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(2025) 6 ILRA 2
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 13.06.2025

BEFORE

THE HON'BLE SAURABH LAVANIA, J.

Application U/S 482 No.491 of 2025

Deepak Singh @ Subham Singh ...Applicants
Versus
State of U.P. & Anr. ...Opp. Parties

Counsel for the Applicants:
Manuvendra Singh

Counsel for the Opp. Parties:
G.A., Ajay Pratap Singh

Criminal Law - Indian Penal Code, 1860 - Section 323, 504, 506, 325 & 308 - Code of Criminal Procedure, 1973 – Section 319 - Impugned summoning order is based on St.ments of injured witnesses (PW-1), (PW-2)/complainant and witness of fact (PW-3), who levelled specific allegations against applicant, also found in NCR - Challenge to order is based on ground that earlier application under Section 319 Cr.P.C. was dismissed as withdrawn without Court's permission to file a fresh one - It is contended that subsequent application under same Section was not maintainable - Testimony of injured witnesses holds high evidentiary value and should not be lightly discarded - At this stage, trial court need not assess evidence on merits, that is to be done during trial - First application was withdrawn for bona fide reasons, as it was informed that named person, had already passed away - Subsequently, second application was filed - Judgment in Baccha Lal @ Vijay Singh (infra) is per incuriam and not binding, liable to be disregarded - No illegality in impugned order. (Para 4, 6, 24 to 26)

Application dismissed. (E-13)

List of Cases cited:

1. St. of M.P. Vs Mansingh (2003) 10 SCC 414

2. Abdul Sayeed Vs St. of M.P. (2010) 10 SCC 259

3. St. of U.P. Vs Naresh (2011) 4 SCC 324

4. Laxman Singh Vs St. of Bihar (Now Jharkhand) (2021) 9 SCC 191

5. K.R. Deb Vs The Collector of Central Excise, Shillong, AIR 1971 SC 1447

6. St. of Assam & anr. Vs J,N, Roy Biswas, AIR 1975 SC 2277

7. St. of Panjab Vs Kashmir Singh, 1997 SCC (L&S) 88

8. U.O.I. & ors. Vs P.Thayagarajan, AIR 1999 SC 449

9. U.O.I. Vs K.D. Pandey & anr. (2002) 10 SCC 471

10. Assistant Commissioner, Commercial, Tax Department, Brothers (JT) 2010 (4) SC 35

11. CCT Vs Shukla & Brothers 2010 (4) SCC 785

12. Baccha Lal @ Vijay Singh Vs St. of U.P. & anr., Criminal Appeal No. 6502 of 2018, (Para 22 to 42)

13. Sarguja Transport Service Vs St. Transport Appellate Tribunal, M.P., Gwalior & ors.; (1987) 1 SCC 5

14. Upadhyay & Company Vs St. of U.P. & ors.; (1999) 1 SCC 81

15. Hardeep Singh Vs St. of Pun., reported in (2014) 3 SCC 92, (Para 10 to 19, 43, 45, 63)

16. Rajesh & ors. Vs St. of Har., reported in (2019) 6 SCC 368

17. Brijendra Singh Vs St. of Raj., (2017) 7 SCC 706 : (2017) 4 SCC (Cri) 144

18. Manjeet Singh Vs St. of Har. & ors., reported in (2021) 18 SCC 321, (Para 15 to 26)

19. Sukhpal Singh Khaira Vs St. of Pun. reported in (2023) 1 SCC 289 (Para 22, 38 to 41)

20. Yashodhan Singh & ors. Vs St. of U. P. & ors., reported in (2023) LiveLaw (SC) 576 : 2023 INSC 652

21. Jogendra & ors. Vs St. of Bihar & anr. , reported in (2015) 9 SCC 244

22. Sarva Shramik Sanghatana (KV) Vs St. of Mah. & ors. reported in (2008) 1 SCC 494

23. Himachal Pradesh Financial Corporation Vs Anil Garg & ors. reported in (2017) 14 SCC 634, (Para 13 to 16, 19)

24. P. Rathinam Vs U.O.I. & anr. reported in (1994) 3 SCC 394, (Para 92 to 96)

25. K.S. Panduranga Vs St. of Karn., [2013] 1 A.C. R 994, (Para 30 to 35)

26. Sundeep Kumar Bafna Vs St. of Mah. reported in (2014) 16 SCC 623 : (2015) 3 SCC (Cri) 558, (Para 19)

27. Punjab Land Development & Reclamation Corpn. Ltd. Vs Labour Commr., (1990) 3 SCC 682 : 1991 SCC (L&S) 71, (Para 40)

28. Bilkis Yakub Rasool Vs U.O.I. & ors.reported in (2024) 5 SCC 481, (Para 145, 146, 153, 154)

(Delivered by Hon’ble Saurabh Lavania, J.)

