in the regular establishment, is to be taken into reckoning for the purpose of determination of pension, the foremost authority that the learned Counsel for the petitioner has relied upon is **Dr. Umesh Kumar** (*supra*). The facts in **Dr. Umesh Kumar** can best be recapitulated in the words of their Lordships as these appear in the report of the decision. These read:

"2*. Brief facts necessary for adjudication of the petition are that petitioner was appointed as Medical Officer in the department of Health, Government of H.P., on contract basis w.e.f. 31.01.1997. His contract employment continued for about ten years, whereafter services of the petitioner were regularized w.e.f. 05.03.2007. Though, the initial appointment of the petitioner was on contract basis, but he was being paid regular pay scale with all allowances admissible to Medical Officers appointed on regular basis. Petitioner was also paid increments at par with regularly appointed Medical Officers. Noticeably, the initial appointment of the petitioner on contract basis was made after undergoing selection process in which he was interviewed by a duly constituted selection committee. As many as thirty-four Medical Officers were appointed on contract basis alongwith petitioner.*

3. *In 2010, petitioner alongwith similarly situated Medical Officers were directed by respondents to switch over to Contributory Pension Scheme, which was introduced, vide notification dated 17.08.2006. Petitioner alongwith others approached this Court by way of CWP No. 4799 of 2010, raising challenge to the aforesaid direction of the respondents. By way of an interim order, respondents were restrained from compelling the petitioner to join Contributory Pension Scheme. Finally, CWP No. 4799 of 2010 was decided by a Division Bench of this Court, vide judgment dated 30.11.2010, in following terms:—*

"9. Having regard to the factual matrix and legal position as referred to above, whereby the appointments though on adhoc/contractual/tenure basis having been made prior to 15.5.2003 and which appointments having been given effect by way of regularization with effect from the date of adhoc/tenure/contractual basis, the contentions as referred to above, assume significance and force. Therefore, these writ petitions are disposed of directing the first respondent to consider the case of the petitioners afresh and take appropriate action in the matter expeditiously. Till the orders are passed as above, interim order passed in this case will continue."

4. *Petitioner superannuated on 31.12.2020 and till such date no decision could be taken by respondents in pursuance to directions issued by this Court, vide judgment dated 30.11.2010. On 18.10.2021, a communication was sent from the office of respondent No. 1 to respondent No. 2 informing that the case of the petitioner had been rejected. Thus, petitioner is before this Court assailing communication dated 18.10.2021, Annexure P-5."*

18. In rejecting the respondents' stand, denying the petitioner's claim for adding towards his qualifying service, service

rendered on contractual basis, under the CCS Rules, 1972, their Lordships of the Division Bench of the Himachal Pradesh High Court held:

"9. *The facts are not in dispute. It is not in dispute that petitioner was duly qualified and was appointed on contract basis after he had undergone the selection process in which thirty-four other Medical Officers were selected. All of them had appeared before duly constituted selection committee and were finally appointed on recommendations of such committee. The continuance of petitioner on contract basis for about ten years is also a fact which has not been disputed. The grant of pay scale, allowances and increments etc. to the petitioner at par with Medical Officers appointed on regular basis, have also not been denied.*

10. *Rule-13 of CCS (Pension) Rules, 1972, reads as under:—*

"13. Commencement of qualifying service Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post : Provided further that –

(a) in the case of a Government servant in a Group 'D' service or post who held a lien or a suspended lien on a permanent pensionable post prior to the 17th April, 1950, service rendered before attaining the age of sixteen years shall not count for any purpose, and

(b) in the case of a Government servant not covered by clause (a), service rendered before attaining the age of eighteen years shall not count, except for compensation gratuity.

(c) the provisions of clause (b) shall not be applicable in the cases of counting of military service for civil pension under Rule 19."

11. *Thus, qualifying service of a government servant commences from the date he takes charge of the post to which he has first appointed either substantively or in an officiating or temporary capacity. It is further provided that an officiating or temporary service should be followed without interruption by substantive appointment in the same or another service or post. In the given facts of the case, the initial appointment of the petitioner, though, in temporary capacity continued for about ten years and was followed without interruption by substantive appointment on the same post. In such view of the matter, the contract service of the petitioner is liable to be counted towards qualifying service for the purposes of applicability of CCS (Pension) Rules, 1972. Admittedly, it is not a case where the initial appointment of the petitioner was for a short period or for limited purpose.*

12. *In CWP No. 5400 of 2014, titled as Veena Devi v. Himachal Pradesh State Electricity Board Ltd., decided on 21.11.2014, a Division Bench of this Court had held that the contract service followed by regular appointment was required to be counted for the purpose of pension. Similarly in CWP No. 8953 of 2013, titled*

as Joga Singh v. State of H.P., decided on 15.06.2015, the same proposition was reiterated by a Division Bench of this Court. In CWP No. 2384 of 2018, titled as State of Himachal Pradesh v. Sh. Matwar Singh, decided on 18.12.2018, another Division Bench of this Court held even the work charge status followed by regular appointment to be counted as a component of qualifying service for the purposes of pension and other retiral benefits."

19. Likewise, in **Praduman Kumar Jain** (*supra*), the question was whether the employee, who had rendered 12 years and 8 months of service in the Indian Meteorological Department (IMD) as an Assistant Meteorologist, but fallaciously claimed by the Central Government not to have been confirmed, was entitled to count that period of service for determining his pension with his next employer, the National Thermal Power Corporation (NTPC), a Central Government Undertaking, which he joined, resigning his Central Government service. It was in this context that their Lordships of the Supreme Court held:

"4. *The question whether the appellant is entitled to pro rata pension in respect of the service for the period of twelve years and eight months rendered by him under the Central Government depends on the point whether he held the appointment in the service of the IMD in a substantive capacity. It is not disputed that the appellant was appointed as Assistant Meteorologist on 13-10-1977 by way of direct recruitment through the Union Public Service Commission. Direct recruitment, invariably, is made against permanent vacancies. It is not the case of the respondents that the appellant was appointed against a temporary post. The appellant was, therefore, appointed as Assistant Meteorologist against a permanent vacancy. He was on probation for a period of two years. His crossing the efficiency bar in October 1983 and further promotion to the higher post in September 1986 show that he successfully completed his probation period. In any case it is obvious that the work and conduct of the appellant has throughout been satisfactory.*

5. *The finding of the Tribunal, that the appellant was working in an officiating capacity, is solely based on the wording of the order dated 29-3-1984 allowing the appellant to cross the efficiency bar wherein it was mentioned that the increment was being given to him in the officiating post of Assistant Meteorologist. We fail to understand how a direct recruit in the post of Assistant Meteorologist, who joined service in 1977 and completed his probation in 1979, could be working against an officiating post. As mentioned above, direct recruitment is always made against permanent vacancies. A person appointed against a permanent vacancy, completing his probation period successfully, crossing the efficiency bar and even promoted to the higher rank, cannot be considered to be working in an officiating capacity.*

6. *It would be useful to refer to para 4 of the Office Memorandum dated 31-1-1986 which is in the following terms:*

"Pensionary benefits : (i) Resignation from government service with a view to secure employment in a Central public enterprise with proper permission will not entail forfeiture of the service for the purpose of retirement/terminal benefits. In such cases, the government servant concerned shall be deemed to have retired

from service from the date of such resignation and shall be eligible to receive all retirement/terminal benefits as admissible under the relevant rules applicable to him in his parent organisation."

7. *It is not disputed that the appellant resigned from government service with a view to secure employment in the Central public enterprise with proper permission of the Central Government. The appellant is, therefore, entitled to the benefit of the above-quoted Office Memorandum. We may also refer to para 4.1 of the Office Memorandum dated 28-3-1988 which is reproduced hereunder:*

"4.1 Confirmation

(a) General

(i) Confirmation will be made only once in the service of an official which will be in the entry grade.

(iii) Confirmation is delinked from the availability of permanent vacancy in the grade. In other words, an officer who has successfully completed the probation may be considered for confirmation."

8. *The memorandum dated 28-3-1988 came into force with effect from 1-4-1988.*

9. *The Tribunal came to the conclusion that since the appellant had resigned from the Central Government service before coming into force of the Office Memorandum dated 28-3-1988 the same was not applicable in his case.*

10. *It is not disputed that the appellant had more than ten years of service under the Central Government. His service would count as qualifying service for pension if the provisions of Rules 13 and 49 of the Rules are satisfied. The relevant provision of Rules 13 and 49 are as follows:*

"13. Commencement of qualifying service. — Subject to the provisions of these rules, qualifying service of a government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post.

49. (2)(b) The amount of pension arrived at on the basis of the above slabs will be related to the maximum qualifying service of 33 years. For government servants who, at the time of retirement, have rendered qualifying service of ten years or more but less than 33 years, the amount of their pension will be such proportion of the maximum admissible pension as the qualifying service rendered by them bears to the maximum qualifying service of 33 years. A few illustrations are given in the Annexure to this Office Memorandum."

12. *Although the combined reading of the two Office Memorandums reproduced above support the appellant's contention that he stood confirmed in the post of Assistant Meteorologist before he resigned the Central Government service but it is not necessary for us to go into the effect of the two Memorandums. Examining the facts and circumstances of this case in*

the light of the law laid down by this Court in Baleshwar Dass case [(1980) 4 SCC 226 : 1980 SCC (L&S) 531 : (1981) 1 SCR 449] , the only conclusion which can be drawn is that the appellant was working as Assistant Meteorologist in a substantive capacity.

***13.** We, therefore, hold that the appellant had been appointed in a substantive capacity against a permanent post of Assistant Meteorologist and is therefore entitled to pro rata pension and other terminal benefits in respect of the service rendered by him under the Central Government."*

20. We may at once dispose of the argument advanced by learned Counsel for the petitioner drawing strength from **Praduman Kumar Jain**. In **Praduman Kumar Jain,** as would be seen, the employee was appointed to the service of the Central Government, after being regularly selected by the Union Public Service Commission against a substantive post. He was placed on probation for a period of two years and then confirmed in service, as the facts show. He was promoted also to the next higher post. The correspondence between the petitioner and the Central Government while serving the Indian Meteorological Department about confirmation in service even after a period of 12 years, during which he successfully completed his probation and was promoted, was apparently a misconceived stand by the Central Government. He was, after all, a confirmed employee of the Central Government, when he joined the service of the NTPC, after resigning his position with the Central Government. There was in the field an office memorandum dated 31.01.1986, which provided for the contingency, where a government servant resigned his position to secure employment with a Public Sector Enterprise with proper permission and it said that such resignation will not entail forfeiture of service for the purpose of retirement/terminal benefits.

21. Upon resignation from the Government, there was a fiction given in the office memorandum, which regarded the employees as having retired on the date of their resignation, entitled to receive their retirement/terminal benefits. Also, since the petitioner had rendered more than 10 years service with the Central Government before resigning, his services with the Government would be regarded as qualifying service under Rule 13 of the CCS Rules and worked out in accordance with Rule 49(2)(b). It is, thus, evident that **Praduman Kumar Jain** was a case different altogether.

22. The CCS Rules, which applied to the Central Government and the NTPC apparently and the office memorandum dated 31.01.1986 by the Central Government, making special provision for employees resigning their position with the Central Government after proper permission in order to join the service of a Central Public Enterprise made all the difference. The office memorandum made a specific provision in such cases for non-forfeiture of the service rendered with the Central Government for the purpose of retirement/terminal benefits in the harness of the next employer, that is to say, the Central Public Enterprise joined by the resigning employee of the Central Government. Added to it is the fact that in **Praduman Kumar Jain,** the petitioner was a regularly selected employee of the Central Government, selected by the Union Public Service Commission and appointed by the competent Authority in the Central Government, where he rendered about 12

years of service before resigning his position to join the NTPC. It was not a case where services rendered in some project were claimed to be reckonable for the purpose of determining the employee's pension. The determination claimed was in accordance with the office memorandum of the Central Government, and more than that, the CCS Rules.

23. In the present case, Srivastava was employee of a project called the CBD in the Department of Preventive and Social Medicine, IMS, BHU. There is little doubt that this project was funded by private sources and not an employment in the establishment of the BHU. Srivastava's selection for this project too was not in accordance with any rules, as it appears. More than that is the fact that Srivastava joined the establishment of the University as a regular employee, after he applied for the post of a Medical Social Worker with the Department of Preventive and Social Medicine, IMS, BHU, pursuant to an advertisement issued by the University, leading to his selection and appointment. There is just no way how services of Srivastava rendered with the CBD Project, that had nothing to do with the University, but funded by a private association, to wit, the Family Planning Association, Bombay, could be taken into reckoning to determine his total length of service for the purpose of computation of his pension. These remarks of ours hold good in the context of **Dr. Umesh Kumar'**s case as well. The reason is that Dr. Umesh Kumar, though appointed as a Medical Officer in the Department of Health, Government of Himachal Pradesh on contract basis, had a contract, that led him to work for 10 years continuously, where his services were regularized in the establishment of the Department of Health. The selection on contract basis, as the report of the decision in **Dr. Umesh Kumar** would show, came after he had undergone a selection process, in which, 34 other Medical Officers were selected. They had all faced a duly constituted selection committee for the purpose.

24. The Division Bench regarded the contractual service, which followed without interruption into regularization in service in the same Department as temporary service, for the purpose of qualifying service, under the CCS Rules. This is certainly not the case here, as we have already elucidated. Service in a privately funded project, that is given up and followed by employment in the regular establishment of the University, after selection pursuant to an advertisement, is no continuation of the project's service or any kind of regularization, that may entitle the petitioner to count his services, rendered under the project. There is another fallacy in the submissions advanced by the learned Counsel for the petitioner about what precisely is the entitlement to the reckoning of services in a temporary capacity or even in a project in the subsequent permanent service in the regular establishment for the purpose of pension.

25. The next authority, that has been pressed in aid by the learned Counsel for the petitioner is **Mahesh Chandra Verma (1)**. In **Mahesh Chandra Verma (1),** the question was if services rendered by judicial officers as Fast Track Court Judges is liable to be counted for their pensionary and other benefits, after they joined regular judicial service. In **Mahesh Chandra Verma (1),** the following remarks of the Supreme Court are most pertinent:

"14. *The need to set up Fast Track Courts arose on account of delays in*

the judicial process, targeting certain priority areas for quicker adjudication. In fact, had there been adequate cadre strength, there would have been no need to set up these Fast Track Courts.

15. *The appellants were not appointed to the Fast Track Courts just at the whim and fancy of any person, but were the next in line on the merit list of a judicial recruitment process. They were either part of the select list, who could not find a place given the cadre strength, or those next in line in the select list. Had there been adequate cadre strength, the recruitment process would have resulted in their appointment. We do believe that these Judges have rendered services over a period of nine years and have performed their role as Judges to the satisfaction, otherwise there would have been no occasion for their appointment to the regular cadre strength. Not only that, they also went through a second process for such recruitment.*

16. *We believe that it is a matter of great regret that these appellants who have performed the functions of a Judge to the satisfaction of the competent authorities should be deprived of their pension and retiral benefits for this period of service. The appellants were not pressing before us any case of seniority over any person who may have been recruited subsequently, nor for any other benefit. In fact, we had made it clear to the appellants that we are only examining the issue of giving the benefits of their service in the capacity of Fast Track Court Judges to be counted towards their length of service for pensionary and retiral benefits. To deny the same would be unjust and unfair to the appellants. In any case, keeping in mind the spirit of the directions made under Article 142 of the Constitution of India in Brij Mohan Lal (2) [Brij Mohan Lal (2) v. Union of India, (2012) 6 SCC 502 : (2012) 2 SCC (L&S) 177] and in Mahesh Chandra Verma [Mahesh Chandra Verma v. State of Jharkhand, (2012) 11 SCC 656 : (2013) 1 SCC (L&S) 1] , the necessary corollary must also follow, of giving benefit of the period of service in Fast Track Courts for their pension and retiral benefits. The methodology of non-creation of adequate regular cadre posts and the consequent establishment of Fast Track Courts manned by the appellants cannot be used as a ruse to deny the dues of the appellants.*

17. *In a different factual context but on the principle laid down, we take note of the judgment in Nihal Singh v. State of Punjab [Nihal Singh v. State of Punjab, (2013) 14 SCC 65 : (2013) 3 SCC (L&S) 85] of a Bench of this Court to which one of us was a member. The State of Punjab in the 1980s was faced with large scale disturbance and was not in a position to handle the prevailing law and order situation with the available police personnel and, hence, resorted to recruitment under Section 17 of the Police Act, 1861 (hereinafter referred to as "the Act") for appointing Special Police Officers (SPOs). The SPOs were assigned the duty of providing security to banks, for which the financial burden was to be borne by the banks, with the clear understanding that, as per the provisions of the Act, such police officers were to be under the discipline and control of the Senior Superintendent of Police of the District concerned. Such SPOs provided yeoman service in difficult times but when their case was considered for regularisation subsequently, it met with an unfavourable response by an order passed in the year 2002. This Court while recognising that the*

creation of a cadre or sanctioning of posts was exclusively within the authority of the State, opined that if the State did not choose to create a cadre but chose to make appointments of persons creating contractual relationship only, such action would be categorised as arbitrary nature of exercise of power. In this context, it was observed by the Bench, thus: (SCC p. 74, para 20)

"20. ... Sanctioned posts do not fall from heaven. The State has to create them by a conscious choice on the basis of some rational assessment of the need."

Thus, the facts found showed that there was the existence of a need for creation of posts and the failure to create such posts or having a stop-gap arrangement, which lasted for years cannot be used to deny in an arbitrary manner, the absorption benefit to the people who had worked for long years. A direction was issued to regularise the services of such SPOs and they were held entitled to the benefits of service similar in nature to the existing cadre of police service of the State.

18. *The position in respect of the appellants is really no different on the principle enunciated, as there was need for a regular cadre strength keeping in mind the inflow and pendency of cases. The Fast Track Court Scheme was brought in to deal with the exigency and the appellants were appointed to the Fast Track Courts and continued to work for almost a decade. They were part of the initial select list/merit list for recruitment to the regular cadre strength but were not high enough to be recruited in the existing strength. Even at the stage of absorption in the regular cadre strength, they had to go through a defined process in pursuance of the judgment of this Court and have continued to work thereafter.*

19. *We are, thus, unhesitatingly and unequivocally of the view that all the appellants and Judicial Officers identically situated are entitled to the benefit of the period of service rendered as Fast Track Court Judges to be counted for their length of service in determination of their pension and retiral benefits."*

26. As would be evident, the Fast Track Courts were set up as a special establishment, albeit temporary, for the purpose of dealing with long pending cases, in particular, sessions trials. The 11th Finance Commission had allocated a sum of ₹502.90 crores for funding this special project. The Judges, who were appointed to these Courts, had staked their claim for the post of Additional District Judges in the Jharkhand Superior Judicial Service and took part in the recruitment process. They did not figure in the select list. It would be apposite to notice here that the scheme was challenged in various High Courts, but those matters were transferred to the Supreme Court and decided in **Brij Mohan Lal (1) v. Union of India**[14]**.** As it appears, appointments to these Fast Track Courts were directed to be made by the Supreme Court from three difference sources. We are not concerned here with the first two, but the third. The third was from the Bar. Since the Fast Track Courts were a transitory scheme, members of the Bar appointed were made provision for by the Supreme Court in terms of the fourth direction in **Brij Mohan Lal,** in terms of which, their Lordships themselves have quoted in **Mahesh Chandra Verma (1)** in paragraph No.3 of the report in the following terms:

"3. *..... The fourth direction in this behalf is as under: (SCC p. 8, para 10)*

"10. ... 4. The third preference shall be given to members of the Bar for direct appointment in these courts. They should be preferably in the age group of 35-45 years, so that they could aspire to continue against the regular posts if the Fast Track Courts cease to function. The question of their continuance in service shall be reviewed periodically by the High Court based on their performance. They may be absorbed in regular vacancies, if subsequent recruitment takes place and their performance in the Fast Track Courts is found satisfactory. For the initial selection, the High Court shall adopt such methods of selection as are normally followed for selection of members of the Bar as direct recruits to the Superior/Higher Judicial Services.""

27. It appears that in **Mahesh Chandra Verma (1),** the State of Jharkhand took into note the fact that some 84 Fast Track Courts had been established, who were all to be manned by Additional District Judges. In order to fill up these posts expeditiously, the process of selection for the Superior Judicial Service having been recently undertaken by the Jharkhand High Court, it was considered apposite to accommodate candidates from the select list of the Jharkhand Superior Judicial Service Examination held pursuant to the advertisement dated 23.05.2001, who could not be accommodated in the regular cadre of Superior Judicial Service. Their Lordships have noticed in **Mahesh Chandra Verma (1)** that 17 candidates out of 27 in the select list were appointed to the regular on 15.12.2001, while the remaining 10 to the Fast Track Courts on 02.02.2002. It also appears from the report in **Mahesh Chandra Verma (1)** that 10 candidates appointed in this manner could not fill up the requisite vacancies and, therefore, 15 more candidates strictly in order of merit, next following, were appointed. The 15 others, who were picked up from the merit list, were appointed on 23.09.2002.

28. The Old Pension Scheme was abolished for those joining government service on or after 01.12.2004, replacing it with the New Contributory Pension Scheme. In the meantime, the High Court decided to recruit Additional District Judges in the year 2008 through a limited competitive examination to be held on 31.08.2008. The limited competitive examination appears to have been the provision of an avenue for Judicial Officers of the subordinate service to enter the Superior Judicial Service, instead of waiting for their turn for promotion. There were challenges laid to these selections to the Higher Judicial Service by incumbents appointed to the Fast Track Courts, which the other side, upon the FTC candidates succeeding before the High Court, carried in appeal to the Supreme Court. It is not much material to go further into the facts there. What is relevant is that with the funding of the Fast Track Courts scheme by the Central Government coming to an end and the State Government too, reporting lack of funds, directions were issued in **Brij Mohan Lal (2) v. Union of India**[15]**,** prescribing a regular selection process to be followed for Judges recruited from the Bar to the Fast Track Courts under the FTC Scheme to be appointed to the regular cadre of the Higher Judicial Service in their respective States. After further directions in **Mahesh Chandra Verma (2) v. State of Jharkhand**[16] to implement the earlier directions for appointment of FTC Judges to the regular cadre, following the process laid down, the FTC Judges took the examination for regularization and absorption.

29. The appellants before the Court in **Mahesh Chandra Verma (2)** (*supra*) were successful and appointed to the Jharkhand Superior Judicial Service. They were, however, treated as fresh recruits. Upon absorption in the regular cadre, the former FTC Judges wanted pay protection and other benefits of continuance in service. They did not want to be treated as fresh recruits. The request was rejected by the State Government. This led to writ petitions being instituted in the High Court, where, after some interim reliefs, the writ petitions were dismissed. In substance, the State treated their absorption in the regular cadre from the FTC as a fresh appointment and their earlier appointments as ones under a special scheme, leading to denial of benefit of that service and treating them as fresh recruits for all purposes, including pension and retiral benefits. This was the course of the matter, that is to say, the reckoning of services in the FTC Establishment as part of the service after absorption in the regular establishment. Their Lordships of the Supreme Court in **Mahesh Chandra Verma (1)** held:

"12. *In the course of arguments, the learned counsel appearing for the State Government sought to emphasise that by its very nature, the Fast Track Courts were constituted for a limited period of time and, thus, the persons so appointed were conscious of the fact that they would have a limited tenure. Since the funding from the Central Government stopped, the State Governments did continue these courts for some years, but that again would not give any right to the appellants to claim the benefit of the service rendered as Fast Track Court Judges for the purposes of computation of pensionary and retiral benefits. He also sought to emphasise that this Court has taken recourse to Article 142 of the Constitution of India to issue directions and the High Court had rightly observed that what was not done by the Supreme Court under Article 142 of the Constitution of India could not be done by the High Court.*

13. *We put a specific query to the learned counsel as to whether this Court had, in the two judgments in question, prohibited any such grant? The learned counsel after some initial hesitation could not dispute the position that there was no such prohibition. We also put to the learned counsel whether the existing cadre strength was sufficient to subserve the justice delivery process i.e. could it be said that there were enough courts in existence to try the relevant cases? The only answer, which came forth was that the State had been carved out recently and had taken immediate steps to fill the vacancies. However, to our mind, the important aspect is that the State was no exception to the general position prevalent of inadequate judicial posts to deal with the existing inflow of cases. It is only through subsequent directions that a periodic increase in judicial strength has been envisaged. In Brij Mohan Lal (2) [Brij Mohan Lal (2) v. Union of India, (2012) 6 SCC 502 : (2012) 2 SCC (L&S) 177] , it was observed as under: (SCC p. 579, para 207.11)*

"207.11. Keeping in view the need of the hour and the constitutional mandate to provide fair and expeditious trial to all litigants and the citizens of the country, we direct the respective States and the Central Government to create 10% of the total regular cadre of the State as additional posts within three months from today and take up the process for filling such additional vacancies as per the

Higher Judicial Service and Judicial Services Rules of that State, immediately thereafter."

14. *The need to set up Fast Track Courts arose on account of delays in the judicial process, targeting certain priority areas for quicker adjudication. In fact, had there been adequate cadre strength, there would have been no need to set up these Fast Track Courts.*

15. *The appellants were not appointed to the Fast Track Courts just at the whim and fancy of any person, but were the next in line on the merit list of a judicial recruitment process. They were either part of the select list, who could not find a place given the cadre strength, or those next in line in the select list. Had there been adequate cadre strength, the recruitment process would have resulted in their appointment. We do believe that these Judges have rendered services over a period of nine years and have performed their role as Judges to the satisfaction, otherwise there would have been no occasion for their appointment to the regular cadre strength. Not only that, they also went through a second process for such recruitment.*

16. *We believe that it is a matter of great regret that these appellants who have performed the functions of a Judge to the satisfaction of the competent authorities should be deprived of their pension and retiral benefits for this period of service. The appellants were not pressing before us any case of seniority over any person who may have been recruited subsequently, nor for any other benefit. In fact, we had made it clear to the appellants that we are only examining the issue of giving the benefits of their service in the capacity of Fast Track Court Judges to be counted towards their length of service for pensionary and retiral benefits. To deny the same would be unjust and unfair to the appellants. In any case, keeping in mind the spirit of the directions made under Article 142 of the Constitution of India in Brij Mohan Lal (2) [Brij Mohan Lal (2) v. Union of India, (2012) 6 SCC 502 : (2012) 2 SCC (L&S) 177] and in Mahesh Chandra Verma [Mahesh Chandra Verma v. State of Jharkhand, (2012) 11 SCC 656:(2013) 1 SCC (L&S) 1], the necessary corollary must also follow, of giving benefit of the period of service in Fast Track Courts for their pension and retiral benefits. The methodology of non-creation of adequate regular cadre posts and the consequent establishment of Fast Track Courts manned by the appellants cannot be used as a ruse to deny the dues of the appellants.*

17. *In a different factual context but on the principle laid down, we take note of the judgment in Nihal Singh v. State of Punjab [Nihal Singh v. State of Punjab, (2013) 14 SCC 65 : (2013) 3 SCC (L&S) 85] of a Bench of this Court to which one of us was a member. The State of Punjab in the 1980s was faced with large scale disturbance and was not in a position to handle the prevailing law and order situation with the available police personnel and, hence, resorted to recruitment under Section 17 of the Police Act, 1861 (hereinafter referred to as "the Act") for appointing Special Police Officers (SPOs). The SPOs were assigned the duty of providing security to banks, for which the financial burden was to be borne by the banks, with the clear understanding that, as per the provisions of the Act, such police officers were to be under the discipline and control of the Senior Superintendent of Police of the District*

concerned. Such SPOs provided yeoman service in difficult times but when their case was considered for regularisation subsequently, it met with an unfavourable response by an order passed in the year 2002. This Court while recognising that the creation of a cadre or sanctioning of posts was exclusively within the authority of the State, opined that if the State did not choose to create a cadre but chose to make appointments of persons creating contractual relationship only, such action would be categorised as arbitrary nature of exercise of power. In this context, it was observed by the Bench, thus: (SCC p. 74, para 20)

"20. ... Sanctioned posts do not fall from heaven. The State has to create them by a conscious choice on the basis of some rational assessment of the need."

Thus, the facts found showed that there was the existence of a need for creation of posts and the failure to create such posts or having a stop-gap arrangement, which lasted for years cannot be used to deny in an arbitrary manner, the absorption benefit to the people who had worked for long years. A direction was issued to regularise the services of such SPOs and they were held entitled to the benefits of service similar in nature to the existing cadre of police service of the State.

18. *The position in respect of the appellants is really no different on the principle enunciated, as there was need for a regular cadre strength keeping in mind the inflow and pendency of cases. The Fast Track Court Scheme was brought in to deal with the exigency and the appellants were appointed to the Fast Track Courts and continued to work for almost a decade. They were part of the initial select list/merit list for recruitment to the regular cadre strength but were not high enough to be recruited in the existing strength. Even at the stage of absorption in the regular cadre strength, they had to go through a defined process in pursuance of the judgment of this Court and have continued to work thereafter.*

19. *We are, thus, unhesitatingly and unequivocally of the view that all the appellants and Judicial Officers identically situated are entitled to the benefit of the period of service rendered as Fast Track Court Judges to be counted for their length of service in determination of their pension and retiral benefits."*

30. Much in contrast to the case in **Mahesh Chandra Verma (1),** Srivastava was not recruited to the CBD Project, Department of Preventive and Social Medicine, IMS, BHU, after following any kind of procedure for selection and appointment. He was not appointed to the Project after due selection according to some recruitment rules. The services rendered in the Project were co-terminus with the Project. It was not that, that based on the Project Services, there were any rules for absorption of the CBD Project employees into the regular cadre of the University after following some prescribed procedure for selection or absorption. Rather, the petitioner was appointed in the service of the University on 28.08.1986, after he applied pursuant to an advertisement. Therefore, there is no principle similar to that in **Mahesh Chandra Verma (1)** attracted to Srivastava's case. His case is one of fresh recruitment to the University's regular cadre. There is no transition involved, governed by rules, from the service of the Project into the University cadre. The

appointment with the University is distinct, different and new. In our considered opinion, what is of the greatest relevance is the fact that in principle, there are authorities, including **Prem Singh** (*supra*), which, though founded on the interpretation of particular service rules, nevertheless, lay down that the period of service rendered in a project, that leads directly to absorption in the regular cadre, would be reckoned for the purpose of qualifying service. The concession that has been granted by this principle in favour of employees, who have served for a long period of time in the establishment's Project(s) and then absorbed in the regular cadre, is to extend them the benefit of qualifying service.

31. There is a fundamental distinction between 'qualifying service' and that involving in the reckoning of 'total period of service rendered outside the regular establishment' before absorption, for the purpose of computation of pension. While qualifying service entitles the employee to become eligible for pension invariably under the Old Pension Scheme, reckoning of services in the Project for computation of pension is not a principle of eligibility. It is a principle entitling the employee to quantification of his pension and other retiral benefits, taking into account service that was not regular, whether temporary or permanent. Project Services have never been countenanced for the purpose of determining the total length of service in order to determine the quantum of pension payable. Rather, the principle as to qualifying service, subject to rules and facts about the manner and the process through which the employee has moved from the Project into the regular establishment, favour reckoning services outside the regular establishment to count towards eligibility for pension alone, which we have explained hereinbefore. In this regard, reference may be made to **Uday Pratap Thakur** (*supra*), where the Court, explaining the principle in **Prem Singh,** held:

"22. *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 and 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.*

23. *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.

24. *In view of the above and for the reasons stated above, present appeals lack merits and the same deserve to be dismissed and are accordingly dismissed. It is observed and held that the service rendered as work charged after their services have been regularized under the regularization scheme, namely, the Rules, 2013 and the Circular shall be counted for the purpose of qualifying service for pension only as per Rule 5(v) of the Rules, 2013."*

(emphasis by Court)

32. So far as Srivastava is concerned, his is not a case where he has been deprived of pension under the Old Pension Scheme on account of shortage of years in the regular establishment. He is in receipt of pension. His service in the regular cadre entitles him to a pension under the Old Pension Scheme, which he received while alive, and, now, the petitioner would be the beneficiary of a family pension based on Srivastava's retirement pension. Srivastava's case is, therefore, not one of 'crisis of shortage of years' in the regular establishment, placing him on the wrong side of completing the qualifying service before retirement. Srivastava completed his qualifying service in the regular establishment. He was sanctioned and paid a retirement pension until alive. The petitioner would be receiving family pension reckoned on that basis. This leaves us to consider the petitioner's plea about the quantum of pension payable to him on the basis of his plea of discrimination *vis-a-vis* Joshi.

33. As already noticed, Joshi was initially appointed on temporary basis in the regular establishment of the University, in the pay scale of ₹425-700/- w.e.f. 06.04.1979, as a Social Worker in the Centre of the Radiotherapy & Radiation Medicine, IMS *vide* Letter No. EST/12359 dated 31.03.1979, a copy of which is annexed as Annexure No. SCA1 to the supplementary counter affidavit filed on behalf of the respondents, bearing No.16 of 2024. As against this, Srivastava joined the regular establishment on 28.08.1986, much after Joshi's initial appointment on 06.04.1979. Joshi never worked in a project. It is also evident that Srivastava was granted a pension on his last pay drawn, that was in the pay-sale of ₹6500-10500 (₹2000-3500 pre-revised) as on 31.08.2005, the date when he superannuated. Srivastava was thus appointed on 28.08.1986 and retired on 31.08.2005, whereas Joshi was appointed much earlier to the University service, albeit on a temporary basis initially, and retired on 31.03.2010, much

after Srivastava. Joshi, therefore, retired receiving a much higher pay-sale and was, therefore, sanctioned a higher pension, accordingly. There is, therefore, apparently no case of hostile discrimination by the respondents between Srivastava and Joshi in the matter of fixation of their respective pensions.

34. Reference has then been made by Mr. Khare to substantiate a case of hostile discrimination against Srivastava to cases of Om Prakash Singh and Vijay Narayan Singh, both of whose cases are pointed out to have been recommended for reckoning their project services in order to determine their quantum of pension. A copy of the office note and the resolution of the Non-Teaching Staff Grievance Committee dated 06/07.04.2017 in the case of Om Prakash Singh, in the matter of fixation of his pension, is annexed as Annexure No. SA-1 to the supplementary affidavit, bearing No.18 of 2024. After a detailed consideration of the matter, the Non-Teaching Staff Grievance Committee resolved in favour of counting the project services of Om Prakash Singh for the purpose of computation of his pension, as well as that of other similarly circumstanced employees, in the following terms:

"Resolved that the request of Shri O.P. Singh former Sr. Clerk, Office of the Controller of Examinations, BHU for counting of past services rendered by him in CBD project & Centre for Population Education, Research and Extension, Deptt. of PSM, IMS w.e.f. 01.02.1983 for pensionary and other incidental benefits by counting the period 01.04.1997 to May 2004 notionally be acceded to.

Resolved further that on the same line the request, of seven other employees nameely S/Shri Kedar Nath Gupta, Krishna Tiwari, R.K. Ram, Kamala Shanker Mishra, Vijay Bahadur Pandey, Vijay Narayan Singh, Hanumanji and other CBD staffs' be admitted/ considered and the consequential benefit be extended to them as well from date the respective joining."

35. This, however, does not appear to help the petitioner much, for the reason that the recommendations of the Non-Teaching Staff Grievance Committee, were recommendations after all, and not an effective decision by the University, enuring to the named employee's benefit. The recommendations of the Non-Teaching Staff Grievance Committee, when these came up before the Vice Chancellor, the competent Authority to act on behalf of the respondents, rejected the recommendations of the said Committee *vide* order dated 30.09.2022, a copy whereof is annexed as Annexure No. II[nd] SCA-4 to the second supplementary counter affidavit filed on behalf of respondent Nos.1 to 5, bearing No.20 of 2024. The aforesaid order relates to Vijay Narayan Singh and a host of other employees. In case of Om Prakash Singh, his representation dated 09.09.2014 was rejected and the decision communicated to him *vide* memo dated 13.07.2017 by the Office of the Registrar (Administration)-Non-Teaching of the University. A copy of the said order dated 13.07.2017 is annexed as Annexure No. II[nd] SCA-2 to the second supplementary counter affidavit filed on behalf of respondent Nos.1 to 5, bearing No.20 of 2024. Later on, as already noted, his case appears to have been recommended by the Non-Teaching Staff Grievance Committee, but turned down like other employees, with the order of the Vice Chancellor dated 30.09.2022, discarding all recommendations of the Non-Teaching Staff Grievance Committee for the reckoning of period of service rendered by

any of them in the CBD Project or other project for the purpose of quantification of their pension, to which they were entitled upon retirement.

36. In considering all these facts, issues and circumstances, besides the law, which bears on the point, we do not find it to be a fit case for the grant of relief in the exercise of our jurisdiction under Article 226 of the Constitution.

37. In the result, this writ petition **fails** and stands **dismissed**.

38. There shall be no order as to costs.

(2025) 7 ILRA 488
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 17.07.2025
BEFORE
THE HON'BLE AJIT KUMAR, J.

Writ A No. 20013 of 2019

Yagya Narayan Sen ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Prabahkar Awasthi

Counsel for the Respondents:
Ashok Kumar Yadav, C.S.C., Lokesh Kumar Dwivedi

Issue for Consideration

The petitioner's salary was withheld on the ground that an investigation indicated he had fraudulently recorded his date of birth as 01.08.1970, whereas a school record for one Yagya Narayan showed the date of birth as 02.11.1961.The main issue for consideration before the court "Whether the date of birth of the petitioner once entered into service at the time of entry into service could be changed by investigating into his date of birth on a third party complaint subsequently, more specially when such an employee is not high school pass out".

Headnotes

Service law- Determination of Date of Birth Rules, 1974-Date of birth-Correction or changed-Admissibility-Date of birth of an employee who has not passed the High School Certificate cannot be changed once originally recorded at the time of entry in service-The Rules,1974 are fully applicable-The Court quashed the order passed by the Executive engineer, Baghla Kanal Project, Prayagraj which withheld the payment of the petitioner's salary-Petition allowed.

Held

An order to withhold the salary of an employee, including one passed during an enquiry or investigation into their DoB, carries adverse civil consequences-Such an order is not sustainable without providing the petitioner notice or an opportunity of hearing-The petitioner's recorded date of birth of 01.08.1970 in the service book shall be continued and used as the basis for his service-Shall be entitled to the entire salary which has remained withheld and also current salary until he attains the age of superannuation-The order dated 27.11.2019 passed by the Executive Engineer,Baghla Kanal Project, Prayagraj, which withheld the payment of the petitioner's salary and the order dated 14.112019 passed by the Superintending Engineer, which directed for a fresh investigaiton and enquiry into the petitioner's date of birth are quashed.(Para 12 to 15) (E-6)

List of Acts

Determination of Date of Birth Rules,1974

List of Keywords

Daily wager; Executive Engineer, Internal Inhouse enquiry; Kanhar Kanal Project Division, Baghla Kanal Project; Service book; Superannuation; Permanent employee.

Case Arising From

Service Law- WRIT-A No. – 20013 of 2019
From the Judgment and order dated 17.07.2025 of the High Court of Judicature at Allahabd.

Yagya Narayan Sen Vs. State of U.P. & 3 Ors

Appearances for Parties

Advs. for Petitioner:

Prabhakar Awasthi
Advs. for Respondent: Ashok Kumar Yadav, C.S.C., Lokesh Kumar Dwivedi

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

1. Heard Sri Prabhakar Awasthi, learned counsel for the petitioner and Ms. Akansha Sharma, learned counsel for the respondents and Sri Lokesh Kumar Dwivedi, learned counsel for the complainant.

2. By means of this petition filed under Article 226 of Constitution of India, petitioner has prayed for quashing the order dated 27.11.2019 whereby his salary has been withheld on the ground that upon enquiry/ investigation being conducted into original school record from the institution it transpired that petitioner had got fraudulently recorded his date of birth while entering service as 01.08.1970 whereas the date of birth recorded in the records of the school in front of the name of one Yagya Narayan was shown to be 02.11.1961.

3. From the pleadings brought on record and the documents by the respective parties it transpires that petitioner was initially engaged as daily wager on 01.11.1983 but upon detecting that he was underage being a minor, he was discontinued after two months and thereafter came to be re-engaged on a daily wages basis only in the year 1989 and having continued working for more than 240 days and he being enlisted in the muster role issued in the year 1998 at serial no.22 provided by Executive Engineer, Baadh Sector, Construction Division Ist, Mirzapur, he was given permanent appointment on the post of Chowkidaar in the work charge establishment on 10.05.1998. He was made to continue until 2001 when finally he was shifted to regular establishment and given joining on 18.01.2001. He was subsequently transferred to the office of Executive Engineer, Baghla Kanal Division on the post of Mate.

4. It transpires from the records that a third party complaint was made by a villager in the office of Executive Engineer stating therein that petitioner's date of birth was 02.11.1961. It is on the basis of this complaint that an internal inhouse enquiry was set into motion and it was found that in the service records petitioner's name was recorded as Yagya Narayan Sen with date of birth as 01.08.1970. On the basis of the medical examination report submitted by Chief Medical Officer, Mirzapur his date of birth was so recorded.

5. A letter was written by the office where the petitioner was posted on 10.01.2019 directing the Executive Engineer,Baadh Sector, Construction Division, Mirzapur to submit its report and since the said division subsequently came to be merged with the Kanhar Kanal Project Division, Sonbhadra a letter was written on 12.02.2019 and 16.05.2019 from Prayagraj to the said division to furnish report. As a consequence thereof, the Executive Engineer, Kanhar Division 4th, Duddhi submitted a report on 25.06.2019 that there was no record available in the name of Yagya Narayan and when again a letter was written to investigate into the cash section of the office to find out the payment vouchers, it was in response to this, that information was given that again entire records were investigated but no document could be made available in the name of Yagya Narayan Sen. It is after this that the Executive Engineer, Baghla Kanal

Project, Allahabad submitted report on 10.09.2019 that the school records of Bajrang Bali Purva Madhyamik Vidyalaya, Baghla, Shankargarh, the verification showed that Yagya Narayan Sens' date of birth was 01.08.1970 and accordingly, the Superintendent Engineer submitted report that petitioner's date of birth can be taken to be 01.08.1970. However, the matter did not end here and some further investigation an enquiry was undertaken in view of the letter written by the Superintending Engineer on 14.11.2019. This letter was written to the Chief Engineer, Irrigation, U.P., Lucknow and and as a sequal thereto an order was passed on 27.11.2019 restraining payment of salary to the petitioner.

6. Learned counsel for the petitioner has raised two points: firstly, due to mere pendency of any enquiry or investigation, salary of an employee could not have been witheld and that too without putting him to notice when such an order is having adverse civil consequences; and secondly, the Determination of Date of Birth Rules, 1974 are applicable to the establishment in question which does not permit any change in the date of birth, may be on a mere complaint, once it has been entered at the time of entry into service.

7. Learned Standing Counsel on the contrary submits that the service book sufficiently demonstrates that the word 'Sen' has been further added after the name 'Yagya Narayan' inasmuch as the signatures of Yagya Narayan as 'Yagya Narayan Sen' also differs in flow of writing especially when subsequently title given therein as 'Sen'. However, learned Standing Counsel would fairly admit that the entire service book carries the name as 'Yagya Narayan Sen' and the original date of birth recorded at the time of entry into service is 01.08.1970.

8. Having heard learned counsel for the parties and having perused the records, the point of of law that emerges for consideration before the Court is, whether the date of birth of the petitioner once entered into service record at the time of entry into service could be changed by investigating into his date of birth on a third party complaint subsequently, more especially when such an employee is not high school pass out.

9. It is not disputed to the parties that petitioner came to be employed permanently in the work charge establishment only in the year 2001 naturally, therefore, the service book was prepared for the first time in 2001 and even if some may doubt the title of 'Sen' to be not originally written at the time of preparation of service book but the entry of date of birth as 1970 has not been doubted. This entry of date of birth at the time of preparation of service book shall stand governed under the 1974 Rules because the petitioner would be taken to have enrolled as a permanent employee of the establishment only in the year 2001. So entry in service is 2001 and date of birth entered at that time was 01.08.1970.

10. I have perused the original service book and I do not find any interpolation therein.

11. It is also admitted to the respondents that the petitioner is not high school passed, nor ever furnished any certificate of this effect, nor ever applied for change of his date of birth recorded originally in service book. It is also admitted to the respondents that the

petitioner entered in service as daily wager in 1989 and when finally he was given permanent appointment in 2001, he was major. So at the time of entry as a regular member of service, petitioner was major and the period counted for the purposes of regularisation from 1989 would also disclose that he was major in 1989. Thus the argument that the petitioner was minor at the time of entry into service on the basis of his date of birth in 1970 deserves to be rejected. In the background of aforesaid facts therefore, the 1974 Rules are fully applicable. Relevant Rules of 1974 Rules are reproduced hereunder:

*"2. **Determination of correct date of birth or age**.-The date of birth of a Government servant as recorded in the certificate of his having passed the High School or equivalent examination at the time of his entry into the Government service or where a Government servant has not passed any such examination as aforesaid or has passed such examination after joining the service, the date of birth or the age recorded in his service book at the time of his entry into the Government service shall be deemed to be his correct date of birth or age, as the case may be, for all purposes in relation to his service, including eligibility for promotion, superannuation, premature retirement or retirement benefits, and no application or representation shall be entertained for correction of such date or age in any circumstances whatsoever.*

*3. **Change of date of birth**-Bona fide mistake.-The date of birth can be changed only if there was a bona fide mistake. The principle of estoppel will apply and hence when the Government servant had indicated a particular date of birth in his application form or any other document at the time of employment the Court should not change that date of birth."*

12. From a bare reading of the aforesaid provisions, it is clear that date of birth of employee who has not passed the High School Certificate cannot be changed once originally recorded at the time of entry in service.

13. In my above view I find support in the judgments of a coordinate benches of this court in the case of Surendra Singh v. State of U.P and Others, 2019 5 ADJ 365, and of the Division Bench judgment in the case of Mohan Singh v. U.P. Rajya Vidyut Utpadan Ltd. And Others, 2012 (8) ADJ 383.

14. In view of the above, therefore, respondents were not justified in conducting any investigation or enquiry into the date of birth of the petitioner originally recorded in the service book as 01.08.1970.

It is also admitted to the respondents that no notice or opportunity of hearing was afforded to the petitioner before passing the order impugned witholding payment of salary. The counter affidavit only demonstrates that during an in-house enquiry conducted petitioner was afforded opportunity. I may further refer it to the enquiry report of the Superintending Engineer dated 03.11.2017 which in its concluding part records that petitioner's date of birth should be considered as 01.08.1970 on the basis of records and the certificate issued by the Chief Medical Officer. I therefore, fail to understand as to why upon a sheer third party complaint made by a villager who may be a busybody, the respondents embarked upon a fresh enquiry under the order dated

14.10.2019 passed by Superintendent Engineer.

14. Thus, the order passed by the Superintendent Engineer dated 14.11.2019 is also not sustainable in view of the aforesaid rules. I take judicial notice of the order dated 14.11.2019 also because it has laid the foundation for the order impugned dated 27.11.2019 and hence while the order dated 27.11.2019 deserves to be quashed the order dated 14.11.2019 equally deserves to be quashed.

15. Writ petition succeeds and is ***allowed***. The order impugned dated 27.11.2019 passed by the Executive Engineer, Baghla Kanal Project, Prayagraj witholding payment of salary of the petitioner brought as Annexure-8 to the writ petition and order passed by the Superintending Engineer dated 14.11.2019 directing for fresh investigation and enquiry are hereby quashed. The petitioner shall be continued in service on the basis of his date of birth recorded as 01.08.1970 in the service book and shall be entitled to entire salary which has remained witheld and also the current salary until he attains the age of superannuation.

16. Service book is returned to the learned Standing Counsel.

(2025) 7 ILRA 492

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 24.07.2025

BEFORE

THE HON'BLE AJIT KUMAR, J.

Writ A No. 21425 of 2019

Deepak Kumar & Ors. ...Petitioners

Versus

State Of U.P. & Ors. ...Respondents

Counsel for the Petitioners:
Seemant Singh

Counsel for the Respondents:
C.S.C.

Issue for Consideration

The petitioner's salary was withheld on the ground that an investigation indicated he had fraudulently recorded his date of birth as 01.08.1970, whereas a school record for one Yagya Narayan showed the date of birth as 02.11.1961.The main issue for consideration before the court "Whether the date of birth of the petitioner once entered into service at the time of entry into service could be changed by investigating into his date of birth on a third party complaint subsequently, more specially when such an employee is not high school pass out".

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Held

An order to withhold the salary of an employee, including one passed during an enquiry or investigation into their DoB, carries adverse civil consequences-Such an order is not sustainable without providing the petitioner notice or an opportunity of hearing-The petitioner's recorded date of birth of 01.08.1970 in the service book shall be continued and used as the basis for his service-Shall be entitled to the entire salary which has remained withheld and also current salary until he attains the age of superannuation-The order dated 27.11.2019 passed by the Executive Engineer,Baghla Kanal Project, Prayagraj, which withheld the payment of the petitioner's salary and the order dated 14.112019 passed by the Superintending Engineer, which directed for a fresh investigaiton and enquiry into the petitioner's date of birth are quashed.(Para 12 to 15) (E-6)

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Appearances for Parties
Advs. for Petitioner:
Prabhakar Awasthi
Advs. for Respondent: Ashok Kumar Yadav, C.S.C., Lokesh Kumar Dwivedi

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

1. Heard Sri Seemant Singh, learned counsel appearing for the petitioners, learned Additional Chief Standing appearing for the State-respondents and perused the records.

2. By this petition filed under Article 226 of the Constitution, petitioners have prayed for a writ of certiorari for quashing the order dated 17.10.2019, whereby the petitioners were declared 'unsuccessful' in the test of 'Stenography' and their claims have been rejected.

3. At present, learned counsel submits that petitioners are only pressing for relief no.3, according to which, petitioners have prayed that their candidature may be considered for compassionate appointment as per Uttar Pradesh Recruitment of Dependants of Government Servants Dying-in-Harness (11th Amendment) Rules, 2014 (hereinafter referred to as 'the Rules 2014').

4. Brief facts of the case are that father/husband of the respective petitioners, as the case may be, died-in-harness in respective years given in paragraph 6 which is reproduced hereinunder:

"That the father/husband of the petitioners died-in-harness on dates like 17.07.2013, 07.12.2013, 19.04.2009, 28.05.2012,

21.06.2008, 03.07.2003, 03.02.2011, 28.03.2013, 12.10.2010, 12.05.2011, 22.05.2009, 11.08.2012, 10.01.2009, 10.10.2010 and 27.06.2006 in so far as it relates to petitioner No.1 to petitioner No.15."

5. Since they were the sole bread-earner, their respective families suddenly landed in a huge financial crisis and, hence, there arose a need for compassionate appointment to be claimed by their respective dependants. In the circumstances, they all applied for compassionate appointment before the respondent-Establishment as per the Uttar Pradesh Recruitment of Dependants of Government Servants Dying-in-Harness Rules, 1974 (hereinafter referred to as the 'Rules, 1974') against suitable posts and by the time their applications could have been accorded consideration, the State Government framed new rules namely the Uttar Pradesh Police Ministerial, Accounts and Confidential Assistant Cadres Service Rules, 2015 (hereinafter referred to as 'the Rules, 2015) vide its Gazette Notification dated 23.07.2015, wherein Rule 10(3) provided appointment against the post of Sub-Inspector (Confidential), a minimum eligibility criteria for dying-in-harness

purposes was 'Speed of 25 words per minute in Hindi Typing' and '80 words per minute in Shorthand' and a candidate who applies for appointment, should also possess 'O' Level Computer Certificate' issued by DOEACC/ NIELIT.

6. It further transpires that Rules, 2015 were made applicable by the respondents, but it did not force for necessary requirements of 'O Level Computer Certificate' issued by DOEACC/ NIELIT. The petitioners upon coming to know that their candidature for the purposes of compassionate appointment were being subjected to the procedure prescribed under Rules, 2015 coupled with the eligibility criteria prescribed therein, they rushed to this Court by filing a writ petition being Writ-A No.5039 of 2016 (Ajeet Kumar and 7 others Vs. State of U.P. and 2 others) and Writ-A No.9045 of 2016 (Jitendra Kumar Yadav and 6 others Vs. State of U.P. and 2 others), which were allowed finally with a direction to the authorities to accord due consideration to the candidature of the petitioners for compassionate appointment in terms of old rules.

7. The said co-ordinate Bench of this Court in Writ-A No.5039 of 2016 has set aside the order dated 13.01.2016, by which the respondents held the petitioners 'not to be eligible' as per Rules, 2015. Relevant paragraph 22 thereof is reproduced hereinunder:

"22. Having regard to the facts and circumstances of the case, the orders issued by the respondents which are under challenge in the writ petition, are liable to be set aside. Accordingly, the impugned orders dated 13.1.2016, collectively annexed as annexure-5 to the writ petition, issued to each petitioner, are set aside. The petitioners are entitled to be considered under the old scheme."

8. It further transpires, as is also admitted by the learned counsel for the petitioners, that all the petitioners, except petitioner nos.6, 14 and 15, were party to the aforesaid petitions. However, the respondents continued to test the eligibility of the petitioners as per Rules, 2015 and finally rejected their candidature being 'unsuccessful' in the test of 'Stenography'.

9. Learned Advocate appearing for the petitioners has placed two fold arguments. First, Rules, 2015 were not applicable in the case of the petitioners as the cause of action for compassionate appointment arose prior to Rules, 2015 on account of death of the sole bread-earner of the respective petitioners in the relevant years prior to Rules, 2015, and all dependents being major had moved an application for consideration of compassionate appointment prior to Rules, 2015 when Rules, 2014 were applicable. In support of his arguments, he has placed reliance upon the authorities of this Court in the case of ***Dharamveer Singh and another Vs. State of U.P. and 5 others (Writ-A No.15345 of 2023),*** where due consideration to the claim of the petitioners for compassionate appointment, was directed to be accorded under the Uttar Pradesh Recruitment of Dependants of Government Servants Dying-in-Harness (11th Amendment) Rules, 2014 in the Police Department. He has also placed reliance upon judgment of the Supreme Court in the case of ***State of Madhya Pradesh & others Vs. Ashish Awasthi*** in Civil Appeal No.6903 of 2021 along with connected appeal being Civil Appeal No.6904 of 2021, *State of Madhya Pradesh & others Vs. Baalendu Yadav, reported in LL* 2021 SC 659 disposed of on

18.11.2021. He has also placed paragraph 4.1, 4.2 and 5 of that judgment before the Court and the same are reproduced hereinbelow:

*"4.1 In the case of **Indian Bank and Ors. Vs. Promila and Anr., (2020) 2 SCC 729,** it is observed and held that claim for compassionate appointment must be decided only on the basis of relevant scheme prevalent on date of demise of the employee and subsequent scheme cannot be looked into. Similar view has been taken by this Court in the case of **State of Madhya Pradesh and Ors. Vs. Amit Shrivas, (2020) 10 SCC 496**. It is required to be noted that in the case of **Amit Shrivas (supra)** the very scheme applicable in the present case was under consideration and it was held that the scheme prevalent on the date of death of the deceased employee is only to be considered. In that view of the matter, the impugned judgment and order passed by the Division Bench is unsustainable and deserves to be quashed and set aside.*

4.2 The submission on behalf of the respondent that after the impugned judgment and order passed by the High Court, the respondent has been appointed and therefore his appointment may not be disturbed, deserves rejection. Once the judgment and order passed by the Division bench under which respondent is appointed is quashed and set aside, necessary consequences shall follow and the appointment of the respondent, which was pursuant to the impugned judgment and order passed by the Division Bench of the High Court cannot be protected.

5. In view of the above and for the reasons stated above, the present appeal succeeds, the impugned judgment and order passed by the Division Bench of the High Court of Madhya Pradesh Bench at Jabalpur in WA No.1559 of 2018 is hereby quashed and set aside by observing that the respondent shall not be entitled for appointment on compassionate ground on the basis of the subsequent circular/policy dated 31.08.2016."

10. Thus, the argument is that the respondents may be commanded by issuing writ of mandamus to offer compassionate appointment to the petitioners as per dying-in-harness Rules, 2014 on suitable posts.

11. *Per contra,* learned Additional Chief Standing Counsel has sought to defend the stand of the respondents on the ground that once the petitioners subjected themselves to the Rules, 2015 and appeared in the test of 'Typing' as well as 'Stenography', now they cannot be permitted to take 'U-turn' to suggest that their candidature ought to have been considered under the old rules. In support of his argument, he has placed emphasis on an extract of paragraph six of the counter affidavit and same is reproduced hereinunder:

"The claim of the petitioners for providing equality of the candidates who participated in the examination on 8.8.2021, is not sustainable in the eyes of law. It is relevant to mention here that separate notifications were issued for both the examinations. The petitioners were fully aware about the notification dated 27.6.2019 and after full satisfaction they have participated in the examination on 8.7.2019. It is submitted that since the selection was made separately, therefore, no question arises for giving any equality/parity to the petitioners as per relevant rules. The instant amendment application filed on behalf of the

petitioners, is absolutely misconceived and nothing new fact has been brought by means of present amendment application, as such instant amendment application is liable to be rejected outrightly by dismissing the writ petition in view of facts stated in this counter affidavit of amendment application as well as main counter affidavit of writ petition."

12. It is sought to be urged by learned Additional Chief Standing Counsel that even under the dying-in-harness Rules, 2014 qualifying test was the 'Typing' and the petitioners having failed in 'Typing-cum-Stenography Test', now may not be permitted to take a plea that their candidature for compassionate appointment may be accorded due consideration against the post in question.

13. Having heard learned counsel for the respective parties and having perused the records, I find only one question to be requiring determination by this Court and is, whether the petitioners' candidature should have been considered under the dying-in-harness Rules, 2014 or the respondents were justified in holding 'Typing-cum-Stenography Test of the petitioners under the Rules, 2015.

14. It is admitted to the learned counsel for both the parties that the sole earning members of the respective petitioners had died between the period 2006 and 2013 when the dying-in-harness Rules, 2014 were very much in existence and were also applicable to the Police Department as well. It is also not disputed by the respective parties especially the State-respondents that all the petitioners as dependents of the deceased-employees had applied for compassionate appointment prior to coming into force of Rules, 2015.

15. In the circumstances, the natural inference to be drawn is that on the date applications were filed for the purposes of enforcement of relevant rights vested under the service rules existing on that date, admittedly, Dying-in-Harness Rules, 2014 was then in existence and hence the respondents were to abide by the said law while considering the candidature of petitioners for compassionate appointment. The rule of compassionate appointment is an exception to the general rule of appointment and the object behind it is to provide immediate succour to the bereaved family which has landed in a sudden financial crisis on account of death of the sole bread-earner of the family in harness. In the case of ***State of West Bengal vs. Debabrata Tiwari and others (2025) 5 SCC 712,*** the Supreme Court has discussed the policy of compassionate appointment. Vide paragraph 23 to 31, it has held thus:

"23. The majesty of death is that it is a great leveller for, it makes no distinction between the young and the old or the rich and the poor. Death being as a consequence of birth at some point of time is inevitable for every being. Thus, while death is certain, its timing is uncertain. Further, a deceased employee does not always leave behind valuable assets; he may at times leave behind poverty to be faced by the immediate members of his family. Therefore, what should be done to ensure that death of an individual does not mean economic death for his family? The State's obligation in this regard, confined to its employees who die in harness, has given rise to schemes and rules providing for compassionate appointment of an eligible member of his family as an instance of providing immediate succour to such a family. Support for such a provision has been derived from the provisions of

Part IV of the Constitution of India, i.e., Article 39 of the Directive Principles of State Policy.

24. It may be apposite to refer to the following decisions of this Court, on the rationale behind a policy or scheme for compassionate appointment and the considerations that ought to guide determination of claims for compassionate appointment.

25. In Sushma Gosain vs. Union of India, (1989) 4 SCC 468, this Court observed that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. That the purpose of providing appointment on compassionate grounds is to mitigate the hardship caused due to the death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress.

26. In Umesh Kumar Nagpal vs. State of Haryana, (1994) 4 SCC 138, this Court observed that the object of granting compassionate employment is to enable the family of a deceased government employee to tide over the sudden crisis by providing gainful employment to one of the dependants of the deceased who is eligible for such employment. That mere death of an employee in harness does not entitle his family to such source of livelihood; the Government or the public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied that, but for the provision of employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family, provided a scheme or rules provide for the same. This Court further clarified in the said case that compassionate appointment is not a vested right which can be exercised at any time after the death of a government servant. That the object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, compassionate employment cannot be claimed and offered after lapse of considerable amount of time and after the crisis is overcome.

27. In Haryana State Electricity Board vs. Hakim Singh, (1997) 8 SCC 85, ("Hakim Singh") this Court placed much emphasis on the need for immediacy in the manner in which claims for compassionate appointment are made by the dependants and decided by the concerned authority. This Court cautioned that it should not be forgotten that the object of compassionate appointment is to give succour to the family to tide over the sudden financial crisis that has befallen the dependants on account of the untimely demise of its sole earning member. Therefore, this Court held that it would not be justified in directing appointment for the claimants therein on compassionate grounds, fourteen years after the death of the government employee. That such a direction would amount to treating a claim for compassionate appointment as though it were a matter of inheritance based on a line of succession.

28. This Court in State of Haryana vs. Ankur Gupta, AIR 2003 SC 3797 held that in order for a claim for compassionate appointment to be considered reasonable and permissible, it must be shown that a sudden crisis occurred in the family of the deceased as a result of death of an employee who had served the State and died while in service. It was further observed that appointment

on compassionate grounds cannot be claimed as a matter of right and cannot be made available to all types of posts irrespective of the nature of service rendered by the deceased employee.

29. There is a consistent line of authority of this Court on the principle that appointment on compassionate grounds is given only for meeting the immediate unexpected hardship which is faced by the family by reason of the death of the bread earner vide Jagdish Prasad vs. State of Bihar, (1996) 1 SCC 301. When an appointment is made on compassionate grounds, it should be kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion, vide I.G. (Karmik) vs. Prahalad Mani Tripathi, (2007) 6 SCC 162. In the same vein is the decision of this Court in Mumtaz Yunus Mulani vs. State of Maharashtra, (2008) 11 SCC 384, wherein it was declared that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis.

30. In State of Jammu and Kashmir vs. Sajad Ahmed Mir, AIR 2006 SC 2743, the facts before this Court were that the government employee (father of the applicant therein) died in March, 1987. The application was made by the applicant after four and half years in September, 1991 which was rejected in March, 1996. The writ petition was filed in June, 1999 which was dismissed by the learned Single Judge in July, 2000. When the Division Bench decided the matter, more than fifteen years had passed from the date of death of the father of the applicant. This Court remarked that the said facts were relevant and material as they would demonstrate that the family survived in spite of death of the employee. Therefore, this Court held that granting compassionate appointment after a lapse of a considerable amount of time after the death of the government employee, would not be in furtherance of the object of a scheme for compassionate appointment.

31. In Shashi Kumar, this Court speaking through Dr. D.Y. Chandrachud, J. (as His Lordship then was) observed that compassionate appointment is an exception to the general rule that appointment to any public post in the service of the State has to be made on the basis of principles which accord with Articles 14 and 16 of the Constitution. That the basis of the policy is that it recognizes that a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service. That it is the immediacy of the need which furnishes the basis for the State to allow the benefit of compassionate appointment. The pertinent observations of this Court have been extracted as under:

"35. Insofar as the individual facts pertaining to the Respondent are concerned, it has emerged from the record that the Writ Petition before the High Court was instituted on 11 May 2015. The application for compassionate appointment was submitted on 8 May 2007. On 15 January 2008 the Additional Secretary had required that the amount realized by way of pension be included in the income statement of the family. The Respondent waited thereafter for a period in excess of seven years to move a petition Under Article 226 of the Constitution. In Umesh Kumar Nagpal (supra), this Court has emphasized that the basis of a scheme of compassionate appointment lies in the need

of providing immediate assistance to the family of the deceased employee. This sense of immediacy is evidently lost by the delay on the part of the dependant in seeking compassionate appointment."

16. Keeping this object in mind, any prudent man would come to conclude that the moment an application is moved by the dependent of the deceased-employee seeking compassionate appointment, it should have be considered within a reasonable time because the delay would defeat the very object for which the rules have been framed. This aspect has been considered by the Supreme Court in the case of ***State of H.P. vs. Shashi Kumar, (2019) 3 SCC 653***. Vide paragraph 35 the Court has held thus:

"35. Insofar as the individual facts pertaining to the Respondent are concerned, it has emerged from the record that the Writ Petition before the High Court was instituted on 11 May 2015. The application for compassionate appointment was submitted on 8 May 2007. On 15 January 2008 the Additional Secretary had required that the amount realized by way of pension be included in the income statement of the family. The Respondent waited thereafter for a period in excess of seven years to move a petition Under Article 226 of the Constitution. In Umesh Kumar Nagpal (supra), this Court has emphasized that the basis of a scheme of compassionate appointment lies in the need of providing immediate assistance to the family of the deceased employee. This sense of immediacy is evidently lost by the delay on the part of the dependant in seeking compassionate appointment."

17. Relying upon the same, the Supreme Court in the case of ***Debabrata Tiwari (supra)*** vide paragraph 32.4 observed thus:

"That compassionate appointment should be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years."

18. Further, in the case of ***Malaya Nanda Sethy vs. State of Orissa and others, 2022 SCC Online SC 684,*** the Court vide paragraph 16 has held thus:

"Before parting with the present order, we are constrained to observe that considering the object and purpose of appointment on compassionate grounds, i.e., a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service and the basis or policy is immediacy in rendering of financial assistance to the family of the deceased consequent upon his untimely death, the authorities must consider and decide such applications for appointment on compassionate grounds as per the policy prevalent, at the earliest, but not beyond a period of six months from the date of submission of such completed applications."

(emphasis supplied)

19. In this above view of the matter, the respondents were required to consider the application of the petitioners for compassionate appointment within a reasonable period the moment they received their applications. But, it appears that the respondents waited and lingered on the matter until Rules, 2015 came into force. It is thereafter, they proceeded to

consider the candidature of the petitioners. Being aggrieved by the approach of the respondents to consider the claims vide new Rules, 2015, petitioners had rushed to this Court by filing petitions before this Court, except petitioner nos.6, 14 and 15, seeking a relief that their candidature may be considered under the dying-in-harness Rules, 2014 and not under the Rules, 2015. This Court issued a positive direction in this regard, which has already been reproduced hereinabove. However, the respondents continued to stick to their own stand that Rules, 2015 would be applicable and subjected the petitioners to undergo 'Typing-cum-Stenography Test'. Paragraph 6 of the counter affidavit, which is a reply to paragraph 10 of the writ petition, does not in any manner dispute the mandate contained in the directions of this Court passed in the aforesaid writ petition, which have been reproduced hereinabove, wherein the respondents were directed to follow Rules, 2014.

20. The defence taken subsequently in the counter affidavit is that even the old rules required 'Typing Test'. It is also apparent from the records that all the petitioners qualified the 'Typing Test', but failed in the 'Stenography Test'. If this object as has been raised in the counter affidavit, is taken into consideration, then even as per the old rules all the petitioners deserve to be appointed.

21. In the circumstances, therefore, the judgment passed by this Court Court in the case of ***Dharamveer Singh (supra)*** is fully attracted in the case of the petitioners, wherein it has been categorically held that the rules as was in force on the date of cause of action would be applicable. In paragraphs 11 and 12 of that judgment, the Court has held thus:

"11. Vide paragraph 61 of the judgment the Division Bench in the case of ***State of U.P. and others v. Himanshu Yadav*** *(Special Appeal No.126 of 2023) finally held thus:*

"61. Lastly, considering the submission of the learned Additional Advocate General for the appellants based on the decision of the Apex court in ***State of Uttar Pradesh and others vs. Premlata reported in (2022) 1 SCC 30*** *that the offer given to the respondent/writ petitioner for appointment on compassionate ground on a lower post was sufficient compliance of the scheme requiring appointment to the dependents of the deceased, suffice it to note that such an offer ignoring the fact that the appellants do not adhere to the requirement of the rules by filling up vacancies year-wise, cannot be said to be in the spirit of law. No one can be granted benefit of their own wrong. By first accumulating the applications for compassionate appointment over the period of four years and then excluding the candidates from the zone of consideration by holding an objective test after a period of four years from the date of the promulgation of the Rules providing for restriction to 5% limit to the number of vacancies to be filled up by direct recruitment, the appellants have committed a mistake benefit of which cannot be granted to them."*

12. Besides above, in recent judgment of the Division Bench in the case of ***Oriented Insurance Company Ltd. v. Priyanka Agarwal*** *(Special Appeal No.309 of 2019), decided on 04.08.2023, the Court followed the judgment of the Special Appellate Bench in the case of* ***State of U.P. and others v. Himanshu Yadav*** *(Special Appeal No.126 of 2023), delivered*

on 07.07.2023. The Court further observed that merely because a matter has been referred to a larger Bench in ***State Bank of India v. Sheo Shankar Tewari (2019) 5 SCC 600****, the legal position as stands today cannot be made unsettled but the law exists shall have to be followed. Vide paragraph 23 the Court held thus:*

"23. We are also aware that the reference made to Larger Bench of the Supreme Court in State Bank of India Vs. Sheo Shankar Tewari is still pending before that Court. However, in view of the discussion made above as to the law laid down by the Supreme Court, since the occurrence of that reference vide order dated 08.02.2012 we do not find any doubt exists as to the law to be applied in matters of compassionate appointments, in the meanwhile. For that reason as well, since on the date of occurrence of death of Sri Surendra Kumar Agrawal, on 06.9.2014, there did not exist any scheme for grant of compassionate appointment, the claim made by the petitioner would fail."

22. The Supreme Court judgments in the cases of ***Dharamveer Singh (supra)*** and ***Ashish Awasthi (supra)*** which have been relied upon by learned counsel for the petitioners, which have been reproduced hereinabove, also provides that the scheme that was prevalent on the date of death of an employee should be taken into consideration for the purposes of compassionate appointment.

23. In such above view of the matter, the respondents are held 'not justified' in rejecting the claim of the respective petitioners for compassionate appointment on the ground that they could not succeed in the 'Stenography Test' pursuant to the Rules, 2015.

24. Accordingly, the respondents are directed to reconsider the applications of the respective petitioners as per the dying-in-harness Rules, 2014. In the considered view of the Court, this time a positive consideration must be accorded more especially when the petitioners have succeeded in the 'Typing Test' as per own stand of the respondents and they shall be offered appointment.

25. I must add here that delay for long consideration of claims by respondents and the pendency of the matter before this Court since 2015 would not invite clause of 5 years' bar so as to seek further approval of State Government. The said clause shall not be attracted in the present case.

26. Appropriate orders for compassionate appointment, accordingly, shall be passed to all the respective petitioners within a maximum period of one month from the date of production of a certified copy of this order, if there is no legal impediment.

27. The writ petition succeeds and is, accordingly, **allowed** as above.

(2025) 7 ILRA 501
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 15.07.2025
BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No. 21629 of 2011

Ramesh Chandra Gupta ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Chhaya Gupta, Rajiv Joshi

Counsel for the Respondents:
K.N. Yadav, N.K. Yadav, Nikhil Kumar, Prashant, Satyam Singh

Issue for consideration

Whether the punishment of dismissal from service is shockingly disproportionate?

Headnotes

A. Service Law – It is well settled that in normal circumstances, Courts are slow in causing interference in the orders passed in disciplinary proceedings. (Para 15)

B. It is well settled that inquiry initiated before retirement may continue even after retirement of delinquent as well as in present case, a liberty was granted by the Court vide an order passed in earlier round of litigation, money collected from Members after issuing receipts was not deposited. Lesser money was shown in account balance. The period of embezzlement runs for many years. Details of embezzlement are mentioned in earlier part of the judgment. The petitioner has submitted vague averments which are not sufficient to contradict the findings. (Para 20)

Since there is no procedural error in the process of disciplinary proceedings, principles of natural justice were followed, direction given vide order dated 26.07.2010 passed by this Court were also followed as well as that the petitioner has not appeared despite repeated opportunities to access the documents as well as specific reasons are assigned in the proposal adopted in regard to various acts of embezzlement, therefore, no circumstances exist to interfere with the impugned order as well as Court also takes note that allegations are of financial embezzlement which has caused huge financial loss to respondents, therefore, punishment of dismissal from service is also not shockingly disproportionate. (Para 21)

Writ petition dismissed. (E-4)

Case Law Cited

1. State of Rajasthan Vs. Bhupendra Singh, MANU/SC/0854/2024; 2024:INSC:592; 2024 SCC OnLine 1908 (Para 15, 21)

2. State Bank of India Vs. Naveen Kumar Sinha, MANU/SC/1220/2024; 2024 INSC 874 (Para 19)

List of Keywords

Service Law; dismissed; embezzlement; inquiry; superannuation; disciplinary proceedings; suspension; principles of natural justice.

Appearances for Parties

For Petitioner: Chhaya Gupta and Rajiv Joshi

For Respondents: K.N. Yadav, N.K. Yadav, Nikhil Kumar, Prashant and Satyam Singh

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. Petitioner while working as Secretary in Sadhan Sahkari Samit Karaura, Bulandshahar was dismissed from services vide order dated 01.06.2022 for repeated instance of embezzlement.

2. Aforesaid order was challenged by the petitioner by way of a statutory appeal and by order dated 10.01.2005, order under appeal was set aside and matter was remitted back to District Administrative Committee to pass a fresh order.

3. The District Administrative Committee passed an order dated 03.06.2006 whereby the petitioner was again dismissed from services.

4. Challenge to it by way of statutory appeal was failed vide order dated 18.06.2008.

5. In aforesaid circumstances, petitioner preferred a Writ A No. 53113/2008 against orders dated 03.06.2006 and 18.06.2008 which was allowed by this Court vide order dated 26.07.2010 whereby both orders were set aside. For reference, relevant part of order is quoted below :-

"In view of the aforesaid admitted and conceded position that the proceedings are vitiated and have been conducted in violation of principles of natural justice, there is no option

but to set aside the order dated 3.6.2006 as well as the appellate order dated 18th June, 2008. Accordingly the said orders are quashed.

The proceedings shall be initiated against the petitioner by the District Administrative Committee after providing an opportunity to the petitioner to submit his defence against the two charge sheets on which reliance has been placed by the respondents. The petitioner shall be afforded reasonable opportunity and also shall be allowed to access to the documents which may be necessary for his defence. The District Administrative Committee shall apprise the petitioner of about the documents which are required by him in writing and the District Administrative Committee shall thereafter proceed to take a decision in the matter.

Learned counsel for the petitioner contends that the petitioner is to retire shortly. In view of the aforesaid position, it is provided that the District Administrative Committee shall proceed to conclude the proceedings as expeditiously as possible preferably within three months from today.

In case, the respondents choose to consider the petitioner still under suspension then in that event the petitioner shall be entitled to his subsistence allowance from the concerned society.

The writ petition is accordingly allowed."

6. In pursuance of above order, petitioner was allowed to rejoin, however, by order dated 26.08.2010, he was again put under suspension and on same day, earlier issued charge sheet and supplementary charge sheet were also served.

7. It is a case of petitioner that he has submitted repeated letters dated 31.08.2010, 25.09.2010, 27.09.2010, 07.10.2010, 25.10.2010 and 29.10.2010 and demanded necessary documents, however, according to petitioner, it were never supplied.

8. The District Administrative Committee submitted an inquiry report and adopted a Resolution dated 08.01.2011 and its relevant part being "विचारण" is as follows :-

"कमेटी द्वारा सम्यक विचार विमर्श उपरांत उक्तानुसार गबन/ अपहरण, गंभीर वित्तीय अधिनियमितताये करने तथा समिति का पूर्ण चार्ज न सौपने का दोषी पाए जाने के फलस्वरूप सर्वसम्मति से निर्णय लिया गया कि श्री प्रेम सिंह निलंबित सचिव को एक कारण बताओ नोटिस दिया जाये कि उपरोक्त आरोपों के बारे में वह अपना पक्ष इस कारण बताओ नोटिस के १५ दिन के अंदर प्रेषित करना सुनिश्चित करे कि क्यों न उपरोक्त गंभीर आरोप सिद्ध होने की स्थिति में सेवा से पृथक कर अन्य विधिक कार्यवाही संपन्न की जाये। यदि श्री प्रेम सिंह का उत्तर निर्धारित समय तक प्राप्त नहीं होता है तो यह मानकर कि इन्हे आरोपों के बारे में कुछ नहीं कहना है तथा सभी आरोप मान्य है। पत्रावली पुनः कमेटी के निर्णयार्थ प्रस्तुत की जाये।"

9. The petitioner was thereafter dismissed from services vide order dated 15.01.2011. Relevant part thereof is mentioned below :-

"अतः कमेटी द्वारा श्री गुप्ता को पूर्व में निर्गत आरोप पत्र व अनुपूरक आरोप पत्र के सापेक्ष श्री गुप्ता के पूर्व प्रेषित उत्तर तथा संयुक्त जांच अधिकारियों की संयुक्त जांच आख्याओं का गम्बीरता पूर्वक बिन्दुवार परीक्षण करने तथा सम्यक विचार विमर्श उपरान्ति श्री गुप्ता को आरोप पत्र के आरोप संख्या 1,3, 4, 6, 9, 11, 12, 15, 18, 19, 20, 21, 22 में निम्नानुसार मु० 86331.78 रु. गबन/अपरहरण, मु० 80866.00 रु. र्दुविनियोग/गम्भीर वित्तीय अनियमित्तायें करने, अभिलेखों में कूटकरण करने, अभिलेखों को फाड़ने/नष्ट करने तथा साधन सहकारी समिति लि० करौरा के प्रकरण में गठित अनुपूरक आरोप पत्र में आरोपित आरोप के अनुसार दिनांक 1-4-2000 से 31-5-2000 तक समिति सदस्यों से मु० 183598.00 रु. की ऋण वसूली कर सदस्य खातों में पृविष्टि कर/करा कर धनराशि बैंक शाखा में समिति के ऋण खाता में जमा न करके अपहरण करने तथा दिनांक 1-4-2000 से 31-5-2000 तक की कैशबुक, रसीदबुक, बाऊचर पत्रावली किताब कार्यवाही आदि महत्वपूर्ण अभिलेख चार्ज में न सौंपने का दोषी पाया।

आरोप सं	गबन अपहरण की राशि	र्दुविनियोग/ग०वि०अ० की राशि	विवरण

ख्या			
01	4000.50	-	दिनाँक 10-12-1994 को मु. 13720.46 रु. अवशेष तहबील के स्थान पर मु. 9719.96 रु. अवशेष तहबील अंकित कर मु. 4000.50 रू. का अपहरण करने के दोषी
03	98.00	-	दिनांक 29-1-95 को अवशेष तहबील मु. 7069.00 रु. के स्थान पर मु. 6971.00 रू. अंकित कर मु. 98.00 रु. अपहरण के दोषी।
04	-	399.00	दिनांक 10-2-95 में अनियमित यात्रा भत्ता भुगतान प्राप्त कर व
			139.00 रु. ब्याज की हानि पुहंचाने के दोषी।
06	1768.00	-	दिनांक 31-3-1995 को खार बिक्री नगद की धनराशि 1-4-1995 के प्रारम्भिक अवशेष में न पकड कर और न ही बैंक जमा कर अपहरण के दोषी।
09	100	-	दिनांक 18-05-1995 को कैशबुक के सायर खार्च में तहबील कम निकाल कर अपहरण।
11	3600.00	-	दिनाँक 6-11-95 में कैशबुक में अवशेष रोकड कम दर्शाकर अपहरण।
12	600.00	-	दिनाँक 5-12-1995 में कैशबुक में अवशेष रोकड़ कम दर्शाकर अपहरण।
15	-	89.00	अनियमित

			व्यय कर समिति को ब्याज की हानि पुहंचाने के दोषी।
18	40784.00	-	दिनाँक 30-5-2000 को निलंबन पश्चात 31-5-2000 से गम्भीर रूप से हृदयरोग से पीड़ित होते हुए दिनांक 2-6-2000 को यू.पी.एस.ए स. मेरठ से उपभोक्ता सामान लाना स्वीकार किया जाना तथा इसी प्रकार दिनाँक 3-7-2000 को उपभोक्ता सामान लाकर अपहरण करने के दोषी।
19	-	-	करौरा समिति की 1-4-2000 से दिनाँक 31-5-2000 तक की कैशबुक, रसीदबुक, बाऊचर
			पत्रावली, कार्यवाही रजिस्टर आदि महत्वपूर्म अभिलेख चार्ज में न सौंपने के दोषी।
20	-	34208.00	दिनांक 26-11-98 में प्राप्त 98 कट्टा गेहूं बीज प्राप्त कर स्टाक में पकड़ने के पश्चात दिनाँक 27-11-1998 से अनाधिकृत रूप से अवकाश पर चले जाने तथा गेहूँ बीज क्षतिग्रस्त हो जाने के लिए पूर्ण रूप से उत्तरदायी।
21	19274.43	- 20563.00 13395.00 12212.00	शिकारपुर समिति के उर्वरक व्यसाय में अपहरण असमायोजित बैंकों की धनराशि जो बकायादार सदस्यों को ऋण वितरण

			करने के कारण बैंक में समायोजित नहीं हो सके, के लिए दोषी। असमायोजित बैंकों के विरूद्ध वसूली ऋण वसूली राशि समिति के कैश एण्ड कैरी खाता में जमा न कर अन्य मदों में विभागीय निर्देशों के विपरीत जमा करने के दोषी। नगद उर्वरक बिक्री की धनराशि को समिति के कैश एण्ड कैरी खाता में जमा न कर अन्य मदों में सीधे कैशबुक से नगद व्यय करने के दोषी।
22	7701.15 3770.70 5235.00	- - -	शिकारपुर समिति से स्थानान्तरण पश्चात कैशबुक के

			अनुसार अवशेष रोकड शेष प्रतिस्थानी सजिव को चार्ज में न सौंप कर अपहरण रोकड शेष कम निकाल कर एवं प्रारम्भिक रोकड में न जोडकर अपहरण। समिति आकिक को 3 माह अप्रैल 97 से जून 97 तक कैशबुक के अनुसार दो बार नकद वेतन भुगतान दर्शाकर अपहरण।
योग	86931.78	80866.00	
	183598.00	-	अनुपूरक आरोप पत्र में आरोपित आरोप के अनुसार समिति में 1-4-2000 से 31-5-2000 तक सदस्यों को रसीद निर्गत कर ऋण वसूली की

			धनराशि को सदस्यों के खातों में पृविष्टि कर/कराकर बैंक जमा न करके अपहरण के दोषी

उक्त के अतिरिक्त श्री रमेश चन्द्र गुप्ता के विरूद्ध साधन सहकारी समिति लि० करौरा के प्रण में मु० 220991.00 रू. गबन/अपहरण करने तथा दिनांक 1-4-2000 से 31-5-2000 तक की कैशबुक, रसीदबुक, बाऊचर पत्रावली, किताब कार्यवाही, पी०डी०एस० व्यवसाय एवं गेहूँ खरीद से सम्बन्धित अभिलेख चार्ज में न सौंपकर खुर्द बुर्द करने का मु.अ.सं. 163/2002 अन्तर्गत धारा 409 पंजीकृत है, जिसकी विवेचनाधिकारी, विशेष अनुसंझान शाखा सह- मेरठ द्वारा विवेचना उपरान्त प्रकरण माननीय अपर मुख्य न्यायिक मजिस्ट्रेट, तृतीय मेरठ के न्यायालय में विचाराधीन है तथा थाना शिकारपुर में मु.अ.सं. 319/02 अन्तर्गत धारा 409 मु. 35981.00 रु. गबन/अपहरण करने की प्रथम सूचना रिपोर्ट दर्ज है, जिसकी पुलिस विवेचना उपरान्त प्रकरण माननीय जनपद न्यायालय में विचाराधीन है।

श्रीगुप्ता के विरूद्ध उ.प्र. सहकारी समति अधिनियम 1965 की धारा 68(2) के अन्तर्गत जिला सहायक निबंधक, सहकारी समितियाँ, उ.प्र. बुलन्दशहर द्वारा मु. 201199.95 रु. मय 12 प्रतिशत ब्याज की डिक्री अधिभार आदेश पारित किया जा चुका है।

अतः कमेटी द्वारा सम्यक विचार विमर्श उपरान्त सर्वसम्मति से श्री रमेश चन्द्र गुप्ता, सेवाच्युत कैडर सचिव जो माननीय उच्च न्यायालय इलाहाबाद के आदेश दिनांक 26-7-2010 के अनुपालन में निलम्न की स्थिति में हैं तथा जो उ.प्र. प्रार. कृषि सहकारी ऋण समिति केन्द्रीयत सेवा विनियमावली 1976 के नियम संख्या 27(ए) के अन्तर्गत अपनी 58 वर्ष अधिवर्षता आयु दिनाँक 31-12-2010 को पूर्ण कर चुके हैं, के सम्बन्ध में जिला प्रशासनिक कमेटी की बैठक दिनाँक 23-5-2002 व 30-05-2006 में लिए गए निर्णय को सही मानते हुए सेवाच्युत किए जाने का निर्णय लिया गया।

अतः जिला प्रशासनिक कमेटी की बैठक दिनाँक 08-01-2011 में लिए गए निर्णय के अनुपालन में श्री रमेश चन्द्र गुप्ता, निलम्बित सचिव को कैडर सचिव पद की चाकरी से सेवाच्युत किया जाता है। ”

10. Aforesaid order is impugned in this writ petition.

11. Sri Sujeet Kumar, learned counsel for petitioner has submitted that directions passed in the order dated 26.07.2010 passed by this Court was not complied with as well as inquiry was continued even after petitioner has attained age of superannuation, which was legally impermissible.

12. Learned counsel has further submitted that despite various communications, relevant documents were not provided, as such, direction of this Court vide order dated 26.07.2010 qua to supply documents was also not followed. The petitioner has not committed any financial embezzlement, therefore, charges were not proved on basis of evidence available. Otherwise also, on proved charges, punishment is shockingly disproportionate.

13. Per contra, S/Sri Abhishek Mishra and Mahesh Narain Mishra, learned counsel for respondents have supported the impugned order and submitted that this Court vide order dated 26.07.2010 has granted liberty to put the petitioner under suspension and after providing charge sheet and supplementary charge sheet and to grant liberty to access documents and after submission of reply, disciplinary proceedings may be concluded. Said directions were strictly followed. A copy of both charge sheets were supplied and reply was sought, however, despite all papers were given in the earlier round of proceedings, petitioner unnecessarily submitted repeated applications only to delay the proceedings. Explanation submitted was found unsatisfactory and on basis of material, charges of embezzlement

were proved and punishment of dismissal is not shockingly disproportionate.

14. Heard learned counsel for parties and perused the records.

15. It is well settled that in normal circumstances, Courts are slow in causing interference in the orders passed in disciplinary proceedings. For reference relevant part of a judgment passed by Supreme Court in the case of **State of Rajasthan v. Bhupendra Singh, 2024 SCC OnLine SC 1908** is mentioned hereinafter:

"23.The scope of examination and interference under Article 226 of the Constitution of India (hereinafter referred to as the 'Constitution') in a case of the present nature, is no longer res integra. In State of Andhra Pradesh v.S Sree Rama Rao, AIR 1963 SC 1723, a 3-Judge Bench stated:

'7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant:it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution.'

24. The above was reiterated by a Bench of equal strength in State Bank of India v. Ram Lal Bhaskar, (2011) 10 SCC 249. Three learned Judges of this Court stated as under in State of Andhra Pradesh v. Chitra Venkata Rao, (1975) 2 SCC 557:

'25. In State Bank of India v. S.K. Sharma,(1996) 3 SCC 364, two learned Judges of this Court held:

'28. The decisions cited above make one thing clear, viz., principles of natural justice cannot be reduced to any hard and fast formulae. As said in Russell v. Duke of Norfolk [[1949] 1 All ER 109 : 65 TLR 225] way back in 1949, these principles cannot be put in a strait-jacket. Their applicability depends upon the context and the facts and circumstances of each case. (See Mohinder Singh Gill v. Chief Election Commr. [(1978) 1 SCC 405 : (1978) 2 SCR 272]) The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. (See A.K. Roy v. Union of India [(1982) 1 SCC 271:1982 SCC (Cri) 152] and Swadeshi Cotton Mills v. Union of India [(1981) 1 SCC 664].) As pointed out by this Court in A.K. Kraipakv. Union of India [(1969) 2 SCC 262], the dividing line between quasi-judicial function and administrative function (affecting the rights of a party) has become quite thin and almost indistinguishable - a fact also emphasised by House of Lords in Council of Civil Service Unions v. Minister for

the Civil Service [[1984] 3 All ER 935 : [1984] 3 WLR 1174 : [1985] A.C. 374, HL] where the principles of natural justice and a fair hearing were treated as synonymous. Whichever the case, it is from the standpoint of fair hearing - applying the test of prejudice, as it may be called - that any and every complaint of violation of the rule of audi alteram partem should be examined. Indeed, there may be situations where observance of the requirement of prior notice/hearing may defeat the very proceeding - which may result in grave prejudice to public interest. It is for this reason that the rule of post-decisional hearing as a sufficient compliance with natural justice was evolved in some of the cases, e.g., Liberty Oil Mills v. Union of India [(1984) 3 SCC 465]. There may also be cases where the public interest or the interests of the security of State or other similar considerations may make it inadvisable to observe the rule of audi alteram partem altogether [as in the case of situations contemplated by clauses (b) and (c) of the proviso to Article 311(2)] or to disclose the material on which a particular action is being taken. There may indeed be any number of varying situations which it is not possible for anyone to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries : a distinction ought to be made between violation of the principle of natural justice, audi alteram partem, as such and violation of a facet of the said principle. In other words, distinction is between "no notice"/ "no hearing" and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity". To illustrate - take a case where the person is dismissed from service without hearing him altogether (as in Ridge v. Baldwin [[1964] A.C. 40 : [1963] 2 All ER 66 : [1963] 2 WLR 935]). It would be a case falling under the first category and the order of dismissal would be invalid - or void, if one chooses to use that expression (Calvin v. Carr [[1980] A.C. 574 : [1979] 2 All ER 440 : [1979] 2 WLR 755, PC]). But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report (Managing Director, ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704]) or without affording him a due opportunity of cross-examining a witness (K.L. Tripathi [(1984) 1 SCC 43 : 1984 SCC (L&S) 62]) it would be a case falling in the latter category - violation of a facet of the said rule of natural justice - in which case, the validity of the order has to be tested on the touchstone of prejudice, i.e., whether, all in all, the person concerned did or did not have a fair hearing. It would not be correct - in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e., adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone of prejudice as aforesaid."

16. This Court vide order dated 26.07.2010 has granted liberty to respondents to put the petitioner under suspension and after giving copy of both charge sheets and after providing access to documents, on basis of reply filed, the disciplinary proceedings may be concluded.

17. On the basis of record, it is not much disputed that copy of charge sheets were supplied and reply was sought. So far as access to documents is concerned, I have carefully perused the record and despite copy of documents were already given in earlier proceedings, the petitioner in order to linger on the proceedings has filed repeated applications to supply documents. He was granted opportunity to access the documents, however, he does not appear.

18. I have also perused the proposal adopted by Committee which is placed along

with supplementary counter affidavit wherein all the allegations were dealt in detail as well as that despite petitioner was called to appear in person to access documents and informed by the registered post, however, it is specifically noted that petitioner has not appeared.

19. Court also takes note that in regard to allegations of embezzlement, specific finding was returned in resolution so adopted and that petitioner has not deposited money on many occasions and due to misconduct of petitioner, respondents have suffered financial loss, a very serious misconduct. **(See State Bank of India vs. Naveen Kumar Sinha, 2024 INSC 874)**

20. It is also well settled that inquiry initiated before retirement may continue even after retirement of delinquent as well as in present case, a liberty was granted by the Court vide an order passed in earlier round of litigation, money collected from Members after issuing receipts was not deposited. Lesser money was shown in account balance. The period of embezzlement runs for many years. Details of embezzlement are mentioned in earlier part of the judgment. The petitioner has submitted vague averments which are not sufficient to contradict the findings.

21. In aforesaid circumstances and taking note of **State of Rajasthan vs. Bhupendra Singh (supra),** since there is no procedural error in the process of disciplinary proceedings, principles of natural justice were followed, direction given vide order dated 26.07.2010 passed by this Court were also followed as well as that the petitioner has not appeared despite repeated opportunities to access the documents as well as specific reasons are assigned in the proposal adopted in regard to various acts of embezzlement, therefore, no circumstances exist to interfere with the impugned order as well as Court also takes note that allegations are of financial embezzlement which has caused huge financial loss to respondents, therefore, punishment of dismissal from service is also not shockingly disproportionate.

22. Accordingly, writ petition is **dismissed**.

(2025) 7 ILRA 510
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 01.07.2025
BEFORE
THE HON'BLE AJIT KUMAR, J.

Writ A No. 25277 of 2018

Arun Pratap Srivastava ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Avanish Kumar Upadhyay, Raj Kumar Upadhyay

Counsel for the Respondents:
C.S.C.

Issue for consideration

Whether after the employee has attained the age of superannuation, correction in the pay scale should be considered beyond the period of 34 months?

Headnotes

A. Service Law - Petitioner, who has retired on 31st March, 2017 as Senior Assistant from the office of District Magistrate, Varanasi, is aggrieved by the order dated 15th May, 2017 passed by the Collector, Varanasi disputing the grade pay of Rs.4600 with an additional one increment given to the petitioner on 22nd December, 2011 reducing his pay to Rs.50,500/- on the date of his superannuation as against Rs.52,000/- as per the chart issued from the office of Collector, Varanasi under his signature. (Para 2)

The order impugned is found to be absolutely silent as to any opportunity being afforded to the petitioner to offer his explanation qua the proposed action of correction in the pay grade. The order simply records that petitioner's pay fixation and pay grade Rs.4600/- along with additional increment was malicious and hence deserved correction. (Para 8)

B. GO dated 16th January, 2007 is very specific on the point that after the employee has attained the age of

superannuation, no such correction in the pay scale should be considered beyond the period of 34 months. (Para 9)

Since the Government has itself laid down the principle that no such correction can be permitted beyond the period of 34 months after the employee has attained the age of superannuation and, therefore, in this case, any correction in the pay grade awarded to the petitioner in the 2017 would definitely amount to the altering the pay grade beyond the period of 34 months. (Para 10)

C. Upon a bare reading the aforesaid letter cum order issued by the Additional Director, Treasury and Pension, Varanasi dated 16th March, 2017 it becomes absolutely clear that **there was no application of mind by the authorities concerned and this was being done only when the pension papers were being finalized.** (Para 12)

D. Any action that results in adverse civil consequences and that too when it is attributable to alleged malicious exercise, it must be pre-visited with a notice to the concerned employee to give him an opportunity to offer his explanation and hence on the touchstone of the principles of natural justice the order dated 15th May, 2017 directing for pay correction of the petitioner's pay grade and pay scale cannot be sustained in law. **Such an action, therefore, automatically has got rendered arbitrary and so also hit by Article 14 of the Constitution.** (Para 16)

Writ petition allowed. (E-4)

Case Law Cited

Sushil Kumar Singhal Vs. Pramukh Sachiv Irrigation Department and others, 2014 (16) SCC 444 (Para 4)

List of Keywords

Service Law; increment; superanuation.

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

1. Heard Sri Raj Kumar Upadhyay, learned counsel for the petitioner and learned Additional Chief Standing Counsel for the State respondents.

2. Petitioner, who has retired on 31st March, 2017 as Senior Assistant from the office of District Magistrate, Varanasi, is aggrieved by the order dated 15th May, 2017 passed by the Collector, Varanasi disputing the grade pay of Rs.4600 with an additional one increament given to the petitioner on 22nd December, 2011 reducing his pay to Rs.50,500/- on the date of his superannuation as against Rs.52,000/- as per the chart issued from the office of Collector, Varanasi under his signature and appended as Annexure - 13 to the writ petition.

3. Two fold arguments have been advanced by learned counsel for the petitioner:

(a). Such back date correction in the pay grade could not have been done by the respondents in view of the provisions as contained under the Government order dated 16th January, 2007, which only permits any correction in matter of pay fixation up to 34 months prior to the date of retirement; and

(b). The order impugned has been passed after the petitioner attained the age of superannuation and that too without giving any notice much less a show cause notice and hence order has rendered unsustainable for want of compliance of principles of natural justice.

4. In support of first point learned counsel for the petitioner has relied upon the authority of Supreme Court in the case of **Sushil Kumar Singhal Vs. Pramukh Sachiv Irrigation Department and others, 2014 (16) SCC 444.**

5. A counter affidavit has been filed in the matter on behalf of the State respondents in which plea has been taken vide paragraph 3 that in terms of the Government order dated 8th December, 2008 only fresh appointee was entitled to grade pay of Rs.4600 in the pay band of Rs.12540 totalling to Rs.17140 as on 1st January, 2006 and since petitioner had already been in service as on 8th December, 2008, he could not have been given benefit under such Government order.

6. A further plea has been taken vide paragraph 5 of the counter affidavit that order under challenge was only a consequential order as by way of information given to the petitioner on the basis some letter issued on 16th March, 2017 by Additional Director, Treasury and Pension, Varanasi, which formed the basis to examine original records and also consideration of letter written by the petitioner dated 14th June, 2017. The letter was taken into consideration and records were further thoroughly examined and a detailed report was submitted on 18th May, 2018. He has placed before the Court the letter of the Additional Director, Treasury and Pension, Varanasi dated 16th March, 2017 brought on record as Annexure - 11 to the writ petition as well as the report dated 18th May, 2018 brought on record as Annexure - 17 to the writ petition.

7. It is next argued by learned Additional Chief Standing Counsel that an employee is entitled to pay scale and pay grade assigned for the post in question and for any wrongful pay fixation, a mistake due to inadvertence, he cannot walk away with the higher pay scale as ultimately it is a loss caused to public exchequer and nobody stands any disadvantageous position for any correction of pay scale if carried out rightfully. However, as far as Government order as well as judgment of Supreme Court is concerned, learned Additional Chief Standing Counsel submits that these are the question of law that can be examined and the matter can be disposed of in the light of the authorities cited and testing upon the same the pleadings raised by the respective parties in this case.

8. Having heard learned counsel for the respective parties and having perused the records, I find the order impugned to be absolutely silent as to any opportunity being afforded to the petitioner to offer his explanation *qua* the proposed action of correction in the pay grade. The order simply records that petitioner's pay fixation and pay grade Rs.4600/- along with additional increment was malicious and hence deserved correction.

9. Insofar as the first point raised by learned counsel for the petitioner is concerned that no such correction could have been ordered in the pay scale of the petitioner altering the pay grade back from the year 2011 in the light of the Government order dated 16th January, 2007, I find substance in the argument so advanced by learned counsel for the petitioner for the reason that Government order is very specific on the point that after the employee has attained the age of superannuation, no such correction should be considered beyond the period of 34 months. Relevant part of the Government order dated 16th January, 2007 is reproduced hereunder:

"4. शासन के उपरान्त आदेश अभी तक प्रभावी है परन्तु सन्दर्भित शासनादेश दिनाँक 05 दिसम्बर, 2001 में दिये गये निर्देशों को देखते हुए पेंशन प्राधिकर्ता अधिकारी दिनाँक 01-01-

86 से पुनरीक्षित वेतनमानों में वेतन निर्धारण तक की जाँच भी करने लगे हैं, जिससे पेंशन प्राधिकार-पत्र निर्गत करने में विलम्ब होता है। अतः इस सम्बन्ध में सम्यक विचारोपरान्त राज्यपाल महोदय द्वारा निम्नांकित आदेश प्रदान किये गये हैं:-

(1) उक्त सन्दर्भित शासनादेश दिनांक 13 दिसम्बर 1977 के उपरोक्त प्रावधान के ही अनुसार पेंशन स्वीकर्ता अधिकारी द्वारा पेंशन स्वीकृति हेतु सेवानिवृत्ति की तारीख से 10 माह पूर्व की परिलब्धियाँ तथा उसके 02 वर्ष पूर्व अर्थात कुल 34 महीने का रिकार्ड ही देखा जायेगा।

(2) पेंशन स्वीकर्ता अधिकारी का किसी कर्मचारी के सेवाकाल में वेतन के निर्धारण में त्रुटि को ठीक कराने का दायित्व उपरोक्त (1) में निर्धारित सीमा से अधिक नहीं होगा। वेतन-निर्धारण की त्रुटियों को कर्मचारी के सेवारत रहते हुए ही सामान्य जाँच/आडिट के माध्यम से दूर किये जाने की व्यवस्था को प्रभावी ढंग से लागू किया जाए।"

10. The interpretation of the Government order was done by the Supreme Court in its judgment of Sushil Kumar Singhal *(supra)*, in which Supreme Court has observed that since the Government has itself laid down the principle that no such correction can be permitted beyond the period of 34 months after the employee has attained the age of superannuation and, therefore, applying the said principle in this case I also find that any correction in the pay grade awarded to the petitioner in the 2017 would definitely amount to the altering the pay grade beyond the period of 34 months. The relevant part of the judgment of Supreme Court is reproduced hereunder:

"11. The submission made on behalf of the learned counsel appearing for the respondent that the appellant would be getting more amount than what he was entitled to cannot be accepted in view of the policy laid down by the Government in G.O. dated 16th January, 2007. If the Government feels that mistakes are committed very often, it would be open to the Government to change its policy but as far as the G.O. dated 16th January, 2007 is in force, the respondent-employer could not have passed any order for recovery of the excess salary paid to the appellant or for reducing pension of the appellant."

11. Insofar as the argument advanced by learned Additional Chief Standing Counsel that the order was passed by the competent authority citing the infirmity in the pay grade awarded to the petitioner in the year 2017 vide order dated 16th March, 2017, does not disclose any reason, I find that the order only refers to certain dates and pay grades but does not record any reasons as to why such award of pay grade was bad or was malicious. The order dated 16th March, 2017 is reproduced hereunder:

"सेवा में,

दिनाँक- 16.03.2017

कार्यालयाध्यक्ष

कलेक्ट्रेटरेट वाराणसी, वाराणसी

विषय- श्री अरुण प्रताप श्रीवास्तव (जीएयू-67982), जे ए वाराणसी के पेंशन प्रकरण के सम्बन्ध में।

महोदय,

श्री अरुण प्रताप श्रीवास्तव (जीएयू-67982), जे ए वाराणसी के पेंशन प्रपत्र तथा सेवा पुस्तिका जाँच में निम्न कमियां पायी गयी है-

आबजेक्शन-

बाई-नरेन्द्र नाथ यादव

(60401)

1- ई पेंशन फार्म में विभाग का नाम मेडिकल कालेज अम्बेडकर नगर अंकित काया जाना त्रुटि पूर्ण है,

2- ई पेंशन फार्म में सेवा प्रारम्भ की तिथि 16 य 03 य 1984 के स्थान पर 18 य 07 य 1980 अंकित किया जाना त्रुटि पूर्ण है,

3- श्रीवास्तव का वेतन दिनाँक-22.12.2011 को उच्चीकृत ग्रेड पे 4600 में एक वेतन वृद्धि का लाभ अनुमन्य करते हुए वेतन निर्धारित किया जाना त्रुटि पूर्ण है, त्रुटि सुधार कर आवश्यक कार्यवाही करें।

4- ई पेंशन फार्म के एनेक्सर 4 पर विशिष्ट-4 उपयुक्त नहीं है।

भवदीय

अपर/निदेशक, कोषागार एवं पेंशन

वाराणसी, उत्तर प्रदेश "

12. Upon a bare reading the aforesaid letter cum order issued by the Additional Director, Treasury and Pension, Varanasi dated 16th March, 2017 it becomes absolutely clear that there was no application of mind by the authorities concerned and this was being done only when the pension papers were being finalized.

13. This kind of conduct amounts malice in law because it has set into motion an inquiry into the pay grade awarded to the petitioner which was not at all required without there being any plausible reasons or explanation offered in the letter.

14. The authority sub-ordinate to the Additional Director, Treasury and Pension, Varanasi immediately acted upon the letter and submitted a report regarding incorrect pay fixation. The report only refers to the letter dated 16th March, 2017 and then records same pay grade and pay scale which according to the report petitioner deserved and which is *verbatim* the contents of the order impugned. The relevant part of the report dated 18th May, 2018 is reproduced hereunder:

"(3) श्री अरूण कुमार श्रीवास्तव, से०नि० वरिष्ठ सहायक,

इनकी नियुक्ति दि०- 163/85 को हुई है। दि० 26-02-1993 को पदोन्नति वरिष्ठ लिपिक के पद पर हुई है। इनकी सेवा पुस्तिका के पृष्ठ (22) पर चस्पा अपर निदेशक, कोषागार एवं पेंशन वाराणसी मण्डल वाराणसी के पत्र सं० 649 दि०-16-03-2017 के अनुपालन में दि०-22-12-2011 से वेतन का संशोधन का निर्धारण किया गया है जो इस प्रकार है-

अवधि	*वेतन*	
दि० 22-12-2011	*12120+4600 =*	*16720*
दि०01-07-2012	*12630+4600 =*	*17230*
दि०01-07-2013	*13150+4600 =*	*17750*
दि० 01-07-2014	*13690+4600 =*	*18290*
दि० 01-07-2015	*14240+4600 =*	*18840*

पुनरीक्षित वेतन 1-1-2016 - 49000

1-7-2016 - 50500"

15. From the perusal of the aforesaid report it is clearly established that there has been no application of mind at all.

16. In the considered view of the Court, any action that results in adverse civil consequences and that too when it is attributable to alleged malicious exercise, it must be pre-visited with a notice to the concerned employee to give him an opportunity to offer his explanation and hence on the touchstone of the principles of natural justice the order dated 15th May, 2017 directing for pay correction of the petitioner's pay grade and pay scale cannot be sustained in law. Such an action, therefore, automatically has got rendered arbitrary and so also hit by Article 14 of the Constitution. The second submission is also liable to be upheld and is hereby upheld.

17. In view of the above, therefore, the correction of pay grade and consequential pay scale of the petition with effect from 2011 under the order impugned cannot be sustained in law. The order dated 24th July, 2018 is, accordingly, hereby quashed. Petitioner's pay grade and pay scale stands restored as were prior to correction. Petitioner shall be entitled to all consequential benefits accordingly and payment of difference of pension between what he has been paid and what he ought to have been paid taking his final pay at the time of retirement as Rs.52,000/- with basic pay of Rs.12540 in the grade pay of Rs.4600 totalling to Rs.17,140/- as basic pay, shall be made.

18. The difference shall be computed and arrears shall be paid to the petitioner within a maximum period of two months and any delay in such payment would result in accrual of interest at the rate of 12% from the date of expiry of the two months of presentation of certified copy of this order till the actual payment is made.

19. The writ petition is succeed and is, accordingly, allowed.

(2025) 7 ILRA 515
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 29.07.2025
BEFORE
THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No. 26097 of 2018

Jag Pal Singh ...Petitioner
Versus
Union Of India & Ors. ...Respondents

Counsel for the Petitioner:
Ashok Khare (Sr. Adv.), Satyendra Chandra Tripathi, Shiv Poojan Yadav, Sunil Kumar Srivastava

Counsel for the Respondents:
A.S.G.I., Chandra Bhan Singh, Pankaj Srivastava, S.C., Satish Chaturvedi

Issue for Consideration

Matter pertains to the challenge of the departmental punishment of dismissal from service imposed on the petitioner (a bank cashier) by the State Bank of India after an inquiry, on the ground that the disciplinary authority's findings were based solely on the petitioner's alleged confessional statement made to the Police during criminal investigation and therefore constituted a case of no evidence.

Headnotes

Payment of Gratuity Act, 1972 – S.4(6)(a) - Code of Criminal Procedure,1973, SS. 319,161 - Service Law - Disciplinary Proceedings - Standard of proof - Sole reliance on Police statement/Confession - "No Evidence" Test - Preponderance of probability - Confessional statement before Police cannot by itself form basis for punishment-requirement of

independent corroborative evidence for sustaining findings – "Preponderance of probability" cannot substitute existence of independent evidence - Charge must have supporting material and not mere repetition of investigation statement - High Court may interfere if findings suffer from non-consideration of evidence or are based on no evidence - Disciplinary authority's fresh decision must follow earlier judicial directions in letter and spirit.

Held: Statement made before Police authorities could not be the sole ground for punishing the petitioner in departmental proceedings - Inquiry must rely on independent material; otherwise the finding fails the test of preponderance of probability - There was no evidence connecting petitioner directly or indirectly with the alleged fraud or the resultant loss to the Bank - It is a case of "no evidence" - Impugned order of dismissal dated 20.06.2018 and the appellate order quashed, with liberty to proceed afresh or await outcome of criminal trial - petitioner entitled to one-fourth of salary for period out of service with continuity of service. (Paras 19,29,31,33,34,35,36) (E-7)

Case Law Cited

Bharat Singh and Others v. State of Haryana **(1988) 4 SCC 534**; *Radha Raman Samanta v. Bank of India* **(2004) 1 SCC 605**; *Roop Singh Negi v. Punjab National Bank* **(2009) 2 SCC 570**; *Rajendra Yadav v. State of Madhya Pradesh* **(2013) 3 SCC 73**; *United Bank of India v. Biswanath Bhattacharjee* **(2022) 13 SCC 329**; *State Bank of India v. A.G.D. Reddy,* **2023 INSC 766**; *Nand Kishore Prasad v. State of Bihar* **(1978) 3 SCC 366**; *Anil Kumar v. Presiding Officer* **(1985) 3 SCC 378**;*State Bank of India v. Ram Lal Bhaskar* **(2011) 10 SCC 249**; *State of A.P. v. S. Sree Rama Rao,* **AIR 1963 SC 1723**;*Union of India v. Subrata Nath,* **2022 SCC Online SC 1617**

List of Acts

Constitution of India; Code of Criminal Procedure,1973; Payment of Gratuity Act, 1972.

List of Keywords

Disciplinary Proceedings - Departmental Charge-Sheet - Dismissal from Service without notice - Confessional Statement Before Police - Preponderance of Probability - No Evidence - Gross Misconduct - Quasi-judicial proceedings - Memorandum of Settlement - Gratuity Forfeiture - Judicial Review - Reputational Loss - Fraud in Account - No work no pay - Continuity in service.

Case Arising From

Departmental charge-sheet dated 28.02.2015, order dated 20.06.2018 passed by the Disciplinary Authority and an undated order passed by the Appellate Authority are under challenge.

Appearances for Parties

Advs. for the Appellant:
Ashok Khare (Sr. Adv.), Satyendra Chandra Tripathi, Shiv Poojan Yadav, Sunil Kumar Srivastava

Advs. for the Respondents:
A.S.G.I., Chandra Bhan Singh, Pankaj Srivastava, S.C., Satish Chaturvedi.

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. The petitioner, while working in a clerical cadre as a Cashier with Respondent-State Bank of India at Gonda Branch, has faced a disciplinary proceedings and his name was also revealed during investigation as an accused in a F.I.R. lodged by one Asha Pundir on 20.06.2024 about withdrawal of Rs.55 lakhs from her bank account without her information or permission.

2. The petitioner was arrested on 26.11.2014 and was released on bail vide an order dated 09.02.2015 passed by Special Judge, E.C. Act/Additional Sessions Judge, Aligarh.

3. After investigation, a charge-sheet was filed on 18.04.2015 against the petitioner also on which cognizance was taken and trial was commenced.

4. According to supplementary affidavit filed by the petitioner on 28.01.2024, after framing charges, some of the prosecution witnesses were examined and two co-accused were also summoned on basis of an application filed under Section 319 Cr.P.C., therefore, it appears that trial is still not concluded.

5. Simultaneously, petitioner has faced a disciplinary proceeding also and departmental charge-sheet dated 28.02.2015 was submitted and petitioner was placed under suspension. Charge-sheet was submitted against the petitioner that he has committed following irregularities:

"1) आपके द्वारा बैंक की गोपनीयता को भंग किया गया।

2) आपकी मिलीभगत से यह घोखाधड़ी की गयी।

3) आपके इस कृत्य से बैंक को 55.20 लाख रु० की हानि हुई तथा बैंक की छवि को अपूर्णनीय क्षति पहुंची है।"

6. Regional Manager of State Bank of India vide an order dated 15.04.2015 appointed Sri H.C. Sarkar, Chief Manager/Vigilance Department, Legal Head, New Delhi, as an Inquiry Officer.

7. After conclusion of inquiry, a written brief of Presenting Officer was submitted that the petitioner has breached secrecy of bank, he has committed fraud by hatching conspiracy and by aforesaid act, bank has suffered a loss of Rs.55.20 lakhs.

8. Petitioner has submitted a detailed reply to above referred brief and has annexed various documents and denied all allegations made therein.

9. The Inquiry Officer submitted an inquiry report dated 09.10.2015 that all the three charges were proved against the petitioner and relevant part thereof i.e. finding of the Inquiry Officer on each charge is mentioned hereinafter:

"My Findings

Following table gives the details of the amount withdrawn from A/c No.30860679645 of Smt. Asha Pundir by deposit Cheques by opening forged/fake account in other Branches.

1	2	3	4	5	6
Sl. No.	Cheque No.	Date of Payment	Amount in Rs.	Paying Branch	Pex No.
1	*069774*	*07/06/2014*	*8,70,000.00*	*Atrauli*	*P-8/6*
2	*069771*	*07/06/2014*	*8,50,000.00*	*do*	*P-8/8*
3	*069772*	*07/06/2014*	*7,30,000.00*	*do*	*P-8/10*
4	*069773*	*07/06/2014*	*9,40,000.00*	*do*	*P-8/10*
5	*069791*	*11/06/2015*	*9,20,000.00*	*ADB Gabhana*	*P-8/12*
6	*069792*	*11/06/2014*	*7,80,000.00*	*do*	*P-8/12*
7	*069788*	*10/06/2014*	*4,30,000.00*	*Chandaus*	*P-8/11*

Pex 1/1 is the copy of office note submitted to Regional Manager, Region-II, by Chief Manager (Admin), in which it is revealed that the EPA has shared all the information with the fraudster regarding the A/c No.30860679645 of Smt. Asha Pundir. As a result, large amounts of withdrawals took place through different Branches by depositing Cheques bearing forged signature of drawer. It is only possible when an insider/Bank Employee provides all the Customer's information

regarding Account holder's Name/Mobile number/ Balance amount /Account number/ Specimen Signature / status of operation of account etc.

3. As per Bank's laid down instructions, Customer's account information cannot be disclosed/shared with any person/outsider in any circumstances. ***In this particular case, the EPA has admitted that he has himself provided all the information's to the fraudster, it is revealed in copy of FIR dated 19/20.06.2014 marked as Dex-1/110-130.***

Therefore, in view of the above documentary/Circumstantial evidence, I hold the charges levelled against the EPA as substantiated.

xxx

"My Findings

"It was admitted by EPA as per Dex-1/110-130. that he had conspired with Shri Ajit Sharma (Canteen Boy) along with two other accomplices, to defraud the large sum of money lying in the A/c No.30860679645 of Smt. Asha Pundir. Accordingly, EPA executed the entire plan as stated in Dex-1/110-130.

In PW1, deposed on the floor of Enquiry on 08.06.2015, that the EPA had confessed /commitment of fraud in front of Crime Branch & also admitted that he had closed all the Loan accounts including that of his Mother's KCC Loan account. It is also substantiated, therefore, Allegation No.2, levelled against EPA is substantiated.

xxxxx

My findings.

It is confirmed from documents Pex-9/1-12 that Bank has suffered a loss of Rs.55.20 lacs, as the amount has been transferred to Recalled Assets Account due to EPA's Act.

His action have also resulted in reputational loss for the Bank."

(Emphasis supplied)

10. The Disciplinary Authority issued a provisional order dated 16.11.2015 that why not petitioner be terminated on basis of proved charges from service and sought his reply.

11. In response to above referred provisional order, petitioner submitted his reply on 01.12.2015 that his earlier explanation be taken note of and principles of natural justice be complied with.

12. The Disciplinary Authority passed a final order dated 10.12.2015 and confirmed the penalty of dismissal from service upon petitioner and an opportunity was granted to him to file a departmental appeal, if so advised. Relevant part of the order is reproduced hereinafter:

"इस संबंध में श्री जगपाल सिंह, सहायक द्वारा दिनांक 01/12/2015 को मेरे समक्ष व्यक्तिगत सुनवाई में अपना पक्ष रखा। मैंने अनुशासनिक प्राधिकारी के रूप में अपने विवेकाधिकार का उचित एवं न्याय संगत प्रयोग करते हुए श्री जगपाल सिंह, सहायक को दिये गए आरोप पत्र, उनसे प्राप्त स्पष्टीकरण, उनके पूर्व सेवा रिकॉर्ड व संबन्धित फ़ाइल तथा व्यक्तिगत सुनवाई आदि को संज्ञान में लेते हुए अद्ध्यन किया ओर पाया कि श्री जगपाल सिंह, सहायक द्वारा अनंतिम आदेश में वर्णित चूकें की गयी हैं ओर मुझे अनंतिम आदेश में वर्णित दंड को बदलने का कोई कारण नज़र नहीं आता हैं। अतः इन परस्थितियों में, मैंने

अंतिम रूप से निर्णय लिया है कि भारतीय बैंकर्स संघ एवं कर्मचारी यूनियन के मध्य हुए मैमोरेंडम ऑफ सेटेलमेंट दिनांक 10/04/2002, जो कि अनुशासनिक कार्यवाही प्रक्रिया से संबन्धित हैं, पर लिखित पैरा 6 (B) के अनुसार श्री जगपाल सिंह, गाोंड़ा शाखा, जिला- अलीगढ़ को बैंक सेवा से बर्खास्त करने का दंड दिया जाये।.''

13. The aforesaid order was also communicated to petitioner on the same date. The petitioner thereafter filed an Appeal before the Appellate Authority on 21.01.2016, but the same was dismissed by a reasoned order dated 21.03.2016.

14. Aforesaid orders were challenged at the behest of petitioner by way of filing a Writ Petition No.18744 of 2006.

15. A Co-ordinate Bench of this Court vide judgement dated 21.03.2018 has allowed aforesaid writ petition and quashed the impugned orders therein with certain directions to Disciplinary Authority to pass a fresh order. Relevant part of said judgment is reproduced hereinafter:

''A perusal of the impugned punishment order dated 10.12.2015, passed by the disciplinary authority shows that it has been passed stating that he has granted opportunity of personal hearing to the petitioner on 01.12.2015, as disciplinary authority, exercising his discretion in just and legal manner by going through the charge sheet issued to the petitioner, his reply, his earlier service record and concerned file and personal hearing granted to him, etc. He has come to the conclusion that the petitioner is guilty of the lapses mentioned in the proposed punishment order and therefore, he does not finds any reason to convert the proposed punishment order and has passed the order of dismissal dated 10.12.2015, against the petitioner.

This order does not records what consideration was done by the disciplinary authority regarding the charges against the petitioner, his reply thereto, his service record and concerned file and also what was stated by the petitioner during personal hearing granted to him on 01.12.2015 and how it was considered by the disciplinary authority. It is proved that the procedure of granting hearing to the delinquent employee, prior to the passing of the proposed punishment order was observed in the case of the petitioner but what consideration of his reply was made by the disciplinary authority has not been recorded at all. The procedure does not requires ritualistic compliance of procedure by the disciplinary authority, in disciplinary proceedings, rather, its purposes to arrive at the truth with the help of the procedure. The consideration of reply was required to be proved by recording of reasons but in the impugned final punishment order, there are no reasons recorded regarding any consideration mentioned in the order itself. No punishment order can be held to be legal, if it is not based on any consideration and reasons arising out of the consideration duly recorded in the order. Therefore, the impugned punishment order dated 10.12.2015, passed by the disciplinary authority can not be sustained. The appellate order wrongly confirmed the punishment order of the disciplinary authority, which suffers from gross illegality of non consideration of the reply of the petitioner to the proposed punishment order.

In view of the above facts and the legal position emerging from the record, the order of disciplinary authority, Regional Manager, Region-II, Regional Business Office, State Bank of India, Aligarh, dated 10.12.2015 and also the appellate order dated 21.03.2016 passed by Deputy General Manager (Business and Operations) State Bank of India,

Administrative Office, Agra are hereby quashed. The respondent no.4, the Disciplinary Authority is directed to pass afresh order taking into account, the Objection dated 01.12.2015 of the petitioner and also after complying with Clause-12 (c) of the Settlement dated 10.04.2002 by recording his findings regarding the gravity of misconduct, the previous record, if any, of the petitioner and other aggravating or extenuating circumstance. The disciplinary authority shall consider the findings of the enquiry officer recorded in the enquiry report dated 09.10.2015 after consideration whether the findings are based on evidence or not. The petitioner shall be continued under suspension and shall be paid his subsistence allowance from the date of his suspension till the date of passing of the fresh order of the disciplinary authority in accordance with law. The disciplinary authority is expected to pass fresh order in accordance with law within a period of 3 months from today. Since the respondents are represented, the information of this order is deemed on them through their Counsel.

The writ petition is allowed to the extent stated above. There shall be no order as to costs."

16. In aforesaid circumstances, petitioner submitted an application alongwith a copy of aforesaid order to Disciplinary Authority on 04.04.2018 and Disciplinary Authority after considering relevant documents, charge-sheet, records of inquiry proceedings, submissions and arguments made by the prosecution, defence, Inquiry Officer's report and objections filed by the petitioner, by an order dated 20.06.2018 decided to impose upon petitioner a penalty of "Dismissal from service without notice" in terms of para 6 (a) of Memorandum of Settlement dated 10.04.2002 on disciplinary action and procedure thereof. Relevant part of said order is reproduced hereinafter:

"Therefore in view of the above documentary/Circumstantial evidences, I hold the charge levelled against EPA as substantiated.

DA's findings

I have gone through all the relevant documents, the enquiry officer's report, the submission made by the parties and objections dated 30.11.2015 made by EPA Sh.Jagpal Singh which were received on 01.12.2015 and my findings are as under:

The enquiry officer in his finding in respect of allegation no.1 has relied upon document Dex-1/110-130 which is copy of Police diary report. From the perusal of the said document it diary clearly reveals that the EPA admitting his involvment in the fraud perpetrated upon the Bank had disclosed before the Police that he had conspired with Sh.Ajit Kumar Sharma and shared the information with other persons in respect of the account of Smt. Asha Pundhir with others. The contention of the EPA that on his refusal of bribery to the Police, he was falsely implicated in the case is not tenable. Further, the contention of the EPA in submissions/objections dated 30.11.2015 that the Bank is inclined to proceed against him only in view of the registration of case by the Police under grave sections is also not tenable. ***Document DEX 1/110-130 clearly reveals that the EPA admitted before the Police that he had conspired with Sh. Ajit Kumar Sharma and shared***

the information with others in respect of the account of Smt. Asha Pundhir. The other contentions raised by EPA in his objections dated 30.11.2015 are neither relevant nor material to the charge.

Thus, I agree with the views/ findings of the Inquiry Authority and hold allegation PROVED.

xxx

DA's findings:-

I have gone through the relevant documents, record of enquiry proceedings, enquiry officers, findings of the enquiry officer and the submissions/objections made by EPA Sh.Jagpal Singh dated 30.11.2015 received on 01.12.2015 and my comments are as under:

The enquiry officer in his findings in respect of allegation no.2 has relied upon Document Dex 1/110-130 and the deposition of PW 1 Sh. Manoj Kumar, the then Branch Manager of Gonda Branch. ***Document Dex 1/110-130 is copy of Police diary report. The relevant portion of case diary reveals that the EPA had admitted before the Police that he had conspired with Sh.Ajit Kumar Sharma and others in the commission of fraud in respect of account of Smt. Asha Pundhir. PW I Sh. Manoj Kumar has also deposed that the EPA Sh. Jagpal Singh had admitted commission of fraud before the Police in his presence.*** *The EPA in his submission has simply disowned his involvement in the fraud and has tried to shift the blame on others. Further, the EPA in his objections dated 30.11.2015 has denied the Charge. He has submitted that allegations made against him are baseless and that the bank has proceeded against him in a prejuidiced manner. He has further submitted that in the course of enquiry proceedings Sh. Shree Chand Meena, Chief Manager was not produced for cross examination and the audio/video recording of his admission before the Police was also not produced. The submissions/objections of EPA are not tenable.* ***The statement of Sh. Shree Chand Meena has not been relied upon by the enquiry officer as evidence against Sh. Jagpal Singh. Further, mere non production of audio/video recordings of admission of the EPA does not vitiate the statement of Sh. Manoj Kumar Singh. Further, from the perusal of document Dex 1/110-130 it reveals that the EPA had admitted before the Police that he had conspired with Sh. Ajit Kumar Sharma and others in the commission of fraud in respect of account of Smt. Asha Pundhir. PW I Sh. Manoj Kumar has also stated that in his presence, the EPA Sh. Jagpal Singh had admitted before the Police as to commission of fraud by him in conspiracy with Sh. Ajit Kumar Sharma and others.***

Thus, I agree with the views/ findings of the Inquiry Authority and hold allegation PROVED.

xxx

DA's Findings

I have gone through the relevant documents, record of enquiry proceedings, enquiry officers, findings of the enquiry officer and the submission/objections made by EPA sh. Jagpal Singh dated 30.11.2015 received on 01.12.2015 and my comments are as under:

The enquiry officer in his findings has relied upon document Pex-9/1-12. Perusal of these documents reveals that

fraud amount has been transferred in Recalled Assets account by the Bank. The EPA in his submissions has just tried to shift the blame on others. He has further alleged that these documents are made and executed by the Bank. The contentions of EPA are not tentable. ***Perusal of documents Pex-9/1-12 clearly reveals that amount defrauded from the account of Smt. Asha Pundhir has been transferred in Recalled Assets account by the Bank. As such, a loss of Rs.55.20 lacs and reputational loss as well have been caused to the Bank. The EPA in his submissions has not disputed the loss to the Bank.***

Thus, I agree with the views/ findings of Inquiry Authority and hold allegation PROVED.

xxx

DA'S FINAL VIEWS:

I have carefully examined the relevant document, submissions/ arguments made by prosecution, defence & entire record of enquiry proceedings. In exercise of my discretionary power, individually, I have observed that all the three charges against Sh. Jagpal Singh, Assistant had been Proved and he has committed the following irregulartities:-

"1. श्री जगपाल सिंह के द्वारा बैंक की गोपनियता को भंग किया गया।

2. श्री जगपाल सिंह की मिलीभगत से यह धोखाधड़ी की गयी।

3. श्री जगपाल सिंह के इस कृत्य से बैंक को 55.20 लाख रु की हानि हुई तथा बैंक की छवि को अपूर्णनीय क्षति पहुंची है।

Thus, Sh. Jagpal Singh, Assistant is guilty of gross misconduct. I have gone through the previous record of Sh. Jagpal Singh, Assistant, the Submission dated 30.11.2015 made by him in the course of personal hearing given to him on 01.12.2015 and other extenuating circumstances. The irregularities submitted by Sh. Jagpal Singh, Assistant amounts to gross misconduct. His acts have resulted into a loss of Rs. 55.20 Lakhs to the bank.

The irregularities committed by him also caused the reputational loss to the bank. Accordingly I have decided to impose upon Sh. Jagpal Singh, Assistant a penalty of "dismissal from service without notice" in terms of Para 6 (a) of memorandum of settlement dated 10.04.2002 on disciplinary action and procedure there off. Further. the period of suspension of Sh. Jagpal Singh, Assistant will be treated as such i e. he will not be paid salary, any other allowances other than subsistence allowance for the period of his suspension and it will not be reckoned in his service in the bank. Further, the gratuity, if any payable to him is forfeited in terms of Section 4 (6) (a) of payment of gratuity act 1972."

(Emphasis supplied)

17. Petitioner thereafter filed an Appeal before Appellate Authority on 28.06.2018, however, it was dismissed vide an undated order.

18. Above referred departmental charge-sheet dated 28.02.2015, order dated 20.06.2018 passed by the Disciplinary Authority and an undated order passed by the Appellate Authority are under challenge before this Court in present Writ Petition.

19. Sri Satyendra Chandra Tripathi, learned counsel for petitioner, has submitted that in earlier round of litigation a Coordinate Bench of this Court has

allowed writ petition, set aside punishment order and matter was remitted back with certain directions, which includes that Disciplinary Authority will pass a fresh order taking into account the objections dated 01.12.2015 submitted by petitioner as well as provisions of Clause 12(c) of Memorandum of Settlement dated 10.04.2002. Disciplinary Authority was also directed that the findings of Inquiry Officer recorded in inquiry report dated 09.10.2015 shall also be examined and consider that whether the findings are based on evidence on record. However, Disciplinary Authority has not followed the directions in its letter and spirit and by awarding punishment the error committed earlier was perpetuated.

20. Petitioner was not involved in alleged fraud and alleged loss directly or indirectly. He was not authorized to do the work which was alleged by Complainant. The Complainant has not named petitioner as one of the erring Officer. Reply dated 01.12.2015 has essentially adopted the earlier reply dated 06.10.2015, however, said reply was not considered afresh. Video recording of alleged confession was not produced during departmental inquiry and no opportunity was granted to cross-examine any witness.

21. Learned counsel for petitioner has referred the statement of PW-1 recorded in criminal trial that Complainant has not even referred his name in entire statement. He also referred that allegations were made against other Bank employees also, however, they were left with minor punishment or without any punishment, whereas without any evidence or reason, petitioner was awarded major punishment of dismissal from service.

22. Learned counsel for petitioner refers the judgments passed by Supreme Court in **Bharat Singh and others vs. State of Haryana and others, (1988)4 SCC 534; Radha Raman Samanta vs. Bank of India and others, (2004)1 SCC 605; Roop Singh Negi vs. Punjab National Bank and others, (2009)2 SCC 570; Rajendra Yadav vs. State of Madhya Pradesh and others, (2013)3 SCC 73;** and, **United Bank of India vs. Biswanath Bhattacharjee, (2022) 13 SCC 329** and much reliance was placed on following paragraphs of **Roop Singh Negi (supra)**:

"14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved. Some

evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left."

23. Learned counsel for petitioner also submitted that departmental inquiry was based on alleged confession of petitioner recorded before Police in criminal investigation, which cannot be read in present departmental proceedings.

24. Per contra, Sri Pankaj Srivastava, learned counsel appearing for Respondent-Bank submitted that directions passed by this Court in earlier round of litigation were strictly complied with. Petitioner's reply was considered as well as inquiry report was also considered and since there were sufficient evidence against petitioner, impugned punishment order was passed. He also submitted that scope of judicial review in departmental proceedings is very limited as well as nature to prove the charge in departmental inquiry is based on preponderance of probabilities and it cannot be compared with standard of proof in criminal trial, i.e., to prove a charge beyond reasonable doubt. He refers a judgment passed by Supreme Court in **State Bank of India vs. A.G.D. Reddy: 2023 INSC 766** wherein scope of judicial review in disciplinary proceedings was considered. Relevant paragraphs of the judgment are reproduced hereinafter:

"32. From the above discussion, it is clear that it could not be said that the Enquiry Report, the findings of the Disciplinary Authority and the order of the Appointing Authority are based on no evidence or are perverse. Even if we eschew the report insofar as the aspect of non-submission of control form, the transgression of the area of operation and non-declaration of the immovable property and certain other charges are concerned, the order of penalty can be sustained.

33. As has been demonstrated above, the aspects of failure to conduct periodic inspection and the negligence in not stipulating the taking of immovable property as collateral security in the case of M/s Saraswathi Fabricators in spite of the party offering it, constrain us to conclude that there was material on record for the appellant to pass the order of penalty.

34. Mr. S.N. Bhat, learned Senior Counsel, relying upon the judgments of this Court in ***Nand Kishore Prasad vs. State of Bihar and Others, (1978) 3 SCC 366*** *and* ***Anil Kumar vs. Presiding Officer and Others, (1985) 3 SCC 378*** *contends that the Disciplinary Authority should arrive at its conclusion on the basis of some evidence with some degree of definiteness pointing to the guilt of the delinquent in respect of the charge against him. He would contend that a suspicion cannot be allowed to take the place of proof and scrupulous care must be taken to see that the innocent are not punished by recording findings merely based on ipse dixit of the Enquiry Officer. We are unable to accept the contention that the principles laid down in the above judgments are attracted to the present case. The judgments cited are clearly distinguishable, for the reasons that we have set out hereinabove, while analyzing the facts of the present case.*

35. Shri Sanjay Kapur, learned counsel for the Bank relies on ***State Bank***

of India vs. Ram Lal Bhaskar and Another, (2011) 10 SCC 249*. In that judgment the scope of judicial review of departmental proceedings was set out and the principle laid down in State of A.P. vs. S. Sree Rama Rao, AIR 1963 SC 1723, was reiterated, which reads as follows:-*

"This Court has held in State of A.P. and Others v. S. Sree Rama Rao (AIR 1963 SC 1723, para 7):

"7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence."

13. Thus, in a proceeding under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence the High Court does not re-appreciate the evidence and come to a different and independent finding on the evidence. This position of law has been reiterated in several decisions by this Court which we need not refer to, and yet by the impugned judgment the High Court has re-appreciated the evidence and arrived at the conclusion that the findings recorded by the enquiry officer are not substantiated by any material on record and the allegations leveled against the respondent no.1 do not constitute any misconduct and that the respondent no.1 was not guilty of any misconduct."

36. It is now well settled that the scope of judicial review against a departmental enquiry proceeding is very limited. It is not in the nature of an appeal and a review on merits of the decision is not permissible. The scope of the enquiry is to examine whether the decision-making process is legitimate and to ensure that the findings are not bereft of any evidence. If the records reveal that the findings are based on some evidence, it is not the function of the court in a judicial review to re-appreciate the same and arrive at an independent finding on the evidence. This lakshman rekha has been recognized and reiterated in a long line of judgments of this Court."

25. I have heard learned counsel for parties and perused the material available on record.

26. As referred above, the Coordinate Bench while allowing writ petition filed in earlier round of litigation has passed directions and on perusal of material on record the said directions, which includes, to consider the reply of petitioner, to consider the inquiry report and to pass a fresh reasoned order, were substantially followed and complied with. Therefore, any argument in this regard is rejected.

27. The other arguments of learned counsel for petitioner, i.e., charges levelled

against petitioner was proved on basis of statements recorded during investigation by Police under Section 161 Cr.P.C. as well as his alleged confession, have some substance and for that the Court has carefully perused the discussion made in impugned order by Disciplinary Authority. Relevant part of impugned order has already been quoted in earlier paragraph of this judgment.

28. So far as Charge No. 1 is concerned, it is only based on a statement of petitioner recorded before Police in investigation that he has shared details of Bank account of a customer to other co-accused. With regard to Charge No. 2, it is based on statement of PW-1 recorded during the disciplinary proceedings that delinquent/ petitioner has confessed before Police that he has committed fraud and no other discussion or independent evidence was called or considered.

29. The statement made before Police Authorities cannot be made a sole ground to punish petitioner in a departmental proceedings. Inquiry ought to have been conducted by considering independent evidence but it appears that in present case the departmental proceedings were proceeded only on basis of statements recorded during investigation including of the petitioner.

30. Third charge is with regard to loss. However, once there is no evidence that petitioner was involved directly or indirectly in crime or fraud, which has caused loss to customer or bank, he could not be made solely responsible for such act.

31. Preponderance of probability does not mean that entire proceeding would be made on probabilities only. There must be some evidence to support the allegations levelled against delinquent employee. There must be existence of a fact, being more probable than its non existence. In this regard the Court takes note of a judgment passed by Supreme Court in **Union of India and others vs. Subrata Nath, 2022 SCC OnLine SC 1617** wherein it is observed that Court cannot re-appreciate the evidence led during departmental proceedings and the relevant paragraph of the judgment is reproduced hereinafter:

"27. We are unable to commend the approach of the learned Single Judge and the Division Bench. There was no good reason for the High Court to have entered the domain of the factual aspects relating to the evidence recorded before the Inquiry Officer. This was clearly an attempt to reappreciate the evidence which is impermissible in exercise of powers of judicial review vested in the High Court under Article 226 of the Constitution of India. We are of the opinion that both, the learned Single Judge as well as the Division Bench, fell into an error by setting aside the order of dismissal from service imposed on the respondent by the Disciplinary Authority and upheld by the Appellate Authority."

32. The Court further takes note of another judgment passed by Supreme Court in **Biswanath Bhattacharjee (supra)** that if departmental proceeding, which culminated in penalty, was based on confessional statement made before Police and no other material, the punishment order can be interfered.

33. As referred above, in the present case, no independent witness was examined and the only material considered was the

statement of the petitioner recorded during Police investigation. The witness examined has only stated that petitioner has accepted his guilt before the Police during investigation, therefore, such nature of evidence would be failed if tested at the anvil of "preponderance of probability".

34. In aforesaid circumstances, the Court is of the opinion that it is a case of no evidence. The impugned order is failed in the test of preponderance of probability since it was based only on alleged confessional statement made by petitioner before Police, which cannot be read in its entirety against the petitioner in a disciplinary proceeding without any independent support. There is absolutely no material on record that petitioner was directly or indirectly committed alleged fraud. Therefore, facts of present case warrants interference.

35. In the result, writ petition is allowed. Impugned order of Disciplinary Authority dated 20.06.2018 as also the undated order passed in the Appeal, are hereby set aside and its legal consequence shall follow. The respondents can proceed afresh against the petitioner or may wait for outcome of the criminal trial, which is still pending.

36. So far as relief with regard to back wages is concerned, the Court is of the view that despite the principle of "no work no pay", petitioner is entitled for 1/4 of salary for the period he remained out of service. However, there will be continuity in service.

(2025) 7 ILRA 527
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.07.2025

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

Writ B No. 1870 of 1981

Jagbhan Singh & Ors. ...Petitioners
Versus
Assistant Director of Consolidation & Ors. ...Respondents

Counsel for the Petitioners:
Mr. S.K. Vidyarthi

Counsel for the Respondents:
Mr. Ashutosh Kumar Rai, Addl. C.S.C., Mr. Achal Singh

Issue for Consideration

Matter pertains to claim of Sirdari rights by petitioners over Gaon Sabha land recorded as Shreni-IV, on the basis of adverse possession, and the validity of concurrent orders passed by Consolidation Officer, Settlement Officer (Consolidation), and Deputy Director of Consolidation under SS. 9-A (2), 11(1), & 48 of the U.P. Consolidation of Holdings Act, 1953.

Headnotes

U.P. Consolidation of Holdings Act, 1953 – SS. 9-A (2), 11(1), 48 - U.P. Consolidation of Holdings Rules, 1954 - Rule 26 - U.P. Zamindari Abolition and Land Reforms Act, 1950 – Consolidation-Claim of Sirdari rights - Adverse possession against Gaon Sabha land - Not maintainable – Evidence - Failure to prove title and possession – Jurisdiction - Deputy Director of Consolidation - Limited powers prior to 10.11.1980 amendment - Writ Jurisdiction - Article 226 - Concurrent findings of fact - No interference warranted.

Held: There was no illegality in the exercise of revisional jurisdiction by the Deputy Director of Consolidation in passing the impugned order dated 13.10.1980 - Consolidation Officer "has properly exercised the jurisdiction as provided under Rule 26 of the U.P. C.H. Rules - Petitioners failed to prove title or possession over the plot in question - Plea of adverse possession cannot be sustained against Gaon

Sabha property - Consequently, the concurrent findings of all three consolidation courts warranted no interference under Article 226 of the Constitution of India. Petitioners not entitled to be recorded as Sirdar - concurrent findings of fact sustained - Petition dismissed - No order as to costs. (Paras 10,11,12,13,14,15) (E-7)

Case Law Cited

None specifically cited in the judgment

List of Acts

U.P. Consolidation of Holdings Act, 1953; U.P. Consolidation of Holdings Rules, 1954; U.P. Zamindari Abolition and Land Reforms Act, 1950.

List of Keywords

Adverse possession - Gaon Sabha land - Sirdar - Shreni-IV - title objection - concurrent finding of fact - limited jurisdiction - Rule 26 of U.P. C.H. Rules.

Case Arising From

Orders of Consolidation Officer dated 29.6.1977, Settlement Officer (Consolidation) dated 30.7.1977, and Deputy Director of Consolidation dated 13.10.1980 relating to Khata No. 602, Plot No. 211/13, Village Majhgawan, Tehsil Rath, District Hamirpur.

Appearances for Parties

Advs. for the Petitioners:
Mr. S.K. Vidyarthi.

Advs. for the Respondents:
Mr. Ashutosh Kumar Rai, Addl. C.S.C.; Mr. Achal Singh.

(Delivered by Hon'ble Chandra Kumar Rai, J.)

1. Heard Mr. S.K. Vidyarthi, learned counsel for the petitioners, Mr. Ashutosh Kumar Rai, learned Addl. C.S.C. for the state-respondents and Mr. Achal Singh, learned counsel for the respondent-gaon sabha.

2. Brief facts of the case are that the dispute relates to khata no.602, plot no.211/13, situated in village Majhgawan, Pargana and Tehsil Rath, District Hamirpur. In the basic year of the consolidation operation, the aforementioned plot was recorded in the name of the petitioners under Shreni-IV. Against the basic year entry of the plot in question, an objection under Section 9-A(2) of the U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the "U.P. C.H. Act") was filed by the petitioners with the prayer that petitioners should be recorded as Sirdar in place of Shreni-IV. The aforementioned objection filed by the petitioners, was registered as Case No.5767 before the Consolidation Officer. The Gaon Sabha filed his reply, denying the case of the petitioners. The petitioners adduced oral and documentary evidence in support of their case. One issue was framed before the Consolidation Officer as to whether the petitioners/objectors is entitled to be recorded as Sirdar on the basis of their adverse possession. The Consolidation Officer vide order dated 29.6.1977 rejected the claim of the petitioners/objectors and directed that plot in question should be recorded as Jaman-V/Naveen Parti Gram Samaj. Against the order of the Consolidation Officer dated 26.9.1977, appeal under Section 11(1) of the U.P. C.H. Act was filed by the petitioners which was heard and dismissed vide order dated 30.7.1977. Against the appellate order dated 30.7.1977, revision under Section 48 of the U.P. C.H. Act was filed before the Deputy Director of Consolidation which was registered as Revision No.4616. The aforementioned revision was heard and dismissed vide order dated 13.10.1980. Hence, this writ petition for the following relief:-

"(i) Issue a writ of certiorari for quashing the orders dated 29.6.1976 and 13.10.1980 passed by Consolidation Officer as well as Assistant Director of Consolidation respectively. (Annexure Nos. 1 & 2)."

3. This Court entertained the matter on 28.7.1981 and granted interim protection to the effect that operation of the impugned order dated 13.10.1980 shall remain stayed and the possession of the petitioners shall not be disturbed.

4. Counsel for the petitioners submitted that petitioners are in possession of the disputed plot since before the date of vesting, as such, the petitioners have matured their right and title in respect to the plot in question in view of the provisions contained under the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the "U.P. Z.A. & L.R. Act"). He further submitted that title objection filed by the petitioners to record their names as Sirdar has been decided by the Consolidation Officer in arbitrary manner. He submitted that no documentary evidence was filed by the Gaon Sabha before the Consolidation Officer but the title objection of the petitioners has been dismissed without considering the oral and documentary evidence adduced by the petitioners. He submitted that the appellate and revisional jurisdiction have also been exercised in arbitrary manner. He submitted that the impugned orders passed by the consolidation authorities should be set aside and the petitioners' objection under Section 9-A (2) of the U.P. C.H. Act should be allowed, directing the authorities to record the names of the petitioners over the plot in question forthwith.

5. On the other hand, learned Addl. C.S.C. for the state-respondents and the counsel for the respondent-gaon sabha submitted that concurrent finding of fact has been recorded by all the three courts that no right will accrue to the petitioners in respect to the gaon sabha land on the basis of adverse possession. He submitted that the petitioners have claimed the right in respect to 13 acre land which belongs to gaon sabha. They submitted that the Consolidation Officer has framed the issues and considered the evidence adduced by the parties, recording finding of fact that petitioners cannot be recorded as Sirdar as neither the ownership nor the possession has been proved according to the provisions contained under the Act. They further submitted that no interference is required and the writ petition is liable to be dismissed.

6. I have considered the arguments advanced by learned counsel for the parties and perused the records.

7. There is no dispute about the fact that the title objection filed by the petitioners under Section 9-A(2) of the U.P. C.H. Act was dismissed by the Consolidation Officer which has been maintained in appeal as well as revision.

8. In order to appreciate the controversy involved in the matter, perusal of the only issue framed before the Consolidation Officer and the finding recorded on that issue, will be relevant which is as under:-

"न्यायालय चकबन्दी अधिकारी राठ उत्तर

मुकदमा नम्बर 5767/6327 धारा 6क(2)

ग्राम- मफगवां पर० व तहसील राठ जिल हमीरपुर।

जगमान सिंह बनाम ग्राम समाज

निर्णय

वाद बिन्दु- (1) क्या वादी विवाद ग्रस्त भूमि पर कब्जे अनाधिकार के आधार पर सीरदार है? वादी की ओर से बहस प्रारम्भ करते हुए कहा गया है कि हम विवादित भूमि पर जमाना जमींदारी से काबिज बहैसियत मुखालफा-ना, व मालकाना बदस्तूर चले आ रहे हैं हमारे कब्जे की जानकारी ग्राम समाज की हमेशा से रही है परन्तु हमारे खिलाफ कभी भी बेदखली का दावा दायर नहीं किया गया। इससे स्पष्ट होता है कि गांव सभा को हमारा कब्जा स्वीकार था। गवाह देव सिंह प्रधान है। उन्होंने अपने ब्यानों में कहा है कि मैं ग्राम समाज का प्रधान रहा हूं मेरे समय में ही जगभान सिंह का कब्जा लिखा गया था। इसकी जानकारी मुझे रही। आराजी निजाई में प्रतिवर्ष फसल होती है। परती व बंजर कभी नहीं रही दिनाँक 10-10-58 की गिर-दावर कानूनगो साहब का आदेश हमारा नाम वर्ग 4 में अंकित होने का हुआ और उसके पहले से हम निरन्तर काबिज चले आ रहे हैं। नत्थू गवाह का विवादित भूमि के पास ही खेत है उसने भी हमारा कब्जा माना है। और चौहदी भी ठीक बतायी है। 1363 फ० में हमारे कब्जा टिप्पणी के स्तम्भ में लाल स्याही अंकित किया गया है तथा पूरे नम्बर पर फसल अंकित की गयी है। 1364 व 1365 फ० में यही इन्द्राज है। 1366 फ० व 1367 फ० के खसरे समाप्त कर दिये गये है। अतः वह उपलब्ध नहीं है। इसी कारण प० क० 10 की नकल उपलब्ध नहीं मिल सकी है। प० क० 10 का कोई आस्तित्व नहीं रहता जबकि उस समय के प्रधान ने हमारा कब्जा स्वीकार किया है। 1368 फ० लगायत आजतक हमारा

कब्जा निरन्तर चला आ रहा है और फसल भी रही है। इस प्रकार हम विवादित भूमि के कानूनन सीरदार हो गये है।

ग्राम समाज की ओर से बहस प्रारम्भ करते हुए कहा गया कि नकल खसरा **1363** फ० **1364** फ० तथा **1363** फ० की प्रमाणित प्रतियां जमा नहीं की गयी है। अतः इन खसरों की साक्ष्य में नहीं पढ़ा जा सकता। यह खसरे फर्जी लेखपाल से बनवाकर जमा कर दिये गये है। नकल खसरा **1368** फ० में जग्गेसिंह का नाम स्तम्भ **4** में अंकित है। रकबा स्तम्भ **3** में **5-25, 132** व **6-68** अलग-अलग अंकित किया गया है तथा स्तम्भ **18** में बहेड़ व बंजर अंकित किया गया है जो यह स्पष्ट करता है कि यह भूमि **1368** फ० में बंजर व बेहड़ थी और एक ग्राम समाज के कब्जे में थी **1374** में केवल **11-00** में फसल है तथा **1** जवाब अंकित है इस प्रकार वादी का वास्तविक कब्जा **1366** फ० से प्रारम्भ होता है अतः इसके बाद **12** वर्ष पूरे नहीं होता। **14** अक्टूबर **1671** से पूर्व यदि **12** वर्ष की अवधि पूर्व नहीं होती तो **30** वर्ष का साक्ष्य प्रस्तुत करना चाहिये। साथ ही **25-1-71** को आदेशानुसार तहसीलदार साहब जग्गेसिंह पुत्र बृजराज सिंह बेदखल किये गये।

उक्त तथ्यों के आधार पर मैं इस निष्कर्ष पर पहुंचता हूँ कि वादी अपने लिखित एवं मौखिक साक्ष्य से दावा सिद्ध करने में पूर्ण रूप से असफल है अतः वादी का दावा निरस्त किया जाता है वाद बिन्दु वादी के विरूद्ध निर्णय किया जाता है। अतः
आदेश हुआ कि

गाटा संख्या **211/13-00** से वादी जग्गे सिंह पुत्र बृजराज सिंह निवासी ग्राम वर्ग **4** से नाम तथा आपत्ति खारिज होकर भूमि जिमन **5** नवीन परती ग्राम समाज में अंकित हो। पत्रावली वाद अमल दरामद दाखिल दफतर हो।

यस० डी०:-

(प्रेम शंकर शर्मा)

च०अ० राठ उत्तर

26-6-77"

9. The perusal of the issue framed and the finding recorded, demonstrates that the Consolidation Officer has properly exercised the jurisdiction as provided under Rule 26 of the Uttar Pradesh Consolidation of Holdings Rules, 1954 (hereinafter referred to as the "U.P. C.H. Rules").

10. The perusal of the finding of fact as quoted above, fully demonstrates that plaintiff has failed to prove his title as well as possession in respect to the plot in question.

11. It is also settled that plea of adverse possession is not available against the gaon sabha property. The finding of fact recorded by the Consolidation Officer has been maintained by the Settlement Officer of Consolidation and the Deputy Director of Consolidation.

12. It is also material to mention that relevant entry of 1356 fasli and 1359 fasli have also not been annexed along with the writ petition nor there is any pleading regarding the entry, as such, no right and title can be given to petitioners.

13. It is also relevant to mention that the revisional order in the instant matter was passed on 13.10.1980 and Section 48 of the U.P. C.H. Act was amended by adding explanation 3 w.e.f. 10.11.1980, as such, the Deputy Director of Consolidation in the instant matter on the date of passing of the judgment, i.e., 13.10.1980, was having limited jurisdiction.

14. In view of above, there is no illegality in the exercise of the revisional jurisdiction by the Deputy Director of Consolidation while passing the impugned revisional order dated 13.10.1980.

15. Considering the entire facts and circumstances of the case, there is no scope of interference by this Court under Article 226 of the Constitution of India against the concurrent judgment passed by all the three consolidation courts under Sections 9-A(2)/11(1)/48 of the U.P. C.H. Act.

16. The writ petition is dismissed.

17. No order as to costs.

(2025) 7 ILRA 531
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.07.2025

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

Writ B No. 2525 of 2024
&
Writ B No. 318 of 2025

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

Counsel for the Petitioner:
Kamlesh Shrama, Pradeep Kumar Rai, Prajyot Rai, Rituvendra Singh Nagvanshi

Counsel for the Respondents:
C.S.C., Dhirendra Singh, J.P. Singh

Issue for Consideration
I. Whether the consolidation authorities have not decided the dispute regarding succession in proper manner
II. Whether consolidation authorities have illegally held that petitioner as well as private respondents both will succeed as provided under Section 175 of the U.P.Z.A. and L.R. Act

Head Notes
The Constitution of India, 1950-Article 226 - The Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 12 - The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Sections 171 & 175 - finding of fact recorded by appellate Court fully demonstrate that in the basic year khatauni, Shanti Devi was recorded along with co-tenure holders of the khata in dispute and appellate Court has rightly appreciated the provisions of Sections 171 to 175 of U.P.Z.A. and L.R. Act in holding that provision of Section 175 of U.P.Z.A. and L.R. Act will be applicable in the instant matter - Petition dismissed.

Held- The Settlement Officer of Consolidation has rightly held that in view of the provisions contained under Section 175 of the U.P.Z.A. and L.R. Act, petitioner as well as private respondent will be entitled to be recorded in the place of deceased Shanti Devi on the basis of principle of survivorship as provided under Section 175 - Consolidation Officer has directed to record the name of private respondent only in place of Shanti Devi but in appeal filed by petitioner which was allowed and petitioner as well as private respondents both were ordered to be recorded on the basis of principle of survivorship, as such, there was no occasion to challenge the appellate order in revision as petitioner and private respondents both were ordered to be recorded in place of deceased Shanti Devi. **(Para 13, 16 & 17)** (E-15)

Case Law Cited
;AIR (2000) SC 745 Moolchand Vs. Kedar (deceased) by LRS and Others

List of Acts
The Constitution of India, 1950- The Uttar Pradesh Consolidation of Holdings Act, 1953 - The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950

List of Keywords
Principle of survivorship; Section 175 of the U.P.Z.A. and L.R. Act; Basic year khatauni

Case Arising From
I. Order dated 22.5.2024 passed by the Deputy Director of Consolidation under Section 48 (1) of the U.P.C.H. Act, 1953 in case No. 0464 of 2020, computerized case No. 20205415500000464, revision No. 180 of 2024 and revision No. 209 of 2024, computerized case No. 2020531551000016, the order dated 7.12.2019 passed by Settlement Officer of Consolidation and the orders dated 26.12.2018 passed by the Consolidation Officer (Final Record), Mau in case No. 426 rejecting the restoration application filed by the petitioner against the ex-parte orders dated 18.5.2016 and the order dated 18.5.2016 passed under Section 12 of the U.P.C.H. Act

II. Proceeding of case No. 7 of 2024, computerized case No. 20195151020179 (Sharda Devi Vs. State and others) under Rule 109-A (1) of U.P.C.H. Act pending before Consolidation Officer Sadar-II Mau District Mau

Appearances for Parties

Counsel for Petitioner:- Kamlesh Shrama, Pradeep Kumar Rai, Prajyot Rai, Rituvendra Singh Nagvanshi

Counsel for Respondent :- C.S.C., Dhirendra Singh, J.P. Singh

Judgment/Order of the High Court

(Delivered by Hon'ble Chandra Kumar Rai, J.)

1. Heard Mr. R.C. Singh, learned Senior Counsel assisted by Mr. Kamlesh Sharma, learned counsel for the petitioner, Mr. Dhirendra Singh/ Mr. J.P. Singh, learned counsels for the private respondents and Mr. P.S. Chauhan, learned Standing Counsel for the State respondents in both the petitions.

2. Brief facts of the case are that dispute relates to chak No. 151 situated in Village Luduhi, Pargana-Ghosi, District Mau. The family pedigree of the parties is mentioned in paragraph No.6 of Writ B No. 2525 of 2024. The family pedigree demonstrate that one Charittar had four sons (Bindeshwar, Nageshwar, Muneshwar and Dhaneshwar) and one daughter (Shyam Dulari). The pedigree further demonstrate that Bindeshwar and Dhaneshwar died issueless. Nageshwar had died leaving behind his widow Pyari Devi and from the wedlock of Nageshwar and Pyari Devi, two daughters (Sharda and Sheela) were born. Sharda is private respondents in both the writ petitions. Muneshwar had died leaving behind his son Jitendra who is petitioner in both the writ petitions and Shyam Dulari died leaving behind her daughter (Shanti). During consolidation proceeding in the Village in question, C.H. Form 23 was distributed in the name of Shanti Devi (daughter of Shyam Dulari) in respect to chak No. 151. Subsequently the C.H. Form 45 was prepared and new plot No. 302 area 1 acre 86 kari was carved out in the name of Shanti Devi. Shanti Devi had expired accordingly application under Section 12 of U.P. Consolidation of Holdings Act, 1953 hereinafter referred to as U.P.C.H. Act was filed by petitioner claiming right on the basis of the provisions contained under Section 171 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 hereinafter referred to as U.P.Z.A. and L.R. Act. The aforementioned proceeding under Section 12 of the U.P.C.H. Act was initiated before issuance of notification under Section 52 of the U.P.C.H. Act. The Assistant Consolidation Officer passed an order dated 23.2.1983 to record the name of petitioner/ Jitendra in the place of Shanti Devi. Against the order dated 23.2.1983 passed by Assistant Consolidation Officer, one Nageshwar, son of Charittar filed a revision under Section 48 of the U.P.C.H. Act along with the prayer for condonation of delay. The aforementioned revision was heard and allowed by Deputy Director of Consolidation vide order dated 30.9.2014 after condoning the delay in filing the revision and remitted the matter back before the Consolidation Officer setting aside the order dated 23.2.1983 passed by Assistant Consolidation Officer for fresh decision of the proceeding/ application under Section 12 of the U.P.C.H. Act. In pursuance of the remand order passed by Deputy Director of Consolidation, the matter was proceeded before the Consolidation Officer and an issue was

framed to the effect as who is the legal heir of Smt. Shanti Devi (daughter of Shyam Dulari). Consolidation Officer passed an ex-parte order on 18.5.2016 accordingly petitioner filed a restoration application which was dismissed by Consolidation Officer vide order dated 26.12.2018. Against the orders dated 18.5.2016 and 26.12.2018 passed by Consolidation Officer, appeal was preferred by petitioner/ Jitendra before the Settlement Officer of Consolidation. The aforementioned appeal was heard and allowed by Settlement Officer of Consolidation vide order dated 7.12.2019 setting aside the orders dated 18.5.2016/ 26.12.2018 and directed to record the name of petitioner/ Jitendra and Sharda Devi (daughter of Nageshwar) over chak No. 151 after expunging the name of Shanti Devi (daughter of Shyam Dulari). Against the appellate order dated 7.12.2019, two revisions were filed by petitioner/ Jitendra under Section 48 of the U.P.C.H. Act which were numbered as revision No. 180 of 2024 and 209 of 2024. One revision was filed against the order of Consolidation Officer and another revision was filed against the order of Settlement Officer of Consolidation. Both the aforementioned revisions were consolidated and heard together. Deputy Director of Consolidation vide order dated 22.5.2024 dismissed both the revision and maintained the order of Settlement Officer of Consolidation dated 7.12.2019. Hence Writ B No. 2525 of 2024 has been filed by petitioner/ Jitendra for the following reliefs:-

"(i) Issue a writ, order or direction in the nature of certiorari to call for record of the case and quash the order dated 22.5.2024 passed by the Deputy Director of Consolidation under Section 48 (1) of the U.P.C.H. Act, 1953 in case No. 0464 of 2020, computerized case No. 20205415500000464, revision No. 180 of 2024 and revision No. 209 of 2024, computerized case No. 2020531551000016, the order dated 7.12.2019 passed by Settlement Officer of Consolidation and the orders dated 26.12.2018 passed by the Consolidation Officer (Final Record), Mau in case No. 426 rejecting the restoration application filed by the petitioner against the ex-parte orders dated 18.5.2016 and the order dated 18.5.2016 passed under Section 12 of the U.P.C.H. Act.

(ii) Issue a writ, order or direction in the nature of mandamus restraining the respondent authorities not to dispossession the petitioner from plot No. 302."

3 This Court on 6.8.2024 directed the learned counsel for the private respondents to file counter affidavit accordingly pleadings are exchanged between the parties.

4. Writ B No. 318 of 2025 has been filed by petitioner/ Jitendra for the following relief:-

"Issue a writ, order or direction in the nature of certiorari quashing the entire proceeding of case No. 7 of 2024, computerized case No. 20195151020179 (Sharda Devi Vs. State and others) under Rule 109-A (1) of U.P.C.H. Act pending before Consolidation Officer Sadar-II Mau District Mau/ respondent no.3."

5. Learned Senior Counsel for the petitioner submitted that consolidation authorities have not decided the dispute regarding succession of Shanti Devi in proper manner, as such, the impugned

orders passed by consolidation authorities cannot be sustained in the eye of law. He further submitted that in view of the provisions contained under Section 171 of the U.P.Z.A. and L.R. Act, petitioner/ Jitendra (son of Charittar) will succeed Shanti Devi but the consolidation authorities have illegally held that petitioner as well as private respondents both will succeed as provided under Section 175 of the U.P.Z.A. and L.R. Act. He submitted that impugned orders passed by consolidation authorities should be set aside and direction be issued for recording the name of petitioner/ Jitendra only as successor of deceased Shanti Devi (daughter of Shyam Dulari). He further submitted that in view of the aforementioned fact, the proceeding initiated by private respondents under Rule 109 (A) of the U.P. Consolidation of Holdings Rule, 1954 hereinafter referred to as U.P.C.H. Rules for giving effect, the orders have been passed by consolidation authorities under Section 12 of the U.P.C.H. Act should be quashed.

6. On the other hand, learned counsel for private respondents submitted that consolidation authorities have rightly considered the provisions contained under Sections 171 to 175 of the U.P.Z.A. and L.R. Act and directed that according to the provisions contained under Section 175 of the U.P.Z.A. and L.R. Act, petitioner/ Jitendra as well as private respondent-Sharda Devi (daughter of Nageshwar) will be entitled to be recorded in place of deceased Shanti Devi in respect to chak No. 151. He further submitted that chak no. 151 was recorded in the name of four sons of Charittar as well as Shyam Dulari (daughter of Charittar) and after death of Shanti Devi, petitioner/ Jitendra had fradulently got his name recorded under Section 12 of the U.P.C.H. Act but after remand order passed in revision, consolidation authorities have rightly ordered to record the name of petitioner/ Jitendra as well as private respondent (Sharda Devi) in view of the provisions contained under Section 175 of the U.P.Z.A. and L.R. Act which requires no interference in exercise of jurisdiction under Article 226 of the Constitution of India. He further submitted that one revision filed by one Savita Devi was dismissed as withdrawn. He submitted that no interference is required in the matter and writ petition filed by petitioner should be dismissed. He submitted that there is no illegality in the initiation of proceeding by private respondent under Rule 109-A of U.P.C.H. Rules on the basis of final orders passed in the proceeding under Section 12 of the U.P.C.H. Act. He further submitted that no interim order was operating in the Writ B No. 2525 of 2024 filed by petitioner. He submitted that Writ B No. 318 of 2025 filed by petitioner is also liable to be dismissed. He further placed reliance upon the following judgement of this Court in support of his argument:- ***(I) 1998 R.D. 328 Mool Chand Vs. Kedar and Others***

(ii) 1973 R.D. 308 Dharam Das Vs. Bishun Narain

7. I have considered the arguments advanced by learned counsel for the parties and perused the records.

8. There is no dispute about the fact that Consolidation Officer vide order dated 18.5.2016 in the proceeding under Section 12 of the U.P.C.H. Act directed to record the name of private respondent (Sharda Devi, daughter of Nageshwar) in place of deceased Shanti Devi (daughter of Shyam Dulari) in respect to chak No. 151 but in

appeal under Section 11 (1) of the U.P.C.H. Act filed by petitioner, the order of Consolidation Officer were set aside and the name of petitioner/ Jitendra as well as private respondent (Sharda Devi) were ordered to be recorded in place of Shanti Devi. There is also no dispute about the fact that revisions filed by petitioner/ Jitendra against the order of Settlement Officer of Consolidation were dismissed.

9. In order to appreciate the controversy involved in the matter, the perusal of the family pedigree of the parties will be relevant. The family pedigree as mentioned in the grounds of revision filed by petitioner/ Jitendra is as under:-

Charittar

Bindeshwari Nageshwar (died)
Muneshwar Shyam Dulari

(issueless) (death year 1998)
Dhaneshar

Jitendra

Shanti

Pyari Devi (wife)
(daughter)

(death year 2001)
Sukhia (wife)

Sharda Devi (married daughter)
Savita (daughter)

10. In the counter affidavit, private respondent has mentioned the family pedigree which is slightly different, as such, the perusal of the same will be relevant which is as under:-

Charitar

Bindeshwari Nageshwar
Muneshwar Dhaneshar

(died issueless)

Pyari Devi (wife) Jitendra
(died issueless)

Shyam Dulari (daughter)

Sharda Devi (daughter)

Shanti Devi (daughter)

(died)

11. The dispute in the present matter is regarding the succession of Shanti Devi (daughter of Shyam Dulari). It is also material to mention that Shanti Devi remained recorded till her death along with the sons of Charittar and there was objection by anybody for expunging the name of Shanti Devi. The dispute has arisen after the death of Shanti Devi.

12. The perusal of finding of fact recorded by Settlement Officer of Consolidation allowing the appeal of petitioner for recording the name of petitioner/ Jitendra along with respondent no.5/ Sharda Devi in the place of deceased

Shanti Devi (daughter of Shyam Dulari) will be relevant which is as under:-

"न्यायालय बन्दोबस्त अधिकारी चकबन्दी, मऊ

अपील संख्या 1323/1508 धारा 11 (1) जो०च०अधि० शारदा

जितेन्द्र बनाम शारदा

ग्राम-लुदुही, परगना व तहसील-घोसी, जनपद-मऊ

निर्णय

साक्ष्यों से स्पष्ट है कि मृतका शान्ति देवी द्वारा स्वत्व भूमि अपनी माँ से बतौर उत्तराधिकारी प्राप्त की गयी थी जिनके स्वयं के परिवार में किसी व्यक्ति द्वारा उत्तराधिकार का दावा प्रस्तुत नहीं किया गया है। धारा 171 के अनुसार मृतक शान्ति देवी का कोई वारिस नहीं है जिसके ओर से उत्तराधिकारी होने का दावा प्रस्तुत किया गया हो। साक्ष्यों से यह भी सिद्ध है कि धारा 172 के अधीन मृतका शान्ति देवी का कोई जीवित विधिक वारिस नहीं है। उ०प्र० जमीदारी विनाश अधिनियम एवं भूमि व्यवस्था अधिनियम की धारा 175 में यह प्राविधान है कि जब किसी सहखातेदार की मृत्यु हो जाय तो संयुक्त सम्पदा में उसके अंश को उसके उत्तराधिकारी धारा 171 से 174 के प्राविधानों के अनुसार प्राप्त होगें। किन्तु जब ऐसा सहखातेदार बिना किसी उत्तराधिकारी के और बिना वैध वसीयत किये मर जाय तो संयुक्त सम्पदा (जोत) में उसका अंश बचे हुए सहखातेदारों को उत्तरजीविता के सिद्धान्त के अनुसार इस धारा के अन्तर्गत प्राप्त होगा। साक्ष्यों से यह सिद्ध है कि मृतका शान्ति देवी का विधिक उत्तराधिकारी धारा 171 से 174 के प्राविधानों के अनुसार नहीं है। ऐसी दशा में उत्तराधिकार/स्वत्व का संक्रमण धारा 175 के अनुसार होगा। अवर न्यायालय द्वारा भी उक्त निष्कर्ष भी दिया गया है जो उचित है, किन्तु विचारणीय प्रश्न यह है कि मृतका शान्ति देवी के साथ किन खातेदारों का नाम बतौर सहखातेदार दर्ज रहा है। इस सम्बन्ध में अपील स्तर पर प्रस्तुत साक्ष्य नकल आधार वर्ष खतौनी खाता सं० 33 से स्पष्ट है कि विवादित भूमि पर बिन्देश्वरी, नागेश्वर, मुनेसर, धनेसर पुत्रगण चरित्तर व शान्ति देवी पुत्री श्यामदुलारी का नाम अंकित है जिससे स्पष्ट है कि विवादित भूमि में मृतका शान्ति के साथ बिन्देश्वरी आदि पुत्रगण चरित्तर उक्त का नाम दर्ज रहा है। साक्ष्यों से यह भी स्पष्ट है कि बिन्देश्वरी व धनेसर भी लावल्द मृत हो चुके हैं। नागेश्वर की एक मात्र पुत्री शारदा तथा मुनेसर का एक मात्र पुत्र जितेन्द्र जीवित हैं जो धारा 175 व उ०प्र० जमींदारी विनाश अधिनियम एवं भूमि व्यवस्था अधिनियम के प्राविधानों के अधीन मृतका शान्ति देवी के उत्तराधिकारी हैं। अवर न्यायालय द्वारा मृतका शान्ति देवी का एक मात्र वारिस शारदा देवी पुत्री नागेश्वर को धारा 175 के तहत माना है, जबकि साक्ष्यों से सिद्ध है कि शारदा एवं जितेन्द्र दोनों धारा 175 के अन्तर्गत वारिस हैं।

आदेश

उपरोक्त विवेचना के आधार पर अपील स्वीकार की जाती है। अवर न्यायालय का आदेश दिनांक 18.05.2016 व 26.12.2018 निरस्त किया जाता है। चक सं० 151 पर अंकित मृतक शान्ति देवी पुत्री श्यामदुलारी का नाम खारिज करके बतौर वारिस जितेन्द्र पुत्र मुनेसर व शारदा पुत्री नागेश्वर अंकित हो। पत्रावली वाद अमलदरामद अभिलेखागार में संचित हो।

(सुरेश जायसवाल)

बन्दोबस्त अधिकारी चकबन्दी

मऊ।"

13. The finding of fact recorded by appellate Court as quoted above fully demonstrate that in the basic year khatauni, Shanti Devi was recorded along with co-tenure holders of the khata in dispute and appellate Court has rightly appreciated the provisions of Sections 171 to 175 of U.P.Z.A. and L.R. Act in holding that provision of Section 175 of U.P.Z.A. and L.R. Act will be applicable in the instant matter.

14. In order to adjudicate the controversy involved in the present matter, the ratio of law laid down by Hon'ble Apex Court in the case reported in ***AIR (2000) SC 745 Moolchand Vs. Kedar (deceased)***

by LRS and Others will be relevant. Paragraph Nos. 12 to 16 of the judgement rendered in Moolchand (Supra) will be relevant for perusal which is as under:-

"12. However, in the present case, Section 172 (2) squarely applies as female Bhumidhar died after coming into force of the aforesaid U.P.Z.A. Act.

13. Thus in this background the question is, whether Section 172(2)(a)(ii) or 172(2)(a)(i) is applicable. The distinction between the two clauses are that under (i) inheritance would be governed by Section 171, if under the personal law she was entitled to a life estate. If on the other hand, under the personal law if she was entitled to hold such estate absolutely, then inheritance would be governed by the Table under Section 174. The Legislature clearly spells out its intent. So to find the channel of inheritance, one has to go to the personal law applicable to her and then to steer to the provisions to find whether she would have held the property as limited or absolute owner before applying sub-clause (i) or (ii). So, first it has to be examined, what would have been her right to such estate under her personal law. This right has not to be seen either under Tenancy Law, U.P.Z.A. Act or any other statutory or other law but has to be seen only under her Personal Law. The legal position, so far as personal law viz. Hindu Law, of a female inheriting property from a male is what we have quoted above from Mullas Hindu Law. As already stated any female including the daughter, as in the present case, when she inherits the property from male gets only life estate in as much as the case is not governed by the Bombay School. In view of this legal position, Section 172(2)(a)(i) would apply, and not sub-clause (ii). May be, after coming into force of the Hindu Succession Act of 1956, within the ambit of Section 14, limited estate of Hindu female is converted into absolute estate. In such cases, inheritance would be governed by the Table under Section 174 in view of Section 172(2)(a)(ii). But in the present case she died before the aforesaid Act of 1956.

14. It may look paradoxical that female Bhumidar having absolute right to transfer, but for the purposes of inheritance, one has to traverse to her personal law to find, whether she would have held this property as limited or absolute owner, and if she had limited right then in spite of her absolute right under U.P.Z.A. Act, it had to follow different course to be governed by Section 172 (2)(a)(i). But this is what legislature intends. That is why law of inheritance varies for different properties under different statute for the same person.

15. In view of our aforesaid finding, that Smt. Kaushalya Devi held the land inherited from her father, under the personal law as limited estate, after her death such bhumidhari land would be governed by clause (i) of Section 172(2)(a) of U.P.Z.A. Act. Thus for inheritance Section 171 would apply under which husband is not a heir. In view of this the appellant claim cannot succeed. The courts below rightly held that the property would go to the concerned respondents by survivorship by virtue of Section 175 as they were co-tenure holder.

16. So, we do not find any merit in this appeal. Accordingly, it is dismissed. Costs on the parties. "

15. In the aforementioned judgement of Hon'ble Apex Court, it has been held

that the inheritence will be governed by Section 175 of U.P.Z.A. and L.R. Act.

16. In the present matter also, the Settlement Officer of Consolidation has rightly held that in view of the provisions contained under Section 175 of the U.P.Z.A. and L.R. Act, petitioner/ Jitendra as well as private respondent (Sharda Devi) will be entitled to be recorded in the place of deceased Shanti Devi on the basis of principle of survivorship as provided under Section 175 of the U.P.Z.A. and L.R. Act.

17. It is also material to mention that Consolidation Officer has directed to record the name of private respondent (Sharda Devi) only in place of Shanti Devi but in appeal filed by petitioner/ Jitendra which was allowed and petitioner as well as private respondents both were ordered to be recorded on the basis of principle of survivorship, as such, there was no occasion to challenge the appellate order in revision as petitioner and private respondents both were ordered to be recorded in place of deceased Shanti Devi.

18. Considering the entire facts and circumstances of the case, no interference is required against the impugned orders dated 22.5.2024 and 7.12.2019 passed by the consolidation authorities in the proceeding under Section 12 of the U.P.C.H. Act. The Writ B No. 2525 of 2024 filed by petitioner/ Jitendra against the orders dated 22.5.2024 and 7.12.2019 passed by consolidation authorities in the proceeding under Section 12 of the U.P.C.H. Act is dismissed and Writ B No. 318 of 2025 filed by petitioner/ Jitendra for quashing the proceeding of Rule 109-A of U.P.C.H. Rules is also **dismissed**.

19. No order as to costs.

(2025) 7 ILRA 538
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 07.07.2025
BEFORE

THE HON'BLE PANKAJ BHATIA, J.

Writ C No. 6290 of 2025
&
Writ C No. 6292 of 2025

Krishna Kumari & Ors. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioners:
Lalta Prasad Misra, Prafulla Tiwari, Ramesh Kumar Dwivedi

Counsel for the Respondents:
C.S.C, Rishabh Tripathi

ISSUE FOR CONSIDERATION

Whether the policy decisions of the State for pairing and merging the school, offend Article 21-A of the Constitution or any provisions of the RTE Act and the Rules framed by the State Government thereunder

HEADNOTE

Education — Constitution of India — Article 21-A — Right of Children to Free and Compulsory Education Act, 2009 — Sections 6, 35, 38 — Uttar Pradesh Right of Children to Free and Compulsory Education Rules, 2011 — Rule 4(1), (2), (3) — Pairing of Schools — Government Orders dated 16.06.2025 and 24.06.2025 — Writ petitions challenged the Government Order dated 16.06.2025, wherein directions were issued for taking steps for pairing of the schools managed under the supervision and control of the Basic Shiksha Adhikari and owned by the State Government - Validity of — Scope of Judicial Review.

Held:

Scope for judicial review of policy decisions is very limited and is available only if it is demonstrated that any fundamental rights are adversely affected or that the policy is manifestly arbitrary or tainted with mala fides. Impugned orders were in furtherance of the National Education Policy, 2020, which has been issued in exercise of powers under Section 35 and provides for efficient resourcing and effective governance through school complexes and clusters. In terms of the said policy decision, a decision has been taken through the impugned orders. There being no challenge to the National Education Policy, 2020 in the present case, the impugned orders only being an action in furtherance of the National Education Policy, 2020, cannot be subjected to judicial review in the absence of any challenge to the foundation, which is the National Education Policy, 2020, which authorises and prescribes for consolidation of small schools that have been rendered economically suboptimal and operationally complex to run and are posing a systematic challenge to governance and management, and thus, on that count itself, the writ petition is liable to be dismissed. As per Article 21-A of the Constitution, the mandate is to provide free and compulsory education to the children between the ages of six and fourteen years in such manner as the State may by law determine. The mandate of Article 21-A cannot be presumed to mean that such education has to be provided by the State within a distance of one kilometre. Merely because, after pairing, the distance of the educational institution becomes more than one kilometre, it cannot be said that there is a violation of rights conferred under Article 21-A of the Constitution; such contention merits rejection. On a complete analysis of Rule 4(1), Rule 4(2) and Rule 4(3), read conjointly, it is clear that the State Government is bound to establish schools at the nearest possible place from a habitation and, in the absence thereof, is obliged to ensure transportation facilities, etc., and in conjunction therewith identify neighbourhood schools, whether government or otherwise. There being no material to the contrary in respect of guidelines of pairing in the policy of 2020, which can be said to be arbitrary or in violation of Article 21-A of the Constitution, the impugned orders do not warrant interference. Writ petitions dismissed. [Paras 52, 53, 62, 63] (E-5)

CASE LAW CITED

Kerala Aided L.P. and U.P. School Managers Association v. State of Kerala, W.P.(C) No.19008 of 2013 (Ker); *Jule Khan Bai & Anr. v. State of Rajasthan & Ors.*, S.B. Civil W.P. No.8990 of 2016 (Raj.); *Union of India v. Naveen Jindal & Anr.*, (2004) 2 SCC 510; *Bijoe Emmanuel & Ors. v. State of Kerala & Ors.*, (1986) 3 SCC 615; *B.N. Nagarajan & Ors. v. State of Mysore & Ors.*, AIR 1966 SC 1942; *Shamsher Singh v. State of Punjab & Anr.*, (1974) 2 SCC 831; *Delhi Development Authority & Anr. v. Joint Action Committee, Allottee of SFS Flats & Ors.*, (2008) 2 SCC 672; *Narmada Bachao Andolan v. Union of India & Ors.*, (2000) 10 SCC 664; *State of Maharashtra & Anr. v. Lok Shikshan Sanstha & Ors.*, (1971) 2 SCC 410; *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh Kumar Seth*, (1984) 4 SCC 27; *State of Odisha & Ors. v. School Managing Committee of Amaramunda Government Primary School*, W.A. No.417 of 2021 (Ori HC)

List of Acts

Constitution of India; Right of Children to Free and Compulsory Education Act, 2009; Uttar Pradesh Right of Children to Free and Compulsory Education Rules, 2011

List of Keywords

Education; Article 21-A; Right to Education; Policy decision; Judicial review; Pairing of schools; National Education Policy 2020; Fundamental right; Purposive interpretation; Government Order; Rule 4(1) RTE Rules.

CASE ARISING FROM

Challenging Government Orders dated 16.06.2025 and 24.06.2025 issued by Basic Education Department, regarding pairing of primary schools.

Appearances for Parties

Advs For Petitioner: Dr. L.P. Misra, Sri Prafulla Tiwari, Sri Ramesh Kumar Dwivedi, Sri Gaurav Mehrotra, Sri Utsav Mishra and Ms. Manjari.

Advs For Respondents: Sri Anuj Kudesia, Additional Advocate General, assisted by Sri Sailendra Kumar Singh, Chief Standing Counsel, and Sri Ran Vijay Singh, Additional Chief Standing Counsel; Sri Sandeep Dixit, Senior Advocate, assisted by Sri Rishabh Tripathi and Sri Arun Kumar Singh.

(Delivered by Hon'ble Pankaj Bhatia, J.)

1. Heard Dr. L. P. Mishra assisted by Sri Prafulla Tiwari, the counsel for the petitioner of Writ C No. - 6290 of 2025 and Sri Gaurav Mehrotra along with Sri Utsav Misra and Ms. Manjari, learned Counsel appearing on behalf of the petitioners in Writ C No. 6292 of 2025 as well as Sri Anuj Kudesia, learned Additional Advocate General assisted by Sri Sailendra Kumar Singh, learned Chief Standing Counsel and Sri Ran Vijay Singh, learned Additional Chief Standing Counsel appearing on behalf of the State, and Sri Sandeep Dixit, learned Senior Advocate assisted by Sri Rishabh Tripathi and Arun Kumar Singh, learned Counsel appearing on behalf of the respondent no.4.

2. Both the above writ petitions, raises a common question, as such, are being decided by means of this common judgment.

3. Both the said writ petitions, challenge the Government Order dated 16.06.2025 (Annexure no.1) wherein directions have been issued by the Additional Chief Secretary, Basic Shiksha Department, for taking steps for pairing of the schools managed under the supervision and control of the BSA and owned by the State Government. The petitions also challenge the consequential action dated 24.06.2025 wherein the actual list of the schools, which are being paired being 105 in number has been issued.

4. Before adverting to the arguments raised by the petitioner and the respondents, I deem it appropriate to record the backdrop leading to issuance of the orders, which are impugned in the present writ petition. Right to Education, was held to be a part of Article 21 of the Constitution of India and in pursuance to the said right being declared as part of Article 21, in the 86th amendment to the Constitution, Article 21-A was inserted, which is as under:

"21-A. Right to education. *The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."*

5. To give effect to the mandate of Article 21-A, the Central Government framed the 'Act' known as 'Right of Children to Free and Compulsory Education Act, 2009', hereinafter referred to as the 'RTE Act, 2009'. The statement of object and reason for enacting the said Act was that universal elementary education is essential for strengthening the social fabric of the democracy through the role of universal elementary education and to give effect to the directive principles of State Policy enumerated in the Constitution prescribing that the State shall endeavour to provide free and compulsory education to all the children up to the age of fourteen years and to further give effect to the mandate of Article 21-A of the Constitution, the 'Act' in question was enacted. The Act in question is a child centric and is aimed at achieving the goals as laid down by Article 21-A. Section 2-A of the RTE Act, 2009 defines 'appropriate Government' as used in the Act and is as under :

` ***"2. Definitions -*** *In this Act, unless the context otherwise requires -*

(a) "appropriate Government" means—

(i) in relation to a school established, owned or controlled by the Central Government, or the administrator of the Union

territory, having no legislature, the Central Government;

(ii) in relation to a school, other than the school referred to in sub-clause (i), established within the territory—

(A) a State, the State Government;

(B) a Union territory having legislature, the Government of that Union territory;"

Section 2(c) defines 'child' which means male and female child of the age of six to fourteen years.

Section 2(f) defines 'elementary education', which means the education from first class to eighth class;

Section 2(h) defines 'local authority', which is as under :

"2(h) local authority" means a Municipal Corporation or Municipal Council or Zila Parishad or Nagar Panchayat or Panchayat, by whatever name called, and includes such other authority or body having administrative control over the school or empowered by or under any law for the time being in force to function as a local authority in any city, town or village;

Section 2(n) defines 'school', which is as under :

"2(n) "school" means any recognised school imparting elementary education and include—

(i) a school established, owned or controlled by the appropriate Government or a local authority;

(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and

(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority;"

Section 3 of the said Act declares the intent and establishes a right in favour of every child in between the age of six to fourteen years. Section 3 is quoted herein below:

"3. Right of child to free and compulsory education. - *(1) Every child of the age of six to fourteen years, including a child referred to in clause (d) or clause (e) of Section 2, shall have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education.*
(2) For the purpose of sub-section (1), no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education:

. . ...

(3) A child with disability referred to in sub-clause (A) of clause (ee) of Section 2 shall, without prejudice to the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), and a child referred to in sub-clauses (B) and (C) of clause (ee) of Section 2, have the same rights to pursue free and compulsory elementary education which children with disabilities have under the provisions of Chapter V of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995:

Provided that a child with "multiple disabilities" referred to in clause (h) and a child with "severe disability" referred to in clause (o) of Section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999) may also

have the right to opt for home-based education."

It is also essential to note the mandate of Section 5 of the said Act, which is as under:

"5. Right of transfer to other school. *- (1) Where in a school, there is no provision for completion of elementary education, a child shall have a right to seek transfer to any other school, excluding the school specified in sub-clauses (iii) and (iv) of clause (n) of Section 2, for completing his or her elementary education.*

(2) Where a child is required to move from one school to another, either within a State or outside, for any reason whatsoever, such child shall have a right to seek transfer to any other school, excluding the school specified in sub-clauses (iii) and (iv) of clause (n) of Section 2, for completing his or her elementary education.

(3) For seeking admission in such other school, the Head-teacher or in-charge of the school where such child was last admitted, shall immediately issue the transfer certificate:

Provided that delay in producing transfer certificate shall not be a ground for either delaying or denying admission in such other school:

Provided further that the Head-teacher or in-charge of the school delaying issuance of transfer certificate shall be liable for disciplinary action the service rules applicable to him or her."

Section 6 of the said Act confers the duty of appropriate government and local authority to establish school. Section 6 is as under:

"6. Duty of appropriate Government and local authority to establish school. *- For carrying out the provisions of this Act, the appropriate Government and the local authority shall establish, within such area or limits of neighbourhood, as may be prescribed, a school, where it is not so established, within a period of three years from the commencement of this Act.*

The share of financial and other responsibilities have been prescribed under Section 7, which is as under:

"7. Sharing of financial of other responsibilities. - (1) The Central Government and the State Governments shall have concurrent responsibility for providing funds for carrying out the provisions of this Act.

(2) The Central Government shall prepare the estimates of capital and recurring expenditure for the implementation of the provisions of the Act.

(3) The Central Government shall provide to the State Governments, as grants-in-aid of revenues, such percentage of expenditure referred to in sub-section (2) as it may determine, from time to time, in consultation with the State Governments.

(4) The Central Government may make a request to the President to make a reference to the Finance Commission under sub-clause (d) of Clause (3) of Article 280 to examine the need for additional resources to be provided to any State Government so that the said State Government may provide its share of funds for carrying out the provisions of the Act.

(5) Notwithstanding anything contained in sub-section (4), the State Government shall, taking into consideration the sums provided by the Central Government to a State Government under sub-section (3), and its other resources, be responsible to provide funds for implementation of the provisions of the Act.

(6) The Central Government shall—

(a) develop a framework of national curriculum with the help of academic authority specified under Section 29;

(b) develop and enforce standards for training of teachers;

(c) provide technical support and resources to the State Government for promoting innovations, researches, planning and capacity building."

The duties of appropriate government have been prescribed under Section 8 of the Act, which are as under:

8. Duties of appropriate Government.- *The appropriate Government shall—*

(a) provide free and compulsory elementary education to every child:

Provided that where a child is admitted by his or her parents or guardian, as the case may be, in a school other than a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or a local authority, such child or his or her parents or guardian, as the case may be, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child in such other school.

Explanation—The term "compulsory education" means obligation of the appropriate Government to—

(i) provide free elementary education to every child of the age of six to fourteen years; and

(ii) ensure compulsory admission, attendance and completion of elementary education by every child of the age of six to fourteen years;

(b) ensure availability of a neighbourhood school as specified in Section 6;

(c) ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds;

(d) provide infrastructure including school building, teaching staff and learning equipment;

(e) provide special training facility specified in Section 4;

(f) ensure and monitor admission, attendance and completion of elementary education by every child;

(g) ensure good quality elementary education conforming to the standards and norms specified in the Schedule;

(h) ensure timely prescribing of curriculum and courses of study for elementary education; and

(i) provide training facility for teachers."

The duties of local authorities, parents and guardians are defined under Section 9 & 10 of the said Act.

It is also essential to notice the mandate of Section 12 which prescribes for extent of school's responsibility for carrying out the intent of Article 21-A and the purpose for which the Act was enacted. Section 12(1) reads as under:

"12. Extent of school's responsibility for free and compulsory education. - *(1) For the purposes of this Act, a school,—*

(a) specified in sub-clause (i) of clause (n) of Section 2 shall provide free and compulsory elementary education to all children admitted therein;

(b) specified in sub-clause (ii) of clause (n) of Section 2 shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent;

(c) specified in sub-clauses (iii) and (iv) of clause (n) of Section 2 shall admit in Class I, to the extent of at least twenty-five per cent of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion:"

6. Other restrictions are prescribed from Section 13 till Section 28 of the Act and are basically related to the duties prescribed in school, the teachers etc., which are not much relevant for the purpose of the lis being decided by means of the present writ petition.

7. It is also essential to notice the mandate of Section 35 and 38 of the Act, which conferred the power on the Central Government to issue guidelines to the appropriate government as well as the rule making power conferred upon the governments to make the rules. Section 39 of the Act empowers the Central Government to remove difficulties that arise during the course of implementation of the provisions of the Act.

8. It is also essential to notice the schedule amended to the Act which has been heavily relied upon during the course of the argument. Section 35, 38, 39 & schedule to the Act are quoted herein below:

"35. Power to issue directions: *(1) The Central Government may issue such guidelines to the appropriate Government or, as the case may be, the local authority, as it deems fit for the purpose of implementation of the provisions of this Act.*

(2) The appropriate Government may issue guidelines and give such directions, as it deems fit, to the local authority or the School Management Committee regarding implementation of the provisions of this Act.

(3) The local authority may issue guidelines and give such directions, as it deems fit, to the School Management Committee regarding implementation of the provisions of this Act.

38. Power of appropriate government to make rules. *-(1) The appropriate Government may, by notification, make rules, for carrying out the provisions of this Act.*

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) the manner of giving special training and the time-limit thereof, under first proviso to Section 4;

(b) the area or limits for establishment of a neighbourhood school, under Section 6;

(c) the manner of maintenance of records of children up to the age of fourteen years, under clause (d) of Section 9;

(d) the manner and extent of reimbursement of expenditure, under sub-section (2) of Section 12;

(e) any other document for determining the age of child under sub-section (1) of Section 14;

(f) the extended period for admission and the manner of completing study if admitted after the extended period, under Section 15;

(fa) the manner and the conditions subject to which a child may be held back under sub-section (3) of Section 16;]

(g) the authority, the form and manner of making application for certificate of recognition, under sub-section (1) of Section 18;

(h) the form, the period, the manner and the conditions for issuing certificate of

recognition, under sub-section (2) of Section 18;

(i) the manner of giving opportunity of hearing under second proviso to sub-section (3) of Section 18;

(j) the other functions to be performed by School Management Committee under clause (d) of sub-section (2) of Section 21;

(k) the manner of preparing School Development Plan under sub-section (1) of Section 22;

(l) the salary and allowances payable to, and the terms and conditions of service of, teacher, under sub-section (3) of Section 23;

(m) the duties to be performed by the teacher under clause (f) of sub-section (1) of Section 24;

(n) the manner of redressing grievances of teachers under sub-section (3) of Section 24.

(o) the form and manner of awarding certificate for completion of elementary education under sub-section (2) of Section 30;

(p) the authority, the manner of its constitution and the terms and conditions therefor, under sub-section (3) of Section 31;

(q) the allowances and other terms and conditions of appointment of Members of the National Advisory Council under sub-section (3) of Section 33;

(r) the allowances and other terms and conditions of appointment of Members of the State Advisory Council under sub-section (3) of Section 34.

(3) Every rule made under this Act and every notification issued under Sections 20 and 23 by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

(4) Every rule or notification made by the State Government under this Act shall be laid, as soon as may be after it is made; before the State Legislatures.

***39. Power of Central Government to remove difficulties** (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty:Provided that no order shall be made under this section after the expiry of three years from the commencement of the Right of Children to Free and Compulsory Education (Amendment) Act, 2012.(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament."*

THE SCHEDULE

[See Section 19 and 25]

Norms and Standards for a School

Sl. No.	Item	Norms and Standards

1.	Number of teachers:		
	(a) For first class to fifth class	Admitted children	Number of teachers
		Up to sixty	Two
		Between sixty-one to ninety	Three
		Between ninety-one to one hundred and twenty	Four
		Between one hundred and twenty-one to two hundred	Five
		Above one hundred and fifty children	Five plus one Head-teacher
		Above two hundred children	Pupil-Teacher Ratio (excluding Head-teacher) shall not exceed forty.
	(b) For sixth class to eighth class	(1) At least one teacher per class so that there shall be at least one teacher each for—	
		(I) Science and Mathematics;	
		(ii) Social Studies;	
		(iii) Languages.	
		(2) At least one teacher for every thirty-five children	
		(3) Where admission of children is above one hundred—	
		(i) a full time head-teacher;	
		(ii) part time instructors for—	
		(A) Art Education;	
		(B) Health and Physical Education;	
		(C) Work Education.	
1A.	Number of Special Education Teachers for children with special needs		
	(a) For first class to fifth class	One Special Education Teacher for every ten pupils with disabilities enrolled	
	(b) For sixth class to eighth class	One Special Education Teacher for every fifteen pupils with disabilities enrolled	
		Note 1 : One school and one (minimum) special education teacher norms remains intact.	
		Note 2 : Adhoc or special provision of Itinerant Special Education Teacher under special circumstances as per the Pupil Teacher Ratio specified above may be done in cluster of schools in case of—	

		(i) adequate number of special education teachers are not available,
		(ii) school is a single teacher school having only one general education teacher.
		This may be done with the conditions that the allotment of,—
		(i) not more than four schools; and
		(ii) distance between any two allotted schools
		should not be more than five kilometers so that Special Education Teacher gets the required time to provide necessary interventions at each school level.
		Note 3 : The condition of number of schools and distance covered under Note 2 shall remain intact till minimum of fifty per cent of the Pupil Teacher Ratio is maintained and, the Special Education Teacher and schools make effort to bring more students with disabilities to classrooms to maintain required Pupil Teacher Ratio.
		In case the minimum fifty per cent of Pupil Teacher Ratio is not achieved, one by one nearby schools shall be added.]
2.	Building	All-weather building consisting ofâ€”
		(i) at least one class-room for every teacher and an officer-cum-store-cum Head teacher's room;
		(ii) barrier-free access;
		(iii) separate toilets for boys and girls;
		(iv) safe and adequate drinking water facility to all children;
		(v) a kitchen where mid-day meal is cooked in the school;
		(vi) playground;
		(vii) arrangements for securing the school building by boundary wall or fencing.
3.	Minimum number of working days/instructional hours in an academic year	(i) two hundred working days for first class to fifth class;
		(ii) two hundred and twenty working days for sixth class to eighth class;
		(iii) eight hundred instructional hours per academic year for first class to fifth class;
		(iv) one thousand instructional hours per academic year for sixth class to eighth class.
4.	Minimum number of working hours per week for the teacher	Forty-five teaching including preparation hours.
5.	Teaching learning equipment	Shall be provided to each class as required.
6.	Library	There shall be a library in each school providing newspaper, magazines and books on all subjects, including story-books..
7.	Play	Shall be provided to each class as

	material, games and sports equipment	required.

9. It is also essential to notice that in the backdrop of the statutory provisions under the RTE Act, Rules have been framed by the Central Government known as 'Right of Children to Free and Compulsory Education Rules, 2010. Similarly, in exercise of power conferred by virtue of Section 38 of the RTE Act, 2009 the State Government has also framed Rules, known as 'The Uttar Pradesh Right of Children to Free and Compulsory Education Rules, 2011, hereinafter referred to as 'U.P. Rules, 2011'. Rule 4(1), Rule 4(2) & Rule 4(3) are quoted herein below:

"4. Areas or limits of neighbourhood (section-6) *- (1) The area or limit of neighbourhood within which a school has to be established by the Committee authorized by the State Government, shall be as under -*

(a) in respect of children in classes I-V, a school shall be established in habitation which has no school within a distance of 1.0 Km. and has population of at least 300;

(b) in respect of children in classes VI-VIII, a school shall be established in habitation which has no school within a distance of 3.0 km. and has population of at least 800.

Explanation: *For the purposes of this rule the expression "Committee authorized by the State Government" shall mean the Committee established under section-10 or section-10 A, as the case may be, of the Uttar Pradesh Basic Education Act, 1972.*

(2) For children from such areas where it is not possible to provide school within the radius of neighbourhood specified under sub-rule (1), the State Government shall make adequate arrangements, such as free transportation, residential facilities etc. in relaxation of the provisions specified under sub-rule (1).

(3) The local authority i.e. Gram Panchayat/Nagar Nigam/Nagar Palika/Nagar Panchayat as the case may be shall identify a neighbourhood school where children can be admitted and make such information public for each habitation within its jurisdiction."

10. It is also essential to notice that in exercise of power under section 35, the Central Government has issued a National Education Policy 2020, hereinafter referred to as 'NEP 2020' prescribing for various measures to be taken in the interest of the children and for improving the infrastructure etc. of the basic schools, to give effect to the mandate of the Act as well as the constitutional mandate cast upon the government. It is also essential to notice that after the issuance of the National Education Policy, various Government Orders have been issued, forming committees for implementation of the guidelines issued in the NEP 2020.

11. The learned Additional Advocate General Sri Anuj Kudesia has also placed before this Court the minutes of conference of Chief Secretaries held on various occasions, wherein, the intent to implement the NEP 2020 was reiterated with further directions to take adequate steps. He also places on record material to demonstrate that in furtherance of the said steps, pilot project has been undertaken by the State of U.P. in the district of Gautam Buddh Nagar. It is also brought on record that the guidelines with regard to the consolidation of schools have been undertaken.

12. In the light of the said, statutory provisions quoted herein above, I proceed to record the respective arguments raised by the parties, in support of their challenge and in support of the defense by the State.

13. Dr. L. P. Misra appearing on behalf of the petitioner, argues that in terms of the

mandate of Section 6 of the Act, the duty is cast upon the appropriate government/local authority to establish within such area or limits of neighbourhood, as may be prescribed, a school, within a period of three years from the commencement of the Act. He argues that the Kerala High Court, while dealing with the mandate of Section 6 of the Act, had held that for the purposes of classification, the respective class in which the students is to study, is to be taken as a criteria and not the school as a whole, as has been done by means of the Government Order. Extensive reliance is placed by him on the judgment of the Kerala High Court, in the case of the ***Kerala Aided L.P and U.P. School, Managers Association vs. State of Kerala; W.P. (C) No.19008 of 2013 (A) decided on 17.12.2015.*** He further draws my attention to the word 'neighbourhood' as used in Rule 4(a) of the U.P. Rules to argue that in terms of the prescription which is in the form of Rules made by the State Government, it is a duty to establish a school in habitation which has no school within a distance of one kilometre and has a population of at least 300. Similar duty is cast upon the State Government in respect of children who are studying in class sixth to eight to establish a school within a distance of three kilometres and has a population of 800. He, thus, argues that in terms of Article 21-A, which itself includes the phrase *as may be prescribed* 'which are in the form of Act enacted by the Central Government and the Rules framed by the Central Government as well as the State Government', it is incumbent to establish a school within a distance of one kilometre, where the population of habitation is 300. He further argues that on one hand, the State Government is yet to take steps to fulfil the mandate cast upon it by virtue of Article 21-A, the RTE Act as well as the State Rules, on the other hand, the impugned Policy decision, wipes away the schools which are already established and are existing leading to a lot of inconvenience to the children, who would now have to attend the paired school which is at a distance of more than one kilometre, which according to him, is bad in law. It is specifically emphasised by Dr. L. P. Misra that Article 21-A, on its plain reading would include, *the manner* as laid down under Article 21-A which has to be read as a whole.

14. Sri Gaurav Mehrotra, Advocate, appearing on behalf of the petitioner in Writ-C No. 6292 of 2025 also draws my attention to the mandate of Article 21-A, which he argues, is in furtherance of the directive principles of State Policy. He also draws my attention to Article 51-A of the Constitution, which prescribes for the fundamental duties. Article 51-A (k) is quoted herein below:

"51-A. Fundamental duties *- It shall be the duty of every citizen of India—*

(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

15. He further argues that the executive instructions, impugned in the present writ petition, particularly Annexure no.1, is neither a Government Order, nor comes within the definition of law as prescribed under Article 13, particularly as, it seeks to take away the rights which are guaranteed under Article 21-A, the same being a part of Chapter III. He argues that it is clearly well settled that, the fundamental rights, in the present case guaranteed by Article 21-A, cannot be amended except in accordance with law and certainly not through the executive instructions as is being done.

16. To buttress his submission that Article 21-A, is being violated, he argues that in view of the paring of the school, the same would result in closure of the schools in which, the students are studying at present and, thus they would have to attend the schools which are at a distance of more than one kilometre, which according to him, is contrary to the rights conferred upon the children under Article 21-A, read in conjunction with the Rules framed by the State particularly Rule 4(1)(a) of the U.P. Rules. The judgments relied upon by the parties shall be dealt subsequently.

17. Controverting the arguments of the petitioner, as recorded above, Sri Anuj Kudesia,

the learned Additional Advocate General argues that the entire case, in challenging the executive instructions, which according to him is a Government Order is misplaced as no such action is being taken so as to deny the rights as are guaranteed under Article 21-A, read with the mandate of RTE Act. He argues that in terms of the intent of the Central Government as expressed in the NEP 2020, which included, action for paring in consolidation of the schools to optimise the use of human resources and other resources, the present government order has been issued. He further argues that even in terms of the prayers made, the only challenge to the Government Order is to that part of the order, which prescribes for paring of the schools. He argues that even after the paring, the State Government is bound to ensure that free and compulsory education is provided to all children including the petitioners herein for which requisite directions have been issued. He further argues that although the RTE Act is confined to children aged between six to fourteen, considering the necessity that is arising, steps are being taken by the State Government for providing educational and infrastructural requirements for pre-school education and the schools, which become vacant on account of paring will be used for the said purpose, which is also in furtherance of the aim of the State Government to promote education across all age groups.

18. He draws my attention to a chart filed to argue that as many as fifty eight schools have zero students and thus, the infrastructure is not being used adequately. He also draws my attention to the chart, to argue that the student strength in various school is skewed and to rectify the said, the present government order has been issued. He also argues that on the strength of the Rules of business to argue that the Additional Chief Secretary is well empowered under the Rules to issue the Government Order and thus, the argument of the petitioner that Annexure no.1 is a mere executive instructions and not a Government Order, is liable to be rejected according to him.

19. In short, he submits that the argument of the petitioner are ill founded inasmuch as even after the issuance of Annexure no.1 & 2, the rights conferred by the virtue of Article 21-A and the RTE Act, are not adversely effected. He also argues that in fact, the executive instructions are nothing but steps in furtherance of the NEP 2020 which itself has been issued in exercise of the power conferred upon the Central Government by virtue of Section 35 of RTE Act. He thus, argues that the State Government has taken a policy decision for optimizing its resources and for taking steps for better education and modern facilities is to be provided for the children to ensure that the State Government is able to take steps for enforcement of its duties as are prescribed under the Act and the Rules framed thereunder. He argues that in terms of the Constitution and the Act, although a duty is cast upon the Government and the local authority to ensure and provide free and compulsory education, the said objective would not be met properly if, the education provided is not of utmost quality, which is being aimed by the State Government. He draws my attention to the various provisions of the Government Order which are in the nature of providing better and modern facilities to the students. In paring the schools, which are according to him, are steps in furtherance of improving the quality of education apart from fulfilling the mandate cast upon the Government.

20. He lastly argues that the petitioners could not demonstrate by any verified data that the implementation of the policy of pairing would in effect result in negating the right which are vested by virtue of Article 21-A of the Constitution. He also argues that it is well and truly established that a policy decision, cannot be set aside unless it is alleged and established that there is a malafide or arbitrariness on the part of the State Government, which according to him are utterly missing in the pleadings or even in the argument raised by the petitioners. He thus, submits that the petitions are liable to be dismissed.

21. Shri Sandeep Dixit, learned Senior Advocate who appears for respondent no.2 argues and draws my attention to the provisions of Section 2(n) of RTE Act to argue that the

definition of "School" referred to the RTE Act includes private schools also apart from the government schools which are affected by the policy in question and thus, in terms of the mandate of Section 12, the rights as vested in the children are not going to be adversely affected.

22. He also draws my attention to the mandate of Rule 4(2) of U.P. Rules to argue that the Rules itself carve out an exception to Rule 4(1) keeping in view the requirements that may be felt in the future and a further duty is cast upon the State Government to make adequate free transportation, etc., for the furtherance of the object of the Act and in the present petition, either in the petition or in the arguments, nothing has been argued or established to suggest that the State Government is shirking from its responsibilities.

23. He argues that in the light of the mandate of Rule 4(2) of the U.P. Rules, it cannot be argued that Rule 4(1)(a) is so sacrosanct that not following the same literally would lead to a conclusion that the State Government is shying away from its responsibilities to comply with the obligations cast upon the Government under the Act and the Rules framed thereunder.

24. He argues that out of the total 3521 schools, only 246 schools are sought to be paired and in fact, orders have been passed only in respect of 210 schools which is a minuscule percentage. He argues that the argument with regard to the distance of 1 km in the light of mandate of Rule 4(1)(a) is flawed and liable to be outrightly rejected keeping in view the geographical constraints as well as the other administrative and financial constraints that may be faced by the State Government/Local Authorities in implementation of the mandate cast upon them for which Rule 4(2) provides for adequate safeguards and measures.

25. In the light of the said, it is argued that the writ petition, based upon the pleadings, is liable to be dismissed.

26. Coming to the judgments cited by both the parties:

27. Learned counsel for the petitioners have relied upon a judgment of the Rajasthan High Court passed in ***S.B. Civil Writ Petition No.8990 of 2016 (Jule Khan Bai & Anr. v. The State of Rajasthan and Ors.) decided on 20.07.2019*** to argue that a similar point with regard to the distance as specified in Rule 4(1) of the U.P. Rules was also under consideration. It is argued that the High Court after considering the mandate of Article 21A of the Constitution, the RTE Act and the Rules framed thereunder had set aside an order of merger passed by the Government of Rajasthan. Reliance is also placed upon Para 7 and Para 12 of the said judgment, which read as under:

"7. Indisputably, the right to education is basic human right, essential for empowerment and development of an individual and the society as a whole. In the first instance, by way of Article 45, a duty was casted upon the States to make endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory d compulsory education for all children until they complete the age of 14 years. Later, by way of Constitution (Eighty-Sixth Amendment) Act, 2002 ("the Amendment Act, 2002"), the Article 45 was substituted in terms that the State shall endeavour to provide early childhood care and education for all children until they complete the age of 6 years. But, at the same time, vide Amendment Act, 2002, the Right to Education was recognized as fundamental right by inserting Article 21A in the part III of the Constitution, which reads as under:

"21A. Right to education. The State shall provide free and compulsory education all children of the age of six to fourteen years in such manner as the State may, by law, determine."

12. In the result, the writ petition is allowed. The order impugned issued by the Joint Secretary, Elementary Education, Government of Rajasthan, directing merger of

the Government Primary School, Rikhiyani in Government Upper Primary School, Sagoroliya, is quashed. Needless to say that while restoring the Government Primary School, Rikhiyani, the respondents shall ensure that the children of the age 6 to 14 years of village Rikhiyani are imparted free education upto class VIII, as mandated by the provisions of RTE Act. No order as to costs."

28. A perusal of the said judgment reveals that in terms of the policy issued by the State of Rajasthan, it was alleged by the petitioners before the Rajasthan High Court that after the division of the revenue village, a new revenue village was created and thus, the order of merger of a primary school in the same revenue village was contrary to the policy decision. It was also stated that the school in which the institution in question was merged was situated at a distance of 8 km from the revenue village. The Court also considered the mandate of Article 21A of the Constitution as well as the mandate of Section 6 of RTE Act and finding that the distance of 8 km for the child aged about 6 to 14 years was ex facie violative of the provisions of Section 6 of the RTE Act, set aside the same. The pleadings in the present case as well as the grounds for challenge in the present case were neither pleaded nor adverted to, as such, the said judgment does not lay down any precedent in respect of arguments raised here.

29. The next judgment cited by learned counsel for the petitioners a judgment of the Rajasthan High Court in ***S.B. Civil Writ Petition No.353 of 2015 (Smt. Meera Jha v. The State of Raj. & Ors.)*** decided on ***18.02.2015*** wherein a similar issue was under consideration and the Court after considering the order of merger of schools, dismissed the writ petition, however, the said judgment admittedly was passed without taking into consideration the mandate of Article 21A of the Constitution, the provisions of the RTE Act and the arguments raised before this Court were neither raised before the Rajasthan High Court nor were considered, as such, has no precedential value.

30. Reliance is also placed upon an interim order passed by a Division of the High Court of Uttarakhand at Nainital in ***Writ Petition (PIL) No.39 of 2020 (Ganesh Chandra Upadhyay v. State of Uttarakhand and Ors.)*** dated ***18.03.2020*** wherein it was argued that school in question was temporarily attached to a nearby school which was as a distance of 4 km. The Court considering the mandate of the RTE Act and Rule 4 framed by the State Government entertained the writ petition and has stayed the order during the pendency of the petition.

31. The said being an interlocutory order does not lay down any ratio and as such, cannot be considered for deciding the issues as raised before this Court.

32. Learned counsel for the petitioners has also placed reliance on the judgment of the Supreme Court in the case of ***Union of India v. Naveen Jindal and Anr.; (2004) 2 SCC 510*** with emphasis on Paras 28 to 31, which are as under:

"28. Before we proceed further, it is necessary to deal with the question, whether Flag Code is "law"? Flag Code concededly contains the executive instructions of the Central Government. It is stated that the Ministry of Home Affairs, which is competent to issue the instructions contained in the Flag Code and all matters relating thereto are one of the items of business allocated to the said Ministry by the President under the Government of India (Allocation of Business) Rules, 1961 framed in terms of Article 77 of the Constitution of India. The question, however, is as to whether the said executive instruction is "law" within the meaning of Article 13 of the Constitution of India. Article 13(3)(a) of the Constitution of India reads thus:

"13.(3)(a) 'law' includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

29. A bare perusal of the said provision would clearly go to show that

executive instructions would not fall within the aforementioned category. Such executive instructions may have the force of law for some other purposes; as for example those instructions which are issued as a supplement to the legislative power in terms of clause (1) of Article 77 of the Constitution of India. The necessity as regards determination of the said question has arisen as Parliament has not chosen to enact a statute which would confer at least a statutory right upon a citizen of India to fly the National Flag. An executive instruction issued by the appellant herein can any time be replaced by another set of executive instructions and thus deprive Indian citizens from flying National Flag. Furthermore, such a question will also arise in the event if it be held that right to fly the National Flag is a fundamental or a natural right within the meaning of Article 19 of the Constitution of India; as for the purpose of regulating the exercise of right of freedom guaranteed under Articles 19(1)(a) to (e) and (g) a law must be made.

30. In Kharak Singh v. State of U.P. [AIR 1963 SC 1295 : (1963) 2 Cri LJ 329] this Court held: (AIR p. 1299, para 5)

"Though learned counsel for the respondent started by attempting such a justification by invoking Section 12 of the Indian Police Act he gave this up and conceded that the regulations contained in Chapter XX had no such statutory basis but were merely executive or departmental instructions framed for the guidance of the police officers. They would not therefore be 'a law' which the State is entitled to make under the relevant clauses (2) to (6) of Article 19 in order to regulate or curtail fundamental rights guaranteed by the several sub-clauses of Article 19(1), nor would the same be 'a procedure established by law' within Article 21. The position therefore is that if the action of the police which is the arm of the executive of the State is found to infringe any of the freedoms guaranteed to the petitioner the petitioner would be entitled to the relief of mandamus which he seeks, to restrain the State from taking action under the regulations."

31. To the same effect are the decisions of this Court in State of M.P. v. Thakur Bharat Singh [AIR 1967 SC 1170] and Bijoe Emmanuel v. State of Kerala [(1986) 3 SCC 615]."

33. In the light of the said observations, it is proposed to be argued that before the Supreme Court also it was argued and was upheld that 'Flag Code' neither being a 'Government Order' nor 'law' as prescribed under Article 13 of the Constitution, cannot supersede the constitutional provisions particularly Part III, which is also the case of the petitioners herein against the impugned orders.

34. Similar reliance is based upon the judgment of the Supreme Court in the case of ***Bijoe Emmanuel and Ors. v. State of Kerala and Ors.; (1986) 3 SCC 615*** with emphasis on Paras 9 & 16, which are quoted herein below:

"9. Article 19(1)(a) of the Constitution guarantees to all citizens freedom of speech and expression, but Article 19(2) provides that nothing in Article 19(1)(a) shall prevent a State from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. Article 25(1) guarantees to all persons freedom of conscience and the right freely to profess, practise and propagate religion, subject to order, morality and health and to the other provisions of Part III of the Constitution. Now, we have to examine whether the ban imposed by the Kerala education authorities against silence when the National Anthem is sung on pain of expulsion from the school is consistent with the rights guaranteed by Articles 19(1)(a) and 25 of the Constitution.

16. We have referred to Article 19(1)(a) which guarantees to all citizens freedom of speech and expression and to Article

19(2) which provides that nothing in Article 19(1)(a) shall prevent a State from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by Article 19(1)(a) in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. The law is now well settled that any law which be made under clauses (2) to (6) of Article 19 to regulate the exercise of the right to the freedoms guaranteed by Article 19(1)(a) to (e) and (g) must be 'a law' having statutory force and not a mere executive or departmental instruction. In Kharak Singh v. State of U.P. [AIR 1963 SC 1295, 1299 : (1964) 1 SCR 332] the question arose whether a police regulation which was a mere departmental instruction, having no statutory basis could be said to be a law for the purpose of Article 19(2) to (6). The Constitution Bench answered the question in the negative and said:

"Though learned counsel for the respondent started by attempting such a justification by invoking Section 12 of the Indian Police Act he gave this up and conceded that the regulations contained in Chapter XX had no such statutory basis but were merely executive or departmental instructions framed for the guidance of the police officers. They would not therefore be 'a law' which the State is entitled to make under the relevant clauses (2) to (6) of Article 19 in order to regulate or curtail fundamental rights guaranteed by the several sub-clauses of Article 19(1), nor would the same be 'a procedure established by law' within Article 21. The position therefore is that if the action of the police which is the arm of the executive of the State is found to infringe any of the freedoms guaranteed to the petitioner the petitioner would be entitled to the relief of mandamus which he seeks, to restrain the State from taking action under the regulations."

35. The said paragraphs are cited again to buttress the submission that the executive instructions cannot override the Constitution/statutory provisions.

36. Shri Gaurav Mehrotra, learned counsel for the petitioners has also cited and argued that the State is under obligation to provide school to the children in the neighbourhood as per the mandate of Rule 4 & Rule 6 of the State Rules, which mandates the need for setting up school within the distance of 1 km. Reliance is also placed in that regard in the case of ***Jule Khan Bai (supra).***

37. Reliance is also placed on the judgment of the Supreme Court in the case of ***B.N. Nagarajan and Ors. v. State of Mysore and Ors.; AIR 1966 SC 1942*** with emphasis on Para 5, which is quoted herein below:

"5. It would be convenient to deal with this argument at this stage. Mr Nambiar contends that the words "shall be as set forth in the rules of recruitment of such service specially made in that behalf" clearly show that till the rules are made in that behalf no recruitment can be made to any service. We are unable to accept this contention. First it is not obligatory under proviso to Article 309 to make rules of recruitment, etc., before a service can be constituted or a post created or filled. This is not to say that it is not desirable that ordinarily rules should be made on all matters which are susceptible of being embodied in rules. Secondly, the State Government has executive power, in relation to all matters with respect to which the Legislature of the State has power, to make laws. It follows from this that the State Government will have executive power in respect of List II, Entry 41, State Public Services. It was settled by this Court in Ram Jawava Kapur v. State of Punjab [(1955) 2 SCR 225] that it is not necessary that there must be a law already in existence before the executive is enabled to function and that the powers of the executive are limited merely to the carrying out of these laws. We see nothing in the terms of Article 309 of the Constitution which abridges the power of the executive to act under Article 162 of the Constitution without a law. It is hardly necessary to mention that if there is a statutory rule or an act on the matter, the executive must abide by that act or rule and it cannot in exercise of the executive power under

Article 162 of the Constitution ignore or act contrary to that rule or act."

38. Reliance is also placed upon the judgment of the Supreme Court in the case of ***Delhi Development Authority and Anr. v. Joint Action Committee, Allottee of SFS Flats and Ors.; (2008) 2 SCC 672*** to argue that executive order cannot bypass the fundamental rights and a policy decision is not beyond scope of judicial review.

39. Reliance is also placed upon the judgment of the Kerala High Court in the case of ***Kerala Aided L.P. & U.P. School (supra)*** to argue that the Kerala High Court had held that the prescriptions contained with regard to pupil teacher ratio have to be scrupulously followed and have to be interpreted to be *class* wise and not *school* wise, whereas the impugned policy is based upon considering the pairing of the institution on school wise basis and not class wise basis.

40. The said judgment would be of no avail as the issue before the Kerala High Court was with regard to the appointment of teachers in consonance with the prescriptions contained in schedule appended to the RTE Act which was interpreted to mean that the said ratio has to be class wise and not school wise.

41. The State, on the other hand, places extensive reliance on the Division Bench judgment of the Odisha High Court in the case of ***State of Odisha & Ors. v. School Managing Committee of Amaramunda Government Primary School (W.A. No.417 of 2021)*** decided on ***29.10.2024*** wherein the Single Judge of the Odisha High Court had set aside the similar provision where the school was being established at a distance of more than 1 km, however, the appellate Court set aside the said order. Specific reliance is placed upon Paras 67, 68 & 73 of the said judgment.

42. In respect of the said judgment, learned counsel for the petitioners argue that the said judgment cannot be considered as a precedent in the facts of the present case as admittedly learned Single Judge had, on the basis of personal knowledge and placing reliance on Google Maps, recorded finding of fact that the distance in between the merged schools were more than 1 km, which was found to be incorrect and thus, the appellate Court had intervened.

43. The State has also placed reliance upon the judgment of the Supreme Court in the case of ***Shamsher Singh v. State of Punjab and Anr.; (1974) 2 SCC 831*** with emphasis on Paras 28, 29 & 48, which are quoted herein below, to argue that the decision in question is a Government Order:

"28. Under the Cabinet system of Government as embodied in our Constitution the Governor is the constitutional or formal head of the State and he exercises all his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion.

29. The executive power is generally described as the residue which does not fall within the legislative or judicial power. But executive power may also partake of legislative or judicial actions. All powers and functions of the President except his legislative powers as for example in Article 123 viz. ordinance making power and all powers and functions of the Governor except his legislative power as for example in Article 213 being ordinance making powers are executive powers of the Union vested in the President under Article 53(1) in one case and are executive powers of the State vested in the Governor under Article 154(1) in the other case. Clause (2) or clause (3) of Article 77 is not limited in its operation to the executive action of the Government of India under clause (1) of Article 77. Similarly, clause (2) or clause (3) of Article 166 is not limited in its operation to the executive action of the Government of the State under clause (1) of Article 166. The expression "Business of the Government of India" in clause (3) of Article

77, and the expression "Business of the Government of the State" in clause (3) of Article 166 includes all executive business.

48. The President as well as the Governor is the constitutional or formal head. The President as well as the Governor exercises his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers, save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion. Wherever the Constitution requires the satisfaction of the President or the Governor for the exercise by the President or the Governor of any power or function, the satisfaction required by the Constitution is not the personal satisfaction of the President or Governor but the satisfaction of the President or Governor in the constitutional sense in the Cabinet system of Government, that is, satisfaction of his Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions. The decision of any Minister or officer under Rules of Business made under any of these two Articles 77(3) and 166(3) is the decision of the President or the Governor respectively. These articles did not provide for any delegation. Therefore, the decision of a Minister or officer under the Rules of Business is the decision of the President or the Governor."

44. In the backdrop of the arguments rendered in between the parties, Shri L.P. Mishra, learned counsel for the petitioners, during the course of the hearing argued that even if the order impugned contained in Annexure â€" 1 is held to be a Government Order, still the same needs to be struck down as admittedly a Government Order cannot supersede the fundamental rights and does not qualify to be a law as prescribed under Article 13 of the Constitution.

45. Considering the rival arguments and the pleadings as well as the judgments referred above, the points that emerge for determination are:

(1) whether the Annexure — 1 & Annexure — 2, the policy decisions of the State for pairing and merging the school, offend Article 21A of the Constitution or any provisions of the RTE Act and the Rules framed by the State Government thereunder ?

(2) whether the decision of the State Government is manifestly arbitrary requiring the setting aside of the same on account of violation of the rights of the children guaranteed under Article 21A of the Constitution read with RTE Act and the Rules framed thereunder ?

(3) whether the impugned Government Orders, not being the law as prescribed under Article 13 of the Constitution, have to be struck down on that account, as argued ?

46. Considering the said points that primarily emerge for consideration by this Court, it is essential to keep in mind fairly well settled position that scope for judicial review of policy decisions is very limited and is available only if it is demonstrated that any fundamental rights are adversely affected or is manifestly arbitrary or tainted with malafides. Reference can be drawn from the judgment of the Supreme Court in the case of ***State of Maharashtra & Anr. v. Lok Shikshan Sanstha & Ors.; (1971) 2 SCC 410,*** Para 9, which is as under:

"9. Before we deal with the above contentions advanced before us on behalf of both sides, it is necessary to state that the High Court in the judgment under attack has made certain observations regarding what according to it should be the policy adopted by the educational authorities in the matter of permitting the starting of a new school or of an additional school in a particular locality or area. It is enough to state that the High Court has thoroughly misunderstood the nature of the jurisdiction that was exercised by it when dealing with the claims of the two writ petitioners that their applications had not been wrongly rejected by the educational authorities. So long as there is no violation of any

fundamental rights and if the principles of natural justice are not offended, it was not for the High Court to lay down the policy that should be adopted by the educational authorities in the matter of granting permission for starting schools. The question of policy is essentially for the State and such policy will depend upon an overall assessment and summary of the requirements of residents of a particular locality and other categories of persons for whom it is essential to provide facilities for education. If the overall assessment is arrived at after a proper classification on a reasonable basis, it is not for the courts to interfere with the policy leading up to such assessment."

47. Similarly, in the case of ***Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh Kumar Seth Etc.; (1984) 4 SCC 27,*** the Supreme Court has held as under:

"16. In our opinion, the aforesaid approach made by the High Court is wholly incorrect and fallacious. The Court cannot sit in judgment over the wisdom of the policy evolved by the Legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The Legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution. None of these vitiating factors are shown to exist in the present case and hence there was no scope at all for the High Court to invalidate the provision contained in clause (3) of Regulation 104 as ultra vires on the grounds of its being in excess of the regulation-making power conferred on the Board. Equally untenable, in our opinion, is the next and last ground by the High Court for striking down clause (3) of Regulation 104 as unreasonable, namely, that it is in the nature of a bye-law and is ultra vires on the ground of its being an unreasonable provision. It is clear from the scheme of the Act and more particularly. Sections 18, 19 and 34 that the Legislature has laid down in broad terms its policy to provide for the establishment of a State Board and Divisional Boards to regulate matters pertaining to secondary and higher secondary education in the State and it has authorised the State Government in the first instance and subsequently the Board to enunciate the details for carrying into effect the purposes of the Act by framing regulations. It is a common legislative practice that the Legislature may choose to lay down only the general policy and leave to its delegate to make detailed provisions for carrying into effect the said policy and effectuate the purposes of the statute by framing rules/regulations which are in the nature of subordinate legislation. Section 3(39) of the Bombay General clauses Act, 1904, which defines the expression "rule" states: "Rule shall mean a rule made in exercise of the power under any enactment and shall include any regulation made under a rule or under any enactment". It is important to notice that a distinct power of making bye-laws has been conferred by the Act on the State Board under Section 38. The Legislature has thus maintained in the statute in question a clear distinction between "bye-laws" and "regulations". The bye-laws to be framed under Section 38 are to relate only to procedural matters concerning the holding of meetings of the State Board, Divisional Boards and the Committee, the quorum required, etc. More important matters affecting the rights of parties and laying down the manner in which the provisions of the Act are to be carried into effect have been reserved

to be provided for by regulations made under Section 36. The Legislature, while enacting Sections 36 and 38, must be assumed to have been fully aware of the niceties of the legal position governing the distinction between rules/regulations properly so called and bye-laws. When the statute contains a clear indication that the distinct regulation-making power conferred under Section 36 was not intended as a power merely to frame bye-laws, it is not open to the Court to ignore the same and treat the regulations made under Section 36 as mere bye-laws in order to bring them within the scope of justiciability by applying the test of reasonableness."

48. Similarly, the Supreme Court in the case of ***Narmada Bachao Andolan v. Union of India & Ors.; (2000) 10 SCC 664,*** has emphasized that the Court should not transgress into the field of policy decision, although it is the duty of the Court to see that the decision does not violate any law or any fundamental rights except to the extent permissible under the Constitution.

49. Similarly, the Supreme Court in the case of ***Delhi Development Authority (supra),*** broadly laid down the grounds on which a policy decision can be interfered through a judicial review only if it is unconstitutional.

"65. Broadly, a policy decision is subject to judicial review on the following grounds:

(a) if it is unconstitutional;

(b) if it is dehors the provisions of the Act and the regulations;

(c) if the delegatee has acted beyond its power of delegation;

(d) if the executive policy is contrary to the statutory or a larger policy."

50. Keeping in view the narrow scope of judicial review, the Court is to see whether the orders impugned violate any right guaranteed under 21A of the Constitution or not ?

51. With regard to the question whether Annexure — 1, the order impugned, is a Government Order or not will not be of much importance as the said order is in furtherance to the National Education Policy, 2020, which has been issued in exercise of powers under Section 35 and provides for efficient resourcing and effective governance through school complexes and clusters in Para 7, which is quoted herein below:

"7. Efficient Resourcing and Effective Governance through School Complexes/Clusters

7.1. While the establishment of primary schools in every habitation across the country-driven by the Sarva Shiksha Abhiyan (SSA), now subsumed under the Samagra Shiksha Scheme and other important efforts across the States - has helped to ensure near-universal access to primary schools, it has also led to the development of numerous very small schools. According to U-DISE 2016-17 data, nearly 28% of India's public primary schools and 14.8% of India's upper primary schools have less than 30 students. The average number of students per grade in the elementary schooling system (primary and upper primary, i.e., Grades 1-8) is about 14, with a notable proportion having below 6; during the year 2016-17, there were 1,08,017 single-teacher schools, the majority of them (85743) being primary schools serving Grades 1-5.

7.2. These small school sizes have rendered it economically suboptimal and operationally complex to run good schools, in terms of deployment of teachers as well as the provision of critical physical resources. Teachers often teach multiple grades at a time, and teach multiple subjects, including subjects in which they may have no prior background; key areas such as music, arts, and sports are too often simply not taught; and physical resources, such as lab and sports equipment

and library books, are simply not available across schools.

7.3. The isolation of small schools also has a negative effect on education and the teaching-learning process. Teachers function best in communities and teams, and so do students. Small schools also present a systemic challenge for governance and management. The geographical dispersion, challenging access conditions, and the very large numbers of schools make it difficult to reach all schools equally. Administrative structures have not been aligned with the increases in the number of school or with the unified structure of the Samagra Shiksha Scheme."

52. In terms of the said policy decision, a decision has been taken through the impugned orders, Annexure — 1 which is nothing but an action in furtherance to the National Education Policy, 2020. Interestingly, there is no challenge to the National Education Policy, 2020 in the present case. The Annexure — 1 and Annexure — 2 only being an action in furtherance of National Education Policy, 2020 cannot be subjected to judicial review in the absence of there being any challenge to the foundation which is National Education Policy, 2020, which authorizes and prescribes for consolidation of small schools which have been rendered economically suboptimal and operationally complex to run and are posing a systematic challenge to governance and management and thus, on that count itself, the writ petition is liable to be dismissed.

53. Considering the arguments it is to be seen, whether simply by pairing of schools it can be presumed that the same would result in violation of Article 21A of the Constitution, the same again merits rejection as on a plain reading of Section 21A, the mandate is to provide free and compulsory education to the children in between the age of six and fourteen years in such manner as the State may by law determine. The mandate of Article 21A of Constitution cannot be presumed to be decided to hold that the free and compulsory education to the children in between the age of six and fourteen years have to be provided by the State within a distance of 1 km, as is being argued. Even if, for the sake of argument, it is accepted that the manner as prescribed and written under Article 21A of the Constitution would include the rules merely because there is some infraction of the Rule as framed by the State, which can be termed *in the said manner* as used under Article 21A, the same *ipso facto* would not result in violation of Article 21A of the Constitution, thus, the argument that merely because the distance of the educational institutions after pairing is given effect to, would result in the school being established at a distance of more than 1 km and thus, would result in violation of rights conferred under Article 21A of the Constitution, merits rejection and is accordingly rejected.

54. Considering the mandate of the Rules framed in exercise of powers conferred upon the State by the RTE Act being rule 4(1), which have been framed in exercise of powers conferred under Section 38 of the RTE Act and are the foundation for the entire argument as raised by the petitioners, needs to be interpreted by this Court.

55. On the one hand, the petitioners have argued that in terms of the mandate cast under Rule 4(1)(a), it is incumbent for the State Government to establish school in respect of children from Class 1 to 5 in the habitation where there is no school within a distance of 1 km and the habitation having a population of at least 300.

56. On the literal interpretation of the said Rule as proposed to be argued by the petitioners, what transpires is that in every habitation of 300, a school has to be established within 1 km of there being 300 inhabitants. In fact, it has also been argued by Dr. L.P. Mishra, learned counsel appearing for the petitioners, that the 300 inhabitants would mean 300 persons and would not necessarily mean 300 children, thus, even if there is one child, a school has to be established.

57. Whereas, on the other hand, as per the State, the duty to establish school within 1 km

has to be interpreted in a manner that the same does not become absolutely unworkable and in the present case, the distances ranges from 1 km to approx. 2 — 2.5 km.

58. If the literal construction of the Rule is to be followed, the same would result in absolute absurdity as the Rules are applicable throughout the State of Uttar Pradesh from rural areas to semi urban areas and to urban areas where there are limitations of availability of the land and other resources; in fact the approximate population of the State is 24 crore and if the arguments of petitioner are to be accepted that for every 300 inhabitants one school should be available at a distance of 1 km, the State will have to provide for about 8 lakh schools; clearly a literal interpretation of Rule 4(1)(a) would render the entire rule to an absurdity, thus, the said Rule is to be interpreted adopting the principles of interpretation so as to make the Rule workable and not a dead letter. *A purposive interpretation* of the Rule is required which mandates that the same must be construed in a manner that advances the object and purpose for which it was enacted.

59. The adoption of literal interpretation, as sought to be canvassed by the petitioner, is further liable to be rejected in view of the provisions contained in Rule 4(2) which in fact, cast a further obligation on the State for providing transportation, etc., where the schools cannot be established in the neighbourhood as specified in Rule 4(1). Thus, the State while framing the Rule itself had taken into consideration that it may not always be possible to establish within the neighbourhood as defined under Section 4(1).

60. Although not cited or argued by either of the parties, Rule 4(3) has some seminal importance as the local authority has been saddled with a responsibility of identifying a neighbourhood school where the children can be admitted and such information is to be made public; the school as referred would be a school as defined under Section 2(n) of the RTE Act, thus, on a conjoint reading of Rule 4(1), Rule 4(2) and Rule 4(3), what transpires is that it is the duty of the State Government to establish schools as far as practical at a distance which is closest to the habitation, and if the same is not possible, to ensure that the children are provided facilities such as transportation etc., and for identification of a school which may be available in the neighbourhood in case the State Government cannot establish school, which would also include school other than the school established by the Government as is the mandate of Section 2(n) read with Section 12 of the RTE Act. Any other interpretation of Rule 4(1) would do violation to the statutory rule keeping in view the considerations of a large State such as the State of Uttar Pradesh with regard to availability of land and other resources and keeping in view the fiscal health of the State concerned.

61. Thus, on a complete analysis of Rule 4(1), Rule 4(2) & Rule 4(3) read conjointly, it is clear that the State Government is bound to establish school on the nearest possible place from a habitation and in the absence thereof, it is obliged to ensure transportation facilities etc., and in conjunction thereof identifying the neighbourhood schools, whether they are government schools or otherwise.

62. It is essential to add a word with regard to the National Education Policy, 2020 which includes various issues including the pairing of the schools. The policy in itself is laudible and prescriptions have been given with regard to the steps to be taken to ensure that education is imparted at the initial level to all the citizens and the children of the country. There being no material to the contrary in respect of guidelines of pairing in the policy of 2020, which can be said to be arbitrary or in violation of Article 21A of the Constitution and finding the impugned Government Orders to be in furtherance of the said objective, no interference is called for.

63. Present petitions lack merit and are accordingly ***dismissed***.

64. The obligation cast upon the State shall be scrupulously followed and the State is

bound to ensure that no child is left out because of any action taken by the State.

65. It will be the duty of the Basic Shiksha Adhikari to ensure that no child is left out for being educated and all steps as are necessary shall be taken as and when required in accordance with law.

(2025) 7 ILRA 561
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.07.2025
BEFORE

THE HON'BLE MANISH KUMAR NIGAM, J.

Writ C No. 8282 of 2025

B.M. Education And Social Institute ...Petitioner

Versus

State Of U.P. ...Respondent

Counsel for the Petitioner:
Punit Kumar Gupta

Counsel for the Respondent:
C.S.C.

Issue for Consideration

Matter pertains to challenge against the order dated 21.1.2025 passed by the District Judge, Banda, rejecting the application under S. 5A of the Societies Registration Act, 1860 declining permission to the society to execute a sale deed of its property on the ground that original resolution and accounts of the society were not placed before the court below.

Headnotes

Societies Registration Act, 1860 – S.5A – Sale of immovable property of society – Requirement of prior permission of District Judge - Maintainability – Necessary parties – Members of the Society - Application filed without impleading members of the society not maintainable.

Held: Purpose of obtaining permission under S. 5A before the sale of property is to protect interest of members of the society - Application was filed without impleading necessary parties i.e. members of the society, it was not maintainable - District Judge rightly rejected it - Liberty granted to the petitioner to move a fresh application after impleading all necessary parties, and if such application is made, the District Judge shall consider and decide it in accordance with law, expeditiously, and uninfluenced by earlier findings.**(Paras 6,7,8,9,10)** (E-7)

Case Law Cited

Kisan Education Society v. District Judge and others, ***2008 (10) ADJ 524;*** *Raj Nath Misra v. The Xth Addl. District Judge, Varanasi and others,* ***1991 ALJ 486****.*

List of Acts

Societies Registration Act, 1860

List of Keywords

Society - Property - Permission - interest of members - Members of the Society – Maintainability - Impleading Necessary Parties.

Case Arising From

Order dated 21.1.2025 passed by the District Judge, Banda under Section 5A of the Societies Registration Act, 1860.

Appearances for Parties

Advs. for the Petitioner: Punit Kumar Gupta
Advs. for the Respondent: C.S.C.

(Delivered by Hon'ble Manish Kumar Nigam, J.)

1. Heard learned counsel for the parties and perused the record.

2. This petition has been filed challenging the order dated 21.1.2025 passed by District Judge, Banda rejecting the application under Section 5A of the Society Registration Act, 1860 declining the permission to the society to execute a sale deed of the property of the society on the ground that original resolution and accounts of the society were not placed before the court below.

3. Learned counsel for the petitioner has submitted that the District Judge, Banda has erred in law in rejecting the application filed by the society under Section 5A of the Society Registration Act, 1807. There was no objection on behalf of any of the members of the society to the sale of the property of the society and therefore the application filed by the Society ought to have been allowed by the District Judge, Banda.

4. From perusal of the record, it is apparent that application was filed impleading public at large as opposite party in the said application without impleading the members of the society who may probably have any objections to the sale of the property of the society. This Court in case of **Kisan Education Society Vs. District Judge and others** reported in **2008 (10) ADJ 524** has held in paragraph 6 and 7 of the judgment which are quoted as under :

"6. Section 5-A of the Societies Registration Act, as applicable in the State of U.P. provides-

5. Property of society how vested- *The property, movable and immovable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title.*

7. The aforesaid provision has been incorporated in order to protect the properties of the Society and the interest of its members. This Section places an embargo on the Society from transferring its immovable properties without previous permission from the District Judge. The idea behind this is that the Court should be satisfied that the transfer of the property of the Society was being made in the larger interest of the Society and not to the detriment of the members of the Society."

5. Similar view was taken in case **of Raj Nath Misra Vs. The Xth Addl. District Judge, Varanasi and others** reported in **1991 ALJ 486**, wherein the Court has held:

"The said Section has been enacted for putting a check on the society from transferring its immovable properties without the previous approval of the Court so that the Court may also look into it and give permission only if the Court is satisfied that the transfer of any immovable property is being made in the interest of the society and not in the manner which is detrimental to the interest of the society. This is the entire scope of said section. The only objection which is contemplated within the purview of the aforesaid Section is that the governing body of the society is proposing to transfer its immovable property which is contrary to the interest of the institution. It is not within the scope of the said Section to examine as to whether the society has ceased to be the owner of its immovable property."

6. In view of law laid down by this Court, the purpose of obtaining permission before the sale of property of the society by the society is to protect the interest of members of the Society. In the present case, the application was filed without impleading any member of the society and therefore, it cannot said that there was no objection on behalf of the members of the society as contended by learned counsel for

the petitioner as they are not impeaded as opposite party in the aforesaid proceedings.

7. Learned counsel for the petitioner contended that records of the Society was already placed but the same were not looked into by the District Judge.

8. In my view, since the application filed by the petitioner is itself not maintainable for want of necessary parties i.e. members of the society, the court below has not committed any error in rejecting the application filed by the petitioner.

9. At this stage, learned counsel for the petitioner has submitted that the petitioner be given liberty to move a fresh application after impleading all the necessary parties i.e. members of the society for redressal of their grievance as the members of the society were not made party in the earlier proceedings. It has also been prayed by learned counsel for the petitioner that society may be permitted to file evidence in support of that application.

10. In veiw of the prayer made by the petitioner, the writ petition is disposed of with liberty to the petitioner to move an appropriate application for redressal of his grievance after impleading all the necessary parties i.e. members of the society. In case, such an application is moved by the petitioner, the same shall be considered and decided by the District Judge, Banda, in accordance with law, expeditiously after ensuring service upon all the respondents and after giving opportunity of hearing to the parties concerned provided that there is no other legal impediment without being influenced by finding recorded in order dated 21.1.2025 passed by the District Judge earlier.

(2025) 7 ILRA 563
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 16.07.2025
BEFORE

THE HON'BLE ARINDAM SINHA, J.
THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Writ C No. 18408 of 2025

Ishak ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Akhilesh Kumar Singh

Counsel for the Respondents:
C.S.C.

ISSUE FOR CONSIDERATION

Whether a writ petition under Article 226 of the Constitution is maintainable for protection of life and property of a senior citizen under Rule 21 of the U.P. Maintenance and Welfare of Parents and Senior Citizens Rules, 2014, where the grievance relates to obstruction by neighbours in construction of a gate on his private property.

HEADNOTE

A. Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sections 4, 5, 20, 21 - U.P. Maintenance and Welfare of Parents and Senior Citizens Rules, 2014, Rule 21 - Scope - Jurisdiction of Maintenance Tribunal – Dispute regarding obstruction by private neighbours in

construction of a gate by senior citizen – Held, the Act of 2007 and the Rules framed thereunder are intended to secure maintenance and welfare of senior citizens by children or relatives and do not extend to adjudication of disputes concerning ownership or enjoyment of property against third parties – Proper remedy lies before civil court.

The petitioner, a senior citizen, approached the High Court under Article 226 seeking direction upon the police authorities to protect his life and property under Rule 21 of the 2014 Rules, alleging that his neighbours were obstructing construction of a gate on his property. It was contended that Sections 20 and 21 of the 2007 Act, read with Rule 21, obliged the State to ensure protection and welfare of senior citizens against any person causing distress to them.

Held: **The grievance of obstruction in construction on private property does not attract provisions of the 2007 Act or the 2014 Rules. The maintenance tribunals constituted under the Act have been empowered to entertain applications relating to claims for maintenance against children, or in case of a childless senior citizen against his relative who would inherit the property. There is no conferment of jurisdiction to adjudicate questions relating to property and ownership rights particularly where there is a dispute with third parties. Disputes in that regard are to be adjudicated before the Civil Courts of competent jurisdiction. Petitioner failed to show any infringement of legal right under the Act. Writ petition dismissed, with liberty to seek appropriate remedy as available in law. (Para 8, 9, 10)** (E-5)

CASE LAW CITED

— None referred.

LIST of Acts

Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sections 4, 5, 20, 21). U.P. Maintenance and Welfare of Parents and Senior Citizens Rules, 2014, Rule 21).

KEYWORDS

Senior Citizens – Maintenance – Welfare – Property Dispute – Jurisdiction of Maintenance Tribunal – Civil Remedy – Obstruction in Construction of gate – Article 226.

CASE ARISING FROM

APPEARANCES

For the Petitioner : Akhilesh Kumar Singh

For the Respondents : Mr. Gireesh Chandra Tiwari, Standing Counsel

JUDGMENT

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

1. Mr. Firdaus Ahmad, learned advocate holding brief of Mr. Akhilesh Kumar Singh appears on behalf of petitioner and submits, his client seeks direction upon respondent no.2 to ensure his life and property as is said respondent's duty under Rule 21 of UP Maintenance and Welfare of Parents and Senior Citizens Rules, 20141. On query he submits, his client wants to construct gate on his property but private respondent nos.2 to 5

are obstructing and holding out threats. His client is a senior citizen.

2. Mr. Gireesh Chandra Tiwari, learned advocate, Standing Counsel appears on behalf of State.

3. On observations made, Mr. Ahmad, in addition to referring to Rule 21 of the Rules 2014, as aforesaid, also relies on Sections 20 and 21 of the Maintenance and Welfare of Parents and Senior Citizens Act, 20072 to submit that the provisions come to aid of senior citizens, not only against children and relatives but also against any one who causes distress to them.

4. We find petitioner is complaining of obstruction for constructing gate on his property. It is not a situation where petitioner requires discharge of duty by the administrative authority under Rule 21, to come to his aid. The rules have been promulgated for carrying out objects of the Act 2007. Section 20 the Act 2007 relates to medical support for senior citizens and Section 21 is in regard to measures for publicity, awareness, etc., for welfare of the senior citizens. The said provisions are in no manner relevant to the controversy involved in the present case.

5. The statement of objects and reasons given in the Act clearly say that due to withering of the joint family system, a large number of elderly are not being looked after by their family, as a consequence many older persons are forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. Taking into consideration that aging has become a major social challenge and there is need to give more attention to the care and protection for the older persons, the Act 2007 was enacted to provide for more effective provisions for maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution and for matters connected therewith or incidental thereto.

6. Section 4 of the Act 2007 provides for entitlement for maintenance to a senior citizen including parent who is unable to maintain himself from his own earning and out of the property owned by him against one or more of its children not being a minor and in the case of childless senior citizen against his relatives who would inherit his property.

7. In terms of Section 5 of the Act 2007, an application for maintenance under Section 4 may be made by a senior citizen or a parent, or, if he is incapable by any other person or organization authorized by him. The application is to be made before the Maintenance Tribunal constituted under Section 7. The Tribunal may also take cognizance *suo motu.*

8. The Act 2007 is primarily aimed to provide for ensuring effective provisions for maintenance and welfare of parents and senior citizens. The maintenance tribunals constituted under the Act have been empowered to entertain applications relating to claims for maintenance against children, or in case of a childless senior citizen against his relative who would inherit the property. There is no conferment of jurisdiction to adjudicate questions relating to property and ownership rights particularly where there is a dispute with third parties. Disputes in this regard are to be adjudicated before the Civil Courts of competent jurisdiction.

9. The present being a case where the grievance sought to be raised by the

petitioner is regarding alleged obstruction by his neighbour in the construction of a gate on the petitioner's property, the same in our view would not come within the purview of provisions of the Act 2007.

10. Petitioner has not been able to demonstrate a legal right infringed as available under the Act 2007. The writ petition is dismissed. The dismissal will not prevent him from finding his remedy as may be available in law.

(2025) 7 ILRA 566
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 04.07.2025
BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE PRAVEEN KUMAR GIRI, J.

Writ C No. 18575 of 2025

Dcb Bank Ltd. ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Shivang

Counsel for the Respondents:
C.S.C.

Issue for Consideration

Matter pertains to whether the *Additional District Magistrate/District Magistrate* has the power to entertain and execute a fresh application under S.14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, when the borrower has illegally trespassed upon the secured asset after possession had been taken by the secured creditor.

Headnotes

The Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) – S.14 – Power of the District Magistrate/Additional District Magistrate to entertain fresh application - Enforcement of Security Interest - Continuing Validity of Orders under Section 14 – Once an order under S.14 is passed, it remains valid until the entire outstanding amount is recovered, unless recalled, reviewed, or set aside by a competent authority - **Re-exercise of Power by District Magistrate - No prohibition under the SARFAESI Act against the District Magistrate or his delegate re-exercising powers to execute orders under S.14.**

Held: Court is "at consensus ad idem of the view taken by the Bombay High Court" regarding the power of the District Magistrate/Additional District Magistrate to entertain a fresh application under S.14 when the borrower illegally trespasses over the secured asset - Additional District Magistrate is directed to grant an opportunity of hearing to the petitioner and pass a fresh order on the fresh application under S.14 of the SARFAESI Act, in accordance with law - entire exercise shall be completed within two months by the respondent concerned - Petition was disposed of. **(Paras 3,4,5)** (E-7)

Case Law Cited

The Nashik Merchant Co-operative Bank (Multi State Scheduled Bank) v. The District Collector, Jalna & Ors., Bombay High Court; Bank of India v. M/s Maharana Electricals Pvt. Ltd. & Ors., Bombay High Court; Kotak Mahindra Bank Ltd. & Anr. v. State of Maharashtra & Ors., Bombay High Court; M/s Sri Balaji Centrifugal Castings v. M/s ICICI Bank Ltd., **(2018) SCC Online Hyd 368***; A.A. Kumaran v. Superintendent of Police, Thrissur & Ors., Kerala High Court,* **WP (C) No. 5875 of 2022***; Smt. Mishri Bai w/o Late Shri Nirmal Kumar & Ors. v. Shubh Laxmi Mahila Cooperative Bank Ltd.*

List of Acts

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

List of Keywords

SARFAESI Act – Fresh application – Restoration of possession – Secured asset – Illegal trespass – Rule of law – Enforcement of security interest – Re-exercise of power – Possession of secured asset.

Case Arising From

Writ Petition under Article 226 of the Constitution of India seeking a writ of mandamus directing Respondents No. 2 and 3 to restore possession of the secured asset being *"House No. 4, Block H, Sector 02 & 03, Tyagi Market, Village Loni, Pargana & Tehsil-Loni, Ghaziabad, Uttar Pradesh-201102"* to the authorized officer of the petitioner bank as envisaged under S.14 of the SARFAESI Act, 2002.

Appearances for Parties

For the Petitioner:

Shri Aniket Raj, Advocate (as per record; cause title mentions Shivang)

For the Respondents:

Shri Dilip Kumar Kesharwani, Additional Chief Standing Counsel (C.S.C.)

(Delivered by Hon'ble Shekhar B. Saraf, J.)

&

(Hon'ble Praveen Kumar Giri, J.)

1. Heard Sri Aniket Raj, learned counsel for the petitioner and Sri Dilip Kumar Kesharwani, learned Additional Chief Standing Counsel for the State-respondent.

2. This is a writ petition under Article 226 of the Constitution of India wherein the writ petitioner has made the following prayer:

"i) To issue suitable writ, order, orders or direction in the nature of mandamus, directing the Respondents No. 2 and 3 to forthwith restore possession of the secured assets being "House No. 4, Block H, Sector 02 & 03, Tyagi Market, Village Loni, Pargana & Tehsil -Loni, Ghaziabad, Uttar Pradesh-201102" to the authorized officer of the Petitioner as envisaged under Section 14 of Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002."

3. Learned counsel for the petitioner has relied upon the judgments of Bombay High Court in **The Nashik Merchant Co-operative Bank (Multi State Scheduled Bank) Versus The District Collector, Jalna and others,** decided on February 28, 2023, **Bank of India Versus M/s Maharana Electricals Pvt. Ltd and others,** decided on September 09, 2024 and **Kotak Mahindra Bank Ltd. and another Versus State of Maharashtra and others,** decided on June 30, 2023, to buttress the argument that the Additional District Magistrate/District Magistrate has the power to execute/entertain a fresh application under Section 14 of Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 when the borrower in an illegal manner trespasses over the said property. He relies upon paragraph nos. 17, 18, 19 and 20 of the case of **The Nashik Merchant Co-operative Bank** (supra) which read as under:

*"17. Mr S.V. Adwant, learned advocate appearing for the petitioner also places reliance on the Judgment delivered by the Division Bench of High Court of Andhra Pradesh in case of **M/s. Sri. Balaji Centrifugal Castings Vs. M/s ICICI Bank Limited reported in (2018) SCC Online Hyd 368,** wherein, it is held that there is no bar to secured creditor maintaining more than single application under section 14(1) of the SARFAESI Act for securing the possession of the very same secured assets.*

*18. The similar view has been reiterated by the High Court of Kerala in the matter of **A.A. Kumaran Vs. Superintendent of Police, Thrissur and Ors, in WP (C) No. 5875 of 2022 dated 18-05-2022,** wherein the court observed thus :-*

21. Further, the present case reveals an instance where a person has taken the law into his hands by force and thereafter seeks the benefit of legal principles. If such actions are permitted to be perpetrated, rule of law will suffer immeasurably. The purport of the Act is to divest the owner of a property in the enforcement of security interest and initiate measures to wipe off the liability by resorting to measures including sale. If measures taken for dispossession and consequent sale are inter-meddled by persons like respondents 4 and 5, it

would result in a mockery of the rule of law. The will of the people reflected through the legislation will be seriously infringed, if the court remains a mute spectator.

19. The High Court of Madhya Pradesh in the matter of ***Smt. Mishri Bai W/o Late Shri Nirmal Kumar and others Vs.Shubh Laxmi Mahila Cooperative Bank Ltd.,*** *has observed thus :-*

The secured creditor is not required to approach again and again before the District Magistrate or DRT for recovery of the amount, once the order has been passed under section 14 of SARFAESI Act until unless the entire outstanding amount is recovered, the order remains valid, therefore, the Tehsildar has not committed any error of law or he does not functus officio unless the entire outstanding amount is recovered by the bank. It is settled law that any order passed bny the Authority, quash- judicial authority or the Court or Tribunal remains valid unless reviewed, recalled, cancelled by the same authority or court or set aside by the Higher Court/Tribunal, thus the order passed by District Magistrate is still valid and Respondent No.1/Bank is free to take steps thereafter until the entire outstanding amount is cleared.

20. The uncontroverted factual aspects in present matter depict that the respondent Nos. 5 and 6 have devised novel, unimaginable and unsustainable modus operandi to defeat ends of justice and fair play. It is not only the matter of physical altercation, but would tantamount to assault on the law and statute. They have the audacity to overrule the law. The growing tendency of overpowering the law cannot be tolerated. In peculiar facts and circumstances of this case, we are inclined to exercise powers under Article 226 of the Constitution of India to protect the rule of law and deprecate rising tendency of using criminal force against recovery proceeding undertaken by the financial institutions in terms of SARFAESI Act. We do not find any prohibition under the scheme of the SARFAESI Act that comes in the way of District Magistrate or his delegate to re- exercise the powers to execute the orders passed under section 14."

4. Upon considering the issue at hand, we are at consensus ad idem of the view taken by the Bombay High Court, and accordingly, direct the Additional District Magistrate to grant him opportunity of hearing to the petitioner and pass a fresh order on the fresh application under Section 14 of SARFAESI Act filed before him, in accordance with law. The entire exercise should be completed within a period of two months by the respondent concerned.

5. With the above direction, the writ petition is disposed of.

(2025) 7 ILRA 568
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 29.07.2025
BEFORE

THE HON'BLE ROHIT RANJAN AGARWAL, J.

Writ C No. 20244 of 2025

Talimuddin & Ors. ...Petitioners
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Anup Kumar Srivastava

Counsel for the Respondents:
C.S.C.

Issue for Consideration

Matter pertains to challenge of the order passed by the Joint Magistrate/Sub-Divisional Officer, expunging the name of *Sahadat Hussain*, grandfather of the petitioners, from *Jamman-8* where he was recorded as hereditary tenant. Issue for consideration was whether hereditary tenancy rights could accrue in land used for growing *water chestnut (singhara)* under the provisions of the U.P. Tenancy Act, 1939.

Headnotes

U.P. Tenancy Act, 1939 - SS. 29 , 30 - Hereditary tenancy rights - Land covered

by water and used for growing *singhara* - no hereditary tenancy right could accrue - Under S. 30 of the U.P. Tenancy Act, 1939, hereditary rights shall not accrue in land covered by water and used for the purpose of growing singhara or other produce - Decree declaring hereditary tenancy in such land is void being against the statute - Revenue Entry - Long standing entry in Jamman-8 - Based on void decree - liable to be expunged - Once the declaratory decree of 1966 was found contrary to S. 30, entry based thereon could not be allowed to continue in Jamman-8 -

Held: The decree dated 15.06.1966 declaring *Sahadat Hussain* as a hereditary tenant was void, as it was passed under SS. 59/61 of the U.P. Tenancy Act, 1939 in violation of S. 30, which bars hereditary rights in land used for growing *water chestnut (singhara)* - Suit was found *collusive* and the decree contrary to law - Long-standing entry in *Jamman-8* based on such void decree was rightly expunged by the authority - No hereditary tenancy could accrue - Petition dismissed - No order as to costs. (Paras 24 to 31) (E-7)

Case Law Cited

No specific case law cited in judgment.

List of Acts

U.P. Tenancy Act, 1939; Code of Civil Procedure, 1908; U.P. Land Revenue Act, 1901

List of Keywords

Hereditary tenant - water chestnut (singhara) - Jamman-8 - collusive decree - declaratory suit - expunging entry - non-fertile land - hereditary rights shall not accrue - Revenue entry - Expunging name - Void decree.

Case Arising From

Order dated 17.05.2025 passed by Joint Magistrate/Sub-Divisional Officer, Sadar, Gorakhpur in Case No. 17731 of 2025 (Yogi Kamal Nath vs. State) under S. 59 of the U.P. Tenancy Act, 1939.

Appearances for Parties

Advs. for the Petitioners:

Sri Anup Kumar Srivastava

Advs. for the Respondents:

C.S.C.

Sri Manish Goyal, Additional Advocate General

Dr. Rajeshwar Tripathi, Chief Standing Counsel

Sri Satya Prakash Rai, for private respondent no. 3 (Yogi Kamal Nath)

(Delivered by Hon'ble Rohit Ranjan Agarwal, J.)

1. Heard Sri Anup Kumar Srivastava, learned counsel for the petitioners, Sri Manish Goyal, learned Additional Advocate General along with Dr. Rajeshwar Tripathi, learned Chief Standing Counsel for respondent nos. 1 and 2 and Sri Satya Prakash Rai, learned counsel for private respondent no. 3.

2. This writ petition has been filed assailing the order dated 17.05.2025 passed by Joint Magistrate/Sub Divisional Officer, Sadar, Gorakhpur in Case No. 17731 of 2025 (Yogi Kamal Nath vs. State).

3. Petitioners, who are 22 in number, claim that Arazi No. 466/3 was recorded in the name of one Smt. Harnam Kunwari widow of Jaidev Prasad (as Zamindar) and Arazi No. 446/3/2 in Khata No. 88 was recorded in name of Gorakhnath Mandir through its Sarvakar. Grandfather of petitioners namely Sahadat Hussain had purchased land bearing Arazi No. 446/3M measuring 22 decimal (3 kadi) from Smt. Harnam Kunwari. Another registered sale-deed dated 13.12.1962 was registered and grandfather of petitioners exchanged land of Arazi No. 446, measuring 50 decimal 7 kadi; Arazi No. 446K, measuring 33 decimal 8 kadi; Arazi No. 445M measuring 6 decimal 5 kadi; Arazi No. 531 measuring 26 decimal 6 kadi, total area 1 acre 17 decimal 6 kadi from Gorakhnath Mandir through its Sarvakar Baba Naumi Nath Chela Mahant Baba Varam Nath in place of Arazi No. 68 measuring 33 decimal.

4. Sahadat Hussain fied a suit under Section 59/61 of U.P. Tenancy Act, 1939 *(hereinafter called as "the Act of 1939")* against Smt. Harnam Kunwari. The suit was decreed on 15.06.1966 on the basis of

admission by defendant Harnam Kunwari. Sahadat Hussain was held to be hereditary tenant of plot in suit. According to petitioners, Sahadat Hussain filed another case under Section 59/61 of the Act of 1939 against Baba Naumi Nath and the said suit was also decreed on 25.06.1966. Name of grandfather of petitioners was recorded as hereditary tenant in Khatauni in Jamman-8. According to petitioners, the land in dispute is non fertile and used for growing water chestnut *(singhara)*.

5. Petitioners claim to be in possession of the same. On 06.08.2024, an application was moved by private respondent no. 3, Yogi Kamal Nath, Sarvakar of Gorakhnath Temple before respondent no. 2 stating that Arazi No. 446/3/1 measuring 0.137 hectare mentioned in Khata No. 88 is recorded in the name of Mahant Yogi Aditya Nath Khewat Khata No. 1 and Arazi No. 446/3/2 measuring 0.090 hectare mentioned in Khata No. 74 in name of Alok Kumar Srivastava and name of grandfather of petitioners has been wrongly mentioned in Jamman-8 and requested for deleting their name and correcting the Khatauni (record of rights).

6. The application was registered as proceedings under Section 59 of the Act of 1939. A report was called by Sub Divisional Officer which was submitted through Tehsildar, Sadar, Gorakhpur recommending to cancel the name of grandfather of petitioners in Jamman-8. On 24.10.2024, an order was passed expunging the name from revenue records. The said order was challenged through Writ-C No. 40941 of 2024 and co-ordinate Bench of this Court on 10.01.2025 while allowing the writ petition set aside the order and directed respondent authorities to initiate proper proceedings in accordance with law and decide the same. The order dated 10.01.2025 is extracted hereasunder:-

"1. Heard learned counsel for the petitioner, Shri Manish Goyal, learned Additional Advocate General assisted by learned Chief Standing Counsel for the State-respondents and perused the record.

2. This petition has been filed for the following relief:

"I. issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 24.10.2024 passed by the Joint Magistrate/ UP Ziladhikari, Sadar, Gorakhpur in Case No. 37779 of 2024 (Computerized Case No. T202405310337779) (Yogi Kamal Nath Versus State) under Section 59 U.P. Kastkari Act, 1939."

3. Contention of the learned counsel for the petitioner is that an order under Section 59 of U.P. Tenancy Act, 1939 has been passed against the petitioner without even issuing notices to the petitioner and a long standing revenue entry in favour of the petitioner has been expunged by an ex-parte order.

4. Learned Additional Advocate General though opposed the writ petition but could not demonstrate that the order was passed after hearing the opposite party who was recorded tenure holder.

5. Since, the order has been passed without issuing notices to the petitioner in violation to the principles of natural justice, no useful purpose would be served in keeping this petition pending.

6. In view of the above, the order dated 24.10.2024 passed by respondent no. 2 i.e. Joint Magistrate/ UP Ziladhikari, Sadar, Gorakhpur in Case No. 37779 of 2024, is set aside.

7. However, liberty is provided to the respondents to initiate proper proceedings in accordance with law and decide the same after providing opportunity of hearing to the petitioners and reasonable opportunity to lead evidence in support of their case.

8. Accordingly, the writ petition stands allowed. "

7. Post remand, respondent no. 3 moved an application on 13.01.2025 for deciding the matter afresh. Notices were issued on 21.01.2025 and report of Sub-Registrar was called. On 23.01.2025, Sub-Registrar, Sadar,

Gorakhpur submitted his report that alleged sale-deed dated 13.12.1962 was not registered and is not available on record. The respondent no. 2 on the same date found that no document was produced by petitioners in respect of agricultural work being done over the land in dispute, thus, proceeded to expunge the name from Jamman-8 where the name was recorded as hereditary tenant.

8. Petitioners challenged the order dated 23.01.2025 before this Court through Writ-C No. 9372 of 2025 and by order dated 03.04.2025, the writ petition was allowed and order dated 23.01.2025 was set aside by co-ordinate Bench and the matter was remanded back to respondent no. 2 to decide afresh. Further, opportunity was given to petitioners to file their objections on or before 15.04.2025 along with evidence in support of their claim. The order dated 03.04.2025 is extracted hereasunder:-

"1. Heard learned counsel for the parties and perused the record.

2. This writ petition has been filed seeking following relief :-

"issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 23.1.2025 passed by the Joint Magistrate/ UP Ziladhikari, Sadar, Gorakhpur in Case No. RST/37779/2024 T202405310337779) (Computerized Case No. (Yogi Kamal Nath Versus State) under section 59 U.P. Kastkari Act 1939.

issue a writ, order or direction in the nature of mandamus directing the respondent No.2 not to dispossess the petitioners from the land in dispute in pursuance of the impugned order dated 23.1.2025"

3. Contention of learned counsel for the petitioners is that earlier order was passed on 24.10.2024 by respondent No.2 under Section 59 of the U.P. Tenancy Act, 1939. The said order was ex parte and, therefore, the petitioners filed writ petition no.40941 of 2024, which was allowed and the matter was remanded to decide afresh after providing opportunity of hearing and reasonable opportunity to lead evidence in support of their case by order dated 10.1.2025. The order dated 10.1.2025 is quoted as under :-

"1. Heard learned counsel for the petitioner, Shri Manish Goyal, learned Additional Advocate General assisted by learned Chief Standing Counsel for the State-respondents and perused the record.

2. This petition has been filed for the following relief:

"I. issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 24.10.2024 passed by the Joint Magistrate/ UP Ziladhikari, Sadar, Gorakhpur in Case No. 37779 of 2024 (Computerized Case No. T202405310337779) (Yogi Kamal Nath Versus State) under Section 59 U.P. Kastkari Act, 1939."

3. Contention of the learned counsel for the petitioner is that an order under Section 59 of U.P. Tenancy Act, 1939 has been passed against the petitioner without even issuing notices to the petitioner and a long standing revenue entry in favour of the petitioner has been expunged by an ex-parte order.

4. Learned Additional Advocate General though opposed the writ petition but could not demonstrate that the order was passed after hearing the opposite party who was recorded tenure holder.

5. Since, the order has been passed without issuing notices to the petitioner in violation to the principles of natural justice, no useful purpose would be served in keeping this petition pending.

6. In view of the above, the order dated 24.10.2024 passed by respondent no. 2 i.e. Joint Magistrate/ UP Ziladhikari, Sadar, Gorakhpur in Case No. 37779 of 2024, is set aside.

7. However, liberty is provided to the respondents to initiate proper proceedings in accordance with law and decide the same after providing opportunity of hearing to the petitioners and reasonable opportunity to lead evidence in support of their case.

8. Accordingly, the writ petition stands allowed. "

4. After the order dated 10.1.2025, it appears that an application was moved by respondent No.3 on 13.1.2025 on which 21.1.2025 date was fixed in the matter. On 21.1.2025, petitioners appeared before respondent No.2 and filed certified copy of the order. On 23.1.2025, two days thereafter, again order has been passed against the petitioners.

5. Contention of learned counsel for the petitioners is that despite a direction given by this Court to provide opportunity of filing an objection as well as reasonable opportunity to lead evidence, the entire proceedings have been concluded within two days.

6. Shri Manish Goel, learned Additional Advocate General has though opposed the prayer but could not deny the fact that the entire proceedings have been concluded within two days.

7. From the facts, as has come before this Court, it is apparent that this order is passed with undue haste and without granting proper opportunity to the petitioner, and therefore, I am of the view that order cannot be sustained and the order dated 23.1.2025 is hereby quashed and the proceedings are remitted to respondent No.2 to decide afresh. It is further provided that petitioners will file their objections on or before 15.4.2025 and will also file evidence in support of their claim. After submission of objections and evidence, proceedings shall be concluded by respondent No.2 after providing opportunity of hearing to all the concerned parties.

8. With these observations, the writ petition stands allowed."

9. It appears that petitioners, thereafter, filed an impleadment application as well as application under Order IX Rule 13 CPC. They also filed their detailed objection along with evidence, such as, Khatauni for Fasli 1415, 1391, 1377 and 1927 and also certified copy of sale-deed dated 12.12.1962 and 13.12.1962 as well as the orders passed under Section 59/61 dated 15.06.1966. By order impugned dated 17.05.2025, respondent no. 2 has cancelled the name of Sahadat Hussain from Jamman-8. Hence, this writ petition.

10. Learned counsel for the petitioners submits that the entries are long standing and the matter has already attained finality between the parties as in proceedings initiated under Section 59/61 both against Harnam Kunwari and Gorakhnath Temple, compromise decree was passed in the year 1966 and since then grandfather of petitioners is recorded as hereditary tenant. According to him, the land is barren and was used for growing water chestnut *(singhara),* thus, respondent no. 2 could not have cancelled the entry which has been already settled through a declaratory suit which cannot be questioned in summary proceedings. In the written argument filed by petitioners, in para no. 6, it has been specifically stated that petitioners were not cultivating the land and it was vacant and the nature of the land is pond, while some part is plain. According to him, application dated 06.08.2024 could not have been entertained and long standing entry should not have been expunged by respondent no. 2 treating it to be an application under Section 33/39 of Land Revenue Act, 1901.

11. Lastly, it was emphasized that once Sahadat Hussain was declared as a hereditary tenant with the land in dispute and a detailed order was passed in the year 1966, the same cannot be challenged and questioned in summary proceedings like this.

12. Sri S.P. Rai, learned counsel appearing for private respondent no. 3, Yogi Kamal Nath opposed the writ petition on the ground that the claim of petitioner itself is barred by provisions of Section 30 of the Act of 1939 as petitioners

claim the land used for growing water chestnut *(singhara)*.

13. According to him, no rights of hereditary tenant would accrue in terms of Section 29. Moreover, explanation to sub-section (3) of Section 4 provides that when a land has remained uncultivated for a period of 7 years, it shall be deemed to have not been previously cultivated. He then submitted that land in question does not belong to petitioners and the entries are standing wrongly for which the application was moved for expunging the name of Sahadat Hussain.

14. The State Counsel submitted that order in question needs no interference on the ground that Sub-Registrar had already inquired into the matter and found that no such sale-deed as claimed of 1962 was ever executed nor is on record. Moreover, the claim is for exchanging the 113.24 decimal land instead of 33 decimal which is highly improbable. According to him, petitioners were given ample opportunity but they have failed to adduce any document to justify their claim over the wrong entry continuing for so long.

15. I have heard respective counsel for the parties and perused the material on record.

16. Before delving into the issue in hand, a cursory glance of some of provisions of the Act of 1939 is necessary for resolving the dispute placed before this Court.

17. Section 3(23) of the Act of 1939 defines "tenant", which is as under:-

" "tenant" means the person by whom rent is, or but for a contract, express or implied, would be payable and, except when the contrary intention appears, includes a sub-tenant, but does not include a mortgagee of proprietary or under-proprietary rights, a grove-holder, a rent-free grantee, a grantee at a favourable rate of rent or, except as otherwise expressly provided by this Act, an under-proprietor, a permanent lessee or a thekedar;"

18. Section 21 which is provided under Chapter III of the Act of 1939 provides for classes of tenants, which are as under:-

"21. Classes of tenants. *- There shall be, for the purposes of this Act, the following classes of tenants, namely:*

(a) permanent tenure-holders,

(b) fixed-rate tenants,

(c)tenants holding on special terms in Oudh,

(d) ex-proprietary tenants,

(e) occupancy tenants,

(f) hereditary tenants,

(g) non-occupancy tenants."

19. Thus, we see that Act provides for different classes of tenants. In the instant case, the dispute is as to the entry of Sahadat Hussain, grandfather of petitioners as a hereditary tenant in the revenue records. Hereditary tenants have been defined in Section 29 as under:-

"29. Hereditary tenants. *- Every person belonging to one or another of the following classes shall be a hereditary tenant, and subject to any contract which is not contrary to the provisions of Section 4 shall be entitled to all the rights conferred, and be subject to all the liabilities imposed on hereditary tenants by this Act, namely :*

(a) every person who is, at the commencement of this Act, a tenant of land otherwise than as a permanent tenure-holder, a fixed-rate tenant, a tenant holding on special terms in Oudh, an ex-proprietary tenant, an occupancy tenant, or except as otherwise provided in this Act, as a sub-tenant, as a tenant or a tenant of sir,

(b)every person who is, after the commencement of this Act, admitted as a tenant otherwise than as a tenant of sir or as a sub-tenant;

(c)every person who, in accordance with the provisions of this Act, acquires hereditary rights.

[Explanation. - For the purposes of this section, 'sub-tenant' does not include a person who holds land from a relation, dependant or servant of the land-holder, unless such relation, dependent or servant proves to the satisfaction of the Court that he is a genuine tenant of such land and has not been admitted to prevent the accrual of hereditary rights in favour of such person.] [Added by U.P. Act No. 10 of 1947.]"

20. Section 30 provides for the land in which hereditary rights shall not accrue, which is as under:-

"30. Land in which hereditary rights shall not accrue. *— Notwithstanding anything in Section 29, hereditary rights shall not accrue in, —*

(1) grove-land, pasture land, or land covered by water and used for the purpose of growing singhara or other produce;

(2) land used for the casual or occasional cultivation in the bed of a river;

(3) land acquired or held for a public purpose or a work of public utility; and in particular, and without prejudice to the generality of this clause, —

(a) lands at present, or which may, hereafter, be set apart for military encamping grounds;

(b) lands situated within the limits of any cantonment;

(c) lands included within railway or canal boundaries;

(d) lands acquired by a town improvement trust, in accordance with a scheme sanctioned under Section 42 of the United Provinces Town Improvement Act, 1919; or by a municipality for a purpose mentioned in clause (a) or clause (c) of Section 8 of the United Provinces Municipalities Act, 1916;

(e) lands within the boundaries of any Government forests;

(f) municipal trenching grounds;

(g) land held or acquired by educational institutions for purposes of instruction in agriculture;

(4) such tracts of shifting or unstable cultivation as the State Government may specify by notification in the official Gazette;

(5) such areas included in tea estates as the State Government with the previous approval of both Houses of the Legislature, may notify as areas in which, in the interest of the tea industry, hereditary rights should not accrue :

[Provided that, notwithstanding the inclusion of any plot in any notification issued under this clause before the first day of September, 1946, such plot if held by a tenant the aggregate area of whose holding exceeds one-half of an acre, shall be deemed never to have been included in any such notification.

Provided further that if any tenant has been ejected since January 1, 1940, from any plot to which the foregoing proviso applies on grounds other than those on which a hereditary tenant is liable to ejectment, such ejected tenant shall be reinstated in such plot, if he applies to a competent Court within six months from the date of the commencement of the United Provinces Tenancy (Amendment) Act, 1947.] [Added by U.P. Act No. 10 of 1947.]

(6) land transferred by a mortgage to which the provisions of the second paragraph of sub-section (5) of Section 15 of the Agra Tenancy Act, 1926, apply during the period specified in that paragraph;

[(7) The khudkasht of a landlord, permanent tenure-holder or under-proprietor, the local rate payable by whom does not exceed Rupees twenty-five per annum, if such khudkasht is let out when such landlord,

permanent tenure-holder or under-proprietor is in the military, naval or air service of the Government or within three months before the entry in or three months after the cessation, of such service :

Provided that provisions of this clause shall not apply, -

(a) if, at the time such khudkasht is let out, there are several co-sharers in such khudkasht and not all of them are in the service of the Government as aforesaid, unless the co-sharers who are not in such service, belong to one or more of tine following classes, namely, females, minors, lunatics, idiots or persons incapable of cultivation by reason of blindness or physical infirmity; and

(b) beyond the thirtieth day of June next following the expiry of two years after the cessation of such service of landlord, permanent tenure-holder or under-proprietor, as the case may be.

(8) Lands notified by the State Government in accordance with rules to be framed by the State Government for the purpose of tanugya plantation.

Explanation. - For the purposes of this sub-section 'taungya plantation' means the system of afforestation where under the plantation of forest trees according to a scientific system, is done in the initial stages simultaneously with the cultivation of agricultural crop which ceases when the young trees begin to form a canopy and make further cultivation of agricultural crops impossible.] [Inserted by U.P. Act No. 18 of 1942.]"

21. Thus, from the reading of Section 21, 29 and 30, it is clear that though there are various classes of tenants and hereditary tenants having defined in Section 29, but such right shall not accrue in the land mentioned in Section 30, such as, grove-land, pasture land, or land covered by water and used for the purpose of growing singhara or other produce, land used for the casual or occasional cultivation in the bed of a river, land acquired or held for a public purpose or for a work of public utility, such tracts of shifting or unstable cultivation etc.

22. In the instant case, petitioners claim that Sahadat Hussain had filed a declaratory suit no. 64 under Section 59/61 of the Act of 1939 against Smt. Harnam Kunwari for declaring him as hereditary tenant. Annexure-2 to the writ petition is copy of the plaint filed before Assistant Collector, First Class, Gorakhpur. Para 2 of the plaint clearly reveals that Sahadat Hussain was in occupation of pit *(gaddha)* for 14-15 years in which he was growing water chestnut *(singhara)*. Judgment dated 15.06.1966 declaring Sahadat Hussain as hereditary tenant clearly reveals that plot in suit which is in shape of *gaddha* and produces water chestnut *(singhara)* in it, on admission by Harnam Kunwari suit was decreed and plaintiff Sahadat Hussain was declared as hereditary tenant. Judgment dated 15.06.1966 is extracted here-asunder:-

"In the Court of Sri G. Shanker, Assistant Collector, Ist class, Gorakhpur

Suit No. 64 u/s 59/1 of U.P. T. Act Mohalla Purana Gorakhpur, City Gorakhpur

Sahadat Hussain vs Smt Harnam Kunwari

Copy of the Judgment

Plaintiff filed this suit under section 59/61 of U.P. Tenancy Act for declaration that he is a tenant of the plot detailed at the foot of the plaint. He further alleged that he is in possession over this plot in suit which is the shape of Garaha and produces singhara in it. That the trees situated around the land in suit are also in his possession That the defendant is an influential person and the Patwari does not record his name due to his fear hence this suit for declaration.

2. Defndt. Harnam Kunwari turned up and filed Eqbaldava in favour of the plaintiff admitting his case. The plaintiff filed extract of

Khewat 1372 F and Khatauni 1372p in support of his claim and has a examined himself who has affirmed his case on oath.

Order

The suit of the plaintiff is decreed in terms of the Eqbaldava and he is declared hereditary tenant of the plot in suit. Let the papers be corrected accordingly.

Sd.

G. Shanker 15.6.66

(G. Shanker)

Assistant Collector Ist class Gorakhpur 15.6.66

Judgment, signed, dated and pronounced in open court

Sd.

G. Shanker 15.6.66

(G. Shanker)

Assistant Collector Ist class

Gorakhpur 15.6.66"

23. Section 59 provides for declaratory suit by tenant for declaration of right or share, while Section 30 clearly bars that hereditary rights shall not accrue in the land enumerated therein, such as, grove-land, pasture land, or land covered by water and used for the purpose of growing singhara or other produce, notwithstanding anything in Section 29, meaning thereby that hereditary tenancy would not accrue in respect of land on which *singhara* is grown.

24. Thus, the decree of the year 1966 which was passed on the basis of admission by defendant is a nullity as suit was decreed under Section 59/61 against provisions of Section 30. It clearly appears that it was a collusive suit for providing hereditary tenancy to Sahadat Hussain over the land mentioned in Section 30 for which no hereditary right could accrue.

25. It was solely on the basis of judgment of the year 1966 that name of Sahadat Hussain continued in Jamman-8 as hereditary tenant. The decree passed in the year 1966 is totally in contravention of provisions of Section 30 of the Act. Once no such hereditary tenancy right could have accrued in favour of Sahadat Hussain, the entry could not have been continued in Jamman-8.

26. Moreover, it is an admitted case of petitioners that no agricultural work is being done over the land in question. The entire case of petitioners and their grandfather hinges on the fact that land in question is being used for growing water chestnut *(singhara),* thus, no hereditary tenancy right could accrue in their favour and the entry cannot continue. Apart from the fact that declaratory suit was filed by Sahadat Hussain in the year 1966 which was decreed, petitioners have no other case to rely upon the entry standing since then in Jamman-8.

27. Petitioners, post remand, could only place before the authorities the judgment rendered in 1966 and also a copy of sale-deed, which after verification and report of Sub-Registrar was found to be incorrect. The authorities proceeded to reject the recall application filed by petitioners holding that no such hereditary tenancy could be continued over the land marked in Section 30 of the Act.

28. Thus, considering the facts and circumstances of the case, I find that no such declaration could have been made in favour of Sahadat Hussain over the land mentioned in Section 30 of the Act once the case of plaintiff is that land in question was used for growing water chestnut *(singhara)*, decree passed in the year 1966 is void being against the provisions of Section 30.

29. In view of above, I find that no interference is required in the order impugned

dated 17.05.2025 expunging the name of Sahadat Hussain from Jamman-8 as hereditary tenant.

30. Writ petition fails and is hereby dismissed.

31. However, no order as to costs.

(2025) 7 ILRA 577
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 11.07.2025
BEFORE

THE HON'BLE MAHESH CHANDRA TRIPATHI, J.
THE HON'BLE VINOD DIWAKAR, J.

Writ C No. 21802 of 2025

Smt Savita Sharma ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Om Prakash Shukla

Counsel for the Respondents:
Anuj Pratap Singh, C.S.C.

Issue for Consideration
Matter pertains to cancellation of industrial plot allotment by Uttar Pradesh State Industrial Development Authority (UPSIDA) and rejection of petitioner's restoration application on grounds of limitation and non-compliance with lease conditions. Issue for consideration was whether the petitioner, having defaulted in payment and failed to establish industrial activity within the stipulated time, is entitled to restoration of lease and quashing of e-auction proceedings.

Headnotes
Uttar Pradesh State Industrial Development Authority (UPSIDA) - Allotment of Industrial Plot - Cancellation of allotment - Repeated Defaults - Financial Hardship - Restoration of Lease – Equity - Delay and Non-Performance - Public Interest - Industrial Policy Considerations - Equitable indulgence cannot be granted to a party in prolonged breach of contractual and statutory obligations - Restoration after repeated defaults undermines fiscal discipline, transparency, and industrial growth objectives - Principles of Natural Justice - Public Trust Doctrine - Industrial Policy - UPSIDA's action are neither arbitrary nor violative of natural justice; writ jurisdiction cannot be invoked to condone persistent default.

Held: Court is not persuaded to accept the petitioner's explanation of financial hardship and medical exigencies as a valid justification for years of non-compliance with the essential terms of the allotment and lease - A mere expression of willingness to pay outstanding dues after the initiation of e-auction proceedings or subsequent to the cancellation of the allotment cannot obliterate a prolonged and willful failure to adhere to contractual obligations - Even if the restoration application was within one month from the date of service, it cannot absolve substantive and prolonged breaches - Restoring a lease after repeated defaults strikes at the very foundation of fiscal discipline, public interest, and industrial policy objectives - UPSIDA acted lawfully and in public interest - Cancellation of allotment and rejection of restoration are justified – No interference under Article 226 of the Constitution of India - Petition dismissed - No order as to costs. (paras 11 to 22) (E-7)

Case Law Cited
Skyline Contractors Pvt. Ltd. v. State of U.P., **(2008) 8 SCC 265;** Kamla Nehru Memorial Trust and Others v. U.P. State Industrial Development Corporation Limited and Others, **SLP(C) Nos. 31887-88/2017;** M.C. Mehta v. Kamal Nath, **(1997) 1 SCC 388;** Centre for Public Interest Litigation v. Union of India, **(2012) 3 SCC 1**

List of Acts
Constitution of India; U.P. Urban Planning and Development Act, 1973

List of Keywords
Allotment – Lease Cancellation – Restoration Application – Financial Hardship – Industrial Area – UPSIDA – Default – Public Interest –

Fiscal Discipline – Natural Justice – E-auction – Industrial Development – Non-compliance – Judicial Interference – Transparency – Industrial Policy

Case Arising From

Order dated 24.05.2024 cancelling lease of Plot No. E-236, Industrial Area, Karkhiyaon, Phoolpur, Varanasi, and order dated 12.08.2024 rejecting restoration application; challenge under Article 226 seeking quashing of cancellation, restoration of allotment, and cancellation of e-auction notice dated 23.06.2025.

Appearances for Parties

For the Petitioner:

Shri Om Prakash Shukla, Advocate.

For the Respondents:

Shri Anuj Pratap Singh, C.S.C.

Shri Devesh Vikram, Addl. C.S.C. (for State Respondent).

Shri Ambrish Shukla, Counsel for U.P. State Industrial Development Authority (UPSIDA)

(Delivered by Hon'ble Mahesh Chandra Tripathi, J.)

&

(Hon'ble Vinod Diwakar, J.)

1. Heard learned counsel for the petitioner, Shri Devesh Vikram, learned Additional Chief Standing Counsel for State respondent and Shri Ambrish Shukla, learned counsel for U.P. State Industrial Development Authority1.

2. The present writ petition has been filed, *inter alia*, seeking issuance of a writ in the nature of certiorari to quash the impugned order dated 24.05.2024, whereby the petitioner's lease has been cancelled, and to set aside the subsequent order dated 12.08.2024, by which the petitioner's review application dated 03.07.2024, seeking restoration of the allotment, has been rejected. The petitioner further seeks to cancel the scheduled e-auction of the plot in question and prays for a direction to the respondent authorities restraining them from dispossessing the petitioner from Plot No. E-236, ad-measuring 767.32 square meters, situated at Industrial Area Karkhiyaon, Phoolpur, Varanasi.

3. The petitioner was duly allotted the plot in question for the purpose of establishing industrial activities, in accordance with the policies and procedures prescribed by the concerned authorities. Respondent No. 2 – Uttar Pradesh State Industrial Development Authority (UPSIDA) – is a state-level industrial development authority entrusted with the responsibility of promoting and facilitating the development of industries across the State of Uttar Pradesh. As the governing body, UPSIDA exercises control over the allotment, management, and regulation of industrial plots within its notified areas, including the plot allotted to the petitioner.

4. The records reveal that the petitioner was allotted Plot No. E-236, admeasuring 767.32 square meters, situated in the Industrial Area, Karkhiyaon, Phoolpur, Varanasi, by UPSIDA through an allotment letter dated 18.11.2019, for the purpose of establishing a fruit ripening industrial unit. Pursuant to the allotment, the petitioner deposited the earnest money, completed all requisite formalities, and executed a 90-year lease deed on 25.09.2020. Despite taking possession of the plot, the petitioner failed to deposit the balance premium amount of Rs.19,82,912.03/-. She sought multiple extensions, citing financial constraints and health-related issues within her family, and even approached this Hon'ble Court by filing Writ Petition No. 40081 of 2023. The

said writ petition was disposed of on 12.12.2023, granting her liberty to clear the dues within a period of three months.

4.1 However, upon her failure to comply with the said order, the respondent authority cancelled the allotment vide order dated 24.05.2024. Subsequently, the petitioner filed an application dated 03.07.2024 seeking restoration of the plot, which was rejected by the respondent authority on 12.08.2024 on the ground of limitation. The petitioner contends that the cancellation order was served upon her only on 05.06.2024, and therefore, her restoration application was within the prescribed time limit. Despite her repeated requests for restoration and her readiness to pay the outstanding dues along with interest, the respondent authority proceeded to list the plot for e-auction on 11.07.2025 pursuant to the e-auction notice dated 23.06.2025.

4.2 Aggrieved by the said actions, the petitioner has invoked the extraordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India, praying for quashing of the impugned orders dated 24.05.2024, 12.08.2024, and the e-auction notice dated 23.06.2025.

5. Learned counsel for the petitioner contends that the petitioner, despite facing severe financial hardships and family health emergencies, has never acted with any mala fide intent. She continues to remain in possession of the disputed plot, has developed partial infrastructure for industrial purposes, and is ready and willing to clear the outstanding dues along with applicable interest and penalties. It is submitted that the impugned orders are vitiated by procedural irregularities, as the petitioner's application for restoration of the plot dated 03.07.2024 was filed within one month from the date of actual service of the cancellation order, which was received on 05.06.2024.

5.1 It is further argued that UPSIDA failed to consider the petitioner's bona fide conduct and her genuine attempts to comply with the conditions of allotment. Arbitrary cancellation of the plot would defeat the larger object of industrial development for which the allotment was initially made. The learned counsel also submits that the principles of natural justice were not adhered to, and the rejection of the restoration application was mechanical and devoid of proper consideration. Lastly, it is urged that denial of restoration and the initiation of re-allotment through e-auction is unjust, inequitable, and warrants judicial interference, with a prayer for restoration of the allotment in favour of the petitioner.

6. *Per contra,* Shri Ambrish Shukla, learned counsel appearing for UPSIDA, has vehemently opposed the writ petition. He submits that the petitioner was granted a conditional allotment dated 18.11.2019, under which she was required to fulfill all mandatory formalities, including completion of construction, obtaining requisite approvals, and commencement of production, within a stipulated period of two years. Despite repeated reminders and notices dated 07.12.2020, 02.06.2021, 07.12.2021, 14.03.2023, and others, the petitioner neither cleared the outstanding dues amounting to Rs.19,82,912.03/- nor established a functional industrial unit on the allotted plot. Even the extended timeline granted up to 18.05.2023 expired without compliance.

6.1 It is further contended that although the earlier writ petition was

disposed of on 12.12.2023 with a direction to clear all dues within three months, the petitioner failed to adhere to this deadline. Shri Shukla asserts that the restoration application dated 03.07.2024 was not filed within one month from the date of cancellation order (i.e., 24.05.2024) as required, and UPSIDA is not bound by the petitioner's claim regarding the alleged date of service of the cancellation order. In support of his arguments, he has placed reliance on Condition Nos. 09, 11, 15, 20, and 23 of the allotment letter, which are reproduced herein below:

"9. You shall have to get the maps approved within 90 days of taking possession. The formalities to be done in this regard are available on website onlineupside.com.

11. You shall have to start production on the plot within 12.00 months from date of allotment and intimate the corporation of the same.

15. The allotment will be cancelled if and when any one of the following mentioned violations happen and further action after cancellation shall be taken up as mentioned in clause 16 below. a. If you fail to comply to any of the conditions 7-12 above within the time stipulated above, the time duration mentioned being of essence. OR b. If you fail to make payment of Interest anil or premium on or before the due date(s) as mentioned in clause 5 of this letter OR c. If you fail to comply clause 23, 24 and 26 mentioned here in below.

20. You will pay use and occupation charges/lease rent at the rate of Rs. 1/- per Sq.mtr per year during the first thirty years, Rs. 2.5/- per Sq.mtr per year during the next thirty years after expiry of the first thirty years and Rs. 5/- per Sq.mtr per year during the next thirty years after expiry of the first sixty years. Use and occupation charges are payable till the date lease is granted to you whereafter lease rent will have to be paid.

23. You will utilize minimum 40% area of the plot by covering it by roof/ permanent shed within the above specified period failing which the allotment of the plots(s) will be cancelled."

7. Relying on the strict enforcement of the terms of the lease, learned counsel for UPSIDA asserts that the cancellation of the petitioner's allotment is legal, justified, and strictly in accordance with the conditions stipulated in the allotment letter. It is submitted that UPSIDA, being a statutory authority, has an obligation to ensure the optimal utilization of industrial plots, and the prolonged non-compliance by an allottee, despite repeated indulgence and extensions, inevitably warrants cancellation. It is further contended that the fresh e-auction process initiated by the authority is a transparent and lawful mechanism to re-allocate unused industrial land to deserving applicants, thereby promoting industrial growth and public interest. Lastly, it is urged that since the petitioner has failed to fulfill the essential terms and conditions of the allotment agreement as well as the general conditions, the impugned orders have been rightly passed, and the present writ petition is devoid of merit and liable to be dismissed.

8. The primary objectives of UPSIDA are to promote and attract investments within the State of Uttar Pradesh by facilitating industrial growth and

development. The authority is entrusted with the responsibility of developing and maintaining requisite infrastructure, providing incentives, and creating a conducive environment for businesses to establish and expand their operations in the state. In furtherance of these objectives, UPSIDA also endeavours to generate employment opportunities and to support and strengthen the growth of existing industries across Uttar Pradesh.

9. The decision of the Hon'ble Apex Court in ***Skyline Contractors Pvt. Ltd. v. State of U.P*** [2]**.** squarely applies to the facts of the present case. In that matter, despite partial and delayed payments by the allottee, the Hon'ble Supreme Court upheld the cancellation of allotment by NOIDA, holding that unilateral deposits made without prior approval or consent could not bind the authority. Similarly, in the present case, the petitioner neither sought nor obtained any formal extension of time from UPSIDA within the contractual framework. Her delayed restoration applications—though sought to be justified by referring to the alleged date of service—cannot cure or condone years of non-performance and breach of essential terms of allotment.

10. In a recent judgment, the Hon'ble Apex Court in ***Kamla Nehru Memorial Trust and Others v. U.P. State Industrial Development Corporation Limited and Others*** [3] held that, in order to preserve the integrity of the allotment process, allowing deliberate and repeated defaults by an allottee to persist unchecked would undermine the entire framework of land allocation and set a harmful precedent detrimental to public interest. The relevant portion of the judgment is reproduced herein below:—

"25. We may hasten to add at this stage that the dues for the Subject Land, allotted in 2003, remained unpaid despite multiple communications spanning several years. KNMT not only failed to make timely payments but also sought unwarranted concessions, including waiver of interest and rescheduling of dues. This persistent non-compliance establishes KNMT as a chronic defaulter, while the continued attempts to seek waiver evince a deliberate strategy to avoid payment obligations. UPSIDC's action in treating KNMT as a defaulter was, therefore, both justified and necessary to preserve the integrity of the allotment process. Allowing such deliberate defaults to persist unchecked would undermine the entire framework of land allocation and set a detrimental precedent.

1. 26. For the reasons stated, we are satisfied that the cancellation of allotment by UPSIDC is fully justified and in accordance with law.

E. INVOKING THE PUBLIC TRUST DOCTRINE IN THE ALLOCATION OF RESOURCES.

2. 27. The prolonged litigation initiated by KNMT has spanned over fifteen years, unnecessarily burdening the judicial system and impeding the efficient functioning of public authorities. Such protracted disputes highlight the need for more stringent initial evaluation processes to prevent chronic defaults.

3. 28. While we have upheld the cancellation due to KNMT's default, the circumstances reveal systemic concerns in the original allocation process. UPSIDC allotted the Subject Land to KNMT within merely two months of application, raising questions about the thoroughness of the

evaluation. Furthermore, during the pendency of

4. this dispute, UPSIDC demonstrated remarkable alacrity in considering alternative allotments to M/s. Jagdishpur Paper Mills Ltd.

5. 29. We, therefore, consider it necessary to examine whether UPSIDC's procedure for industrial land allotment meets standards of administrative propriety, particularly in light of the Public Trust Doctrine (Doctrine) mandating that public resources be managed with due diligence, fairness, and in conformity with public interest.

6. 30. The Doctrine emanates from the ancient principle that certain resources (seashores, rivers and forests) are so intrinsically important to the public that they cannot be subjected to unrestricted private control. Rooted in Roman law and incorporated into English common law, this Doctrine recognizes that the Sovereign holds specific resources as a trustee for present and future generations. M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388, para 24-25.

7. 31. In the Indian context, the Doctrine has evolved to encompass public resources meant for collective benefit, reflecting the constitutional mandate Under Article 21. As held in Natural Resources Allocation In re, while the Doctrine does not impose an absolute prohibition on transferring public trust property, it subjects such alienation to stringent judicial review to ensure legitimate public purpose and adequate safeguards. Centre for Public Interest Litigation V. Union of India (2012) 3 SCC 1

8. 32. When a substantial tract of industrial land is allocated without a comprehensive evaluation, it raises critical questions about adherence to these principles. The Doctrine requires that allocation decisions be preceded by a thorough assessment of public benefits, beneficiary credentials, and safeguards ensuring continued compliance with stated purposes.

9. 33. The allocation of 125 acres of industrial land to KNMT without a competitive process fundamentally violated the Doctrine, which demands proper procedure and substantive accountability in public resource allocation. UPSIDC ought to have considered verifiable evidence of economic benefits, employment generation potential, environmental sustainability, and alignment with regional development objectives to demonstrate that the decision serves the collective benefit. The failure to adopt transparent mechanisms not only deprived the public exchequer of potential revenue-as evidenced by the substantial appreciation in the value of such a large tract of land-but also created a system where privileged access supersedes equal opportunity. This betrays the fiduciary relationship between the State and its citizens.

34. Having upheld the cancellation due to KNMT's chronic default, we observe that the hasty allotment followed by years of litigation exemplifies systemic deficiencies in the allocation process. This necessitates comprehensive directions to ensure that future allocations uphold principles of transparency and accountability, thereby preventing prolonged disputes while ensuring that public resources genuinely promote

industrial development and economic growth.

F. CONCLUSION AND DIRECTIONS

10. 35. In light of our detailed examination of the contentions raised by the parties, the comprehensive analysis of the factual and legal matrix and the resultant conclusions, we uphold the cancellation of the allotment by UPSIDC."

11. It is an admitted position that the allotment of the plot in question was made in favour of the petitioner on 18.11.2019, subject to specific terms and conditions requiring the establishment and operationalization of an industrial unit within the period stipulated in the lease deed. The lease deed, executed on 25.09.2020, further reaffirmed these obligations. The petitioner was under a contractual as well as statutory obligation to clear all outstanding dues, obtain necessary approvals, undertake construction, and commence industrial operations within the prescribed timeline. However, despite repeated reminders and notices issued by UPSIDA on various occasions, including notices dated 07.12.2020, 02.06.2021, 07.12.2021, 14.03.2023, and others, the petitioner failed to ensure effective compliance. Even after this Court, in Writ Petition No. 40081 of 2023, extended indulgence by its order dated 12.12.2023 granting three months' time to fulfil the lease conditions, the petitioner once again defaulted in meeting the requirements.

12. This Court is not persuaded to accept the petitioner's explanation of financial hardship and medical exigencies as a valid justification for years of non-compliance with the essential terms of the allotment and lease. While the Court is mindful of and sympathetic to the petitioner's personal circumstances, a mere expression of willingness to pay outstanding dues after the initiation of e-auction proceedings or subsequent to the cancellation of the allotment cannot obliterate a prolonged and wilful failure to adhere to contractual obligations. Equity, though an integral facet of the writ jurisdiction, cannot be invoked in favour of a party who has consistently failed to perform its obligations under the allotment and lease conditions.

13. The petitioner's contention that the restoration application was filed within one month from the date of actual service of the cancellation order, even if assumed to be correct, cannot absolve her of the substantive and prolonged breaches that persisted for nearly four years. The cancellation of the allotment was not predicated merely upon any delay in filing the restoration application but was fundamentally based on the petitioner's sustained failure to adhere to the core obligations under the lease. This is not a case where a minor procedural lapse alone resulted in the cancellation; rather, it is one of repeated and substantial non-compliance with essential conditions.

14. There are far reaching consequences of restoring a lease after repeated defaults. The fiscal and administrative policies of the State, particularly in matters concerning the allotment of industrial plots and lease deeds, are anchored in principles of public accountability, efficient utilization of resources, and the promotion of industrial growth. When an allottee repeatedly defaults—especially over a prolonged

period involving multiple violations of lease terms and statutory provisions—restoring such a lease poses significant fiscal, administrative, and public policy challenges.

15. The Uttar Pradesh State Industrial Development Authority (UPSIDA) operates under a financial model designed to recover the cost of infrastructure, fund new development projects, and ensure equitable distribution of industrial plots. Allowing restoration of a lease despite persistent non-payment undermines fiscal discipline and sets a precedent for leniency towards defaulters. This could result in revenue losses, delayed development of industrial infrastructure, financial strain on the authority, and end up in erosion of fiscal discipline.

16. The core objective of entities like UPSIDA is to promote rapid industrialization and economic growth. Land lying idle due to an allottee's prolonged default contradicts this aim. By restoring such leases, the State risks stalling new investments, delaying job creation, and defeating the larger purpose of its industrial policies and this would undermines public and transparency.

17. Successive failures to comply with lease terms also undermine public interest. Permitting continued retention of land by a non-performing allottee deprives deserving applicants of opportunities and slows down industrialization efforts. If such conduct is tolerated through writ jurisdiction, it may erode public confidence in the fairness and transparency of the State's land allocation framework.

18. Restoration of leases after repeated defaults may be viewed as arbitrary or ultra vires, particularly when it contravenes the express terms of the allotment letter or lease deed. The Supreme Court in ***Skyline Contractors Pvt. Ltd. (supra)*** have emphasized that deliberate non-compliance with payment schedules and lease conditions justifies cancellation of allotments. Courts have consistently held that leniency towards such defaulters undermines the integrity of the allotment process and sets a detrimental precedent.

19. A policy of restoring leases after long-term default would create a negative precedent for future allottees to disregard payment schedules and statutory obligations, anticipating eventual concessions. This undermines the deterrent effect of enforcement measures like cancellation and e-auction, weakening the overall governance framework of industrial land allocation.

20. In essence, restoring a lease deed after 14 successive failures to pay dues and violations of statutory provisions is not merely a question of administrative discretion; it strikes at the very foundation of fiscal discipline, public interest, and industrial policy objectives. The UPSIDA has acted in a manner that balances equity with accountability, ensuring that public resources are allocated to genuine entrepreneurs who can contribute to economic development and employment generation. Any contrary approach risks financial losses, delays in industrial growth, and erosion of public trust in the State's administrative fairness.

21. Therefore, having regard to the petitioner's repeated non-compliance with the demand notices dated 07.12.2020, 02.06.2021, 07.12.2021, 22.12.2021, 04.03.2022, 26.05.2022, 12.07.2022,

24.11.2022, 14.12.2022, 14.03.2023, 09.06.2023, 19.09.2023, 28.12.2023, and 07.03.2023, coupled with the violation of Clauses 15(a), 15(b), 15(c), and 23 of the lease deed dated 09.09.2020 as well as other provisions of the Urban Planning and Development Act, 1973, this Court finds no ground to extend indulgence in the exercise of its writ jurisdiction. The grounds urged by the petitioner do not merit interference under Article 226 of the Constitution of India, as UPSIDA's actions are neither arbitrary nor violative of the principles of natural justice.

22. Accordingly, for the reasons stated hereinabove, the writ petition fails on merits and is hereby ***dismissed***. There shall be no order as to costs.

(2025) 7 ILRA 585
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 11.07.2025
BEFORE

THE HON'BLE MAHESH CHANDRA TRIPATHI, J.
THE HON'BLE VINOD DIWAKAR, J.

Writ C No. 21819 of 2025

Smt. Savita Sharma ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Om Prakash Shukla

Counsel for the Respondents:
Anuj Pratap Singh, C.S.C.

Issue for consideration

Whether Petitioner's lease cancelled after prolonged failure in payment of balance amount-legality of impugned order examined.

Headnotes

Petitioner was allotted Plot-despite taking possession of the plot-the petitioner failed to deposit the balance premium amount-sought multiple extensions-upon her failure-authority cancelled the allotment-allottee repeatedly defaults—especially over a prolonged period involving multiple violations of lease terms and statutory provisions—restoring such a lease poses significant fiscal, administrative, and public policy challenges-impugned order upheld-**W.P. dismissed.**

Held:

Urban Planning and Development Act, 1973- Restoring a lease deed after 14 successive failures to pay dues and violations of statutory provisions is not merely a question of administrative discretion; it strikes at the very foundation of fiscal discipline, public interest, and industrial policy objectives. The UPSIDA has acted in a manner that balances equity with accountability, ensuring that public resources are allocated to genuine entrepreneurs who can contribute to economic development and employment generation. Any contrary approach risks financial losses, delays in industrial growth, and erosion of public trust in the State's administrative fairness. (E-9)

Case Law Cited

1. Kyline Contractors Pvt. Ltd. v. State of U.P, (2008) 8 SCC 265
2. Kamla Nehru Memorial Trust and Others v. U.P. State Industrial Development Corporation Limited and Others, Arising out of SLP (C) Nos. 31887-88/2017

List of Acts

Urban Planning and Development Act, 1973

List of Keywords

allotment of the plot; outstanding dues; cancellation of the allotment; public accountability

Appearance of parties

Counsel for Petitioner:- Om Prakash Shukla

Counsel for Respondent:- Anuj Pratap Singh, C.S.C.

(Delivered by Hon'ble Mahesh Chandra Tripathi, J.)
&
(Hon'ble Vinod Diwakar, J.)

1. Heard learned counsel for the petitioner, Shri Devesh Vikram, learned Additional Chief Standing Counsel for State respondent and Shri Ambrish Shukla, learned counsel for U.P. State Industrial Development Authority1.

2. The present writ petition has been filed, *inter alia*, seeking issuance of a writ in the nature of certiorari to quash the impugned order dated 24.05.2024, whereby the petitioner's lease has been cancelled, and to set aside the subsequent order dated 12.08.2024, by which the petitioner's review application dated 03.07.2024, seeking restoration of the allotment, has been rejected. The petitioner further seeks to cancel the scheduled e-auction of the plot in question and prays for a direction to the respondent authorities restraining them from dispossessing the petitioner from Plot No. E-235, ad-measuring 877.85 square meters, situated at Industrial Area Karkhiyaon, Phoolpur, Varanasi.

3. The petitioner was duly allotted the plot in question for the purpose of establishing industrial activities, in accordance with the policies and procedures prescribed by the authority. Respondent No. 2 – Uttar Pradesh State Industrial Development Authority (UPSIDA) – is a state-level industrial development authority entrusted with the responsibility of promoting and facilitating the development of industries across the State of Uttar Pradesh. As the governing body, UPSIDA exercises control over the allotment, management, and regulation of industrial plots within its notified areas, including the plot allotted to the petitioner.

4. The records reveal that the petitioner was allotted Plot No. E-235, admeasuring 877.85 square meters, situated in the Industrial Area, Karkhiyaon, Phoolpur, Varanasi, by UPSIDA through an allotment letter dated 18.11.2019, for the purpose of establishing a fruit ripening industrial unit. Pursuant to the allotment, the petitioner deposited the earnest money, completed all requisite formalities, and executed a 90-year lease deed on 25.09.2020. Despite taking possession of the plot, the petitioner failed to deposit the balance premium amount of Rs.21,15,690.10/-. She sought multiple extensions, citing financial constraints and health-related issues within her family, and even approached this Hon'ble Court by filing Writ Petition No. 40072 of 2023. The said writ petition was disposed of on 11.12.2023, granting her liberty to clear the dues within a period of three months.

4.1 However, upon her failure to comply with the said order, the respondent authority cancelled the allotment vide order dated 24.05.2024. Subsequently, the petitioner filed an application dated 03.07.2024 seeking restoration of the plot, which was rejected by the respondent

authority on 12.08.2024 on the ground of limitation. The petitioner contends that the cancellation order was served upon her only on 05.06.2024, and therefore, her restoration application was within the prescribed time limit. Despite her repeated requests for restoration and her readiness to pay the outstanding dues along with interest, the respondent authority proceeded to list the plot for e-auction on 11.07.2025 pursuant to the e-auction notice dated 23.06.2025.

5. Learned counsel for the petitioner contends that the petitioner, despite facing severe financial hardships and family health emergencies, has never acted with any mala fide intent. She continues to remain in possession of the disputed plot, has developed partial infrastructure for industrial purposes, and is ready and willing to clear the outstanding dues along with applicable interest and penalties. It is submitted that the impugned orders are vitiated by procedural irregularities, as the petitioner's application for restoration of the plot dated 03.07.2024 was filed within one month from the date of actual service of the cancellation order, which was received on 05.06.2024.

5.1 It is further argued that UPSIDA failed to consider the petitioner's bona fide conduct and her genuine attempts to comply with the conditions of allotment. Arbitrary cancellation of the plot would defeat the larger object of industrial development for which the allotment was initially made. The learned counsel also submits that the principles of natural justice were not adhered to, and the rejection of the restoration application was mechanical and devoid of proper consideration. Lastly, it is urged that denial of restoration and the initiation of re-allotment through e-auction is unjust, inequitable, and warrants judicial interference, with a prayer for restoration of the allotment in favour of the petitioner.

6. *Per contra*, Shri Ambrish Shukla, learned counsel appearing for UPSIDA, has vehemently opposed the writ petition. He submits that the petitioner was granted a conditional allotment dated 18.11.2019, under which she was required to fulfill all mandatory formalities, including completion of construction, obtaining requisite approvals, and commencement of production, within a stipulated period of two years. Despite repeated reminders and notices dated 07.12.2020, 02.06.2021, 07.12.2021, 14.03.2023, and others, the petitioner neither cleared the outstanding dues amounting to ₹21,15,690.10/- nor established a functional industrial unit on the allotted plot. Even the extended timeline granted up to 18.05.2023 expired without compliance.

6.1 It is further contended that although the earlier writ petition was disposed of on 11.12.2023 with a direction to clear all dues within three months, the petitioner failed to adhere to this deadline. Shri Shukla asserts that the restoration application dated 03.07.2024 was not filed within one month from the date of cancellation order (i.e., 24.05.2024) as required, and UPSIDA is not bound by the petitioner's claim regarding the alleged date of service of the cancellation order. In support of his arguments, he has placed reliance on Condition Nos. 09, 11, 15, 20, and 23 of the allotment letter, which are reproduced herein below:

"9. You shall have to get the maps approved within 90 days of taking possession. The formalities to be done in

this regard are available on website onlineupside.com.

11. You shall have to start production on the plot within 12.00 months from date of allotment and intimate the corporation of the same.

15. The allotment will be cancelled if and when any one of the following mentioned violations happen and further action after cancellation shall be taken up as mentioned in clause 16 below. a. If you fail to comply to any of the conditions 7-12 above within the time stipulated above, the time duration mentioned being of essence. OR b. If you fail to make payment of Interest anil or premium on or before the due date(s) as mentioned in clause 5 of this letter OR c. If you fail to comply clause 23, 24 and 26 mentioned here in below.

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23. You will utilize minimum 40% area of the plot by covering it by roof/ permanent shed within the above specified period failing which the allotment of the plots(s) will be cancelled."

7. Relying on the strict enforcement of the terms of the lease, learned counsel for UPSIDA asserts that the cancellation of the petitioner's allotment is legal, justified, and strictly in accordance with the conditions stipulated in the allotment letter. It is submitted that UPSIDA, being a statutory authority, has an obligation to ensure the optimal utilization of industrial plots, and the prolonged non-compliance by an allottee, despite repeated indulgence and extensions, inevitably warrants cancellation. It is further contended that the fresh e-auction process initiated by the authority is a transparent and lawful mechanism to re-allocate unused industrial land to deserving applicants, thereby promoting industrial growth and public interest. Lastly, it is urged that since the petitioner has failed to fulfill the essential terms and conditions of the allotment agreement as well as the general conditions, the impugned orders have been rightly passed, and the present writ petition is devoid of merit and liable to be dismissed. .

8. The primary objectives of UPSIDA are to promote and attract investments within the State of Uttar Pradesh by facilitating industrial growth and development. The authority is entrusted with the responsibility of developing and maintaining requisite infrastructure, providing incentives, and creating a conducive environment for businesses to establish and expand their operations in the state. In furtherance of these objectives, UPSIDA also endeavours to generate employment opportunities and to support and strengthen the growth of existing industries across Uttar Pradesh. .

9. The decision of the Hon'ble Apex Court in ***Skyline Contractors Pvt. Ltd. v. State of U.P*** [2]. squarely applies to the facts of the present case. In that matter, despite partial and delayed payments by the allottee, the Hon'ble Supreme Court upheld

the cancellation of allotment by NOIDA, holding that unilateral deposits made without prior approval or consent could not bind the authority. Similarly, in the present case, the petitioner neither sought nor obtained any formal extension of time from UPSIDA within the contractual framework. Her delayed restoration applications—though sought to be justified by referring to the alleged date of service—cannot cure or condone years of non-performance and breach of essential terms of allotment.

10. In a recent judgment, the Hon'ble Apex Court in ***Kamla Nehru Memorial Trust and Others v. U.P. State Industrial Development Corporation Limited and Others*** [3] held that, in order to preserve the integrity of the allotment process, allowing deliberate and repeated defaults by an allottee to persist unchecked would undermine the entire framework of land allocation and set a harmful precedent detrimental to public interest. The relevant portion of the judgment is reproduced herein below:—

"25. We may hasten to add at this stage that the dues for the Subject Land, allotted in 2003, remained unpaid despite multiple communications spanning several years. KNMT not only failed to make timely payments but also sought unwarranted concessions, including waiver of interest and rescheduling of dues. This persistent non-compliance establishes KNMT as a chronic defaulter, while the continued attempts to seek waiver evince a deliberate strategy to avoid payment obligations. UPSIDC's action in treating KNMT as a defaulter was, therefore, both justified and necessary to preserve the integrity of the allotment process. Allowing such deliberate defaults to persist unchecked would undermine the entire framework of land allocation and set a detrimental precedent.

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E. INVOKING THE PUBLIC TRUST DOCTRINE IN THE ALLOCATION OF RESOURCES.

2. 27. The prolonged litigation initiated by KNMT has spanned over fifteen years, unnecessarily burdening the judicial system and impeding the efficient functioning of public authorities. Such protracted disputes highlight the need for more stringent initial evaluation processes to prevent chronic defaults.

3. 28. While we have upheld the cancellation due to KNMT's default, the circumstances reveal systemic concerns in the original allocation process. UPSIDC allotted the Subject Land to KNMT within merely two months of application, raising questions about the thoroughness of the evaluation. Furthermore, during the pendency of

4. this dispute, UPSIDC demonstrated remarkable alacrity in considering alternative allotments to M/s. Jagdishpur Paper Mills Ltd.

5. 29. We, therefore, consider it necessary to examine whether UPSIDC's procedure for industrial land allotment meets standards of administrative propriety, particularly in light of the Public Trust Doctrine (Doctrine) mandating that public resources be managed with due diligence, fairness, and in conformity with public interest.

6. 30. The Doctrine emanates from the ancient principle that certain resources (seashores, rivers and forests) are so intrinsically important to the public that they cannot be subjected to unrestricted private control. Rooted in Roman law and incorporated into English common law, this Doctrine recognizes that the Sovereign holds specific resources as a trustee for present and future generations. M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388, para 24-25.

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9. 33. The allocation of 125 acres of industrial land to KNMT without a competitive process fundamentally violated the Doctrine, which demands proper procedure and substantive accountability in public resource allocation. UPSIDC ought to have considered verifiable evidence of economic benefits, employment generation potential, environmental sustainability, and alignment with regional development objectives to demonstrate that the decision serves the collective benefit. The failure to adopt transparent mechanisms not only deprived the public exchequer of potential revenue-as evidenced by the substantial appreciation in the value of such a large tract of land-but also created a system where privileged access supersedes equal opportunity. This betrays the fiduciary relationship between the State and its citizens.

34. Having upheld the cancellation due to KNMT's chronic default, we observe that the hasty allotment followed by years of litigation exemplifies systemic deficiencies in the allocation process. This necessitates comprehensive directions to ensure that future allocations uphold principles of transparency and accountability, thereby preventing prolonged disputes while ensuring that public resources genuinely promote industrial development and economic growth.

F. CONCLUSION AND DIRECTIONS

10. 35. In light of our detailed examination of the contentions raised by the parties, the comprehensive analysis of the factual and legal matrix and the resultant conclusions, we uphold the cancellation of the allotment by UPSIDC."

11. It is an admitted position that the allotment of the plot in question was made in favour of the petitioner on 18.11.2019, subject to specific terms and conditions requiring the establishment and operationalization of an industrial unit

within the period stipulated in the lease deed. The lease deed, executed on 25.09.2020, further reaffirmed these obligations. The petitioner was under a contractual as well as statutory obligation to clear all outstanding dues, obtain necessary approvals, undertake construction, and commence industrial operations within the prescribed timeline. However, despite repeated reminders and notices issued by UPSIDA on various occasions, including notices dated 07.12.2020, 02.06.2021, 07.12.2021, 14.03.2023, and others, the petitioner failed to ensure effective compliance. Even after this Court, in Writ Petition No. 40072 of 2023, extended indulgence by its order dated 11.12.2023 granting three months' time to fulfill the lease conditions, the petitioner once again defaulted in meeting the requirements.

12. This Court is not persuaded to accept the petitioner's explanation of financial hardship and medical exigencies as a valid justification for years of non-compliance with the essential terms of the allotment and lease. While the Court is mindful of and sympathetic to the petitioner's personal circumstances, a mere expression of willingness to pay outstanding dues after the initiation of e-auction proceedings or subsequent to the cancellation of the allotment cannot obliterate a prolonged and willful failure to adhere to contractual obligations. Equity, though an integral facet of the writ jurisdiction, cannot be invoked in favour of a party who has consistently failed to perform its obligations under the allotment and lease conditions.

13. The petitioner's contention that the restoration application was filed within one month from the date of actual service of the cancellation order, even if assumed to be correct, cannot absolve her of the substantive and prolonged breaches that persisted for nearly four years. The cancellation of the allotment was not predicated merely upon any delay in filing the restoration application but was fundamentally based on the petitioner's sustained failure to adhere to the core obligations under the lease. This is not a case where a minor procedural lapse alone resulted in the cancellation; rather, it is one of repeated and substantial non-compliance with essential conditions.

14. There are far reaching consequences of restoring a lease after repeated defaults. The fiscal and administrative policies of the State, particularly in matters concerning the allotment of industrial plots and lease deeds, are anchored in principles of public accountability, efficient utilization of resources, and the promotion of industrial growth. When an allottee repeatedly defaults—especially over a prolonged period involving multiple violations of lease terms and statutory provisions—restoring such a lease poses significant fiscal, administrative, and public policy challenges.

15. The Uttar Pradesh State Industrial Development Authority (UPSIDA) operates under a financial model designed to recover the cost of infrastructure, fund new development projects, and ensure equitable distribution of industrial plots. Allowing restoration of a lease despite persistent non-payment undermines fiscal discipline and sets a precedent for leniency towards defaulters. This could result in revenue losses, delayed development of industrial infrastructure, financial strain on the authority, and end up in erosion of fiscal discipline.

16. The core objective of entities like UPSIDA is to promote rapid industrialization and economic growth. Land lying idle due to an allottee's prolonged default contradicts this aim. By restoring such leases, the State risks stalling new investments, delaying job creation, and defeating the larger purpose of its industrial policies and this would undermines public and transparency.

17. Successive failures to comply with lease terms also undermine public interest. Permitting continued retention of land by a non-performing allottee deprives deserving applicants of opportunities and slows down industrialization efforts. If such conduct is tolerated through writ jurisdiction, it may erode public confidence in the fairness and transparency of the State's land allocation framework.

18. Restoration of leases after repeated defaults may be viewed as arbitrary or ultra vires, particularly when it contravenes the express terms of the allotment letter or lease deed. The Supreme Court in ***Skyline Contractors Pvt. Ltd. (supra)*** have emphasized that deliberate non-compliance with payment schedules and lease conditions justifies cancellation of allotments. Courts have consistently held that leniency towards such defaulters undermines the integrity of the allotment process and sets a detrimental precedent.

19. A policy of restoring leases after long-term default would create a negative precedent for future allottees to disregard payment schedules and statutory obligations, anticipating eventual concessions. This undermines the deterrent effect of enforcement measures like cancellation and e-auction, weakening the overall governance framework of industrial land allocation.

20. In essence, restoring a lease deed after 14 successive failures to pay dues and violations of statutory provisions is not merely a question of administrative discretion; it strikes at the very foundation of fiscal discipline, public interest, and industrial policy objectives. The UPSIDA has acted in a manner that balances equity with accountability, ensuring that public resources are allocated to genuine entrepreneurs who can contribute to economic development and employment generation. Any contrary approach risks financial losses, delays in industrial growth, and erosion of public trust in the State's administrative fairness.

21. Therefore, having regard to the petitioner's repeated non-compliance with the demand notices dated 07.12.2020, 02.06.2021, 07.12.2021, 22.12.2021, 04.03.2022, 26.05.2022, 12.07.2022, 24.11.2022, 14.12.2022, 14.03.2023, 09.06.2023, 19.09.2023, 28.12.2023, and 07.03.2023, coupled with the violation of Clauses 15(a), 15(b), 15(c), and 23 of the lease deed dated 09.09.2020 as well as other provisions of the Urban Planning and Development Act, 1973, this Court finds no ground to extend indulgence in the exercise of its writ jurisdiction. The grounds urged by the petitioner do not merit interference under Article 226 of the Constitution of India, as UPSIDA's actions are neither arbitrary nor violative of the principles of natural justice.

22. Accordingly, for the reasons stated hereinabove, the writ petition fails on merits and is hereby ***dismissed***. There shall be no order as to costs.

(2025) 7 ILRA 593
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 29.07.2025
BEFORE

THE HON'BLE ARINDAM SINHA, J.
THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Writ C No. 24614 of 2025

M/S Kaleshwari Power Products Private Limited ...Petitioner
Versus
State Of U.P. & Anr. ...Respondents

Counsel for the Petitioner:
Prem Chandra, Sudhanshu Kumar, Swapnil Kumar

Counsel for the Respondents:
C.S.C.

Issue for Consideration

Petitioner, a registered micro/small enterprise supplies to various departments of BSNL. Bills for the supplies remained unpaid. It took steps under provisions in section 18 of the MSME Act. The issue of non-payment resulted in arbitration reference and award stood made.

Headnotes

Civil matter-Micro, Small and Medium Enterprise Development Act, 2006-Section 18 & Arbitration and Conciliation Act, 1996-Section 31(5)-The petitioner challenged a requisition requiring it to pay stamp duty to obtain a copy of an arbitral award made following a reference u/s 18 of the MSME Act-Communication requiring payment of stamp duty for providing a signed copy of the arbitral award to a party was illegal-Petition allowed.

Held

The court held that Section 31(5) of the Arbitration and Conciliation Act,1996 which is applicable by operation of the MSME Act,2006, mandates that a signed copy of the arbitral award must be delivered to each party-Following the Supreme court pronouncement in M. Anasuya Devi and Anr. Vs. M. Manik Reddy and Ors, the Court reiterated the question of whether an award is required to be stamped and registered is relevant only when a party files the Award for its enforcement under section 36 of the Act.1996-Stamping is a prerequisite for enforcement, not for delivery of the copy-The court found the vires challenge to Clause (xii) under Rule 6 of the Uttar Pradesh State Micro and Small Enterprises Facilitation Council Rules,2006 which states that the award "shall be stamped in accordance with the relevant law in force," to be unfounded-The writ petition allowed-The respondent was directed to make the signed copy of the award available to the petitioner.(Para 7 to 10) (E-6)

Case Law Cited

M. Anasuya Devi & Anr. Vs. M. Manik Reddy & Ors Appeal (Civil) 7940-792 of 2001

List of Acts

Micro, Small and Medium Enterprises Development Act,2006, Arbitration and Conciliation Act,1996

List of Keywords

Arbitral award; BSNL; Stamp Duty;Micro, Small and Medium Enterprises Development Act,2006;Arbitration and Conciliation Act,1996

Case Arising From

CIVIL JURISDICTION: WRIT-C No. – 24614 of 2025
From the Judgment and Order dated 29.07.2025 of the High Court of Judicature at Allahabad.

M/S Kaleshwari Power Products Pvt. Ltd. Vs. State of U.P. & Anr.

Appearances for Parties

Advs. for Petitioner:
Prem Chandra, Sudhanshu Kumar, Swapnil Kumar
Adv. for Respondent:-
C.S.C.

(Delivered by Hon'ble Arindam Sinha, J.)

1. Petitioner says it is registered as a micro/small enterprises under provisions in Micro, Small and Medium Enterprises

Development Act, 2006. It made supplies to various departments of Bharat Sanchar Nigam Limited (BSNL). Bills for the supplies remained unpaid. It took steps under provisions in section 18 of said Act. The issue of non-payment resulted in an arbitration reference and award stood made.

2. Mr. Sudhanshu Kumar, learned advocate appearing on behalf of petitioner draws attention to writing dated 21st March, 2025, in response to his client's requisition for copy of the award. By said writing his client was informed that stamp duty needs to be paid for the award copy to be made available. This requirement cannot be sustained because section 31 in Arbitration and Conciliation Act, 1996 provides for form of arbitral award, which is applicable in an arbitration reference by operation of provisions in the Act of 2006. Section 36 in the 1996 Act provides for enforcement. He relies on judgment of the Supreme Court in **Appeal (Civil) 7940-7942 of 2001 (M. Anasuya Devi and Anr. vs. M. Manik Reddy and Ors.)** dealt with on **judgment dated 16th October, 2003** to submit, law declared was, the question as to whether the award is required to be stamped and registered would be relevant, only when a party files the award for its enforcement under section 36 in the Act of 1996. Relied upon paragraph in 'JUDIS.NIC.IN' print is reproduced below.

"After we heard the matter, we are of the view that in the present case this issue was not required to be gone into at the stage of proceedings under Section 34 of the Act. In fact, this issue was pre-mature at that stage. Section 34 of the Act provides for setting aside of the Award on the ground enumerated therein. It is not in dispute that an application for setting aside the Award would not lie on any other ground, which is not enumerated in Section 34 of the Act. ***The question as to whether the Award is required to be stamped and registered, would be relevant only when the parties would file the Award for its enforcement under Section 36 of the Act.*** *It is at this stage the parties can raise objections regarding its admissibility on account of non-registration and non-stamping under Section 17 of the Registration Act. In that view of the matter the exercise undertaken to decide the said issue by the Civil Court as also by the High Court was entirely an exercise in futility. The question whether an Award requires stamping and registration is within the ambit of Section 47 of the Code of Civil Procedure and not covered by Section 34 of the Act."*

(emphasis supplied)

He submits, in the facts and circumstances his client has mounted vires challenge to clause (xii) under rule 6 in Uttar Pradesh State Micro and Small Enterprises Facilitation Council Rules, 2006, notified on 19th January, 2007. The clause (xii) is reproduced below.

"6. .....

(xii) The Council shall make an Arbitral award in accordance with section 31 of the Arbitration and Conciliation Act 1996 and within the time specified in sub-section (5) of section 18 of the Act. ***The award shall be stamped in accordance with the relevant law in force. Copies of the award shall be made available within seven days of filing of any application."***

(emphasis supplied)

3. Mr. Kumar submits, requirement by entry 12 in schedule I-B in Stamp Act, 1899 providing for the rules applicable in Uttar Pradesh cannot be basis for the requisition made on his client, to provide stamp duty for making the award available. The award has not been published. He refers to the entry to point out that there has to be assessment on value of the award for purpose of treating it as a bond, to determine stamp duty payable. His client has not yet been informed of contents in the award and as such or even otherwise, the requisition is illegal.

4. He submits further, impugned clause (xii) under rule 6 in the notification was promulgated in exercise of powers granted to the State Government by section 30 in the Act of 2006, to make rules. Section 30 is reproduced below.

"30. Power to make rules by State Government.—

(1) The State Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the composition of the Micro and Small Enterprises Facilitation Council, the manner of filling vacancies of the members and the procedure to be followed in the discharge of their functions by the members of the Micro and Small Enterprises Facilitation Council under sub-section (3) of section 23;

(b) any other matter which is to be or may be, prescribed under this Act.

(3) The rule made under this section shall, as soon as may be after it is made, be laid before each House of the State Legislature where there are two Houses, and where there is one House of the State Legislature, before that House."

The offending clause in the rule cannot be said to be other matter, which is or may be prescribed under the Act. Said clause is not for purpose to carry out any provision in the Act. He reiterates his reliance on section 18 in the Act of 2006, making applicable provisions in the Act of 1996, where there is nothing required on registration of an award. He seeks striking down of clause (xii) under rule 6 in the rules notified on 19th January, 2007.

5. Dr. D.K. Tiwari, learned advocate, Additional Chief Standing Counsel appears on behalf of State and submits, the clause in the rule has been provided to make the award enforceable, in line with requirement under entry 12 in schedule I-B of the Stamp Act. No interference is warranted.

6. Impugned clause under rule 6 requires the award to be stamped in accordance with the relevant law in force. The requisition precedes mandate for copies of the award to be made available within seven days of filing of any application. Wording of the clause carrying requirement of stamp duty preceding requirement of making available copy of the award appears to be basis for the requisition, questioned by petitioner. Petitioner has applied for copy of the award. It has been told to pay on stamp duty. Considering the clause as a whole, it is seen that the council is to make an arbitral award in accordance with section 31 of the Arbitration and Conciliation Act, 1996. Sub-section (1) in section 31

provides for the award to be made in writing and signed by the members of the arbitral tribunal. Sub-section (5) mandates, the arbitral award, on its making, signed copy thereof be delivered to each party. Section 36 provides for enforcement of the award. It follows that the award, when made, signed copy of it must be made available to a party to the reference. Requirement for payment of stamp duty will arise, when the award is sought to be enforced.

7. In **M. Anasuya Devi (supra),** the Supreme Court noticed that it was urged by respondent before it, the award in that case did create rights in favour of the parties and it required registration. The Court said, view taken by the High Court was in conformity with the law. In this case petitioner says, he is not aware of contents in the award. Mr. Kumar reiterates, question of payment of stamp duty will only arise at or prior to execution. We accept his submission but are of the view that the vires challenge is unfounded.

8. Section 30 in the Act of 2006 empowers the State Government to make rules to carry out provisions of the Act. Impugned clause under rule 6 is for purpose of enforcement of an award. Petitioner's case must result in award for money and hence, petitioner is referring to entry 12 in schedule I-B of the Stamp Act as applicable in the State. In some other case, it may be an award on interest in respect of immovable property, to make it compulsorily registrable under section 17 in Registration Act, 1908. Whatever be the case, the State Government in requiring an arbitral award, made by the council, enforceable is seen to have duly exercised the power in promulgating, *inter alia*, clause (xii) under rule 6 of the 2006 Rules, applicable in this State. However, the communication requiring stamp duty to be paid for making signed copy of the award available to petitioner, who was party in the reference, cannot stand inasmuch as referred to sub-sections in section 31 of the 1996 Act mandate signed copy of the award being made available to it. The 1996 Act has been made applicable in this case on invocation of chapter V in the MSME Act, 2006.

9. Petitioner will produce certified copy of this judgment before respondent no.2, whereupon signed copy of the award is to be made available to it.

10. The writ petition is **allowed** and **disposed of** as above.

(2025) 7 ILRA 596
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 18.07.2025
BEFORE

THE HON'BLE ALOK MATHUR, J.

Writ C No. 1003588 of 2003

Becha Lal ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Kishore Kr. Srivastava, Ravi Shanker Tewari, Sheo Pal Singh

Counsel for the Respondents:
C.S.C., Dilip Kumar Pandey, R.N. Gupta

Issue for consideration

When a fragment of a holding has been transferred during the period when Section 168-A of the U.P.Z.A.&L.R. Act was in existence with regard to an area which though initially was

subject to proceedings under Section 4 of the U.P.. Consolidation of Holdings Act, 1953 but were subsequently cancelled by issuance of notification under Section 6 before the proceedings were finalized, would bar of Section 168-A still apply?

Headnotes

Consolidation operations had not attained finality -accordingly, all the proceedings had ceased from the issuance of the notification under Section 6 of the Act of 1953.-on issuance of the aforesaid notification- the said land could not be held to be under consolidation operations-hence, excluded from being considered a consolidated area- S.D.M. did not consider the aforesaid aspect and concluded in assumptions that the disputed land was liable to be considered as a consolidated area as per Section 2A-clearly contrary to the statutory provisions- impugned orders set aside. **W.P. allowed.**

Held:

U.P.Z.A.&L.R. Act –sec168-A-U.P. Consolidation of Holdings Act, 1953-sec.2, 4,6-On the issuance of the notification under Section 6 of the Act of 1953, the area which in fact came under consolidation operation got excluded from the consolidated area and therefore, also came to be excluded from the rigors of Section 168-A of the UP. Zamindari and Abolition Act. (E-9)

Case Law Cited

1. Dalip Singh and 3 others versus Vikram Singh and 6 others, Special Appeal Defective No.421 of 2015

List of Acts

1. U.P.Z.A.&L.R. Act
2. U.P. Consolidation of Holdings Act, 1953

List of Keywords

Appearance of the parties

Counsel for Petitioner :- Kishore Kr. Srivastava, Ravi Shanker Tewari, Sheo Pal Singh

Counsel for Respondent :- C.S.C., Dilip Kumar Pandey, R.N. Gupta

(Delivered by Hon'ble Alok Mathur, J.)

1. Heard Shri Ravi Shanker Tewari, learned counsel for the petitioner as well as Shri Badrish Kumar Tripathi, learned Standing Counsel on behalf of respondents.

2. By means of the present writ petition, the petitioner has challenged the order dated 30.08.2001 passed by Sub-Divisional Magistrate, Sadar, Lucknow thereby rejecting the application preferred by petitioner.

3. The petitioner moved an application under Section 34 of the Land Revenue Act for mutation of his name in place of name of recorded tenure holder on the basis of registered sale deed whereby the petitioner had purchased a plot of land Khasra No.874 Khatauni No.134 area 6 Biswa situated at Village Sikroori, Pergana, Tehsil and District Lucknow from its recorded tenure holder Shri Kailash Chandra Yadav son of Late Shri Baboo Lal.

4. It has been submitted by counsel for the petitioner that the area of Khasra No.874, total area was 2 Bighas 9 Biswa, out of which the petitioner has purchased only 6 Biswas of land which was a

fragment of the total holding of the recorded tenure holder. On the application of the petitioner for mutation, a notice was issued by the Sub-Divisional Magistrate, Sadar, Lucknow under Section 166/167 of the U.P.Z.A.&L.R. Act asking him to respond as to why the said land should not be vested in the State Government in light of the provisions contained in Section 168-A of the U.P.Z.A.&L.R. Act, which provides for a clear injunction of fragmenting that holdings. The proceedings before the S.D.M. were conducted ex parte and the petitioner did not appear and only after perusal of the record, the S.D.M. recorded a satisfaction to the effect that the petitioner had purchased 6 Biswa of land in Gata No.874 which happens to be a fragment of the total area which is not permissible in light of provisions under Section 168-A of the U.P.Z.A.&L.R. Act and accordingly, directed the vesting of the said land in the State Government. It was further submitted that as per provision of 166 of the U.P.Z.A.&L.R. Act, any transfer made in contravention of the Act was void and as per the consequences provided under Section 167 of the U.P.Z.A.&L.R. Act, the said land vested in the State Government after he declared the said transfer to be void.

5. The petitioner being aggrieved by the order dated 30.08.2001 preferred a revision under Section 333 of the U.P.Z.A.&L.R. Act before the Additional Commissioner (Judicial), Lucknow Mandal, Lucknow. Before revisional authority, it was submitted that the proceedings before the Sub-Divisional Magistrate are illegal and arbitrary and in gross violation of principle of natural justice inasmuch as no opportunity of hearing was given and hence prayed for setting aside the said order.

6. The Additional Commissioner (Judicial) considered the arguments of the petitioner, who subsequently, did not appear in the revision and consequently, it was rejected holding that there has been no violation of principle of natural justice.

7. The counsel for the petitioner while assailing both the orders date 30.08.2001 and 11.10.2002 has submitted that a perusal of Section 168-A of the U.P.Z.A.&L.R. Act would indicate that injunction against transfer of fragments applies only if the said land is situated in consolidated area and does not extent to any other area which is not found to be part of consolidated area. He submits that the said amendment was brought into effect by U.P. Act, 18 of 1956 but it was omitted from the statute book by U.P. Act 27 of 19 from 2004 with effect from 23.08.2004. It has been submitted that at the time when the U.P.Z.A.&L.R. Act was enacted, the U.P. Consolidation of Holdings Act, 1953 was not in existence and it is only after enactment of the Act of 1953 that the "consolidated area" came to be defined under Section 2A of the Act of 1953 which is quoted hereunder:

"2A.*['Consolidation area' means the area, in respect of which notification under Section 4 has been issued, except such portions thereof to which the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950,] [Added by U.P. Act No. 38 of 1958.] [or any other Law by which Zamindari System has been abolished] [Added by U.P. Act No. 30 of 1991 (w.e.f. 19.02.1991).] do not apply;"*

8. Accordingly, it is stated that such area would be deemed to be consolidated area only where a notification under Section 4 of the Act of 1953 is issued with regard to such area. It has been submitted

that notice under Section 4 of the Consolidation of Holdings Act, 1953 was issued on 25.09.1982 but before the consolidation operations could be concluded, order for cancellation of the notification under Section 4 was issued on 26.10.1985. The aforesaid facts have also been stated in affidavit dated 28.05.2025 filed by Sri Praveen Singh Gautam, Additional Consolidation Officer, Bakshi ka Talab, Lucknow.

9. It is in the aforesaid circumstances, this Court is called upon to consider the fact that when a fragment of a holding has been transferred during the period when Section 168-A of the U.P.Z.A.&L.R. Act was in existence with regard to an area which though initially was subject to proceedings under Section 4 of the U.P.. Consolidation of Holdings Act, 1953 but were subsequently cancelled by issuance of notification under Section 6 before the proceedings were finalized, would bar of Section 168-A still apply?

10. Considering the provisions of Section 168-A of the U.P.Z.A.&L.R. Act, one of the conditions necessary for the applications of injunction against transfer of fragment is the fact that the fragment should be situated in a "consolidation area", except where the transfer is in favour of tenure holder, whose plot is contiguous to the fragment or the transfer is not in favour of any such tenure holder.

11. Accordingly, the moot question for consideration is as to whether at the relevant time whether the said unit can be held to be included in the consolidated area.

12. To consider the aforesaid submissions, one has to consider the provisions of Sections 6 (2) of the Act of 1953 which provides that where a notification has been cancelled in respect of any unit under Sub Section (1), such area shall subject to the final orders relating to corrections of land records, if any, passed on or before the date of such cancellation seized to be under consolidation operations w.e.f. date of cancellation. Hence, on issuance of a notification under Section 6 of the Act of 1953, cancelling the notification under Section 4 of the Act of 1953, all the consolidation operations cease except the final order relating to corrections of land record.

13. The ambit of Sections 4 and 6 has been elaborated by a Division Bench of this Hon'ble Court in the case of **Dalip Singh and 3 others versus Vikram Singh and 6 others, Special Appeal Defective No.421 of 2015** wherein following has been observed:

The provisions of Sections 4 and 6 of the Act came up for consideration before a Division Bench of this Court in Agricultural & Industrial Syndicate Ltd. (supra). The Division Bench held that when the Director of Consolidation issues a notification under Section 4 or Section 6, he performs neither a quasi judicial function nor does he exercise an administrative power. In the view of the Division Bench, the power was of a legislative nature. Moreover, it was held that if a notification is issued under Section 6, the land holder has no rights which are affected in consequence of such a notification. The Supreme Court in the judgment in Harbhajan Singh (supra) while considering a similar provision contained in Section 16(1) of the Consolidation Act in the State of Himachal Pradesh held as follows:-

"It is, thus, clear that it is only when the persons entitled to possession of holdings under the Act have been delivered possession of the holdings that they acquire rights, title and interest in the new holding allotted to them and the consolidation scheme in the area is deemed to have come into force. Till such possession of the allotted land under the consolidation scheme is delivered to the allottees and the consolidation scheme is deemed to come into force, the State Government has the power under Section 16(1) of the Act to cancel the declaration under Section 14(1) of the Act."

The Supreme Court also held as follows:

"We have already held that the State Government can issue a notification under Section 16(1) of the Act cancelling the declaration under Section 14(1) of the Act in respect of any area at any time before the persons entitled to possession of holdings under the Act have entered into possession of the holdings allotted to them. Since before the persons enter into possession of the holdings allotted to them, they do not acquire any right, title and interest in the holdings allotted to them and they do not lose in any manner their rights, title and interest in their original holdings, their rights are not affected by the issuance of a notification under Section 16(1) of the Act. In other words, a notification under Section 16(1) of the Act issued by the State Government before delivery of possession of the allotted holdings to persons has no civil consequences and, therefore, the State Government is not required to follow the principles of natural justice before issuing such a notification."

The principle of law which has been laid down in the judgment of the Division Bench and in the judgment of the Supreme Court is that before persons have entered into possession of the holdings allotted to them, they do not acquire any right, title or interest and they would not lose their rights by the issuance of a notification under Section 6 of the Act. That is the position in law. The writ petition challenging the notification under Section 6 of the Act was not maintainable since there were no rights enuring to the benefit of the original petitioners which were taken away or affected by a notification under Section 6 of the Act.

14. In the present case, there is no dispute that the consolidation operations had not attained finality and accordingly, all the proceedings had ceased from the issuance of the notification under Section 6 of the Act of 1953. On issuance of the aforesaid notification, the said land could not be held to be under consolidation operations and hence, excluded from being considered a consolidated area.

15. The S.D.M. did not consider the aforesaid aspect of the matter and merely assuming that the area was subject to consolidation operations, concluded that the disputed land was liable to be considered as a consolidated area as per Section 2A of the Act of 1953. This presumption is clearly contrary to the statutory provisions as discussed hereinabove. On the issuance of the notification under Section 6 of the Act of 1953, the area which in fact came under consolidation operation got excluded from the consolidated area and therefore, also came to be excluded from the rigors of Section 168-A of the UP. Zamindari and Abolition Act,

16. Accordingly, in light of the above, both the impugned orders dated 30.08.2001

and 11.10.2002 are illegal and arbitrary and are **set aside**. The petition stands **allowed**.

(2025) 7 ILRA 601
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 07.07.2025
BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 1004048 of 2002

Akbar & Anr. ...Petitioners
Versus
Add. Commissioner Judicial & Ors. ...Respondents

Counsel for the Petitioner:
Farooq Ahmad

Counsel for the Respondents:
C.S.C., Anand Dubey, Brijesh Kumar Mishra, R.N. Gupta, Rajendra Singh Chauhan

Issue for consideration

Legality of impugned orders are passed rejecting the lease granted to the Petitioners.

Headnotes

U.P.Z.A. & L.R. Act-sec.198-Respondent moved application for cancellation of patta of Petitioner-rejected-revision-allowed-impugned order- impugned order records that lower court has not come to the conclusion on the basis of evidence -CH form recorded the disputed numbers which are old numbers 1090, 1091, 1092 and the respondent Nos.3 to 7 have been declared to be Seechdar of the disputed numbers- mutation could not take place, therefore, at the time of lease, the land was shown as Usal- if under the public document- it is certified that there are some orders of the Consolidation Officer -it is seen to be correct and genuine-till by producing documentary evidence- it is not shown to be illegal or forged- the proceeding for cancellation of lease was accepted and the lease granted to the petitioner was cancelled-impugned order legal. **W.P. dismissed.** (E-9)

Case Law Cited

Nil

List of Acts

U.P.Z.A. & L.R. ActList of Keywords

Appearance of parties

Counsel for Petitioner :- Farooq Ahmad

Counsel for Respondent :- C.S.C.,Anand Dubey,Brijesh Kumar Mishra,R.N. Gupta,Rajendra Singh Chauhan

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Sri Farooq Ahmad, learned counsel for the petitioners, learned Standing Counsel for the State-respondent and Sri Anand Dubey, learned counsel for the private respondents.

2. By means of present writ petition, the petitioner is challenging the order dated 28.10.2002 passed by respondent No.1 contained as Annexure-1 to the writ petition.

3. Factual matrix of the case is that the land management committee of Gaon Sabha Daulatyarpur passed a resolution for allotting land of gaon sabha to landless persons including the petitioners on 11.06.1989. The Sub Divisional Officer (SDO), Bilgram, District Hardoi approved the resolution on 11.06.1989 of the land management committee of the gaon sabha.

4. Respondent Nos.5 to 7 and father of respondent Nos.3 & 4 moved application under Section 198(4) of U.P.Z.A. & L.R. Act for cancellation of patta of the petitioners only in respect of plot No.813 area 0.594 hectare and plot No.814 area 0.367 hectare on the basis of forged order dated 25.10.1969 of the Consolidation Officer. Later on, same was transferred before the court of Additional Collector, Hardoi.

5. The petitioners filed objection in the court of Additional Collector, Hardoi. The petitioners and their witnesses filed their affidavits in respect of their cases before the trial court.

6. The Additional Collector, rejected the application under Section 198(4) of UPZA & LR Act of respondent Nos.3 to 7 after considering the entire material on record. Respondent Nos.3 to 7 filed revision before respondent No.1 under Section 333-A of UPZA & LR Act. Respondent No.1 allowed the revision of respondent Nos.3 to 7, therefore, the present writ petition has been filed challenging the order of Additional Commissioner dated 28.10.2002.

7. Submission of learned counsel for the petitioners is that the entries shown by the document issued by the Consolidation Officer is forged and fabricated, therefore, the finding returned without summoning the record of revisional court is wholly erroneous and perverse in nature.

8. Along with supplementary affidavit, learned counsel for the petitioners has annexed copy of application moved by his Advocate on 03.05.2024 to the effect that Gaon Sabha Daulatyarpur, Pargana Mallawa, Tehsil Bilgram related misilband register be permitted to see, whereon vide order dated 20.05.2024 it was informed that the said register is not available in the office.

9. His next submission is that the document, which was produced by the Tehsildar is alleged to have been passed in misuse of power under Rule 115(C) and invited attention on Rule 115 (C) of the Rules framed under the Act and submitted that the Tehsildar does not have power to make entries in the name of private parties.

10. He also invited attention of this Court to annexure SA-2, which is an application dated 15.07.2024 for perusal of entries made in original suit No.225/119 under Section 115 (C) dated 30.10.1956, wherein return has been made on 15.07.2024 that the related record does not have been found in the office.

11. On the other hand, learned Additional Chief Standing Counsel invited attention of this Court on page 17 of the record of writ petition, wherein he placed reliance on last paragraph of page 16 and said that on perusal of order dated 25.10.1969, which is in regard to title is derived that the order is final and due to some reason, no mutation could take place.

12. In rebuttal, learned counsel for the petitioners submitted that the Additional Commissioner merely relying on a forged document has proceeded to record finding and in this regard relevant statement of fact has been given in paragraph 19 of the writ petition, which has not been denied by filing counter affidavit.

13. Learned counsel for private respondents submitted that the order of Additional Commissioner passed in the revision does not suffer from any infirmity or illegality and is just and valid.

14. I have considered the submissions advanced by learned counsel for the parties and perused the material on record.

15. On perusal of CH form, which is placed on record, disputed numbers which are old numbers 1090, 1091, 1092 and 1093, which are numbers before the consolidation operations, the Consolidation Officer passed an order on 25.10.1969 in regard to the title over the land in dispute. On its perusal, it is certified that the respondent Nos.3 to 7 have been

declared to be *Seechdar* of the disputed numbers, but due to some reason or otherwise, the mutation could not take place, therefore, at the time of lease, the land was shown as *Usal*. It is settled principle of law that if under the public document, it is certified that there are some orders of the Consolidation Officer then it is seen to be correct and genuine till by producing documentary evidence, it is not shown to be illegal or forged.

16. On the record, there is no material to establish that certified copies produced of the CH form are not genuine, therefore, the determination of the lower court that due to non mutation of land, it comes under the suspicious category, therefore, as per the opinion of the lower court, due to non mutation of land, it comes under the suspicious category and is not legally valid document is an erroneous finding and cannot be accepted in the eyes of law.

17. On the other hand, the respondents, by relying on the document, which is judgment of the Consolidation Officer dated 25.10.1969 to be genuine document, therefore, it is accepted as relevant evidence. The petitioner claimed that to save himself from the ceiling proceeding, the mutation was not done by the respondent Nos.3 to 7 but no evidence was produced by the petitioner. The revisional court on the basis of no evidence and certificate produced before the lower court, came to the conclusion that the reasons assigned are not tenable in law. The lower court has not come to the conclusion on the basis of evidence and on the said basis, the proceeding for cancellation of lease was accepted and the lease granted to the petitioner was cancelled. The finding recorded by the revisional court does not suffer from any infirmity or illegality, therefore, cannot be interfered by this Court.

18. The petitioner has not challenged the finding recorded by the revisional court that the order of the Consolidation Officer is genuine in nature and cannot be ignored. The respondents have filed supplementary affidavit, enclosing the Goswara Register, wherein property has been shown in the name of the respondents. The certified copy produced by the learned counsel for the respondents is taken on record alongwith the photocopy enclosed alongwith the supplementary affidavit.

19. In view of the reasons recorded above, the finding returned by the revisional court does not suffer from any infirmity or illegality and is just and valid, therefore, this Court declines to interfere in the finding of fact recorded by the revisional court in exercise of discretionary power under Article 226 of Constitution of India.

20. The writ petition is accordingly, **dismissed**.

(2025) 7 ILRA 603
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 28.07.2025
BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 1004469 of 2005

Vishwanath Umar Vaisya & Anr.
...Petitioners
Versus
Additional Commissioner Allahabad & Ors.
...Respondents

Counsel for the Petitioners:
Girish Chandra Sinha

Counsel for the Respondents:
C.S.C., Sampurnanand

Issue for consideration

Headnotes

Land Revenue Act-Lekhpal added the name of Nagar Palika in reference to the plots without any order of any competent authority-plots and trees and tank were initially recorded under the possession of Ganeshi Deen (Petitioner's

ancestor)-the petitioners moved a complaint to the Tehsildar-Sub Divisional Magistrate -rejected the claim in summary manner without considering the report-impugned order-report of Tashildar and Lekhpal that incorporation has been done wrongly by mistake- not incorporated in pursuance to the order of any revenue Officer-impugned order bad-**W.P. allowed.**

Held:

There is no rational justification on the part of the Sub Divisional Magistrate and Commissioner not the consider the report of the Tehsildar and Lekhpal dated 24.6.1998 and due to non consideration of report, the impugned orders suffer from vices of merit and are liable to be set aside. (E-9)

Case Law Cited

Nil

List of Acts

Land Revenue Act

List of Keywords

No rational justification; summary order; without any order of any competent authority

Appearance for parties

Counsel for Petitioner :- Girish Chandra Sinha

Counsel for Respondent :- C.S.C., Sampurnanand

(Delivered by Hon'ble Irshad Ali, J.)

1. List has been revised.

2. Heard Sri G.C. Sinha, learned counsel for the petitioners and learned Standing Counsel for the State-respondent.

3. Learned counsel for the petitioners has informed to Sri Sampurnanand, learned counsel for the respondent, who is representing Nagar Palika, Pratapgarh, who has received the notice, but is not present.

4. By means of the present writ petition, the petitioners have challenged the order dated 7.6.2003 and 31.3.2005, contained as Annexures-1 and 2, passed by respondent Nos.2 and 1 respectively. It is further prayed for issuance of writ of mandamus commanding the respondent No.2 to delete the name of respondent No.3 from the revenue records regarding plot No. 1330 of Village Ranjeetpur Chilbila.

5. Factual matrix of the case is that in the year 1879, the district Pratapgarh was carved out from the district Raebareli. In 1872, the first settlement was done, wherein plot Nos.820, 821 and 825 of Village Ranjeetpur, Chilbila were in possession of Janka Das Faqeer and Zamindar of the land was Rani Raghuraj Kunwari. In 1982, the Village Ranjeetpur became popular as Chilbila Bazar.

6. The forefather of the petitioners came to Chilbila and established in Village Ranjeetpur alongwith his son Ganeshi Din acquired the said pond area from the Zamindar for the purpose of charity and built a pakka talab having two ghats for human and one ghat for animals. During the second settlement, the plot Nos.820, 821 and 825 were carved out as a single plot and numbered as plot No.1279 having its area as 2-17-16. The construction and trees were recorded in revenue records. The

said plots and trees and tank were recorded under the possession of Ganeshi Deen.

7. In the third settlement, the plot No.1279 of second settlement was renumbered as plot No.392 having an area of 3-8-17. On 17.12.1910, huge property of Durga was partitioned through family settlement. After abolition of zamindari, the sub urban area of Ranjeetpur Chilbila was included in Nagar Palika, Pratapgarh. A Lekhpal added the name of Nagar Palika in reference to the said plots without any order of any competent authority. The petitioners came to know about the aforesaid in the year 1998. On 24.6.1998, the petitioners moved a complaint to the Tehsildar, who on the basis of complaint, made an enquiry and submitted his report to Sub Divisional Officer, Sadar.

8. The petitioners moved an application under Section 33/39 of Land Revenue Act before the Sub Divisional Officer, Sadar, Pratapgarh for rectifying the mistake and removing the name of respondent No.3 from the records in reference of the said plot. The said application was registered as Case No.88/39/15/12//5/29/24 and later on transferred to the respondent No.2 for disposal, who disposed of the application of the petitioners by way of passing a summary order on surmises and conjectures, it is the submission of learned counsel for the petitioners.

9. The petitioners preferred a revision against the order dated 7.6.2003 before the Commissioner, Allahabad Division, Allahabad which was later on transferred to the respondent No.1 for disposal.

10. The respondent No.1, passed an order, confirming the findings of respondent No.2, thereby the petitioners have filed the present writ petition before this Court.

11. Submission of learned counsel for the petitioners is that a report was called for from the Tehsildar and Lekhpal of the concerned area who submitted a report on 24.6.1998 that the incorporation has been done wrongly by mistake and has not incorporated in pursuance to the order of any revenue Officer. Submission is that without considering the relevant material on record before the Sub Divisional Magistrate and Commissioner, they have failed to pass a justified order in law.

12. On the other hand, learned Standing Counsel submitted that the impugned orders are just and valid and do not suffer from any infirmity or illegality.

13. After having heard the submission advanced by learned counsel for the parties, I perused the material on record.

14. Learned counsel for the petitioners invited attention of this Court on the report of the Tehsildar and Annexure-10 (page-96) of the paper book, which clearly states that the Gata No.1330 in the khatauni, the land is registered as tank and adjacent to the tank, old temple and *dharamshala* is situated and there are *mahua* and *peepal* trees. It has also been reported that no order whatsoever has been passed by any revenue authority for incorporation of the land belonging to the Nagar Palika.

15. The Sub Divisional Magistrate while deciding the issue, has rejected the claim in summary manner without considering the report submitted by the Tehsildar and Lekhpal. The Commissioner has also failed to appreciate that the

incorporation in the name of Nagar Palika is forged and fabricated and ignored the report of the Tehsildar and Lekhpal dated 24.6.1998 (Annexure 10 to the writ petition), therefore, the impugned orders suffer from apparent illegality and are liable to be set aside.

16. There is no rational justification on the part of the Sub Divisional Magistrate and Commissioner not the consider the report of the Tehsildar and Lekhpal dated 24.6.1998 and due to non consideration of report, the impugned orders suffer from vices of merit and are liable to be set aside.

17. On overall consideration of the matter, I am of the opinion that the impugned orders dated 7.6.2003 and 31.3.2005 are not justifiable in law, therefore, the same are hereby quashed. The writ petition succeeds and is **allowed**.

18. It is provided that the respondent No.2 shall pass a fresh order in accordance with law, taking into consideration the report of the Tehsildar dated 24.6.1998, if possible, within a period of six months from the date of production of a certified copy of this order.

(2025) 7 ILRA 606
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 31.07.2025
BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 3000108 of 1998

Deen Bandhu & Ors. ...Petitioners
Versus
Addl. Commissioner J Faizabad & Ors. ...Respondents

Counsel for the Petitioners:
A.R.Khan, Aasif Razzaque Khan

Counsel for the Respondents:
C.S.C.

Issue for consideration

Impugned orders and inaction on the part of respondent Nos.1 and 2 and also the
action of the District Revenue Authorities by which they have proceeded to take possession and allot the same.

Headnotes

Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1976- sec. 10 (2), 31, 3 (2) and (3)- land only recorded as irrigated in khasra 1378 fasli, 1379 fasli- but impugned order wrongly held that the entire land is irrigated-mere entry in khasra of 1381 fasli and 1372 fasli about the installation of the government tubewell do not mean that the land belonging to the original tenure holder is irrigated -the land is neither irrigated nor is capable of yielding two crops -these evidence have been ignored-prescribed authority misread and misinterpreted the provisions of Section 31 (2) of the Act 1975-determination of surplus land could only be held within two years- impugned
orders are illegal and invalid. **W.P. allowed.** (E-9)

Case Law Cited

Nil

List of Acts

Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1976

List of Keywords

Surplus land; irrigated land; unirrigated land.

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard learned counsel for the petitioners and learned Standing Counsel for the State-respondent.

2. By means of the present writ petition, the petitioner has prayed for the following reliefs :-

"(i) issue a writ, order or direction in the nature of certiorari quashing the order dated 14.7.1998 contained in Annexure-2, order dated 26.3.1993 contained in Annexure-3, the order dated 27.2.1986 contained in Annexure-4, the part of the order dated 7.12.1991 passed by the opposite parties no. 1 and 2 and also the revised notice dated 28.2.1983 and the entire proceedings after summoning the original from the opposite parties.

(ii) issue a writ, order or direction in the nature of mandamus commanding the opposite parties not the implement the order dated 14.7.1998, 19.1.1998, 26.3.93, 27.2.86 and 7.12.1991 and also not to dispossess the petitioners from the land in question and also not allot the same to any one.

(iii) issue a writ, order or direction in the nature of interim mandamus commanding the opposite parties not the implement the order dated 14.7.1998, 19.1.1998, 26.3.93, 27.2.86 and 7.12.1991 and also not to dispossess the petitioners from the land in question and also not allot the same to any one.

(iv)...

(v)..."

3. Brief facts of the case are that the prescribed authority declared 21.7.33 acres of land as surplus vide order dated 27.2.1986. Against the said order, an appeal was filed, wherein stay was granted vide order dated 19.5.1986. Thereafter, the appeal was allowed and the prescribed authority was directed to decide the issue afresh vide order dated 7.12.1991.

4. A revised notice was issued on 28.2.1983 under Section 10 (2) of the Act. On 26.3.1993, an order was passed by the Chief Revenue Officer, Bahraich in Case No.751/35/34 under Section 10 (2) of the Act. Vide order dated 19.9.1995, an order was passed by the Additional Commissioner (Judicial), Faizabad Division, Faizabad in Ceiling Appeal No.497/ Bahraich (Nakchhad Prasad Vs. State of U.P.).

5. Submission of learned counsel for the petitioners is that the present writ petition has been filed challenging the impugned orders and inaction on the part of respondent Nos.1 and 2 and also the action of the District Revenue Authorities by which they have proceeded to take possession and allot the same. The impugned order passed by the respondent No.1 is nullity as it has been passed against a dead person. The said order is also without jurisdiction as no order on merit could be passed unless, the legal heirs of the deceased party are substituted and brought on record, besides the same is also in violation of principles of natural justice. The order passed by the prescribed authority is also contrary to the provision of Section 4-A of U.P. Imposition of Ceiling on Land Holding Act and thus, the same are also illegal and invalid. The respondent No.1 has proceeded arbitrarily to exercise the jurisdiction and power upon an

application moved for recall of ex-parte order by rejecting it but substituting the petitioners, although the said order was passed against a dead person, vide an order dated 14.7.1998. The certified copy of the orders dated 14.7.1998, 19.1.1998 and 26.3.1993 are enclosed as Annexures-1, 2 and 3 to the writ petition.

6. In response to a notice issued under Section 10(2) of the Act, the petitioners' father filed an objection before the prescribed authority, stating therein that he had no surplus land and also mentioned detailed facts therein upon which the prescribed authority passed an order dated 30.6.1976.

A revised notice was again issued on 28.2.1983 under Section 10 (2) of the Act and on receipt of the same, the petitioners' father again filed an objection stating therein that revised notice dated 28.2.1983 is barred by limitation in view of the provisions of Sections 31, 3 (2) and (3) of the U.P. Act No.20 of 1976. It had also been pleaded that the entire land belonging to him is also unirrigated but the same has wrongly been shown as irrigated. In objection it has also been shown as unirrigated. In objection it was also pleaded that the land belonging to the adult sons and who are also residing separately ought not to have been clubbed with his holding and no fresh determination could be held as the prescribed authority had already passed an order dated 30.6.1976 upon the original notice issued to him. Besides the above, it was further pleaded that the land which had already been transferred could not be treated of his land, thereby clubbing the same with his holding.

7. It is submitted that subsequently, an application for impleadment was also given by Buddho, Deen Mohamman, Jaan Mohammad, Wali Mohammad, sons of Qasim Ali, Duber Ameen son of Mustaqeem on 13.5.1983, which was allowed.

8. After framing the issues, the prescribed authority proceeded to record the evidence. The objector examined himself (Nakchhed Prasad), Jamuna Prasad and Buddho and also filed the Khatauni extracts for the 1383 fasli to 1394 fasli relating to khata Nos.76, 64 and 70 of gram Akhtiyarapur, certificate of Apar Primary Examination Chhatra Lekha Pramau Patra, so issued by the Gandhi Inter College, Bahraich, original sale deed dated 10.3.1981 whereas, the State of U.P. examined Chhotan Lal, Supervisor, Kanoongo Nanpara, the then Lekhpal Akhtiyarapur, Sri Gopalji Lekhpal, Bhilora Basu and also filed khatauni of Gram Jagdishpur for the 1387 fasli to 1392 fasli of khata Nos.88, 122, 123, 125, 127 and 128.

9. The prescribed authority declared 21.733 Acres of land as surplus vide order dated 27.2.1986. Against the said order, an appeal was filed, wherein stay was granted vide order dated 19.5.1986 and thereafter, vide order dated 7.12.1991, the appeal was allowed and the prescribed authority was directed to decide afresh.

10. Thereafter, the prescribed authority again rejected the objection dated 5.2.1993 filed by Buddho vide order dated 22.3.1993 and also rejected the objection filed by the tenure holder vide ex-parte order dated 26.3.1993. Against the said order, an appeal was filed before the Commissioner, wherein interim stay order was passed on 19.9.1995. During the pendency of the appeal, the original tenure

holder Sri Nakchhed died, leaving behind the petitioners as his legal heirs and representatives on 17.11.1997.

11. The respondent No.1 proceeded in absence of the petitioner and dismissed the appeal on merit vide order dated 19.1.1998.

12. It is submitted that the petitioners had no knowledge about the date fixed in the appeal as such they could not appear and take necessary steps and the appeal was decided ex-parte on merit. As and when the petitioners came to know about the aforesaid decision on appeal, they immediately moved an application for substitution and recall of the said order in appeal. The application for recall was rejected vide order dated 14.7.1998.

13. Submission of learned counsel for the petitioners is that the respondent No.1 proceeded in most arbitrary manner thereby rejecting the application for recall of the order by ignoring the fact that the appellate order dated 19.1.1998 is an ex-parte order and has been passed even without hearing the appellants' counsel. It is further submitted that a notice under Section 10 (2) of the Act was issued and the prescribed authority passed an order dated 30.6.1976 and thereafter, time barred revised notice was issued on 28.2.1983 and the prescribed authority passed an order determining the surplus land on 27.2.1986 and thus, the entire proceedings are void abinitio.

14. It is further submitted that the prescribed authority misread and misinterpreted the provisions of Section 31 (2) of the U.P. Act No.20 of 1975 in rejecting the petitioners' plea that the entire proceedings are barred by time, holding that the same are not barred by time. Next submission is that the determination of surplus land could only be held within two years from 17.1.1975/10.10.1975, on the basis of revised notice, even if earlier proceeding was stayed by the prescribed authority but in the present case it has not been done and thus, entire proceeding vitiated.

15. Learned counsel for the petitioners submitted that the respondents have failed to consider that the land belonging to major sons could not be clubbed with the holding of the original tenure holder as is being done in the present case. The partition between the original tenure holder and the major sons who were coparceners was already held long ago and were residing separately but the courts below failed to consider the same while passing the impugned order. The courts below have wrongly rejected the plea that a substantial piece of land had already been transferred under unrevocable transaction vide executing registered sale deed for an adequate consideration, in good faith not being benami and sham transaction, in favour of a stranger and thus the impugned orders are illegal and invalid.

16. Submission is that the appellate court was not justified in remanding the matter only on the question of irrigation/ unirregation, however, all the above points are purely legal and could be raised subsequently, but the respondent No.1 erred in law in not deciding the same. It is also submitted that the State failed to lead evidence and discharge the burden of proof that the entire land is irrigated capable of yielding two crops in a fasli year and two crops have been yielded in 1378, 1379 and 1380 fasli in view of the provisions of Section 4-A of the Act, but the courts below have wrongly held the entire land as irrigated land.

17. It is submitted that the original tenure holder had the oral and documentary evidence, thereby proved that the entire land is unirrigated and is not capable of yielding two crops but the courts below have wrongly held otherwise and thus, the impugned orders are illegal and invalid.

18. Further submission is that on perusal of the impugned orders, it shows that land of plot Nos.418 area 10 and plot No.421 area 0.80 were only recorded as irrigated in khasra 1378 fasli, 1379 fasli but even then it has wrongly been held that the entire land is irrigated and thus, the impugned orders are illegal and invalid.

19. It is submitted that a mere entry in khasra of 1381 fasli and 1372 fasli about the installation of the government tubewell by Sri Haridei and Munna Lal do not mean that the land belonging to the original tenure holder is irrigated as deposed by Triveni Prasad, Lekhpal, unless it is proved that the same comes within the effective command area and it had also been irrigated in any of the fasli year of 1378, 1379 and 1380 fasli but the same has not been proved and thus, the impugned order are illegal and invalid. It is further submitted that the aforesaid land is neither irrigated nor is capable of yielding two crops and two crops were not yielded in any of the 1378 fasli, 1379 fasli and 1380 fasli and it does not comes in effect command area and it has also not have been irrigated but the courts below have wrongly held otherwise.

20. Submission of learned counsel for the petitioners is that the order dated 19.1.1998 has been passed against a dead person and thus, the same are nullity.

21. On the other hand, learned Standing Counsel submits that the impugned orders are just and valid and does not suffer from any infirmity or illegality.