1. Heard Sri Manuvendra Singh, learned counsel for the applicant, Sri Ajay Kumar Srivastava, learned AGA for the State of U.P., Sri Ajay Pratap Singh-II, Advocate, who has filed Vakalatnama alongwith Sri Vinod Kumar Singh, Advocate on behalf of the opposite party No. 2/complainant/ Mahendra Pratap Singh in the Court today, which is taken on record, as well as perused the record.

2. By means of the instant application, the applicant has sought the following main relief(s):-

"That for the facts, reasons and circumstances stated in the accompanying affidavit filed in support of this application under section 482, Cr.P.C., it is most respectfully prayed that this Hon'ble Court may graciously be pleased to quash the impugned order dated 09-02-2023 passed by Upper Session Judge Room No. 8, Sultanpur, in S. T. No. 115/2016, arising out Case Crime No. 222/2012, Under Section 323, 504, 506, 325, 308, IPC, Police Station Chanda District Sultanpur contained here with as Annexure No. 1 to this affidavit, otherwise the applicant shall suffer irreparable loss and injury.

It is further prayed that this Hon'ble Court may graciously be pleased to stay the proceeding of the S.T. No. 115/2016 (State vs. Rajesh Pratap Singh and another) arisen out of the case crime no. 222 of 2012, under section 323, 504, 506, 325, 308, IPC, Police Station Chanda, District- Sultanpur, which is pending before Upper Session Judge Room No. 21 Sultanpur, which is pending before Chief Judicial Magistrate District Lucknow, otherwise the applicants shall suffer irreparable loss and injury."

3. Vide order, under challenge, dated 09.02.2023 passed by Additional Sessions Judge (Room No. 8), Sultanpur (in short "trial court") in S.T. No. 115/2016, arising out of Case Crime No. 222/2012, under Sections- 323, 504, 506, 325, 308 IPC, Police Station- Chanda District- Sultanpur, whereby, the trial court allowed the Application No. 37-Kha preferred by the opposite party No. 2 under Section 319 Cr.P.C. and summoned the

applicant to face the trial. The order dated 09.02.2023, being relevant, is extracted hereunder:-

दिनांक 09.02.2023

सत्र परीक्षण प्रस्तुत हुआ। वादी महेन्द्र प्रताप सिंह और से प्रार्थना पत्र संख्या–37 ख अन्तर्गत धारा–319 दण्ड प्रक्रिया संहिता एवं प्रस्तावित विपक्षी की ओर से प्रस्तुत आपत्ति प्रार्थना पत्र संख्या–40 ख पर उभयपक्षों के विद्वान अधिवक्ता सहित राज्य की ओर से उपस्थित विद्वान सहायक जिला शासकीय अधिवक्ता दाण्डिक सुना गया तथा पत्रावली का परिशीलन किया गया।

निस्तारण प्रार्थना पत्र संख्या–37 ख, अन्तर्गत धारा–319 दण्ड प्रक्रिया

1. वादी/अभियोजन पक्ष की ओर से प्रार्थना पत्र 37 ख, अन्तर्गत धारा–319 दण्ड प्रक्रिया संहिता मय शपथपत्र इस आशय का प्रस्तुत किया गया है कि दिनांक 08.05.2012 को समय 8.30 बजे राजेश प्रताप सिंह, शिवकेश सिंह, पुष्पा देवी व दीपक सिंह एक राय होकर जान से मारने की नियत से प्राणघातक चोटें पहुंचायी, जिसमें बाद विवेचना पुलिस द्वारा अभियुक्त पुष्पा सिंह एवं दीपक सिंह का नाम निकाल दिया गया है व अन्य अभियुक्तों के विरूद्ध धारा 308, 323, 325, 504, 506 भारतीय दण्ड संहिता के अन्तर्गत आरोप पत्र प्रेषित किया गया। विवेचक के समक्ष साक्षीगण द्वारा दिये गये बयान में उक्त अभियुक्तगण दीपक सिंह व पुष्पा सिंह के घटना में सम्मिलित होने का बयान दिया गया है। पत्रावली पर अभियुक्त दीपक सिंह द्वारा घटना कारित किये जाने का निश्चयात्मक साक्ष्य उपलब्ध है। दौरान विचारण अभियुक्ता पुष्पा सिंह की मृत्यु हो चुकी है। अतः प्रस्तावित अभियुक्त दीपक सिंह को विचारण हेतु तलब किया जाए।