22. After having heard the submission advanced by learned counsel for the parties, I perused the material on record.

23. On perusal of the contents of the writ petition as also the submission so advanced by learned counsel for the petitioners, it is evident that the present writ petition has been filed challenging the impugned orders and inaction on the part of respondent Nos.1 and 2 and also the action of the District Revenue Authorities by which they have proceeded to take possession and allot the same. The impugned order passed by the respondent No.1 is nullity as it has been passed against a dead person. The said order is also without jurisdiction as no order on merit could be passed unless, the legal heirs of the deceased party are substituted and brought on record, besides the same is also in violation of principles of natural justice, therefore, the order being passed against a dead person and without issuing notice and opportunity of hearing, the same is liable to be quashed on this ground alone.

24. The order passed by the prescribed authority is also contrary to the provision of Section 4-A of U.P. Imposition of Ceiling on Land Holding Act and thus, the same are also illegal and invalid. The respondent No.1 has proceeded arbitrarily to exercise the jurisdiction and power upon an application moved for recall of ex-parte order by rejecting the same. The said order was passed against a dead person, vide an order dated 14.7.1998. The orders dated 14.7.1998, 19.1.1998 and 26.3.1993 are Annexures-1, 2 and 3 to the writ petition.

25. In response to a notice issued under Section 10(2) of the Act, the

petitioners' father filed an objection before the prescribed authority, stating therein that he had no surplus land and also mentioned detailed facts therein upon which the prescribed authority passed an order dated 30.6.1976. A revised notice was again issued on 28.2.1983 under Section 10 (2) of the Act and on receipt of the same, the petitioners' father again filed an objection stating therein that revised notice dated 28.2.1983 is barred by limitation in view of the provisions of Sections 31, 3 (2) and (3) of the U.P. Act No.20 of 1976. The entire land belonging to him is also unirrigated but the same has wrongly been shown as irrigated. In objection it has also been shown as unirrigated. In objection it was also pleaded that the land belonging to the adult sons and who are also residing separately ought not to have been clubbed with his holding and no fresh determination could be held as the prescribed authority had already passed an order dated 30.6.1976 upon the original notice issued to him.

26. An application for impleadment was also given by Buddho, Deen Mohamman, Jaan Mohammad, Wali Mohammad, sons of Qasim Ali, Duber Ameen son of Mustaqeem on 13.5.1983, which was allowed. After framing the issues, the prescribed authority proceeded to record the evidence. The objector examined himself (Nakchhed Prasad), Jamuna Prasad and Buddho and also filed the Khatauni extracts for the 1383 fasli to 1394 fasli relating to khata Nos.76, 64 and 70 of gram Akhtiyarapur, certificate of Apar Primary Examination Chhatra Lekha Pramau Patra, so issued by the Gandhi Inter College, Bahraich, original sale deed dated 10.3.1981 whereas, the State of U.P. examined Chhotan Lal, Supervisor, Kanoongo Nanpara, the then Lekhpal Akhtiyarapur, Sri Gopalji Lekhpal, Bhilora Basu and also filed khatauni of Gram Jagdishpur for the 1387 fasli to 1392 fasli of khata Nos.88, 122, 123, 125, 127 and 128.

27. The prescribed authority declared 21.733 Acres of land as surplus vide order dated 27.2.1986. Against the said order, an appeal was filed, wherein stay was granted vide order dated 19.5.1986 and thereafter, vide order dated 7.12.1991, the appeal was allowed and the prescribed authority was directed to decide afresh. This clearly demonstrates that the impugned orders have been passed, ignoring all these materials, therefore, they are not sustainable in the eyes of law and are liable to be set aside.

28. The prescribed authority again rejected the objection dated 5.2.1993 filed by Buddho vide order dated 22.3.1993 and also rejected the objection filed by the tenure holder vide ex-parte order dated 26.3.1993. Against the said order, an appeal was filed before the Commissioner, wherein interim stay order was passed on 19.9.1995. During the pendency of the appeal, the original tenure holder Sri Nakchhed died, leaving behind the petitioners as his legal heirs and representatives on 17.11.1997.

29. The respondent No.1 proceeded in absence of the petitioner and dismissed the appeal on merit vide order dated 19.1.1998. The petitioners had no knowledge about the date fixed in the appeal and they could not appear, thus, the appeal was decided ex-parte on merit. The application for recall was also rejected vide order dated 14.7.1998, therefore, the ex-parte order passed without substituting the legal heirs, is wholly illegal and arbitrary and is liable to be set aside.

30. The respondent No.1 proceeded in most arbitrary manner thereby rejecting the application for recall of the order by ignoring the fact that the appellate order dated 19.1.1998 is an ex-parte order and has been passed even without hearing the appellants' counsel. A notice under Section 10 (2) of the Act was issued and the prescribed authority passed an order dated 30.6.1976 and thereafter, time barred revised notice was issued on 28.2.1983 and the prescribed authority passed an order determining the surplus land on 27.2.1986 and thus, the entire proceedings are void abinitio.

31. The prescribed authority misread and misinterpreted the provisions of Section 31 (2) of the U.P. Act No.20 of 1975 in rejecting the petitioners' plea that the entire proceedings are barred by time, holding that the same are not barred by time. The determination of surplus land could only be held within two years from 17.1.1975/10.10.1975, on the basis of revised notice, even if earlier proceeding was stayed by the prescribed authority but in the present case it has not been done and thus, entire proceeding vitiated in law.

32. The respondents have failed to consider that the land belonging to major sons could not be clubbed with the holding of the original tenure holder as is being done in the present case. The partition between the original tenure holder and the major sons who were coparceners was already held long ago and were residing separately but the courts below failed to consider the same while rejecting the appeal. The courts below have wrongly rejected the plea that a substantial piece of land had already been transferred under unrevocable transaction vide executing registered sale deed for an adequate consideration, in good faith not being *benami* and sham transaction, in favour of a stranger and thus the impugned orders are illegal and invalid.

33. The appellate court was not justified in remanding the matter only on the question of irrigation/ unirregation, however, all the above points are purely legal and could be raised subsequently, but the respondent No.1 erred in law in not deciding the same. The State failed to lead evidence and discharge the burden of proof that the entire land is irrigated capable of yielding two crops in a fasli year and two crops have been yielded in 1378, 1379 and 1380 fasli in view of the provisions of Section 4-A of the Act, but the courts below have wrongly held the entire land as irrigated land.

34. The original tenure holder had the oral and documentary evidence, thereby proving that the entire land is unirrigated and is not capable of yielding two crops but the courts below have wrongly held otherwise and thus, the impugned orders are illegal and invalid and are liable to be quashed on this ground also.

35. In the impugned orders, it shows that land of plot Nos.418 area 10 and plot No.421 area 0.80 were only recorded as irrigated in khasra 1378 fasli, 1379 fasli but even then it has wrongly been held that the entire land is irrigated and thus, the impugned orders are not sustainable in the eyes of law. A mere entry in khasra of 1381 fasli and 1372 fasli about the installation of the government tubewell by Sri Haridei and Munna Lal do not mean that the land belonging to the original tenure holder is irrigated as deposed by Triveni Prasad, Lekhpal, unless it is proved that the same comes within the effective command area

and it had also been irrigated in any of the fasli year of 1378, 1379 and 1380 fasli but the same has not been proved and thus, the impugned order are liable to be set aside. The land is neither irrigated nor is capable of yielding two crops and two crops were not yielded in any of the 1378 fasli, 1379 fasli and 1380 fasli. All these evidence have been ignored by the respondent Nos.1 and 2.

36. On overall consideration of facts and circumstances of the entire record, it is evident that the impugned orders suffer from apparent illegality and are liable to be set aside, therefore, they are hereby set aside. The writ petition succeeds and is **allowed**.

37. No order as to costs.

(2025) 7 ILRA 613
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 17.07.2025
BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE PRAVEEN KUMAR GIRI, J.

Writ Tax No. 278 of 2024

Cell Com Teleservices Pvt. Ltd.
...Petitioner
Versus
Union Of India & Ors. ...Respondents

Counsel for the Petitioner:
Mr. Rahul Agarwal

Counsel for the Respondents:
Mr. Manu Ghildyal

Issue for Consideration

The dispute revolves around the interpretation of "genuine hardship" in the context of the petitioner seeking to avail the beneficial concessional tax rate under section 115BAA. Principal Commissioner of Income Tax(PCIT) rejected the petitioner's application for condonation of delay in filing Form 10-IC for the Assessment year 2020-21, concluding that the company was not facing "genuine hardship".

Headnotes

Tax matter-Income Tax Act,1961-Section 119(2)(b)-Rejection of Delay Condonation-The delay was attributed to the unavailability of the person handling tax matters due to severe personal difficulties, including the death of the family members-The Court quashed the PCIT order and allowing the petitioner to file Form10-IC and receive the consequential relief.

Held

The court held that the "genuine hardship" must be construed liberally to ensure an assessee's substantive right to a beneficial tax provision is not defeated by a mere procedural lapse-The requirement to file Form 10-IC prior to the ITR is not mandatory if genuine hardship is established for the delay-Impugned order quashed.(Para 18 to 21) (E-6)

Case law Cited

B.M. Malani Vs Commr. of Income Tax & Anr (2008) 10 SCC 617; Gujarat Electric Co. Ltd. Vs CIT [2002] 255 ITR 396; K.S. Bilawala Ors. Vs Principal Commr. of Income Tax 17, Mumbai & Ors (Writ Petition (1) No. 32261 of 2023); Sitaldas K Motwani Vs Dir. Gen. of Income Tax & Ors (2009) SCC OnLine Bom 2195); R/Special Civil Application No. 3445 of 2024; Deepak Pragjibhai Gondaliya Vs Principal Commr. of Income Tax Vododara 1; Sitaldas K Motwani Vs Dir. Gen. of Income Tax (International Taxation) [2010] 187 Taxman 44{=323 ITR 223 (Bombay)}; Bombay Mercantile Co-op. Bank Ltd., Vs CBDT [2010] 195 Taxman 106{=332 ITR 87 (Bom.); Pankaj Kailash Agarwal Vs Asst. Commr. of Income Tax [2024] 464 ITR 65 (Bombay); Principal Commr. of Income Tax Vs Wipro Ltd 446 ITR 1 (SC); MRF Ltd Vs Central Board of Direct Taxes, New Delhi; Pankaj Kailash Agarwal Vs Asst. Commr. of Income Tax & Ors ;2024 SCC OnLine Bom 1025-referred to.

List of Acts

Income Tax Act, 1961

List of Keywords

Principal Commissioner of Income Tax, Assessment year; Tax liability; MAT; Income tax return; Circular No. 9/2015; Range Head; Genuine Hardship; Tax evasion; Refund; Assesee; Concessional rate of Tax; Consequential relief.

Case Arising From

Tax matter- WRIT TAX No. – 278 of 2024
From the Judgment and Order dated 17.07.2025 of the High Court of Judicature at Allahabad.
CELL COM TELESERVICES PRIVATE LIMITED Vs UNION OF INDIA & ORS.

Appearances for Parties

Adv. for Petitioner:
Mr. Rahul Agarwal, Advocate
Adv. for Respondent:
Mr. Manu Ghildyal, Advocate

(Delivered by Hon'ble Praveen Kumar Giri, J.)

1. Heard learned counsel appearing for both the parties.

2. The present writ petition has been filed with the following prayer:

"1) Issue a writ, order or direction in the nature of Certiorari quashing the order dated 30.01.2024 passed by the Principal Commissioner of Income Tax, Ghaziabad (Annexure-1 to the writ petition);

(ii) Issue a writ, order or direction in the nature of Mandamus directing the Principal Commissioner of Income Tax, Ghaziabad to condone the delay in filing Form 10-IC for AY 2020-21 and allow the petitioner to file the same;

(iii) Issue a writ, order or direction in the nature of Mandamus directing the respondent no. 4 to extend consequential rel58ief by recomputing the tax liability of the petitioner for AY 2020-21."

3. The brief facts of the case are as under:

i. The petitioner is challenging the order dated 30.01.2024, passed by the Principal Commissioner of Income Tax, Ghaziabad rejecting the application of condonation of delay filed by the petitioner for condoning the delay in filing Form 10-IC for assessment year 2020-21. The relevant portion of the impugned order dated 30.01.2024 is being quoted below:

"The assessee company filed a Petition u/s 119(2)(b) of the Income Tax Act 1961 dated 29.12.2023 through its director, which was received in the office on 29.12.2023, requesting for condonation of delay, in-filing Form No.10-IC for the A.Y. 2020-21. The assessee company has stated that it had prepared the Form No. 10-IC for filing at the I.T. Portal, but due to the technical glitches it could not submit at the time of filing of ITR."

2. The petition of the assessee company was forwarded to the Addl. Commissioner of Income Tax Range-2(1), Ghaziabad vide letter dated 04.01.2024 for his comments and report. Vide letter dated 17.01.2024 Addl.CIT Range-2(1), Ghaziabad has forwarded report of the JAO Concerned. The Assessing Officer in his report stated that the assessee company has submitted that the person in charge of Income Tax matters. Sh. Anupam Sharma and his family members were suffering from COVID-19 during the year under consideration. On perusal of documents submitted by the assessee company, it appears that its claim is correct and genuine. Therefore, the application for condonation of delay in filing of Form 10-IC may be accepted.

3. Different view has been taken by the Range Head, Ghaziabad and stated. that the assessee company did not file Form No. 10-IC at the time of filing ITR, which is required to be filed on or before the due date of filing return of Income u/s 139(1) of I.T. Act, 1961 and such

option once exercised shall apply to subsequent year. But the assessee did not file the same within the specified date. The assessee company has claimed that due to some technical problem of the I.T. Portal, it could not file the Form 10-IC within due date. However, the assessee company did not file any evidence with regard to technical problem/glitches of I.T. Portal. The assessee company does not fulfil the 3rd condition laid down in the circular no. 6/2022 dated 17.03.2022, which is reproduced hereunder,

"Form 10-IC is filed electronically on or before 30.06.2022 or 3 months from the end of the month in which this circular is issued, whichever is later."

Therefore, it is recommended that the condonation application filed by the assessee company may not be considered..

4. On perusal of records and the reports of the authorities below, it is noted that assessee company was not in genuine hardship and therefore, the condonation application filed by the assessee company may not be considered/condoned.

5. The assessee company does not satisfy the conditions for condonation of delay u/s 119(2)(b) as stipulated in Circular No. 9/2015 [F.No 312/22/2015-OT] dated 09.06.2015. Hence, the request for condonation of delay is hereby rejected"

ii. The petitioner-company filed its income tax return under Section 139(1) for the assessment year 2020-21 on 25th November 2020. The total income declared was Rs. 38,91,260/-. The petitioner had filed its return of income availing the benefit of the newly introduced Section 115BAA of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by which a concessional rate of 22% was applied to the total income of an assessee and the Minimum Alternate Tax (hereinafter referred to as 'MAT') regime was made inapplicable. The provision of Section 115BAA of the Act is produced hereinbelow:

"Section 115BAA of The Income Tax Act, 1961:

(1) Notwithstanding anything contained in this Act but subject to the provisions of this Chapter, other than those mentioned under section 115BA and section 115BAB, the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2020, shall, at the option of such person, be computed at the rate of twenty-two per cent., if the conditions contained in sub-section (2) are satisfied:

***Provided** that where the person fails to satisfy the conditions contained in sub-section (2) in any previous year, the option shall become invalid in respect of the assessment year relevant to that previous year and subsequent assessment years and other provisions of the Act shall apply, as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years.*

(2) For the purposes of sub-section (1), the total income of the company shall be computed,-

(i) without any deduction under the provisions of section 10AA or clause (iia) of sub-section (1) of section 32 or section 32AD or section 33AB or section 33ABA or sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) or sub-section (2AB) of section 35 or section 35AD or section 35CCC or section 35CCD or under any provisions of [Chapter VI-A other than the provisions of Section 80JJAA or section 80M];

(ii) without set off of any loss carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to any of the deductions referred to in clause (i);

(iii) without set off of any loss or allowance for unabsorbed depreciation deemed

so under section 72A, if such loss or depreciation is attributable to any of the deductions referred to in clause (i); and

(iv) by claiming the depreciation, if any, under any provision of section 32, except clause (iia) of sub-section (1) of the said section, determined in such manner as may be prescribed.

(3) The loss and depreciation referred to in clause (ii) and clause (iii) of sub-section (2) shall be deemed to have been given full effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent year:

Provided *that where there is a depreciation allowance in respect of a block of asset which has not been given full effect to prior to the assessment year beginning on the 1st day of April, 2020, corresponding adjustment shall be made to the written down value of such block of assets as on the 1st day of April, 2019 in the prescribed manner, if the option under sub-section (5) is exercised for a previous year relevant to the assessment year beginning on the 1st day of April, 2020.*

(4) In case of a person, having a Unit in the International Financial Services Centre, as referred to in sub-section (1A) of section 80LA, which has exercised option under sub-section (5), the conditions contained in sub-section (2) shall be modified to the extent that the deduction under section 80LA shall be available to such Unit subject to fulfilment of the conditions contained in the said section.

Explanation. - For the purposes of this sub-section, the term "Unit" shall have the same meaning as assigned to it in clause (zc) of section 2 of the Special Economic Zones Act, 2005.

(5) Nothing contained in this section shall apply unless the option is exercised by the person in the prescribed manner on or before the due date specified under sub-section (1) of section 139 for furnishing the returns of income for any previous year relevant to the assessment year commencing on or after the 1st day of April, 2020 and such option once exercised shall apply to subsequent assessment years:

Provided *that in case of a person, where the option exercised by it under section 115BAB has been rendered invalid due to violation of conditions contained in sub-clause (ii) or sub-clause (iii) of clause (a), or clause (b) of sub-section (2) of said section, such person may exercise option under this section:*

Provided further *that once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year."*

iii. The petitioner has made this declaration in its return of income, as well as the statutorily required Form 3CD (audit report), which the petitioner was required to file, however, along with the return of income, the petitioner did not file the newly introduced Form 10-IC.

iv. On 24.12.2021, the Centralized Processing Center issued an intimation order under Section 143(1) of the Act, wherein a demand of Rs. 45,89,490/- was raised against the petitioner for the assessment year 2020-21. The relevant portion of intimation order dated 24.12.2021 is being quoted below:

" स्थायी खाता संख्याः AACCC1688D । निर्धारण वर्षः 2020-21 । पत्र सन्दर्भ संख्याः CPC/2021/A6/187513353 । पावती संः 747236681251120

निर्धारण वर्ष 2020-21 के लिए आपके केस में मांग निर्धारित की गई है

माँग की राशिः रू 45,89,490
मांग सन्दर्भ संः 2021202037030813732C

ITRफार्म का प्रकार स्थिति सूचना आदेश की दिनांक

ITR6 मूल Private Company
24/12/2021

फाइलिंग की दिनांक

25/11/2020

नियत दिनांक विस्तारित नियत दिनाँक

15/02/2021 15/02/2021

आयकर विवरणी का विवरण

राशि (रू में)

क्र.सं.	विवरण	रिपोर्टिंग शीर्ष	करदाता द्वारा प्रदान किया गया	धारा 143(1) की गणना के अनुसार
01	आय का विवरण	कुल आय	38,91,260	38,91,260
02	कर का विवरण	राहत के बाद कर दायित्व	8,90,321	42,06,089
03	ब्याज और देय शुल्क	कुल ब्याज और शुल्क (और)	0	9,48,482
04	पूर्व संदत्त कर	कुल भुगतान किया गया कर (अग्रिम कर टी डी एस टी सी एस स्व-मूल्यांकन कर)	9,17.028	5,65,078
05	देय कर	कुल देय राशि	0	45,89,490

एन साईंराज

सहायक आयकर निदेशक, सी.पी.सी.

बेंगलुरु"

v. Notification No. 06/2022 dated 17.03.2022 had permitted assessee to file Form 10-IC by 30.06.2022. The petitioner was unable to file Form 10-IC due to unavailability of Shri Anupam Sharma, the person handling income tax matters of the petitioner as due to severe health conditions of his mother and elder daughter and their subsequent deaths, he was unable to focus on work and as a result Form 10-IC could not be filed even before the extended date, i.e., 30.06.2022.

vi. In the application for delay condonation dated 29.12.2023, the petitioner has stated that it only came to know about the non-filing of Form 10-IC when a demand of Rs. 45,89,490/- was found on the portal. It was pleaded that the non-filing of Form 10-IC was not intentional but due to personal difficulties of the staff member and that non-filing of Form 10-IC was a procedural error and could be rectified.

vii. Vide order dated 30.01.2024, the Principal Commissioner of Income Tax, Ghaziabad rejected the application for delay condonation filed by the petitioner on grounds that the assessee company was not in genuine

hardship. The same was done on the report of the Range Head, Ghaziabad who recorded in his report that the petitioner had failed to establish technical glitches suffered by him while uploading Form 10-IC. It is alleged that prior to passing of the order dated 30.01.2024, no opportunity of personal hearing was provided to the petitioner.

viii. The Principal Commissioner of Income Tax, Ghaziabad has recorded a specific finding that the Assessing Officer, in his report on petitioner's application, had stated that based on the documentary evidence attached to the application, the claim is correct and genuine. Despite a specific finding by the assessing authority that the case of the petitioner seems to be genuine, the Principal Commissioner of Income Tax, Ghaziabad, placing reliance on the report of the Range Head, Ghaziabad has rejected the application of the petitioner.

ix. The report of the Range Head, Ghaziabad, which was adverse to the petitioner and on the basis of which the order impugned has been passed was not made available to the petitioner before the order impugned was passed. The petitioner had no opportunity to review it and thereafter controvert its contents.

x. The Circular No. 9/2015 [F.No.312/22/2015-OT] dated 09.06.2015 provides for guidelines on conditions and procedure to be followed in cases where application has been filed under Section 119(2)(b) of the Act.

xi. Clause 5 of the Circular No. 9/2015 [F.No.312/22/2015-OT] dated 09.06.2015 is extracted below:

"5. The powers of acceptance/rejection of the application within the monetary limits delegated to the Pr.CCIT/CCSIT/Pr.CsIT/CIT in case of such claims will be subject to following conditions:

a. At the time of considering the case under Section 119(2)(b), it shall be ensured that the income/loss declared and/or refund claimed is correct and genuine and also that the case is of genuine hardship on merits.

b. The Pr.CCIT/CCIT/Pr.CIT/CIT dealing with the case shall be empowered to direct the jurisdictional assessing officer to make necessary inquiries or scrutinize the case in accordance with the provisions of the Act to ascertain the correctness of the claim."

xii. No reasons have been accorded for rejection of the application on grounds of lack of genuine hardship on the part of the petitioner when the circumstances explained by the petitioner have not been dealt with by the Principal Commissioner of Income Tax, Ghaziabad, in the impugned order dated 30.01.2024.

xiii. The order impugned dated 30.01.2024 does not record that the affidavit submitted by Mr. Anupam Sharma attesting to the deaths in his family and consequent personal difficulties were falsehoods, only set up to justify the application for condonation of delay submitted by the petitioner. Due to delay in filing Form 10-IC an additional demand of Rs. 45,89,490/- was raised against the petitioner for the assessment year 2020-21.

xiv. Relevant clause 9 of the Circular No. 9/2015 [F.No.312/22/2015-01] dated 09.06.2015 is extracted below:

"9. The Board reserves the power to examine any grievance arising out of an order passed or not passed by the authorities mentioned in para 2 above and issue suitable directions to them for proper implementation of this Circular. However, no review of or appeal against the orders of such authorities would be entertained by the Board."

4. **Learned counsel for the petitioner** submits that the Principal Commissioner of Income Tax, Ghaziabad, arbitrarily rejected the petitioner's application for condonation of delay in filing Form 10-IC, concluding a lack of "genuine hardship." The petitioner submitted the proof, including a detailed affidavit,

demonstrating that the delay had occurred due to subsequent deaths of Shri Anupam Sharma's mother and elder daughter, the person responsible for the petitioner's tax compliance. To disregard such well-substantiated circumstance as not constituting genuine hardship represents an unjust exercise of discretionary power.

5. He further submits that the impugned order is fundamentally incorrect due to a clear violation of the principles of natural justice. The Principal Commissioner passed the order without giving any opportunity of hearing to the petitioner. Further, the adverse report from the Range Head, Ghaziabad which served as the sole basis for the rejection, was never disclosed to the petitioner, thereby depriving the petitioner of any opportunity to review or refute the allegations made against it.

6. Learned counsel for the petitioner further argues that the Principal Commissioner has not used his discretion under Section 119(2)(b) of the Act correctly. This section is for ensuring justice by allowing delay condonation applications when there are genuine hardship, however, the Commissioner took a very narrow view and ignored the clear human reasons for the delay. The non-filing of Form 10-IC was an unintended procedural oversight, not a deliberate act of tax evasion. The petitioner had clearly signified its intention to opt for the beneficial Section 115BAA of the Act by including it in its original income tax return and audit report (Form 3CD). The subsequent substantial demand of Rs. 45,89,490/- is a direct consequence of this technical lapse. The delay had occurred due to the unavoidable personal circumstances and there is no indication that the petitioner has sought any advantage by late filing. The respondent authority was not justified in denying such benefit by not condoning the delay in filing such form which is procedural in nature.

7. Learned counsel for the petitioner further submits that the Principal Commissioner has ignored the Assessing Officerâ€™s report, who, after reviewing the documentary evidence, deemed the petitioner's claim "correct and genuine." The impugned order fails to provide any cogent reasons for rejecting the finding and for concluding a lack of genuine hardship despite the detailed report in favour of the petitioner.

8. Learned counsel for the petitioner relied upon the judgment passed by Hon’ble Supreme Court as well as various judgments of the Honâ€™ble High Courts in support of his aforesaid contentions. The judgments which are relied upon by the learned counsel are as under:

i. The Hon'ble Apex Court in ***B.M.Malani v. Commissioner of Income Tax and Anr (2008) 10 SCC 617*** observed as under:

"16. The term genuine' as per the New Collins Concise English Dictionary is defined as under: "Genuine means not fake or counterfeit, real, not pretending (not bogus or merely a ruse)"

17. For interpretation of the aforementioned provision, the principle of purposive construction should be resorted to. Lavy of interest although is statutory in nature, inter alia for re-compensating the revenue from loss suffered by non-deposit of tax by the assessee within the time specified therefor. The said principle should also be applied for the purpose of determining as to whether any hardship had been caused or not. A genuine hardship would, inter alia, mean a genuine difficulty. That per se would not lead to a conclusion that a person having large assets would never be in difficulty as he can sell those assets and pay the amount of interest levied.

18. The ingredients of genuine hardship must be determined keeping in view the dictionary meaning thereof and the legal conspectus attending thereto. For the said purpose, another well-known principle, namely, a person cannot take advantage of his own wrong, may also have to be borne in mind. The said principle, it is conceded, has not been applied by the courts below in this case, but we

may take note of a few precedents operating in the field to highlight the aforementioned proposition of law. [See Priyanka Overseas Pvt. Ltd. & Anr. v. Union of India & ors. 1991 Suppl. (1) SCC 102, para 39, Union of India & ors. v. Major General Madan Lal Yadav (Retd.) (1996) 4 SCC 127 at 142, paras 28 and 29, Ashok Kapil v. Sana Ullah (dead) ors. (1996) 6 SCC 342 at 345, para 7, Sushil Kumar v. Rakesh Kumar (2003) 8 SCC 673 at 692, para 65, first sentence, Kusheshwar Prasad Singh v. State of Bibar ors. (2007) 11 sec 447, paras 13, 14 and 16).

19. Thus, the said principle, in our opinion, should be applied even in a case of this nature. A statutory authority despite receipt of such a request could have kept mum. It should have taken some action. It should have responded to the prayer of the appellant. However, another principle should also be borne in mind, namely, that a statutory authority must act within the four corners of the statute. Indisputably, the Commissioner has the discretion not to accede to the request of the assessee, but that discretion must be judiciously exercised. He has to arrive at a satisfaction that the three conditions laid down therein have been fulfilled before passing an order waiving interest."

ii. The Hon'ble ***Gujarat High Court in Gujarat Electric Co. Ltd. v. CIT [2002] 255 ITR 396*** held that the word ***"genuine hardship"*** in Section 119 must be construed liberally and granted the benefit of refund to the petitioner where return could not be filed due to illness of the person in-charge of filing the returns.

iii. The Hon'ble High Court of Judicature at Bombay in ***K.S. Bilawala Ors. v. Principal Commissioner of Income Tax 17, Mumbai &Ors (Writ Petition (1) No. 32261 of 2023)*** has held as under:

"Therefore, the phrase genuine hardship' used in Section 119(2)(b) of the Act should be considered liberally. Respondent should keep in mind, while considering an application of this nature, that the power to condone the delay has been conferred to enable the authorities to do substantial justice to the parties by disposing the matters on merits. While considering these aspects, the authorities are expected to bear in mind that no applicant stand to benefit by lodging delayed returns. Refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when the delay is condoned, the highest that can happen is that a cÐ°Ð½Ð·Ð¸ would be decided on merits after hearing the parties."

iv. The Hon'ble High Court of Judicature at Bombay in ***Sitaldas K Motwani vs. Director General of Income Tax and others (2009 SCC OnLine Bom 2195)*** held as under:

"The Legislature has conferred the power to condone delay to enable the authorities to do substantive justice to the parties by disposing of the matters on merit. The expression "genuine" has received a liberal meaning in view of the law laid down by the Apex Court referred to bereinabove and while considering this aspect, the authorities are expected to keep in mind that ordinarily the applicant, applying for condonation of delay does not stand to benefit by lodging its claim late. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the authorities can decide the case on merits after hearing the parties. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay."

v. Learned counsel for the petitioner has also relied upon a judgment of the High

Court of Gujarat at Ahmedabad in ***R/Special Civil Application No. 3445 of 2024; Deepak Pragjibhai Gondaliya vs. Principal Commissioner of Income Tax Vododara 1,*** decided on 10.06.2025. Paragraph Nos. 7 and 8 of the judgment are quoted below:

"7. As held by this Court in various judgments while considering the late filing Form 10-IC, Form 10B as required under various provisions of the Act for claiming deduction under Chapter-VI, that the filing of form for claiming benefit under the provisions of the Act is procedural, the case of ***Sitaldas K. Motwani v. Director General of Income Tax (International Taxation)*** *reported in* ***[2010] 187 Taxman 44 {=323 ITR 223 (Bombay)}*** *as well as the case of* ***Bombay Mercantile Co-op. Bank Ltd., v. CBDT*** *reported in* ***[2010] 195 Taxman 106 {=332 ITR 87(Bombay)}*** *were followed. Similarly in case of* ***Pankaj Kailash Agarwal v. Assistant Commissioner of Income Tax*** *reported in* ***[2024] 464 ITR 65 (Bombay),*** *the Hon'ble Bombay High Court has held as under :-*

"10. On the issue of genuine hardship, relying on R. K. Madhani Prakash Engineers (Supra), Mr. Sarda submitted that while considering this aspect of genuine hardship, the authorities are expected to bear in mind that ordinarily applicant applying for condonation of delay does not stand to benefit by lodging its claim late. Moreso, when applicant is claiming the deductions under Section 80IC of the Act. Mr. Sarda submitted that CBDT has failed to understand that when the delay is condoned, the highest that can happen is that the cause would be decided on merits after hearing the parties and the approach of the CBDT should be justice oriented so as to advance cause of justice.

11. In the affidavit in reply, respondents have only reiterated what was stated in the impugned order and Mr. Rattesar resubmitted the same.

12. We would agree with Mr. Sarda that no assessee would stand to benefit by lodging its claim late. Moreso, in case of the nature at hand, where assessee would get tax advantage/benefit by way of deductions under Section 80IC of the Act. Of course, there cannot be a straight jacket formula to determine what is 'genuine hardship'. In our view, certainly the fact that an assessee feels that he would be paying more tax if he does not get the advantage of deduction under Section 80IC of the Act, that will be certainly a 'genuine hardship'. It would be apposite to reproduce paragraph 4 of judgment in K. S. Bilawala & Ors. Vs. PCIT & Ors. (2024) 158 taxmann.com 658 (Bombay), which reads as under:

"4. There cannot be a straight jacket formula to determine what is genuine hardship. In our view, certainly the fact that an assessee feels he has paid more tax than what he was liable to pay will certainly cause hardship and that will be certainly a 'genuine hardship'. This Court in Optra Health Pvt. Ltd. v. Additional Commissioner of Income Tax (HQ), Pune & Ors. (Writ Petition No.15544 of 2023 dtd. 19 th December 2023) in paragraphs No. 9 and 10 held as under:

9. While considering the genuine hardship, the PCCIT was not expected to consider a solitary ground as to whether the assessee was prevented by any substantial cause from filing the corrections within a due time. Other factors also ought to have been taken into account. The phrase "genuine hardship" used in Section 119(2)(b) of the Act should have been construed liberally. The Legislature has conferred the power to condone the delay to enable the authorities to do substantial justice to the parties by disposing the matters on merits. The expression 'genuine' has received a liberal meaning in view of the law laid down by the Apex Court and while considering this aspect, the authorities are expected to bear in mind that ordinarily the applicant, applying for condonation of delay, does not stand to benefit by lodging erroneous returns. Refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is

condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate action. There is no presumption that a delay in correcting an error or responding to a notice of invalid return received under Section 139(9) of the Act is occasioned deliberately or on account of culpable negligence or on account of mala-fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk. The approach of authority should be justice-oriented so as to advance cause of justice. If the case of an applicant is genuine, mere delay should not defeat the claim. We find support for this view in Sitaldas K. Motwani v. Director General of Incometax (International Taxation), New Delhi, relied upon by Mr. Walve, where paragraph nos. 13 to 17 read as under :

"13. Having heard both the parties, we must observe that while considering the genuine hardship, Respondent No. 1 was not expected to consider a solitary ground so as to whether the petitioner was prevented by any substantial cause from filing return within due time. Other factors detailed hereinbelow ought to have been taken into account.

14. The Apex Court, in the case of B.M. Malani v. CIT [2008] 10 SCC 617, has explained the term "genuine" in following words:

"16. The term 'genuine' as per the New Collins Concise English Dictionary is defined as under : 'Genuine' means not fake or counterfeit, real, not pretending (not bogus or merely a ruse)'.

17. ******

18. The ingredients of genuine hardship must be determined keeping in view the dictionary meaning thereof and the legal conspectus attending thereto. For the said purpose, another well-known principle, namely, a person cannot take advantage of his own wrong, may also have to be borne in mind....." (p. 624).

The Gujarat High Court in the case of Gujarat Electric Co. Ltd. (supra) was pleased to hold as under:

"... The Board was not justified in rejecting the claim for refund on the ground that a case of genuine hardship was not made out by the petitioner and delay in claiming the relief was not satisfactorily explained, more particularly when the returns could not be filed in time due to the ill health of the officer who was looking after the taxation matters of the petitioner...." (p. 737).

The Madras High Court in the case of R. Seshammal (P.) Ltd. (supra), was pleased to observe as under:

"This is hardly the manner in which the State is expected to deal with the citizens, who in their anxiety to comply with all the requirements of the Act pay monies as advance tax to the State, even though the monies were not actually required to be paid by them and thereafter, seek refund of the monies so paid by mistake after the proceedings under the Act are dropped by the authorities concerned. The State is not entitled to plead the hypertechnical plea of limitation in such a situation to avoid return of the amounts. Section 119 of the Act vests ample power in the Board to render justice in such a situation. The Board has acted arbitrarily in rejecting the petitioner's request for refund." (p.187)

15. The phrase "genuine hardship" used in section 119(2)(b) should have been construed liberally even when the petitioner has complied with all the conditions mentioned in Circular dated 12-10-1993. The Legislature has conferred the power to condone delay to enable the authorities to do substantive justice to the parties by disposing of the matters on merit. The expression "genuine" has received a liberal

meaning in view of the law laid down by the Apex Court referred to hereinabove and while considering this aspect, the authorities are expected to bare in mind that ordinarily the applicant, applying for condonation of delay does not stand to benefit by lodging its claim late. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. The approach of the authorities should be justiceoriented so as to advance cause of justice. If refund is legitimately due to the applicant, mere delay should not defeat the claim for refund.

16. Whether the refund claim is correct and genuine, the authority must satisfy itself that the applicant has a prima facie correct and genuine claim, does not mean that the authority should examine the merits of the refund claim closely and come to a conclusion that the applicant's claim is bound to succeed. This would amount to prejudging the case on merits. All that the authority has to see is that on the face of it the person applying for refund after condonation of delay has a case which needs consideration and which is not bound to fail by virtue of some apparent defect. At this stage, the authority is not expected to go deep into the niceties of law. While determining whether refund claim is correct and genuine, the relevant consideration is whether on the evidence led, it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence.

17. Having said so, turning to the facts of the matter giving rise to the present petition, we are satisfied that respondent No. 1 did not consider the prayer for condonation of delay in its proper perspective. As such, it needs consideration afresh."

10. This was followed by this Court in Artist Tree (P.) Ltd. v. Central Board of Direct Taxes, (2014) 52 taxmann.com 152 (Bombay) relied upon by Mr. Walve, where paragraph nos. 19, 21 and 23 read as under :

"19. The circumstance that the accounts were duly audited way back on 14 September 1997, is not a circumstance that can be held against the petitioner. This circumstance, on the contrary adds force to the explanation furnished by the petitioner that the delay in filing of returns was only on account of misplacement or the TDS Certificates, which the petitioner was advised, has to be necessarily filed alongwith the Return of Income in view of the provisions contained in Section 139 of the said Act read alongwith Income Tax Rules, 1962 and in particular the report in the prescribed Forms of Return of Income then in vogue which required an assessee to attach the TDS Certificates for the refund being claimed. The explanation furnished is that on account of shifting of registered office, it is possible that TDS Certificates which may have been addressed to the earlier office, got misplaced. There is nothing counterfeit or bogus in the explanation offered. It cannot be said that the petitioner has obtained any undue advantage out of delay in filing of Income Tax Returns. As observed in case of Sitaldas K. Motwani (supra), there is no presumption that delay is occasioned deliberately or on account of culpable negligence or on account of mala fides. It cannot be said that in this case the petitioner has benefited by resorting to delay. In any case when substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to prevail without in any manner doing violence to the language of the Act.

21. We find that the impugned order dated 16 May 2006 of the CBDT also seeks to

reject the application for condonation of delay on account of delay from the date of filing the Return of Income, i.e., 14 September 1999 upto 30 April 2002. This was not the ground mentioned in notice dated 7 February 2006 given to the petitioner by the CBDT for rejecting the application for condonation of delay. Thus the petitioner had no occasion to meet the same. It appears to be an afterthought. However, as pointed out in paragraph 20 hereinabove, the delay in filing of an application if not coupled with some rights being created in favour of others, should not by itself lead to rejection of the application. This is ofcourse upon the Court being satisfied that there were good and sufficient reasons for the delay on the part of the applicant.

23. In light of the aforesaid discussion, we are of the opinion that an acceptable explanation was offered by the petitioner and a case of genuine hardship was made out. The refusal by the CBDT to condone the delay was a result of adoption of an unduly restrictive approach. The CBDT appears to have proceeded on the basis that the delay was deliberate, when from explanation offered by the petitioner, it is clear that the delay was neither deliberate, nor on account of culpable negligence or any mala fides. Therefore, the impugned order dated 16 May 2006 made by the CBDT refusing to condone the delay in filing the Return of Income for the Assessment Year 1997-98 is liable to be set aside. Consistent with the provisions of Section 119(2)(b) of the said Act, the concerned I.T.O. or the Assessing Officer would have to consider the Return of Income and deal with the same on merits and in accordance with law."

The Court has held that the phrase 'genuine hardship' used in Section 119(2) (b) of the Act should be considered liberally. CBDT should keep in mind, while considering an application of this nature, that the power to condone the delay has been conferred is to enable the authorities to do substantial justice to the parties by disposing the matters on merits and while considering these aspects, the authorities are expected to bear in mind that no applicant would stand to benefit by lodging delayed returns. The court also held that refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when the delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties. Similar issue came to be considered in R. K. Madhani Prakash Engineers (Supra), where paragraph 8 reads as under :

"8 Further it is recorded in the impugned order that petitioner has failed in proving the genuine hardship. In this regard, we would refer to the judgment of a Division Bench of this court in the case of Sitaldas K. Motwani Vs. Director General of Income Tax (International Taxation) & Ors.,(2009 Scc Online Bom 2195) where the court has discussed the phrase "genuine hardship" used in Section 119(2)(b) of the Act. The court has held that the phrase "genuine hardship" should be construed liberally particularly when the legislature had conferred the power to condone the delay to enable the authorities to do substantive justice to the parties by disposing the matter on merits. While considering this aspect of genuine hardship, the authorities are expected to bear in mind that ordinarily applicant applying for condonation of delay does not stand to benefit by lodging its claim late. More so, in the case at hand where applicant was seeking refund of a large amount of Rs.82,13,340/-. Refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. The authorities fail to understand that when the delay is condoned, the highest that can happen is that the cause would be decided on merits after hearing the parties. In our view, the approach of the authority should be justice oriented so as to advance cause of justice. If refund is legitimately due to applicant, mere delay should not defeat the claim for refund.

Paragraphs 13 to 16 of Sitaldas K. Motwani (Supra) read as under:

13. Having heard both the parties, we must observe that while considering the

genuine hardship, respondent No. 1 was not expected to consider a solitary ground as to whether the petitioner was prevented by any substantial cause from filing return within due time. Other factors detailed herein below ought to have been taken into account.

14. The Apex Court, in the case of B.M. Malani v. CIT and Anr. MANU/SC/4268/2008 : (2008) 10 SCC 617, has explained the term "genuine" in following words:

16. The term "genuine" as per the New Collins concise English Dictionary is defined as under: 'Genuine' means not fake or counterfeit, real, not pretending (not bogus or merely a ruse).

18. The ingredients of genuine hardship must be determined keeping in view the dictionary meaning thereof and the legal conspectus attending thereto. For the said purpose, another well known principle, namely a person cannot take advantage of his own wrong, may also have to be borne in mind.

The Gujarat High Court in the case of Gujarat Electric Co. Ltd. V. CIT MANU/G1/0407/2001: 255 ITR 396, was pleased to hold as under:

The Board was not justified in rejecting the claim for refund on the ground that a case of genuine hardship was not made out by the petitioner and delay in claiming the relief was not satisfactorily explained, more particularly when the returns could not be filed in time due to the ill health of the officer was looking after the taxation matters of the petitioner.

The Madras High Court in the case of Seshammal (R) v. ITO MANU/ TN/ 0879/ 1998: (1999) 237 ITR 185 (Madras), was pleased to observe as under:

This is hardly the manner in which the State is expected to deal with the citizens, who in their anxiety to comply with all the requirements of the Act pay monies as advance tax to the State, even though the monies were not actually required to be paid by them and thereafter seek refund of the monies so paid by mistake after the proceedings under the Act are dropped by the plea of limitation in such a situation to avoid return of the amounts. Section sit of the Act vests ample power in the Board to render justice in such a situation. The Board has acted arbitrarily in rejecting the petitioner's request for refund.

15. The phrase "genuine hardship" used in Section 119(2)(b) should have been construed liberally even when the petitioner has complied with all the conditions mentioned in Circular dated 12th October, 1993. The Legislature has conferred the power to condone delay to enable the authorities to do substantive justice to the parties by disposing of the matters on merit. The expression "genuine" has received a liberal meaning in view of the law laid down by the Apex Court referred to hereinabove and while considering this aspect, the authorities are expected to bare in mind that ordinarily the applicant, applying for condonation of delay does not stand to benefit by lodging its claim late. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. The approach of the authorities should be justice oriented so as to advance cause of justice. If refund is legitimately due to the applicant, mere delay should not defeat the claim for refund.

16. Whether the refund claim is correct and genuine, the authority must satisfy

itself that the applicant has a prima facie correct and genuine claim, does not mean that the authority should examine the merits of the refund claim closely and come to a conclusion that the applicant's claim is bound to succeed. This would amount to prejudging the case on merits. All that the authority has to see is that on the face of it the person applying for refund after condonation of delay has a case which needs consideration and which is not bound to fail by virtue of some apparent defect. At this stage, the authority is not expected to go deep into the niceties of law. While determining whether refund claim is correct and genuine, the relevant consideration is whether on the evidence led, it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence." (emphasis supplied)

This court in R.K. Madhani Prakash Engineers (Supra) had quashed and set aside the impugned order on the ground that the impugned order is not passed by the CBDT but only with the approval of the Member (IT & R), CBDT. So also in the case of TATA Autocomp (supra) wherein paragraphs 11, 12 and 13 read as under:

"11. Moreover, the order says, "This issues with the approval of Member (IT&R), Central Board of Direct Taxes" and is signed by one Virender Singh, Additional Commissioner of Income Tax (ITA Cell), CBDT, New Delhi. If a personal hearing has been granted by the Member (IT&R), the order should have been passed by him. Mr. Sharma states there could be file notings. If that is so, that has not been made available to Petitioner.

12. In the circumstances, on these two grounds alone, we quash and set aside the impugned order dated 5th December 2023 and remand the matter to CBDT. The Member/Members shall within three weeks from the date this order is uploaded make available to Petitioner all Field Reports/ documents/ instructions received by the CBDT from the Field Authorities and within two weeks of receiving the same, Petitioner shall file, if advised, further submissions in support of their application for condonation of delay.

13. Thereafter, an order shall be written, passed and that order shall be authored and signed by the Member of CBDT, who has given a personal hearing and when we say this, it is not the Member holding the same designation. The same individual who gave a personal hearing, shall write and sign the order. All rights and contentions of Petitioner are kept open. Before passing any order which shall be a reasoned order dealing with all submissions of Petitioner, a personal hearing shall be given to Petitioner, notice whereof shall be communicated at least seven working days in advance."

13. In our view, legislature has conferred power on respondent no.3 to condone the delay to enable the authorities to do substantive justice to the parties by disposing the matter on merits. Routinely passing the order without appreciating the reasons why the provisions for condonation of delay has been provided in the act, defeats the cause of justice."

"8. This Court in the case of Surat Smart City Development Ltd. (supra) has also considered the decision of the Hon'ble Apex Court in the case of ***Principal Commissioner of Income Tax v. Wipro Limited*** *reported in* ***446 ITR 1 (SC)*** *and observed as under :-*

"17. On perusal of the above observation of the Hon'ble Apex Court, it is also apparent that the Hon'ble Apex Court has considered the significance of filing declaration under Section 10B(8) of the Act considering the provisions of Section 10B(5) of the Act being a check to verify the correctness of the claim of deduction at the time of filing of return so that if an assessee claims an exemption under the Act by virtue of Section 10B of the Act, then the correctness of the claim has already been verified under Sub-section (5) of Section 10B and therefore, if the claim is withdrawn post the date of filing of return, the report of the Accountant filed under Section 10B(5) of the

Act would become falsified and would stand to be nullified. However, the provisions of Section 115BAA of the Act are in a way granting relief to the assessee Companies to enable them to pay the reduced rate of tax at rate of 22% on exercise of the option on the various conditions mentioned therein.

18. In such circumstances, the respondent No.1 was required to consider the facts of the case by permitting the petitioner to file a fresh Form 10-IC and condoning the delay in filing such Form by molding the prayer made by the petitioner to treat the Form 10-IC filed by the petitioner for Assessment Year 2021-2022 to be treated as that of for Assessment Year 2021. The provisions of Section 119(2)(b) of the Act are meant for redressal of the grievance and hardships caused to the petitioner as held by the Hon'ble Madras High Court in case of R.Seshammal (Supra) as under :

"This is hardly the manner in which the State is expected to deal with the citizens, who under anxiety to comply with all the requirements of the Act pay monies as advance tax to the State, even though the monies were not actually required to be paid by them and thereafter seek refund of the monies so paid by mistake after the proceedings under the Act are dropped by the authorities concerned. The State is not entitled to plead the hypertechnical plea of limitation in such a situation to avoid return of the amounts. Section 119 of the Act vests ample power in the Board to render justice in such a situation. The Board has acted arbitrarily in rejecting the petitioner's request for refund.""

vi. Learned counsel has further relied upon a judgment of the High Court of Madras in ***MRF Ltd. vs. Central Board of Direct Taxes, New Delhi;*** [2025] 172 taxmann.com 776 (Madras). Paragraph Nos. 5 and 8 of the judgment are quoted below:

"5. In this regard. it was submitted by the learned counsel for the petitioner that Section 119(2)(b) has been considered by various High Courts including Hon'ble Supreme Court and it has consistently been held that the discretion under this provision ought to be exercised liberally. It was then submitted by the learned counsel for the petitioner that the belated filing of Form 10-1C in support of the option exercised under Section 115BAA of the Act had been dealt with by this Court in Axe Bpo Services (P) Ltd. v. Director [W.P. No. 3425 of 2024, dated 13-11-2024] wherein after referring to various case laws on the scope of the expression "genuine hardship", it was found that there was substantial compliance inasmuch while filing the return it was stated that the petitioner had opted to pay taxes under Section 115BAA of the Act which is the case here as well. In this regard, it may be relevant refer to the following order.

"...

13. The expression "genuine hardship" had come up for consideration on more than one occasion before various Court, including this Court and the Apex Court. It appears that it has been consistently held that the power conferred under Section 119(2)(b) of the Act, ought to be exercised liberally provided circumstances set out therein exist. Here it may be relevant to keep in view the decision of the High Court of Bombay in the case of Pankaj Kailash Agarwal v. CIT, reported in (2024) 4641TR 65, wherein it was held that no assessee would stand to benefit by lodging its claim late. More so, where the assessee would get tax advantage/benefit. It was held that the fact that an assessee feels that he would be paying more tax if he does not get the advantage of deduction will certainly constitute "genuine hardship". The phrase "genuine hardship" used in section 119(2)(b) of the Act should be construed liberally. The Legislature has conferred the power to condone the delay to enable the authorities to do substantial justice to the parties by disposing of the matters on merits."

8. This Court, after carefully considering the submissions and examining the scope, purport and object of Section 119(2)(6),

finds that identical submissions were made before this Court and the same was rejected in W.P. No. 3425 of 2024, dated 13-11-2024. The relevant portion is extracted here under:

"10. Section 119(2x8) vests power in the Board to admit an application or claim for any exemption, deduction, refund or any other relief under the Act after the period specified under the said Act, for making such application or claim, if it is considered by the Board to be desirable or expedient so to do for avoiding genuine hardship in any case or class of cases.

11..... if the circumstances set out under Section

119(2)(6) of the Act exist, a duty is cast on the Assessing Officer to exercise its power under Section 119(2)(b) of the Act. It is trite law that vesting of power in an authority results in imposition of duties on that authority to exercise that power in a manner which would advance the purpose for granting/vesting of such power. In other words, this Court is of the view that the power under Section 119(2)(6) though seemingly an enabling provision, conferring discretionary power, such power is coupled with duty.

16. I also find that, there has been substantial compliance of the requirement under Section 115BAA of the Act, as evident from the fact that while filing the returns, it was declared/stated by the petitioner that the option to discharge the tax was exercised under Section 115BAA of the Act and taxes were in fact paid@ 22% without claiming deductions as contemplated under Section 115BAA of the Act. In this regard, it may be relevant to refer to the Hon'ble Supreme Court, in the case of Dilip Kumar (2018) 9 SCC, wherein while deciding the Doctrine of Substantial Compliance held as under:

"33. A fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important. Substantial compliance with an enactment is insisted, where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the non-compliance of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted."

17. In the circumstances this Court is of the view that the Respondent Authority/Board has completely mis-directed itself in not-examining if the failure to consider the claim of option to discharge tax under Section 115BAA on the ground of failure on the fact of the petitioner to file Form 10-IC within the period stipulated under Section 115BAA would cause "genuine hardship" to the petitioner/assessee and thus it is desirable as expedient to permit the petitioner to file Form 10-IC in support of its option under Section 115BAA and deal with the same on merit. The facts narrated supra leaves no room for doubt that the rejection of the petition under Section 119(2)(b) to permit the petitioner to file Form 10-IC in support of its exercise of option under Section 115BAA of the Act would cause genuine hardship and it is desirable and expedient to permit the petitioner to file Form 10-IC in support of its claim/option under Section 115BAA of the Act and deal with such claim on merits in accordance with law.

18. In view thereof, the impugned order is set-aside, the respondent shall keep the portal open to enable the petitioner to upload the Form 10-IC and the petitioner shall file the Form 10-IC within a period of four weeks from the date of receipt of a copy of this order,

thereafter the respondent shall proceed to deal with the claim of the petitioner under Section 115BAA on merit and in accordance with law."

8.1. Following the same, this Court is inclined to set aside the order passed under Section 119(2)(b). In view thereof, the impugned order dated 26.03.2024 is set-aside, the respondents shall keep the portal open to enable the petitioner to upload the Form 10-IC and the petitioner shall file the Form 10-IC within a period of four weeks from the date of receipt of a copy of this order, thereafter the respondents shall proceed to deal with the claim of the petitioner under Section 115BAA on merit and in accordance with law."

vii. Learned counsel has also relied upon a judgment of the High Court of Bombay in ***Pankaj Kailash Agarwal vs. Assistant Commissioner of Income-tax and others;*** 2024 SCC OnLine Bom 1025. Paragraph No. 12 of the judgment is quoted below:

""…..

12.1 The court has held that the phrase "genuine hardship" used in section 119(2)(b) of the Act should be considered liberally. The Central Board of Direct Taxes should keep in mind, while considering an application of this nature, that the power to condone the delay has been conferred is to enable the authorities to do substantial justice to the parties by disposing of matters on the merits and while considering these aspects, the authorities are expected to bear in mind that no applicant would stand to benefit by lodging delayed returns. The court also held that refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when the delay is condoned, the highest that can happen is that a cause would be decided on the merits after hearing the parties. Similar issue came to be considered in R.K. Madhani Prakash Engineers, where paragraph 8 reads as under (page 51 of 458 ITR):

…....

15. The phrase "genuine hardship" used in section 119(2)(b) should have been construed liberally even when the petitioner has complied with all the conditions mentioned in Circular dated October 12, 1993. The Legislature has conferred the power to condone delay to enable the authorities to do substantive justice to the parties by disposing of the matters on merit. The expression "genuine" has received a liberal meaning in view of the law laid down by the apex court referred to hereinabove and while considering this aspect, the authorities are expected to bare in mind that ordinarily the applicant, applying for condonation of delay does not stand to benefit by lodging its claim late. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned the highest that can happen is that a cause would be decided on the merits after hearing the parties. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. The approach of the authorities should be justice oriented so as to advance cause of justice. If refund is legitimately due to the applicant, mere delay should not defeat the claim for refund.

…….

(emphasis supplied)"

9. **Learned counsel for the respondent** vehemently opposed the submissions advanced by the learned counsel for the petitioner and submits that the benefit of Section 115BAA, offering a concessional tax rate, is conditional upon strict compliance with all statutory prerequisites, including the timely filing of Form 10-IC. The Centralized Processing Center (CPC) assessed the petitioner's income under the MAT regime, because Form 10-IC was not filed within the prescribed time limit. The

option to avail Section 115BAA of the Act depends upon fulfilling all the conditions contained in sub-section (2) of Section 115BAA of the Act, which includes the mandatory electronic filing of Form 10-IC and since this was not done, the petitioner is not eligible for the concessional rate.

10. Learned counsel for the respondent contended that the Principal Commissioner of Income Tax, Ghaziabad, correctly rejected the petitioner's application for condonation of delay under Section 119(2)(b) of the Act, due to a lack of "genuine hardship" because the responsibility for filing all statutory forms within the stipulated time lies with the assessee (petitioner) and not with its staff. The petitioner also failed to furnish documentary evidence to support claims of technical glitches.

11. Learned counsel for the respondent further submits that the petitioner failed to comply with Notification No. 6/2022 dated 17.03.2022, which extended the deadline for filing Form 10-IC to 30.06.2022. The petitioner's contention of "non-availability of the person handling tax matters" is not an acceptable reason for failing to meet this extended deadline. The third condition laid down in Circular No. 6/2022 regarding the timely electronic filing of Form 10-IC was not fulfilled, which directly led to the rejection of the condonation application.

12. Learned counsel for the respondent rebutted the petitioner's claims of arbitrariness and violation of natural justice and submits that the Principal Commissioner of Income Tax's order dated 30.01.2024 was passed after due consideration of the facts and material available on record. Even if an Assessing Officer initially found the claim genuine, the final decision rests with the higher authority, who is empowered to make inquiries and scrutinize the case as per clause 5(ii) of Circular No. 9/2015.

13. Learned counsel for the respondent has submitted that already intimation has been given to the petitioner under Section 143 of the Act, therefore, he cannot be allowed to submit its Form 10-IC beyond the period prescribed under the law.

14. Learned counsel for the respondent submits that **under Section 115BAA, a condition is stipulated that Form 10-IC must be filed by the assessee before submitting the Income Tax Return (ITR) so that the concessional tax rate of 22% is payable by the assessee.** In this case, the petitioner did not submit Form 10-IC within the prescribed period, as per the provisions of the Act, prior to filing its ITR. Therefore, there is no provision to allow the petitioner to submit its Form 10-IC subsequent to filing its ITR. Consequently, the impugned order has been passed in accordance with law.

15. Per contra, learned counsel for the petitioner submits that relaxation has been granted by the various Hon'ble Courts by passing judgments under the heading of "genuine hardship", and in such a condition, the delay may be condoned and the petitioner may be directed to submit its Form 10-IC even after filing its ITR. He further submits that a further direction may be issued to the concerned respondent to inform the petitioner that the said form has been accepted.

16. We have heard learned counsel for the parties and perused the record.

17. In this case following **legal provisions of law** are involved:

(I) Section 143(1) of The Income Tax Act, 1961:

(1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:

(a) the total income or loss shall be computed after making the following adjustments, namely:

(i) any arithmetical error in the return;

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;

(iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;

(iv) disallowance of expenditure [or increase in income] indicated in the audit report but not taken into account in computing the total income in the return;

(v) disallowance of deduction claimed under [section 10AA or under any of the provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes", if] the return is furnished beyond the due date specified under sub-section (1) of section 139; or

(vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

***Provided** that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:*

***Provided further** that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made:*

***Provided also** that no adjustment shall be made under sub-clause (vi) in relation to a return furnished for the assessment year commencing on or after the 1st day of April, 2018;*

(b) the tax, interest and fee, if any, shall be computed on the basis of the total income computed under clause (a);

(c) the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax, interest and fee, if any, computed under clause (b) by any tax deducted at source, any tax collected at source, any advance tax paid, any relief allowable under section 89, any relief allowable under an agreement under section 90 or section 90A, or any relief allowable under section 91, any rebate allowable under Part A of Chapter VIII, any tax paid on self-assessment and any amount paid otherwise by way of tax, interest or fee;

(d) an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee under clause (c); and

(e) the amount of refund due to the assessee in pursuance of the determination under clause (c) shall be granted to the assessee:

***Provided** that an intimation shall also be sent to the assessee in a case where the loss declared in the return by the assessee is adjusted but no tax, interest or fee is payable by, or no refund is due to, him:*

***Provided further** that no intimation under this sub-section shall be sent after the expiry of [nine months] from the end of the financial year in which the return is made.*

Explanation. For the purposes of this sub-section,—

(a) "an incorrect claim apparent from any information in the return" shall mean a claim, on the basis of an entry, in the return,—

(i) of an item, which is inconsistent with another entry of the same or some other item in such return;

(ii) in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or

(iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction;

(b) the acknowledgement of the return shall be deemed to be the intimation in a case where no sum is payable by, or refundable to, the assessee under clause (c), and where no adjustment has been made under clause (a).

(II) Section 119(2)(b) of The Income Tax Act, 1961:

"(b) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorise [any income-tax authority, not being a Joint Commissioner (Appeals) or] a Commissioner, (Appeals)) to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law."

18. In the present matter, the Principal Commissioner of Income Tax, Ghaziabad, appears to have fallen into error by adopting an excessively precise and stringent approach to the application for condonation of delay under Section 119(2)(b) of the Act. The very essence of this statutory provision is to confer discretionary power upon the tax authorities to mitigate "genuine hardship" faced by assessees. The undeniable and tragic circumstances of successive family deaths of the person handling petitioner-company's tax matters, as submitted by the petitioner through a detailed affidavit of Anupam Sharma, unequivocally establish a case of profound personal hardship that directly impaired the petitioner's ability to ensure timely compliance. To dismiss such a well-substantiated cause as insufficient for condonation not only negates the remedial intent of Section 119(2)(b) but also constitutes an arbitrary exercise of discretion, particularly when the petitioner's intent to avail the beneficial provisions of Section 115BAA was evident from its original return and audit report.

19. The arbitrary rejection of the condonation of delay in filing Form 10-IC are strongly supported by various judgments that widely interpret "genuine hardship" under Section 119(2)(b) of the Act. The Hon'ble Supreme Court in **B.M. Malani** (supra) emphasized that "genuine hardship" signifies "genuine difficulty" and requires a purposeful interpretation of the provision, mandating a judicious exercise of discretion by statutory authorities. The Hon'ble Gujarat High Court in **Gujarat Electric Co. Ltd.** (supra) held that "genuine hardship" must be construed liberally. The Hon'ble Bombay High Court in **K.S. Bilawala Ors. (supra)** and **Sitaldas K Motwani (supra)** further consolidated this liberal interpretation, asserting that the power to condone delay is for substantial justice and refusing it can defeat the interest of justice. The Hon'ble Gujarat High Court in **Deepak Pragjibhai Gondaliya** (supra), held that the filing of forms for claiming benefits is procedural and no assessee benefits from late filing. The Hon'ble **Bombay High Court in Pankaj Kailash Agarwal** (supra) recited by the **Madras High Court in MRF Ltd.** (supra), firmly stated that the "an assessee feels that he would be paying more tax if he does not get the advantage of deduction will certainly constitute genuine hardship."

20. The judgments discussed hereinabove collectively stress that when substantial justice and technical considerations are aligned against each other, the preference should be given to the cause of substantial justice and the authorities' approach should be justice-oriented on merits. The clear and repeated position of law is that even if a procedural delay occurs due to "genuine hardship", it should not prevent an assessee from receiving a rightful tax benefit. Therefore, in light of the aforesaid judgments of Hon'ble Supreme Court and Hon'ble High Courts, we are of the view that filing of Form 10-IC prior to filing of return is not mandatory and if "genuine hardship" is shown then delay may be condoned and in this respect the provision of law shall be taken as a beneficial piece of legislation.

21. After perusing the contentions of the learned counsel for the parties, records and case

laws cited, in the opinion of the Court, the genuine hardship shall be seen by the concerned respondent authority as the petitioner is not getting benefit of concessional rate of tax under the Act, in respect of delay, therefore, the impugned order dated 30.01.2024 passed by the Principal Commissioner of Income Tax, Ghaziabad is **quashed** and the respondent authority is directed to condone the delay in filing Form 10-IC and accept the said Form 10-IC. The respondent concerned is further directed to provide consequential relief to the petitioner by recomputing its tax liability on the submission of its ITR by taking into account Form 10-IC.

22. Accordingly, the writ petition is **allowed**.

(2025) 7 ILRA 633
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.07.2025

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE PRAVEEN KUMAR GIRI, J.

Income Tax Appeal No. 395 of 2007

M/s Rai Wines Ras Bahar Colony
...Appellant
Versus
The Commissioner Of Income Tax
...Respondent

Counsel for the Appellant:
R.S. Agarwal, Mayank Jain

Counsel for the Respondent:
Ashok Kumar, Gaurav Mahajan

Issue for consideration

Whether, on the facts and circumstances of the case, the Income Tax Appellate tribunal was legally correct in sustaining the order of the CIT (Appeals) while making an enhancement to the income of the appellant to Rs.13,38,780/- over and above to the assessed income of the appellant amounting to Rs.25,63,730/- made by the Assessing Officer?"

Headnotes

A. Income Tax Law - Income Tax Act, 1961: Rule 5 - **It is well-settled that in a best judgment assessment there is always a certain degree of guess work. No doubt the authorities concerned should try to make an honest and fair estimate of the income even in a best judgment assessment, and should not act totally arbitrarily, but there is necessarily some amount of guess work involved in a best judgment assessment, and it is the assessee himself who is to blame as he did not submit proper accounts.** (Para 8)

The Tribunal has come to the finding that it is undisputed that the assessee had not maintained the cash memos and, therefore, the sale figures of the assessee could not be determined in any manner whatsoever. It is further held that rate of sale per liter had been determined by the authorities by taking into view the sales made by the shops in the adjoining areas. Further, the assessee could not bring any contrary finding to indicate that the bulk sale rate was less than the figure decided by the CIT (Appeals) of Rs. 30.70 per liter. (Para 6)

The Tribunal held that the estimation of the sales has not been on the basis of license fee but on the basis of sales on facts of the assessee's own case in the immediate preceding year and no contrary facts have been brought on record by the assessee. Consequently, the Tribunal did not interfere with the finding of the CIT (Appeals). (Para 7)

B. When a best assessment is done, it is for the assessee to bring on record the facts that may reveal that the findings are perverse in nature. In the present case, no such material has been brought on record to convince us to dislodge the decision of the CIT (Appeals) and the Tribunal. (Para 9)

Appeal disposed of. (E-4)

Case Law Cited

Kachwala Gems Vs. Joint Commissioner of Income Tax, MANU/SC/8797/2006; 2006:INSC:1016; [2007] 288 ITR 10 SC (Para 8)

List of Acts

Income Tax Act, 1961.

List of Keywords

Income Tax; Assessment; enhancement; accounts.

Appearances for Parties

For Appellant: R.S. Agarwal and Mayank Jain

For Respondent: Ashok Kumar and Gaurav Mahajan

(Delivered by Hon'ble Shekhar B. Saraf, J.)

1. This is an appeal under Section 260-A of the Income Tax Act, 1961. The substantial question of law admitted by the High Court is as follows:

"(iv). Whether, on the facts and circumstances of the case, the Income Tax Appellate tribunal was legally correct in sustaining the order of the CIT (Appeals) while making an enhancement to the income of the appellant to Rs.13,38,780/- over and above to the assessed income of the appellant amounting to Rs.25,63,730/- made by the Assessing Officer?"

2. We have heard Mr. R.S. Agarwal, learned counsel for the appellant as well as Mr. Gaurav Mahajan, learned counsel for the Income Tax Department.

3. It is to be noted that the findings recorded by the Commissioner of Income Tax (Appeals) (hereinafter referred to as "CIT Appeals") and the Income Tax Appellate Tribunal are concurrent findings.

4. Mr. Agarwal has argued that the Tribunal has not gone into the aspect of enhancement of income by the CIT (Appeals) in any detail whatsoever and has, in a simplistic manner, justified the approach of the CIT (Appeals).

5. However, after perusing the order passed by the Income Tax Appellate Tribunal, we find that in paras 3 and 4 of the order, which are delineated below, the Tribunal has discussed the issue in detail. Paras. 3 and 4 are being quoted hereinbelow:

"3. The matter was appealed before Ld. CIT (Appeals) who examined the issue in detail after considering the submissions and material available on record. Ld. CIT (Appeals) considered the rate of sales made by different assessee's in the vicinity. The assessee in the immediate preceding year had shown the selling rate of Rs. 31.30 per liter, which was accepted by the department while finalizing the assessment of that year. The Id. CIT (Appeals) considered the matter in the light of the facts that during the marriage and festival season, the rates are higher and towards the closing year will be slightly lower, but there would not be much variation in the selling rates. He, therefore, adopted the selling rate of Rs. 30.70 per liter as against 39.70, which is lower than the selling rate of Rs. 31.30 declared by the assessee in immediate preceding year. Ld. CIT (Appeals) allowed the margin of 60 paisa per liter to take care of the increase in quota and contract money in the current year. Accordingly, he estimated the sale of country liquor at Rs. 3,85,21,40/- as against Rs. 3,56,12,160/- shown by the assessee and Rs. 4,98,13,853/- estimated by the Assessing Officer.

4. He further observed that rate of 5% after comparing assessee's case with

certain other case applied by the Assessing Officer was not in order. The entire difference between the estimated sales and sales shown by the assessee in the books was required to be added to the net profit shown by the assessee. This would automatically give the net profit of the assessee. If it was done, then the difference in sales of Rs. 29,08,880/- was to be added to the net profit of Rs. 9,93,625/-. This resulted in enhancement of enhancement notice. He compared the cases where sales were estimated on basis of license fee. Ld. CIT (Appeals) after considering the reply of the assessee and various decisions referred to in appellate order came to the conclusion that income of assessee was to be estimated at Rs. 39,02,510/- as against estimated by Assessing Officer at Rs. 25,63,730/-. Thus, he enhanced the income by Rs.13,38,780/-."

6. Subsequently, the Tribunal has come to the finding that it is undisputed that the assessee had not maintained the cash memos and, therefore, the sale figures of the assessee could not be determined in any manner whatsoever. It is further held that rate of sale per liter had been determined by the authorities by taking into view the sales made by the shops in the adjoining areas. The Tribunal has further held that the assessee could not bring any contrary finding to indicate that the bulk sale rate was less than the figure decided by the CIT (Appeals) of Rs. 30.70 per liter.

7. In light of the same, the Tribunal held that the estimation of the sales has not been on the basis of license fee but on the basis of sales on facts of the assessee's own case in the immediate preceding year and no contrary facts have been brought on record by the assessee. Consequently, the Tribunal did not interfere with the finding of the CIT (Appeals).

8. We are also fortified by the judgment of the Supreme Court in **Kachwala Gems Versus Joint Commissioner of Income Tax, reported in [2007] 288 ITR 10 SC,** wherein the Supreme Court has held as follows:

"It is well-settled that in a best judgment assessment there is always a certain degree of guess work. No doubt the authorities concerned should try to make an honest and fair estimate of the income even in a best judgment assessment, and should not act totally arbitrarily, but there is necessarily some amount of guess work involved in a best judgment assessment, and it is the assessee himself who is to blame as he did not submit proper accounts. In our opinion there was no arbitrariness in the present case on the part of the income-tax authorities. Thus, there is no force in this appeal, and it is dismissed accordingly. No costs."

9. Upon perusal of the Tribunal's order, we are of the view that when a best assessment is done, it is for the assessee to bring on record the facts that may reveal that the findings are perverse in nature. In the present case, no such material has been brought on record to convince us to dislodge the decision of the CIT (Appeals) and the Tribunal.

10. Accordingly, the substantial question of law is answered in favour of the revenue and against the assessee. The appeal is accordingly disposed of.

(2025) 7 ILRA 636
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 09.07.2025
BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE PRAVEEN KUMAR GIRI, J.

Writ Tax No. 3026 of 2025

S.S. Enterprises ...Petitioner
Versus
State of U.P. & Anr. ...Respondents

Counsel for the Petitioner:
Suyash Agarwal

Counsel for the Respondents:
C.S.C.

Issue for Consideration

Matter pertains to the imposition of penalty under S.129(1)(b) of the CGST/UP GST Act, 2017, treating the petitioner as not being the owner of the goods and the consequent order of detention and seizure of goods and vehicle under S.129(1)(a). Petitioner seeks quashing of order dated 24.06.2025 passed by the Assistant Commissioner, Commercial Tax, Mobile Unit, Khatauli, Muzaffarnagar, and release of goods and vehicle.

Headnotes

GST - UP GST Act, 2017 – S.129(3) - Central Goods and Services Tax Act (CGST Act) – Penalty under S.129(1)(a) or (b) - Grounds for Imposition of penalty - (a) - Reply by registered email, (b) - Absence of activity at principal place of business - Owner of Goods - Presumption - absence of business activity at principal place of business not sufficient to presume that invoice was fake or that petitioner was not the owner of goods - Opportunity of Hearing.

Held: Penalty imposed under S.129(1)(b) of the CGST Act treating the petitioner as not being the owner of the goods was held unsustainable, as replying through registered email without personal appearance is a "tenuous" ground - Absence of activity at the principal place of business cannot, by itself, establish that the invoice was fake or that the petitioner was not the owner - Petitioner's name appeared in the invoice and he sought release of the goods, Clause 6 of Circular No. 76/50/2018-GST applied, deeming him the owner - Order dated 24.06.2025 was quashed - Authority was directed to grant an opportunity of hearing and pass a reasoned order within eight weeks in accordance with *Halder Enterprises* (supra) - Petition disposed of. (Paras 3 to 8) (E-7)

Case Law Cited

M/s Halder Enterprises v. State of U.P. & Ors., **2024 (2) ADJ 660 (DB)**

List of Acts

Constitution of India; Central Goods and Services Tax Act, 2017; Uttar Pradesh Goods and Services Tax Act, 2017

List of Keywords

Penalty - Seizure - Owner of Goods - Invoice - Principal Place of Business - Suspension of Registration - GST - Opportunity of Hearing - Reasoned Order - Detention - Email Reply - Portal - Tenuous Grounds

Case Arising From

Order dated 24.06.2025 passed by the Assistant Commissioner, Commercial Tax, Mobile Unit, Khatauli, Muzaffarnagar under Section 129(3) of the UP GST Act, 2017

Appearances for Parties

Advs. for the Petitioner:
Suyash Agarwal

Advs. for the Respondents:
C.S.C.

(Delivered by Hon'ble Shekhar B. Saraf, J.
&
Hon'ble Praveen Kumar Giri, 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 prayers:-

"A. Issue a Writ, Order or Direction in the nature of Certiorari quashing order dated 24.06.2025 passed by Respondent No.2 Assistant Commissioner Commercial Tax Mobile Unit Khatauli, Muzaffarnagar - u/s 129(3) of UP GST Act 2017. ***(Annexure No.1)****."*

B. Issue writ order or directing the nature of mandamus directing Assistant Commissioner Commercial Tax Mobile Mobile Unit Khataul, Muzaffarnagar to release goods and vehicle seized u/s 129(1)(a) of the act;"

3. Upon perusal of the impugned order, we find that penalty has been imposed under Section 129(1)(b) of the CGST Act treating the petitioner as not being the owner of the goods.

4. Learned counsel appearing on behalf of the petitioners relies upon a judgment of this Court in ***M/s Halder Enterprises v. State of U.P. and others*** reported in 2024 (2) ADJ 660 (DB), wherein this Court has examined this issue and also examined the relevant circular that has been issued by the department with regard to penalty to be imposed under Section 129(1)(a) and 129(1)(b) of the CGST Act.

5. In the present factual matrix, the grounds for imposing penalty under Section 129(1)(b) of CGST Act as elucidated by the authority concerned is two fold:-

(a) The first ground is that the petitioner had replied by way of his registered email on the portal itself and none appeared in person before the authority concerned. This ground is tenuous in nature and the fact that the petitioner replied by way of the registered email cannot be held against him. It is not the case of the respondent authority that the petitioner was summoned and thereafter the petitioner did not appear. When the petitioner has replied by way of the registered email through the portal, no adverse inference can be drawn against him.

(b) The second ground is that subsequent to the detention on June 11, 2025, a team was sent to the principal place of business of the petitioner and no activity was found at the particular place. Owing to this, the authority concerned suspended the GST registration of the petitioner on the ground that no business activities were carried out at the principal place of business of the petitioner. On this issue also, we are of the view that the absence of any activity at the principal place of business of the petitioner by itself cannot result in a presumption that the invoice that was issued to the petitioner was fake and that the petitioner is not the owner of the goods.

6. Since the petitioner's name is there in the invoice and the petitioner has approached the authorities concerned for release of the goods, we are of the view that Clause No.6 in Circular No.76/50/2018-GST dated December 31, 2018 shall apply to the petitioner and it would be deemed that

the petitioner is the owner of the goods.

7. In light of the above findings, the impugned order dated June 24, 2025 is quashed and set aside with a direction upon the authority concerned to grant an opportunity of hearing to the petitioner and thereafter pass a reasoned order in accordance with law, keeping in mind the principle laid down in ***M/s Halder Enterprises (supra),*** within a period of eight weeks from date.

8. The writ petition is disposed of.

(2025) 7 ILRA 638
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 01.07.2025

BEFORE

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

Matter Under Article 227 No. 5913 of 2025 (Criminal)

Satish Kumar Gupta ...Petitioner
Versus
State of U.P. & Anr. ...Opp. Parties

Counsel for the Petitioner:
Manvendra Singh

Counsel for the Opp. Parties:
G.A.

Issue for Consideration

Petitioner confined his prayer seeking relief by moving the discharge application before the Court concerned at the appropriate stage.

Head Notes

The Constitution of India, 1950- Article 226- The Bonded Labour System (Abolition) Act, 1976 - Section 21 - Offences under the Bonded Labour System (Abolition) Act are tried summarily by a Magistrate - Petition disposed of .

Held-

Direction issued to the Court concerned to consider and decide the matter in terms of Chapter XX and XXI of the Code of Criminal Procedure, 1973. **(Para 5)** (E-15)

Case Law Cited

List of Acts

The Constitution of India, 1950- The Bonded Labour System (Abolition) Act, 1976

List of Keywords

Offences under the Bonded Labour System (Abolition) Act; Tried summarily by a Magistrate

Case Arising From

Judgment and order dated 07.04.2025 passed by the learned Additional Sessions Judge, Special Judge SC/ST Act, Baghpat, in Criminal Revision No. 69 of 2024 (Satish Kumar Gupta vs. State of U.P. and another) as well as impugned cognizance order dated 25.08.2017 passed by Chief Judicial Magistrate, Baghpat in Criminal Case No. 3599 of 2017 (State vs. Satish Kumar Gupta) arising out of Case Crime No. 303 of 2017, under Sections 16, 17, 18, 19 & 20 of the Bonded Labour System (Abolition) Act, 1976, Police Station Baghpat, District Baghpat as well as entire proceedings of aforesaid Criminal Case No. 3599 of 2017 (State Vs. Satish Kumar Gupta) pending in the Court of Chief Judicial Magistrate, Baghpat. (E-15)

Appearances for Parties

Counsel for Petitioner :- Manvendra Singh
Counsel for Respondent :- G.A.

Judgment/Order of the High Court

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

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

2. The instant petition under Article 227 of the Constitution of India has been filed with a prayer to set aside the judgment and order dated 07.04.2025 passed by the learned Additional Sessions Judge, Special Judge SC/ST Act, Baghpat, in Criminal Revision No. 69 of 2024 (Satish Kumar Gupta vs. State of U.P. and another) as well as impugned cognizance order dated 25.08.2017 passed by Chief Judicial Magistrate, Baghpat in Criminal Case No. 3599 of 2017 (State vs. Satish Kumar Gupta) arising out of Case Crime No. 303 of 2017, under Sections 16, 17, 18, 19 & 20 of the Bonded Labour System (Abolition) Act, 1976, Police Station Baghpat, District Baghpat as well as entire proceedings of aforesaid Criminal Case No. 3599 of 2017 (State Vs. Satish Kumar Gupta) pending in the Court of Chief Judicial Magistrate, Baghpat.

3. Learned counsel for the petitioner has confined his prayer seeking relief by moving the discharge application before the Court concerned at the appropriate stage.

4. Per contra, learned AGA for the State has vehemently opposed the aforesaid prayer and relied on Section 21 of the Bonded Labour System (Abolition) Act, 1976, which is provided as under:-

*"21. **Offences to be tried by Executive Magistrates**.- (1) The State Government may confer, on an Executive Magistrate, the powers of a Judicial Magistrate of the first class or of the second class for the trial of offences under this Act; and, on such conferment of powers, the Executive Magistrate on whom the powers are so conferred, shall be deemed, for the purposes of the Code of Criminal Procedure, 1973 (2 of 1974), to be a Judicial Magistrate of the first class, or of the second class, as the case may be.*

(2) An offence under this Act may be tried summarily by a Magistrate."

5. As the offences under the Bonded Labour System (Abolition) Act, 1976 are tried summarily by a Magistrate, therefore, it is hereby directed to the Court concerned to consider and decide the matter in terms of Chapter XX and XXI of the Code of Criminal Procedure, 1973.

6. With the aforesaid direction, the petition is disposed of.

(2025) 7 ILRA 640
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 24.07.2025

BEFORE

THE HON'BLE PRASHANT KUMAR, J.

Crl. Misc. Application U/S 482 No. 28703 of 2008

Dr. Ashok Kumar Rai ...Applicant
Versus
State of U.P. & Anr. ...Respondents

Counsel for the Applicants:
Senior Advocate, Shailendra Kumar Rai

Counsel for the Respondents:
Govt. Advocate, eS.k. Mishra

Issue for Consideration

Issue arose for determination was whether, in facts and circumstances of case, the continuation of criminal proceedings and summoning order dated 15.09.2008 against applicant, a duly qualified medical practitioner, u/s 304A, 315, 323, and 506 IPC, constituted an abuse of process of Court, particularly in view of Medical Board's report exonerating applicant of negligence, or whether, on the contrary, the material on record disclosed prima facie case of medical negligence warranting applicant's prosecution.

Head Notes

Penal Code, 1860 - ss. 304A, 315, 323 and 506 - Applicant, proprietor of Savitri Nursing Home, filed application u/s 482 Cr.P.C. seeking quashing of summoning order dated 15.09.2008 and entire proceedings in u/s 304A, 315, 323, and 506 IPC, arising from FIR dated 29.07.2007 lodged by opposite party no. 2 - It was alleged that applicant, while attending delivery of complainant's relative, exhibited negligence by delaying surgery despite obtaining consent at around 11:00 A.M., resulting in death of foetus - Post-mortem report attributed cause of death to prolonged labour, and complainant further alleged assault by employees of applicant and his associates and fabrication of documents by applicant and his staff - Applicant relied upon Medical Board's report exonerating him of negligence, contending that he was duly qualified and proceedings were an abuse of process of law - Opposite parties asserted contradictions in applicant's statements, existence of two O.T. notes, non-placement of post-mortem report before Medical Board, and deliberate delay in performing surgery due to absence of anaesthetist.

Held:

Criminal liability arises if a doctor fails to exercise ordinary care while treating a patient; mens rea must be examined, and criminal negligence is established if doctor acts without such ordinary care - Instant matter is not case where applicant does not possess requisite qualification, but matter hinges on whether applicant had exercised reasonable care in providing medical service in time, or he had acted carelessly - Case of pure misadventure where doctor has admitted patient and after taking go ahead for operation from patient's family members, did not perform operation in time as he was not having requisite doctor (i.e. anaesthetist) to perform surgery - As per statement of anaesthetist he got a call at 3.30 p.m. and this delay (medical negligence) can only be attributed to applicant - There is contradiction in times of admission, consent and operation, with two O.T. notes and post-mortem report not placed before Medical Board, rendering its opinion unreliable; prima facie, offence is made out against applicant - Although consent was obtained at 12:00, thereafter doctor suggested for operation but operation was not carried out till 4/5 P.M., without explanation, and post-mortem shows foetus died due to prolonged labour, indicating malafide intention of applicant - Thus, cognizance order issued after perusing material collected during investigation, application is devoid of merits and accordingly, dismissed. [Paras 33, 34, 37, 38, 41, 47] (E-13)

Case Law Cited

Jacob Mathew v. State of Punjab and another,**(2005) 6 SCC 1;** Dr. Suresh Gupta v. Govt. of N.C.T. of Delhi & Another, **(2004) 6 SCC 422;** Dr. A.K. Gupta and others v. State of U.P. and others, **2018 AHC 173248, (2018) 0 Supreme (All) 2304;** State of Haryana and others v. Bhajan Lal and others, **1992 Supp (1) SCC 335 - relied on**

V. Kishan Rao v. Nikhil Super Speciality Hospital in Civil Appeal no.2641 of 2010 arising out of SLP (C) No. **15084/2009;** Bolam v. Friern Hospital Management Committee, **(1957) I WLR 582 : (1957) 2 All ER 118;** Bhalchandra alias Bapu and another v. State of Maharashtra, **AIR 1968 SC 1319;** Poonam Verma v. Ashwing Patel and others, **(1996) 4 SCC 332;** Jacob Mathew v. State of Punjab and another, **(2005) 6 SCC 1;** Kusum Sharma and others v. Batra Hospital & Medical Research Centre and others, **(2010) SCR (2) 685;** M/s Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra, **AIR 2021 SC 1918;** R.P. Kapur v. State of Punjab, **A.I.R. 1960 S.C. 866;** State of Bihar v. P.P.Sharma, **1992 SCC (Cr.) 192;** Zandu Pharmaceutical Works Ltd. v. Mohd. Saraful Haq and another, **(Para10) 2005 SCC (Cr.) 283 - referred to**

List of Acts

Penal Code, 1860.

List of Keywords

Medical negligence; Gross negligence; Summoning order; Criminal liability; Civil liability; Private nursing homes; Advance stage of pregnancy; Surgery; Attended the patient and suggested for caesarean; Death of foetus; Chief Medical Officer; Infrastructure deficiency; Statement of informant side has not been adduced; Failure to act in time; Enticing patients; Malafide intention; Employees of applicant; No discharge slip given; Bar Association; Deleted from computer; Extortion money; Medical qualification/competence; Protection for medical professionals; Lack of due care and diligence; Mens rea; Delay in conducting surgery; Prolonged labour; Consent for surgery; O.T. notes; Manufactured documents; Post mortem report; Medical Board's report; Lack of anaesthetist; Consumer complaint; Consumer Court; Trial to proceed independently; Bolam's test.

Case Arising From

ORIGINAL JURISDICTION: Application U/s 482 No. - 28703 of 2008

From the Judgment and Order dated 15.09.2008 of A.C.J.M., Court No.19, Deoria in Case No.17 of 2008

Appearances for Parties

Advs. for the Applicant:
I.K. Chaturvedi (Senior Advocate), Shailendra Kumar Rai

Adv. for the Opposite Party:
Govt. Advocate, S.K.Mishra

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

1. Heard Sri I.K. Chaturvedi, learned Senior Advocate assisted by Sri Shailendra Kumar Rai, learned counsel for the applicant, Sri S.D. Pandey, learned A.G.A. for the State and Sri S.K. Mishra, learned counsel for O.P. no.2.

2. The present application under Section 482 Cr.P.C has been filed by the applicant with a prayer to quash summoning order dated 15.09.2008 passed by A.C.J.M., Court No.19, Deoria under Section 304A, 315, 323 and 506 IPC as well as the entire proceedings of Case No.17 of 2008 pending in the court of Additional Chief Judicial Magistrate, Court no.19, Deoria.

FACTS OF THE CASE

3. In the instant matter, an FIR was lodged on 29.07.2007 by O.P. no.2 wherein it is alleged that wife of younger brother of the informant/O.P. no.2 was admitted in Savitri Nursing Home, Deoria, which is owned/runned by the applicant, who happens to be a doctor. It has been alleged that the patient was admitted to the hospital on 28.07.2007 at 10.30 A.M. for delivery.

At around 11 O'Clock on 29.07.2007 the applicant called O.P. No.2 and checked up the patient and told her relatives that it is necessary for the patient to undergo surgery and asked for their consent. The same was immediately given, however, the surgery was not carried out in time. In the meanwhile, condition of the patient kept deteriorating and it is only at about 5.30 P.M. the patient was taken into the operation theatre. After operation, the informant was informed that the foetus has died. When objection was raised by the family members of the patient, and then they were beaten up by the employees of the doctor (applicant) and his associates. The doctor has also taken ₹8700/- for the surgery and asked the informant to deposit another ₹10,000/-. Even no discharge slip was given to the patient. After registration of the FIR, post mortem examination was conducted on the dead body of the child.

4. After registration of FIR, police wrote a letter to the concerned Chief Medical Officer calling for his opinion in the matter. The C.M.O. called upon the applicant to give his version. The applicant herein had immediately given statement on 14.11.2007 to the C.M.O. which reads as follows:-

"आज दिनांक 14.11.2007 को मुख्य चिकित्साधिकारी, देवरिया के समक्ष मेरा कथन निम्न हैः-

1- यह कि मरीज ऊषा पाण्डेय पत्नी बृजेश पाण्डेय ग्राम सरौरा हमारे यहां 30.03.2007 से हमारे Ante-natal careमें थी इनका LMP 10-10-06 था। इसके मुताबिक इनके प्रसव की तिथि 17.07.2007 थी। इनका सिजेरियन आपरेशन लगभग 6 वर्ष पूर्व हमारे यहाँ ही हुआ था।

2- प्रसव की तिथि (RFF) 17.07.2007 की जानबूझकर अवहेलना करते हुए 11 दिन विलम्ब 28.07.2007 को शांय 3 बजे भर्ती हुए। इनकी अल्ट्रासाउण्ड जांच से पता चला कि पानी कम हो गया है और इनको आपरेशन की सलाह दी गयी। लेकिन वे नार्मल डिलेवरी के लिये आग्रह करते रहे।

3- 28.07.2007 को शायं 6 बजे एवं रात्रि 10 बजे पुनः मरीज को देखा गया और इन्हें फिर आपरेशन की सलाह दी गयी लेकिन अभिभावक नार्मल डिलेवरी के लिये प्रयास करने पे जोर देते रहे।

4- 29.07.2007 को सुबह 6 बजे मरीज को देखा गया और पाया गया की बच्चे की धड़कन ज्यादा है और उन्हें तुरन्त आपरेशन की सलाह दी गयी, बावजूद इसके अभिभावक आपरेशन के लिए मना कर दिये।

5- 29.07.2007 को पुनः 12 बजे मरीज को देखा गया तो बच्चे की धड़कन नहीं मिल रही थी तब इनको यह बताया गया कि यदि तुरन्त आपरेशन नहीं कराया गया तो मरीज की जान को खतरा है, फिर भी अभिभावक आपरेशन के लिये तैयार नहीं हुये।

6- 29.07.2007 दोपहर 2 बजे जब मरीज को पसीना आने लगा और टांके में दर्द होने लगा तथा मरीज की स्थिति गम्भीर होने लगी तब इनके अभिभावक आपरेशन के लिये तैयार हुये।

7- मरीज की पूरी तैयारी करने के बाद 29.07.2007 को शायं 4 बजे आपरेशन हुआ और मृत बच्चा पैदा हुआ।

8- मरीज के अभिभावकों द्वारा बार बार सलाह देने के बावजूद आपरेशन की अनुमति नहीं देने के कारण बच्चे की मृत्यु हुई। बच्चे की मृत्यु के लिये उसके अभिभावक स्वयं जिम्मेदार है।

9- यह कि मरीज 05.08.2007 तक इस अस्पताल में भर्ती रही, उस समय मरीज बिल्कुल सामान्य थी और मरीज के अभिभावक उस दिन जबरदस्ती छुट्टी कारकर मरीज को जिला महिला अस्पताल देवरिया ले गये वहां भी मरीज बिल्कुल स्वस्थ पाया गया।

5. After receiving the statement of the applicant, the C.M.O. constituted Medical Board to look into the issue. The Medical Board looked into the case and gave following report on 17.11.2007 :-

"जाँच आख्या

डा० ए०के० राय गायनायकोलाजिस्ट, निदेशक सावित्री नर्सिंग होम देवरिया के विरूद्ध श्रीमती उषा पाण्डेय के उपचार में लापरवाही बरतने से संबंधित श्री बृजेश कुमार पाण्डेय एडवोकेट को शिकायत की जांच दिनाँक 14-11-2007 को

3.00 बजे अपरान्ह में डा० सुश्रुषा श्रीवास्ताव मुख्य चिकित्सा अधीक्षक, जिला महिला चिकित्सालय देवरिया एवं मेरे द्वारा संयुक्त रूप से जाँच हेतु सावित्री नर्सिंग होम देवरिया जाकर जाँच किया गया। डा० ए०के० राय द्वारा श्रीमती उषा पाण्डेय पत्नि श्री बृजेश पाण्डेय ग्राम सरौरा जनपद देवरिया की डिलीवरी से संबंधित अभिलेखों का अवलोकन किया गया तथा उनका बयान लिया गया डा० ए०के० राय द्वारा दिये गये बयान की पुष्टि श्रीमती उषा पाण्डेय को दिये दिये गये उपचार से संबंधित अभिलेखों से की जाती है। डा० ए०के० राय द्वारा श्रीमती उषा पाण्डेय के उपचार में कोई लापरवाही नहीं की गयी है उनके द्वारा मरीज के हित में उपचार दिया गया है। चूंकि डा० ए०के० राय की अर्हता डी०जी०ओ० है अतः उक्त चिकित्सा उपचार हेतु अधिकृत भी है।"

6. Immediately thereafter the C.M.O. sent a letter to the I.G. Police Gorakhpur stating that the applicant is not at fault by giving following report :-

"आपके पत्र दिनाँक 7-11-2007 के संदर्भ में डा० ए०के० राय निदेशक सावित्री नर्सिंग होम देवरिया के विरूद्ध श्री बृजेश पाण्डेय निवासी ग्राम सरौरा जनपद देवरिया की पत्नि श्रीमती उषा पाण्डेय के उपचार में किये गये लापरवाही से संबंधित मेरे एवं मुख्य चिकित्सा अधीक्षक, जिला महिला चिकित्सालय देवरिया द्वारा जाँच किया गया। जाँच आख्या एवं डा० ए०के० राय के बयान की छायाप्रति संलग्न कर भेजते हुये कहना है कि इसमें डा० ए०के० राय का कोई दोष नहीं है। नियमानुसार उपचार दिया गया है।"

7. However, at this point of time there was no mention of the post mortem report which was carried out of the foetus and same was not placed before the Medical Board.

8. On the basis of the report of the Medical Board, final report was submitted by the I.O. on 30.11.2007. Aggrieved by this final report, the complainant filed protest petition on 15.03.2008 in which it is specifically stated that the consent for surgery was given at 11 O'Clock on 29.07.2007. However, surgery was not carried out. It was only at 5.30 P.M. the patient was taken to O.T. Thereafter, husband of patient made to sign on some papers, and soon, thereafter staff of the applicant announced that the foetus as dead. The death was due to the negligence of the doctor and when the same was challenged, the informant and his family members were beaten up by the staff of the applicant. An FIR was lodged on the same day i.e. 29.07.2007 at 22.45 P.M., however, the patient was not discharged. It is when the informant brought it to the notice of Bar Association, Deoria and when they met the Superintendent of Police, then the patient was discharged. The informant was not given discharge summary and only when the pressure was applied, in front of police officers, some fabricated documents were given and no detail case summary was given as the same was deleted from the computer. It was also mentioned in the protest petition as to how the I.O. was changed. It has been specifically stated that death of foetus was because of delay in carrying out the operation. There was cross-case also lodged against the informant and in the FIR applicant himself admitted that around 12 O' Clock the consent for operation was given. In the statement given by Dr. Chandra Shekhar Azad, he has specifically stated that the applicant had called him at 3.30 P.M. and asked him to come immediately so that the operation may be carried out. This shows that the applicant had not taken steps for conducting operation from 12 O'Clock to 3.30 P.M. though consent was given at around 12 O'clock and the operation was carried out at 5.30 P.M. Its a clear case of medical negligence. It is alleged that the Medical Board had not carried out investigation properly and statement of informant side has not been adduced.

9. In the protest case, after perusing the case diary and evidence on record, the concerned Magistrate came to a conclusion

that prima facie case is made out against the applicant as prima facie it appears to be a case of medical negligence because of which, foetus has died. Accordingly, final report was rejected and allowing the protest petition, summons were issued against the applicant. The summoning order as well as the entire proceedings of the aforesaid case has been assailed by the applicant means of the instant application.

ARGUMENT ON BEHALF OF THE APPLICANT

10. Learned Senior Counsel for the applicant submitted that firstly, the applicant was having the requisite medical qualification for the treatment of the patient. He has the degree of M.B.B.S. and D.G.O. (Diploma in Gynaecology and Obstetrics). He submitted that it is not a case where the applicant was not duly qualified and it was not a case where there was any negligence on the part of the applicant. Secondly, as per report submitted by the Medical Board, no such medical negligence has been proved against the applicant in providing treatment to the alleged victim. To buttress his argument, he has placed reliance on the judgment of Hon'ble Supreme Court in the matter of **Jacob Mathew vs. State of Punjab and another**[1]. He further placed reliance on the judgment passed in the matter of **Dr. Suresh Gupta vs. Govt. of N.C.T. of Delhi & Another**[2] wherein the Court has held has follows:-

"21. Thus, when a patient agrees to go for medical treatment or surgical operation, every careless act of the medical man cannot be termed as criminal. It can be termed criminal only when the medical man exhibits a gross lack of competence or inaction and wanton indifference to his patient's safety and which is found to have arisen from gross ignorance or gross negligence. Where a patient's death results merely from error of judgment or an accident, no criminal liability should be attached to it. Mere inadvertence or some degree of want of adequate care and caution might create civil liability but would not suffice to hold him criminally liable.

22. This approach of the courts in the matter of fixing criminal liability on the doctors, in the course of medical treatment given by them to their patients, is necessary so that the hazards of medical men in medical profession being exposed to civil liability, may not reasonably extend to criminal liability and expose them to risk of landing themselves in prison for alleged criminal negligence.

23. For every mishap or death during medical treatment, the medical man cannot be proceeded against for punishment. Criminal prosecutions of doctors without adequate medical opinion pointing to their guilty would be doing great disservice to the community at large because if the courts were to impose criminal liability on hospitals and doctors for everything that goes wrong, the doctors would be more worried about their own safety than giving all best treatment to their patients. This would lead to shaking the mutual confidence between the doctor and patient. Every mishap or misfortune in the hospital or clinic of a doctor is not a gross act of negligence to try him for an offence of culpable negligence."

11. He further placed reliance on the judgment passed by this Court in the matter of **Dr. A.K. Gupta and others vs. State of U.P. and others**[3], 2018 AHC 173248 wherein it has been held in para 28 to 31 as follows:-

"28. The Court surely could not have proceeded with the complaint in case no evidence were led before the Magistrate, looking to the law laid down in Suresh Gupta (supra). The issue of proceeding with a complaint bereft of medical opinion as to professional negligence, and, documents relating to treatment, was considered by their Lordships in Jacob Mathew (supra). It was held:

"50. As we have noticed hereinabove that the cases of doctors (surgeons and physicians) being subjected to criminal prosecution are on an increase. Sometimes such prosecutions are filed by private complainants and sometimes by police on an FIR being lodged and cognizance taken. The investigating officer and the private complainant cannot always be supposed to have knowledge of medical science so as to determine whether the act of the accused medical professional amounts to rash or negligent act within the domain of criminal law under Section 304-A of IPC. The criminal process once initiated subjects the medical professional to serious embarrassment and sometimes harassment. He has to seek bail to escape arrest, which may or may not be granted to him. At the end he may be exonerated by acquittal or discharge but the loss which he has suffered in his reputation cannot be compensated by any standards.

51. We may not be understood as holding that doctors can never be prosecuted for an offence of which rashness or negligence is an essential ingredient. All that we are doing is to emphasize the need for care and caution in the interest of society; for, the service which the medical profession renders to human beings is probably the noblest of all, and hence there is a need for protecting doctors from frivolous or unjust prosecutions. Many a complainant prefers recourse to criminal process as a tool for pressurizing the medical professional for extracting uncalled for or unjust compensation. Such malicious proceedings have to be guarded against.

52. Statutory Rules or Executive Instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, we propose to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. A private complaint may not be entertained unless the complainant has produced prima facie evidence before the Court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying Bolam's test to the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigation officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld."

29. The requirement of a credible opinion, given by another Doctor, to

support a charge of rashness or negligence on the part of an accused Doctor, is a louder echo of their Lordships' decision in Suresh Gupta (supra), where it says that criminal prosecution of doctors, without adequate medical opinion pointing to their guilt, would be counter-productive. Thus, in order to maintain a complaint for an offence punishable under Section 304-A IPC against a doctor with regard to his professional acts, the requirement of the law is that it should be supported by adequate medical evidence, prima facie demonstrative of a case of criminal negligence. A private complaint, or even an FIR, based on a non-medico layman's vantage, howsoever categorical or systematic, would not entitle the Magistrate to proceed with the complaint against a doctor for criminal negligence, relating to his professional acts.

30. In a later decision, the Hon'ble Supreme Court in Kusum Sharma and others (supra), summarized the principles to be applied in case of medical negligence, that are expressed in the words of their Lordships, thus:

"89. On scrutiny of the leading cases of medical negligence both in our country and other countries specially United Kingdom, some basic principles emerge in dealing with the cases of medical negligence. While deciding whether the medical professional is guilty of medical negligence following well known principles must be kept in view:-

I. Negligence is the breach of a duty exercised by omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.

II. Negligence is an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.

III. The medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.

IV. A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.

V. In the realm of diagnosis and treatment there is scope for genuine difference of opinion and one professional doctor is clearly not negligent merely because his conclusion differs from that of other professional doctor.

VI. The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Just because a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/her suffering which did not yield the desired result may not amount to negligence.

VII. Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.

VIII. It would not be conducive to the efficiency of the medical profession if no Doctor could administer medicine without a halter round his neck.

IX. It is our bounden duty and obligation of the civil society to ensure that the medical professionals are not unnecessary harassed or humiliated so that they can perform their professional duties without fear and apprehension.

X. The medical practitioners at times also have to be saved from such a class of complainants who use criminal process as a tool for pressurizing the medical professionals/hospitals particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners.

XI. The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals.

90. In our considered view, the aforementioned principles must be kept in view while deciding the cases of medical negligence. We should not be understood to have held that doctors can never be prosecuted for medical negligence. As long as the doctors have performed their duties and exercised an ordinary degree of professional skill and competence, they cannot be held guilty of medical negligence. It is imperative that the doctors must be able to perform their professional duties with free mind."

31. It must be noticed here, that Kusum Sharma (supra) was a case that arose from proceedings under the Consumer Protection Act, but their Lordships considered the position of law regarding medical negligence, in its widest possible terms, whether involved in a criminal prosecution, a civil action or a consumer complaint. Their Lordships enunciation of the law shows, like the decision, in Jacob Mathew (supra) to be founded on principles propounded in the face of this new world challenge of a changing order. It is also based on a searching review of authority from different jurisdictions across the world, where courts have been confronted with similar claims against doctors and hospital establishments, by dissatisfied patients, sometimes blackmailers. There is no manner of doubt that the decision of their Lordships under reference, though rendered in the context of a consumer dispute, adumbrates principles, that provide ground rules to judge, irrespective of the nature of jurisdiction or proceedings, claims and complaints regarding medical negligence. They also served as an infallible guide for courts, called upon to decide, whether a criminal prosecution initiated, on a complaint, or a police report, is worth permitting to proceed to trial, or requires as is proverbially called, to be nipped in the bud."

12. Relying on the aforesaid ratio learned counsel for the applicant submitted that the prosecution of the applicant is not justified because admittedly, the medical board has given a report in which it was held that it is not a case of medical negligence. He further submitted that the FIR has only been lodged to extort money from the applicant.

ARGUMENT ON BEHALF OF OPPOSITE PARTIES

13. Per contra, Sri S.K. Mishra, learned counsel for O.P. no.2 submits that the applicant in his evidence stated that the patient was admitted in his Nursing Home at 10.30 AM on 28.07.2007 whereas before

the Medical Board, the applicant has stated that the patient was admitted at 3.30 P.M. on 28.07.2007. He submits that there is contradiction in two statements of the applicant. He further submits that the applicant himself has lodged a cross FIR against O.P. no.2 on 30.07.2007 in which time of admission of the patient has been mentioned to be 7.00 P.M and alleged that the surgery was carried out on 29.07.2007, which is a completely different stand from what has been stated before the Medical Board. He submits that the applicant is trying to fill up the lacunas of the case by stating different times of admission. He further submits that at the time of admission it was mentioned by the applicant that the patient was in perfect condition and still asked her family members for carrying out the surgery. He further submits that the post mortem report of the foetus shows that cause of death was due to "Prolonged labour".

14. Sri Mishra further submits that documents produced before the Medical Board were manufactured documents and on the basis thereof, the Medical Board had come up to a conclusion of no negligence on the part of the applicant. He further submits that in fact the O.T. Note, which was prepared by the applicant just before the operation, was also not placed before the Medical Board. Further, he submits that there is another O.T. Note which has been filed along with the supplementary counter affidavit, and there is no rational for having two O.T. notes specially in the fact when there is difference between the two notes. He further submits that the post mortem of the dead child was carried out and in the post mortem report, the cause of death was "due to prolonged labour". There is nothing on record to show that this post mortem report was placed before the Medical Board or the Medical Board had any chance to deal with it. In absence of aforesaid important documentary evidence, the Medical Board could not have come to the conclusion that it is not a case of medical negligence on behalf of the applicant.

15. He submitted that the consent for surgery was given around 11 O'clock on 29.07.2007 and since the applicant did not have any anaesthetist in his nursing home, so the necessary surgery could not be carried out. He submitted that as per statement of the anaesthetist, it was around 3.30 P.M. the applicant called him and asked him to come as the applicant had to carry out surgery. He next submitted that thereafter the operation was carried out at 5.30 P.M. Further after the call made to the anaesthetist at 3.30 P.M. it took almost 2 hours for carrying out the operation, it is again further case of medical negligence. He contended that apparently there is clear cut delay from 11 O'clock to 3.30 P.M., which amounts to medical negligence and has not been explained by the applicant. He further added that the post mortem record clearly shows that death was due to prolonged labour and had the operation been carried out in time, the child would have been alive. He further submits that the allegation against O.P. no.2 is that, the family members of the patient were pressing for normal delivery and that was the reason for delaying the operation. This averment of the applicant is totally incorrect and has not been substantiated by any evidence. He submits that the first child of the patient was caesarean then how it is possible or why would the family members would press for a normal delivery. Such averment is just a ploy of the applicant to hide his mistake. At last, he submitted that it is clear case of medical negligence.

16. Per contra, Sri S.D. Pandey, learned A.G.A. submits that foetus died only because of the delay in carrying out the surgery in time by the applicant. He submits that there are two O.T. notes and it seems that one of the O.T. note has been manufactured/prepared just for the help of the applicant, which casts serious doubt upon his conduct. He submits that the court below after perusing the case diary and other evidences in detail has rightly come to a conclusion that, prima facie, case of negligence is made out against the applicant and this is the reason why the final report was rejected and summons were rightly issued. At last he submitted that there is no illegality in the summoning order, hence, the instant application should be rejected. He further submitted that in the instant case there are lot of material contradictions in the evidences, which can only be adjudicated upon after adducing the evidence. He further submitted that it is not a case where no prima facie case is made out, hence, this Court should not use inherent power conferred under section 482 Cr.P.C. He further submitted that this is not a case which falls under the guidelines laid down by Hon'ble Supreme Court in the matter of **State of Haryana and others Vs. Bhajan Lal and others[4].**

REJOINDER ON BEHALF OF THE APPLICANT

17. In rejoinder, Sri Chaturvedi, learned Senior Counsel submits that as per report of the Medical Board there was nothing on the record to show that there was any medical negligence on the part of the applicant. Hence, the issue of medical negligence is hyper technical issue. He next submitted that the Medical Board has clearly found that it is not a case of medical negligence, hence the summons issued against the applicant is illegal and liable to be set aside, as the same has been issued by overreaching the report of the Medical Board.

FINDINGS

18. Heard learned counsel for the parties and perused the record.

19. Evidently, an FIR was lodged on 29.07.2007 by brother-in-law of the patient (O.P. no.2) wherein patient, who was in advance stage of pregnancy, was admitted in the nursing home owned/runned by the applicant on 28.07.2007 at 10.30 A.M. The applicant, who is a doctor having M.B.B.S. and D.G.O. degree, attended the patient and suggested for caesarean. For that, consent by the brother of informant/husband of the patient was obtained but since there was no anaesthetist present, the operation could not be carried out. It is only about later in the afternoon when the anaesthetist came and operation was carried out on 29.07.2007 at 5.30 P.M.. The foetus was found dead. After registration of the FIR, the I.O. has referred the matter to the C.M.O. for his opinion, who had constituted a Medical Board. However, it is evident that no opportunity was given to the informant/O.P. no.2 or the patient by the Medical Board and it is only the applicant, who had appeared before the Medical Board and given his statement wherein he has stated that he (applicant/doctor) has checked the patient at about 6.00 P.M. and again at 10.00 P.M. on 28.07.2007 and suggested for operation. The patient was again checked at 6.00 A.M. on the next morning and it was found that the heartbeat of the foetus was high and suggested for surgery. He further stated that at about 12 O'clock the patient was re-examined and it was found that heartbeat of the foetus was

missing and suggest for immediate surgery. He also told the patient that in case operation is not carried out that would become fatal. Then the attendant of the patient agreed for the surgery. According to him, surgery was carried out at 4.00 P.M. on 29.07.2007. The reason for the death, as stated by the applicant, is because the family members of the patient did not agree for surgery at the right time.

20. The aforesaid statement of the doctor is contrary to the FIR wherein the timings are quite different and do not match with the other evidences.

21. The allegation of the informant is that the doctor had taken consent for operation at about 12 O' clock but surgery could not be carried out as the nursing home did not have the anaesthetist . It is only after the arrival of the anaesthetist that the patient was operated.

22. A bare perusal of the post mortem report of the foetus, which has been annexed along with the supplementary counter affidavit, shows that cause of death was "Prolonged Labour". However, there is nothing on record to show that the post mortem report was placed before the Medical Board and even the report of the Medical Board does not talk anything about the post mortem report.

23. Further, counsel for O.P. no.2 brought it to the notice of the Court that there are two O.T. Notes. However, the second O.T. note seems to be manufactured and created to fill in lacunas, for the help of the applicant. There was no reason for any doctor to prepare two O.T. notes.

24. It has been argued that the patient and her family members have already moved for compensation before the Consumer Court in the year 2009 and same is still pending, hence, there is no reasons for pursuing the criminal case against the applicant. In fact, Hon'ble Supreme Court in the matter of **V. Kishan Rao vs. Nikhil Super Speciality Hospital in Civil Appeal no.2641 of 2010 arising out of SLP (C) No. 15084/2009** has held as follows:-

"It is clear from the statement of objects and reasons of the Act that it is to provide a forum for speedy and simple redressal of consumer disputes. Such avowed legislative purpose cannot be either defeated or diluted by superimposing a requirement of having expert evidence in all cases of medical negligence regardless of factual requirement of the case. It will be substantially curtailed and in many cases the remedy will become illusory to the common man."

Surprisingly, the consumer complaint lodged by the victim's family has still not been deliberated upon and has been lying for the last 16 years in the Consumer Court. Since, the said proceeding is not under challenge in this application, I refrain from making any comments on the same.

25. As far as medical negligence is concerned, the first notable judgment in the field of medical negligence is in the matter of **Bolam Vs. Friern Hospital Management Committee, (1957) I WLR 582 : (1957) 2 All ER 118** wherein Lord Justice McNair observed as under :-

"(i) a doctor is not negligent, if he is acting in accordance with a practice accepted as proper by a reasonable body of medical men skilled in that particular art, merely because there is a body of such opinion that takes a contrary view.

The direction that, where there are two different schools of medical practice, both having recognition among practitioners, it is not negligent for a practitioner to follow one in preference to the other accords also with American law; See 70 Corpus Juris Secondum (1951) 952, 953, para 44. Moreover, it seems that by American law a failure to warn the patient of dangers of treatment is not, of itself, negligence ibid. 971, para 48.

Lord Justice McNair also observed : Before I turn that I must explain what in law we mean by "negligence". In the ordinary case, which does not involve any special skill, negligence in law means this : some failure to so some act which a reasonable man in the circumstances would do, or doing some act which a reasonable man in the circumstances would not do; and if that failure or doing of that act results in injury, then there is a cause of action. How do you test whether this act or failure is negligent? In an ordinary case, it is generally said, that you judge that by the action of the man in the street. He is the ordinary man. In one case it has been said that you judge it by the conduct of the man on the top of a Clapham omnibus. He is the ordinary man. But where you get a situation which involves the use of some special skill or competence, then the test whether there has been negligence or not is not the test of the man on the top of Claphm omnibus, because he has not got this man exercising and professing to have that special skill. A man need not possess the highest expert skill at the risk of being found negligent. It is well established law that it is sufficient if her exercises the ordinary skill of an ordinary competent man exercising that particular art."

26. Later, a three-Judges' Bench of Hon'ble Supreme Court in the matter of **Bhalchandra alias Bapu and another vs. State of Maharashtra**[5], has carved out a distinction between Negligence and Criminal Negligence, the Court held that while Negligence is breach of duty caused by omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do. However, criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual.

27. In the matter of **Poonam Verma v. Ashwing Patel and others**[6] where the question of medical negligence was considered in the context of treatment of a patient, Hon'ble Supreme Court has observed as follows:-

"40. Negligence has many manifestations-it may be active negligence, collateral negligence, comparative negligence, concurrent negligence, continued negligence, criminal negligence, gross negligence, hazardous negligence, active and passive negligence, wilful or reckless negligence or Negligence per se."

28. The ratio laid down by Hon'ble Supreme Court in the matter of **Dr. Suresh Gupta vs. Govt. of N.C.T. of Delhi and another (supra)** it has been held that for fixing criminal liability on a doctor, the standard negligence required to be proved should be high and can only be proceeded if it is a case of gross negligence or recklessness. No criminal prosecution should be carried out against the doctor without adequate medical opinion.

29. The guidelines laid down in this case subsequently came to be known as

Bolam's test, wherein it has been specifically stated that medical negligence would mean, some failure to do some act which a reasonable mean in the circumstances would do and in failure to do the act resulted into injury, then it is a case of medical negligence.

30. The issue of medical negligence has been dealt with by Hon'ble Supreme Court in the matter of **Jacob Mathew vs. State of Punjab and another, (2005) 6 SCC 1**, which has been relied upon by learned counsel for the applicant, wherein the Court has held as follows:-

"50. Before we embark upon summing up our conclusions on the several issues of law which we have dealt with hereinabove, we are inclined to quote some of the conclusions arrived at by the learned authors of "Errors, Medicine and the Law" (pp. 241-248), (recorded at the end of the book in the chapter titled 'Conclusion') highlighting the link between moral fault, blame and justice in reference to medical profession and negligence. These are of significance and relevant to the issues before us. Hence we quote :-

(i) The social efficacy of blame and related sanctions in particular cases of deliberate wrongdoings may be a matter of dispute, but their necessity in principle from a moral point of view, has been accepted. Distasteful as punishment may be, the social, and possibly moral, need to punish people for wrongdoing, occasionally in a severe fashion, cannot be escaped. A society in which blame is overemphasized may become paralysed. This is not only because such a society will inevitably be backward-looking, but also because fear of blame inhibits the uncluttered exercise of judgment in relations between persons. If we are constantly concerned about whether our actions will be the subject of complaint, and that such complaint is likely to lead to legal action or disciplinary proceedings, a relationship of suspicious formality between persons is inevitable. (ibid, pp. 242-243)

(ii) Culpability may attach to the consequence of an error in circumstances where substandard antecedent conduct has been deliberate, and has contributed to the generation of the error or to its outcome. In case of errors, the only failure is a failure defined in terms of the normative standard of what should have been done. There is a tendency to confuse the reasonable person with the error-free person. While nobody can avoid errors on the basis of simply choosing not to make them, people can choose not to commit violations. A violation is culpable. (ibid, p. 245).

(iii) Before the court faced with deciding the cases of professional negligence there are two sets of interests which are at stake : the interests of the plaintiff and the interests of the defendant. A correct balance of these two sets of interests should ensure that tort liability is restricted to those cases where there is a real failure to behave as a reasonably competent practitioner would have behaved. An inappropriate raising of the standard of care threatens this balance. (ibid, p.246). A consequence of encouraging litigation for loss is to persuade the public that all loss encountered in a medical context is the result of the failure of somebody in the system to provide the level of care to which the patient is entitled. The effect of this on the doctor-patient relationship is distorting and will not be to the benefit of the patient in the long run. It is also unjustified to impose on those engaged in medical treatment an undue degree of additional

stress and anxiety in the conduct of their profession. Equally, it would be wrong to impose such stress and anxiety on any other person performing a demanding function in society. (ibid, p.247). While expectations from the professionals must be realistic and the expected standards attainable, this implies recognition of the nature of ordinary human error and human limitations in the performance of complex tasks. (ibid, p. 247).

(iv) Conviction for any substantial criminal offence requires that the accused person should have acted with a morally blameworthy state of mind. Recklessness and deliberate wrongdoing, are morally blameworthy, but any conduct falling short of that should not be the subject of criminal liability. Common-law systems have traditionally only made negligence the subject of criminal sanction when the level of negligence has been high a standard traditionally described as gross negligence. In fact, negligence at that level is likely to be indistinguishable from recklessness. (ibid, p.248).

(v) Blame is a powerful weapon. Its inappropriate use distorts tolerant and constructive relations between people. Distinguishing between (a) accidents which are life's misfortune for which nobody is morally responsible, (b) wrongs amounting to culpable conduct and constituting grounds for compensation, and (c) those (i.e. wrongs) calling for punishment on account of being gross or of a very high degree requires and calls for careful, morally sensitive and scientifically informed analysis; else there would be injustice to the larger interest of the society. (ibid, p. 248).

Indiscriminate prosecution of medical professionals for criminal negligence is counter-productive and does no service or good to the society.

Conclusions summed up

51. We sum up our conclusions as under :

(1) Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence as given in Law of Torts, Ratanlal & Dhirajlal (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: 'duty', 'breach' and 'resulting damage'.

(2) Negligence in the context of medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions what has to be seen is whether those precautions were taken which the ordinary experience of men has

found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.

(3) A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.

(4) The test for determining medical negligence as laid down in Bolam's case [1957] 1 W.L.R. 582, 586 holds good in its applicability in India.

(5) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.

(6) The word 'gross' has not been used in Section 304A of IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be 'gross'. The expression 'rash or negligent act' as occurring in Section 304A of the IPC has to be read as qualified by the word 'grossly'.

(7) To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent.

(8) Res ipsa loquitur is only a rule of evidence and operates in the domain of civil law specially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed in service for determining per se the liability for negligence within the domain of criminal law. Res ipsa loquitur has, if at all, a limited application in trial on a charge of criminal negligence.

31. On the hind side it is also common phenomenon that whenever there is death, then nowadays there is marked tendency of the family members of the deceased to look for human factor to blame for the untoward event as they find doctors as a “sitting duck” to be targeted. In such condition, there has to be protection for the

medical professionals. Unless and until protection is granted, the hands of a surgeon is going to shiver and he might not conduct the surgery out of fear of prosecution, if there is no protection.

32. However, this protection has to be balanced as per the ratio laid down in several judgments, this protection can only be applied if the medical professional has carried out its duty skilfully, as any other doctor would have done in the given circumstances.

33. A criminal liability occurs, if ordinary care is not taken by a doctor while treating the patient. In case of criminal liability, the ingredients of mens rea have to be seen. The true rest for establishing criminal negligence is to see whether the doctor was guilty of not acting with ordinary care.

34. The instant matter is not a case where the applicant does not possess the requisite qualification. However, the instant matter hinges on the second aspect as to whether the applicant had exercised reasonable care in providing medical service in time, or he had acted carelessly. In this matter, though consent was taken around 12 O'Clock but the operation was conducted at 5.30 P.M. Delay in conducting the surgery was non availability of the anaesthetist, which resulted in death of the child.

35. Hon'ble Supreme Court in the matter of **Kusum Sharma and others vs. Batra Hospital & Medical Research Centre and others**[7] has held that in the case of medical negligence mens rea has to be seen as well as on the element of criminality, it has to be seen whether the accused has done the act with recklessness or by indifference.

36. In the case in hand, there was clear distinction between simple lack of care incurring civil liability and very high degree of negligence, which incurred criminal liability. As far as prosecution of the applicant in instant criminal case is concerned, there is difference between civil liability and criminal liability. It cannot be said that if action has been taken in civil liability, no criminal liability rises.

37. This is a case of pure misadventure where the doctor has admitted the patient and after taking go ahead for operation from the patient's family members, did not perform the operation in time as he was not having the requisite doctor (i.e. anaesthetist) to perform the surgery. In fact, as per the statement of the anaesthetist he got a call at 3.30 P.M. This delay (medical negligence) can only be attributed to the applicant.

38. In this case there is a contradiction of time of admission, time of consent and time of operation. And there have been two O.T. notes and a post mortem report. All the documents were not produced before the Medical Board and hence, opinion of the Medical Board would have no credence in this matter. This is a case where prima facie offence is made out against the applicant and there is no justification to invoke inherent powers for any interference in the impugned proceedings.

39. It is common practice these days that private nursing homes/hospitals tend to entice the patients for treatment even though they do not have the doctors or infrastructure. When the patient is admitted in a private hospital they start calling for the doctor to treat the patient. It is common knowledge that the private hospitals/nursing homes have started treating the patients as guinea pig/ATM machines only to extort money out of them.

40. No doubt, yes the medical practitioner had to be saved from the clutches of medical negligence otherwise that would cause trembling and dangling fear among doctors of commencing criminal prosecution of any failure in any operation/surgery. This is the fact that any medical professional, who carries out his profession with due diligence and caution, has to be protected but certainly not those doctors who have opened nursing home without proper facilities, doctors and infrastructure and enticing the patients just to extract money out of them.

41. The instant case is a classic case where consent of the family members of the patient was taken around 12 O'clock and thereafter the doctor suggested for operation but operation was not carried out till 4/5 P.M. and further no reason was given by the doctor for delay of 4-5 hours. The post mortem report shows that the foetus died because of the prolonged labour. This clearly shows malafide intention of the doctor/applicant in cheating the patient.

42. The time of admission of the patient and the time of surgery and time of taking the consent from the family member of the patient are three crucial aspects in this case which has to be seen upon after adducing evidences. If the consent of the family members was given at around 12 O' Clock why the operation was carried out at 4/5 P.M. There is no rationale for delay on the part of the doctor/nursing home/hospital. Such negligence can only be attributed to the doctor/applicant.

CONCLUSION

43. From the perusal of material on record and looking into the facts of the case at this stage it cannot be said that prima facie no offence is made out against the applicants. The cognizance order dated 15.09.2008 has been issued after perusing the material collected during investigation of the case. The arguments raised by learned counsel for the applicants are all disputed question of fact, which cannot be adjudicated upon by this Court under Section 482 Cr.P.C. At this stage only prima facie case is to be seen in the light of the law laid down by Supreme Court.

44. Hon'ble Supreme Court in the matters of **State of Haryana Vs. Bhajan Lal 1992 Supp (1) SCC 335, M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra, AIR 2021 SC 1918, R.P. Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866, State of Bihar Vs. P.P.Sharma, 1992 SCC (Cr.) 192, and lastly, Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283** has held that only those cases in which no prima facie case is made out can be considered in an application under Section 482 Cr.P.C.

45. The instant application does not fall under the guidelines laid down by the Hon'ble Supreme Court in the judgments mentioned above, and followed in a number of matters. Moreover, the facts as alleged cannot be said that, prima facie, no offence is made out against the applicants. It is only after the evidence and trial, it can be seen as to whether the offence, as alleged, has been committed or not.

46. However, it is open for the applicants to take all its defence in the trial.

47. The instant application is devoid of merits and is, accordingly, **dismissed**.

48. However, it is made clear that the observation made in this judgment would not come in the way of the trial and the trial

would proceed independently without taking findings of this Court into consideration.

(2025) 7 ILRA 657
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 07.07.2025

BEFORE

THE HON'BLE SANJAY KUMAR SINGH, J.

Crl. Misc. Application U/S 482 No. 28797 of 2024

Ajay Mishra & Anr. ...Applicants
Versus
C.B.I. ...Respondent

Counsel for the Applicants:
Sri Ram M. Kaushik, Sri Tanveer Ahmad (Sr. Adv.)

Counsel for the Respondents:
Sri Rahul Srivastava

Issue for Consideration

Issue was whether inherent jurisdiction of Court u/s 482 of Cr.P.C. could be invoked to quash charge-sheet and criminal proceedings at pre-trial stage, when allegations made in First Information Report and material collected during investigation prima facie disclosed commission of cognizable offence; Court was required to examine whether continuation of such proceedings would amount to abuse of process of law and whether case fell within limited parameters laid down by Supreme Court for exercise of inherent powers.

Head Notes

Penal Code, 1860 - ss. 120-A, 120-B, 420, 471 - Prevention of Corruption Act, 1988 - ss. 13 (2), 13 (1) (d) - Prevention of Corruption (amendment) Act, 2018 - s. 7 - Code of Criminal Procedure, 1973 - ss. 173(2), 239 - Pursuant to Court's order dated 15.11.2011 in Writ Petitions No. 3611 (MB), 3301 (MB) and 2647 (MB) of 2011 (PIL), preliminary enquiry led to registration of FIR dated 11.06.2014 at CBI/STF, New Delhi against then MD of Uttar Pradesh Electronics Corporation Ltd. (UPLC), Director of M/s Infolink Consultancy Service Pvt. Ltd., and other unknown UPLC officials, for offences u/s 120-B IPC r/w 420 IPC and Section 13(2) r/w 13(1)(d) of PC Act, alleging that during 2009-10 they conspired to cause pecuniary loss to Government in HMIS project, resulting in wrongful loss of Rs. 2.4 crores - On basis of such material, Investigating Officer submitted charge-sheet against applicant, whereafter Magistrate took cognizance - Applicants, Ajay Mishra (applicant no.1) and M/s Infolink Consultancy Services Pvt. Ltd. through its Director Ajay Mishra (applicant no.2), moved application u/s 239 Cr.P.C. seeking discharge - Similar applications were filed by co-accused persons, all discharge applications were heard together and rejected by common order, whereafter charges were framed against all the accused persons - Applicants sought quashing of impugned orders.

Held

Every accused turns on its own facts and evidence - Even one additional or different fact and role of individual may make big difference between conclusion in cases of other co-accused, because even single significant detail may alter entire aspect - Considering overall facts and CBI charge-sheet, the case of applicant no.1, a private entity/vendor, stands on a different footing from co-accused who, at the relevant point of time, held official positions in NHRM and UPLC, making his case distinguishable - In view of facts, evidence relied upon by CBI and charge-sheet against applicants, criminal prosecution of applicants amounts to abuse of Court's process, as no offence is made out against them; accordingly, impugned orders dated 02.03.2024 and 29.04.2024 are liable to be quashed and applicants are liable to be discharged, in accordance with principles laid down by Apex Court in Union of India v Prafulla Kumar Samal (infra), Dilawar Babu Kurane (infra), P.Vijayan (infra) and Dipakbhai Jagdishchandra Patel (infra). [Paras 18 to 20] (E-13)

Case Law Cited

Dhariwal Tobacco Products Ltd. & Anr. v. State of Maharashtra &. Anr. **(2009) 2 SCC 370;** Prabhu Chawla v. State of Rajasthan & Anr. , **(2016) 16 SCC 30;** Asian Resurfacing of Road Agency Pvt. Ltd.& Anr. v. Central Bureau of Investigation, **(2018) 16 SCC 299;** Rajesh Yadav & Another v. State of Uttar Pradesh **(2022) 12 SCC 200;** P.K. Narayanan v. State of Kerala **(1995) 1 SCC 142;** Dr. S. K. Singh v. State of M.P & Ors **CRR No. 2032/2015 (MP HC);** T Barai v. Henry AH Hoe **(1983) 1 SCC 177;** Md. Abdul Haque v. Srimati Jesmine Begum Chaudhary **2012 SCC OnLine Gau 143;** Ratan Lal v. State of Punjab **AIR 1965 SC 444;** Shyam Lal v. State **AIR 1968 All 392;** Sundar Lal v. MCD **1970 6 DLT 445 (DEL HC);** Zile Singh v. State of Haryana **(2004) 8 SCC 1;** New India Assurance Co. Ltd v. C. Padma & Anr **(2003) 7 SCC 713;** Sushila N. Rungta v. Tax Recovery Officer **(2019) 11 SCC 795;** West U.P. Sugar Mills Assn. v. State of UP **(2002) 2 SCC 645;** Union of India v. Prafulla Kumar Samal **(1979) 3 SCC 4;** Dilawar Babu Kurane v. State of Maharasthra **(2002) 2 SCC 135;** P. Vijayan v. State of Kerala **(2010) 2 SCC 568;** Dipakbhai Jagdishchandra Patel v. State of Gujarat **(2019) 16 SCC 547;** Anil Kumar Yadav v. State of U.P., application u/s **482 Cr.P.C. No. 40 of 2020,** Interim stay order dated 07.01.2020**;** Kaptan Singh v. State of Uttar Pradesh, **(2021) 9 SCC 35;** Central Bureau of Investigation v. A. Raja and others passed in **Criminal Misc. Application No. 1731 of 2020,** decided on 23.11.2020**;** State of Rajasthan v. Tejmal Choudhary, **2022 LiveLaw (SC) 158 - relied on**

Hridaya Ranjan Prasad Verma v. State of Bihar, **(2000) 4 SCC 168;** Mohammad Ibrahim and others v. State of Bihar and another, **(2009) 8 SCC 751 - referred to**

List of Acts

Penal Code, 1860; Prevention of Corruption Act, 1988; Code of Criminal Procedure Code, 1973.

List of Keywords

Charge-sheet; Cognizance; Investigation; Abuse of process of Court; District Hospital; Prevention of Corruption Act; Criminal conspiracy; Pecuniary loss to Government exchequer; Discharge application; Computer hardware and hardware; Dishonest intention; Framing of charge; Undue pecuniary advantage; Charges framed; Without following tender process; Wrongful gain; Fake tender documents; Public Servant; Breached criminal trust; Wrongful loss of money; Wrongful gain; Service provider/private vendor; Proposed work quotation; Duly empanelled vendor; Turnkey contractor; Bahraich Model; Undue favour; Non-panelled and unregistered firm; Software development, Turnkey projects and web development; Monitoring committee; Allegations of demand or acceptance of gratification by public servant.

Case Arising From

ORIGINAL JURISDICTION: Application U/s 482 No. - 28797 of 2024

From the Judgment and Order dated 02.03.2024 of Court of Special Judge CBI, Ghaziabad in Special Case No. 05 of 2017, arising out of Case Crime No. RC/DST/2014/A/0014, New Delhi

Appearances for Parties

Advs. for the Applicant:
Ram M. Kaushik, Tanveer Ahmad Mir (Senior Advocate)

Adv. for the Opposite Party:
Rahul Srivastava

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

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ORDER

1- This application under Section 482 of the Code of Criminal Procedure (hereinafter referred as Cr.P.C.) has been filed by the applicants Ajay Mishra and M/s. Infolink Consultancy Service Pvt. Ltd. Lucknow through its Director, Ajay Mishra for quashing of the impugned order dated 02.03.2024 passed by the Court of Special Judge CBI, Ghaziabad in Special Case No. 05 of 2017, arising out of Case Crime No. RC/DST/2014/A/0014 New Delhi under sections 120-B, 420 and 471 IPC & section 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988, police station CBI/STF, New Delhi, whereby discharge application bearing No. 251 Kha under Section 239 Cr.P.C dated 02.03.2024 of the applicants has been rejected as well as the order dated 29.04.2024 whereby charges have been framed against the applicants.

2- Heard Mr. Tanveer Ahmad Mir, learned Senior Advocate assisted by Mr. Ram M. Kaushik, learned counsel for the applicants, Mr. Rahul Srivastava, learned counsel appearing on behalf of the Central Bureau of Investigation/opposite party at length and perused the record.

Factual matrix of the case

3- Brief facts of the case, which are required to be stated are that on the basis of preliminary enquiry in pursuance of the order of this Court dated 15.11.2011 passed in Writ Petitions No. 3611 (MB) of 2011 (PIL), 3301 (MB) of 2011 (PIL) and 2647 (MB) of 2011 (PIL), First Information Report being RC/DST/2014/A/0014 dated 11.06.2014 was registered at police station CBI/STF, New Delhi against Shri D.N. Srivastava, the then Managing Director, Uttar Pradesh Electronics Corporation Ltd., (UPLC), Shri Ajay Mishra, Director, M/s. Infolink Consultancy Service Pvt. Ltd. Lucknow and other unknown officials of Uttar Pradesh Electronics Corporation, Ltd Lucknow (UPLC) for the commission of offences punishable under sections 120-B IPC r/w 420 IPC & section 13 (2) r/w 13 (1) (d) of PC Act, 1988 mainly on the allegations that they entered into a criminal conspiracy during the year 2009-10 with intention to cause pecuniary loss to the Government exchequer in the matter of implementation of HMIS, thereby they caused wrongful loss to the tune of Rs. 2.4 crores.

Contents of First Information Report

4- In the F.I.R. it is alleged inter-alia that:-

4.1- The Executive Committee of NRHM in its meeting held on 06.07.2009 under the Chairmanship of the then Principal Secretary, Health, UP decided to implement Hospital Management Information System (hereinafter referred as HMIS) by covering the computerization of the hospitals in 15 districts of U.P. by getting the work done through NIC or other

PSUs which were to be short listed. The cost approved for the Project Implementation Plan (PIP) in 2009 was Rs. 5.25 crores.

4.2- On 31.08.2009, Mr. Sanket Verma, GM (MIS), SPMU, NRHM, in compliance of the above decision dated 06.07.2009 of the Executive Committee of NRHM, short listed 5 PSUs including UP Electronic Corporation (hereinafter referred as UPLC) and also mentioned that UPLC had submitted a proposal on 19.08.2009 for the work of HMIS in UP and finally under NRHM, U.P. Electronics Corporation Limited (UPLC), was engaged to implement this project.

4.3- On 17.08.2009, M/s U.P. Electronics Corporation Limited (UPLC) received a proposal from Shri Ajay Mishra, partner M/s Large Info Solution, Lucknow proposing for installation of HMIS at different district hospitals based on the project already running in district hospital Bahraich, which was done by NIC in the year 2006. The computer hardware configuration and software used in Bahraich hospital were different from the configuration given in the proposal by M/s Large Info Solution.

4.4- Shri D.N. Srivastava, the then Managing Director, UPLC instead of processing the proposal in the file, forwarded the said proposal to the Director NRMH on 19.08.2009 on behalf of UPLC.

4.5- M/s Large Info Solution was not an empanelled firm. Even though UPLC had many firms having expertise in supply and execution of works involving computer hardware/software like M/s Odyssey, the firm which ultimately supplied the computer hardware, no market survey was conducted to ascertain the cost of the computer hardware and software proposed by the firm nor the empanelled firm was contacted/considered.

4.6- The selection of the firm by UPLC was in criminal conspiracy with Shri Ajay Mishra as the proposal should have been made from one of the empanelled firms or after conducting market survey and resorting to open tender having both technical bid as well as commercial bid, as the amount involved was Rs. 5.25 crores.

4.7- Subsequently, a letter was written by M/s Large Info Solution to give the said work to M/s Info Link Services Pvt. Ltd., a company of Shri Ajay Mishra. This company was also not empanelled with UPLC, even though the request of an non-empanelled company/firm was accepted by UPLC for another non-empanelled company to execute the work.

4.8- On the instructions of UPLC, M/s Infolink Consultancy Services Pvt. Ltd., surveyed 15 districts where the work was to be done to assess their requirements on the basis of questionnaire filled by CMOs. For this purpose, the company charged Rs. 30,000 per hospital (total Rs. 4,50,000/-) from UPLC.

4.9- The officials of UPLC never approached NIC for a proposal or to ascertain the rates etc., whereas NIC had established HMIS work at Bahraich, District Hospital which was treated as the basis.

4.10-The NRHM gave work order for implementation of the said computerization project in 15 districts on 04.03.2010 to UPLC for a total cost of Rs. 5.25 crores in which Rs. 2,81,50,065/- was meant for hardware and Rs. 2,04,54,525/- was meant for software and the remaining Rs. 34,70,360/- was institutional charges of UPLC for the work of HMIS. Further a sum of Rs. 4,25,050/- was for the survey done in 15 hospitals which was done by M/s Infolink Consultancy Services Pvt. Ltd. Even though no expenditure was incurred for the survey done by M/s

Infolink Consultancy Services Pvt. Ltd., but the same was charged by UPLC from NRHM.

4.11- The said work was to be completed within 8-10 weeks. In furtherance of the said criminal conspiracy and to achieve the ulterior object, UPLC deliberately delayed the project and waited till the empanelment of M/s Infolink Consultancy Services Pvt. Ltd. on 12.04.2010.

4.12- After that UPLC issued order to M/s Infolink Consultancy Services Pvt. Ltd., on 22.04.2010 without inviting tender and ignoring all their empanelled companies/firms- M/s. Odyssey and also not following DGS&D rates.

4.13- M/s. Infolink Consultancy Services Pvt. Ltd., which deals only in software had purchased hardware from M/s Odyssey which was an empanelled firm of UPLC and they could have been given this work of supplying hardware directly which could have saved around Rs. 1 crore but UPLC got it supplied through M/s Infolink, a non-empanelled company with ulterior motive to cause wrongful gain to said company /themselves.

4.14-UPLC had purchased computer of the same configuration on 19.12.2009 from M/s Odyssey at the cost of Rs. 42,986/- whereas M/s Infolink after purchasing computer from M/s Odyssey had supplied the same at the rate of Rs. 57,143 to UPLC which shows a difference/loss of Rs. 98,93,835/- (approx). This difference will further increase since two items namely, 150 Client Side Operative System @ Rs. 6857/- as against the unit price of Rs. 6250/- and 165 antivirus software charging @ Rs. 165/- which otherwise is given free of charge, were not found to have been supplied in Ghaziabad hospital. Similarly, the other hardware items were also supplied on exorbitant rates by M/s Infolink Consultancy Services Pvt. Ltd to hospitals with dishonest intention in order to cause pecuniary loss to the government. Thus, the total loss comes to Rs. 01 crore approximately in supply of hardware items.

4.15- M/s. Infolink Consultancy Services which executed the work, charged around Rs. 2.4 crores for software development. Had the work been allocated to NIC, the cost of software development to the tune of Rs. 2.4 crores could have been saved, as the same had already been developed by NIC for Bahraich district hospital free of cost. This was not done by UPLC with dishonest intention as well as in furtherance of criminal conspiracy in order to give undue pecuniary advantage to the said company and corresponding loss to the government.

4.16- M/s. Infolink Consultancy Services Pvt. Ltd., deals in the software and it is alleged that the company might have copied the software from the pilot project of Bahraich (originally developed by NIC) and with slight update, they showed it as their own software.

Charge-Sheet

5- After culmination of investigation, the investigating officer submitted report dated 30.06.2017 under Section 173 (2) Cr.P.C. against nine accused persons namely D.S. Srivastava, Ajay Mishra (applicant no.1), M/s Infolink Consultancy Services Pvt Ltd through its Director Ajay Mishra (applicant no. 2), Pradeep Kumar Shukla, R.K Balani, Sanket Verma, Dr Chander Bhan Prasad, Dr Rajender Prasad and Dr Ram Narayan Rawat for the offences u/s 120-B r/w Sections 420, 471 IPC and Section 13(2) r/w 13(1)(d) of PC Act, 1988 and substantive offences thereof.

Cognizance

6- On the said charge-sheet, the trial Court took cognizance of the said offences

and summoned the accused persons to face trial.

Discharge Application

7- The applicants herein namely Ajay Mishra (applicant no.1) and M/s Infolink Consultancy Services Pvt. Ltd. through its Director Ajay Mishra (applicant no. 2) have preferred an application Under Section 239 of the Code of Criminal Procedure, 1973 dated 07.03.2022 seeking discharge. The other co-accused persons namely D.S. Srivastava, Pradeep Kumar Shukla, R.K. Balani, Sanket Verma, Dr Chander Bhan Prasad, Dr Rajender Prasad and Dr Ram Narayan Rawat have also filed separate discharge applications. All the discharge applications were heard together and rejected by the trial Court vide common order dated 02.03.2024 and thereafter charges have been framed against the accused persons by common order dated 29.04.2024.

8- Here it would be relevant to mention the charges framed against the accused persons, which are as under:-

Charges

I, Pramod Kumar, Special Judge Anti Corruption, CBI Ghaziabad, hereby charge you, the accused Daya Shankar Srivastava, Ajay Mishra, M/s Infolink Consultancy Services Pvt. Ltd. represented by Director Ajay Mishra, Pradeep Kumar Shukla, Ravindra Kumar Balani, alias R.K Balani, Sanket Verma, Dr. Rajendra Prasad and Dr. Ram Narayan Rawat alias Dr. R.N Rawat with the following charges.

i. That in the year 2009-10, you, the accused Daya Shankar Srivastava, Ajay Mishra, M/s Infolink Consultancy Services Private Limited, Director Ajay Mishra, Pradeep Kumar Shukla, Ravindra Kumar Balani alias R.K. Balani, Sanket Verma, Dr. Rajendra Prasad and Dr. Ram Narayan Rawat alias Dr. R.N Rawat entered into a criminal conspiracy among themselves and under this, there was a criminal conspiracy in NRHM and hospital management information system in 15 district level hospitals of Uttar Pradesh. In the implementation of the System (HMIS), M/s Infolink Consultancy Services Pvt. Ltd., Lucknow, which was not empanelled with UPLC, was allotted the work at a higher rate by following the tender process differently. This caused a loss of about Rs. 02 crores to the government and the public servants and you accused persons got wrongful gains. Thus, you have committed the offence punishable under Section 120-B read with Section 420, 471 of the Indian Penal Code, Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, which is in the cognizance of this court.

ii. That at the above mentioned time and place, you, the accused conspired among themselves with ill intention and without following the tender process to execute the tender of Hospital Management Information System (HMIS) under NRHM at a higher rate given to M/s Infolink Consultancy Services Pvt. Ltd., Lucknow, which was not listed with UPLC, by allotting work without following it, he cheated and caused wrongful loss to the government and wrongful gain to himself. You have committed a punishable offence under Section 420 of the Indian Penal Code, which is in cognizance of this court.

iii. That at the above mentioned time and place, you, the accused Daya Shankar Srivastava, Pradeep Kumar Shukla, Ravindra Kumar Balani alias R.K. Balani,

Sanket Verma, Dr. Rajendra Prasad and Dr. Ramayan Rawat alias Dr. R.N. Rawat conspired with the accused Ajay Mishra and his company M/s Infolink Consultancy Services Pvt. Ltd., of which he was the Director, by using fake tender documents as genuine ones and without following the tender process, M/s Infolink Consultancy Services Pvt. Ltd., Lucknow. The work was allotted to a company which was not empanelled with UPLC at a higher rate by following different tender procedures. Thus, you have committed an offence punishable under Section 471 of the Indian Penal Code, which is in cognizance of this court.

iv. That at the above mentioned time and place, you, the accused Daya Shankar Srivastava, Pradeep Kumar Shukla, Ravindra Kumar Balani alias RK Balani, Sanket Verma, Dr. Rajendra Prasad and Dr. Ramayan Rawat alias Dr. Rawat, while holding the post of a public servant, misused his position in the tender process for the implementation of Hospital Management Information System (HMIS) under the NRHM and cheated during the allotment, breached the criminal trust and defrauded the government of about Rs 2.00 crores causing wrongful loss of money and wrongful gain to himself. Thus, you have committed an offence punishable under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, which is in the cognizance of this court.

Therefore, I hereby order you to be tried by this court for the said charges.

9-Both the above orders dated 02.03.2024 and 29.04.2024 are the subject matter of challenge in the case in hand by the applicants (Ajay Mishra and M/s Infolink Consultancy Services Pvt Ltd).

Submissions on behalf of applicants

10-The learned counsel the applicants strenuously urged as under:-

10.1- The applicant no.1 (accused no. 2 in charge-sheet) is a bona fide service provider/private vendor engaged in the business of providing IT solutions for a variety of prestigious competitive examination works and other software, computerized processing works. He is the founder and Director of the company M/s Infolink Consultancy Services Pvt. Ltd. (applicant no.2-accused no. 3 in charge-sheet).

10.2- Accepting the prosecution case and relied upon materials by the C.B.I. as it is, no offence is made out against the applicant-Ajay Mishra and his company M/s Infolink Consultancy Services Pvt Ltd.

10.3- The budget of Rs. 5.25 crores was proposed by the State Government, not by the UPLC, nor by the applicants.

10.4- It is an admitted fact that the proposed work quotation made by the applicant comfortably fell within the budget. There is no impropriety with the quoted prices by the applicants.

10.5- The work assigned to the applicants by UPLC has been completed in terms of work order.

10.6- So far as payment made to vendor-M/s Infolink Consultancy Services Pvt Ltd. is concerned, it is admitted case of the prosecution that DG(FW) transferred Rs. 4,72,50,008/- to UPLC. UPLC made payment of Rs. 3,66,72,009/- (Rs. 3,75,63,403- TDS Rs. 8,91,394/-) to vendor

M/s Infolink Consultancy Services Pvt Ltd. against bill of Rs. 4,83,91,682/-.

10.7- There is no allegations, much less evidence of any conspiracy, demand, transfer, acceptance, gratification or kickback or undue favour at the hands of the public officers in the present case

10.8- Applicant no. 2 (M/s Infolink Consultancy Services Pvt Ltd) was a duly empanelled vendor both on the date of issuance of work order, i.e. 22.04.2010 in its favour, and even on prior occasions from 2006 onwards. At all the relevant dates, the applicant no. 2 was empanelled.

10.9- Referring the contents of charge sheet and statement of Shri A.K. Rawat (PW-23), who was Technical Director, National Information Centre (NIC), it is submitted that on physical inspection which was carried out on 8th and 9th January 2015, it was found that computer hardware and main HMIS software were supplied by the vendor. The HMIS system was found installed and functional in the hospital, therefore, the present case is neither a case of over-invoicing, nor under-supply of any proposed material. The perceived faults found by the investigating officer is entirely speculative and not borne out from material on record.

10.10- So far as the proposed HMIS system is concerned, it is submitted that same was not meant to be identical to the 'Bahraich Model' but was meant to be an upgraded/upscaled version of the 'Bahraich Model', hence solely on this ground, comparisons between the two systems are wholly improper.

10.11- Regarding DGS&D rates, it is submitted that same were never available to the applicant to avail, as he was a private vendor empanelled and employed in the capacity of a 'turnkey contractor'. Only direct Government procurement, if at all would be entitled to the same. Secondly, rates of different make/model/brands within the DGS&D rates could not at all be the basis of comparison with the material sourced by the applicant, because they were not of the same quality/suitability.

10.12- Deductions to the tune of Rs. 1,08,28,279/- was already effected by the Government over perceived service issues, which manifestly indicates the same at highest to be a civil matter. Wrongful loss cannot arise when the Government has already applied deductions.

10.13- The charge under Section 13(2) R/W 13(1)(d) of the PC Act is not made out in view of the amendment dated 26.07.2018 to Section 13(1)(d) of the PC Act and absence of Savings Clause within the Amendment Act itself.

10.14- Substantial modification of the ingredients of Section 13(1)(d) of the P.C. Act, 1988 has been made in view of the long-standing misuse of the application of the erstwhile provision of Section 13(1)(d) of the P.C. Act, 1988 prior to its amendment w.e.f. 26.07.2018.

10.15- Much emphasis has been given by contending that it is settled law that amendments that mitigate or mollify the rigours of penal statutes are to be beneficially construed and to this extent they can be given retrospective application to erstwhile prosecutions as well.

10.16- Mr. Daya Shankar Srivastava (accused no.1), the then Managing Director, Uttar Pradesh Electronics

Corporation Ltd. (UPLC) was already under suspension in the year 2009 and his name does not appear in the selection, issuance or approval of the work order, therefore applicant no.1 could not have had any contact with him and other accused persons including accused no.4. The said fact is corroborated and confirmed from the statement of Shri Vishnu Mohan (PW-11), the then Marketing Officer posted in Hardware Division and at the time of recording of his statement, he was posted as Assistant Manager (Computer Education and Training), U.P. Electronics Corporation Ltd.

10.17- UPLC being an empanelled agency does not need to go through the competitive process and can be selected directly. Pursuant to G.O. dated 16.08.2002, UPLC can be directly assigned work order on the direction of administrative departments. The said G.O. dated 16.08.2002 has been in force much prior to the alleged conspiracy and has never been challenged nor rescinded.

10.18-As per statement of Chandra Prakash (PW 84), the then Principal Secretary, IT and Electronics, M/s Infolink Consultancy was already empanelled Vendor from 2006-08, which was the competent company and had applied for renewal of empanelment for developing and supplying application software for HMIS project in 15 hospitals. Mr. Chandra Prakash has also stated inter alia that it was the overall duty and responsibility of Mr. S.C. Gupta to go through and examine all rules, regulations, Government orders, etc. regarding procurement and empanelment of vendors and after having exhausted due diligence by the concerned officials of UPLC, file was put up for his approval. Thereafter said recommendation was approved by him.

10.19- Person who negotiated, oversaw and approved the project to UPLC has not been made accused.

10.20- Empanelment of M/S Infolink Consultancy Services Pvt Ltd. proves the applicant Company to be a bona fide and duly certified vendor of the UPLC much prior to the alleged conspiracy. Work order was given to applicant no. 2 as a turnkey contractor. Therefore, the applicants cannot be implied to be some fly by night operator or ineligible vendor.

10.21- Regarding the allegation of prosecution that work order was issued without following tender process is concerned, it is submitted that UPLC had adopted and ratified the policy and rules relating to " Outsourcing of Marketing of Software & Services of UPDESCO (another State-owned enterprise and nodal agency of the State Government) except rule relating to price fixation and remuneration of marketing partner as laid down in para 8 of the policy and rules of UPDESCO.

10.22- The aforesaid policy was not the creation of UPLC, but of another State PSU, UPDESCO as early as in the year 2006. UPLC merely adopted the UPDESCO policy in its meeting in 2008, which is again much prior to the alleged conspiracy.

10.23- Relevant clauses of the UPDESCO policy as adopted by UPLC are Clause 5(ii), Clause 7(A), Clause 7(E).

10.24- The said policy has never been challenged. This policy was never rescinded.

10.25- UPLC taking cue from UPDESCO followed a practice of not only outsourcing marketing proposals for work but allotting work orders to the vendor that

assisted/proposed/canvasses in the marketing of the proposal and otherwise had full rights to award work to specific vendor. Hence the allegation that work order was given to the applicants without exhausting the process of tender is totally fallacious and misconceived in view of the existing policies and standard practices of UPLC as early as in 2006, which is 4 years prior to NRHM Scheme.

10.26- For development and execution of projects in the area of turnkey software solutions, development of application software, infrastructure & networking, practical training on software and maintenance of software, security, storage and backup etc., marketing proposals were part of the scope of work required of empanelled vendors for software development & turnkey projects to provide complete hardware and software IT solutions.

10.27- It is also submitted that M/s Large Info Solutions was not empanelled, is completely irrelevant in view of the fact that Ajay Mishra being part of both M/s Large Info Solutions (partnership firm) and Infolink (partnership) has no separate legal liability and is the alter-ego. There is no material impropriety, much less any criminal wrongdoing.

10.28- Referring the contents of para 23 of the Rejoinder Affidavit, it is further submitted that allegations against the applicants are wholly false, concocted, obnoxious and presented with the mala-fide intension to falsely implicate the applicants.

10.29- The Investigating officer, instead of levelling charges based on evidence, has drawn his own subjective views based on presumptions, surmises and conjectures without any evidence and in utter disregard of prevalent Government Order dated 16-8-2022 and policy adopted by UPLC vide Executive Committee meeting dated 28-6-2006 and practices during the relevant period.

10.30- Investigating officer has failed to mention any concrete evidence against the applicant.

10.31- In the contents of the charge sheet what is totally and conspicuously absent is any evidence of conspiracy, demand, transfer, acceptance of any gratification or kickback or undue favour at the hands of the public officers, who are accused in the charge sheet.

10.32- The entire case of the prosecution based on the materials relied upon by the prosecution unsubstantiated and implausible from the outset when in fact the applicants had totally and satisfactorily implemented the project in entirety which was categorically proved to be superior to the 'Bahraich Model'.

10.33- The alleged loss to the public exchequer is based on totally erroneous calculations and completely different and dis-analogous rates of items/brands that have been quoted in comparison to the applicants specifications that could not have validly been compared to the applicants' rates.

10.34- The applicants were marking partner of UPLC. The UPLC does not adopt tender process, because the same is not binding upon UPLC and as per prevailing practice UPLC accepts outsourcing marketing proposals for work and had full rights to award work to specific vendor.

10.35- The conclusion drawn by the investigating officer is contrary to his own record and evidence collected during investigation.

10.36- On the strength of above submissions, lastly it is submitted that basic ingredients to constitute an alleged offence against the applicants are lacking, hence no offence is made out against applicants, but the trial Court illegally rejected the discharge application of the applicants vide impugned order and framed the charges against the applicants. Hence under the facts and material evidence on record, criminal prosecution of the applicants is nothing but an abuse of process of the Court, hence both the impugned orders dated 02.03.2024 and 29.04.2024 are liable to be quashed.

Judgments relied upon on behalf of applicants

11-Learned counsel for the applicants in support of his submissions and prayer placed reliance upon the following judgments:-

1.	Dhariwal Tobacco Products Ltd. & Anr. v. State of Maharashtra &. Anr. (2009) 2 SCC 370
2.	Prabhu Chawla v. State of Rajasthan & Anr. (2016) 16 SCC 30
3.	Asian Resurfacing of Road Agency Pvt. Ltd.& Anr. v. Central Bureau of Investigation (2018) 16 SCC 299
4.	Rajesh Yadav & Another v. State of Uttar Pradesh (2022) 12 SCC 200
5.	P.K. Narayanan v. State of Kerala (1995) 1 SCC 142
6.	Dr. S. K. Singh v. State of M.P & Ors CRR No. 2032/2015 (MP HC)
7.	T Barai v. Henry AH Hoe (1983) 1 SCC 177
8.	Md. Abdul Haque v. Srimati Jesmine Begum Chaudhary 2012 SCC OnLine Gau 143
9.	Ratan Lal v. State of Punjab AIR 1965 SC 444
10.	Shyam Lal v. State AIR 1968 All 392
11.	Sundar Lal v. MCD 1970 6 DLT 445 (DEL HC)
12.	Zile Singh v State of Haryana (2004) 8 SCC 1
13.	New India Assurance Co. Ltd v. C. Padma & Anr (2003) 7 SCC 713
14.	Sushila N. Rungta v. Tax Recovery Officer (2019) 11 SCC 795
15.	West U.P. Sugar Mills Assn. vs. State of UP (2002) 2 SCC 645
16.	Union of India vs.Prafulla Kumar Samal (1979) 3 SCC 4
17.	Dilawar Babu Kurane Vs. State of Maharasthra (2002) 2 SCC 135)
18.	P. Vijayan v. State of Kerala (2010) 2 SCC 568
19.	Dipakbhai Jagdishchandra Patel v. State of Gujarat 2019 16 SCC 547
20.	Interim stay order dated 07.01.2020 passed in application under Section 482 Cr.P.C. No. 40 of 2020 (Anil Kumar Yadav v. State of U.P.) pending before the Lucknow Bench of this Court.

Submissions on behalf of C.B.I.

12- Mr. Rahul Srivastava, learned counsel appearing for the Central Bureau of Investigation, at the outset, raised a preliminary objection by contending that since impugned order dated 02.03.2024 is in the nature of final order, therefore this application under section 482 Cr.P.C. is not maintainable. The applicants have alternative remedy to challenge the order dated 02.03.2024 by means of criminal revision. Apart from the aforesaid preliminary objection, it is also submitted that whether applicant was indulged in criminal conspiracy with the other co-accused or not is a matter of trial, which can appropriately be adjudicated by the trial Court after leading evidence by the parties concerned. Since the defence of the accused cannot be taken into consideration at this stage, hence relief as sought for by means of this application cannot be granted to the applicants. Referring paragraph no. 8 of the counter affidavit filed on behalf of C.B.I. and relying upon the contents of charge-sheet, learned counsel further submits that:

12.1-As per charge-sheet, investigation revealed that during the month of June 2009, there was an allocated budget of Rs. 5.25 crores by Central Government under National Rural Health Mission (NRHM) for installation of Hospital Management Information System project in 15 district level hospitals @ Rs. 35 lacs per hospital on the model of district hospital Bahraich that was developed and executed by National Informatics Centre and UP Health System Development Programme (UPHSDP) with the aid of World Bank.

12.2- The modalities of the implementation of HMIS project were finalized in a meeting held on 06-07-2009 under the Chairmanship of Shri Chanchal Tiwari, the then Secretary, Family Welfare, Government of UP and Mission Director, NRHM, Lucknow. A decision was taken firstly to identify 15 district hospitals in which the project will be executed. Since the result of Bahraich Model developed by NIC and UPHSDP was good, therefore it was also decided in the meeting to associate both the agencies for the purpose of survey and preparation of estimates in 15 hospitals and after these exercises, an agency be identified for implementation of this project.

12.3- In the meantime Shri Pradeep Kumar Shukla (accused no. 4), the then Principal Secretary, Medical Health, Government of UP took charge as Mission Director, NRHM in place of Shri Chanchal Tiwari.

12.4- On 06.08.2009, Shri Pradeep Shukla chaired the Executive Committee meeting of the NRHM wherein an agenda was placed in terms of the decision dated 06.07.2009, in which earlier decision dated 06.07.2009 was modified and it was decided to utilize the services of NIC or any Central/State reputed agencies dealing in IT/Electronics. The said decision was further ratified in next meeting dated 12.08.2009 of Executive Committee of the NRHM and it was also decided that out of the identified agencies, if necessary, one organization can be taken in the advisory role and the other can be the executing agency. The said minutes were signed by Shri Pradeep Shukla.

12.5-On account of aforesaid modification/dilution in decision dated 06-07-2009, it is clear that there was a deliberate change brought about in the nomenclature of the proposed agency for

execution of the HMIS project by Shri Pradeep Kumar Shukla with dishonest intention knowingly and purposely.

12.6-Thereafter Shri Pradeep Kumar Shukla being Director of NRHM in pursuance of criminal conspiracy assigned the said project to UP Electronics Corporation Ltd, a State Public Sector Enterprises, which was further got implemented by UPLC through a vendor without exhausting the process of competitiveness and reasonability of rates resulting in causing of huge loss to the Government exchequer.

12.7-Everything was decided by Shri Pradeep Shukla himself, who entered into a criminal conspiracy with Shri D.S. Srivastava, the then Managing Director, UPLC Lucknow and Shri Ajay Mishra, partner of M/s Large Info-solutions and Director of M/s Infolink Consultancy Services Pvt. Ltd., Lucknow sometimes in the month of August 2009, to show undue favour to Shri Ajay Mishra and his company, hence there was a meeting of mind between Shri Pradeep Shukla and Shri D.S. Srivastava.

12.8- Thereafter Shri Ajay Mishra dishonestly prepared a proposal on the letter-head of his non-panelled and unregistered firm M/s Large Info Solutions for installation of HMIS project @ Rs.34.15 lacs per hospital and provided the same to Shri D.S. Srivastava enclosing with a letter dated 17.08.2009 addressed to MD, UPLC. Apart from this Rs. 12.5 lacs has been mentioned as one time cost of development of software. In this way the total cost of the project comes to Rs. 525 lacs for 15 hospitals.

12.9- Shri Ajay Mishra was in touch and pursuing the said project with the NRHM authorities and Director General Family Welfare (DGFW), Lucknow for setting up the same on the basis of Bahraich model.

12.10- Shri D.S. Srivastava, Managing Director, U.P. Electronics Corporation Limited (UPLC) at his own level in criminal conspiracy with the accused Pradeep Kumar Shukla and Ajay Mishra forwarded the said proposal dated 17.08.2009 of Ajay Mishra to the Director, NRHM (Shri Pradeep Shukla) vide letter dated 19.08.2009, without processing the same on file. On 20.08.2009 Shri Pradeep Kumar Shukla, the then Principal Secretary and Mission Director, NRHM marked the said proposal to the concerned subordinate officer of NRHM.

12.11- These documentary evidences coupled with the statements of officers of UPLC and NRHM and subsequent acts and omissions on the part of accused persons clearly show the existence of criminal conspiracy.

12.12- Thereafter, on receipt of the dishonest proposal of UPLC, Shri Sanket Verma in criminal conspiracy with Pradeep Shukla initiated a note dated 31.08.2009 to the effect that 15 district hospitals have been identified. He also mentioned that as per GO dated 25.08.2004 there were 5 authorized agencies namely UPDESCO, UPLC, NICSY, Uptron Powertronic Ltd. and Shriton India Ltd. Accused Sanket Verma also mentioned in the note regarding receipt of the proposal of UPLC dated 19.08.2009.

12.13- In furtherance of the criminal conspiracy with dishonest intention to award the work to Ajay Mishra or his firm/company, accused Sanket Verma without obtaining any proposal from the other 4 authorized agencies as indicated above and contrary to the decision taken in

meeting dated 12.08.2009 regarding identification of one agency as advisory and another agency as executing, dishonestly put up a detailed note on 23.10.2009 proposing that UPLC be nominated as Advisory as well as Executing Agency for installation of Hospital Management Information System (HMIS). The said proposal was approved by Shri Pradeep Kumar Shukla, the then Mission Director on 23.10.2009. Thereafter Executive Committee in its meeting dated 27.01.2010 under the chairmanship of Shri Pradeep Kumar Shukla post-facto approved the nomination of UPLC and transfer of funds to the account of Director General Family Welfare (DGFW) was also approved in the same meeting of Executive Committee.

12.14- On 29.10.2009, the office of NRHM informed MD, UPLC about the decision of nomination of UPLC as executing as well as monitoring agency of the said HMIS project and asked to submit a detailed proposal.

12.15- In furtherance of the said criminal conspiracy, accused R.K. Balani, Manager (Business Development and Marketing), UPLC without processing the said letter, without any official process of proper identification of an agency and without obtaining the approval of the competent authority on record regarding M/s Large Info Solution as an authorized representative of UPLC, intimated NRHM vide letters dated 04.11.2009 and 11.12.2009 that M/s Large Info Solution was its authorized representative. He also misinformed that M/s Large Info Solution had already started the survey work of the hospitals and the said firm would also implement the project on behalf of UPLC whereas M/s Large Info Solution was neither empanelled nor authorized to implement the said project, hence, selection of M/s Large Info Solution was arbitrary and pre-decided.

12.16- As per the note dated 19.11.2009 initiated by Shri Sanket Verma, Shri Pradeep Kumar Shukla approved the constitution of a Monitoring Committee under the Chairmanship of Dr. C.B. Prasad, DGFW, with the following members :

i. Director Medical Care, Swathya Bhawan

ii. Dr. R. P. Yadav then GM(NP), NRHM

iii. Dr. G.P.Shahi, then Joint Director, UPHSDP

iv. Shri Sanket Verma, then GM(MIS), NRHM

v. Shri S.S. Singh, Asstt. Engineer, UPHSDP

12.17- Accordingly a letter dated 07.12.2009 was issued to DG (FW) under the signature of Shri S.K. Singh, the then GM, (Admn), NRHM in which it was also directed to complete the said project by 31.12.2009. Copies of the same were also sent to UPLC and CMS of 15 district hospitals. In the said letter, the committee so constituted was also directed to monitor the HMIS project as well as to get survey conducted by UPLC and thereafter to examine the detailed proposal for HMIS in said 15 district hospitals and to get the project implemented by 31.12.2009.

12.18- The copy of the said letter 07.12.2009 of NRHM was also received in UPLC. Shri D.S. Srivastava, the then MD had seen the letter and marked it to accused R.K. Balani on 08.12.2009.

12.19- Accused Ajay Mishra, on 28.01.2010 applied UPLC for renewal of the empanelment of his company M/s

Infolink Consultancy Pvt. Ltd., Lucknow for software development, turnkey projects and web development etc. in which he and his wife were Directors.

12.20- In pursuance of the said criminal conspiracy, accused Ajay Mishra on the letter head of M/s Infolink Consultancy Pvt. Ltd. submitted survey reports and price schedule in respect of said 15 hospitals to Shri R.K. Balani of UPLC on 11.02.2010. It was done before empanelment and after conducting survey. Copies of the same were also sent to DG Parivar Kalyan and GM(Admn), NRHM. Accused R.K. Balani dishonestly and fraudulently did not put up and also did not bring the said reports in the notice of the then GM Shri S.C Gupta and the then MD Shri Chandra Prakash. He also dishonestly did not verify and scrutinize the rates submitted by accused Ajay Mishra which were quite exorbitant.

12.21- Dr. C.B. Prasad, the then DGFW chaired the monitoring committee meeting dated 26.02.2010 which was also attended by (i) Shri Sanket Verma, GM NRHM, (il) Dr. Rajendra Prasad, Director, Medical Care, (iii) Dr. R.N. Rawal, GM (NP) (as Dr RP Yadav already transferred) and (iv) Shri Ajay Mishra as the representative of the UPLC. The survey reports and price schedule of 15 hospitals so submitted by Ajay Mishra of M/s Infolink Consultancy Services Pvt Ltd. through UPLC were discussed. The Monitoring Committee members in criminal conspiracy with each other as well as the accused Ajay Mishra did not examine and verify the rates of items as submitted by the said vendor Ajay Mishra and the rates so submitted by the vendor were accepted as such. UPLC was asked to execute the said project. As such they failed to discharge their official duties and abused their official positions as public servants, thereby causing huge loss to the Govt exchequer.

12.22-After approval of the Monitoring Committee, Shri Ajay Mishra, Director, M/s Infolink Consultancy Services Pvt. Ltd. sent a letter to MD, UPLC requesting to issue the work order.

12.23- Dr. C.B. Prasad, DGFW on behalf of NRHM gave the work order for implementation of computerization in 15 districts on 04-03-2010 to UPLC, which was to be completed within 8-10 weeks. UPLC did not give the work order to any empanelled firm instead they waited for the empanelment of the M/s Infolink Consultancy Services Pvt Ltd., which was empanelled on 12-04-2010. After this, UPLC issued work order to M/s Infolink Consultancy Services Pvt Ltd. on 22-04-2010 for installing the same. Thus, M/s Infolink Consultancy Services Pvt Ltd., was awarded work in a pre-decided manner, without any tender, transparency and ensuring reasonability of rates

12.24- During investigation, it is established that accused Shri Ajay Mishra, Director, M/s Infolink Consultancy Services Pvt Ltd. did not implement the said HMIS project properly in the said 15 District Level Hospitals of UP. The rates of hardware items as well as of the software were claimed quite exorbitantly.

12.25- After conducting technical survey of HMIS project in all 15 District Level Hospitals, the difference of rates in case of hardware and system software comes to Rs. 1,33,34,150/-, whereas, the difference in the rates of main HMIS Application Software comes to Rs.

63,40,890/-. In this way the accused vendor Ajay Mishra, Director, M/s Infolink Consultancy Services Pvt Ltd, Lucknow in criminal conspiracy with accused DS Srivastava, Pradeep Shukla, Sanket Verma, R K Balani, Dr C B Prasad, Dr Rajender Prasad and Dr RN Rawat has caused an undue pecuniary loss to the Government exchequer for a total Rs. 1,97,75,040/-.

Judgments relied upon on behalf of C.B.I

13-On behalf of the C.B.I. reliance has been placed on the following judgments:-

1.	Kaptan Singh Vs. State of Uttar Pradesh, (2021) 9 SCC 35
2.	Central Bureau of Investigation Vs. A. Raja and others passed in Criminal Misc. Application No. 1731 of 2020, decided on 23.11.2020
3.	State of Rajasthan Vs. Tejmal Choudhary, 2022 LiveLaw (SC) 158

Discussion of relied upon judgements

14-Before delving into the matter, it would be appropriate to discuss the judgments relied upon by the learned counsel for the parties. First of all, this Court proceeds to examine the judgments relied upon on behalf of the applicants, which are as under:-

14.1- In the case of **Dhariwal Tobacco Products Ltd. and Anr. Vs. State of Maharashtra and Anr., (2009) 2 SCC 370**, the Hon'ble Apex Court after considering a catena of judgments on the point, has held that only because a revision petition is maintainable, the same by itself would not constitute a bar for entertaining an application under Section 482 of the Code. The inherent power of the High Court is not conferred by statute but has merely been saved thereunder. It is, thus, difficult to conceive that the jurisdiction of the High Court would be held to be barred only because the revisional jurisdiction could also be availed of.

14.2- In the case of **Prabhu Chawla Vs. State of Rajasthan and another, (2016) 16 SCC 30**, the Hon'ble Apex Court has further following the judgment in the case of Dhariwal Tobacco Products Ltd. (supra) held that Section 482 begins with a non obstante clause to state:

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

A fortiori, there can be no total ban on the exercise of such wholesome jurisdiction where, in the words of Krishna Iyer, J.

"abuse of the process of the court or other extraordinary situation excites the Court's jurisdiction. The limitation is self-restraint, nothing more".

14.3- In the case of **Asian Resurfacing of Road Agency Pvt. Ltd.& Anr. v. Central Bureau of Investigation, (2018) 16 SCC 299**, the Hon'ble Apex Court has held that order framing charge is not purely an interlocutory order nor a final order. Jurisdiction of the High Court is not barred irrespective of the label of a petition,

be it under Sections 397 or 482 Cr.P.C or Article 227 of the Constitution.

14.4- In the case of **Rajesh Yadav & Anr. Vs. State of Uttar Pradesh, (2022) 12 SCC 200**, Hon'ble Apex Court has held that a report under Section 173(2) Cr.P.C is a mere opinion of the investigating officer formed on the materials collected by him.

14.5- In the case of **P.K. Narayanan v. State of Kerala, (1995) 1 SCC 142**, Hon'ble Apex Court has held that an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inferences which are not supported by cogent evidence.

14.6- In the case of **Dr. S. K. Singh v. State of M.P & Ors CRR No. 2032/2015**, Madhya Pradesh High Court has discharged the accused on the ground of mere violation of the procedure in absence of criminal intent. The relevant part of observation made in this regard are as under:-

"23. Except for demonstrating a procedural impropriety or illegality in the matter of allotment of work, no criminal intention, malafide or criminality is made out from the entire material available on record . That being the position, we have no hesitation in holding that it is a fit case where prosecution of the petitioners on the material available according to us is not at all warranted and it is a fit case where their discharge can be ordered.

24. In the case of Major J. S. Khanna (supra), similar questions with regard to procedural impropriety has been considered and similar action quashed by the Court as charges were said to be not made out and it was held by the Court in the aforesaid case that mere violation of the procedure may be proved but in the absence of criminal intent and criminality being established, prosecution cannot continues. In the present case also, similar scenario exists and therefore, we are of the considered view that it is a fit case where the petitioners should be discharged as no useful purpose would be served by prosecuting them in the manner as done."

14.7- In the case of **T Barai v. Henry AH Hoe, (1983) 1 SCC 177**, the Hon'ble Apex Court has held inter alia that since amendment was beneficial to accused persons, it can be applied even with respect to earlier cases as well which are pending in the Court. The relevant paragraph of the said judgment is quoted as under:-

"22. It is only retroactive criminal legislation that is prohibited under Article 20(1). The prohibition contained in Article 20(1) is that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence prohibits nor shall he be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It is quite clear that insofar as the Central Amendment Act creates new offences or enhances punishment for a particular type of offence no person can be convicted by such ex post facto law nor can the enhanced punishment prescribed by the amendment be applicable. But insofar as the Central Amendment Act reduces the punishment for an offence punishable under Section 16(1)(a) of the Act, there is no reason why the accused should not have the benefit of such reduced punishment. The rule of beneficial construction requires that even ex post facto law of such a type should be applied to mitigate the rigour of the law.

The principle is based both on sound reason and common sense. This finds support in the following passage from Craies on Statute Law, 7th Edn., at pp. 388-89:

"A retrospective statute is different from an ex post facto statute. "Every ex post facto law…" said Chase, J., in the American case of Calder v. Bull [3 US (3 Dall) 386: 1 L Ed 648 (1798)] "must necessarily be retrospective, but every retrospective law is not an ex post facto law. Every law that takes away or impairs rights vested agreeably to existing laws is retrospective, and is generally unjust and may be oppressive; it is a good general rule that a law should have no retrospect, but in cases in which the laws may justly and for the benefit of the community and also of individuals relate to a time antecedent to their commencement: as statutes of oblivion or of pardon. They are certainly retrospective, and literally both concerning and after the facts committed. *But I do not consider any law ex post facto within the prohibition that mollifies the rigour of the criminal law, but only those that create or aggravate the crime, or increase the punishment or change the rules of evidence for the purpose of conviction*.... There is a great and apparent difference between making an unlawful act lawful and the making an innocent action criminal and punishing it as a crime."

14.8- The High Court of Gauhati in the case of **Md. Abdul Haque v. Srimati Jesmina Begum Chaudhary, 2012 SCC OnLine Gau 143** has held inter alia that those enactments which only relax the existing procedure or mollify the rigour of the criminal law can be given retrospective operation. The relevant paragraph of the said judgment is quoted as under:-

"20. What emerges from the aforesaid authorities is that every new enactment is presumed to be prospective in operation, unless either expressly or by necessary intendment is made retrospective. Prospective operation of law is also presumed, if it creates new rights and liabilities and this principle has to be applied more rigorously if the law provides penal provisions inasmuch as Article 20(1) of the Constitution, inter-alia, clearly stipulates that no person shall be convicted of any offence except for violation of 'law in force' at the time of commission of the act. Only those enactments which only relax the existing procedure or mollify the rigour of the criminal law can be given retrospective operation."

14.9- In the case of **Ratan Lal v. State of Punjab, AIR 1965 SC 444**, the question that fell for consideration was whether an appellate Court can extend the benefit of Probation of first Offenders Act, 1958 which had come into force after accused had been convicted of a criminal offence. The Apex Court by majority of 2:1 answered the question in the affirmative, concluding that the rule of beneficial construction required that even post facto law of the type involved in that case should be applied to reduce the punishment.

14.10- In the case of **Shyam Lal v. State, AIR 1968 All 392**, the Allahabad High Court has held that the Court trying an accused has to take into consideration the law as it exists on the date of judgement. The observations made in this regard are as under:-

"12. It seems to us clear that the true rule of construction of a penal Statute is that where the legislature evinces its intention to modify the law, in favour of the accused, so as to reduce the rigour of the law in the light of past experience and changed social conditions, so long as prosecution of the accused has not concluded by a judgment of conviction, the

proceedings against him are regarded as inchoate and the law applicable to him would be the law as amended by the legislature. The court trying an accused person has to take into consideration the law as it exists on the date of the judgment. It seems reasonable that an accused person cannot render himself liable to a higher punishment under a statute which has ceased to exist and has been substituted by a new law which favours him. Where the question as to the interpretation of a penal statute is concerned, the Court must construe its provisions beneficially in regard to their applicability to the accused. It would be violating the spirit of the law and the will of the Legislature as expressed in the amending statute to sentence an accused person on the basis of the original Act which has been considered by the Legislature to be harmful and harsh against public interest."

14.11- In the case of **Sundar Lal v. MCD, 1970 6 DLT 445**, Delhi High Court has held that the new standard having taken away the rigours of law and being in favour of the accused, it should be given a retrospective operation. In this connection, reliance has been placed on a Division Bench judgement of the Allahabad High Court in Shyam Lal Vs.State, 1968 A.L.J 788(1), wherein after quoting Crawford's "Construction of Statute" (1940 Edition) at page 599, with approval, it was observed:—

"The above rule of construction is based on the principle that until the proceedings have reached final judgment in the Court of last resort, that Court, when it comes to announce its decision, must conform to the law then existing."

It was further held—

"It seems to us clear that the true rule of construction of a penal tatute is that where the legislature evinces its intention to modify the law, in favour of the accused so as to reduce the rigour of the law in the light of past experience and changed social conditions, so long as prosecution of the accused has not concluded by a judgment of conviction, the proceedings against him are regarded as inchoate and the law applicable to him would be the law as amended by the legislature. The Court trying an accused person has to take into consideration the law as it exists on the date of the judgment. It seems reasonable that an accused person cannot render himself liable to a higher punishment under a statute which has ceased to exist and has been substituted by a new law which favours him. Where the question as to the interpretation of a penal statute is concerned, the Court must construe its provisions beneficially in regard to their applicability to the accused. It would be violating the spirit of the law and the will of the Legislature as expressed in the amending statute to sentence an accused person on the basis of the original Act which has been considered by the Legislature to be harmful and harsh against public interest.

We are in respectful agreement with the Division Bench of the Allahabad High Court."

14.12- In the case of **Zile Singh v. State of Haryana, (2004) 8 SCC 1**, the Hon'ble Apex Court, has clarified the distinction between "supersession" of a rule and "substitution" of a rule. The observations made in this regard are as under:-

"24. The substitution of one text for the other pre-existing text is one of the

known and well-recognised practices employed in legislative drafting. "Substitution" has to be distinguished from "supersession" or a mere repeal of an existing provision.

25. Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision (see Principles of Statutory Interpretation, ibid., p. 565). If any authority is needed in support of the proposition, it is to be found in West U.P. Sugar Mills Assn. v. State of U.P. [(2002) 2 SCC 645] , State of Rajasthan v. Mangilal Pindwal [(1996) 5 SCC 60] , Koteswar Vittal Kamath v. K. Rangappa Baliga and Co. [(1969) 1 SCC 255] and A.L.V.R.S.T. Veerappa Chettiar v. S. Michael [AIR 1963 SC 933] . In West U.P. Sugar Mills Assn. case [(2002) 2 SCC 645] a three-Judge Bench of this Court held that the State Government by substituting the new rule in place of the old one never intended to keep alive the old rule. Having regard to the totality of the circumstances centring around the issue the Court held that the substitution had the effect of just deleting the old rule and making the new rule operative. In Mangilal Pindwal case [(1996) 5 SCC 60] this Court upheld the legislative practice of an amendment by substitution being incorporated in the text of a statute which had ceased to exist and held that the substitution would have the effect of amending the operation of law during the period in which it was in force. In Koteswar case [(1969) 1 SCC 255] a three-Judge Bench of this Court emphasised the distinction between "supersession" of a rule and "substitution" of a rule and held that the process of substitution consists of two steps: first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place."

14.13- Learned counsel for the applicant, in support of his submission that where the amendment is beneficial, Section 6A of General Clauses Act will not apply, has referred the judgment of the Apex Court in the case of **New India Assurance Co. Ltd v. C. Padma & Anr, (2003) 7 SCC 713**, wherein the Hon'ble Apex Court held that Section 6-A of the General Clauses Act, undoubtedly, provides that the repeal of a provision will not affect the continuance of the enactment so repealed and in operation at the time of repeal. However, this is subject to "unless a different intention appears". The relevant observations made in this regard are as under:-

"10. The ratio laid down in **Dhannalal case [(1996) 4 SCC 652 : 1996 SCC (Cri) 816]** applies with full force to the facts of the present case. When the claim petition was filed sub-section (3) of Section 166 had been omitted. Thus, the Tribunal was bound to entertain the claim petition without taking note of the date on which the accident took place. Faced with this situation, Mr Kapoor submitted that Dhannalal case [(1996) 4 SCC 652 : 1996 SCC (Cri) 816] does not consider Section 6-A of the General Clauses Act and therefore, needs to be reconsidered. We are unable to accept the submission. Section 6-A of the General Clauses Act, undoubtedly, provides that the repeal of a provision will not affect the continuance of the enactment so repealed and in operation at the time of repeal. However, this is subject to "unless a different intention appears". In Dhannalal case [(1996) 4 SCC 652 : 1996 SCC (Cri) 816] the reason for the deletion of sub-section (3) of Section 166 has been set out. It is noted that Parliament realized the grave injustice and injury caused to heirs and legal representatives of the victims of accidents if the claim petition was rejected only on the ground of limitation. Thus "the different intention" clearly appears and Section 6-A of the General Clauses Act would not apply."

14.14- Learned counsel for the applicant heavily relied upon the case of

Sushila N. Rungta v. Tax Recovery Officer, (2019) 11 SCC 795 by contending that in absence of specific saving clause, recourse cannot be taken to General Clauses Act, 1897. Relevant paragraphs, on which reliance has been placed are as under:-

"7. Having heard the learned counsel for both sides, we are of the view that the Statement of Objects and Reasons makes it clear that over 22 years, the results achieved under the Act have not been encouraging and the desired objectives for which the Act has been introduced have failed. Following the advice of experts, who have examined issues related to the Act, the Objects and Reasons goes on further to state that this Act has proved to be a regressive measure which has caused considerable dissatisfaction in the minds of the public and hardship and harassment to artisans and small self-employed goldsmiths.

8. This being the case, we are of the opinion that the repeal simpliciter, in the present case, does not attract the provisions of Section 6 of the General Clauses Act as a contrary intention is very clearly expressed in the Statement of Objects and Reasons to the 1990 repeal Act. In this behalf, it would be apposite to refer to New India Assurance Co. Ltd. V. C. Padma [New India Assurance Co. Ltd. v. C. Padma, (2003) 7 SCC 713 : 2003 SCC (Cri) 1709] , SCC para 10.

9. This Court noticed in C. Padma case [New India Assurance Co. Ltd. v. C. Padma, (2003) 7 SCC 713 : 2003 SCC (Cri) 1709] that, in a parallel instance of simpliciter repeal, Parliament realised the grave injustice and injury that had been caused to heirs of LRs of victims of accidents if their petitions were rejected only on the ground of limitation. This being the case, this Court found that a different intention had been expressed and, therefore, Section 6-A of the General Clauses Act would not in that situation apply."

14.15- Learned counsel for the applicant in support of his submission that the Central Government by making amendment in the P.C. Act, 1988 with effect from 26.07.2018 completely repealed the provision of Section 13 (1) (d) of the P.C. Act, 1988 and while substituting the new Section 13 of the P.C. Act it was never intended to keep the Section 13 (1) (d) alive, hence new substituted Section 13 of the Prevention of Corruption (Amendment) Act, 2018 will have retrospective effect. He has also relied upon the principles laid down by the Hon'ble Apex Court in the case of **West U.P. Sugar Mills Assn. vs. State of UP, (2002) 2 SCC 645**, wherein, it has been held inter-alia that-

"15. It would have been a different case where a subsequent law which modified the earlier law was held to be void. In such a case, the earlier law shall be deemed to have never been modified or repealed and, therefore, continued to be in force. Where it is found that the legislature lacked competence to enact a law, still amends the existing law and subsequently it is found that the legislature or the authority was denuded of the power to amend the existing law, in such a case the old law would revive and continue. But it is not the case here. It is not disputed that the State Government under Section 28 read with Section 18 of the Act, has power to frame rules prescribing the society commission. The State Government by substituting the new Rule 49 never intended to keep alive the old rule. The totality of the circumstances shows that the

old rule was deleted and came to be substituted by the new Rule 49 and, therefore, we are of the view that after the new Rule 49 ceased to be operative, the old Rule 49 did not revive."

14.16- The Hon'ble Apex Court in a landmark judgment in the case of **Union of India vs. Prafulla Kumar Samal [1979 (3) SCC 4]**, while enunciating the legal position as regards the power of the trial court to discharge an accused from the allegations that have been levelled against him at the stage of charge, held as follows:-

"10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

1) That the Judge while considering the question of framing the charges under Section 227 of the Code 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.

2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

14.17- Similarly, Hon'ble Supreme Court of India in **Dilawar Babu Kurane Vs. State of Maharasthra** [(2002) 2 SCC 135] held as under:-

"12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges 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; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case,

the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial (see Union of India v. Prafulla Kumar Samal [(1979) 3 SCC 4])."

14.18- In P. Vijayan vs. State of Kerala [(2010) 2 SCC 398], the Hon'ble Apex Court while taking note of the judgment in Prafulla Kumar Samal (supra) observed as under:

"10. Before considering the merits of the claim of both the parties, it is useful to refer to Section 227 of the Code of Criminal Procedure, 1973, which reads as under:

"227. Discharge.-If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. Further, the words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere post office to frame the 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."

14.19- The Apex Court, in **Dipakbhai Jagdishchandra Patel vs. State of Gujarat** [(2019) 16 SCC 547] observed as under:-

"At the stage of framing the charge in accordance with the principles which have been laid down by the Court, what the court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon the prosecution. The sifting is not to be meticulous in the sense the court dons the mantle of the trial judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion, must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence."

14.20- In application under Section 482 Cr.P.C. No. 40 of 2020 (**Anil Kumar Yadav v. State of U.P**.) pending before the

Lucknow Bench of this Court, issue about the retrospective effect of the Prevention of Corruption (Amendment) Act, 2018 was raised for consideration by advancing following submissions:-

i-Accused is entitled to be extended the benefit of amendment of Prevention of Corruption Act, 1988 whereby Section 13(1)(d) has been omitted. This benefit is to be extended retrospectively.

ii-Although Section 13(1)(d) has been omitted however the same has not been saved under Section 30 of the Prevention of Corruption Act and, therefore, the Provisions of Section 6 of the General Clauses Act cannot be invoked.

iii-Accused cannot be held liable under Section 13(1)(d) of Prevention of Corruption Act and neither can not be prosecuted.

iv-Since the law which has been omitted by the said amendment the rigour of criminal law has been mollified, the accused is entitled to take benefit of such mollification as per the law declared from time to time and such enactment shall have a retrospective effect.

Considering the aforementioned submissions, the High Court vide interim order dated 07.01.2020 has stayed the trial proceeding in the light of judgment in the case of Sushila N. Rungta (supra).

15- Now, this Court proceeds to deal with the judgments relied upon on behalf of C.B.I.

15.1-learned counsel for C.B.I. in support of his submission that at this stage this Court cannot go into the merit of the case, placed reliance upon the judgment in the case of **Kaptan Singh Vs. State of Uttar Pradesh, (2021) 9 SCC 35**, wherein it has been observed that after submission of charge-sheet, the High Court in exercise of power conferred under Section 482 Cr.P.C. is not required to go into the merit of the allegations as if the High Court is exercising the appellate jurisdiction and/or conducting trial.

15.2-In the case of **Central Bureau of Investigation Vs. A. Raja and others** (Criminal Misc. Application No. 1731 of 2020), decided on 23.11.2020, the C.B.I. had preferred leave to appeal against the order of acquittal, in which objection was raised challenging the maintainability of petition seeking leave to appeal on the ground that it has become infructuous in view of the amendment to P.C. Act, 1988 and provision of Section 13 (1) (d) of The P.C. Act has been repealed and Prevention of Corruption (Amendment) Act 2018 does not contain saving clause and the legislature has not amended Section 13 of the P.C. Act, 1988. Since Reference in this regard was pending before the Division Bench, therefore request was made to adjourn the matter, but Hon'ble Single Judge of the Delhi High Court while deciding the said issue of maintainability vide order dated 23.11.2020 has held that the provisions of General Clauses Act have to be read into the provisions of every statute which has been enacted after coming into force of the General Clauses Act. That being the case, the General Clauses Act, 1897 no doubt applies to Prevention of Corruption (Amendment) Act, 2018, being a statute which has come into force after the enactment of General Clauses Act. It is further held that wherever there is repeal of an enactment of General Clauses Act, the consequences laid down in Section 6 of General Clauses Act will follow unless different intention appears

from the amending Act. Accordingly, the Court was of the opinion that there is no impediment in hearing the criminal leave to appeal. Accordingly, prayer for adjournment was refused.

15.3- In the case of **State of Rajasthan Vs. Tejmal Choudhary, 2022 Live Law (SC) 158**, the Hon'ble Apex Court has held that every statute is prospective, unless it is expressly or by necessary implication made to have retrospective operation.

Analysis

16-Having heard the submissions of learned counsel for the parties and examined the matter in its entirety, I find that from the contents of charge-sheet, it appears that main grievance of the prosecution is that no effort was made by the authorities concerned to give work to NIC. Likewise M/s Odyssey having expertise in supply and execution of work involving computer hardware and software, which was empanelled also with UPLC was not taken into consideration in the selection of firm for executing the HMIS project. Selection of UPLC by the officers of NRHM and selection of applicant-Ajay Mishra's firm M/s Infolink Consultancy Services Pvt Ltd. by the officers concerned of UPLC was not in accordance with due procedure and tender process. Had the work been allocated to NIC, the cost of software development to the tune of Rs. 2.4 crores could have been saved but adopting different modus operandi work order was given to the applicants under a criminal conspiracy in collusion with co-accused. In this way the vendor had charged much higher rates of the software application.

17-In the light of aforesaid allegations and filtering out unnecessary details, it would also be apposite to mention here the following relevant facts, which are not disputed and necessary for the just decision of the case.

17.1-As per case of prosecution, in the month of June 2009, there was an allocated budget of Rs. 5.25 crores by Central Government under National Rural Health Mission for installation of Hospital Management Information System project in 15 district level hospitals @ Rs. 35 lacs per hospital on the model of district hospital Bahraich.

17.2-The district hospital Bahraich was developed and executed by National Informatics Centre (NIC) and UP Health System Development Programme (UPHSDP).

17.3-The modalities for implementation of HMIS project were finalized in a meeting dated 06-07-2009 under the Chairmanship of Shri Chanchal Tiwari, the then Secretary, Family Welfare, Government of UP and Mission Director, NRHM, Lucknow, wherein it was resolved to identify 15 district hospitals in which the project will be executed and it was further resolved to associate both the agencies NIC and UPHSDP for the purpose of survey and preparation of estimates in 15 hospitals and after these exercise, an agency be identified for implementation of the said project.

17.4- Later on, Mr. Pradeep Kumar Shukla, the then Principal Secretary, Medical Health, Government of U.P. took over charge as Mission Director, NRHM in place of Shri Chanchal Tiwari and said decision dated 06.07.2009 was modified on 06.08.2009 by Shri Pradeep Kumar Shukla in the next meeting of Executive Committee of the NRHM and it was decided to utilize the services of NIC or any Central/State reputed agencies dealing in IT/Electronics. The said decision was

further ratified in next meeting dated 12.08.2009 of Executive Committee of the NRHM and it was also decided that out of the identified agencies, if necessary, one organization can be taken in the advisory role and the other can be the executing agency. The said minutes were signed by Shri Pradeep Kumar Shukla.

17.5-The aforesaid decision taken in the meetings dated 06.08.2009 and 12.08.2009 have not been challenged by anyone and the same attained finality.

17.6-Thereafter Shri Pradeep Kumar Shukla being Director of NRHM assigned the said project to UP Electronics Corporation Ltd (UPLC).

17.7- UPLC further got implemented the said HMIS project through applicant/M/s Infolink Consultancy Services Pvt Ltd. giving work order to him on 22.04.2010 as per prevalent practice and policy adopted by UPLC.

17.8-The Applicant no. 1, who is a service provider/private vendor engaged in the business of providing IT solutions and other software, computerized processing works completed the work in terms of work order.

17.9- On the day of issuance of work order, M/s Infolink Consultancy Services Pvt Ltd. of applicant no.1 was empanelled with UPLC.

17.10-The work assigned to applicants by UPLC has been completed in terms of work order and within the budget.

17.11-So far as payment against work in question to applicant Ajay Mishra/vendor-M/s Infolink Consultancy Services Pvt Ltd. is concerned, there is no dispute that UPLC made payment of Rs. 3,66,72,009/- (Rs. 3,75,63,403- TDS Rs. 8,91,394/-) to vendor against bill of Rs. 4,83,91,682/-. As such there is no excess payment to the applicant than the quoted prices by him.

17.12-The work in question has been done in less than the proposed budget of Rs. 5.25 crores.

17.13-There is no financial loss to UPLC.

17.14-So far as selection of agency/vendor is concerned, it was the duty and responsibility of authorities concerned of NHRM to select the agency for the HMIS project following due procedure and further duty was also cast upon authority concerned of UPLC to select and assigned the work of HMIS project to appropriate vendor strictly in accordance with due procedure and policy applicable for the said purpose.

17.15- If there is any irregularity or illegality in the selection of vendor/executor of HMIS project, the applicant (Ajay Mishra) being private service provider/vendor cannot said to be liable on the presumption without any concrete material evidence of criminal conspiracy.

17.16-It is very common and general tendency that every private person keeps trying to get work order in his favour. In the present case, UPLC has issued work order in favour of M/s Infolink Consultancy Services Pvt Ltd.

17.17-Here it would also be useful to mention Section 13 (1) (d) of the Prevention of Corruption Act, 1988, which read thus:-

"13.Criminal misconduct by a public servant-

(1) A public servant is said to commit the offence of criminal misconduct-

(a)……..

(b)…….

(c)……..

(d) if he,—

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest.''

17.18-The aforementioned Section 13(1)(d) of the Prevention of Corruption, Act 1988 has been amended by the Prevention of Corruption (Amendment) Act, 2018 (16 of 2018) with effect from 26.07.2018, which are as follow:-

"7. Amendment of Section 13- In section 13 of the Principal Act, for sub-section (1), the following shall be substituted, namely:—

(1) A public servant is said to commit the offence of criminal misconduct,—

(a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or

(b) if he intentionally enriches himself illicitly during the period of his office.

Explanation 1.—A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.

Explanation 2.—The expression ''known sources of income'' means income received from any lawful sources.".

17.19-On perusal of Section 13 (1)(d) of the Prevention of Corruption Act, 1988 and Section 7 of the Prevention of Corruption (amendment) Act, 2018, it is clear that the same are applicable for a misconduct by a public servant. The applicants before this Court admittedly is not a public servant. There is no allegations of demand or acceptance of gratification by the public servant from the applicant no. 1 for undue favour at the hands of the concerned public officers. There is no allegation that any bribe was given by the applicant no. 1 to the authorities concerned for getting work order in his favour.

17.20- With regard to aforementioned amendment dated 26.07.2018, learned counsel for applicant heavily relying upon the judgment of the Hon'ble Apex Court in the case of **Sushila N. Rungta v. Tax Recovery Officer (2019) 11 SCC 795** that since there is no saving clause in the Prevention of Corruption (Amendment) Act, 2018, therefore, the provisions of General Clauses Act, 1897 shall not be attracted whereas on behalf of the Central Bureau of Investigation, relying upon the judgment dated 23.11.2020 of Hon'ble Single Judge of Delhi High Court in the matter of C.B.I. Vs. A. Raja and others passed in Criminal Misc. Application No. 1731 of 2020 (Supra), it is argued that the provisions of General Clauses Act have to be read into the provisions of every statute which has been enacted after coming into force of the General Clauses Act. Therefore the General Clauses Act, 1897 applies to Prevention of Corruption (Amendment)

Act, 2018. It is also submitted that in the said case the Hon'ble Single Judge has held that wherever there is repeal of an enactment, the consequences laid down in Section 6 of General Clauses Act will follow unless different intention appears from the amending Act.

17.21-During the course of argument while making rival submissions by the learned counsel for the parties, it was pointed out that the issue about the retro-activity or otherwise of the amendment dated 26.07.2018 made to the Prevention of Corruption Act, 1988, is still sub judice before the Division Bench of Delhi High Court in Crl. Ref. No.1/2019 as well as before the Lucknow bench of this Court in application under Section 482 Cr.P.C. No. 40 of 2020 (Anil Kumar Yadav Vs. State of U.P.), in which interim stay order has been granted on 07.01.2020 in the light of principles laid down by the Hon'ble Apex Court in the case of Sushila N. Rungta (supra). Since both the above matters are at the stage of hearing, hence this Court is not going to deal with that aspect of the matter.

17.22- Considering the allegations and evidence brought on record by the prosecution, prima-facie, I find that basic ingredients of Section 13 (1)(d) of the Prevention of Corruption Act, 1988 are lacking qua the applicants.

17.23-Now this Court proceeds to deal another allegation of criminal conspiracy, which has been defined in Section 120A of the Indian Penal Code, 1860, which read thus:

"When two or more persons agree to do, or cause to be done,–

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.–It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

17.24- Section 120B of the Indian Penal Code provides for punishment for criminal conspiracy. Criminal conspiracy is an independent offence. It is punishable separately. Its ingredients are

(i) an agreement between two or more persons;

(ii) an agreement must relate to doing or causing to be done either

(a) an illegal act;

(b) an act which is not illegal in itself but is done by illegal means.

17.25- It is also relevant to mention that in the light of basic ingredients of criminal conspiracy as noted above, it is apparent that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy, hence the cumulative effect of the circumstances should be taken into account in determining the guilt of the accused rather than adopting an isolated approach to each of the circumstances. Ex facie, there is no material to show that a conspiracy had been hatched by the applicant no.1, hence no offence for Section 120A I.P.C. punishable under Section 120B I.P.C. is made out against the applicants.

17.26- So far as alleged offence under Section 420 I.P.C. is concerned, it is relevant to note that in the case of **Hridaya Ranjan Prasad Verma v. State of Bihar**, (2000) 4 SCC 168, the Hon'ble Apex Court interpreted Sections 415 and 420 of IPC to hold that fraudulent or dishonest intention is a precondition to constitute the offence of cheating. The relevant extract from the judgment reads thus:

"14. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest."

In the light of ingredients of Section 420 I.P.C. as set out in the above judgment, no case under Section 420 I.P.C. is made out against the applicants.

17.27- So far as charge under Section 471 I.P.C. is concerned, it would be useful to refer leading judgment in the case of **Mohammad Ibrahim and others Vs. State of Bihar and another, (2009) 8 SCC 751**, wherein Hon'ble Apex Court has elaborately discussed and laid down the ingredients of offence under Section 463,464,467 and 471 mentioning inter-alia that forgery as defined under Section 463 I.P.C. in turn dependents upon creation of a 'false document' as defined under Section in Section 464 I.P.C. A person is said to have made a "false document", if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practising deception, or from a person not in control of his senses. It has also been observed that if there is no false document, offences under Section 467 and 471 I.P.C. are also not made out.

In view of the above principle of law, this Court finds that no offence under section 471 I.P.C. is made out against the applicants.

Outcome of analysis

18-This Court is also of the opinion that case of every accused turns on its own facts and evidence. Even one additional or different fact and role of individual may make a big difference between the conclusion in cases of other co-accused, because even a single significant detail may alter the entire aspect.

19- In view of the above, considering the overall facts and circumstances as well as contents of charge-sheet filed by C.B.I as noted and discussed above, I find that the case of applicant no.1-Ajay Mishra, who is a private entity / vendor stands on different footing than that of other co-accused persons who, at the relevant point of time, were holding different posts in NHRM and UPLC. Hence the case of applicants is distinguishable from other co-accused.

20- As a fallout and consequence of aforementioned discussion, this Court feels that criminal prosecution of the applicants under the facts and material evidence relied upon by the C.B.I. in support of charge-

sheet against the applicants is abuse of the process of the Court as no offence is made out against them, hence impugned orders dated 02.03.2024 and 29.04.2024 are liable to be quashed in order to secure the end of justice and in the light of principle of law laid down by the Hon'ble Apex Court in the cases of Union of India vs. Prafulla Kumar Samal (supra), Dilawar Babu Kurane (supra), P.Vijayan (supra) and Dipakbhai Jagdishchandra Patel (supra). Hence, the applicants are liable to be discharged.

21- Accordingly, both the impugned orders dated 02.03.2024 and 29.04.2024 qua applicants are hereby quashed. Applicants are discharged from the charges under sections 120-B, 420 and 471 IPC & section 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988 levelled against them.

22- This application under Section 482 of Cr.P.C. stands **allowed**.

(2025) 7 ILRA 686
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 10.07.2025

BEFORE

THE HON'BLE ARUN SINGH DESHWAL, J.

Criminal Misc. Bail Application No. 22915 of 2025

Riyaz **...Applicant**

Versus

State of U.P. **...Respondent**

Counsel for the Applicant:
Sri Santosh Kumar Gupta

Counsel for the Respondent:
G.A.

Issue for consideration

Whether the applicant can be released on bail?

Headnotes

A. Bhartiya Nyaya Sanhita: Section 152 - Liberty of thought and expression is one of the cornerstone ideals of our Constitution. Article 19(1)(a) confers a fundamental right on all citizens to freedom of speech and expression. **Before registering a case regarding a post on social media, it should be looked into as a reasonable man and decision should be based on standards of reasonable, strong-minded, firm and courageous individuals and not based on standards of people with weak and oscillating minds.** (Para 6)

B. Before invoking the Section 152 BNS, reasonable care and standards of reasonable person should be adopted as spoken words or posts on social media is also covered by the liberty of freedom of speech and expression, which should not be narrowly construed unless it is of such nature which effect the sovereignty and integrity of a country or encourages separatism. **For attracting the ingredients of Section 152 BNS, there must be purpose by spoken or written words, signs, visible representations, the electronic communication to promote secession, armed rebellion, subversive activities or encourages feeling of separating activities or endangers the sovereignty, unity and integrity of India.** Therefore merely posting a message to simply shows supporting of any country may create anger or disharmony among citizens of India and may also be punishable u/s 196 BNS which is punishable up to seven years but definitively will not attract the ingredients of Section 152 BNS. (Para 7)

C. Before invoking the Section 196 BNS or other offences covered by the law referred to in Clause 2 of Article 19 of the Constitution of India preliminary inquiry should be conducted as required u/s 173 (3) BNSS to ascertain whether prima facie case is made out to proceed against the accused but in the present case record shows that no such preliminary inquiry

was conducted while registering the FIR against the applicant. (Para 8)

Taking into account the observation made by the Apex Court and considering the age of the applicant and taking into account that charge sheet has already been filed and without expressing any opinion on the merits of the case, the applicant is considered entitled to be enlarged on bail. (Para 9)

Bail granted. (Personal bond, sureties and conditions imposed) (E-4)

Case Law Cited

Imran Pratapgadhi Vs. State of Gujarat and another, 2025 SCC OnLine SC 678 (Para 6)

List of Acts

Bharatiya Nyaya Sanhita.

List of Keywords

Criminal law; freedom of speech and expression; fundamental right; constitution; stringent punishment; sovereignty; unity; integrity; charge sheet; bail.

Case Arising From

Judgment and order dated 09.06.2025 passed by Special Judge POCSO Act/Additional Sessions Judge Sambhal in Bail Application No. 816 of 2025, arising out of Case Crime No. 169 of 2025n u/s 152 B.N.S.

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

1. Heard Sri Santosh Kumar Gupta, learned counsel for the applicant, Sri Anish Kumar Upadhyay, learned A.G.A. for the State and perused the record.

2. Instant bail application has been filed with a prayer to release the applicant on bail during the trial in Case Crime No. 169 of 2025, under Section 152 BNS, Police Station- Bahjoi, District Sambhal.

3. Contention of learned counsel for the applicant is that as per the allegation made in the FIR, the applicant has posted following story through his Instagram ID;

"Chahe jo ho jai sport to bas ..... Pakistan ka karenge."

It is further submitted by counsel for the applicant that this post nowhere referable to lower the dignity and sovereignty of country as neither the flag of country was there nor use of name or any photo which shows any disrespect to the country and merely supporting a country, even if, the country is enemy to the country of India, will not attract the ingredients of Section 152 BNS. He further submitted that charge sheet has already been filed by the police, therefore, there is no requirement for custodial interrogation. The applicant has no criminal history and he is languishing in jail since 09.05.2025. He further submitted that as the applicant is 18 year old boy, therefore, he may be released on bail. In case, he is granted bail, he will not misuse the liberty of bail and would cooperate in the trial proceedings.

4. Per contra, learned A.G.A. for the State vehemently opposed the prayer for bail and submitted that such post of the applicant through Instagram ID encourages the separatism activity, therefore, the applicant is not entitled to be released on bail.

5. Considering the submissions of learned counsel for the parties and perusal of record, it is not in dispute that while posting the aforesaid post through Instagram ID, the applicant has not mentioned anything which shows disrespect towards our country. Merely showing support to the Pakistan without referring to any incident or mentioning the name of India, will not prima facie attract the offence under Section 152 BNS.

6. The Apex Court in the case of **Imran Pratapgadhi vs State of Gujarat and another; 2025 SCC OnLine SC 678**, has observed that liberty of thought and expression is one of the cornerstone ideals

of our Constitution. Article 19(1)(a) confers a fundamental right on all citizens to freedom of speech and expression. Police Officers being citizens, are bound to abide by the Constitution. We are bound to honour and uphold freedom of speech and expression conferred to all citizens. It is further observed by the Apex Court that before registering a case regarding a post on social media, it should be looked into as a reasonable man and decision should be based on standards of reasonable, strong-minded, firm and courageous individuals and not based on standards of people with weak and oscillating minds.

7. Section 152 BNS is a new Section providing stringent punishment and there was no corresponding section in IPC, therefore, before invoking the Section 152 BNS, reasonable care and standards of reasonable person should be adopted as spoken words or posts on social media is also covered by the liberty of freedom of speech and expression, which should not be narrowly construed unless it is of such nature which effect the sovereignty and integrity of a country or encourages separatism. For attracting the ingredients of Section 152 BNS, there must be purpose by spoken or written words, signs, visible representations, the electronic communication to promote secession, armed rebellion, subversive activities or encourages feeling of separating activities or endangers the sovereignty, unity and integrity of India. Therefore merely posting a message to simply shows supporting of any country may create anger or disharmony among citizens of India and may also be punishable under Section 196 BNS which is punishable up to seven years but definitively will not attract the ingredients of Section 152 BNS. It would be beneficial to quote Sections 152 and 196 of BNS, 2023 which are as follows;

152. Act endangering sovereignty, unity and integrity of India. - Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend to seven years, and shall also be liable to fine.

Explanation. Comments expressing disapprobation of the measures, or administrative or other action of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite the activities referred to in this section do not constitute an offence under this section.

196. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.?(1) Whoever?

(a) by words, either spoken or written, or by signs or by visible representations or through electronic communication or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities; or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity; or

(c) organises any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

8. The Apex Court in the case of **Imran Pratapgadhi (supra)** has observed that before invoking the Section 196 BNS or other offences covered by the law referred to in Clause 2 of Article 19 of the Constitution of India preliminary inquiry should be conducted as required under Section 173 (3) BNSS to ascertain whether prima facie case is made out to proceed against the accused but in the present case record shows that no such preliminary inquiry was conducted while registering the FIR against the applicant. Para 42 (v) and (vi) of the **Imran Pratapgadhi (supra)** case is being quoted as under;

42 (v). Clause (2) of Article 19 of the Constitution carves out an exception to the fundamental right guaranteed under sub-clause (a) of clause (1) of Article 19. If there is a law covered by clause (2), its operation remains unaffected by sub-clause (a) of clause (1). We must remember that laws covered by the clause (2) are protected by way of an exception provided they impose a reasonable restriction. Therefore, when an allegation is of the commission of an offence covered by the law referred to in clause (2) of Article 19, if sub-Section (3) of Section 173 is applicable, it is always appropriate to conduct a preliminary inquiry to ascertain whether a prima facie case is made out to proceed against the accused. This will ensure that the fundamental rights guaranteed under sub-clause (a) of clause (1) of Article 19 remain protected. Therefore, in such cases, the higher police officer referred to in sub-Section (3) of Section 173 must normally grant permission to the police officer to conduct a preliminary inquiry.

(vi). When an offence punishable under Section 196 of BNS is alleged, the effect of the spoken or written words will have to be considered based on standards of reasonable, strong-minded, firm and courageous individuals and not based on the standards of people with weak and oscillating minds. The effect of the spoken or written words cannot be judged on the basis of the standards of people who always have a sense of insecurity or of

those who always perceive criticism as a threat to their power or position.

9. In view of above and taking into account the observation made by the Apex Court in **Imran Pratapgadhi (supra)** and considering the age of the applicant and taking into account that charge sheet has already been filed and without expressing any opinion on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

10. Let the applicant- Riyaz involved in the aforementioned crime be released on bail, on his furnishing a personal bond and two sureties each in the like amount, to the satisfaction of the court concerned, with the following conditions:-

i. The applicant 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.

ii. The applicant shall cooperate in the trial/investigation sincerely without seeking any adjournment.

iii. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

iv. The applicant shall attend in accordance with the conditions of the bond executed by him.

v. The applicant shall not post any material on social media which could create disharmony among citizens of India.

11. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

12. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

(2025) 7 ILRA 690
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 03.07.2025

BEFORE

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

Commercial Appeal No. 2 of 2025
With
Commercial Appeal No. 4 of 2025

Reeta Chaddha & Ors. ...Appellants
Versus
U.P. Jal Nigam & Ors. ...Respondents

Counsel for the Appellants:
Daya Shankar, Mahendra Kumar Mishra

Counsel for the Respondents:
Suresh Singh, Vimlesh Kumar Rai

Issue for Consideration

Whether under proviso to Section 13(1A) of the Act, 2015, appeal can lie only from such orders passed by Commercial Court that are specifically enumerated under Order XLIII C.P.C. and Section 37 of Arbitration and Conciliation Act, 1996.

Head Notes

The Commercial Courts Act, 2015 - Section 13(1A), The Code of Civil Procedure, 1908- Order XLIII, The Arbitration and Conciliation Act, 1996- Section 37 - Remedy of appeal under the provisions of Act, 2015 is available against those orders which are specifically and exhaustively

enumerated under Order XLIII C.P.C. and Section 37 of the Act, 1996 and from the orders which do not fall within the scope and ambit of the orders specified therein, no appeal shall lie - Appeals dismissed.

Held- The Commercial Court has dismissed the execution applications against which the appeal is not maintainable either under Order XLIII C.P.C. or Section 37 of the Act, 1996 and, as such, the present appeals arising from the orders passed in execution proceedings under the Act, 2015 would not be maintainable - Appeal dismissed with liberty to the appellants to take recourse to such remedy, as may be available to them in law. **(Para 12, 13, 14 & 16)** (E-15)

Case Law Cited

Kandla Export Corporation and another Vs. OCI Corporation and another : (2018) 14 SCC 715;Tapesh Arora Vs. Mukesh Chand : CM(M) 1806 of 2023 decided by Delhi High Court on 16.11.2023.;BGS SGS SOMA JV Vs. NHPC Limited : (2020) 4 SCC 234;Sri Satyanarayana Muniyappa vs. Siemens Financial Services Pvt. Ltd. : Commercial Appeal No. 247 of 2023 decided on 04.07.2023.

List of Acts

The Commercial Courts Act, 2015 - The Code of Civil Procedure, 1908- The Arbitration and Conciliation Act, 1996

List of Keywords

Commercial Courts Act, 2015; Remedy of appeal is available against: Orders enumerated under Order XLIII C.P.C. and Section 37 of the Act, 1996; No appeal shall lie; orders not within the scope of Order XLIII C.P.C. and Section 37

Case Arising From

Orders dated 05.09.2024 passed by Commercial Court, Prayagraj in Execution Case Nos. 33 of 2004 and 31 of 2004 arising out of arbitral awards dated 31.07.2002

Appearances for Parties

Counsel for Appellant :- Daya Shankar, Mahendra Kumar Mishra

Counsel for Respondent :- Suresh Singh, Vimlesh Kumar Rai

Judgment/Order of the High Court

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

1. These appeals under Section 13(1A) of the Commercial Courts Act, 2015 (for short 'Act, 2015') have been filed against the judgments/orders dated 05.09.2024 passed by Commercial Court, Prayagraj in Execution Case Nos. 33 of 2004 and 31 of 2004 arising out of arbitral awards dated 31.07.2002 passed by Sole Arbitrator, whereby the execution cases filed by the appellants have been rejected.

2. The facts indicated reveal that respondent-Jal Nigam invited tenders for reconstruction of RCC Overhead Tank, the contract bond was accepted and signed on 12.06.1972 by M/s Chaddha & Co. through Sri P.D. Chaddha, who later on died on 19.09.2017. After execution of the work, when outstanding bill was not cleared by the respondent, a dispute arose between the parties and proceedings were initiated for appointment of Arbitrator. The Arbitrator was appointed by order dated 13.11.2001 passed by Civil Judge (Senior Division), Allahabad. Ex-parte awards dated 31.07.2002 were passed by the Arbitrator. For execution of the awards dated 31.07.2002, execution applications were filed. The execution proceedings were contested.

3. On account of death of Mr. P.D. Chaddha, who had filed the proceedings on behalf of the firm, application under Section 146 C.P.C. was filed seeking the permission to pursue the execution cases by Mr. Piyush Chaddha, son of P.D. Chaddha, however, when Mr. Piyush Chaddha also died on 14.04.2021, the appellants moved

applications seeking permission to conduct the pending execution cases. Thereafter respondents 4 to 6 also moved applications seeking permission to continue the proceedings, which were allowed.

4. The Commercial Court, by the orders impugned, framed points for determination pertaining to the maintainability of the proceedings at the instance of the applicants and came to the conclusion that succession certificate was not necessary, however, in view of the fact that two sets of claimants were seeking exclusive right to prosecute the applications, the Court came to the conclusion that none was able to establish such right and consequently dismissed the applications.

5. Feeling aggrieved, present appeals have been filed under the provisions of Section 13(1A) of the Act, 2015.

6. Learned counsel for the respondents raised preliminary objection about maintainability of the appeals. Submissions were made that under proviso to Section 13(1A) of the Act, 2015, appeal can lie only from such orders passed by Commercial Court that are specifically enumerated under Order XLIII C.P.C. and Section 37 of Arbitration and Conciliation Act, 1996 (for short 'Act, 1996') and as the orders impugned do not fall within either of the categories, the appeals deserve to be dismissed as not maintainable. Reliance was placed on **Kandla Export Corporation and another Vs. OCI Corporation and another : (2018) 14 SCC 715**. It was prayed that the appeals may be dismissed as not maintainable.

7. Counsel for the appellants vehemently opposed the submissions. It was submitted that the appeals are very much maintainable under the provisions of Section 13(1A) of the Act, 2015 and the objection raised in this regard has no substance. Submissions were made that the provisions of Section 13(1A) of the Act, 2015 provide for appeal against judgment/order of a Commercial Court to the Commercial Appellate Division of the High Court independent of the proviso under the said sub-section and, therefore, as the orders impugned have been passed by the Commercial Court, the appeals are maintainable. Reliance was placed on judgments in **Kandla Export Corporation (supra)** relied on by the counsel for the respondents and **Tapesh Arora Vs. Mukesh Chand : CM(M) 1806 of 2023** decided by Delhi High Court on 16.11.2023.

8. We have considered the submissions made by counsel for the parties and have perused the material available on record and are of the considered view that the objection to the maintainability of the appeals has to be sustained in the light of the authoritative pronouncements of Hon'ble Supreme Court in the case of **Kandla Export Corporation (supra)** followed in **BGS SGS SOMA JV Vs. NHPC Limited : (2020) 4 SCC 234.**

9. In the case of **Kandla Export Corporation (supra)**, the Supreme Court examined the statutory scheme of appeals under the Act, 1996 as also under Section 13 of the Act, 2015 and taking into consideration the 'Statement of Objects and Reasons' of the Act, 2015 and the various provisions contained in the said Act, it was laid down as under:

"13. Section 13(1) of the Commercial Courts Act, with which we are

immediately concerned in these appeals, is in two parts. The main provision is, as has been correctly submitted by Shri Giri, a provision which provides for appeals from judgments, orders and decrees of the Commercial Division of the High Court. To this main provision, an exception is carved out by the proviso. The primary purpose of a proviso is to qualify the generality of the main part by providing an exception, which has been set out with great felicity in CIT v. Indo-Mercantile Bank Ltd., 1959 Supp (2) SCR 256 pp. 266-267 : AIR 1959 SC 713 pp. 717-18, thus:

"9. .... The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment. Ordinarily it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment.

'8. It is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso.'

Therefore it is to be construed harmoniously with the main enactment. (Per Das, C.J. in Abdul Jabar Butt v. State of J&K (1957) SCR 51, p.59 : AIR 1957 SC 281 p. 284, para 8). Bhagwati, J., in Ram Narain Sons Ltd. v. CST (1955) 2 SCR 483 p.493: AIR 1955 SC 765 p. 769, para 10 said:

"10. It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.'

10. Lord Macmillan in Madras & Southern Maharatta Railway Co. v. Bezwada Municipality (1944) SCC OnLine PC 7 : (1943-44) 71 IA 113, p.122, laid down the sphere of a proviso as follows:

"…. The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. Where, as in the present case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it by implication what clearly falls within its express terms."

The territory of a proviso therefore is to carve out an exception to the main enactment and exclude something which otherwise would have been within the section. It has to operate in the same field and if the language of the main enactment is clear it cannot be used for the purpose of interpreting the main enactment or to exclude by implication what the enactment clearly says unless the words of the proviso are such that that is its necessary effect. (Vide also Toronto Corpn. v. Attorney-General for Canada 1946 AC 32 (PC), p.37)"

14. The proviso goes on to state that an appeal shall lie from such orders passed by the Commercial Division of the High Court that are specifically enumerated under Order 43 of the Code of Civil Procedure Code, 1908, and Section 37 of the Arbitration Act. It will at once be noticed that orders that are not specifically enumerated under Order 43 of the CPC would, therefore, not be appealable, and appeals that are mentioned in Section 37 of the Arbitration Act alone are appeals that can be made to the Commercial Appellate Division of a High Court.

15. Thus, an order which refers parties to arbitration under Section 8, not being appealable under Section 37(1)(a), would not be appealable under Section 13(1) of the Commercial Courts Act. Similarly, an appeal rejecting a plea referred to in sub-sections (2) and (3) of

Section 16 of the Arbitration Act would equally not be appealable under Section 37(2)(a) and, therefore, under Section 13(1) of the Commercial Courts Act."

10. The Court clearly laid down that as per the then existing provisions of Section 37 of the Act, the orders under Section 8 and 16 of the Act, 1996 were not appealable, the appeal could not be filed/maintained under Section 13(1) of the Act, 2015.

11. After substitution of Section 13 of the Act and insertion of the sub-section (1A) in the said provision in the year 2018, the judgment in the case of **Kandla Export Corporation (supra)** was considered in the case of **BGS SGS SOMA JV (supra)** by Hon'ble Supreme Court wherein it was specifically laid down that there is no independent right of appeal under Section 13(1) of the Act, 2015 and that appeal could be filed in terms of proviso to Section 13(1A) of the Act, 2015. It was laid down as under:

"13. Given the fact that there is no independent right of appeal under Section 13(1) of the Commercial Courts Act, 2015, which merely provides the forum of filing appeals, it is the parameters of Section 37 of the Arbitration Act,1996 alone which have to be looked at in order to determine whether the present appeals were maintainable. Section 37(1) makes it clear that appeals shall only lie from the orders set out in sub-clauses (a), (b) and (c) and from no others. The pigeonhole that the High Court in the impugned judgement has chosen to say that the appeals in the present cases were maintainable is sub-clause (c). According to the High Court, even where a Section 34 application is ordered to be returned to the appropriate Court, such order would amount to an order "refusing to set aside an arbitral award under Section 34".

14. Interestingly, under the proviso to Section 13(1-A) of the Commercial Courts Act, 2015, Order 43 CPC is also mentioned. Order 43 Rule(1)(a) reads as follows:

*"**1. Appeal from orders**.- An appeal shall lie from the following orders under the provisions of Section 104, namely-*

(a) an order under Rule 10 of Order 7 returning a plaint to be presented to the proper Court except where the procedure specified in Rule 10-A of Order 7 has been followed;"

This provision is conspicuous by its absence in Section 37 of the Arbitration Act, 1996, which alone can be looked at for the purpose of filing appeals against orders setting aside, or refusing to set aside awards under Section 34. Also, what is missed by the impugned judgment is the words "under Section 34". Thus, the refusal to set aside an arbitral award must be under Section 34, i.e., after the grounds set out in Section 34 have been applied to the arbitral award in question, and after the Court has turned down such grounds. Admittedly, on the facts of these cases, there was no adjudication under Section 34 of the Arbitration Act, 1996 - all that was done was that the Special Commercial Court at Gurugram allowed an application filed under Section 151 read with Order 7 Rule 10 CPC, determining that the Special Commercial Court at Gurugram had no jurisdiction to proceed further with the Section 34 application, and therefore, such application would have to be returned to the competent court situate at New Delhi."

12. The above pronouncements of Hon'ble Supreme Court leave no scope for

further arguments inasmuch it has been categorically laid down that the remedy of appeal under the provisions of Act, 2015 is available against those orders which are specifically and exhaustively enumerated under Order XLIII C.P.C. and Section 37 of the Act, 1996 and from the orders which do not fall within the scope and ambit of the orders specified therein, no appeal shall lie.

13. So far as judgment in the case of **Tapesh Arora (supra),** reliedon by counsel for the appellants is concerned, order impugned in the said case was a decree of possession passed by the Commercial Court under Order XII Rule 6 C.P.C. qua which by way of an interlocutory order, it was observed that the appeal under the Act, 2015 would be maintainable, which judgment would have no application to the facts of the present case.

14. In the present case, by the orders impugned, the Commercial Court has dismissed the execution applications against which the appeal is not maintainable either under Order XLIII C.P.C. or Section 37 of the Act, 1996 and, as such, the present appeals arising from the orders passed in execution proceedings under the Act, 2015 would not be maintainable.

15. Similar view has been taken by Division Bench of Karnataka High Court in **Sri Satyanarayana Muniyappa vs. Siemens Financial Services Pvt. Ltd. : Commercial Appeal No. 247 of 2023** decided on 04.07.2023.

16. Consequently, the appeals are dismissed as not maintainable, with liberty to the appellants to take recourse to such remedy, as may be available to them in law.

17. The certified copies of the impugned orders be returned to the counsel for the appellants on production of self attested copies of the orders impugned.

(2025) 7 ILRA 695
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 14.07.2025

BEFORE

THE HON'BLE VIVEK KUMAR BIRLA, J.
THE HON'BLE JITENDRA KUMAR SINHA, J.

Contempt Appeal Defective No. 2 of 2025

Rakesh Kumar Sharma & Ors.
...Appellants
Versus
Shri Ramjan Baksh & Ors. ...Respondents

Counsel for the Appellants:
Gavendra Kumar Mishra

Counsel for the Respondents:
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Issue for Consideration

Whether an appeal under Section 19 of the Contempt of Courts Act is maintainable, when the impugned order decision has not been passed in exercise of its jurisdiction to punish for contempt by the High Court.

Head Notes

The Contempt of Courts Act, 1971 - Section 19 - No appeal lies under Section 19, if the court refuses to take action or initiate proceedings - Appeal dismissed as not maintainable.

Held- By the order impugned herein the learned Single Judge has dismissed the contempt application, therefore, clearly the learned Single Judge has refused to take action or initiate contempt proceedings - Present appeal would not lie and the same stands dismissed as not maintainable.**(Para 7, 8 & 9)** (E-15)

Case Law Cited

Baradakanta Mishra vs. Justice Gatikrushna Misra, Chief Justice of Orissa High Court 1975 (3) 535; State of Maharashtra vs. Mahboob S. Allibhoy @ another 1996(4) SCC 411

List of Acts

The Contempt of Courts Act, 1971

List of Keywords

No appeal lies under Section 19; Court refused to take action; Appeal not maintainable.

Case Arising From

Appeal has been filed under Section 19(1) of Contempt of Courts Act, 1971 challenging the order dated 3.3.2025 passed by the Contempt Court in Contempt Application (Civil) No. 901 of 2025 (Rakesh Kumar Sharma and others vs. Shri Ramjan Baksh), whereby the contempt application has been dismissed.

Appearances for Parties

Counsel for Appellant :- Gavendra Kumar Mishra

Judgment/Order of the High Court

(Delivered by Hon'ble Vivek Kumar Birla, J. & Hon'ble Jitendra Kumar Sinha, J.)

1. Heard Sri Gavendra Kumar Mishra, learned counsel for the appellants and perused the record.

2. Present appeal has been filed under Section 19(1) of Contempt of Courts Act, 1971 challenging the order dated 3.3.2025 passed by the Contempt Court in Contempt Application (Civil) No. 901 of 2025 (Rakesh Kumar Sharma and others vs. Shri Ramjan Baksh), whereby the contempt application has been dismissed.

3. For the sake of clarity the impugned order dated 3.3.2025 is quoted as under:-

"The present contempt application has been filed pleading willful disobedience of the order dated 22.12.2010 passed by this Court in Writ-C No. 74537 of 2010.

The averments made in the affidavit filed in support of the contempt application do not indicate any willful disobedience of the order passed by this Court inasmuch as there is no delivery of possession during the consolidation proceedings.

The records annexed with the affidavit only disclose that title proceedings are going on between the parties.

The contempt application is dismissed."

4. On being confronted with maintainability of the present appeal, on the last date learned counsel for the appellants sought time to prepare the matter.

5. Today, addressing the Court on the maintainability of the present appeal under Section 19 of the Contempt of Courts Act, 1971 as the impugned order decision has not been passed in exercise of its jurisdiction to punish for contempt by the High Court, learned counsel for the appellants has placed reliance on a judgment of Hon'ble Apex Court in the case of **State of Maharashtra vs. Mahboob S. Allibhoy @ another 1996(4) SCC 411** to contend that the appeal would be maintainable.

6. We find that the reliance placed on the aforesaid judgment is patently misconceived inasmuch as in the said order itself in paragraphs 3 and 4 of the judgment the Hon'ble Apex Court has held as under:-

"3. The preliminary question which has to be examined as to whether in the facts and circumstances of the case an appeal is maintainable against an order

dropping the proceeding for contempt. It is well settled that an appeal is a creature of a statute. Unless a statute provides for an appeal and specifies the order against which an appeal can be filed, no appeal can be filed or entertained as a matter of right or course. Section 19 of the Act says:

"19. Appeals - (1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt –

(a) where the order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court;

(b) where the order or decision is that of a Bench, to the Supreme Court:

Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union Territory, such appeal shall lie to the Supreme Court.

(2) Pending any appeal, the appellate Court may order that –

(a) the execution of the punishment or order appealed against be suspended;

(b) if the appellant is in confinement, he be released on bail; and

(c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal the High Court may also exercise all or any of the powers conferred by sub-section (2).

(4) An appeal under sub-section (1) shall be filed

(a) in the case of an appeal to a Bench of the High Court, within thirty days;

(b) in the case of an appeal to the Supreme Court, within sixty days,

from the date of the order appealed against.

On a plain reading Section 19 provides that an appeal shall lie as of right from any order or decision of the High Court in exercise of its jurisdiction to punish for contempt. In other words, if the High Court passes an order in exercise of its jurisdiction to punish any person for contempt of court, then only an appeal shall be maintainable under sub- section (1) of Section 19 of the Act. As sub-section (1) of Section 19 provides that an appeal shall lie as of right from any order, an impression is created that an appeal has been provided under the said sub-section against any order passed by the High Court while exercising the jurisdiction of contempt proceedings. The words 'any order' has to be read with the expression 'decision' used in said sub-section which the High Court passes in exercise of its jurisdiction to punish for contempt. 'Any order' is not independent of the expression 'decision'. They have been put in an alternative form saying 'order' or 'decision'. In either case, it must be in the nature of punishment for contempt. If the expression 'any order' is read independently of the 'decision' then an appeal shall lie under sub-section (1) of Section 19 even against any interlocutory order passed in a proceeding for contempt by the High Court which shall lead to a ridiculous result.

4. It is well known that contempt proceeding is not a dispute between two parties, the proceeding is primarily between the court and the person who is alleged to have committed the contempt of court. The person who informs the court or brings to the notice of the court that anyone has committed the contempt of such court is not in the position of a prosecutor, he is simply assisting the court so that the dignity and the majesty of the court is maintained and upheld. It is for the court, which initiates the proceeding to decide whether the person against whom such

proceeding has been initiated should be punished or discharged taking into consideration the facts and circumstances of the particular case. This Court in the case of Baradakanta Mishra v. Mr. Justice Gatikrushna Misra C.J. of the Orissa H.C., AIR 1974 SC 2255 - 1975(1) SCR 524 said:

...Where the Court rejects a motion or a reference and declines to initiate a proceeding for contempt, it refuses to assume or exercise jurisdiction to punish for contempt and such a decision cannot be regarded as a decision in the exercise of its jurisdiction to punish for contempt. Such a decision would not, therefore, fall within the opening words of Section 19, subsection (l) and no appeal would lie against it as of right under that provision.

Again in the case of D.N. Taneja V. Bhaian Lal, (1988) 3 SCC 26 it was said:

"The right of appeal will be available under sub-section (1) of Section 19 only against any decision or order of a High Court passed in the exercise of its jurisdiction to punish for contempt. In this connection, it is pertinent to refer to the provision of Article 215 of the Constitution which provides that every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Article 215 confers on the high Court the power to punish for contempt of itself. In other words, the High Court derives its jurisdiction to punish for contempt from Article 215 of the Constitution. As has been noticed earlier, as appeal will lie under Section 19(1) of the Act only when the High Court makes an order or decision in exercise of its jurisdiction to punish for contempt. It s submitted on behalf of the respondent and, in our opinion rightly, that the High Court exercises its jurisdiction or power as conferred on it by Article 215 of the Constitution when it imposes a punishment for contempt. When the High Court does not impose any punishment on the alleged contemnor, the High Court does not exercise its jurisdiction or power to punish for contempt. The jurisdiction cf the High Court is to punish. When no punishment is imposed by the High Court, it is difficult to say that the High Court has exercised its jurisdiction or power as conferred on it by Article 215 of the Constitution."

No appeal is maintainable against an order dropping proceeding for contempt or refusing to initiate a proceeding for contempt is apparent not only from sub section (1) of Section 19 but also from sub-section (2) of Section 19 which provides that pending any appeal the appellate Court may order that

(a) the execution of the punishment or the order appealed against be suspended;

(b) if the appellant is in confinement, he be released on bail; and

(c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

Sub-section (2) of Section 19 indicates that the reliefs provided under clauses (a) to (c) can be claimed at the instance of the person who has been proceeded against for contempt of court."

(emphasis supplied)

7. As noticed in the above quoted paragraphs, clearly the law in respect of maintainability of appeal under Section 19 of the Act has been settled as back as in the year 1975 by Hon'ble Apex Court in the case of **Baradakanta Mishra vs. Justice Gatikrushna Misra, Chief Justice of Orissa High Court 1975 (3) 535**, wherein it was categorically held by the

Constitutional Bench of 3 Hon'ble Judges' that no appeal lies under Section 19 of the Act, if the court refuses to take action or initiate proceedings.

8. By the order impugned herein the learned Single Judge has dismissed the contempt application, therefore, clearly the learned Single Judge has refused to take action or initiate contempt proceedings.

9. Under such circumstances, present appeal would not lie and the same stands dismissed as not maintainable.

Re: Criminal Misc. Delay Condonation Application

1. Since the appeal itself is not maintainable, therefore, there is no occasion to consider this application to condone the delay in filing the appeal.

2. The delay condonation application stands disposed of accordingly.

(2025) 7 ILRA 699
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 14.07.2025

BEFORE

THE HON'BLE VIVEK KUMAR BIRLA, J.
THE HON'BLE JITENDRA KUMAR SINHA, J.

Contempt Application (Criminal) No. 8 of 2025

Ratnesh Kumar Singh ...Applicant
Versus
Shri Pushpraj Singh ...Respondent

Counsel for the Applicant:
Devendra Dahma

Counsel for the Respondent:
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Issue for Consideration

Whether application for initiation of criminal contempt against the alleged contemnor was beyond time and hit by section 20 of The Contempt of Courts Act, 1971

Head Notes

The Contempt of Courts Act, 1971 - Sections 16 & 20 - Alleged contemnor misbehaved and insulted the applicant in open court lowering the prestige of the applicant - Application filed before the learned Advocate General on 16.04.2025 was beyond time and was hit by Section 20 of the Act, 1971 - Incident took place on 21.03.2024 and the application was filed before the learned Advocate General on 16.04.2025 which was clearly beyond time - Contempt application rejected.

Held- In the present case, admittedly the incident had taken place on 21.03.2024 whereas the application was filed by the applicant before the learned Advocate General on 16.04.2025 which was clearly beyond time. In such view of the matter, initiation of contempt proceeding at the instance of the applicant was clearly beyond time. **(Para 5, 9 & 10)** (E-15)

Case Law Cited

Pallav Sheth vs Custodian and Others, reported in (2001) 7 SCC 549; Firm Ganpat Ram Rajkumar vs. Kalu Ram and Others, AIR 1989 SC 2285; Vilas V. Sanghai Vs. Sumermal Misrimal Bafna, reported in (2016) 9 SCC 439

List of Acts

The Contempt of Courts Act, 1971

List of Keywords

Section 20 of the Act, 1971; Application filed beyond time; hit by section 20 of The Contempt of Courts Act

Case Arising From

Application filed under Section 16 of the Contempt of Courts Act, 1971seeking consent/permission to initiate criminal contempt proceeding under section 16 of the Act, 1971 against opposite party/contemnor, who was the Presiding Officer in Appeal No.353/2024 which was filed against an order cancelling a fair price shop license.

Appearances for Parties

Counsel for Applicant :- Devendra Dahma

Judgment/Order of the High Court

(Delivered by Hon'ble Vivek Kumar Birla, J.
&
Hon'ble Jitendra Kumar Sinha, J.)

1. Heard Shri Devendra Dahma, learned counsel for the applicant and perused the records.

2. Present contempt application has been filed by the applicant under Section 16 of the Contempt of Courts Act, 1971(hereinafter referred to as the Act, 1971) seeking consent/permission to initiate criminal contempt proceeding under section 16 of the Act, 1971 against opposite party/contemnor, who was the Presiding Officer in Appeal No.353/2024 which was filed against an order cancelling a fair price shop license.

3. It is alleged that the applicant was appointed as Special Counsel Revenue in Commissionerate, Prayagraj and joined on 03.04.2021. On 21.03.2024 the applicant appeared on behalf of the State in Appeal No.353/2024 (Kavita Devi vs. State of U.P.) which was filed against an order cancelling a fair price shop license. It is being claimed that he requested the Court to give opportunity of hearing on the question of admission and grant of stay, however, the Presiding Officer of the Court on 21.3.2024 while discharging judicial function openly said in the Court that it was not necessary to hear Government Advocate and admitted the appeal and stayed the operation of order cancelling fair price shop license of the appellant. It is alleged that the alleged contemnor misbehaved and insulted the applicant in open court lowering the prestige of the applicant. The complaint in this regard was lodged by the petitioner with the Commissioner of Prayagraj, Division Prayagraj as well as with the Chairman, Board of Revenue, U.P. Lucknow and also to the Under Secretary, State Government. It is further alleged that he has received one letter dated 23.07.2024 from Commissioner Prayagraj, Division Prayagraj for appearing before him on 26.07.2024 for personal hearing. Consequently, the applicant appeared before him and on 30.07.2024 filed his statement alongwith affidavit as well as affidavit of two witnesses, the advocates who were present in the Court on 21.03.2024. Ultimately, an application was filed before the learned Advocate General on 16.04.2025 in respect of the incident dated 21.03.2024 for the purpose of referring the matter for making motion of initiation of criminal contempt against the alleged contemnor-Shri Pushpraj Singh. Learned Advocate General vide order dated 23.04.2025 rejected the application and consent sought was refused.

4. Submission of the learned counsel for the applicant is that the one of the grounds taken by the learned Advocate General for refusing to grant consent is that the application dated 16.04.2025 filed before him was beyond one year period from 21.03.2024, which is the date on which the opposite party had allegedly made statement against the applicant. It was thus held that as the limitation for filing the application expired on 21.03.2025, therefore, the application was barred by limitation. The other ground for rejection of the application by learned Advocate General was based on the interpretation of Section 15 of the Act, 1971. By placing reliance upon the judgment of Hon'ble Apex Court in the case of ***Vilas V. Sanghai Vs. Sumermal***

Misrimal Bafna, reported in (2016) 9 SCC 439. It was held by learned Advocate General that the applicant has also no legal right under Section 15(2) of the Act, 1971 to apply before the Advocate General for grant of consent in a case, if any criminal contempt of a subordinate Court.

5. In our opinion, if the application filed before the learned Advocate General on 16.04.2025 was beyond time and was hit by Section 20 of the Act, 1971, no other question would arise for consideration. The question of contempt application being time barred was specifically raised and in reply learned counsel for the applicant placing reliance upon the judgment of ***Firm Ganpat Ram Rajkumar vs. Kalu Ram and Others, AIR 1989 SC 2285*** submitted that the action of the opposite party/alleged contemnor is a continuing wrong and thus, Section 20 of the Act, 1971 is not applicable. We find that the argument is misconceived and is liable to be rejected.

6. Suffice to note that in the case of ***Firm Ganpat Ram (Supra)*** the question of handing over the possession was involved and it was held by the Hon'ble Apex Court that failure to give possession amounts to continuing wrong, which is not so in the present case and as such the said judgment is not applicable in the present case.

7. Section 20 of the Act, 1971 is quoted as under:-

"20. Limitation for actions for contempt*.?No court shall initiate any proceedings of contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed."*

8. Question of limitation as per Section 20 of the Act, 1971 was considered by Hon'ble Apex Court in the case of ***Pallav Sheth vs Custodian and Others, reported in (2001) 7 SCC 549*** in detail. Relevant paragraph nos.33, 39, 40, 41 and 44 whereof read as under:-

"33. The question which squarely arises is as to what is the meaning to be given to the expression "no court shall initiate any proceedings for contempt..." occurring in Section 20 of the 1971 Act. Section 20 deals not only with criminal contempt but also with civil contempt. It applies not only to the contempt committed in the face of the High Court or the Supreme Court but would also be applicable in the case of contempt of the subordinate court. The procedure which is to be followed in each of these cases is different.

39. In the case of criminal contempt of subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate-General or the Law Officer of the Central Government in the case of Union Territory. This reference or motion can conceivably commence on an application being filed by a person whereupon the subordinate court or the Advocate-General if it is so satisfied may refer the matter to the High Court. Proceedings for civil contempt normally commence with a person aggrieved bringing to the notice of the Court the wilful disobedience of any judgment, decree, order etc. which could amount to the commission of the offence. The attention of the Court is drawn to such a contempt being committed only by a person filing an application in that behalf. In other words, unless a Court was to take a suo motu action, the proceeding under the Contempt of Courts Act, 1971 would normally commence with the filing of an application drawing to the attention of the Court to the contempt having been committed. When the judicial procedure requires an application being filed either before the Court or consent being sought by a person from the Advocate-General or a Law Officer it must logically follow that proceeding for

contempt are initiated when the applications are made.

40. In other words, the beginning of the action prescribed for taking cognizance of criminal contempt under Section 15 would be initiating the proceedings for contempt and the subsequent action taken thereon of refusal or issuance of a notice or punishment thereafter are only steps following or succeeding to such initiation. Similarly, in the case of a civil contempt filing of an application drawing the attention of the Court is necessary for further steps to be taken under the Contempt of Courts Act, 1971.

41. One of the principles underlying the law of limitation is that a litigant must act diligently and not sleep over its rights. In this background such an interpretation should be placed on Section 20 of the Act which does not lead to an anomalous result causing hardship to the party who may have acted with utmost diligence and because of the inaction on the part of the Court a contemner cannot be made to suffer. Interpreting the section in the manner canvassed by Mr. Venugopal would mean that the Court would be rendered powerless to punish even though it may be fully convinced of the blatant nature of a contempt having been committed and the same having been brought to the notice of the Court soon after the committal of the contempt and within the period of one year of the same. Section 20, therefore, has to be construed in a manner which would avoid such an anomaly and hardship both as regards the litigant as also by placing a pointless fetter on the part of the Court to punish for its contempt. An interpretation of Section 20, like the one canvassed by the Appellant, which would render the constitutional power of the Courts nugatory in taking action for contempt even in cases of gross contempt, successfully hidden for a period of one year by practising fraud by the contemner would render Section 20 as liable to be regarded as being in conflict with Article 129 and/or Article 215. Such a rigid interpretation must therefore be avoided.

44. Action for contempt is divisible into two categories, namely, that initiated suo motu by the Court and that instituted otherwise than on the Court's own motion. The mode of initiation in each case would necessarily be different. While in the case of suo motu proceedings, it is the Court itself which must initiate by issuing a notice. In other cases initiation can only be by a party filing an application. In our opinion, therefore, the proper construction to be placed on Section 20 must be that action must be initiated, either by filing of an application or by the Court issuing notice suo motu, within a period of one year from the date on which the contempt is alleged to have been committed."

(Emphasis Supplied)

9. In the present case, admittedly the incident had taken place on 21.03.2024 whereas the application was filed by the applicant before the learned Advocate General on 16.04.2025 which was clearly beyond time. In such view of the matter, initiation of contempt proceeding at the instance of the applicant was clearly beyond time.

10. The present application is time barred and as such it is not necessary to go into any other question that may be involved in the present case.

11. The contempt application is accordingly rejected. However, the

petitioner is at liberty to pursue his remedy elsewhere, as already observed, by learned Advocate General in the second last paragraph of the judgment.

12. We make it clear that rejection of the present contempt application as being time barred would not effect the proceedings, if any, pursued by the applicant herein.

(2025) 7 ILRA 703
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 21.07.2025

BEFORE

THE HON'BLE RAJNISH KUMAR, J.

Criminal Appeal No. 200 of 1999

Vijay Prakash Shukla ...Appellant
Versus
State ...Respondent

Counsel for the Appellant:
Yogendra Singh, Kailash Nath Mishra, Kaushal Mani Tripathi, R.P. Misra, Trishita Singh

Counsel for the Respondent:
G.A.

ISSUE FOR CONSIDERATION

Whether the conviction of the appellant under Sections 363, 366, 368, and 376/511 IPC was legally sustainable based on the evidence presented, and whether he was entitled to any relief or benefit under law, including the First Offender provision.

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 – Section – 164, 313, 374(2), - Indian Penal Code, 1860 – Section - 363, 366, 368, 376, 511, - Juvenile Justice Act, 1986 - Section - 24, - Probation of Offenders Act, 1958 – Section - 4- Criminal Appeal – against conviction and sentenced - Appellant convicted for kidnapping and attempted rape of minor cousin under Sections 363, 366, 368, and 376/511 IPC - FIR lodged with delay - court held delay immaterial due to familial ties and social stigma - Victim's testimony consistent and corroborated by medical and witness evidence - Defence failed to prove enmity or alibi - no credible explanation under Section 313 CrPC - Trial court's judgment upheld - with observation that convicted and sentenced, beyond any doubt and appeal filed on misconceived and baseless grounds – held, benefit of first offender 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 – consequently, Appeal is dismissed. (Para – 12, 27, 28, 29)

Appeal Dismissed. (E-11)

CASE LAW CITED

Satpal Singh v. State of Haryana - 2010 Cri LJ 4283; State of Himachal Pradesh v. Prem Singh - AIR 2009 SC 1010); Tarkeshwar Sahu v. State of Bihar – (AIRONLINE 2006 SC 383); Pandharinath v. State of Maharashtra - (2009) 14 SCC 537); Koppula Venkat Rao v. State of Andhra Pradesh - (2004) 3 SCC 602); Chaitu Lal v. State of Uttarakhand - (2019) 20 SCC 272); Israil v. State of U.P. - Criminal Appeal No. 40 of 2001); Smt. Devki v. State of Haryana - 1979 (3) SCC 760); Kalu @ Laxminarayan v. State of M.P. - (2019) 10 SCC 211).

LIST OF ACTS

Code of Criminal Procedure, 1973; Indian Penal Code, 1860; Juvenile Justice Act, 1986; Probation of Offenders Act, 1958.

LIST OF KEYWORDS

Criminal Appeal – Kidnapping - Attempt to Rape - Minor Victim - Familial Abuse – Delay in FIR - First Offender Denial - Medical Evidence - Credibility of Testimony – baseless grounds.

CASE ARISING FROM

Date of Judgment and order: 28.04.1999 passed in Sessions Trial No. 545 of 1987 passed by Trial Court - 7th Additional Sessions Judge, Gonda.

APPEARANCE OF PARTIES

Counsel for Appellant: - Yogendra Singh, Kailash Nath Mishra, Kaushal Mani Tripathi, R. P. Misra, Trishita Singh

Counsel for Respondent: - Government Advocate

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

1. Heard Sri Kaushal Mani Tripathi, learned counsel for the appellant and Shri Badrul Hasan, learned Additional Government Advocate (here-in-after referred as AGA).

2. 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 28.04.1999 passed in Session trial No. 545 of 1987; State vs. Ram Chandra and others, Police Station Wazirganj, District Gonda by 7th Additional Sessions Judge, Gonda by means of which the appellant has been convicted and sentenced two years of rigorous imprisonment under Section 363 of Indian Penal Code (here-in-after referred as IPC), three years rigorous imprisonment under Section 366 IPC, three years rigorous imprisonment under Section 368 IPC and five years rigorous imprisonment and fine of Rs. 20,000/- under Section 376/511 IPC and in default of payment of fine, six months additional simple imprisonment. It has further been provided that all the sentences shall run concurrently.

3. Gomti Prasad on the basis of a written complaint dated 23.11.1986 lodged an FIR bearing Case Crime No. 129 of 1986 under Section 363/366 IPC at Police Station Wazirganj, District Gonda alleging therein that accused Ram Chandra son of Sheetla Prasad, Vijay Prakash Shukla and Anil Kumar Shukla both sons of Jagdamba Prasad took away his daughter Km. Shakuntala Devi, aged about 11 years at 04:00 in the morning of 16.11.1986 for taking bath to Ayodhya. On 17.11.1986 at 04:00 in the evening, two accused(s) namely Ram Chandra and Anil Kumar came back but his daughter did not come back. The said accused informed to the complainant that his daughter is with the accused Vijay Prakash Shukla and she will come with him. Accused Vijay Prakash Shukla came back to home on 18.11.1986 at 10:00 in the night but his daughter did not come back with him. When the complainant asked Vijay Prakash Shukla about his daughter Shakuntala, then he said that he do not know about her. The complainant inquired about his daughter in his relations and a panchayat was called on 22.11.1986 in the evening, in which the inquiry was made from Ram Chandra but he declined to inform anything and stated that he does not know as to where Shakuntala has gone.

4. Subsequently, Km. Shakuntala Devi was recovered on 02.12.1986 along with Vijay Prakash Shukla while they were going via Durjanpur to Parsarampur. Accordingly, the girl was recovered and the accused was arrested. The girl was examined by Dr. Ranjana Singh, Medical Officer posted at District Government Women Hospital, Gonda on 03.12.1986 and her X-ray was done by another Dr. P. C. Shukla on 04.12.1986 for determination of her age. Thereafter, a supplementary report was given by Dr. Ranjana Singh, according to which, the age of girl was about 13 years. It was further reported that there was no intercourse with the girl and no entrance into vagina was found. Sub Inspector Bans Raj Bharti investigated the matter. He recorded the statements of witnesses, prepared the site plan of the place of incident and place of recovery and after investigation submitted charge sheet against the accused(s).

5. The learned Magistrate committed the case to Sessions Court by means of the order dated 24.08.1987. The charge was framed against all accuseds under Sections 363 and 366 IPC and against the accused-appellant Vijay Prakash Shukla in addition to the aforesaid sections, under Sections 368 and 376 IPC also by the Session Court. The accused(s) pleaded not guilty and demanded trial. On behalf of the prosecution, 7 witnesses were examined; Gomti Prasad Shukla as P.W. 1, Shakuntala Devi as PW. 2, Ram Chabi Shukla as P.W. 3, Dr. P.C. Shukla as P.W. 4, Dr. Ranjana Singh as P.W. 5, Habibullah Khan Sub-Inspector, who was Head Moharir as P.W. 6 and Sub-Inspector Bans Raj Bharti as P.W. 7. Thereafter, statement of the accused(s) was recorded under Section 313 CrPC, in which the accused(s) denied that they had taken away Shakuntala with them. It was also stated that no panchayat was held and on account of enmity for property, they have falsely been implicated. The appellant-Vijay Prakash Shukla also stated that he was on Homeguard duty at the time of incident. He had enmity with Sub-Inspector Bans Raj Bharti, therefore, he has falsely been implicated.

6. In defence evidence, Ganga Prasad was examined as D.W. 1. Thereafter, after hearing learned counsel for the parties, the learned trial court held that the accused Anil Kumar appears to be lesser than 12 years of age and he was a child on the date of incident, therefore, his trial would not be held jointly under Section 24 of the Juvenile Justice Act, 1986 (here-in-after referred as JJ Act) and his case would be referred to the Juvenile Court. Thus, in this case, the trial will be only in regard to the accused Ram Chandra and Vijay Prakash Shukla. Thereafter, after examining the evidence and material on record convicted Ram Chandra and the appellant Vijay Prakash Shukla. The case of Anil Kumar Shukla for determination of his age and appropriate action under the JJ Act was referred to the Juvenile Court. Considering the age of accused Ram Chandra, who was aged about 65 years and blind since birth and had only accompanied the girl along with the accused and being his first offence, released him giving the benefit of First Offender on two sureties and a bond of Rs. 10,000/-. The appellant Vijay Prakash Shukla has been sentenced awarding the aforesaid sentences. Hence, this appeal has been filed by him.

7. The First Information Report was lodged by Gomti Prasad father of Km. Shakuntala Devi against the three accused along with the appellant Vijay Prakash Shukla. The accused Ramesh Chandra is the cousin of Gomti Prasad, whereas Vijay Prakash Shukla and Anil Kumar Shukla are real brothers and his nephews, who are sons of cousin brother of Gomti Prasad namely Jagdambika Prasad. The accuseds took away Km. Shakuntala Devi, who was aged about 11-13 years at the time of incident on the pretext of taking bath in Saryu River at Ayodhya on Kartik Purnima i.e. 16.11.1986 at 04:00 in the morning. They took away the girl without permission of her parents. P.W.- 1 and 2 both have proved that the accused had taken away Km. Shakuntala on 16.11.1986 at about 04:00 in the morning and nothing could be extracted from them in cross-examination or shown which may create any doubt about their testimony.

8. Km. Shakuntala Devi i.e. P.W.-2 has stated that about 101/4 years back while she was sleeping on the thatches (पैरा) on the door of her house, Ram Chandra had awaken her in early morning and stated that

let us go for bath to Ayodhya. At that time, there was fair of Kartik Purnima. Besides her and Ram Chandra, Vijay Prakash and Anil Kumar were also with them. They had gone to Tikri Railway Station from her house on foot. From Tikri Railway Station to Katra Railway Station by train. Thereafter, from Katra to Ayodhya on foot. At the time of incident her age was 10-11 years. In Ayodhya, they had taken bath in Saryu River and after taking bath they had gone to certain temples. Thereafter, they stayed at hut of a Hermit, where they had taken food and stayed in night. She also stated that from the hut of hermit to Tikri, they went on foot. The accused(s) had some talk in the first night, thereafter, they came on foot to Katra. In Katra, they sat in a bus, but when the bus started, Ramesh Chandra and Anil Kumar got down leaving her with Vijay Prakash. Thereafter, Vijay Prakash took her somewhere. She could not know as to where she was taken. In the night, he used to keep her at some place in small market or in any school. Wherever she stayed, Vijay Prakash had done bad work with her. She was wearing Salwar Kameez. He used to open the Salwar and on the threat to life, used to try to penetrate his penis in her vagina. He used to do it from the outside. He had done such work many times. Whenever he used to try to penetrate, she used to cry. She was recovered after 8-9 days of kidnapping. In the cross-examination, she stated that she was tired at that time and the appellant used to scold her, therefore, she used to keep mum and could not raise voice. She also stated that even in the first night Vijay Prakash had done bad work with her. However, whenever he had done bad work there was no bleeding. Thus, she was firm on her statement given in the examination-in-chief and the statement under Section 164 CrPC and nothing could be extracted in the cross-examination, which may create any doubt about her testimony. It is also noticed that the P.W. 2 has given the aforesaid evidence, while she appeared for evidence after her marriage, even at the stake of her matrimonial life. It is also not in dispute that the appellant Vijay Prakash was her cousin brother. He was working in Homeguard at that time. Therefore, the appellant has not only abused the close relationship but disciplined force also. He, being an Homeguard, instead of saving her cousin sister, committed such a crime with a girl aged about 11-13 years.

9. Dr. Ranjana Singh, who appeared as P.W. 5 stated in her examination-in-chief that there were no injuries on the outer parts of body. In the internal examination, she found that no hairs on the private part and under the shoulder. Hymen was broken. No sign of injury was found on the outer side. There was no bleeding or sign of bleeding. She gave an opinion that there was no penetration in the vagina. She also stated that if there may be any minor injury on private part about 12 to 14 days ago, then it would not be found on the date of examination and in minor injury, some signs may be found between 24 hours to one week. P.W. 4-Dr P.C. Shukla, Radiologist proved the X-ray report. On the basis of above, P.W.-5 opined that the age of victim could have been between 9 years to 13 years. Thus, the offence under Section 376, though is not proved but the attempt to rape i.e. offence under Section 376/511 IPC is proved because as deposed by P.W. 2, the appellant used to rub his penis on her vagina and tried to penetrate into vagina after opening her salwar but on account of this, she used to cry, therefore, he could not penetrate. It was an attempt to rape and it is apparent that due to minor girl and pain to her even in attempt, he could not commit

rape. Thus, the offence of attempt to rape is proved beyond doubt.

10. P.W. 3-Ram Chabi Shukla has stated that a panchayat was called on the request of Gomti Prasad in which he had told that the accused had taken away his daughter Shakuntala for bathing in Ayodhya but she has not come back. In panchayat, except the accused Vijay Prakash Shukla, two accused(s) had come and they informed that Shakuntala is with Vijay Prakash Shukla. These proceedings were held in writing. In the cross-examination, he also stated that Vijay Prakash was in homeguard at that time. The panchayat was held within a week of going of the girl and during this period he had not seen Vijay Prakash.

11. P.W. 6-Hamidullah Khan Sub Inspector stated that on 13.11.1986 at 09: 15 in the morning the complainant Gomti Prasad had given a written complaint (tehrir), on the basis of which he had prepared the Chick No. 119, Case Crime No. 129 of 1986 under Section 363/366 IPC and proved the same. He further stated that investigation of the case was handed over to Bans Raj Bharti. Bans Raj Bhari appeared as P.W. 7 and proved the statements recorded by him and the site plan etc. He also stated that with the permission of learned Magistrate, he had copied the statements recorded under Section 164 CrPC. He also proved the recovery of the girl. Thus, the case was proved by the prosecution witnesses.

12. In the statement under Section 313 CrPC, the appellant stated that report has been lodged on account of enmity. The recovery is forged. There was no panchayat and he has been implicated on account of enmity for property but he failed to prove any enmity and also could not adduce any evidence contrary to evidence adduced by the prosecution. Ganga Prasad was produced in defence as D.W.-1 and tried to prove that the appellant was on duty on the relevant dates. However, he specifically stated that he does not know as to whether he was posted on the police station on the relevant dates or not. He also stated that he had come to give the evidence on being called by the appellant Vijay Prakash Shukla. Thus, he tried to give evidence in support of the appellant but no material evidence could be adduced in support of him.

13. The learned trial court, after considering the aforesaid evidence and material on record, convicted the appellant and sentenced as above.

14. The girl of 11-13 years was kidnapped by the accused(s) from the lawful guardianship of her parents on the pretext of taking bath in Saryu River in Ayodhya taking benefit of their being close relatives and living in the near vicinity. Shakuntla Devi has not only given the evidence before the court during trial but also supported her statement under Section 164 CrPC in which she had also supported the prosecution. Thus, the offence under Section 363 CrPC, which provides punishment for kidnapping any person from lawful guardianship is proved.

15. The aforesaid evidence adduced by P.W. 2 indicates that she was kidnapped in order to force or seduce her to illicit intercourse because the appellant made repeated efforts of rape but could not succeed as the girl was minor and used to cry, whenever he tried to do so. Thus, the offence under Section 366 has also been proved against the appellant. As per

evidence of the P.W. 2, she was confined at several places after kidnapping with the aforesaid intention. Thus, the offence under Section 368 IPC is also made out.

16. Section 363 IPC provides punishment for kidnapping. It provides that 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. Section 366 IPC provides kidnapping, abducting or inducing woman to compel her for marriage, etc. It 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. The definition of rape has been given in Section 375 IPC. Section 376 provides the punishment for rape. Section 511 IPC provides punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment. It provides that whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both. Thus, where a person attempts to commit an offence punishable by this Code, he can be punished for a term which may extend to one half of the imprisonment provided for the offence or with fine or both.

17. In view of above, the learned trial court after considering the evidence and material on record has rightly and in accordance with law came to the conclusion that the offences under Sections 363/366/368 and 376/511 IPC are proved against the appellant and accordingly he has been convicted taking aid of Section 222(3) CrPC and sentenced. This Court does not find any illegality or error in the findings recorded by the trial court. The explanation for delay in lodging FIR has been given. Even otherwise the delay in such cases is immaterial, particularly when the girl was taken away by the relatives, even if there may be mute consent of mother on account of close relation and a brother-in-law (जेठ) was also accompanying as she could not have expected that the appellant would commit such a crime with his cousin.

18. The Hon'ble Supreme Court, in the case of **Satpal Singh vs. State of Haryana; 2010 CRI. L. J. 4283**, considering the judgment of Hon'ble Supreme Court in the case of **State of Himachal Pradesh vs. Prem Singh; 2009 (64) ACC 287**, has held that in case of sexual offence, the criteria may be different altogether. As honour of the family is involved, its members have to decide whether to take the matter to the court or not. In such a fact-situation, near relations of the prosecutrix may take time as to what course of action should be adopted. Thus,

delay is bound to occur. The relevant paragraphs 15, 16 and 17 are extracted hereinbelow:-

"15. However, no straight jacket formula can be laid down in this regard. In case of sexual offences, the criteria may be different altogether. As honour of the family is involved, its members have to decide whether to take the matter to the court or not. In such a fact-situation, near relations of the prosecutrix may take time as to what course of action should be adopted. Thus, delay is bound to occur. This Court has always taken judicial notice of the fact that "ordinarily the family of the victim would not intend to get a stigma attached to the victim. Delay in lodging the First Information Report in a case of this nature is a normal phenomenon" [vide Satyapal Vs. State of Haryana AIR 2009 SC 2190].

16. In State of Himachal Pradesh Vs. Prem Singh AIR 2009 SC 1010, this Court considered the issue at length and observed as under :-

"So far as the delay in lodging the FIR is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR."

17. Thus, in view of the above, the delay in lodging FIR in sexual offences has to be considered with a different yardstick."

19. The Hon'ble Supreme Court, in the case of **Tarkeshwar Sahu vs. State of Bihar (Now Jharkhand); AIRONLINE 2006 SC 383**, has held that the important ingredient of the offence under Section 375 punishable under Section 376 IPC is penetration. No offence under Section 376 IPC can be made out unless there was penetration to some extent.

20. The Hon'ble Supreme Court, in the case of **Pandharinath vs. State of Maharashtra; (2009) 14 SCC 537**, has held that if the accused- appellant had removed her clothes and he had not rebutted this statement of the prosecutrix in his examination-in-chief, it is definitely a case of attempt to rape.

21. The Hon'ble Supreme Court, in the case of **Koppula Venkat Rao vs. State of Andhra Pradesh; (2004) 3 SCC 602**, has held that the plea relating to applicability of Section 376 read with Section 511 IPC needs careful consideration. In every crime, there is first, intention to commit, secondly preparation to commit it, thirdly, attempt to commit it. If the third stage, that is, attempt is successful, then the crime is complete. If the attempt fails the crime is not complete, but law punishes the person attempting the Act under Section 511 IPC The relevant paragraphs 8, 11, 12 and 13 are extracted hereinbelow:-

"8. The plea relating to applicability of Section 376 read with Section 511 IPC needs careful consideration. In every crime, there is first, intention to commit, secondly preparation to commit it, thirdly, attempt to commit it. If the third stage, that is, attempt is successful, then the crime is complete. If the attempt fails the crime is not complete, but law punishes the person attempting the Act, Section 511 is a general provision dealing with attempts to commit offences

not made punishable by other specific sections. It makes punishable all attempts to commit offences punishable with imprisonment and not only those punishable with death. An attempt is made punishable, because every attempt, although it falls short of success, must create alarm, which by itself is an injury, and the moral guilt of the offender is the same as if he had succeeded. Moral guilt must be united to injury in order to justify punishment. As the injury is not as great as if the act had been committed, only half the punishment is awarded.

11. The sine qua non of the offence of rape is penetration, and not ejaculation. Ejaculation without penetration constitutes an attempt to commit rape and not actual rape. Definition of "rape" as contained in Section 375 IPC refers to "sexual intercourse" and the Explanation appended to the Section provides that penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Intercourse means sexual connection.

12. In the instant case that connection has not been established. Courts below were not correct in their view.

13. When the evidence of the prosecutrix is considered in the proper perspective, it is clear that the commission of actual rape has not been established. However, the evidence is sufficient to prove that attempt to commit rape was made. That being the position, conviction is altered from Section 376 IPC to Section 376/511 IPC. Custodial sentence of 3 and '/2 years would meet the ends of justice. The accused who is on bail shall surrender to custody to serve remainder of his sentence."

22. The Hon'ble Supreme Court, in the case of **Chaitu Lal vs. State of Uttarakhand; (2019) 20 SCC 272**, held that the attempt to commit an offence begins when the accused commences to do an act with the necessary intention.

23. A coordinate Bench of this Court, in **Israil vs. State of Uttar Pradesh; Criminal Appeal 40 of 2001**, has held that for the commission of every offence there are three stages, the first is the intention to commit the offence, thereafter comes the preparation to commit the offence and third is attempt to commit offence. If the attempt succeeds, he has committed the offence, if it fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence. Thereafter, considering several reports of the Hon'ble Supreme Court on the issue, the Court observed that in view of the case laws referred, it is clear that in order to hold the accused guilty of an attempt to commit rape the Court has to be satisfied that the accused, when he laid down the prosecutrix not only desired to gratify the passion upon her but that he intended to do so in all events, notwithstanding any resistance on her part. The Court after dealing with situation to the facts of the present case held that the conclusion is irresistible when the offence committed by the accused falls within the category of attempt of rape and it cannot, by any stretch of imagination, be said to be an offence under Section 354 IPC. The relevant paragraphs 14 and 21 are extracted hereinbelow:-

"14. For the commission of every offence there are three stages, the first is the intention to commit the offence, thereafter comes the preparation of commit

the offence and third is attempt to commit offence. If the attempt succeeds, he has committed the offence, if it fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence. The word "attempt" is not itself defined and must, therefore, be taken in its ordinary meaning. This is exactly what the provisions of Section 511 require. An attempt to commit a crime is to be distinguished from an intention to commit an offence, not followed by any act, cannot constitute an offence. The will is not to be taken for the deed unless there be some external act which shows that progress has been made in the direction of it, or towards maturing and effecting it. Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice. Preparation consists in devising or arranging the means or measures necessary for the commission of the offence. It differs widely from attempt which is the direct movement towards the commission after preparations are made. The point as to what would amount to attempt to rape has been considered by Hon'ble Apex Court in several cases.

21. In view of the aforementioned case laws it is clear that in order to hold the accused guilty of an attempt to commit rape the Court has to be satisfied that the accused, when he laid down the prosecutrix not only desired to gratify the passion upon her but that he intended to do so in all events, notwithstanding any resistance on her part. Indecent assaults are often magnified into attempts of rape. In order to come to a conclusion that the conduct of the accused was suggestive of determination to gratify his passion at all events and inspite of all resistance, there must be material on record. The offence under Section 354 IPC is much lesser than the offence under Sections 376/511 IPC. Even if a person gives slight slap in public view on the posterior of a lady with a culpable intention, then the offence under Section 354 IPC is complete. But in order to commit an offence under Section 376 read with Section 511 IPC, as stated above, there must be evidence on record to show that the accused had all the intention to satisfy his lust. When the aforesaid settled legal position is applied to the facts of the present case then the conclusion is irresistible then the accused has committed an offence to commit rape because he has not only undressed the victim but has also undressed himself, took her inside the Arhar field and laid on the victim. He was moving his waist at that time. He left the victim only when her grand mother reached on the place of occurrence and pulled him by holding his hairs. It is only thereafter he ran away from the place of occurrence. Therefore, the offence committed by the accused falls within the category of attempt of rape and it cannot, by any stretch of imagination, be said to be an offence under Section 354 IPC. A half hearted argument regarding the false implication of the appellant has also been raised but there is nothing on record to support such false implication. The victim has stated that the accused was his uncle and this fact has not been challenged in the cross-examination. It is absolutely unbelievable that the grand father would involve his grand daughter aged about 9 years in such an offence and thereby he would destroy her future because the stigma attached with the victim

of offence of rape, in the Indian perspective, remains attached with her throughout her life and a great damage is done not only to the victim but to the entire family of the victim. No specific enmity, nor any other material is on record to justify the theory of false implication due to enmity"

24. The Hon'ble Supreme Court, in the case of **Deepak vs. State of Haryana; (2015) 4 SCC 762**, has held that no self-respecting woman would ever come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her and the testimony of the prosecutrix in such cases is vital and the same cannot be rejected unless there is any justification. The relevant paragraph 26 is extracted here-in-below:-

"26. We are alive to the law laid down by this Court wherein it is ruled that in a case of rape, no self- respecting woman would ever come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. The testimony of the prosecutrix in such cases is vital and unless there are compelling reasons, which necessitate looking for corroboration of her statement or where there are compelling reasons for rejecting of her testimony, there is no justification on the part of the court to reject her testimony."

25. The judgment of a co-ordinate Bench in the case of **Rajesh Kumar dubey vs. State of U.P.; 2022 SCC OnLine All 1719** relied by learned counsel for the appellant is of no assistance to the appellant as in the said case the view as held by this Court was that the view taken by the trial court was against the weight of the evidence.

26. The judgment in **Mushtaq Vs. State; MANU/UP/0226/1954** is also not of any assistance to the appellant as it is distinguishable on the facts of the present case because the appellant in this case was not a minor at the time of incident.

27. Learned counsel for the appellant, relying on **Shyam @ Shyamoo vs. State of Uttar Pradesh; Criminal Appeal No. 178 of 2000** by a co-ordinate Bench, had argued that the appellant is entitled for benefit of first offender as he has no criminal history, whereas the said benefit is not available to him in view of the heinous crime of the appellant with a minor girl, who was his cousin while he was working in homeguard. The co-ordinate Bench has also observed that the Hon'ble Supreme Court, in the case of Smt. Devki vs. State of Haryana; 1979 (3) SCC 760, has held that benefit of Section 4 of the Act of 1958 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. Thus, the appellant is not entitled for benefit of first offender.

28. The Hon'ble Supreme Court, in the case of **Kalu @ Laxminarayan vs. State of Madhya Pradesh; (2019) 10 SCC 211**, has held that once the prosecution established a prima facie case, the appellant was obliged to furnish some explanation under Section 313, Cr.P.C. with regard to the circumstances. His failure to offer any explanation whatsoever therefore leaves no doubt for the conclusion of his being the assailant. In the present case, the appellant has failed to do so as discussed above.

29. In view of above and considering the overall facts and circumstances of the case, there is no room of doubt that the offences under which the appellant has

been convicted and sentenced have been proved beyond doubt before the trial court and the appellant has failed to give any explanation and prove anything contrary even by producing a defence witness, which may give any benefit to the appellant. This Court is of the view that looking to the crime committed by the appellant, the trial court has passed the impugned judgment and order in accordance with law, after considering the evidence and material on record, which does not suffer from any illegality or error. Thus, The appeal has been filed on misconceived and baseless grounds.

30. The appeal is, accordingly, **dismissed**.

(2025) 7 ILRA 713
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 23.07.2025

BEFORE

THE HON'BLE SIDDHARTH, J.
THE HON'BLE AVNISH SAXENA, J.

Criminal Appeal No. 2125 of 1984

Kanhaiya & Ors. ...Appellants
Versus
State of U.P. ...Respondent

Counsel for the Appellants:
Gagan Mehta, Kalp Nath, Parmeshwar Kr. Chaudhary

Counsel for the Respondent:
A.G.A.

Issue for Consideration

I. Whether the youthful offenders/appellants are to be punished like an adult.
II. The role of two child- accused in their individual acts and also whether they were the members of unlawful assembly.

Head Notes

The Code of Criminal Procedure, 1973 - Section 374 - The Uttar Pradesh Children Act, 1951 - Sections 2(4), 2(13), 27, 33, 63 - Conviction of the accused persons under sections 302 r/w 149 & 147 IPC- The trial judge has specifically mentioned the age of accused Chhedi and Madan are 15 years and 13 years, respectively - Child less than sixteen years of age is a youthful offender - Trial judge has committed an error of law and fact in failing to determine the age of the child and sentencing the appellants as an adult - Appellants were child and youthful offenders at the time of incident though rightly been considered to be involved in the offence of being a member of unlawful assembly but incorrectly being sentenced as an adult - Appeal Partly allowed.

Held - Appellants who were child and youthful offenders at the time of incident though rightly been considered to be involved in the offence of being a member of unlawful assembly but incorrectly being sentenced as an adult - Section 27 of the Act further clarifies that a child, who is 12 years of age or upward may be committed to prison when the court certifies that the child is (1) so unruly, (2) so depraved a character that he is not fit to be sent to an 'approved school'. The trial judge has not even considered this aspect of punishment and sent the appellants to the prison - The conviction of accused appellants being youthful offenders is upheld but their sentences are being reduced to period already undergone. **(Para 37, 38, 39 & 40)** (E-15)

Case Law Cited

Ashok Kumar Mehra and another Vs. State of Punjab [AIR 2019 SC 1903]; Mohd. Gufran Vs. State of U.P [(1990) All. L.J. 540]; Kalika Tiwari Vs. state of Bihar [(1997) 4 SCC 2186]; Shivraj Bapuray Jadhav and others Vs. State of Karnataka [(2003) 6 SCC 392];

List of Acts

The Code of Criminal Procedure, 1973 - The Uttar Pradesh Children Act, 1951

List of Keywords

Child less than sixteen years of age; Youthful offenders; incorrectly sentenced as an adult; Error of law and fact

Case Arising From

Judgment of conviction and sentence dated 31st July, 1984 passed by Special Judge, Varanasi in Sessions Trial No. 240 of 1982, State Vs. Kanhaiya and 4 others, arose out of case crime no. 203 of 1982, P.S. Bhelupur, District Varanasi, whereby the five appellants have been convicted for committing the offence of murder after forming unlawful assembly under Section 302 read with Section 149 IPC and Section 147 IPC

Appearances for Parties

Counsel for Appellant :- Gagan Mehta, Kalp Nath, Parmeshwar Kr. Chaudhary
Counsel for Respondent :- A.G.A.

Judgment/Order of the High Court

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

1. Heard Sri Kalpnath, learned counsel for the surviving appellant nos. 4 and 5, Mrs. Manju Thakur, learned AGA-1st for the State and perused the record.

2. This criminal appeal has been preferred against the judgment of conviction and sentence dated 31st July, 1984 passed by Special Judge, Varanasi in Sessions Trial No. 240 of 1982, State Vs. Kanhaiya and 4 others, arose out of case crime no. 203 of 1982, P.S. Bhelupur, District Varanasi, whereby the five appellants have been convicted for committing the offence of murder after forming unlawful assembly under Section 302 read with Section 149 IPC and Section 147 IPC. EACH convict has been sentenced to life imprisonment u/s 302 IPC and one year's rigorous imprisonment for committing offence under Section 147 IPC. It is directed that both the sentences shall run concurrently.

3. Out of five accused-appellants, namely, Kanhaiya, Mannu, Bahadur @ Bhagudar, Chhedi and Madan, first three accused-appellants passed away during the pendency of appeal. Hence, the appeal was dismissed as abated against Kanhaiya and Mannu by order dated 2nd February, 2018, whereas appeal against Bahadur @ Bhagudar was dismissed as abated by order dated 30th August, 2022.

On the point of declaration of appellant nos. 4 and 5 as 'Child' :-

4. The remaining two accused, namely, Chhedi and Madan were claimed to be minor and below 16 years of age at the time of incident. Therefore, the learned counsel for the appellants no. 4 and 5 has filed two applications, viz., Crl. Misc. Application No. 1 of 2018 to declare appellant no.4, Chhedi @ Chhedi Lal son of Gulab, as 'child' and Crl. Misc. Application No. nil of 2018 for declaring appellant no.5, Madan, as a 'child'.

5. Hence prior to considering the merits of the grounds taken in appeal, it would be expedient to consider the above noted applications moved by the learned counsel for the appellants, who has relied on the case of ***Ashok Kumar Mehra and another Vs. State of Punjab***[1] on the point that the application for declaring a person as juvenile could be moved and considered at any stage, including the appellate stage.

6. We have perused the later part of the impugned judgment under challenge in appeal and found that the issue of juvenility of accused-Chhedi and Madan was raised even at the time of trial before the trial judge and the trial judge while convicting the accused has made an observation that the accused persons are more than 12 years of age and held them responsible for committing the crime. The relevant paragraph of the impugned judgment is required to be quoted underneath :-

"As regards the last submission of the learned defence counsel that accused Chhedi and Madan are minor and

therefore, it is most improbable that they could have participated in this occurrence, ***it is to be observed that any person of 12 or more than 12 years of age could be held responsible for committing the crime****. Undisputedly both the accused Chhedi and Madan were more than 12 years of the age at the time of occurrence. Therefore, it could not be said that they could not have participated in the occurrence."*

7. On the point of age of the appellant, Chhedi @ Chhedi Lal son of Gulab, it is mentioned in the accompanying affidavit that the date of birth of accused-Chhedi is 3rd April, 1969, as mentioned in the school leaving certificate dated 29th April 1982 of Basic Primary Pathshala, Shivpurwa Mandal, Zila Varanasi, wherein it is mentioned that the name of Chhedi Lal has been deleted from the register of school as he is continuously absent. He has passed class-III and was in class-IV, when his name was struck off due to his indefinite absence from school.

8. The incident occurred on 8th April, 1982. While recording the statement of appellant-Chhedi under Section 313 Cr.P.C., on 23rd June 1984, the learned trial judge has mentioned his age as 15 years. This shows that the Trial Judge was aware of the fact that child was below 16 years of age. According to Transfer Certificate (T.C.) the age of the accused, Chhedi, was ***13 years and 5 days*** on the date of occurrence.

9. So far as, the age of appellant-Madan son of Gulab, is concerned, it is mentioned in the accompanying affidavit that the date of birth of accused/appellant-Madan is 28th July, 1967, as is mentioned in the birth certificate issued by Municipal Corporation, dated 4th May, 2018.

10. The incident occurred on 8th April, 1982. While recording the statement of accused, Madan, under Section 313 Cr.P.C. on 23rd June 1984, learned trial judge has mentioned his age as 13 years. This shows that the Trial Judge was aware of the fact that Madan was below 16 years of age. According to birth certificate issued by Municipal Corporation, the age of the accused/appellant- Madan was 15 years, 3 months and 5 days on the date of occurrence.

11. The learned trial judge while dealing with the age of accused has merely considered that the age of accused-appellant nos. 4 and 5 as more than 12 years, but has not considered them as child and youthful offender in view of Sections 2(4) and (13) respectively of U.P. Children Act, 1951. The Act provides under sub-Section (4) the definition of 'child' under the Act, which means "a person under the age of sixteen years", whereas, sub-Section (13) provides the definition of 'youthful offender' meaning "any ***child***, who has been found to have committed an offence punishable with transportation or imprisonment".

12. Chapter-IV of the Act deals with youthful offender. On the point of sentence, Section 27 of the Act is reiterated underneath:-

*"****Section 27:Sentences that may not be passed on child****.- Notwithstanding anything to the contrary contained in any law, no court shall sentence a child to death or transportation or imprisonment for any term or commit him to prison in default of payment of fine :Provided that a child who is twelve years of age or upwards may be committed to prison when the court certifies that he is of so unruly, or of so*

depraved a character that he is not fit to be sent to an approved school and that none of the other methods in which the case may legally be dealt with is suitable."

Wherein, by non-obstante clause the trial court is restrained from imposing a sentence on child but it is provided that if a child is 12 years of age or upwards he may be committed to prison only when the court certifies that the child is 'so unruly', 'so depraved a character' that the court considered it fit to send the child to prison.

13. Section 33 of the Act provides, the method of dealing with children charged with offences and what sentence could be awarded once the court is satisfied about the guilt of the child. The provision is reiterated underneath :-

*"**Section 33:Methods of dealing with children charged with offences**.- Where a child charged with any offence is tried by any court, and **the court is satisfied of his guilt the court shall**, before passing orders, take into consideration the manner in which, under the provisions of this or any other Act enabling the court to deal with the case, the case should be dealt with, namely, whether-*

(a) by discharging the offender after due admonition; or

(b) by committing the offender to the care of his parent, guardian, other adult relative or other fit person or such parent, guardian, relative or person executing a bond to be responsible for his good behaviour; or

(c) by so discharging the offender and placing him under the supervision of a person named by the court; or

(d) by committing the offender to the custody of any suitable person, whether a relative or not, who is willing to undertake the care of the offender; or

(e) by releasing the offender on probation of good conduct; or

(f) by sending the offender to an approved school; or

(g) by ordering the offender to pay a fine; or

(h) by ordering the parent or guardian of the offender to pay a fine; or

(i) by dealing with the case in any other manner in which it may be legally dealt with ; or

(j) when the offender is a child of twelve years of age or upwards by sentencing him to imprisonment:

Provided that nothing in this section shall be construed as authorizing the court to deal with any case in any manner in which it could not deal with the case but for this section."

14. Section 63 of the Act provides for joint trial of children and adult, which provides that the child may be jointly tried together with an adult, but the sentence is to be awarded in accordance with the provision of this Act. Section 63 is reiterated underneath:-

***"Section 63: Joint trial of the child and adult**.- Where a child is charged with an offence together with any, other person not being a child then notwithstanding anything contained in this Act the child may be tried top ether with the adult in accordance with the provisions of the Code of Criminal Procedure, 1898, and nothing in this Act shall require the child to be tried by a Juvenile Court but the sentence, if any, awarded to the child shall be in accordance with the provisions of this Act."*

15. As to the presumption and determination of age of child, Section 73 of the Act casts a duty on the court to make an

inquiry as to the age of a person before the court. Section 73 is reiterated underneath:-

"Section 73: Presumption and determination of age*.- (1) Where a person, whether charged with an offence or not, is brought before any court otherwise than for the purpose of giving evidence and it appears to the court that he is a child, the court may make due inquiry as to the age of that person and for that purpose, may take such evidence as may be forthcoming, and may record a finding thereon, stating his age as nearly as may be.*

(2) A declaration by the court under the preceding sub-section as to the person brought before it being under the age of sixteen years shall for the purposes of this Act be final and no court shall in appeal or revision interfere with any such declaration."

In the present case the trial judge has specifically mentioned the age of Chhedi and Madan are 15 years and 13 years, respectively. while recording their statements under Section 313 Cr.P.C., and also considered the age of Chhedi and Madan as above 12 years, though the Act specifically provides that a child less than sixteen years of age is a youthful offender. The learned trial judge has committed an error of law and fact in failing to determine the age of the child and sentencing the appellants as an adult.

16. The conviction of accused Madan and Chhedi has been recorded in the year 1984. The appeal is pending since then. The trial court was aware of the age of appellants but the trial judge has sentenced the children ignoring the provision of Section 73 of the Act and has failed to determine their age. The Act of 1951 remained in force till the Union legislature passed the Juvenile Justice Act, 1986, enforced w.e.f., 1st December, 1986. Section 63 of Juvenile Justice Act provides for repeal and savings of all the acts applicable in the State dealing with juvenile. The repealing of Act of 1951 by the Act of 1986 has been dealt with by this High Court in the case of ***Mohd. Gufran Vs. State of U.P.2 In paragraph 3 it was held, " I, however, find that as the Juvenile Justice Act, 1986 (hereinafter referred to as the Juvenile Act) came into force with effect from 3.12.1986 and in view of provisions of Section 63 of the Juvenile Act, 1986 regarding repeal, the U.P. Children Act 1951 relied upon by the trial court is now no longer in existence and the case has to be proceeded with under the provisions of the Juvenile Act, 1986….."*.** Section 63 of the Juvenile Justice Act is reiterated underneath:-

"Section 63 of the J.J.Act: Repeal and savings*. – If, immediately before the date on which this Act comes into force in any State, there is in force in that State, any law corresponding to this Act, that law shall stand repealed on the said date :*

Provided that the repeal shall not affect –

(a) The previous operation of any law so repealed or anything duly done or suffered thereunder ; or

(b) Any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed ; or

(c) Any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability,

penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed."

Even in the act of 1986, the juvenile means a boy, who has not attained the age of 16 years but for a girl the age was 18 years, which was 16 years for both boy and girl in the U.P. Children Act, 1951.

17. The document filed in support of the age of child/youthful offender is substantiated by school leaving certificate and date of birth certificate of Nagar Nigam, which remained uncontroverted. Sending the matter for inquiry before the trial court or conducting any further inquiry at this stage in respect to certificate appended by the two youthful offenders, may lead to further delay in disposal of the case, more so, when learned trial judge has made an observation in the judgment that two accused are above 12 years of age and recorded their statements entering their age as less than 16 years. The documents appended by accused, Madan and Chhedi, supported by affidavits clearly, show that Madan was 15 years, 3 months and 20 days of age, whereas, Chhedi was 13 years and 5 days of age on the date of incident (8th April 1982).

18. **Therefore, the two appellants were the youthful offenders within the meaning provides under U.P.Children Act, 1951**. Hence the Crl. Misc. Application No. 1 of 2018 and Crl. Misc. Application No. nil of 2018 are Allowed.

Discussion on merit of grounds in Appeal :-

19. According to the FIR lodged by the informant Smt. Phulari (P.W.-1) written by Vishnu (P.W.-2) on 8th April, 1982, 10.30 p.m. at P.S. Bhelupur, Sadar, Varanasi, situated at distance of 5 kms. from the place of incident i.e. Tulsipur, Varanasi, there was a drain (parnala, spout) falling from the house of informant open in the lane. In the evening of 8th April, 1982 Kanhaiya, Bahadur and Madan had closed that drain as it used to damage the wall of their house and create sludge on the pathway. In the night when her son Lakhan returned home at 9.30 p.m., he has opened that drain, on which Kanhaiya exhorted and stated that Lakhan is opening the drain. Hearing the same Mannu, Bahadur @ Bhagudar, Chhedi and Madan reached there. Bahadur @ Bhagudar was having iron rod, Madan was carrying brick, whereas, Kanhaiya, Mannu and Chhedi were wielding lathis in their hands. They have dragged Lakhan to the trisection (tiraha) and inflicted lathi and iron rod blows on Lakhan. On hearing the hue and cry of her son, the informant, her daughter Chandar (P.W.-3) came out from the house and saw that the accused were beating her son. On wailing for help, Vishnu, Bhaiya Lal and Sukkhu came to the spot. Lakhan became unconscious and was dragged by Kanhaiya towards the house and stated that Lakhan is still alive, on which Madan gave a brick blow on his head. Lakhan died on the spot. On seeing villagers, the accused sprinted away from the spot. The incident was witnessed in the light of lantern and moonlight.

20. The FIR has been registered against Kanhaiya, Mannu, Bahadur @ Bhagudar, Chhedi and Madan. The inquest

on the dead body of Lakhan has been carried out by S.I. Hari Raj Singh (P.W.-6) at 1.00 a.m. in the intervening night of 8/9.4.1982 in presence of inquest witnesses, namely, Kailash Prasad, Bhaiya Lal son of Khilawan, Babu Lal, Somnath and Bhaiya Lal son of Heera Lal, wherein it is reported that Lakhan died due to injuries sustained by him.

21. After inquest, the dead body was sealed on the spot and handed over to Constable- Lalta Prasad Yadav (P.W.-4) and Constable- Singhasan Prasad Nirala for post mortem examination, the post mortem of the dead body was conducted on 9th April, 1982 at 3.00 p.m. by Dr. C.B.Tripathi (P.W.-5). Following ante mortem injuries have been recorded in the post mortem report.

(i) Lacerated would 4-1/2 cm x 2 cm x brain deep over right forehead including eye-brow outer part, 6 cm right to midline.

(ii) Contusion 5 cm x 1 cm over right eye upper lid, contusion externally (outward) to the Zygoma-- Transversely placed.

(iii) Lacerated wound transversely placed 4-1/2 cm x 1 cm over left ear pinna, lacerated the cartilage.

(iv) Lacerated wound transversely placed 4-1/2 cm x 1-/12 cm scalp deep over left occipito-- partial region of head. 7 cm above and back to left ear.

(v) Lacerated wound 1-1/2 cm x 3/4 cm over back of pinna of left ear 1/2 cm below injury no.3.

(vi) Contused swelling 11 cm x 7 cm over left cheek, mandibular region including chin with fracture of body of mandable left side at mid.

(vii) Linear abraded contusion 9 cm x 1 cm – transversely placed over right side mandibular region (body) inclucing mid line of chin with fracture of mandibule in the mid line (front).

(viii) Abraded contusion 3 cm x 1 cm over right mastoid region 2 cm behind right ear.

(ix) Abraded contusion 2-1/2 cm x 1-1/2 cm over right collar bone-- outer 1/3rd-- 8 cm outer to mid line.

(x) Abraded contusion 3 cm x 3-1/2 cm over front of right knee joint.

(xi) Lacerated wound 1 cm x ½ cm over back of upper third of left fore arm with fracture of ulna 4 cm below elbow joint.

(xii) Multiple abraded contusions in an area of 34 cm x 12 cm over back of left side trunk from upper border of scapula to lumber region including mid line.

On internal examination I found the following condition:-

Scalp-Contusion of scalp (on opening and reflection) 13 cm x 12 cm over both side occipital region and adjoining perital region both side.

Skull-Depressed comminuted fracture of right side frontal bone including right supra arbital ridge and superior surface of right orbital bone.

Membrace- Ruptured over right frontal lobe.

Brain- Laceration of right frontal lobe including orbital surface. Sub dural haemorrhage over left temporal lobe.

Base-Fracture of both side temporal bone communicating through fracture of middle fossa.

22. After investigation the charge sheet was submitted under Section 302/147 IPC against the appellants-accused.

23. The prosecution produced three witnesses of fact and three formal witnesses. Smt. Phulari and Smt. Chandar were examined as P.W.-1 and P.W.-3 respectively, whereas Vishnu has been examined as P.W.-2, independent witness, who was declared hostile.

24. Before dealing with the depositions of Smt. Phulari and Smt. Chandar, the deposition of independent witness Vishnu is required to be discussed.

25. Learned trial judge while appreciating the evidence has considered the deposition of P.W.-2 Vishnu as partly reliable and partly non-reliable. On the point of FIR and source of light, this witness has not been relied upon. P.W.-2 has stated, being scribe of written information, that last eleven lines of the written information was written in the police station, though P.W.-1 Smt. Phulari has deposed that the complete first information was dictated to P.W.-2 Vishnu at her residence. Learned trial judge has gone through the first information report Ex.Ka-1 and found that statement of P.W.-2 Vishnu that the last eleven lines of the written information were written at the police station does not appeal to reason is based on the fact that there is continuity of hand-writing and use of one pen. The observation of the trial judge does not requires any interference.

26. Moreover, the last eleven lines of the FIR shows that the informant and witness had seen the incident in the light of moon and lantern. The trial judge has made an observation about the existence of the source of light and belied the contention of defense that the source of light has not been proved by the prosecution as the lantern has not been taken into custody by the Investigating Officer. It is also observed that the assailants were neighbours, who could be easily identified. This observation of learned trial judge also does not require interference in view of the observation of Apex Court in the case of ***Kalika Tiwari Vs. state of Bihar***[3] that " The visible capacity of urban people who are acclimatized to florescent light is not the standard to be applied to villagers whose optical potency is attuned to country made lamps. Visibility of villagers is conditioned to such lights and hence it would be quite possible for them to identify men and matters in such lights".

27. Further, the Apex Court in the case of ***Shivraj Bapuray Jadhav and others Vs. State of Karnataka***[4] has observed that the parties who knows each other as neighbours could easily identify each other even from their voices.

28. P.W.-2 Vishnu, further stated that there was an altercation between Lakhan (deceased) and Mannu, Kanhaiya, Bahadur, Mandan and Chhedi, due to drain (spout-parnala), when Lakhan has thrown bricks (Addha) the persons gathered there had stepped back "थोड़ा पीछे हट गए". He then stated that there was no weapon in the hand of Bahadur and Chhedi. On seeing Kailash, Sukkhu, Shobhnath and others, accused sprinted away. During his cross examination this witness has stated that there is lane in between the house of accused and deceased-Lakhan. The incident took place in the lane. He specifically stated that Madan has injured Lakhan by the brick in his hand. From the statement of Vishnu it is reflected that he has witnessed the incident and presence of all the accused, though stated that Bahadur and Chhedi were not having any weapon, which is considered not reliable by the Trial

Judge. We are of the same view as seeing the involvement of family members in beating Lakhan, how the two accused would have restraint themselves from involving in the fight.

29. The point for consideration in the present appeal is the role of two child-accused in their individual acts and also whether they were the members of unlawful assembly.

30. It is consistent statement of P.W.-1 Smt.Phulari and P.W.-3 Smt. Chandar, respectively the mother and sister of deceased-Lakhan, that the accused came to the house to block the drain, as it was damaging the wall of the accused and created sludge in the lane in between the house of accused and deceased. It is also the consistent statement of these two witnesses that Lakhan, when he returned home at about 9.30 p.m. on 08.04.1982, he went to open the drain, which was the cause of altercation and fight between them. It is further stated that when Lakhan was opening the drain, accused Kanhaiya has exhorted that Lakhan is opening the drain, on hearing which, other co-accused came out.

31. There are 12 ante mortem injuries on the person of deceased, caused by hard and blunt object. In the opinion of Dr. C.B.Tripathi, P.W.-5, the deceased Lakhan died due to coma as a result of head injury and injury to the brain. The post mortem report reveals fatal injuries on the head of deceased.

32. The prosecution has proved the presence of appellants-accused and the place of incident. P.W.-5 Dr. C.B.Tripathi has refuted the suggestion of defense that the injuries sustained by Lakhan were due to fall.

33. The point of grave and sudden provocation allegedly given by the deceased is of no help to the appellants-aggressors, as the prosecution has proved that prior to altercation, the accused had closed the drain of the house of the deceased, which was being opened by the deceased when the incident took place. This shows that accused themselves had provoked the cause.

34. As three of the main accused have already passed away. The point of consideration is the role of youthful offender in the incident, as being the member of unlawful assembly for committing the act with the same intention and knowledge attract punishment.

35. From the statement of P.W.-1 Phulari, the relation between the accused is clarified. Accused Mannu was brother of Gulab and Heera; Gulab and Heera passed away. Accused-Bahadur is the son of Mannu; Accused Chhedi and Madan were sons of Gulab; and Kanhaiya was son of Heera. There was specific question put to P.W.-1 Smt. Phulari that all the male members of the family have been implicated as accused in the case, which was replied affirmatively. The purpose behind the question is false implication of all the male members of the family, so that, there is no-one to stand to fight their legal battle.

36. Smt. Phulari and Smt. Chandar in their respective depositions have stated that Chhedi was inflicting lathi blow and Madan had given a brick blow on the head of deceased-Lakhan. Moreover, PW-3 Vishnu has also stated that Madan had

inflicted brick blow on Lakhan. Therefore, their role of the appellants in the incident, which has rightly been considered by the trial judge. Hence, we do not find any ground of interference in the order of conviction.

37. The only point of consideration is whether the youthful offenders/appellants are to be punished like an adult.

38. Section 63 of 1951 Act, though provides for joint trial of child and adult, but the sentence, if any, is to be awarded to the child in accordance with Section 33 of the Act. The learned trial judge though considered the surviving appellants above 12 years of age but had ignored to apply the provisions of Uttar Pradesh Children Act, 1951 in awarding punishment.

39. Section 27 of the Act further clarifies that a child, who is 12 years of age or upward may be committed to prison when the court certifies that the child is (1) so unruly, (2) so depraved a character that he is not fit to be sent to an 'approved school'. The trial judge has not even considered this aspect of punishment and sent the appellants to the prison.

40. Therefore, we are of the considerate view that the appellants who were child and youthful offenders at the time of incident though rightly been considered to be involved in the offence of being a member of unlawful assembly but incorrectly being sentenced as an adult.

41. Therefore, the appeal is **partly allowed**. The conviction of accused-appellants being youthful offenders is upheld but their sentences are being reduced to period already undergone in Sessions Trial No. 240 of 1982, State Vs. Kanhaiya and 4 others, under Section 302 read with Section 149 and Section 147 IPC in case crime no. 203 of 1982, P.S. Bhelupur, District Varanasi.

42. Office is directed to return the trial court's record along with a copy of this judgment to the trial court within ten days.

(2025) 7 ILRA 722
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 16.07.2025

BEFORE

THE HON'BLE SIDDHARTH, J.
THE HON'BLE AVNISH SAXENA, J.

Criminal Misc. Writ Petition No. 11627 of 2025

Santosh ...Petitioner
Versus
State of U.P. & Anr. ...Respondents

Counsel for the Petitioner:
Ankit Kumar Singh, Vikas Sharma

Counsel for the Respondents:
G.A.

Issue for Consideration

Whether non exercise of discretion u/s 427 (1) of The Code of Criminal Procedure, 1973 of consecutive or concurrent running of sentence by the trial Judge while convicting the petitioner simultaneously in six cases led to travesty of justice and long incarceration in jail.

Head Notes

The Constitution of India, 1950-Article 226- The Code of Criminal Procedure, 1973 - Sections 265-G & 427(1) - Petitioner convicted in six cases on the same date ands sentenced for imprisonment of one years six months in each case, leading to his incarceration of nine years in jail- Trial court not exercised the discretion under Section 427 Cr. P.C- In absence of no direction for running the sentences concurrently the petitioner

would suffer incarceration consecutively in six cases for a term of nine years - Life and liberty of the petitioner will be jeopardised if his grievance not redressed - Sentence of one year and six months imprisonment in all the six session cases, shall run concurrently - Petition allowed

Held- Accused petitioner has been made to suffer long incarceration of nine years, merely because the trial court has not exercised the discretion, whether the sentences shall run consecutively or concurrently - Life and liberty of the petitioner will be jeopardised if his grievance is not redressed in this writ petition - The sentence of one year and six months imprisonment awarded to the petitioner in all the six session cases, shown in the chart, shall run concurrently. **(Para 12 & 13)** (E-15)

Case Law Cited

Iqram Vs. State of U.P (2023) 3 SCC 184;Satnam Singh Puransing Gill Vs. State of Maharastram 2009 SCC Online Bom 52

List of Acts

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

List of Keywords

Section 427(1) Cr.P.C; Discretion not exercised; Life and liberty jeopardised; Sentences run consecutively or concurrently

Case Arising From

Sr. No.	Sessions Case No.	Case Crime No.	Police Station	Under Section	Date of Judgment	Sentence	Fine Deposited on
1	2559/2023	Case Crime No. 375/2022	Jawan, District Aligarh	Section 136 of Electricity Act, 2003	06-01-2024	Imprisonment of 1 year, 6 months and Fine of Rs. 5000/-. In default, 6 months imprisonment.	25-04-2025
2	2560/2023	Case Crime No. 10/2023	Jawan, District Aligarh	Section 136 of Electricity Act, 2003	06-01-2024	Imprisonment of 1 year, 6 months and Fine of Rs. 5000/-. In default, 6 months imprisonment.	25-04-2025
3	2562/2023	Case Crime No. 379/2022	Jawan, District Aligarh	Section 136 of Electricity Act, 2003	06-01-2024	Imprisonment of 1 year, 6 months and Fine of Rs. 5000/-. In default,	25-04-2025

						6 months imprisonment.	
4	2565/2023	Case Crime No. 374/2022	Jawan, District Aligarh	Section 136 of Electricity Act, 2003	06-01-2024	Imprisonment of 1 year, 6 months and Fine of Rs. 5000/-. In default, 6 months imprisonment.	25-04-2025
5	2566/2023	Case Crime No. 361/2022	Jawan, District Aligarh	Section 136 of Electricity Act, 2003	06-01-2024	Imprisonment of 1 year, 6 months and Fine of Rs. 5000/-. In default, 6 months imprisonment.	25-04-2025
6	2568/2023	Case Crime No. 06/2023	Jawan, District Aligarh	Section 136 of Electricity Act, 2003	06-01-2024	Imprisonment of 1 year, 6 months and Fine of Rs. 5000/-. In default, 6 months imprisonment.	25-04-2025

Appearances for Parties

Counsel for Petitioner :- Ankit Kumar Singh,Vikas Sharma

Counsel for Respondent :- G.A.

Judgment/Order of the High Court

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

1. The point of concern in the present writ petition preferred under Article 226 of the Constitution of India is for issuance of direction to the Jail Superintendent District Jail Aligarh for concurrently running of sentence imposed in six cases arising out of theft of electricity equipment, wherein the petitioner was sentenced on admitting the guilt under plea bargaining.

2. The petitioner is aggrieved, as the trial Judge while convicting the petitioner in six cases on the same date has sentenced the accused for imprisonment of one years six months in each case, leading to his incarceration of nine years in jail, due to non exercise of discretion provided under Section 427(1) Cr.P.C.

3. The six cases in which the petitioner has been convicted and sentenced, are tabulated below:-

Sr. No.	Sessions Case No.	Case Crime No.	Police Station	Under Section	Date of Judgment	Sentence	Fine Deposited on
1	2	3	4	5	6	7	8
1	2559/2023	Case Crime No. 375/2022	Jawan, District - Aligarh	Section 136 of Electricity Act, 2003	06-01-2024	Imprisonment of 1 year, 6 months And Fine of Rs. 5000/-. In default, 6 months imprisonment.	25-04-2025
2	2560/2023	Case Crime No. 10/2023	Jawan, District - Aligarh	Section 136 of Electricity Act, 2003	06-01-2024	Imprisonment of 1 year, 6 months and Fine of Rs. 5000/-. In default, 6 months imprisonment.	
3	2562/2023	Case Crime No. 379/2022	Jawan, District - Aligarh	Section 136 of Electricity Act, 2003	06-01-2024	Imprisonment of 1 year, 6 months and Fine of Rs. 5000/-. In default, 6 months imprisonment	25-04-2025
4	2565/2023	Case Crime No.	Jawan, District	Section 136 of	06-01-2024	Imprisonment of 1 year, 6	25-04-2025

		374/2022	-Aligarh	Electricity Act, 2003		months and Fine of Rs. 5000/-. In default, 6 months imprisonment.	
5	2566/2023	Case Crime No. 361/2022	Jawan, District-Aligarh	Section 136 of Electricity Act, 2003	06-01-2024	Imprisonment of 1 year, 6 months and Fine of Rs. 5000/-. In default, 6 months imprisonment.	25-04-2025
6	2568/2023	Case Crime No. 06/2023	Jawan, District-Aligarh	Section 136 of Electricity Act, 2003	06-01-2024	Imprisonment of 1 year, 6 months and Fine of Rs. 5000/-. In default, 6 months imprisonment	25-04-2025

4. Sri Ankit Kumar Singh, learned counsel for the petitioner submits that the discretion provided under Section 427(1) Cr.P.C. has not been exercised by the trial Judge. The petitioner has confessed the crime on plea bargaining, considering that in all the cases the petitioner would be released after one and half years of imprisonment, as all the cases have been lodged by the police. The non exercise of discretion of consecutive or concurrent running of sentence by the trial Judge while convicting the petitioner simultaneously in six cases led to travesty of justice and long incarceration in jail. He has relied on the case of ***Iqram Vs. State of Uttar Pradesh***[1].

5. Per contra, learned A.G.A. submits that Section 427 (1) Cr.P.C. provides the principle of running of sentence consecutively, unless the court directs the subsequent sentence to run concurrently with the previous sentence. The petitioner is apparently a habitual offender, who is

convicted for theft of electricity equipment. He was apprehended by the police and accused has pleaded guilty and has been convicted accordingly.

6. We have given thoughtful consideration to the rival submissions made by the parties and perused the record.

7. The perusal of the judgements of conviction and sentence clearly shows that the order of conviction in six cases, detailed above have been passed by the same Judge, on the same date and on the basis of plea bargaining, on admission of guilt. The sentence passed in each case evinces same sentence with the direction of set off the period of detention undergone by the petitioner in the case, in view of Section 428 Cr.P.C. but the trial Judge has not exercised the discretion provided under Section 427 Cr.P.C. directing concurrent running of sentences, despite the fact that all the convictions have been recorded and sentences awarded on the same date which infers that the subsequent orders of punishment were within the knowledge of the Trial Judge.

8. The same issue has been dealt with by the Supreme Court in the case of ***Iqram Vs. State of U.P. (Supra)***[2], while dealing with the theft of electricity equipment wherein, in nine cases, the accused was sentenced without exercise of discretion whether the sentences shall run consecutively or concurrently. The Supreme Court has intervened in the matter and considered that the right to personal liberty is a precious and inalienable right recognised by the Constitution, which requires protection in the exercise of writ jurisdiction. The relevant paragraphs 6 to 13 are reiterated underneath:-

"6. The appellant is in jail for a period of three years. The appellant moved a petition under Article 226 of the Constitution of India, being habeas corpus Writ Petition No. 460 of 2021, before the High Court of Judicature at Allahabad. The High Court noted that the writ petition was filed on the premise that the sentences of the appellant in nine separate and distinct cases should run concurrently. The grievance of the appellant was that the jail authorities were not justified in treating the sentences to be consecutive.

7. The Division Bench [Iqram v. State of U.P., 2022 SCC OnLine All 875] of the High Court has come to the conclusion that in view of the provisions of Section 427 of the Code of Criminal Procedure, 1973 ("CrPC"), each subsequent term of conviction has to commence at the expiration of the imprisonment currently being undergone by the appellant.

8. The net consequence of the position, as it emerges, is that the appellant would have to undergo a total term of imprisonment of 18 years in respect of the nine convictions for offences under Section 136 of the Electricity Act and cognate provisions.

9. The plea bargain was with reference to the provisions of Chapter XXI-A of the CrPC. Section 265-G stipulates that the judgment delivered by the court shall be final and no appeal (except a special leave petition under Article 136 and a writ petition under Articles 226 and 227 of the Constitution) shall lie in any court against such a judgment.

10. Section 427 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. In Mohd. Zahid v. State [Mohd. Zahid v. State, (2022) 12 SCC 426] , this Court interpreted the provisions of Section 427CrPC after duly considering the precedents in the following terms : (SCC p. 440, para 17

"17. Thus from the aforesaid decisions of this Court, the principles of law that emerge are as under:-

17.1. 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.

17.2. 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.

17.3. 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 427CrPC.

17.4. Under Section 427(1)CrPC 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."

12. The trial Judge, in the present case, granted a set-off within the ambit of Section 428/Section 31 CrPC. No specific direction was issued by the trial court within the ambit of Section 427(1) so as to allow the subsequent sentences to run concurrently. All the convictions took place on the same day.

13. Once the petitioner espoused the remedy of moving a writ petition under Article 226 of the Constitution, the High Court ought to have noticed the serious miscarriage of justice which would occur consequent upon the trial court not having exercised specifically its discretion within the ambit of Section 427(1). When the appellant moved the High Court, he was aggrieved by the conduct of the jail authorities in construing the direction of the trial court to mean that each of the sentences would run consecutively at the end of the term of previous sentence and conviction. The High Court ought to have intervened in the exercise of its jurisdiction by setting right the miscarriage of justice which would occur in the above manner, leaving the appellant to remain incarcerated for a period of 18 years in respect of his conviction and sentence in the nine Sessions trials for offences essentially under the Electricity Act."

9. The petitioner by judgment and sentence dated 6th January, 2024 passed in one case has been punished with imprisonment of one and half years of judicial confinement. The trial court has not exercised the discretion provided under Section 427 Cr.P.C., which is required to be exercised at the time of subsequent conviction. Consequently in absence of no direction for running the sentences

concurrently, the accused-petitioner would suffer incarceration consecutively in six cases for a term of nine years. This will adversely affect his right to life and personal liberty.

10. To elaborate further the provision of Section 427 Cr.P.C., deals with two aspects of legislative intent. These are, (i) whether it is necessary for the trial court to pass an order under Section 427 Cr.P.C.; and (ii) how to exercise the discretion. We are not concerned with the latter in the present matter, but in our view, it would be obligatory on the Trial Court to exercise the discretion provided under Section 427 Cr.P.C., when read in conformity with Sections 235(2) and 236 Cr.P.C., which deals with the previous conviction and imposition of sentence, needless to elaborate. We further considered it necessary to quote the view of the larger Bench of Bombay High Court in ***Satnam Singh Puransing Gill Vs. State of Maharastram***[3], while answering the question, **"whether power under section 427 of the Criminal Procedure Code, 1973 can be exercised when the conviction of the accused is in two or more cases for distinct and separate offences arising out of different transactions/incidents?",** the larger Bench has opined in following words:-

"……. It is a legislative mandate which operates on its own force. In contra-distinction to this provision, Section 427(1) of the Code vests discretion in the Court, which has to be exercised judiciously and in conformity with the settled principles, to direct whether the sentence passed on conviction in the subsequent trial will run concurrently or consecutively with the previous sentence awarded to the accused. The Legislature, thus, has made it obligatory upon the Court to exercise such discretion. A bare reading of the Section does not contemplate even an application by convict or an accused in that behalf. The legislative intent requires the Court to act on its own as sentencing is primarily the duty of the Court and it is expected to consider all facets of sentencing policy while passing an order as envisaged under Section 427(1) of the Code. It is only the subsequent conviction and sentence in case of a person already undergoing a sentence of imprisonment in a previous conviction that the provisions of this Section would operate. Expression 'the Court' appearing at the end of Section 427(1) of the Code obviously refers to the Court of competent jurisdiction which deals with the imposition of sentence of imprisonment in a subsequent conviction……."

11. The sentence provided under Section 136(1) of Electricity Act, 2003 is 'imprisonment for a term which may extend to three years or with fine or with both' and sub-section(2) of Section 136 of the Act provides that 'If a person, having been convicted of an offence punishable under sub-section (1) is again guilty of an offence punishable under that sub-section, he shall be punishable for the second or subsequent offence for a term of imprisonment which shall not be less than six months but which may extend to five years and shall also be liable to fine which shall not be less than ten thousand rupees'.

12. The accused petitioner has been made to suffer long incarceration of nine years, merely because the trial court has not exercised the discretion, whether the sentences shall run consecutively or concurrently. The conviction has been recorded under plea bargaining, as per

Section 265-G of Cr.P.C. against which no appeal lies, but the writ petition under Article 226 of the Constitution of India.

13. Hence, we are of the considered view that the life and liberty of the petitioner will be jeopardised if his grievance is not redressed in this writ petition. Thus, the writ petition is **allowed**. The sentence of one year and six months imprisonment awarded to the petitioner in all the six session cases, shown in the chart, shall run concurrently. The fine has been deposited by the petitioner, per enclosed receipts.

14. The Registry to inform the District Jail, Aligarh to release the petitioner-Santosh, considering the concurrent running of sentences.

15. The copy of this judgment shall also be sent to Additional District and Sessions Judge/Special Judge E.C. Act, Aligarh and learned District Judge Aligarh for ensuring compliance.

(2025) 7 ILRA 730
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 18.07.2025

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE ANIL KUMAR-X, J.

Criminal Misc. Writ Petition No. 14242 of 2025

Nitesh Kumar ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Devottam Pandey

Counsel for the Respondents:
G.A.

Issue for Consideration

Remedy against the impugned order whereby the vehicle of the petitioner confiscated under section 5(a) of The Uttar Pradesh Prevention of Cow Slaughter Act, 1955

Head Notes

The Constitution of India, 1950-Article 226- The Uttar Pradesh Prevention of Cow Slaughter Act. 1955 - Section 5 (a) - The Code of Criminal Procedure, 1973- Section 397- Vehicle of the petitioner was seized by the police - Impugned order to confiscate the vehicle of the petitioner was passed - U.P. Prevention of Cow Slaughter Act, 1955 does not provide any forum of appeal or revision against the order of confiscation regarding the seized vehicle passed by the District Magistrate - if any judicial or quasi judicial order is passed against a party, then he must have a forum to vindicate his grievances. A party cannot be left in lurch in case any such order is passed against him - the said lacuna which occurred due to oversight of the legislature was rectified later on by issuing a notification dated 15.10.2024. Petition disposed with liberty to approach the proper forum for filing a criminal revision.

Held- Criminal revision before Divisional Commissioner alone will lie against the confiscation order passed by the District Magistrate in U.P. Prevention of Cow Slaughter Act, 1955 - Criminal writ against the impugned order not maintainable. **(Para 9)** (E-15)

Case Law Cited

Criminal Misc. Writ Petition No. 9028 of 2021 (Mustakeem Begum vs. State of U.P. and 3 Ors)

List of Acts

The Constitution of India, 1950- The Uttar Pradesh Prevention of Cow Slaughter Act. 1955 - The Code of Criminal Procedure, 1973

List of Keywords

Vehicle confiscation order; Legality of action under section 5-A; Criminal revision will lie; Against the confiscation order in U.P. Prevention of Cow Slaughter Act, 1955

Case Arising From

Confiscation order dated 22.3.2025 passed by the District Magistrate Ballia in Case No. 3080 of 2024 (State vs. Nitesh Kumar) under Section 5(a) of U.P. Prevention of Cow Slaughter Act, 1955, where vehicle No. UP 60 BT 9421 of the petitioner was confiscated.

Appearances for Parties

Counsel for Petitioner :- Devottam Pandey
Counsel for Respondent :- G.A

Judgment/Order of the High Court

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

1. Heard Sri Devottam Pandey, learned counsel for the petitioner and learned AGA for the State.

2. Challenge in this present petition is the confiscation order dated 22.3.2025 passed by the District Magistrate Ballia in Case No. 3080 of 2024 (State vs. Nitesh Kumar) under Section 5(a) of U.P. Prevention of Cow Slaughter Act, 1955, where vehicle No. UP 60 BT 9421 of the petitioner was confiscated.

3. Brief facts of this case is that on basis of an information, the above vehicle of the petitioner was seized by the police personnel and they found that it was carrying certain bovines. It was also suspected that the said vehicle was used for illegal transportation of bovines. Thereafter, an FIR bearing Case Crime No. 249 of 2024, under Section 3/5(a)/8 of U.P. Prevention of Cow Slaughter Act, 1955. Thereafter, an application before District Magistrate was forwarded with a prayer to confiscate the aforesaid vehicle. Proceeding under Section 5a(7) under the aforesaid Act was initiated by the District Magistrate. Notice was also issued to present petitioner who after his appearance file his objections. But his objections were not found satisfactory and the impugned order to confiscate the vehicle of the petitioner was passed.

4. Learned counsel for the petitioner has submitted that petitioner is involved in business of selling milk and his vehicle is engaged in the said business for transportation of milk. But certain police personnel continue to harass him as he is unable to gratify their illegal demands. Present proceedings against him were drawn only due to the said vendetta. The petitioner is the owner of the vehicle and he has also filed the registration certificate. Therefore, the impugned order dated 22.3.2025 is illegal and is liable to be quashed and the confiscated vehicle be released in favour of the petitioner.

5. Learned AGA has submitted that U.P. Prevention of Cow Slaughter Act, 1955 does not mention any remedy against confiscation order passed in the Act. In given circumstances, it was held by the co-ordinate Bench of this Court in Criminal Misc. Writ Petition No. 9028 of 2021 (Mustakeem Begum vs. State of U.P. and 3 Ors) that the Act does not provide any forum of appeal or revision against the order of confiscation regarding the seized vehicle passed by the District Magistrate. Thereafter, it was held that in such circumstances, provisions of criminal revision under Section 397 of Cr.P.C., shall be applicable and a criminal revision in the court of Sessions against such order will lie. Though it was mentioned that such orders are revisable before the Sessions court, yet many criminal revisions by this High Court were also entertained. Later on, a notification was issued by Government of Uttar Pradesh on 15.10.2024 wherein it was laid down that if the legality or propriety of the action taken under the Section 5a of

the U.P. Prevention of Cow Slaughter Act, 1955 is to be challenged, the same could be challenged before the Divisional Commissioner. Therefore, present criminal writ against the impugned order is not maintainable.

6. Confronted with the above notification dated 15.10.2024, learned counsel for the petitioner prayed that he may be permitted to file a criminal revision against the impugned order before Divisional Commissioner and it was also prayed that delay occurred under the above circumstances be also condoned.

7. After hearing the counsel for the parties, it becomes apparent that U.P. Prevention of Cow Slaughter Act, 1955 does not provide any forum of appeal or revision against the order of confiscation regarding the seized vehicle passed by the District Magistrate. It is trite law that if any judicial or quasi judicial order is passed against a party, then he must have a forum to vindicate his grievances. A party cannot be left in lurch in case any such order is passed against him. From the perusal of the order passed in Criminal Misc. Writ Petition No. 9028 of 2021, it is evident that the said order was passed on 26.4.2024 when no such forum was available for a party to challenge the confiscation order passed by the District Magistrate in U.P. Prevention of Cow Slaughter Act, 1955. It appears that the said lacuna which occurred due to oversight of the legislature was rectified later on by issuing a notification dated 15.10.2024.

8. We have also perused the above notification which is reproduced herein below:-

UTTAR PRADESH SHASAN

Grih (Police) Anubhag-9

In pursuance of the provisions of clause (3) of Article 348 of the Constitution of India, the Governor is pleased to order the publication of the following English translation of Notification no. U.0./77/VI-P-9-2024 dated 15 October, 2024.

NOTIFICATION

No. U.O./77 U.O-/VI-P-9-2024
Lucknow: Dated: 15 October, 2024

In exercise of the powers under sub-section (5) of section 5-A of the Uttar Pradesh Prevention of Cow Slaughter Act. 1955 (U.P. Act no. 1 of 1956) read with section 21 of the Uttar Pradesh General Clauses Act, 1904 (U.P. Act no. 1 of 1904), the Governor is pleased to authorise the Divisional Commissioner to satisfy himself at any time as to the legality or propriety of the action taken under the section 5-A of the Uttar Pradesh Prevention of Cow Slaughter Act, 1955 (U.P. Act no. I of 1956), call for and examine the record of any case and pass such order thereon as he may deem fit.

The aforesaid power shall be exercised within the limit of the respective districts of the Divisional Commissioners.

It is further Clarified that aforesaid authority Conferred to Division Commissioner may be know as Revisional Jurisdication.

By Order,
(Rajesh kumar)
Secretary.
Signed by
Rajesh Kumar
Date: 15-10-2024 14:44:39

9. In light of the aforesaid notification, it is very much clear that a criminal revision before Divisional Commissioner alone will lie against the confiscation order passed by the District Magistrate in U.P. Prevention of Cow Slaughter Act, 1955. Hence, the present criminal writ against the impugned order after the said notification is not maintainable as petitioner has equal and efficacious remedy to ventilate his grievances. However, we are of the view that the above notification which was issued on 15.10.2024 would not have come to the notice of the petitioner. Therefore we find it appropriate to dispose of this writ petition with a liberty to the petitioner to approach the proper forum for filing a criminal revision within a month from the date of order and if petitioner approaches the forum as directed by this Court, the concerned Division Commissioner will entertain his revision without going into the question of limitation.

10. Since we are aware that issue of this nature frequently arises before Sessions Judges, who are vested with the judicial power to adjudicate such orders, it is directed that copy of this judgment shall be circulated amongst all the Judicial Officers within State of U.P. through the District and Sessions Judges concerned. Similarly, a copy of this order shall also be sent to Director of Judicial Training and Research Institute.

11. Let a copy of this order be placed before the Registrar General of this Court, who will comply the directions given in para 10 of this judgment.

(2025) 7 ILRA 733
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 07.07.2025

BEFORE

THE HON'BLE SANJAY KUMAR SINGH, J.

Criminal Revision No. 2213 of 2025

Diwakar Nath Tripathi ...Revisionist
Versus
State of U.P. & Ors. ...Opp. Parties

Counsel for the Revisionist:
Sri Ramesh Chandra Dwivedi, Sri Abhishek Mishra, Sri Chandrakesh Mishra, Sri K.K. Roy, Sri Prabal Pratap, Sri Daya Shanker Mishra (Sr. Adv.)

Counsel for the Opp. Parties:
Sri Ashutosh Kumar Sand (G.A.), Sri Manish Goyal (Sr. Adv./A.A.G.), Sri Pawan Kumar Singh, Sri Prashant Singh, Sri Saurabh Sachan

Issue for Consideration
Whether the allegations in the application under Section 156 (3) Cr.P.C. disclose any cognizable offence and are sufficient to constitute the alleged offences

Head Notes
The Code of Criminal Procedure, 1973 - Section 156(3) - Application U/s 156(3) moved alleging Opp. Party No.2 concealing facts obtained political and lucrative position on the basis of misrepresentation and forged documents - Revisionist is pretentiously aggrieved but potentially dangerous - No force in the contention - No locus to move an application under Section 156 (3) - wheels of criminal justice system cannot be permitted to be clogged by frivolous complaints - Proceedings appear to be prima facie initiated maliciously by the revisionist with oblique motives. Revision rejected.

Held- The allegations of the complainant, who is admittedly neither victim nor aggrieved with the educational certificates of respondent no. 2 do not disclose cognizable offence, hence this criminal revision is liable to be rejected - Impugned order is based upon relevant considerations and supported by cogent

reasons, the same does not suffer from any irregularity, illegality or jurisdictional error, hence no interference is required. **(Para 33, 34, 35, 36, 38 & 39)** (E-15)

Case Law Cited

A.R. Antulay v. Ramdas Sriniwas Nayak and another, (1984) 2 SCC 500;Dr. Ravinder Nath vs. State of H.P. and Others [1993 Supp. (2) SCC 639];State of Rajasthan and Others v. Lata Arun, (2002) 6 SCC 252;Urmila Devi v. State of U.P. and Another, 2011 SCC OnLine All 1796;Pradeep Nirankarnath Sharma v. State of Gujarat and Others, 2025 SCC OnLine SC 559;Imran Pratapgadhi v. State another, 2025 SCC OnLine SC 678;Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168;International Advanced Research Centre For Powder Metallurgy and New Materials (ARCI) and others Vs. Nimra Cerglass Technics (P) Ltd., (2016) 1 SCC 348;Vimla (Dr.) Vs. Delhi Admn, 1962 SCC OnLine SC 172;Mohammad Ibrahim and others Vs. State of Bihar and another, (2009) 8 SCC 751;Manharbhai Muljibhai Kapadia and another Vs. Shaileshbhai Mohanbhai Patel and others, (2012) 10 SCC 517;Santhakumari and others Vs. State of Tamil Nadu and another, (2023) 15 SCC 440;Manharbhai Muljibhai Kapadia (supra) and Balmanohar Jalan Vs. Sunil Paswan, (2014) 9 SCC 640;Jagannath Verma & others v. State of U.P. & another A.I.R. 2014 ALLAHABAD 214 (Full Bench);Rambabu Gupta vs. State of U.P., 2001 CrLJ 3363 Allahabad (Full Bench).;Kailash Vijayvargiya v. Rajlakshmi Chaudhuri and Others, (2023) 14 SCC 1;Usha Chakraborty & another v. State of West Bengal & Another, (2023) 15 SCC 135;Mrs. Priyanka Srivastava and another v. State of U.P. and others, (2015) 6 SCC 287;Sarah Mathew Vs. Institute of Cardio Vascular Diseases (2014) 2 SCC 62;Amritlal Vs. Shantilal Soni and others (2022) 13 SCC 128

List of Acts

The Code of Criminal Procedure, 1973

List of Keywords

Application under Section 156 (3) Cr.P.C; No locus; Wheels of criminal justice; Cannot be permitted to be clogged by frivolous complaints; Proceedings prima facie initiated maliciously; With oblique motives

Case Arising From

Judgment and order dated 04.09.2021 passed by the Additional Chief Judicial Magistrate in Misc. Case No. 102/XII/ 2021 (C.N.R. No. 2750/2021)

Appearances for Parties

Counsel for Revisionist: Ramesh Chandra Dwivedi, Abhishek Mishra, Chandrakesh Mishra, K.K. Roy, Prabal Pratap (Mr. Daya Shanker Mishra, learned Senior Advocate)

Counsel for Opposite Party: Mr. Ashutosh Kumar Sand, Learned Government Advocate (Mr. Manish Goyal, learned Senior Advocate/AAG) for State Mr. Pawan Kumar Singh for O.P No. 2

Judgment/Order of the High Court

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

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ORDER

1- This Criminal Revision under Section 397 of the Code of Criminal Procedure (hereinafter referred to as

Cr.P.C.) has been filed by the revisionist with a prayer to set aside the judgment and order dated 04.09.2021 passed by the Additional Chief Judicial Magistrate in Misc. Case No. 102/XII/2021 (C.N.R. No. 2750/2021), whereby the learned Magistrate rejected the application under Section 156 (3) Cr.P.C dated 20.07.2021 filed by the revisionist seeking direction for registration of First Information Report against respondent no. 2 and to investigate the same.

2- Heard Mr. Daya Shankar Mishra, learned Senior Counsel assisted by Mr. Ramesh Chandra Dwivedi, learned counsel for the revisionist, Mr. Manish Goyal, learned Senior Counsel/ Additional Advocate General, assisted by Mr. Ashutosh Kumar Sand, learned Government Advocate for the State of U.P. and Mr. Pawan Kumar Singh, learned counsel for the respondent no. 2.

Factual matrix of the case

3- The facts that formed the bedrock of the present criminal revision are that the revisionist-Diwakar Nath Tripathi, has moved an application dated 20.07.2021 under Section 156(3) of Code of Criminal Procedure in the Court of Additional Chief Judicial Magistrate, Court No. 17, Allahabad with the allegations inter alia that:-

3.1- Shri Keshav Prasad Maurya by concealing facts obtained political and lucrative position on the basis of misrepresentation and forged documents. He, while contesting the Assembly Election of 2007 from Allahabad West Constituency, has disclosed that he has passed Prathma in the year 1986, Madhyama in the year 1988 and Uttama in the year 1998 from Hindi Sahitya Sammelan, Allahabad. In the year 2012, in the column of highest educational qualification, while Shri Keshav Prasad Maurya was contesting the Assembly Election from Sirathu Vidhan Sabha Constituency (Kaushambi) had disclosed that he passed B.A. in the year 1997 from Hindi Sahitya Sammelan, Allahabad. Similarly, false affidavit has been filed in the year 2014 Lok Sabha Election, Phoolpur Constituency and Vidhan Parishad Election.

3.2- The application further recounts that Shri Keshav Prasad Maurya has been allotted a petrol pump from Indian Oil Corporation Limited on the basis of forged educational documents. The said petrol pump is being operated in district Kaushambi in the name of Kamdhenu Filling Station.

3.3- It is also mentioned in the application that so far as the educational qualification is concerned, certificates of Prathma, Madhyma, Uttama Sahitya Ratna issued by Hindi Sahitya Sammelan are not considered as equivalent to High School, Intermediate and Bachelor (B.A.) degree respectively by Uttar Pradesh Government, UGC and NECT. Under the Right to Information Act, the Principal Secretary, Secondary Education has provided information on 01.08.2017 that Prathama, Madhyama (Visharad) examination conducted by Hindi Sahitya Sammelan Allahabad was neither recognized in the past nor is recognized at present as equivalent to the High School and Intermediate examination of the Board of Secondary Education, U.P.

3.4- Shri Shri Keshav Prasad Maurya using the said certificate of Prathma of

Hindi Sahitya Sammelan Allahabad has obtained the Petrol Pump.

3.5- Shri Keshav Prasad Maurya has submitted affidavits in different elections to the Election Commission, in which the educational qualification of the same class has been shown in different years, whereas the qualifying year/session of the same educational qualification is the same and not different. In this manner, a malicious attempt was made to obtain a public post by concealing facts in a wrong manner through fraudulent conduct and forged documents and he was successful too.

3.6- The documents made available to the revisionist under the Right to Information Act in respect of educational qualification of Keshav Prasad Maurya from the Indian Oil as well as from the Election Commission, in which the writing and signature of Keshav Prasad Maurya were found different. When the revisionist went to the Hindi Sahitya Sammelan along with the aforesaid documents and wanted to get second copy of Roll No. 3238 Samvat 2053 (1996) of Uttar Madhyma, second part (Sahitya Ratna), he was told by the official concerned that in Roll No. 3238 Samvat 2053 (1996), the name of Manju Singh, daughter of Lal Singh Chauhan is recorded, which proved that the affidavit and the educational documents are forged and fabricated.

3.7- In the booklet issued by the Indian Oil, the qualification for allotment of petrol pump has been clearly mentioned as High School, but Shri Keshav Prasad Maurya by using his political influence on the basis of Prathma degree has got the petrol pump whereas he does not fulfil the conditions and qualifications for the allotment of the petrol pump.

3.8- It is further mentioned in the application that Shri Keshav Prasad Maurya on the basis of forged and fabricated documents are using and enjoying the public property which is very dangerous to the society and the country. The revisionist is very much hurt from the aforesaid act of shri Keshav Prasad Maurya and, therefore, prayed that strict penal action is required be taken against him.

3.9- For registration of first information report, the applicant sent an application on 19.07.2021 by registered post to the In-charge Inspector, Cantt., Senior Superintendent of Police, Prayagraj, Director General of Police, U.P. Lucknow, Principal Secretary (Home), U.P. Lucknow, Governor of U.P. Principal Secretary (Home) Ministry of Home, Government of India, New Delhi, but no action has been taken.

3.10-Being aggrieved by the inaction of the district administration, the revisionist has filed the application under Section 156(3) Cr.P.C. for registration of F.I.R. against respondent no. 2 and investigation of the case.

4- The learned Magistrate vide order dated 11.08.2021 directed the concerned Station House Officer to conduct a preliminary enquiry and submit his report.

5- Pursuant to the aforesaid order dated 11.8.2021, the police has submitted the a preliminary enquiry report 31.08.2021, which runs as under:

"The applicant has alleged that Shri Keshav Prasad Maurya has used the forged document before the Election Commission of India, for which the applicant should have made application for

appropriate action before the Election Commission of India, who should have taken action if the record found forged. The applicant has alleged that opposite party has used the forged documents in the Indian Oil Corporation, for which the applicant should have made application before the Indian Oil Corporation so that action may be taken in case the documents found forged. The applicant has not produced any documents from Hindi Sahitya Sammelan to prove that the documents used by opposite party were forged and fabricated. The police report further mentions that the applicant has alleged that opposite party while residing in Alkapuri Colony has committed the said forgery, but it has not been mentioned that as to when and from whom he has got the said information. No documentary proof has been brought on record by the applicant in support of his application. "

6- Learned Additional Chief Judicial Magistrate, Allahabad after going through the record of the case as well as considering the report dated 31.08.2021 of the police, rejected the said application of the applicant vide order dated 04.09.2021.

7- Being aggrieved against the order dated 04.09.2021 rejecting his application under Section 156(3) Cr.P.C., the revisionist approached this Court by filing this Criminal Revision (Defective) No. 576 of 2023. Since, this revision was filed with delay of 318 days, a Coordinate Bench of this Court vide order dated 01.02.2024 dismissed the revision on the ground of delay in filing the revision.

8- Dissatisfied with the dismissal of his revision on the ground of delay, the revisionist rushed to Hon'ble Supreme Court by filing Petition for Special Leave to Appeal (Crl) No. 6246 of 2024. Hon'ble Supreme Court vide order dated 06.01.2025 set aside the order of this Court dated 01.02.2024 and directed this Court to decide the revision on merits. The order of the Hon'ble Supreme Court reads as under:

"The petitioner has challenged the order dated 01st February, 2024 passed by the High Court of Judicature at Allahabad in Criminal Miscellaneous Delay Condonation Application No. 1 of 2023 in Criminal Revision Defective No. 576 of 2023. Since the High Court has only dismissed the revision on delay, which is hardly a month's delay and there is cogent reason assigned by the petitioner that he was for a long period suffering from Dengue, the revision filed by the petitioner should have been heard and decided on merits.

Therefore, without going into the merits of the matter, we set aside the order of the High Court and dispose of this Special Leave Petition with a request to the High Court to decide the revision on merits.

Pending applications are disposed of. "

9- Pursuant to above order of the Hon'ble Apex Court, on 24.04.2025, the delay of 318 days in filing the instant criminal revision was condoned by this Court and office was directed to allot regular number to this criminal revision.

10- Thereafter on 06.05.2025 and 17.05.2025 following orders were passed by this Court.

(i) Order dated 06.05.2025

During the course of argument, it is pointed out by Shri A.K. Sand, learned Government Advocate that the revisionist

had already preferred an application Under Section 482 No. 27198 of 2021, which has been dismissed vide order dated 24.11.2022.

On the joint request made by the learned counsel for the parties, let the case be listed on 17.05.2025 along with the record of Application U/s 482 No. 27198 of 2021.

(ii) Order dated 17.05.2025

During the course of argument, Mr. Manish Goyal, learned Additional Advocate General appearing for the State submits that revisionist has not come with clean hands before this Court because he has filed an undated application under Section 156 (3) Cr.P.C. and that too without its enclosures. He also pointed out that even incomplete order-sheet has been filed by the revisionist.

On putting query in this regard, learned counsel for the revisionist is speechless and could not give satisfactory reply. He prays for summoning of the original record.

In view of the above, let the original record of C.N.R. No. 2750/2021 (Misc. Case No. 102/XII/2021 - Diwakar Nath Tripathi Vs. Keshav Prasad Maurya), be summoned in a sealed envelop from the Court of Additional Chief Judicial Magistrate, Court No. 17, Prayagraj by the next date.

Office shall communicate this order to the District Judge, Prayagraj within 48 hours, who shall ensure compliance of this order.

On the joint request of learned counsel for the parties, let this matter be listed on 23.05.2025.

11- After receipt of original record, matter has been heard at length.

Submissions on behalf of the revisionist

12- Mr. Daya Shankar Mishra, learned Senior Counsel, appearing for the revisionist, assailing the impugned order dated 04.09.2021, strenuously argued that-

12.1- Since Shri Keshav Prasad Maurya (respondent no. 2) who is sitting Deputy Chief Minster of State of U.P., by concealing facts obtained political position on the basis of misrepresentation *and furnishing forged documents with affidavit before the Election Commission in the year 2007, 2012 and 2014 and Indian Oil Corporation, which is a cognizable offence, therefore revisionist who is social worker and RTI activist is personally very hurt, hence he moved an application under Section 156 (3) Cr.P.C. dated 20.07.2021 seeking direction to lodge F.I.R. against respondent no. 2 but the same has been illegally rejected by the learned Magistrate vide impugned order dated 04.09.2021.*

12.2- On the issue of locus-standi of the revisionist, Mr. Mishra relying upon the judgment of the Hon'ble Apex Court in the case of **A.R. Antulay v. Ramdas Sriniwas Nayak and another**, (1984) 2 SCC 500, it is argued that though the revisionist has not been personally deceived by respondent no. 2, but he being citizen of this country is personally very hurt on furnishing forged documents with affidavit by respondent no. 2 before the Election Commission and Indian Oil Corporation, hence in the interest of society, he has equal locus-standi to set the criminal law in motion against respondent no. 2 through an application under Section 156 (3) Cr.P.C. dated 20.07.2021.

12.3- Mr. Mishra elaborating his argument further submits that respondent no. 2, while contesting the Assembly Election of 2007 from Allahabad West Constituency has disclosed that he has passed 'Prathma' in the year 1986, 'Madhyama' in the year 1988 and 'Uttama' in the year 1998 from Hindi Sahitya Sammelan, Allahabad, whereas certificates of Prathma, Madhyma and Uttama Sahitya Ratna issued by Hindi Sahitya Sammelan are neither recognized nor considered as equivalent to High School, Intermediate

and Bachelor (B.A.) degree respectively by Uttar Pradesh Government as per information provided by the Principal Secretary, Secondary Education on 01.08.2017 under the Right to Information Act. In this regard reliance has also been placed upon the judgment of the Hon'ble Apex Court in the case of **State of Rajasthan and Others v. Lata Arun**, (2002) 6 SCC 252, wherein the judgment in the case of Dr. Ravinder Nath vs. State of H.P. and Others [1993 Supp. (2) SCC 639] has been referred in which it has been observed that diploma/degree awarded by Hindi Sahitya Sammelan, Allahabad were recognized for the period from 1931 to 1967 only. Reliance has also been placed upon the Division Bench judgments of this Court in the case of **Urmila Devi v. State of U.P. and Another**, 2011 SCC OnLine All 1796, wherein it has been held inter-alia that Prathama and Madhyama (Visharad) (Examination) conducted by the Hindi Sahitya Sammelan are not equivalent to the High School and Intermediate Examination conducted by the Board of High School and Intermediation Education of U.P.

12.4- It next submitted that in the year 2012, in the column of highest educational qualification, while respondent no. 2 was contesting the Assembly Election from Sirathu Vidhan Sabha Constituency (Kaushambi), has disclosed that he has passed B.A. in the year 1997 from Hindi Sahitya Sammelan, Allahabad and similarly, false affidavit has been filed in the year 2014 Lok Sabha Election, Phoolpur Constituency and Vidhan Parishad election. It is further submitted that in the documents which have been made available to the revisionist under the Right to Information Act in respect of educational qualification of Shri Keshav Prasad Maurya from the Indian Oil as well as from the Election Commission, his writing and signatures were found different.

12.5- When revisionist tried to get second copy of Roll No. 3238 Samvat 2053 (1996) of Uttar Madhyma, second part (Sahitya Ratna), he was told by the official concerned of Hindi Sahitya Sammelan, Allahabad that in Roll No. 3238, Samvat 2053 (1996), the name of Manju Singh, daughter of Lal Singh Chauhan is recorded.

12.6- Much emphasis has been given by contending that respondent no. 2 even without fulfilling the conditions and eligibility criteria has also obtained a petrol pump in district Kaushambi from Indian Oil Corporation Limited using the forged educational certificate of 'Prathma 1986' of Hindi Sahitya Sammelan, Allahabad, which is not recognised as equivalent to High School.

12.7- Advancing his submission on the object of calling police report, it is submitted that purpose of calling police report on the application under Section 156 (3) Cr.P.C. is only to know whether any F.I.R. has already been register or not. In the present case police has submitted detail report dated 31.08.2021, which is against the intent of the law.

12.8- It is also argued that respondent no. 2 being prospective accused has no locus-standi to be heard at this stage in the present criminal revision, hence at this stage he should not be given an opportunity of hearing in the matter which is against the order of rejection of application under Section 156 (3) Cr.P.C. of the revisionist.

12.9- On the strength of aforesaid submissions, lastly it is submitted that the allegations made in the application under

Section 156 (3) Cr.P.C. disclose the commission of cognizable offence, therefore impugned order dated 04.09.2021 is liable to be set-aside and considering the nature of allegations proper investigation by the police is required after registration of F.I.R. against respondent no. 2. In support of above submissions, reliance has been placed upon the judgments of the Hon'ble Apex Court in the cases of **Pradeep Nirankarnath Sharma v. State of Gujarat and Others**, 2025 SCC OnLine SC 559 and **Imran Pratapgadhi v. State another**, 2025 SCC OnLine SC 678. In both the above judgments, the law laid down in the case of **Lalita Kumari Vs. Government of Uttar Pradesh and others** (2014) 2 SCC 1 on Section 154 of the Code has been discussed and considered. The relevant paragraph 120 of the said decision containing conclusions/directions reads thus :

"120. In view of the aforesaid discussion, we hold:

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further." [Emphasis supplied]"

Submissions on behalf of State

13- Per contra Mr Manish Goyal, learned Additional Advocate General for the state of U.P./respondent no.1, refuting the aforesaid argument of learned counsel for the revisionist submits that:-

13.1 -Under the facts of the case, the application filed by the revisionist under Section 156(3) Cr.P.C is not maintainable.

13.2- The Revisionist in his application under Section 156(3) Cr.P.C. dated 20.07.2021 has alleged that respondent no. 2 submitted documents with fraudulent and deceitful intent by misrepresenting his educational qualifications in affidavits filed during Legislative Assembly elections held in 2007, 2012, and Lok Sabha Election held in 2014, whereas the contents of the application suggests that the discrepancies in the educational qualification's declaration may stem from errors or misunderstandings, rather than deliberate falsification. In this regard reliance is placed upon Section 25 of IPC, which defines the term "Fraudulently'' which means "a person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise." Hence the said application fails to set out the ingredients of the aforesaid offences, as the common ingredient of 'intent' stands missing from the aforesaid application.

13.3- Though no specific section of I.P.C. for the alleged offence is mentioned in the application, but allegations made in the application under Section 156(3) Cr.P.C. pertain to offences such as cheating,

forgery, and fraud, thereby invoking the provisions of Sections 420, 463, 464, and 471 of the Indian Penal Code, 1860, whereas from the contents of the said application, basic ingredient of 'intent' and other required ingredients to constitute the aforesaid offences against respondent no. 2 are lacking. As such the application fails on substantive and procedural grounds also.

13.4- The allegations made in the application do not disclose the commission of any electoral offence or cognizable offence, as no offence is made out upon a plain reading of the application under 156 (3) Cr.P.C.

13.5- In support of the above submissions, reliance has been placed upon the following judgments of the Hon'ble Apex Court:-

(i)-**Hridaya Ranjan Prasad Verma v. State of Bihar**, (2000) 4 SCC 168. In this case Hon'ble Apex Court interpreted Sections 415 and 420 of IPC to hold that fraudulent or dishonest intention is a precondition to constitute the offence of cheating. The relevant extract from the judgment reads thus:

"14. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest."

(ii)-**International Advanced Research Centre For Powder Metallurgy and New Materials (ARCI) and others Vs. Nimra Cerglass Technics (P) Ltd**., (2016) 1 SCC 348. In this case Hon'ble Supreme Court held that in order to attract Section 420 I.P.C., there is need to establish dishonest intention. The relevant portion thereof is quoted herein below:-

15. The essential ingredients to attract Section 420 IPC are : (i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security; and (iii) mens rea of the accused at the time of making the inducement. The making of a false representation is one of the essential ingredients to constitute the offence of cheating under Section 420 IPC. In order to bring a case for the offence of cheating, it is not merely sufficient to prove that a false representation had been made, but, it is further necessary to prove that the representation was false to the knowledge of the accused and was made in order to deceive the complainant.

(iii)-**Vimla (Dr.) Vs. Delhi Admn, 1962 SCC OnLine SC 172**, wherein Hon'ble Apex Court has settled the law about the offence under Section 463 and 464 I.P.C.The relevant portion thereof is quoted herein below:-

"5. Before we consider the decisions cited at the Bar it would be convenient to look at the relevant provisions of the Indian Penal Code.

Section 463 : Whoever makes any false document or part of a document with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property or to enter into any

express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Section 464 : A person is said to make a false document- First-- Which dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document/or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, scaled or executed; or

" * *"*

The definition of "false document" is a part of the definition of "forgery". Both must be read together. If so read, the ingredients of the offence of forgery relevant to the present enquiry are as follows, (1) fraudulently signing a document or a part of a document with an intention of causing it to be believed that such document or part of a document was signed by another or under his authority; (2) making of such a document with an intention to commit fraud or that fraud may be committed. In the two definitions, both mens rea described in s.464 i. e., "fradulently" and the intention to commit fraud in s. 463 have the same meaning. This redundancy has perhaps become necessary as the element of fraud is not the ingredient of other intentions mentioned in s. 463. The idea of deceit is a necessary ingredient of fraud, but it does not exhaust it; an additional element is implicit in the expression. The scope of that something more is the subject of may decisions. We shall consider that question at a later stage in the light of the decisions bearing on the subject. The second thing to be noticed is that in s. 464 two adverbs, "dishonestly" and "fraudulently" are used alternatively indicating thereby that one excludes the other. That means they are not tautological and must be given different meanings. Section 24 of the Penal Code defines "dishonestly" thus :

"Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing dishonestly".

"Fraudulently" is defined in s. 25 thus:

" A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise".

The word "defraud" includes an element of deceit. Deceit is not an ingredient of the definition of the word "dishonestly" while it is an important ingredient of the definition of the word "fraudulently". The former involves a pecuniary or economic gain or loss while the latter by construction excludes that element. Further) the juxtaposition of the two expressions "'dishonestly" and "fraudulently" used in the various sections of the Code indicates their close affinity and therefore the definition of one may give colour to the other. To illustrate, in the definition of "dishonestly", wrongful gain or wrongful loss is the necessary enough. So too, if the expression "fraudulently' were to be held to involve the element of injury to the person or persons deceived, it would be reasonable to assume that the injury should be something other than pecuniary or economic loss. Though almost always an advantage to one causes loss to another and vice versa, it need not necessarily be so. Should we hold that the concept of fraud" would include not only deceit but also some injury to the person deceived, it would be appropriate to hold by analogy drawn from the definition of "dishonestly"

that to satisfy the definition of "'fraudulently" it would be enough if there was a non- economic advantage to the deceiver or a non-economic loss to the deceived. Both need not co-exist.

(iv)-Mohammad Ibrahim and others Vs. State of Bihar and another, (2009) 8 SCC 751, wherein Hon'ble Apex Court has elaborately discussed and laid down the ingredients of offence under Section 463, 464, 467 and 471 IPC mentioning inter-alia that forgery as defined under Section 463 I.P.C. in turn dependents upon creation of a 'false document' as defined under Section in Section 464 I.P.C. A person is said to have made a "false document", if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practising deception, or from a person not in control of his senses.

If there is no false document, offences under Section 467 and 471 I.P.C. are also not made out.

13.6- Based on the averments in the application under Section 156(3) Cr.P.C., maximum the provisions of Section 125A of the Representation of the People Act, 1951 is attracted, concerning the alleged filing of a false affidavit before Election Commission.

13.7- Referring Section 125A of the Representation of People Act, 1951 much emphasis has been given by contending that for the alleged offences pertain to misrepresentation and false affidavits submitted by respondent no. 2 before the Election Commission in the year 2007, 2012 and 2014, the application under Section 156 (3) Cr.P.C. against respondent no. 2 was filed in July 2021 after a long gap of approximately 13, 9 and 7 years respectively, hence the relief sought by means of application under Section 156(3) Cr.P.C. is also hit by Section 468 of Cr.P.C. because Section 125A prescribes imprisonment up to six months (less than one year), therefore applicable limitation period under Section 468(2)(b) Cr.P.C. would be one year.

13.8- It is also vehemently argued that it is trite law, for an offence of cheating and forgery legal doctrine requires an actual deceived party but in the present case, no victim exists, and the revisionist not being the deceived party lacks locus standing to file either application under Section 156(3) or the instant criminal revision.

13.9- The complainant/revisionist, being a third party, has not demonstrated any direct, personal, or specific injury sustained as a result of the alleged educational qualification discrepancies in the affidavit of respondent no. 2.

13.10- It is also pointed out that neither the Election Commission nor rival candidate or the Indian Oil Corporation is a party in the instant Criminal Revision before this Hon'ble Court. The Revisionist cannot register a private complaint concerning offences of the nature described above, as this responsibility falls within the purview of the aggrieved parties who have allegedly been mislead by respondent No. 2.

13.11- Regarding allegations to get dealership by respondent no. 2 from Indian Oil Corporation showing qualifications from Hindi Sahitya Samelan, Allahabad as equivalent to high school is concerned, it is submitted that the mere difference between Hindi Sahitya Sammelan qualifications and high school equivalency demonstrates a potential interpretative error or administrative

inconsistency rather than a deliberate fraud on the part of respondent no. 2.

13.12- The question whether Hindi Sahitya Sammelan certifications are equivalent to high school qualifications represents an administrative or regulatory dispute about credential interpretation that may be resolved by educational authorities, not through criminal allegations of fraud.

13.13- The revisionist fails to establish that the respondent no. 2 knowingly mis-characterised his qualifications, as the differences appeared in public documents filed with various authorities, suggest open interpretation rather than concealment or deception.

13.14- Furthermore, the grant of dealership was carried out in accordance with the modalities prescribed by the Indian Oil Corporation. Consequently, no criminal liability for fraud or forgery is made out and no cognizable offence is disclosed.

13.15- Lastly, it is submitted that in view of what has been argued as noted herein above, the instant Criminal Revision lacks of merits and is liable to be dismissed.

Submissions on behalf of the respondent no.2

14- Mr. Pawan Kumar Singh, learned advocate appearing for the respondent no. 2 adopted the argument raised on behalf of the State. However in addition he submits that:-

14.1- The respondent no.2 being a prospective accused has right to be heard in view of the provisions of Section 401 (2) Cr.P.C. In this regard he placed reliance upon the judgment of the Hon'ble Apex Court in the case of **Manharbhai Muljibhai Kapadia and another Vs. Shaileshbhai Mohanbhai Patel and others**, (2012) 10 SCC 517, wherein in paragraph 48, in the context of a revision against an order dismissing a complaint under Section 203 of the Code, the provisions of sub-section (2) of Section 401 of the Code were interpreted as under:

"48. ……. by virtue of Section 401(2) of the Code, the suspects get right of hearing before revisional court although such order was passed without their participation. The right given to "accused" or "the other person" under Section 401(2) of being heard before the revisional court to defend an order which operates in his favour should not be confused with the proceedings before a Magistrate under Sections 200, 202, 203 and 204. In the revision petition before the High Court or the Sessions Judge at the instance of complainant challenging the order of dismissal of complaint, one of the things that could happen is reversal of the order of the Magistrate and revival of the complaint. It is in this view of the matter that the accused or other person cannot be deprived of hearing on the face of express provision contained in Section 401(2) of the Code. The stage is not important whether it is pre-process stage or post process stage." (emphasis supplied)

14.2- The aforesaid decision of the Apex Court in the case of **Manharbhai Muljibhai Kapadia** (supra) has been further considered and followed by the Apex Court in the case of **Santhakumari and others Vs. State of Tamil Nadu and another**, (2023) 15 SCC 440, wherein order of the High Court in Criminal Revision whereby the revision of the complainant against an order of the learned Magistrate dismissing his application under

Section 156(3) CrPC has been allowed without giving opportunity of hearing to proposed accused and a direction has been issued to register F.I.R. against the appellants, was the subject matter of challenge. The short issue was raised on behalf of the appellant that while exercising revisional power, the High Court in compliance of the provisions of sub-section (2) of Section 401 of the Code should have given opportunity of hearing to proposed accused as they would be the persons to be prejudiced by the order. The Apex Court in the light of law laid down in previous judgments in the case of Manharbhai Muljibhai Kapadia (supra) and Balmanohar Jalan Vs. Sunil Paswan, (2014) 9 SCC 640 allowed the appeal setting aside the order of the High Court and matter was remitted back to the High Court to decide the revision afresh in accordance with law.

14.3- Referring the Full Bench decision of this Court in the case of **Jagannath Verma & others v. State of U.P. & another** A.I.R. 2014 ALLAHABAD 214 (Full Bench), it is further submitted that in the said case following question was referred for consideration:-

"Whether an order made under Section 156(3) of the Code of Criminal Procedure, 1973 Code is an interlocutory order and the remedy of a revision against such an order is barred under sub-section (2) of Section 397."

In the light of aforesaid reference, the Full Bench has framed following two additional questions for consideration by a Larger Bench :

"(i) Whether an order made under Section 156(3) of the Code rejecting an application for a direction to the police to register and investigate, is revisable under Section 397; and

(ii) If the answer to Question (1) is in the affirmative, then, whether in a revision filed against an order rejecting an application under Section 156(3), the prospective accused is also a necessary party and is required to be heard before a final order is passed."

The Full Bench has answered the reference holding that :

(i) …..

(ii) An order of the Magistrate rejecting an application under Section 156(3) of the Code for the registration of a case by the police and for investigation is not an interlocutory order. Such an order is amenable to the remedy of a criminal revision under Section 397; and

(iii) In proceedings in revision under Section 397, the prospective accused or, as the case may be, the person who is suspected of having committed the crime is entitled to an opportunity of being heard before a decision is taken in the criminal revision.

14.4- Much emphasis has been given by contending that revisionist in the application under Section 156 (3) Cr.P.C. and his affidavit has disclosed his identity as social worker and R.T.I. activist but in support of this averment he has neither disclosed any social work done by him nor did mention that in which other matters he has ever obtained information under the R.T.I. Act. The reason is obvious that the revisionist is neither social worker nor the R.T.I. activist. The affidavit of the revisionist in this regard is false.

14.5- In the affidavit revisionist has also mentioned that he is personally hurt, which itself indicates that revisionist has filed the application under Section 156 (3) Cr.P.C. against respondent no. 2 with

ulterior motive in order to settle his personal score.

14.6- So far as educational certificate of respondent no. 2 is concerned, it is submitted that whatever certificate was issued by the Hindi Sahitya Sammelan to respondent no.2, he has submitted to the Election Commission and Indian Oil Corporation, hence there is no question of forgery of any kind or submission of false information or document before the Election Commission.

14.7- So far as issue as to whether the certificate of 'Prathma' and 'Madhya' (Visharad) issued by the Hindi Sahitya Sammelan is recognized as equivalent to High School or Intermediate is concerned, it is argued that if the said examination/certificate is not recognized by the State Government, then it may be an unrecognised document, but cannot said to be a forged or false document as it is admitted fact that the same has been issued by Hindi Sahitya Sammelan.

14.8- It is also pointed out that the revisionist has come up with a stand that certain documents, on which he is relying upon has been given to him by Indian Oil Corporation and Election Commission under Right to Information Act whereas no such documents have been provided to the revisionist by the Indian Oil Corporation and Election Commission. The affidavit of the revisionist in this regard is also false.

14.9- So far as stand of the revisionist that when he tried to obtain the duplicate copy of certificates of Roll No. 3238 Samvat 2053 (1996) of of Uttar Madhyma, second part (Sahitya Ratna) of the respondent no. 2, then employee of Hindi Sahitya Sammelan informed him that at Enrolment No. 3238 of respondent no. 2 name of Manju Singh has been shown. But neither the name of concerned employee has been disclosed nor the date and specific source of information has been mentioned. Even said certificate of Uttar Madhyma, second part (Sahitya Ratna) of Hindi Sahitya Sammelan was neither filed with Election Commission nor with Indian Oil Corporation. It is admitted fact that respondent no. 2 submitted the certificate of "Prathma" only issued by Hindi Sahitya Sammelan before both the above authorities.

14.10- At the end to sum-up his submission, it is emphatically argued that action of the revisionist is not bonafide but malicious with ulterior motive only to maline the political image of the respondent no.2 and to cause irreparable loss and injury to him, hence this revision is liable to be rejected with heavy cost upon the revisionist.

Discussion about object of Section 156(3) Cr.P.C.

15- Here it would not be out of place to mention that it well settled that the duty cast upon the learned Magistrate, while exercising power under Section 156(3) Cr.P.C., cannot be marginalized. To understand the real purport of the same, this Court thinks it apt to reproduce the said provision:

"156. Police officer's power to investigate cognizable case.

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the

case was one which such officer was no empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned."

16- Before delving into the matter, it would be apposite to mention the object and scope of the provisions under Section 156 (3) CrPC, which are as follow:-

16.1- There is no dispute that on receiving application under Section 156 (3) CrPC, three courses are open to Magistrate. He may either take cognizance under 190 Cr.P.C or may forward the application to the police under Section 156 (3) Cr.P.C for investigation or he may dismiss the application having baseless or false allegation, therefore such discretionary power ought to have been exercised cautiously with due application of judicial mind only on reasons and not in a routine or mechanical manner. If Magistrate is prima facie of the view that allegations made in the application constituted commission of cognizable offence requiring thorough investigation, only then he may direct the police to register the case and investigate the same.

16.2- The word “may” occurring in Section 156(3) CrPC is of utmost significance. It gives the Magistrate a discretionary power to order or not for an investigation into the cognizable offence disclosed in the application. This discretionary power has been given to Magistrate to enable them to deal adequately with both types of the applications (i) the genuine application containing truthful allegations about the commission of cognizable offence, and (ii) the applications having baseless or false allegation on the face of record. It is the duty of the Magistrate to make it a point that no applicant of later category may succeed in his wicked game. His application need to be dismissed with firmness and boldness. At the same time it is the pious duty of the Magistrate to ensure that no case of the former category may go uninvestigated. The Magistrates are thus saddled with a grate responsibility to keep such balance.

16.3- The application of judicial mind by the Magistrate while exercising power under Section 156(3) Cr. P.C. is of utmost importance not only to assess the disclosure of commission of cognizable offence but to rule out the possibility of harassment by unscrupulous elements by making bald allegations. The aforesaid view is fortified by the judgement of Full Bench of this Court in Rambabu Gupta vs. State of U.P., 2001 CrLJ 3363 Allahabad (Full Bench).

16.4- The Magistrate has to be satisfied as to the need of investigation in the matter taking into consideration the guidelines laid down by the Hon’ble Apex Court in this regard (for example, the cases of Lalita Kumari v. Govt of UP & Others 2014 (2) SCC 1, Mrs. Priyanka Srivastava and another Vs. State of U.P. and others, (2015) 6 SCC 287, Usha Chakraborty & another v. State of West Bengal & Another, (2023) 15 SCC 135, Kailash Vijayvargiya v. Rajlakshmi Chaudhuri and Others, (2023) 14 SCC 1,etc).

16.5- If the allegations are vague and non-specific, the directions may not be issued for registration of FIR. In this regard here it would also be useful to refer the Judgment of the Hon’ble Apex Court in the case of **Usha Chakraborty & another v. State of West Bengal & Another**, (2023)

15 SCC 135 wherein it has been held inter-alia that there cannot be any doubt with respect to the position that in order to cause registration of an F.I.R. and consequential investigation based on the same the petition filed under Section 156 (3) Cr.P.C. must satisfy the essential ingredients to attract the alleged offences. In other words, if such allegations in the petition are vague and are not specific with respect to the alleged offences it cannot lead to an order for registration of an F.I.R. and investigation on the accusation of commission of the offences alleged.

16.6- Though the provision of Section 156(3) Cr.P.C. empowers a Magistrate to direct the police to register a case and investigate but the same can be used in the appropriate cases only and said power cannot be permitted to be abused as sought by the complainant.

16.7- The power under Section 156(3) Cr.P.C. to issue direction to register F.I.R. and investigate the case should not be invoked at whims and fancies of the complainant and the locus standi of the complainant, if made on behalf of another person or with oblique motive can also be looked into by the Magistrate as settled by the Hon'ble Apex Court in the case of **Mrs. Priyanka Srivastava and another v. State of U.P. and others**, (2015) 6 SCC 287.

16.8- Merely alleging disclosure of cognizable offence may not be sufficient to issue directions under Section 156(3) Cr.P.C. if the same lacks credibility and is bereft of necessary details, otherwise this may be an agonizing way of harassment of any person who may be innocently framed and prosecuted.

17- Hear it would be relevant to epitomise the salient findings recorded by the learned Magistrate in the impugned order while dismissing the application under Section 156 (3) Cr.P.C., which are as under:-

17.1- Revisionist has claimed that respondent no.2 has forged the mark-sheet of Uttama, second part of Hindi Sahitya Sammelan but he has neither filed attested copy of mark-sheet of Uttama, second part of Hindi Sahitya Sammelan of respondent no.2 nor of Manju Singh along with the application nor produced the same for perusal in order to establish that same are actually in existence or not.

17.2- Keeping degree of Hindi Sahitya Sammelan by any person is not an offence.

17.3- The process of allotment of petrol pump and on the basis of which educational qualification it is allotted is a matter of jurisdiction of Indian Oil Corporation.

17.4- If there has been any loss due to the violation of any rule, then it happened to Indian Oil Corporation and not to any other person.

17.5- No averment has been made by the revisionist in his application as to whether any application was given by him to Indian Oil Corporation or any action was taken by Indian Oil Corporation.

17.6- The third allegation has been leveled by the revisionist that respondent no.2 in the assemble election 2007 and 2012 had given false affidavit before the Election Commission. In this regard no averment has been mentioned by the revisionist in his application as to whether any application was given by him before the Election Commission or not.

17.7- Allegations of the revisionist do not come within the ambit of Section 156 (3) Cr.P.C.

17.8- Following the principle of law laid down by the Hon'ble Supreme Court

and High Courts, it has been observed that order for registering F.I.R. should not be made mechanically in routine manner but should be made applying judicial mind.

17.9-Prima facie, no cognizable offence is shown to have been committed, hence application under Section 156 (3) Cr.P.C. is baseless and deserve to be dismissed.

Analysis

18- Having heard the learned counsel for the parties and perusing the record, I find that:-

18.1- Revisionist is not personally affected from the educational certificate of 'Prathma', 'Madhyama' and 'Uttama' of respondent no. 2 issued in the year 1986, 1988 and 1998 from Hindi Sahitya Sammelan, Allahabad.

18.2- Regarding the issue of locus-standi, the stand of the revisionist is that although he is not affected by the affidavit of respondent no. 2 submitted before the Election Commission in the year 2007, 2009 and 2014 as well as furnishing information before the Indian Oil Corporation, but he is personally hurt by the act and conduct of respondent no. 2, therefore in the larger interest of society he is running from pillar to post to get the F.I.R. lodged against respondent no.2.

18.3- Revisionist claims himself to be a social worker and RTI activist, whereas he has not filed any document on record with regard to his social work. So far as his claim that he is RTI activist is concerned, there is no material on record to indicate that revisionist is RTI activist and he had obtain information under under R.T.I. Act about people other than respondent no. 2 and made effort to get the F.I.R. lodged against any other person before filing application dated 20.07.2021 under Section 156 (3) Cr.P.C. against respondent no. 2.

18.4- It is not the case of the revisionist that said certificates of 'Prathma', 'Madhyama' and 'Uttama' have not been issued by Hindi Sahitya Sammelan, Allahabad to respondent no. 2.

18.5- Neither the Election Commission nor the Indian Oil Corporation provided any document relating to respondent no. 2 to the complainant/revisionist.

18.6- The revisionist in application under Section 156 (3) Cr.P.C. dated 20.07.2021 has not disclosed the date of his knowledge and source of information about the educational certificates of the respondent no.2.

18.7- There is no complainant of Smt. Manju Singh against respondent no. 2 and she has not been impleaded by the revisionist in array of the parties.

18.8- Revisionist has not filed any complaint/representation before the Election Commission and Indian Oil Corporation with regard to filing of alleged forged and false educational certificates of Prathma, Madhyama and Uttama by respondent no. 2. Even no correspondence has been made in this regard from Hindi Sahitya Sammelan, Allahabad.

19- Now this court proceeds to deal with the main allegations of the revisionist against respondent no. 2. The moot question is whether the allegations in the aforesaid application under Section 156 (3)

Cr.P.C. disclose any cognizable offence and are sufficient to constitute the alleged offences. Here at the outset, it is relevant to note that specific Section of any offence under Indian Penal Code or under any other law for the time being in force is not mentioned in the application.

20- The main grievance of the revisionist is that respondent no. 2 obtained political position on the basis of misrepresentation and furnishing forged educational certificate of Prathma, Madhyma, Uttama Sahitya Ratna of Hindi Sahitya Sammelan with affidavit before the Election Commission while contesting Assembly Election in the year 2007, 2012 and Lok Sabha Election 2014. In this regard, it is relevant to mention that tenure of aforesaid Assembly Election held in the year 2007, 2012 and Lok Sabha Election held in the year 2014 had already expired prior to moving application under Section 156 (3) Cr.P.C dated 20.07.2021 by the revisionist. Apart from this it is specific case of respondent no. 2 that whatever certificate was issued by the Hindi Sahitya Sammelan to him, he has submitted to the Election Commission and Indian Oil Corporation, hence there is no question of forgery of any kind. From the contents of paragraph no. 5 of the application under Section 156 (3) Cr.P.C. as well as paragraph no. 6 of the affidavit of the revisionist filed in support of the application, it clear that the revisionist has admitted the fact that Hindi Sahitya Sammelan, Allahabad has issued said certificates of 'Prathma', 'Madhyama' and 'Uttama' to respondent no. 2, hence the said documents cannot said to be forged or false document prepared by respondent no. 2. Even assuming that respondent no. 2 had given false declaration or affidavit at the relevant point of time before the Election Commission, then also said allegation will not traverse Section 125A of the Representation of the People Act, 1951, which read thus:-

125A. Penalty for filing false affidavit, etc.—

A candidate who himself or through his proposer, with intent to be elected in an election,—

(i) fails to furnish information relating to sub-section (1) of section 33A; or

(ii) gives false information which he knows or has reason to believe to be false; or

(iii) conceals any information, in his nomination paper delivered under sub-section (1) of section 33 or in his affidavit which is required to be delivered under sub-section (2) of section 33A, as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

21- It hardly needs to be reiterated that it is well settled that every law is designed to facilitate end of justice and not to frustrate it. The submission made by Mr. Manish Goyal, learned Additional Advocate General for the state on the issue of limitation, in view of the provision of Section 468 Cr.P.C, that complaint, if any against respondent no. 2 could be filed only within a period of one year from the date of filling affidavit by respondent no. 2 before the Election Commission seem to be preponderous in view of provision of Section 125A of the Representation of the People Act, 1951.

22- The Representation of People Act, 1951 is a complete and self contained

Code. Where a right or liability is created by a statute which gives a special remedy for enforcing it, remedy provided by that statute only must be availed of.

23- Now it is also necessary to discuss Section 468 Criminal Procedure Code, 1973 which deals with bar of taking cognizance after lapse of the period of limitation reads thus:

468 Cr.P.C.

"(1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2)The period of limitation shall be –

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment."

24- On the aforementioned issue of limitation, it would be useful to refer the judgment of the Hon'ble Apex Court in the case of **Sarah Mathew Vs. Institute of Cardio Vascular Diseases** (2014) 2 SCC 62, wherein the Constitution Bench after wholesome treatment and discussing every aspect of the matter in detail regarding the applicability of Section 468 Cr.P.C. has held as under:-

51. " ……..we hold that for the purpose of computing the period of limitation under Section 468 Cr.P.C. the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. ....."

25- The aforesaid Constitution Bench of the Hon'ble Apex Court in the case of Sarah Mathew (supra) has been further considered and followed in the case of **Amritlal Vs. Shantilal Soni and others** (2022) 13 SCC 128.

26- Any certificate being forged and any certificate not being recognised as equivalent to High School are two different things and will have different effect. In the present case the main thrust of argument on behalf of revisionist is that educational certificates (Prathma, Madhyma and Uttama Sahitya Ratna) of respondent no. 2 issued by Hindi Sahitya Sammelan, Allahabad are not considered as equivalent to High School, Intermediate and Bachelor, therefore submission of said documents by respondent no. 2 before the Election Commission and Indian Oil Corporation amounts to an offence of forgery is not liable to be accepted and has no legal force. If there is no forgery in any document or educational certificate and the same has been issued by the office of authority concerned under seal and signature, then said document or educational certificate cannot said to be a forged document. If there is no forgery, the document cannot said to be a false document irrespective of the issue whether it is recognised under the law or not and this situation cannot lead to criminal action under the I.P.C. or BNS, 2023. The issue is purely civil in nature and cannot be permitted to give colour of criminal one.

27- Another grievance of the revisionist is that respondent no. 2 has also

obtained a retail outlet from Indian Oil Corporation on the basis of degree of Prathma 1986 of Hindi Sahitya Sammelan, which is not considered as equivalent to High School by Uttar Pradesh Government, it is relevant to mention that whether respondent no. 2 has validly obtained the retail out-let or not is not a matter of criminal action at this stage. For the said purpose Indian Oil Corporation is the competent authority to look into the matter, in case any grievance is raised before it. The revisionist has not preferred any representation against the allotment of retail outlet before the Indian Oil Corporation. Under the facts of the case, he cannot be allowed to drag respondent No. 2 in a criminal prosecution for an action which is essentially civil in nature.

28- In paragraph No. 10 of the application dated 20.07.2021, under section 156(3) Cr.P.C., as well as in paragraph No. 4 of the affidavit filed in support of this revision, it is mentioned that revisionist had sent the application to the concerned police authorities for registration of FIR through registered post on 19.07.2021, but the revisionist instead of receipts dated 19.07.2021 of registered post, has filed the receipts dated 14.07.2021 of registered post before the learned Magistrate which do not corroborate from the averment made in the application dated 20.07.2021 under Section 156 (3) CrP.C., hence the same creates doubt. As such said averment does not inspire confidence.

29- On perusal of original record, I also find that no date has been mentioned in the said application which is alleged to have been sent by the revisionist to the police authorities.

30- Even the instant criminal revision has been preferred before this Court without annexing complete documents of this case with vague averment.

31- On one hand argument was raised on behalf of the revisionist that proposed accused has no right to be heard at this stage, but on the other hand revisionist himself has impleaded the proposed accused as respondent no. 2. The argument on behalf of the revisionist that proposed accused has no right to be heard at this stage has no leg to stand in the light of judgement of the Hon'ble Apex Court in the case of **Santhakumari and others Vs. State of Tamil Nadu and another** (supra) and Full Bench of this Court in the case of **Jagannath Verma & others v. State of U.P. & another** (supra).

32- There is no dispute about the ratio of law laid down by the Hon'ble Apex Court in judgments cited on behalf of the revisionist, but this Court is of the view that every case turns on its own facts. Even one additional or different fact may make a big difference between the conclusion in two cases, because even a single significant detail may alter the entire aspect. The judgments relied upon on behalf of revisionist are distinguishable on facts, hence not helpful to him.

33- Considering the over all facts and circumstances of the case in totality, it appears that revisionist is pretentiously aggrieved but potentially dangerous. There is no force in the contention urged on behalf of the revisionist that respondent no. 2 has forged his educational certificate and filed before the Election Commission and Indian Oil Corporation. In view of the above discussion the allegations made in the application under Section 156 (3) Cr.P.C. of the revisionist even if they are taken at their face value do not constitute the cognizable offence.

34- The complainant-revisionist is not a person deceived by respondent no. 2, therefore, in view of Section 39 Cr.P.C, he had no locus to move an application under Section 156 (3) Cr.P.C. seeking direction to register FIR regarding alleged offence of cheating and forgery which are not covered under Section 39 of Cr.P.C.

35- The wheels of criminal justice system cannot be permitted to be clogged by frivolous complaints where complainant himself is not aggrieved or victim in any manner.

36- The proceedings appear to be prima facie initiated maliciously by the revisionist with oblique motives with an intention to gain some advantage or to settle his score.

37- Under the facts of the case, the prayer made by the revisionist for direction to register an FIR against respondent no. 2 and investigate defy any logic or prudence. Hence, in the backdrop of factual matrix of the case as discussed above, allowing the application under Section 156 (3) Cr.P.C of the revisionist would amounts to travesty of justice.

Conclusion

38- In view of the above, the allegations of the complainant (revisionist-Diwakar Nath Tripathi), who is admittedly neither victim nor aggrieved with the educational certificates of respondent no. 2 (Keshav Prasad Maurya, who is sitting Deputy Chief Minister of State of U.P.) do not disclose cognizable offence, hence this criminal revision is liable to be rejected.

39- As a fall out and consequence of above discussion and reasons, I find that the impugned order dated 04.09.2021 is based upon relevant considerations and supported by cogent reasons, the same does not suffer from any irregularity, illegality or jurisdictional error, hence no interference is required by this Court.

40- This Criminal Revision lacks merit and stands **rejected**.

41- Office is directed to transmit the original record to the concerned Court below in a sealed cover.

(2025) 7 ILRA 753
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 03.07.2025

BEFORE

THE HON'BLE SHEKHAR KUMAR YADAV, J.

First Appeal No. 45 of 2007
Connected with
First Appeal Nos. 70 of 2007 & 71 of 2007

Ashok Kumar & Ors. ...Appellants
Versus
Bhartiya Jeevan Beema Nigam Mandal Karyalaya & Ors. ...Respondents

Counsel for the Appellants:
Divakar Rai Sharma, Arvind Srivastava

Counsel for the Respondents:
Manish Goyal, Siddharth Singhal

Issue for Consideration

Issue arose whether plaintiff-Life Insurance Corporation of India (LIC) had any subsisting title or possession over disputed plots in Kailash Nagar Colony, so as to entitle it to seek a declaration that subsequent sale deed dated 23.09.2000 executed by Bharat Stores Ltd. in favour of defendants was void, and whether suits were maintainable and within limitation in view of provisions of Limitation Act, Specific Relief Act, and Evidence Act.

Head Notes

Code of Civil Procedure, 1908 - O. 14. R.2 - Specific Relief Act, 196 - ss. 34, 38, 41 - Limitation Act, 1963 - s. 27, Article 65 - Indian Evidence Act, 1872 - ss. 92, 110 - U.P. Zamindari Abolition and Land Reforms Act, 1950 - s.331 - The plaintiff, Life Insurance Corporation of India (LIC), instituted two suits seeking declarations that sale deed dated 23.09.2000, executed by M/s Bharat Stores Ltd. in favour of defendants, was void and ineffective insofar as it pertained to certain plots on the ground that said land had already been transferred to its predecessor, Swadeshi Bima Company Ltd., through sale deeds executed in 1949 and 1953 - Defendants contested the claim, asserting valid title and possession under 2000 sale deed, and pleaded that LIC had neither title nor possession, that alleged earlier deeds were unproved and never acted upon, and that suits were barred by limitation and by provisions of Specific Relief Act and U.P. Zamindari Abolition and Land Reforms Act - Trial court partly decreed suits, declaring impugned sale deed void to a limited extent, whereafter both parties preferred first appeals, leading to present adjudication by High Court to determine legality of trial court's findings regarding title, possession, limitation, and maintainability.

Held: In view of findings, and overwhelming evidence including admissions of Plaintiff's own witnesses (P.W.-1 and P.W.-2) and supported by cited Supreme Court judgments, Court finds substantial merit in Defendants-Respondents' arguments as articulated in their cross-objection - Plaintiff-Appellant's suit is fundamentally flawed due to non-identifiability of property, absence of prayer for possession, improper institution of suit, and trial court's erroneous findings on key factual and legal issues - Trial court failed to appreciate material facts and wrongly invalidated a sale deed without clear proof of LIC's physical possession or proper title demarcation and erred by granting a declaration in favor of LIC without proof of title, possession, or defined property boundaries - It also erred by presuming an unproduced document and ignoring relevant legal bars - Although refusal to grant injunction was legally sound, partial decree of declaration is unsustainable - Judgment and decree of trial court are found unsustainable and set aside to extent they declare sale deed void and suit maintainable - First Appeal No. 45 of 2007 is allowed, holding that sale deed dated 23.09.2000 executed by M/s Bharat Stores Ltd. in favour of Defendants Nos. 6 to 8 is valid and binding - LIC's claim over 550 sq. yds. (Plot Nos. 33 & 34) and 1800 sq. yds. (Plot Nos. 37 & 38) stands dismissed as unproved - First Appeals Nos. 70 and 71 of 2007 are dismissed, and Cross-Objection is disposed of. [Paras 101, 102, 103] (E-13)

Case Law Cited

State of Andhra Pradesh and others v. D. Raghukul Pershad (Dead) By Lrs and others, **(2012) 8 SCC 584** - **relied on**

Rishikesh v. Harikesh and Others, **2019 (1) ADJ 678;** Pawan Kumar Dutt and another v. Shakuntala Devi and others, **(2010) 5 SCC 601**; Nahar Singh v. Harnak Singh **(1996) 6 SCC 699;** Vasantha (Dead) through L.R. v. Rajalakshmi @ Rajam (Dead) through L.Rs., **2024 INSC 109;** Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust Virudhunagar v. Chandran and others, **(2017) 3 SCC 702;** M. K. Rappai and Others v. John and Others, **1969 (2) SCC 590 (para-10);** Ram Saran and Another v. Smt Ganga Devi**, (1973) 2 SCC 60 (para-4);** Meharchand Das v. Lal Babu Siddique and others, **(2007) 14 SCC 253 (para-12);** Union of India v. Ibrahim Uddin and another, **(2012) 8 SCC 148;** Anathula Sudhakar v. P. Buchi Reddy (Dead) By Lrs & Ors., **2008 (4) SCC 594;** Vinay Krishna v. Keshav Chandra, **1993 Supp (3) SCC 129;** Shri Ram and another v. Ist Addl. District Judge and others, **(2001) 3 SCC 24;** Kamla Prasad and others v. Kishna Kant Pathak and others, **(2007) 4 SCC - referred to**

List of Acts

Code of Civil Procedure, 1908; Specific Relief Act, 1963; Limitation Act, 1963; Indian Evidence Act, 1872; U.P. Zamindari Abolition and Land Reforms Act, 1950

List of Keywords

Title and possession - Identification of property - Resell - Predecessor - Unidentifiable property -

Permanent injunction - Maintainability of suit - Court fee - Limitation - Extinguishment of right to property - Oral evidence - Term of the contract - Sale deed - Proof of title - Plaint map - Registered power of attorney - Property register not produced - Co-ownership - Possession of one co-owner - Agricultural land - Jurisdiction - Non-framing of issue on sale deed validity - Perversity of findings - Bona fide purchaser - Void and ineffective sale deed - Proof of exclusive possession - Cause of action - Delay - Adverse possession - Revenue entries - Fiscal entries for declaration of title - Burden of proof - Secondary evidence - Written statement - Witness - Transfer - Survey - Mutation - Demarcation.

Case Arising From

APPELLATE JURISDICTION: First Appeal No. - 45 of 2007

Connected with
First Appeal No. 70 of 2007 and First Appeal No. 71 of 2007

From the Judgment and Order dated 21.11.2006 of the Additional District Judge, Court No. 11 Aligarh, in Suit No. 1210 of 2004

Appearances for Parties

Advs. for the Appellant:
Divakar Rai Sharma, Arvind Srivastava

Advs. for the Respondent:
Manish Goyal, Siddharth Singhal

(Delivered by Hon'ble Shekhar Kumar Yadav, J.)

Background of the Appeals

1. First Appeal No. 45 of 2007 has been filed by the appellants—Defendants No. 6, 7, and 8—while First Appeal No. 71 of 2007 has been preferred by the appellant–Life Insurance Corporation of India (LIC). Both appeals challenge the judgment and decree dated November 21, 2006, passed by the learned Additional District Judge, Court No. 11, Aligarh, in Suit No. 1210 of 2004. By this judgment, the trial court partly decreed the suit in favor of the plaintiff–LIC, declaring the sale deed dated September 23, 2000, executed in favor of Defendants No. 6 to 8, void and ineffective to the extent of 550 square yards.

2. First Appeal No. 70 of 2007 was filed by the plaintiff-appellant LIC under Section 96 of the Code of Civil Procedure, 1908. This appeal challenges the judgment and decree dated November 21, 2006, passed in Original Suit No. 1211 of 2004, in which LIC sought a decree declaring the sale deed dated September 23, 2000, void with respect to Plot Nos. 12, 13, 14, and 15, each having an area of 450 square yards, carved out of Khasra No. 37 & 38. The plaintiff seeks a reversal of the judgment insofar as it dismissed its claim for permanent injunction and prays that the suit be decreed in its entirety with costs. Separately, Defendants No. 1 to 5 (including heirs) have filed Cross-Objection No. 128636 of 2007, challenging the trial court's findings on Issues No. 1, 2, 3, 6, and 8.

3. Since all the aforementioned appeals pertain to the same subject matter, they are being decided together by this common judgment.

4. The plaintiff–LIC instituted Original Suit No. 1210 of 2004 seeking a declaration that the sale deed dated September 23, 2000, executed by M/s Bharat Stores Ltd. in favor of Defendants No. 6 to 8, was void to the extent it pertained to 550 square yards of land, allegedly forming part of Khasra Nos. 33 and 34, Mauja Daulatabad, Aligarh. A decree of permanent injunction was also sought to restrain defendants-respondents

from interfering with the said land. The trial court, by its judgment dated November 21, 2006, partly decreed the suit by declaring the impugned sale deed dated September 23, 2000, void to the extent of 550 square yards but declined to grant the relief of permanent injunction. Aggrieved, Defendants No. 6 to 8 filed First Appeal No. 45 of 2007, while LIC filed First Appeal No. 71 of 2007 against the denial of the injunction.

5. Mr. Arvind Srivastava, learned counsel for the respondents/defendants, assisted by Mr. Vineet Vikram, Advocate; Mr. Divakar Rai Sharma, learned counsel appearing in the cross-objection; and Mr. Shashi Nandan, learned Senior Counsel, assisted by Ms. Divya Chaurasia, learned counsel for the appellant (LIC), were heard, and the record was perused.

6. The record discloses that the dispute pertains to 550 square yards of land forming part of the larger Khasra Nos. 33, 34, 37, and 38, situated within Kailash Nagar Colony, Aligarh. The plaintiff–LIC claimed that the said portion was previously transferred to its predecessor, Swadeshi Insurance Company, through a sale deed dated July 23, 1954, executed by Lal Singh & Sons, who had acquired it under a sale deed dated August 3, 1949, from Bharat Stores Ltd. In contrast, Defendants No. 6 to 8 contended that they purchased the same land through a registered sale deed dated September 23, 2000, from Bharat Stores Ltd., acting through its attorney Sanjeev Kumar Maheshwari. The trial court held that since Bharat Stores had already divested itself of title to the said land in 1949, it had no authority to resell it in 2000, rendering the later sale deed null and void to the extent of 550 square yards. Defendants No. 6 to 8, however, contended valid title and possession over the land, submitting that there was a misappreciation of evidence, title by adverse possession, and an erroneous application of limitation law by the trial court.

7. In First Appeal No. 70 of 2007, LIC averred that Defendant No. 6 developed Kailash Nagar Colony over Khasra Nos. 33 to 38 by carving out 181 residential plots. Of these, Plot Nos. 12, 13, 14, and 15, each measuring 450 square yards (total 1800 square yards), were sold to Swadeshi Bima Company Ltd. via a sale deed dated December 5, 1953. After the enactment of the Life Insurance Corporation Act, 1956, Swadeshi Bima Company Ltd. merged with LIC, and the said plots vested in the plaintiff. LIC alleged that the defendants had attempted to interfere with its possession and challenged the sale deed dated September 23, 2000, as illegal, void, and ineffective.

8. Both suits filed by the plaintiff–LIC revolve around the title and possession of plots within Kailash Nagar Colony, allegedly developed by Bharat Stores Ltd. LIC's claim is based on sale deeds in favor of its predecessor, Swadeshi Bima Company. The defendants denied these claims.

Arguments of the Parties [Defendants' Arguments (Appeal No. 45 of 2007 & Cross Objection No. 128636 of 2007)]

9. In Appeal No. 45 of 2007, learned counsel for Defendants No. 6 to 8/appellants assailed the judgment on several grounds. They argued that neither LIC nor its predecessor, Swadeshi Bima Company, nor the predecessor of Defendant

No. 1, Sri Lal Singh and Sons Harmonium Maker, took actual possession of the said land since July 23, 1954 (the date of the sale deed in favor of Swadeshi Bima Company Ltd. by Sri Lal Singh), nor from August 3, 1949 (the date of execution of the sale deed by M/s Bharat Stores Ltd., Agra, in favor of Sri Lal Singh and Sons Harmonium Maker). They also contended that title was not asserted for more than five decades, making Suit No. 1210 of 2004, instituted by the plaintiff for declaration of the sale deed dated September 23, 2000, in favor of Defendants No. 6, 7 & 8 by Defendant No. 9 as void, not only barred by time but also not maintainable in view of Section 34 of the Specific Relief Act, 1963.

10. It was argued that LIC failed to produce any conclusive evidence showing either legal or physical possession. Furthermore, the sale deed dated September 23, 2000, was executed through a registered power of attorney and is presumed valid. It was also submitted that the defendants have made constructions and are in settled possession, which was overlooked by the trial court.

11. It was further submitted that the suit was barred by Section 331 of the UPZA & LR Act, 1950, as Khasra Plot Nos. 33, 34, 37, & 38 were agricultural plots. The plaintiff's name was not recorded in the revenue records, nor was the plaintiff in possession of Khasra Plot Nos. 33, 34, 37, & 38. Therefore, the suit was barred by Section 331 of the UPZA & LR Act, 1950, as it amounted to a declaration of title of the plaintiff, whose name was not recorded over these Khasra plots.

12. It was argued that the trial court proceeded with manifest illegality in holding that, on account of the execution of the sale deed dated July 23, 1954, by Sri Lal Singh in favor of Swadeshi Bima Company, it was not necessary for a declaration of title, as revenue entries were irrelevant and pertained to fiscal entries. This view, they submitted, is contrary to the law settled by the Hon'ble Apex Court and the record.

13. A significant argument was that the suit was filed by an incompetent authority. Sri Suresh Kumar, who filed and signed the suit on behalf of the LIC, allegedly had no authority to present the suit, and the Zonal Manager had no authority to delegate any such power. It was further submitted that the signatures of the power of attorney, alleged to be the Zonal Manager, were not proved by any witnesses. Sri Suresh Kumar admitted that LIC had three Directors, namely, D.K. Mehrotra, George Mathew, and A.K. Das Gupta, and none of them had executed any power of attorney, nor had anyone seen any document authorizing the Zonal Manager to execute a power of attorney on behalf of LIC authorizing Sri Suresh Kumar to sign the plaint.

14. It was also argued that no issue was framed challenging the sale deed dated September 23, 2000, and in the absence of such an issue, no decision could have been made by the Trial Court about its validity.

15. Lastly, the appellants-defendants No. 6 to 8 contended that M/s Bharat Stores is admitted by the plaintiff to be the owner of Khasra Plot Nos. 33, 34, 37, & 38 located at Mauja Daulatabad, District Aligarh. The plaintiff stated that M/s Bharat Stores carved out 181 plots over these Khasra plots for Kailash Nagar Colony, but no colony was ever constructed, nor was

Plot No. 1, having an area of 550 square yards, allegedly sold to Lal Singh and Sons, the predecessor of Defendant No. 1, ever given effect to, nor was its location identifiable over Khasra Plot Nos. 33, 34, 37, & 38. The sale deed dated August 3, 1949, executed by M/s Bharat Stores in favor of the predecessor of Defendant No. 1, is not on record despite being the basis of the suit. Hence, Plot No. 1 located over Khasra Plot Nos. 33, 34, 37, & 38 is not identifiable, and since the plot is not identifiable, no decree can be granted for unidentified plots, making the suit not maintainable.

LIC's Arguments

16. Learned senior counsel appearing for the LIC submitted that the non-framing of the issue regarding the validity of the sale deed dated September 23, 2000, is irrelevant as no prejudice was caused to Defendants No. 6 to 8. It was further submitted that in view of Section 92 of the Indian Evidence Act, once the fact of transfer of possession is mentioned in the sale deed dated July 23, 1954, it cannot be contradicted by oral evidence. Since the sale deed dated July 23, 1954, is the source of LIC's title, there was no need for a separate declaration of title by LIC. Counsel for LIC submitted that once the sale deed dated July 23, 1954, was executed, the plaintiff became the co-owner of Plot Nos. 33, 34, 37, & 38, and the plaintiff has annexed a plaint map along with the plaint which clearly shows the plot numbers and their location; therefore, there is sufficient identification of the plots.

Defendants' Rebuttal to LIC's Arguments

17. In rebuttal, learned counsel for Defendants No. 6 to 8 argued that out of 181 plots allegedly carved out over Khasra Plot Nos. 33, 34, 37, & 38, the location of Plot No. 1, area 550 sq. yards, was not identifiable after superimposing the map annexed with the plaint over Khasra Plot Nos. 33, 34, 37, & 38. The map annexed with the plaint does not provide any identification of Plot No. 1 over these Khasra plots.

18. Secondly, it was submitted that no evidence was led to prove the sale deed dated August 3, 1949, which was the source of title for executing the sale deed dated July 23, 1954, nor was the sale deed dated August 3, 1949, brought on record. Therefore, in the absence of any evidence, severe prejudice is caused when the trial court decides the validity of the sale deed dated September 23, 2000, without any issue being framed. This act of the Trial Court is contrary to the provisions of Order 14 Rule 2 of CPC.

19. With respect to the submission regarding Section 92 of the Indian Evidence Act, it was argued that Section 92 is not attracted to the plaintiff's case. The statement in the sale deed that the predecessor of the plaintiff was given possession of the plot is not a "term of the contract" but merely a "fact mentioned in the sale deed as a recital." Oral evidence can, therefore, be given to prove the contrary, which the defendant has done, proving that possession was never given to the plaintiff's predecessor.

20. It was further argued that the subsequent conduct of Defendant No. 9 and the predecessor of the plaintiff, by never giving effect to the sale deed executed by Defendant No. 9 in favor of the plaintiff's predecessor, clearly demonstrates that there was no intention to sell the property to the plaintiff's predecessor, and oral evidence can be given to demonstrate these facts. Furthermore, Proviso (1) and (6) of Section 92 of the Indian Evidence Act, 1872, clearly give the defendants the right to

prove additional facts mentioned in the sale deed by means of oral evidence, which has been done by the defendant. The parties to the sale deed are not the same as Defendant No. 9 has not sold the property to the plaintiff; therefore, the provisions of Section 92 of the Evidence Act are not applicable to the facts of the case.

21. It was also submitted that the appellant-plaintiff relied upon the provisions of Section 92 of the Indian Evidence Act, 1872, for discarding the oral evidence given in favor of the defendant, proving that the sale deed allegedly executed in favor of the predecessor of the plaintiff was never given effect to. It is submitted that the provisions of Section 92 of the Indian Evidence Act, 1872, are not applicable to the facts of the present case. Section 92 of the Indian Evidence Act, 1872, applies only to the terms of the document and not to the facts mentioned in the documents. The rule is therefore not infringed by the introduction of parole evidence contradicting or explaining the instruments in some of its recitals of facts. There is nothing in this section to exclude evidence which is not a term of the contract but a recital in the contract itself. A document may contain a fact itself, and this recital may be traversed by giving oral evidence. It was further submitted that the subsequent conduct of the parties signing the documents and the surrounding circumstances are also relevant for determining the intention of the parties, and oral evidence can be given to prove the recitals in the documents.

22. The plaintiff's submission that courts can adjudicate the validity of the sale deeds despite no issue being framed with respect to the challenge of the sale deed executed in 2000 in favor of the defendant is a misconceived submission.

23. It was further submitted that since no issue was framed for adjudicating the validity of the sale deed executed in 2000 in favor of the defendant, no evidence was laid by the defendant to prove the sale deed executed in 2000. Consequently, the sale deed could not have been declared void by the learned trial court. Learned counsel relied upon the decision of the Apex Court in ***State of Andhra Pradesh and others Vs D. Raghukul Pershad (Dead) By Lrs and others, reported in (2012) 8 SCC 584.***

Arguments in Appeal No. 71 of 2007 (LIC vs. Defendants No. 6-8)

24. In Appeal No. 71 of 2007, learned Senior Counsel appearing for LIC reiterated the submission raised in Appeal No. 45 of 2007.

25. In rebuttal, learned counsel for Defendants No. 6 to 8 reiterated the submission made in Appeal No. 45 of 2007.

Arguments in Appeal No. 70 of 2007 (LIC vs. Defendants No. 1-5)

26. In Appeal No. 70 of 2007, the counsel for the LIC submitted that in view of Section 92 of the Indian Evidence Act, once the fact of transfer of possession is mentioned in the sale deed dated December 5, 1953, it cannot be contradicted by oral evidence. Therefore, the trial court erred in relying upon oral evidence in holding that the plaintiff was not in possession. It was further submitted that since the sale deed dated December 5, 1953, is the source of LIC's title, there was no need for a declaration of title by LIC. Counsel for LIC submitted that once the sale deed dated December 5, 1953, was executed, the plaintiff became the co-owner of Plot No. 37 & 38, and the plaintiff has annexed a

plaint map along with the plaint which clearly shows the plot numbers and their location; therefore, there is sufficient identification of the plots.

27. In rebuttal, learned counsel for Defendants No. 1 to 5 submitted that Section 92 of the Indian Evidence Act, 1972, is not attracted to the plaintiff's case because the statement in the sale deed that the predecessor of the plaintiff was given possession of the plot is not a "term of the contract" but only a "fact mentioned in the sale deed as a recital." Oral evidence can be given to prove the contrary, which has been provided by the defendant, proving that possession was never given to the predecessor of the plaintiff. It is further argued that the subsequent conduct of Defendant No. 6 and the predecessor of the plaintiff, namely, Swadeshi Bima Company Ltd., in never giving effect to the sale deed executed by Defendant No. 6 in favor of the predecessor of the plaintiff, clearly demonstrates that there was no intention to sell the property to the predecessor of the plaintiff, and oral evidence could be given to demonstrate these facts. Further submission is that Proviso (1) and (6) of Section 92 of the Indian Evidence Act, 1872, clearly give the defendants the right to prove additional facts mentioned in the sale deed by means of oral evidence, which has been done by the defendant. The parties to the sale deed are not the same as Defendant No. 6 has not sold the property to the plaintiff; therefore, the provisions of Section 92 of the Evidence Act are not applicable to the facts of the case.

Defendants' Cross-Objection Arguments (Appeal No. 70 of 2007)

28. In the cross-objection filed by Defendants No. 1 to 5 in Appeal No. 70 of 2007, learned counsel for Defendants No. 1 to 5 assailed the judgment on the grounds that neither LIC nor its predecessor, Swadeshi Bima Company, ever took actual possession of the said land since December 5, 1953 (the date of the sale deed in favor of Swadeshi Bima Company Ltd.), nor asserted title for more than five decades. Hence, Suit No. 1211 of 2004, instituted by the plaintiff for a declaration of the sale deed dated September 23, 2000, with respect to the title of Defendants No. 1 to 5 as void, was not only barred by time in view of Section 27 of the Limitation Act and Article 65 of the Limitation Act (and the admission of the plaintiff that M/s Bharat Stores Ltd. had sold the property to the defendants and also handed over its possession to Defendants No. 1 to 5) but was also not maintainable in view of Section 34 of the Specific Relief Act, 1963 and also not identifiable.

29. It was argued that LIC failed to produce any conclusive evidence showing either legal or physical possession. Further, the sale deed dated September 23, 2000, was executed through a registered power of attorney and is presumed valid. It was also submitted that the defendants have made constructions and are in settled possession, which was overlooked by the trial court. It is further submitted that the suit was barred by Section 331 of the UPZA & LR Act, 1950, as Khasra Plot No. 37 & 38 were agricultural plots. The plaintiff's name was not recorded in the revenue record, nor was the plaintiff in possession of Khasra Plot No. 37 & 38. Therefore, the suit was barred by Section 331 of the UPZA & LR Act, 1950, as it amounted to a declaration of title of the plaintiff whose name was not recorded over Khasra Plot No. 37 & 38.

30. It was submitted that the trial court proceeded with manifest illegality in

holding that on account of the execution of the sale deed dated December 5, 1953, by Defendant No. 6 in favor of Swadeshi Bima Company, it was not necessary for a declaration of title as the revenue entries were irrelevant and pertained to fiscal entries. This view of the trial court is contrary to the law settled by the Apex Court and the record.

31. It was further submitted that the suit was filed by an incompetent authority as Sri Suresh Kumar, who filed and signed the suit on behalf of the LIC, had no authority to present the suit on behalf of the LIC, and the Zonal Manager had no authority to delegate any power. It was further submitted that the signature of the power of attorney, alleged to be the Zonal Manager, was not proved by any witnesses. Sri Suresh Kumar admitted that LIC had three directors, namely, D.K. Mehrotra, George Mathew, and A.K. Das Gupta, and none of them had executed any power of attorney, nor has anyone seen any document which authorized the Zonal Manager to execute a power of attorney on behalf of LIC authorizing Sri Suresh Kumar to sign the plaint on behalf of LIC.

32. It was further submitted by the appellant-defendants No. 6 to 8 that M/s Bharat Stores is admitted to be the owner of Khasra Plot No. 37 & 38 located at Mauja Daulatabad, District Aligarh, by the plaintiff. The plaintiff stated that M/s Bharat Stores carved out 181 plots over these Khasra Plot Nos. 33, 34, 37, & 38 for the purpose of making Kailash Nagar Colony, but no colony was ever constructed, nor were Plot Nos. 12, 13, 14, & 15, each having an area of 450 sq. yards, allegedly sold to Swadeshi Bima Company, ever given effect to, nor was their location identifiable over Khasra Plot No. 37 & 38. Hence, Plot Nos. 12, 13, 14, & 15 located over Khasra Plot Nos. 37 & 38 are not identifiable, and since the plots are not identifiable, no decree can be granted for unidentified plots, making the suit not maintainable. It was further submitted that Defendants No. 1 to 5 were in possession over Khasra Plot No. 37 & 38, and in view of Section 110 of the Evidence Act, they have title over it.

33. In rebuttal, learned counsel for the LIC submitted that since the sale deed dated December 5, 1953, is the source of LIC's title, there was no need for a declaration of title by LIC. It was submitted by counsel for the LIC that once the sale deed dated December 5, 1953, was executed, the plaintiff became the co-owner of Plot No. 37 & 38, and the plaintiff has annexed a plaint map along with the plaint which clearly shows the plot number and its location; therefore, there is sufficient identification of the plots.

Issues Framed by the Trial Court

34. In Suit No. 1210 of 2004, the learned Trial Court framed the following issues:

(I) Whether the plaintiff is the owner and in possession of the disputed property? If yes, what is its effect?

(II) Whether the sale deed dated 24.01.2004 is void and ineffective, as alleged in the plaint?

(III) Whether the suit is barred by the provisions of Section 27 of the Limitation Act?

(IV) Whether the suit is barred by the provisions of Sections 34, 38, and 41 of the Specific Relief Act?

(V) Whether the suit has been undervalued and the court fee paid is insufficient?

(VI) Whether this court lacks jurisdiction to hear the suit, as stated in the written statement? If yes, what is its effect?

(VII) Relief, if any, the plaintiff is entitled to.

(VIII) Whether the person who signed and verified the plaint has the authority to file the suit? If not, what is its effect?

35. In Suit No. 1211 of 2004, the trial court framed the following issues:

(I) Whether the plaintiff is the owner and in possession of the disputed property? If yes, what is its effect?

(II) Whether the sale deed dated 23.09.2000 is liable to be cancelled on the grounds stated in the plaint? If yes, what is its effect?

(III) Whether the suit is barred by the provisions of Section 27 of the Limitation Act?

(IV) Whether the suit is barred by the provisions of Sections 34, 38, and 41 of the Specific Relief Act?

(V) Whether the suit has been undervalued and the court fee paid is insufficient?

(VI) Whether this court lacks jurisdiction to hear the suit?

(VII) Relief, if any, the plaintiff is entitled to.

(VIII) Whether the person who signed the plaint has the authority to file the suit? If not, what is its effect?

Analysis of Possession and Identification (Issues No. 1)

36. **Issue No. 1**: Whether the plaintiff-LIC has title and possession over Plot No. 1, area 550 sq. yards over Khasra Plot No. 33 & 38, and Plot Nos. 12, 13, 14, & 15, area 450 sq. yards each, over Khasra Plot No. 33, 37 & 38, in Suit No. 1210 of 2004 & 1211 of 2004. Since issue no. 1 in both the suits is common hence it is being dealt with jointly.

37. Defendants No. 9 in Suit No. 1210 of 2004 who is also Defendant No. 6 in Suit No. 1211 of 2004, in its written statements, admitted that it was the owner of Khasra No. 34 to 38 and that a sale deed dated September 23, 2000, was executed in favor of Defendants No. 6, 7 & 8 of Suit No. 1210 of 2004, and Defendants No. 1, 2, 3, 4, and 5 in Suit No. 1211 of 2004. It categorically denied that any colony was developed over Plot Nos. 33, 34, 37, & 38, nor were any Plot Nos. 12, 13, 14, & 15 carved out over these plots. It denied the existence of any developed colony with roads or parks on the ground, asserting that the colony was merely on paper. It contended that the plots mentioned in the sale deed dated August 3, 1949, and sale deed dated December 5, 1953, were unidentifiable due to lack of plotting and demarcation on site, and that Swadeshi Bima Nigam or LIC or the predecessor of Defendant No. 1 in Suit No. 1210 of 2004 never obtained possession. It also stated that any rights LIC might have had were extinguished by Section 27 of the Limitation Act. The maintainability of the suit was also challenged on various grounds, including lack of proper authorization to file the suit, and being barred by Sections 34, 38, and 41 of the Specific Relief Act, 1963, and Section 331 of the U.P. Zamindari Abolition and Land Reforms Act.

38. LIC's claim rested on the assertion that Plot No. 1, measuring 550

square yards, had been transferred in 1949 to Lal Singh & Sons and later auctioned to Swadeshi Bima Company in 1954. However, no sale deed dated August 3, 1949, was brought on record. Furthermore, material evidence of ownership and possession remained unsubstantiated. Crucially, P.W.-1, Suresh Kumar, a witness for the plaintiff, admitted that no demarcation or survey had ever been conducted over the property in dispute. He deposed under cross-examination as under:

"LIC does not maintain any record identifying Plot No. 1 on Khasra Nos. 33, 34, 37, 38. I have not seen any document showing that Plot No. 1 was demarcated or occupied by LIC. I do not know on which exact part of the Khasra numbers Plot No. 1 is situated."

39. Similarly, P.W.-2, Rakesh Kumar, deposed:

"I have no personal knowledge of previous possession. No site verification has been done by LIC. The property on site is not demarcated."

40. The trial court observed that no plotting or development had been done over Khasra Nos. 33, 34, 37, and 38, and that the alleged plots never came into existence. The court remarked:

"This property is not demarcated on site. The location of Plot No. 1, as they state, also does not reveal that Plot No. 1 exists on site. Since they have failed to prove the on-site situation according to the lengths and widths of the boundaries shown in the map."

41. The admissions of P.W.-1 and P.W.-2, when read in conjunction with the trial court's observations, strongly support the defendants' plea that the property was unidentifiable on the ground. The plaintiff's own witnesses conceded the absence of plot numbers, development, or any possession.

42. The trial court failed to consider that since the plaintiff had not proved the sale deed dated August 3, 1949, nor the identity of the land purportedly covered by it. In the absence of cogent evidence identifying the land covered by the 1949 and 2000 sale deeds as the same, the findings of the court below declaring the sale deed dated 23.09.2000 as void are perverse. A decree for injunction concerning an unidentifiable subject matter is unexecutable and contrary to settled legal principles. In ***Rishikesh v. Harikesh and Others, 2019 (1) ADJ 678***, this Court held that a decree cannot be granted for property that is not clearly identifiable. It was observed that where there exists a discrepancy between the description of the property in the plaint and that in the sale deed relied upon by the plaintiff, rendering the identity of the property uncertain, the plaintiff cannot be said to have established their title or possession. The Court further emphasized that in the absence of clear demarcation or reliable evidence establishing the boundaries or location of the disputed property, the claim is liable to fail. The judgment reinforces the well-settled principle that no relief can be granted in respect of vague or unidentifiable immovable property.

43. The Hon'ble Apex Court, in ***Pawan Kumar Dutt and another Vs. Shakuntala Devi and others, (2010) 5 SCC 601, and Nahar Singh vs. Harnak Singh (1996) 6 SCC 699***, held that the plaintiff is not entitled to the relief of specific

performance if the property is not identifiable. The relevant paragraph from Pawan Kumar Dutt is extracted below:

"10.3. In the decision of the Hon'ble Supreme Court reported in [(2010) 15 SCC 601] (supra) it has been held as follows:- 7. It is clear from the suit agreement that no boundaries of the suit property which was sold are specified in the agreement. It is not clear from what point the area is to be measured. It is also not clear that these 4 bighas 2 biswas is a portion of the land situated in the middle of the total land or in one portion or at the extreme end or at a particular place, in other words, there is no clear identity of the property agreed to be sold. The Courts are not expected to pass a decree which is not capable of enforcement in the courts of law. If the argument of the learned Counsel for the Appellants is to be accepted and if a decree is to be granted for specific performance, without identification of the suit property, it will not be possible to enforce such a decree. In a judgment reported in (1996) 6 SCC 699 (supra), it has been held that, if the property itself cannot be identified, the relief of specific performance cannot be granted."

44. The Trial court correctly emphasized that the critical requirement for relief was the establishment of identifiable and exclusive possession. The oral testimonies of PW-1 and PW-2 revealed that LIC had neither conducted any survey nor could identify the exact plots. The discrepancy in maps (Papers 34G and 70G) further cast doubt on the demarcation, location, and identification.

45. In the absence of specific identification and proof of exclusive possession, mere co-ownership does not entitle the plaintiff to an injunction or a declaration voiding a sale deed executed by another co-owner, especially when the plaintiff's own possession is not clearly established and his title and claim over the plot in dispute is barred by time. The burden of proving specific identity and possession of the disputed plots lay on the plaintiff, which was not discharged.

46. The trial court correctly concluded that there was no proof of exclusive possession. The principle that the possession of one co-owner is the possession of all is settled; however, a co-owner seeking an injunction must demonstrate unlawful interference or ouster. The Hon'ble Supreme Court, in a catena of decisions, has clarified that such relief cannot be granted in the absence of proof of specific title and possession.

47. So far as the title of the plaintiff over Plot No. 33 & 34 and Plot No. 37 & 38 is concerned, after considering the trial court judgment and the respective arguments made by learned counsel for the parties, this court finds that its findings on this issue are perverse and based upon misreading of evidence and misconception of the provisions of law. The sale deed dated August 3, 1949, which allegedly gave title to Sri Lal Singh and Sons, who purportedly sold Plot No. 1 located over Plot No. 33 & 34 to Swadeshi Bima Company, the predecessor of LIC, was not on record nor was it proved nor given effect to. Similarly, the sale deed dated December 5, 1953, allegedly executed by Defendant No. 6 of Suit No. 1211 of 2004 in favor of Swadeshi Bima Company Ltd., was not proved nor was it ever given effect to. This was categorically reiterated by Defendant No. 6 in his written statement in paragraph No. 8, stating that the alleged sale deed

dated December 5, 1953, was never made effective at the spot. The relevant paragraph is quoted below:

"alleged sale deed dated 5.12.1953 was never made effective at the spot, because though Bharat Stores Ltd Agra had purchased land in village Daulatabad, Aligarh to make a colony and map of the proposed colony was prepared but in fact, Bharat Stores Ltd, Agra could not make plotting, parks and roads there because of the reasons best known to the then Directors…"

48. Similar averments were also made by Defendant No. 9 in Suit No. 1210 of 2004. The relevant paragraph is quoted below:

"But as such proposed colony could never be made at spot, the purchasers, if any could not get actual possession at the spot also for want to demarcations of plots at sit. As such purchasers, if any, did not take any action to get charged out these plots at site and to take possession over their allegedly purchased plots for long lapse of time, so their rights and remedy, if any stood lost in view of Section 27 of Limitation Act."

49. The witnesses produced by the plaintiff have categorically stated that details of LIC's properties were maintained in a property register and several other documents, but none of these documents have been produced by the LIC to show whether Plot No. 1, 12, 13, 14 & 15, allegedly located over Khasra No. 33, 34, 37 & 38, are recorded in these registers. The relevant part **(translated from Hindi)** is quoted below:

"Suresh Kumar admitted in his statement that LIC maintains property registers and files regarding all its properties, and he had seen this register on May 24, 2004. That property register could have been the most important evidence in this regard. The non-production before the court of whether the property transferred by Lal Singh & Sons to Swadeshi Bima Company in the form of a plot is recorded in LIC's records indicates that LIC never acquired this property nor ever took possession of it. (Suit No. 1210 of 2004)

Regarding the learned counsel for the defendant's argument that the LIC's property register, which records all its properties, as admitted by PW-1 Suresh Kumar in his statement (Paper No. 53C), was not produced before the court. He admits in his statement that he has seen this register of LIC's properties and that details of all LIC's properties are recorded in that register. This witness clarified that he had seen this register on May 24, 2004. He admits that he did not verify Khasra No. 33, 34, 37, 38 on site, but he wants to verify his plot. The non-production of that property register in court will not adversely affect the plaintiff's rights, because the document by which the plaintiff acquired rights in this property has been filed in original form as Paper 33-Ka. In the above situation, after Swadeshi Bima Company, LIC will be considered the full owner of this property. (Suit No. 1211 of 2004)"

50. The trial court, while deciding Suit No. 1211 of 2004 and Suit No. 1210 of 2004, has given contradictory findings. While deciding Suit No. 1211 of 2004, the trial court illegally ignored the effect of non-production of the property register, despite the categorical admission by the plaintiff's own witnesses that all LIC's properties are recorded in the property register. This register was deliberately not brought on record to show that Plot No. 1, 12, 13, 14 & 15 are entered in it. Instead of

drawing an adverse inference from the non-production of this crucial evidence, the court held that its non-production would have no effect in Suit No. 1211 of 2004, while in Suit No. 1210 of 2004, it held that its non-production clearly demonstrated that LIC had no title over it. Thus, the findings given by the trial court suffer from perversity and non-application of mind, besides being contradictory. In the absence of the sale deed, which is the source of the plaintiff's title, and in the absence of the contents of the sale deed dated December 5, 1953, having not been proved, nor the sale deed ever having been given effect to (which is evident from the conduct of the parties to the sale deeds dated August 3, 1949, and December 5, 1953), the trial court has made an error apparent on the face of the record by ignoring to consider these aspects in declaring the plaintiff as having title over Plot No. 33, 34, 37 & 38 and blindly relying upon the sale dated dated 5.12.1953 paper no. 33 ka which has not been proved in consonance with Section 90 and 90-A of the Indian Evidence Act.

51. In addition, learned counsel for the Defendants-Respondents submitted that Section 110 of the Indian Evidence Act establishes that possession follows title. They argued that since the Plaintiff-LIC never had actual possession, title effectively rests with the Defendants. They maintained that Bharat Stores Ltd. retained possession until the sale deed dated September 23, 2000, after which the Defendants (Nos. 6–8) took possession, and their names were duly mutated in the revenue records. The LIC-Plaintiff, however, contended that possession passed to it by operation of law following the merger.

52. This Court acknowledges the significant role that possession plays as evidence of title. The oral evidence strongly favors the Defendants. P.W.-1 (Suresh Kumar) admitted that Bharat Stores Ltd. initially held possession, and thereafter, the appellants (Defendants Nos. 6–8) came into possession. He also conceded that the names of Lal Singh, Swadeshi Bima Company, or LIC were never recorded in the revenue records, while the Khasra-Khatauni reflects the property in the names of Chandra Shekhar, Narendra Kumar Maheshwari, and previously Bharat Stores Ltd. Further, P.W.-2 (Rakesh Kumar Saxena) confirmed that Defendants Nos. 6–8 purchased the property from Bharat Stores Ltd. on September 23, 2000, and are in possession as owners. The trial court's own findings—that "this entire property is in the possession of the Defendants Nos. 6 to 8" and that "no doubt remains that this entire property is in their possession"—corroborate these admissions. Taken together with the revenue records, the evidence establishes that the Plaintiff was never in actual possession, while the Defendants are in actual physical possession of the property.

53. Counsel for the plaintiff submitted that, in view of Section 92 of the Evidence Act, no oral evidence should be considered for proving the plaintiff's possession over the disputed plot once the sale deeds dated December 5, 1953, and July 23, 1954, acknowledge that possession has been transferred to Swadeshi Bima Company. The counsel for Defendants No. 6 to 8 and 1 to 5 submitted that no such arguments were pressed before the trial court and, therefore, cannot be considered. Furthermore, Section 92 of the Evidence Act is not applicable to the facts of this case as neither the plaintiff nor the defendants were parties to the sale deeds dated December 5, 1953, and July 23, 1954, nor is the fact of possession recorded in the aforesaid sale deeds, is a term of the

sale deed. Besides this, the sale deed dated August 3, 1949, is not brought on record nor has it been proved.

54. It is well settled that when no arguments are pressed before the trial court, it is not open for the appellate court to consider those arguments and consider the judgment passed by the trial court on grounds that were never pressed before it. Furthermore, the recording of the fact of possession in the sale deeds dated December 5, 1953, and July 23, 1954, is not a term of the document on the basis of which the parties to the sale deed had agreed to transfer the title; therefore, oral evidence can be given.

55. The provision of Section 92 is not at all attracted to the present case set up by the plaintiff because the statement given in the sale deed that the predecessor of the plaintiff was given possession of the plot is not a "term of the contract" but only a "fact mentioned in the sale deed as a recital." Oral evidence can be given to prove the contrary, which has been provided by the defendant, proving that possession was never given to the predecessor of the plaintiff. The subsequent conduct of M/s Bharat Stores Ltd and the predecessor of the plaintiff, in never giving effect to the sale deed executed by M/s Bharat Stores Ltd. in favor of the predecessor of the plaintiff, clearly demonstrates that there was no intention to sell the property to the predecessor of the plaintiff, and oral evidence could be given to demonstrate these facts. Proviso (1) and (b) of Section 92 of the Indian Evidence Act, 1872, clearly give the defendants the right to prove additional facts mentioned in the sale deed by means of oral evidence, which has been done by the defendant. The parties to the sale deed are not the same as Defendant No. 9 has not sold the property to the plaintiff; therefore, the provisions of Section 92 of the Evidence Act are not applicable to the facts of the case. The appellant-plaintiff has relied upon the provisions of Section 92 of the Indian Evidence Act, 1872, for discarding the oral evidence given in favor of the defendant, proving that the sale deed allegedly executed in favor of the predecessor of the plaintiff was never given effect to. The provisions of Section 92 of the Indian Evidence Act, 1872, are not applicable to the facts of the present case. Section 92 of the Indian Evidence Act, 1872, applies only to the terms of the document and not to the facts mentioned in the documents. The rule is therefore not infringed by the introduction of parole evidence contradicting or explaining the instruments in some of its recitals of facts. There is nothing in this section to exclude evidence which is not a term of the contract but a recital in the contract itself. A document may contain the fact itself, and this recital may be traversed by giving oral evidence. The subsequent conduct of the parties signing the documents and the surrounding circumstances are also relevant for determining the intention of the parties, and oral evidence can be given to prove the recitals in the documents. Proviso (1) of Section 92 of the Indian Evidence Act, 1872, clearly provides that any fact may be proved which invalidates any document on the ground that the document suffers from a mistake of law. Furthermore, Proviso (6) of Section 92 of the Indian Evidence Act, 1872, provides that any fact may be proved which shows in what manner the language of a document is related to existing facts. It should be noted that the existence of facts of the contract is quite distinct from the proof of the terms of the contract. In any document where there is a statement of fact

other than the terms of the contract, oral evidence can be placed to prove or disprove the fact. In the sale deed which is the subject matter of the case, the fact of transfer of possession mentioned in the sale deed is not a term of the contract/document. The trial court has rightly, after appreciating evidence, found that the plaintiff was unable to prove its possession over Plot No. 1 and Plot Nos. 12, 13, 14 & 15 over Khasra Plot No. 33, 34, 37 & 38, or that the sale deeds dated August 3, 1949, July 23, 1954, and December 5, 1953, were ever given effect to.

56. Issue No. 2: Whether the sale deed dated January 24, 2004, is void and ineffective, as alleged in the plaint?

57. In Suit No. 1210 of 2004, it is evident that no issue was framed challenging the validity of the Sale deed dated September 23, 2000, with respect to Plot No. 33 & 34, over which Plot No. 1 has allegedly been carved out.

58. The trial court, while deciding Suit No. 1210 of 2004, declared the sale deed dated September 23, 2000, as void without any issue being framed to declare it as such and challenging it. No evidence was led to prove the title of the plaintiff over Plot No. 33 & 34 as the sale deed dated August 3, 1949, which was the basic sale deed through which title was conferred upon the predecessor of the plaintiff, was neither brought on record nor proved.

59. The Hon'ble Apex Court in ***State of Andhra Pradesh and others Vs D. Raghukul Pershad (Dead) By Lrs and others, reported in (2012) 8 SCC 584***, in paragraph 6, held as under:

"We have considered the submissions of Mr. P.S. Narsimha and we find that although plea was raised by the appellants in their written statement that the execution of the lease deed in the present case, as well as payment of rent pursuant to the lease deed were under mistake of fact, no issue as such was framed by the trial court on whether the lease deed was executed by mistake of fact. This issue is an issue of fact and it is at the stage of trail that this issue will have to be raised and framed by the trial court so that parties could lead evidence on the issue. In this case, as this issue has not been framed, parties have to adduced evidence and no finding as such has been recorded by the trial court on this issue. Hence, we are not in a position to consider the argument of Mr. P.S. Narsimha that the lease deed was executed and the rent was paid by mistake of fact."

60. It is amply clear that since no issue has been framed for adjudicating the validity of the sale deed executed in the year 2000 in favor of the defendant, the sale deed could not have been declared as void by the learned trial court. Thus, without framing an issue, the trial court acted with manifest illegality in declaring the sale deed dated September 23, 2000, with respect to Plot No. 33 & 34, as void.

61. After reviewing the trial court's judgment and the discussion therein, this Court finds that its findings on this issue appear contradictory. Although the court acknowledged that no plotting existed on the ground and that the Plaintiff failed to prove the specific demarcation of Plot Nos. 1, 13, 14 & 15 over Plot Nos. 33, 34, 37 & 38, it nevertheless proceeded to declare the Defendants' sale deed partially void based on an assumed overlap. Given the absence of identifiable plots and the Plaintiff's failure to establish clear prior possession of a demarcated area, the basis for partially

invalidating the Defendants' sale deed becomes questionable. The evidence from P.W.-1 and P.W.-2 regarding the non-demarcation of plots directly undermines the premise of an overlapping area.

62. The sale deed dated September 23, 2000, was executed by M/s Bharat Stores Ltd., the recorded owner of Khasra Nos. 33, 34, 37, and 38. The appellants were bona fide purchasers for value, and the land sold was contiguous, undivided, and in the physical possession of the vendors. The claim that Bharat Stores Ltd. had previously transferred Plot No. 1 in 1949 remains unsupported by any document; no possession was ever transferred, nor was any mutation effected in favor of the Plaintiff or its predecessor.

63. The record discloses that the witnesses DW-2 Rakesh and DW-1 Prempal categorically admitted that Defendants-appellants Nos. 6, 7, and 8 were in possession of the disputed plot and that no separate plotting was ever undertaken over Khasra Plot Nos. 33, 34, 37, and 38. They stated:

"The entire land of Bharat Stores Ltd. is in single possession; no plotting was ever done. The defendants (Nos. 6 to 8) are in full possession of the entire land."

64. Despite recording this categorical finding, the trial court erroneously invalidated the 2000 sale deed on the mere assumption that it overlapped with the 1949 transaction—a deed that was neither proved nor placed on record nor given effect to by the parties of the deed. In the circumstances, the sale deed dated September 23, 2000, is valid and was executed by a competent party with respect to unencumbered property.

65. Learned counsel for the Defendants-Respondents further contended that the trial court's presumption of the validity of the sale deed dated August 3, 1949, under Section 90 of the Indian Evidence Act was a misinterpretation of law. It was argued that since the original sale deed was not presented, the presumption under Section 90 should not apply to an unproven document, which was the basis of the suit.

66. The Court agrees with the Defendants-Respondents.

67. The application of Section 90 of the Indian Evidence Act requires strict adherence to its provisions. P.W.-1 admitted that the crucial "property register," which could have confirmed the transfer to LIC's records, was not presented in court. Furthermore, the original sale deed dated August 3, 1949—the basis of the suit—was not on record. The Plaintiff failed to provide sufficient evidence to justify its non-production or to lay a foundation for secondary evidence. The Supreme Court has clarified that the presumption under Section 90 applies to original documents, not to copies, and that it should come from proper custody unless specific conditions are met, which were never proved by the plaintiff to exist Accordingly, the trial court's reliance on this presumption was erroneous, and its misinterpretation of Section 90 constitutes manifest illegality.

68. Regarding issue no. 2 in suit no. 1211 of 2004, the trial court proceeded with manifest illegality in declaring the sale deed dated September 23, 2000, void with respect to plot nos. 12, 13, 14 & 15 over khasra plot nos. 37 & 38. This declaration was made without any material to prove the contents of the sale deed dated December

5, 1953, and despite overwhelming evidence demonstrating that the latter deed was never given effect to and there being no evidence that it was produced from valid custody following the provisions of Section 90 and 90A of the Indian Evidence Act.

69. **Issue no. 3**: Whether the suit is barred by the provisions of Section 27 of the Limitation Act? This issue is common to both suits. The trial court, while deciding Suit nos. 1210 & 1211, failed to address the specific contention raised by the defendants that the suit challenging the sale deed dated September 23, 2000, is barred by limitation under Section 27 of the Limitation Act and Article 65 of the Limitation Act. This constitutes a manifest illegality.

70. Section 27 of the Limitation Act states: "**Section 27 - Extinguishment of right to property** — At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished."

71. This section clearly indicates that if a person fails to file a lawsuit for possession of property within the prescribed limitation period, their right to that property is extinguished. In essence, if legal action to reclaim property is not taken within the statutory time limit, ownership rights are permanently lost. The right initially obtained by Swadeshi Insurance Company stands extinguished by the operation of Section 27 of the Limitation Act, as neither Swadeshi Insurance Company nor, subsequently, the Life Insurance Corporation (LIC) ever obtained actual possession of the property by filing suit for specific relief nor did any suit for declaration of title was filed by the plaintiff for more than 50 years. Section 27 emphasizes that for any immovable property, if no steps are taken to secure possession or assert ownership within the statutory period of twelve years, the original owner's entire rights in that property are extinguished.

72. A perusal of the evidence on record, particularly the statements of witnesses produced by the plaintiff and defendants, and the pleadings recorded by the trial court, makes it amply clear that the plaintiff or its predecessor were never in possession of the property, nor were their names recorded in the revenue records. In view of Section 27 and Article 65 of the Limitation Act, their right to sue for a declaration of title over plot nos. 33, 34, 37 & 38 stands extinguished after 50 years from 5.12.1953 and 3.08.1949. Furthermore, the limitation period for challenging the sale deed dated September 23, 2000, is three years, and the suit was filed beyond this period. On this ground alone, the suits were barred by limitation.

73. Issue no. 4: Whether the suit is barred by the provisions of Sections 34, 38, and 41 of the Specific Relief Act? This issue is also common to both suits. In both cases, the trial court correctly held that the suits were barred under the provisions of Sections 34, 38 & 41 of the Specific Relief Act.

74. Counsel for the plaintiff has been unable to dislodge the findings given by the court below.

75. The findings given by the trial court are correct as the plaintiff has been unable to demonstrate that there arose any cause of action of filing the suit. Trial Court in both the suits recorded a categorical findings of fact after appreciating evidences

that no cause of action arose for filing the suit.

76. Learned counsel for the plaintiff has not been able to demonstrate any perversity in the findings recorded by the Trial Court.

77. In addition to this suits are also barred by Sections 34, 38 and 41 of the Specific Relief Act on the following grounds.

78. The Hon'ble Supreme Court, in ***Vasantha (Dead) through L.R. v. Rajalakshmi @ Rajam (Dead) through L.Rs., 2024 INSC 109***, reiterated the settled legal position that a suit for mere declaration without seeking consequential relief, such as possession, is not maintainable under Section 34 of the Specific Relief Act, 1963. It was further held that where the right to sue had clearly accrued long before the institution of the suit, and the plaintiff failed to take timely action, such a suit is barred by limitation under Article 58 of the Limitation Act, 1963. The Court emphasized that mere inaction over a long period disentitles a party from declaratory relief, particularly where rival claims are evident and the delay remains unexplained.

79. Similarly, in ***Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust Virudhunagar Vs Chandran and others, (2017) 3 SCC 702***, the Supreme Court held that a suit for mere declaration of title without seeking the consequential relief of possession is not maintainable when the plaintiff is not in possession of the property. The Court emphasized that under **Section 34 of the Specific Relief Act, 1963**, a person out of possession must necessarily pray for recovery of possession along with a declaration. It also noted that the plaintiff failed to prove title and did not properly describe the property in dispute, rendering the claim unsustainable. The relevant portion of the judgment, paragraphs 32 to 35, is quoted below:

"32. One of the submissions made before the courts below, on behalf of the defendant, was that the suit for mere declaration when the plaintiff was not in possession of the property, was not maintainable and hit by Section 34 of The Specific Reliefs Act, 1963, the plaintiff having not sought for recovery of possession. 33. Trial court, after considering the aforesaid submissions, recorded its conclusions in para 14 which is to the following effect: "From the facts of above cited suit, plaintiff in this suit has prayed for the relief of declaration without seeking the relief of recovery of possession and under these circumstances, it is clearly seen that the plaintiff is not entitled to get such relief. Therefore, it is held that the suit is not maintainable legally."

34. Section 34 of the Specific Reliefs Act, 1963 provides as follows: "Section 34:- Discretion of court as to declaration of status or right.-Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. ...."

35. In the present case, the plaintiff having been found not to be in

possession and having only sought for declaratory reliefs, the suit was clearly not maintainable and has rightly been dismissed by the trial court."

80. Similar views have been taken in the decisions of the Hon'ble Apex Court in ***M. K. Rappai and Others Vs John and Others, 1969 (2) SCC 590 (para-10); Ram Saran and Another Vs Smt Ganga Devi, (1973) 2 SCC 60 (para-4); Meharchand Das s Lal Babu Siddique and others, (2007) 14 SCC 253 (para-12); and Union of India Vs Ibrahim Uddin and another, (2012) 8 SCC 148.***

81. The Hon'ble Apex Court, in a catena of decisions, has consistently held that in suits for injunction, the plaintiff must prove settled possession of the property. If possession is disputed or not clearly established, a suit for a bare injunction may not be maintainable; the plaintiff might then be required to seek declaratory relief and/or relief for possession. In ***Anathula Sudhakar vs. P. Buchi Reddy (Dead) By Lrs & Ors., 2008 (4) SCC 594***, the principles regarding when a suit for a bare injunction is maintainable—and when a suit for declaration of title and/or possession is necessary—were clearly laid down. The Supreme Court elucidated that when a defendant raises a substantial dispute over the plaintiff's title, a mere suit for injunction is inadequate, and the plaintiff must seek a declaration of title and possession.

82. In ***Meharchand Das Vs Lal Babu Siddique and others, (2007) 14 SCC 253***, the Hon'ble Apex Court reaffirmed that a suit for a mere declaration of title is not maintainable if the plaintiff is not in possession of the property and does not seek consequential relief. Relying on the proviso to Section 34 of the Specific Relief Act, 1963, and prior precedents such as ***Vinay Krishna v. Keshav Chandra, 1993 Supp (3) SCC 129***, the Court held that "if the plaintiff is not in possession, a suit for mere declaration would not be maintainable." It further held that even a suit for permanent injunction is untenable without the plaintiff's possession.

83. In ***Anathula Sudhakar (supra)*** reiterated that if the plaintiff has failed to prove possession over the plots in question, they cannot seek relief of injunction simpliciter without claiming the relief of possession. Furthermore, if the plaintiff's title is under cloud and dispute, and the plaintiff is not in possession nor has been able to establish possession, a suit without the relief of possession is not maintainable.

84. Learned counsel for the Defendants-Respondents also challenged the maintainability of the suit by contending that LIC/Plaintiff sought a decree of permanent injunction and a declaration that certain sale deeds were void without seeking the consequential relief of possession. This, they argued, renders the suit barred by Sections 34 and 38 of the Specific Relief Act, 1963.

85. The record clearly shows that no prayer was made for possession of the plots derived from Khasra Plot Nos. 33, 34, 37, and 38. Consequently, no declaration of title can be granted because, under Sections 34 and 38 of the Specific Relief Act, 1963, a claim must be supported by both title and possession, or proof of interference with possession. The Plaintiff failed to establish either element. Even the trial court noted that the Defendants (Nos. 6 to 8) were in exclusive physical possession: "प्रश्नागत संपत्ति पर

प्रतिवादी 6 र 8 मौके पर काबिज हैं ----------और अलग से कोई प्लाटिंग नहीं हुई है।" (The defendants 6 to 8 are in possession of the property in question on the spot ----------and no separate plotting has been done.)

86. This Court concurs with the Defendants-Respondents' arguments. The Plaintiff's suit essentially seeks to establish title to the property; however, without a prayer for possession, the suit is incomplete. Supreme Court precedents clearly establish that when the plaintiff is not in possession, a suit for a mere declaration of title without also seeking possession is not maintainable. The admissions of P.W.-1 and P.W.-2 regarding LIC's lack of actual possession further reinforce this point. The Hon'ble Apex Court has repeatedly held that if the plaintiff is out of possession and merely seeks to restrain the defendant from interfering with an alleged possession (when the defendant is in possession), the plaintiff must first seek recovery of possession. Thus, a bare injunction suit in these circumstances is generally not maintainable. [***Ref: Anathula Sudhakar vs. P. Buchi Reddy (Dead) By Lrs & Ors., 2008 (4) SCC 594***].

87. **Issue no. 5**: Whether the suit was undervalued and the court fee paid was insufficient? In both suits, the trial court correctly held that this issue was not pressed by any of the parties, and therefore, the court fees had been properly paid. The issue was rightly decided against the defendants.

88. **Issue no. 6**: Does this Court have jurisdiction to hear the suit, as stated in the written statement? If yes, what is the effect? In both suits, the trial court framed this issue regarding its jurisdiction. However, the trial court incorrectly held, under a misconception of law, that the suit was not barred by Section 331 of the Uttar Pradesh Zamindari Abolition and Land Reforms (UPZA & LR) Act.

89. It is noted that the suit was indeed barred by Section 331 of the UPZA & LR Act, 1950, because Khasra Plot Nos. 33, 34, 37, and 38 are agricultural plots. Since the Plaintiff's name did not appear in the revenue records, and neither the plaintiff nor their predecessor (from whom the property was allegedly purchased) was in possession of the property, the suit effectively amounted to a declaration of title over land for which the Plaintiff had no recorded right. Thus, it was barred by Section 331 of the UPZA & LR Act.

90. The trial court further proceeded with manifest illegality by holding that, given the execution of the sale deed dated July 23, 1954, by Shri Lal Singh in favor of Swadeshi Bima Company, and the execution of the sale deed dated December 5, 1953, by defendant no. 6 of suit no. 1211 of 2004 in favor of Swadeshi Bima Company, a declaration of title was unnecessary, and revenue entries were irrelevant as they pertained solely to fiscal matters. Consequently, it held that the suit was not barred by Section 331 of the Act—a finding that directly contradicts statutory requirements and the law laid down by the Hon'ble Apex Court.

91. The Hon'ble Apex Court, in ***Shri Ram and another Vs Ist Addl. District Judge and others, (2001) 3 SCC 24***, held in paragraph no. 7: "The position would be different where a person not being a recorded tenure holder seeks cancellation of sale deed by filing a suit in the civil court on the ground of fraud or

impersonation. There necessarily the plaintiff is required to seek a declaration of his title and, therefore, he may be directed to approach the revenue court, as the sale deed being void has to be ignored for giving him relief for declaration and possession."

92. Furthermore, in ***Kamla Prasad and others Vs Kishna Kant Pathak and others (2007) 4 SCC***, it was held in paragraph no. 15: "In this connection, the learned counsel for the appellant rightly relied upon a decision of this Court in ***Shri Ram & another Vs Ist Addl. Distt. Judge & Ors., (2001) 3 SCC 24***. In Shri Ram, A, the original owner of the land sold it to B by a registered sale deed and also delivered possession and the name of the purchaser was entered into Revenue Records after mutation. According to the plaintiff, sale deed was forged and was liable to be cancelled. In the light of the above fact, this Court held that it was only a Civil Court which could entertain, try and decide such suit. The Court, after considering relevant case law on the point, held that where a recorded tenure holder having a title and in possession of property files a suit in Civil Court for cancellation of sale deed obtained by fraud or impersonation could not be directed to institute such suit for declaration in Revenue Court, the reason being that in such a case, prima facie, the title of the recorded tenure holder is not under cloud. He does not require declaration of his title to the land."

93. The land in dispute is agricultural, and the Plaintiff/LIC is not recorded in the revenue records. Thus, the suit, which effectively seeks a declaration of title over agricultural land against recorded tenure-holders, is barred under **Section 331 of the UPZA & LR Act**. The trial court's erroneous conclusion that revenue entries were irrelevant is legally flawed; accordingly, the suit is barred under Section 331 of the Act.

94. Issue no. 8: Is the person who signed and verified the suit authorized to institute it? If not, what is the effect? This issue concerns the competency of the person who filed the suit. In both cases, the trial court erroneously held that the suit had been filed by a competent person.

95. The suit was not filed by a competent authority, as the individual who instituted it was not authorized to do so. It was contended that under Order 29 Rule 1 of the Civil Procedure Code (CPC), only a Secretary, Director, or Principal Officer of a Corporation may sign and verify pleadings. The Manager (Legal) who filed the suit acted in violation of the CPC. The LIC-Plaintiff's submission that the Manager was competent is legally incorrect.

96. Upon examining the record, this Court finds that P.W.-1 (Suresh Kumar), the Manager (Legal) who filed the suit, explicitly admitted during cross-examination that the Chairman or Directors of LIC had not given him the power to institute the suit. He further stated that he was unaware of any document authorizing the Zonal Manager (who allegedly delegated power to him) to execute such a power of attorney. Although the plaint was signed and verified by Shri Suresh Kumar, purportedly under the authority of the Zonal Manager, no valid power of attorney was produced. Suresh Kumar himself stated: "I have not seen any power of attorney executed by the Zonal Manager. I do not know whether he was authorized by LIC to delegate such power."

97. The statutory scheme under the LIC Act permits only the Secretary,

Director, or Chairman to institute legal proceedings. In the absence of any resolution or delegation authorizing the filing of the suit by the Manager (Legal), the suit was instituted by an unauthorized person and is therefore not maintainable in law. This admission by the Plaintiff's own witness is fatal to the suit. Order 29 Rule 1 of the CPC clearly specifies who is authorized to represent a corporation in legal proceedings, and the Manager (Legal) does not fall within those prescribed categories without proper authorization.

98. Separately, Defendants Nos. 1 to 5 preferred Cross Objection No. 128636 of 2007, challenging the trial court's findings on Issues Nos. 1, 2, 3, 6, and 8 in First Appeal No. 70 of 2007.

Issue 1: The Defendants argued that the trial court's finding that the Plaintiff had proved its title was based on unsound evidence, citing the Plaintiff's failure to mutate their name in the revenue records for over fifty years, along with admissions by P.W.-1 and P.W.-2 that LIC's name was never recorded.

Issue 2: The Defendants contended that once it was established that plots were not carved out, the basis for declaring any part of the sale deed void was lost.

Issue 3: They asserted that the trial court wrongly decided the matter of possession in favor of the Plaintiff, given the clear admissions by P.W.-1 and P.W.-2 that the Defendants were in actual physical possession.

Issue 6: The Defendants argued that the trial court erred in granting a permanent injunction and in asserting that the civil court had jurisdiction. They maintained that since the land is agricultural and the Defendants' names appear in the revenue records, the suit for declaration of title should have been filed in the Revenue Court under Section 229-B of the U.P.Z.A. and L.R. Act, thereby barring the civil court's jurisdiction under Section 331.

Issue 8: The Defendants reiterated that the trial court wrongly found the Manager (Legal) to be competent to institute the suit, given P.W.-1's admissions concerning the lack of proper authorization.

99. The Plaintiff argued that these cross-objections are not maintainable.

100. This Court has meticulously examined the evidence related to these issues. The Defendants' arguments in their cross-objection are well-founded and strongly supported by the oral evidence. The admissions of P.W.-1 and P.W.-2 regarding the Plaintiff's lack of actual possession, the absence of revenue entries in the Plaintiff's favor, and the non-demarcation of the plots directly contradict the trial court's findings on both title and possession. Moreover, the clear admissions regarding the Manager's lack of authority to institute the suit render the entire proceeding not maintainable. The trial court's errors on these points significantly impacted its overall judgment and contributed to this Court's decision to set aside the original decree.

101. In view of the aforesaid findings, and the overwhelming evidence—including the admissions of the Plaintiff's own witnesses (P.W.-1 and P.W.-2) and supported by the cited Supreme Court judgments—this Court finds substantial merit in the Defendants-Respondents' arguments as articulated in their cross-

objection. The Plaintiff-Appellant's suit is fundamentally flawed due to the non-identifiability of the property, the absence of a prayer for possession, the improper institution of the suit, and the trial court's erroneous findings on key factual and legal issues.

102. Accordingly, this Court finds that the learned trial court failed to appreciate material facts and wrongly invalidated a sale deed without clear proof of LIC's physical possession or proper title demarcation. The trial court erred by granting a declaration in favor of LIC without proof of title, possession, or defined property boundaries. It also erred by presuming an unproduced document and ignoring relevant legal bars. Although the refusal to grant an injunction was legally sound, the partial decree of declaration is unsustainable.

103. In light of all the foregoing, this Court is of the considered opinion that the judgment and decree passed by the learned trial court is unsustainable and is liable to be set aside so far as it declares the sale deed as void and suit to be maintainable. Accordingly, **First Appeal No. 45 of 2007** is allowed. The judgment and decree dated November 21, 2006, passed by the learned Additional District Judge, Court No. 11, Aligarh, in Suit Nos. 1210/2004 and 1211/2004, are hereby set aside to that extent. It is held that the sale deed dated September 23, 2000, executed by M/s Bharat Stores Ltd. in favor of Defendants Nos. 6, 7, and 8, is valid and binding. The claim by LIC to 550 square yards of land over plot no. 33 & 34 and 1800 Sq Yards of land over plot no 37 & 38 are dismissed as unproven. Accordingly, **First Appeals No. 70 & 71 of 2007 are dismissed**. Cross-Objection No. 128636 of 2007, filed by defendants-Respondents in First Appeal No. 70 of 2007, is likewise disposed of in view of the findings stated above. No order as to costs is passed, and all pending applications, if any, are hereby **disposed of**.

(2025) 7 ILRA 776
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.07.2025

BEFORE

THE HON'BLE AJAY BHANOT, J.

Writ-A No. 1019 of 2025

Smt. Naina Gupta ...Petitioner
Versus
Union of India & Ors. ...Respondents

Counsel for the Petitioner:
Sri Siddharth Khare, Sr. Adv.

Counsel for the Respondents:
A.S.G.I., Ajay Shankar

Issue for Consideration

(A) Effect of refusal by the mother of deceased in executing the letter of relinquishment and other documents over the claim of the widow of deceased for appointment on compassionate grounds.

(B) Employer's obligation to achieve an amicable resolution, if the family dispute tend to frustrate the provision of compassionate appointment.

(C) Liability of person appointed on compassionate ground towards other dependent members.

Headnotes

(A) Service law – Compassionate appointment – Petitioner, being widow of deceased employee and dependent of deceased, claimed – Mother of deceased declined to issue letter of relinquishment, which was made pre-condition for appointment by the authority – Family

dispute was amount to frustrate the provision of compassionate appointment – Permissibility – Obligation of employer to achieve an amicable resolution :

Held : The sole purpose of compassionate appointments is to enable the dependent family members to tide over the immediate financial crises caused by the death of the earning member – Family disputes cannot frustrate the claims of an eligible family member to appointment, or deprive other dependents of the deceased of their entitlements to avail monetary benefits from such appointment – The endeavour of the employer should be to achieve an amicable resolution of such family disputes if possible, and provide an equitable distribution of the benefits flowing from the appointment when necessary – The family member who is appointed on compassionate grounds steps into the shoes of the deceased, and is liable to shoulder the obligations of the deceased and discharge their responsibilities towards other dependent members – 20% of the salary of the petitioner shall be deducted every month and deposited in the bank account of respondent no. 5 (mother of deceased) by the respondent bank. [Paras 9, 11, 13, 16, and 35(IV)] (E-1)

List of Keywords

Compassionate appointment; Letter of relinquishment; Penal consequence; Welfare measure; Model employer; Financial crisis; Public selection process; Relaxation; Unnecessary hindrance; Abdication of statutory rules; Family dispute; Amicable resolution; Equitable distribution of benefits; Comparative financial status; Equitable apportion; Obligation of appointee towatds other dependent members.

Case Arising From

Order dated 21.10.2024 issued by the Branch Head, UCO Bank, making it necessary to furnish the letter of relinquishment and other documents duly executed by mother of deceased for compassionate appointment of the petitioner (widow of deceased).

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

1. The judgment is being structured in the following conceptual framework to facilitate the discussion:

I	Introduction		
II	Facts established from the record		
III	Submissions of learned counsel for the parties		
IV	Issues arising for consideration		
V	Appointments on compassionate grounds : rationale & purpose		
VI		**A**	Disputes and competing claims in the process of compassionate ground appointments : General
		B	Disputes and competing claims regarding compassionate appointments: Duties of the employer
VII	Analysis of the competing claims :		
		a	Eligibility of parties for appointment
		b	Financial status of parties
		c	Comparative long term commitments and other support systems of the parties
		d	Benefits to all dependents of deceased
VIII	Validity of stand of the respondent		

	no. 5 against the petitioner and maintenance needs of respondent no. 5
IX	Answers to the issues arising for consideration
X	Conclusions & Directions

I. Introduction

2. The petitioner has assailed the order dated 21.10.2024 issued by the Branch Head, UCO Bank, Zonal Office, Varanasi Zone, Varanasi, insofar as it mandates the petitioner to furnish various documents including letter of relinquishment duly executed by Ms. Meena Gupta-respondent no. 5, which are required to decide the petitioner's claim for compassionate appointment. According to the petitioner she is entitled to be appointed without production of the said documents.

II. Facts established from the record

3. Kuldeep Gupta was working as a Single Window Operator in UCO Bank, Mahmoorganj Branch, Varanasi. He was married to the petitioner. The couple had one son in the wedlock. Kuldeep Gupta died in harness on 21.01.2024. The deceased is survived by his wife (petitioner) and a son. The mother of the deceased (respondent no.5) was also dependent on him. The petitioner has made a claim for appointment on compassionate grounds.

4. Evidently there is no love lost between the two ladies. Infact there is an open discord between them over the appointment on compassionate grounds. The respondent no. 5 has declined to issue the letter of relinquishment in favour of the petitioner, and has also refused to execute other relevant documents. The said documents are essential requirements to process the petitioner's claim and in the absence thereof the appointment of the petitioner has been held up.

III. Submissions of learned counsel for the parties:

5. Shri Siddharth Khare, learned counsel assisted by Shri Aditendra Singh, learned counsel for the petitioner made the

following submissions:

I. The petitioner is eligible for appointment on compassionate grounds on account of her age and educational qualifications. The respondent no. 5 cannot be appointed in view of her age and ineligibility for appointment.

II. The petitioner faces greater financial hardship compared to the respondent no. 5.

III. Denial of appointment on compassionate grounds to the petitioner on account of opposition of the respondent no. 5 will also visit penal consequences on her minor son.

IV. The petitioner affirms her obligations to maintain respondent no. 5 and undertakes to provide for the respondent no. 5 on terms to be decided by this Court.

6. Shri Utkarsh Khanna, learned counsel for the respondent no. 5 submits:

I. The respondent no. 5 is an old lady and was dependent on her son.

II. The petitioner resides separately and is not taking care of respondent no. 5.

III. The petitioner is not entitled for appointment on compassionate grounds.

7. Shri Mohd. Mohsin, learned counsel holding brief of Shri Ajay Shankar, learned counsel for the respondent Bank states:

I. The Bank is open to process the claim of the petitioner for grant of appointment on compassionate grounds if the respondent no. 5 executes the relevant documents in favour of the petitioner and gives her no objection.

IV. Issues arising for consideration:

8. The following issues arise for consideration in the facts of this case:

A. Whether the claim of the petitioner for appointment on compassionate grounds can be declined on the footing that the respondent no. 5 has failed to give the letter of relinquishment and has refused to execute other documents in her favour?

B. Whether the petitioner is entitled to appointment on compassionate grounds? If yes, whether the interests of respondent no. 5 are liable to be protected while granting appointment on compassionate grounds to the petitioner and the manner in which the entitlements of respondent no. 5 will be secured?

V. Appointments on compassionate grounds : rationale and purpose

9. Compassionate ground appointments are a welfare measure taken by model employers to benefit the dependent family members of a deceased employee. The sole purpose of compassionate appointments is to enable the dependent family members to tide over the immediate financial crises caused by the death of the earning member. This feature alone constituted the kin/dependents of the deceased employee into one class, and on this sole footing the rationale of compassionate grounds appointment was legitimated by the Constitutional Courts. The compassionate grounds appointments provide a sheltered entry to an eligible dependent of the deceased employee without facing the rigours of a public selection process. The nature of the compassionate appointments is such that they contemplate various relaxations to enable appointment of the eligible dependent without unnecessary hindrances.

VIA. Disputes and competing claims in the process of compassionate ground appointments: General

10. Compassionate ground appointments are expected to be processed smoothly and in an expeditious manner with the support and the consensus of all family members. However, family disputes or rival claims can delay the process of appointment on compassionate grounds.

11. Family disputes cannot not frustrate the claims of an eligible family member to appointment, or deprive other dependents of the deceased of their entitlements to avail monetary benefits from such appointment.

12. The stalement in the petitioner's appointment due to the opposition of respondent no. 5 will defeat the beneficial intent of compassionate appointments by pushing all dependents of the deceased on the brink of starvation, and will permanently blight the future of the petitioner's minor son. The discord between parties has not abated, and the process of compassionate appointment has

ground to a halt. The contesting claims of the parties have to be adjudicated on merits.

VIB. Disputes and competing claims/disputes regarding compassionate appointment : Duties of the employer

13. Even in situations of family disputes or contested claims of dependents the employers have to ensure that the legislative intent of grant of appointment on compassionate grounds is implemented. The employer cannot sit still or adopt a hands off approach in such matters as that would tantamount to abdication of statutory duties or legal obligations cast on the employer under any scheme of compassionate appointments holding the field. The endeavour of the employer should be to achieve an amicable resolution of such family disputes if possible, and provide an equitable distribution of the benefits flowing from the appointment when necessary.

14. When the consensus between the family members in regard to grant of appointment is elusive or amicable resolution of such disputes is not possible, the employer has to initiate steps to realize the aim of compassionate ground appointments. An assessment of the comparative financial status, assets, liabilities, long term commitments and educational qualifications of the respective parties is the first step in such enquiry.

15. After evaluation of the aforesaid factors, the process will culminate in the appointment of the most eligible dependent of the deceased which will also give maximum benefits to other dependents. Simultaneously the interests of other dependents of the deceased have to be protected by adopting appropriate measures to equitably apportion the resources accruing from the said appointment and thus make the welfare scheme properly inclusive.

16. The family member who is appointed on compassionate grounds steps into the shoes of the deceased, and is liable to shoulder the obligations of the deceased and discharge their1 responsibilities towards other dependent members. An irrevocable undertaking sworn on affidavit to maintain and take care of the financial needs of other dependents2 of the deceased by the eligible applicant is a mandatory prerequisite for the appointment on compassionate grounds. Violation of such undertaking by the appointee will be on the pain of cancellation of the appointment on compassionate grounds.

17. In fact shared resources and distributive justice to ameliorate the financial penury of the deceased employee's dependents inhere in the concept of compassionate appointments. Benefits flowing from a compassionate appointment are the common assets of all dependents and not the sole preserve of the appointee. The said assets are liable to be distributed equitably among all dependents and not appropriated exclusively by the appointee.

VII. Analysis of the competing claims:

18. The relevant parameters which will guide the final decision on the validity of the rival claims and govern the entitlements of the deceased's dependents are discussed hereinafter.

VII (a) Eligibility of the parties for appointment

19. The petitioner is a post graduate and satisfies the eligibility criteria for appointment on the post of clerk on compassionate grounds in the respondent bank. The respondent bank has confirmed the petitioner's eligibility to be appointed as a clerk (written instructions to this effect are in the record). The respondent no. 5 is 58 years of age. The age of superannuation in the bank is 60 years. Appointment of the respondent no. 5 will not serve any purpose on account of her age. Moreover the respondent no. 5 is ineligible for appointment as a clerk.

VII (b) Financial Status of the parties

20. The financial condition of the petitioner as disclosed in the affidavit filed on her behalf is extracted hereunder:

"3. That the details related with petitioner with regard to property, assets and income of sources are mentioned below:

(i) The petitioner received a total amount of Rs. 4,02,324/- from the respondent bank after her husband expired under various heads.

(ii) The petitioner does not have any movable or immovable property in her name.

(iii). The petitioner has a fixed deposit to the tune of Rs. 53,793/-

4. That it may also be noticed that the petitioner has a two year old son which has to be taken care of coupled with the fact that upon appointment being granted the petitioner will have to rent an accommodation in which also substantial amount would go."

21. The averments have not been denied by the respondent no. 5 in the supplementary counter affidavit.

22. The following averments are made in the supplementary affidavit-II filed in support of the writ petition in regard to the financial status of respondent no. 5.

"5. That on the contrary the respondent no. 5 has an earning son. She has already received an amount of Rs. 12,28,809/- after the petitioner's husband expired. To the best knowledge of the petitioner, there was a fixed deposit opened by the husband of the petitioner ranging between 5 to 8 lacs in which the respondent No. 5 was nominee and with regard to the aforesaid details can only be disclosed either by the respondent Bank or the respondent No. 5 herself. The petitioner is not aware of the same. Apart from the aforesaid various property is in the name of the respondent No. 5."

23. The aforesaid assertions made in the supplementary affidavit-II are not traversed in the supplementary counter affidavit filed by the respondent no. 5 and are hence accepted as true.

24. There are other details regarding her financial status as disclosed in the counter affidavit filed by the respondent no. 5 collectively amount to Rs. 33,000/-.

VII(c). Comparative long term commitments and other support systems of the parties:

25. The petitioner is a single mother who has a young child to care for. Her expenses will rise as the boy grows older. The minor child is completely dependent on the petitioner, and his future is inextricably linked to the fate of his mother. As a single working lady too the petitioner's expenditure will be higher than respondent no. 5. The financial condition of

the petitioner is clearly penurious and her commitments are long drawn.

26. The respondent no. 5 on the other hand has a strong support system as she stays with her second son who is gainfully employed and is earning Rs. 13,250/- per month.

27. The respondent no. 5 is residing in the house which is recorded in the name of her father-in-law. She has a heritable right on the aforesaid property along with her surviving son. Due to the estranged relations between the parties, the petitioner is not in a position to stay in the said house. If at all she initiates litigation to assert her rights over the aforesaid property, it will take a long time to be decided. The petitioner does not have a house of her own.

VII (d) Benefits to dependents of deceased by appointment of the petitioner:

28. In view of her age and qualifications the petitioner will have many decades of fruitful employment on the post of clerk in the bank. The compassionate appointment will enable the petitioner to meet her financial commitments, discharge her duties towards her son and secure his future, and also cater to the needs of respondent no. 5. Infact by virtue of her young age and higher qualifications the petitioner is best placed to serve the needs of other dependents of the deceased(including respondent no. 5) for the longest period of time.

29. The petitioner is the only eligible and most suitable candidate for appointment on compassionate grounds.

VIII. Validity of stand of the respondent no. 5 against the petitioner and maintenance needs of respondent no. 5:

30. The opposition of the respondent no. 5 to the petitioner's appointment is constant. On the contrary the petitioner is willing to discharge her obligations towards respondent no. 5 after getting the appointment. Before this Court an undertaking has been given on behalf of the petitioner that she is prepared to give 20% of her salary to the respondent no. 5 on monthly basis. The said undertaking sworn on affidavit shall also be furnished by the petitioner to the respondent Bank. It is fairly submitted on behalf of the petitioner that the amount may be deducted from her salary directly by the Bank and credited to the account of the respondent no. 5. The stand of respondent no. 5 against the petitioner as discussed from her affidavit filed before this Court no longer holds any water.

31. The respondent no. 5 cannot be permitted to obstruct the appointment of the petitioner after the latter has acknowledged her obligation to maintain respondent no. 5 and is prepared to affirm the same on affidavit. Most importantly the obdurate resistance of the respondent no. 5 to the petitioner's appointment will directly and adversely impact the future of her own grandson. In these facts and circumstances the impediments created by respondent no. 5 in the petitioner's appointment cannot be countenanced in law. The appointment of the petitioner is liable to be processed in the absence of the said documents.

32. The amount which respondent no. 5 will be entitled from the petitioner's salary shall be fixed in light of the above

discussion of their family status, comparative hardships and long term commitments. After factoring these issues the respondent no. 5 is held to be entitled to 20% of the monthly salary of the petitioner on a regular basis.

33. The grant of compassionate appointment to the petitioner securing the future of the minor son of the deceased and upholding the entitlements of respondent no. 5 in the above manner reconciles the divergent needs and opposing stands of the parties and also realizes the beneficial purpose of compassionate appointment.

IX. Answers to the issues arising for consideration

34. The issues framed for consideration are answered accordingly.

X. Conclusions and Directions:

35. The entitlements of the parties determined in the preceding part of the narrative will be effectuated in the following sequence:

I. The respondents are directed to process the application of the petitioner for grant of appointment on compassionate grounds in light of observations made in this judgement.

II. Before the petitioner's appointment is made she will provide a sworn undertaking on affidavit to give 20% of her monthly salary to the respondent no. 5 on a regular basis as and when her salary is disbursed.

III. In case the respondent no. 5 declines to execute relevant documents including the letter of relinquishment in favour of the petitioner after being given an opportunity by the bank authorities, the appointment of the petitioner shall be processed without the said documents.

IV. 20% of the salary of the petitioner shall be deducted every month and deposited in the bank account of respondent no. 5-Smt. Meena Gupta by the respondent bank.

V. The exercise shall be completed within two months from the date of receipt of a certified copy of this order.

36. It will be advisable for the Bank authorities to create appropriate rules for deciding the disputes of family members of the deceased relating to grant of compassionate grounds appointment consistent with this judgement.

37. The rules may provide for the following to ease the process of appointments which are embroiled in disputes or rival claims of various dependents of the deceased:

I. It would be imperative for respective parties to make a frank and true disclosure of all relevant facts like assets, liabilities and commitments necessary for determine their interse rights and entitlements to compassionate appointments and/or benefits flowing from it.

II. An undertaking shall be given on affidavit affirming the obligation of the appointee to maintain the other dependents in the manner provided by the competent authority.

III. To ensure smooth and unhampered credit of amounts from the salary of the appointee to the accounts of other dependents.

IV. Ensure opportunity of hearing to rival claimants.

V. Pass reasoned orders on the controversy.

38. The rules may also provide for mediation between the parties.

39. With the aforesaid observations the writ petition is disposed of.

(2025) 7 ILRA 784
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.07.2025

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ-A No. 5280 of 2019
Alongwith other connected cases

Shiv Charan & Ors. ...Petitioners
Versus
State of U.P. & Anr. ...Opp. Parties

Counsel for the Petitioners:
Seemant Singh

Counsel for the Opp. Parties:
Abhishek Srivastava, C.S.C., Vineet Kumar Singh

Issue for Consideration

Permissibility to challenge the rule of normalization as provided in the advertisement, after when the petitioners have participated in recruitment process and they failed to find place in select list.

Headnotes

(A) Service law – Recruitment – Post of Technician Grade - 2 –Advertisement issued with the provision of preparing the merit list after adoption of rule of 'normalization' – Petitioner participated in recruitment process and when their name was not found in select list, they challenged the rules of 'normalization' – Permissibility :

Held : All petitioners were well aware that final merit list will be prepared on basis of marks obtained after normalization as well as it was also specifically mentioned that normalization method will be applied on both examinations, i.e., first and second part – When with open eyes petitioners have participated in recruitment process, they cannot challenge the rules of game after the game was over. [Paras 10 and 12] (E-1)

Case Law Cited

State of Uttar Pradesh v. Karunesh Kumar and others, 2022 SCC OnLine SC 1706; State of U.P. and others v. Atul Kumar Dwivedi and others, (2022) 11 SCC 578; State of Uttar Pradesh v. Pankaj Kumar, (2022) 1 SCC 335 **– referred to.**

List of Keywords

Recruitment process; Normalization; select list; Cut off marks; Challenge to condition of advertisement; Raw marks; Unsuccessful candidates; Selection process.

Case Arising From

The grievance not finding place in final select list prepared for the post of Technician Grade - 2.

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. The Electricity Service Commission, U.P. Power Corporation Limited, issued an Advertisement dated 17.02.2018 for initiating recruitment process to fill up 664 vacant posts of Technician Grade-2 Electric (Trainee) in U.P. Power Transmission Corporation Limited and 2115 vacant posts of Technician Grade-2 Electric (Trainee) in

U.P. Power Corporation Limited. Relevant part of Advertisement, which are essential to decide the controversy involve in present cases, is reproduced hereinafter:

"विज्ञापित पद पर आवेदकों की संख्या अधिक होने की स्थिति में ऑन-लाइन परीक्षा (CBT) एक से अधिक पालियों /दिवसों में कराई जाएगी। विभिन्न शिफ्ट के प्रश्नपत्रों के मुल्यांकन के पश्चात Normalization method (CBTके प्रथम एवं द्वितीय भाग में) श्रेष्ठता निर्धारण में प्रयक्त होगा।"

XXX

"11. ***चयन प्रक्रिया****: चयन लिखित परीक्षा (CBT) के आधार पर किया जायेगा। लिखित परीक्षा का प्रश्न पत्र दो भागों का होगा, जिसकी अवधि 03 घंटे की होगी:-*

प्रथम भाग:-

(1) प्रथम भाग की लिखित परीक्षा में NIELIT के "CCC" स्तर का कम्प्यूटर ज्ञान से सम्बन्धित वस्तुनिष्ठ प्रकार का प्रश्न पत्र होगा जिसमें 50 प्रश्न होगे। प्रत्येक प्रश्न 01 अंक का होगा अर्थात यह परीक्षा अधिकतम 50 अंकों की होगी। प्रत्येक गलत उत्तर के लिये ऋणात्मक 1/4 अंक प्रदान किये जायेंगे अर्थात 1/4 अंक की अतिरिक्त कटौती की जायेगी।

(2) कम्प्यूटर ज्ञान की प्रथम भाग की परीक्षा में कम से कम 20 अंक प्राप्त करना अनिवार्य होगा अन्यथा की स्थिति में सम्बन्धित अभ्यर्थी को अर्ह न मानते हुये उसकी लिखित परीक्षा के द्वितीय भाग का मूल्यांकन नहीं किया जायेगा।

(3) कम्प्यूटर ज्ञान के प्रथम भाग में अर्जित अंक श्रेष्ठता (मेरिट) निर्धारण हेतु जोडे नहीं जायेंगे।

द्वितीय भाग:-

द्वितीय भाग में निम्नांकित पाठ्यक्रम से सम्बन्धित वस्तुनिष्ठ प्रकार का प्रश्न पत्र होगा जिनके अधिकतम अंक सम्मुख अंकित है। प्रत्येक प्रश्न 01 अंक का होगा एवं प्रत्येक गलत उत्तर के लिये ऋणात्मक 1/4 अंक प्रदान किये जायेंगे अर्थात 1/4 अंक की अतिरिक्त कटौती की जायेगी।

क्र0 सं0	*पाठ्यक्रम*	*प्रश्नों की संख्या*	*अधिकतम अंक*
1	*सामान्य अध्ययन एवं तार्किक ज्ञान*	*20*	*20*
2	*सामान्य हिन्दी (हाईस्कूल सामान्य स्तर)*	*15*	*15*
3	*सामान्य अंग्रेजी (हाईस्कूल सामान्य स्तर)*	*15*	*15*
4	*तकनीकी विषयक ज्ञान*	*150*	*150*
		कुल	***200***

नोटः- चयन हेतु द्वितीय भाग की परीक्षा में कम से 33.5% प्रतिशत अंक प्राप्त करना अनिवार्य होगा अर्थात ऐसे अभ्यर्थी जो 67 अंक से कम अंक प्राप्त करेंगे वे चयन प्रक्रिया से बाहर हो जायेंगे।"

2. All petitioners before this Court, being qualified to participate in above referred recruitment process, have appeared in both part of online examination, i.e., first and second. Most of the petitioners were qualified in first part of examination, therefore, their marks of second part were calculated. Normalization was applied firstly on raw marks of first part of examination who scored more than 20 marks and subsequently on raw marks of second part of examination. Admittedly, petitioners' marks obtained in second part of examination, after normalization, were less than the cut off marks, therefore, they were not selected in final select list dated 08.03.2019 issued by Secretary, Electricity Service Commission, Uttar Pradesh Power Corporation Limited, Lucknow.

3. In aforesaid circumstances, petitioners have approached this Court and the prayers made in leading writ petition, i.e., Writ-A No. 5280 of 2019, are reproduced hereinafter:

"a) Issue a writ, order or direction in the nature of Certiorari calling for the record and quashing the impugned final select list dated 08.03.2019 (Annexure No.7 to the Writ Petition) issued by Secretary, Electricity Service Commission, Lucknow, prepared on the basis of merit

after having been successful in document verification.

b) Issue a writ, order or direction in the nature of Mandamus directing the respondents to redrew the final select the dated 08.03.2019 by applying the process of normalization uniformly as it has been applied in respect of candidates having appeared in online written examination (computer based test) in first and second shifts on 25.01.2019 or in alternative final select list dated 08.03.2019 may be redrawn on the basis of raw marks obtained by the candidates in online written examination (computer based test) without applying process of normalization in selection of Technician Grade-2 Electric (Trainee) in pursuance of the advertisement dated 17.02.2018 issued by the Secretary, Electricity Service Commission, Lucknow,

c) Issue any other suitable writ, order or direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

d) Award the cost of the writ petition to the petitioners."

4. In other connected writ petitions similar reliefs were sought.

5. Sri Seemant Singh and Sri Vipul Kumar Dubey, learned counsel for petitioners, have argued at length and crux of their arguments are mentioned hereinafter:

(a) Recruitment was conducted in terms of regulation dated 03.07.2017 issued for U.P. Power Corporation Limited wherein entire procedure was mentioned, however, there application of normalization was not referred. This fact has not been denied by learned counsel for respondents. Counsel for rival parties have also not disputed that in the same regulation it was specifically mentioned as follows:

"3. परीक्षा प्रक्रिया से सम्बन्धित अन्य ऐसे बिन्दु जिनका इस विनियमावली में कोई उल्लेख नहीं है, के सम्बन्ध में निर्णय लेने का अधिकार अध्यक्ष, विद्युत सेवा आयोग को प्राप्त होगा।"

(b) Advertisement does not contemplate that raw marks obtained by each candidate in first part of examination (minimum required marks were 20) were liable to be normalized and only on normalized marks, if they got more than 20 marks, answer sheet of second part of examination would be checked. By applying normalization to first part of examination, benefit was granted to such candidates also who though got more than minimum marks, i.e., 20 marks, whereas their raw marks were much less than 20 and for that learned counsel has referred answer sheets of some of the selected candidates (source of answer sheets is not on record). Petitioners have claimed that their respective raw marks in first part of examination were more than 20, therefore, even without normalization, their answer sheets of second part of examination were required to be checked.

(c) Some arguments are also raised with regard to manner of normalization, however, on bare perusal of manner of normalization mentioned in counter affidavit, such argument does not survive.

6. Per contra, Sri Abhishek Srivastava, Advocate as well as Sri H.N. Singh, learned Senior Advocate assisted by Sri Vineet Kumar Singh, Advocate appearing for respondents, referred the counter affidavit that petitioners' score in second part of examination after normalization was less than the cut off

marks, therefore, they were not included in final select list. Petitioners have participated in selection process, with open eyes after going through the contents of advertisement, without raising any objection and once they were not selected in final select list, they approached this Court challenging rules of game, which is legally impermissible.

7. Learned counsel for respondents vehemently denied the contentions raised on behalf of petitioners that there was no condition for normalization of raw marks in first part of examination and they vehemently referred above mentioned part of advertisement that marks were to be determined on basis of normalization method of both first and second part of CBT though for determining merit the marks obtained after normalization in second part would only be taken into account.

8. Learned counsel for respondents also submitted that advertisement was issued by Secretary, Electricity Service Commission on behalf of Chairman, Electricity Service Commission, therefore, any challenge to conditions of advertisement on ground being issued without jurisdiction is legally unsustainable. Regulation dated 03.07.2017 specifically empowered Chairman, Electricity Service Commission to take a decision on issues which were not mentioned in regulation.

9. I have heard learned counsel for parties and perused the material available on record.

10. It is not under much dispute that in advertisement it was specifically mentioned that *"विज्ञापित पद पर आवेदकों की संख्या अधिक होने की स्थिति में ऑन-लाइन परीक्षा (CBT) एक से अधिक पालियों /दिवसों में कराई जाएगी। विभिन्न शिफ्ट के प्रश्नपत्रों के मुल्यांकन के पश्चात Normalization method (CBTके प्रथम एवं द्वितीय भाग में) श्रेष्ठता निर्धारण में प्रयक्त होगा।"*, therefore, all petitioners were well aware that final merit list will be prepared on basis of marks obtained after normalization as well as it was also specifically mentioned that normalization method will be applied on both examinations, i.e., first and second part.

11. The argument of learned counsel for petitioners that raw marks obtained in first part of examination were wrongly normalized or contrary to conditions of advertisement, therefore, does not survive being contrary to record.

12. In aforesaid circumstances, it is evident that once petitioners have participated in recruitment process and when their names were not found in final select list, they approached this Court challenging the process of application of normalization, however, the Court is of the view that when with open eyes petitioners have participated in recruitment process, they cannot challenge the rules of game after the game was over.

13. In this regard the Court takes note of a judgment passed by Supreme Court in **State of Uttar Pradesh vs. Karunesh Kumar and others, 2022 SCC OnLine SC 1706** wherein it was reiterated that it is settled position that unsuccessful candidate cannot turn back and assail the selection process. Relevant part of the judgment is reproduced hereinafter:

"21. A candidate who has participated in the selection process adopted under the 2015 Rules is estopped

and has acquiesced himself from questioning it thereafter, as held by this Court in the case of Anupal Singh (supra):

"55. Having participated in the interview, the private respondents cannot challenge the Office Memorandum dated 12-10-2014 and the selection. On behalf of the appellants, it was contended that after the revised Notification dated 12-10-2014, the private respondents participated in the interview without protest and only after the result was announced and finding that they were not selected, the private respondents chose to challenge the revised Notification dated 12-10-2014 and the private respondents are estopped from challenging the selection process. It is a settled law that a person having consciously participated in the interview cannot turn around and challenge the selection process.

56. Observing that the result of the interview cannot be challenged by a candidate who has participated in the interview and has taken the chance to get selected at the said interview and ultimately, finds himself to be unsuccessful, in Madan Lal v. State of J&K [(1995) 3 SCC 486 : 1995 SCC (L&S) 712], it was held as under : (SCC p. 493, para 9)

"9. ... The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted."

57. In K.H. Siraj v. High Court of Kerala [(2006) 6 SCC 395 : 2006 SCC (L&S) 1345], it was held as under : (SCC p. 426, para 73)

"73. The appellant-petitioners having participated in the interview in this background, it is not open to the appellant-petitioners to turn round thereafter when they failed at the interview and contend that the provision of a minimum mark for the interview was not proper."

58. In Union of India v. S. Vinodh Kumar [(2007) 8 SCC 100 : (2007) 2 SCC (L&S) 792], it was held as under : (SCC p. 107, para 19)

"19. In Chandra Prakash Tiwari v. Shakuntala Shukla [(2002) 6 SCC 127 : 2002 SCC (L&S) 830] ....

xxx xxx xxx

It was further observed : (SCC p. 149, para 34)

"34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seem to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not "palatable" to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process."

59. Same principle was reiterated in Sadananda Halo v. Momtaz Ali Sheikh [(2008) 4 SCC 619 : (2008) 2 SCC (L&S) 9] wherein, it was held as under : (SCC pp. 645-46, para 59)

"59. It is also a settled position that the unsuccessful candidates cannot turn back and assail the selection process.

There are of course the exceptions carved out by this Court to this general rule. This position was reiterated by this Court in its latest judgment in Union of India v. S. Vinodh Kumar [(2007) 8 SCC 100 : (2007) 2 SCC (L&S) 792] .... The Court also referred to the judgment in Om Prakash Shukla v. Akhilesh Kumar Shukla [1986 Supp SCC 285 : 1986 SCC (L&S) 644], where it has been held specifically that when a candidate appears in the examination without protest and subsequently is found to be not successful in the examination, the question of entertaining the petition challenging such examination would not arise."

14. The Court also takes note of a judgment passed by Supreme Court in the case of **State of U.P. and others vs. Atul Kumar Dwivedi and others, (2022) 11 SCC 578** relied on by learned counsel for respondents that in the event when examination is conducted in more than one shifts, the process to ascertain merit by applying normalization method on raw marks was accepted as a legal method, therefore, also any argument against application of such method is sans merit.

15. The last argument of learned counsel for petitioner was that some seats are still vacant on which petitioners may be considered in accordance to their respective merit. However, the Court is of the opinion that selection process is of the year 2018 and to consider the aforesaid prayer after about 7 years would be in the teeth of a judgment passed by Supreme Court in the case of **State of Uttar Pradesh vs Pankaj Kumar, (2022)1 SCC 335.**

16. In view of above discussion, the Court is of the opinion that the relief sought by petitioners cannot be granted.

17. The writ petitions are accordingly dismissed

(2025) 7 ILRA 789
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 14.07.2025

BEFORE

THE HON'BLE AJAY BHANOT, J.

Writ-A No. 6583 of 2022

Tinku Singh ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Mujib Ahmad Siddiqui

Counsel for the Respondents:
C.S.C., Krishna MohanSri Akhilesh Chandra Srivastava, C.S.C., Sri Gaurav Bishan

Issue for consideration

Whether the claim of the petitioner for grant of appointment on compassionate grounds has been rightly declined by the impugned order dated 14.09.2018?

Headnotes

A. Service Law – Scheme for appointment on Compassionate Grounds: Clauses 6, 22(h) - Compassionate appointments are made only to enable the family of the deceased employee to tide over the immediate financial crisis caused by the death of the earning member of the family. The appointments on compassionate ground entail deviation from regular processes of recruitment, and are an exception to the constitutionally mandated scheme for appointments to posts in the government and in government undertakings. Compassionate appointments emanate from specific service rules holding the field and have been rationalized by service law jurisprudence evolved by Constitutional Courts. (Para 6, 7, 11)

B. The purpose of grant of compassionate ground appointments can be subserved and their constitutionality can be saved only by strict compliance of the rules governing the grant of compassionate ground appointments. (Para 12 to 14, 17)

The concept of compassionate ground appointments is a welfare measure taken by a model employer. The provisions of the scheme for compassionate appointment has to be interpreted in order to reach the beneficent measures to the eligible candidates. The authorities have to implement the said scheme to effectuate the benign intent of the scheme of compassionate appointments. However, there is a caution. An over liberal interpretation of the right to the appointments on compassionate ground will open a floodgate of such appointments and turn them into a veritable source of recruitment. In these circumstances very concept of appointments on compassionate grounds will then be exposed to the wrath of Articles 14, 15, 16 of the Constitution of India. (Para 16)

C. Determination of the financial condition or the nature of financial crisis being faced by the family caused by the death of employee is a mandatory pre condition for appointment on compassionate grounds. (Para 18)

D. Financial penury has not been defined in the holdings of various constitutional courts. The same has to be examined in light of facts of each case and applicable provisions of law. (Para 20)

In the present case, respondent bank appointments on compassionate grounds are governed and regulated under the Scheme for appointment on compassionate grounds holding the field. Clause 6 of the said scheme provides for a sound and a rationale criteria for determining the financial condition of the family of the deceased and to make a finding on eligibility for grant of compassionate appointment. The manner of computation of income of the family of the deceased is provided in sub clause (h) of clause 22 of the aforesaid scheme. (Para 21 to 23)

While determining the income of the family under the said scheme the authority has to examine as to whether the son/family member of the deceased who is gainfully employed is maintaining the dependents of the deceased or not. If the member has no connection with the dependents of the deceased or does not cater to their financial needs or fails to maintain them, the said employment shall not influence the decision for grant of appointment on compassionate grounds. Any contrary interpretation will defeat the purpose of grant of compassionate grounds appointment. (Para 29)

In the instant case, a specific ground has been taken that the son of the deceased who is employed in CISF is not maintaining the family. According to the petitioner his income could not be included in the income of the family which was computed by the bank authorities. However, these material aspects were not considered while passing the impugned order. In this wake the impugned orders are quashed. (Para 30 to 32)

Writ petition allowed. (E-4)

Case Law Cited

1. Umesh Kumar Nagpal Vs. State of Haryana, 1994 (4) SCC 138 (Para 9)
2. Director of Education (Secondary) Vs. Pushpendra Kumar, 1998 (5) SCC 192 (Para 10)
3. Roopam Mishra Vs. State of U.P. and 4 others, Writ-A No. 15512 of 2019 (Para 11)
4. Director of Treasuries in Karnataka & Anr. Vs. Somyashree, Civil Appeal No. 5122 of 2021 (Para 12)
5. Ipsita Chakrabarti Vs. State of West Bengal, 2018 (2) Cal LT 177 (HC) (Para 13)
6. Sri Bijon Mukherjee Vs. The State of West Bengal and others, 2018 (3) Cal LT 136 (HC) (Para 14)
7. Ankita Saha and Anr. Vs. The State of West Bengal and Ors., WPA No. 12287 of 2019 (Calcutta High Court) (Para 15)
8. Central Coalfields Limited through its Chairman and Managing Director and others Vs. Parden Oraon, (2021) 16 SCC 384 (Para 19)

List of Acts

Scheme for appointment on Compassionate Grounds.

List of Keywords
Service Law; compassionate; appointment.

Appearances for Parties
For Petitioner: Mujib Ahmad Siddiqui

For Respondents: C.S.C., Krishna Mohan Asthana

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

1. Heard Sri Mujib Ahmad Siddiqui, learned counsel for the petitioner and Sri Krishna Mohan Asthana, learned counsel assisted by Sri Sagar Srivastava, learned counsel for the respondents.

2. The father of the petitioner was an employee of the respondent bank who died in harness on 12.04.2016. The claim of the petitioner for grant of appointment on compassionate grounds has been declined by the impugned order dated 14.09.2018.

3. The appointment on compassionate ground has been declined on the footing that the total income of the petitioner's family from all sources exceeds the threshold criteria of Rs. 35,000/- per month. Hence the family does not face financial destitution and the applicant is not entitled for appointment on compassionate grounds.

4. Heard learned counsel for the parties.

5. Appointments to public posts, government services and to various instrumentalities of the State within the meaning of Article 12 of the Constitution of India are governed and regulated by comprehensive provisions contained in the Constitution. The constitutional scheme envisages an open recruitment and a transparent procedure which enables maximum participation from eligible segments of the citizenry at large. The final appointments are made after a fair selection based on competitive merit. While making the said appointments the reservation policy or affirmative action under the Constitution for representation and empowerment of backward classes, SCs/STs and other sections of the society identified as per law has to be duly adhered to. The recruitment and appointment to government services and government undertakings were examined by constitutional courts in the context of Articles 14, 15 and 16 of the Constitution of India. Holdings of the constitutional courts have irretrievably entrenched the aforesaid modes and procedures for appointments to posts in the government and Article 12 instrumentalities in the body of the constitutional law.

6. On the contrary compassionate ground appointments are not made through a transparent and public process of recruitment after inviting the applications from the open market. The appointments on compassionate ground entail deviation from regular processes of recruitment, and are an exception to the aforesaid constitutionally mandated scheme for appointments to posts in the government and in government undertakings. Compassionate appointments emanate from specific service rules holding the field and have been rationalized by service law jurisprudence evolved by Constitutional Courts.

7. The appointments on compassionate ground passed the test of constitutional validity by a slender margin. Dependents of a deceased employee face unforeseen

financial destitution after the death of the latter and need urgent succour. Compassionate appointments are made only to enable the family of the deceased employee to tide over the immediate financial crisis caused by the death of the earning member of the family. This feature alone constituted the dependent kin of a deceased employee into one class and on this sole footing the rationale of compassionate ground appointments was justified by Constitutional Courts.

8. The discussion has the benefit of authorities in point.

9. Supreme Court in **Umesh Kumar Nagpal Vs. State of Haryana1** explained the purpose of compassionate in following terms:

"2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by

him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

10. A similar sentiment was echoed by the Supreme Court **in Director of Education (Secondary) v. Pushpendra Kumar2:**

"8.The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions. An exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependant of a deceased employee……."

11. This Court in **Roopam Mishra v. State of U.P. and 4 others3** held as under:

"16. The purpose of compassionate appointments provides their justification. The death of a bread winner forces the family of the deceased into penury. The immediacy of the financial crisis creates the requirement for urgent redressal. The concept of compassionate appointments is created only to enable the bereaved family to tide over the immediate financial crisis".

12. The need to make appointments on compassionate grounds in conformity with the Rules governing the grant of such appointments was emphasized by the Supreme Court in **the Director of Treasuries in Karnataka & Anr. v. Somyashree4** by summarizing the law as follows:

"7…...(i) that the compassionate appointment is an exception to the general rule;

(ii) that no aspirant has a right to compassionate appointment;

(iii) the appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;

(iv) appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy and/or satisfaction of the eligibility criteria as per the policy

(v) the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment."

13. Similarly, the necessity to strictly adhere to rules relating to compassionate grounds was succinctly summarized by the Calcutta High Court in **Ipsita Chakrabarti v. State of West Bengal5. Ipsita Chakrabarti (supra)** upon consideration of holdings of various Constitutional Courts held:

"(a) Appointment on compassionate grounds is an exception craved out to the general rule that recruitment to public services is to be made in a transparent and accountable manner providing opportunity to all eligible persons to compete and participate in the selection process.

(b) The right of a dependent of an employee who died in harness for compassionate appointment is based on the scheme, executive instructions, rules etc. framed by the employer and there is no right to claim compassionate appointment on any other ground apart from the above scheme conferred by the employer.

(c) Appointment on compassionate ground is given only for meeting the immediate hardship which is faced by the family by reason of the death of the bread earner. When an appointment is made on compassionate ground it should be kept confined only to the purpose it seems to achieve, the idea being not to provide for endless compassion.

(d) Compassionate appointment has to be exercised only in warranting situations and circumstances existing in granting appointment and guiding factors should be financial condition of the family."

14. Furthermore, the Calcutta High Court in **Sri Bijon Mukherjee v. The State of West Bengal and others6** again stated what is by now the settled position of law that the appointments on compassionate ground must be made only in conformity with the specific rules applicable to the employee :

"26. After observing the ratio and the legal positions contended by the Counsels appearing on behalf of the parties as well as the precedents examined above, I am persuaded to opine that appointment on compassionate grounds seeks to relieve the immediate financial hardship faced by the dependants of the deceased. It acts as an exception to Articles 14 and 16 of the Constitution as the defendant are given preferential appointment ahead of other equally meritorious candidates similarly placed and hence it cannot be claimed as a right. With the object of appointment on compassionate grounds in mind, it is palpably clear to me that this appointment must be done in accordance with the rules for such appointment. The dependant seeking such appointment must be eligible for such consideration and facing financial hardship to the extent delineated by the rules."

15. Ipsita Chakrabarti (supra) and **Sri Bijon Mukherjee (supra)** were followed by the Calcutta High Court in **Ankita Saha and Anr. v. The State of West Bengal and Ors7**

16. The concept of compassionate ground appointments is a welfare measure taken by a model employer. The provisions of the scheme for compassionate appointment has to be interpreted in order to reach the beneficient measures to the eligible candidates. The authorities have to implement te said scheme to effectuate the benign intent of the scheme of

compassionate appointments. However, there is a caution. An overliberal interpretation of the right to the appointments on compassionate ground will open a floodgate of such appointments and turn them into a veritable source of recruitment. An unjustified generous approach in compassionate ground which is not consistent with the applicable service rules will confer benefits to underserving and ineligible candidates, and simultaneously deny the constitutional rights and legal claims of eligible and meritorious candidates from getting appointment to government posts. Treating compassionate ground appointments as an unconditional and vested right and making it a source of recruitment will shear the thin veil of legality which protects such appointments from the vice of unconstitutionality. In these circumstances very concept of appointments on compassionate grounds will then be exposed to the wrath of Articles 14, 15, 16 of the Constitution of India.

17. The purpose of grant of compassionate ground appointments can be subserved and their constitutionality can be saved only by strict compliance of the rules governing the grant of compassionate ground appointments.

18. The preceding discussion discloses that determination of the financial condition or the nature of financial crises being faced by the family caused by the death of employee is thus a mandatory pre condition for appointment on compassionate grounds.

19. The importance of assessing the financial condition of the family of deceased was emphasized by the Supreme Court in **Central Coalfields Limited through its Chairman and Managing Director and others Vs Parden Oraon8** by holding thus:

"8. The whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis which arises due to the death of the sole breadwinner. The mere death of an employee in harness does not entitle his family to such source of livelihood. The authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied that but for the provision of employment, the family will not be able to meet the crisis that the job is offered to the eligible member of the family 1. It was further asseverated in the said judgment that compassionate employment cannot be granted after a lapse of reasonable period as the consideration of such employment is not a vested right which can be exercised at any time in the future. It was further held that the object of compassionate appointment is to enable the family to get over the financial crisis that it faces at the time of the death of sole breadwinner, compassionate appointment cannot be claimed or offered after a significant lapse of time and after the crisis is over."

20. Financial penury has not been defined in the holdings of various constitutional courts. The same has to be examined in light of facts of each case and applicable provisions of law.

21. In the respondent bank appointments on compassionate grounds are governed and regulated under the Scheme for appointment on compassionate grounds holding the field. The eligibility criteria provided in the Scheme is extracted hereunder:

"**6. Eligibility criteria**:

a. The family is indigent and deserves immediate assistance for relief from financial destitution. Accordingly, appointment on compassionate grounds will be granted to deserving cases where the total income of the family from all sources is below Rs. 35,000/-per month.

b. Applicant for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant Recruitment Rules."

22. Clause 6 of the said scheme provides for a sound and a rationale criteria for determining the financial condition of the family of the deceased and to make a finding on eligibility for grant of compassionate appointment.

23. The manner of computation of income of the family of the deceased is provided in sub clause (h) of clause 22 of the aforesaid scheme. The provision is extracted hereunder:

"h. Total monthly income of the family from all sources:

i. Monthly interest on Net Assets @ Max. Interest rate applicable to general public as on date of death.

ii. Monthly pension from the Bank (of deceased)

iii. Monthly income of family members.

iv. Monthly income from any other source

Total (H)

24. The exercise to determine the financial status of the family after death of the employee has been undertaken by the bank.

25. The impugned order dated 14.09.2018 has found that the monthly income of the family is Rs. 55,783/-, which is more than ceiling income of Rs. 35,000/ p.m. The manner of calculation of the total monthly by the Bank is extracted hereunder;

01	Monthly notional interest income on terminal benefits and investment proceeds	Rs. 5,825.00
02	Monthly pension from the Bank (of deceased)	Rs. 13,344.00
03	Monthly Income of the dependant family members (Son)	Rs . 36,614.00
	Total Monthly Income	Rs. 55,783.00

26. While calculating the monthly income of the family of the deceased drawn from all sources, the income of one son of the deceased who is employed as constable in the CISF has also been included. According to the petitioners the aforesaid son of the deceased resides separately with his family and does not support or maintain the family of the deceased. Hence the income of the aforesaid earning member of the deceased's family was not liable to be computed towards the monthly family income. Further the petitioner also claims that he was solely dependent on his father.

27. According to the learned counsel for the Bank financial hardship and

the income of the family was computed in light of relevant clauses of the Scheme quoted hereunder:

"**13. Where there is an earning member in a family:**

a. In deserving cases, even when there is already an earning member in the family, a dependent family member may be considered for compassionate appointment with the prior approval of the Competent Authority of the Bank who, before approving such appointment, will satisfy himself that grant of compassionate appointment is justified, having regard to the number of dependents, assets and liabilities left by the employee, income of the earning member, as also his liabilities including the fact that the earning member is residing with the family of the employee and whether he should not be a source of support to other members of the family.

b. In cases where any member of the family of the deceased or medically retired employee is already in employment and is not supporting the other members of the family of the deceased employee, extreme caution has to be observed in ascertaining the economic distress of the members of the family of the deceased employee so that, the facility of appointment on compassionate ground is not circumvented and misused by putting forward the ground that the member of the family already employed is not supporting the family."

21: General

c. An application for compassionate appointment should, however, not be rejected merely on the ground that the family of the employee has received the benefits under the various welfare schemes. While considering a request for appointment on compassionate ground a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities (including the benefits received under the various welfare schemes mentioned above) and all other relevant factors such as the presence of an earning member, size of the family etc."

28. The aforesaid clauses have to be interpreted in light of the purposes to be subserved by appointment under the compassionate grounds and to implement the intent of the beneficent provisions. The respondents have to diligently consider only relevant factors while determining the financial status of the family and consciously exclude irrelevant consideration. The aim of exercise is to ensure that lawful benefits accrue to legible claimants, while unlawful claims do not pass muster.

29. While determining the income of the family under the said scheme the authority has to examine as to whether the son/family member of the deceased who is gainfully employed is maintaining the dependents of the deceased or not. If the member of the family who is gainfully employed has no connection with the dependents of the deceased or does not cater to their financial needs or fails to maintain them, the said employment shall not influence the decision for grant of appointment on compassionate grounds. Any contrary interpretation will defeat the purpose of grant of compassionate grounds appointment.

30. In the instant case, a specific ground has been taken that the son of the

deceased who is employed in CISF is not maintaining the family. According to the petitioner his income could not be included in the income of the family which was computed by the bank authorities. However, these material aspects were not considered while passing the impugned order.

31. The impugned orders dated 29.08.2018 and 14.09.2018 neglect to consider the aforesaid germane aspects while invalidating the claim of the petitioners. The impugned orders dated 29.08.2018 and 14.09.2018 are vitiated on account of non application of mind to relevant consideration.

32. In this wake, the impugned orders dated 29.08.2018 and 14.09.2018 are quashed.

33. The matter is remitted to the respondents-authorities who shall decide the claim of the petitioner after considering all relevant factors including the financial condition of the family of the deceased in light of above observations and as per law within a period of three months from the date of receipt of a certified copy of this order.

34. The writ petition is allowed to the extent indicated above.

(2025) 7 ILRA 798
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 14.07.2025

BEFORE

THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Writ-A No. 9438 of 2025

Atul Kumar ...Petitioner

Versus

State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Hridaya Narain Singh

Counsel for the Respondents:
C.S.C., Sanjay Kumar Singh

Issue for consideration

Whether petitioner's candidature fulfils the requirements as enshrined under the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974?

Headnotes

A. Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 Rule 5 - Facts of the case are that petitioner's mother late Savitri Devi was working as an Assistant Teacher in a Junior High School, Barauli, Block Nagra, District Ballia. She died-in harness on 06th July, 2020. The petitioner moved a representation before the third respondent on 29th September, 2021 for his appointment on compassionate ground on the post of peon, however, it failed to elicit any response. The impugned order dated 30th May, 2025 has been passed whereby the claim for compassionate appointment of the petitioner has been rejected, which is under challenge in the present writ petition. (Para 2)

B. The whole object of granting compassionate appointment is to provide succour to the indigent family of a deceased employee so as to tide over the sudden crisis and financial destitution. (Para 6)

C. Compassionate appointment is a concession and not a right and the criteria laid down in the Rules must be satisfied by all aspirants. The applicant dependent must strictly fall within the parameters as on the date of the death of government servant, besides the fact that the appointment is neither a right nor an alternative source of recruitment. (Para 7, 9)

Dependents of the deceased Government employee are made eligible by virtue of the policy on compassionate appointment and they must fulfil the norms laid down

by the State's policy. The norms prevailing on the date of consideration of the application should be the basis for consideration of claim for compassionate appointment. (Para 8)

As regards, the condition u/Rule-5 that one member of deceased employee's family shall be given employment, in case spouse of the deceased Government Servant is not already employed under the Government establishment, exists since introduction of the Rules, 1974. Insofar as the opportunity of hearing is concerned, the petitioner had submitted all relevant documents before the authority along with his application dated 28th February, 2025, but he failed to turn up for personal hearing while he was called on 04th April, 2025. (Para 11)

The petitioner does not fulfil the criteria as framed u/Rule-5 of the Rules, 1974 as his father (spouse of deceased employee) is an Assistant Teacher in a Primary School run by the U.P. Basic Education Board and in view of the settled position of law, it is inevitable the dependent must strictly fall within the parameters as on the date of death of government servant and must fulfil the norms laid down by policy of State Government, for consideration of employment on compassionate ground. (Para 12)

Writ petition dismissed. (E-4)

Case Law Cited

1. Ravi Kumar Jeph Vs. Joint Director & Anr. Special Leave Petition (Civil) Diary No(s). 25916 of 2025 (Para 10)
2. Steel Authority of India Limited Vs. Madhusudan Das & Ors., (2008) 15 SCC 560 (Para 7)
3. The Director of Treasuries in Karnataka & Anr. Vs. V. Somyashree, AIR 2021 SC 5620 (Para 8)
4. Ravi Kumar Jeph Vs. Joint Director, Office of the Chief Commissioner, CGST and Central Excise (Jaipur Zone), Jaipur, Rajasthan & another, D.B. Civil Writ Petition No. 4928 of 2020; 2023:RJ-JP:41338-DB (Para 9)

List of Acts

Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974.

List of Keywords

Service Law; compassionate appointment.

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. The petitioner, a dependent of an Assistant Teacher who died in-harness, has preferred instant writ petition challenging an order dated 30th May, 2025 passed by the third respondent[1], whereby claim for appointment on compassionate ground has been denied on the ground that his candidature does not fulfil the requirements as enshrined under the Uttar Padesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974.

2. Facts of the case are that petitioner's mother late Savitri Devi was working as an Assistant Teacher in a Junior High School, Barauli, Block Nagra, District Ballia. She died-in harness on 06th July, 2020. The petitioner moved a representation before the third respondent on 29th September, 2021 for his appointment on compassionate ground on the post of peon, however, it failed to elicit any response. Aggrieved thereby, the petitioner preferred a writ petition before this Court i.e. **Writ-A No. 1278 of 2025**[2]. Said writ petition was disposed of by order dated 04th February, 2025 with a direction that if the required papers and documents are submitted by the petitioner within one month, the third respondent shall take decision thereon. Pursuant thereto, the impugned order dated 30th May, 2025 has been passed whereby the claim for compassionate appointment of the petitioner has been rejected, which is under challenge in the present writ petition.

3. Learned counsel for the petitioner submits that the petitioner fulfils all the

requisite qualifications for compassionate appointment, due to death of his mother, as required under the Uttar Padesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974[3]. He has drawn the attention of the Court to Annexure-10, which is a notification of Government of Uttar Pradesh dated 27th December, 2022, introducing the thirteenth amendment i.e. the Uttar Pradesh Recruitment of Dependent of Government Servants Dying in Harness (Thirteenth Amendment) Rules, 2022. Emphasizing thereupon, learned counsel for the petitioner submits that petitioner's mother passed away on 06th July, 2020, therefore, the order impugned passed on the basis of the aforementioned Rules, is illegal as the said Rules do not have retrospective effect.

4. It has further been contended by learned counsel for the petitioner that the petitioner lives separately and has no connection with his father and sister, thus, he is entitled for being appointed on compassionate ground as his mother died in harness. He next argued that the order impugned has been passed without affording any notice or opportunity of hearing to the petitioner.

5. Learned counsel for the respondents has made vehement submission that the petitioner's father and sister both are Government Servants and in view of the requisite conditions for appointment on compassionate ground as stipulated under Rule-5 of the Rules, 1974, which enumerates that one member of deceased employee's family shall be given employment, in case spouse of the deceased Government Servant is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government, the petitioner is not entitled for appointment on compassionate ground after the demise of his mother who died in harness.

6. It is an admitted fact that petitioner's father is an Assistant Teacher in a Primary School run by the Board of Basic Education, U.P. and the whole object of granting compassionate appointment is to provide succour to the indigent family of a deceased employee so as to tide over the sudden crisis and financial destitution.

7. The Apex Court in the case of **Steel Authority of India Limited v. Madhusudan Das & Ors.**[4], has remarked that compassionate appointment is a concession and not a right and the criteria laid down in the Rules must be satisfied by all aspirants.

8. In the case of **The Director of Treasuries in Karnataka & Anr. v. V. Somyashree**[5], the Supreme Court has observed that dependents of the deceased Government employee are made eligible by virtue of the policy on compassionate appointment and they must fulfil the norms laid down by the State's policy. The Court has further held that the norms prevailing on the date of consideration of the application should be the basis for consideration of claim for compassionate appointment.

9. Following the aforementioned judgements of Apex Court, a Division Bench of Rajasthan High Court in the case of **Ravi Kumar Jeph v. Joint Director, Office of the Chief Commissioner, CGST and Central Excise (Jaipur Zone), Jaipur, Rajasthan & another**[6], has held as under:

"18. ...the principles pertaining to the nature of claim made by the dependents, its consideration based on the parameters as laid down in the relevant Rules, that also with the emphasis that the applicant-dependent must strictly fall within the parameters as on the date of the death of government servant, are well established besides the fact that the appointment is neither a right nor an alternative source of recruitment."

(emphasis supplied)

10. The aforementioned judgement of Rajasthan High Court in **Ravi Kumar Jeph (*supra*),** was challenged before the Apex Court by means of **Special Leave Petition (Civil) Diary No(s). 25916 of 2025**[7]. The Apex Court vide its judgement dated 17.06.2025 has dismissed the petition on the ground of delay as well as on merits, observing that there is no ground to interfere with the order challenged therein.

11. The arguments advanced by the learned counsel for the petitioner regarding non-applicability of Rule-5 of the Rules, 1974 in petitioner's case and not giving opportunity of hearing before passing the order impugned, have no merit acceptance. As regards, the condition under Rule-5 that one member of deceased employee's family shall be given employment, in case spouse of the deceased Government Servant is not already employed under the Government establishment, exists since introduction of the Rules, 1974. Insofar as the opportunity of hearing is concerned, the petitioner had submitted all relevant documents before the authority along with his application dated 28th February, 2025, but he failed to turn up for personal hearing while he was called on 04th April, 2025.

12. In view of the aforesaid, admittedly the petitioner does not fulfil the criteria as framed under Rule-5 of the Rules, 1974 as his father (spouse of deceased employee) is an Assistant Teacher in a Primary School run by the U.P. Basic Education Board and in view of the settled position of law, discussed in preceding paragraphs, it is inevitable the dependent must strictly fall within the parameters as on the date of death of government servant and must fulfil the norms laid down by policy of State Government, for consideration of employment on compassionate ground.

13. I do not find it a fit case to be interfered with. The writ petition lacks merit, hence stands dismissed.

14. No order as to costs.

(2025) 7 ILRA 801
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 04.07.2025

BEFORE

THE HON'BLE AJAY BHANOT, J.

Writ-A No. 17732 of 2022

Vikrant Sengar ...Petitioner
Versus
State of U.P. & Ors. ...Opp. Parties

Counsel for the Petitioner:
Sri Chandan Sharma, Sri Jadu Nandan Yadav, Sri Pranvesh

Counsel for the Opp. Parties:
Sri Akhilesh Chandra Srivastava, C.S.C., Sri Gaurav Bishan

ISSUE FOR CONSIDERATION

Whether dismissal from service on the ground of fraudulent compassionate appointment, obtained by suppression of

previous employment, could be sustained without holding a regular departmental inquiry under the U.P. Government Servant (Discipline and Appeal) Rules, 1999, and whether such appointment is void *ab initio.*

HEADNOTE

Compassionate Appointment – Fraudulent Appointment – Natural Justice – Scope of Disciplinary Inquiry

HELD

Father of the petitioner died in harness on 11.06.1984. He was appointed as a DSL Cleaner on 05.07.1984 in the Indian Railways and was subsequently removed from service on 03.06.1989. Petitioner had a regular source of income for all those years and did not suffer financial destitution due to the death of his father in harness. Petitioner was appointed as an Assistant Teacher on 04.10.1990 under the Dying in Harness Rules by concealing the said facts of his previous service and removal from the Railways. A chargesheet was drawn up against the petitioner on 12.10.2020. The petitioner did not tender his defence or refutation of the charges. The disciplinary authority found that the charges relating to illegality and fraud in the petitioner's appointment stood proved and passed the order of dismissal. ***Held -*** financial crisis faced by the petitioner in 1989 resulted from his removal from Railway service and was not caused by his father's death. There was no nexus between the death of the petitioner's father in harness in 1984 and the financial penury faced by him in 1989. Immediate financial destitution of the dependent, caused by the death of an employee—which is the mandatory prerequisite for appointment on compassionate grounds—did not exist in this case. Violation of the imperative precondition for compassionate appointment is a non-curable illegality which goes to the root and renders the petitioner's appointment *void ab initio.* Application for appointment on compassionate grounds was made nearly five years after the death of the petitioner's father; such delay was fatal to the legality of the appointment. Issuance of show-cause notice and compliance of the broad principles of natural justice were sufficient to meet the ends of justice; a regular departmental inquiry under the 1999 Rules was not required. Mere continuance for long years in service does not entitle the petitioner to any equitable relief. *(Paras 49–64) (E-5)*

CASE LAW CITED

Zila Basic Shiksha Adhikari, Balrampur v. Anand Kumar Tripathi & Others, 2024:AHC-LKO:37313-DB;

District Basic Education Officer v. Punita Singh & Others, Special Appeal Defective No. 506 of 2024;

R. Vishwanatha Pillai v. State of Kerala, (2004) 2 SCC 105;

Union of India v. Prohlad Guha etc., 2024 SCC OnLine SC 1865;

Devendra Kumar v. State of Uttaranchal, (2013) 9 SCC 363;

Lazarus Estates Ltd. v. Beasley, (1956) 1 QB 702;

R.M. Sahai J. in Shrisht Dhawan (Smt.) v. M/s Shaw Brothers;

D. Gopaiah v. State of A.P., 2002 (2) LLN 484 (FB)

National Institute of Technology v. Niraj Kumar Singh, (2007) 2 SCC 481

List of Acts

U.P. Government Servant (Discipline and Appeal) Rules, 1999

U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974

Constitution of India

List of Keywords

Compassionate appointment – Fraud – Suppression of facts – Natural justice – Disciplinary inquiry – Void ab initio – Illegal

appointment – Article 311 – Equitable relief – Departmental enquiry

CASE ARISING FROM

Challenge to the order dated 03.03.2021 passed by the Basic Shiksha Adhikari dismissing the petitioner from service and the order dated 18.09.2022 passed by the Secretary, Basic Shiksha Parishad, Prayagraj rejecting the petitioner's appeal.

Appearances for Parties

Advs For Petitioner: Chandan Sharma, Jadu Nandan Yadav, Pranvesh

Advs For Respondents: Akhilesh Chandra Srivastava, C.S.C., Gaurav Bishan

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

1. The judgment is being structured in the following conceptual framework to facilitate the discussion:

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I. Introduction:

2. The petitioner is aggrieved by the order dated 03.03.2021 passed by the Basic Shiksha Adhikari dismissing him from service. The petitioner has also assailed the order dated 18.09.2022 passed by the appellate authority/Secretary, Basic Shiksha Parishad, Prayagraj rejecting the appeal of the petitioner against order of dismissal.

II. Events leading upto impugned orders:

3. The petitioner was appointed as an Assistant Teacher on 04.10.1990 under the Dying in Harness Rules. A chargesheet was drawn up against the petitioner on 12.10.2020 which caused the initiation of departmental proceedings against him.

4. The gravamen of the charges in the said chargesheet were as under: As per the

first charge the petitioner was working as a DSL Cleaner in the Indian Railways, and later he was removed from service. The petitioner obtained an appointment as a teacher under the Dying in Harness Rules in the Basic Shiksha department by concealing the said facts of his service and removal from Railways. According to the second charge, the petitioner was appointed on compassionate grounds on 04.10.1990 after the period of limitation had expired. The third charge alleges acts of financial irregularities and disobedience of the orders of superior authority.

5. The chargesheet records that various documents which were proposed to be relied upon against the petitioner were being appended thereto.

6. The petitioner submitted a response to the chargesheet on 02.11.2020. In the aforesaid reply the petitioner did not tender his defence or refutation of the charges against him. The petitioner never disputed the recitals in the chargesheet that the documents appended to the chargesheet were served upon him. The petitioner simply demanded copies of some documents relating to his appointment and initiation of the enquiry against him. By order dated 12.11.2020 the documents which depicted the petitioner's appointment as DSL Cleaner and removal from service of the railways were duly provided to him alone with other relevant documents.

7. The petitioner furnished another reply on 24.12.2020, wherein he demanded certain documents pertaining to allegations of financial irregularities. It needs to be emphasized in the aforesaid reply that the petitioner did not dispute his appointment and termination from the Indian Railways.

8. A report was prepared on 05.01.2021 by the Block Education Officer regarding the financial irregularities committed by the petitioner. After receipt of the aforesaid report and the replies of the petitioner a show cause notice was issued to the petitioner on 27.01.2021 by the disciplinary authority. The show cause notice reiterated the substance of the chargesheet against the petitioner. The show cause notice appended various documents which were proposed to be relied upon against the petitioner including those pertaining to his appointment as DSL Cleaner and subsequent removal from service in the railways.

9. The reply of the petitioner to the show cause notice merely states that the petitioner was not supplied the documents which had been demanded by him. The petitioner also made an enquiry of the list of departmental witnesses who were proposed to be examined and asked for opportunity to cross examine the said witnesses. Further the petitioner demanded copies of the complaint against him and also copies of various departmental enquiries conducted in the year 2014. The reply did not refute the charges on merits.

10. It is noteworthy that none of the aforesaid documents demanded by the petitioner were proposed to be relied upon against him as per the charge-sheet or the show cause notice.

III. Impugned Orders:

III(A). Order dated 03.03.2021 passed by the disciplinary authority:

11. After consideration of the same petitioner's reply the Basic Shiksha Adhikari, Hathras passed the impugned order on 03.03.2021. The disciplinary authority in the impugned order dated 03.03.2021 has recorded that the petitioner

was given adequate opportunity to defend himself. However, the petitioner failed to submit any refutation of the charges nor adduced evidence in support of his case. The impugned order relied upon the documents pertaining to his service as DSL Cleaner in the Railways. The disciplinary authority found that the charges relating to the illegality and fraud in the petitioner's appointment were found to be proved. Further the charge of the financial embezzlement stood established according to the impugned order. In this wake the order of dismissal was passed by the disciplinary authority on 03.03.2021.

III(B). Order dated 18.09.2022 passed by the appellate authority:

12. The petitioner carried the order of dismissal in appeal before the appellate authority. The appellate authority in the impugned order dated 18.09.2022 dwelt at length on the grounds raised by the petitioner and the materials in the record. After consideration of the same the appellate authority found that the following facts were established.

13. The appellate authority in the order dated 18.09.2022 recorded that the petitioner was appointed under the Dying in Harness Rules on 04.10.1990. The father of the petitioner died in harness on 11.06.1984. The petitioner was appointed as a DSL Cleaner on 05.07.1984 in the Indian Railways, and was subsequently removed from service on 03.06.1989. The appellate authority has referenced a document of the Indian Railways attesting the aforesaid facts in extenso. Thereafter upon invoking the provisions of the Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974, the appellate authority has found that the petitioner was in service in the Indian Railways at the time of death of his father and was not entitled to be appointed on compassionate grounds. Lastly the appellate authority has also held that the charge of financial irregularities against the petitioner also stood proved before the disciplinary authority and warranted no interference.

14. The appellate authority has specifically found that the petitioner was given various opportunities to tender his defence to the charges against him. However, the petitioner failed to refute charges on merits in his reply to the show cause notice.

15. After independent consideration of material in the records and grounds of appeal the appellate authority in the order dated 18.08.2022 confirmed the guilt of the petitioner and also upheld the order of dismissal passed by the disciplinary authority.

IV. Facts established from the record:

16. These facts are established. The death of father of the petitioner on 11.06.1984 in harness is a fact admitted to both the parties. The petitioner was appointed as a DSL Cleaner in Indian Railways on 05.07.1984 and he was removed from service on 03.06.1989. The communication of the Indian Railways in this regard has been referenced in the impugned order.

17. Moreover, the petitioner has not disputed the fact of his appointment as DSL Cleaner on 05.07.1984, and his removal from service from the Railways on

03.06.1989 at any stage before the authorities below. In the writ petition the petitioner has admitted to the fact of his appointment in the Indian Railways and his removal from service by order dated 03.06.1989. On the footing of various materials in the record the Court has no hesitation in holding that appointment of the petitioner as DSL Cleaner on 05.07.1984 in the Indian Railways and his subsequent removal from the said post on 03.06.1989 has been established beyond doubt and dispute.

18. The order dated 03.06.1989 issued by the competent authority removing the petitioner as DSL Cleaner in the Railways has been appended to the writ petition and is being extracted hereinunder for ease of reference:

"I have gone through the enquiry report and evidence on record carefully and agreed with the findings of the enquiry officer. Your past record also does not speak well in regard to the attendance performance. Moreover, lenient views taken in each and every post offence on your part with the hope that you will improve but in vain. It if felt that you are not serious in being regular. I therefore hold you guilty of the charges levelled against you vide SF-5 of even No. date 11-09-1988 and has decided to impose upon you the penalty of removal from service from the date issue of this notice."

19. The petitioner was appointed on compassionate grounds under the Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 on 04.10.1990 too is common ground between the rival parties.

V. Questions for consideration:

20. The questions that arise for consideration in the facts and circumstances of this case narrated above are:

I. Whether in the facts and circumstances of the case and the materials available before the authorities below the order of dismissal from service was justified?

II. Whether the procedure envisaged in law was adopted while passing the impugned orders?

III. Whether the petitioner is entitled to any relief by this Court?

VI. Compassionate Appointments:

VI(A). Rationale and Purpose:

21. The process of appointments on compassionate grounds is a departure and an exception to the public process of appointments as stipulated in the Constitution. Compassionate appointments reflect the commitment of the State as a model employer to the welfare of its employees.

22. The sole purpose of compassionate ground appointments is to provide immediate financial succour to a family of the deceased government employee which faces sudden financial destitution as a result of the death of the employee in harness. The appointments on compassionate grounds have passed the test of constitutionality by a slender margin and on the above grounds alone.

23. Appointments on compassionate grounds give a sheltered entry to the dependents of a deceased employee into government service without the rigors of an open selection procedure. The competitive merit of candidates is of no relevance since

the appointments are made without adopting the public selection procedure. Norms of recruitment are completely relaxed for appointment on compassionate grounds. However the law requires the applicants to possess minimum qualifications for the posts.

24. Considering the aforesaid limitations of compassionate ground appointments, it has been held by good authority that there is no vested right to an appointment on compassionate grounds. Further, the right to compassionate ground appointment is derived only from specific provisions in this regard and the same have to be strictly adhered to. An unduly liberal view while interpreting the aforesaid rules may make the appointments vulnerable to reproach by the equality clause of the Constitution.

25. Appointments on compassionate grounds made in violation of the Rules governing such appointments or without examination of relevant factors as per law, or in the teeth of holdings of Constitutional Courts in point will shear the cloak of legality from these appointments and will reduce the said appointments to a class of hereditary appointments. Under the constitutional scheme of Articles 14 and 16 of the Constitution appointments to government posts have to be achieved by merit and not acquired by inheritance. Constitutional law holdings have disapproved conversion of compassionate appointments into a source of recruitment.

26. The narrative will be buttressed by authorities in point. The purpose of appointment on compassionate grounds was explained by the Supreme Court in **Umesh Kumar Nagpal v. State of Haryana**[1]. Jurisprudential rationale laid down in **Umesh Kumar Nagpal (supra)** is the locus classicus which provides the sole legal basis for compassionate appointments:

"2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the

financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

27. The same propositions were expounded by the Supreme Court in **Director of Education (Secondary) v. Pushpendra Kumar**[2]:

"8. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions. An exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependant of a deceased employee….."

28. A Full Bench of this Court in **Shiv Kumar Dubey and others v. State of U.P. and others**[3] summed up the law as under:

"31. We now proceed to formulate the principles which must govern compassionate appointment in pursuance of Dying in Harness Rules:

(i) A provision for compassionate appointment is an exception to the principle that there must be an equality of opportunity in matters of public employment. The exception to be

constitutionally valid has to be carefully structured and implemented in order to confine compassionate appointment to only those situations which subserve the basic object and purpose which is sought to be achieved;

(ii) There is no general or vested right to compassionate appointment. Compassionate appointment can be claimed only where a scheme or rules provide for such appointment. Where such a provision is made in an administrative scheme or statutory rules, compassionate appointment must fall strictly within the scheme or, as the case may be, the rules;

(iii) The object and purpose of providing compassionate appointment is to enable the dependent members of the family of a deceased employee to tide over the immediate financial crisis caused by the death of the bread-earner;

(iv) In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family; its liabilities, the terminal benefits received by the family; the age, dependency and marital status of its members, together with the income from any other sources of employment;

(v) Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out;

(vi) Rule 5 mandates that ordinarily, an application for compassionate appointment must be made within five years of the date of death of the deceased employee. The power conferred by the first proviso is a discretion to relax the period in a case of undue hardship and for dealing with the case in a just and equitable manner;

(vii) The burden lies on the applicant, where there is a delay in making an application within the period of five years to establish a case on the basis of reasons and a justification supported by documentary and other evidence. It is for the State Government after considering all the facts to take an appropriate decision. The power to relax is in the nature of an exception and is conditioned by the existence of objective considerations to the satisfaction of the government;

(viii) Provisions for the grant of compassionate appointment do not constitute a reservation of a post in favour of a member of the family of the deceased employee. Hence, there is no general right which can be asserted to the effect that a member of the family who was a minor at the time of death would be entitled to claim compassionate appointment upon attaining majority. Where the rules provide for a period of time within which an application has to be made, the operation of the rule is not suspended during the minority of a member of the family."

VI (B). Strict adherence to law while making compassionate appointments:

29. Strict compliance of provisions for grant of appointments on compassionate grounds, and rigorous adherence to holdings of constitutional courts in point have been consistently emphasized in the constitutional law discourse. The discussion shall be fortified by extracting the relevant citations. The authorities discussed below under score that non compliance of provisions for grant of appointments on compassionate grounds, and violation of case laws holding the field

is on the pain of invalidation of such appointments. In fact appointments on compassionate grounds made in the teeth of statutory provisions and case laws delegitimate the very concept of compassionate appointments.

30. There is consensus among Constitutional Courts in the country on the issue of compassionate appointments. The Calcutta High Court in **Ipsita Chakrabarti v. State of West Bengal**[4] summarized the aforesaid key principles which guide appointments on compassionate grounds by holding :

"10. After going through the judgments passed by the Supreme Court on the issue of compassionate appointment, the following principles emerge:-

(a) Appointment on compassionate grounds is an exception craved out to the general rule that recruitment to public services is to be made in a transparent and accountable manner providing opportunity to all eligible persons to compete and participate in the selection process.

(b) The right of a dependent of an employee who died in harness for compassionate appointment is based on the scheme, executive instructions, rules etc. framed by the employer and there is no right to claim compassionate appointment on any other ground apart from the above scheme conferred by the employer.

(c) Appointment on compassionate ground is given only for meeting the immediate hardship which is faced by the family by reason of the death of the bread earner. When an appointment is made on compassionate ground it should be kept confined only to the purpose it seems to achieve, the idea being not to provide for endless compassion.

(d) Compassionate appointment has to be exercised only in warranting situations and circumstances existing in granting appointment and guiding factors should be financial condition of the family."

31. The paramount importance for granting equal opportunity to all aspirants under the constitutional scheme for government appointments and the exception created by the concept of appointments on compassionate grounds was reiterated by the Supreme Court in **N.C. Santhosh v. State of Karnataka and others**[5]**. N.C. Santhosh (supra)** while citing the cases in point reaffirmed that such appointments did not create any vested right and also held that adherence to the criteria for such appointments is a mandatory requirement in law:

"13. It is well settled that for all the government vacancies equal opportunity should be provided to all aspirants as is mandated under Articles 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said norms. In SAIL v. Madhusudan Das [SAIL v. Madhusudan Das, (2008) 15 SCC 560 : (2009) 2 SCC (L&S) 378] it was remarked accordingly that compassionate appointment is a concession and not a right and the criteria laid down in the Rules must be satisfied by all aspirants.

14. This Court in SBI v Raj Kumar [SBI v. Raj Kumar, (2010) 11 SCC 661 : (2011) 1 SCC (L&S) 150] while reiterating that no aspirant has a vested right to claim compassionate appointment, declared that the norms that are in force, when the application is actually considered, will be applicable. The employer's right to

modify the scheme depending on its policies was recognised in this judgment. Similarly, in MGB Gramin Bank v. Chakrawarti Singh [MGB Gramin Bank v. Chakrawarti Singh, (2014) 13 SCC 583 : (2015) 1 SCC (L&S) 442] this Court reiterated that compassionate appointment has to be considered in accordance with the prevalent scheme and no aspirant can claim that his case should be considered as per the scheme existing on the date of death of the government employee.

17. The above discussion suggest that the view taken in Canara Bank v. M. Mahesh Kumar [Canara Bank v. M. Mahesh Kumar, (2015) 7 SCC 412 : (2015) 2 SCC (L&S) 539] is to be reconciled with the contrary view of the coordinate Bench, in the two earlier judgments. Therefore, notwithstanding the strong reliance placed by the appellant's counsel on Canara Bank v.M. Mahesh Kumar [Canara Bank v. M. Mahesh Kumar, (2015) 7 SCC 412 : (2015) 2 SCC (L&S) 539] as also the opinion of the learned Single Judge of the Karnataka High Court in Uday Krishna Naik v. State of Karnataka [Uday Krishna Naik v. State of Karnataka, 1999 SCC OnLine Kar 209 : ILR 1999 Kar 2648] , it can not be said that the appellant's claim should be considered under the unamended provisions of the Rules prevailing on the date of death of the government employee.

18. In the most recent judgment in State of H.P. v. Shashi Kumar [State of H.P. v. Shashi Kumar, (2019) 3 SCC 653 : (2019) 1 SCC (L&S) 542] the earlier decisions governing the principles of compassionate appointment were discussed and analysed. Speaking for the Bench, Dr D.Y. Chandrachud, J. reiterated that appointment to any public post in the service of the State has to be made on the basis of principles in accord with Articles 14 and 16 of the Constitution and compassionate appointment is an exception to the general rule. The dependants of a deceased government employee are made eligible by virtue of the policy on compassionate appointment and they must fulfil the norms laid down by the State's policy."

32. Absence of a vested right, mandate of the constitutional scheme of recruitment and the need to strictly adhere to the rules governing the grant of appointment on compassionate grounds was also emphasized by the Supreme Court in the **Director of Treasuries in Karnataka and another v. Somyashree**[6] :

"7. While considering the submissions made on behalf of the rival parties a recent decision of this Court in the case of N.C. Santhosh (Supra) on the appointment on compassionate ground is required to be referred to. After considering catena of decisions of this Court on appointment on compassionate grounds it is observed and held that appointment to any public post in the service of the State has to be made on the 10 basis of principles in accordance with Articles 14 and 16 of the Constitution of India and the compassionate appointment is an exception to the general rule. It is further observed that the dependent of the deceased Government employee are made eligible by virtue of the policy on compassionate appointment and they must fulfill the norms laid down by the State's policy. It is further observed and held that the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim of compassionate appointment. A dependent of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand

consideration of his/her application. It is further observed he/she is, however, entitled to seek consideration in accordance with the norms as applicable on the day of death of the Government employee. The law laid down by this Court in the aforesaid decision on grant of appointment on compassionate ground can be summarized as under:

(i) that the compassionate appointment is an exception to the general rule;

(ii) that no aspirant has a right to compassionate appointment;

(iii) the appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;

(iv) appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy and/or satisfaction of the eligibility criteria as per the policy;

(v) the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment."

33. The purpose of appointments on compassionate grounds and the need to avoid conferring benefits merely on sympathetic considerations alone were reiterated by the Supreme Court in **State of Haryana and another v. Ankur Gupta[7]. In Ankur Gupta (supra)** it was clearly observed that the appointments on compassionate grounds are not source of recruitment and do not unduly interfere in the rights of other persons who are eligible for appointment against that post:

"6. As was observed in State of Haryana and Ors. v. Rani Devi & Anr. (JT 1996 (6) SCC 646), it need not be pointed out that the claim of person concerned for appointment on compassionate ground is based on the premises that he was dependant on the deceased employee. Strictly this claim cannot be upheld on the touchstone of Articles 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right. Die-in harness scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. In Rani Devi's case (supra) it was held that scheme regarding appointment on compassionate ground if extended to all types of casual or ad hoc employees including those who worked as apprentices cannot be justified on constitutional grounds. In Life Insurance Corporation of India v. Asha Ramchhandra Ambekar (Mrs.) and Anr. (1994 (2) SCC 718) it was pointed out that High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplates such appointments. It was noted in Umesh Kumar Nagpal v. State of Haryana and Ors. (1994 (4) SCC 138) that as a rule in public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source

of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.

7. In Director of Education (Secondary) and Anr. v. Pushpendra Kumar and Ors. (1998 (5) SCC 192) it was observed that in matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependant of the deceased employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision."

34. More recently the Supreme Court in **Tinku v. State of Haryana and others**[8] stated the position of law settled over the years thus:

"12. As regards the compassionate appointment being sought to be claimed as a vested right for appointment, suffice it to say that the said right is not a condition of service of an employee who dies in harness, which must be given to the dependent without any kind of scrutiny or undertaking a process of selection. It is an appointment which is given on proper and strict scrutiny of the various parameters as laid down with an intention to help a family out of a sudden pecuniary financial destitution to help it get out of the emerging urgent situation where the sole bread earner has expired, leaving them helpless and maybe penniless. Compassionate appointment is, therefore, provided to bail out a family of the deceased employee facing extreme financial difficulty and but for the employment, the family will not be able to meet the crisis. This shall in any case be subject to the claimant fulfilling the requirements as laid down in the policy, instructions, or rules for such a compassionate appointment.

14. The very basis and the rationale, wherever such policies are framed for compassionate appointment is with an object to grant relief to a family in distress and facing destitution, and thus an exception is culled out to the general rule in favour of the family of the deceased employee. This is resorted to by taking into consideration the services rendered by such employee and the consequent legitimate legal expectations apart from the sudden change in status and affairs of the family because of the unexpected turn of events, i.e. the loss of the sole bread earner.

15. The purpose, therefore, of such policies is to give immediate succour

to the family. When seen in this conspectus, three years as has been laid down from the date of death of the employee for putting forth a claim by a dependant, which, includes attainment of majority as per the 1999 policy instructions issued by the Government of Haryana cannot be said to be in any case unjustified or illogical, especially when compassionate appointment is not a vested right."

35. Lastly in **Canara Bank v. Ajithkumar G.K.**[9] the Supreme Court elaborated the need for assessing the suitability for appointment and emphasized the requirement of determining financial hardship and reiterated the caution of not merely giving one post for another post while making compassionate appointments:

11. "(q) An appointment on compassionate ground made many years after the death/incapacitation of the employee or without due consideration of the financial resources available to the dependent of the deceased/incapacitated employee would be directly in conflict with Articles 14 and 16 of the Constitution [see National Institute of Technology v. Niraj Kumar Singh].

(s) The retiral benefits received by the heirs of the deceased employee are to be taken into consideration to determine if the family of the deceased is left in penury. The court cannot dilute the criterion of penury to one of "not very well-to-do". [see General Manager (D and PB) v. Kunti Tiwary].

(t) Financial condition of the family of the deceased employee, allegedly in distress or penury, has to be evaluated or else the object of the scheme would stand defeated inasmuch as in such an eventuality, any and every dependent of an employee dying-in- harness would claim employment as if public employment is heritable [see Union of India v. Shashank Goswami, Union Bank of India v. M.T. Latheesh, National Hydroelectric Power Corporation v. Nank Chand and Punjab National Bank v. Ashwini Kumar Taneja].

(u) The terminal benefits, investments, monthly family income including the family pension and income of family from other sources, viz. agricultural land were rightly taken into consideration by the authority to decide whether the family is living in penury. [see Somvir Singh (supra)].

(v) The benefits received by widow of deceased employee under Family Benefit Scheme assuring monthly payment cannot stand in her way for compassionate appointment. Family Benefit Scheme cannot be equated with benefits of compassionate appointment. [see Balbir Kaur v. SAIL]

(w) The fixation of an income slab is, in fact, a measure which dilutes the element of arbitrariness. While, undoubtedly, the facts of each individual case have to be borne in mind in taking a decision, the fixation of an income slab subserves the purpose of bringing objectivity and uniformity in the process of decision making. [see State of H.P. v. Shashi Kumar].

(x) Courts cannot confer benediction impelled by sympathetic consideration [see Life Insurance Corporation of India v. Asha Ramchandra Ambedkar].

(y) Courts cannot allow compassionate appointment dehors the statutory regulations/instructions. Hardship of the candidate does not entitle him to appointment dehors such regulations/instructions [see SBI v. Jaspal Kaur].

(z) An employer cannot be compelled to make an appointment on compassionate ground contrary to its policy [see Kendriya Vidyalaya Sangathan v. Dharmendra Sharma]."

"33. The next sub-issue, which cannot be overlooked, is this. The scheme of 1993 envisages assessment of the suitability of the claimant for compassionate appointment. As has been laid down in several decisions of this Court, noted above, the clauses forming part of the policy/scheme 30 for compassionate appointment have to be followed to the letter. Without the respondent having been subjected to a suitability test, the Division Bench plainly fell in error in directing the respondent's appointment in the category of clerk relying on the decision in Canara Bank (supra). It is of some significance that even Canara Bank (supra) did not order appointment but required reconsideration of the claim.

44. As pertinently held in B. Kishore (supra), indigence of the dependants of the deceased employee is the fundamental condition to be satisfied under any scheme for appointment on compassionate ground and that if such indigence is not proved, grant of relief in furtherance of protective discrimination would result in a sort of reservation for the dependents of the employee dying-in-harness, thereby directly conflicting with the ideal of equality guaranteed under Article 14 and 16 of the Constitution. Also, judicial decisions abound that in deciding a claim for appointment on compassionate grounds, the financial situation of the deceased employee's family must be assessed. In a situation otherwise, the purpose of the scheme may be undermined; without this evaluation, any dependent of an employee who dies while in service might claim a right to employment as if it is heritable.

45. The ratio decidendi of all these decisions have to be read in harmony to achieve the noble goal of giving succour to the dependants of the employee dying-in-harness, who are genuinely in need, and not with the aim of giving them a post for another post. One has to remember in this connection the caution sounded in Umesh Kumar Nagpal (supra) that as against the destitute family of the deceased there are millions of other families which are equally, if not more, destitute."

VI (C) Delay in compassionate appointments

36. There is another facet to the controversy. The legislative intent and judicial rationale for appointment on compassionate grounds is subserved only when an application for appointment on compassionate grounds is made in quick time and in near proximity to the death of the employee. No delay can be brooked in the applications for grant of appointment on compassionate grounds. Constitutional law holdings regarding compassionate ground appointment mandate that dependents claimants have to be vigilant about their rights diligently prosecute their application for appointment. Delay in filing of the application or apathy in prosecution of the case for grant of compassionate appointment has not been countenanced by the Courts. In fact delay in filing of the application raises a presumption that financial crisis being faced by the family has ceased to exist. The discussion has the benefit of cases in point.

37. This Court in **Ashish Yadav Vs. Managing Director, UP State Road**

Transport Corporation and others rendered in Writ A No. 17483 of 2024) states as under:

"25. A Division Bench of this Court after citing authorities in point also concluded that financial penury ceases to exist in case an application was made long years after the death of the employee in the case of Smt. Sonal Laviniya and another vs. Union of India and another reported at 2003 (5) AWC 4070:

38. The purpose of providing such an employment has been to render the financial assistance to the family, which has lost the bread earner immediately after the death of the employee. If the application has been filed after expiry of 9½ years the element of immediate need stood evaporated and there was no occasion for the respondents to consider the case of the petitioner for such a relief. The observation made by the learned Tribunal are in consonance with the law laid down by the Hon'ble Apex Court and no exception can be taken out.

38. The impact of delay on the legality of compassionate appointments was examined by the Supreme Court in **Ajithkumar G.K. (supra)** by holding:

"11. (j). An application for compassionate appointment has to be made immediately upon death/incapacitation and in any case within a reasonable period thereof or else a presumption could be drawn that the family of the deceased/incapacitated employee is not in immediate need of financial assistance. Such appointment not being a vested right, the right to apply cannot be exercised at any time in future and it cannot be offered whatever the lapse of time and after the crisis is over.

27. Lapse of time could, however, be a major factor for denying compassionate appointment where the claim is lodged belatedly. A presumption is legitimately drawn in cases of claims lodged belatedly that the family of the deceased/incapacitated employee is not in immediate need of financial assistance. However, what would be a reasonable time would largely depend on the policy/scheme for compassionate appointment under consideration. If any time limit has been prescribed for making an application and the claimant applies within such period, lapse of time cannot be assigned as a ground for rejection."

VII(A). Impugned order / Termination / Cancellation of appointment in light of statutory provisions and case laws:

39. With these established facts and clear statutory mandate and settled position of law the correctness of the impugned orders and the legality of the petitioner's appointment will be examined.

40. The existence of financial destitution emanating from the death of an employee is the sine qua non for appointment on compassionate grounds. In absence of financial penury caused by the death of the earning member in harness the dependents of the deceased employee cannot claim compassionate appointment.

41. It is noteworthy that the petitioner has not disputed the findings of the authorities below regarding the factum of his employment as DSL Cleaner in the Railways for five years after the death of his father. The petitioner had a good and regular source of income for all those years, and clearly he did not suffer financial

destitution due to the death of his father in harness. Financial crisis faced by the petitioner thus resulted from his removal from Railway service, and was not caused by his father's death. There is no nexus between the death of the petitioner's father in harness in 1984, and the financial penury faced by him in 1989. The financial hardship which was claimed by the petitioner for the first time in 1989 was entirely of his own making. Immediate financial destitution of the dependent caused by the death of an employee which is the mandatory prerequisite for appointment on compassionate ground does not exist in this case. The violation of the sole and imperative precondition for compassionate appointment is a non curable illegality which goes to the root, and renders the petitioner's appointment void ab initio.

42. The holdings in **Ajithkumar G.K. (supra), Sonal Laviniya (supra)** and **Ashish Yadav (supra)** are applicable to the facts of this case and shall govern its fate. The application for appointment on compassionate grounds was obviously made by the petitioner nearly five years after the death of his father. The delay on part of the petitioner too is fatal to the legality of his appointment.

43. There is no infirmity in the findings returned by authorities below regarding the fraud and invalidity in the petitioner's appointment. Moreover, granting relief of reinstatement to the petitioner would be in the teeth of the holdings of the Supreme Court discussed in the preceding part of the narrative, and would tantamount to legitimizing an appointment which was inherently illegal and void ab initio.

VII(B). Abuse of Compassionate Appointments:

44. The petitioner's appointment was made in complete violation of the law governing compassionate appointment and entirely subverted the beneficent purpose of the same. The appointment of petitioner was an abuse of the power of compassionate appointments and was vitiated since inception. The appointment of the petitioner was possible because of lax standards of scrutiny while making such appointments, if not an outright act of collusion of the competent authorities in the fraud. The petitioner cannot get any benefit of poor oversight of officials or their connivance in his illegal appointment.

45. The law has looked askance against creation of such contrivances to make back door entries in public employment for the benefit of serving employees and creating a monopoly in their favour by treating government jobs as a largesse. Constitutional Courts have noticed the abuse of compassionate appointments and the law has set its face against such fraud for appointment on compassionate grounds. Authorities in point will fortify the narrative.

46. A Full Bench judgement of the Andhra Pradesh High Court in **Government of Andhra Pradesh, General Administration, Department, Hyderabad, and others v. D. Gopaiah and others**[10] had drawn the red lines after noticing the abuse of the process of making compassionate grounds appointments in an indiscriminate manner. Familiar and ingenuous devices like Government Orders were created to grant government appointments as largesse, and to avoid appointments by the constitutional mode of recruitment to government posts. The overreach of the law laid down by the

Supreme Court was looked askance in **D. Gopaiah (supra)**.

47. The observations of Andhra Pradesh High Court in **D. Gopaiah (supra)** were also affirmed by the Supreme Court in **National Institute of Technology and others v. Niraj Kumar Singh**[11] by holding as under:

"19. In Govt. of A.P. v. D. Gopaiah [(2001) 6 An LT 553 : (2002) 93 FLR 12 (AP) (FB)] , a Full Bench of the Andhra Pradesh High Court noticing the aforementioned judgment, opined : (An LT p. 555, para 8)

"8. By reason of Articles 14 and 16 of the Constitution of India, great hopes and aspirations were generated in the minds of the people of India that employment shall not be given on descent. Public employment is considered to be public wealth. The economy of the State has taken a tilt from agriculture to public employment and the growth rate of employment has increased to 34%. On a plain reading, Article 16 of the Constitution of India carries no exception."

It was further stated : (An LT p. 556, paras 11-14)

"11. The matter relating to grant of compassionate appointment only in limited situation took its root in public employment. The State and the Central Governments issued several circulars, took various policy decisions and also changed their policy decisions from time to time resulting in spurt in litigation. A close study of the circulars issued by the State as also the pattern of litigations generating therefrom leads us to take judicial notice about gross abuse of the schemes and inherent lack of safeguards.

12. Before further adverting to the aforementioned question, we may notice that the petitioners themselves stated that in the State of Andhra Pradesh, no appointment had been made as a ban had been in vogue since 1987. The appointments are being made only on contract basis by way of schemes, which stricto sensu violate the recruitment rules and Articles 14 and 16 of the Constitution of India. A lot of employment is generated through the populist scheme of regularisation of services. There are schemes for employment for displaced persons, schemes for taking over the services of the taken over projects, landless persons and so on and so forth. A person can obtain appointment in terms of aforementioned schemes or on contract basis, on political pressures, on demand of trade unions, as also on the pressures of the non-governmental organisations. The long and short of the matter is that unless there is somebody to push his case, an employment cannot ordinarily be obtained by a citizen in terms of Articles 14 and 16 of the Constitution of India. The majority of the population faces the paradox of articulated programmes for obtaining employment.

13. The schemes for grant of compassionate appointment on medical invalidation, as noticed hereinbefore, had been made wider and wider. The State has for one reason or the other compromised with the basic principles underlying grant of public employment and has deviated from the constitutional norms; sometimes it widened the scope and ambit of grant of appointment on compassionate ground to such an extent that it had to backtrack its steps. The State's policy decision in this regard had never been on firm root. They took different steps at different times depending on the whims and caprice of the officer concerned or acted on pressure of the employees' unions.

14. The law interpreting Articles 14 and 16 of the Constitution of India in this regard has also undergone ups and downs."

48. The Supreme Court in **Bihar Rajya Dafadar Chaukidar Panchayat (Magadh Division) v. State of Bihar and others**[12] relied on a Division Bench Judgement of the Punjab and Haryana High Court wherein the learned Division Bench saw through the devices evolved by the Railways "to make backdoor entries in public employment" which brazenly "militated against equality in public employment" and held thus:

"22. The Union Ministry of Railways introduced a scheme called the "Liberalised Active Retirement Scheme for Guaranteed Employment for Safety Staff"20 . It allowed drivers and gangmen aged between 50 and 57 years to voluntarily retire after completing 33 years of service (later reduced to 20 years). After retirement, a "suitable ward" of the retired employee would be considered for employment.

23. The Division Bench in Kala Singh (supra) was seized of a writ petition concerning an employment dispute related to the LARSGESS but where the LARSGESS was not under challenge. Speaking for the Division Bench, Hon'ble Surya Kant, J. (as His Lordship then was) observed that the scheme, prima facie, does not stand to the test of Articles 14 and 16 of the Constitution and is a device evolved by the Railways to make backdoor entries in public employment and brazenly militates against equality in public employment. While dismissing the writ petition and directing the Railways to stop making any appointment, the Division Bench also directed that the Railways should revisit the same keeping in view the principles of equal opportunity and elimination of monopoly in holding public employment. An application seeking recall of the order of the Division Bench was dismissed. The order of the Division Bench having been challenged before this Court, a coordinate Bench declined to interfere. In view of the observations made by the High Court, the Railway Board terminated the scheme."

49. The petitioner not only fails to satisfy the mandatory criteria for appointment on compassionate grounds, but in the facts of this case his appointment attracts an immediate and incurable disqualification. The infirmity in the appointment of the petitioner goes to the root of the matter, and strikes at the very legitimacy of the concept of compassionate appointments. The instant case actually shows how compassionate appointments are treated as a vested right. The manner of the petitioner's appointment also reflects a growing of entitlement which employees is impervious to any transparency and shuns all accountability.

50. In these facts mere continuance for long years in service does not entitle the petitioner to any equitable relief from this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. The first and the third questions framed earlier are answered accordingly in favour of the respondents and against the petitioner.

VIII. Procedure adopted while passing impugned orders: Natural Justice:

51. The second question as to whether the respondents have adopted the procedure known to law while passing the impugned orders will now be determined.

52. Before passing the impugned order of dismissal the petitioner was duly put to notice on charges of illegality in his appointment. The charges against the petitioner were defined by clarity and supported with material particulars. The petitioner was given several opportunities to tender his defence before the authorities below. The petitioner tendered his reply to the aforesaid charges on more than one occasion. However as seen earlier the petitioner never refuted the charges on merits and the material facts before the authorities below.

53. The relevant documents and adverse materials which were proposed to be relied upon by the authorities were also supplied to the petitioner. In particular the communication sent by the Indian Railways confirming the appointment of the petitioner as DSL Cleaner, and his subsequent removal from service was duly served upon him. Further only the documents supplied to the petitioner were relied upon by the authorities below while holding that the petitioner had obtained his appointment by suppression of relevant facts and the same was illegal.

54. The documents which were demanded by the petitioner were neither relied upon nor found relevant by the respondents authorities while passing the impugned order.

55. The impugned orders reflect due application of mind to the facts and evidences in the record. The impugned orders are supported by reasons and are consistent with law. No other view can be taken in the facts and circumstances of the case.

56. Principles of natural justice were duly complied with in the course of proceedings before the authorities below prior to passing of the impugned orders. No prejudice has been caused to the petitioner by the aforesaid procedure adopted by the authorities. Demand of documents which were neither germane to the controversy nor were relied upon by the authorities against the petitioner cannot be said to be violation of principles of natural justice.

57. The question now arises as to whether a regular departmental enquiry ought to have been conducted to bring home charge of invalid appointment in the facts of this case. The applicability of the UP Government Servant Discipline and Appeal Rules, 1999 for the purposes of holding a regular departmental enquiry in similar facts fell for consideration before a learned Division Bench of this Court in **District Basic Education Officer and another vs. Punita Singh and others reported at Special Appeal Defective No. 506 of 2024.**

58. In the case of **Punita Singh (supra),** the services of the petitioner were terminated on the footing that her educational certificates were forged and fabricated. The question arose whether, the issuance of show cause notice and compliance of broad principles of natural justice were sufficient to meet the ends of justice or it was imperative to hold a regular departmental enquiry. The learned Bench considered the applicability of Rules 1999, and negatived the demand for a regular departmental enquiry by enunciating the following proposition of law:

"16. From the above determination, it is apparent that the University has categorically indicated that the documents relied on by the respondent

for seeking employment were totally forged and fabricated. Neither before the learned Single Judge nor before this Court any attempt has been made to negate the finding recorded about the eligibility/qualification documents being forged and fabricated.

17. The learned Single Judge allowed the writ petition only on the ground that termination of employment amounts to imposing major penalty and the same could not have been imposed without holding inquiry under Rules of 1973/Rules of 1999.

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. "

59. The case at hand is squarely covered by the law laid down in **Punita (supra)**. The charges relating to the fraud and infirmity in the initial appointment have led in effect to a cancellation of the petitioner's appointment. This is distinguishable from misconduct committed in discharge of official duties.

60. The procedure adopted while finding against the petitioner on the said charge cannot be faulted with and is consistent with the law laid down in **Punita (supra)**. Thus the second question framed for consideration is accordingly answered by finding for the respondents and against the petitioner.

IX. Conclusions and Directions:

61. The charges relating to the financial irregularities shall now be dealt with. A regular departmental enquiry proceeding to bring home the aforesaid charge wherein the relevant departmental witnesses were to be produced and cross examined was the requirement of law. Various documents which established the said charges too had to be proved before the enquiry officer. The said procedure has not been followed and the second charge has not been proved as per the procedure prescribed by law. The findings of the authorities below in this regard cannot be sustained.

62. The findings of the authorities in the impugned orders in regard to the second charges are perverse and are not liable to be sustained. Ordinarily the matter would have been remanded to the authorities including into the charge as per the procedure provided in the relevant service rules. The two sets of charges relating to invalidity of appointment and financial regularities respectively are severable. Since the appointment of the petitioner has been found to be illegal beyond cure and vitiated beyond recall, no purpose will be served by remanding the matter. It is time for litigative repose.

63. The respondent No.1-Secretary, Department of Basic Education, Government of Uttar Pradesh, Lucknow shall cause an enquiry to be conducted into the following issues as per law:

(a) role of officials responsible for the petitioner's appointment.

(b) the reasons why the matter went undetected for decades.

(c) the responsible officials who turned a blind eye or delayed the proceedings even after the issue came in full knowledge of the authorities. Appropriate action as per law shall be taken thereafter.

64. In light of such enquiry proper institutional measures including detailed scrutiny of applications and due diligence before making compassionate ground appointments are liable to be put in place to prevent recurrence of such incidents in future.

65. In wake of the preceding discussion, the writ petition is liable to be dismissed and is dismissed.

(2025) 7 ILRA 825
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.07.2025

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ-A No. 46032 of 2017
Alongwith other connected cases

Hriday Narain Pandey & Ors. ...Petitioners
Versus
State of U.P. & Anr. ...Opp. Parties

Counsel for the Petitioners:
Avnish Kumar Srivastava

Counsel for the Opp. Parties:
C.S.C.

Issue for Consideration

Matter pertains to the claim of retrenched employees of U.P. Cement Corporation for absorption in any alternative government department in terms of the Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service Rules, 1991 (Rules of 1991), and for the extension of the benefit of absorption granted to other retrenched employees of the same Corporation by the judgment of the Supreme Court in Sunil Kumar Verma vs. State of U.P. and others, (2016) 1 SCC 397.

Headnotes

Service Law – Absorption – Retrenched Employees – U.P. Cement Corporation - Petitioners, retrenched in 1999 - sought absorption under 1991 Rules - Claim hit by delay and laches - Judgment in rem or in persona - Delay – Laches – Fence-sitters - Rescission Act, 2009 – Retrospective effect - Petitioners therein already absorbed and claiming pension - Facts distinguishable - Not applicable.

Held: Judgment in Sunil Kumar Verma (2016) 1 SCC 397 was in persona and applicable only to appellants therein – Petitioners were neither parties before learned Single Judge, Division Bench nor Supreme Court, despite litigation continuing from 2003 to 2016 - Petitioners approached this Court after 19 years without any steps during said period - They were fence-sitters - Litigation having remained pending for 13 years for similarly placed employees, petitioners cannot now claim same benefit - Division Bench decision in State of U.P. v. Shambhu Nath Srivastava, squarely applicable - Similar claim of retrenched employees of U.P. State Cement Corporation rejected after considering Sunil Kumar Verma and Act of 2009 - No reason to take a different view - 'Act of 2009' expressly bars claim of absorption for those not absorbed till 8.4.2003 - Petitioners not protected thereunder - Right under 1991 Rules deemed terminated - Facts of State of U.P. v. Shiv Jag Sharma & Ors., distinguishable, as petitioners therein were already absorbed—Not applicable - All writ petitions dismissed. (Para 4,15,17,18 ,19,20,21,22,24) (E-7)

Case Law Cited

Sunil Kumar Verma vs. State of U.P. and others, **(2016) 1 SCC 397;** *Official Liquidator v. Dayanand*, **(2008) 10 SCC 1: (2009) 1 SCC (L&S) 943;***State of U.P. and others vs. Shiv Jag Sharma and others*, **2023: AHC:155290-DB;** *State of U.P. vs. Shambhu Nath Srivastava and others*, **2019: AHC:98463-DB;** *State of U.P. and others vs. Sinchai Mazdoor Sangh and others*, **2025: AHC:7569-DB;** *Ajit Raizada and others vs. State of U.P.*, **2011 (6) ADJ 511;** *Prabhu Nath Prasad v. State of U.P.*, **(2007) 2 All LJ 280.**

List of Acts

U.P. Absorption of Retrenched Employees of Government or Public Corporations in Government Service Rules, 1991 ("Rules of 1991")

U.P. Absorption of Retrenched Employees of Government or Public Corporations in Government Service (Rescission of Rules) Rules, 2003 ("Rules of 2003")

Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service (Rescission of Rules) Act, 2009 ("Act of 2009")

List of Keywords

Retrenched employees - absorption - rescission - fence-sitter - judicial discipline - pension - in rem - in persona - Rescission Rules - alternative government department.

Case Arising From

Writ-A No. 46032 of 2017 Along with other connected cases, filed by retrenched employees of the U.P. Cement Corporation (wound up in 1999), seeking a direction for their absorption in alternative government departments under the Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service Rules, 1991 (Rules of 1991) and also sought the extension of absorption benefits granted by the Supreme Court in *Sunil Kumar Verma vs. State of U.P. and others, (2016) 1 SCC 397*.

Appearances for Parties

Advs. for the Petitioners:

Avnish Kumar Srivastava; Radha Kant Ojha, Sr. Adv.; Shivendu Ojha; Madan Lal Srivastava; Yogesh Kumar Saxena; R.K. Singh Gaharwar; Vijay Kumar; Kanhaiya Lal; Abhay Kumar Srivastava; Shatrughan Sonwal; Pankaj Srivastava; Animesh Srivastava; Krishna Pratap Singh Kaushik; Rahul Kumar Tiwari.

Advs. for the Respondents:

C.S.C.; Abhishek Srivastava, Chief Standing Counsel; P.K. Shahi, Addl. Chief Standing Counsel; Ashish Agarwal (for Official Liquidator).

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. Petitioners in present bunch of writ petitions are retrenched employees of U.P. Cement Corporation which was wounded way back in the year 1999 and have approached this Court that their claim for absorption in any alternative government department be considered in terms of Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service Rules, 1991 (for short "Rules of 1991") as well as that benefit of absorption granted to other retrenched employees of same Corporation by a judgment of Supreme Court in **Sunil Kumar Verma vs. State of U.P. and others, (2016) 1 SCC 397** be extended to them also.

2. S/Sri Radha Kant Ojha, learned Senior Advocate assisted by Sri Shivendu Ojha, Advocate as well as Sri Madan Lal Srivastava, Sri Yogesh Kumar Saxena, Sri R.K. Singh Gaharwar, Sri Vijay Kumar, Sri Kanhaiya Lal, Sri Abhay Kumar Srivastava, Sri Shatrughan Sonwal, Sri Pankaj Srivastava, Sri Animesh Srivastava, Sri Krishna Pratap Singh Kaushik and Sri Rahul Kumar Tiwari, Advocates for petitioners have vehemently urged that petitioners were before this Court through their Association way back in the year 1998, when Corporation was under process of winding by way of filing a Civil Misc. Writ Petition No. 21199/1998, which was disposed of vide order dated 07.07.1998 that claim of petitioners therein be considered for absorption in accordance with law. For reference, relevant part of said order is quoted below :-

"Heard learned counsel for petitioners. This petition is disposed of with liberty to the petitioners to make a representation to the authority concerned regarding his grievance and the same will be decided within two months of the production of certificate of copy of this order in accordance with law."

3. Learned Senior Advocate for petitioners has further submitted that despite various communications and representations, submitted in pursuance of above referred order, their respective claim for absorption were not considered.

4. Learned Senior Advocate has not disputed that they were not party in writ

petitions which ultimately reached up to Supreme Court in **Sunil Kumar Verma (supra)** i.e. neither they were party before learned Single Judge nor before Division Bench of this Court nor before Supreme Court, despite said litigation remained pending before above Courts from 2003 to 2016 (i.e. for 13 years), when finally the Supreme Court has passed above referred judgment of **Sunil Kumar Verma (supra).**

5. Learned Senior Advocate has further submitted that in Sunil Kumar Verma (supra), relevant provisions of 'Rules of 1991', subsequent Rule viz. UP Absorption of Retrenched Employees of Government or Public Corporations in Government Service (Rescission of Rules) Rules, 2003 (for short "Rules of 2003") and also Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service (Rescission of Rules) Act, 2009 (for short "Act of 2009") were considered and taken note of and only thereafter has passed direction for absorption of the appellants before Supreme Court. However, they were not able to much dispute that Supreme Court in **Sunil Kumar Verma (supra)** has passed directions only qua to appellants therein. Learned Senior Advocate for petitioner was failed to show any part of said judgment that there was a direction that effect of said judgment would be applicable to other retrenched employees also, whether or not they were before the Court. For reference, directions made by the Supreme Court in **Sunil Kumar Verma (supra)** are mentioned below :-

"22. We have highlighted this aspect as we intend to ingeminate that this kind of unnecessary enthusiastic quest should be avoided. It is because it is contrary to the principles of judicial discipline. In this regard reference to Official Liquidator v. Dayanand [(2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943] would be apt. In the said ruling, it has been observed thus : (SCC p. 52, para 78)

"78. There have been several instances of different Benches of the High Courts not following the judgments/orders of coordinate and even larger Benches. In some cases, the High Courts have gone to the extent of ignoring the law laid down by this Court without any tangible reason. Likewise, there have been instances in which smaller Benches of this Court have either ignored or bypassed the ratio of the judgments of the larger Benches including the Constitution Benches. These cases are illustrative of non-adherence to the rule of judicial discipline which is sine qua non for sustaining the system."

23. In view of the aforesaid analysis, we find no reason that the appellants herein should not reap the benefits of absorption and, accordingly, it is directed that they shall be absorbed by the State Government as per their seniority and be given the benefit of increments, within eight weeks hence. Needless to say, they will be entitled to their seniority as per the prevalent rules. If anyone has been retired from service, he shall get the retiral benefits inclusive of pension.

24. At this juncture, the question arises as to what amount should be paid towards back wages. In this context, our attention has been invited to the order passed by this Court in contempt proceeding. However, after some debate, the learned counsel for the appellants left it to the discretion of this Court. Ms Reena Singh, learned Additional Advocate General for the State vehemently opposed with regard to grant of any back wages. Having heard the learned counsel for the parties on this score and regard being had

to the facts and circumstances of the case, we think that the cause of justice would be best subserved if each of the appellant is paid 40% of the back wages, and it is so directed. It shall be computed as per our directions issued here-in-before within a period of twelve weeks hence and be paid to the appellants."

6. Learned Senior Advocate for petitioners have also vehemently placed reliance upon a judgment passed by Division Bench of this Court in bunch of Special Appeals leading being **State of U.P. and others vs. Shiv Jag Sharma and others, 2023:AHC:155290-DB** that petitioners therein were retrenched employees of Churk and Dala Cement Factories established by Government of U.P. who were benefited with the direction that they be entitled for pension and ratio of law as held therein is applicable in present case also.

7. Learned Senior Advocate for petitioners have also referred following paragraphs of **Sunil Kumar Verma (supra)** that provisions of 'Act of 2009' will not act as an adverse factor to negate the claim of petitioners for absorption.

"13. The Division Bench expressed the view that the decision in Subhash Prasad [Special Appeal Defective No. 233 of 2007, order dated 15-3-2007 (All)] was squarely applicable and governed the field. It also referred to the decision in Prabhu Nath Prasad v. State of U.P. [2007 SCC OnLine All 1221 : (2007) 2 All LJ 280] , wherein the learned Single Judge had opined that merely because some incumbents had been offered appointment under the cover of the orders passed by the Court, it will not improve the case of the petitioners therein as two wrongs would not make a thing right. Endorsing the said view, the Division Bench proceeded to state that : (Sunil Kumar Verma case [State of U.P. v. Sunil Kumar Verma, 2010 SCC OnLine All 2581 : (2010) 5 All LJ 582] , SCC OnLine All paras 94-96)

"94. … We having found that the right of consideration for absorption under the 1991 Rules having come to an end after the Rescission Rules, 2003, no mandamus can be issued for enforcing the said right. However, it is relevant to note that under the Rescission Rules, 2003 as well as under the 2009 Act certain benefits have been provided to the retrenched employees even after 8-4-2003. The retrenched employees i.e. writ petitioners are fully entitled to take the benefit of the aforesaid Rule 3(ii) of the Rescission Rules, 2003 and Section 3(2) of the 2009 Act.

95. The appeals filed by the retrenched employees challenging the order of the learned Single Judge in Prabhu Nath Prasad case [2007 SCC OnLine All 1221 : (2007) 2 All LJ 280] deserves to be and are hereby dismissed in view of the foregoing discussions. Thus, all the appeals of Group I, Group III and Group IV are partly allowed setting aside the directions issued by the learned Single Judge for absorbing the writ petitioners.

96. However, it is directed that retrenched employees of U.P. Cement Corporation, Bhadohi Woollen Mills and U.P. State Sugar Corporation shall be entitled for the benefits as contemplated under Rule 3(ii) of the Rescission Rules, 2003 and saved under Section 3(2) of the 2009 Act on Group C and Group D posts.""

8. Per contra, S/Sri Abhishek Srivastava, learned Chief Standing Counsel assisted by Sri P.K. Shahi, Additional Chief Standing Counsel for State-Respondents and Sri Ashish Agarwal, Advocate for

Official Liquidator have vehemently placed reliance on provisions of 'Act of 2009' and for reference, relevant part of Act of 2009 are mentioned hereinafter :-

"3. Rescission and saving

(1) The Absorption Rules which was rescinded with effect from April 8, 2003 by the Rescission Rules shall be rescinded and be deemed to have been rescinded on May 9, 1991 and consequent upon such rescission,–

(a) the retrenched employees except those who were absorbed during the period from May 9, 1991 to April 8, 2003 shall have no claim with regard to their absorption rules or under any Government orders issued in regard thereto and their right regarding absorption accrued under the absorption Rules shall be deemed terminated.

(b) the orders of the Government issued from time to time prescribing the norms of absorption for retrenched employees of a particular Government Department or Public Corporation in Government Service and granting of consequential benefits including pay protection shall stand revoked ab-initio.

(2) Notwithstanding such rescission,–

(a) the benefit of absorption provided to the retrenched employees absorbed before April 8, 2003 under the provisions of the Absorption Rules, shall not be withdrawn;

(b) the benefit of pay protection granted to the retrenched employees absorbed prior to April 8, 2003 shall also be maintained.

(c) a retrenched employee covered by the Absorption Rules, but who has not been absorbed till April 8, 2003 shall be entitled to get relaxation in upper age limit for direct recruitment to such Group 'C' and Group 'D' posts which are outside the purview of the Uttar Pradesh Public Service Commission to the extent he has rendered his continuous services in substantive capacity in the concerned Government Department or the Public Corporation in completed years.

4. Rescinded of Rules :-

The Rescission Rules, be rescinded and be deemed to have been rescinded on April 8, 2003."

9. Learned advocates for respondents have submitted that in view of above provisions of 'Act of 2009', claim of petitioners, if any, stands negated as well as that provisions of 'Act of 2009' are not under challenge at the behest of petitioners in present bunch of writ petitions.

10. Learned Advocates for respondents have also placed reliance on two judgments passed by Division Bench of this Court in **State of U.P. vs. Shambhu Nath Srivastava and others, 2019:AHC:98463-DB and State of U.P. and others vs. Sinchai Mazdoor Sangh and others, 2025:AHC:7569-DB.**

11. Learned Advocates for respondents have further submitted that **Shambhu Nath Srivastava (supra)** is in regard retrenched employees of U.P. State Cement Corporation and it is squarely applicable in present bunch of cases against the petitioners since similar claim was rejected after taking note of **Sunil Kumar Verma (supra)** and effect of Act of 2009 and they have referred following relevant paragraphs of said judgment which are quoted below :-

"18. By Section 4, Rules 2003 have been rescinded with effect from 8th April, 2003. Therefore, Recession Act,

2009 in fact has made entire slate clear which was initiated by Absorption Rules, 1991 and ended by Rules, 2003. Still litigation continued, hence State Legislature intervened and both the Rules, from the date of their enforcement, have been rescinded. In respect of Absorption Rules, 1991, there is a deeming clause, rescinding the same with effect from 9th May, 1991 but subject to some protection in Section 3.

19. Section 3(1)(a) of Recession Act, 2009 clearly declares that except those retrenched employees who were absorbed during 9th May,1991 and 8th April, 2003, all unabsorbed retrenched employees shall have no claim with regard to their absorption under Absorption Rules, 1991 or under any Government Order issued in that regard and their right relating to absorption accrued under absorption Rules shall be deemed terminated. Thus no protection has been made to a person not already absorbed till 8.4.2003. Section 3(1)(a) of Recession Act, 2009 clearly bars any right of absorption to any retrenched employee governed by Rules, 1991, if not already absorbed and now no such right survive.

20. There is a little protection provided under Section 3(2)(c) to retrenched employees who have not been absorbed with regard to relaxations in upper age limit for direct recruitment on Group "C' and "D' posts. Except protection with regard to relaxations in upper age limit given vide Section 3(2)(c), petitioner or any other person like him, after promulgation of Recession Act, 2009, cannot be allowed any absorption as Absorption Rules, 1991 have been rescinded from the date of their promulgation, i.e. 9th May, 1991, leaving no such right open to the petitioner or any person like him.

21. With regard to relaxations, some are even otherwise provided under different Service Rules framed under proviso to Article 309 of Constitution, applicable to different departments and a detailed discussion we find in a Single Judge judgement rendered in Ajit Raizada and others Versus State of U.P. and others, 2011 (6) ADJ 511.

22. We are also opinion of a decision of Apex Court in Sunil Kumar Verma and others Versus State of U.P. and others in Civil Appeal Nos. 9165 to 9172 of 2010, decided on 09.09.2016 but we find that therein incumbents were already appointed, hence and Court had no occasion to apply effect and consequences under Recession Act, 2009. Therefore, in our view, aforesaid judgement has no application in this appeal.

23. Be that as it may, we have already discussed Absorption Rules, 1991 in the light of present scenario, where State Legislature has rescinded aforesaid Rules vide Rescission Act, 2009 with deeming clause with effect from 9th May, 1991, i.e. the date on which aforesaid Rule."

12. Learned Advocates for respondents have further submitted that same proposition of law was followed in **Sinchai Mazdoor Sangh (supra).**

13. In rejoinder, learned Senior Advocate appearing for petitioners have submitted that in the judgment of **Shambhu Nath Srivastava (supra)**, the Division Bench, in a very short observation, has rejected the effect of judgment of Supreme Court in **Sunil Kumar Verma (supra)** and in case there are two contrary judgments of Division Benches on a same legal issue, this Bench may refer the matter to Larger Bench by making a request to Hon'ble The Chief Justice.

14. Heard learned counsel for parties and perused the records.

15. Court has already observed in preceding paragraphs that judgment of **Sunil Kumar Verma (supra)** is not in rem rather it is a judgment of in persona limited to appellants therein and for that Court also takes note of orders passed in earlier rounds of litigation wherein petitioners were also not party as well as that directions made in paragraphs 22, 23 and 24 of **Sunil Kumar Verma (supra) (already quoted in earlier paragraphs).**

16. Even after observing above, it cannot be denied that petitioners may have a benefit of law as crystalized by Supreme Court in Sunil Kumar Verma (supra) if they are similarly retrenched employees and would able to satisfy that they were active towards their claim i.e. whether they were fence-sitter or not as well as effect of 'Act of 2009' and **Shambhu Nath Srivastava (supra)** wherein identical claim of similarly retrenched employees was rejected after taking note of **Sunil Kumar Verma (supra)** is also required to be taken note of.

17. It is admitted case of petitioners on basis of averments made in this writ petition as well as on basis of submissions that for claim of absorption, they were lastly approached this Court way back in the year 1998 i.e. after 19 years present bunch of writ petitions was filed. No substantial argument or submission or documents are placed along with these writ petitions that they have regularly approached before concerned respondents for absorption during said period of 19 years.

18. On basis of material available, it is not much disputed that litigation was pending before Single Bench, Division Bench of this Court as well as before Supreme Court for about more than 13 years involving similar issues but the petitioners have never taken any steps to become party either before Single Bench, Division Bench or Supreme Court. Therefore, Court is of considered view that petitioners are fence-sitter and awake from a long slumber of 19 years and approached this Court in the year 2017 only after issue was crystallized on basis of writ petitioners who were before Courts for 13 years and finally, the Supreme Court passed a judgment in Sunil Kumar Verma (supra).

19. The Court is also of the view that judgment passed by Division Bench in **Shambhu Nath Srivastava (supra)** is squarely against the case of petitioners whereby Division Bench has rejected the similar claim of retrenched employees of U.P. Cement Corporation as well as distinguished **Sunil Kumar Verma (supra)** also. There is no reason to take a different view.

20. So far as judgment of **Shiv Jag Sharma and others (supra)** is concerned, it was in regard to grant of pension to retired employees of U.P. Rajya Cement Nigam Ltd. at Churk and petitioners therein were already absorbed in State services, whereas petitioners herein were admittedly not absorbed, therefore, facts of **Shiv Jag Sharma and others (supra)** are distinguishable and it are not applicable to present case.

21. Court also takes note of Act of 2009 which is absolutely against the petitioners' claim as in terms of Section (3) of the Act, ***"Absorption Rules which was rescinded with effect from April 8, 2003 by the Rescission Rules shall be rescinded and be deemed to have been rescinded on May 9, 1991***" and petitioners were not

protected as well as now they could not take benefit of Rules of 1991.

22. Court also takes note of 'Rules of 2003' and 'Rules of 2009' as discussed in **Sunil Kumar Verma (supra)** wherein Supreme Court has upheld judgment given by Learned Single Judge that petitioners therein were before respondents before Rules of 2003 came into force, therefore, its benefit was granted whereas in present case, as referred above, petitioners were sleeping for a very long period, therefore, adverse effect of Act of 2009 would definitely fall upon them.

23. Considering overall circumstances, this Court does not find any ground to grant relief to petitioners.

24. Accordingly, all writ petitions are **dismissed**.

(2025) 7 ILRA 832
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 18.07.2025

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

Writ-B No. 1552 of 2020

Ajay Kumar Singhal ...Petitioner
Versus
D.D.C. & Ors. ...Opp. Parties

Counsel for the Petitioner:
Mr. Brajesh Kumar Shukla

Counsel for the Opp. Parties:
Mr. Tarun Gaur, S.C., Mr. Vijay Kumar Rai

Issue for Consideration

Matter pertains to whether the *Deputy Director of Consolidation* could legally disturb the petitioner's Chak, allotted on plot no. 258, in a highly time-barred proceeding initiated under SS. 9-A (2) and 21(1) of the *U.P. Consolidation of Holdings Act, 1953*, after delivery of possession and final notification under S. 52.

Headnotes

U.P. Consolidation of Holdings Act, 1953 (U.P. C.H. Act) – SS. 4, 9-A (2), 21(1), 52 - Consolidation proceedings - Chak allotment - Disturbance of Chak at a late stage on time-barred objection - Once proceedings under S. 9-A(2) attain finality, the same issue cannot be re-agitated under S. 21(1) - allotment of Chak proceeding cannot be initiated at any time during consolidation operation on the ground that plot in question is the original road-side plot of the tenure holder concerned, especially when no proper objection was filed within the limitation.

Held: Once the relief for declaring plot no.258 as Chak Out under S. 9-A (2) had been refused by the consolidation authorities and the said order maintained by the High Court in Writ-B No.42518 of 2015, the consolidation authorities had no jurisdiction to subsequently declare any area of the said plot as Chak Out in a Chak allotment proceeding - Entire procedure adopted under S. 21(1), without condonation of delay and after notification under Section 52, was illegal - Impugned orders dated 18.11.2020 (Deputy Director of Consolidation), 8.6.2015 (Settlement Officer of Consolidation), and 13.4.2015 and 25.3.2015 (Consolidation Officer) cannot be sustained in the eye of law and are accordingly set aside - Petition allowed - No order as to costs.**(Paras 10,11,12,13,14,15)** (E-7)

Case Law Cited

Writ-B No.42518 of 2015 (decided on 31.7.2015) (regarding refusal to declare plot no. 258 as Chak out under S.9-A (2) of the U.P. C.H. Act).

List of Acts

Uttar Pradesh Consolidation of Holdings Act, 1953

List of Keywords

Time-barred objection - Chak allotment - Chak out - declaration under Section 9-A (2) - finality of proceedings - Deputy Director of

Consolidation - Consolidation Officer - abuse of process of law - notification under Section 52 - road-side plot.

Case Arising From

Revision No. 161/201793131600004 decided by the Deputy Director of Consolidation, Bijnor, vide order dated 18.11.2020 under the *U.P. Consolidation of Holdings Act, 1953*.

Appearances for Parties

Advs. for the Petitioner:

Mr. Brajesh Kumar Shukla

Advs. for the Respondents:

Mr. Tarun Gaur, Standing Counsel
Mr. Vijay Kumar Rai

(Delivered by Hon'ble Chandra Kumar Rai, J.)

1. Heard Mr. Brajesh Shukla, learned counsel for the petitioner, Mr. Tarun Gaur, learned standing counsel for the state-respondents and Mr. Vijay Kumar Rai, learned counsel for respondent nos. 4 & 5.

2. Brief facts of the case are that Village Girdawa Shahanpur, Pargana and Tehsil Nazibabad, District Bijnor was notified under Section 4 of the Uttar Pradesh Consolidation of Holdings Act, 1953 (hereinafter referred to as the "U.P. C.H. Act") on 16.8.1992. The petitioner is chak holder no.63 and original holding of the petitioner is 95/1, etc. (total area .388 hect.). The petitioner was proposed chak on plot no. 258, area .293 hect. Respondent nos. 4 & 5 are chak holder no.466. The original holding of respondent nos. 4 & 5 are plot no.258, etc., area 3.688 hect. Respondent nos. 4 & 5 were allotted single chak on plot no.258, etc., area 3.650 etc. A time-barred objection under Section 9-A(2) of the U.P. C.H. Act was filed by respondent nos. 4 & 5 for declaring the plot no.258 as chak out. Consolidation Officer vide order dated 28.5.2010 excluded the plot no.258, area 3.650 hect. from consolidation scheme. Against the order dated 28.5.2010 passed by the Consolidation Officer, petitioner filed an appeal under Section 11(1) of the U.P. C.H. Act before the Settlement Officer of Consolidation which was registered as Appeal No.522 of 2010-11. The aforementioned appeal was heard and allowed by the Settlement Officer of Consolidation vide order dated 15.12.2010. The delivery of possession of the village in question including the chak of the petitioner, was taken place on 25.5.2011. Respondent nos. 4 & 5 filed a time-barred restoration application to recall the order dated 15.12.2010 which was rejected by the Settlement Officer of Consolidation vide order dated 23.1.2015. Respondent nos. 4 & 5 challenged the order dated 15.12.2010 by way of revision under Section 48 of the U.P. C.H. Act before the Deputy Director of Consolidation. The aforementioned revision was heard and dismissed by the Deputy Director of Consolidation vide order dated 18.6.2015. Respondent nos. 4 & 5 filed a Writ Petition No.42518 of 2015 before this Court which was dismissed vide order dated 31.7.2015. Respondent nos. 4 & 5 filed two time-barred objection under Section 21(1) of the U.P. C.H. Act. The Consolidation Officer vide order dated 25.3.2015 allowed the objection and area .100 hect. was excluded from consolidation scheme, affecting the chak of the petitioner, without condoning the long delay in filing the chak objection. Petitioner filed a restoration application before the Consolidation Officer against the order dated 25.3.2015 which was rejected vide order dated 13.4.2015. Against the orders dated 13.4.2015 and 25.3.2015, petitioner filed an appeal under Section 21(2) of the U.P. C.H. Act before the Settlement Officer of Consolidation which was heard and

dismissed vide order dated 8.6.2015. The revision under Section 48 of the U.P. C.H. Act filed by the petitioner against the orders passed by the Consolidation Officer and the Settlement Officer of Consolidation, was registered as Revision No.486 before the Deputy Director of Consolidation. The aforementioned revision was heard and allowed vide order dated 18.6.2015, setting aside the orders dated 8.6.2015, 25.3.2015, 13.4.2015. Respondent nos. 4 & 5 initiated time-barred proceeding under Section 9-A(2) of the U.P. C.H. Act for excluding the plot nos. 95/1 & 95/2 from consolidation scheme. The aforementioned proceeding/time-barred objection was dismissed by the Consolidation Officer vide order dated 1.10.2015. Respondent nos. 4 & 5 filed recall application to recall the order dated 18.6.2015 which was allowed by the Deputy Director of Consolidation vide order dated 29.8.2017, setting aside the order dated 18.6.2015 and restoring the revision on its original number. The petitioner filed Writ Petition No.53362/2017 before this Court against the order dated 29.8.2017 which was initially entertained but later on the writ petition was dismissed vide order dated 1.5.2018. The village in question was notified under Section 52 of the U.P. C.H. Act on 8.2.2018. The transfer application filed on behalf of the petitioner to transfer the proceeding of pending revision, was rejected by the Collector vide order dated 4.11.2020. The Deputy Director of Consolidation vide order dated 18.11.2020 dismissed the petitioners revision. Hence, this writ petition for the following relief:-

(i) Issue a writ, order or direction in the nature nature of certiorari to quash the order dated 18.11.2020 passed by respondent no.1 in Revision No.161/201793131600004 and affirm the order dated 18.6.2015 and further quash the order dated 8.6.2015 passed by Settlement Officer of Consolidation in Appeal No.255 and order dated 13.4.2015 and 25.3.2015 passed by Consolidation Officer in Case No.191 in proceeding under Section 21(1) of the U.P. C.H. Act.

(ii) Issue any suitable writ, order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case."

3. This Court vide order dated 18.12.2020, directed the counsel for respondent to file counter affidavit. In pursuance of the order of this court dated 18.12.2020, affidavits exchanged between the parties.

4. Counsel for the petitioner submitted that the Deputy Director of Consolidation has illegally dismissed the petitioner's revision, without considering the fact that chak of the petitioner cannot be disturbed at such a late stage of consolidation proceeding, on the basis of highly time-barred proceeding initiated by respondent nos. 4 & 5. He further submitted that revision has been decided without summoning the records of the Settlement Officer of Consolidation and the Consolidation Officer. He further submitted that proceeding under Section 9 of the U.P. C.H. Act for declaring the plot no.258 as C.H. 18 was decided upto the High court and the same has attained finality, as such, on the basis of subsequent time-barred chak allotment proceeding, initiated by respondent nos. 4 & 5, the plot no.258 cannot be declared as chak out. He further submitted that petitioner was proposed chak on plot no.258 and at that time, the land was very up and down condition. He

submitted that delivery of possession was affected in the year 2011, accordingly, petitioner has developed his plot and village in question has been notified under Section 52 of the U.P. C.H. Act in the year 2018, as such, the impugned order, affecting the chak of the petitioner is wholly illegal. He further submitted that the Consolidation Officer has passed the order on the application of contesting respondent under Section 21(1) of the U.P. C.H. Act which was highly time-barred, but without condoning the delay in filing the proceeding, the Consolidation Officer has passed the order dated 25.3.2015, affecting the chak of the petitioner. He further submitted that chak was allotted to petitioner on plot no.258 after mandatory deduction made in the chak of the contesting respondent and chak of the contesting respondent was already allotted, adjacent to the road, as such, the petitioner's chak cannot be affected on the basis of highly time-barred proceeding initiated by the contesting respondent. He submitted that the impugned orders passed by the consolidation authorities should be set aside.

5. On the other hand, learned counsel for respondent nos. 4 & 5 submitted that no interference is required against the impugned orders passed by the consolidation authorities. He further submitted that plot no.258 is situated on national highway and respondent nos. 4 & 5 are the original tenure holders of the aforementioned plot. He further submitted that plot nos. 95/1, 95/2 and 828 are the original holdings of the petitioner. He submitted that petitioner filed an appeal under Section 21(2) of the U.P. C.H. Act against the order passed by the Consolidation Officer which was dismissed after affording opportunity of hearing to both the parties, holding that the Consolidation Officer has rightly allotted chak to petitioner and respondent nos. 4 & 5 vide order dated 25.3.2015. He further submitted that revision filed by the petitioner was rightly dismissed under the impugned order. He further submitted that respondent nos. 4 & 5 were under urgent need of money, accordingly, executed the sale deed dated 11.4.2016 of old plot no.258, area 188.20 sq. mtr. in favour of Sanjay Singh and handed over possession to him. He submitted that no interference is required against the impugned order and the writ petition is liable to be dismissed.

6. I have considered the arguments advanced by learned counsel for the parties and perused the records.

7. There is no dispute about the fact that plot nos. 256 & 258 are the original plots of respondent nos. 4 & 5. There is also no dispute about the fact that plot no. 95/1, etc. are the original plots of the petitioner. There is also no dispute about the fact that petitioner was proposed chak on plot no. 258 which has been disturbed under the impugned order on the basis of time-barred proceeding initiated by respondent nos. 4 & 5. There is also no dispute about the fact that earlier proceeding initiated at the instance of respondent nos. 4 & 5 under Section 9-A(2) of the U.P. C.H. Act for declaring the plot no. 258 as C.H. 18 was dismissed and order has attained finality.

8. It is relevant to mention that village in question was notified under Section 4 of the U.P. C.H. Act on 16.8.1992, delivery of possession in the village in question has taken place on 25.5.2011 and notification under Section 52 of the U.P. C.H. Act in respect to the village in question has taken place on 8.2.2018.

9. It is also relevant to mention that proceeding for declaring the plot no. 258 as

C.H. 18 was finalized, refusing the relief to respondent nos. 4 & 5 to declare the entire area of plot no.258 as chak out, by dismissing the Writ B No.42518/2015 vide order dated 31.7.2015. The perusal of the order dated 31.7.2015 passed by this Court in Writ B No.42518 of 2015 will be relevant which is quoted hereunder:-

"Heard Sri Rajeev Sisodia for the petitioners and Sri Brajesh Shukla for respondent-3.

The writ petition has been filed against the orders of Settlement Officer, Consolidation dated 15.12.2010 and Deputy Director of Consolidation dated 18.6.2015 passed in the proceeding under Section 9-B as well as chak allotment proceeding under U.P. Consolidation of Holdings Act, 1953.

Plot nos. 256 and 258 were the original holding of the petitioners, which situates on the road side. Initially, the entire area of plot no.256 was left as chak out and the entire area of plot no.258 i.e. 3.650 hectare was valued. Assistant Consolidation Officer proposed a single chak to the petitioners on plot no.258 in which an area of 0.004 hectare of plot no.259 and an area of 0.189 hectare of plot no.261 were also included. However, the Consolidation Officer by order dated 28.8.2010 excluded the area of plot nos.259 and 261 from the chak of the petitioners and its valuation of plot 258 has been allotted in plot no.258. Thus, from the stage of Consolidation Officer a single chak has been carved out to the petitioner on plot no.258. One Ajay Kumar Singhal has filed an appeal from the order of Consolidation Officer as earlier some area of plot no.258 was allotted in his chak but the Consolidation Officer had taken away that area from his chak. The Settlement Officer, Consolidation by order dated 15.12.2010 allowed the appeal of Ajay Kumar Singhal and the valuation as it was determined from the Assistant Consolidation Officer has been maintained. The petitioners filed a revision against the aforesaid order, which has been dismissed by the Deputy Director of Consolidation by order dated 18.6.2015 but while dismissing the revision the Deputy Director of Consolidation has observed that valuation of plot no.256 was also rightly determined. This observation of Deputy Director of Consolidation is uncalled for as the entire area of plot no.256 has been left as chak out and its valuation has not been determined from any stage. Hence , this writ petition has been filed.

I have considered the arguments of the counsel for the petitioners.

The observation of the Deputy Director of Consolidation in respect of plot no.256 is based on conjectures and surmises as the entire area of plot no.256 was left as chak out. So far as plot no.258 is concerned the chak of the petitioners has been allotted on plot no.258 . Since plot no.258 is a very big plot having area 3.650 hectare as such it is not possible to left the entire area of this plot as chak out. However, it is not denied that plot in dispute is a road side land but the chak of the petitioners has been allotted on this plot itself. Thus, absolutely, no prejudice has been caused to the petitioners.

With the aforesaid observation the writ petition is disposed of."

10. It will also be relevant to mention that after finalization of the proceeding initiated under Section 9-A(2) of the U.P. C.H. Act in respect to plot no.258,

respondent nos. 4 & 5 initiated proceeding under Section 21(1) of the U.P. C.H. Act which has been entertained and allowed, declaring 0.100 hect. area of plot no.258M as chak out as well as disturbing the chak of the petitioner by taking out the area from plot no.258M and allotting him chak on plot no.828, 261, 259, 258. The allotment of chak proceeding cannot be initiated at any time during consolidation operation on the ground that plot in question is the original road-side plot of the tenure holder concerned. It is correct that road-side plot is to be allotted to the original tenure holder but if no proper objection has been filed by the original tenure holder within the limitation as provided under the U.P. C.H. Act, the consolidation will be otherwise. The case of the petitioner is that the surface of plot no.258 at the time of allotment to petitioner was in uneven/irregular condition and petitioner has developed the same, as such, the highly time-barred proceeding initiated by respondent nos. 4 & 5 is nothing but abuse of process of law.

11. It is also relevant to mention that once the relief for declaring the plot no.258 as C.H. 18 under Section 9-A(2) of the U.P. C.H. Act has been refused by the consolidation authorities and order has been maintained by this court, then the consolidation authorities cannot declare the area of plot no.258 as C.H. 18 in the allotment of chak proceeding. The procedure prescribed under the U.P. C.H. Act is to be followed in proper manner otherwise the entire proceeding will be vitiated.

12. It is also material to mention that this Court while deciding Writ B No.42518 of 2015 filed by respondent nos. 4 & 5, arising out of proceeding under Section 9-A(2) of the U.P. C.H. Act has taken into consideration the claim of respondent nos. 4 & 5 to declare that plot no.258 as C.H. 18 and held that plot no.258 has been rightly refused to be declared as C.H. 18.

13. Considering the entire facts and circumstances of the case, the impugned orders dated 18.11.2020, passed by respondent no.1/Deputy Director of Consolidation, Bijnor; 8.6.2015, passed by the Settlement Officer of Consolidation in Appeal No.255; 13.4.2015 and 25.3.2015 passed by the Consolidation Officer in Case No.191 cannot be sustained in the eye of law which are liable to be set aside and the same are hereby set aside.

14. The writ petition stands allowed.

15. No order as to costs.

(2025) 7 ILRA 837
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 17.07.2025

BEFORE

THE HON'BLE ATTAU RAHMAN MASOODI, J.
THE HON'BLE SUBHASH VIDYARTHI, J.

Writ-C No. 4426 of 2025
Along with other connected cases

Waqf No. 19 Dahgah Sahrif & Ors. **...Petitioners**

Versus

State of U.P. & Anr. **...Opp. Parties**

Counsel for the Petitioners:
Lalta Prasad Misra, Syed Husain

Counsel for the Opp. Parties:
C.S.C.

Issue for Consideration

Matter pertains to the validity of the District Magistrate's order dated 26.04.2025 declining permission for organizing the Annual *Jeth Mela*

– 2025 at *Dargah Syed Salaar Masood Ghazi (R.A.), Bahraich*, and whether such denial violates the petitioners' rights under Articles 14, 21, 25, 26 and 29 of the Constitution of India.

Headnotes

Writ petition under Article 226 - Challenge to administrative refusal to permit Annual *Jeth Mela* at Dargah Sharif, Bahraich - Petitioners contended that refusal infringes fundamental rights of freedom of religion, conscience and cultural expression - Security and public order concerns due to Indo-Nepal border sensitivity and national security operations - Article 25 protects ritualistic practices unless they threaten public order or security of State - Courts must not assess rituals by reason or science - Administration of Dargah - Committee responsible for management and coordination with State authorities.

Held: Ritualistic practices and usages existing since time immemorial cannot be obstructed by the State on trivial grounds when they promote cultural harmony - Committee of Management directed to ensure effective administration of Urs and Jeth Mela by installing CCTV and cooperating with administration for public safety Protection under Article 25 extends to such rituals subject only to two exceptions - threat to public order and security of the State - State's interference with long-recognized faith practices on trivial grounds cannot be justified - Impugned order has lost efficacy; apprehensions have been dispelled - petitions disposed of in terms of interim order- Parties to bear own costs. (Para 4, 10, 14, 23, 24, 27, 28, 30,31,32) (E-7)

Case Law Cited

Gulam Abbas and Ors. v. State of U.P. and Ors., **(1982) 1 SCC 71;** *Ram Gopal Tripathi v. Dr. Sarvajeet Herbert*, **2003 SCC OnLine All 550 = 2003 (5) AWC 3910;** *D.S. Joseph v. State of U.P. and Ors.*, **2005 Cr.L.J. 709**

List of Acts

Constitution of India

List of Keywords

Annual Jeth Mela - Dargah Sharif - Ritualistic practices - Fundamental rights - Freedom of conscience - Public order - Security of the State - Composite constitutional morality - Interfaith harmony - Operation Sindoor - Indo-Nepal border - Urs - CCTV installation - Law and order

Case Arising From

Order of the District Magistrate, Bahraich, dated 26.04.2025 declining permission to organize Annual Jeth Mela – 2025 at Dargah Syed Salaar Masood Ghazi (R.A.), Bahraich.

Appearances for Parties

Advs. for the Petitioners:

Dr. Lalta Prasad Misra, Syed Husain, Ms. Annapurna Agnihotri, Ms. Arti Bali, Alok Kumar Mishra, Akram Azad, Sayyed Faooq Ahmad, Syed Mehfuzur Rehman, Vinod Kumar Yadav.

Advs. for the Respondents:

Sri Kuldeep Pati Tripathi, Additional Advocate General for the State; Sri Farhan Habib, for U.P. Sunni Waqf Board;

(Delivered by Hon'ble Attau Rahman Masoodi, J.)

(1) Writ-C No. 4426 of 2025 has been filed by Waqf No. 19, Dargah Sharif, Bahraich, through its Committee of Management, jointly with the Committee of Management of Dargah Sharif and four private individuals, challenging the validity of an order dated 26.04.2025 passed by the District Magistrate, Bahraich declining permission for organizing the Annual Jeth Mela - 2025 at Dargah Syed Salaar Masood Ghazi (RA), Bahraich. The petitioners have sought a Writ of Mandamus commanding the opposite parties to co-operate and co-ordinate in organizing the Jeth Mela - 2025 starting from 15.05.2025 and ending on 15.06.2025 and not to create any hindrance in holding the Annual Jeth Mela by the Management of Dargah Sharif, Bahraich and also not create any hindrance in visit of devotees of Dargah Sharif, Bahraich.

(2) P.I.L. No. 458 of 2025 has been filed by five individual petitioners and

P.I.L. No. 463 of 2025 has been filed by six individual petitioners substantially seeking the same relief.

(3) As common questions have been raised by all the petitioners of the three writ petitions, all the three Writ Petitions are being decided by this common judgment.

(4) The petitioners in Writ-C No. 4426 of 2025 have pleaded that the Dargah Sharif, Bahraich exists since time immemorial over the Mazar of Syed Salaar Masood Ghazi (RA). An annual Urs is organized every year in the month of Basant, i.e., around February and the Jeth Mela is organized in the month of Jeth, i.e., May/June. Lakhs of people from across the country attend the annual Urs and the Jeth Mela which not only had a leaning of faith and spiritual significance, but also provides an economic boost to the local people across the caste, creed and religion and it gives a boost to the national harmony besides economic upliftment for the local traders. The 'Urs' and 'Jeth Mela' are organized by the management of Dargah Sharif with co-ordination and co-operation of the District Administration over the large premises of Dargah Sharif with a large chunk of its open land.

(5) On 01.04.1987, a Government Order was issued providing that the expenditure incurred in deployment of police and making sanitation arrangements in annual Urs/Mela of five Dargahs, including Syed Salaar Masood Ghazi (RA), Bahraich, be not recovered from the concerned waqf. The management of the Dargah Sharif allots land during Annual Jeth Mela to shopkeepers for putting up temporary shops and also for means of entertainment such as Circus, Jhulas (swings), Magic Show, Picture show, Nautanki etc.

(6) Every year, meetings are held between the authorities of the District Administration and the Committee of Management of Dargah Sharif for smooth organization of the Jeth Mela. This year also, the Chairman of the Managing Committee of Dargah had sent a letter dated 15.04.2025 to the District Magistrate, Bahraich requesting for calling a meeting for organization of Annual Jeth Mela. A proposed agenda for the meeting was attached with the letter which mentions that the administration is expected to make arrangements for drinking water, cleanliness arrangements with adequate sanitation and lighting arrangements. Baraats (wedding processions) will be taken out during the Mela in which fireworks will be displayed. Adequate arrangements should be made for dealing with any fire accident. The Chief Medical Officer should make arrangements for providing medical assistance as well as for prevention of spread of infections. Two large ambulances and two small ambulances should be provided for the Mela alongwith a Lady Doctor & a Mid-Wife. Adequate transport and parking arrangements should be made. Temporary fair price shops should be set-up in the Mela. The Legal Meteorology Department should ensure that no incident of weighing lesser quantity of goods takes place during the Mela. Adequate police force should be deputed at the Mela area for smooth running of swings, circus, drama, magic shows, etc.

(7) The petitioners have stated that in previous years, meetings were held for the smooth conduct of the Mela and arrangements used to be made by the District Administration, but this year, the District Magistrate has declined co-operation for organizing Mela by means of the impugned order dated 26.04.2025.

(8) The impugned order dated 26.04.2025 states that the permission for organizing the Jeth Mela at Dargah Syed Salar Masood Ghazi stands declined keeping in view the reports submitted by the Superintendent of Police, Sub-Divisional Magistrate, Sadar and the Executive Officer, Nagar Palika Parishad, Bahraich.

(9) Assailing validity of the impugned order dated 26.04.2025, it has been submitted on behalf of the petitioners that the permission has been denied on flimsy and irrelevant grounds and that the action is mala fide and has been taken for appeasement of a few political persons. The petitioners have submitted that the District Magistrate cannot wriggle out of his responsibility to maintain the law and order in the District during the Jeth Mela on the flimsy ground of apprehension of breach of peace. The petitioners have further submitted that a large number of devotees visit the Dargah Sharif during the Jeth Mela irrespective of caste, creed and religion and the refusal for permission to organize the Mela is violative of the very ethos of fraternity of this great nation-India and it is de hors the very constitutional fabric flowing from the preamble of the Constitution of India and the Fundamental Rights guaranteed to its citizens and persons under Articles 14, 21, 25, 26 and 29 of the Constitution of India.

(10) The petitioners in P.I.L. No. 463 of 2025 have pleaded that the Annual Jeth Mela organized at Dargah Sharif of Syed Salaar Masood Ghazi (RA) in Bahraich is a significant socio-cultural event rooted in the spiritual legacy of Syed Salaar Masood Ghazi, who is revered as a saint by one and all. Many devotees including those from marginalized communities such as Kories, Kurmi and Ahir peasants as well as lepers seeking miraculous cures through the shrine's rituals, rely on the Mela for spiritual fulfillment and healing practices. The Dargah of Syed Salaar Masood Ghazi is a unique symbol of interfaith harmony. Rejection of permission to organize the Mela infringes upon the fundamental rights to freedom of conscience and cultural expression guaranteed under Articles 25 and 29 of the Constitution of India as it prevents devotees of Syed Salar Masood Ghazi from practicing their faith through participation in the Jeth Mela. The petitioners have also pleaded that permissions have been granted for large-scale religious gatherings in Devipatan Mandir, Tulsipur, Balrampur and for Magh Mela at Prayagraj, but the same has been denied for organizing the Jeth Mela at Dargah Sharif which is discriminatory.

(11) It has further been stated in P.I.L. No. 463 of 2025 that if the State will surrender to the pressure of certain political or radical groups then how the secular character of the nation will be protected and equal treatment will be given to all its citizens.

(12) WPIL No.458 of 2025 has been filed by 5 persons. 3 petitioners in this petition are Khadims of the Dargah, whereas the petitioner no. 4 claims to be an Islamic scholar who is professing Sufism and propagating the same in the country and he is an independent writer of newspapers/web-portals and is also teaching in a Madarsa and petitioner No. 5 is an Advocate who is professing and propagating Sufism. All the petitioners are residents of Bahraich. They have pleaded that the denial of permission to organize the Mela is arbitrary. They have further pleaded that about 600 Baraats come from

the entire country at the Dargah and the tradition of Baraat is an essential ingredient to show respect/tribute to Syed Salar Masood Ghazi. The petitioners have pleaded that the Government earns a huge amount as revenue from the Mela and the denial of permission would result in loss of revenue to the State, besides resulting in about 10,000 poor people being deprived of their source of livelihood by putting up shops in the Mela.

(13) The State has filed a short counter affidavit of City Magistrate, Bahraich in Writ-C No. 4426 of 2025 stating that the Tomb of Syed Salaar Masood Ghazi situated in Revenue Village Singhaparasi Pargana and Tehsil & District Bahraich has been constructed in about 4 hectares and it is surrounded by a boundary wall. The vacant area of the Dargah at the spot is about 6 hectares. The petitioners have stated that the Waqf land around the Dargah is spread over about 1.5 sq. km., whereas there is only about 10 hectares of land available on the spot. The area near the Dargah is occupied by dense and mixed population. During the fair, shops are put up even on the pavements and dividers of the roads. In case of any emergency, the movement of ambulance, fire brigade and police vehicles will be obstructed.

(14) It has also been stated in the short counter affidavit that as per the report submitted by the Sub-Divisional Magistrate, Sadar, Bahraich, the Dargah Syed Salaar Masood Ghazi is situated within the area of Thana Dargah Sharif. The area around the Dargah is a highly sensitive area with mixed dense population and lakhs of pilgrims and devotees come to attend the Jeth Mela from other States also. Due to the open border with Nepal, this area falls in the highly sensitive category. In the current scenario, in which terrorists have carried out a gruesome massacre by firing on tourists at Pahalgam, Jammu & Kashmir, a situation of unrest prevails in the entire country. There is a strong possibility of infiltration of anti-national and undesirable elements through the crowd coming and going from the Indo-Nepal border for which a special vigilance is required. In view of Operation Sindoor being conducted by the Government of India, security arrangements at all important places/ establishments/railway stations/railway tracks/petrol-diesel pipelines/air-strips and densely populated areas are in a high alert mode in the entire country. In view of the tensed situation between India and Pakistan, it will not be possible to black out the Mela area due to the crowd/pilgrims gathering in the fair in case of a sudden declaration of emergency.

(15) It has been stated in the short counter affidavit that keeping in view the aforesaid facts, it was found appropriate not to give permission to organize the Jeth Mela at Dargah Sharif, Bahraich.

(16) The petitioners have filed a rejoinder affidavit annexing therewith a copy of the letter dated 08.05.2025 of the Inspector General of Police (Law and Order), U.P. sent to the Superintendent of Police, Bahraich stating that permission for organization of Jeth Mela has not been given and adequate publicity of this fact should be made. Police should ensure restricting the movement of pilgrims/devotees going to Bahraich for attending the Jeth Mela.

(17) The petitioners have also filed a supplementary affidavit annexing therewith copies of extracts of revenue records and they have contended that the Dargah holds 36 hectares of land.

(18) Heard Dr. L.P. Misra, assisted by Sri Syed Husain, Ms. Annapurna Agnihotri

& Ms. Arti Bali, Sri Alok Kumar Mishra, Sri Akram Azad, Sri Sayyed Faooq Ahmad, Sri Syed Mehfuzur Rehman and Sri Vinod Kumar Yadav, learned counsel for the petitioners & Sri Kuldeep Pati Tripathi, learned Additional Advocate General, learned counsel for the State-authorities and Sri Farhan Habib, learned counsel for the U.P. Sunni Waqf Board.

(19) Dr. L.P. Misra, learned counsel who has led submissions on behalf of the petitioners, has submitted that the Jeth Mela is an integral part of the ritualistic practices at the Dargah. The denial of permission for organizing the Jeth Mela violates the petitioners' fundamental right of freedom of conscience. He has submitted that the Government Order dated 01.04.1987 recognizes the importance of Jeth Mela at the Dargah by providing that the expenditure for deployment of police and sanitation facilities for the Mela be not recovered from the concerned Waqf.

(20) Dr. L. P. Misra has placed reliance on the judgment of the Hon'ble Supreme Court in **Gulam Abbas and others v. State of U.P. and others**: (1982) 1 SCC 71, a judgment of a Division Bench of this Court in **Ram Gopal Tripathi v. Dr. Sarvajeet Herbert**: 2003 SCC OnLine All 550 = 2003 (5) AWC 3910 and a Judgment of a Single Judge Bench of this Court in **D.S. Joseph v. State of U.P. and others**: 2005 Cr.L.J. 709.

(21) Sri. Kuldeep Pati Tripathi, the learned Additional Advocate General has submitted that organizing a Mela by putting up shops, Circus, Jhulas, Magic Show, Picture show, Nautanki etc. is not a part of essential practices attached to any religion and no one has a fundamental right to organize a socio-cultural Mela. He has submitted that the fundamental right to practice faith is not being denied by the State to any person and the devotees are free to visit the Dargah to offer their prayers and other offerings.

(22) When the controversy came up before us, this Court after hearing learned counsel for the parties, passed the following order on 17.05.2025:-

"The bunch of writ petitions on a non-sitting day has come up before us on an urgency being pointed out as per the order on administrative side passed by Hon'ble the Chief Justice.

We have heard learned counsel for the parties at great length.

Judgement reserved.

Until the delivery of the judgment, as an interim measure, we provide that routine activities at Dargah Sharif for carrying out the ritualistic practices shall remain open for which all support for maintaining law and order as well as necessary civic amenities shall be provided by the State in co-operation with the Committee administering the management of Dargah Sharif.

To this extent Shri Kuldeep Pati Tripathi, learned Additional Advocate General for the State has expressed no objection.

Insofar as the prayer for organizing 'Jeth Mela' having cultural/commercial trappings is concerned, we are not persuaded, prima facie, to interfere with the decision of the State authorities.

We also provide that the Committee shall ensure that devotees visit the shrine in moderate numbers as per routine in order to avoid the possibility of any stampede or unwarranted situation causing a concern to the safety of the

devotees and creating difficulties for the administration."

(23) The order passed by the Court, as an interim measure, took stock of the ritualistic practices which are liable to be protected by the State under any circumstance to which there are two exceptions, namely, if the gathering at the place threatens public order and secondly, if it causes a threat to the security of the State. It is perhaps in the light of these two exceptions that the impugned order came to be passed during the current year having regard to the intelligence reports received from various sources by the State Government although no such material has been placed on record received from the agencies or Central Government.

(24) In normal course, all such ritualistic practices which stand recognized since time immemorial cannot be obstructed by the State on trivial grounds particularly when such practices promote cultural harmony in the Society. Rituals and usages know no boundaries and sometimes they reach the zenith of faith at a particular shrine or a religious place of worship. This is a tendency of development of natural law which the Constitution of India recognizes by virtue of Article 13 of the Constitution of India. The law made by the Parliament may leave certain gaps which may be filled by the Constitutional Courts in the form of 'interstitial law making', but so far as the rituals and usages are concerned, they are driven by the ritualistic practices and usages performed at the shrines or religious places which are perceived and experienced to be a spiritual source of conscience protected under Article 25 of the Constitution of India which promotes composite constitutional morality. The Constitutional Courts must desist to comment on the righteousness of such rituals in contrast to reason or science except that the rituals and usages on practice ought not to threat the public order or security of the State.

(25) For observance of such usages and customs, some times it does not appeal to reason but at the same time all such practices cannot be obstructed which assume a ritualistic model amongst the masses belonging to the people of single or multiple faith bringing harmony and peace to he society.

(26) In the circumstances of the case, it is unnecessary for this Court to clarify the applicability or not of the case laws cited before us as we have already set the norms for regulating the existing rights in terms of the interim order extracted above which has brought optimum good to the devotees and safeguarded the concern expressed by the State. It is fortunate that peace and tranquility has prevailed during the operation of the arrangements provided under the interim order passed by this Court, therefore, all the apprehensions of the State stand dispelled for organizing the Jeth Mala within the scheduled dates.

(27) More over, the Committee of Management of Dargah Sharif shall henceforth ensure that the management of 'Urs' and 'Mela' shall be dealt with effectively by installing CCTV cameras at the entry/relevant places, particularly during the Jeth Mela as well as the Urs so that any threat or apprehension, as has been taken note of in the impugned order, the police authorities are facilitated with the first hand information regarding entry of people in the premises of Dargah Sharif so that the ritualistic practices are well-managed and there is no difficulty faced by

the administration to provide necessary assistance in the given situation.

(28) On the basis of the scheme of administration produced by the Committee of Management of Dargah Sharif, it is amply clear that the Committee alone is vested with the power to regulate the management of Dargah and its property, therefore, it is the bounden duty of the Committee to ensure effective management of the affairs of the Dargah so as to facilitate the devotees to perform the rituals on visiting the shrine. The suggestions made by the administration, if any, may also be taken into consideration for ensuring peace and tranquility.

(29) So far as the rights of other petitioners are concerned, we are of the firm opinion that they having supported the cause of the Committee would equally stand protected for the purpose of performing the customary rituals, which, of course, are subject to the limitations mentioned above.

(30) Though the State Government, looking to the circumstances and based on the confidential reports, has passed the order impugned, which has lost its efficacy, consequent upon the period of Mela being over and the interim arrangement made by this Court permitting the performance of rituals has rather dispelled the apprehensions of the State, therefore, the relief prayed for stands virtually granted due to non-interference by the State in the routine practices as stated by the learned Additional Advocate General for the State.

(31) For the reasons stated above, all the three writ petitions are **disposed of** in terms of the order dated 17.05.2025 and what we have observed above.

(32) The parties will bear their own costs of litigation.

(2025) 7 ILRA 844
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 17.07.2025

BEFORE

THE HON'BLE ATTAU RAHMAN MASOODI, J.
THE HON'BLE SUBHASH VIDYARTHI, J.

Writ-C No. 4816 of 2024
Along with other connected cases

Suez India Pvt. Ltd. ...Petitioner
Versus
Uttar Pradesh Pollution Control Board & Ors. ...Opp. Parties

Counsel for the Petitioner:
Aprajita Bansal, Anilesh Tewari, Gursimran Kaur

Counsel for the Opp. Parties:
Asit Srivastava, Ashok Kumar Verma, C.S.C., Namit Sharma, Rishabh Kapoor

ISSUE FOR CONSIDERATION

Whether the U.P. Pollution Control Board has the authority to impose environmental compensation and recover the same from an industry under any statutory provision?

HEADNOTE

Environment (Protection) Act, 1986 – Air (Prevention and Control of Pollution) Act, 1981 – Water (Prevention and Control of Pollution) Act, 1974 – National Green Tribunal Act, 2010 – Ss. 31A, 33A, 14, 15, 16 – Power to impose environmental compensation – Jurisdiction of U.P. Pollution Control Board – Held, the Board has no adjudicatory power to impose compensation. Such power lies exclusively with the National Green Tribunal (NGT) - Directions imposing environmental compensation are **set aside**.

HELD

State has not enacted any law empowering the State Pollution Control Board to impose or recover environmental compensation from any industry. The power to issue administrative directions for prevention or control of water and air pollution does not include the power to impose or recover compensation.State Pollution Control Board has no power to adjudicate or impose environmental compensation upon any person or industry. The adjudicatory function for determining liability for environmental compensation under Section 15 of the NGT Act is vested exclusively in the NGT, and such function cannot be delegated to the State Pollution Control Board. State Pollution Control Board may, however, file an application before the NGT under Section 15 read with Section 18 of the NGT Act seeking appropriate direction for payment of compensation. Orders passed by the State Pollution Control Board imposing environmental compensation upon the petitioners—impugned in the writ petitions quashed. (Paras 47, 61, 80, 82, 83) (E-5)

CASE LAW CITED

Thandava Co-operative Sugars Ltd. v. Central Pollution Control Board, 2020 SCC OnLine NGT 1823; *Nutra Specialities (P) Ltd. v. Member Secretary, CPCB*, 2020 SCC OnLine NGT 1572 ; *Delhi Pollution Control Committee v. Splendor Landbase Ltd.*, 2012 SCC OnLine Del 400; *Kantha Vibhag Yuva Koli Samaj Parivartan Trust v. State of Gujarat*, (2023) 13 SCC 525

List of Acts

Air (Prevention and Control of Pollution) Act, 1981
Water (Prevention and Control of Pollution) Act, 1974
Environment (Protection) Act, 1986;
National Green Tribunal Act, 2010

List of Keywords

Environmental compensation – Jurisdiction – Pollution Control Board – National Green Tribunal – Adjudicatory power – Polluter pays - Administrative direction– Environmental jurisprudence

CASE ARISING FROM

Common challenge to orders of U.P. Pollution Control Board imposing environmental compensation on industrial units, including brick kilns

Appearances for Parties

Advs. For Petitioner: Aprajita Bansal, Anilesh Tewari, Gursimran Kaur, Salil Kumar Srivastava, Rahul Srivastava, Jalaj Kumar Gupta, and others.

Advs. F**or Respondents:** Asit Srivastava, Ashok Kumar Verma, C.S.C., Namit Sharma, Rishabh Kapoor, A.S.G.

(Delivered by Hon'ble Subhash Vidyarthi, J.)

(1) Heard Sri Jaideep Narain Mathur, Senior Advocate, assisted by Ms. Aprajita Bansal, Sri. Anilesh Tewari, Ms. Gursimran Kaur, Advocates, Sri Jalaj Kumar Gupta, Sri Mehdi Khan, Sri Mohd. Aslam Khan, Sri Rahul Srivastava, Sri Salil Kumar Srivastava, Sri Sarvesh Kumar, Sri Shivang Tiwari, Sri Mohd. Khalid Amin Khan, Sri Saryu Prasad Tiwari, Sri Ratnesh Dwivedi, Sri Sheeran Mohiuddin Alavi, Ms. Aditi Tripathi, Sri Harsh Vardhan Kediya, Sri Ankur Yadav, Sri Arvind Kumar Shukla, Ms. Smita Chitranshi, Sri Sunny Singh, Sri Kripa Shankar Yadav, Ms. Moni Yadav, Ms. Preeti Yadav, Sri Pawan Kumar Upadhyay, Sri Ram Ji Trivedi, Ms. Shraddha Tripathi, Sri Prashant Shukla, Sri Ashutosh Tiwari, Sri Saryu Prasad Tiwari, Sri Piyush Pathak, Ms. Sumedha Sen, Sri Syed Mehfuzur Rehman, Sri Vikas Vikram Singh, Sri Devesh Chandra Pathak, Sri Amit Dwivedi, Sri Himanshu Kamboj, Sri Vinod Kumar Mishra, Sri Prashant Shukla, Ms. Priya Pandey, Sri Ajay Pratap Singh, Sri Abhishek Yadav, Dr. Pooja Singh, Sri Surya Prakash Tiwari, Sri Kazim Ibrahim, Ms. Pushipla Bisht, Ms. Sukhmani Singh,

Sri Gaurav Mehrotra, Sri Harsh Vardhan Mehtroa, Ms. Maria Fatima and Sri Shashank Kumar, learned counsel appearing for the petitioners in their respective writ petitions, and Sri Ashok Kumar Verma assisted by Sri Tushar Verma, Sri Asit Srivastava & Sri Vaibhav Mishra, learned counsel for U.P. Pollution Control Board, Sri Rishabh Kapoor, learned counsel for the U.P. Jal Nigam, Sri Namit Sharma, learned counsel for Lucknow Municipal Corporation and Sri Akash Sinha, learned Standing Counsel for the State and Sri Asit Srivastava, Sri Chandra Shekhar Pandey, Sri Devesh Chandra Pathak, Sri Rishabh Chauhan, Ms. Ranjana Srivastava, Sri Shivam Srivastava, learned counsel appearing for the contesting respondents.

(2) All the aforesaid writ petitions have been filed challenging various orders passed by the U.P. Pollution Control Board imposing environmental compensation on the petitioners' industries. Validity of the orders imposing environmental compensation has been challenged in all the writ petitions on a common ground that the U.P. Pollution Control Board does not have the authority to impose environmental compensation and to recover the same from an industry, under any statutory provision.

(3) As a common question is involved in all the aforesaid writ petitions, all the Writ Petitions are being decided by this common judgment.

(4) Sri J. N. Mathur, learned Senior Advocate who led submissions on behalf of the petitioners, has submitted that a bare perusal of the provisions contained in the NGT Act and the NGT Rules, 2011 makes it manifest that the legislature has conferred the jurisdiction to adjudicate the claims regarding payment of compensation for causing environmental damage upon the National Green Tribunal, which has been constituted as an expert body. The NGT Act is a complete Code in itself which has been enacted for adjudication of claims relating to compensation for any damage caused to the environment. He has submitted that the functions of the Board are enumerated in Section 17 of the Water (Prevention and Control of Pollution) Act, 1974 (which will hereinafter be referred to as 'the Water Act') and the same do not include performance of any adjudicatory function. The U.P. Pollution Control Board does not have jurisdiction to impose compensation and recover the same; rather, the Board has to file an application to the Tribunal as provided in Section 18 of the NGT Act.

(5) Shri Gaurav Mehrotra, Advocate assisted by Ms. Maria Fatima, learned Counsel appearing in Writ-C No. 2107 of 2025 has submitted that the jurisdiction can be conferred by Statute alone and it cannot be conferred by any Court or Tribunal, not even by the Hon'ble Supreme Court. He has relied upon the judgments in the case of **Benarsi Silk Palace Vs. Commr. of Income Tax** [1964] 52 ITR 220 (All) and **Chiranjilal Shrilal Goenka v. Jasjit Singh and others**: (1993) 2 SCC 507. He has also relied upon the judgments in the cases of **Jagmittar Sain Bhagat v. Health Services, Haryana**: (2013) 10 SCC 136.

(6) *Per Contra*, Sri A. K. Verma, the learned Counsel for the U. P. Pollution Control Board has submitted that Section 33-A of the Water Act, 1974 and Section 31-A of the Air (Prevention and Control of Pollution) Act, 1981 (which will hereinafter be referred to as 'the Air Act') empower the Pollution Control Board to issue any direction to any person. It is in exercise of

the aforesaid statutory powers that the U.P. Pollution Control Board has the authority to issue a direction to any person for payment of environmental compensation and to recover the same. He has further submitted that any person aggrieved by such a direction can file an appeal against the direction(s) issued by the U.P. Pollution Control Board before the National Green Tribunal as is provided under Section 33-B of the Water Act and under Section 31-B of the Air Act. He has submitted that Section 16 of the NGT Act also provides that any person aggrieved by and directions issued by a Board under Section 33-A of the Water Act.

(7) Relying upon the aforesaid provisions of the NGT Act, Sri Verma has submitted that when Section 31-B of the Air Act confers appellate jurisdiction upon the National Green Tribunal in respect of directions issued under Section 31-A of the Air Act; Section 33-B of the Water Act and Section 16 of the NGT Act confer appellate jurisdiction upon the National Green Tribunal in respect of directions issued under Section 33-A of the Water Act, the National Green Tribunal would not have the original jurisdiction to adjudicate upon the subject matter regarding which it has appellate jurisdiction.

(8) Shri Verma has submitted that the Water Act is a social legislation and it should be given a purposive interpretation. The Board's power under Section 33-A of the Water Act are very wide and unfettered. The Board has the power to award compensation in exercise of the powers conferred by Section 33-A of the Water Act and Section 31-A of the Air Act. The orders passed under Section 33-A of the Water Act or Section 31-A of the Air Act are appealable under Section 16 of the NGT Act.

(9) The learned Counsel for the State Pollution Control Board has submitted that Section 17 of the Water Act enumerates the functions of the State Board and sub-Section (1) (l) (ii) of Section 17 provides that the functions of a State Board include requiring any person concerned to construct new systems for the disposal of sewage and trade effluents or to modify, alter or extend any such existing system or to adopt such remedial measures as are necessary to prevent, control or abate water pollution. Sub-Section (1) (o) of Section 17 provides that the functions of the State Board will include to perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government.

(10) Shri Verma has also submitted that Section 18(2) of the NGT Act provides that an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal without prejudice to the provisions contained in Section 16 of the NGT Act. Therefore, the provision regarding filing of an application by the Pollution Control Board contained in Section 18(2)(f) of the NGT Act is without prejudice to the appellate powers of the Tribunal contained in Section 16 of the NGT Act and the appellate power under Section 16 will have a precedence over the provisions contained in Section 18(2). He has also submitted that Section 19 of the NGT Act lays down the procedure and powers of the Tribunal. A cumulative reading of the aforesaid provisions makes it clear that the Pollution Control Board has power to issue directions including the direction for payment of compensation.

(11) Sri Verma has submitted that 'water pollution' is included in the term 'water' occurring in item - 17 of List - II contained in Schedule 7 appended to the Constitution of India, and therefore, it is a State subject. He has also submitted that the entries occurring in Schedule - 7 should be given the widest interpretation. Sri Verma has drawn our attention to the directive principles of State policy contained in Part IV of the Constitution of India. Article 48-A provides that the State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country. Part IV-A of the Constitution of India enlists fundamental duties and Article 51-A(g) provides that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

(12) The learned Counsel for the Board has submitted that the State Authorities have to strike a balance between sustainable development and protection of environment. The State has to ensure that a polluter pays compensation for any damage caused by him to the environment.

(13) He has further submitted that Chapter VI of the Air Act contains provisions regarding penalties and procedure and it provides that the adjudicating officer may impose penalty. The power to impose penalty under the Air Act vests in the Adjudicating Officer. He has also submitted that in case the industry operates without consent of the Board, it may be prosecuted. However, in case of other violations, penalty can be imposed by the Adjudicating Officer without prosecution.

(14) Shri Chandra Shekhar Pandey, the learned Counsel appearing for the Central Pollution Board has relied upon the decision in the case of **Paryavaran Suraksha Samiti v. Union of India**: (2017) 5 SCC 326, in which the Hon'ble Supreme Court has granted liberty to private individual(s) and organizations, to address complaints to the Pollution Control Board if any industry is in default. On the receipt of any such complaint, the Pollution Control Board concerned shall be obliged to verify the same and take such action against the defaulting industry, as may be permissible in law. Such action would be in addition to the discontinuation of industrial activity forthwith. The Pollution Control Boards were also directed to initiate such civil or criminal action, as may be permissible in law, against all or any of the defaulters. It is in furtherance of the aforesaid directions that Original Application No. 593/2017, Paryavaran Suraksha Samiti and another v. Union of India and others, was registered before the National Green Tribunal, Principal Bench, New Delhi which is still continuing and directions are issued in the said case from time to time. By means of directions issued by the NGT in the aforesaid case, the Board has been empowered to impose and recover compensation from the defaulting industrial units.

(15) In **Rylands v. Fletcher**: (1861-73) All ER Rep 1, it was laid down that if a person brings on to his land and collects and keeps there anything likely to do harm and such thing escapes and does damage to another, he is liable to compensate for the damage caused.

(16) In the year 1986, the Environment (Protection) Act, 1986, (which will hereinafter be referred to as 'the Act of

1986') was enacted on 23.05.1986 to provide for the protection and improvement of environment and for matters connected therewith. Section 3 of the Act of 1986 provides for the powers of the Central Government to take measures to protect and improve environment.

(17) In the case of **M.C. Mehta and another v. Union of India and others**: (1987) 1 SCC 395 (decided on 20.12.1986), a Constitution Bench consisting of five Hon'ble Judges of the Supreme Court dealt with the question as to what is the measure of liability of an enterprise which is engaged in a hazardous or inherently dangerous industry, if by reason of an accident occurring in such industry, persons die or get injured. The Hon'ble Supreme Court referred to the rule that was evolved in **Rylands v. Fletcher (Supra)** and held that: -

"31. ...We have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy, there is no reason why we should hesitate to evolve such principle of liability merely because it has not been so done in England. ... We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortuous principle of strict liability under the rule in Rylands v. Fletcher (supra)."

(18) The Public Liability Insurance Act, 1991 was enacted by the Parliament to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accidents occurring while handling any hazardous substance and for matters connected therewith or incidental thereto.

(19) In the year 1995, the National Environment Tribunal Act, 1995, was enacted to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment and for matters connected therewith or incidental thereto.

(20) In spite of the aforesaid enactments, the National Environment Tribunal was not constituted. Taking cognizance of this situation, in **Vellore Citizens' Welfare Forum v. Union of India and others**: (1996) 5 SCC 647, the Hon'ble Supreme Court issued the following directions:-

"1. The Central Government shall constitute an authority under Section 3(3) of the Environment (Protection) Act, 1986 and shall confer on the said authority all the powers necessary to deal with the situation created by the tanneries and other polluting industries in the State of Tamil Nadu. The authority shall be headed by a retired judge of the High Court and it may

have other members -- preferably with expertise in the field of pollution control and environment protection -- to be appointed by the Central Government. The Central Government shall confer on the said authority the powers to issue directions under Section 5 of the Environment Act and for taking measures with respect to the matters referred to in clauses (v), (vi), (vii), (viii) (ix), (x) and (xii) of sub-Section (2) of Section 3. The Central Government shall constitute the authority before September 30, 1996.

2. The authority so constituted by the Central Government shall implement the "Precautionary Principle" and the "Polluter Pay Principle". The authority shall, with the help of expert opinion and after giving opportunity to the polluters concerned assess the loss to the ecology/environment in the affected areas and shall also identify the individuals/families who have suffered because of the pollution and shall assess the compensation to be paid to the said individuals/families. The authority shall further determine the compensation to be recovered from the polluters as cost of reversing the damaged environment. The authority shall lay down just and fair procedure for completing the exercise.

3. The authority shall compute the compensation under two heads namely, for reversing the ecology and for payment to individuals. A statement showing the total amount to be recovered, the names of the polluters from whom the amount is to be recovered, the amount to be recovered from each polluter, the persons to whom the compensation is to be paid and the amount payable to each of them shall be forwarded to the Collector/District Magistrate of the area concerned. The Collector/District Magistrate shall recover the amount from the polluters, if necessary, as arrears of land revenue. He shall disburse the compensation awarded by the authority to the affected persons/families.

4. The authority shall direct the closure of the industry owned/managed by a polluter in case he evades or refuse to pay the compensation awarded against him. This shall be in addition to the recovery from him as arrears of land revenue.

5. An industry may have set up the necessary pollution control device at present but it shall be liable to pay for the past pollution generated by the said industry which has resulted in the environmental degradation and suffering to the residents of the area."

(21) In the year 1997, the National Environment Appellate Authority Act, 1997 was enacted to provide for the establishment of a National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 and for matters connected therewith or incidental thereto.

(22) The Water Act was been enacted in the year 1974 with the following object:-

"An Act to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water, for the establishment, with a view to carrying out the purposes aforesaid, of Boards for the prevention and control of water pollution, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith."

(23) Section 3 of the Water Act provides for constitution of the Central Pollution Control Board, whereas Section 4

of the Act, 1974 provides for constitution of the State Pollution Control Boards.

(24) Chapter IV of the Water Act contains provisions regarding powers and functions of the Board. Section 16 of the Water Act provides for functions of the Central Board, whereas Section 17 provides for the functions of the State Boards. The relevant provisions of Section 17 of the Water Act are being reproduced here-in-below:-

*"**17. Functions of State Board**.— (1) Subject to the provisions of this Act, the functions of a State Board shall be—*

(a) to plan a comprehensive programme for the prevention, control or abatement of pollution of streams and wells in the State and to secure the execution thereof;

(b) to advise the State Government on any matter concerning the prevention, control or abatement of water pollution;

(c) to collect and disseminate information relating to water pollution and the prevention, control or abatement thereof;

(d) to encourage, conduct and participate in investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;

(e) to collaborate with the Central Board in organising the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of water pollution and to organise mass education programmes relating thereto;

(f) to inspect sewage or trade effluents, works and plants for the treatment of sewage and trade effluents and to review plans, specifications or other data relating to plants set up for the treatment of water, works for the purification thereof and the system for the disposal of sewage or trade effluents or in connection with the grant of any consent as required by this Act;

(g) to lay down, modify or annul effluent standards for the sewage and trade effluents and for the quality of receiving waters (not being water in an inter-State stream) resulting from the discharge of effluents and to classify waters of the State;

(h) to evolve economical and reliable methods of treatment of sewage and trade effluents, having regard to the peculiar conditions of soils, climate and water resources of different regions and more especially the prevailing flow characteristics of water in streams and wells which render it impossible to attain even the minimum degree of dilution;

(i) to evolve methods of utilisation of sewage and suitable trade effluents in agriculture;

(j) to evolve efficient methods of disposal of sewage and trade effluents on land, as are necessary on account of the predominant conditions of scant stream flows that do not provide for major part of the year the minimum degree of dilution;

(k) to lay down standards of treatment of sewage and trade effluents to be discharged into any particular stream taking into account the minimum fair weather dilution available in that stream and the tolerance limits of pollution permissible in the water of the stream, after the discharge of such effluents;

(l) to make, vary or revoke any order—

(i) for the prevention, control or abatement of discharges of waste into streams or wells;

*(ii) **requiring any person concerned to construct new systems for***

the disposal of sewage and trade effluents or to modify, alter or extend any such existing system or adopt such remedial measures as are necessary to prevent, control or abate water pollution;

(m) to lay down effluent standards to be complied with by persons while causing discharge of sewage or sullage or both and to lay down, modify or annul effluent standards for the sewage and trade effluents;

(n) to advise the State Government with respect to the location of any industry the carrying on of which is likely to pollute a stream or well;

(o) ***to perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government.***

(2) The Board may establish or recognise a laboratory or laboratories to enable the Board to perform its functions under this section efficiently, including the analysis of samples of water from any stream or well or of samples of any sewage or trade effluents."

(25) Section 18(1)(b) of the Water Act provides that in performance of its functions under the Act, every State Board shall be bound by such directions in writing as the Central Board or the State Government may give to it.

(26) Section 32 of the Water Act empowers the Board to take emergency measures in the case of pollution of streams or wells or on land and this provision is being quoted below:-

"32. Emergency measures in case of pollution of stream or well*.—(1) Where it appears to the State Board that any poisonous, noxious or polluting matter is present in any stream or well or on land by reason of the discharge of such matter in such stream or well or on such land or has entered into that stream or well due to any accident or other unforeseen act or event, and if the Board is of opinion that it is necessary or expedient to take immediate action, it may for reasons to be recorded in writing, carry out such operations as it may consider necessary for all or any of the following purposes, that is to say,—*

(a) removing that matter from the stream or well or on land and disposing it of in such manner as the Board considers appropriate;

(b) remedying or mitigating any pollution caused by its presence in the stream or well;

(c) issuing orders immediately restraining or prohibiting the person concerned from discharging any poisonous, noxious or polluting matter into the stream or well or on land, or from making insanitary use of the stream or well.

(2) The power conferred by sub-section (1) does not include the power to construct any works other than works of a temporary character which are removed on or before the completion of the operations."

(27) Section 33 of the Water Act provides as follows: -

"33. Power of Board to make application to courts for restraining apprehended pollution of water in streams or wells.—*(1) Where it is apprehended by a Board that the water in any stream or well is likely to be polluted by reason of the disposal or likely disposal of any matter in such stream or well or in any sewer or on any land, or otherwise, the Board may make an application to a court, not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class, for restraining the person who is likely to cause such pollution from so causing.*

(2) On receipt of an application under sub-section (1) the court may make such order as it deems fit. ... "

(28) There is no provision in the Water Act which confers any power of judicial or quasi-judicial nature on the State Board.

(29) The National Green Tribunal Act, 2010 (which will hereinafter be referred to as 'the NGT Act') was enacted on 02.06.2010 with the following object:-

"An Act to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including *enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto."*

(30) Thus NGT has been established with the object of effective and expeditious disposal of cases relating to compensation relating to environment. The composition of NGT is provided in Section 4 (1) of the NGT Act which is as follows:-

"4. Composition of Tribunal *– (1) The Tribunal shall consist of,–*

(a) a full-time Chairperson;

(b) not less than ten but subject to not maximum of twenty full-time Judicial Members as the Central Government may, from time to time, notify;

(c) not less than ten but subject to maximum twenty full-time Expert Members, as the Central Government may, from time to time, notify."

(31) The qualifications of Chairperson, Judicial Member and Expert Member are provided in Section 5 of the NGT Act, which is as follows:-

*"**5. Qualifications for appointment of Chairperson, Judicial Member and Expert Member**.—(1) A person shall not be qualified for appointment as the Chairperson or Judicial Member of the Tribunal unless he is, or has been, a Judge of the Supreme Court of India or Chief Justice of a High Court:*

Provided that a person who is or has been a Judge of the High Court shall also be qualified to be appointed as a Judicial Member.

(2) A person shall not be qualified for appointment as an Expert Member, unless he,—

(a) has a degree in Master of Science (in physical sciences or life sciences) with a Doctorate degree or Master of Engineering or Master of Technology and has an experience of fifteen years in the relevant field including five years practical experience in the field of environment and forests (including pollution control, hazardous substance management, environment impact assessment, climate change management, biological diversity management and forest conservation) in a reputed National level institution; or

(b) has administrative experience of fifteen years including experience of five years in dealing with environmental matters in the Central or a State Government or in a reputed National or State level institution.

(3) The Chairperson, Judicial Member and Expert Member of the Tribunal shall not hold any other office during their tenure as such.

(4) The Chairperson and other Judicial and Expert Members shall not, for a period of two years from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any person who has been a party to a proceeding before the Tribunal under this Act:

Provided that nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).''

(32) The aforesaid provision makes it manifest that NGT has been constituted as a body of experts.

(33) Chapter III of the NGT Act deals with jurisdiction, powers and proceedings of the Tribunal. Section 14 of the NGT Act provides that the Tribunal shall have jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

(34) The phrase "Substantial question relating to environment" is defined in Section 2(m) of the NGT Act as follows:-

''(m) ''substantial question relating to environment'' shall include an instance where,—

(i) there is a direct violation of a specific statutory environmental obligation by a person by which,—

(A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or

(B) the gravity of damage to the environment or property is substantial; or

(C) the damage to public health is broadly measurable;

(ii) the environmental consequences relate to a specific activity or a point source of pollution;''

(35) Section 15 of the NGT Act provides for relief, compensation and restitution and the relevant parts of this Section read as follows:-

15. Relief, compensation and restitution.—(1) The Tribunal may, by an order, provide,—

(a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I *(including accident occurring while handling any hazardous substance);*

(b) for restitution of property damaged;

(c) for restitution of the environment for such area or areas,

as the Tribunal may think fit.

* * *

(2) The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).

* * *

(4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.

* * *

(36) Schedule - I referred to in Sections 14 and 15 of the Act lists the following Acts:-

"1. The Water (Prevention and Control of Pollution) Act, 1974;

2. The Water (Prevention and Control of Pollution) Cess Act, 1977;

3. The Forest (Conservation) Act, 1980;

4. The Air (Prevention and Control of Pollution) Act, 1981;

5. The Environment (Protection) Act, 1986;

6. The Public Liability Insurance Act, 1991;

7. The Biological Diversity Act, 2002"

(37) Schedule II referred to in Section 15 of the NGT Act as follows:-

"Heads under which compensation or relief for damage may be claimed

(a) Death;

(b) Permanent, temporary, total or partial disability or other injury or sickness;

(c) Loss of wages due to total or partial disability or permanent or temporary disability;

(d) Medical expenses incurred for treatment of injuries or sickness;

(e) Damages to private property;

(f) Expenses incurred by the Government or any local authority in providing relief, aid and rehabilitation to the affected persons;

(g) Expenses incurred by the Government for any administrative or legal action or to cope with any harm or damage, including compensation for environmental degradation and restoration of the quality of environment;

(h) Loss to the Government or local authority arising out of, or connected with, the activity causing any damage;

(i) Claims on account of any harm, damage or destruction to the fauna including milch and draught animals and aquatic fauna;

(j) Claims on account of any harm, damage or destruction to flora including aquatic flora, crops, vegetables, trees and orchards;

(k) Claims including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water, land and eco-systems;

(l) Loss and destruction of any property other than private property;

(m) Loss of business or employment or both;

(n) Any other claim arising out of, or connected with, any activity of handling of hazardous substance."

(38) Section 20 of the NGT Act provides that *"The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle."*

(39) A bare perusal of the aforesaid provisions of the NGT Act makes it manifest that the NGT has been constituted as an expert body and it has been conferred with the jurisdiction over all civil cases where a substantial question relating to environment is involved. Payment of compensation for causing damage to environment is a civil dispute and it involves a substantial question relating to environment. Therefore, the NGT has been conferred with the jurisdiction to decide the cases relating to award of compensation, including the compensation under the Water Act and the Air Act.

(40) Section 18 of the NGT Act provides as follows:-

***"18. Application or appeal to Tribunal**.—(1) Each application under Sections 14 and 15 or an appeal under Section 16 shall, be made to the Tribunal in such form, contain such particulars, and, be accompanied by such documents and such fees as may be prescribed.*

*(2) Without prejudice to the provisions contained in Section 16, **an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by**—*

(a) the person, who has sustained the injury; or

(b) the owner of the property to which the damage has been caused; or

(c) where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased; or

(d) any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or

(e) any person aggrieved, including any representative body or organisation; or

*(f) the Central Government or a State Government or a Union Territory Administration or **the Central Pollution Control Board or a State Pollution Control Board** or a Pollution Control Committee or a local authority, or any environmental authority constituted or established under the Environment (Protection) Act, 1986 (29 of 1986) or any other law for the time being in force:*

Provided that…

(3)…"

(41) Rule 8 of the National Green Tribunal (Practices and Procedure) Rules, 2011 (which will hereinafter be referred to as 'the NGT Rules, 2011') contains a specific provision for submission of an application for compensation and it provides as follows:-

*"8. **Procedure for filing application or appeal**.- (1) An application or appeal to the Tribunal under section 18 shall be presented in Form I by the applicant or appellant, as the case may be, in person or by an agent or by a duly authorised legal practitioner, to the Registrar or any other officer authorised in writing by the Registrar to receive the same or be sent by registered post with acknowledgment duly addressed to the Registrar of the Tribunal at and sent to concerned place of sitting:*

*Provided that **where the application is for relief and compensation, it shall be made in Form II.***

* * *

(42) Rule 35 of the NGT Rules, 2011 provides as follows:-

***"35. Manner and the purposes for which amount of compensation or relief or restitution credited to Environment Relief Fund shall be utilised**.—(1) The amount by way of compensation or relief to the victim or restitution of property and the environment, ordered by the Tribunal to be paid shall be remitted to the authority, specified under sub-section (3) of Section 7-A of the Public Liability Insurance Act, 1991 (6 of 1991), within a period of thirty days from the date of order or award or as otherwise ordered by the Tribunal.*

(2) In the case of failure to remit the amount by the concerned person, under sub-rule (1), within the time so specified, the District Collector of the concerned district shall file a complaint, before the court having jurisdiction, under clause (a) of sub-section (1) of Section 30 of the Act.

(3) The amount referred to in sub-rule (1), shall be credited to the Environment Relief Fund under Section 24 of the Act for utilisation under any heads specified in Schedule II to the Act.

(4) A separate account shall be created and maintained by the authority referred to in sub-rule (1) for the purpose of receiving and disbursement of the amount pursuant to the order or award of the Tribunal."

(43) Rule 36 of the NGT Rules, 2011 provides for procedure for disbursement of relief or compensation or restitution of property damaged and this Rule provides as follows:-

***"36. Procedure for disbursement of relief or compensation or restitution of property damaged.**—(1) A copy of the award or order or decision of the Tribunal passed under clause (a) or clause (b) of sub-section (1) of Section 15 of the Act shall be transmitted to the authority referred to in sub-rule (1) of Rule 35 and the District Collector having local jurisdiction for disbursement.*

(2) The authority referred to in sub-rule (1) of Rule 35 shall transfer the amount so deposited in the Environment Relief Fund to the concerned District Collector within a period of thirty days form the date of deposit.

(3) The District Collector shall arrange to disburse the amount of compensation or relief and restitution of property damaged within a period of thirty days of the receipt of the amount under sub-rule (2), to the affected persons or victims of pollution or other environmental damages arising under the enactments specified in Schedule I, under the heads specified in Schedule II, to the Act."

(44) Thus the NGT Act and the NGT Rules, 2011 contain elaborate provisions for filing of applications for imposition of compensation and adjudication thereof by the NGT, as per which, the Board can file an application before the NGT for claiming compensation from an industry if it is of the view that the industry is liable to pay compensation and the NGT will adjudicate whether the industry is liable to pay compensation, and if yes, what would be the quantum of compensation. The Board cannot itself pass an order imposing the liability for payment of compensation upon an industry.

(45) The learned Counsel for the Board has submitted that the Board derives the power to impose and recover compensation from the provisions contained in Section 33-A of the Water Act, 1974 and Section 31-A of the Air Act. Both the Sections were inserted way of by amendment with effect from 01.04.1988 and both the Sections are identically worded, which read as follows:-

"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.

(46) The directions referred to in Section 33-A of the Water Act and Section 31-A of the Air Act refer to directions of administrative nature so as to prevent water pollution or air pollution. The nature of directions that can be passed in exercise of the powers conferred Section 33-A of the Water Act and Section 31-A of the Air Act is explained by the Explanations appended to the Sections, as per which the directions would include the directions for closure, prohibition or regulation of any industry, operation or process; or the stoppage or regulation of supply of electricity, water or any other service. The directions contemplated in both the aforesaid Sections are preventive or restrictive in nature. Although the Explanations appended to the Sections state that the directions would 'include' the nature of directions mentioned in the Explanations and the examples are not exhaustive, yet the explanation clarifies that the other directions that may be issued under Section 33-A of the Water Act or Section 31-A of the Air Act would be similar in nature to those administrative directions which are mentioned in the Explanations appended to the Sections.

(47) The power to issue administrative directions for prevention of water pollution or air pollution would not include the power to impose environmental compensation and recover the same. Had this power been already there in the Water Act and the Air Act, the Legislature would have had no occasion to enact the NGT Act conferring specific provision for conferring jurisdiction upon the NGT to impose environmental compensation on erring industries.

(48) The learned Counsel for the State Pollution Control Board has placed reliance upon a judgment passed by the NGT in **State Pollution Control Board v. Swastik Ispat Pvt. Ltd**.: 2014 SCC OnLine NGT 13, wherein the NGT held that:-

"32.Keeping in view the legislative scheme and the object of the Air Act, it is evident that the Board is not incapacitated to issue a direction which may not be prohibitory or of closure in substance and application, but may be regulatory with an object to ensure that anti-pollution devices and anti-pollution measures are adopted to prevent and control pollution. For this purpose, the Board may require an industry to furnish a bank guarantee which would serve dual purposes. On the one hand, it would provide incentive to an industry to install anti-pollution devices so as to ensure non-encashment of the bank guarantee, while on the other, in the event of default, resulting in pollution, the Board would be able to spend that money for remedial purposes to control environmental degradation or damage that has taken place as a result of such default. Both these purposes would squarely fall within the framework of law and the powers and functions of the Board. The purpose of requiring a Unit to furnish a bank guarantee is not penal per se. It is compensatory i.e. an amount which would be required to be spent upon rehabilitation and restoration of the environment due to the damage caused to it by default on the part of the Unit. ... The intention of the Legislature to ensure implementation of these facets is further elucidated by the language of Section 31A of the Air Act where the Board can issue directions as afore-mentioned in exercise of its powers and performance of its functions under the

Act. Thus, there has to be a direct nexus between the directions contemplated under Section 31A of the Air Act and the powers and functions of the Board as contemplated under Sections 16, 17 and other relevant provisions of the Air Act. Once these Sections are read co-jointly, then it becomes clear that a direction which would ensure compliance of the conditions of the consent order and further the cause of prevention and control of pollution would be a direction permissible under law."

The NGT held that *"Resolution of the Board for imposing a condition upon the industrial plants/units to furnish a bank guarantee as an interregnum for compliance and/or in the nature of compensation cannot be held to be without the authority of law or jurisdiction, in so far as it is not penal or punitive."*

(49) Sri Verma has also placed reliance upon a judgment of the NGT in **Thandava Co-operative Sugars Ltd. v. Central Pollution Control Board**: 2020 SCC OnLine NGT 1823, wherein the NGT held that:-

"24. In view of Section 3 of the Environment (Protection) Act, 1986, Central Pollution Control Board has a duty to make measures to protect and improve environment and certain aspects have been provided as to how they have to be dealt with. Sub-clause (xiv) of sub-section (2) of Section 3 the Environment (Protection) Act, 1986 gives power to give further direction for the purpose of effective implementation of the provisions of this Act. Sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 authorises the Central Government to constitute an 'appropriate authority' to take measures, as provided under sub-section (2) of Section 3. That was how Central Pollution Control Board has been constituted for the purpose of effective implementation of the Environment (Protection) Act, 1986 to take all measures to abate pollution that is likely to be caused on account of operation of industrial units due to their non-compliance of the directions issued or conditions imposed in the consent granted. Further, the Apex Court, in several cases, have come to the conclusion that unless the violators are directed to pay compensation for causing pollution by applying the 'polluter pays' principle, no purpose will be served and evolved the doctrine of 'polluter pays' to realise environmental compensation from the erring units and directed the regulating authorities to take steps to implement the order and realise environmental compensation and utilise that amount for restoration of damage caused to environment.

* * *

27. So the submission made by learned counsel for appellant that Central Pollution Control Board has no power to impose environmental compensation is without any substance and the same is liable to rejected…."

(50) The same passage finds place in paragraphs 45 to 48 of the judgment passed by the NGT in the case of **Nutra Specialities (P) Ltd. v. Member Secretary, Central Pollution Control Board**: 2020 SCC OnLine NGT 1572.

(51) Regarding the binding effect of a judgment passed by the NGT, it would be appropriate to refer to the judgment of this Court in **Dan Bahadur Yadav v. Bank of Baroda**: 2025 SCC OnLine All 600, wherein this Court has held that *"The Tribunals have to follow the law laid down by the Hon'ble Supreme Court and the High Court within whose superintendence*

they function, but they do not have the power to lay down law."

(52) The learned Counsel for the Board could not place any law under which the observations made by the NGT in its judgments interpreting a statutory provision may be binding on a Constitutional Court.

(53) Further, none of the aforesaid judgments of NGT cited by the learned Counsel for the Board take into consideration the provisions of Section 15 of the NGT Act, which specifically confers the jurisdiction to adjudicate upon the claims for imposition of environmental compensation upon the NGT.

(54) In **Delhi Pollution Control Committee v. Splendor Landbase Ltd**.: 2012 SCC OnLine Del 400, a Division Bench of Delhi High Court held that:-

"37. ...that the power to issue directions under Section 33A of the Water Act and the power to issue directions under Section 31A of the Air Act, on their plain language, does not confer the power to levy any penalty. We would further highlight that under Chapter VII of the Water Act, and under Chapter VI of the Air Act penalties and procedure to levy the same have been set out. A perusal of the provisions under the Water Act would reveal that penalties can be levied as per procedure prescribed and only Courts can take cognizance of offences under the Act and levy penalties, whether by way of imprisonment or fine. Similar is the position under the Air Act. The legislature having enacted specific provisions for levy of penalties and procedures to be followed has specifically made the offences cognizable by Courts and the power to levy penalties under both Acts has been vested in the Courts. The role of the Pollution Control Boards is to initiate proceedings before the Court of Competent Jurisdiction and no more."

(55) We find ourselves in complete agreement with the aforesaid view of the Delhi High Court.

(56) Section 33-B of the Water Act and under Section 31-B of the Air Act contain provisions for filing appeals before the NGT, which provisions are being reproduced below:-

*"**33-B. Appeal to National Green Tribunal**.—Any person aggrieved by,—*

(a) an order or decision of the appellate authority under Section 28, made on or after the commencement of the National Green Tribunal Act, 2010; or

(b) an order passed by the State Government under Section 29, on or after the commencement of the National Green Tribunal Act, 2010; or

(c) directions issued under Section 33-A by a Board, on or after the commencement of the National Green Tribunal Act, 2010,

may file an appeal to the National Green Tribunal established under Section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act.

* * *

31-B. Appeal to National Green Tribunal.—Any person aggrieved by an order or decision of the Appellate Authority under Section 31, made on or after the commencement of the National Green Tribunal Act, 2010, may file an appeal to the National Green Tribunal established under Section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act."

(57) Section 16 of the NGT Act provides for filing of appeals against the directions issued under Section 33-A of the Water Act and the relevant part of Section 16 of the NGT Act is being quoted below:-

"16. Tribunal to have appellate jurisdiction.—*Any person aggrieved by,*—

* * *

(c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under Section 33-A of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

* * *

may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:

* * *

(58) Relying upon the aforesaid provisions of the NGT Act, Sri Verma has submitted that when Section 31-B of the Air Act confers appellate jurisdiction upon the NGT in respect of directions issued under Section 31-A of the Air Act; Section 33-B of the Water Act and Section 16 of the NGT Act confer appellate jurisdiction upon the NGT in respect of directions issued under Section 33-A of the Water Act, the NGT would not have the original jurisdiction to adjudicate upon the subject matter regarding which it has appellate jurisdiction. We find no force in this submission, as we have already held that Section 33-B of the Water Act and Section 31-A of the Air Act confer power upon the Board to issue directions of administrative nature and it does not confer any adjudicatory power on the Board, which power vests in the NGT only.

(59) Sri Verma has also submitted that Section 18(2) of the NGT Act provides that an application for grant of relief or compensation or settlement of dispute may be made to the NGT without prejudice to the provisions contained in Section 16 of the Act, 2010. Therefore, the provision regarding filing of an application by the Pollution Control Board contained in Section 18(2)(f) of the NGT Act is without prejudice to the appellate powers of the Tribunal contained in Section 16 of the NGT Act and the appellate power under Section 16 will have a precedence over the provisions contained in Section 18(2). This submission also has no force, as we have already held that Section 33-B of the Water Act and Section 31-A of the Air Act confer power upon the Board to issue directions of administrative nature and it does not confer any adjudicatory power on the Board, which power vests in the NGT only.

(60) The learned counsel for the Board has drawn the attention of this Court to the provisions contained in Article 21 of the Constitution of India which provides that "No person shall be deprived of his life or personal liberty except according to procedure established by law." He has submitted that the protection of environment and ecological balance is included in the Fundamental Right to life. There can be no dispute against this proposition, but it would not lead to the proposition that the Board has the power to impose environmental compensation without taking recourse to the process of filing an application under Section 15 read with Section 18 of the NGT Act before the NGT.

(61) Sri Verma has submitted that 'water pollution' is included in the term 'water' occurring in item - 17 of List - II

contained in Schedule 7 appended to the Constitution of India, and therefore, it is a State subject. We do not find it necessary to go into the question whether the term 'water' occurring in item - 17 of List - II contained in Schedule 7 appended to the Constitution of India would include 'water pollution' or not, as in any case, the entries merely provide that the State would have the authority to enact a law on the subject. In the present case, the State has not enacted any such law as may empower the State Pollution Control to impose and recover environmental compensation from any industry.

(62) Sri Verma has drawn our attention to the directive principles of State policy contained in Part IV of the Constitution of India. Article 48-A provides that the State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country. Part IV-A of the Constitution of India enlists fundamental duties and Article 51-A(g) provides that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. He has submitted that the State Authorities have to strike a balance between sustainable development and protection of environment. The State has to ensure that a polluter pays compensation for any damage caused by him to the environment. However, these submissions do not justify the exercise of an adjudicatory power by the Pollution Control Board, which power has been conferred upon the NGT by the Statute, i.e. NGT Act and no statute has conferred such a power on the Pollution Control Board.

(63) The learned Counsel for the State Pollution Control Board has also submitted that Chapter VI of the Air Act contains provisions regarding penalties and procedure and it provides that the adjudicating officer may impose penalty. The power to impose penalty under the Air Act vests in the Adjudicating Officer. He has also submitted that in case any industry operates without consent of the Board, it may be prosecuted. However, in the case of other violations, penalty can be imposed by the Adjudicating Officer without prosecution.

(64) Chapter VI of the Air Act contains Sections 37 to 46. Section 37 (1) of the Air Act provides that "*Whoever contravenes or does not comply with the provisions of Section 22 or directions issued under Section 31-A, shall, in respect of each such contravention, be liable to penalty which shall not be less than ten thousand rupees, but which may extend to fifteen lakh rupees."*

(65) Section 28 of the Air Act provides for penalties for the following specific acts: -

"(a) destroys, pulls down, removes, injures or defaces any pillar, post or stake fixed in the ground or any notice or other matter put up, inscribed or placed, by or under the authority of the Board;

(b) obstructs any person acting under the orders or directions of the Board from exercising his powers and performing his functions under this Act;

(c) damages any works or property belonging to the Board;

(d) fails to furnish to the Board or any officer or other employee of the Board any information required by the Board or

such officer or other employee for the purposes of this Act;

(e) fails to intimate the occurrence of the emission of air pollutants into the atmosphere in excess of the standards laid down by the State Board or the apprehension of such occurrence, to the State Board and other prescribed authorities or agencies as required under sub-section (1) of Section 23;

(f) fails in giving any information which he is required to give under this Act, makes a statement which is false in any material particular, shall be liable to penalty which shall not be less than ten thousand rupees, but which may extend to fifteen lakh rupees."

(66) Section 38-A of the Air Act contains provisions for penalty for contravention by Government Departments. Section 39 deals with Penalties for contravention of certain provisions of the Act.

(67) Section 39-A of the Act provides as follows: -

***"39-A. Adjudicating officer**.—(1) The Central Government, for the purposes of determining the penalties under Sections 37, 38, 38-A and Section 39, shall appoint an officer not below the rank of Joint Secretary to the Government of India or a Secretary to the State Government to be the adjudicating officer, to hold an inquiry and to impose the penalty in the manner, as may be prescribed:*

Provided that the Central Government may appoint as many adjudicating officers as may be required.

*(2) **The adjudicating officer may summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person concerned has contravened the provisions of this Act, he may determine such penalty as he thinks fit under the provisions of Sections 37, 38, 38-A or 39, as the case may be:***

Provided that no such penalty shall be imposed without giving the person concerned a reasonable opportunity of being heard.

(3) The amount of penalty imposed under the provisions of Sections 37, 38, 38-A and 39, shall be in addition to the liability to pay relief or compensation under Section 15 read with Section 17 of the National Green Tribunal Act, 2010 (19 of 2010)."

(68) Thus it is clear that the Adjudicating Officer has the statutory power to adjudicate the penalty to be imposed in accordance with the statutory provisions. However, the statute does not confer any adjudicatory power on the Pollution Control Board. Therefore, the adjudicatory powers of the Adjudicating Officer are not relevant for deciding whether the Pollution Control Board has any adjudicatory powers.

(69) Now we proceed to consider the decision in the case of **Paryavaran Suraksha Samiti v. Union of India:** (2017) 5 SCC 326, in which the Hon'ble Supreme Court has granted liberty to private individual(s) and organizations, to address complaints to the Pollution Control Board if any industry is in default. On the receipt of any such complaint, **the Pollution Control Board concerned shall be obliged to verify the same and take such action against the defaulting**

industry, as may be permissible in law. Such action would be in addition to the discontinuation of industrial activity forthwith. The Hon'ble Supreme Court further provided that the concerned Benches of the National Green Tribunal will maintain running and numbered case files, by dividing the jurisdictional area into units to supervise the complaints of non-implementation of the directions issued by the Hon'ble Supreme Court and the cases will be listed periodically. The Pollution Control Boards were also directed to initiate such civil or criminal action, as may be permissible in law, against all or any of the defaulters. Liberty was granted to private individuals, and organizations, to approach the Bench concerned of the jurisdictional National Green Tribunal, for appropriate orders, by pointing out deficiencies, in implementation of the above directions issued by the Hon'ble Supreme Court. It is in furtherance of the aforesaid directions that Original Application No. 593/2017, Paryavaran Suraksha Samiti and another v. Union of India and others, was registered before the National Green Tribunal, Principal Bench, New Delhi which is still continuing and directions are issued in the said case from time to time.

(70) When the Hon'ble Supreme Court has directed in **Paryavaran Suraksha Samiti (Supra)** that private individual(s) and organizations, can submit complaints to the Pollution Control Board if any industry is in default and on receipt of any such complaint, the Pollution Control Board concerned shall be obliged to verify the same and take such action against the defaulting industry, as may be permissible in law, the Pollution Control Board can only take action as is permissible in law, which is to issue preventive directions contemplated by Section 33-B of the Water Act and Section 31-A of the Air Act and filing an application for compensation before the NGT under Section 15 read with Section 18 of the NGT Act. Passing an order by the Board imposing the liability for payment of compensation from the industry is not permissible in law and in **Paryavaran Suraksha Samiti (Supra)**, the Hon'ble Supreme Court has not directed the Board to pass any order which is not permissible in law.

(71) On 31.08.2018, the National Green Tribunal has issued the following directions in the aforesaid case:-

"(i) We direct the Central Pollution Control Board (CPCB) to forthwith prepare an action plan after looking into all the status reports. The action plans must have mechanism to ensure compliance or all the directions in the order of the Hon'ble Supreme Court. To enable this to be done, a Nodal officer must be identified to deal with the issue of CETPs/ ETPs/STPs.

(ii) A representative of the Ministry of Environment, Forest and Climate Change may be associated with the Nodal Officer of the CETP for monitoring. The Monitoring by the said two officers- the representative of the MoEF and the Nodal Officer of the CPCB must be held atleast once in a month and on the basis of such meeting and the feedback taken further follow up action must be taken and appropriate directions issued. This process may be a continuous process.

(iii) It must be ensured that STPs, CETPs and ETPs are functional and meet the requisite standards.

(iv) There is already a direction in the above judgment under which 50% of the funds for the purpose are to be provided

by the Central Government, 25% by the States and remaining 25% to be arranged by way of loans which is to be re-paid by the user industries. Local bodies and the States have duties as clearly stipulated in the judgment. There has to be online monitoring system by each State to display emission levels in public domain in terms of paragraph 17 of the order of the Hon'ble Supreme Court.

(v) A report of the steps taken may be placed on the website of the Central Pollution Control Board atleast once in three months. Deficiencies if any may also be so displayed.

(vi) The Central Pollution Control Board may take penal action for failure, if any, against those accountable for setting up and maintaining STPs, CETPs and ETPs Central Pollution Control Board may also assess and recover compensation for damage to the environment and the said fund be kept in a separate account and utilized in terms of an action plan for protection of the environment. Such action plan may be prepared by the Central Pollution Control Board within three months from today.

(vii) A compliance report in terms of the above order may be furnished to this Tribunal within four months from today by e-mail at filing.ngt@gmail.com."

(72) Again in the order dated 28.08.2019 passed by the NGT in the case of **Paryavaran Suraksha Samiti (Supra)**, the NGT referred to two reports - first report dated 30.05.2019 updated on 19.07.2019 prepared by the Central Pollution Control Board regarding status of setting up of ETPs/CETPs/STPs and methodology for assessing environmental compensation for discharge of pollutants in water bodies and other report dated 14.08.2019 with regard to monitoring of CETPs. Extracts of the report on the scale of environmental compensation were quoted in para 14 of the order passed by the National Green Tribunal which is as follows:-

"1. Report dated 30.05.2019 updated on 19.07.2019

13. According to updated report dated 19.07.2019, out of 62,897 number of industries requiring ETPs, 60,944 industries are operating with functional ETPs and 1949 industries are operating without ETPs. 59,258 industries are complying with environmental standards and 1,524 industries are noncomplying. There are total 192 CETPs, out of which 133 CETPs are complying with environmental standards and 59 CETPs are non-complying. There are total 13,709 STPs (Municipal and other than municipal), out of which, 13,113 STPs are complying with environmental standards and 637 STPs are non-complying 73 CETPs in construction/proposal stage, whereas, for STPs, 1164 projects (municipal and non-municipal) are under construction/proposal stage.

14. A report has also been prepared on the scale of environmental compensation to be recovered from individual/authorities for causing pollution or failure for preventing causing pollution, apart from illegal extraction of ground water, failure to implement Solid waste Management Rules, damage to environment by mining and steps taken to explore preparation of an annual environmental plan for the country. Extracts from the report which are considered significant for this order are:

*"**I. Environment Compensation to be levied on Industrial Units***

Recommendations

The Committee made following recommendations:

To begin with, Environmental Compensation may be levied by CPCB only when CPCB has issued the directions und.er the Environment (Protection) Act, 1986. In case of a, band c, Environmental Compensation may be calculated based on the formula "EC= Pl x N x Rx S x LF", wherein, Pl may be taken as 80, 50 and 30 for red,, orange and green category of industries, respectively, and R may be taken as 250. Sand LF may be taken as prescribed in the preceding paragraphs

1.5.2 In case of d, e and f, the Environmental Compensation may be levied based on the detailed investigations by Expert Institutions/Organizations.

1.5.3. The Hon'ble Supreme Court in its order dated 22.02.2017 in the matter of Paryavaran Suraksha Samiti and another v/s Union of India and others {Writ Petition {Civil) No. 375 of 2012), directed that all running industrial units which require "consent to operate" from concerned State Pollution Control Board, have a primary effluent treatment plant in place. Therefore, no industry requiring ETP, shall be allowed to operate without ETP.

1.5.4 EC is not a substitute for taking actions under EP Act, Water Act or Air Act. In fact, units found polluting should be closed/prosecuted as per the Acts and Rules.

II. Environmental Compensation to be levied on all violations of Graded Response Action Plan (GRAP) in NCR.

Table No. 2.1: Environmental Compensation to be levied on all violations of Graded Response Action Plan (GRAP) in Delhi-NCR.

Activity	*State Of Air Quality*	*Environmental Compensation ()*
Industrial Emissions	***Severe +/Emergency***	***Rs 1.0 Crore***
	Severe	***Rs 50 Lakh***
	Very Poor	***Rs 25 Lakh***
	Moderate to Poor	***Rs 10 Lakh***
Vapour Recovery System (VRS) at Outlets of Oil Companies		
i. Not installed	*Target Date*	*Rs 1.0 Crore*
ii. Non functional	*Very poor to Severe +*	*Rs 50.0 Lakh*
	Moderate to Poor	*Rs 25.0 Lakh*
Construction sites (Offending plot more than 20,000 Sq.m.)	*Severe +/Emergency*	*Rs 1.0 Crore*
	Severe	*Rs 50 Lakh*
	Very Poor	*Rs 25 Lakh*
	Moderate to Poor	*Rs 10 Lakh*
Solid waste/ garbage dumping in Industrial Estates	*Very poor to Severe +*	*Rs 25.0 Lakh*
	Moderate to Poor	*Rs 10.0 Lakh*
Failure to water sprinkling on unpaved roads		
a) Hot-spots	*Very poor to Severe +*	*Rs 25.0 Lakh*
b) Other than Hot-spots	*Very poor to Severe +*	*Rs 10.0 Lakh*

III. Environmental Compensation to be levied in case of failure of preventing the pollutants being discharged in water

bodies and failure to implement waste management rules:

Table No. 3.3: Minimum and Maximum EC to be levied for untreated/partially treated sewage discharge

Class of the City/Town	***Mega-City***	***Million-plus City***	***Class-I City/Town and others***
Minimum and Maximum values of EC (Total Capital Cost Component) recommended by the Committee (Lacs Rs.)	*Min. 2000 Max. 20000*	*Min. 1000 Max. 10000*	*Min. 100 Max. 1000*
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)	*Min. 2 Max. 20*	*Min. 1 Max. 10*	*Min. 0.5 Max. 5*

Table No. 3.4: Minimum and Maximum EC to be levied for improper municipal solid waste management

Class of the City/Town	***Mega-City***	***City Million-plus***	***Class-I City/Town and others***
Minimum and Maximum values of EC (Capital Cost Component) recommended by the Committee (Lacs Rs.)	*Min. 1000 Max. 10000*	*Min. 500 Max. 5000*	*Min. 100 Max. 1000*
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)	*Min. 1.0 Max. 10.0*	*Min. 0.5 Max. 5.0*	*Min. 0.1 Max. 1.0*

3.3 Environment Compensation for Discharge of Untteated/Partially Treated Sewage by Concerned Individual/ Authority:

* * *

(73) After referring to the aforesaid reports, the National Green Tribunal issued the following directions:-

"(i) The Environmental compensation regime fixed for industrial units, GRAP, solid waste, sewage and ground water in the report dated 30.05.2019 is accepted and the same may be acted upon as an interim measure.

(ii) SPCBs/PCCs may ensure remedial action against noncompliant

CETPs or individual industries in terms of not having ETPs/fully compliant ETPs or operating without consent or in violation of consent conditions. This may be overseen by the CPCB. CPCB may continue to compile information on this subject and furnish quarterly reports to this Tribunal which may also be uploaded on its website.

(iii) All the Local Bodies and or the concerned departments of the State Government have to ensure 100% treatment of the generated sewage and in default to pay compensation which is to be recovered by the States/UTs, with effect from 01.04.2020. In default of such collection, the States/UTs are liable to pay such compensation. The CPCB is to collect the same and utilize for restoration of the environment.

(iv) The CPCB needs to collate the available data base with regard to ETPs, CETPs, STPs, MSW facilities, Legacy Waste sites and prepare a river basinwise macro picture in terms of gaps and needed interventions.

(v) The Chief Secretaries of all the States/UTs may furnish their respective compliance reports on this subject also in O.A. No. 606/2018."

(74) Shri Verma has submitted that the Pollution Control Board is levying environmental compensation in accordance with the aforesaid directions issued by the National Green Tribunal.

(75) We are unable to accept the aforesaid submission of Sri. Verma, as the directions issued by the NGT do not contain any direction to the State Pollution Control Board to recover compensation. Secondly, adjudication of the liability for payment of compensation is a statutory function and the statute has conferred this adjudicatory power on the NGT. When the Statute has not conferred this power upon the State Pollution Control Board, this power cannot be conferred on the State Board by the NGT.

(76) In **Benarsi Silk Palace Vs. Commr. of Income Tax** [1964] 52 ITR 220 (All), this Court has held that:-

"Jurisdiction could be conferred only by statute and not by consent and acquiescence. Since jurisdiction is conferred upon Income Tax Officer to proceed under Section 34 (1) only if he issues a notice an assessee cannot confer jurisdiction upon him by waiving the requirement of a notice because jurisdiction cannot be conferred by consent or acquiescence."

(77) In **Chiranjilal Shrilal Goenka v. Jasjit Singh and others:** (1993) 2 SCC 507, the Hon'ble Supreme Court has observed as under:-

"17. ...In A.R. Antulay v. R.S. Nayak [(1988) 2 SCC 602] when a Constitution Bench directed the High Court Judge to try the offences under the Prevention of Corruption Act with which the petitioner therein was charged and the trial was being proceeded with, he questioned by way of writ petition the jurisdiction of this Court to give such a direction. A Bench of seven judges per majority construed the meaning of the word "jurisdiction'. Mukharji, J. as he then was, speaking per himself, Oza and Natarajan, JJ. held that ***the power to create or enlarge jurisdiction is legislative in character. So also the power to confer a right of appeal or to take away a right of appeal. The Parliament alone can do it by law and no court, whether superior or inferior or both combined, can enlarge the jurisdiction of***

a court *and divest a person of his rights of appeal or revision. Ranganath Mishra, J. as he then was, held that* ***jurisdiction comes solely from the law of the land and cannot be exercised otherwise. In this country, jurisdiction can be exercised only when provided for either in the Constitution or in the laws made by the legislature****. Jurisdiction is thus the authority or power of the court to deal with a matter and make an order carrying binding force in the facts. Oza, J. supplementing the question held that* ***the jurisdiction to try a case could only be conferred by law enacted by the legislature. The Supreme Court could not confer jurisdiction if it does not exist in law****. Ray, J. held that the Court cannot confer a jurisdiction on itself which is not provided in the law. In the dissenting opinion Venkatachaliah, J., as he then was, lay down that the expression jurisdiction or prior determination is a "verbal coat of many colours". In the case of a tribunal, an error of law might become not merely an error in jurisdiction but might partake of the character of an error of jurisdiction. But, otherwise, jurisdiction is a "legal shelter' and a power to bind despite a possible error in the decision. The existence of jurisdiction does not depend on the correctness of its exercise. The authority to decide embodies a privilege to bind despite error, a privilege which is inherent in and indispensable to every judicial function. The characteristic attribute of a judicial act is that it binds whether it be right or it be wrong. Thus this Court laid down as an authoritative proposition of law that* ***the jurisdiction could be conferred by statute and this Court cannot confer jurisdiction or an authority on a tribunal****. In that case this Court held that Constitution Bench has no power to give direction contrary to Criminal Law Amendment Act, 1952. The direction per majority was held to be void."*

(78) In **Jagmittar Sain Bhagat v. Health Services, Haryana**: (2013) 10 SCC 136, it was held that:-

"9. Indisputably, it is a settled legal proposition that ***conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court****, and if the court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the root of the cause. Such an issue can be raised at any stage of the proceedings. The finding of a court or tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Similarly, if a court/tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetrate and perpetuate defeating of the legislative animation.* ***The court cannot derive jurisdiction apart from the statute****. In such eventuality the doctrine of waiver also does not apply. (Vide United Commercial Bank Ltd v. Workmen [1951 SCC 364], Nai Bahu v. Lala Ramnarayan [(1978) 1 SCC 58], Natraj Studios (P) Ltd. v. Navrang Studios [(1981) 1 SCC 523] and Kondiba Dagadu Kadam v. Savitribai Sopan Gujar [(1999) 3 SCC 722].)"*

(79) In **Kantha Vibhag Yuva Koli Samaj Parivartan Trust v. State of Gujarat**: (2023) 13 SCC 525, the Hon'ble Supreme Court held that:-

"18. Section 14 and Section 15 entrust adjudicatory functions to NGT. NGT is a specialised body comprising of judicial and expert members. Judicial members bring to bear their experience in adjudicating cases. On the other hand, expert members bring into the decision-making process scientific knowledge on issues concerning the environment. In Hanuman Laxman Aroskar v. Union of India [(2019) 15 SCC 401], a two-Judge Bench of this Court noted that NGT is an expert adjudicatory body on the environment.

19. The Court held :

"133. The NGT Act provides for the constitution of a tribunal consisting both of judicial and expert members. The

mix of judicial and technical members envisaged by the statute is for the reason that the Tribunal is called upon to consider questions which involve the application and assessment of science and its interface with the environment. ...

134. NGT is an expert adjudicatory body on the environment."

NGT does not have a dearth of "expertise" when it comes to the issues of environment.

20. Section 15 empowers NGT to award compensation to the victims of pollution and for environmental damage, to provide for restitution of property which has been damaged and for the restitution of the environment. NGT cannot abdicate its jurisdiction by entrusting these core adjudicatory functions to administrative Expert Committees. Expert Committees may be appointed to assist NGT in the performance of its task and as an adjunct to its fact-finding role. But adjudication under the statute is entrusted to NGT and cannot be delegated to the administrative authorities. Adjudicatory functions assigned to the courts and tribunals cannot be hived off to administrative committees. In Sanghar Zuber Ismai v. Union of India [(2021) 17 SCC 827], a three-Judge Bench of this Court noted that NGT cannot refuse to hear a challenge to an environmental clearance under Section 16(h) of the NGT Act and delegate the process of adjudicating on compliance to an Expert Committee.

21. The Court held :

"7. ... NGT has not dealt with the substantive grounds of challenge in the exercise of its appellate jurisdiction. Constitution of an Expert Committee does not absolve NGT of its duty to adjudicate. The adjudicatory function of NGT cannot be assigned to committees, even Expert Committees. The decision has to be that of NGT. NGT has been constituted as an expert adjudicatory authority under an Act of Parliament. The discharge of its functions cannot be obviated by tasking committees to carry out a function which vests in the tribunal."

22. NGT has in the present case abdicated its jurisdiction and entrusted judicial functions to an administrative Expert Committee. An Expert Committee may be able to assist NGT, for instance, by carrying out a fact-finding exercise, but the adjudication has to be by NGT. This is not a delegable function…."

(80) After the aforesaid pronouncement of law made by the Hon'ble Supreme Court, there is no scope to doubt that the adjudicatory duties for ascertaining the liability for payment of environmental compensation under Section 15 of the NGT Act have to be performed by the NGT alone and the NGT cannot delegate this duty to the State Pollution Control Board.

(81) Sri Verma has provided a compilation of containing photocopies of 13 judgments running into 396 pages, but he has not referred to any of those judgments in his submissions and the compilation does not have any brief note or index which mentions the ratio or the relevant portion of the judgment. Therefore, we are not referring to those judgments. No other point was pressed before us.

(82) In view of the foregoing discussion, we hold that the State Pollution Control Board has no power to impose environmental compensation upon any person or Industry and it can merely file an application before the NGT under Section 15 read with Section 18 of the NGT Act for

issuance of a direction to the person concerned for payment of compensation.

(83) Accordingly, all the Writ Petitions are allowed. All the orders passed by the State Pollution Control Board imposing environmental compensation upon the petitioners, which are under challenge in the Writ Petitions, are quashed. The State Pollution Control Board will be at liberty to file applications before the NGT for award of compensation. Costs made easy.

(84) Before parting, it is worthwhile to put on record that Entry 6 and 17 of List II of Seventh Schedule of the Constitution of India give exclusive right to the State Legislature to frame laws with respect to the Water Pollution. However, Article 252 of the Constitution of India provides as under:-

"252. Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State

(1) If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in articles 249 and 250 should be regulated in such States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.

(2) Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State."

(85) It appears that in pursuance of Article 252 (1) of the Constitution of India, the Legislatures of the State of Assam, Bihar, Gujarat, Haryana, Himachal Pradeh, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal have passed a resolution that the Parliament may make a law regulating Water Pollution in their States and accordingly, the Parliament enacted the Water (Prevention and Control of Pollution) Act, 1974.

(86) There does not appear to be anything on record to indicate that the House of Legislature of the State of Uttar Pradesh has passed or adopted any resolution in the above perspective.

(87) Insofar as National Capital Region (NCR) is concerned, the Parliament has recently promulgated a legislation on The Commission for Air Quality Management in National Capital Region and Adjoining Areas Act, 2021 which ousts or dilutes the jurisdiction of National Green Tribunal (NGT) to the extent of areas governed under this Act. Thus, a situation of overlapping with respect to the redressal mechanism has crept in which requires a clarification and guidance.

(88) We hope and trust that the laws regulating Pollution Control are streamlined and made effective by

rectifying the legislative or executive lapses, if any.

(2025) 7 ILRA 872
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 03.07.2025

BEFORE

THE HON'BLE ASHWANI KUMAR MISHRA, J.
THE HON'BLE JAYANT BANERJI, J.

Writ-C No. 6490 of 2025

Ashok Kumar Gupta ...Petitioner
Versus
State of U.P. & Ors. ...Opp. Parties

Counsel for the Petitioner:
Sri Dhananjai Rai, Sri Vibhu Rai

Counsel for the Opp. Parties:
C.S.C., Sri Pushpendra Kumar, Sri Ramdhan, Sri Vibhanshu Vaibhav

Issue for Consideration

The primary issue is whether the authorities should be directed to provide police force and proceed with the demolition of a dilapidated building, despite resistance from the occupants (alleged tenants) to safeguard life and property.

Headnotes

Civil matter-U.P. Municipal Corporation Act,1959-Section 331-Ruinous and Dangerous Buildings-Demolition- U.P. Regualtion of Uraban Premises Tenancy Act,2021-Conflict of Statutes-Public Safety Vs. Tenancy Rights-The tenants' right to object or resist the demolition on the basis of their tenancy protection under Act,2021 is subordinate to the municipal authorities duty to prevent danger-Imminent demolition is imperative u/s 331 of the Act,1959 to ensure the protection of life of individuals-directions issued.

Held

Petitioner sought a direction to the District Magistrate and Senior Superintendent of Police, Aligarh to provide necessary police force to the Nagar Nigam, Aligarh, to execute a demolition notice dated October 1, 2024 issued u/s 331(1) of the Act,1959-The notice pertains to the demolition of a nearly 100-year old, dilapidated structure known as 'Rama Devi Building'-The Nagar Nigam's efforts to execute the demolition were thwarted by "massive protest" and resistance from 44 alleged tenants and their family members-The court held that the scheme under the Act,1959 for the protection of life from a dilapidated building posing a threat, must be given primacy over the tenancy rights-The action of demolition is to be undertaken strictly in accordance with law preferably within two months.(Para 10 to 20) (E-6)

List of Acts

U.P. Municipal Corporation Act,1959, Tenancy Act,2021

List of Keywords

Nagar Nigam; U.P. Municipal Corporation Act,1959;premises; Rama Devi Building; Municipal Commissioner; Tenancy Act,2021,Rent Authority; tenant; demolition; eviction; dilapidated tenanted premises

Case Arising From

CIVIL JURISDICTION: WRIT-C No. – 6490 of 2025
From the Judgment and Order dated 03.07.2025 of the High Court of Judicature at Allahabad.

Ashok Kumar Gupta Vs. State of U.P. & 3 Ors

Appearances for Parties

Advs. for Petitioner:
Dhananjai Rai, Vibhu Rai
Advs. for Respondent:
C.S.C., Pushpendra Kumar, Ramdhan , Vibhanshu Vaibhav

(Delivered by Hon'ble Ashwani Kumar Mishra, J.
&
Hon'ble Jayant Banerji, J.)

1. Heard learned counsel for the petitioner, learned Standing Counsel for the State-respondents and Shri Vibhanshu Vaibhav, learned counsel representing the Nagar Nigam, Aligarh as well as the

learned counsel for the applicants seeking impleadment of the intervenors.

2. This writ petition has been filed with a prayer to issue an appropriate direction to the District Magistrate, Aligarh and Senior Superintendent of Police, Aligarh to provide necessary police force to the petitioner to get the building demolished in compliance of the notice issued by Nagar Nigam, Aligarh dated 1.10.2024 under Section 331(1) of the U.P. Municipal Corporation Act, 19591. The petitioner has made further prayer to command the officials of the Nagar Nigam and District Administration to get the building demolished, bearing Municipal No.2/206 at Sudama Puri, Ram Ghat Road, Aligarh, which is popularly known as 'Rama Devi Building'.

3. The petitioner claims to be the owner of the premises in question. In paragraph 6 of the writ petition, it is claimed that the building is nearly 100 years old and is in dilapidated condition. According to petitioner, the building in question is such that neither its maintenance is possible nor is it possible to be repaired inasmuch as any attempt at its renovation might result in collapse of the building itself. In paragraph 10 of the writ petition, it is claimed that on being apprised by one Mahesh Chandra Saxena, certain reports were called for by the authorities of Nagar Nigam, Alligarh. The building was inspected by the officials of the Nagar Nigam and it was found that the structures are in dilapidated stage and will require demolition. The authorities are said to have found the building such that its collapse is quite imminent which may result in loss of life and property.

4. Records of the writ petition reveal that various proceedings were undertaken for the building to be demolished, but no action was taken. Taking cognizance of the grievance raised in the present petition, this Court passed the following order dated 29.5.2025 :-

"In the present petition, it has been stated that despite an order under Section 331(3) and despite the inability of the petitioner who claims himself to be the power of attorney holder of the original owner of the property to demolish the building, no steps have been taken by the Municipal Commissioner and the Nagar Nigam, Aligarh to execute the notice issued under Section 331 of the Uttar Pradesh Municipal Corporation Act, 1959.

The Municipal Commissioner, Nagar Nigam, Aligarh shall file his personal affidavit on the next date fixed in which he shall give the details of the facts and materials which persuaded the Nagar Nigam to issue notice under Section 331 of the Act, 1959 and further the circumstances which prevented the Nigam from ensuring the execution of notice. The Municipal Commissioner, Nagar Nigam, Aligarh shall also be personally present in the Court on the next date fixed.

Put up again as fresh on 3rd July, 2025.

The impleadment application filed by the occupiers of the building shall be considered on the next date.

It is clarified that till the next date, no action shall be taken either by the Nagar Nigam or the petitioner or any other person in pursuance to the notice issued under Section 331.

A copy of this order shall be sent to the Municipal Commissioner, Nagar Nigam, Aligarh by the Registrar (Compliance) within 24 hours."

5. Pursuant to the aforesaid order, Shri Vibhanshu Vaibhav representing the Nagar Nigam, Aligarh has filed a personal affidavit of Municipal Commissioner, Nagar Nigam, Aligarh. The Municipal Commissioner is also present before us.

6. The Municipal Commissioner, in his personal affidavit, has clearly stated that attempts were made to demolish the dilapidated building but on account of various resistance made by 44 alleged tenants and their family members, the demolition could not be carried out. Stand of the Municipal Commissioner as is contained in paragraphs 9 to 11 of the affidavit reads as under :-

"9. That with profound respect, it is also noteworthy to mention here that in furtherance of the Notice dated 01-10-2024, the Superintendent of Police (City) have sent a letter no. st-spcity-06/2025 dated 18-05-2025 to the Additional Municipal Commissioner, Nagar Nigam, Aligarh stating therein to depute the competent official to be present on the spot in question at the time of further proceeding. In that regard, the Additional Municipal Commissioner, Nagar Nigam, Aligarh through his letter no. 37/s.t./na.ni.ali/2025-26 dated 19-05-2025 have deputed one Sri Shiftey Haider, Assistant Engineer (Civil) to be present on the spot in question for the purpose of further proceedings in furtherance of the notice dated 01-10-2024. For ready reference to this Hon'ble Court, a correct copy of the letter no. st-spcity-06/2025 dated 18-05-2025 sent by the Superintendent of Police (City) to the Additional Municipal Commissioner, Nagar Nigam, Aligarh and letter no. 37/s.t./na.ni.ali/2025-26 dated 19-05-2025 issued by the Additional Municipal Commissioner, Nagar Nigam, Aligarh to Sri Shiftey Haider, Assistant Engineer (Civil), Nagar Nigam, Aligarh are being filed herewith collectively and marked as Annexure No. 5 to this affidavit.

10. That it is highly significant to mention here that in furtherance of the Notice dated 01-10-2024, the Assistant Engineer and Junior Engineer, Nagar Nigam, Aligarh proceeded in the matter and went to the spot in question on 28-05-2025 but there was massive protest raised by the 44 tenants and their family members resulting which, the violent and intense situation have been created. It is also intimated by the officials of the Nagar Nigam to the tenants to pull down the dilapidated structure of the building by their own otherwise the Nagar Nigam of their own resources would demolish the said building. In that regard, a departmental report dated 28-05-2025 has been submitted. It is humbly submitted that another notice no. 3598/ni.vi./na.ni.ali./2024-25 dated 28-05-2025 have been issued mentioning therein with direction to the tenants to demolish or renovate the dilapidated structure which is shown as orange colour in the map appended with the notice but the tenants have refused to accept the said notice. It is further submitted that on account of the massive and huge protest by the tenants and their family members, the officials of the Nagar Nigam was also unable to affixed/chaspa the said notice upon the said building. For ready reference to this Hon'ble Court, a correct copy of the report dated 28-05-2025 submitted by the Assistant Engineer and Junior Engineer, Nagar Nigam, Aligarh and the notice no. 3598/ni.vi./na.ni.ali./2024-25 dated 28-05-2025 issued by the Nagar Nigam, Aligarh are being filed herewith collectively and marked as Annexure No. 6 to this affidavit.

11. That bare perusal of the aforesaid facts and circumstances, it is respectfully submitted that despite of adequate efforts by district administration, police department and nagar nigam in as much as the massive protest raised by the 44 tenants and their family members of the said building, the answering respondent could not be able to proceed in the matter effectively which prevented the nagar nigam from ensuring the execution of the notice dated 01-10-2024. For ready reference to this Hon'ble Court, a correct copies of the cutting of newspapers reflecting the massive protest raised by the 44 tenants and their family members of the said building is being filed herewith and marked as Annexure No. 7 to this affidavit."

7. The Municipal Commissioner has also informed the Court that he himself has inspected the premises in question and found the said building to be in dilapidated condition. The Municipal Commissioner has also expressed serious apprehension with regard to possible loss of life in the event any unfortunate incident occurs during the upcoming mansoon season. He has also stated that the authorities of Nagar Nigam are conscious of their obligation under the Act, 1959 and are making all endeavours to ensure that the building is demolished so that life and property of residents and nearby persons is safeguarded.

8. During course of hearing of the present matter, Shri Pushpendra Kumar and Shri Ram Dhan, Advocates, appeared on behalf of 23 persons alongwith an application for their impleadment. Learned counsel representing the proposed applicants contended that these tenants are in occupation on part of the premises since long and that their interest be protected. The Court had called upon the counsel for the applicants, who have moved the application, to apprise the Court as to what rights would be available to the tenants in such eventuality where the tenanted premises is found to be in dilapidated condition and requires demolition.

9. In order to enable the learned counsel to apprise the Court of the aforesaid query, we deferred the matter for some time.

10. We have examined the provisions of the U.P. Regulation of Urban Premises Tenancy Act, 20212 so as to ensure that the right available to a tenant under the statutory scheme is clearly protected.

11. Our attention has been invited to Chapter V of the Tenancy Act, 2021, which contains provisions relating to protection of tenant against eviction. Section 21(1) of the Tenancy Act, 2021 confers protection upon a tenant in the manner provided in the Statute itself. Sub-section (2) of Section 21 permits the Rent Authority to make an order of eviction where the tenanted premises requires demolition. Sub-section (2)(e) of Section 21 reads as under :-

"21. Protection of tenant against eviction-

(1) …….

(2) The Rent Authority may, on an application made to it by the landlord in such manner as may be prescribed, make an order for eviction and recovery of possession of the premises on one or more of the following grounds, namely:-

(a) …….

(b) …….

(c) ……..

(d) ……...

(e) where it is necessary for the landlord to carry out any repair or construction or rebuilding or addition or alteration or demolition in respect of the premises or any part thereof, which is not possible to be carried out without the premises being vacated:

Provided that after such repair, construction, rebuilding, addition or alteration, the tenant may be allowed to reoccupy the premises only when it has been mutually agreed to between the landlord and the tenant and a new tenancy agreement has been submitted with the Rent Authority:

Provided further that the tenant shall not be allowed to reoccupy the premises,-

(i) in the absence of submission of such mutual tenancy agreement with the Rent Authority; and

(ii) in cases where the tenant has been evicted under the orders of a Rent Authority.

…….

…….”

12. Section 4 of the Tenancy Act, 2021 provides for tenancy agreement. It also deals with tenancy created before the commencement of the Tenancy Act, 2021.

13. Having examined the statutory scheme, we find that any tenant who is entitled to protection under the provisions of the Tenancy Act, 2021 would be at liberty to make appropriate application before the Rent Authority which may then pass appropriate orders in accordance with law. The right which is available to a tenant in respect of dilapidated building, however, will have to be enforced subject to the provisions of Section 331 of the Act, 1959 which deal with a special exigency where the tenanted building requires imminent demolition for protection of life of individuals. Sections 331(1) and 331(3) of the Act, 1959 are as under:-

(1) If it shall at any time appear to the Municipal Commissioner that any structure (including under this expression any building wall, parapet, pavement, floor steps, railing, door or window frames or shutters or roof, or other structure and anything affixed to or projecting from or resting on, any building, wall, parapet or other structure) is in a ruinous condition or likely to fall, or in any way dangerous to any person occupying, resorting to or passing by such structure or any other structure or place in the neighborhood thereof, the Municipal Commissioner may, by written notice, require the owner or occupier of such structure to pull down, secure, remove or repair, such structure or thing or do one or more of such things and to prevent all cause of danger therefrom.

(2) ……...

(3) If it appears to the Municipal Commissioner that the danger from a structure which is ruinous or about to fall is imminent he may, before giving notice as aforesaid or before the period of notice expires, fence off, take down, secure or repair the said structure or take such steps or cause such work to be executed as may be required to arrest the danger.”

14. n the facts of the present case, materials on record clearly reveal urgent requirement of demolition of the tenanted premises, which is in dilapidated condition. The authorities of Nagar Nigam, Aligarh have proceeded to act in furtherance of the Statute but requisite action of demolition has so far not been undertaken only because of resistance by the tenants of the premises in question. Although 44 persons claim to be tenants of the premises in

question but their status as tenants is otherwise disputed. We are, however, not inclined to dwell upon this aspect of the matter as the question with regard to the determination of tenancy of individuals would be gone into by the Rent Authority in accordance with the applicable Statute.

15. At this juncture, we may only observe that the rights of the tenants in such an exigency will have to be dealt with under the Tenancy Act, 2021. The tenants, however, will not be entitled to object to the expeditious demolition of the tenanted building, particularly when the authorities have inspected the said premises and found the requirement of its demolition as imperative. The applicable scheme under the Act, 1959 for protection of life of individuals on account of building being dilapidated and posing threat to life of individuals will have to be given primacy over the protection of tenancy rights of individual applicants.

16. In such circumstances, we are of the view that the authorities of Nagar Nigam, Aligarh would be required to demolish the dilapidated tenanted premises in question, in accordance with law. Such action/exercise of the Nagar Nigam cannot be resisted by the tenants by making protests etc. The Nagar Nigam shall provide a reasonable opportunity to such occupants to remove their belongings.

17. We, in such circumstances, deem it appropriate to direct the District Magistrate, Aligarh as well as Senior Superintendent of Police, Aligarh to provide requisite police force on the request of Nagar Nigam, Aligarh so that the dilapidated structure in question be demolished. Such action would be undertaken strictly in accordance with law. We also provide that the demolition of the structure would in no way affect the rights of the tenants as are available to them under the Tenancy Act, 2021. The requisite action in terms of the notice/Act, 1959 would be undertaken at the earliest, preferably within two months from today.

18. We expect the tenants occupying the premises in question to be alive to the concern of protection of life of individuals due to imminent collapse of the building and not to create any resistance/objection in demolition of the building.

19. The appearance of the Municipal Commissioner, Nagar Nigam, Aligarh is dispensed with.

20. With the aforesaid observations/directions, this writ petition is disposed of.

(2025) 7 ILRA 877
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 17.07.2025

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE PRAVEEN KUMAR GIRI, J.

Writ-C No. 24192 of 2022

Suresh Chandra Singh Negi & Anr. ...Petitioners

Versus

Bank of Baroda & Ors. ...Opp. Parties

Counsel for the Petitioners:
Mr. Aniket Gupta, Mr. Prem Chandra

Counsel for the Opp. Parties:
Mr. Namit Srivastava

Issue for consideration

Whether any action has been taken either by the Bank over unsolicited transaction.

Headnotes

Cyber Fraud-unsolicited transactions-reported-alleged no action has been taken either by the Police or the Bank-petitioners invoked clause 6(ii)-the record shows that the transaction was deliberate and was done by the petitioners themselves-no embezzlement of funds as every transaction was within the knowledge of petitioners-RBI circular also do not provide shelter for garbing personal transaction as cyber fraud-here appears to be gross negligence on the part of the petitioners -the case of a third party hacking into their accounts is not conclusively proved-relief sought cannot be granted-**W.P. dismissed.** (E-9)

Case Law Cited

1. State Bank of India v. Pallabh Bhowmick & Ors. in S.L.P. No. 30677/2024
2. Jaiprakash Kulkarni and others v. The Banking Ombudsman and others 2024 SCC Online Bombay 1666

List of Acts

RBI Circular no. RBI/2017-2018/15, DBR. NO. Leg. BC. 78/09.07.005/2017-2018 dated July 6, 2017

List of Keywords

Embezzled amount; transferred amount; unsolicited transactions; I.P. Address for the alleged transaction; customer liability; negligence by the customer.

Appearance of the parties

Advocates for the Petitioners: Mr. Aniket Gupta and Mr. Prem Chandra, Advocates for the Respondents: Mr. Namit Srivastava, Advocate

(Delivered by Hon'ble Shekhar B. Saraf, J.)

HON'BLE SHEKHAR B. SARAF, J. : The present writ petition has been filed under Article 226 of the Constitution of India wherein the petitioners have prayed for the issuance of a writ of mandamus directing the Bank of Baroda (hereinafter referred to as 'respondent no.1') and Reserve Bank of India (hereinafter referred to as 'respondent no.3') to restore the illicitly embezzled fund of Rs.38,78,000/- inclusive of penal interest at the rate of 24%.

FACTS

2. The factual matrix of the present writ petition is delineated below:

a. The petitioner no.1 and petitioner no.2 are father and son respectively. Both of them are proprietors of their respective proprietorship firm engaged in the business of transformers fabrication.

b. Petitioners have opened two accounts with respondent no.1 which was having cash credit facility with limit of Rs.1,20,00,000/- and Rs.1,30,00,000/-, respectively and active net banking facility.

c. On June 19, 2022, petitioner no.1 transferred amount of Rs.37,85,000/- into account of petitioner no.2, and thereafter, the said amount was transferred to an unknown account. Aggrieved, the petitioner no.2 lodged an F.I.R dated June 21, 2022 in Cyber Crime Police Station, Civil Lines bearing no. 0012 of 2022 and

the petitioner no.1 filed a complaint to respondent no.1 regarding the said embezzlement.

d. Being aggrieved by the inaction of respondents, petitioners approached this Court by means of the present writ petition.

CONTENTIONS OF PETITIONERS

3. The learned counsel appearing on behalf of the petitioners has made the following submissions:

a. It is the case of the petitioners that despite being vigilant and paying all due diligence, such unsolicited transactions have been carried out in their bank accounts.

b. The sim card got blocked and no sms and calls can be received subsequent to transfer of money from the account of petitioner no.1 to the account of petitioner no. 2.

c. No action has been taken either by the Police or the Bank even after intimation to the police within 24 hours the petitioner received sms. The investigation is halted without any reason.

d. The petitioner has reported the unsolicited transaction within 3 days according to RBI Circular no. RBI/2017-2018/15, DBR. NO. Leg. BC. 78/09.07.005/2017-2018 dated July 6, 2017 wherein it is provided that such fraudulent transaction should immediately be restored to customer without any liability and also the burden of proof in such scenario shall completely lie upon the bank.

e. The I.P. Address for the alleged transaction was not the same as of immediate preceding transaction which demonstrate that some third person was involved for the embezzlement.

f. To buttress his arguments, counsel has placed reliance on **State Bank of India v. Pallabh Bhowmick & Ors.** in S.L.P. No. 30677/2024 and a Bombay High Court Judgment in **Jaiprakash Kulkarni and others v. The Banking Ombudsman and others** (W.P. no. 1150 of 2023) reported in 2024 SCC Online Bombay 1666 wherein the court has held that amount withdrawn by fraudulent transaction, should be restored back, if reported.

CONTENTIONS OF RESPONDENTS

4. The learned counsel appearing on behalf of the respondents has rebutted the arguments of petitioner and made following submissions:

a. The alleged embezzled amount was transferred from the account of petitioner no.1 to the account of petitioner no.2 and subsequently has been utilised by transferring it to the accounts of beneficiaries that had already been added by the petitioner no.2 on June 18, 2022.

b. The alleged transaction has been done by petitioner no.1 via internet banking by logging into his account and sim card was never blocked and mobile number in the same device was used to generate one time password and also the password was changed by petitioner himself.

c. The device used by petitioner no.2 in transferring the amount to the different bank account was the same which was being used by the petitioner no.2 in operating his internet banking. The counsel has placed I.P. Address details of the petitioner no.2.

d. The petitioner no.2 himself changed his password after completing all

the alleged transactions which requires verification process and the same can be modified only after the internet bank account holder is aware of his old password.

ANALYSIS

5. I have given my 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.

6. After perusal of the Debit/Credit details as well as I.P Address details, evidently, the petitioners were not the victims of cyber fraud as the alleged transaction had been done diligently by the petitioners themselves subsequent to logging into the internet banking account on June 19, 2022 and transferring the amount of Rs.30,00,000/- at 19.08.00 and the amount of Rs.7,85,000/- at 19:11:28. The petitioners also generated one time password and also changed the password. The amount that has been alleged to be unauthorisedly transferred was originally transferred to the accounts which were added as a beneficiary by the petitioner no.2. It is the admitted case of the petitioners that they received sms on June 19, 2022 regarding withdrawal of amounts in two denominations of Rs.30,00,000/- and Rs.7,85,000/- at 12.44 pm but abstained from reporting the issue immediately and filed the complaint on cyber crime portal on June 20, 2022 and lodged an F.I.R on June 21, 2022. The delay in reporting the issue to bank instantly about the transaction intimation received via sms and lodging of F.I.R depict that it is an afterthought and a concocted story.

7. The petitioners take shelter of the RBI Circular dated June 6, 2017 titled "Customer Protection-Limiting Liability of Customers in Unauthorised Electronic Banking Transactions", the relevant part of which is extracted below:

" Limited Liability of a Customer-

(a) Zero Liability of a Customer

6. A customer's entitlement to zero liability shall arise where the unauthorised transaction occurs in the following events:

(i). Contributory fraud/negligence/deficiency on the part of the bank (irrespective of whether or not the transaction is reported by the customer).

(ii). Third party breach where the deficiency lies neither with the bank nor with the customer but lies elsewhere in the system, and the customer notifies the bank within three working days of receiving the communication from the bank regarding the unauthorised transaction.

(b) Limited Liability of a Customer

7. A customer shall be liable for the loss occurring due to unauthorised transactions in the following cases:

(i). In cases where the loss is due to negligence by a customer, such as where he has shared the payment credentials, the customer will bear the entire loss until he reports the unauthorised transaction to the bank. Any loss occurring after the reporting of the unauthorised transaction shall be borne by the bank.

(ii) In cases where the responsibility for the unauthorised electronic banking transaction lies neither with the bank nor with the customer, but lies elsewhere in the system and when there is a delay (of four to seven working days after receiving the communication from the bank) on the part of the customer in

notifying the bank of such a transaction, the per transaction liability of the customer shall be limited to the transaction value or the amount mentioned in Table 1, whichever is lower.

Table 1
Maximum Liability of a Customer under paragraph 7(ii)

Type of Account	Maximum Liability (₹)
• **BSBS Accounts**	**5000**
• **All other SB accounts** • **Pre-paid Payment Instruments and Gift Cards** • **Current/Cash Credit/Over draft Accounts of MSMEs** • **Current Accounts/Cash Credit/Over draft Accounts of Individuals with annual average balance (during 365 days preceding the incidence of fraud) /limit up to Rs. 25 lakh.** • **Credit cards with limit upto Rs. 5 lakh**	**10,000**
• **All other Current/Cash Credit/Over draft Accounts** • **Credit cards with limit above Rs. 5 lakh**	**25,000**

Further, if the delay in reporting is beyond seven working days, the customer liability shall be determined as per the bank's Board approved policy. Banks shall provide the details of their policy in regard to customers' liability formulated in pursuance of these directions at the time of opening the accounts. Banks shall also display their approved policy in public domain for wider dissemination. The existing customers must also be individually informed about the bank's policy.

***

Burden of Proof

12. The burden of proving customer liability in case of unauthorised electronic banking transactions shall lie on the bank."

CONCLUSION

8. A careful perusal of the aforesaid circular would show that the burden of proving the customer's liability in case of unauthorized electronic banking, lies upon the bank. The petitioners invoked clause 6(ii) but then one has to understand whether the loss occurred due to negligence

by the customer. The record shows that the transaction was deliberate and was done by the petitioners themselves.

9. The burden of proving customer liability lies upon the bank and the bank, in its counter affidavit has placed passbook, documents showing beneficiary addition by petitioner no. 2, I.P. Address details of petitioner no.2, time and debit transfer details from the internet bank account of the petitioner no.2, a document showing password modification by the petitioner no.2 to discharge its burden.

10. From the perusal of the aforesaid record, it can be discerned that there has been no embezzlement of funds as every transaction was within the knowledge of petitioners, therefore, the defence taken by the petitioners is not fathomable in the eye of law.

11. As far as the cases referred to by the learned counsel for the petitioners, the Supreme Court while dismissing the order passed by the Division Bench of Gauhati High Court has held that it is the duty of the Bank to employ advanced technology to prevent fraud. **Pallabh Bhowmick** (Supra) is distinct from the present case as in that case the amount was withdrawn fraudulently and unauthorisedly without being any negligence on the part of account holder who promptly reported to the bank. Therefore, account holder was entitled to zero liabilty under RBI's circular.

12. The judgment of Bombay High Court in **Jaiprakash Kulkarni (Supra)** will also not apply to the present case as in that case petitioner did not receive any intimation with regard to the beneficiaries added to his account either through sms or email, therefore it was held that there was no negligence on the part of the petitioner in that case.

13. In summary, the aforesaid decisions do not help the petitioners in any manner. On the other hand, RBI circular also do not provide shelter to the petitioner for garbing personal transaction as cyber fraud. RBI circular is to cover aspects of customer protection, including the mechanism of creating customer awareness on the risks and responsibilities, and customer liability arising in specific scenarios of unauthorized electronic transactions. The pupose of this circular is to act as a shield for customers from fraudulent transactions and not as a sword in the garb of personal transactions.

14. In light of the above reasoning, this Court is of the view that neither the RBI circular nor the judgment cited by the petitioners apply to the present case. In fact, there appears to be gross negligence on the part of the petitioners and the case of a third party hacking into their accounts is not conclusively proved. Hence, this Court is of the view that the relief sought by the petitioners cannot be granted. Ergo, the writ petition is dismissed.

(2025) 7 ILRA 882
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 22.07.2025

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ-C No. 1003005 of 2002

Smt. Amina ...Petitioner
Versus
Up Zila Adhikari Pratapgarh & Ors. ...Opp. Parties

Counsel for the Petitioner:

R.P. Pandey, G.P. Pandey, Mohammad Aslam Khan, Mohd. Arif Khan

Counsel for the Opp. Parties:
C.S.C., Mohammad Ehtesham Khan, Pankaj Gupta, R.N. Gupta, Sharad Nandan Ojha, Yogendra Nath Yadav

Issue for Consideration
The suit was filed by respondent no. 2& 3 u/s 229B of UPZA & LR Ac-the main issue before the High court was the legality of the orders passed by Respondent No.1/Up Zila Adhikari and subsequent order passed by the Respondent no.4/Revisional court. Whether the original suit filed u/s 229B of UPZA & LR act was barred by Section 49 of the Consolidation of Holdings Act, whether the compromise on which the SDM based the order was forged, and whether the Revisional Court erred by directing the parties to file a regular suit instead of deciding the revision on its merit.

Headnotes
Civil matter-U.P. Consolidation of Holdings Act, 1953-Section 49 -Bar to Civil/Revenue court's jurisdiction-Suit u/s 229B of UPZA & LR Act filed after consolidation proceedings are finalized, and the person's name incorporated in the revenue record is not maintainable-Once rights have been declared and adjudicated under consolidation proceedings, a suit concerning those rights is barred by section 49-Petition allowed.

Held
The suit filed u/s 229B of the UPZA & LR Act was barred by Section 49 of the Consolidation of Holdings Act-suit is not maintainable-The SDM committed a manifest error of law by proceeding to decide the suit in terms of a compromise, particularly when the petitioner alleged the compromise was forged, therefore, the SDM's order was wholly without jurisdiction-The Revisional Court committed a manifest error of law by directing the petitioner to file regular suit-The matter was remanded back to the Revisional court to decide the case afresh on merit within a period of six months.(Para 17 to 23) (E-6)

List of Acts
U.P.Z.A. & L.R. Act

List of Keywords
Bhumidhari; Substitution; Revenue record; S.D.O.; Civil suit; Consolidation of Holding Act; Consolidation proceedings; Manifest error; Compromise; U.P.Z.A. & L.R. Act

Case Arising From
CIVIL JURISDICTION-WRIT-C No. 1003005 of 2002
From the Judgment and Order dated 22.07.2025 of the High Court of Judicature at Allahabad.

Smt. Amina Vs.Up Zila Adhikari Patti Pratapgarh & Ors 5

Appearances for Parties
Advs. for Petitioner:
R.P. Pandey, G.P.Pandey, Mohammad Aslam Khan, Mohd. Arif Khan
Advs. for Respondent:
C.S.C., Mohammad Ehtesham Khan, Pankaj Gupta,R.N. Gupta, Sharad Nandan Ojha, Yogendra Nath Yadav

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Sri Mohd. Arif Khan, learned Senior Advocate assisted by Sri Mohd. Aslam Khan and Sri Shadab Khan, learned counsel for the petitioner, Sri Sharad Nandan Ojha, learned counsel for respondent No.2, learned Additional CSC for respondent Nos.1, 4 and 6 and Sri Pankaj Gupta, learned counsel for respondent No.5.

2. In compliance of earlier order of this Court dated 07.07.2025, S.D.M. Patti, Pratapgarh and C.R.O. Pratapgarh are present before this Court in person.

3. The affidavit filed by learned Additional CSC today in Court may be taken on record.

4. The petitioner has died and there are two substitution applications which are

allowed but due to some inadvertent mistake, the incorporation could not be made, therefore, learned counsel for the petitioner is permitted to carry out necessary incorporation during course of the day.

5. By means of present writ petition, the petitioner is challenging the orders dated 17.03.1999 passed by respondent No.1 contained as annexure 1 to the writ petition and order dated 19.06.2002 passed by respondent No.4 contained as annexure 2 to the writ petition.

6. Factual matrix of the case is that a suit was filed by respondent Nos.2 & 3 under Section 229 B of U.P. Z.A.& L.R. Act before respondent No.1. Respondent Nos.2 & 3 stated that the land in dispute is their bhumidhari land and they are in possession of the land in dispute from the time of their father and their father died and respondent Nos.2 and 3 are waris of their father.

7. It is stated that the petitioner has no touch with the land and with the connivance of officials of revenue department, they have got their name entered in the revenue record, which deserves to be cancelled and respondent Nos.2 and 3 have also requested that it would be declared as bhumidhar of the land in dispute.

8. The S.D.M. has heard the parties and it has been found in the compromise that name of the petitioner is entered as widow of Noor Mohammad and father of respondent Nos.2 and 3 died and they are real brothers and they are actual share holders of respondent Nos.2 and 3.

9. The compromise shown is fake and the petitioner challenged the so called compromise. The S.D.O. passed an order in favour of respondent Nos.2 and 3 and revision under Section 333 U.P. ZA& LR Act was filed before respondent No.4 by the petitioner that the order of court below is against the provisions of law and the order has been passed without perusal of evidence on record and it also involved question of jurisdiction, hence, the order of court below deserves to be set aside in the interest of justice.

10. In assailing the impugned orders, submission of learned Senior Counsel for the petitioner is that the suit is barred under Section 49 of Consolidation of Holdings Act. The signature of the petitioner is forged and fabricated and therefore, the compromise is not sustainable in the eyes of law.

11. He submitted that while dismissing the revision, the revisional court directed the parties to file regular suit in regard to controversy involved in the present case. He submitted that the revisional court should have decided the matter on merit in spite of remanding the matter to the regular civil suit.

12. His last submission is that no counter affidavit has been filed till date, therefore, the averment made in the writ petition are correct as it has not been denied by filing counter affidavit.

13. In spite of repeated orders passed in the matter, record of the case could not be produced by the SDM, Patti, Pratapgarh and C.R.O. Pratapgarh, which also shows that the compromise taken place is forged one.

14. On the other hand, Sri Sharad Nandan Ojha, learned counsel for respondent No.2 submitted that the impugned orders do not suffer from any infirmity or illegality and are just and valid.

15. I have considered the submissions advanced by learned counsel for the parties and perused the material on record.

16. In regard to first submission of learned Senior Counsel for the petitioner that the suit is barred under Section 49 of Consolidation of Holdings Act, to decide the controversy, it is relevant to quote the same:

"49. Bar to civil Courts jurisdiction: *- Notwithstanding anything contained in any other law for the time being in force, the declaration and adjudication of right of tenure-holder in respect of land lying in an area, for which a [notification] [Substituted by U.P. Act No. 8 of 1963.] has been issued [under sub-section (2) of Section 4] [Substituted by U.P. Act No. 12 of 1965 (w.e.f 08.03.1963).] or adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under this Act, shall be done in accordance with the provisions of this Act and no Civil or Revenue Court shall entertain any suit or proceeding with respect to rights in such land or with respect to any other matters for which a proceeding could or ought to have been taken under this Act :*

[Provided that nothing in this section shall preclude the Assistant Collector from initiating proceedings under Section 122-B of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 in respect of any land, possession over which has been delivered or deemed to be delivered to a Gaon Sabha under or in accordance with the provisions of this Act.] [Inserted by U.P. Act No. 20 of 1982 (w.e.f. 10.11.1980).] "

17. On bare perusal of provisions contained under Section 49 of the Act, it is evident that once name of the person has been incorporated in the revenue record under consolidation proceedings and it has finalized, then the suit under Section 229 B is not maintainable before the S.D.M.

18. The S.D.M., in spite of deciding the suit on merit, has proceeded to decide the case in terms of compromise. The SDM has committed manifest error of law in deciding the suit. The suit was barred by Section 49 of the Act, therefore, the order passed by the SDM is wholly without jurisdiction.

19. In regard to submission advanced by learned Senior Counsel that the signature is forged on the compromise but the same was not taken into consideration by the SDM while passing the impugned order. The SDM has committed illegality in proceeding to decide the suit in terms of compromise, therefore, the order is liable to be set aside by this Court.

20. The revisional Court has also committed manifest error of law in spite of deciding the issue on merit and directing the petitioner to file regular suit against the order passed in terms of compromise by the SDM. The revisional court would have decided the case on merit in spite of directing to file regular suit, therefore, the impugned order suffers from apparent illegality and is liable to be set aside.

21. The submissions advanced by learned counsel for the opposite party are misplaced and not tenable in the eyes of law.

22. On over all consideration of facts and circumstances of the case, it is evident that the impugned orders have been passed in utter disregard of law settled by this court as well as by Hon'ble Apex Court, therefore, the impugned orders dated 17.03.1999 passed by respondent No.1 contained as annexure 1 to the writ petition and order dated 19.06.2002 passed by

respondent No.4 contained as annexure 2 to the writ petition are hereby quashed.

23. The writ petition succeeds and is **allowed**.

24. The matter is remanded back to the revisional court to decide the matter afresh on merit within a period of six months from the date of production of a certified copy of this order.

(2025) 7 ILRA 886
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 11.07.2025

BEFORE

THE HON'BLE ASHUTOSH SRIVASTAVA, J.

Criminal Misc. Bail Application No. 23905 of 2025

Preeti ...Applicant
Versus
State of U.P. ...Opposite Party

Counsel for the Applicant:
Swati Agrawal Srivastava

Counsel for the Opposite Party:
G.A.

Issue for consideration
Whether the applicant can be released on bail?

Headnotes
A. Bharatiya Nagarik Suraksha Sanhita, 2023: Section 483 – Applicant submits that similarly circumstanced co-accused Sanjay has already been enlarged on bail by co-ordinate Bench of the co-ordinate Bench of this Court on 14.05.2025 in Criminal Misc. Bail Application No. 11517 of 2025, hence the applicant is also entitled for bail on the ground of parity for the reasons given in bail application of co-accused. The applicant has no criminal antecedent and there is no likelihood of her fleeing from course of justice or tampering with evidence in case of release on bail. Hence, bail has been prayed for. (Para 3)

Considering all above facts and circumstances, the nature of accusations, severity of the punishment in the case of conviction and nature of supporting evidence, reasonable apprehension of tampering with the witness and prima facie case, but without commenting on merit of case, a case for bail is made out. (Para 5)

Bail application allowed. (Personal bond, sureties and conditions imposed) (E-4)

List of Acts
Bharatiya Nagarik Suraksha Sanhita, 2023.

List of Keywords
Criminal law; freedom of speech and expression; fundamental right; constitution; stringent punishment; sovereignty; unity; integrity; charge sheet; bail.

(Delivered by Hon'ble Ashutosh Srivastava, J.)

1. Heard Sri Amit Kumar, Advocate, holding brief of Ms. Swati Agrawal Srivastava, learned counsel for the applicant, Shri Yagyavalk Pandey, learned AGA for the State-respondents and perused the record.

2. This bail application under Section 483 of Bharatiya

Nagarik Suraksha Sanhita, 2023 has been moved on behalf of accused-applicant, Preeti, seeking enlargement on bail in Session Trial No. 1420 of 2025 arising out of Case Crime No. 534 of 2024, under Sections 103(1), 61(2) of the Bharatiya Nyaya Sanhita, 2023, Police Station Dhampur, District Bijnor.

3. Learned counsel for the applicant argued that the accused-applicant is innocent. She has been falsely implicated in this very case crime number and is languishing in jail since 20.11.2024. Learned counsel for the applicant submits that similarly circumstanced co-accused Sanjay has already been enlarged on bail by co-ordinate Bench of the co-ordinate Bench of this Court on 14.05.2025 in Criminal Misc. Bail Application No. 11517 of 2025, hence the applicant is also entitled for bail on the ground of parity for the reasons given in bail application of co-accused. The applicant has no criminal antecedent and there is no likelihood of her fleeing from course of justice or tampering with evidence in case of release on bail. Hence, bail has been prayed for.

4. Per contra learned A.G.A. has opposed the prayer for bail of the applicant, but submits that similarly circumstanced aforesaid co-accused has already been granted bail by this Court.

5. Considering all above facts and circumstances, the nature of accusations, severity of the punishment in the case of conviction and nature of supporting evidence, reasonable apprehension of tampering with the witness and prima facie case, but without commenting on merit of case, a case for bail is made out.

6. Accordingly, the bail application is ***allowed.***

7. Let the **accused-applicant, Preeti, involved in above mentioned case crime number be released on bail,** on her executing a personal bond and two reliable sureties each, in the like amount to the satisfaction of the court concerned, subject to the following conditions:

1. The applicant will not tamper with the evidence.
2. The applicant will not indulge in any criminal activity.
3. The applicant will not pressurize/intimidate the prosecution witnesses and co-operate in the trial.
4. The applicant will appear regularly on each and every date fixed by the trial court, unless her personal appearance is exempted through counsel by the court concerned.

8. In the event of breach of any of the aforesaid conditions, the court below will be at

liberty to proceed to cancel her bail.

(2025) 7 ILRA 888
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.07.2025

BEFORE

THE HON'BLE DR. GAUTAM CHOWDHARY, J.

Criminal Misc. Anticipatory Bail Application U/S 482 BNSS No. 4679 of 2025

Gulab Chauhan ...Applicant
Versus
State of U.P. ...Opposite Party

Counsel for the Applicant:
Aakash Chauhan, Bharat Bhushan Dubey, Bhavni Singh

Counsel for the Opposite Party:
G.A.

विचारणीय मुद्दा

क्या धारा 108 भारतीय न्याय संहिता के तहत ऐसे अभियुक्त को अग्रिम जमानत का संरक्षण दिया जा सकता है, जिसके विरुद्ध गंभीर अपराध का आरोप तो है परंतु विश्वसनीय साक्ष्य अनुपस्थित हैं और उसके विरुद्ध अभी तक कोई बाध्यकारी प्रक्रिया नहीं अपनाई गई है तथा वह जांच में सहयोग का आश्वासन देता है|

हेडनोट्स

भारतीय न्याय संहिता, 2023 - धारा 108 - आवेदक के विरुद्ध धारा 108 भारतीय न्याय संहिता के तहत अभियोग पंजीकृत किया गया - आवेदक ने आशंका व्यक्त की कि उसे इस प्रकरण में द्वेषवश फंसाया गया है और गिरफ्तारी की संभावना मात्र है - उसने कहा कि उसके विरुद्ध कोई प्रत्यक्ष या विश्वसनीय साक्ष्य उपलब्ध नहीं है, कोई बाध्यकारी प्रक्रिया नहीं अपनाई गई हैं तथा वह जांच एजेंसी और न्यायालय के प्रति पूर्ण सहयोग करने को तैयार है - राज्य की ओर से आपत्ति जताई गई कि अपराध गंभीर प्रकृति का है और आवेदक को अग्रिम जमानत नहीं दी जानी चाहिए। (E-13)

धारित किया गया

वर्तमान प्रकरण में अग्रिम जमानत संबंधी स्थापित सिद्धांतों, आरोपों की प्रकृति, आवेदक की भूमिका तथा मामले के समस्त तथ्यों और परिस्थितियों पर विचार करते हुए, गुण-दोष पर मत व्यक्त किए बिना, आवेदन स्वीकार किया जाता है – इसके अलावा आवेदक की गिरफ्तारी की स्थिति में, ₹50,000/- के व्यक्तिगत बंध पत्र एवं समान राशि के दो प्रतिभू प्रस्तुत करने पर (पुलिस रिपोर्ट दाखिल होने तक), उसे कुछ अन्य शर्तों के साथ अग्रिम जमानत पर रिहा किया गया | [पैरा 6, 7]

उद्धृत केस लॉ

सिद्धराम सतलिंगप्पा म्हेत्रे बनाम महाराष्ट्र राज्य, **(2011) 1 एससीसी 694 – संदर्भित |**

अधिनियमों की सूची

भारतीय न्याय संहिता, 2023

कीवर्ड की सूची

अग्रिम जमानत; धारा 108 बी.एन.एस; गिरफ्तारी की आशंका; द्वेषवश फंसाए जाने का आरोप; विश्वसनीय साक्ष्य का अभाव; न्यायिक विवेक; जांच में सहयोग का आश्वासन; जमानत की शर्तें; आपराधिक कार्यवाही; आपराधिक इतिहास नहीं हैं; कोई बाध्यकारी प्रक्रिया नहीं अपनाई गई हैं |

वाद उद्भूत

आरंभिक क्षेत्राधिकार से उत्पन्न मामला: बी.एन.एस.एस की धारा 482 के अंतर्गत आपराधिक विविध अग्रिम जमानत आवेदन संख्या - 4679 /2025)
मु.अ.सं 92 सन् 2025, थाना नगरा, जिला बलिया में हुए निर्णय और आदेश से उद्भूत

पक्षकारों की ओर से उपस्थिति

आवेदक की ओर से अधिवक्ता:
आकाश चौहान, भरत भूषण दूबे, भावनी सिंह

विरोधी पक्षकार की ओर से अधिवक्ता:
शासकीय अधिवक्ता

(Delivered by Hon'ble Dr. Gautam Chowdhary, J.)

1. वर्तमान दाण्डिक प्रकीर्ण अग्रिम जमानत प्रार्थना पत्र, आवेदक गुलाब चौहान की ओर से मु०अ०सं० 92 सन् 2025, अन्तर्गत धारा 108 बी०एन०एस०, थाना नगरा, जिला बलिया में अग्रिम जमानत की माँग करते हुए इस प्रार्थना के साथ दायर किया गया है कि गिरफ्तारी की स्थिति में आवेदक को जमानत पर रिहा किया जा सके।

2. आवेदक के विद्वान अधिवक्ता भावनी सिंह एवं विद्वान अपर शासकीय अधिवक्ता को सुना तथा पत्रावली का परिशीलन किया।

3. आवेदक के विद्वान अधिवक्ता ने तर्क प्रस्तुत किया कि आवेदक निर्दोष है, उसे उपरोक्त धाराओं में द्वेषवश तंग व परेशान करने की नियत से आलिप्त किया गया है, उसे आशंका है कि उसे उपरोक्त वर्णित मामले में गिरफ्तार किया जा सकता है जबकि उसके विरूद्ध कोई विश्वसनीय साक्ष्य नहीं है। उनका यह भी कथन है कि आवेदक का कोई आपराधिक इतिहास नहीं रहा है और आवेदक के विरूद्ध अभी तक कोई भी बाध्यकारी प्रक्रिया नहीं अपनाई गयी है। पुनः उनका कथन है कि आवेदक विचारण और जॉच के दौरान सहयोग करने का वचन देता है कि वह जॉच एजेंसी या न्यायालय द्वारा अपेक्षित समय पर उपस्थित रहेगा एवं आवेदक की ओर से यह आश्वासन दिया गया है कि वह कानून की प्रक्रिया में सहयोग करने के लिए तैयार है और जब भी आवश्यकता होगी वह ईमानदारी से न्यायालय के समक्ष खुद को उपलब्ध कराएगा और उन सभी शर्तों को स्वीकार करने के लिए भी तैयार है जो

4. विद्वान अपर शासकीय अधिवक्ता द्वारा अभियुक्त के अग्रिम जमानत के विरोध में यह तर्क प्रस्तुत किया गया कि आवेदक द्वारा कारित अपराध गंभीर प्रकृति का है। मामले के तथ्य एवं परिस्थितियों को दृष्टिगत रखते हुये अभियुक्त को अग्रिम जमानत पर रिहा किये जाने का पर्याप्त अधार नहीं है। अतः अभियुक्त को अग्रिम जमानत पर न छोड़ा जाये।

5. यह कहा जा सकता है कि Siddharam Satlingappa Mhetre vs. State of Maharashtra, (2011) 1 SCC 694 के मामले में माननीय उच्चतम न्यायालय द्वारा यह अवधारित किया गया है कि अग्रिम जमानत याचिका पर न्याय निर्णयन करते समय न्यायालय को आरोपों की प्रकृति और गंभीरता, आरोपी की न्यायिक प्रक्रिया से भागने की संभावना पर विचार करना चाहिए और यह कि न्यायालय को आरोपी के विरूद्ध उपलब्ध सभी सामग्री का सावधानी से मूल्यांकन करना चाहिए और आरोपी की वास्तविक भूमिका पर भी विचार करना चाहिए।

6. वर्तमान मामले में अग्रिम जमानत संबंधी विधि के स्थापित सिद्धांतों को ध्यान में रखते हुए और पक्षकारों के विद्वान अधिवक्ताओं के कथनों आरोपों की प्रकृति, आवेदक की भूमिका और मामले के सभी तथ्यों

एवं परिस्थितियों को ध्यान में रखते हुए, मामले के गुण-दोष पर बिना कोई विचार व्यक्त किए अग्रिम जमानत की प्रार्थना स्वीकार किए जाने योग्य है। तद्नुसार अग्रिम जमानत आवेदन पत्र स्वीकार किया जाता है।

7. उपरोक्त मुकदमा अपराध संख्या में सम्मिलित आवेदक की गिरफ्तारी की दशा में, उसे संबंधित थाने के भारसाधक अधिकारी की संतुष्टि पर रू० 50,000/- का व्यक्तिगत बंध पत्र एवं उसी धनराशि के दो प्रतिभू प्रस्तुत करने पर, (पुलिस आरोप पत्र दाखिल किए जाने तक) निम्न शर्तों के अधीन अग्रिम जमानत पर रिहा किया जाएगा :-

1- आवेदक, यदि आवश्यक होगा तो पुलिस अधिकारी द्वारा जॉच हेतु अपेक्षित समय पर उपस्थित रहेगा।

2- आवेदक मामले के तथ्यों से परिचित किसी व्यक्ति या पुलिस अधिकारियों को प्रत्यक्ष या परोक्ष रूप से कोई धमकी, वादा या प्रलोभन नहीं देगा जिससे कि वह ऐसे तथ्य को न्यायालय के समक्ष या किसी पुलिस अधिकारी के समक्ष प्रकट न करने पर मान जाए।

3- आवेदक विवेचना एवं विचारण के दौरान सहयोग करेंगे और जमानत की स्वतंत्रता का दुरूपयोग नहीं करेगा।

उपरोक्त शर्तों के उल्लंघन की स्थिति में विवेचनाधिकारी / अभियोजन पक्ष को, आवेदक को प्रदत्त अग्रिम जमानत के निरस्तीकरण हेतु उपयुक्त आवेदन प्रस्तुत करने की स्वतंत्रता होगा।

8. तद्नुसार यह अग्रिम जमानत आवेदन पत्र उपरोक्त टिप्पणियों के साथ अंतिम रूप से निस्तारित किया जाता है।

(2025) 7 ILRA 890
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 14.07.2025

BEFORE

THE HON'BLE DR. GAUTAM CHOWDHARY, J.

Criminal Misc. Anticipatory Bail Application U/S 438 CR.P.C. No. 9797 of 2024

Mohd. Israr Khan ...Applicant
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicant:
Ankit Srivastava, Ch. Dil Nisar

Counsel for the Opposite Party:
G.A., Ram Kumar Dubey

विचारणीय मुद्दा

क्या आवेदक को धारा 379, 419, 420, 406 भा.दं.सं. के अंतर्गत दर्ज आपराधिक प्रकरण में, जब उसके विरुद्ध कोई ठोस साक्ष्य, बलपूर्वक प्रक्रिया नहीं अपनाई गई है अथवा आपराधिक इतिहास नहीं है और उसने जाँच में सहयोग करने का आश्वासन दिया है, तो उसे अग्रिम जमानत का लाभ दिया जा सकता है या नहीं |

हेडनोट्स

दण्ड संहिता, 1860 - धारा 379, 419, 420, 406 - अभियोग में आरोप है कि आवेदक ने धोखाधड़ी एवं विश्वासघात करते हुए धनराशि का अनुचित उपयोग किया - आवेदक की ओर से यह तर्क दिया गया कि वह निर्दोष है, उसके विरुद्ध कोई ठोस साक्ष्य नहीं है और बलपूर्वक प्रक्रिया नहीं अपनाई गई है और इस मामले में अंतरिम आदेश प्राप्त है तथा उसका कोई आपराधिक इतिहास नहीं है - यह भी प्रतिपादित किया गया कि वह

जांच में सहयोग करने को तैयार है, जांच एजेंसी/पुलिस/न्यायालय द्वारा अपेक्षित होने पर उपस्थित रहेगा और गिरफ्तारी की स्थिति में उसे अपूरणीय क्षति होगी - राज्य की ओर से अग्रिम जमानत आवेदन का विरोध किया गया, यह कहते हुए कि आरोप गंभीर प्रकृति के हैं और अग्रिम जमानत प्रदान किए जाने का कोई औचित्य नहीं है |

धारित किया गया

वर्तमान आवेदन में किए गए कथनों पर विचारोपरांत, न्यायालय का मत है कि अग्रिम जमानत प्रदान करने हेतु कोई उपयुक्त या पर्याप्त आधार प्रस्तुत नहीं किया गया है - अतः आवेदक का अग्रिम जमानत आवेदन अस्वीकृत किया जाता है - यदि कोई अंतरिम आदेश विद्यमान हो, तो उसे निरस्त माना जाएगा - तथापि, आवेदक को संबंधित विचारण न्यायालय के समक्ष नियमित जमानत आवेदन प्रस्तुत करने की स्वतंत्रता होगी, जिसे न्यायालय सतेंद्र कुमार अंतिल बनाम केंद्रीय अन्वेषण ब्यूरो और अन्य में प्रतिपादित दिशा-निर्देशों के आलोक में, विधि अनुसार विचार करेगा। [पैरा 6 से 9] (E-13)

उद्धृत केस लॉ

सिद्धराम सतलिंगप्पा म्हेत्रे बनाम महाराष्ट्र राज्य, **(2011) 1 एससीसी 694;** सतेंद्र कुमार अंतिल बनाम केंद्रीय अन्वेषण ब्यूरो और अन्य (विशेष अनुमति अपील (आपराधिक) संख्या **5191/2021, 07.10.2021 को निर्णीत**) **– संदर्भित |**

अधिनियमों की सूची

दण्ड संहिता, 1860

कीवर्ड की सूची

अग्रिम जमानत; धारा 438 दंड प्रक्रिया संहिता; चोरी के लिए दण्ड; आपराधिक न्यासभंग के लिए दण्ड; प्रतिरूपण द्वारा छल के लिए दण्ड; गिरफ्तारी की आशंका; अंतरिम आदेश; विवेचना में सहयोग; विश्वसनीय साक्ष्य का अभाव; जांच में सहयोग का आश्वासन; आपराधिक कार्यवाही; आपराधिक इतिहास नहीं हैं; कोई बलपूर्वक प्रक्रिया नहीं अपनाई गई हैं |

वाद उद्भूत

आरंभिक क्षेत्राधिकार से उत्पन्न मामला: दं.प्र.सं की धारा 438 के अंतर्गत आपराधिक विविध अग्रिम जमानत आवेदन संख्या - 9797 / 2024)

मु.अ.सं 113 सन् 2024, थाना फतेहपुर, जिला सहारनपुर में हुए निर्णय और आदेश से उद्भूत

पक्षकारों की ओर से उपस्थिति

आवेदक की ओर से अधिवक्ता:

अंकित श्रीवास्तव, चौधरी दिल निसार

विरोधी पक्षकार की ओर से अधिवक्ता:

शासकीय अधिवक्ता, राम कुमार दूबे

(Delivered by Hon'ble Dr. Gautam Chowdhary, J.)

1. आवेदक के विद्वान अधिवक्ता एवं राज्य की ओर से उपस्थित विद्वान अपर शासकीय अधिवक्ता को सुना तथा पत्रावली का परिशीलन किया।

2. वर्तमान अग्रिम जमानत आवेदन पत्र, मु०अ०सं० 113/2024 अंतर्गत धारा 379, 419, 420, 406, थाना फतेहपुर, जिला सहारनपुर में अग्रिम जमानत की मांग करते हुए इस प्रार्थना के साथ प्रस्तुत किया गया है कि गिरफ्तारी की स्थिति में आवेदक को जमानत पर रिहा किया जाए।

3. आवेदक के विद्वान अधिवक्ता द्वारा तर्क दिया गया है कि आवेदक निर्दोष है तथा उसे आशंका है कि उसे उपर्युक्त मामले में गिरफ्तार किया जा सकता है, जबकि उसके विरुद्ध कोई विश्वसनीय साक्ष्य नहीं है। आगे

यह भी प्रस्तुत किया गया है कि आवेदक को इस मामल में अंतरिम आदेश प्राप्त है। का कोई आपराधिक इतिहास नहीं है तथा आवेदक के विरुद्ध अब तक कोई बलपूर्वक प्रक्रिया जारी नहीं की गई है। यह भी प्रस्तुत किया गया कि आवेदक जांच तथा परीक्षण के दौरान सहयोग करने का वचन देता है तथा वह जांच एजेंसी/पुलिस/न्यायालय द्वारा अपेक्षित होने पर उपस्थित होगा। यह कहा गया है कि यदि आवेदक को अग्रिम जमानत दी जाती है, तो वह जमानत की स्वतंत्रता का दुरुपयोग नहीं करेगा और जांच में सहयोग करेगा और जमानत की सभी शर्तों का पालन करेगा।

4. विद्वान अपर शासकीय अधिवक्ता द्वारा आवेदक के अग्रिम जमानत का विरोध किया किया तथा आगे यह तर्क प्रस्तुत किया गया कि आवेदक का
अग्रिम जमानत प्रार्थना पत्र निरस्त किये जाने योग्य है।

5. यह प्रासंगिक तथ्य यह भी है कि Siddharam Satlingappa Mhetre vs. State of Maharashtra, (2011) 1 SCC 694 के मामले में माननीय उच्चतम न्यायालय द्वारा यह अवधारित किया गया है कि अग्रिम जमानत याचिका पर न्याय-निर्णयन करते समय न्यायालय को आरोपों की प्रकृति और गंभीरता, आरोपी की न्यायिक प्रक्रिया से भागने की संभावना पर विचार करना चाहिए और यह कि न्यायालय को आरोपी के विरूद्ध उपलब्ध सभी सामग्री का सावधानी से मूल्यांकन करना चाहिए और आरोपी की वास्तविक भूमिका पर भी विचार करना चाहिए।

6. उभय पक्षों के विद्वान अधिवक्तागण को सुनने और वर्तमान आवेदन में किए गए कथनों पर विचार करने के उपरांत, यह न्यायालय इस राय पर है कि आवेदक के विद्वान अधिवक्ता द्वारा अग्रिम जमानत देने के लिए कोई उपयुक्त एवं पर्याप्त आधार नहीं प्रस्तुत किया गया है।

7. तदनुसार, आवेदक Mohd Israr Khan का यह अग्रिम जमानत आवेदन पत्र अस्वीकार किया जाता है।

8. इस वाद में यदि कोई अंतरिम आदेश हो तो, उसे निरस्त समझा जाय।

9. हालांकि, आवेदक के लिए संबंधित विचारण न्यायालय के समक्ष नियमित जमानत आवेदन पत्र प्रस्तुत करने के लिए स्वतंत्रता है, यदि जमानत के लिए ऐसा कोई आवेदन संबंधित विचारण न्यायालय के समक्ष पेश किया जाता है, तो यह उम्मीद की जाती है कि संबंधित न्यायालय, न्यायालय के विवेक और जमानत देने में विचार को नियंत्रित करने वाले वैधानिक प्रावधानों को बाधित किये बिना, मा० उच्चतम न्यायालय के द्वारा Satendra Kumar Antil Vs. Central Bureau of Investigation and another (Special Leave to Appeal (Crl.) No. 5191 of 2021, decided on 07.10.2021) में प्रतिपादित या निर्धारित जमानत देने के लिए आवश्यक दिशा-निर्देशों को ध्यान में रखते हुए उस पर विचार करेगी और फैसला करेगी।

10. उपर्युक्त टिप्पणियों/निर्देशों के साथ, यह वर्तमान आवेदन पत्र का निस्तारित किया जाता है।

11. कार्यालय को निर्देशित किया जाता है कि इस आदेश की प्रति संबंधित/ विचारण न्यायालय को अविलंब प्रेषित करना सुनिश्चित करें।

(2025) 7 ILRA 893
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 10.07.2025

BEFORE

THE HON'BLE RAJNISH KUMAR, J.

Criminal Revision Defective No. 250 of 2025

Faisal Siddiqui @ Mohd. Faisal
...Revisionist
Versus
State of U.P. & Ors. ...Opposite Parties

Counsel for the Revisionist:
Yogesh Kumar Mishra, Dharmendra Kumar Yadav

Counsel for the Opposite Parties:
G.A., Ramakar Shukla

Issue for Consideration

Whether a revision filed with concealment of material facts and suppression of earlier failed mediation proceedings can be entertained, and whether obtaining interim relief by misrepresentation amounts to fraud on the Court, vitiating the proceedings and inviting exemplary costs.

Headnotes

Criminal Procedure Code, 1973 — ss. 397/401, 125, 126(2) — Concealment of material facts — Fraud on Court — Suppression of earlier failed mediation — Interim relief obtained by deceit — Delay in filing revision — Condonation refused — Exemplary costs imposed — Ethical obligation of advocate towards Court.

Held:

The revisionist- suppressed the material fact- earlier, in proceedings under Section 482 Cr.P.C.- relating to the same matrimonial dispute-matter had been referred to mediation, which had failed-concealing this fact and falsely representing a "possibility of settlement'- interim protection was obtained fraudulently. [Paras 2–5]

Suppression of material facts and misleading the Court amount to **fraud-** vitiates all judicial acts- *fraus omnia corrumpit* applies — fraud unravels everything- judgment or order obtained by playing fraud on the Court is **non est in law** and a nullity- every Court, whether superior or subordinate bound to treat such order as void [Paras 5–7]

Every litigant approaching the Court-duty of **full and fair disclosure** of material facts- Advocates, being officers of the Court-equally obliged to assist the Court fairly and truthfully- legal profession demands the highest standards of probity, candour and integrity. [Para 8]

Application for condonation of delay dismissed — Revision dismissed — Cost of ₹1,00,000 imposed; ₹90,000 to be paid to respondent no. 2 and ₹10,000 to be deposited in the Court. (E-14)

Case Law Cited

Jeet Narain v. Govind Prasad, **2010 (110) RD 374 — relied on; *Neeru Yadav v. State of U.P.*, (2016) 15 SCC 422 — followed; *S.P. Chengalvaraya Naidu (Dead) by LRs v. Jaganath (Dead) by LRs*, (1994) 1 SCC 1 — followed; *Saumya Chaurasia v. Directorate of Enforcement*, (2024) 6 SCC 401 — relied on; *Kusha Duruka v. State of Odisha*, (2024) 4 SCC 432 — applied.**

List of Acts / Statutes

Code of Criminal Procedure, 1973; Dowry Prohibition Act, 1961; Indian Penal Code, 1860

List of Keywords

Fraud on Court; Suppression of material facts; Concealment; Interim protection obtained by deceit; Professional ethics; Duty of disclosure; Advocates as officers of the Court; Matrimonial proceedings; Misrepresentation; Nullity of order.

Case Arising From

Criminal Revision filed under Sections 397/401 Cr.P.C. challenging the order of the Family Court passed under Sections 125 and 126(2) Cr.P.C.

Appearance for Parties

For the Revisionist : Shri Yogesh Kumar Mishra, Shri Dharmendra Kumar Yadav
For the Opposite Parties : Learned Government Advocate, Shri Ramakar Shukla

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

1. In deference to the order dated 26.05.2025, the parties are present in person.

2. The respondent no.2 states that she does not want mediation in the matter because earlier the revisionist had filed Application under Section 482 No.1605/2023(Mohd.Faisal and Others versus State of U.P. and Another) challenging the charge sheet and the summoning order dated 06.11.2020 passed in Criminal Case arising out of Case Crime No.3690/2020, under Section 498-A, 323, 504, 506 I.P.C. and Section 3/4 of the Dowry Prohibition Act, Police Station Kotwali Nagar, District Sultanpur. One of the contention of learned counsel for the revisionist in that case was that there is possibility of compromise between the parties being matrimonial dispute, therefore, this Court had referred the matter for mediation. However, the mediation failed because the revisionist was not ready to settle the dispute in the said case and thereafter the revisionist is also not appearing in that application before the Court and enjoying the interim order granted by this court.

3. Learned counsel for respondent no.2 submits that without disclosing this fact, this revision has been filed challenging the order passed under Section 125 Cr.P.C. as well as under Section 126(2) Cr.P.C. on the application of the revisionist and the only contention as recorded in the order dated 26.05.2025 is that there is chance of settlement, therefore, the Court issued notices and granted interim protection on deposit of Rs.50,000/- within two weeks, which has been deposited. Thus, the submission is that this revision is liable to be dismissed merely on the ground of concealment playing fraud with the court for obtaining interim order. Even otherwise the submission is that nothing has been paid by the revisionist till date to the respondent no.2, even after allowing the interim maintenance by the family court, whereas the respondent no.2 is residing separately on account of conduct of the revisionist since January 2019. It has also been submitted that in this highly belated revision, no ground for condonation of delay could also be shown. Thus the application for condonation of delay alongwith revision is liable to be dismissed with heavy cost.

4. Sri Yogesh Kumar Mishra, learned counsel for the revisionist could not dispute the aforesaid submissions of learned counsel for the respondent no.2. However, he submits that inadvertently the fact of reference to the mediation and conciliation centre in the aforesaid application before this Court could not be disclosed and pointed out to this Court and it can not be said that any fraud has been played. He also could not show any payment made to the respondent no.2 till date except the deposit of Rs.20,000/-, out of which Rs.15,000/- was paid to the respondent no.2 in the aforesaid application under Section 482 Cr.P.C. No.1605/2023 and Rs.50,000/- in the present case.

5. In view of above, it is apparent that in this highly belated revision, in which office has reported a delay of 583

days in filing the revision, interim order has been obtained by the revisionist not only by material concealment of fact but playing fraud with the Court also because once the mediation had failed in a proceeding before this court, without disclosing the same and as to why the same has failed and as to how it is possible now, the only argument advanced by learned counsel for the revisionist as recorded in the order dated 26.05.2025 is that there are chances for settlement. But when the mediation had already failed before this court in another proceeding, the contention was misconceived and not tenable. It shows that the plea was taken only to obtain interim order. The counsels for the revisionist should also have cautious and refrained from taking such plea, once the mediation had failed before this court. At this stage learned counsel for the revisionist submits that it could not be disclosed as the revisionist had contacted him for filing revision against the impugned order and it was prepared as per instructions. However it is his first mistake and he will be careful in future. He is warned to be careful in future.

6. The Hon'ble Supreme Court, in the case of **Jeet Narain and another Versus Govind Prasad and others; 2010 (110) RD 374**, has held that it is now well settled that fraud unravels everything.

7. The Hon'ble Supreme Court, in the case of **S.P.Chengalvaraya Naidu (Dead) by LRs Versus Joganath (Dead) by LRs and others; (1994) 1 SCC 1**,reproducing the observations of Chief Justice Edward Coke of England about three centuries ago that fraud avoids all judicial acts, ecclesiastical or temporal held that it is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non-est in the eyes of law. The relevant paragraph 1 is extracted here-in-below:-

"1. Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree by the first court or by the highest court has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings." "

8. The Hon'ble Supreme Court, in the case of **Saumya Chaurasia Versus Directorate of Enforcement; (2024) 6 SCC 401**, has held that it is an obligation on party to make full and correct disclosure of material facts and of advocate to fairly assist the court in carrying out its function and finding material concealment dismissed the appeal with costs of Rs.1 lakh. The relevant paragraph 13 is extracted here-in-below:-

"13.It cannot be gainsaid that every party approaching the court seeking justice is expected to make full and correct disclosure of material facts and that every advocate being an officer of the court, though appearing for a particular party, is expected to assist the court fairly in carrying out its function to administer the justice. It hardly needs to be emphasised that a very high standard of professionalism and legal acumen is expected from the advocates particularly designated senior advocates appearing in the highest court of the country so that their professionalism may be followed and emulated by the advocates practising in the

High Courts and the District Courts. Though it is true that the advocates would settle the pleadings and argue in the courts on instructions given by their clients, however their duty to diligently verify the facts from the record of the case, using their legal acumen for which they are engaged, cannot be obliviated."

9. The Hon'ble Supreme Court, in the case of **Kusha Duruka Versus State of Odisha; (2024) 4 SCC 432**, referring various judgments observed that one of the two cherished basic values by Indian society for centuries is "satya"(truth) and the same has been put under the carpet by the petitioner. It has further been held that now it is well settled that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final. Suppression of material facts from the court of law, is actually playing fraud with the court. The relevant paragraph 6 is extracted here-in-below:-

"6.It was held in the judgments referred to above that one of the two cherished basic values by Indian society for centuries is ?satya? (truth) and the same has been put under the carpet by the petitioner. Truth constituted an integral part of the justice-delivery system in the pre-Independence era, however, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In the last 40 years, the values have gone down and now litigants can go to any extent to mislead the court. They have no respect for the truth. The principle has been evolved to meet the challenges posed by this new breed of litigants. Now it is well settled that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final. Suppression of material facts from the court of law, is actually playing fraud with the court. The maxim suppressio veri, expressio falsi i.e. suppression of the truth is equivalent to the expression of falsehood, gets attracted. It is nothing but degradation of moral values in the society, may be because of our education system. Now we are more happy to hear anything except truth; read anything except truth; speak anything except truth and believe anything except truth. Someone rightly said that: “Lies are very sweet, while truth is bitter, that's why most people prefer telling lies.”

10. In view of above, this revision alongwith application for condonation of delay is liable to be dismissed with heavy cost as no sufficient ground for condonation of delay could also be shown.

11. The application for condonation of delay is dismissed. Consequently the revision is **dismissed** with a cost of Rs.1 lakh, which shall be deposited by the revisionist before Senior Registrar of this Court within a period of three weeks from today, failing which the same shall be recovered from the revisionist as arrears of land revenue by him forthwith.

12. It is further provided that Rs.50,000/- deposited before the mediation and conciliation centre of this Court shall be released and paid to the respondent no.2 on an application moved by her giving the details of her account, which shall be transferred in her account through RTGS after verification. The said amount shall be adjusted towards the amount of maintenance fixed by the Family Court.

13.It is further provided that out of the aforesaid cost of Rs.1,00,000/-, Rs.90,000/- shall also be paid to the respondent no.2, which shall be transferred in her account by the aforesaid mode on her application.

14. The aforesaid amounts shall be transferred within two weeks of moving application.

(2025) 7 ILRA 897
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 28.07.2025
BEFORE

THE HON'BLE MANISH KUMAR NIGAM, J.

Matters Under Article 227 No. 3939 of 2021

Kamleshwar Shahi ...Petitioner
Versus
Dr. Ajay Shankar & Ors. ...Respondents

Counsel for the Petitioner:
Chandra Shekhar Agnihotri

Counsel for the Respondents:
Anshu Chaudhary

Issue for Consideration

Whether under Order XXII Rule 4(4) of the *Code of Civil Procedure, 1908*, the court may exempt the plaintiff from substituting the legal representatives of a deceased defendant who did not contest the suit, even if the application seeking such exemption is filed after the expiry of the prescribed period of ninety days.

Headnotes

Code of Civil Procedure, 1908 — O.22 r.4(4) — Substitution of legal representatives — Non-contesting defendant — Exemption from substitution — Power of court — Limitation of ninety days — Applicability — Abatement — Legislative intent — Interpretation of "whenever the court thinks fit"

HELD:

Sub-rule (4) of Rule 4 of Order XXII C.P.C.-enacted to remedy procedural delays in substitution-empowering courts to exempt plaintiffs from substituting legal representatives of defendants who neither filed a written statement nor contested the suit-legislative object is to prevent abatement -avoid unnecessary delay in disposal of cases. [Paras 6–7]

Words *"whenever the court thinks fit"* in sub-rule (4)-confer a **discretionary power** not limited by the period prescribed for substitution-provision does not require-application for exemption be filed within ninety days from the death of the defendant-to hold otherwise would defeat the legislative intent and render the remedial nature of the amendment nugatory. [Paras 11, 13–15]

Plaintiff had already filed a substitution application within the prescribed period-there was no abatement of appeal-subsequent application seeking exemption under Order XXII Rule 4(4) C.P.C. was rightly maintainable-appellate court's rejection of the exemption application was erroneous-ignored the legislative intent of sub-rule (4) - procedural safeguard meant to expedite justice-Order of appellate court set aside — Exemption application allowed — Petition allowed. [Paras 12, 16, 17, and 18] (E-14)

Case Law Cited

***Rameshwar Prasad v. State of U.P.,* AIR 1983 SC 383 — applied; *Sankri Prasad Singhdeo v. Kanailal Rao*, (1948) 52 Cal**

WN 599 — dissented from; *Nani Gopal v. Panchanan*, (1955) 59 Cal WN 304 — dissented from; *Laxmi Charan v. Satyabadi*, AIR 1964 Ori 39 — dissented from; *S.A. Raheem v. Rajamma*, AIR 1977 Kant 20 — followed; *Nepal Chand Saha v. Rebati Mohan Saha*, AIR 1979 Gauh 1 — followed; *Rai Nath Sahgal v. Shiva Prasad Sinha*, AIR 1979 Pat 239 — followed; *Velappan Pillai v. Parappan*, AIR 1969 Mad 309 — relied on.

List of Acts / Statutes

Code of Civil Procedure, 1908

List of Keywords

Civil procedure; Substitution of legal representatives; Non-contesting defendant; Exemption from substitution; Abatement; Legislative intent; "Whenever the court thinks fit"; Discretionary power; Delay; Interpretation of remedial provisions; Procedural justice; Judicial discretion.

Case Arising From

Petition under Article 227 of the *Constitution of India* challenging the order dated 10 March 2021 passed by the Appellate Court in Civil Appeal No. 30 of 2012, rejecting petitioner's application (Paper No. 55Ka-2) seeking amendment of substitution application (Paper No. 37Ka-2) and exemption from substituting the heirs of deceased respondent no. 3 under Order XXII Rule 4(4) C.P.C.

Appearance for Parties

For the Petitioner : Shri Chandra Shekhar Agnihotri

For the Respondents : Shri Anshu Chaudhary.

(Delivered by Hon'ble Manish Kumar Nigam, J.)

1. Heard learned counsel for the parties and perused the record.

2. This writ petition has been filed challenging the order dated 10.03.2021 passed by the appellate court rejecting the application (paper 55 ka-2) filed by the petitioner seeking amendment in the substitution application paper No. 37 Ka-2 filed for substituting the heirs of defendant/respondent no. 3 who died during pendency of the appeal.

3. Brief facts of the case are that original suit no. 89 of 1968 was filed by the petitioner for the relief that compromise petition filed in Supreme Court in Civil Appeal No. 375 of 1957 which was recorded by the court on 19.05.1958 and incorporated in a decree of the said appeal, so far as it purported to convey the property described in a schedule-IV to Shri Bhagwati declaring illegal void and not binding on the plaintiff. In the aforesaid suit one Gauri Shankar Sahi was added as defendant no. 3 who was substituted after his death by Bhuvneshwar Prasad Sahi. The said suit was dismissed by judgment and decree dated 07.05.2012. Against the judgement and decree passed in the suit, first appeal being appeal No. 30 of 2012 was filed by the plaintiff. During the pendency of the appeal Bhuvneshwar Prasad Shahi respondent no. 3 died on 26.10.2018. Petitioner/appellant filed an application for substituting the heirs of deceased defendant/respondent no. 3 being paper no. 37Ka-2. Later on petitioner/appellant filed an application Paper No. 55 Ka-2 for amendment in the substitution application praying for relieving the petitioner/appellant from necessity of substituting the legal representative of deceased defendant/respondent no. 3 in view of Sub-rule (4) of Rule 4 of Order 22 C.P.C. Application Paper No. 55 Ka-2 has been rejected by the appellate court, hence, the present petition.

4. It has been contended by learned counsel for the petitioner that Shri Gauri Shankar Sahi, defendant no. 3 never contested the suit and has not filed written statement during the pendency of the suit. After his death, Bhuvneshwar Prasad Sahi was substituted in his place who happens to be son of Gauri Shankar Sahi during the

pendency of the suit. Bhuveneshwar Prasad Sahi too have not filed any written statement or contested the suit. Therefore, the petitioner/appellant prayed that petitioner appellant be exempted from substituting the heirs of deceased respondent no. 3 Bhuvneshwar Prasad Sahi. It has been further contended by learned counsel for the petitioner that no relief in the suit was claimed against defendant no. 3.

5. Shri Anshul Chowdhary, learned counsel appearing for respondent nos. 1 & 2 submitted that no error has been committed by the appellate court in rejecting the application for amendment moved by the petitioner for amending the substitution application filed for substituting the heirs of deceased defendant/respondent no. 3. It has been further submitted that once the substitution application has been filed for substituting the heirs of deceased defendant/respondent no. 3, there is no occasion for the petitioner/appellant to file an application for being relieved from substituting the heirs of deceased defendant/respondent no. 3 under Sub-rule (4) of Rule 4 of Order 22 C.P.C. It has been further submitted by learned counsel for the respondents that deceased defendant/respondent no. 3 died on 26.10.2018 and the present application, purported to be under Sub-rule (4) of Rule 4 of Order 22 C.P.C. was filed on 05.01.2021. In case, application was to be filed by the petitioner/appellant for seeking exemption under Sub-rule (4) of Rule 4 of Order 22 C.P.C., the same should have been filed within time within which the application for substitution could be filed and the same cannot be entertained after expiry of the aforesaid period.

6. Before considering the rival submissions of the learned counsel for the parties, it will be appropriate to look into the provisions of Order 22 Rule 4 C.P.C. which are quoted as under:

"4. Procedure in case of death of one of several defendants or of sole defendant.

(1) .....

(2) .....

(3) .....

(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant not withstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

(5) ....."

6. There used to be a great deal of controversy about the effect of not bringing on record the heirs and legal representatives of the defendant who did not either file the written statement or contest the suit. As a remedial measure Calcutta, Madras, Karnataka and Orissa High Courts had inserted a new sub-rule in R.4 of O. 22 CPC to the effect that substitution of the legal representatives of a non-contesting defendant would not be necessary and the judgment delivered in the case would be as effective as if it had been passed when the defendant was alive. The Joint Committee of Parliament recommended for adoption of the said rule in O. 22 R. 4 Civil P.C. The recommendations made by it were:

"The Committee are, therefore, of the view that in order to avoid delay in substitution of the legal representatives of the deceased defendant and consequent delay in the disposal of the suits, similar provision may be made in the Code itself. New sub-r. (4) in R.4 of O. 22 has been inserted accordingly."

7. The background which led to the insertion of sub-r. (4) of O. 22 is based on the recommendation of the aforesaid Committee. The intention of insertion is clear from the recommendations made by the Joint Committee. This was done with a view to curtail waste of unnecessary time. Court has, therefore, to keep the intention of the Legislature in mind while interpreting sub-r. (4) of O. 22 R. 4 CPC. It is now well established that intention of legislature, including the recommendations of the Joint Select Committee, can be considered and looked into for interpreting a legislation.

8. In **Rameshwar Prasad v. State of U.P., AIR 1983 SC 383,** the view taken by the Supreme Court was that whenever a court is called upon to interpret an amended provision, it has to bear in mind the history of the provision, the mischief which the legislature attempted to remedy, the remedy provided by the amendment and the reason for providing such remedy.

9. So far as the contention raised by learned counsel appearing for respondents that power of exemption conferred by Sub-rule (4) of Rule 4 of Order 22 C.P.C. can be invoked only in those cases where the application for the said purpose has been made under the provisions of sub-rule (4) within 90 days. According to him, once a suit is abated, the court has no power under the aforesaid rule to exempt. It has been further argued that abatement of suit, is not by filing an application for abatement but abatement is automatic and on such automatic abatement, coming into existence there is noting before the court, so far as the deceased defendant is concerned, in which any order for exemption under Sub-rule (4) or another order could be possibly made. It has also been contended that this application has been filed after a lapse of about 3 years from the date of death of deceased defendant/respondent. Hence, the court below has rightly rejected the application for amendment in the substitution application seeking exemption which was in fact an application for seeking exemption under Sub-rule (4) of Rule 4 of Order 22 C.P.C.

10. In support of his submission, learned counsel for the respondents relied upon the judgment in case of **Sankri Prasad Singhdeo v. Kanailal Rao, (1948) 52 Cal WN 599, Nani Gopal v. Panchanan (1955) 59 Cal WN 304,** and **Laxmi Charan v. Satyabadi, AIR 1964 Orrisa 39**. In all of these cases, the view taken was that the words "Whenever the Court thinks fit" in the context must mean that the court sees fit within 90 days from the date of death and before abatement takes place.

11. These authorities, no doubt support the petitioner contentions. Two courses are open to the plaintiff either to make an application for substitution or to file an application invoking the courts power of exempting from the necessity of substituting the legal heirs of the deceased defendant/respondent. If either of the two things are not done, the irresistible conclusion would be that the suit stands abated as against the deceased defendant. In the facts of the present case, an

application for substituting was filed by the petitioner/appellant on 05.01.2019, for substituting the heirs of defendant/respondent no. 3 who died on 26.10.2018, which was well in time. After filing the substitution application, the petitioner/appellant moved the present application for exemption on 25.01.2021 by seeking amendment in the substitution application.

12. In the facts of the present case, there cannot be any abatement in the appeal as the application for substitution was already filed and by the subsequent application, petitioner/appellant has sought exemption from substituting the heirs of deceased defendant/respondent no. 3, thus, in my view, contention of the learned counsel for the respondent is of no avail.

13. Apart from the factual position in the present case, mentioned above, I am not persuaded to agree with the view taken in case of Sankri Prasad Singhdeo v. Kanailal Rao (Supra), Nani Gopal v. Panchanan (Supra) and Laxmi Charan v. Satyabadi (Supra). The intention behind the sub-r. (4) of R. 4 of O. 22 is that a plaintiff need not be asked to file an application for bringing on record the heirs of the deceased when he has not taken any interest in the suit. That intention could not be fructified if the suit is abated on the application for exemption not being made within 90 days. The expression used in sub-r. (4) is, "whenever it thinks fit". The word "whenever" means at whatever time or at what time so ever. To accept the interpretation put forward by the petitioners' learned counsel would result in ignoring that expression altogether. The power to exempt is not inhibited by the condition that the application for the said purpose must have been moved within 90 days. The exemption given by sub-r. (4) of O. 22, R. 4 relieves the plaintiff from the liability of moving a substitution application. It is a maxim of law that words of exemption are not to be construed to import any liability. The exemption granted excuses the plaintiff from the performance of duty. Accordingly, to me it appears that moving of application within 90 days is not at all necessary, as was argued by the learned counsel for respondent.

14. Dissenting with the view taken by the Orissa and Calcutta High Courts the Karnataka High Court held in **S.A Raheem v. Rajamma (AIR 1977 Kant 20),** that exemption application is not required to be filed within 90 days of death. To the same effect is the view of Gauhati and Patna High Courts in **Nepal Chand Saha v. Rebati Mohan Saha (AIR 1979 Gauhati 1)** and **Rai Nath Sahgal v. Shiva Prasad Sinha (AIR 1979 Pat 239)**. In Nepal Chand Saha's case (Supra), strong reliance had been placed by the learned Judge on a decision of the Madras High Court reported in **Velappan Pillai v. Parappan (AIR 1969 Mad 309)**. In this decision, the controversy in issue has been considered in great detail. I am in respectful agreement with the view taken by the Madras High Court.

15. A legal action on the death of a party to a suit passes into a state of suspense which itself passes into a state of abatement, if the legal representatives are not brought within time. But in a case where there is no need of moving a substitution application for bringing on record the heirs and legal representatives of a defendant who had not filed his written statement or contested the suit, the said position would not emerge. Not bringing on record his legal representatives would not result in the abatement of the suit as the law now does not contemplate the same.

16. In the present case, since the application for substitution was already filed by the petitioner/appellant within

time, there was no question of appeal being abated.

17. I am of the view that the court below has erroneously rejected the application filed by the appellant and the same is liable to be set-aside.

18. In view of the above, the order dated 10.03.2021 passed by the appellate court rejecting the application (paper 55ka-2), in Civil Appeal No. 30 of 2012, is hereby set-aside and the application (paper 55Ka-2) filed by the petitioner/appellant seeking amendment, is allowed.

19. Accordingly, the writ petition is **allowed**.

(2025) 7 ILRA 902
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 15.07.2025

BEFORE

THE HON'BLE JASPTREET SINGH, J.

Civil Misc. Arbitration Application No. 2 of 2024

Devi Prasad Mishra ...Applicant
Versus
M/S Nayara Energy Limited (Earlier Essar Oil Limited) ...Respondent

Counsel for the Applicant:
Girish Chandra Sinha, Dhirendra Singh, Manish Mehrotra, Mayank Sinha

Counsel for the Respondent:
Kumar Ayush

Issue for Consideration

Whether, in a petition under Section 11(6) of the *Arbitration and Conciliation Act, 1996,* for appointment of an arbitrator, the bench of High Court at Lucknow has jurisdiction to entertain the application when the arbitration clause provides that the proceedings "shall be held in Mumbai" and the agreement also contains an *exclusive-jurisdiction clause* conferring jurisdiction on the Courts at Mumbai only.

Headnotes

Arbitration and Conciliation Act, 1996 — s. 11(6); ss. 20(1)–(3); s. 42 — Jurisdiction — Seat and Venue — Effect of exclusive jurisdiction clause — When 'venue' is to be treated as 'seat'

HELD:

Clauses 21 and 22 of the franchisee agreement-read together- unambiguously designate *Mumbai* as the place where the arbitration proceedings "shall be held"- the agreement "shall be subject to the exclusive jurisdiction of Courts at Mumbai only"-once a *seat* of arbitration is fixed, the Courts of that seat alone have supervisory jurisdiction over the arbitral proceedings to the exclusion of all others. [Paras 16–18, 24–26]

Applying the test in *B.G.S. S.G.S. Soma JV v. NHPC Ltd.*, (2020) 4 SCC 234, and approved in *Arif Azeem Co. Ltd. v. Micromax Informatics FZE*, 2024 SCC OnLine SC 3212-where the agreement mentions only one place- no contrary indication-that place becomes the juridical seat even if termed as 'venue'- Hence, 'Mumbai', being the only place specified, constitutes the seat of arbitration. [Paras 24–26]

Petition was therefore not maintainable before the Allahabad High Court (Lucknow Bench)-Dismissed with liberty to the petitioner to approach the competent Court at Mumbai. [Para 29] (E-14)

Case Law Cited

Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd.*, (2017) 7 SCC 678 — relied on; *B.G.S. S.G.S. Soma JV v. NHPC Ltd.*, (2020) 4 SCC 234 — followed; *Brahmani River Pellets Ltd. v. Kamachi Industries Ltd.*, (2020) 5 SCC 462 — applied; *Arif Azeem Co. Ltd. v. Micromax Informatics FZE*, 2024 SCC OnLine SC 3212 — approved; *State of W.B. v. Associated Contractors*, (2015) 1 SCC 32 — distinguished; *Aarka Sports

***Management (P) Ltd. v. Kalsi Buildcon (P) Ltd.*, 2020 SCC OnLine Del 2077 — not applicable; *Faith Constructions v. N.W.G.E.L. Church*, 2025 SCC OnLine Del 1746 — not followed.**

List of Acts / Statutes

Arbitration and Conciliation Act, 1996; Code of Civil Procedure, 1908

List of Keywords

Arbitration; Seat of arbitration; Venue vs. Seat; Exclusive jurisdiction clause; Section 11(6) petition; Territorial jurisdiction; Franchisee agreement; Mumbai as seat; Supervisory jurisdiction; Arbitral proceedings; Jurisdiction bar.

Case Arising From

Application under Section 11(6) of the *Arbitration and Conciliation Act, 1996* for appointment of a sole arbitrator arising out of Franchisee Agreement dated 18 January 2018 between the parties.

Appearance for Parties

For the Applicant : Shri Pratham Mehrotra, Shri Manish Mehrotra, Shri Girish Chandra Sinha, Shri Dhirendra Singh, Shri Mayank Sinha.

For the Respondent : Shri Kumar Ayush.

(Delivered by Hon'ble Jaspreet Singh, J.)

1. Heard Shri Pratham Mehrotra and Shri Manish Mehrotra, learned counsel for the petitioner and Shri Kumar Ayush, learned Counsel appearing for the respondent.

2. The instant petition has been preferred under Section 11(6) of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as Act, 1996) seeking appointment of a sole Arbitrator to resolve the disputes having arisen between the parties, emerging from a franchisee agreement dated 18.01.2018.

3. Submission of the learned counsel for the petitioner is that a franchisee agreement was executed initially between Essar Oil Ltd. and the petitioner. In furtherance of the said agreement, the petitioner invested a sum of Rs.1.5 crores and odd to establish a petrol pump. It is the case of the petitioner that since Essar Oil Ltd. is a bulk supplier to the Indian State Controlled Petroleum Companies, hence it colluded with the local companies, as a consequence, the retail price of petrol and petroleum products were dearer at the Essar Petrol Pump in comparison to the pumps operated by the Government Control Petroleum Company.

4. It is also stated that Essar Oil Ltd. established another local company, namely, M/s. Nayara Energy Ltd. and the local business of petrol pumps was merged in the said company and M/s. Nayara Energy Ltd. stepped into the shoes of Essar Old Ltd. and took over the management and control of the erstwhile company Essar Oil Ltd.

5. M/s. Nayara Energy Ltd., the respondent company terminated the dealership/franchisee agreement of the petitioner by an unilateral decision dated 18.08.2023. The termination was against the interest of the petitioner as well as in violation of the terms as contained in the franchisee agreement. Since disputes had arisen, accordingly the petitioner invoked the dispute resolution mechanism and sent a letter to the respondent on 18.09.2023 calling upon the respondent to resolve the same amicably and in case if the same did not materialise, then the petitioner also suggested a name of the Former Judge of this Court, who may be appointed as a sole Arbitrator and a request was made to the respondent that it may give its consent.

6. It is urged that despite the aforesaid invocation of the arbitration clause, no response was given by the respondent, as a

consequence, the petitioner was compelled to institute the above petition and it is urged that this Court may appoint the sole Arbitrator exercising powers under section 11(6) of the Act. 1996.

7. Shri Kumar Ayush, learned counsel for the respondent has raised a preliminary objection indicating that this Court does not have the jurisdiction to appoint the sole Arbitrator. The crux of the submission of the respondent is that though the franchisee agreement was signed at NOIDA and the dealership of the petrol pump related to District Amethi in State of Uttar Pradesh. However, the parties had agreed that the arbitration proceedings will be held in Mumbai coupled with the fact that clause 22 of the franchisee agreement provided for an exclusive jurisdiction clause which excluded the jurisdiction of all other Courts including the Courts at Lucknow are vested powers of appointment of the Arbitral Tribunal and supervision of the arbitral proceedings with the Court at Mumbai only.

8. It is, thus, submitted that in view of the fact that the parties had agreed to the 'seat' of arbitration being at Mumbai coupled with the exclusive jurisdiction clause, hence it is only the Courts at Mumbai who had the jurisdiction to appoint an Arbitrator and not this Court at Lucknow. In support of his submission, learned counsel for the respondent has relied upon the decision of the Apex Court in ***Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd. & others, (2017) 7 SCC 678.***

9. Shri Pratham Mehrotra, learned counsel for the petitioner has refuted the aforesaid submission and has primarily urged that the parties had not agreed to fix the 'seat' of arbitration and the entire franchisee agreement is silent thereon. It is further submitted that even if clause 21 of the agreement is seen, it only refers to Mumbai as the 'venue' and not as a 'seat'. It is alsosubmitted that the exclusive jurisdiction clause 22 in the agreement refers to those disputes which are not arbitrable for which the jurisdiction of the regular City Civil Courts are to be invoked and alternatively it has also been urged that since no part of cause of action has accrued in Mumbai, hence the parties even by consent cannot confer jurisdiction on a Court which has none.

10. It has also been urged by the learned counsel for the petitioner that in a case where the agreement is silent and it does not indicate that the parties have agreed on the 'seat' of arbitration, in such circumstances, the Courts where even a part of cause of action has accrued can exercise its jurisdiction and the Court in exercise of its power under section 11(6) of the Act, 1996. Moreover, this Court in Section 11(6) proceedings may not decide the issue of 'seat' rather it should be left open to be considered by the Arbitral Tribunal in terms of Section 20(2) of the Act, 1996.

11. It is, thus, urged that in the given facts and circumstances, the parties had not agreed on the 'seat' of arbitration to be at Mumbai, hence this Court has ample jurisdiction as the dealership was to established at Amethi which is under the territorial jurisdiction of this Court, hence the petition is liable to be entertained and the respondent has not denied the fact that there is no arbitration clause and that there are live and subsisting disputes between the parties, accordingly the petition deserves to be allowed.

12. In supported of his submissions the learned counsel for the petitioner has relied upon the decision of the Apex Court in ***State of West Bengal and others v. Associated Contractors (2015) 1 SCC 32,*** a decision of the Delhi High Court in ***Aarka sports Management Pvt. Ltd v. Kalsi Buildcon Pvt. Ltd. 2020 SCC OnLine Delhi 2077*** and another decision of the Delhi High Court in ***Faith Constructions v. N.W.G.E.L. Church 2025 SCC OnLine Delhi 1746.***

13. The Court has heard the learned counsel for the parties and also perused the material on record.

14. At the outset, it may be noticed that the parties do not dispute that there is an arbitration clause. It is also not disputed by the respondent that the arbitration clause has been invoked by the petitioner, to which there was no response from the side of the respondent. It is also not disputed that there are disputes between the parties. However, what is disputed is the jurisdiction of this Court to entertain the petition on the ground of lack of territorial jurisdiction.

15. In order to examine the respective contentions, it will be appropriate to examine the arbitration clause as well as the exclusive jurisdiction clause which are clause 21 and 22 of the franchisee agreement dated 18.01.2018. For the ease of reference clause 21 and 22 is being reproduced hereinafter:-

21. Dispute Resolution

"All disputes and differences of any nature whatsoever or any claim, cross, counter claim, or any dispute arising under or out of this Agreement or any beach or alleged breach of any of the covenants thereof or as to the interpretation of any clause/provision of this Agreement shall be resolved through mutual discussion between the parties hereto, falling which the same shall be referred to and finally resolved by arbitration to be conducted in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996, as amended. The arbitration panel shall consist of a sole arbitrator o be appointed by the company. ***The arbitration proceedings shall be held in Mumbai and shall be conducted in the English language.*** *The award rendered by the arbitration panel shall be final, conclusive and binding on all parties to this agreement and shall be subject to enforcement in any court of competent jurisdiction. Bach party shall bear the cost of preparing and presenting its case, and the cost of arbitration, including fees and expenses of the arbitrator, shall be shared equally by the disputing parties, unless the award otherwise provides."*

22 (Governing laws and jurisdiction) is reproduced as under:

"this agreement will be governed by and construed in accordance with the laws of India and shall be subject to the exclusive jurisdiction of the courts at Mumbai only"

16. On the bare perusal of the dispute resolution clause 21, it would indicate that the parties had agreed that any dispute or difference of any nature whatsoever or claim or counter claim arising out of this agreement or any breach of any of the covenants or interpretation of any clause, first it shall be resolved through mutual discussions, failing which, the same could be resolved by referring it to a sole Arbitrator.

17. However, what is relevant to note is the language of clause 21, which specifically states that arbitration panel

shall consist of a sole Arbitrator to be appointed by the company (referring to the respondent). It further states that *'the arbitration proceedings shall be held in Mumbai and shall be conducted in English language'*. This sentence regarding the proceedings to be held at Mumbai and read in context with clause 22 as reproduced above, indicates that the agreement will be governed by the laws of the country and it shall be subject to the exclusive jurisdiction of Courts at Mumbai only.

18. In light of the aforesaid two clauses, it is to be ascertained as to whether the parties had agreed to fix the 'seat' of arbitration at Mumbai or not coupled with the fact that what could be implication of the exclusive jurisdiction clause.

19. There are several conflicting decisions relating to the issue of 'seat' and 'venue' of arbitration as well as whether the parties could confer jurisdiction on a Court who possessed none on the ground that no part of cause of action may have accrued within the jurisdiction of such a Court.

20. The Apex Court in ***Indus Mobile (supra)*** had the occasion to consider this aspect of the matter and upon perusal of the aforesaid decision, it would reveal that the arbitration clause contained in the instant case was quite similar to the one which was before the Apex Court in ***Indus Mobile (supra)***. Similar submissions were raised regarding vesting of jurisdiction in a Court, which otherwise may not have any jurisdiction in context with Section 16 to Section 20 CPC.

21. The Apex Court considering the submissions as well as the provisions of law and noticing the earlier decisions, in para 19 and 20 held as under:-

19. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it clear that jurisdiction exclusively vests in the Mumbai courts. Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to "seat" is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction — that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Sections 16 to 21 of CPC be attracted. In arbitration law however, as has been held above, the moment "seat" is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.

20. It is well settled that where more than one court has jurisdiction, it is open for the parties to exclude all other courts. For an exhaustive analysis of the case law, see Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd. [Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157] This was followed in a recent judgment in B.E. Simoese Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd. [B.E. Simoese Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd., (2015) 12 SCC 225 : (2016) 1 SCC (Civ) 427] Having regard to the above, it is clear that Mumbai courts alone have jurisdiction to the exclusion of all other courts in the country, as the juridical seat of arbitration is at Mumbai.

This being the case, the impugned judgment [Datawind Innovations (P) Ltd. v. Indus Mobile Distribution (P) Ltd., 2016 SCC OnLine Del 3744] is set aside. The injunction confirmed by the impugned judgment will continue for a period of four weeks from the date of pronouncement of this judgment, so that the respondents may take necessary steps under Section 9 in the Mumbai Court. The appeals are disposed of accordingly.

22. Later this issue was once again considered in great detail by the Apex Court in ***B.G.S. S.G.S. Soma JV v. NHPC Limited (2020) 4 SCC 234*** wherein the Apex Court again considered the issue of 'seat' and 'venue' vis-a-vis Section 42 of the Act, 1996 and the relevant paragraphs 59, 61, 81 and 82 are being reproduced hereinafter:-

"59. Equally incorrect is the finding in Antrix Corpn. Ltd. [Antrix Corpn. Ltd. v. Devas Multimedia (P) Ltd., 2018 SCC OnLine Del 9338] that Section 42 of the Arbitration Act, 1996 would be rendered ineffective and useless. ***Section 42 is meant to avoid conflicts in jurisdiction of courts by placing the supervisory jurisdiction over all arbitral proceedings in connection with the arbitration in one court exclusively. This is why the section begins with a non obstante clause, and then goes on to state "…where with respect to an arbitration agreement any application under this part has been made in a court…" It is obvious that the application made under this part to a court must be a court which has jurisdiction to decide such application. The subsequent holdings of this court, that where a seat is designated in an agreement, the courts of the seat alone have jurisdiction, would require that all applications under Part I be made only in the court where the seat is located, and that court alone then has jurisdiction over the arbitral proceedings and all subsequent applications arising out of the arbitral agreement. So read, Section 42 is not rendered ineffective or useless. Also, where it is found on the facts of a particular case that either no "seat" is designated by agreement, or the so-called "seat" is only a convenient "venue", then there may be several courts where a part of the cause of action arises that may have jurisdiction. Again, an application under Section 9 of the Arbitration Act, 1996 may be preferred before a court in which part of the cause of action arises in a case where parties have not agreed on the "seat" of arbitration, and before such "seat" may have been determined, on the facts of a particular case, by the Arbitral Tribunal under Section 20(2) of the Arbitration Act, 1996. In both these situations, the earliest application having been made to a court in which a part of the cause of action arises would then be the exclusive court under Section 42, which would have control over the arbitral proceedings. For all these reasons, the law stated by the Bombay and Delhi High Courts in this regard is incorrect and is overruled.***

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61. It will thus be seen that wherever there is an express designation of a "venue", and no designation of any alternative place as the "seat", combined with a supranational body of rules governing the arbitration, and no other significant contrary indicia, the inexorable conclusion is that the stated venue is actually the juridical seat of the arbitral proceeding.

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81. Most recently, in Brahmani River Pellets [Brahmani River Pellets Ltd. v. Kamachi Industries Ltd., (2020) 5 SCC 462 : 2019 SCC OnLine SC 929 at para 15] , this Court in a domestic arbitration considered Clause 18 — which was the arbitration agreement between the parties — and which stated that arbitration shall be under Indian Arbitration and Conciliation Act, 1996, and the venue of arbitration shall be Bhubaneswar. After citing several judgments of this Court and then referring to Indus Mobile Distribution [Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd., (2017) 7 SCC 678 : (2017) 3 SCC (Civ) 760] , the Court held : (Brahmani River Pellets case [Brahmani River Pellets Ltd. v. Kamachi Industries Ltd., (2020) 5 SCC 462 : 2019 SCC OnLine SC 929 at para 15] , SCC pp. 472-73, paras 18-19)

"18. Where the contract specifies the jurisdiction of the court at a particular place, only such court will have the jurisdiction to deal with the matter and parties intended to exclude all other courts. In the present case, the parties have agreed that the "venue" of arbitration shall be at Bhubaneswar. Considering the agreement of the parties having Bhubaneswar as the venue of arbitration, the intention of the parties is to exclude all other courts. As held in Swastik [Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157] , non-use of words like "exclusive jurisdiction", "only", "exclusive", "alone" is not decisive and does not make any material difference.

19. When the parties have agreed to the have the "venue" of arbitration at Bhubaneshwar, the Madras High Court erred [Kamchi Industries Ltd. v. Brahmin River Pellets Ltd., 2018 SCC OnLine Mad 13127] in assuming the jurisdiction under Section 11(6) of the Act. Since only the Orissa High Court will have the jurisdiction to entertain the petition filed under Section 11(6) of the Act, the impugned order [Kamchi Industries Ltd. v. Brahmin River Pellets Ltd., 2018 SCC OnLine Mad 13127] is liable to be set aside."

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82. On a conspectus of the aforesaid judgments, it may be concluded that whenever there is the designation of a place of arbitration in an arbitration clause as being the "venue" of the arbitration proceedings, the expression "arbitration proceedings" would make it clear that the "venue" is really the "seat" of the arbitral proceedings, as the aforesaid expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place. This language has to be contrasted with language such as "tribunals are to meet or have witnesses, experts or the parties" where only hearings are to take place in the "venue", which may lead to the conclusion, other things being equal, that the venue so stated is not the "seat" of arbitral proceedings, but only a convenient place of meeting. Further, the fact that the arbitral proceedings "shall be held" at a particular venue would also indicate that the parties intended to anchor arbitral proceedings to a particular place, signifying thereby, that that place is the seat of the arbitral proceedings. This, coupled with there being no other significant contrary indicia that the stated

venue is merely a "venue" and not the "seat" of the arbitral proceedings, would then conclusively show that such a clause designates a "seat" of the arbitral proceedings. In an international context, if a supranational body of rules is to govern the arbitration, this would further be an indicia that "the venue", so stated, would be the seat of the arbitral proceedings. In a national context, this would be replaced by the Arbitration Act, 1996 as applying to the "stated venue", which then becomes the "seat" for the purposes of arbitration."

23. Lately, the Apex Court in ***Arif Azeem Comapny Ltd. vs. Micromax Informatices FZE : 2024 SCC OnLine SC 3212*** approved the reasoning as laid down in ***B.G.S. S.G.S. Soma (supra)*** and in paras 53 and 54 noticed as under:-

"53. Thus, this Court in BGS SGS SOMA (supra) laid down a three-condition test as to when 'venue' can be construed as 'seat' of arbitration. The conditions that are required to be fulfilled are as under:—

i. The arbitration agreement or clause in question should designate or mention only one place;

ii. Such place must have anchored the arbitral proceedings i.e., the arbitral proceedings must have been fixed to that place alone without any scope of change;

iii. There must be no other significant contrary indicia to show that the place designated is merely the venue and not the seat.

Where the aforesaid conditions are fulfilled, then the place that has been designated as 'venue' can be construed as the 'seat' of arbitration. It is clarified that, while applying the aforesaid test, it must be borne in mind that where a supranational body of rules has been stipulated in an arbitration agreement or clause, such stipulation is not to be regarded as a contrary indicium, such stipulation does not mean that no seat has been designated rather such stipulation is a positive indicia that the place so designated is actually the 'seat'.

54. The aforesaid test was approvingly applied by this Court in Mankastu Impex Private Ltd. v. Airvisual Ltd. reported in (2020) 5 SCC 399 and it was held that where the reference to a place in the arbitration agreement is not simply as "venue" and rather a reference as place for final resolution by arbitration, such place shall be construed as the seat of arbitration. The relevant observations read as under:—

"20. It is well settled that "seat of arbitration" and "venue of arbitration" cannot be used interchangeably. It has also been established that mere expression "place of arbitration" cannot be the basis to determine the intention of the parties that they have intended that place as the "seat" of arbitration. The intention of the parties as to the "seat" should be determined from other clauses in the agreement and the conduct of the parties.

21. In the present case, the arbitration agreement entered into between the parties provides Hong Kong as the place of arbitration. The agreement between the parties choosing "Hong Kong" as the place of arbitration by itself will not lead to the conclusion that the parties have chosen Hong Kong as the seat

of arbitration. The words, "the place of arbitration" shall be "Hong Kong", have to be read along with Clause 17.2. Clause 17.2 provides that "... any dispute, controversy, difference arising out of or relating to MoU shall be referred to and finally resolved by arbitration administered in Hong Kong....". On a plain reading of the arbitration agreement, it is clear that the reference to Hong Kong as "place of arbitration" is not a simple reference as the "venue" for the arbitral proceedings; but a reference to Hong Kong is for final resolution by arbitration administered in Hong Kong. The agreement between the parties that the dispute "shall be referred to and finally resolved by arbitration administered in Hong Kong" clearly suggests that the parties have agreed that the arbitration be seated at Hong Kong and that laws of Hong Kong shall govern the arbitration proceedings as well as have power of judicial review over the arbitration award.

22. As pointed out earlier, Clause 17.2 of MoU stipulates that the dispute arising out of or relating to MoU including the existence, validity, interpretation, breach or termination thereof or any dispute arising out of or relating to it shall be referred to and finally resolved by the arbitration administered in Hong Kong. The words in Clause 17.2 that "arbitration administered in Hong Kong" is an indicia that the seat of arbitration is at Hong Kong. Once the parties have chosen "Hong Kong" as the place of arbitration to be administered in Hong Kong, the laws of Hong Kong would govern the arbitration. The Indian courts have no jurisdiction for appointment of the arbitrator."

(Emphasis supplied)"

and then in para 71, it recorded the exposition of law as under:-

"71. From the above exposition of law, the following position of law emerges:—

(i) Part I of the Act, 1996 and the provisions thereunder only applies where the arbitration takes place in India i.e., where either (I) the seat of arbitration is in India OR (II) the law governing the arbitration agreement are the laws of India.

(ii) Arbitration agreements executed after 06.09.2012 where the seat of arbitration is outside India, Part I of the Act, 1996 and the provisions thereunder will not be applicable and would fall beyond the jurisdiction of Indian courts.

(iii) Even those arbitration agreements that have been executed prior to 06.09.2012 Part I of the Act, 1996 will not be applicable, if its application has been excluded by the parties in the arbitration agreement either explicitly by designating the seat of arbitration outside India or implicitly by choosing the law governing the agreement to be any other law other than Indian law.

(iv) The moment 'seat' is determined, it would be akin to an exclusive jurisdiction clause whereby only the jurisdictional courts of that seat alone will have the jurisdiction to regulate the arbitral proceedings. The notional doctrine of concurrent jurisdiction has been expressly rejected and overruled by this Court in its subsequent decisions.

(v) The 'Closest Connection Test' for determining the seat of arbitration by

identifying the law with which the agreement to arbitrate has its closest and most real connection is no longer a viable criterion for determination of the seat or situs of arbitration in view of the Shashoua Principle. The seat of arbitration cannot be determined by formulaic and unpredictable application of choice of law rules based on abstract connecting factors to the underlying contract. Even if the law governing the contract has been expressly stipulated, it does not mean that the law governing the arbitration agreement and by extension the seat of arbitration will be the same as the lex contractus.

(vi) The more appropriate criterion for determining the seat of arbitration in view of the subsequent decisions of this Court is that where in an arbitration agreement there is an express designation of a place of arbitration anchoring the arbitral proceedings to such place, and there being no other significant contrary indicia to show otherwise, such place would be the 'seat' of arbitration even if it is designated in the nomenclature of 'venue' in the arbitration agreement.

(vii) Where the curial law of a particular place or supranational body of rules has been stipulated in an arbitration agreement or clause, such stipulation is a positive indicium that the place so designated is actually the 'seat', as more often than not the law governing the arbitration agreement and by extension the seat of the arbitration tends to coincide with the curial law.

(viii) Merely because the parties have stipulated a venue without any express choice of a seat, the courts cannot sideline the specific choices made by the parties in the arbitration agreement by imputing these stipulations as inadvertence at the behest of the parties as regards the seat of arbitration. Deference has to be shown to each and every choice and stipulations made by the parties, afterall the courts are only a conduit or means to arbitration, and the sum and substance of the arbitration is derived from the choices of the parties and their intentions contained in the arbitration agreement. It is the duty of the court to give weight and due consideration to each choice made by the parties and to construe the arbitration agreement in a manner that aligns the most with such stipulations and intentions.

(ix) We do not for a moment say that, the Closest Connection Test has no application whatsoever, where there is no express or implied designation of a place of arbitration in the agreement either in the form of 'venue' or 'curial law', there the closest connection test may be more suitable for determining the seat of arbitration.

(x) Where two or more possible places that have been designated in the arbitration agreement either expressly or impliedly, equally appear to be the seat of arbitration, then in such cases the conflict may be resolved through recourse to the Doctrine of Forum Non Conveniens, and the seat be then determined based on which one of the possible places may be the most appropriate forum keeping in mind the nature of the agreement, the dispute at hand, the parties themselves

and their intentions. The place most suited for the interests of all the parties and the ends of justice may be determined as the 'seat' of arbitration."

24. Stage is now set to examine as to whether the parties had agreed to fix the 'seat' of arbitration and applying the test as laid down by the Apex Court in ***B.G.S. S.G.S. Soma (supra),*** this Court finds that in the instant agreement, the parties had clearly agreed that the arbitration will be held at Mumbai. If the arbitration agreement mentions only one place and even if it is termed as the 'venue', then unless there is a contrary indicia the 'venue' is construed as the 'seat'.

25. In the instant case, admittedly there is only one place which is mentioned in the agreement and that is Mumbai, where the arbitration proceedings were to be held as agreed, coupled with the fact that in clause 22, it vested exclusive jurisdiction to the Courts at Mumbai meaning thereby that Mumbai was agreed as to be the 'seat' of arbitration and the parties had agreed to anchor all the arbitral proceedings in Mumbai and there is no other clause or contrary indicators that any other Court could also have the jurisdiction, hence in the instant case it can safely be held that it is the Courts at Mumbai, who would have the jurisdiction as the parties had fixed the 'seat' of arbitration at Mumbai and there is no contrary indicator to suggest otherwise.

26. In light of the aforesaid, this Court is of the clear view that the Courts at Mumbai would have the jurisdiction as the parties agreed Mumbai to be the 'seat'. Moreover, even it its treated to be the 'venue' but then in absence of any contrary indicia coupled with the exclusive jurisdiction clause, the venue is treated as the 'seat' as held by the Apex Court and once the 'seat' has been fixed then all proceedings relating to the said arbitration would be held within the jurisdiction of that Court.

27. As far as the decisions cited by the learned counsel for the petitioner is concerned, the decisions of ***Faith Constructions (supra)*** does not come to the aid of the petitioner as the said decision does not consider the law as propounded by the Apex Court in ***Indus Mobile (supra)*** and ***B.G.S. S.G.S. Soma (supra)***.

28. Considering the decision in ***Aarka Sports Management (supra),*** it would indicate that though the learned Single Judge of the Delhi High Court noticed the decision of the Apex Court in ***Indus Mobile (supra)*** and certain other decisions, however, it has given a finding which otherwise against the ratio as laid down by the Apex Court in ***B.G.S. S.G.S. Soma (supra)*** and ***Arif Azeem Company Ltd. (supra),*** hence the said decision also does not bind this Court and it cannot be a precedent.

29. For the aforesaid reasons, this Court is of the clear view that the instant petition is not maintainable before this Court at Lucknow, hence it is dismissed,

leaving it open for the petitioner to approach the jurisdictional High Court at Mumbai.

(2025) 7 ILRA 913
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 03.07.2025

BEFORE

THE HON'BLE SANJAY KUMAR SINGH, J.

Criminal Misc. Bail Application No. 15773 of 2025

Gulfam ...Applicant

Versus

State of U.P. ...Opposite Party

Counsel for the Applicant:
Mohd Imran Khan

Counsel for the Opposite Party:
G.A

Issue for Consideration

Whether an accused with extensive criminal antecedents, including prior convictions, and who has concealed his complete criminal history in the bail application, is entitled to be released on bail?

Headnotes

Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 — s. 3(1), s. 19(4)(b) — Bail — Concealment of criminal antecedents — Doctrine of clean hands — Misuse of bail liberty — Mandatory satisfaction of twin conditions — Parity plea — Rejection of bail

Held:
The applicant was involved in 41 criminal cases-including three convictions under the *Gangsters Act*-only 10 cases were disclosed in the bail application — deliberate concealment of material facts amounts to misleading the Court-A litigant seeking discretionary relief must come with clean hands-failing which the application is liable to be dismissed. [Paras 6, 10–15, 18]

Section 19(4)(b) of the *Gangsters Act*- bail can be granted only if the Court is satisfied that there are **reasonable grounds to believe** that the accused is not guilty of the offence-**not likely to commit any offence while on bail-c**onsidering the applicant's repeated involvement in serious offences-prior misuse of bail, these statutory preconditions are not satisfied. [Paras 20–24, 30]

"Reasonable grounds" under Section 19(4)(b)-something more than *prima facie* grounds-substantial probable cause to believe that the accused is not guilty. [Para 24]

Reliance placed on the plea of parity with co-accused Imran (who had 9 cases) is misconceived — bail to the co-accused was granted without compliance with Section 19(4)(b) and cannot justify repetition of illegality. [Paras 27–29]

Applicant's deliberate suppression of criminal history constitutes abuse of process-all bail applications must disclose complete criminal history with status of bail/trial within the first five paragraphs of the affidavit-Registrar General to place the order before the Hon'ble Chief Justice for framing administrative guidelines. [Paras 35–37]

Bail application rejected. (E-14)

Case Law Cited

Ash Mohammad v. Shiv Raj Singh alias Lalla Babu, **(2012) 9 SCC 446 — applied; *Neeru Yadav v. State of U.P.*, (2016) 15 SCC 422 — followed; *Sudha Singh v. State of U.P.*, (2021) 4 SCC 781 — applied; *Arunima Baruah v. Union of India*, (2007) 6 SCC 120 — relied on; *Prestige Lights Ltd. v. State Bank of India*, (2007) 8 SCC 449 — relied on; *K.D. Sharma v. Steel Authority of India Ltd.*, (2008) 12 SCC 481 — relied on; *Dalip Singh v. State of U.P.*, (2010) 2 SCC 114 — followed; *Amar Singh v. Union of India*, (2011) 7 SCC 69 — applied; *Kishore Samrite v. State of U.P.*, (2012) 10 SCALE 330 — applied; *Deepak Yadav v.***

***State of U.P.*, (2022) 8 SCC 559 — followed.**

List of Acts / Statutes

Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986; Bharatiya Nagarik Suraksha Sanhita, 2023; Indian Penal Code, 1860

List of Keywords

Bail; Gangsters Act; Criminal antecedents; Concealment of criminal history; Clean hands; Suppression of material facts; Misuse of liberty; Parity; Reasonable grounds; Habitual offender; Fair disclosure.

Appearance for Parties

For the Applicant : Shri Mohd. Imran Khan
For the State : Learned Government Advocate

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

1. Heard learned counsel for the applicant, learned Additional Government Advocate representing the State and perused the record of the case.

2. By means of this application under Section 483 of BNSS, applicant Gulfam, who is involved in Case Crime No. 175 of 2024, under Section 3(1) of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986, police station Tanda, district Rampur seeks enlargement on bail during pendency of trial.

3. Brief facts of the case, which are required to be stated are that on the basis of a case registered as crime No. 494 of 2023 under Section 8/20 N.D.P.S. Act at Police Station-Tanda, District-Rampur against the applicant as well as considering his other criminal history, proceedings under the provisions of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986 were initiated against him. Accordingly, a First Information Report was lodged on 01.04.2024 against the applicant-Gulfam, Dilawar and Imran at Case Crime No. 175 of 2024, for the offence under Section 3(1) of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986 at police station Tanda, district Rampur.

4. It is argued by learned counsel for the applicant that according to the gang chart, the applicant is said to have involved in 08 criminal cases but the provisions of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986 have been invoked against the applicant on the basis of only 01 case being Case Crime No. 494 of 2023, under Section 8/20 NDPS Act, police station Tanda, district Rampur, in which he has already been enlarged on bail, copy of bail order has been brought on record as Annexure No. 3 to the bail application. It is next submitted that in 07 other criminal cases also, the applicant has been granted bail, copy of the bail orders have been annexed as Annexure Nos. 6 to 12 to the bail application. It is further argued that the applicant has falsely been implicated in the present case due to ulterior motive. He is neither gang leader nor member of any gang. There is no prospect of trial of the present case being concluded in near future due to heavy dockets. It is further submitted that co-accused Imran, who has a criminal history of 09 cases has been granted bail by the coordinate Bench of this Court vide order dated 28.08.2024 in Criminal Misc. Bail Application No. 27325 of 2024, therefore, the applicant, who is languishing in jail since 29.10.2023 is also entitled to be enlarged on bail. Lastly, it is submitted that in case the applicant is released on bail, he will not misuse the liberty of bail.

5. Per contra, learned Additional Government Advocate for the State opposed the prayer for bail of the applicant

by contending that there is recovery of 1kg and 100 grams of charas in base case being case crime no. 494 of 2023, under Section 8/20 N.D.P.S. Act, registered at Police Station-Tanda, District-Rampur on 29.10.2023 against the applicant. It is next submitted that applicant is running a gang and co-accused Dilawar and Imran are the members of the applicant's gang. It is also pointed out that in 03 criminal cases being Case Crime No. 135 of 2000, under Section 3(1) of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986, police station Azeemnagar, district Rampur, Case Crime No. 282 of 2003, under Section 3(1) of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986, police station Tanda, district Rampur and Case Crime No. 1333 of 2010, under Section 3(1) of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986, police station Tanda, district Rampur, the applicant has already been convicted by the trial Court vide judgment and orders dated 30.06.2022, 01.07.2022 and 07.07.2022 respectively. It is further pointed out that the applicant is a history sheeter and apart from this case, he is involved in as many as **41** other criminal cases, which are as under:

(I) Case Crime No. 47 of 2000, under Section 25 Arms Act, police station Azeem Nagar, district Rampur.

(II) Case Crime No. 48 of 2000, under Sections 41/102 Cr.P.C. and Section 411 IPC, police station Azeem nagar, district Rampur.

(III) Case Crime No. 135 of 2000, under Section 3(1) Gangsters Act, police station Azeem nagar, district Rampur.

(IV) Case Crime No. 137 of 2000, under Section 25 Arms Act, police station Azeem nagar, district Rampur.

(V) Case Crime No. 229 of 2003, under Section 307 IPC, police station Tanda, district Rampur.

(VI) Case Crime No. 232 of 2003, under Sections 4/25 Arms Act, police station Tanda, district Rampur.

(VII) Case Crime No. 233 of 2003, under Section 8/20 NDPS Act, police station Tanda, district Rampur.

(VIII) Case Crime No. 282 of 2003, under Section 3(1) Gangsters Act, police station Tanda, district Rampur.

(IX) Case Crime No. 280 of 2004, under Sections 384/504/506 IPC, police station Tanda, district Rampur.

(X) Case Crime No. 1021 of 2005, under Sections 382/411 IPC, police station Tanda, district Rampur.

(XI) Case Crime No. 1056 of 2005, under Sections 18/20 NDPS Act, police station Tanda, district Rampur.

(XII) Case Crime No. 484 of 2006, under Section 382 IPC, police station Azeemnagar, district Rampur.

(XIII) Case Crime No. 496 of 2006, under Sections 356/411 IPC, police station Azeemnagar, district Rampur.

(XIV) Case Crime No. 513 of 2006, under Sections 307/147/148/149/411 IPC, police station Azeemnagar, district Rampur.

(XV) Case Crime No. 603 of 2006, under Section 457 IPC, police station Tanda, district Rampur.

(XVI) Case Crime No. 278 of 2007, under Sections 332/353/224 IPC,

police station Azeemnagar, district Rampur.

(XVII) Case Crime No. 05 of 2008, under Sections 384/504/506 IPC, police station Azeemnagar, district Rampur.

(XVIII) Case Crime No. 12 of 2008, under Section 307 IPC, police station Azeemnagar, district Rampur.

(XIX) Case Crime No. 14 of 2008, under Section 25 Arms Act, police station Azeemnagar, district Rampur.

(XX) Case Crime No. 576 of 2008, under Sections 379/411 IPC, police station Patwai, district Rampur.

(XXI) Case Crime No. 624 of 2008, under Section 3/25 Arms Act, police station Patwai, district Rampur.

(XXII) Case Crime No. 469 of 2010, under Section 392 IPC, police station Tanda, district Rampur.

(XXIII) Case Crime No. 526 of 2010, under Section 392 IPC, police station Tanda, district Rampur.

(XXIV) Case Crime No. 539 of 2010, under Sections 379/411 IPC, police station Azeemnagar, district Rampur.

(XXV) Case Crime No. 547 of 2010, under Section 392 IPC, police station Tanda, district Rampur.

(XXVI) Case Crime No. 634 of 2010, under Section 392 IPC, police station Tanda, district Rampur.

(XXVII) Case Crime No. 978 of 2010, under Sections 8/22 NDPS Act, police station Tanda, district Rampur.

(XXVIII) Case Crime No. 1012 of 2010, under Section 392 IPC, police station Swar, district Rampur.

(XXIX) Case Crime No. 1080 of 2010, under Section 394 IPC, police station Swar, district Rampur.

(XXX) Case Crime No. 1333 of 2010, under Section 3(1) Gangsters Act, police station Tanda, district Rampur.

(XXXI) Case Crime No. 32 of 2014, under Sections 394/307 IPC, police station Ganj, district Rampur.

(XXXII) Case Crime No. 193 of 2018, under Sections 147/148/ 149/224/307/323/332/353/504 IPC, police station Azeemnagar, district Rampur.

(XXXIII) Case Crime No. 216 of 2018, under Section 302 IPC and Section 3(2) SC/ST Act, police station Tanda, district Rampur.

(XXXIV) Case Crime No. 119 of 2020, under Sections 8/15 NDPS Act, police station Azeemnagar, district Rampur.

(XXXV) Case Crime No. 217 of 2020, under Section 3/25 Arms Act, police station Azeemnagar, district Rampur.

(XXXVI) Case Crime No. 03 of 2021, under Section 3(1) Gangsters Act, police station Azeemnagar, district Rampur.

(XXXVII) Case Crime No. 100 of 2021, under Section 8/21 NDPS Act, police station Azeemnagar, district Rampur.

(XXXVIII) Case Crime No. 155 of 2022, under Section 307 IPC, police station Tanda, district Rampur.

(XXXIX) Case Crime No. 156 of 2022, under Sections 3/25/27 Arms Act, police station Tanda, district Rampur.

(XL) Case Crime No. 158 of 2022, under Sections 323/504 IPC, police station Tanda, district Rampur.

(XLI) Case Crime No. 494 of 2023, under Section 8/20 NDPS Act, police station Tanda, district Rampur.

6. Having heard learned counsel for the parties and examined the matter in its entirety, I find that apart from the present case, the applicant has a long criminal history of 41 other criminal cases as noted above, out of which, criminal history of only 10 cases [mentioned above at Sl. Nos. (III), (VIII), (XXVII), (XXX), (XXXII), (XXXIV), (XXXV), (XXXVI), (XXXVII) and (XXXVIII)] have been disclosed by him in the bail application. It is also admitted fact that in 03 cases, the applicant has been convicted as noted above.

7. In **Ash Mohammad Vs. Shiv Raj Singh alias Lalla Babu and another, (2012) 9 SCC 446**, Hon'ble Supreme Court, held as under:

"We may usefully state that when the citizens are scared to lead a peaceful life and this kind of offences usher in an impediment in establishment of orderly society, the duty of the court becomes more pronounced and the burden is heavy. There should have been proper analysis of the criminal antecedents. Needless to say, imposition of conditions is subsequent to the order admitting an accused to bail. The question should be posed whether the accused deserves to be enlarged on bail or not and only thereafter issue of imposing conditions would arise. We do not deny for a moment that period of custody is a relevant factor but simultaneously the totality of circumstances and the criminal antecedents are also to be weighed."

8. Hon'ble Apex Court in the case of **Neeru Yadav Vs. State of U.P. (2016) 15 SCC 422**, after referring a catena of judgement of Hon'ble Supreme Court on the consideration of factors for grant of bail, held as under:

"This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal antecedent of the accused. What has weighed with the High Court is the doctrine of parity. A history sheeter involved in the nature of crimes which we have reproduced herein above, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination can be regarded as jejune. Such cases do create a thunder and lightening having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner."

9. The aforesaid judgement has further been followed by the Apex Court in the case of **Sudha Singh Vs. State of U.P. and**

another, (2021) 4 SCC 781. The fact in Sudha Singh's case was that F.I.R. under Section 3(1) of the Uttar Pradesh Gangsters And Anti-Social Activities (Prevention) Act, 1986 was registered against the accused Arun Yadav, in which as per gang chart, 16 cases were shown against him. The High Court granted bail vide order dated 08.05.2020 considering the fact that out of 16 cases, in 03 cases accused had been acquitted, in 08 cases accused had been granted bail, 04 cases ended in favour of the accused and in 01 case no F.I.R. was lodged against him. The said order dated 08.05.2020 granting bail to the accused Arun Yadav was challenged by Sudha Singh who is wife of the deceased, namely, Rajnarain Singh, who has been allegedly murdered by the accused. The Apex Court vide order dated 23.04.2021 allowed the appeal and set aside the order granting bail to the accused. The relevant observations made by the Hon'ble Apex Court in para no. 7 are quoted herein below :

"7. We find in this case that the High Court has overlooked several aspects, such as the potential threat to witnesses, forcing the trial court to grant protection. It is needless to point out that in cases of this nature, it is important that courts do not enlarge an accused on bail with a blinkered vision by just taking into account only the parties before them and the incident in question. It is necessary for courts to consider the impact that release of such persons on bail will have on the witnesses yet to be examined and the innocent members of the family of the victim who might be the next victims."

10. It would not be out of place to mention that in the matter of bail merely disclosure of criminal history by the accused is not sufficient but proper explanation (about the nature of crime, role assigned to accused and status of investigation or trial as the case may be) of the same is also required to be mentioned in the bail application.

11. In the present case, the applicant has misused the process of law by not mentioning his complete criminal history and tried to mislead the Court. The Courts of law are meant for imparting justice between the parties. One, who comes to the court, must come with clean hand and no material facts should be concealed. I am constrained to hold that more often the process of the court is being abused by unscrupulous litigants to achieve their nefarious design. I have no hesitation in saying that a person, whose case is based on falsehood, has no right to approach the Court.

12. In **Arunima Baruah Vs. Union of India** (2007) 6 SCC 120, Supreme Court held that it is trite law that to enable the Court to refuse to exercise its discretionary jurisdiction suppression must of material fact. Material fact would mean material for the purpose of determination of the lis. It was further held that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands.

13. In **Prestige Lights Limited Vs. State Bank of India** (2007) 8 SCC 449, Apex Court held as under:

"It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses

relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."

14. In **K.D Sharma Vs. Steel Authority of India Limited and others,** (2008) 12 SCC481, Supreme Court held that no litigant can play "hide and seek" with the courts or adopt "pick and choose". To hold a writ of the court one should come with candid facts and clean breast. Suppression or concealment of material facts is forbidden to a litigant or even as a technique of advocacy. In such cases the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of Court for abusing the process of the court.

15. Supreme Court in **Dalip Singh Vs. State of Uttar Pradesh and others,** (2010) 2 SCC 114 came down heavily on unscrupulous litigants by holding that it is now well established that a litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final. The Court further held as under:

"For many centuries, Indian society cherished two basic values of life i.e., `Satya' (truth) and `Ahinsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."

16. In **Amar Singh Vs. Union of India** (2011) 7 SCC 69, Supreme Court held that Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts. Courts held that such litigants have come with "unclean hands" and are not entitled to be heard on the merits of their case.

17. In Kishore Samrite Vs. State of U.P. and others, 2012 (10) SCALE 330, The Supreme Court held as under:

"31. It has been consistently stated by this Court that the entire journey

of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the Justice Delivery System.

32. With the passage of time, it has been realized that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorized or unjust gain to anyone as a result of abuse of the process of the Court. <u>One way to curb this tendency is to impose realistic or punitive costs."</u>

18. Having considered the factual aspect of the case and the dictum of the Hon'ble Supreme Court, I am of the considered view that the applicant has not come to the Court with clean hand. Honesty, fairness, purity of mind should be of the highest order to approach the court, failing which the litigants should be shown the exit door at the earliest point of time.

19. Having considered the factual aspect of the case with regard to granting bail to the applicant previously in other cases and the dictum of the Hon'ble Apex Court, I also find that every time whenever the applicant was granted bail, a condition was imposed that in future he will not indulge in any criminal case, but every time the applicant violated the said condition and got himself involved in criminal cases, hence I am of the considered view that he always misused the liberty of bail.

20. Here it would be useful to quote the provisions of <u>Section 19(4) of the Uttar Pradesh Gangsters And Anti-Social Activities (Prevention) Act, 1986,</u> which is one of the relevant factor to be kept in mind while considering bail of an accused under the said Act, which reads thus:-

<u>Section 19</u>

(1) …….

(2) …….

(3) …….

(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act or any rule made thereunder shall, if in custody, be released on bail or on his own bond unless-

(a) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(b) where the Public Prosecutor opposes the application, the Court is

satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

21. It is well settled that every law is designed to facilitate end of justice and not to frustrate it. Hence the aforesaid legislative mandate is required to be adhered and followed.

22. Taking into note of the aforesaid provisions, I find that Section 19 (4) (a) and (b) of the Uttar Pradesh Gangsters And Anti-Social Activities (Prevention) Act, 1986 are mandatory in nature. Hence while considering/granting bail, said provisions cannot be ignored.

23. However, it is relevant to mention that no strait-jacket formula can be laid down with regard to satisfaction of the Court in terms of aforesaid Section 19 (4) (b) of Act, 1986, because every case turns on its own facts. Even one additional or different fact may make a big difference between the conclusion in two cases, because even a single significant detail may alter the entire aspect.

24. The expression "reasonable grounds" has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting bail under the Uttar Pradesh Gangsters And Anti-Social Activities (Prevention) Act, 1986.

25. The primary objective of the Uttar Pradesh Gangsters And Anti-Social Activities (Prevention) Act, 1986 is to prevent organized crimes and gangster activities within the State of Uttar Pradesh. It aims to dismantle criminal networks and prevent the growth of illicit activities. The offences mentioned in Section 2 (b) (i) to (xxv) of the Uttar Pradesh Gangsters And Anti-Social Activities (Prevention) Act, 1986, involve significant harm or pose a threat to public safety. The Act empowers law enforcement agencies and State authorities to take necessary measures against gangsters to ensure the safety and security of the citizens.

26. The plea of false implication is a stereotyped defence raised in every case. Experience shows that such statements are made in almost every case, therefore, plea of false implication without any basis or material on record is not liable to be accepted blindly.

27. So far as submission of learned counsel for the applicant that since co-accused Imran, who has a criminal history of 09 cases has been granted bail by the coordinate Bench of this Court vide order dated 28.08.2024 is concerned, it is relevant to mention that it is well settled that a judge is not bound to grant bail to an accused on the ground of parity, where the order granting bail to an identically placed co-accused contains no cogent reasons or if the same has been passed in flagrant violation of well established principle of law. If any illegality is brought to the knowledge of the Court, the same should not be permitted to perpetuate. In the said case, bail has been granted ignoring the

provisions of Section 19 (4) (b) of the Uttar Pradesh Gangsters And Anti-Social Activities (Prevention) Act, 1986 as no finding has been recorded in terms of Section 19 (4) (b) of the said Act, 1986, whereas said accused has a criminal history of nine cases.

28. In this regard, it is also apposite to mention that after considering plethora of judgements on the guiding principle for adjudicating a regular bail, Hon'ble Supreme Court in **Deepak Yadav vs. State of U.P. and Another,** (2022) 8 SCC 559 held as under:

26. "The importance of assigning reasoning for grant or denial of bail can never be undermined. There is prima facie need to indicate reasons particularly in cases of grant or denial of bail where the accused is charged with a serious offence. The sound reasoning in a particular case is a reassurance that discretion has been exercised by the decision maker after considering all the relevant grounds and by disregarding extraneous considerations."

" xxxxxxxxxxxxxxxxxxx"

"39. *Grant of bail to the Respondent No. 2/accused only on the basis of parity shows that the impugned order passed by the High Court suffers from the vice of non-application of mind rendering it unsustainable. The High Court has not taken into consideration the criminal history of the respondent No. 2/accused, nature of crime, material evidences available, involvement of respondent No. 2/accused in the said crime and recovery of weapon from his possession*."

(emphasis supplied)

29. Hence, in the light of the aforesaid discussions, the benefit of parity of bail order dated 28.08.2024 of co-accused Imran cannot be extended to the present applicant. Accordingly, the submission of learned counsel for the applicant for granting bail to the applicant on the ground of parity is hereby rejected.

30. Considering the overall facts and circumstances of the case as well as keeping in view the submissions advanced on behalf of parties as noted above, gravity of offence, role assigned to the applicant in base case and severity of punishment, this Court in the light of criminal history of the applicant does not find reasonable grounds for believing that the applicant is not guilty of such offence and that he is not likely to commit any offence while on bail. Hence aforesaid mandatory requirement of Section 19 (4) (b) of the Uttar Pradesh Gangsters And Anti-Social Activities (Prevention) Act, 1986 does not stand satisfied.

31. In view of the above, the instant bail application stands **rejected**.

32. It is clarified that observations made herein above are limited to the extent of determination of this bail application and will in no way be construed as an expression on the merits of the case. The trial Court shall be absolutely free to arrive at its independent conclusions on the basis of evidence to be adduced uninfluenced by anything mentioned in the order.

33. The trial Court shall make an endeavour to conclude the trial of the applicant expeditiously without granting any unnecessary adjournments to either of the parties in light of the provisions of Section 12 of the Uttar Pradesh Gangsters

and Anti Social Activities (Prevention) Act, 1986.

34. Copy of this order be sent to the concerned trial Court immediately for necessary information and compliance.

35. Before parting with the case, it would also be apposite to mention that criminal history of an accused is one of the important factors for consideration of a bail application, therefore, its correct disclosure along with status of bail and trial is necessary, however, invariably there is a default on behalf of accused-applicant or pairokar that criminal history is either not disclosed or declaration remained half truth, which may be considered as a serious defect and bail application may be rejected on sole ground of misrepresentation or concealing vital informations. It is also seen that declaration about criminal history is made in later part of bail application, even in some cases criminal history are mentioned in different supplementary affidavits, which causes great inconvenience to learned Government Advocates to search those paragraphs and assist the Court properly and effectively and precious time of the Courts are also wasted in searching and making query about criminal history of the accused. Sometimes it remained unnoticed by the Court also, which adversely affects outcome of the bail application. Therefore, this Court feels that an appropriate direction be issued for declaration/mentioning of criminal history at the place earmarked for it.

36. Accordingly, it is desirable that declaration of complete criminal history alongwith status of bail or trial should be made in first five paragraphs of the affidavit filed in support of the bail application or reasons for any default.

37. The Registrar General of this Court is directed to place copy of this order before Hon'ble the Chief Justice on administrative side for consideration and necessary directions.

(2025) 7 ILRA 923
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.07.2025

BEFORE

THE HON'BLE RAJIV GUPTA, J.
THE HON'BLE RAM MANOHAR NARAYAN MISHRA, J.

Capital Case No. 1 of 2021
With
Reference No. 1 of 2021

Bantu @ Shiv Shankar ...Petitioner
Versus
State Of U.P. ...Respondent

Counsel for the Petitioner:
Beena Mishra, From Jail, Pradeep Kumar Mishra, Vinay Saran(Senior Adv.)

Counsel for the Respondent:
A.G.A.

Issue for Consideration

Whether conviction of the appellant for offences under Sections 376AB and 302 IPC and Section 5/6 POCSO Act, based solely on circumstantial evidence—primarily the "last seen together" theory—was justified, despite serious investigative lapses including non-conduct of DNA profiling and absence of medical evidence of genital injuries.

Whether the case qualified as "rarest of rare" to warrant confirmation of the death penalty imposed by the trial court.

Headnotes

Indian Penal Code, 1860 — ss. 376AB, 302; POCSO Act, 2012 — ss. 5/6, 29, 30; Indian Evidence Act, 1872 — s.106 — Circumstantial evidence — Last seen together — Foundational facts — Presumption under POCSO — DNA test not conducted — Smothering — Partial penetration — Death sentence — Commutation.

Held:

Four witnesses of fact (PW-2, PW-3, PW-4, PW-5)-consistently proved that the 8-year-old victim was last seen alive-with the appellant around 9:00–9:30 PM on the night of the incident-she was never seen thereafter-her body was found early next morning in a nearby wheat field-strong and natural "last seen" circumstance-Accused offered no explanation under Section 106 Evidence Act-as to when and where he parted company with the victim- such fact lay within his special knowledge. [Paras 34–38, 60–61]

Medical evidence established homicidal smothering-blood was oozing from the victim's vagina-her clothes were blood-smeared-no genital injuries were noted-doctor did not find internal tears- profuse vaginal bleeding in a child of eight years-coupled with circumstances-established *penetrative sexual assault within the meaning of law*-even in the nature of partial penetration- Rape is a legal, not medical, concept. [Paras 49–51, 57]

Investigative lapses—non-conduct of DNA analysis-non-recovery of accused's clothes, discrepancies regarding recovered underwear—do not undermine an otherwise credible chain of circumstances when witnesses' testimony is trustworthy-Court reiterated that *faulty investigation*- cannot claim acquittal. [Paras 52–56, 59]

Foundational facts for application of Section 29 POCSO Act- established through consistent last-seen evidence-medical findings-conduct of accused- absence of enmity with witnesses-Presumption under Section 29-rightly invoked; no rebuttal was offered. [Paras 54–56, 61]

Despite gravity of crime—rape and murder of a minor cousin—the case did not meet the "rarest of rare" threshold-Appellant was 30 years old-had no criminal antecedents-offence was based on circumstantial evidence-possibility of reformation was not ruled out-Death sentence unsustainable. [Paras 65–69]

Death sentence commuted to— Life imprisonment for not less than 25 years (without remission) for offence under Section 302 IPC— 20 years rigorous imprisonment for offence under Section 376AB IPC-Sentences to run concurrently; fine of ₹20,000 payable to the informant as compensation. (E-14)

Case Law Cited

***Ramkirat Munilal Goud Vs. State of Maharashtra,* 2025 (0) SC 841; *Gambhir Singh Vs. State of U.P.* reported in 2025 (0) SC 285 para 34; *Soundarajan Vs. State represented by the Inspector of Police Vigilance Anti-Corruption Dindigul* in 2023 Live Law (SC) 314; *Kalicharan and others Vs. State of U.P.* in 2022 Live Law (SC) 1027; *State of Haryana Vs. Bhagirath and others* AIR 1999 (5) SC 2005; *State of Haryana Vs. Bhagirath and others* AIR 1999 (5) SC 2005; *R. Sreenivasa Vs. State of Karnataka* 2023(0) Supreme (SC) 836; *Gambhir Singh Vs. State of U.P. 2025* 0 Supreme (SC) 285; *Veerendra Vs. State of Madhya Pradesh* (2022) 8 SCC 668; *Sambhubhai Raisangbhai Padhiyar Vs. State of Gujarat* in 2025 (2) SCC 399; *Edakkandi Dineshan @ P. Dineshan & Ors. Vs. State of Kerela* 2025 INSC 28; *Sundar @ Sundarrajan Vs. State by Inspector of Police*, 2023 (2) SCC 353*; Mohd. Arif alias Ashfaq Vs. Registrar, Supreme Court of India* 2014 (() SCC 737; *Bachan Singh v.State of Punjab* 1980 (2) SCC 684.**

List of Acts / Statutes

Indian Penal Code, 1860; Protection of Children from Sexual Offences (POCSO) Act, 2012; Code of Criminal Procedure, 1973; Indian Evidence Act, 1872.

List of Keywords

Capital punishment; Last seen together; Circumstantial evidence; Child rape; Partial penetration; Smothering; Vaginal bleeding; POCSO presumption; DNA evidence; Faulty investigation; Mitigating circumstances; Rarest of rare; Commutation of death penalty; Life imprisonment without remission.

Case Arising From

Capital conviction recorded by the Additional Sessions Judge / Special Judge (POCSO Act), Firozabad in PST No. 1642 of 2019 arising out of Case Crime No. 137/2019, P.S. Sirsaganj, District Firozabad, convicting the appellant under Sections 376AB, 302 IPC and Section 5/6 POCSO Act, and making Reference No. 01 of 2021 under Section 366 Cr.P.C. for confirmation of death sentence.

Appearance for Parties

For the Appellant (from Jail / Amicus Curiae: Sri Vinay Saran, Senior Advocate, Sri Pradeep Kumar Mishra, Ms. Beena Mishra.

For the Respondent : Sri A.N. Mulla, A.G.A., Sri Arun Kumar Pandey, A.G.A., Sri S.S. Tiwary, A.G.A.

(Delivered by Hon'ble Ram Manohar Narayan Mishra, J.)

1. Heard Sri Vinay Saran, learned Senior Advocate and Amicus Curiae assisted by Sri Pradeep Kumar Mishra, Ms. Beena Mishra, learned Amicus Curiae for the appellant and Sri A. N. Mulla, learned A.G.A., Sri Arun Kumar Pandey, learned A.G.A. and Sri S.S.Tiwary, learned A.G.A. for the State.

2. Learned Additional Session Judge / Special Judge, POCSO Act, Firozabad has made a Reference to this Court on 01.12.2020 under section 366 of Cr.P.C., for confirmation of Capital punishment awarded to appellant, Bantu @ Shiv Shankar in PST No.1642 of 2019. The Reference has been registered as Reference No.01 of 2021. The Jail Appeal has also been filed by the convict as Capital Case No.0 1 of 2021). This reference and appeal have arisen out of judgment of trial court dated 01.12.2020 in PST No.1642 of 2019 (State of U.P. Vs. Bantu alias Shiv Shankar), whereby appellant has been convicted for charge under Sections 376 AB, 302 IPC arising out of Case Crime No. 137 of 2019, P.S. Sirsaganj, District Firozabad and sentenced to death for both the charges and is directed to be hanged by the neck until he be dead. The above sentence is subject to confirmation by this Court. Both the sentences are directed to run concurrently. The Appeal and Reference have been framed together and are being disposed of by this common judgment.

3. The Reference and Appeal were admitted. The trial court's record is received and paper book is ready. The prosecution case in nutshell is that PW-1 Kancha Devi wife of Deepak Chandra lodged an FIR on the basis of written report dated 18.03.2019 at P.S. concerned stating that on 17.03.2019 her daughter aged about 8 years had gone to the house of Vimlesh at around 9:00 PM to watch DJ. The mother of the victim Smt. Kancha Devi visited the place of Vimlesh at about 09:30 PM, where Vimlesh and Mukesh who are her co-villagers disclosed that they had seen her daughter together with Bantu son of Atar Singh of their village. Whereupon she inquired about her daughter from Prabhu Dayal, who also stated that he had seen her daughter going with Bantu alias Shiv Shankar at around 09:15 PM. She visited the home of Bantu to inquire about her daughter, but she did not find her there. At around 01:00 AM in the night Bantu met

her and stated that he had sent her daughter to bring Tobacco and gave Rs.10/- to her, she would come back. Thereafter she went in search of her daughter, but could not find her. In the next morning at around 06:30 AM co-villagers Vimal son of Ajay Pal told that underwear of her daughter was lying on the bank of drain of a tubewell on Mandhata Road. When she proceeded towards wheat field of Karu in search of her daughter, she found her lying dead. Blood was oozing out from lower part of her body, and her clothes were also smeared with blood. She stated in her FIR that Bantu had committed this incident to her daughter.

4. PW-8 Head Constable/Head Moharir Srichandra Verma registered an FIR on the basis of Ext. Ka-1 against accused, vide Case Crime No.137 of 2019, under section 302, 376, 201 IPC and Section 3 / 4 of POCSO Act, which is annexed as Ext. Ka-4. PW-8 also made an entry of this FIR, vide GD Entry No.18 time 09:15 AM dated 18.03.2018, the extracts of which are marked as Ext. Ka-5. The record reveals that after lodging of FIR ,the police visited the place where dead body was lying and inquest was carried out. SI, Ashesh Kumar, who was posted at P.S. Sirsaganj, District Firozabad, as Incharge O.P. Arav on 18.03.2019 prepared the inquest report marked as Ext.Ka-6. In the inquest report it is stated that the information of recovery of dead body was given by Prabhu Dayal (PW-2). The death occurred due to gagging of mouth by a cloth. A contusion was noticed on the face of the deceased and blood was oozing out from her private parts. She was wearing Salwar and Kurti. She had worn a string of white coral on her neck and a black band was fastened on her right leg. Family members were present there and waiting, the inquest was carried out between 9:45 to 10:55 hrs.

5. The age of the deceased was 8 years. The dead body was sent for postmortem to ascertain exact cause of death. Postmortem examination on the deceased was conducted by PW-7 Dr. Pradeep Kumar on 18.03.2019 at around 03:00 PM, who prepared postmortem report in his writing and signature, which is marked as Ext. Ka-3

6. In postmortem report report following antemortem injuries were noted.

1. Multiple abrasion in an area 6 x 4 cm around the mouth.

2. Abrasion over the left side of forehead, area 1x 0.5 cm, bleeding from private part present.

3. Rigor mortis was present all over the body.

Dead body was produced by Constable Vikram Singh and Afzal Khan. On internal examination brain was congested, neck face were also congested.

Pleura and pericardiam were congested.

Pasty food was found in stomach. Semi-digested food was found in small intestine, gases and faecal matter were found in large intestine.

Bleeding was present in genitals, vaginal smear and nail preserved for DNA testing and histopathology. Death was caused due to asphyxia as a result of ante mortem smothering.

7. The doctor who conducted postmortem examination, handed over the

sealed bundle of cloth containing Frock, Payajami, Kala Dhaga, Mala to police constables, who had brought the dead body for postmortem examination.

8. The case was investigated by PW-6 S.I Rajesh Kumar who prepared site plan in his handwriting and signatures which is marked as Ext. Ka-2. He recorded statements of the Informant on 18.3.2019 and of three witnesses Vimlesh, Mukesh and Prabhu Dayal on 19.03.2019 drawn the case diary and tried to nab the accused. Thereafter investigation was taken over by PW-10 SHO Sunik Kumar Tomar on 20.03.2019, he altered the charge under Section Â¾ POCSO to charge under Section 5/6 of POCSO, Act, keeping in view the seriousness of offence on 21.03.2019. He arrested the accused Bantu on the road near under-constructed bridge at Saudhara crossing on 21.03.2019 at around 10:30 AM, and recorded his statement in which he confessed his guilt, recorded statements of public witness, Vimal Kumar on 26.03.2019 and also recorded statement of Dr. Pradeep Kumar on 27.03.2019. He sent the clothes of deceased at FSL, Agra for Forensic Examination on 07.04.2019 and recorded the statement of the informant in CD P-9 on 24.09.2019 and after concluding the investigation filed the chargesheet against the accused appellant for charge under Section 376, 302 IPC and under Section 5/6 of POCSO Act, which is marked as Ext. Ka-7. He stated that at the time of making arrest no visual injury was found on his person.

9. Learned trial court took cognizance of the offence and framed the following charge against the accused on 06.07.2019

मैं, इन्द्रीश कुमार प्रथम अपर सत्र न्यायाधीश, फिरोजाबाद, आप अभियुक्त बंटू के विरुद्ध निम्न आरोप लगाता हूँ-

प्रथम- यह कि दिनांक 17.03.2019 को समय व स्थान करू का गेहूं का खेत ग्राम चन्दपुरा वहद थाना सिरसागंज जिला फिरोजाबाद में आपने वादिनी मुकदमा श्रीमती कुन्या देवी की पुत्रीO कु० शशी उम्र करीब 8 वर्ष को बिस्किट दिलाने की कहकर खेल में ले जाकर उसके साथ गलत काम करते हुए, मुंह दबाकर उसकी हत्या कर दी। इस प्रकार आपने ऐसा अपराध कारित किया है जो कि भा०द०सं० की धारा 302 के अन्तर्गत दण्डनीय है और इस न्यायालय के प्रसंज्ञान में है।

द्वितीय- यह कि उपरोक्त दिनांक समय व स्थान पर आपने वादिनी मुकदमा श्रीमती कन्या देवी की पुत्री कु० शशी उम्र करीब 8 वर्ष की हत्या करने के बाद साक्ष्य छिपाने व नष्ट करने के आशय से लाश को पानी की नाली के बराबर में करू के गेहूं के खेत में फेंक दिया। इस प्रकार आपके द्वारा धारा 201 भा०दं०सं० के अन्तर्गत दण्डनीय अपराध कारित किया, जो इस न्यायालय के प्रसंज्ञान में है।

तृतीय- यह कि उक्त दिनांक समय व स्थान पर आपने वादिया मुकदमा वादिनी मुकदमा श्रीमती कन्या देवी की पुत्री कु० शशी उम्र करीब 8 वर्ष, को बिस्किट दिलाने की कहकर खेत में ले जाकर उसके साथ जबरदस्ती बलात्कार कारित किया। इस प्रकार आपने ऐसा अपराध कारित किया है जो कि भा०द०सं० की धारा 376 के अंतर्गत दण्डनीय है और इस न्यायालय के प्रसंज्ञान में है।

चतुर्थ - यह कि उपरोक्त दिनांक समय व स्थान पर आपने वादिया मुकदमा वादिनी मुकदमा श्रीमती कन्या देवी की पुत्री कु० xxx उम्र करीब 8 वर्ष, पर प्रवेशन लैंगिंक हमला किया। इस प्रकार आपने धारा 3/4 पॉक्सो अधिनियम के अन्तर्गत दण्डनीय अपराध कारित किया है जो कि इस न्यायालय के प्रसंज्ञान में है।

मैं एतदद्वारा आपको आदेशित करता हूँ कि उपरोक्त आरोप के लिए आपका विचारण इस न्यायालय द्वारा किया जाये।

दिनांकः 06-07-2019

9.(a). On 09.11.2020 amended charge under Section 376 AB IPC and 5/6 of POCSO Act, was framed against the accused, which is being reproduced as under:-

यह कि दिनांक 17-03-2019 को समय 09.00 बजे रात्रि बस्थान करू का गेह का खेत बहद थाना सिरसांगज, जिला फिरोजाबाद में आपने वादिया श्रीमती कंचा देवी की नाबालिग पुत्री राशि उम्र करीब 08 वर्ष, जो कि 12 वर्ष से कम आयु की बालिका को बिस्कुट दिलाने की कहकर खेत में ले जाकर उसके साथ बलात्कार किया। इस प्रकार आपने धारा 376AB भा० n० सं० के अन्तर्गत दण्डनीय अपराध कारित किया जो इस के न्यायालय के प्रसंज्ञान में है।

द्वितीय- यह कि उपरोक्त दिनांक, समय व स्थान पर आपने वादिया श्रीमती कंचा देवी की नाबालिग पुत्री राशि उम्र करीब 08 वर्ष, के साथ गुरूतर प्रवेशन लैंगिक हमला कारित किया। इस प्रकार आपने धारा 5/6 पोक्सो अधिनियम के अन्तर्गत दण्डनीय अपराध किया जो इस के न्यायालय के प्रसंज्ञान में है।

एतद द्वारा आपको निर्देश दिया जाता है कि उपरोक्त आरोप के लिए आपका विचारण इस न्यायालय द्वारा किया जायेगा।

The accused denied the charge and claimed to be trial.

10. On commencement of trial the prosecution examined PW-1 Smt. Kancha Devi, the informant mother of the deceased who proved the written report bearing her thumb impression, which is marked as Ext. Ka-1; PW2-Prabhu Dayal the witness of last seen; PW-3 Mukesh the witness of last seen; PW-4 Vimlesh, the witness of last seen and PW-5 Vimal on whose information dead body of the deceased was recovered; PW-6 SI Rajesh Kumar is initial Investigating Officer; PW-7 Dr. Pradeep Kumar is author of Postmortem report of deceased; PW-8 HC/HM Shrichandra Verma is author of Chik FIR and entries of GD regarding registration of case at P.S. concerned; PW-9 SI Ashesh Kumar, is author of Panchayatnama (inquest report); PW-10 SHO Sunil Kumar is IInd Investigating Officer who filed chargesheet against the accused; PW-11 Dr. Sadhana Rathore, is co-author of the postmortem report of the deceased. She also stated that on 18.03.2019 she prepared a slide of vaginal smear and preserved nails of the

deceased for DNA test and Histopathology examination and handed over these things to police.

11. After conclusion of prosecution evidence, the trial court examined Bantu alias Shivshankar under Section 313 Cr.P.C., in which he stated that he is acquainted with the informant and witnesses as they are his co-villagers. The informant is his real aunt and deceased was his cousin sister, she was younger to him at the time of incident, she was daughter of the informant and Deepak Chand. He is acquainted with the owners of the field which was shown in the site plan on Ext. Ka-2, deceased was his real cousin. In the night of 17.03.2019, he was present at his village, he consumes tobacco product and khaini. He did not meet the deceased in fateful night around 09:00 PM. He had distributed Rs.10/- to many children as DJ was installed at the house of Vimlesh on the occasion of Chhatti Ceremony and he paid Rs.10/- to the deceased in usual manner and not for bringing tobacco.

12. It is wrong to say that he became restless in the night of the incident and he had met the mother of the deceased and admitted to have paid Rs.10/- to the deceased, thereafter, he went to the crossing road and slept there. It is wrong to say that he took the deceased alongwith him in the fateful night at around 09:00 PM. He denied the incriminating evidence adduced by the witnesses against him. The accused has not adduced any evidence in defence, his defence is of denial.

13. The prosecution has proved following documents during course of trial as, Ext. Ka-1 written report authored by the informant; Ext. Ka-2 site plan of place of occurrence; Ext. Ka-3 Postmortem report; Ext. Ka-4 Chick FIR; Ext. Ka-5 extracts of GD of Case Registration; Ext. Ka-6 Inquest report; Ext. Ka-6A/5 report of RI, report CMO, Chalan Nash, Photo Nash, Sample seal, the papers sent regarding dead body and Ext. Ka-7 chargesheet.

14. The following materials were also proved during the trial. Ext.1 Pajami, Ext.2 Yellow Frock, Ext.3 Black Dhaga, Ext.4 Envelope, Ext. 5 Mala, Ext.6 Envelope, Ext.7 Sealed cloth, Ext.8 another sealed cloth, Ext.9 underwear.

15. In report of FSL, Agra dated 19.04.2019 blood was found on clothes and apparels of the deceased, but no blood was found on underwear allegedly belonging to the deceased. No sperm was detected on Exts. sent for testing before the FSL, human blood was found on Salwar and frock worn by the deceased, but it could not be classified on Kala Dhaga and Moti Mala. PW-1 Smt. Kancha Devi, who is mother of the deceased stated in his evidence that on 17.03.2019 her daughter aged around 08 years had gone to watch DJ in front of the house of Vimlesh at 09:30 PM, where she was told that they had seen her daughter going with Bantu alias Shivshankar son of Atar Singh, thereafter she was informed by Prabhu Dayal that he had seen her daughter going with Bantu around 09:15 PM. She visited the house of Bantu, but he was not found there, she met him at around 01:00 AM and he stated that he had paid Rs.10/- to her daughter for bringing tobacco, thereafter she went in search of her daughter, but could not find her.

16. On the next day at around 06:30 AM her co-villager Vimal told that underwear (Kachcha) of her daughter was lying on the bank of drain of tubwell. She

went forward to the wheat field of Karu where she found her daughter lying dead. Blood was oozing out from lower part of the body and her clothes were blood stained. She stated that Bantu committed rape and murder of her daughter. She got the written report scribed by Bhupendra Singh son of Shrichandra and produced the same at Police Station, which bears her thumb impression. The police conducted spot inspection on her pointing out. In cross examination, the witness stated that she had not attended Chhatti Ceremony of the daughter of Vimlesh, as she was not invited, but her deceased daughter visited the place to watch DJ party, which continued till morning. When she came to the house of Vimlesh 50 to 100 people had assembled there, then she went to the crossing, but did not find her daughter. She met the accused at his home, where he told that her daughter would come in the morning, his family members were also there, her daughter was bare-feet, she had worn Salwar and Frock Suit. She denied defence suggestion that she had framed the accused due to suspicion and to save the actual culprit.

17. PW-2 Prabhu Dayal has stated in his evidence that on 17.03.2019 at around 09:00 PM he saw Bantu, son of Atar Singh taking daughter of Deepak Chand aged about 8 years with him, thereafter the child was not found in the night, even after hectic search and in the morning at 06:30 AM it became known that dead body of the child was lying in wheat field of Karu. He went to the spot where dead body of the child was lying in wheat field of Karu. The deceased was raped and murdered and her dead body was concealed in the wheat field. In cross-examination it is stated that the informant is his daughter-in-law in relationship, he had not visited the place of Vimlesh in the night and was present in his house, as he was standing outside the house of Vimlesh to watch DJ, in which local people were dancing. Bantu fled away from dance party, he had seen Bantu taking the victim with him by holding her hand, she was around 8 years of age. He is not aware that there was any quarrel between family of the deceased and informant, smell of liquor was felt near the place of incident.

18. PW-3 Mukesh has also stated that in the night of 17.03.2019 at around 09:30 PM accused Bantu asked for tobacco from shop and he also took her alongwith him after cajoling her, and thereafter she was not found. Smt. Kancha Devi visited in the night and he told her that Bantu had taken away the victim. He came to know in the morning that dead body of the victim was lying in the wheat field. He also visited the spot and told this fact to police in detail. In cross-examination he stated that as soon as this fact spread in the DJ party that Bantu had taken away the victim he was not traceable and the DJ was stopped. He is brother of Vimlesh (PW-4).

19. PW-4 Vimlesh has also testified that he had seen the accused and victim in the fateful night around 09:50 PM together and told this fact to the informant. In cross-examination he stated that at around 09:15 PM he was serving meal to guests. The victim had also taken meal and performed dance. No foul smell was emanating from dead body when he visited the same.

20. PW-5 Vimal stated that on 18.03.2019 at around 06:30 AM he had gone to the fields to ease himself and he found underwear of the victim on the bank of drain of tubewell situated in his village, when he moved therefrom and made a search in wheat field, he found the victim

lying dead there. The accused had taken the victim infront of the house of Vimlesh and he had seen this in the night of 17.03.2019.

21. PW-6 SI Rajesh Kumar has proved site plan as Ext. Ka-2 steps taken in and criminal investigation in his evidence.

22. PW-7 Pradeep Kumar has proved postmortem examination of the deceased in his evidence. He stated that time of death was ½ to ¾ days prior to postmortem. The cause of death was Asphyxia due to smothering. He further stated that Dr. Sadhana Rathore had also accompanied her during postmortem examination. In cross-examination he stated that entire face of the victim was congested and abrasion and contusion marks were detected around mouth and nose, no mark of tooth bite was present there. He did not do per-vaginal internal inspection of the victim, no mark of injury or swelling was found on outer part of vagina. He had not conducted any medical examination of the accused, in his knowledge a slide was prepared to detect semen in the vagina of victim. Postmortem report was prepared and signed by him.

23. From perusal of record it appears that a red colour underwear recovered near the place of incident is attributed to the deceased. In Forensic examination no blood was found thereon. The trade mark of Boomex MCHAH 90 CM was marked on said underwear.

24. Learned trial court on the basis of evidence laid in the matter has come to the conclusion that this is a horrifying incident in which a girl child 8 years of tender age was allured by the accused, who is her relative. He was 30 years of age, committed rape on her and subsequently smothered her to death by gagging her mouth. The offence is proved beyond reasonable doubt by the evidence of prosecution witnesses of facts. This fact is mentioned in FIR itself that informant was informed by witness, PW-2 Prabhu Dayal, PW-3 Mukesh, PW-4 Vimlesh, PW-5 Vimal that they had seen the accused taking away the victim alongwith him in the fateful night at around 09:50 PM in the night.

25. Learned trial court further observed that the chain of circumstantial evidence in the present case is duly proved. The victim was eight years of age, she had visited the place of Vimlesh (PW-4) to watch DJ and attend dancing. She had worn same apparel which were retrieved from the dead body by the doctor who conducted postmortem examination. The witnesses have stated that the accused gave Rs.10/- to the victim for bringing the tobacco, followed and accompanied her in the process, in the night of incident at around 09:00 PM. The victim never came back alive thereafter, and her dead body was recovered in a wheat field in next morning at around 06:30 AM. Every witness has testified before the court that they had seen the victim being taken away by the accused. The learned trial court has concluded that prosecution case is duly proved beyond reasonable doubt and gave a finding that this was rarest of rare case where a girl child of 8 years was subjected to rape and murder and awarded extreme punishment of death to the accused for both the offences i.e. for charge under Section 376AB and 302 IPC.

26. Learned counsel for the appellant submitted that being a Capital Case, the prosecution case must be fool proof as for graver charges strong degree of proof is required. The investigation was faulty and tainted; the samples taken from dead body

for DNA examination were never sent for Forensic Examination and thus scientific evidence could not be laid which would be able to exculpate or inculpate the accused in relation to said charge. No medical examination was done when the accused was arrested, no sample was taken from his person for DNA examination. Where as in the case of alleged rape and murder, the charge framed in the case is itself defective. This is not a case of prosecution that the accused had given Rs.10/- to the victim to bring biscuit, instead, the case of prosecution is that the accused had given Rs.10/- for bringing tobacco to the victim. It is not clear as to whose underwear was found lying in the vicinity of place of recovery of dead body and when and by whom it was taken into possession, no inventory has been made regarding this underwear. It is strange that PW-5 Vimal discerned at the first place that the underwear lying near the place of incident belonged to missing child, when this is a case of prosecution that she had worn a Frock and Pajami at the time of incident. How could he identify the underwear of victim. In FSL report no blood was found on said underwear, its number is shown as 90 cm which is worn by a grownup male. Therefore, there is nothing to connect the said underwear with the deceased. It appears to be planted only to create an evidence. The accused has duly explained the incriminating circumstances appearing against him in prosecution evidence during his examination under Section 313 Cr.P.C. No external or internal injury on private part is noted in postmortem examination report of the victim. He was cousin sister of the accused and there was no occasion that the accused would commit such kind of dastardly act against her. The investigating officer did not recover the clothes of the accused

27. The accused deserves to be acquitted due to flawed and shoddy investigation, as he has been greatly prejudiced by this. Only evidence appearing against the accused is that of last seen together with the victim which is not conclusive to convict an accused. All the incriminating circumstances were not put before the trial court when the accused was confronted with prosecution evidence during his examination under Section 313 Cr.P.C.

28. The accused appellant is languishing in jail since very inception of the case and only execution of Capital Sentence is stayed by orders of this Court.

29. Learned counsel for the appellant placed reliance on judgment of Hon'ble of Hon'ble Supreme Court in **Ramkirat Munilal Goud Vs. State of Maharashtra 2025 (0) SC 841; Gambhir Singh Vs. State of U.P. reported in 2025 (0) SC 285 para 34; Soundarajan Vs. State represented by the Inspector of Police Vigilance Anti-corruptio Dindigul in 2023 Live Law (SC) 314; Kalicharan and others Vs. State of U.P. in 2022 Live Law (SC) 1027; State of Haryana Vs. Bhagirath and others AIR 1999 (5) SC 2005; Padman Bibhar Vs. State of Odisha SLP (Crl.) No.17440 of 2024 (SC) dated 21.05.2025; R. Sreenivasa Vs. State of Karnataka 2023(0) Supreme (SC) 836.**

30. In **Padman Bibhar Vs. State of Odisha (supra)** the Hon'ble Supreme Court held as under:-

10. It is settled law that in a case based on circumstantial evidence, the prosecution is obliged to prove each circumstance, taken cumulatively to form a chain so complete that there is no escape

from the conclusion that within all human probabilities, crime was committed by the accused and none else. Further, the facts so proved should unerringly point towards the guilt of the accused.

11. This Court in Ramanand vs. State of Himachal Pradesh has held that 'perfect proof is seldom to be had in this imperfect world and absolute certainty is a myth'.

12. This Court in a celebrated judgment in Sharad Birdhichand Sarda vs. State of Maharashtra 1984 (Supreme) SCC 116 has set down the golden rules in the cases basing circumstantial evidence which is to be proved by the prosecution.

(i.) That chain of evidence is complete;

(ii) Circumstances relied upon by prosecution should be conclusive in nature;

(iii) Fact established should be consistent only with the hypothesis of the guilt of accused;

(iv) Circumstances relied upon should only be consistent with the guilt of the accused;

(v) Circumstances relied upon should exclude every possible hypothesis except the one to be proved.

.....19. The present is a case where except for the evidence of â€˜last seen togetherâ€™ there is no other incriminating material against the appellant.

.....20. This Court in Kanhaiya Lal vs. State of Rajasthan (2014) 4 SCC 715 has held that evidence on 'last seen together' is a weak piece of evidence and conviction only on the basis of 'last seen together' without there being any other corroborative evidence against the accused, is not sufficient to convict the accused for an offence under Section 302 IPC. The following passage from the judgment in paras 12 and 15 can be profitably referred:

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

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

.....21. Similarly, this Court in Rambraksh @ Jalim vs. State of Chhattisgarh (2016) 12 SCC 251 has reiterated above legal position in the following words in paras 12 and 13:

"12. It is trite law that a conviction cannot be recorded against the

accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play where the time (2016) 12 SCC 251 gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused.

13. In a similar fact situation this Court in Krishnan v. State of T.N. (2014) 12 SCC 279 held as follows: (SCC pp. 284-85, paras 21-24)

"21. The conviction cannot be based only on circumstance of last seen together with the deceased. In Arjun Marik v. State of Bihar (1994) Supp (2) SCC 372 this Court held as follows: (SCC p. 385, para 31)

'31. Thus the evidence that the appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded.'

22. This Court in Bodhraj v. State of J&K, (2002) 8 SCC 45 held that: (SCC p. 63, para 31)

'31. The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.' It will be hazardous to come to a conclusion of guilt in cases where there is no other positive evidence to conclude that the accused and the deceased were last seen together.

23. There is unexplained delay of six days in lodging the FIR. As per prosecution story the deceased Manikandan was last seen on 4-4-2004 at Vadakkumelur Village during Panguni Uthiram Festival at Mariyamman Temple. The body of the deceased was taken from the borewell by the fire service personnel after more than seven days. There is no other positive material on record to show that the deceased was last seen together with the accused and in the intervening period of seven days there was nobody in contact with the deceased.

24. In Jaswant Gir v. State of Punjab, (2005) 12 SCC 438, this Court held that in the absence of any other links in the chain of circumstantial evidence, the appellant cannot be convicted solely on the basis of "last seen together" even if version of the prosecution witness in this regard is believed."

22. In the case at hand also the only evidence against the appellant is of 'last seen together'. The evidence of motive does not satisfy us to be an adverse

circumstance against the appellant inasmuch as if the appellant has any doubt about his wife's chastity, he would have caused injury or harm to his wife rather than to wife's cousin with whom he had no animosity. Moreover, the so-called weapon of the offence i.e. the stone has not been recovered at his instance nor there is any memorandum statement of the appellant.

24. It is held by this Court in Sujit Biswas vs. State of Assam AIR 2013 SC 3817 suspicion, howsoever strong, cannot substitute the proof and conviction is not permissible only on the basis of the suspicion. It is held thus in para 6:

"6. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved, and something that "will be proved". In a criminal trial, suspicion no matter how strong, cannot and must AIR 2013 SC 3817 not be permitted to take place of proof. This is for the reason that the mental distance between "may be" and "must be" is quite large and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between "may be" true and "must be" true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between "may be" true and "must be" true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. (Vide Hanumant Govind Nargundkar v. State of M.P.,(1952) 2 SCC 71, State v. Mahender Singh Dahiya (2011) 3 SCC 109 and Ramesh Harijan v. State of U.P. (2012) 5 SCC 777."

31. This is admitted fact that there is no eyewitness of the evidence and the case is based on circumstantial evidence.

32. In another judgment in **R. Sreenivasa Vs. state of Karnataka 2023 0 Supreme (SC) 836** Hon'ble Supreme Court in a murder appeal case based on last seen theory observed as under:-

"17. In the present case, given that there is no definitive evidence of last seen as also the fact that there is a long time-gap between the alleged last seen and the recovery of the body, and in the absence of other corroborative pieces of evidence, it cannot be said that the chain of circumstances is so complete that the only inference that could be drawn is the guilt of the appellant. In Laxman Prasad v State of Madhya Pradesh, (2023) 6 SCC 399, we had, upon considering Sharad Birdhichand Sarda v State of Maharashtra, (1984) 4 SCC 116 and Shailendra Rajdev Pasvan v State of Gujarat, (2020) 14 SCC 750, held that '... In a case of circumstantial evidence, the chain has to be complete in all respects so as to indicate the guilt of the

accused and also exclude any other theory of the crime.' It would be unsafe to sustain the conviction of the appellant on such evidence, where the chain is clearly incomplete. That apart, the presumption of innocence is in favour of the accused and when doubts emanate, the benefit accrues to the accused, and not the prosecution. Reference can be made to Suresh Thipmppa Shetty v State of Maharashtra, 2023 INSC 749 : 2023 SCC Online SC 1038."

33. Hon'ble Supreme Court in another judgment **Gambhir Singh Vs. State of U.P. 2025 0 Supreme (SC) 285** also placed reliance on a leading case on circumstantial evidence **Sharadbirdi Chandra Sharda Vs. State of Maharashtra (1984) 4 SCC 116** wherein it is observed as under :

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

34. We have reappraised the evidence adduced in the case in the light of aforesaid judgments on circumstantial evidence, on which reliance has been placed on behalf of the appellant. The main thrust of the argument advanced on behalf of the appellant is that; the only evidence of last seen could not be conclusive to commit the accused, charge has been faulty in the case, as this is the case of the prosecution that the accused had offered Rs.10/- to the victim in the fateful night to bring tobacco for him and not biscuit and thereafter himself accompanied her.

35. It is stated in the charge that the accused allured the victim on the pretext of getting her biscuit and took her away in a field and committed rape on her. Thus, the charge is defective and due to this defect

the accused was misled to exact nature of prosecution case. In statement under Section 313 Cr.P.C. also a question has been put-forth to the accused that he on 17.03.2019 had offered some biscuit or some eatable to the victim in order to take her with him, which he denied. In question 19 it is stated that he had told the mother of the victim (PW-1) that he asked the victim to bring tobacco, but he had denied this fact and stated that in the fateful night he had distributed Rs.10/- to number of children including the victim and he had given Rs.10/- to the victim for bringing tobacco. The accused and children were present at 6th day ceremony of the child birth in the house of Vimlesh (PW-3). It is also contended on behalf of the appellant that there is no injury mark on private part of the body of the deceased who is said to be aged around 8 years only. Thus, commission of rape is not substantiated in the case, if a child victim of such tender age is sexually assaulted or subjected to rape, she must have suffered injuries on internal area of her private parts. It is only on account of the fact that doctor who conducted postmortem examination has noted that blood was oozing out from the private part of the victim, it cannot be assumed that she was subjected to rape.

36. In the present case, although prosecution witnesses have nowhere stated that victim girl child was real cousin of the accused, but the accused has stated in his statement under Section 313 Cr.P.C. that the victim was daughter of his uncle, he was present at the place from where the victim got missing, as this is a prosecution case that child birth ceremony was celebrated at the house of co-villager Vimlesh (PW-3) and the accused was present there when the victim had gone there to watch DJ. As the house of the victim and Vimlesh were adjacent, where witness had seen that accused had given Rs.10/- to the victim and asked her to bring tobacco. Thereafter he was “seen together” with the victim holding her hand and going away, thereafter victim was not seen in the night, even after much efforts made by her family members and witnesses and ultimately her dead body was explored on information given by witness PW-5 Vimal, who had seen the dead body of the victim lying in the wheat field of Karu at the outskirt of the village and informed her mother, the informant. It is also stated in prosecution version that PW-5 Vimal firstly saw that an underwear was lying on the way to the place where dead body was found and then he presumed that it was the underwear of the victim.

37. Learned Senior Counsel appearing for the appellant funther argued that vaginal bleed could have occurred on gagging and pressing the mouth and nostril, as the doctor has opined that cause of death was smothering. PW-11 Dr. Shadhana Rathore has categorically stated that no injury was found on the private parts of the victim.

38. Per contra, it is contended on behalf of the prosecution that as many as three witnesses PW-2 Prabhu Dayal, PW-3 Mukesh and PW-4 Vimlesh have given the evidence of last seen together against the accused and since the time victim got missing from the company of the accused, she was not noticed by any other person and subsequently, in the next morning her dead body was lying in a wheat field in the village. Therefore, as the victim was last seen together with accused, and this fact has been proved by evidence of three witnesses of facts; a heavy duty is case upon the accused under Section 106

Evidence Act to explain what happened to victim thereafter when she was last seen alongwith him and when he parted company with her because there is no evidence in this regard and only accused would explain this fact and as he has failed to explain the fact which was exclusively in his personal knowledge it would be a vital additional circumstance against him and he would be treated as author of crime of rape and murder of the victim girl child as he failed to discharge this burden.

39. It is also contended on behalf of the prosecution that even if no sperm or blood mark was found on underwear near the place of the recovery of the dead body of the victim. No adverse inference can be drawn that the victim was not subjected to rape. Further more, no adverse inference can be drawn in respect of evidence of witnesses of fact, only due to the fact that the underwear recovered in the case was found oversized which was usually worn by a grownup male person. Even if, this part of evidence of recovery of underwear which allegedly belonged to the victim is separated from prosecution evidence, the case is otherwise proved by evidence of witnesses of facts, as the accused failed to impute any motive against them, which would have prompted them to depose against them. He has stated in his statement under Section 313 Cr.P.C. that he had no enmity with the witnesses.

40. The FIR in the case was lodged on written report of Smt. Kancha Devi, the mother of the victim on 18.03.2019 at 09:15 AM, in which time of occurrence is shown as 09:30 PM on 17.03.2019 when the victim was got missing infront of the house of Vimlesh (PW-3), where some child birth ceremony was being celebrated. The informant has introduced all the relevant facts of the case in her written report itself, on the basis of which Chick FIR was drawn by PW-8 Head Moharir Shrichand Verma. She has stated in FIR that her daughter is aged about 8 years (victim) had gone infront of the house of the Vimlesh to watch DJ. At around 09:00 PM she went to take her daughter back at around 09:30 PM at the house of Vimlesh, but he told her that he had seen her daughter together with Bantu at around 09:15 PM. On this information she visited the home of Bantu, but he was not present there. He met her at around 01:00 AM in the night, when she asked him regarding whereabout of his daughter, he told that he had sent her to take tobacco by giving Rs.10/-, thereafter she went in search of her daughter in the village and near by agricultural fields where he could not found her. At around 06:30 AM in the morning witness Vimlesh and some other villagers told him that dead body of her daughter was lying on the bank of drain of tubewell. On this information she visited the said place and found dead body of her daughter in the field of wheat, blood was oozing out from her private parts and her clothes were also smeared with blood. She stated in written report that it is Bantu who has committed rape and murdered her daughter. The Investigating Officer had recorded statement of the informant on the date of lodging of the FIR dated 18.02.2019 in which she has reiterated her FIR version. He also prepared site plan of the place from where beady body was recovered, on pointing out of the informant, Smt. Kancha Devi. On 19.03.2019 he recorded statement of witnesses of last seen Vimlesh, Mukesh and Prabhudayal. He arrested the accused on 19.03.2019 and recorded confessional statement, on 26.03.2019 he recorded statement of witness Vimlesh Kumar, who is said to have seen the dead body of victim

in the morning of 28.03.2019, when he had gone to ease himself . He stated that he had seen the underwear of the victim in the right side of the drain of tubewell and when he walked forward he found dead body of the victim in the wheat field of Karu. The victim was taken away by accused Bantu in the night of 17.03.2019 in front of the house of Vimlesh.

41. Thus, in the present case the name of the witnesses of last seen is shown in the FIR itself. The delay in lodging of FIR is self-explained as the informant has stated in her written report Ext. Ka-1 that she was in search of her missing daughter through out the whole night, and ultimately found her dead body in the next morning and thereafter she came to the police station to lodge the FIR. Thus, in the present case, the witnesses of last seen are not manufactured, but natural, they were examined by Investigating Officer on the next day of lodging of FIR. Thus, the statement of the witnesses of last seen cannot be treated as after thought. This is also noticeable that this cse is based on last seen evidence of as many as four witnesses.

42. PW-1 has stated in her evidence before the court that she was told by her co-villager Vimlesh, Prabhu Dayal and Mukesh in the fateful night that they had seen the victim together with the accused at around 09:15 AM who was going with him. In the cross-examination PW-1 has stated that she was not invited at the place of Vimlesh and for that reason she has not visited the place of ceremony, but her daughter had gone alone to see DJ party at around 09:00 AM in night. She has also stated in cross-examination that she did not find her daughter at the place of Vimlesh and was told by witnesses that they had seen the victim together with Bantu. She visited his house, but she did not find him there. She again visited the house of Bantu at around 01:00 AM and he met her and told that her daughter would come back in the morning. She went to police station by tempo, her daughter was wearing Todia on her legs, she had worn Salwar and Frock suit. She went to the house of Vimlesh twice, when she went in search of her daughters, the shops in the village were closed. The house of the accused and Vimlesh is near by her house. Thus, the description of wearing apparel of the victim given by her mother corresponds to those recovered from her person at postmortem report.

43. PW-2 Prabhu Dayal has given evidence of last seen and stated that he had seen the accused Bantu travelling with victim in the fateful night at around 09:15 PM, and thereafter she did not come back. He came to know in the next morning at 06:30 AM that her body was lying in the wheat field of Karu, in cross-examination he stated that the informant is wife of his brother. He had not participated in DJ party, he was standing near a pole, where DJ was being played and had seen the victim and accused together. Bantu fled away from the place of dance party, he was taking the victim by holding her hand. He followed him to some distance, but thereafter he did not meet him. The victim was 8 years of age, the victim was wearing chappal of her mother. He rushed to the place where dead body was lying on knowing this fact, the smell of liquor was emanating near the place of incident. This makes not much difference that in evidence of PW1 it is stated that the victim was bare feet and PW-2 has stated that she was wearing chappal, as evidence of a witness never becomes foolproof, therefore, the overall evidence of a witness is read to

derive an inference regarding the incident. The incident occurred in the night and the witnesses have stated that they had seen the accused walking with the victim in darkness.

44. PW-3 Mukesh has also given evidence of last seen in her evidence, and in the fateful night victim was watching DJ at the place of Vimlesh, at that time Bantu brought tobacco from a shop, allured and took her away with him, and thereafter she was not found. Her mother came in search of her daughter and then he told her that he had seen the victim alongwith Bantu who had taken her away, he was also present in the DJ party.

45. As soon as this news spread that Bantu had taken the victim and she was not found thereafter the DJ was stopped and people went in search of the victim. The witness Vimlesh in whose house child birth ceremony was being celebrated in the night has also stated in his evidence that at around 09:15 PM, his co-villager Bantu had taken the victim alongwith him, thereafter her mother came in search of her and asked about her, then he told that Bantu had taken away her daughter. In next morning at 06:30 AM, it was learnt that dead body of the victim was lying in the wheat field of Karu. He had seen Bantu giving Rs.10/- to victim and thereafter he took her alongwith him, at that time he was serving meal to guests.

46. PW-5 Vimal has also stated in his evidence that he had seen the accused taking away the victim in the night of 17.03.2019 from the front of the house of Vimlesh and in the morning of 18.03.2019 at around 06:30 AM when he had gone towards field to ease himself he firstly noticed underwear of the victim near corner of drain of tube-well and subsequently, he found her dead body in wheat field. In cross-examination he stated that he was not having mobile phone at that time, he informed his uncle firstly about the incident, Smt. Kancha Devi is his Bhabi by relation, the underwear was of red colour. When he say dead body he assumed that underwear belonged to her. Thus, the theory of last seen in the present case has been proved by evidence of as many as four witnesses, PW-2 Prabhu Dayal, PW-3 Mukesh and PW-4 Vimlesh and also by PW-5 Vimal.

47. It is suggested on behalf of the defence that Atar Singh is step father of the accused and at his behest he was falsely named in the FIR to screen the real culprit. The accused has stated in his statement under Section 313 Cr.P.C. that the witnesses of facts have deposed falsely against him, but could not specify as to what prompted them to testify against him, no specific enmity with the witnesses has been averred on behalf of the accused.

48. In postmortem report of the deceased, the injuries were found on her mouth and forehead, cause of death is shown as asphyxia due to ante-mortem smothering, as her mouth and nose were pressed prior to her death. Thus, in postmortem report the death is shown as homicidal.

49. PW-7 who is author of the postmortem report has also stated in his evidence that blood was oozing out from vagina of the victim, her internal examination was done by Dr. Shadhna Rathore (PW-11), who has prepared her vaginal slide) and nails were preserved for DNA examination. Estimated time of death is shown as 3-4 days which correspond to

the time when the victim got missing in the night. The doctor has stated that the clothes of the victim were smeared with blood, two clothes were found on her body, no medical examination was done at the time of postmortem to ascertain her age, he had not conducted internal examination of her vagina, there was no injury on her private part. At the time of production of clothes and things worn by the victim in the evidence of PW-7, the clothes and things recovered from the dead body during postmortem were sealed in one bundle and the underwear allegedly recovered from the place of incident was sealed in another bundle, on which material Ext. Ka-9 was drawn.

50. PW-9 SI Ashesh Kumar who is author of inquest report of the body of victim, he has stated in his evidence that the victim was in semi naked position and was lying in supine position, she was wearing violet colour kurti, she was identified by her father Deep Chandra. He did not find any cloth in the mouth of victim.

51. PW-11 Dr. Shadhna Rathore had conducted internal examination on dead body of the victim and stated that blood was oozing out from vagina, therefore, probability of rape cannot be ruled out. She was in postmortem panel of doctors; she did internal examination of private parts, but did not find any mark of injury around it. She had prepared slide of vaginal smear for histo-pathology test and observed nails for DNA testing.

52. So far as, non-conducting of DNA examination of nail clippings of victim, it would not in itself fatal for prosecution case, if it would be otherwise proved by positive evidence.

53. Hon'ble Supreme Court in **Veerendra Vs. State of Madhya Pradesh (2022) 8 SCC 668** wherein it is observed in paragraph Nos. 48 to 53 as under:-

Presumption under the POCSO Act

33. It is clearly established in evidence that the deceased was subjected to a brutal sexual assault. The injuries as evidenced in the postmortem report Exh.P.28 particularly injury no. 1 clearly indicate that the deceased was subjected to aggressive penetrative sexual assault. The injury on the prepuce of the penis of the accused along with the matching of the blood group coupled with other circumstantial evidence clearly constitute foundational facts for raising presumption under Sections 29 and 30 of the POCSO Act.

34. Sections 29 and 30 of the POCSO Act reads as under:

***"29. Presumption as to certain offences.**—Where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and Section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.*

35. It will be seen that presumption under Section 29 is available where the foundational facts exist for commission of offence under Section 5 of the POCSO Act. Section 5 of the POCSO Act deals with aggravated penetrative sexual assault and Section 6 speaks of punishment for aggravated penetrative sexual assault. Section 3 of the POCSO Act

defines what penetrative sexual assault is. The relevant Sections are extracted hereinbelow.

"3. Penetrative sexual assault. - *A person is said to commit "penetrative sexual assault" if-*

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

5. Aggravated penetrative sexual assault.*—(a)-(h)*

(i) whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or

(m) whoever commits penetrative sexual assault on a child below twelve years; or

6. Punishment for aggravated penetrative sexual assault.*—*

(1) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine, or with death.

(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim."

48. In the context of the contentions it is more appropriate to refer to the decision of this Court in Sunil Vs. State of Madhya Pradesh. It was a case of rape and murder of a four (4) year old child. A three-Judge Bench held herein thus : SCC pp. 394-95, para 3-4)

"3. At the very outset, we deal with the arguments advanced on behalf of the appellant that in the present case the report of DNA testing of the samples of blood and spermatozoa under Section 53-A of the Code of Criminal Procedure, 1973 has not been proved by the prosecution. The prosecution has, therefore, failed to prove its case beyond reasonable doubt. Reliance in this regard has been placed on the decision of this Court in Krishan Kumar Malik v. State of Haryana .

4. From the provisions of Section 53-A of the Code and the decision of this Court in Krishan Kumar it does not follow that failure to conduct the DNA test of the samples taken from the accused or prove the report of DNA profiling as in the present case would necessarily result in the failure of the prosecution case. As held in Krishan Kumar (para 44), Section 53-A really "facilitates the prosecution to prove its case". A positive result of the DNA test would constitute clinching evidence against the accused if, however, the result of the test is in the negative i.e. favouring the accused or if DNA profiling had not been done in a given case, the weight of the other materials and evidence on record will still have to be considered. It is to the other materials brought on record by the prosecution that we may now turn to."

49. Krishna Kumar Malik's case (referred supra) was rendered by a two-Judge Bench of this Court, wherein at paragraph 43 with respect to the matching of the semen, the following passage from

Taylor's Principles and Practice of Medical Jurisprudence, 2nd Edn. (1965) was extracted thus :-

"Spermatozoa may retain vitality (or free motion) in the body of a woman for a long period, and movement should always be looked for in wet specimens. The actual time that spermatozoa may remain alive after ejaculation cannot be precisely de- fined, but is usually a matter of hours. Seymour claimed to have seen movement in a fluid as much as 5 days old. The detection of dead spermatozoa in stains may be made at long periods of 5 years. Non- motile spermatozoa were found in the vagina after a lapse of time which must have been 3 and could have been 4 months."

50. In paragraph 43 of Krishna Kumar Malik's case, after extracting the above, it was further held : (SCC p.140)

" 43. ..... Had such a procedure been adopted by the prosecution, then it would have been a foolproof case for it and against the appellant."

51. This Court went on to hold thus in Paragraph 44 therein : (Krishan Kumar Malik case, SCC, p.140, para 44)

"44. Now, after the incorporation of Section 53-A in the Criminal Procedure Code w.e.f. 23.6.2006, brought to our notice by the learned counsel for the respondent State, it has become necessary for the prosecution to go in for DNA test in such type of cases, facilitating the prosecution to prove its case against the accused."

52. Evidently, the three Judge Bench in Sunil's case (supra) considered Krishna Kumar Malik's case carryng such observations and finding before coming to the conclusion that 'a positive result of the DNA test would constitute clinching evidence against the accused if, however, the result of the test is in the negative i.e., favouring the accused or if DNA pro- filing had not been done in a given case, the weight of the other materials and evidence on record will still have to be considered'.

53. In view of the nature of the provision under Section 53A Cr.P.C and the decisions referred (supra) we are also of the considered view that the lapse or omission (purposeful or otherwise) to carry out DNA profiling, by itself, cannot be permitted to decide the fate of a trial for the offence of rape especially, when it is combined with the commission of the offence of murder as in case of acquittal only on account of such a flaw or defect in the investigation the cause of criminal justice would become the victim. The upshot of this discussion is that even if such a flaw had occurred in the investigation in a given case, the Court has still a duty to consider whether the materials and evidence available on record before it, is enough and cogent to prove the case of the prosecution. In a case which rests on circumstantial evidence, the Court has to consider whether, despite such a lapse, the various links in the chain of circumstances forms a complete chain pointing to the guilt of the accused alone in exclusion of all hypothesis of innocence in his favour.

54. As a matter of fact, the decision in Rajendra Pralhadrao Wasnik's case, would also fortify our view. The Bench was considering review petitions in Criminal Appeal Nos.145-146 of 2011. That was a case involving rape and murder of a three (3) year old girl where the case was held as proved on the ba- sis of

circumstantial evidence. So also, in that case DNA evidence was not produced before the Court, in spite of samples being taken. Obviously, taking note of the unerring nature of the circumstantial evidence pointing only to the guilt of the accused and the other circumstances the trial Court convicted and awarded him capital punishment. The High Court confirmed not only the conviction but also the award of capital sentence. Originally, this Court dismissed the appeals and thereafter, the dismissed review petitions were restored for consideration solely in view of a Constitution Bench decision of this Court in Mohd. Arif Vs. Supreme Court of India.

54. So far as, applicability of presumption under Section 29 and 30 of POCSO Act, is concerned, Hon'ble Supreme Court in recent judgment of **Sambhubhai Raisangbhai Padhiyar Vs. State of Gujarat in 2025 (2) SCC 399** observed as under:-

Presumption under the POCSO Act

33. It is clearly established in evidence that the deceased was subjected to a brutal sexual assault. The injuries as evidenced in the postmortem report Exh.P.28 particularly injury no. 1 clearly indicate that the deceased was subjected to aggressive penetrative sexual assault. The injury on the prepuce of the penis of the accused along with the matching of the blood group coupled with other circumstantial evidence clearly constitute foundational facts for raising presumption under Sections 29 and 30 of the POCSO Act.

34. Sections 29 and 30 of the POCSO Act reads as under:

***"29. Presumption as to certain offences.**—Where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and Section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.*

35. It will be seen that presumption under Section 29 is available where the foundational facts exist for commission of offence under Section 5 of the POCSO Act. Section 5 of the POCSO Act deals with aggravated penetrative sexual assault and Section 6 speaks of punishment for aggravated penetrative sexual assault. Section 3 of the POCSO Act defines what penetrative sexual assault is. The relevant Sections are extracted hereinbelow.

***"3. Penetrative sexual assault.** - A person is said to commit "penetrative sexual assault" if-*

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

***5. Aggravated penetrative sexual assault.**—(a)-(h)*

(i) whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or

(m) whoever commits penetrative sexual assault on a child below twelve years; or

6. Punishment for aggravated penetrative sexual assault.—

(1) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine, or with death.

(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim."

54-A. In the present case inspite of glaring defects in investigation on the part of the Investigating Officer, the prosecution has been successfully proved the foundational facts. This Court had observed on 25.10.2021, the glaring defects in investigation and summoned the Investigating Officer on 25.10.2021. This Court observed on that day as under:-

" In a case of commission of offence under Sections 376-A and 376-B, 302, 201 I.P.C. and 5/6 of POCSO Act, the Investigating Officer mainly collected the statements to prove last seen of the deceased with the accused.

It is informed that blood stained clothes of the minor girl aged about 8 years were collected and as per the F.S.L. Report, blood was found on Salwar and Frock, black thread and "Motimala" and out of which human blood was found on Salwar and Frock while it remained inconclusive for the black thread and "Motimala". The Investigating Officer did not recover the clothes of the accused and even his medical report was not produced. The I.O. did not collect the evidence to get a DNA test. The nail of the deceased minor at the age of 8 years were collected during the investigation but there is no F.S.L. report to find out whether the skin or a hair of the accused were found in it which may come while making resistance on the rape."

55. It appears that the Investigating Officer submitted his explanation before the Superior Officer, which was not found correct and he was ultimately punished by the department. Had the investigating officer taken the DNA sample from person of the accused who was arrested within few days of the incident and sent the same alongwith DNA taken from person of the deceased alongwith her blood stained clothes, an irrefutable evidence with regard to commission of rape would have been available in this case in the form of scientific evidence. The DNA was taken from nail of the deceased and also the blood stains from her wearing apparel. However due to lapses of Investigating Officer, the evidence of prosecution witnesses, which is otherwise found trustworthy and reliable cannot be brushed-aside. Inasmuch as four witnesses have testified before the court, and has also stated the Investigating Officer earlier that they had seen the accused taking the victim with him in the fateful night at around 09:15 PM from the place of Vimlesh (PW-4) where child birth ceremony was organized. The accused could not specify any enmity with these witnesses of last seen together, namely Prabhu Dayal(PW-2), Mukesh(PW-3), Vimlesh(PW-4) and Vimal PW-5 prompted, by which they might have deposed against him. The accused has stated in his statement under Section 313 Cr.P.C. that victim was his real cousin sister. He did not dispute her alleged age, but feigned ignorance about her age.

56. He had made a general statement that witnesses have given false statement against him. A suggestion has been given on behalf of the accused to the witnesses that step father of the accused and Deepak Chandra father of the deceased were real brothers. The accused and his step father were not on cordial terms and for that reason at the behest of step father he was falsely implicated in the case. No reliance can be placed on such a bald suggestion which is not supported with any material. Much emphasis has been laid by learned Amicus Curiae appearing for the accused to the fact that no injury marks were found on the person of the deceased in her postmortem report. Inasmuch as PW-11 Dr. Shadhana Rathore who is co-author of postmortem report has prepared Vaginal Swab of the victim and conducted her per-vaginal examination at the time of postmortem and had noted no internal and external injury on her private parts. Therefore, for want of any injury on the person of minor victim, no inference of rape can be drawn, and if the factum of rape is not proved, then the motive imputed to the accused which is an essential evidence of a case based on circumstantial evidence will be lacking, which is taken as a circumstance to exculpate the accused from alleged charges.

57. This is true that no internal or external injury on private part of the victim in her postmortem report and supplementary report prepared by Dr. Sadhana Rathore is recorded. Yet this fact cannot be lostsight that in inquest report of the victim as well as in her postmortem report it is stated that blood was oozing out from vagina of the deceased, her clothes were smeared with blood. In FSL examination of her clothes, human blood was found. Such a nature of profuse bleeding from private part of the victim who is stated to be 8 years of age cannot be attributed to any other cause, than that she was subject to sexual assault in the nature of rape. This appears to be a case of partial penetration, otherwise in the case of full penetration victim who was stated to be of 8 years of age, must have suffered some injury on her private part. It is settled law that rape is a legal term and not a clinical term; even partial penetration is sufficient to constitute offence of rape. Therefore, for want of injuries on private part of the victim it cannot be held that she was not subjected to rape.

58. Hon'ble Supreme Court in **Edakkandi Dineshan @ P. Dineshan & Ors. Vs. State of Kerela 2025 INSC 28** reiterated its earlier view that principle of "falsus in uno, falsus in omnibus' does not apply to the Indian criminal jurisprudence, only because there are some contradictions which in the opinion of this Court are not even that material, the entire story of the prosecution cannot be discarded as false. It is the duty of the Court to separate the grain from the chaff. Only due to the fact the underwear allegedly worn by the deceased at the time of incident would not be connected with for want of scientific connective and link evidence, the entire prosecution version cannot be doubted.

59. Hon'ble Court in aforesaid case further observed that principle of law is crystal clear that on the account of defective investigation the benefit will not inure to the accused persons on that ground alone. It is well within the domain of the courts to consider the rest of the evidence which the prosecution has gathered such as statement of the eyewitnesses, medical report etc. It has been a consistent stand of this court that the accused cannot claim

acquittal on the ground of faulty investigation done by the prosecuting agency.

60. The circumstances appearing against the accused in the present case were put to him, in his statement under Section 313 Cr.P.C., wherein he has denied the fact that he had given Rs.10/- to the victim for bringing tobacco, but he admitted that he had distributed the money to the victim as well as other children who were present on the place where DJ was being played.

61. The prosecution has proved following circumstances in the present case, which are proved against the accused appellant:-

i. The victim who was a girl child of 8 years of age and according to the accused was his cousin sister had gone to attend child birth ceremony at the place of her co-villager Vimlesh in the fateful night of 17.03.2019 at around 09:00 PM. She had worn Salwar, Frock, bits Mala in her neck and the black thread around her leg.

ii. Accused Bantu alias Shiv Shanker had admitted in his statement under Section 313 Cr.P.C. that he consumes tobacco and had given Rs.10/- note to the victim to bring tobacco and thereafter followed her and took her alongwith him to a secluded place. Next, just after the departure of the accused alongwith victim, when victim was not found in the vicinity, the witnesses who were present on the spot had told her mother that when she came in search of her daughter that they had seen the victim being taken by Bantu (the accused).

iii. The victim visited the home of the accused, but he was not present there, she again went to his place to meet him and inquire from him about whereabouts of his daughter, he met her but gave her evading answer.

iv. Dead body of the deceased was found in a wheat field at the outskirt of the village, on pointing out of PW-5 Vimal. The informant, who is mother of the victim lodged an FIR without any further delay at P.S. concerned on 18.03.2019 at 09:15 hours, i.e. FIR was lodged within three hours of recovery of the dead body.

v. The motive of the commission of offence is introduced as commission of rape, and this fact is proved that when dead body was found in the wheat field, blood was oozing out from her private parts and this fact is recorded in inquest report as well as in postmortem report of the deceased.

vi. The name of the witnesses who had last seen the victim together with the accused is mentioned in FIR itself. Therefore, witnesses could be termed as natural and they are co-villagers of the accused and the informant.

Vii. It is proved by medical evidence that the death of the victim was homicidal.

No motive has been suggested against the witnesses to speak falsely against the accused, except the fact that some of them are related to the informant side. Once the factum of last seen was proved by evidence of witnesses of facts, the burden shifts to the accused to explain that when did he leave the company of the victim. Thus he failed to discharge his burden under Section 106 Evidence Act, as this was the fact within the special

knowledge of the accused. Therefore, on reappraisal of evidence on record, we find no factual or legal error in findings of trial court, whereby accused has been convicted of charge under Section 376 AB and 302 IPC. He has also been found guilty of charge under Section 5/6 of POCSO Act, by learned trial court and on facts of the case, the presumption under Section 29 of POCSO Act, can be drawn against the accused. The circumstances proved in the case unerringly point towards guilt of the accused and he has been rightly convicted for said offences.

62. Learned trial court has rightly observed that as major punishment has been provided for charge under Section 376 AB IPC, there is no need to award punishment against the accused under Section 5/6 of POCSO Act, in view of provisions of Section 42 of POCSO Act. Consequently, the conviction of the appellant for charge under Section 376 AB and 302 IPC which has been recorded by learned trial court is affirmed.

63. So far as sentence is concerned, the appellant has been awarded death sentence for both the charges, as the victim being a girl child of 8 years of age at the time of incident.

64. So far as the sentencing is concerned, the trial court has awarded death sentence to the accused for both the charges as stated above.

65. The Hon'ble Supreme Court in a recent judgment **Sundar @ Sundarrajan Vs. State by Inspector of Police, 2023 (2) SCC 353** in an appeal against conviction of appellant for charge under Section 364A, 302, 201 IPC in which death penalty was awarded, considered the scope of award of sentence to death at length. Hon'ble Court referred the Constitution Bench Judgment in **Mohd. Arif alias Ashfaq Vs. Registrar, Supreme Court of India 2014 (() SCC 737**, wherein it is observed:-

29. [...] death sentence cases are a distinct category of cases altogether. Quite apart fromÂ Article 134Â of the Constitution granting an automatic right of appeal to the Supreme Court in all death sentence cases, and apart from death sentence being granted only in the rarest of rare cases, two factors have impressed us. ***The first is the irreversibility of a death penalty. And the second is the fact that different judicially trained minds can arrive at conclusions which, on the same facts, can be diametrically opposed to each other. Adverting first to the second factor mentioned above, it is well known that the basic principle behind returning the verdict of death sentence is that it has to be awarded in the rarest of rare cases. There may be aggravating as well as mitigating circumstances which are to be examined by the Court. At the same time, it is not possible to lay down the principles to determine as to which case would fall in the category of rarest of rare cases, justifying the death sentence.*** *It is not even easy to mention precisely the parameters or aggravating/ mitigating circumstances which should be kept in mind while arriving at such a question. Though attempts are made by Judges in various cases to state such circumstances, they remain illustrative only.*

30. [...] A sentence is a compound of many factors, including the nature of the offence as well as the circumstances extenuating or aggravating the offence. A large number of aggravating circumstances and mitigating circumstances have been

pointed out in ***Bachan Singh v. State of Punjab, SCC at pp. 749-50, paras 202 & 206,*** *that a Judge should take into account when awarding the death sentence.* ***Again, as pointed out above, apart from the fact that these lists are only illustrative, as clarified in Bachan Singh itself, different judicially trained minds can apply different aggravating and mitigating circumstances to ultimately arrive at a conclusion, on considering all relevant factors that the death penalty may or may not be awarded in any given case. Experience based on judicial decisions touching upon this aspect amply demonstrate such a divergent approach being taken. Though, it is not necessary to dwell upon this aspect elaborately, at the same time, it needs to be emphasised that when on the same set of facts, one judicial mind can come to the conclusion that the circumstances do not warrant the death penalty, whereas another may feel it to be a fit case fully justifying the death penalty, we feel that when a convict who has suffered the sentence of death and files a review petition, the necessity of oral hearing in such a review petition becomes an integral part of "reasonable procedure".***

66. In the present case, learned counsel for the appellant submitted that the proceedings being based on circumstantial evidence, and the accused was at the time of incident he is young man of 30 years of age without any criminal antecedent and no brutality appears to be committed against the victim. The extreme penalty of death awarded to the appellant is not tenable in any manner. The Constitution Bench decision in ***Bachan Singh v.State of Punjab 1980 (2) SCC 684;*** considered the scope of Section 354(3) and section 235 (2) Cr.P.C., 1973. The Apex Court held that Now, Section 235(2) provides for a bifurcated trial and specifically gives the accused person a right of pre-sentence hearing, at which stage, he can bring on records material or evidence, which may not be strictly relevant to or connected with the particular crime under inquiry, but nevertheless, have, consistently with the policy underlined in Section 354(3), a bearing on the choice of sentence. The Court should not confine its consideration "principally" or merely to the circumstances connected with the particular crime, but also give due consideration to the circumstances of the criminal.

67. Hon'ble Court in **Sundar @ Sundarrajan (supra)** observed as under:-

68. The importance of a separate sentencing hearing being afforded to the accused after recording a conviction was reiterated in Anguswamy v State of Tamil Nadu, Malkiat Singh State of Punjab and Dattaraya v State of Maharashtra.

69. On the other hand, there have also been judgments of this Court where it was held that while the court may adjourn for a separate hearing, same-day sentencing did not violate the provisions of Section 235(2) of the CrPC and did not in itself vitiate the sentence. This reasoning was adopted in the judgments of this Court in Dagdu v State of Maharashtra, Tarlok Singh v State of Punjab and Ramdeo Chauhan v State of Assam.

70. In Suo Motu W.P. (Crl.) No. 1/2022 titled In re: Framing Guidelines Regarding Potential Mitigating Circumstances to be Considered while Imposing Death Sentences, this Court took note of the difference in approach in the interpretation of Section 235(2) of CrPC

and referred the question for consideration o v f a larger bench. While it took note of the conflict on what amounted to 'sufficient time' at the trial court stage to allow for a separate and effective sentencing hearing, it noted that all the decisions also had the following common ground:

27. The common thread that runs through all these decisions is the express acknowledgment that meaningful, real and effective hearing must be afforded to the accused, with the opportunity to adduce material relevant for the question of sentencing.

71. In the present case, the judgment of the Trial Court dealing with sentencing indicates that a meaningful, real and effective hearing was not afforded to the petitioner.

78. In Rajendra Pralhadrao Wasnik v State of Maharashtra. a three judge bench of this Court took note of the line of cases of this Court which underline the importance of considering the probability of reform and rehabilitation of the convicted accused before sentencing him to death. The court observed:

43. At this stage, we must hark back to Bachan Singh and differentiate between possibility, probability and impossibility of reform and rehabilitation. Bachan Singh requires us to consider the probability of reform and rehabilitation and not its possibility or its impossibility.

[.....]

45. The law laid down by various decisions of this Court clearly and unequivocally mandates that the probability (not possibility or improbability or impossibility) that a convict can be reformed and rehabilitated in society must be seriously and earnestly considered by the courts before awarding the death sentence. This is one of the mandates of the "special reasons" requirement of Section 354(3) CrPC and ought not to be taken lightly since it involves snuffing out the life of a person. **To effectuate this mandate, it is the obligation on the prosecution to prove to the court, through evidence, that the probability is that the convict cannot be reformed rehabilitated.** This can be achieved by bringing on record, inter alia, material about his conduct in jail, his conduct outside jail if he has been on bail for some time, medical evidence about his mental make-up, contact with his family and so on. Similarly, the convict can produce evidence on these issues as well.

46. If an inquiry of this nature is to be conducted, as is mandated by the decisions of this Court, it is quite obvious that the period between the date of conviction and the date of awarding sentence would be quite prolonged to enable the parties to gather and lead evidence which could assist the trial court in taking an informed decision on the sentence. But, there is no hurry in this regard, since in any case the convict will be in custody for a fairly long time serving out at least a life sentence.

47. **Consideration of the reformation, rehabilitation and reintegration of the convict into society cannot be overemphasised. Until Bachan Singh, the emphasis given by the courts was primarily on the nature of the crime, its brutality and severity. Bachan Singh placed the sentencing process into perspective and introduced the necessity of considering the reformation or**

rehabilitation of the convict. Despite the view expressed by the Constitution Bench, there have been several instances, some of which have been pointed out in Bariyar and in Sangeet v. State of Haryana where there is a tendency to give primacy to the crime and consider the criminal in a somewhat secondary manner. As observed in Sangeet "In the sentencing process, both the crime and the criminal are equally important." **Therefore, we should not forget that the criminal, however ruthless he might be, is nevertheless a human being and is entitled to a life of dignity notwithstanding his crime. Therefore, it is for the prosecution and the courts to determine whether such a person, notwithstanding his crime, can be reformed and rehabilitated. To obtain and analyse this information is certainly not an easy task but must nevertheless be undertaken.** The process of rehabilitation is also not a simple one since it involves social reintegration of the convict into society. Of course, notwithstanding any information made available and its analysis by experts coupled with the evidence on record, there could be instances where the social reintegration of the convict may not be possible. If that should happen, the option of a long duration of imprisonment is permissible.

82. In Mofil Khan, a three judge bench of this Court was also dealing with a review petition which was re-opened in view of the decision in Mohd. Arif v Registrar, Supreme Court of India. While commuting the death sentence to life imprisonment, the Court reiterated the importance of looking at the possibility of reformation and rehabilitation. Notably, it pointed out that it was the Court's duty to look into possible mitigating circumstances even if the accused was silent. The Court held that:

9. It would be profitable to refer to a judgment of this Court in Mohd. Mannan v. State of Bihar in which it was held that before imposing the extreme penalty of death sentence, the Court should satisfy itself that death sentence is imperative, as otherwise the convict would be a threat to the society, and that there is no possibility of reform or rehabilitation of the convict, after giving the convict an effective, meaningful, real opportunity of hearing on the question of sentence, by producing material. ***The hearing of sentence should be effective and even if the accused remains silent, the Court would be obliged and duty-bound to elicit relevant factors.***

10. It is well-settled law that the possibility of reformation and rehabilitation of the convict is an important factor which has to be taken into account as a mitigating circumstance before sentencing him to death. There is a bounden duty cast on the Courts to elicit information of all the relevant factors and consider those regarding the possibility of reformation, even if the accused remains silent. A scrutiny of the judgments of the trial court, the High Court and this Court would indicate that the sentence of death is imposed by taking into account the brutality of the crime.

There is no reference to the possibility of reformation of the Petitioners, nor has the State procured any evidence to prove that there is no such possibility with respect to the Petitioners. We have examined the socio-economic background of the Petitioners, the absence of any criminal antecedents, affidavits filed by

their family and community members with whom they continue to share emotional ties and the certificate issued by the Jail Superintendent on their conduct during their long incarceration of 14 years. Considering all of the above, it cannot be said that there is no possibility of reformation of the Petitioners, foreclosing the alternative option of a lesser sentence and making the imposition of death sentence imperative.

83. The duty of the court to enquire into mitigating circumstances as well as to foreclose the possibility of reformation and rehabilitation before imposing the death penalty has been highlighted in multiple judgments of this Court. Despite this, in the present case, no such enquiry was conducted and the grievous nature of the crime was the only factor that was considered while awarding the death penalty.

91. On the basis of these details, it cannot be said that there is no possibility of reformation even though the petitioner has committed a ghastly crime. We must consider several mitigating factors: the petitioner has no prior antecedents, was 23 years old when he committed the crime and has been in prison since 2009 where his conduct has been satisfactory, except for the attempt to escape prison in 2013. The petitioner is suffering from a case of systemic hypertension and has attempted to acquire some basic education in the form of a diploma in food catering. The acquisition of a vocation in jail has an important bearing on his ability to lead a gainful life.

92. Considering the above factors, we are of the view that even though the crime committed by the petitioner is unquestionably grave and unpardonable, it is not appropriate to affirm the death sentence that was awarded to him. As we have discussed, the 'rarest of rare' doctrine requires that the death sentence not be imposed only by taking into account the grave nature of crime but only if there is no possibility of reformation in a criminal.

93. However, we are also aware that a sentence of life imprisonment is subject to remission. In our opinion, this would not be adequate in view of the gruesome crime committed by the petitioner.

94. This court has been faced with similar situations earlier where it has noticed that the sentence of life imprisonment with remission may be inadequate in The matter may be inadequate in certain cases. For instance, in Swamy Sharddananda (2) @ Murali Manohr Mishra Vs. State of Karnataka the Court noted that:-

92. The matter may be looked at from a slightly different angle. The issue of sentencing has two aspects. A sentence may be excessive and unduly harsh or it may be highly disproportionately inadequate. When an appellant comes to this Court carrying a death sentence awarded by the trial court and confirmed by the High Court, this Court may find, as in the present appeal, that the case just falls short of the rarest of the rare category and may feel somewhat reluctant in endorsing the death sentence. ***But at the same time, having regard to the nature of the crime, the Court may strongly feel that a sentence of life imprisonment subject to remission normally works out to a term of 14 years would be grossly disproportionate and inadequate. What then should the Court do? If the Court's option is limited***

only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the Court may feel tempted and find itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the Court i.e. the vast hiatus between 14 years' imprisonment and death. *It needs to be emphasised that the Court would take recourse to the expanded option primarily because in the facts of the case, the sentence of 14 year's imprisonment would amount to no punishment at all.*

95. Accordingly, it is open to this Court to prescribe the length of imprisonment, especially in cases where the capital punishment is replaced by life imprisonment. Considering the facts of the instant case, we are of the considered view that the appellant must undergo life imprisonment for not less than twentyfive years without remission of sentence.

68. In the present case, if we strike a balance of mitigating and aggravating circumstances in respect of crime qua the appellant we find aggravating circumstance such as the tender age of the victim, her helpless situation, the relationship of the victim with the accused due to which she reposed trust in her, when he took her alongwith him the gruesome crime of child rape and subsequent murder of the victim by pressing her mouth by asphyxiating her by smothering and leaving the dead body on the place of incident. The mitigating circumstances are that, the accused was a young man of tender age, the offence is mainly based on circumstantial evidence of last seen together. The offence although being of heinous and diabolic nature, but even then on the facts of the case, it may not be said that brutality was committed against the victim for causing her death. The appellant is not a man of criminal antecedents and is a common villager, he is in jail custody since inception of the case, which took place in the year 2019. It cannot be said that appellant is incorrigible or he is a menace to society and he cannot be reformed or rehabiliated. In modern days, much emphasis laid down on reformatory theory of punishment, rather than retributory or deterrent. The golden thread in the wave of criminal jurisprudence, still rules good that death sentence can only be awarded in rarest of of rare cases.

69. In view of the above and foregoing discussion, we are of the considered opinion that this is not an appropriate case, in which award of death sentence to the appellant is liable to be affirmed.

70. Considering the facts of the instant case, we are of the considered view that the appellant must undergo life imprisonment for not less than 25 years without remission of sentence for charge under Section 302 IPC.

71. Consequently, we commute the death sentence awarded to the appellate for charge under Section 302 IPC to life imprisonment for not less than 25 years without reprieve or remission. We commute the death sentence awarded for charge under Section 376 AB IPC to 20 years rigorous imprisonment. A fine of Rs.10,000/- against the appellant for said charges, is also awarded, and in case of default he will have to undergo three months imprisonment in default for both the charges separately. All the sentences

shall run concurrently. The whole of amount of fine (Rs.20,000/- in toto) shall be payable to the informant as compensation.

72. With the aforesaid modification the appeal qua conviction is dismissed. However, the appeal qua sentence is partly allowed and the sentence is modified to the aforesaid extent. The reference for confirmation of death sentence is hereby dismissed.

73. The accused appellant is in jail, he will undergo the remaining sentence in accordance with law. Trial court record and proceedings be sent back to the trial court forthwith for necessary compliance and onwards information to Superintendent of concerned jail about this modified sentence for necessary action.

74. While parting with the case, we deeply appreciate the valuable assistance of Senior Advocate Sri Vinay Saraan assisted by Smt. Beena Mishra, learned Amicus Curiae and also Sri Pradeep Kumar Mishra, Advocate. We direct that an honorarium of Rs.25,000/- shall be paid to Sri Vinay Saran, Senior Advocate, and Rs.25,000/- to Smt. Beena Mishra, as both of them have been appointed as Amicus Curiae in the case by High Court, Legal Services Committee.

(2025) 7 ILRA 954
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 01.07.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Appeal No. 465 of 2013

Mohd. Saleem Khan ...Appellant
Versus
State of U.P. ...Respondent

Counsel for the Appellant:
P. Chakravarty, Pranjal Krishna

Counsel for the Respondent:
Bireshwar Nath, Shiv P. Shukla

Issue for Consideration

Whether the conviction of the appellant under Section 7 of the Prevention of Corruption Act, 1988 could be sustained when (i) the complainant turned wholly hostile; (ii) the shadow witness did not hear any demand; (iii) acceptance of illegal gratification was not proved; (iv) independent witnesses present were not examined; and (v) defence witnesses supported a case of false implication and planting of money by the trap team.

Headnotes

Prevention of Corruption Act, 1988 — s.7; ss.13(1)(d), 13(2); s.20 — Criminal Procedure Code, 1973 — s.161; Evidence Act, 1872 — s.114(g) — Illegal gratification — Demand and acceptance — Complainant hostile — Shadow witness not hearing demand — Independent witnesses not examined — Defence witnesses supporting planting — Adverse presumption — Conviction unsustainable.

Held:

Demand of illegal gratification is **sine qua non** for an offence under Section 7-mere recovery of tainted money is insufficient-complainant (PW-1) categorically denied demand or acceptance-asserted that CBI officials dictated the complaint- folded notes into the passbook-instructed him to place it on the appellant's table-denied handing over the money-evidence, read as a whole, gave no support to the prosecution. [Paras 52–57]

Defence witnesses (DW-5 and DW-7)- present inside the cabin- consistently stated-money was forcibly planted into appellant's pocket-trap team threatened eyewitnesses-testimony

remained unshaken in cross-examination-could not be discarded merely for not complaining to police. [Paras 60–61]

Statement of Jagdish Singh (DW-4)-Investigating Officer had falsely attributed a statement to him under Section 161 Cr.P.C.-prosecution's withholding of this witness-attracts adverse presumption under Section 114(g). [Paras 62–65]

Foundational facts to invoke presumption under Section 20 not proved- prosecution failed to establish demand or voluntary acceptance-Conviction under Section 7 unsustainable-appellant entitled to acquittal. [Paras 45, 66–68] (E-14)

Case Law Cited

B. Jayaraj v. State of A.P., **(2014) 13 SCC 55 — applied;** ***P. Satyanarayana Murthy v. State of A.P.,*** **(2015) 10 SCC 152 — applied;** ***Neeraj Dutta v. State (NCT of Delhi)*****, (2023) 4 SCC 731 — relied on;** ***State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede*****, (2009) 15 SCC 200 — applied;** ***Hazari Lal v. State (Delhi Admn.)*****, (1980) 2 SCC 390 — considered;** ***M. Narsinga Rao v. State of A.P.*****, (2001) 1 SCC 691 — distinguished;** ***Vinod Kumar v. State of Punjab*****, (2015) 3 SCC 220 — referred to;** ***State v. Sanjeev Nanda*****, (2012) 8 SCC 450 — principles noted.**

List of Acts / Statutes

Prevention of Corruption Act, 1988; Code of Criminal Procedure, 1973; Indian Evidence Act, 1872.

List of Keywords

Illegal gratification; Demand and acceptance; Hostile complainant; Shadow witness; Trap case; Recovery of tainted money; Foundational facts; Adverse inference; False implication; Planting of money; Independent witnesses not examined; Defence evidence; Acquittal.

Case Arising From

Impugned judgment dated 07.03.2013 of the Special Judge, CBI Court No. 1, Lucknow, in Criminal Case No. 2 of 2008 (RC No. 0062008A0016/2008), P.S. CBI/ACB, Lucknow.

Appearance for Parties

For the Appellant: Sri Nandit Srivastava, Senior Advocate, Ms. Shahla Zubair, Sri Pranjal Krishna, Sri P. Chakravarty.
For the Respondents: Sri Anurag Kumar Singh, Bireshwar Nath, Shiv P. Shukla.

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Nandit Srivastava Senior Advocate assisted by Ms. Shahla Zubair and Sri Pranjal Krishna Advocates, the learned counsel for the appellant and Sri Anurag Kumar Singh, learned counsel for the CBI.

2. The instant appeal has been filed under Section 374(2) Criminal Procedure Code, 1973 read with Section 27 of the Prevention of Corruption Act, 1988 against the judgment and order dated 07.03.2013 passed by the learned Special Judge, C.B.I., Court No. 1, Lucknow in Criminal Case No. 2 of 2008 arising out of RC No. 0062008A0016/2008 under Sections 7 and Section 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988, Police Station C.B.I./A.C.B., Lucknow, whereby the trial Court has convicted the appellant for the offence under Section 7 of the Prevention of Corruption Act, 1988 and has sentenced him to undergo rigorous imprisonment for a period of three years and to pay Rs.15,000/- as fine. In case of failure to pay fine, the appellant would have to undergo rigorous imprisonment for an additional period of six months. The appellant has been acquitted of the offence under Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988.

3. On 16.10.2008 Sri. Gayabudh Singh son of Sri. Surya Lal Singh gave a complaint to the Superintendent of Police, C.B.I., alleging that his father has taken a Kisan Credit Card loan of Rs.40,000/- and after he had deposited Rs.11,000/- towards repayment of the loan, the loan amount was waived off by the Government. The appellant, who was the Manager of Sarva U. P. Gramin Bank, had demanded Rs.3,000/- for issuing a no-dues certificate to his father. On the same date, the Superintendent of police made an endorsement that the complaint seems to be genuine and upon his order, an F.I.R. bearing RC No. 0062008A0016/2008 under Sections 7 and Section 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 was registered on 16.10.2008 itself.

4. A trap was laid on 17.10.2008. Two independent witnesses accompanied the trap team. The team members and a witness Dr. Harish Chandra Arya stayed outside the Bank's branch whereas the complainant Gayabudh Singh and the shadow witnesses Sri. Vikas Bharti went inside the Bank. After sometime, Sri. Vikas Bharti came outside and gave a signal, whereupon the trap team and the other independent witnesses went inside the Bank and they caught the appellant red handed. At the instruction of the trap laying officer, the independent witnesses Dr. Harish Chandra Arya recovered Rs.2,500/- kept inside a passbook in the drawer of the appellant's office table.

5. The Investigating Officer recorded statements of the complainant Gayabudh Singh under Section 161 Cr.P.C., who supported the prosecution case. The statement of one Jagdish Singh was recorded on 17.11.2008. He stated that the complainant did not do any work without taking bribe and the people of the area were very happy on the day the appellant was caught.

6. The Investigating Officer recorded statement of the shadow witness Sri. Vikas Bharti on 10.11.2008 and he stated that he had accompanied the complainant inside the bank, but he had not gone inside the cabin of the appellant. 5-6 persons were present inside the appellant's cabin but they declined to become witnesses in the case. The complainant went near the appellant, he and the appellant talked to each other for about 2 minutes in low voices and the shadow witness could not hear the conversation. Thereafter the complainant took out the money from his upper pocket and passbook from his lower pocket, kept the money in the passbook and handed it to the appellant. The appellant took the passbook in his right hand, opened the passbook and saw something and kept the same in the drawer of his table. Thereafter the appellant gestured the complainant to go out and the shadow witnesses also came out of the bank with the complainant. Upon his giving the signal, the trap team went inside the bank and caught the appellant.

7. The Investigating Officer recorded the statements of the other independent witness Dr. Harishchandra Arya, the trap laying Officer Sri. Surendra Rai, Inspector C.B.I., Sri. Awdhesh Kumar Dwivedi, the Regional Development Manager, Sarva U. P. Gramin Bank and Sri. Pankaj Kumar Srivastava, a clerk working in the Bank.

8. The Investigating Officer submitted a charge-sheet dated 29.12.2008 against the Appellant for offences under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988

9. The trial Court framed charges for commission of the aforesaid offences on 31.05.2011.

10. The prosecution produced 8 witnesses. The complainant Gayabudh Singh was examined as PW-1. He stated that he had met the appellant for waiver of the old loan and taking a new loan. The appellant had told him that the old loan had been waived off but he had not received any order for granting a new loan. Some persons outside the Bank told that perhaps giving something might help. Some persons sitting at a hotel had given him a phone number and said that the complainant should go to him at Lucknow and he would get a K.C.C. very fast. The complainant categorically stated that he did not meet the appellant after waiver of the loan for getting a no-dues certificate. He stated that he had called on the phone number that was given to him, he was called to C.B.I. office at Lucknow and he had written the complaint as per the directions of C.B.I. officials with the object of getting a KCC loan. Sri. Surendra Rai had asked him to arrange the money. As the complainant did not did not support the prosecution case, he was declared hostile at the request of the prosecution.

11. During his cross-examination by the Public Prosecution, the complainant stated that he had not written the complaint by himself, he was made to write the complaint as per the dictation given to him. The complainant stated that statement recorded under Section 161 Cr.P.C. had not been given by him. The complainant stated that he had given the passbook with the money kept in it to the appellant in presence of a person from the C.B.I. and he had said that as his loan had been waived, an endorsement of nil dues be made on it. He had kept the pass book on the table of the appellant. He denied that the appellant had kept the pass book in the drawer of his table. He said that he had signed the recovery memo under pressure of the C.B.I. team. The appellant categorically denied that the appellant had demanded any bribe from him.

12. During the cross-examination conducted by the defence' Counsel, the complainant stated that he had hidden the money inside the passbook and at the time of keeping the passbook on the appellant's table, he had not said that money was kept in the passbook. The appellant had not picked up the pass book in his presence. He said that the C.B.I. officials had asked him to put the money inside the passbook and the appellant had not demanded any money from him and he had told the C.B.I. officials that the appellant would not take the money from him. Upon this the C.B.I. officials had folded the notes, kept it inside the passbook and instructed him to handover the passbook to the appellant or to put it near him. The complainant further stated that the documents written in the English language had not been prepared in his presence and he had been made to put his signatures on blank papers.

13. The complainant also stated that he did not require any no-dues certificate for taking a K.C.C. loan, as the earlier loan had been taken by his father. The C.B.I. officials falsely implicated the appellant through him under pretext of getting him a K.C.C. loan. He could not understand the entire plan of the C.B.I. officials and had he understood it, he would not have taken any action to falsely implicate the appellant.

14. The shadow witness Sri. Vikas Bharti was examined as PW-2 and in his

examination-in-chief, he stated that although he had gone inside the Bank with the complainant, the complainant alone had gone inside the appellant's cabin and he was standing outside, at a distance of about 6 feet from the appellant's seat. He could not hear the conversation between the complainant and the appellant. However, he reiterated the statement recorded by the Investigating Officer that stated that the complainant took out the money from his upper pocket and passbook from his lower pocket, kept the money in the passbook and handed it to the appellant. The appellant took the passbook in his right hand, opened the passbook and saw something and kept the same in the drawer of his table.

15. During cross-examination, PW-2 stated that some powder was put on the currency notes used in the trap, but no powder was put on any other thing, including the passbook. He said that when the complainant had went inside the appellant's cabin, there were 5-6 persons present there. He could not hear the conversation between the appellant and the complainant and he did not hear about any demand made by the appellant. 5-6 persons were present when the conversation was taking place between the complainant and the appellant. He also stated that the appellant had not counted the notes by taking the notes in his hand.

16. Dr. Harishchandra Arya, the other independent witness, was examined as PW-3 and he supported the prosecution case and he stated that he had taken out the pass book with the money kept inside it, from the drawer of the table.

17. PW-4 Sri. Awdhesh Kumar Dwivedi was an employee of the Bank and he stated that the loan of the complainant's father had already been waived and an entry to this effect had already been made in the loan waiver register – document no. D-12 produced before the Court. During cross-examination, PW-4 stated that the list of loan waiver had been put on the notice board of the Bank and this information was also uploaded on the website of the Bank.

18. PW-5 Pankaj Kumar Srivastava was working as Clerk/Cashier in the Bank. He stated that loans taken by 411 farmers from the Bank had been waived. The Head Office had issued an order that the loan waiver certificates be sent to the beneficiaries till 15.10.2008.

19. The trap laying officer Sri. Surendra Rai, Inspector C.B.I. was examined as PW-6 and he supported the prosecution case. However, he had not witnessed the demand and acceptance of bribe by the appellant.

20. PW-7 Sri. Mahesh Singh was the Investigating Officer. He admitted that during investigation, he had found that the shadow witnesses had not heard any demand of money made by the appellant.

21. Sri. Ashok Kumar Singh, Chairman, Sarva U. P. Gramin Bank was the prosecution sanction authority and he has been examined as PW-8.

22. The appellant produced 8 defence witnesses. DW-2 Sri. Pradeep Kumar Tandon, the Branch Manager of the Bank stated that as per the order passed by the regional Manager of the Bank, he had conducted an enquiry to ascertain as to whether the appellant had issued the loan waiver certificates and whether he had taken any bribe for doing so. He had made enquiries from some farmers and 70

farmers had given in writing that no money was demanded from them and they did not give any money.

23. In his statement recorded on 17.01.2013, DW-4 Jagdish Singh stated that earlier he had come to record his statement in the Court on 21.11.2011 in pursuance of a summon issued on 09.11.2011. He was shown his statement recorded by the Investigating Officer under Section 161 Cr.P.C. and he had told the Public Prosecutor that he had not given any such statement to the investigating Officer and the statement is wrong. Upon this, the Public Prosecutor sent him back without examining him as a witness. Nothing significant came out in his cross-examination conducted by the Public Prosecutor.

24. DW-5 Smt. Pushpa Mishra runs a self help group and she holds an account in the Bank. She stated that she and three other ladies of self help groups were present inside the appellant's cabin at the time of the trap. A person entered the cabin, kept the passbook on the table and he quietly went out in a hurry. Within 2 minutes, 4-5 persons came there and they alleged that the appellant had taken bribe. They forcibly put the passbook inside the appellant's pocket. The appellant took out the passbook from his pocket and threw it away. When the witness and some other persons present there objected against it, the trap team members started beating the appellant and asked the witness and the other persons to leave, else they would also be implicated. She stated that she had made a written complaint regarding this incident to the Regional manager of the Bank on 23.10.2008 and she filed the same in the Court. She categorically stated that no employee of the Bank had demanded any money from her. Even during her cross-examination, DW-5 specifically stated that the appellant does not take bribe and he has been falsely implicated. She remained consistent in her statement during her cross-examination and no discrepancy came to light.

25. DW-7 Mohd. Shamshad stated that he holds an account with the Bank and he was present in the appellant's cabin at the time of the trap. A person came there, kept a passbook at the table and left quietly. 5-6 persons entered the cabin after 2 minutes, one of them picked up the pass book and started putting in the appellant's pocket alleging that he takes bribe. The appellant threw away the passbook and denied the allegation. 5-6 ladies were present there. One of them got up and this witness also objected to the appellant being implicated. The trap team turned every one present there out of the Bank. DW-7 remained consistent even during his cross-examination.

26. The trial Court held that PW-1 - the complainant, has accepted that the complaint is in his hand writing and he has admitted his signatures on it. However, he has stated that the appellant had not demanded or taken any money from him, no money was recovered from the appellant in his presence and he had not seen from where the C.B.I. officials had recovered the money. He said that when he had hidden the money in the passbook and had kept the passbook on the table, he had not told that there was money in the passbook. The shadow witness PW-2 has stated that he could not hear the conversation between the complainant and the appellant. However, PW-2 stated that the appellant took the passbook, opened it and saw it and kept it inside his table drawer along with

the money. PW-2 also stated that no powder was put on the passbook. He stated that the appellant did not count the notes by touching the notes by his hands. The trial Court held that the other independent witness PW-3 Dr. Harishchandra Arya stated that the PW-2 had told him that the appellant had taken the passbook with the money kept inside it, from the complainant.

27. The trial Court referred to the statement of DW-5 Smt. Pushpa Singh and held that as this witness has admitted that she did not make any complaint to any administrative or Police officer, her presence at the spot becomes doubtful.

28. The trial Court held that DW-7 Mohd. Shamshad had stated that while the appellant was making entries in his passbook, the CBI team had caught him whereas the last entry in his passbook was made on 10.03.2008 and no entry was made in it on 17.03.2008 from which it appears that DW-7 was not present in the appellant's cabin at the time of the trap and the trial Court discarded the testimony of PW-7.

29. The trial Court rejected the submission made on behalf of the appellant that no powder was put on the passbook on the ground that if 3 notes of Rs.500/- and 10 notes of Rs.100/- are kept in a passbook measuring 3 inches X 5 inches, the notes would come out naturally and will touch the fingers of the appellant and the solution would change its colour when his fingers are put in it.

30. The trial Court held that the prosecution evidence has proved that the appellant obtained Rs.2,500/- from the complainant. However, the prosecution could not prove the demand of bribe made by the appellant. The trial Court convicted the appellant for the offence under Section 7 of the Prevention of Corruption Act, 1988 and has sentenced him to undergo rigorous imprisonment for a period of three years and to pay Rs.15,000/- as fine. In case of failure to pay fine, the appellant would have to undergo rigorous imprisonment for an additional period of six months. The appellant has been acquitted of the offence under Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988 and the order of acquittal has not been challenged and it has attained finality. Only conviction and sentence of the appellant under Section 7 of the Prevention of Corruption Act, 1988 has been challenged before this Court.

31. The trial Court had released the appellant on interim bail and thereafter, this Court had also enlarged the appellant on bail.

32. Assailing the validity of the judgment of the trial Court, the learned Counsel for the appellant has submitted that the appellant has not supported the prosecution case and he has turned hostile. The shadow witness stated that he did not hear the appellant demanded any money from the complainant. Therefore, there is no evidence that the appellant had demanded any money from the appellant.

33. The learned Counsel for the appellant has relied upon the judgments in the cases of **B. Jayaraj v. State of A.P.:** (2014) 13 SCC 55, **P. Satyanarayana Murthy v. State of A.P.:** (2015) 10 SCC 152, **Neeraj Dutta v. State (NCT of Delhi):** (2023) 4 SCC 731 and **State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede:** (2009) 15 SCC 200.

34. The learned Counsel for the respondent – C.B.I. has relied upon the

judgments in the cases of **Hazari Lal v. State (Delhi Admn.):** (1980) 2 SCC 390, **M. Narsinga Rao v. State of A.P.:** (2001) 1 SCC 691, **Neeraj Dutta v. State (NCT of Delhi):** (2023) 4 SCC 731, **Vinod Kumar v. State of Punjab:** (2015) 3 SCC 220 and **Vinod Kumar v. State of Punjab:** (2015) 3 SCC 220.

35. Before proceeding to understand the law laid down in the cases relied upon by the learned Counsel for the parties, it would be appropriate to have a look at Sections 7 and 13 of the Prevention of Corruption Act, 1988, as the same stood at the relevant time.

36. At the relevant time, Section 7 of the Prevention of Corruption Act, 1988 read as follows: -

"7. Public servant taking gratification other than legal remuneration in respect of an official act.*—Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than three years but which may extend to seven years and shall also be liable to fine.*

Explanations…."

37. At the relevant time, Section 13(1)(d) of the Prevention of Corruption Act, 1988 read as follows: -

"13. Criminal misconduct by a public servant.—

(1) A public servant is said to commit the offence of criminal misconduct,—

* * *

(d) if he,—

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

* * *

38. Section 20 of the Prevention of Corruption Act, 1988 is also relevant for the present case and at the relevant time, it provided as follows: -

"20. Presumption where public servant accepts gratification other than legal remuneration.—(1) Where, in any trial of an offence punishable under Section 7 or Section 11 or clause (a) or clause (b) of sub-section (1) of Section 13 it is proved that an accused person has accepted or

obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

* * *

(3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn."

39. In **Hazari Lal v. State (Delhi Admn.):** (1980) 2 SCC 390: -

"9. *... In the facts and circumstances of a particular case a court may be disinclined to act upon the evidence of such an officer without corroboration, but, equally, in the facts and circumstances of another case the court may unhesitatingly accept the evidence of such an officer.* ***It is all a matter of appreciation of evidence and on such matters there can be no hard and fast rule, nor can there be any precedential guidance.*** *We are forced to say this because of late we have come across several judgments of Courts of Session and sometimes even of High Courts where reference is made to decisions of this Court on matters of appreciation of evidence and decisions of pure question of fact….*

* * *

11. *... where the recovery of the money coupled with other circumstances leads to the conclusion that the accused received gratification from some person the court would certainly be entitled to draw the presumption under Section 4(1) of the Prevention of Corruption Act. In our view both the decisions are of no avail to the appellant and as already observed by us conclusions of fact must be drawn on the facts of each case and not on the facts of other cases. In other words there can be no precedents on questions of facts…"*

40. In **M. Narsinga Rao v. State of A.P.:** (2001) 1 SCC 691, it was held that: -

"14. *When the sub-section deals with legal presumption it is to be understood as in terrorem i.e. in tone of a command that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act etc., if the condition envisaged in the former part of the section is satisfied. The only condition for drawing such a legal presumption under Section 20 is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. The section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification. Direct evidence is one of the modes through which a fact can be proved. But that is not the only mode envisaged in the Evidence Act.*

15. *The word "proof" need be understood in the sense in which it is defined in the Evidence Act because proof depends upon the admissibility of evidence. 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. This is the definition given for the word "proved" in the Evidence Act. What is required is production of such materials on which the court can reasonably act to reach the supposition that a fact exists. Proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him. Fletcher Moulton L.J. in Hawkins v. Powells Tillery Steam Coal Co. Ltd. (1911) 1 KB 988, observed like this:

"Proof does not mean proof to rigid mathematical demonstration, because that is impossible; it must mean such evidence as would induce a reasonable man to come to a particular conclusion."

41. In **B. Jayaraj v. State of A.P.:** (2014) 13 SCC 55, the Hon'ble Supreme Court held that: -

"7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. *The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in C.M. Sharma v. State of A.P. [(2010) 15 SCC 1] and C.M. Girish Babu v. CBI [(2009) 3 SCC 779].*

* * *

9. *Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13(1)(d)(i) and (ii) of the Act. In any event,* ***it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand.*** *As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent.*"

(Emphasis added)

42. In **Vinod Kumar v. State of Punjab:** (2015) 3 SCC 220, the Hon'ble Supreme Court held that: -

"45. *...the authorities in B. Jayaraj (2014) 13 SCC 55, and M.R. Purushotham (2015) 3 SCC 247, do not lay down as a proposition of law that when the complainant turns hostile and does not support the case of the prosecution, the prosecution cannot prove its case otherwise and the court cannot legitimately draw the presumption under Section 20 of the Act."*

43. In **P. Satyanarayana Murthy v. State of A.P.:** (2015) 10 SCC 152, it was held that: -

"23. *The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and*

13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder."

44. In **Neeraj Dutta v. State (NCT of Delhi):** (2023) 4 SCC 731, a Constitution Bench consisting of five Hon'ble Judges of the Supreme Court discussed various precedents on the point and summarized he law as follows: -

"88. *What emerges from the aforesaid discussion is summarised as under:*

88.1. (a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.

88.2. *(b)* ***In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.***

88.3. *(c) Further, the fact in issue, namely,* ***the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.***

88.4. *(d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:*

(i) ***if there is an offer to pay by the bribe-giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.***

(ii) On the other hand, if the public servant makes a demand and the bribe-giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Sections 13(1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, ***the offer by the bribe-giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section*** *7 or Sections 13(1)(d)(i) and (ii), respectively of the Act. Therefore,* ***under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe-giver which is accepted by the public servant which would make it an***

offence. *Similarly, a prior demand by the public servant when accepted by the bribe-giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Sections 13(1)(d)(i) and (ii) of the Act.*

88.5. *(e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.*

88.6. *(f)* ***In the event the complainant turns "hostile", or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.***

88.7. *(g) Insofar as Section 7 of the Act is concerned,* ***on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section.*** *The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Sections 13(1)(d)(i) and (ii) of the Act.*

88.8. *(h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in sub-para 88.5(e), above, as the former is a mandatory presumption while the latter is discretionary in nature.*

89. *In view of the aforesaid discussion and conclusions, we find that there is no conflict in the three-Judge Bench decisions of this Court in B. Jayaraj [(2014) 13 SCC 55] and P. Satyanarayana Murthy [(2015) 10 SCC 152] with the three-Judge Bench decision in M. Narsinga Rao [(2001) 1 SCC 691], with regard to the nature and quality of proof necessary to sustain a conviction for the offences under Sections 7 or 13(1)(d)(i) and (ii) of the Act, when the direct evidence of the complainant or "primary evidence" of the complainant is unavailable owing to his death or any other reason. The position of law when a complainant or prosecution witness turns "hostile" is also discussed and the observations made above would accordingly apply in light of Section 154 of the Evidence Act. In view of the aforesaid discussion, we hold that there is no conflict between the judgments in the aforesaid three cases.*

90. *Accordingly, the question referred for consideration of this Constitution Bench is answered as under:*

In the absence of evidence of the complainant (direct/primary, oral/documentary evidence) it is permissible to draw an inferential

deduction of culpability/guilt of a public servant under Section 7 and Section 13(1)(d) read with Section 13(2) of the Act based on other evidence adduced by the prosecution."

(Emphasis added)

45. The principles deducible from the aforesaid authorities are as follows:

(i) The demand of illegal gratification is sine qua non to constitute the offence under Section 7 and mere recovery of currency notes cannot constitute the offence under Section 7, unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe.

(ii) Even if the complainant turns hostile and does not support the case of the prosecution, if the prosecution proves by such evidence, as would induce a reasonable man to come to a conclusion that the accused has accepted or agreed to accept any gratification, it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act etc.,

(iii) failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder

46. In **State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede:** (2009) 15 SCC 200, the Hon'ble Supreme Court reiterated that it is a well-settled principle of law that where it is possible to have two views, one in favour of the prosecution and the other in favour of the accused, the latter should prevail.

47. The learned Counsel for the respondent – C.B.I. has relied upon the following observations made in **State v. Sanjeev Nanda:** (2012) 8 SCC 450: -

"99. *Witness turning hostile is a major disturbing factor faced by the criminal courts in India. Reasons are many for the witnesses turning hostile, but of late, we see, especially in high profile cases, there is a regularity in the witnesses turning hostile, either due to monetary consideration or by other tempting offers which undermine the entire criminal justice system and people carry the impression that the mighty and powerful can always get away from the clutches of law, thereby eroding people's faith in the system.*

100. *This Court in State of U.P. v. Ramesh Prasad Misra (1996) 10 SCC 360, held that it is equally settled law that the evidence of a hostile witness could not be totally rejected, if spoken in favour of the prosecution or the accused, but it can be subjected to closest scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted. In K. Anbazhagan v. Supt. of Police: (2004) 3 SCC 767, this Court held that if a court finds that in the process the credit of the witness has not been completely shaken, it may after reading and considering the evidence of the witness as a whole, with due caution, accept, in the light of the evidence on the record that part of his testimony which it finds to be creditworthy and act upon it. This is exactly what was done in the instant case by both the trial court and the High Court and they found the accused guilty.*

101. *We cannot, however, close our eyes to the disturbing fact in the instant case where even the injured witness, who was present on the spot, turned hostile. This Court in Manu Sharma v. State (NCT of Delhi): (2010) 6 SCC 1, and in Zahira Habibullah Sheikh (5) v. State of Gujarat: (2006) 3 CC 372, had highlighted the glaring defects in the system like non-recording of the statements correctly by the police and the retraction of the statements by the prosecution witness due to intimidation, inducement and other methods of manipulation. Courts, however, cannot shut their eyes to the reality. If a witness becomes hostile to subvert the judicial process, the court shall not stand as a mute spectator and every effort should be made to bring home the truth. Criminal justice system cannot be overturned by those gullible witnesses who act under pressure, inducement or intimidation. Further, Section 193 IPC imposes punishment for giving false evidence but is seldom invoked."*

48. When we examine the facts of the present case in light of the law laid down in the above mentioned cases, what comes to light is that the case was initiated on a complaint dated 16.10.2008 submitted by Sri. Gayabudh Singh son of Sri. Surya Lal Singh alleging that the appellant had demanded Rs.3,000/- for issuing a no-dues certificate in respect of a Kisan Credit Card loan of Rs.40,000/- taken by Sri. Surya Lal Singh, which loan had been waived off by the Government. A trap was laid on 17.10.2008. Two independent witnesses – (1) Dr. Harish Chandra Arya and (2) Sri. Vikas Bharti, had accompanied the trap team. The trap team members and witnesses Dr. Harish Chandra Arya had stayed outside the Bank's branch whereas the complainant Gayabudh Singh and the shadow witnesses Sri. Vikas Bharti had gone inside the Bank. After sometime, Sri. Vikas Bharti came outside and gave a signal, whereupon the trap team and the other independent witnesses Dr. Harish Chandra Arya went inside the Bank and they caught the appellant red handed. At the instruction of the trap laying officer, the independent witnesses Dr. Harish Chandra Arya recovered Rs.2,500/- kept inside a passbook in the drawer of the appellant's office table.

49. The Investigating Officer recorded statements of the complainant Gayabudh Singh under Section 161 Cr.P.C., who supported the prosecution case. The statement of one Jagdish Singh was recorded on 17.11.2008. He stated that the complainant did not do any work without taking bribe and the people of the area were very happy on the day the appellant was caught.

50. The Investigating Officer recorded statement of the shadow witness Sri. Vikas Bharti on 10.11.2008 and he stated that he had accompanied the complainant inside the bank, but he had not gone inside the cabin of the appellant. 5-6 persons were present inside the appellant's cabin but they declined to become witnesses in the case. The complainant went near the appellant, he and the appellant talked to each other for about 2 minutes in low voices and the shadow witness could not hear the conversation. Thereafter the complainant took out the money from his upper pocket and passbook from his lower pocket, kept the money in the passbook and handed it to the appellant. The appellant took the passbook in his right hand, opened the passbook and saw something and kept the same in the drawer of his table. Thereafter the appellant gestured the complainant to

go out and the shadow witnesses also came out of the bank with the complainant. Upon his giving the signal, the trap team went inside the bank and caught the appellant.

51. The Investigating Officer recorded the statements of the other independent witness Dr. Harishchandra Arya, the trap laying Officer Sri. Surendra Rai, Inspector C.B.I., Sri. Awdhesh Kumar Dwivedi, the Regional Development Manager, Sarva U. P. Gramin Bank and Sri. Pankaj Kumar Srivastava, a clerk working in the Bank.

52. The complainant Gayabudh Singh was examined as PW-1. He stated that he had met the appellant for waiver of the old loan and taking a new loan. The appellant had told him that the old loan had been waived off but he had not received any order for granting a new loan. Some persons outside the Bank had told him that perhaps giving something might help. Some persons sitting at a hotel had given him a phone number and said that the complainant should go to him at Lucknow and he would get a K.C.C. very fast. The complainant categorically stated that he did not meet the appellant after waiver of the loan for getting a no-dues certificate. He stated that he had called on the phone number that was given to him, whereupon he was called to C.B.I. office at Lucknow, he had written the complaint as per the directions of C.B.I. officials with the object of getting a KCC loan. C.B.I. Inspector Sri. Surendra Rai had asked him to arrange the money. The complainant did not did not support the prosecution case and he was declared hostile at the request of the prosecution.

53. During his cross-examination by the Public Prosecution, the complaint stated that he had not written the complaint by himself, he was made to write the complaint as per the dictation given to him. The complainant stated that statement recorded under Section 161 Cr.P.C. had not been given by him. The complainant stated that he had given the passbook with the money kept in it to the appellant in presence of a person from the C.B.I. and he had said that as his loan had been waived, an endorsement of nil dues be made on it. He had kept the pass book on the table of the appellant. He denied that the appellant had kept the pass book in the drawer of his table. He said that he had signed the recovery memo under pressure of the C.B.I. team. The appellant categorically denied that the appellant had demanded any bribe from him.

54. During the cross-examination conducted by the defence' Counsel, the complainant stated that he had hidden the money inside the passbook and at the time of keeping the passbook on the appellant's table, he had not said that any money was kept in the passbook. The appellant had not picked up the pass book in his presence. He said that the C.B.I. officials had asked him to put the money inside the passbook and the appellant had not demanded any money from him. He had told the C.B.I. officials that the appellant would not take the money from him. Upon this the C.B.I. officials had folded the notes, kept it inside the passbook and instructed him to handover the passbook to the appellant or to put it near him.

55. The complainant also stated that he did not require any no-dues certificate for taking a K.C.C. loan, as the earlier loan had been taken by his father. The C.B.I. officials falsely implicated the appellant through him under pretext of getting him a K.C.C. loan. He could not understand the

entire plan of the C.B.I. officials and had he understood it, he would not have taken any action to falsely implicate the appellant.

56. It is true that merely because the complainant has turned hostile, his entire statement cannot be discarded but a reading of the entire statement of the complainant does not make out anything which may support the prosecution case. The complainant has stated clearly that he did not need any no-objection certificate for taking a loan, the appellant had not demanded any money from him, the C.B.I. officials had folded the notes and kept the same inside the passbook and he had kept the passbook on the appellant's table. He had not handed over the money or the passbook to the appellant. The appellant has categorically stated that C.B.I. has falsely implicated the appellant.

57. The shadow witness Sri. Vikas Bharti (PW-2) stated that although he had gone inside the Bank with the complainant, the complainant alone had gone inside the appellant's cabin. He was standing outside and he could not hear the conversation between the complainant and the appellant. PW-2 did not hear whether the appellant had demanded any money. He stated that the complainant had kept the money in the passbook and handed it to the appellant. The appellant took the passbook, opened it, saw something and kept the same in the drawer of his table. He stated that the appellant had not counted the notes by taking the notes in his hand. PW-2 also stated that the chemical powder was put on the currency notes used in the trap, but no powder was put on any other thing, including the passbook.

58. PW-2 said that when the complainant had gone inside the appellant's cabin, there were 5-6 persons present there and the conversation between the complainant and the appellant took place in presence of those persons.

59. CBI has not examined any of those 5-6 persons who were present at the time of the trap.

60. DW-5 Smt. Pushpa Mishra claimed to be one of those 5-6 persons. She stated that she and three other ladies of some self help groups were present inside the appellant's cabin at the time of the trap. A person entered the cabin, kept the passbook on the table and he quietly went out in a hurry. Within 2 minutes, 4-5 persons came there and they alleged that the appellant had taken bribe. They forcibly put the passbook inside the appellant's pocket. The appellant took out the passbook from his pocket and threw it away. When the witness and some other persons present there objected against it, the trap team members started beating the appellant and asked PW-5 and the other persons present there to leave, else they would also be implicated. She stated that she had made a written complaint regarding this incident to the Regional Manager of the Bank on 23.10.2008 and she filed the same in the Court. She categorically stated that no employee of the Bank had demanded any money from her. Even during her cross-examination, DW-5 specifically stated that the appellant does not take bribe and he has been falsely implicated. She remained consistent in her statement during her cross-examination and no discrepancy came to light. However, the trial Court discarded the testimony of DW-5 she admitted that she had not made any complaint to any administrative or Police officer, which makes her presence at the spot doubtful.

61. It is basic principle of criminal jurisprudence that the prosecution has to establish the guilt of an accused person. The testimony of PW-1 is entirely against the prosecution. PW-2 – the shadow witness, also said that he did not hear the conversation between the complainant and the appellant. There was no other person who had witnessed the alleged demand and acceptance of bribe. DW-5 has categorically stated that the appellant had neither demanded nor accepted the bribe and that he has been falsely implicated.

62. The Investigating Officer had recorded the statement of one Jagdish Singh, who stated that the complainant did not do any work without taking bribe and the people of the area were very happy on the day the appellant was caught. However, the prosecution did not produce Jagdish Singh as its witness.

63. Section 114 of the Evidence Act provided that "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 the facts of the particular case. Illustrations (g) appended to Section 114 provides that the Court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. Therefore, non-examination of Jagdish Singh as a prosecution witness would raise an adverse presumption against the case set up by the prosecution.

64. Although Jagdish Singh was not produced by the prosecution, he was examined as DW-4. He stated that earlier he had come to record his statement in the Court on 21.11.2011 in pursuance of summons issued on 09.11.2011. He was shown his statement recorded by the Investigating Officer under Section 161 Cr.P.C. and he had told the Public Prosecutor that he had not given any such statement to the investigating Officer and the statement is wrong. Upon this, the Public Prosecutor sent him back without examining him as a witness. Nothing significant came out in his cross-examination conducted by the Public Prosecutor.

65. The aforesaid statement of Jagdish Singh proves that the Investigating Officer has wrongly recorded statements against the appellant, which corroborates supports the statement of PW-4 that the CBI has falsely implicated the appellant.

66. Although the trial Court has gone into the question of non-dispatch of no-dues certificate, but when the prosecution has failed to prove the demand and acceptance of bribe, which is a sine-qua-non for proving the charge of commission of offence under Section 7 of the Prevention of Corruption Act, there is no need to go into that question.

67. In view of the foregoing discussion, I am of the considered view that the prosecution has failed to prove the guilt of the appellant. The impugned order passed by the trial Court convicting and sentencing the appellant for the offence under Section 7 of the Prevention Of Corruption Act is unsustainable and the same is liable to be set aside.

68. Accordingly, the appeal is ***allowed***. The judgment and order dated 07.03.2013 passed by the learned Special Judge, C.B.I., Court No. 1, Lucknow in Criminal Case No. 2 of 2008 arising out of

RC No. 0062008A0016/2008 under Sections 7 and Section 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988, Police Station C.B.I./A.C.B., Lucknow, whereby the trial Court has convicted the appellant for the offence under Section 7 of the Prevention of Corruption Act, 1988 and has sentenced him to undergo rigorous imprisonment for a period of three years and to pay Rs.15,000/- as fine, is set aside. The amount of fine paid by the appellant shall be refunded to him within a period of 30 days from the date of this judgment.

69. The parties shall bear their own costs of litigation.

(2025) 7 ILRA 971
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 25.07.2025

BEFORE

THE HON'BLE RAJNISH KUMAR, J.

Criminal Appeal No. 479 of 1994

Jai Shankar Shukla ...Appellant
Versus
State of U.P. ...Respondent

Counsel for the Appellant:
Nalini Jain, Ashish Mishra Atal, Brijesh Kumar, Manjusha Kapil, Ramakar Shukla, Surendra Pratap Srivastava

Counsel for the Respondent:
Govt. Advocate

Issue for Consideration

Whether the conviction of the appellant for offences under Sections 304-B and 498-A of the *Indian Penal Code, 1860* was sustainable where (i) key witnesses turned hostile during cross-examination recorded after a lapse of two years, (ii) the Investigating Officer and Doctor were not examined, and (iii) the prosecution relied primarily on circumstantial and corroborative evidence to prove dowry demand and cruelty preceding the death of the deceased.

Headnotes

Indian Penal Code, 1860 — ss. 304-B, 498-A — Dowry death — Presumption under s.113-B Evidence Act — Hostile witnesses — Delay in cross-examination — Non-examination of Investigating Officer — Chance witness — Evidentiary value — Fair trial — Conviction sustained.

Held:

For constituting an offence under Section 304-B IPC-four ingredients must coexist- (i) death of a woman otherwise than under normal circumstances; (ii) within seven years of her marriage; (iii) cruelty or harassment by husband or relatives soon before her death; and (iv) such cruelty or harassment being in connection with demand of dowry-Once these ingredients are established-presumption under Section 113-B of the *Evidence Act, 1872* is attracted. [Paras 14–16]

Long adjournments between examination-in-chief and cross-examination- compromise the integrity of testimony-allow witnesses to be won over-such later contradictions do not erase reliable parts of their earlier statements. [Paras 34–35]

Evidence of hostile witnesses-can be relied upon-to the extent it supports the prosecution case-the court must sift truth from embellishment and rely on dependable portions. [Paras 20, 34–36].

Presumption of dowry death-once established-was not rebutted by the appellant through any cogent evidence-trial court had correctly appreciated the evidence and applied the law-Conviction and sentence upheld-Appeal dismissed. [Paras 45–46] (E-14)

Case Law Cited

Bhupal Singh & Another Vs. State of Uttrakhand; **2025 All SCR (CRL) 341;** Judgment and Order dated 07.10.2021 passed in **Criminal Appeal No.7380 of 2019; *Mohit***

Kumar Vs. State of U.P. by a co-ordinate bench of this court**;** judgment and order dated 29.08.2024 passed in ***Chabi Karmakar and Others Vs. The State of West Bengal,*** **Criminal Appeal No.1556 of 2013 by the Hon'ble Supreme Court;** judgment and order dated 31.01.2025 passed in **Karan Singh Vs. State of Haryana** in Criminal Appeal No.1076 of 2014 by the Hon'ble Supreme Court**;** ***The State of Uttrakhand Vs. Sanjay Ram Tamta @ Sanju @ Prem Prakash,*** **2025 (2) RCR (Criminal) 61: (Law Finder Doc ID # 2693666);** ***Jarnail Singh And Others Vs. State of Panjab,*** **2010 AIR SC 3699;** ***judgment and Order dated 20.01.2025 passed in*** **Binesh Kumar Vs. State of U.P.; Criminal Appeal No.1627 of 2019 by a Division Bench of this Court;** judgment and order dated 22.12.2023 passed in **Smt. Gangotri and Another Vs. State of U.P.,** Criminal Appeal No.2109 of 2016 by Division Bench of this Court; ***Ashok Vs. State of Uttar Pradesh*****; 2024 12 SCR 335;** ***Sovaran Singh Prajapati Vs. The State of U.P.,*** **2025 (2) RCR (Criminal) 98;** ***Madan Singh and Another Vs. The State Jharkand*****; Criminal Appeal No.768 of 2003 passed by a Division Bench of High Court of Jharkhand at Ranchi;** judgment and order dated 15.03.2024 passed in ***Ram Ujer & Others Vs. State of U.P.*****; Criminal Appeal No.103 of 1997 by a co-ordinate bench of this Court;** judgment and order dated 20.09.2024 passed in ***Shoor Singh and Another Vs. State of Uttrakhand*****; Criminal Appeal No.249 of 2013 by Hon'ble Supreme Court;** Judgment and Order dated 09.01.2025 passed in ***Sadashiv Dhondiram Patil Vs. The State of Maharashtra in Criminal Appeal No.1718 of 2017*** **by the Hon'ble Supreme Court;** ***Guna Mahto Vs. State of Jharkhand,*** **2023 (123) ACC 934;** ***Selvamani Vs. The State represented by the Inspector of Police*****, MANU/SC/0403/2024;** ***The State of U.P. Vs. Ramesh Prasad Mishra and Another,*** **1996 (10) SCC 360;** ***State of U.P. Vs. Vijay Kumar Kori and Others,*** **MANU/UP/1218/2016;** ***Rohtash Kumar Vs. State of Haryana,*****MANU/SC/0573/2013*****;** ***Ram Badan Sharma Vs. State of Bihar,*** **MANU/SC/8427/2006;** ***Mano Dutt And Another Vs. State of Uttar Pradesh,*** **(2012) 4 SCC 79;** ***Bassu Vs. State of M.P.,*****MANU/MP/0670/2023 (MANU/SC/0403/2024).**

List of Acts / Statutes

Indian Penal Code, 1860; Indian Evidence Act, 1872; Code of Criminal Procedure, 1973; Dowry Prohibition Act, 1961.

List of Keywords

Dowry death; Presumption under Section 113-B Evidence Act; Hostile witnesses; Delay in cross-examination; Fair trial; Chance witness; Non-examination of Investigating Officer; Dowry demand; Circumstantial evidence; Presumption of guilt; Judicial scrutiny; Conviction.

Case Arising From

Judgment and order dated 17 October 1994 passed by the Special Judge, Unnao, in Sessions Trial No. 19 of 1992 (*State v. Jai Shankar Shukla and Another*)

Appearance for Parties

For the Appellant : Shri Ramakar Shukla, Shri Nalini Jain, Shri Ashish Mishra Atal, Shri Brijesh Kumar, Smt. Manjusha Kapil, Shri Surendra Pratap Srivastav.

For the State : Shri Rajesh Kumar Shukla, Additional Government Advocate

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

1. Heard Shri Ramakar Shukla, learned counsel for the appellant and Shri Rajesh Kumar Shukla, learned A.G.A. for the State.

2. The instant criminal appeal has been filed by Jai Shakar Shukla against the judgment and order dated 17.10.1994, passed in Sessions Trial No.19 of 1992 (State Vs. Jai Shanker Shukla and Another) by the Special Judge, Unnao convicting the appellant under Section 498-A I.P.C and sentencing him to rigorous imprisonment for one year and to pay a fine of Rs.1000 and in case of failure of payment of fine, further rigorous imprisonment for one year and further convicting the appellant under Section 304-B I.P.C. and sentencing him to undergo rigorous imprisonment for ten

years. It has further been provided that all the sentences would run concurrently.

3. Learned counsel for the appellant submitted that the appellant has been wrongly and illegally convicted and sentenced. He submitted that the offences under Section 498-A and 304-B of the Indian Penal Code (hereinafter referred as IPC) could not be proved against the appellant and there was no charge under Section 3/4 of the Dowry Prohibition Act because no witness supported the prosecution case. He further submitted that five witnesses were produced in support of the charge, out of which PW-4 and PW-5 are chance witnesses and the conviction has been made solely on the evidence of PW-4, whose testimony is also hearsay evidence. He also submitted that PW-4 and PW-5 did not tell the date and time of the incident. PW-4 was not shown in the site plan and he did not identify the victim, therefore, his presence itself is doubtful. It has further been submitted that the deceased suffered 100% burn injuries as per the postmortem report, therefore, she could not have been in a position to speak anything. However, PW-4 on the basis of a statement allegedly made by the deceased to some person, stated that she was burnt by her husband and in-laws due to the non-fulfillment of demand of dowry, conversely, her father and mother have not supported the factom of demand of dowry. Thus, it has been submitted that the prosecution failed to prove the offences levelled against the appellant.

4. It has also been submitted that the Doctor, Head Muharrir and Investigating Officer were not produced to prove the post-mortem, FIR and charge sheet respectively. Thus, the statement under Section 161 CrPC recorded by Investigating Officer could not have been relied upon. It was also submitted that although two site plans were produced but they have not been proved and since PW-4 was not shown in the site plan, his presence itself at the spot is doubtful, and his presence on the spot could have been proved only by the Investigating Officer, who was not examined.

5. On the basis of the aforesaid submissions, learned counsel for the appellant submitted that the impugned judgment and order passed by the trial court is not sustainable in the eyes of law and liable to be set-aside by this Court. He relied on **Bhupal Singh & Another Vs. State of Uttrakhand; 2025 All SCR (CRL) 341, Judgment and Order dated 07.10.2021 passed in Criminal Appeal No.7380 of 2019; Mohit Kumar Vs. State of U.P. by a co-ordinate bench of this court, judgment and order dated 29.08.2024 passed in Chabi Karmakar and Others Vs. The State of West Bengal; Criminal Appeal No.1556 of 2013 by the Hon'ble Supreme Court, judgment and order dated 31.01.2025 passed in Karan Singh Vs. State of Haryana in Criminal Appeal No.1076 of 2014 by the Hon'ble Supreme Court, The State of Uttrakhand Vs. Sanjay Ram Tamta @ Sanju @ Prem Prakash; 2025 (2) RCR (Criminal) 61: (Law Finder Doc ID # 2693666), Jarnail Singh And Others Vs. State of Panjab; 2010 AIR SC 3699 (Law Finder Doc ID # 202527), judgment and Order dated 20.01.2025 passed in Binesh Kumar Vs. State of U.P.; Criminal Appeal No.1627 of 2019 by a Division Bench of this Court, judgment and order dated 22.12.2023 passed in Smt. Gangotri and Another Vs. State of U.P.; Criminal Appeal No.2109 of 2016 by Division Bench of this Court, Ashok**

Vs. State of Uttar Pradesh; 2024 12 SCR 335, Sovaran Singh Prajapati Vs. The State of U.P.; 2025 (2) RCR (Criminal) 98 (Law Finder Doc ID # 2695295,), Madan Singh and Another Vs. The State Jharkand; Criminal Appeal No.768 of 2003 passed by a Division Bench of High Court of Jharkhand at Ranchi, judgment and order dated 15.03.2024 passed in Ram Ujer & Others Vs. State of U.P.; Criminal Appeal No.103 of 1997 by a co-ordinate bench of this Court, judgment and order dated 20.09.2024 passed in Shoor Singh and Another Vs. State of Uttrakhand; Criminal Appeal No.249 of 2013 by Hon'ble Supreme Court, Judgment and Order dated 09.01.2025 passed in Sadashiv Dhondiram Patil Vs. The State of Maharashtra in Criminal Appeal No.1718 of 2017 by the Hon'ble Supreme Court & Guna Mahto Vs. State of Jharkhand; 2023 (123) ACC 934.

6. Per contra, learned Additional Government Advocate submitted that the appellant has been rightly and in accordance with law convicted and sentenced by the learned trial court because the case is proved by the prosecution. He further submitted that the evidence of chance witnesses cannot be discarded, as they are independent witnesses. The accused stated in his statement under Section 313 CrPC that the burning was due to sprinkling of seasoning (Chauk lagane se), but there is no evidence to support this claim. The case is proved by Fard recovery itself. He also submitted that since 100% burn injuries were found and if it would have been due to the burning of thatch, the deceased must have tried to save herself on start of fire,, but there is no such evidence. The smell of kerosene oil was found from the body of the deceased and the accused stated in his statement under Section 313 CrPC that he does not know about it. It was also submitted that the information of the incident was not given by any family member of the accused to the parents of the deceased but by a third person. It was further submitted that the non-examination of the Investigating Officer etc., cannot be a ground for exoneration of the accused when the charge has been proved against the appellant.

7. On the basis of above, learned Additional Government Advocate submitted that the learned trial court has rightly and in accordance with law convicted and sentenced the appellant. The impugned order does not suffer from any illegality or error, which may call for any interference by this Court. The appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed. He relied on **Selvamani Vs. The State represented by the Inspector of Police; MANU/SC/0403/2024, The State of U.P. Vs. Ramesh Prasad Mishra and Another; 1996 (10) SCC 360, State of U.P. Vs. Vijay Kumar Kori and Others; MANU/UP/1218/2016, Rohtash Kumar Vs. State of Haryana;MANU/SC/0573/2013, Ram Badan Sharma Vs. State of Bihar; MANU/SC/8427/2006, Mano Dutt And Another Vs. State of Uttar Pradesh; (2012) 4 SCC 79 & Bassu Vs. State of M.P.;MANU/MP/0670/2023 (MANU/SC/0403/2024).**

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

9. As per prosecution the daughter of Raj Kishore @ Rajju was married to the appellant, Jai Shankar Shukla son of Ram

Autar Shukla, about a year prior to the date of incident i.e.11.06.1991. In the marriage, the dowry was given as per his capacity. The appellant i.e. the husband of the deceased and her mother-in-law had been demanding Rs.5000/- since two months prior to the date of the incident. This came to the knowledge when the daughter of the complainant visited his house. When second time the daughter went to his in-laws house, then after some days the complainant himself went to the house of his daughter to bring her and he told to the appellant and the mother-in-law of the daughter that he is not in a position to give Rs.5000/-, upon which he was threatened that if he would not give the money, he himself would be responsible for any consequences and he was not allowed even to meet her. On 11.06.1991, a Pasi from the village Taura informed him that his daughter, who was married in Bhadin, has been burnt. She has been taken to Purva Hospital and if he wants to see her, he should reach there. Upon coming to know about it, he went to the Purva Hospital but he could not find anybody there, therefore, he went to the Police Station, where he was informed that his daughter's dead body is kept at Fatehganj and he may go there. He went to Fatehganj, where he found the dead body of his daughter, which was badly burnt. He is confident that his daughter has been burnt by the in-laws and husband due to the non-fulfillment of demand of money. The FIR of the incident was lodged at Police Station- Purva, District- Unnao, on 11.06.1991, at 21:30. The FIR was lodged based on the written information given by the complainant.

10. A written information of the incident was also given by Ram Autar on June 11, 1991, at 16:40. In this information, it was stated that his daughter-in-law, Smt. Suman, wife of Jai Shankar, has died due to burning from a fire in thatch. It was stated in the said information that Smt. Suman was preparing food at about 10:00 AM on 11.06.1991 and as soon as she sprinkled seasoning for vegetables (Chaunk Lagana) in the wok (karahi), the thatch was burnt and since Smt. Suman was wearing Nylon Saree, she was badly burnt. She was taken to the hospital by bullock cart (Bailgadi), but she died only when he could reach Fatehganj.

11. The matter was investigated by Investigating Officer, who prepared the site plan of the place of incident and where she had died, the recovery memo of the cloths of the deceased and the recovery memo from the place of incident. The deceased's body was sent for post-mortem examination after preparation of inquest, in which the father-in-law is also a member. The post-mortem was conducted on 12.06.1991, at 3:15 PM. As per report, the death was caused by asphyxia and shock resulting from ante-mortem injuries. These ante-mortem injuries consisted of I to IV degree burns covering approximately 10% of the body. However, all the parties are at consensus that such burns are considered equivalent to 100% severe burns. After investigation, the charge sheet was filed, on which the cognizance was taken by the judicial magistrate and since the case was triable by the sessions court, it was committed to session on 04.09.1992.

12. The sessions court framed charges against the accused-appellant under Section 498-A read with Section 34 IPC and 304-B read with Section 34 IPC. The accused pleaded non guilty and prayed for a trial. In oral evidence, five witnesses were examined; Raj Kishore as PW-1, Smt. Shiv Devi as PW-2, Arjun Singh as PW-3,

Susheel Kumar as PW-4 and Babu Lal as PW-5. The genuineness of the documents placed on record by the prosecution has been admitted by the appellant and it is recorded in the judgment of trial court also and it has not been disputed.

13. Before proceeding further, this Court deems it appropriate to reproduce the relevant provisions under which the appellant has been convicted and sentenced, as well as the relevant provisions of the Evidence Act applicable to the facts and circumstances of the case because the main thrust of the arguments of learned counsel for the appellant is that the ingredients of the offences under Section 498-A and 304-B IPC have not been proved against the appellant, therefore, no presumption could have been drawn against him. Section 498-A, 304-B IPC & 113-B of Evidence Act are extracted here-in-below:-

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" mean—

(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.]*

304B. Dowry death.—(1) *Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.*

Explanation.—For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) *Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.*

113B. Presumption as to dowry death. *—-When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.*

Explanation. — For the purposes of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860).

14. On a conjoint reading of the aforesaid provisions, it is apparent that for

presumption that the death is dowry death punishable under Section 304-B IPC, the death of a married woman should be due to any burn or bodily injury or occurred otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand of dowry. If all the said ingredients are proved, the presumption of dowry death under Section 113-B of the Evidence Act can be drawn. This presumption can be drawn when all the initial ingredients of dowry death are proved beyond reasonable doubt. The explanation to Section 304-B of the Indian Penal Code, 1860, clarifies that the term "dowry" shall have the same meaning as provided in Section 2 of the Dowry Prohibition Act, 1961. The "dowry" has been defined under Section 2 of the Dowry Prohibition Act, 1961, which, on reproduction, reads as under:-

"2. Defmition of "dowry"- *ln this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly*

(a) by one party to a marriage to the other party to the marriage; or {b) by the parents of either party to a marriage or by other person, to either party to the marriage or to any other person, at or before (or any time after the marriage] [in connection with the marriage of the said parties but does not include] dower or mahr in the case of persons to whom the Muslim Personal Laws (Shariat) applies.

Explanation II- The expression "valuable security" has the same meaning as in section 30 of the Indian Penal Code (45of1860)."

15. The Hon'ble Supreme Court, in the case of **Shoor Singh & Another Vs. State Uttra Khand (Supra),** has considered it. The relevant paragraphs 12 and 13 are extracted here-in-below:-

"12. *To constitute a 'dowry death', punishable under Section 304- B7 IPC, following ingredients must be satisfied:*

i. death of a woman must have been caused by any burns or bodily injury or it must have occurred otherwise than under normal circumstances; ii. such death must have occurred within seven years of her marriage;

iii. soon before such death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and iv. such cruelty or harassment must be in connection with any demand for dowry.

Section 304-B. Dowry Death. – (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death.

Explanation. -- For the purpose of this sub-section, 'dowry' shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 [28 of 1961]. (2) Whoever commits dowry death shall be punished with imprisonment for a term

which shall not be less than seven years but which may extend to imprisonment for life The phrase 'otherwise than under normal circumstances' is wide enough to encompass a suicidal death.

13. *When all the above ingredients of 'dowry death' are proved, the presumption under Section 113-B8 of the Evidence Act is to be raised against the accused that he has committed the offence of 'dowry death'. What is important is that the presumption under Section 113-B is not in respect of commission of an act of cruelty, or harassment, in connection with any demand for dowry, which is one of the essential ingredients of the offence of 'dowry death'. The presumption, however, is in respect of commission of the offence of 'dowry death' by the accused when all the essential ingredients of 'dowry death' are proved beyond reasonable doubt by ordinary rule of evidence, which means that to prove the essential ingredients of an offence of 'dowry death' the burden is on the prosecution."*

16. A similar view has been taken by the Hon'ble Supreme Court, in the cases of **Bhupal Singh & Another Vs. State of Uttrakhand (Supra), Chabi Karmakar and Others Vs. The State of West Bengal (Supra), Karan Singh Vs. State of Haryana (Supra) & Ram Badan Sharma Vs. State of Bihar (Supra).**

17. Adverting to the facts of the present case, the deceased was a married woman. She died due to burn injuries within seven years of her marriage. Thus, it is to be seen in this case, as to whether it has been proved that deceased was subjected to cruelty or harassment by her husband or any relative of her husband soon before her death for demand of any dowry or not.

18. The incident had occurred at about 10:00 AM in the morning on 11.06.1991, the information of which was given to the father of the deceased on the same date at about 3:00 PM by a third person of the village, where the daughter of the complainant was married and she with her in-laws resided. On coming to know about the incident, the complainant went to the hospital and thereafter to the police station and on the information given by police station, he reached the place where the dead body of his daughter was kept and found it badly burnt. Thereafter, he got a written information prepared and submitted it at the Police Station on the same date, on which the first information report was lodged at 21:30.

19. It is not in dispute between the parties that the deceased was married to the appellant about one year prior to the date of incident i.e. 11.06.1991. It is also not in dispute that the deceased died on 11.06.1991 due to burn injuries sustained by her. The dispute is in regard to demand of dowry by the appellant and the mother-in-law of the deceased and cruelty or harassment with the deceased by them due to such demand, before her death due to burn injuries and the manner in which she sustained burn injuries, which ultimately caused her death from the burn injuries and since the death occurred within seven years of marriage, whether the presumption of dowry death under Section 113-B of the Indian Evidence Act, 1872, could have been drawn.

20. The allegation in the FIR indicates that there was a demand of dowry of Rs.5000/- since two months after the marriage of the deceased by the appellant and his mother i.e. the mother-in-law of the deceased, on account of which the

complainant was also threatened and he was not allowed to meet to his daughter, when he went to her in-laws' house to bring her. According to the FIR, the information about the burning of the deceased was given by a third person and not by the appellant or any of his family members. The complainant appeared as PW-1, whose chief-examination was recorded on 12.11.1992, in which he completely supported the version of the FIR. He also disclosed the demand of dowry made by the appellant and his mother, as told to him by the deceased and also made to him. He also stated that he was even not allowed to meet his daughter and he had assured the appellant and his mother that as soon as he would be able to arrange the money, he would give it and his daughter should not be harassed but the mother of the appellant stated that no purpose would be served by saying so and he would have to give the money. He also stated that Mastana Mishra, a resident of his village, is married in the village where the complainant's daughter was married. Five to six days after he had gone to meet her, Mastana Mishra's wife had come and informed him that his daughter's in-laws were harassing her, and he should bring her after giving the money. On 11.06.1991, Jai Kisan Pasi of his village informed him that his daughter has been burnt, therefore, he went to the Purva Hospital, but nobody was found there. Then he went to the Police Station, where he was informed that his daughter has died and her dead body is kept at Fatehganj. He went to Fatehganj, where her father-in-law was present. Therefore, he got the FIR written by some person at bus stop in Purva and after reading and signing it, lodged the FIR. He proved the FIR lodged by him. He also stated that the appellant Jai Shankar and his family members had not given any information.

21. The cross-examination of PW-1 was done on 08.08.1994 i.e. after about two years of chief examination. In the cross-examination, he reversed his earlier testimony, giving evidence against what he stated in the chief-examination. In the cross-examination, he stated that the FIR was lodged after being got written by a person by the Inspector at the Police Station, which was not told to him and his signature was taken. In the cross-examination, he admitted that the appellant is a rich person and he is a poor person and he had given dowry as per his capacity and there was no demand of dowry. The appellant, etc., had not beaten his daughter. The information about the dowry was given by his sister-in-law. Jai Kisan Pasi had informed that his daughter has been burnt during preparation of food and the appellant Jai Shankar had informed Jai Kisan Pasi after coming to his village. It was also informed by him that they were taking her daughter to the hospital and he may reach there. He also informed that no other witness would give any evidence and his son Om Prakash has died.

22. PW-1 was declared hostile and was cross-examined by ADGC, when he stated that there was no pressure of giving dowry on him. His daughter had never told him about the demand of Rs.5000/-. He had not sent his daughter due to Navratra and the reason for not sending was not harassment. He stated that he had given the statement on the last date due to fear of police. He had sent his daughter happily to her in-laws' house. He further stated that Mastana Mishra is resident of Taura and he had an old enmity with Jai Shankar, on account of which he had informed that his daughter is being harassed in her in-laws' house and on his instigation, he had written that his daughter had been burnt. He further

stated that when he reached the Police Station, Mastana Mishra was present there and on his saying, the Inspector got written the report written by another person, whereas in his chief and cross-examination before being declared hostile, he had not told this.

23. The learned trial court, after considering the examination-in-chief of PW-1 and his cross-examination recorded after two years, came to the conclusion that he had given the statement in his cross-examination under some pressure. The learned trial court also recorded that it is also clear from the evidence of PW-1 that the information of death of his daughter was not given by the accused but by one Jai Kisan Pasi and if the deceased would have died during preparation of food, then they would have given the information of burning to the complainant. As stated in the cross-examination by PW-1 that the appellant had come to his village to give information and after giving information to Jai Kisan Pasi went back and if he had come to give information to village, he could have given information to the complainant also, therefore, this conduct of the appellant itself creates doubt. It is not in dispute that PW-1 was not present at the spot, therefore, he could not have proved as to how the deceased died on account of burning and it is to be seen on the basis of circumstances because PW-1 has also given a completely converse evidence in cross-examination, which was done after about two years of the examination-in-chief. However, even in cross-examination, he admitted that Mastana Mishra had informed about harassment and cruelty with his daughter by appellant and his mother and he also told about difference of financial states between him and family of appellant. Thus, this Court is of the view that the finding recorded by the learned trial court that in cross-examination, he was under some pressure from the accused can not be said to be wrong and perverse.

24. Same evidence, as in cross-examination of PW-1, has been given by PW-2 Smt. Shiv Devi, who is mother-in-law of the appellant and the mother of the deceased. Her statement was recorded after recording of cross-examination of PW-1 Raj Kishore on 08.08.1994. She was also declared hostile. Both PW-1 and PW-2 have stated that they do not know as to how their statements under Section 161 CrPC were recorded. The learned learned trial court recorded a finding that similar to PW-1, PW-2 has also given evidence under some pressure from the accused.

25. PW-3 was also declared hostile and his evidence does not support the prosecution case. PW-4 Sushil Kumar has stated that about three years ago, when he was going to sell ice in Purva, he found a burnt lady near Mangat Kheda, who was saying that she has been burnt by her mother-in-law and husband, who were demanding Rs.5000/-, on account of which she has been burnt. She was being taken to Purva Hospital by bullock cart. The presence of PW-4 on the spot has been doubted by learned counsel for the appellant on the ground that he has not been shown in the site plan and he could not tell as to who was the deceased and since the deceased was 100% burnt, she could not have been in a position to speak, therefore, his statement cannot be relied upon. However, the learned trial court was of the view that on account of excessive burning, the deceased might have been in great distress, therefore, she could have said such things. Thus, his evidence can be relied upon and the deceased was burnt on account of non-receipt of dowry.

26. The evidence of PW-5 Babu Lal was found strange by the trial court on the ground that on the date of his examination-in-chief i.e. 30.08.1994, his cross-examination was not done by the witnesses and time was sought for cross-examination and on the next date i.e. 07.09.1994, he stated in his cross-examination that on the last date, he had given the statement tutored by the police. Bhagat Kheda is not on his way from the village Purva and he himself had not heard as to what the deceased was saying.

27. The appellant, in his statement under section 313CrPC, stated that he has been implicated on account of factionalism (Party Bandi). His mother stated that she has been implicated due to enmity. In regard to the smell of kerosene oil on the deceased's body found in the post-mortem conducted by Dr. H.K. Tandon, the appellant stated that he does not know, whereas the post-mortem report has been admitted by the appellant. Thus, there is contradiction in regard to the reasons for implication of the accuseds in the case and no proof for the reasons given for implication in the case has been given. So far as statement by PW-1 in his cross-examination, after being declared hostile, that Mastana Mishra, had an old enmity with Jai Shankar, therefore, on his telling he had levelled allegations against the appellant and his mother is concerned, no proof for the same has also been given, whereas it has been admitted that he had told about cruelty and harassment of his daughter in Chief as well as Cross-examination. PW-1 in his cross-examination stated that Jai Shankar, etc., are rich persons and he is a poor man and thereafter gave a contradictory evidence than in examination-in-chief, which was recorded about one year and nine months ago, therefore, contradictory statement due to pressure or for some other reason can not be denied.

28. The Hon'ble Supreme Court, in the case of **Jarnail Singh And Others Vs. State of Panjab (Supra)**, has held that evidence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence. Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded. Conduct of the chance witness, subsequent to the incident may also be taken into consideration particularly as to whether he has informed anyone else in the village about the incident.

29. A Division Bench of this Court, in the case of **Binesh Kumar Vs. State of U.P. (Supra),** has also dealt with the testimony of a chance witness and held that the Court must tread carefully before relying on that solitary piece of evidence to convict the appellants and absence of . any corroboration to the testimony of a chance witness by any other fact proven by the prosecution, if it may not have been relied.

30. A Division Bench of this Court, in the case of **State of U.P. Vs. Vijay Kumar Kori and Others (Supra)**, after considering the issue of testimony of a chance witness after considering certain reports of Hon'ble Supreme Court, has held that it is now well-settled position of law that the evidence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately narrate his presence at the place of occurrence. The Hon'ble Supreme Court, in the case of **Rana Partap and Others V. State of Haryana; MANU/SC/0137/1983**

/ **1983 (3) SCC 327,** has held that to discard the evidence of street hawkers and street vendors on the ground that they are 'chance witnesses' even where murder is committed in a street is to abandon good sense and take too shallow a view of the evidence. The relevant paragraphs 26, 27 and 29 are extracted here-in-below:-

"26. *Learned counsel for both the parties have cited various authorities as regards the chance witness from which reference may be made to the pronouncement of Hon'ble Apex Court in the case of Rana Partap and Others V. State of Haryana reported in 1983 (3) SCC 327 which reads as under:-*

"---------- We do not understand the expression 'chance witnesses'. Murders are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a brothel, prostitutes and paramours are natural witnesses. If murder is committed in a street, only passersby will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that that they are mere chance witnesses'. The expression 'chance witnesses' is borrowed from countries where every man's home is considered his castle and every one must have an explanation for his presence elsewhere or in another man's castle. It is a most unsuitable expression in a country whose people are less formal and more casual. To discard the evidence of street hawkers and street vendors on the ground that they are 'chance witnesses' even where murder is committed in a street is to abandon good sense and take too shallow a view of the evidence." (Emphasis given by us)

27. *The above view taken by Hon'ble Apex Court was also followed in Vikram Singh and others V. State of Punjab (2010) 3 SCC 56 and till today it still holds good and settled law on the point that even if a witness is a chance witness or a related witness, even then his evidence cannot be discarded solely on the ground that he was a chance or a related witness.*

29. *It is now well settled position of law that evidence of chance witness requires a very cautious and close scrutiny and a chance witness must adequately narrate his present at the place of occurrence. The observation made by Hon'ble Apex Court in Jarnail Singh vs State of Punjab, (2009) 9 SCC 719 may be extracted below;*

"15. The evdence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence (Satbir v Surat Singh (1997) 4 SCC 192; Harjinder Singh v State of Gujarat (2004) 11 SCC 253 ; Acharaparambath & Anr. v State of Kerala (2006) 13 SCC 643; and Sarvesh Narain Shukla v Daroga Singh and Ors. (2007) 13 SCC 360. Deposition of a chance witness whose presence at the place of incident remains doubtful should be discrded (vide Shankarlal v State of Rajasthan (2004) 10 SCC 632. Conduct of the chance witness, subsequent to the incident may also taken into consideration particularly as to whether he has informed anyone else in the village about the incident. (vide Thangaiya v State of Tamil Nadu (2005) 9 SCC 650."

31. A similar view was taken by a three-judge bench of Hon'ble Supreme Court, in the case of **Sovaran Singh Prajapati Vs. The State of U.P. (Supra)**.

Further while dealing with the rights under Section 311 and 313 CrPC, it considered the examination of the accused under Section 313 and summarized the principles regarding Section 313 CrPC. In **Raj Kumar Vs. State (NCT of Delhi) 45; 2023 SCC OnLine SC 609,** it was held that all the incriminating circumstances were not put to the accused. General, sweeping questions were employed, which were only denied by him and if the statements are not properly recorded, there is an adequate possibility that the appellant has been prejudiced. similar view was taken by the Hon'ble Supreme Court in the case of **Ashok Vs. State of Uttar Pradesh (Supra)** and a Division Bench of this Court in the case of **Smt. Gangotri and Another Vs. State of U.P. (Supra).**

32. The Hon'ble supreme Court, in the case of **The State of Uttrakhand Vs. Sanjay Ram Tamta @ Sanju @ Prem Prakash (Supra)**, relying on a three-judges bench judgment in the case of **Darshan Singh Vs. State of Punjab; (2024) 3 SCC 164,** held that if the prosecution witnesses have failed to mention in their statements under Section 161 CrPC about the involvement of an accused, their subsequent statement before court during trial regarding involvement of that particular accused cannot be relied upon. The prosecution cannot seek to prove a fact during trial through a witness, which such witness had not stated to police during investigation and the evidence of that witness regarding the said improved fact is of no significance.

33. The Hon'ble Supreme Court, in the case of **Sadashiv Dhondiram Patil Vs. The State of Maharashtra (Supra)**, has held that the prosecution has to prove its case beyond a reasonable doubt and that too on its own strength. The initial burden of proof is always on the prosecution. However, in cases where husband is alleged to have killed his wife in the night hours and that too within the residential house, then undoubtedly the husband has to offer some explanation as to what had actually happened and if he fails to offer any plausible explanation, this can go against him. The relevant paragraph 55 is extracted here-in-below:-

"55. *The law in the aforesaid regard is well-settled. Prosecution has to prove its case beyond reasonable doubt & that too on its own legs. The initial burden of proof is always on the prosecution. However, in cases where husband is alleged to have killed his wife in the night hours & that too within the residential house, then undoubtedly the husband has to offer some explanation as to what had actually happened and if he fails to offer any plausible explanation, this can go against him. However, Section 106 of the Evidence Act is subject to one well-settled principle of law. The prosecution has to first lay the foundational facts before it seeks to invoke Section 106 of the Evidence Act. If the prosecution has not been able to lay the foundational facts for the purpose of invoking Section 106 of the Evidence Act, it cannot starightaway invoke the said Section and throw the entire burden on the accused to establish his innocence."*

34. It is settled law that a fair trial must be held and the trial should be fair not only to the prosecution and defense but to the victim also because the victim is the main sufferer of any crime committed against him/her. The court should not allow unnecessary adjournments at any level, particularly after the recording of examination-in-chief of any witness for

cross-examination and if the cross-examination is recorded after a lapse of a certain period, in which the witness changes his stand and deposes contrary to the examination-in-chief, on account of which he/she is declared hostile, her total testimony can not be discarded. In such circumstances, where the witness has changed his stand during cross-examination, there are chances of them being influenced; giving evidence under pressure; or for any other reason, therefore, such evidence is to be examined carefully and the evidence, which is consistent with the case of the prosecution or the defence can be relied upon because the victim, if he/she is not before the court or alive, should not be allowed to suffer discrimination or any injustice to her due to the conduct of the witnesses.

35. The Hon'ble Supreme Court, in the case of **Selvamani Vs. The State represented by the Inspector of Police (Supra),** has held that the duty of the court is to ensure that not only the interest of the accused as per law is protected but also the societal and collective interest is safeguarded. It has also been held that if an accused, for his benefit, takes the trial on the path of total mockery, it cannot be countenanced. The court has a sacred duty to ensure that the trial is conducted as per law. It is not at all appreciable to call a witness for cross-examination after such a long span of time. It is imperative that if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues until late hours, the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial. The court also found that in the said case, on account of long gap between the examination-in-chief and cross examination, the witnesses were win over by the accused and they resiled from the version as deposed in the examination-in-chief, which fully incriminates the accused. The relevant paragraphs 8, 9, 10, 11 and 13 are extracted here-in-below:-

"8. *No doubt that the prosecutrix and her mother and aunt in their cross-examination, which was recorded three and a half months after the recording of the examination-in-chief, have turned around and not supported the prosecution case.*

9. *A 3-Judge Bench of this Court in the case of Khujji @ Surendra Tiwari v. State of Madhya Pradesh MANU/SC/0418/1991 : 1991:INSC:153 : (1991) 3 SCC 627: 1991 INSC 153, relying on the judgments of this Court in the cases of Bhagwan Singh v. State of Haryana MANU/SC/0093/1975 : 1975:INSC:306 : (1976) 1 SCC 389: 1975 INSC 306, Sri Rabindra Kumar Dey v. State of Orissa MANU/SC/0176/1976 : 1976:INSC:204 : (1976) 4 SCC 233: 1976 INSC 204, Syad Akbar v. State of Karnataka MANU/SC/0275/1979 : 1979:INSC:126 : (1980) 1 SCC 30: 1979 INSC 126, has held that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. It was further held that the evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.*

10. *This Court, in the case of C. Muniappan and Others v. State of Tamil Nadu10, has observed thus:*

"81. It is settled legal proposition that : (Khujji case, SCC p. 635, para 6) '6. ... the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.'

82. In State of U.P. v. Ramesh Prasad Misra, (1996) 10 SCC 360] this Court held that (at SCC p. 363, para 7) evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in Balu Sonba Shinde v. State of Maharashtra, (2002) 7 SCC 543], Gagan Kanojia v. State of Punjab, (2006) 13 (2010) 9 SCC 567 : Radha Mohan Singh v. State of U.P.,(2006) 2 SCC 450], Sarvesh Narain Shukla v.

Daroga Singh, (2007) 13 SCC 360] and Subbu Singh v. State, (2009) 6 SCC 462.

83. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.

84. In the instant case, some of the material witnesses i.e. B. Kamal (PW 86) and R. Maruthu (PW 51) turned hostile. Their evidence has been taken into consideration by the courts below strictly in accordance with law. Some omissions, improvements in the evidence of the PWs have been pointed out by the learned counsel for the appellants, but we find them to be very trivial in nature.

85. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. Vide Sohrab v. State of M.P., (1972) 3 SCC 751, State of U.P. v. M.K. Anthony, (1985) 1 SCC 505, Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217, State of Rajasthan v. Om Prakash, (2007) 12 SCC 381, Prithu v. State of H.P., (2009) 11 SCC 588, State of U.P. v. Santosh Kumar, (2009) 9 SCC 626 and State v. Saravanan, (2008) 17 SCC 587"

11. *In the case of Vinod Kumar v. State of Punjab, this Court has observed thus:*

"51. It is necessary, though painful, to note that PW 7 was examined-in-chief on 30-9-1999 and was cross-examined on 25-5-2001, almost after 1 year and 8 months. The delay in said cross-

examination, as we have stated earlier had given enough time for prevarication due to many a reason. A fair trial is to be fair both to the defence and the prosecution as well as to the victim. An offence registered under the Prevention of Corruption Act is to be tried with all seriousness. We fail to appreciate how the learned trial Judge could exhibit such laxity in granting so much time for cross-examination in a case of this nature. It would have been absolutely appropriate on the part of the learned trial Judge to finish the cross-examination on the day the said witness was examined. As is evident, for no reason whatsoever it was deferred and the cross-examination took place after 20 months. The witness had all the time in the world to be gained over. We have already opined that he was declared hostile and re-examined.

52. It is settled in law that the testimony of a hostile witness can be relied upon by the prosecution as well as the defence. In re-examination by the Public Prosecutor, PW 7 has accepted about the correctness of his statement in the court on 13-9-1999. He has also accepted that he had not made any complaint to the Presiding Officer of the court in writing or verbally that the Inspector was threatening him to make a false statement in the court. It has also been accepted by him that he had given the statement in the court on account of fear of false implication by the Inspector. He has agreed to have signed his statement dated 13-9-1999 after going through and admitting it to be correct. It has come in the re-examination that PW 7 had not stated in his statement dated 13-9-1999 in the court that recovery of tainted money was not effected in his presence from the accused or that he had been told by the Inspector that amount has been recovered from the accused. He had also not stated in his said statement that the accused and witnesses were taken to the Tehsil and it was there that he had signed all the memos.

53. Reading the evidence in entirety, PW 7's evidence cannot be brushed aside. The delay in cross-examination has resulted in his prevarication from the examination-in-chief. But, a significant one, his examination-in-chief and the re-examination impels us to accept the testimony that he had gone into the octroi post and had witnessed about the demand and acceptance of money by the accused. In his cross-examination he has stated that he had not gone with Baj Singh to the Vigilance Department at any time and no recovery was made in his presence. The said part of the testimony, in our considered view, does not commend acceptance in the backdrop of entire evidence in examination- in-chief and the re-examination.

xxx xxx xxx

57. Before parting with the case we are constrained to reiterate what we have said in the beginning. We have expressed our agony and anguish for the manner in which trials in respect of serious offences relating to corruption are being conducted by the trial courts:

57.1. Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial.

That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross- examination and the

disquieting feature is that the trial courts grant time. The law requires special reasons to be recorded for grant of time but the same is not taken note of.

57.2. As has been noticed earlier, in the instant case the cross-examination has taken place after a year and 8 months allowing ample time to pressurise the witness and to gain over him by adopting all kinds of tactics.

57.3. There is no cavil over the proposition that there has to be a fair and proper trial but the duty of the court while conducting the trial is to be guided by the mandate of the law, the conceptual fairness and above all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on record. If an accused for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of the rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons. 57.4. In fact, it is not at all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in- chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial. 57.5. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safeguarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. How long shall we say, "Awake! Arise!". There is a constant discomfort. Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same among the learned trial Judges with a command to follow the principles relating to trial in a requisite manner and not to defer the cross-examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery. Let it be remembered that law cannot be allowed to be lonely; a destitute."

***13.** In the present case also, it appears that, on account of a long gap between the examination-in-chief and cross examination, the witnesses were won over by the accused and they resiled from the version as deposed in the examination-in-chief which fully incriminates the accused. However, when the evidence of the victim as well as her mother (PW-2) and aunt (PW-3) is tested with the FIR, the statement recorded under Section 164 CrPC and the evidence of the Medical Expert (PW-8), we find that there is sufficient corroboration to the version given by the prosecutrix in her examination-in-chief."*

36. The Hon'ble Supreme Court, in the case of **Rohtash Kumar Vs. State of Haryana (Supra),** has also held that the law permits the court to take into consideration the deposition of a hostile

witness, to the extent that the same is in consonance with the case of the prosecution and is found to be reliable in careful judicial scrutiny. It has also been held that the law permits the court to take into consideration the deposition of a hostile witness, to the extent that the same is in consonance with the case of the prosecution, and is found to be reliable in careful judicial scrutiny. In an extra-ordinary situation, if the court comes to the conclusion that a material witness has been withheld, it can draw an adverse inference against the prosecution, as has been provided under Section 114 of the Evidence Act. In a given case, the Court can always examine a witness as a court witness, if it is so warranted in the interests of justice. The Hon'ble Supreme Court also considered the case of **Masalti v. State of U.P.; MANU/SC/0074/1964 (AIR 1965 SC 202),** in which it was held that it would be unsound to lay down as a general rule that every witness must be examined, even though, the evidence provided by such witness may not be very material, or even if it is a known fact that the said witness has either been won over or terrorised. In such cases, it is always open to the defence to examine such witnesses as their own witnesses, and the court itself may also call upon such a witness in the interests of justice under Section 311 CrPC. The Hon'ble Supreme Court, in the case of **Raghubir Singh v. State of U.P; MANU/SC/0165/1971 (AIR 1971 SC 2156)** relied by Hon'ble Supreme Court in the aforesaid case has held that the appellant's counsel has not shown how the prosecution story is rendered less trustworthy as a result of the non-production of the witnesses mentioned by him. No material and important witness was deliberately kept back by the prosecution. Incidentally we may point out that the accused too have not considered it proper to produce those persons as witnesses for controverting the prosecution version.

37. The Hon'ble Supreme Court, in the case of **Mano Dutt And Another Vs. State of Uttar Pradesh (Supra),** has held that it is not always mandatory for the prosecution to examine the Investigating Officer, provided it can establish its case beyond reasonable doubt even in his absence. It has further been held that where the accused lead no defence, they cannot take benefit of the fact that the prosecution did not examine any independent witness. The accused would be deemed to have been aware of the consequences in law when they gave a statement admitting the occurrence but attributing aggression and default to the deceased and his family members.

38. The Hon'ble Supreme Court, in the case of **Guna Mahto Vs. State of Jharkhand (Supra),** found that in the facts and circumstances of the case non-examination of the Investigation Officer rendered the prosecution case to be doubtful if not false as the offence under Section 201 IPC could not have been proved without his examination. It has further been held that suspicion, howsoever grave it may be, remains only a doubtful pigment in the story canvassed by the prosecution for establishing its case beyond any reasonable doubt and except for evidence as considered by the Hon'ble Supreme Court that there was no evidence: ocular, circumstantial or otherwise, which could establish the guilt of the accused. Thus, the Hon'ble Supreme Court has passed the said judgment in the facts and circumstances of the case.

39. In view of above, the judgment relied by the learned counsel for the

appellant in the case of **Madan Singh and Another Vs. The State Jharkand (Supra),** is not of any assistance to the case of the appellant because it is always not mandatory to produce any witness cited by the prosecution. In the present case the veracity of the document placed on record by the prosecution has been admitted by the defence.

40. A coordinate bench of High Court of Madhya Pradash (at Jabalpur Bench), in the case of **Bassu Vs. State of M.P. (Supra),** has held that the phrase 'soon before her death' in Section 304-B IPC does not mean 'immediately prior to death of deceased'. However, the prosecution must establish the existence of "proximate and live link" between the dowry death and cruelty or harassment for dowry demand by the husband or his relatives. In the said case the court found that the incident had taken place within one year of marriage and only within eight days when the deceased returned to her matrimonial house from her parental house on assurance of well-keeping by her father-in-law, therefore, the chain of circumstances prove that there existed a live and proximate link between the instances of demand of dowry and the death of deceased.

41. A coordinate bench of this Court, in the case of **Mohit Kumar Vs. State of U.P. (Supra),** relied by learned counsel for the appellant, has held with the law related to dowry death and presumption under Section 113-B of the Evidence Act and as to whether the testimony of PW-1 as deposed during examination-in-chief and retracted in cross-examination is wholly reliable and conviction can be based on it and after considering certain case laws of the Hon'ble Supreme Court held that in case the witness has turned hostile during cross-examination, the statement in examination-in-chief may be taken in support of other reliable and trustworthy evidence available on record and testimony of hostile witness shall not be completely discarded and the part of the statement which supports the prosecution version can always be taken into consideration. Similar view has been taken by a coordinate bench of this Court in the case of **Ram Ujer Vs. State of U.P. (Supra).**

42. The Hon'ble Supreme Court, in the case of **Ram Badan Sharma Vs. State of Bihar (Supra),** has held that there are three main ingredients of offence of Section 304 B; (a) that, there is a demand of dowry and harassment by the accused on that count; (b) that, the deceased died; and (c) that, the death is under unnatural circumstances within seven years of the marriage and when these factors were proved by reliable and cogent evidence, then the presumption of dowry death under section 113-B of the Evidence Act clearly arose. It has further been held that where it is proved that it was neither a natural death nor an accidental death, then the obvious conclusion has to be that it was an unnatural death either homicidal or suicidal. But, even assuming that it is a case of suicide, even then it would be death which had occurred in unnatural circumstances. Even in such a case, Section 304-B IPC is attracted.

43. The Hon'ble Supreme Court, in the case of **State of U.P. Vs. Ramesh Prasad Misra and Another (Supra)**, has held that it is settled law that it is the duty of the prosecution to establish all the circumstances conclusively to hold that the respondent alone had committed the offence. Witnesses may be prone to speak, and in this case, material witnesses have spoken falsehood but it is, therefore, the

duty of the court to carefully scan through the evidence on the anvil of human conduct, probabilities and attending circumstances extending all doubts in favour of the accused. In a case of this type, hardly any direct evidence would be forthcoming for the prosecution.

44. In view of above and considering the case in hand in the light of law as discussed above, this Court finds that PW-1 had admitted the demand for dowry, not only on the basis of hearsay evidence of his daughter but also from him. Though in the cross-examination, he resiled from his statement in examination-in-chief, but his evidence in examination-in-chief was consistent with the prosecution case lodged on the basis of the written complaint made by the PW-1 himself. The genuineness of the documents placed on record by prosecution has been admitted by the appellant. Thus, considering the material also, which includes the recovery memo, in which no sign or material of sprinkling of seasoning (Chauk Lagana) for vegetables has been found, because the wok (Karahi) and vegetables were found kept separately near clay stove (Chulha) and burn thatch. It is also noticed that signs of saving herself by the deceased has also not been found because if she would have caught fire during sprinkling seasoning for vegetables, then she would have cried and tried to save her and the family members present at home or the neighbours could have reached to save her. Therefore, the prosecution proved its case even without the evidence of PW-4, whose presence at the spot in question has been doubted and whose evidence is hearsay and it may only be in aid of prosecution case. Thus, in the facts and circumstances of the present case, on account of non-production of any witnesses, i.e., the Investigating Officer or Doctor, it cannot be said that the impugned judgment and order is liable to be set aside.

45. As far as the evidence of PW-1 and PW-2 in the cross-examination is concerned, it was given after a lapse of about two years and the reasoning of converse evidences are visible in his cross-examination itself which shows that there was a significant financial disparity between the appellant's family and the family of deceased, on account of which there was all possibility of being win over by them. However, even in the cross-examination, PW-1 has admitted that Mastana Mishra had told him about the harassment and cruelty being inflicted upon the deceased due to dowry demand. The only plea taken in the cross-examination is that there was some enmity with the family of the deceased, therefore, he had done so but no proof of any enmity could be given or shown even before this Court. Thus, in the present case, the presumption of dowry death, which has rightly been drawn, could not be rebutted by the appellant by any cogent evidence.

46. In view of above, considering the over all facts and circumstance of the case, this Court is of the view that the learned trial court has rightly and in accordance with law, after analyzing the evidence and material on record appropriately, has passed the impugned judgment and order convicting and sentencing the appellant, which does not call for any interference by this Court. The appeal has been filed on misconceived and baseless grounds.

47. The appeal is, accordingly, **dismissed**.

(2025) 7 ILRA 991
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 24.07.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Appeal No. 1323 of 2018

Tariq @ Lohiya ...Appellant
Versus
State of U.P. ...Respondent

Counsel for the Appellant:
Ajay Kumar Singh, Rajiv Raman Srivatava, Sarvesh Kumar

Counsel for the Respondent:
Govt. Advocate

Issue for Consideration

Whether conviction of the appellant under Sections 363, 366, 376 IPC and Section 3/4 POCSO Act could be sustained when (i) the victim's statements under Sections 161 and 164 Cr.P.C. did not support allegation of rape; (ii) medical and forensic evidence did not corroborate sexual assault; (iii) material discrepancies existed in prosecution evidence; and (iv) the Investigating Officer and several witnesses were not examined.

Headnotes

Indian Penal Code, 1860 — ss. 363, 366, 376; POCSO Act, 2012 — ss. 3/4; Criminal Procedure Code, 1973 — ss. 161, 164, 313, 53-A — Criminal Trial — Appreciation of Evidence — Victim's inconsistent versions — Medical evidence not supporting rape — Non-examination of IO — Benefit of doubt — Acquittal.

Held:

Victim gave mutually contradictory versions at every stage — under Section 161 Cr.P.C. she stated she voluntarily accompanied appellant-under Section 164 Cr.P.C. she confirmed love relationship and denied rape-before the Court-for the first time, she alleged forcible sexual assault-material contradictions strike at the root of the prosecution case-victim fails the "sterling witness" test. [Paras 46–49]

FIR contained false statements-involvement of multiple persons fluctuated between three and five-recovery of clothes doubtful-recovery memo not exhibited-several cited prosecution witnesses were not produced- Investigating Officer not examined,-causing serious prejudice since he alone could clarify contradictions and missing forensic reports.[Paras 39–43, 53–57]

Trial court adopted an erroneous approach-examining defence before prosecution-by relying on rhetoric concerning sexual offences rather than evidence-Prosecution failed to establish guilt beyond reasonable doubt-appellant entitled to acquittal-Appeal allowed. [Paras 33, 59–63] (E-14)

Case Law Cited

***Rai Sandeep v. State (NCT of Delhi),* (2012) 8 SCC 21 — applied; *Raju v. State of M.P.*, (2008) 15 SCC 133 — relied on; *Raj Kishore Jha v. State of Bihar*, (2003) 11 SCC 519 — distinguished; *Behari Prasad v. State of Bihar*, (1996) 2 SCC 317 — referred to.**

List of Acts / Statutes

Indian Penal Code, 1860; Protection of Children from Sexual Offences Act, 2012; Code of Criminal Procedure, 1973; Indian Evidence Act, 1872.

List of Keywords

Rape; Abduction; Minor girl; Contradictory statements; Victim credibility; Sterling witness; Medical inconsistency; No DNA evidence; No spermatozoa; False FIR; IO not examined; Material discrepancies; Benefit of doubt; Erroneous approach of trial court; Acquittal.

Case Arising From

Criminal Appeal under Section 374(2) Cr.P.C. challenging judgment dated 26 July 2018 of the Additional Sessions Judge / Special Judge (POCSO Act), Court No. 8, Sitapur in Special Sessions Trial No. 1 of 2016 arising out of Case Crime No. 268 of 2015, P.S. Sadarpur, Sitapur.

Appearance for Parties

For Appellant: Shri Ajay Kumar Singh, Shri Rajiv Raman Srivastava,
Shri Sarvesh Kumar
For the State: Learned Government Advocate

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. By means of the instant criminal appeal filed under Section 374(2) Cr.P.C., the applicant has challenged the validity of the judgment and order dated 26.07.2018 passed by Sri Ram Suchit, the learned Additional Sessions Judge/ Special Judge, POCSO Act, Court No. 8, Sitapur in Special Sessions Trial No. 1 of 2016 arising out of Case Crime No. 268 of 2015, under Sections 363, 366, 376 IPC and Section 3/4 POCSO Act, Police Station Sadarpur, District Sitapur.

2. The aforesaid case was instituted on the basis of a written complaint given by the informant on 15.11.2015 against three persons, including the appellant Tariq alias Lohiya and his two brothers Salim and Idris, stating that when the informant's daughter aged 16 years had gone out of her home at about 10 p.m. in the intervening night of 12/13.11.2015 for urinating, all the accused persons enticed her away. He kept on making enquiries about his daughter but he could not get any knowledge about her.

3. It is recorded in the case diary that the informant had come to the police station along with a written complaint on 15.11.2015 and upon this complaint, an FIR bearing Case Crime No. 268 of 2018 was lodged in Police Station Sadarpur, District Sitapur at 13:10 on 15.11.2015, under Sections 363, 366 IPC.

4. The informant gave a written application to the Station House Officer stating that although he had given a complaint against the appellant and his brothers but after making enquiries from his daughter, it transpired that she had gone away to the house of her maternal grandfather out of her own free will and that he had given the complaint containing false accusations after being mislead by some person. The informant stated that her daughter had gone away to her maternal grandparents' place and had returned out of her own free will and he did not want any further action on his complaint. This application also had thumb impression of the victim and her mother and it had the signatures of five other persons.

5. The victim was taken to District Women Hospital, Sitapur for her medico legal examination on 19.11.2015. She told the doctor that she had gone out of her home at about 10:00 p.m. for urinating, five persons caught her, took her to a grove, the appellant committed the misdeed against her and the other four persons kept a watch. They had threatened her with a weapon and had assaulted on her right leg with a banki. She had fallen unconscious. The medico legal examination report mentions that the victim had not taken bath and she had changed her undergarments but had not washed her undergarments and clothes. On external examination, a stitched wound of 5 c.m. x 1 c.m. was found on her right ankle. The hymen was opined to be old torn and healed. It is recorded in the medico legal examination that the Investigating Officer had collected the victim's undergarments and clothes and had sealed the same for

DNA examination for evidence. The nail clippings and blood samples of the victim were taken for DNA examination and samples of pubic hairs and vaginal swabs were also collected for examination. On the basis of the findings of the medico legal examination, the doctor opined that there were signs of use of force and sexual violence could not be ruled out. This report has been marked as exhibit A-2.

6. As per radiological examination, age of the victim has been opined to be about 17 years. The pathological examination report mentions that no spermatozoa were seen in the vaginal smear slide.

7. A recovery memo dated 26.11.2015 states that only the victim's salwar suit was collected on 26.11.2015 but as per it, her undergarments were not collected. In her additional statement, she stated that she had handed over the clothes which she was wearing at the time when she had slept with the appellant.

8. The Headmaster of Primary School, Lalpur, Biswan, Sitapur has given a certificate dated 23.11.2015 stating that the victim has studied in the primary school since 12.06.2006 till 01.07.2010 in classes 1 to 5 and as per school records her date of birth is 03.02.2000.

9. In the statement of the informant recorded under Section 161 Cr.P.C., he stated that his daughter had gone out of her home for urinating at 10:00 p.m. on 12.11.2015. When she did not return after quite some time he searched for her and when he could not find her, he believed that his daughter had been enticed away by the three accused persons (the appellant and his two brothers). He stated that the appellant used to visit the informant's home and he was not seen in the village on 13.11.2015. The accused persons had dropped his daughter at Dibiyapur crossing at about 09:00 p.m. She had an injury on her leg which was treated at Biswan. He had gone to the police station on 15.11.2015, had lodged the FIR and had obtained its copy. He further stated that his daughter (the victim) was not present at his home and she had gone to the house of some relatives.

10. The statement of the victim was recorded by the Investigating Officer under Section 161 Cr.P.C. on 19.11.2015 wherein she stated that she was aged 20 years (at the time of giving the statement). On 12.11.2015, her mother had beaten her up badly and had turned her out of her home. In anger, she had gone with the appellant, who is a resident of her village, at about 11:00 p.m. She did not know the name of the village where the appellant had taken her. The victim stated that she loves the appellant and it was upon asking of the appellant that she was returning to her village on a motorcycle. There was a pothole on the way due to which her leg got entangled in the spokes of the motorcycle wheel and got injured. She stated that her father had lodged a false report in the police station as Munna Jadugar keeps on poisoning the minds of her parents. The victim categorically stated that she loves the appellant and has made physical relations with her out of her own free will and she had returned home in the evening on 13.11.2015.

11. In the statement of the victim recorded under Section 164 Cr.P.C. she stated that her father had lodged a false FIR against the appellant whereas she had gone with the appellant on 12.11.2015 out of her own free will. She had gone with him to

some village towards Biswan and had stayed with him for three days. Whatsoever the appellant did with her, did with her consent. She stated that she knows the appellant since her childhood, she loves him for the past two years, she wanted to marry him and to live with him and she did not want to go with her parents.

12. The Investigating Officer recorded the statement of Smt. Jagrani, elder sister of the victim. She stated that she had got married in the month of May, 2015 but her gauna had not been performed and she was living at her parent's home. Her younger sister had gone out of the house to urinate at 12:00 in the night on 12.11.2015 but she did not come back. The enquiry made in the village revealed nothing. The appellant, being a neighbor, used to visit her home. The appellant was also not present at his home and, therefore, her family members suspected that the appellant had enticed away her younger sister and her father lodged the FIR. She stated that her sister had returned home.

13. The Investigating Officer recorded the statement of independent witnesses Smt. Usha Devi and Sarvesh Chauhan, both of whom gave statements similar to the statement of the victim's elder sister and they stated that victim and the appellant used to see each other since long and they used to visit each other's home. They stated that they did not want any innocent person to be incarcerated.

14. In the additional statement of the informant, he stated that he had not seen his daughter going away with the appellant and his family members but when his daughter and the appellant both could not be traced after the incident, he suspected that the appellant had enticed away his daughter.

15. The Investigating Officer recorded statement of the victim's mother, she reiterated the FIR version and she further stated that her daughter came back home and at about 10:00 p.m. on 13.11.2015 along with her father (the informant) and a relative Lal Bahadur on a motorcycle. She had told that the appellant had enticed her away. They did not go to lodge an FIR immediately because of fear of public shame and her husband went to the police station 3-4 days after the incident and registered the FIR.

16. Lal Bahadur Chauhan told the Investigating Officer that he had taken the informant to Dibiyapur crossing at about 09:00 p.m. on 13.11.2015, the victim was standing at the crossing and he had brought the informant and the victim back on his motorcycle at about 10:00 p.m.

17. The Investigating Officer had recorded statements of the appellant who stated that he loved the informant's daughter and she also loved him. Both of them had gone away from the village on 12.11.2015. The Investigating Officer recorded the statements of the appellant's brothers co-accused persons Salim and Idrish both of whom stated that they were innocent.

18. The Investigating Officer has recorded that he had talked to several villagers, all of whom had told him on the condition of unanimity that the appellant and the victim were in a relationship since long. Possibly their parents were not aware about it, but no one wanted to speak anything in this regard as whosoever would speak, would be portrayed evil. The Investigating Officer further recorded that no credible material could be collected against the appellant's brothers co-accused

persons Salim and Idrish and they were exonerated.

19. The Investigating Officer submitted a charge-sheet on 22.12.2015 against the appellant for commission of offences under Sections 363, 366 and 376 IPC and 3/4 POCSO Act. The charge-sheet mentions the name of the informant, the victim, the victim's mother and 5 other persons as witnesses, besides the doctor, the headmaster of school and three police persons (13 persons in all) as prosecution witnesses.

20. The trial court framed charges against the appellant for commission of offences under Sections 363, 366, 376 IPC and Section 4 of the POCSO Act on 27.01.2016.

21. The informant was examined as PW-1. In his examination-in-chief he reiterated the FIR version and he proved the written complaint given by him to the police on 15.11.2015, which was marked as exhibit A-1. During his cross-examination, PW-1 denied the suggestion that he had falsely implicated the appellant due to political rivalry. He stated that his daughter had gone out of his home at about 10:00 p.m. while they were asleep. He woke up between 12:00 to 01:00 in the night and saw that his daughter was not on her bed. He searched for his daughter in the village but when he could not find her, he came back home and slept. In the morning he started searching for his daughter in the house of his relative but could not find her. In the evening of 13.11.2015, he came to know that his daughter was present at the police chowki at Debiyapur crossing and he went there and brought his daughter back. He did not talk to his daughter and his daughter did not told him anything. On 15.11.2015 he went to the police station, gave a written complaint and lodged the FIR. He stated that the subsequent letter given to the police stating that his daughter had gone to her maternal grandparent's home out of her own free will and he did not want any proceedings in the matter, does not bear his signature or thumb impression and this application is wrong.

22. The victim was examined by the trial court as PW-2 and she stated that when she had gone out of her house to urinate, the appellant and his brothers Salim and Idris had caught hold of her, gagged her mouth with a cloth, tied her face with a cloth, picked her up and took her away to a grove situated far away where the other accused persons Salim and Idrish held her hand and legs and the appellant raped her. They kept her there for the entire night and the next day and they dropped her near the police chowki in the following night. The police persons had telephonically informed her parents and her parents had come to the police chowki. Her father had taken her to the police station and had lodged the FIR and thereafter she was taken for medico legal examination and her statement was recorded by the Magistrate. She alleged that she had given the statement before the Magistrate under threat extended by the police. Thereafter she was handed over to her parents. The Investigating Officer had taken the clothes worn by her at the time of the incident and his father had given her transfer certificate to the Investigating Officer.

23. During cross-examination, the victim stated that she had gone out of her home for urinating while her parents were asleep. While she was urinating, the appellant caught hold of her and took her away to a grove. She did not know the

distance of the grove from the village or the direction in which it is situated. She was kept in the grove during the night and during the following day and the appellant brought her to the Police Chowki at Debiyapur Crossing at about 09;00 p.m., handed her to the police and went away. The police had called her father by making a phone call and had asked him to take away his daughter and thereafter her father brought her back home. She further stated that her father does not have any phone and she couldn't tell as to how did the police call her father by making a phone call. She stated that she had leveled allegation of commission of rape for the first time in the court and she did not tell it to the police or to the Magistrate. She stated that the appellant had brought her to the police chowki at Debiyapur crossing on a motorcycle and she had not made any complaint to the police at that time. The victim denied her statement recorded by the Investigating Officer.

24. The victim admitted the statement given by her before the Magistrate wherein she had stated that the appellant had been falsely implicated whereas she had gone with him out of her own free will and she wanted to marry him and to live with him. She knew him since childhood and she loved with him for the past two years. She also admitted that she had stated that she had given this statement out of her own free will without any pressure. Thereafter she stated on her own that she had given the statement upon being threatened by Chaurasia. The victim did not specify as to who this person 'Chaurasia' was. The victim further stated that after reaching her village, she had not gone to any relatives place and she was staying at her home only.

25. The doctor who had medically examined the victim, was examined as PW-3 and she proved the medico legal examination report. During cross-examination, the doctor stated that the hymen takes a month's time in healing after it is torn. No injury was found on any private part of the victim and there was a stitched wound of size 5 c.m. x 1 c.m. on her right ankle joint from which she opined that force was used against the victim. She stated that the vaginal smear examination did not reveal presence of sperms. She stated that no definite opinion could be given regarding rape.

26. No other prosecution witness was produced before the trial court.

27. In the statement of the appellant recorded under Section 313 Cr.P.C., he denied all the allegations and he stated that he had been falsely implicated because of animosity. The appellant stated that he would produce his defence but he did not do so.

28. The trial court has held the accused-appellant guilty of commission of offences under Section 363, 366 and 376 IPC and Section 3/4 of POCSO Act and has sentenced him to undergo rigorous imprisonment for 7 years and pay Rs. 2,000/- fine and to undergo two months' additional imprisonment in case of failure to pay fine for the offence under Section 363 IPC. For the offence under Section 366 IPC, the appellant has been sentenced to undergo 7 years' rigorous imprisonment and to pay Rs. 2,000/- as fine and to undergo two months' additional imprisonment in case of failure to pay fine. For the offence under Section 376 IPC, the appellant has been sentenced to undergo 10 years rigorous imprisonment and to pay Rs. 5,000/- fine and to undergo five months' additional imprisonment in case of failure

to pay fine. For the offence under section 3/4 POCSO Act, the appellant has been sentenced to undergo 10 years' rigorous imprisonment and to pay Rs. 5,000/- as fine and to undergo five months' additional imprisonment in case of failure to pay fine.

29. The trial court has recorded in its judgment that it was contended on behalf of the accused-appellant that the victim had returned home on 13.11.2015 itself and the FIR has been lodged after a delay on 15.11.2015. Rejecting this contention, the trial court held that although some delay has occurred in lodging of the FIR, generally the police avoids registering FIRs and for any irregularity committed by the police, the informant cannot be made responsible. The trial Court held that the matter related to enticing away a minor, the informant tried to look for her and he had lodged the FIR after finding her out. In these circumstances, it cannot be said that the delay in lodging the FIR is fatal for the prosecution case.

30. The second submission on behalf of the accused-appellant was that the Investigating Officer has not been examined which raises a suspicion against the prosecution case. The trial court rejected this submission by referring to the decision of the Hon'ble Supreme Court in the case of ***Raj Kishore Jha v. State of Bihar***: (2003) 11 SCC 519, wherein it has been held that if the prosecution witnesses have proved the incident beyond reasonable doubt, the prosecution case does not become suspicious merely because of non-examination of the Investigating Officer.

31. The third submission on behalf of the accused-appellant was that the informant had alleged that the victim was aged 16 years whereas there was no documentary evidence to prove this contention. The victim herself stated in her statement under Section 161 Cr.P.C. that she was aged 20 years and even as per the entries made in the voter list and parivar register, she was major. It was further contended that although the medico legal examination report opines that the victim was aged 17 years, there is an error margin of two years on either side. The trial court rejected this contention on the ground that the transfer certificate mentions the date of birth of the victim to be 03.02.2000 and the medico legal examination report opines her age to be 17 years. It proves that the victim was minor at the time of the incident.

32. It was next submitted on behalf of the appellant that the FIR alleges that the offence was committed by three brothers and it is highly unnatural that three brothers would commit a sexual offence together. The accused appellant relied upon the statement of the victim recorded under Section 164 Cr.P.C., which does not support the prosecution case. These contentions have not been dealt with by the trial court.

33. Every person is presumed to be innocent unless proved guilty and it is a duty of the prosecution to establish the guilt of the accused person. Therefore, the trial court should deal with the prosecution case first to ascertain whether the prosecution has established the guilty of the accused and only then the Court is required to deal with the defence case. In case the prosecution fails to establish its case, the accused has to be acquitted without dealing with his evidence. Strangely, in the present case, the trial court has first dealt with the defence case indicating that it was labouring under a misconception that the accused has to establish his innocence and

not that the prosecution has to establish the guilt of the accused.

34. The trial court held that although PW-1 has stated that the appellant alone had committed sexual offence against the victim, the victim has stated in her examination-in-chief that the appellant and his two brothers had taken her away, they had gagged her mouth and tied her face, the appellant's brother Salim was catching hold of her hands and his other brother Idris was catching hold of her legs and the appellant raped her. The trial Court referred to the cross-examination of PW-2 wherein she had admitted that she had not leveled the allegation of rape before the police or the magistrate and she had leveled this allegation for the first time before the trial court.

35. The trial court has stated that in her examination in chief, PW-2 has 'admitted' that she had given the statement before the Magistrate under threat of the police whereas this was not an 'admission' made by the victim rather it was an allegation leveled by her. The trial court has mentioned in the judgment that the victim has 'admitted' that she had given the statement before the Magistrate that she loves the appellant for the past two years and wants to live with her and this statement had been given under threat of Chaurasia. This is also not an 'admission' made by the victim, rather it is an allegation leveled by her. The victim has not disclosed any particulars of 'Chaurasia', who had threatened her.

36. Assailing validity of the aforesaid order, the learned counsel for the appellant has submitted that the trial court has committed a patent error in brushing aside the statement of the victim given before the Magistrate wherein she has categorically stated that her father had falsely implicated the appellant whereas she had gone away with him out of her own free will, she loves him, wants to marry him and to live with him only and whatever the appellant did, did with her consent.

37. Per contra, Sri Rajesh Kumar Singh, the learned AGA-I has submitted that in the examination-in-chief of the victim, she has categorically stated that the appellant had committed rape against her. The injury found on the right ankle of the victim establishes use of force against her.

38. When we examine the facts of the present case, it becomes evident that the FIR was lodged on 15.11.2015 against the appellant and his two brothers Salim and Idris, stating that when the informant's daughter aged 16 years had gone out of her home at about 10 p.m. in the intervening night of 12/13.11.2015 for urinating, all the accused persons enticed her away. The complainant kept on making enquiries about his daughter but he could not get any information about her. However, in his statement recorded under Section 161 Cr.P.C., the complainant stated that the accused persons had dropped his daughter at Dibiyapur crossing at about 09:00 p.m. In her statement recorded under Section 161 Cr.P.C. on 19.11.2015 the victim stated that she had returned home in the evening on 13.11.2015. The victim's mother also stated that her daughter had come back home at about 10:00 p.m. on 13.11.2015 along with her father (the informant) and a relative Lal Bahadur on a motorcycle. Lal Bahadur Chauhan also told the Investigating Officer that he had taken the informant to Dibiyapur crossing at about 09:00 p.m. on 13.11.2015, the victim was standing at the crossing and he had brought

the informant and the victim back on his motorcycle at about 10:00 p.m. During his cross-examination, the complainant stated that in the evening of 13.11.2015, he came to know that his daughter was present at the police chowki at Debiyapur crossing and he went there and brought his daughter back.

39. The aforesaid statements make it clear that the informant had made a false statement in the FIR that when the appellant and his brothers had enticed away his daughter and he could not get any information about her till lodging of the FIR on 15.11.2015.

40. The FIR alleged that the appellant and his two brothers had enticed away the victim whereas during medico-legal examination, the victim told the doctor that five persons had caught her, took her to a grove, the appellant had committed the misdeed against her and the other four persons kept a watch. The involvement of any other person in commission of the offence could not be established and the charge-sheet was submitted against the appellant only. The informant was examined as PW-1 and he has not stated about involvement of any other person in commission of the offence. PW-2 stated that the appellant's brothers were also involved in commission of the offence as they had caught hold of her hands and legs while the appellant raped her, no application was filed under Section 319 Cr.P.C. for summoning them to face the trial. The victim has told the doctor that five persons were involved in the incident.

41. The medico legal examination report mentions that the victim had not taken a bath and she had changed her undergarments but had not washed her undergarments and clothes. It is recorded in the medico legal examination held on 19.11.2015 that the Investigating Officer had collected the victim's undergarments and clothes and had sealed the same for DNA examination for evidence, but the recovery memo mentions that the victim's salwar suit was collected on 26.11.2015 and it does not make a mention of her undergarments having been collected. In her additional statement, she stated that she had handed over the clothes which she was wearing at the time when she had slept with the appellant.

42. The recovery memo of the clothes has not been made an exhibit.

43. Nowadays this court is observing a trend where the trial courts first deal with the defence case and thereafter the prosecution case and held the accused persons guilty. This shows a basic flaw in the approach of the trial courts while deciding criminal cases.

44. The medico legal examination report mentions that the nail clippings and blood samples of the victim were taken for DNA examination and samples of pubic hairs and vaginal swabs were also collected for examination. However, no test report regarding the same is available on record. The pathological examination report mentions that no spermatozoa were seen in the vaginal smear slide.

45. Section 53-A of the Cr.P.C. provides that when a person is arrested on a charge of committing an offence of rape and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence, it shall be lawful to make an examination of the arrested person to find out the marks of injury, if any, on the

person of the accused and material may be taken from the person of the accused for DNA profiling. In the present case, DNA examination of samples taken from the body and the clothes of the victim and that of the accused-appellant has not been conducted.

46. In the statement of the victim recorded under Section 161 Cr.P.C. she stated that her father had lodged a false report in the police station; that she loves the appellant and has made physical relations with her out of her own free will and she had returned home in the evening on 13.11.2015. During her medico-legal examination, the victim told the doctor that the appellant had committed the misdeed against her while the other four persons kept a watch. However, in the statement recorded under Section 164 Cr.P.C., she stated that her father had lodged a false FIR against the appellant whereas she had gone with the appellant on 12.11.2015 out of her own free will. Whatsoever the appellant did with her, did with her consent. She stated that she knows the appellant since her childhood, she loves him for the past two years, she wanted to marry him and to live with him and she did not want to go with her parents. The allegation of rape is not there is the statement of the victim recorded under Section 164 Cr.P.C. and it is not supported by the findings of the pathological examination report of the victim's vaginal smear.

47. In the statements recorded under Sections 161 and 164 Cr.P.C., the victim did not level any allegation against the accused-appellant. Before the doctor, she stated that five persons had forcibly taken her away, the appellant raped her in a grove and the other four persons kept a watch. During her examination-in-chief, the victim stated that the appellant and his brothers Salim and Idris had taken her away to a grove where the appellant's brothers Salim and Idrish held her hand and legs and the appellant raped her. During her cross-examination, the victim stated that only the appellant had caught hold of her and had taken her away.

48. During cross-examination, the victim stated that she had leveled allegation of commission of rape for the first time in the court and she did not tell it to the police or to the Magistrate. The victim admitted the statement given by her before the Magistrate wherein she had stated that the appellant had been falsely implicated whereas she had gone with him out of her own free will and she wanted to marry him and to live with him. She knew him since childhood and she loved with him for the past two years. She also admitted that she had stated that she had given this statement out of her own free will without any pressure. Thereafter she stated on her own that she had given the statement upon being threatened by Chaurasia. The victim did not specify as to who this person 'Chaurasia' was.

49. In **Rai Sandeep v. State (NCT of Delhi)**: (2012) 8 SCC 21, the Hon'ble Supreme Court held that: -

"22. *In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness.*

What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

50. The aforesaid discrepancies are also not minor discrepancies, which could have been ignored by the trial Court and no conviction can be based on such statements.

51. The medico-legal report of the victim does not mention any injury on the private parts of the victim's body. The hymen was reported to be old torn and healed. The doctor who had medically examined the victim was examined as PW-3 and she stated that the hymen takes a month's time in healing after it is torn. She stated that the vaginal smear examination did not reveal presence of sperms.

52. Regarding the stitched injury on the ankle, the victim had stated in her statement recorded under Section 161 Cr.P.C. that she had suffered it while riding a motorcycle on the way back to Debiyapur. During her medico-legal examination, the victim stated that the appellant had caused the injury with a banki, but this allegation was not leveled during her examination in the Court and no banki has been recovered from the appellant.

53. The Investigating Officer had recorded the statements of the victim's mother, two sisters, a relative Lal Bahadur and of some other persons and the charge-sheet mentioned as many as 13 witnesses, but only the informant and the victim have been examined. No other prosecution witness has been examined and no explanation has been given for their non-production as prosecution witnesses.

54. In **Raj Kishore Jha v. State of Bihar**: (2003) 11 SCC 519 relied upon by

the trial Court, it was held that mere non-examination of the Investigating Officer does not in every case cause prejudice to the accused or affects the creditability of the prosecution version, but it was so held when after examination-in-chief and partial cross-examination, the Investigating Officer had died and obviously, cross-examination of a dead person could not be completed. Further, the Court held that non-completion of the examination of the Investigation Officer had not caused any prejudice to the accused. The prosecution could not be attributed with any lapse or ulterior motive in such circumstances.

55. In **Behari Prasad v. State of Bihar**: (1996) 2 SCC 317 it was held that a case of prejudice likely to be suffered mostly depends upon facts of each case and no universal straitjacket formula should be laid down that non-examination of the Investigating Officer per se vitiates the criminal trial.

56. In the present case, when the victim had not leveled any allegation against the accused-appellant in her statements recorded under Sections 161 and 164 Cr.P.C. and there are serious discrepancies in the statements of the informant and the victim recorded at different stages regarding material particulars regarding the offence in question, non-examination of the Investigating Officer has caused a serious prejudice to the trial.

57. In view of the foregoing discussion, I am of the considered view that there were serious discrepancies in the statements of the informant and the victim, the allegation of rape is not supported by the findings of the medico-legal report and the pathological examination report of the vaginal smear slide of the victim and the DNA examination has not been conducted to collect evidence of commission of rape. Several other prosecution witnesses mentioned in the charge-sheet have not been produced in the Court. Thus the prosecution has miserably failed to prove the allegations leveled against the appellant.

58. The trial court held that in a case relating to sexual offences, mere absence of injury cannot lead to an inference that the sexual offence has not been committed. Sexual offences are heinous offences which are against the entire humanity. Sexual offences are such heinous offences, which are completely against human creation. If the dignity of the 50% of the world's human population which is not involved in this crime, is not taken into consideration then why should we believe in it. In this offence, the place of creation, which is the most cherished treasure of a woman, is crushed. In a country like India even a discussion regarding sexual offences is deprecated. This is the reason that keeping in view the peculiar social and religious circumstances and the environment, sexual offences are committed secretly, taking care and caution that the offence may not come to light and no sign is left at the spot which may disclose the offence.

59. The trial court has also stated that the sexual offences against ladies and girls have increased; that it is an irony that while we are celebrating rights of women in all spheres, we are showing little or no concern or interest towards their dignity. This is a sad reflection of the indifferent attitude of the society towards the violation of human dignity of the victims of sexual offences. We must remember that the sexual offender not only violates the

privacy of the victim but also causes serious psychological and physical harm in the process. Sexual offence is not merely a physical assault but it often signifies a tendency to destroy entire personality of the aggrieved party. The person committing homicide destroys only the physical body of the victim while a sexual offender also degrades the soul of a helpless woman, which is a permanent suffering.

60. The trial court held that the victim is minor and sexual offences against minors are the most heinous and damaging offences which should be decided with sufficient sensitivity; that although no definite opinion regarding commission of sexual offence has been given in the medico-legal examination report, it should be kept in mind that sexual offence is an offence, not a medical condition. Whether a sexual offence has been committed or not, is a legal conclusion not a conclusion based on medical evidence. The trial court held that from the oral or documentary evidence available on record, the prosecution has proved that the appellant had enticed away the informant's daughter and has committed sexual offence against her.

61. The aforesaid narration made in the impugned order indicates that the trial court has acted with such an unwarranted higher decree of sensitivity towards the alleged offence as has led it to hold the appellant guilty without examining the prosecution evidence thoroughly and properly so as to come to a conclusion whether it establishes the guilt of the appellant.

62. In this regard, it would be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of **Raju v. State of M.P.**: (2008) 15 SCC 133, wherein it was held that: -

"11. *It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time* ***a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication,*** *particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.*

12. *Reference has been made in Gurmit Singh case [(1996) 2 SCC 384] to the amendments in 1983 to Sections 375 and 376 of the Penal Code making the penal provisions relating to rape more stringent, and also to Section 114-A of the Evidence Act with respect to a presumption to be raised with regard to allegations of consensual sex in a case of alleged rape. It is however significant that Sections 113-A and 113-B too were inserted in the Evidence Act by the same amendment by which certain presumptions in cases of abetment of suicide and dowry death have been raised against the accused. These two sections, thus, raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualised as the presumption under Section 114-A is extremely restricted in its applicability. This clearly shows that insofar as allegations of rape are concerned,* ***the evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that***

her statement should, without exception, be taken as the gospel truth. *Additionally, her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. We believe that it is under these principles that this case, and others such as this one, need to be examined."*

(Emphasis added)

63. Therefore, the trial Court has committed a patent error in holding the appellant guilty without a proper and through examination of the evidence on record, merely because the prosecution had alleged that a sexual offence had been committed against a minor girl and the alleged offence is a heinous offence.

64. As this Court has held that the prosecution could not establish the guilt of the accused-appellant, the only conclusion possible that the judgment of the trial Court be set aside and the accused-appellant be acquitted of all the charges.

65. Accordingly, the appeal is allowed. The judgment and order dated 26.07.2018 passed by Sri Ram Suchit, the learned Additional Sessions Judge/ Special Judge, POCSO Act, Court No. 8, Sitapur in Special Sessions Trial No. 1 of 2016 arising out of Case Crime No. 268 of 2015, under Sections 363, 366, 376 IPC and Section 3/4 POCSO Act, Police Station Sadarpur, District Sitapur, convicting and sentencing the appellant, is set aside. The accused-appellant is acquitted of all the charges. In case the appellant has deposited any amount towards fine, the same shall be refunded to him within a period of thirty days from today.

(2025) 7 ILRA 1004
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 31.07.2025
BEFORE

THE HON'BLE RAJNISH KUMAR, J.

Criminal Revision No. 13 of 2025

Anurag Pandey ...Revisionist
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Revisionist:
Amit Kumar Singh, Ajai Kumar Gupta

Counsel for the Opposite Parties:
G.A., Rohit Singh Parmar

Issue for Consideration

Whether a major unmarried daughter can seek maintenance under Section 125 of the *Criminal Procedure Code, 1973* or whether such claim must be determined under Section 20(3) of the *Hindu Adoptions and Maintenance Act, 1956*; and if so, whether the Family Court, exercising concurrent jurisdiction, can convert proceedings under Section 125 Cr.P.C. into a civil suit under Section 20(3) of the 1956 Act.

Headnotes

Criminal Procedure Code, 1973 — s.125; Hindu Adoptions and Maintenance Act, 1956 — s.20(3); Family Courts Act, 1984 — ss.7, 10, 18, 19 — Maintenance — Major unmarried daughter — Jurisdiction of Family Court — Conversion of proceedings — Distinction between civil and criminal jurisdictions — Scope of relief

HELD:

Entitlement to maintenance under s.125 Cr.P.C.- extends only to a *minor child -major child* entitled for maintenance- if suffering from physical or mental abnormality or injury and unable to maintain itself-physically and mentally

fit major unmarried daughter cannot claim maintenance under s.125 Cr.P.C. [Paras 8–9]

Section 20(3) of the *Hindu Adoptions and Maintenance Act, 1956* -statutory and broader obligation on a Hindu parent-maintain an unmarried daughter unable to maintain herself out of her own earnings or property-claim being civil in nature-to be adjudicated in accordance with the *Code of Civil Procedure, 1908* and the factors enumerated in s.23(2) of the 1956 Act. [Paras 10–13, 25]

Under ss.7, 10 and 18 of the *Family Courts Act, 1984*-Family Court exercises dual jurisdiction — civil (under CPC) and criminal (under Cr.P.C.). -proceedings under Chapter IX Cr.P.C. are summary and penal in nature- s.20(3) of the 1956 Act are civil-require full trial and determination. [Paras 14–18, 20–21]

Family Court, while deciding an application under s.125 Cr.P.C.-cannot grant maintenance under s.20(3) of the 1956 Act-without converting the proceedings and without recording findings based on the criteria in s.23(2) of that Act. [Paras 24–25]

Impugned order granting maintenance under s.20(3) while acting under s.125 Cr.P.C.-unsustainable-was set aside-Revision allowed-matter remitted to the Family Court to permit conversion of the proceeding into a civil suit under s.20(3) of the 1956 Act and to decide it expeditiously in accordance with law. [Paras 25–26] (E-14)

Case Law Cited

***Abhilasha v. Parkash and Others,* (2021) 13 SCC 99 — applied.**

List of Acts / Statutes

Criminal Procedure Code, 1973; The Hindu Adoptions and Maintenance Act, 1956; Family Courts Act, 1984; Code of Civil Procedure, 1908; Indian Majority Act, 1875.

List of Keywords

Maintenance; Major unmarried daughter; Family Cour; Dual jurisdiction; Conversion of proceedings; Summary procedure; remand for civil adjudication.

Case Arising From

Criminal Revision under Sections 397/401 Cr.P.C. against judgment and order dated 30 July 2024 passed by the Principal Judge, Family Court, Sultanpur, in Criminal Misc. Case No. 280 of 2023 (*Kumari Neha Pandey v. Anurag Pandey*).

Appearance for Parties

For the Revisionist : Shri Amit Kumar Singh, Shri Ajai Kumar Gupta.
For the Opposite Parties : Learned Government Advocate, Shri Rohit Singh Parmar.

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

1. Heard Shri Amit Kumar Singh, learned counsel for the revisionist, learned AGA and Shri Rohit Singh Parmar, learned counsel for the respondent no. 2.

2. This Criminal Revision has been filed assailing the judgment and order dated 30.07.2024 passed in Criminal Misc. Case No. 280 of 2023; Kumari Neha Pandey vs. Anurag Pandey under Section 125 of Criminal Procedure Code (here-in-after referred as CrPC) by Principal Judge, Family Court, District Sultanpur.

3. The sole argument advanced by learned counsel for the revisionist is that the respondent no. 2 is major in age and it was disclosed in the application under Section 125 CrPC itself, therefore, the maintenance could not have been allowed in the proceeding(s) under Section 125 CrPC and if the court was of the view that a major daughter can claim maintenance under Section 20(3) of Hindu Adoption and Maintenance Act, 1956, the proceedings could have been converted and after trial as a civil suit in accordance with law, the order could have been passed. He further submits that the judgment of the Hon'ble

Supreme Court, in the case of **Abhilasha vs. Parkash and others; (2021) 13 SCC 99,** has wrongly and illegally been interpreted by the trial court. Thus, the submission is that the impugned judgment and order is liable to be set aside and the revision is liable to be allowed.

4. Learned counsel for the respondent no. 2, though opposed the prayer of the revisionist on the ground that the respondent no. 2 is in need of money, but could not contradict the legal position as argued by learned counsel for the revisionist and fairly submits that the impugned judgment and order may be set aside and the matter may be remitted to the concerned Family Court for converting and deciding afresh under Section 20(3) of Hindu Adoption and Maintenance Act, 1956 to avoid multiplicity of cases and the same may be directed to be decided in a time bound manner. To which there is no objection by learned counsel for the revisionist.

5. In view of above and consensus among learned counsels for the parties that being legal issue, this revision can be decided on the material placed on record of this revision.

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

7. The respondent no. 2 had filed an application under Section 125 CrPC claiming maintenance from the revisionist. The respondent no. 2; daughter of the revisionist was major in age at the time of filing of the application and it was disclosed in the application under Section 125 CrPC.

8. Section 125 CrPC provides that if any person having sufficient means neglects or refuses to maintain his legitimate or illegitimate minor child whether, married or not, unable to maintain itself, a Magistrate of the first class, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of such child at such monthly rate, as such Magistrate deems fit. Proviso appended to Sub-section (1) provides that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority. Section 125(1) CrPC is extracted here-in-below:

"125. Order for maintenance of wives, children and parents.*-(1) If any person having sufficient means neglects or refuses to maintain-*

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]

Explanation. For the purposes of this Chapter,-

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) .....

(3) .....

(4) .....

(5) .....

(6)..... U.P. Amendment"

9. In view of above, only a minor daughter is entitled for maintenance under Section 125 CrPC. However, a major daughter is entitled for maintenance, who is not married if by reason of any physical or mental abnormality or injury, she is unable to maintain herself. Thus, the case of the respondent no. 2 is not covered under Section 125 CrPC and she was not entitled for order of maintenance under the said section. Learned trial court after considering it and the provisions of Section 20(3) of Hindu Adoptions and Maintenance Act, 1956 (here-in-after referred as Act of 1956) allowed the application filed under Section 125 CrPC in terms of Section 20(3) of the Act of 1956 and directed to the revisionist to pay an amount of Rs. 10,000/- per month as maintenance from the date of application. Hence, this revision has been filed.

10. In view of above, this Court has to see as to whether in an application for maintenance under Section 125 CrPC, the order for maintenance can be passed under Section 20(3) of the Act of 1956. The Act of 1956 has been enacted to amend and codify the law relating to adoptions and maintenance among Hindus. It has overriding effect under Section 4 of the Act. Chapter 3 of the Act deals with maintenance. Section 20 in Chapter 3 deals with the maintenance of children and aged parents. Sub-section (3) of Section 20 provides the obligation of a person to maintain his or her daughter, who is unmarried and is unable to maintain herself out of her own earnings or the property. Section 20 is extracted hereinbelow:-

***"20. Maintenance of children and aged parents.**—(1) Subject to the*

provisions of this section a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property.

Explanation. — In this section "parent" includes a childless step-mother."

11. The amount of maintenance, which may be allowed under the Act of 1956 has been provided under Section 23 of the Act. Sub-section 2 provides the grounds on which the maintenance shall be awarded to a wife, children or aged or infirm parents under the Act. The relevant Sections 23(1) and 23(2) are extracted here-in-below:-

"23. Amount of maintenance. *— (1) It shall be in the discretion of the Court to determine whether any, and if so what, maintenance shall be awarded under the provisions of this Act, and in doing so, the Court shall have due regard to the considerations set out in sub-section (2), or sub-section (3), as the case may be, so far as they are applicable.*

(2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to—

(a) the position and status of the parties;

(b) the reasonable wants of the claimant;

(c) if the claimant is living separately, whether the claimant is justified in doing so;

(d)the value of the claimant's property and any income derived from such property, or from the claimant's own earnings or from any other source;

(e) the number of persons entitled to maintenance under this Act.

3. In determining the amount of maintenance ....."

12. Section 24 of the Act of 1956 provides that no person shall be entitled to claim maintenance under this Chapter, if he or she has ceased to be a Hindu by conversion to another religion.

13. In view of above, the maintenance to a daughter, who has attained majority can be allowed under the Act of 1956, if she has not ceased to be a Hindu by conversion to another religion and unable to maintain herself out of her own earnings or other property upon consideration of the factors given in Sub-section (2) of Section 23 of Act of 1956.

14. The Family Courts Act, 1984 (here-in-after referred as Act of 1984) has been enacted to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith. The establishment of Family Court has been given in Section 3 of the Act. The jurisdiction conferred on the Family Courts has been given under

Section 7, which is extracted here-in-below:-

"7. Jurisdiction.-*(1) Subject to the other provisions of this Act, a Family Court shall—*

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation. — The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely: —

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstance arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise?

(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment."

15. The procedure generally to be followed by the Family Courts has been given in Section 10 of Act of 1984, which is extracted here-in-below:-

"10. Procedure generally.-

(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court.

(2) Subject to the other provisions of this Act and the rules, the provisions of

the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.

(3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other."

16. The execution of decrees and orders passed by the Family Court has been given under Section 18, which is extracted here-in-below:-

"18. Execution of decrees and orders.- *(1) A decree or an order, other than an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974), passed by a Family Court shall have the same force and effect as a decree or order of a civil court and shall be executed in the same manner as is prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the execution of decrees and orders.*

(2) An order passed by a Family Court under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) shall be executed in the manner prescribed for the execution of such order by that Code.

(3) A decree or order may be executed either by the Family Court which passed it or by the other Family Court or ordinary civil court to which it is sent for execution."

17. Section 19 of the Act of 1984 provides for appeal. Sub-section (1) provides that an appeal from every judgment and order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law. Sub-section (4) added by amendment by Act 59 of 1991 w.e.f. 28.12.1991 provides that the High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of CrPC. Section 19 of the Act of 1984 is extracted here-in-below:

"19. Appeal.-*(1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.*

(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974):Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991 (59 of 1991).

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order of a Family Court.

(4) The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in

which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and, as to the regularity of such proceeding.

(5) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court.

(6) An appeal preferred under sub-section (1) shall be heard by a Bench consisting of two or more Judges."

18. In view of Sections 7, 10, 18 and 19, it is apparent that a Family Court excercises all the jurisdiction excercisable by any district court or any subordinate civil court in respect of suit(s) and proceedings of the nature referred to in explanation in Section 7 of Act of 1984 and according to Explanation (f), a suit or proceeding for maintenance can be filed before the Family Court. As per Sub-section (2) of Section 7, a Family Court shall also have and exercise jurisdiction exercisable by the Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of CrPC. Thus, both the powers have been conferred upon the Family Courts. However, these are to be exercised under the respective procedural law as provided under Section 10, according to which, the provisions of Code of Civil Procedure, 1908 (here-in-after referred as CPC) and of any other law for the time being shall apply to the suit(s) and proceedings other than the proceedings under Chapter IX of CrPC before a Family Court and for the said purpose, as per Sub-section (1), a Family Court shall be deemed to be a civil court and shall have powers of such court. Sub-section (2) of Section 10 of the Act of 1984 provides that subject to this Act and Rules made thereunder, the provisions of CrPC or the rules made thereunder shall apply to the proceedings under Chapter IX of CrPC before a Family Court. Similarly, the procedure for execution of decrees and orders has been provided under Section 18 of the Act of 1984, which shall be under the respective codes. Further the remedies provided in both the cases is different. The judgment and order passed in a suit for maintenance dealt with in accordance with CPC can be challenged in an Appeal before this Court, whereas the order passed under Chapter IX of CrPC dealt with in accordance with CrPC can be challenged in a Revision before this Court.

19. Section 9 of CPC provides that the courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

20. In view of above, a suit or proceeding for maintenance under Section 20(3) of Act of 1956 is to be dealt with in accordance with the procedure prescribed under CPC and any other law applicable on such suits and proceedings and for the said purpose the Family Courts shall exercise the jurisdiction of Civil Courts in respect of suits under CPC and proceedings under Section 125 CrPC, which is under Chapter IX of CPC, is to be dealt with in accordance with the procedure prescribed under CrPC and exercising the jurisdiction as Magistrate of First Class and accordingly, the execution is to be made of the decrees and orders and separate remedies can be availed for challenging the orders in respective proceedings.

21. The Family Courts have been established under Section 3 of the Act of 1984 for area having population exceeding one million and in the areas where the population is less than one million, the suites and the proceedings are being dealt with by the respective civil courts and criminal courts. Thus, it is apparent that the proceedings under Section 125 CrPC are to be dealt with as per the procedure prescribed under Section 126 CrPC exercising jurisdiction of Magistrate First Class, whereas the proceedings under Section 20(3) of the Act of 1956 are of civil in nature, which is to be dealt with by the Family Courts as District or Sub-ordinate Civil Court.

22. The Hon'ble Supreme Court, in the case of **Abhilasha vs. Parkash and others (Supra),** held that the purpose and objective of 125 CrPC is to provide immediate relief to applicant in a summary proceedings, whereas right under Section 20 read with Section 3(b) of Act of 1956 contains larger right, which needs determination by a Civil Court, hence for the larger claims as enshrined under Section 20 of the Act of 1956, the proceedings need to be initiated under Section 20 of the Act of 1956 and the Magistrate, while exercising jurisdiction under Section 125 Cr.P.C. to determine the claims contemplated by Act of 1956, cannot decide the proceedings under Section 20 of the Act of 1956 determining maintenance in accordance with law. The relevant paragraphs 33, 34, 35, 36, 37 and 39 are extracted here-in-below:

36. The purpose and object of Section 125 Cr.P.C. as noted above is to provide immediate relief to applicant in a summary proceedings, whereas right under Section 20 read with Section 3(b) of Act, 1956 contains larger right, which needs determination by a Civil Court, hence for the larger claims as enshrined under Section 20, the proceedings need to be initiated under Section 20 of the Act and the legislature never contemplated to burden the Magistrate while exercising jurisdiction under Section 125 Cr.P.C. to determine the claims contemplated by Act, 1956.

37. There are three more reasons due to which we are satisfied that the orders passed by the learned Judicial Magistrate as well as learned Additional Sessions Judge in the revision was not required to be interfered with by the High Court in exercise of jurisdiction under Section 482 Cr.P.C. The reasons are as follows:-

(i) The application was filed by the mother of the appellant in the year 2002 claiming maintenance on her behalf as well as on behalf of her two sons and appellant, who was minor at that time. The appellant being minor at that time when application was filed on 17.10.2002, there was no occasion for any pleading on behalf of the appellant that she was not able to maintain herself even after attaining the majority.

Section 20 of the Act, 1956 on which reliance has been placed by learned counsel for the appellant recognising the right of maintenance of unmarried daughter by a person subject to the condition when ?the parents or the unmarried daughter, as the case may be, is unable to maintain themselves/herself out of their/her own earnings or other property?. The learned Additional Sessions Judge noticed the submission of the respondent that appellant did not come in

the witness box even when she had attained majority to claim that she was unable to maintain herself, which contention has been noted in paragraph 12 of the judgment of the learned Additional Sessions Judge.

(ii) From the judgment of the learned Judicial Magistrate, another fact, which is relevant to be noticed is that applicant Nos. 2 to 4, which included the appellant also had filed the proceedings under Section 20 of the Act, 1956 being Suit No. 6 of 2001, which was dismissed as withdrawn on 17.12.2012.

(iii) Another factor, which need to be noticed that in the counter affidavit filed in this appeal, there was a specific pleading of the respondent that a plot of land was purchased in name of the appellant admeasuring 214 sq. Yds. In the rejoinder affidavit filed by the appellant, it has been admitted that the plot was purchased on 31.07.2000 from the joint income earned by mother and father of the appellant, which had been agreed to be sold in the year 2012 for a total sale consideration of Rs.11,77,000/-. In the rejoinder affidavit, an affidavit of prospective purchaser has been filed by the appellant, where it is mentioned that agreement to sell had taken place between appellant and Arjun on 31.07.2000 for a sale consideration of Rs.11,77,000/-, out of which appellant had received Rs.10,89,000 as earnest money.

38. .....

39. In facts of the present case the ends of justice be served by giving liberty to the appellant to take recourse to Section 20(3) of the Act, 1956, if so advised, for claiming any maintenance against her father. Subject to liberty as above, the appeal is dismissed.

23. The Family Court, while exercising both the powers, has jurisdiction to decide under Section 125 CrPC as well as the suit under Section 20 of the Act of 1956, therefore, the Family Court can exercise jurisdiction under both the act and in appropriate case, can grant maintenance to married daughter, even if she has become major under Section 20 of the Act of 1956.

24. In view of above, it cannot be disputed that the application filed under Section 125 CrPC can be dealt with and the maintenance can be granted under Section 20 of the Act of 1956 by the Family Courts, if the unmarried daughter claiming the maintenance has become major. Thus, in case during pendency of the application under Section 125 CrPC, a daughter becomes major, the maintenance can be allowed to her invoking the provisions of Section 20 of the Act of 1956, but in the present case, the application was filed by the daughter i.e. respondent no. 2 after attaining the age of majority, therefore, it was not a case in which his daughter had become major during pendency of the application and maintenance could have been awarded in the same proceeding, that too without considering the factors for determination of maintenance under Section 20(3) read with Sections 23 and 24 of Act of 1956. However, since both the powers can be exercised by the Family Court, therefore, this Court is of the view that if the application has been filed under Section 125 CrPC, it can be got converted into a suit under Section 20 of the Act of 1956 as it is to be dealt by the same court and after converting under the relevant provision and dealing with the application

as suit for maintenance and after adopting the procedure as prescribed and upon consideration of pleadings and evidence on record under the provision of Act of 1956, if the Family Court finds that the case for maintenance is made out, the court can order for maintenance to avoid multiplicity of suits, but not on the basis of summary proceedings under Section 125 CrPC. The remedy for challenging the order passed under both the proceedings are also separate as discussed above.

25. In view of above, this Court is of the view that the Family Court, while deciding the application under Section 125 CrPC in the present case could not have allowed the maintenance under Section 20(3) of the Act of 1956 without considering the relevant factors to be considered and recording finding in regard to those, but the learned Family Court without considering the law as discussed above and misinterpreting the judgment of the Hon'ble Supreme Court, in the case of **Abhilasha vs. Parkash and others (Supra),** allowed the application under Section 125 CrPC and awarded the maintenance under Section 20(3) of the Act of 1956. Thus, the same is not sustainable in the eyes of law and liable to be set-aside.

26. In view of above and the consensus among learned counsel for the parties, the revision is **allowed**. The impugned judgment and order 30.07.2024 passed in Criminal Misc. Case No. 280 of 2023; Kumari Neha Pandey vs. Anurag Pandey under Section 125 of CrPC by Principal Judge, Family Court, District Sultanpur is hereby set aside. The matter is remitted back to the concerned Family Court, where the parties shall appear on 18.08.2025 on which date an application may be moved by the respondent no. 2 for converting the application under Section 125 CrPC into a suit under Section 20(3) of the Act of 1956 and the Family Court shall consider and pass appropriate order thereon in accordance with law and the observations made here-in-above in this order on the same day or within two weeks thereafter and the Family Court shall proceed accordingly and in such case make endeavour to decide the suit expeditiously and preferably within a period of six months without granting unnecessary adjournment to either of the parties. It is also expected that the parties shall assist the court in expeditious disposal of the case.

(2025) 7 ILRA 1014
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 31.07.2025
BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Revision No. 1408 of 2024

Bilal Ahmad & Ors. ...Revisionists
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Revisionists:
Arun Sinha, Ram Chandra Singh, Umang Agarwal

Counsel for the Opposite Parties:
G.A., Manik Mishra, Ramakar Shukla, B/R0865

Issue for Consideration

Whether the trial court was justified in summoning persons, earlier exonerated during investigation, under Section 319 of the *Criminal Procedure Code, 1973*, based on the testimony of prosecution witnesses recorded during trial, and whether the revisional court can interfere with such discretionary exercise of power by the trial court.

Headnotes

Criminal Procedure Code, 1973 — ss. 319, 397, 401 — Summoning of additional accused — Persons named in FIR but not charge-sheeted — Degree of satisfaction required — Scope of revisional interference — Discretion of trial court.

Held:

Section 319 Cr.P.C.-empowers a trial court to summon any person appearing to be guilty of an offence, even if not charge-sheeted-based on evidence adduced during trial-*"evidence"* contemplated under Section 319 refers to the material recorded before the trial court-not merely the material collected during investigation-investigative material may be used only for corroboration, not for contradiction or disbelief of trial evidence. [Paras 19–20]

Power under Section 319 Cr.P.C. is discretionary and extraordinary — to be exercised sparingly and with caution- when the evidence led before the court-discloses *strong and cogent* material-showing more than a prima facie case-though short of proof sufficient for conviction. [Paras 16–18]

Revisional court, while examining an order passed under Section 319 Cr.P.C.-can only test whether the discretion was exercised in accordance with law-upon consideration of relevant material- cannot substitute its own opinion merely because another view is possible-trial court had applied the correct legal principles and exercised its discretion judiciously-High Court refused to interfere. [Paras 21–23] (E-14)

Revision dismissed — Summoning order upheld — Interim order vacated.

Case Law Cited

***Michael Machado & Anr. v. Central Bureau of Investigation & Anr.,* AIR 2000 SC 1127 — referred to; *Hardeep Singh v. State of Punjab & Ors.*, (2014) 3 SCC 92 — applied; *Brijendra Singh & Ors. v. State of Rajasthan*, (2017) 7 SCC 706 — followed; *Sunil Kumar Gupta v. State of U.P.*, Criminal Appeal No. 395 of 2019, decided on 27.02.2019 — referred to.**

List of Acts / Statutes

Code of Criminal Procedure, 1973; Indian Penal Code, 1860; Criminal Law Amendment Act, 1932.

List of Keywords

Criminal revision; Summoning under Section 319 Cr.P.C.; Persons not charge-sheeted; Degree of satisfaction; Strong and cogent evidence; Discretionary power; Revisional jurisdiction; Limited interference; Prima facie case; Standard of proof.

Case Arising From

Criminal Revision under Sections 397/401 Cr.P.C. challenging order dated 23 October 2024 passed by the Additional Sessions Judge, Court No. 1, Sultanpur, in Sessions Trial No. 210 of 2022 (*State v. Iqbal Hussain & Others*), whereby the revisionists were summoned under Section 319 Cr.P.C. to face trial in Case Crime No. 305 of 2020 under Sections 302/149, 307/149, 323/149, 504, 506 IPC and Section 7 of the *Criminal Law Amendment Act, 1932*.

Appearance for Parties

For the Revisionists : Shri Arun Sinha, Shri Ram Chandra Singh, Shri UmangAgarwal
For the Opposite Parties : Learned Government Advocate, Shri Manik Mishra, Shri Ramakar Shukla

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Arun Sinha, the learned counsel for the applicants, Sri Satyendra Srivastava, the learned A.G.A. for the State, Sri Adarsh Srivastava, the learned counsel for opposite party No.2 and perused the record.

2. By means of the instant Revision filed under Section 397/401 Cr.P.C., the revisionists have challenged the validity of

an order dated 23.10.2024 passed by the learned Additional Session Judge, Court No.1, Sultanpur in Session Trial No.210 of 2022 whereby an application filed by the opposite party No.2 under Section 319 Cr.P.C. summoning the revisionists and another person Ritesh Rana to face trial in respect of Case Crime No.305 of 2020 under Section 302/149, 307/149, 323/149, 504, 506 I.P.C. and Section 7 of Criminal Law Amendment Act relating to Police Station- Kudwar, District- Sultanpur, has been allowed and the applicants have been summoned to face the trial.

3. The aforesaid case was instituted on the basis of an FIR lodged by the opposite party No.2 on 17.06.2020 against ten persons, including the revisionists, stating that the informant's daughter-in-law was the village Pradhan and all her works were looked after by her husband (the informant's son Mainuddin) as her representative. Accused persons- Iqbal @ Balu, Akhlakh Ahmad, Shakeel Ahmad, Ritesh Rana, Rohit Tewari, Gulam Asgari, Hashim, Khursheed Alam and Zakir used to sit at the electronics shop of Bilal Ahmad and they used to keep on making strategies for spreading their clout in the village and they were jealous about the works being done in Gram Sabha by the complainant's son. When the complainant's son Mainuddin reached the Jan Seva Shop of the complainant's younger son- Nuruddin at about 08:30 on 17.06.2020, all the accused persons attacked him. Iqbal, Gulam Asgari and Khursheed Alam had fired gun-shots at him. When the complainant's other son- Mainuddin ran to save his brother, he was also shot at and thereafter all the accused persons beaten them up with sticks. Both the injured persons were taken to the District Hospital, Sultanpur where Mainuddin died and Nuruddin was referred to Medical College, Lucknow.

4. In the statement of the complainant- Mohd. Ramzan recorded by the Investigating Officer, he reiterated the FIR version.

5. In the statement of the injured Nuruddin recorded by the Investigating Officer, he did not mention the name of the revisionists. The revisionists were not named in the statements of some shopkeepers, who are mentioned as eye-witnesses of the incident.

6. After investigation, the Investigation Officer found that the allegations against the applicants and Ritesh Rana could not be established.

7. In the additional statement of the injured Nuruddin recorded by the Investigating Officer, he stated that the applicants and Ritesh Rana were not involved in the incident. His father had lodged the FIR but he was not present at the time of the incident. In the additional statement of the informant also, he stated that the revisionists and Ritesh Rana were not involved in the incident. After completing the investigation, the Investigating Officer submitted a charge-sheet dated 10.09.2020 against Iqbal Hussain @ Balu, Gulam Asgari, Khursheed Alam (sons of Zakir Hussain @ Zakku) and Zakir Hussain @ Zakku and the implication of Hashim, Bilal Ahmad, Akhlakh Ahmad, Shakeel Ahmad, Rohit Tewari and Ritesh Rana was found to be false.

8. The trial Court took congizance of the offence and summoned the accused persons against whom the charge-sheet has been filed.

9. After examination of PW-1 (the complainant) and PW-2 (the injured Nuruddin), the complainant- opposite party No.2 filed an application under Section 319 Cr.P.C. stating that PW-1 and PW-2 have stated before the Court that all the accused persons had fired at Mainuddin and Nuruddin with the intention of killing them, due to which Mainuddin died and Nurruddin suffered a gun-shot injury in his neck. Involvement of the revisionists and Ritesh Rana in commission of the offence is established and the case of their trial is made out from the aforesaid evidence produced in the trial.

10. The application was opposed on behalf of the revisionists and Akhlakh Ahmad (the revisionist No.2), Shakeel Ahmad, Rohit Tewari and Ritesh Rana claimed alibi.

11. This application has been allowed by the trial Court by means of an impugned order dated 23.10.2024. The trial Court has stated in the impugned order that the complainant has stated about involvement of the revisionists in commission of the offence in the FIR and in his statement recorded under Section 161 Cr.P.C. He has stated about the involvement of the revisionists and Ritesh Rana during his examination before the trial Court. PW-2, who got injured in the incident and who is brother of the deceased, has also stated before the Court about involvement of all the persons named as accused in the FIR, including the revisionists and Ritesh Rana, in commission of the offence. From the evidence available on record, involvement of the revisionists and Ritesh Rana in commission of the offence is established prima facie and a case for summoning them to face the trial is made out.

12. The trial Court has referred to the judgments of the Hon'ble Supreme Court in the case of **Michael Machado & Anr. v. Central Bureau Of Investigation & Anr.**: AIR 2000 SC 1127, **Hardeep Singh v. State of Punjab & Ors.**: (2014) 3 SCC 92 and **Sunil Kumar Gupta v. State of U.P.** Crl. Appeal No.395 of 2019 decided on 27.02.2019.

13. Assailing validity of the aforesaid order, Shri Arun Sinha, the learned counsel for the revisionists has submitted that there was ample evidence collected during investigation to establish that the applicants were not involved in commission of the offence and, therefore, the Investigating Officer had rightly exonerated them. Although the complainant had stated about the involvement of the revisionists in commission of the offence in the FIR and in his statement under Section 161 Cr.P.C. and he has again reiterated the same during his examination before the trial Court, the injured Nuruddin had stated during his statement recorded under Section 161 Cr.P.C. that his father was not present at the time of the incident and Nuruddin had stated before the Investigating Officer that the revisionists and Ritesh Rana were not involved in commission of the offence. Therefore, the statement of PW-1 that the revisionists were involved in commission of the offence, when his injured son has stated that PW-1 was not present at the time of incident, is not sufficient to summon the applicants to face the trial. So far as the PW-2 is concerned, he had himself stated earlier that the revisionists were not involved in commission of the offence and, therefore, the revisionists cannot be summoned to face the trial under Section 319 Cr.P.C. on the basis of statement of PW-2.

14. Section 319 Cr.P.C. provides as follows:-

"319. Power to proceed against other persons appearing to be guilty of offence.

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."

15. Sri Arun Sinha has relied upon the judgments of the Hon'ble Supreme Court in the cases of **Hardeep Singh** (supra) and **Brijendra Singh & Ors. v. State of Rajasthan:** (2017) 7 SCC 706.

16. In **Hardeep Singh** (supra), the Hon'ble Supreme Court held that:-

"105. *Power under Section 319 Cr.P.C. is a discretionary and an extra-ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence.* ***Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.***

106. *Thus, we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his complicity.* ***The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction.*** *In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C.* ***In Section 319 Cr.P.C. the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words "for which such person could be tried together with the accused." The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting under Section 319***

Cr.P.C. to form any opinion as to the guilt of the accused.

.....

111. *Even the Constitution Bench in Dharam Pal (CB) has held that the Sessions Court can also exercise its original jurisdiction and summon a person as an accused in case his name appears in Column 2 of the chargesheet, once the case had been committed to it. It means that a person whose name does not appear even in the FIR or in the chargesheet or whose name appears in the FIR and not in the main part of the chargesheet but in Column 2 and has not been summoned as an accused in exercise of the powers under Section 193 Cr.P.C. can still be summoned by the court, provided the court is satisfied that the conditions provided in the said statutory provisions stand fulfilled."*

17. In **Brijendra Singh** (supra), the Hon'ble Supreme Court has followed the decision in **Hardeep Singh** (supra) and framed the moot questions involved in the case that what is the degree of satisfaction that is required for invoking the powers under Section 319 Cr.P.C. and in what situations this power should be exercised in respect to a person named in the FIR but not charge-sheeted.

18. While answering to the aforesaid questions, the Hon'ble Supreme Court referred to the following passage from the judgment of **Hardeep Singh** (supra) and the Hon'ble Supreme Court further held in **Brijendra Singh** (supra) that :-

"In order to answer the question, some of the principles enunciated in Hardeep Singh's case may be recapitulated: Power under Section 319 Cr.P.C. can be exercised by the trial court at any stage during the trial, i.e., before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial court finds that there is some 'evidence' against such a person on the basis of which evidence it can be gathered that he appears to be guilty of offence. The 'evidence' herein means the material that is brought before the Court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by the Court to invoke the power under Section 319 Cr.P.C. No doubt, such evidence that has surfaced in examination-in-chief, without cross- examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court under Section 319 Cr.P.C. and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom chargesheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity. "

19. What comes out from the judgments in the case of **Hardeep Singh** (supra) and **Brijendra Singh** (supra) relied upon by the learned counsel for the revisionists is that the trial Court may summon any person named in the FIR but against whom the charge-sheet has not

been filed by the Investigating Officer, if some evidence comes against such persons from which he appears to be guilty of the offence. The evidence refers to material placed before the trial Court as prosecution evidence and not the material collected by the Investigating Officer. The material collected by the Investigating Officer during investigation can be utilized for corroboration and to support the evidence recorded by the trial Court to invoke the powers under Section 319 Cr.P.C. but at this stage it cannot be used to contradict or disbelieve the evidence produced before the trial Court. If the evidence produced before the trial Court makes out more than a prima facie case for trial of the accused persons, that is sufficient for summoning the accused persons to face trial under Section 319 Cr.P.C. and it is not required that before summoning the accused person under Section 319 Cr.P.C., the Court should be satisfied that the evidence is such as would lead to conviction of the accused persons. At the stage of summoning an accused under Section 319 Cr.P.C., the trial court is not required to form any opinion as to guilt of the accused person.

20. In the present case, the statements of PW-1 and PW-2 recorded by the trial Court clearly make out a case for trial of the revisionists and Ritesh Rana and it is not necessary that the evidence of PW-1 and PW-2 ought to have been scrutinized by the trial Court to such an extent as to record a satisfaction that it was sufficient for conviction of the revisionists and Ritesh Rana.

21. Section 319 Cr.P.C. confers a discretionary powers upon the trial Court and the Hon'ble Supreme Court has cautioned that the discretion has to be exercised only where more than a mere prima facie case is made out against the persons and this discretion should not be exercised in a casual or cavalier manner. A perusal of the impugned order passed by the trial court indicates that the trial Court has examined the material on record, the statements of PW-1 and PW-2 recorded by the trial Court, statements recorded by the Investigating Officer and after analysis of all the relevant material, the trial Court has allowed the application under Section 319 Cr.P.C. on the basis of cogent reasons recorded in the order. Therefore, it cannot be said that the trial court has exercised its discretion in a casual and cavalier manner, without examining the relevant material and without recording a satisfaction that a case for trial of the revisionists and Ritesh Rana is made out.

22. While examining the validity of an order passed by the trial Court exercising its discretion, the scope of scrutiny by the revisional Court under Section 397/401 Cr.P.C. is limited to examining whether the discretion has been exercised in accordance with law or not. If the discretion has been exercised in accordance with law, after taking into consideration all the relevant aspects of the matter and after recording the cogent reasons for exercising the discretion, this court will not interfere with the order in exercise of its discretionary jurisdiction merely because another view may also be possible and the trial court could have exercised the discretion otherwise also.

23. In view of the foregoing discussion, I find no error or illegality in the impugned order passed 23.10.2024 passed by the learned Additional Session Judge, Court No.1, Sultanpur in Session Trial No.210 of 2022. There is no good ground to interfere in the order in exercise of revisional jurisdiction of this Court.

24. The revision lacks merits and the same is **dismissed**.

25. Interim order dated 03.12.2024 stands discharged.

(2025) 7 ILRA 1021
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 24.07.2025
BEFORE

THE HON'BLE SIDDHARTH, J.

Criminal Revision No. 4833 of 2024

Juvenile 'X' ...Revisionist
Versus
State of U.P. & Ors. ...Opposite Parties

Counsel for the Revisionist:
Sri Ajai Kumar Srivastava, Sri Govind Prasad Pal, Sri Pradeep Kumar Pal

Counsel for the Opposite Parties:
G.A.

Issue for Consideration

Whether a child above sixteen years of age, alleged to have committed a heinous offence, can be directed to face trial as an adult under Section 15 of the *Juvenile Justice (Care and Protection of Children) Act, 2015*, in disregard of a psychologist's report indicating mild intellectual disability and poor social functioning; and whether such opinion is binding upon the Juvenile Justice Board.

Headnotes

Juvenile Justice (Care and Protection of Children) Act, 2015 — ss.15, 18(3), 19 — Juvenile Justice (Care and Protection of Children) Model Rules, 2016 — r.10A — Preliminary assessment — Heinous offence — Juvenile aged between 16–18 years — Expert assessment — Board's discretion — Requirement of independent satisfaction — Procedural safeguard — Social media influence- Reformative intent — Trial as adult — Scope of judicial review.

Held:

Preliminary assessment under s.15 of the *2015 Act*-crucial judicial function determining whether a child above sixteen years should be tried as an adult for a heinous offence-Such assessment must be based upon an evaluation of the-(i) mental and physical capacity to commit the offence-(ii) ability to understand its consequences-(iii) circumstances of its commission. [Paras 13–15]

Juvenile Justice Board may seek assistance from psychologists or experts under s.15(1) r/w r.10A of the *2016 Rules*-expert's opinion is **advisory and not binding**-the Board's disagreement with such opinion must be reasoned and based on an independent evaluation of evidence. [Paras 14, 18, 21–22]

Words "may take assistance" in s.15(1) must be construed as *mandatory* in practice- assessment determines whether the child is to be subjected to an adult trial- omission to meaningfully consider expert opinion vitiates the process - contrary to the legislative safeguards protecting children in conflict with law. [Paras 17, 20]

Act of 2015-reformative and child-centric-envisages rehabilitation-not retribution- Board cannot, on the basis of the seriousness of the offence alone- treat every adolescent as an adult criminal. [Paras 31–33]

Revision allowed — Orders treating juvenile as adult set aside — Matter remanded to the Juvenile Justice Board for trial as a juvenile under the *2015 Act* (E-14)

Case Law Cited

***Minor X v. State of U.P. and Another*, Criminal Revision No. 656 of 2022 (All HC) — distinguished; *Mumtaz Ahmed Nasir Khan v. State of Maharashtra*, 2019 (4) Bom CR (Cri) 261 — relied on.**

List of Acts / Statutes

Juvenile Justice (Care and Protection of Children) Act, 2015; Juvenile Justice (Care and Protection of Children) Model Rules, 2016; Protection of Children from Sexual Offences Act, 2012; Code of Criminal Procedure, 1973; Commissions for Protection of Child Rights Act, 2005.

List of Keywords

Juvenile; Preliminary assessment; Heinous offence; Section 15 JJ Act; Psychologist's report; Mental capacity; Expert opinion; Discretion of Board; Procedural safeguards; Trial as adult; Reformative approach; Intellectual deficit; Judicial reasoning; Rehabilitation; Child rights; Social media influence; Welfare jurisprudence.

Case Arising From

Impugned judgment / order dated 12.12.2023 passed by the Juvenile Justice Board, Kaushambi in Case Crime No. 412 of 2022 (State vs. Child in conflict with law ABCJU) and the impugned judgment / order dated 13.08.2024 passed by the learned POCSO Court / Special Judge (POCSO Act), Kaushambi in Criminal Appeal No. 01 of 2024 (Raju Pal @ Ram Milan vs. State of U.P & others) .

Appearance for Parties

For the Revisionist : Shri Ajai Kumar Srivastava, Shri Govind Prasad Pal.
For the State : Ms. Manju Thakur, A.G.A.-I

(Delivered by Hon'ble Siddharth, J.)

1. Heard learned counsel for revisionist; Ms. Manju Thakur, learned A.G.A-I, for State and perused the material on record.

2. No one has turned up on behalf of opposite party no. 2.

3. The present criminal revision has been filed challenging the impugned judgment / order dated 12.12.2023 passed by the Juvenile Justice Board, Kaushambi in Case Crime No. 412 of 2022 (State vs. Child in conflict with law ABCJU) and the impugned judgment / order dated 13.08.2024 passed by the learned POCSO Court / Special Judge (POCSO Act), Kaushambi in Criminal Appeal No. 01 of 2024 (Raju Pal @ Ram Milan vs. State of U.P & others) on the ground that the impugned orders have wrongly held the revisionist to the tried as adult and his assessment by the Juvenile Justice Board as well as Special Court is not in accordance with law.

4. Counsel for the revisionist submits that in both, the assessment and medical reports, it was assessed and held by the experts that psychological assessment of juvenile are suggestive of mild deficit in intellectual functioning. Also, some difficulty in social domain, as assessed by the CBCL, was found borderline to mild in clinical range, even then vide impugned judgment / order dated 12-12-2023, the Juvenile Justice Board, Kaushambi by ignoring the Preliminary Assessment Report dated 03-11-2023 and Psychological Assessment Report dated 09-11-2023 sent the matter before the POCSO Court for trial and the POCSO Court vide impugned judgment / order dated 13-08-2024 confirmed the stand taken by the Juvenile Justice Board, Kaushambi, as such both the impugned judgments / orders passed by both the Courts below are wholly unsustainable in the eyes of law and liable to be set aside by this Court.

5. He further submits that the impugned judgment / order dated 12-12-2023 of the Juvenile Justice Board, Kaushambi holds that the clinical psychologist report states that there appears mild deficit in mental status, even then the

Board had relied upon the allegations made in the first information report as well as statement of victim recorded under Section 164 Cr.P.C., by ignoring the clinical psychologist report and held that the Juvenile Justice Board, Kaushambi is not bound by the reports submitted by the experts and has disagreed with the reports. It is submitted that denying the experts report will frustrate the provisions of Section 15 (1) of The Juvenile Justice Act, 2015, which may not be allowed.

6. Learned counsel for the State has submitted that although the preliminary assessment report under Section 15(1) and the report of psychologist are in favour of the juvenile but the board has recorded clear findings that since the revisionist indulged in physical relationship with the victim, aged about 14 years, for one year and when she became pregnant for five months, he administered her medicine which resulted in abortion of her pregnancy and therefore the revisionist was required to be tried as an adult. He was well aware of the consequences of his act and had criminal inclination of mind.

7. The courts have found that the revisionist was able to understand the consequence of crime committed by him and therefore the board is not bound to accept the report of the psychologist and has held that the revisionist is required to be tried as an adult.

8. Learned counsel for the revisionist has placed reliance upon a judgment of this court passed in Criminal Revision No. 656 of 2022, Minor ‘X’ vs. State of U.P. and Another. In this revision the dispute was that even on the request of Juvenile to send him for the examination by the psychologist / psychiatrist or other expert, he was not sent for examination and the Juvenile Justice Board without taking assistance of psychologist or expert held that the revisionist is required to be tried as an adult.

9. This court held in the aforesaid judgment that the section 15 of the J.J. Act although provides that the board may take assistance and psychologist or psychiatrist or expert but the word ‘may’ indicates that it is mandatory and not optional for the Juvenile Justice Board. Hence, the matter was remanded to the board for preliminary assessment as per Section 15(1) of the J.J. Act. Clearly the case law has no application to the present case. It has been cited out of context by the learned counsel for revisionist.

10. The Juvenile Justice (Care and Protection of Children) Act, 2015 (in short `the Act') was brought in the system of criminal trial wherein juvenile aged between 16-18 years can be deemed to be an adult in case of commission of heinous offences and therefore can be tried before a criminal court under Section 6 of the Code of Criminal Procedure, 1973 (in short `Cr P C') in accordance with the ordinary procedure of law. Section 15 of the Act provides the mechanism for determination of the mental and physical capacity of a juvenile of such age regarding the commission of the offences and the consequences thereof in order to presume such juvenile `as an adult' by employing legal fiction. The juvenile in fact need not to be an adult. But in law such juvenile will be considered as an adult. Since such an inquiry has immense ramification qua a juvenile aged between 16-18 years, it is of paramount importance that the said inquiry is conducted following the provisions of law in its letters and spirits. But in fact

more often than not, it is found that such legal mandate in conducting such an inquiry is breached in impunity.

11. According to Section 14 of the Act, when a `child in conflict with law' within the meaning of Section 2 (13) of the Act is produced before the Juvenile Justice Board (in Short `the Board') constituted under Section 4 of the Act, the Board is obligated to hold an inquiry as per Chapter XXI of the Code of Criminal Procedure, 1973 (in short `Cr PC') in case of petty offence defined under Section 2(45) of the Act (vide Section 14 (5)(d)); or an inquiry as per Chapter XX of Cr P C in case of serious offence defined under Section 2(54) of the Act (vide Section 14(5)(e)), or an inquiry as per Chapter XX of Cr P C in case of heinous offence defined under Section 2(33) of the Act for a child below the age of sixteen years as on the date of commission of the offence (vide Section 14(5)(f)(i)). At the conclusion of such inquiry the Board may pass either an order of exoneration under Section 17 or an order of conviction under Section 18 of the Act. In case an Order is passed under Section 18 of the Act, the Board is required to follow the provisions mentioned under Section 18(1) and / or 18(2) of the Act.

12. However, in case `a child in conflict with law' above the age of sixteen years as on the date of commission of the offence being an accused of a `heinous offence', a preliminary assessment inquiry has to be conducted in terms of Section 15 of the Act (vide Section 14(3)/ 14(5)(f)(ii)).

13. The purpose of such preliminary assessment test under Section 15 of the Act is to ascertain as to whether `the child in conflict with law' is required to be tried as an adult by a Children's Court (vide Section 18(3)) or by the Board. In the aforesaid eventuality, once `a child in conflict with law' is produced before the Board, it is therefore, imperative for the Board to conduct a preliminary assessment test under Section 15 of the Act with regard to:

a. The mental and;

b. Physical capacity to commit a heinous offence within the meaning of Section 2(33) of the Act and;

c. Ability to understand the consequences of the offence and;

d. The circumstances in which he allegedly committed the offence.

14. In coming to such a conclusion the board may take the assessment of experienced psychologist or psycho-social workers or other experts.

15. In this regard, it may be mentioned that the Board must consist of a Magistrate with at-least 3 years of experience and two social workers (vide Section 4(2)).

16. Rule 10A of the said Act (Care and Protection of children) Model Rules, 2016 (in short `Central Rules') prescribes the procedure for preliminary assessment into heinous offences by the Board. It provides that the Board shall in the first instance determine whether the child is of 16 years of age or above. According to sub-Rule (2) of the Central Rules, for the purpose of conducting a preliminary assessment in case of heinous offences the Board may take assistance of psychologist or psycho-social workers or other experts who have experience of working with the children in different circumstances. According to sub-rule (3) of the Central Rules, while making

the preliminary assessment, the child shall be presumed to be innocent. According to sub-rule (4) of the Central Rules, where the board, upon a preliminary assessment passes an order that there is a need for trial of the said child as an adult, `it shall assign reasons for the same'.

17. In order to appreciate the aforesaid provisions Section 3 of the said Act may be taken into consideration. Section 3 enumerates `General Principles to be followed in administration of the said Act'. According to Clause (i) of Section 3, a child shall be presumed to be innocent of any mala-fide or criminal intent. According to clause (ix) of section 3, no waiver of any right of the child is permissible or valid. According to Clause (xvi), basic procedural safeguards of fairness shall be adhered to, including the right of a fair hearing, rule against bias, etc.

18. In the aforesaid backdrop, it is therefore evident that the preliminary assessment test is a compulsory step which has to be necessarily followed by a Board once a child is produced before it in the eventualities as mentioned hereinabove. The procedure enumerated in Section 15 read with Rule 10A of Central Rules make it imperative for the Board to scrupulously and religiously follow the procedure in order to come to an independent decision, of course with aid of expert opinion. The crux is that the formulation of the opinion must, therefore be by the Board and none else. The Board cannot abdicate its essential judicial function. It is trite law that no decision making authority can abdicate its decision making power to another authority.

19. An order under Section 15 of the Act not only gives a different legal character to a juvenile aged between 16 to 18 years thereby presuming the said juvenile to be an adult in the contemplation of law, but also takes away the application of the beneficial provisions enumerated under Section 18(1)/(2) of the Act. It eventually determines the forum for trial, procedure for trial and the punishment that can ultimately be imposed in case the said juvenile is found to be guilty. Since the provision under Section 15 of the Act deals with a legal fiction (vide Section 18(3)), it has to be construed strictly. It is well settled that a deeming provision deserves strict construction.

20. Once an order is passed under Section 19 (3) of the Act, the case of the said child is transferred to the Children's Court within the meaning of Section 2(20) of the Act. In case the Children's Court is a designated court under Section 25 of the Commissions for Protection of Child Rights Act, 2005 (in short `the Child Rights Act') vis a vis under Section 28 of the Protection of Children from Sexual Offences Act, 2012 (in short `POSCO'), it will follow the procedure for trial of a sessions case under Chapter XVIII of Cr PC (vide Section 19 (2) read with Section 33 of POSCO vis a vis Section 25 of the Child Rights Act and Rule 12(8) of the Central Rules). The Children's Court may draw presumptions of guilt and culpable mental state under Sections 29 and 30 of POSCO respectively, in appropriate cases. It may pass any order of sentence except death sentence and life imprisonment without remission (vide Section 21) unlike the Board under Section 18 of the Act. The protection against disqualification under Section 24 of the Act will also not operate qua a child in conflict with law who was tried as an adult by the Children's Court.

21. Section 15 of the Act therefore, envisages a crucial judicial examination

which determines the status of the child qua a criminal trial. Though Section 15 of the Act is a component of an enquiry and not a trial, nevertheless, such inquiry requires application of judicial mind and the same is not a ministerial work. In this regard it may be mentioned that in the Act, the provisions for trail as envisaged under Cr PC has been generally conceptualized as inquiry. By virtue of sub-rule (3) of Rule 10A of Central Rule, during the decision making process the Board is obliged to presume the child to be an innocent.

22. The decision passed by the Board must necessarily be supported by reasons inasmuch as assigning reason is the best way out to demonstrate the application of mind. In case the reasoning fails, as a consequence thereof, the conclusion fails equally. An order under Section 15 of the said Act has therefore need to demonstrate satisfaction regarding the mental and/or physical capacity of the child to commit a heinous offence; the ability of the child to understand the consequences of the offences, and the circumstances in which the alleged offence had occurred.

23. In the present case, the petitioner, being more than 16 years of age as on the date of commission of alleged offence, the matter had to be considered in view of provisions of Section 15 of Act for the purpose of making preliminary assessment, as to whether the child in conflict with law had to be tried as an adult or not. The three parameters as provided under Section 15 of the Act are required to be followed strictly. The Act of 2015 has been enacted by the Parliament under the powers available under Article 253 of the Constitution of India, the age for trying the child/juvenile as an adult has been reduced from 18 to 16 years.

24. The case, in hand, falls within the category of heinous offence and the petitioner, being more than 16 years of age on the date of commission of offence, is required to be dealt with as per provisions of Section 15 of the Act for the purpose of making preliminary assessment. As per arguments of learned counsel for the petitioner, the Board has conducted the preliminary assessment and got the report from Psychologist as per provisions of the Act and Rules framed thereunder but court has not agreed to its findings. A conjoint reading of both Rules 10, 10A inconsonance with Section 14, 15 and 18(3) would reveal that the path to be tread upon by the Board, post the production of the Juvenile has been clearly spelt-out where heinous offence has been alleged to be committed by a child, who has completed 16 years of age. Rule 10(5) clearly reflects that the Child Welfare Police Officer is to produce the statements of witnesses and other documents prepared during the course of investigation within a period of one month from the date of first production of a child before the Board. It is also required that a copy thereof is to be given to the child or parent or guardian of the child. The legislature in its wisdom has prescribed the period of one month to produce the statements of the witnesses and other documents with a copy to the child, subsequent to which, the Preliminary Assessment in case of heinous offences under Section 15 of the Act has to be completed. Meaning thereby, the copy of list of witnesses and other documents along with copy of final report is to be supplied to the child or his parents or to the guardian before making the Preliminary Assessment as per provisions of Section 15 of the Act. It is also stipulated in Section 15 read with Rules 10 and 10-A along with other provisions of the Act that three basic

parameters are necessary to be followed in case of a heinous offence before passing the order under Section 18(3) for determining the need for trial of a child as an adult. The Board had to follow three parameters for making Preliminary Assessment as to whether there is a need for the trial of said child as an adult or not. It is to be seen as to how the Board as well as the Appellate Court has appreciated the circumstances of the commission of alleged offence, without the list of witnesses, documents relevant to the matter as well as the final report, which in any case the investigating authority is to file before the Board in less than two months of the production of the child before it.

25. In the present case, it appears that no list of witnesses and documents were supplied to the petitioner or his parents or guardian, which itself shows that the Board as well as the Appellate Court have decided the case without any application of mind and contrary to the provisions of the Act and the Rules framed thereunder.

26. There is no dispute that the offence of commission of which the accused appellant was charged with, fall within the category of 'heinous offences' as defined under Section 2(33) of the JJ Act. Section 15(1) provides that in case where a heinous offence/s are alleged to have been committed by a child who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he committed the offence. The Board, after conducting such assessment, may pass an order in accordance with the provisions of sub-section (3) of Section 18 of the JJ Act. Section 15(2) provides that where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial of summons case under CrPC. Under first proviso to this sub-section, the order passed by the Board is appealable under Section 101(2) of the JJ Act.

27. In the present case, there is no dispute that the provisions laid down under Sections 15 to 19 have been complied by the board and the Children's Court. The only issue involved in the revision is whether the report of the psychologist which was in favour of revisionist, could have been ignored by the Board and only on the ground that the revisionist has committed heinous offence as defined under Section 2(33) of J.J. Act he could have been held to be adult and required to be tried as an adult by the Children's Court.

28. The report of clinical psychologist is reproduced hereinbelow :-

CHIEF COMPLAINTS:

- Poor academic performance

- Poor social interaction

- Difficulty in reading and writing

Brief History: Patient was born full term normal delivery.

Birth cry?. No h/s/o jaundice, HGE, prenatal postnatal complications, seizure or head trauma. Speech was delayed. All the immunizations were provided. As per informant, there have been complaints from school regarding his academic difficulty. His parents also

observed that he is facing difficulty in academic performance includes calculation and having poor writing and reading skills. As per informant he has very limited social interaction with his peer groups as well as with his neighbours. There is no h/s/o past psychiatric illness or prolonged hospitalization.

Information: Adequate and Reliable

Behavioral Observation

Patient was well-groomed. He was able to maintain eye-contact. Initially it was difficult to establish rapport with patient however working rapport established in second session of clinical interviewing. Attention could be aroused with little difficulty and sustained throughout the session. He was co-operative and listening carefully to the test instructions. His speech was relevant and coherent, rate tone and volume was decreased. He was cooperative throughout the session. No signs of hyperactivity or any perceptual abnormality could be observed. Test was completed in two sessions with short breaks when required.

TEST ADMINISTERED:

1. *Bender Gestalt Test (BGT/BGVMT) - To assess perceptual and visual motor functioning involving sensory reception, interpretation and organization.*

2. *Child Behavior Check List (CBCL)*

3. *Senguine Form Board test (SFBT) 4. Binet Kamat Test*

(BKT) TEST FINDINGS:

1. *On Bender Gestalt Test patient obtained a raw score of 8 indicative of mild dysfunction in visuo-motor and organizational skills.*

2. *The CBCL was completed by the mother of the child to obtain the parental perception of the child's competencies and problems. On the CBCL, the Internalizing Scale attempts to tap problems which are within the self. It includes the domains of Anxious/Depressed, Withdrawn/Depressed and Somatic Complaints. On the internalizing scale, constituting the domains scores of Anxious / Depressed (T Score=51, Percentile=52), Withdrawn / Depressed (T Score =54, Percentile= 62) and Somatic complaints (T Score =57, Percentile= 75), the child obtained score of 5, with a corresponding T-score of 52. These scores fall in the Normal range.*

The Externalizing Scale of the CBCL attempts to tap problems that mainly involve conflicts with other people and with their expectations for the child. It includes the domains of Rule Breaking Behavior and Aggressive Behavior. On the Externalizing Scale, constituting the domain scores of Rule Breaking Behavior (T Score = 58, Percentile= 53), and Aggressive Behavior (T Score =55, Percentile= 65), the child obtained a score of 8, with a corresponding T-score of 54. These scores fall in the Normal range.The Total Behavior Problem Score, constituting the internalizing scale scores, externalizing scale scores and scores on the domains of social problems (T Score= 67, Percentile= 94), thought problems (T Score=50, Percentile=<50) and attention problems (T Score=68, Percentile= 95), was found to be 34, with a corresponding T score of 57, which is indicative of the Normal Range. Scores in

the social problems sub domains are in the Borderline to mild clinical range.

3. *On SFBT, patient has the form concept and was able to complete the test within given time limit. The shortest time he has taken on SFBT Was 27.64 seconds, suggestive of 6 years of mental age. The total time was 97.23 seconds, which also suggestive of 6 years of mental age. Low performance on SFBT was seems to be affected by poor and limited environmental exposure.*

4. *On BKT IQ (Intelligence quotient), child's 1Q was 66 suggestive of mild deficit in Intellectual functioning.*

IMPRESSION

One the basis of detailed clinical observations, history, mental status examination, finding of psychological assessments are suggestive ***mild deficit*** *in Intellectual functioning. Also some difficulty in social domains as assessed by the CBCL was found* ***borderline to mild clinical range.***

29. The categories of BKT IQ as per Indian Journal of Mental Health 2020 are as follows :-

Normally used categories	**BKT IQ**
Very superior	Above 137
Superior	125 – 136
High / Above average	113 – 124
Average	87 – 112
Low / Below average	75 – 86
Borderline		64 – 74
	Mild	38 - 63
Intellectual Disability Moderate/ Mental Retardation	Moderate	19 - 37
	Severe	Below 19 (BKT does not differentiate between severe and profound
	Profound	

30. This court finds that the report of psychologist was in favour of the revisionist. In the report it was clearly mentioned that the mental age of revisionist was six years only when he was above 16 years of age. From the BKT IQ categories noted above the revisionist with score of 62 comes in borderline category which is even below the category of low / below average. It is also apparent from record that before the children's court an application was made on behalf of revisionist for his re-medical examination with regard to age which was rejected. It is clear from the facts of the case that the revisionist indulged in physical relationship with the victim, aged about 14 years, for one year and when she became pregnant, he called the victim to his house, where the revisionist, Chedilal and Ram Prasad, after threatening the victim gave her some medicine which resulted in abortion of her pregnancy. Therefore, the administration of

medicine was not done on sole discretion of revisionist rather two other persons were involved by revisionist. He was not capable nor he took decision to administered the victim medicine alone. Keeping his conduct in view the orders of the courts below are not justified.

31. This court finds that the Hon'ble Bombay High Court in the case of **Mumtaz Ahmed Nasir Khan and Others vs. State of Maharashtra and Others, 2019(4) Bom CR (Cri) 261** (Bombay) has addressed the root cause of such offences being committed by juveniles as follows :-

"33. As Section 15 permits the Board may, during the preliminary assessment, take the assistance of experienced psychologists or psychosocial workers or other experts. First, the preliminary assessment is "not a trial." Second, it is, instead, an inquiry to assess the child's capacity to commit the alleged offence and to understand its consequences. On inquiry, the Board must satisfy itself in its preliminary assessment about the juvenile's mental and physical capacity, his ability to understand the consequences of the offence, and so on. Then, if the Board is "satisfied on preliminary assessment that the matter should be disposed of", it will follow "the procedure, as far as may be, for trial in summons case under Cr PC." The Board's order is appealable under sub-section (2) of Section 101.

38. A universally accepted ideal is that children are dependent and deficient in the mental and physical capacities, and are in need of guidance. Perhaps, initially, a multi-visual medium like TV; later, a globe devouring internet (appropriately, ominously worded as "world wide web"), and finally-and fatally-the post-truth social media have let the children, especially the adolescents, leapfrog into the adult world. Mostly it is a crash-landing, with disastrous consequences. So the childhood innocence is the casualty. These devices may have made a child bypass his or her childhood, sadly. Then, naturally, the theory of reduced culpability for juveniles relative to adults has taken a statutory dent. The good-old-days icon of a truant child seems to get replaced by the modern-day mascot of a violent predator.

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87. So we need to revisit Section 15 of the Act to determine what circumstances compel a juvenile to face the trial as if he were an adult. (1) It must be a heinous offence; here it is. (2) The child must have completed sixteen years; here he has. (3) The Board must have conducted a preliminary assessment; here it has. (4) That preliminary assessment concerns four aspects: (a) the child's mental and (b) physical capacity to commit such offence; (c) his ability to understand the consequences of the offence; (d) and the circumstances in which he allegedly committed the offence. The preliminary assessment, indeed, has been on all these aspects. Agreed. But has the Board found the child fitting into the scheme on all four counts?

88. I reckon of the four aspects-physical capacity, mental ability, understanding, and the circumstances-none is dispensable. They all must be present, for they are not in the alternative. Let us remind ourselves, just because the statute permits a child of 16 years and beyond can

stand trial in a heinous offence as an adult, it does not mean that the statute intends that all those children should be subject to adult punishment. It is not a default choice; a conscious, calibrated one. And for that, all the statutory criteria must be fulfilled.

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92. The explanation to Section 15 of the Act clarifies that the preliminary assessment is not a trial; it is an exercise to assess the child's capacity to commit and understand the consequences of the alleged offence.

93. In this context, if the Board's criteria of evaluation, as affirmed by the Appellate Court, are followed, then every case becomes an open and shut case. If the child is 16 or above and is capable of committing the offence and understanding the consequences, that will suffice. I am afraid it ought to be more than that. The whole endeavor of the JJ Act is to save the child in conflict with the law from the path of self-destruction and being a menace to the society. It is reformative, not retributive. Section 15, I believe, must be read and understood keeping in view the objective that permeates the whole Act and the spirit it is imbued with.

94. That to contain crime, the State must be strict and the punishment must be harsh is an intuitive assertion; but sometimes the solution to the crime are counterintuitive. Steven D. Levitt and Stephen J. Dubner, in their popular book Freakonomics[16] , have hypothesized that the juvenile crime in a few of states of the US has come down thanks to ***Roe v. Wade****, a judgment of the American Supreme Court that legalized abortion. Critics apart, there can be ideas that are worth exploring. It is equally worthwhile, first, to explore for ideas, instead getting stuck in a predictable, plebian approach to societal problems.*

98. Merely on the premise that the offence is heinous and that it lends to the societal volatility of indignation, we are bracing for juvenile recidivism. Retributive approach vis-a-vis juveniles needs to be shunned unless there are exceptional circumstances, involving gross moral turpitude and irredeemable proclivity for the crime. Condemned, any juvenile is going to be a mere numeral in prison for a lifetime; reformed, he may redeem himself and may become a value addition to the Society. Let no child be condemned unless his fate is foreordained by his own destructive conduct. For this, a single incident not revealing wickedness, human depravity, mental perversity, or moral degeneration may not be enough. Just deserts are more than mere retribution.

99. The Society, or restrictively the aggrieved person, views any problem ex post; it wants a wrong to be righted or remedied to the extent possible. The courts, especially the Courts of Record, view the same problem ex ante. "It involves looking forward and asking what effects the decision about this case will have in the future"[19]. To be more accurate, the courts balance both perspectives. I reckon Section 15 of the Act requires us to balance both the competing perspectives: ex post and ex ante.

[19] [The Legal Analyst, Ward Farnsworth, The University of Chicago Press, Ed. 2007. P. 5]

100. So I conclude that the Board, in the first place, has mechanically

relied on the Social Investigation Report and MH Report, without analyzing the older adult's case on its own. Similarly, the Appellate Court has also endorsed the order in appeal, without exercising the powers it has under Section 101. So both fail the legal scrutiny; they have failed to exercise the jurisdiction vested in them."

32. In the judgment quoted here-in-above, Bombay High Court has rightly held that the television, internet and social-media are having disastrous effects on the impressionable minds of the adolescents and resulting in loss of their innocence at a very early and tender age.

33. Law is an evolving concept and has to keep pace with time. This court has no hesitation to hold that the nefarious effects of the visual mediums like television, internet and social-media on adolescents are not being controlled, nor it appears that the government can control the same, to prevent its deleterious effect on the adolescents, due to the uncontrollable nature of technologies involved. The "Nirbhaya case" was an exception and not a general rule and all juveniles cannot be subjected and tried like adult without proper consideration of the overall social and psychological effects on their psyche.

34. In this case the victim and the juvenile both are minors. They continued in consensual physical relationship for about an year and only after the victim became pregnant their relationship was discovered. The revisionist with the help of two adults got her pregnancy aborted by administering medicine. There is nothing on record to indicate that the revisionist is a predator on the prowl and is prone to repeating the offence without any provocation. He never indulged in any such or other offence earlier. Maturity of his mind has not been certified by the psychologist. Merely because he committed a heinous crime he cannot be put to par with an adult when his social exposure was also found to be deficient by the psychologist.

35. In view of above consideration the impugned judgments and orders passed by both the courts below are set aside.

36. Criminal Revision is allowed.

37. The revisionist is directed to be tried as a juvenile by the Juvenile Justice Board in accordance with law.

38. Registrar (compliance) is directed to communicate this order to the Juvenile Justice Board, Kaushambi for necessary compliance within three days.

(2025) 7 ILRA 1032
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 18.07.2025

BEFORE

THE HON'BLE SIDDHARTH, J.
THE HON'BLE AVNISH SAXENA, J.

Government Appeal No. 115 of 2025

State of U.P. ...Appellant
Versus
Dhirendra Kumar ...Respondent

Counsel for the Appellant:
Ashutosh Kumar Sand

Counsel for the Respondent:
Pranvesh, Saurabh Kesarwani

Issue for Consideration

Matter pertained leave to appeal against acquittal under Section 378(3) of the *Code of Criminal Procedure, 1973.* Whether it

can be granted to the State where the trial court's acquittal is based on proper appreciation of evidence including a genuine suicide note exonerating the accused? Whether State Government can mechanically direct the Public Prosecutor to file such an appeal without recording satisfaction of substantial or compelling reasons for interference with the order of acquittal.

Headnotes

Code of Criminal Procedure, 1973 — s. 378(3) — Leave to appeal against acquittal — When to be granted — Scope of appellate interference — Duty of State in directing appeal — Double presumption of innocence — Compensation for vexatious prosecution.

Held:

Leave to appeal against acquittal- to be granted only where the trial court's judgment is palpably erroneous, perverse, or manifestly unsustainable- view taken by the trial court is reasonable and supported by evidence- the High Court should not interfere-merely because another view is possible. [Paras 11–15, 25, 29–31]

In the present case- the trial court rightly appreciated the ocular and medical evidence, and the suicide note (Exh. Ka-11) written by the deceased — a student of M.Ed. — specifically stated that she was committing suicide due to "study stress" and exonerated her husband, in-laws, and parents from any responsibility- handwriting was confirmed by FSL examination- prosecution failed to establish cruelty or dowry demand soon before death-essential ingredient of *dowry death* under s. 304-B IPC. [Paras 6–10, 20–22]

Appeal against acquittal-principle reiterated- double presumption of innocence — firstly, arising from the presumption of innocence at trial- secondly, reinforced by the acquittal- burden is on the State to demonstrate substantial and compelling reasons to disturb that finding. [Paras 28–29, 32–33]

Acquittal of the respondent was "honourable"- founded on consistent evidence- suicide note proved by the prosecution itself-appeal was frivolous and vexatious- Court, therefore, awarded **compensation of Rs. 2,00,000** to the respondent-accused for wrongful prosecution, to be paid by the State within 30 days. [Paras 34–35]

Leave refused — Appeal dismissed — Compensation of ₹2,00,000 directed to be paid to the respondent. (E-14)

Case Law Cited

***Karan Singh v. State of Haryana*, 2025 (131) ACC 302 (SC); *Charan Singh @ Charanjeet Singh v. State of Uttarakhand*, (2023) 3 SCR 511 (SC); *Ram Kumar v. State of Rajasthan*, 2009 (1) JT 197; *State of M.P. v. Sharad Goswami*, (2021) 17 SCC 783; *State of Rajasthan v. Shera Ram*, (2012) 1 SCC 602; *Shivaji Sahabrao Bobade v. State of Maharashtra*, (1973) 2 SCC 793; *Ramesh Babulal Doshi v. State of Gujarat*, (1996) 9 SCC 225; *Sadhu Saran Singh v. State of U.P.*, (2016) 4 SCC 357; *Basheera Begum v. Mohd. Ibrahim*, (2020) 11 SCC 174; *Kali Ram v. State of H.P.*, (1973) 2 SCC 808; *Rajesh Prasad v. State of Bihar*, (2022) 3 SCC 471 — followed; B*aljinder Pal Kaur v. State of Punjab*, (2016) 1 SCC 671 — applied; *Inspector General of Police v. S. Samuthiram*, (2013) 1 SCC 598 — applied; *Public Prosecutor v. Mayandi*, AIR 1933 Mad 230 — referred to; *Emperor v. Pursumal Germinal*, AIR 1938 Sind 108 — referred to; *State v. Ganga Sahai*, AIR 1953 All 211 — referred to; *State of U.P. v. Ram Ajorey*, 1991 All LJ 669 — followed.**

List of Acts / Statutes

Code of Criminal Procedure, 1973; Indian Penal Code, 1860; Dowry Prohibition Act, 1961; Indian Evidence Act, 1872.

List of Keywords

Criminal appeal; Leave to appeal against acquittal; Double presumption of innocence; Scope of interference; Duty of State; Mechanical filing of appeal; Dowry death; Suicide note; Dying declaration; Study stress; honourable acquittal; Compensation for wrongful prosecution.

Case Arising From

Application for leave to appeal under Section 378(3) *Cr.P.C.* / Section 419(3) *BNSS*, challenging the judgment dated 4 July 2024 of the Additional Sessions Judge, Fast Track Court, Bulandshahr, in Sessions Case No. 2649 of 2022 (*State v. Dhirendra Kumar*), arising out of Case Crime No. 210 of 2022, Police Station Sikandrabad, District Bulandshahr.

Appearance for Parties

For the Appellant (State): Smt. Manju Thakur, A.G.A.-I; Shri Ashutosh Kumar Sand.
For the Respondent: Shri Pranvesh and Shri Saurabh Kesarwani, Advocates

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

1. This application for leave has been moved belatedly under Section 378(3) Cr.P.C. by the State challenging the judgment of acquittal dated 4th July, 2024 passed by the Court of Additional Sessions Judge/F.T.C., Bulandshahr in Sessions Case No.2649 of 2022 (State Vs. Dhirendra Kumar) arising out of Case Crime No.210 of 2022, Police Station- Sikandrabad, District- Bulandshahar, whereby the trial court has acquitted the accused/respondent for offence under Sections 498-A, 304-B, 504, 506 I.P.C. and Sections 3, 4 of Dowry Prohibition Act.

2. It is contended by Smt. Manju Thakur, learned A.G.A.-Ist appearing for the State that the trial court has not properly appreciated the evidence of prosecution and decided the case only on the basis of conjunctures and surmises; the judicial mind has not been applied while appreciating the testimonies of witnesses; the prosecution has proved the case beyond reasonable doubt, which has been overlooked by the trial court; the trial court has wrongly recorded the findings and considered the improvements and contradictions in the statements of witnesses as material discrepancies; the trial court has ignored the testimonies of witnesses, who have clearly proved the unnatural death of deceased within seven years of marriage in the matrimonial home, for non-fulfilment of dowry demand; the trial court has ignored the death of deceased by hanging, registration of prompt F.I.R. and collecting of sufficient material by the Investigating Officer to establish the role of accused in the matter of dowry death. It is, therefore, stated that the acquittal recorded by the trial court is misconceived, not sustainable in the eyes of law, therefore, leave is to be granted to the State for adjudication of appeal on merit.

3. Sri Pranvesh and Sri Saurabh Kesarwani, learned counsel for the opposite party have stated that the learned trial court has rightly appreciated the evidences, oral and documentary on record and rightly acquitted the accused. Learned counsel have specifically drawn the attention of this Court towards suicide note left by the deceased, proved by the prosecution, being document of prosecution. The State cannot ignore the important document, wherein the deceased has committed suicide due to stress in studies and wrote in specific terms that for the suicide, neither her parents nor her in-laws shall be held responsible. This suicide note has rightly been considered by the trial court in the light of testimonies of witnesses of fact, P.W.-1, Santosh Bihari Kumar, P.W-2, Smt. Meena Devi and P.W.-3, Deepak Kumar. The contradictions in the testimonies of witnesses of fact are material in nature, viz., the deceased was stated to be two months pregnant at the time of committing suicide, which is not corroborated by the medical evidence. The witnesses, who are mother and brothers of deceased have not stated about the first marriage of deceased and what happened to

that marriage, in their examination in chief, but reflected from their cross-examination. Moreover, the trial court has also considered the testimonies of witnesses of fact that the deceased was under stress of studies. It is, therefore, stated that the leave cannot be granted as the accused, who is already acquitted would be made to suffer and there is no evidence against the accused. The learned counsel has relied on the case of ***Karan Singh Vs. State of Haryana1 and Charan Singh alias Charanjeet Singh Vs. State of Uttarakhand[2].***

4. This Court has taken into consideration the rival submissions made by the parties and perused the record.

5. The brief conspectus of the case shun unnecessary details is such that the F.I.R. has been registered by Santosh Bihari Kumar (informant, P.W.-1) against accused Dhirendra Kumar, opposite party at P.S. Sikandrabad, District Bulandshahr at 03:41 hours on 07.03.2022, got registered as Case Crime No.210 of 2022 for offence under Sections 498-A, 304-B, 316, 504, 506 I.P.C. and Sections 3,4 of Dowry Prohibition Act, 1961. The context of the written information reveals that the informant is residing at District Gurgaon, Haryana. His sister, Pinky Kumari was married to Dhirendra Kumar son of Nand Kishore Jaiswal, resident of Bakhtiyarpur, Haqiqatpur, Patna, Bihar, on 12th July, 2021 as per Hindu rites and ceremonies. On 7th March, 2022, he got a news that his sister, who was residing at Mohalla, Gayatri Nagar, SDM Colony, Sikandrabad committed suicide. Dhirendra continuously tortured his sister for dowry. His sister was two months pregnant with Dhirendra Kumar, but he disowned the child. He refused to bear the expenses of education and fooding of the deceased and threatened her to kill. He also used to abuse her and demanded extra dowry, due to which the informant's sister has committed suicide.

6. The inquest on the death body was carried out on 07.03.2022 between 18:00 hours to 23:20 hours, at the matrimonial home, by Nayab Tehsildar, Sulabh Gupta (P.W.-6), in presence of inquest witnesses Santosh Bihari Kumar; Sabir Alam, Ram Kumar Sharma, Akash Tibatiya and Rahul Yadav. It is mentioned in the inquest report that the deceased hanged herself from the ceiling fan with a cloth. A suicide note has also been recovered from the deceased. The same has been sealed. The suicide note is duly proved as Exhibit Ka-11, written in blue ink containing date, signature and phone numbers in red ink. The page used is the page of notebook. Written in Hindi with some words in english. The text of the suicide note is reiterated below:-

"

07.03.2022

मै Pinki Jaiswal M.ED 3rd Semster (D.S.B.) Campus Kumaun University Nainitalकी छात्रा अपने ससुराल में study stress की वजह से पूरी होशों हवास में आत्महत्या करने जा रही हूँ। इसकी जिम्वेदारी मैं खुद लेती हूं, मेरे आत्महत्या के पीछे ना मेरे Husband धीरेन्द्र कुमार जयसवाल ना मेरे ससुराल के कोई सदस्य जिम्वेदार है, और ना ही मेरे माँ पिताजी या Family के कोई सदस्य जिम्वेदार है। Pulis Sir से मेरी विनती है कि वे मेरे ससुराल वालों और मायके वाले को मेरी मौत के बाद किसी को परेशान न करें।

इस घर में मेरे मायके से मिला हुआ कुछ समान और कपड़े गहने हैं जिसे ट्रक में रख दिया गया है, उस समान को मेरे भाई जी जो Delhi Gurgav में रहते हैं उनको सारा समान सौंप दिया जायेगा मेरी इच्छा यही है क्योंकि शादी में ढ़ेर सोरा पैसे खर्च हुए थे मेरी लास्ट इच्छा यही है कि मेरे मरने के बाद माँ पिताजी टेंशन नहीं करेंगें।

Pinki Jaiswal.

Husband Mo No.-7380414315

big brother-8929240771

Father Enlaw- 9934212869

DR Hlaml big Mam (M.ed) 8954348345

मेरे Husband Maa G (Mother Inlaw को अचानक tabiyt खराब होने पर Delhi गए हैं। ”

7. The post mortem examination on the death body of deceased has been carried out by Dr. Harendra Singh (P.W.-5) at Mortuary of District Hospital Bulandshahar on 08.03.2022 started at 12:05 p.m. and completed at 12:50 p.m. The only ante mortem injury reported is ***“a ligature mark of size 26 cm x 3 cm present on all around the neck above thyroid cartilage with the note of 4 cm right side of neck mark obliquely place 5 cm below from left ear 2 cm below from right ear and 6 cm below to chin on exploration underneath tissue found white hand and hellenising hyoid bone found intact.” In respect to gential organ, it is found that “utreus size 11cm x 10 cm large in shape. Non-gravida”.*** The cause of death is asphyxia due to ante mortem hanging and time since death is about three-fourth of the day.

8. The suicide note was recovered from the deceased, the hand writing of the suicide note had been compared from the register of the deceased and also compared from the hand writing of the accused in the report of FSL team unit Bulandshahr.

9. After investigation, the charge sheet has been submitted and Section 316 I.P.C. has been dropped, as the deceased was not found pregnant.

10. The prosecution has produced three witnesses of fact, namely, P.W.-1 Santosh Bihari Kumar, brother of deceased and first informant; P.W.-2 Smt. Meena Devi, mother of deceased; and P.W.-3 Deepak Kumar, cousin brother of deceased. The formal witnesses produced were constable P.W.-4, Yogesh Kumar/the scribe of chik F.I.R.; P.W.-5 Dr. Harendra Singh, who has conducted post mortem examination on the dead body of deceased and prepared post mortem report; the Naib Tehsildar, Sulabh Gupta, P.W.-6, who has inspected the death body and prepared the inquest report and other necessary papers for sending the death body for post mortem examination; P.W.-7, C.O., Suresh Kumar has investigated the matter. The defence has produced the defence witness D.W.-1, Harpal Singh, the landlord of the house in tenancy of accused and deceased, who also resides near the tenanted house and usually visit the house of accused and deceased.

10. The learned trial court has acquitted the accused on appreciation of evidence with following observation:-

(i) From the statement of P.W.-1 Santosh Bihari Kumar, P.W.-2 Meena Devi and P.W.-3 Deepak Kumar, it has been revealed that deceased died an unnatural death within seven years of marriage, but it is also observed that the deceased was initially married to Ram Babu, a tailor at Motihari, Bihar. There was no divorce case or any other matrimonial case between Ram Babu and deceased but a written agreement was there. The marriage with accused is stated to be second marriage solemnized on 12th July, 2021 and deceased committed suicide on 7th March, 2022.

(ii) The trial court did not find any evidence from the ocular testimony or witnesses of fact that there was any demand of dowry. This observation of the trial court was based on the testimonies of the witnesses of fact that there was no specific date and time of the demand and what was demanded. It has also been inferred that the witnesses were ignorant about the fact of pregnancy of deceased, not corroborated as per post mortem report and the statement of Dr. Harendra Singh, P.W.-5. It is also observed on this issue that the witnesses of fact had stated that the deceased was pursuing her M.Ed from Kumaun University after completing her B.Ed from Rudrapur and the expenses on study of deceased was borne by the accused.

(iii) The learned trial court thereafter considered the suicide note of the deceased, which is duly proved by the prosecution witnesses, particularly P.W.-7, Investigating officer, Suresh Kumar. This suicide note was found to be in the hand writing of the deceased in the report of FSL, which further proved that the suicide note is not in the hand writing of the accused. This suicide note is proved as Exhibit Ka-11. The register from which the hand writing was compared was of deceased and not of accused as the specimen hand writing of the accused was not matched from the suicide note by the prosecution as Exhibit ka-12 & 13.

(iv) The learned trial court considered the suicide note in view of Section 32(1) of Indian Evidence Act, 1872, and gave full credence to it.

(v). The trial court further found from the statement of P.W.-1, Santosh Bihari Kumar that on 6th March, 2022, he was with his deceased sister but left in the morning of 7th March, 2022. He has also stated in his testimony that accused and his mother went to Delhi.

(vi). The learned trial court has considered that the four important ingredients to hold accused guilty in dowry death case laid down in the case of ***Ram Kamar Vs. State of Rajasthan***[3] have not been proved by the prosecution except that the death of a bride is within seven years of marriage and was an unnatural death. No other ingredient that the bride was subjected to cruelty soon before her death and the cruelty was with respect to the demand of dowry have not been proved.

11. The appellate Court is usually reluctant to interfere with a judgment acquitting an accused on the principle that the presumption of innocence in favour of the accused is reinforced by such a judgment. The above principle has been consistently followed by the Constitutional Court while deciding appeals against acquittal by way of Article 136 of the Constitution or appeals filed under Section 378 and 386 (a) Cr.P.C. in ***State of M.P. Vs. Sharad Goswami***[4]***; State of Rajasthan Vs. Shera Ram***[5]***, Shivaji Sahabrao Bobade Vs. State of Maharastra***[6].

12. The Supreme Court in the case of ***Ramesh Babulal Doshi Vs. State of Gujarat***[7] has observed that the High Court must examine the reasons given by the trial Court for recording their acquittal before disturbing the same by re-appraising the evidence recorded by the trial court. For clarity, para 7 is extracted herein below:

"Before proceeding further it will be pertinent to mention that the entire approach of the High Court in dealing with the appeal was patently wrong for it did not

at all address itself to the question as to whether the reasons which weighed with the trial Court for recording the order of acquittal were proper or not. Instead thereof the High Court made an independent reappraisal of the entire evidence to arrive at the above quoted conclusions. This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellant Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellant Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellant Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then - and then only - reappraise the evidence to arrive at its own conclusions. In keeping with the above principles we have therefore to first ascertain whether the findings of the trial Court are sustainable or not."

13. The Supreme Court in the case of ***Sadhu Saran Singh Vs. State of U.P.***[8] has observed that an appeal against acquittal has always been on an altogether different pedestal from an appeal against conviction. In an appeal against acquittal, where the presumption of innocence in favour of the accused is reinforced, the appellate court would interfere with the order of acquittal only when there is perversity.

14. The Supreme Court in the case ***Basheera Begam Vs. Mohd. Ibrahim***[9] has held that the burden of proving an accused guilty beyond all reasonable doubt lies on the prosecution. If, upon analysis of evidence, two views are possible, one which points to the guilt of the accused and the other which is inconsistent with the guilt of the accused, the latter must be preferred. Reversal of a judgment and other of conviction and acquittal of the accused should not ordinarily be interfered with unless such reversal/acquittal is vitiated by perversity. In other words, the court might reverse an order of acquittal if the court finds that no person properly instructed in law could have, upon analysis of the evidence on record, found the accused to be "not guilty". When circumstantial evidence points to the guilt of the accused, it is necessary to prove a motive for the crime. However, motive need not be proved where there is direct evidence. In this case, there is no direct evidence of the crime.

15. The Supreme Court in the case of ***Kali Ram Vs. State of H.P.***[10] has observed as under:

"25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought is to established by circumstantial evidence."

16. This Court has taken into consideration the statements of witnesses of

fact, namely, Santosh Bihari Kumar, Smt. Meena Devi and Sri Deepak Kumar in the light of statements of formal witnesses, namely, Constable Yogesh Kumar, Dr. Harendra Singh, Nayab Tehsildar, Sulabh Gupta, C.O. Suresh Kumar and the documents proved by these witnesses as well as exhibited during the trial.

17. P.W.-1, Santosh Bihari Kumar, in his cross-examination stated that the marriage of his deceased sister and accused took place on 12th July, 2021. His sister committed suicide by hanging on 7th March, 2022. Accused used to torture his sister, who was two months pregnant and accused has disowned the child. He also torture her in refusing to fulfil the demand of deceased to continue with her study. Did not provide her food. In his further examination, he stated that the expenses for the studies of his sister was not borne by him. This witness is not trustworthy on this point because the deceased was studying. It is not the case that deceased was earning. Then it is inferred that the accused was funding the studies of deceased. Moreover, a day before committing of suicide by the deceased, he was with the deceased and further stated that in the morning, the accused along with his mother left for Delhi. Thus, the requirement of atrocity and cruelty committed on the bride soon before the death is not proved as the informant himself was present soon before the death with the deceased.

18. P.W.-5, Smt. Meena Devi has stated that she has spent Rs.3,25,000/- during the marriage of deceased with accused and also gifted a laptop to her daughter. No incident of atrocity for demand of dowry by the accused is mentioned by this witness. This witness as well as P.W.-1 Santosh Bihari Kumar have specifically stated about the pregnancy of deceased, which was found to be a false ground of alleged torture by accused, as the post mortem falsifies the claim of pregnancy. The testimony of this witness also not sufficient to establish the crime of dowry death.

19. Deepak Kumar, P.W.-3, who has stated in his testimony that accused committed atrocities on the deceased for demand of dowry is a resident of Bihar and was at Bihar at the time of incident. He has also given vague statement about the demand of dowry; though stated that on 6th March, 2022 he had a conversation with accused on phone when the accused intimated him that he will kill his sister and also get him killed. This conversation is not substantiated by any corroborated evidence.

20. The suicide note which is recorded as dying declaration, proved by the prosecution is an important piece of evidence, which speaks entirely a different story altogether. P.W. -1 Santosh Bihari Kumar, is not conversant about the contents of suicide note though admitted its recovery.

21. The suicide note reiterated, hereinabove, is written on a register page, reveals that the deceased in the opening words has mentioned that she is pursuing her M.Ed third Semester from Kumanu University, Nainital and committing suicide due to study stress. It is the statement of witnesses of fact that the deceased was a very good student and was under the stress of study. It is further mentioned in the suicide note that she herself is responsible for the suicide and further wrote that her husband- Dhirendra Kumar Jaiswal, her in-laws are not responsible for her death by suicide. She further wrote that her mother,

father and family members are also not responsible for her death. In the suicide note, she further prayed the police personnel not to harass her in-laws and parents for the said suicide. Lastly, she has mentioned that she has some gold and clothes kept in the trunk, which shall be given to her brother, who resides at Gurgaon, because he has spent money in the marriage of deceased. The last sentence in the suicide note is that her husband had taken the mother-in-law to Delhi due to her ill health.

22. As such, considering the entire gamut of facts in the light of evidence, this Court is of the view that there is no ground to grant leave to the State under Section 378(3) Cr.P.C./419(3) B.N.S.S. The application for leave to appeal deserves to be **dismissed**.

23. Before parting with, we would be like to stress upon the legal principles applicable while dealing with appeal in case of acquittal provided under Section 378 Cr.P.C./419 BNSS and the extent of interference by the appellate Court when the acquittal is recorded by the trial court. We would like to elaborate it at some length, as we have noticed in this case, the cursorily way in which the government appeal is being filed, without considering the judgment, the evidence on the trial court record, the appreciation of evidence in the judgment and sustainability of application for leave.

24. The legislature while legislating the provision of Section 378 Cr.P.C. (419 B.N.S.S.) makes it an exception and not as a rule as provided against conviction. Therefore, purposefully incorporated a word 'direct' in sub-section (1)(a), (1)(b) of Section 378 Cr.P.C. to exercise this power to 'direct', the public prosecutor to file an appeal against acquittal, must be used sparingly and with circumspection. This shows that the direction cannot be exercised without application of mind and in cursorily fashion. Section 378 Cr.P.C. is reiterated underneath:-

"378. Appeal in case of acquittal.*—(1) Save as otherwise provided in sub-section (2), and subject to the provisions of sub-sections (3) and (5),—*

(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court [not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision.

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may, subject to the provisions of sub-section (3), also direct the Public Prosecutor to present an appeal—

(a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.

(3) No appeal to the High Court under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court*.*

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2).”

25. **Scope of appeal under Section 378 Cr.P.C.**

It is a settled principle of law that while deciding an appeal against the judgment of acquittal, the appellate court has the power to re-appreciate the evidence on record, but when two views are reasonably possible, based on evidence, the view that favours the accused should be adopted.

26. In the present case, the prosecution, since the stage of investigation has gathered the material, which evince that the accused is not guilty, because on the one hand, the Investigating Officer has relied on the suicide note and on the other hand has recorded the statements of witnesses of fact, who themselves are shaky witnesses. The Investigating Officer has not ventured into the first marriage of deceased solemnized in the year 2009, and married second time with the accused, as the case is of abetment to suicide and weighing of all the circumstances is essential. Moreover, the reading of suicide note and the diary writing in the register proved before the Court does not give impetus to the guilt of the accused, but the investigating officer has submitted charge-sheet. During the trial, the trial Judge has found that the witnesses of fact cannot be relied upon, non-trustworthy on the point of demand of dowry and cruelty soon before the death for the demand of said dowry and on considering the suicide note, proved by the prosecution, as dying declaration, acquitted the accused. To the utter dismay, the State has challenged the judgment of acquittal.

27. In such circumstances, how the State Government has directed the public prosecutor to file an appeal in the case.

28. In the celebrated judgment of ***Rajesh Prasad Vs. State of Bihar and another***[11] the Supreme Court in paragraphs 21 to 30 dealt with the principles of law enunciated through the dictums, right from

privy counsel to the present day. The said paragraphs are reiterated underneath:-

"21. *Before proceeding further, it would be useful to review the approach to be adopted while deciding an appeal against acquittal by the trial court as well as by the High Court. Section 378 CrPC deals with appeals in case of acquittal. In one of the earliest cases on the powers of the High Court in dealing with an appeal against an order of acquittal the Judicial Committee of the Privy Council in* ***Sheo Swarup v. King Emperor [Sheo Swarup v. King Emperor, 1934 SCC OnLine PC 42 : (1933-34) 61 IA 398 : AIR 1934 PC 227 (2)]*** *considered the provisions relating to the power of an appellate court in dealing with an appeal against an order of acquittal and observed as under: (SCC OnLine PC)*

"16. It cannot, however, be forgotten that in case of acquittal, there is a 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 should be presumed to be innocent unless he is proved to be guilty by a competent court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial court.

"... But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as: (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognised in the administration of justice."

It was stated that the appellate court has full powers to review and to reverse the acquittal.

22. *In* ***Atley v. State of U.P. [Atley v. State of U.P., AIR 1955 SC 807 : 1955 Cri LJ 1653]*** *, the approach of the appellate court while considering a judgment of acquittal was discussed and it was observed that unless the appellate court comes to the conclusion that the judgment of the acquittal was perverse, it could not set aside the same. To a similar effect are the following observations of this Court speaking through Subba Rao, J. (as his Lordship then was) in* ***Sanwat Singh v. State of Rajasthan [Sanwat Singh v. State of Rajasthan, AIR 1961 SC 715 : (1961) 1 Cri LJ 766] : (Sanwat Singh case [Sanwat Singh v. State of Rajasthan, AIR 1961 SC 715 : (1961) 1 Cri LJ 766] , AIR pp. 719-20, para 9)***

"9. The foregoing discussion yields the following results: (1) an appellate court has full power to review the

evidence upon which the order of acquittal is founded; (2) the principles laid down in ***Sheo Swarup [Sheo Swarup v. King Emperor, 1934 SCC OnLine PC 42 : (1933-34) 61 IA 398 : AIR 1934 PC 227 (2)]*** *afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as, (i) "substantial and compelling reasons", (ii) "good and sufficiently cogent reasons", and (iii) "strong reasons" are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified."*

The need for the aforesaid observations arose on account of observations of the majority in ***Aher Raja Khima v. State of Saurashtra [Aher Raja Khima v. State of Saurashtra, AIR 1956 SC 217 : 1956 Cri LJ 426]*** *which stated that for the High Court to take a different view on the evidence "there must also be substantial and compelling reasons for holding that the trial court was wrong".*

23. ***M.G. Agarwal v. State of Maharashtra [M.G. Agarwal v. State of Maharashtra, AIR 1963 SC 200 : (1963) 1 Cri LJ 235]*** *is the judgment of the Constitution Bench of this Court, speaking through Gajendragadkar, J. (as his Lordship then was). This Court observed that the approach of the High Court (appellate court) in dealing with an appeal against acquittal ought to be cautious because the presumption of innocence in favour of the accused "is not certainly weakened by the fact that he has been acquitted at his trial".*

24. In ***Shivaji Sahabrao Bobade v. State of Maharashtra [Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033] , Krishna Iyer, J.****, observed as follows: (SCC p. 799, para 6)*

"6. ... In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents."

25. This Court in ***Ramesh Babulal Doshi v. State of Gujarat [Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225 : 1996 SCC (Cri) 972]*** *, spoke about the approach of the appellate court while considering an appeal against an order acquitting the accused and stated as follows: (SCC p. 229, para 7)*

"7. ... While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or

demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then — and then only — reappraise the evidence to arrive at its own conclusions."

The object and the purpose of the aforesaid approach is to ensure that there is no miscarriage of justice. In another words, there should not be an acquittal of the guilty or a conviction of an innocent person.

26. In ***Ajit Savant Majagvai v. State of Karnataka [Ajit Savant Majagvai v. State of Karnataka, (1997) 7 SCC 110 : 1997 SCC (Cri) 992]*** *, this Court set out the following principles that would regulate and govern the hearing of an appeal by the High Court against an order of acquittal passed by the trial court: (SCC pp. 116-17, para 16).*

"16. This Court has thus explicitly and clearly laid down the principles which would govern and regulate the hearing of appeal by the High Court against an order of acquittal passed by the trial court. These principles have been set out in innumerable cases and may be reiterated as under:

(1) In an appeal against an order of acquittal, the High Court possesses all the powers, and nothing less than the powers it possesses while hearing an appeal against an order of conviction.

(2) The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial court, if the said findings are against the weight of the evidence on record, or in other words, perverse.

(3) Before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds and not subscribing to the view expressed by the trial court that the accused is entitled to acquittal.

(4) In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial court.

(5) If the High Court, on a fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.

(6) The High Court has also to keep in mind that the trial court had the advantage of looking at the demeanour of witnesses and observing their conduct in the Court especially in the witness box.

(7) The High Court has also to keep in mind that even at that stage, the

accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused."

27. *This Court in* ***Ramesh Babulal Doshi v. State of Gujarat [Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225 : 1996 SCC (Cri) 972]*** *observed vis-à-vis the powers of an appellate court while dealing with a judgment of acquittal, as under: (SCC p. 229, para 7)*

"7. ... While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then — and then only — reappraise the evidence to arrive at its own conclusions."

28. *This Court in* ***Chandrappa v. State of Karnataka [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325]*** *, highlighted that there is one significant difference in exercising power while hearing an appeal against acquittal by the appellate court. The appellate court would not interfere where the judgment impugned is based on evidence and the view taken was reasonable and plausible. This is because the appellate court will determine the fact that there is presumption in favour of the accused and the accused is entitled to get the benefit of doubt but if it decides to interfere it should assign reasons for differing with the decision of acquittal.*

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 [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] , 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."

***30.** In **Nepal Singh v. State of Haryana [Nepal Singh v. State of Haryana, (2009) 12 SCC 351 : (2010) 1 SCC (Cri) 244]** , this Court reversed the judgment **[State of Haryana v. Nepal Singh CRA-D No. 99-DBA of 1993, order dated 21-7-1997 (P&H)] of the High Court** which had set aside the judgment of acquittal pronounced by the trial court and restored the judgment of the trial court acquitting the accused on reappreciation of the evidence."*

29. It is a settled law that in the case of acquittal, a double presumption is drawn in favour of accused. Firstly, the presumption of innocence, which is a fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he has been proven guilty by a competent court of law. Secondly, when the accused is acquitted after the trial.

30. The scope of appeal against acquittal is legislated and developed with time by way of judicial pronouncement is required to be taken into consideration by the appellate court, but the Government being a welfare state is also duty bound to follow it, as the fundamental right of life and liberty of a person is at stake.

31. The scope of appeal in the case of acquittal of accused after a full trial cannot be challenged in appeal in a routine manner.

32. The State Government before giving direction to public prosecutor to present an appeal is under a legal obligation to state in clear words its direction that there is substantial and compelling reasons, good and sufficient grounds, very strong circumstances, distorted conclusion and apparent mistake, which warrants appeal. Mere writing of these phrases does not suffice, it should be made clear and explicit in an application for leave to appeal provided under Section 378(3) Cr.P.C./ Section 419(3) B.N.S.S.

33. The role of the State while dealing with issuance of 'direction' to public prosecutor to file an appeal against acquittal is dealt with in various judicial pronouncements. Some quotes are reiterated underneath:-

(I) **Public Prosecutor v Mayandi[12] [Madras High Court]- "***It is an accepted maxim that the right of appeal*

against an acquittal vested in the Crown should be used sparingly and with circumspection."

(II) **Emperor vs. Pursumal Germinal and another[13] [In the court of Judicial Commissioner, Sind] "***.....But we do say that, it is not proper in an appeal against an acquittal for Government to attempt to snatch a conviction by making out another case against the accused. We think that an appeal against an acquittal is a serious matter. The liberty of a person once acquitted is again to be put in jeopardy, and we think we are justified in asking that cases, in which an appeal against an acquittal is to be made, should be carefully considered in all their aspects before the appeal is filed, and that Government should be bound in argument and should consider themselves bound in argument to the grounds raised in the memorandum of appeal....."*

(III) **State v. Ganga Sahai[14] [Allahabad High Court] "***....I do not consider that this was an appeal which should have been filed by Government. "Government may be expected if not as a matter of law, at any rate of conduct, in litigious matters, to set a very high standard", see — 'Crown v. Me. Neil', 31 C.L.R. 76. They should not have filed an appeal when there is no evidence at all against the accused."*

(IV) **State of U.P. v. Ram Ajorey and Others[15] [Allahabad High Court]** *"The law is well settled that appeal from acquittal are allowed only in exceptional circumstances. It is an extraordinary remedy. The appeal by Government should be made judiciously and only in cases where the judgment is so clearly wrong that its maintenance would amount to a serious miscarriage of justice or when a principle is involved or the question is one of great importance or of great public importance. The burden is on the Government to show that the acquittal is wrong and strong and urgent grounds must be made out to justify interference."*

34. Therefore, we are of staunch view that the State before issuing direction to public prosecutor to present this appeal in case of acquittal has not applied it's judicial mind. Unconsiderate to the fact that life and liberty of the accused, who is enjoying double presumption of his innocence in a criminal case, has been twice at jeopardy and hence, would be suitably compensated.

35. Thus, the accused, the opposite party- **Dhirendra Kumar S/O Nand Kishor Jaiswal,** residing at Harpal Singh Solanki Ka Makan, Mohalla Gayatri Nagar, S.D.M. Colony, Sikandrabad, Uttar Pradesh, Bharat and permanent resident of Bakhtiyarpur Haqiqatpur, Bakhtiyarpur, Patna, Bihar, Bharat, who got an 'honourable acquittal' **[per Baljinder Pal Kaur Vs. State of Punjab and others[16]** and **Inspector General of Police Vs. S. Samuthiram[17]]** shall be paid compensation of Rs.2 lakhs within 30 days from the date of this order, which is just and proper compensation for vexatious criminal prosecution.

36. Office to send a copy of this judgment along with record to the court concerned for effecting compliance. A copy shall also be sent to Secretary/D.L.S.A., Bulandshahr for following action.

37. The appeal is accordingly, **dismissed**.

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