2. उपर्युक्त प्रार्थना पत्र पर लिखित आपत्ति प्रार्थना पत्र संख्या–40 ख विपक्षी/अभियुक्त राजेश प्रताप सिंह की ओर से इस आशय की प्रस्तुत की गयी है कि अभियुक्त पुष्पा सिंह एवं दीपक सिंह को प्रथम सूचना रिपोर्ट में अभियुक्त बनाया गया है, परन्तु विवेचक द्वारा उनकी नामजदगी गलत पायी गयी तथा आरोप पत्र राजेश प्रताप सिंह व शिवकेश सिंह के विरूद्ध न्यायालय में प्रेषित किया गया। दीपक सिंह आपत्तिकर्ता का पुत्र नहीं है, उसके दो ही पुत्र हैं, जिनका नाम शिवम सिंह व शुभम सिंह है। दीपक सिंह के नाम का व्यक्ति आपत्तिकर्ता के घर परिवार का नहीं है। प्रथम सूचना रिपोर्ट पुरानी रंजिश के कारण लिखायी गयी है। अतः प्रार्थना पत्र निरस्त किया जाए।

3. आपत्तिकर्ता द्वारा अपनी आपत्ति के साथ अभियुक्त राजेश प्रताप सिंह का आधार कार्ड व शिवम सिंह व शुभम सिंह के हाईस्कूल अंक पत्र एवं परिवार रजिस्टर की प्रति प्रस्तुत की गयी है।

4. पत्रावली की परिशीलन से स्पष्ट होता है कि प्रस्तुत मामले में प्रथम सूचना रिपोर्ट वादी महेन्द्र प्रताप सिंह द्वारा दी गयी तहरीर जो कि पुलिस अधीक्षक, सुल्तानपुर को सम्बोधित की गयी है, जिसमें दीपक सिंह के अतिरिक्त अन्य अभियुक्तगण द्वारा प्राणघातक चोटें पहुंचाया जाना तत्पश्चात मेडिकल कराये जाने आदि का कथन किया गया है। अन्य तहरीर थानाध्यक्ष को प्रेषित की गयी है, पर भी अभियुक्त दीपक सिंह पुत्र राजेश मुल्जिम वर्णित किया गया है। धारा–161 दण्ड प्रक्रिया संहिता के अन्तर्गत अंकित किया गया है, जिसमें भी अभियुक्त दीपक सिंह के घटना में सम्मिलित होने के में बयान दिया गया है। अन्य साक्षी श्रीमती कुसुम सिंह द्वारा भी उक्त के समर्थन में बद दिया गया है।

5. न्यायालय के समक्ष साक्षी पी0डब्लू0 1 राजाराम का बयान अंकित किया गया है। जिसमें अभियुक्त दीपक सिंह के घटना में सम्मिलित होने के विषय में बयान दिया गया है। साक्षी पी0डब्लू0 2 महेन्द्र प्रताप सिंह द्वारा भी यह बयान दिया गया है कि घटना के समय दीपक सिंह लाठी डंडा लेकर आया तथा चारों अभियुक्तों द्वारा मिलकर मारपीट कारित की गयी। साक्षी पी0डब्लू0 3 साधना सिंह द्वारा भी प्रस्तावित अभियुक्त दीपक सिंह के घटना में सम्मिलित होने के संदर्भ में बयान दिया गया है। इस प्रकार साक्ष्य से भी प्रस्तावित अभियुक्त दीपक सिंह की घटना में संलिप्तता साक्षीगण द्वारा प्रदर्शित की गयी है। अतः प्रस्तावित अभियुक्त दीपक सिंह का भी अन्य अभियुक्तगण के साथ विचारण किया जाना न्यायोचित पाया जाता है। तदनुसार प्रार्थना पत्र स्वीकार किये जाने योग्य है।

आदेश

आवेदक/वादी महेन्द्र प्रताप सिंह द्वारा प्रस्तुत प्रार्थना पत्र संख्या 37 ख अंतर्गत धारा 319 दण्ड प्रक्रिया संहिता स्वीकार किया जाता है।

तदनुसार अभियुक्त दीपक सिंह को मुकदमा अपराध संख्या 222/2012, अंतर्गत धारा 308,323,302,325,504,506 सपतित धारा 34 भारतीय दण्ड संहिता, थाना चांदा, जिला सुल्तानपुर के अपराध में विचारण हेतु तलब किया जाता है। अभियुक्त दीपक सिंह के विरूद्ध दिनांक 06.03.2023 हेतु समन जारी हो।

*सत्र परीक्षण की पत्रावली दिनांक 06.06.2023 को प्रस्तुत हो।*ष

4. The order, under challenge, dated 09.02.2023 indicates that the applicant has been summoned after taking note of the statements of injured witnesses namely Rajaram (PW-1) and Mahendra Pratap Singh/complainant (PW-2) and one Sadhana Singh (PW-3), who is the witness of fact.

5. It would be apt to indicate here that Rajaram (PW-1) and Mahendra Pratap Singh/complainant (PW-2) are the injured witnesses and the testimony of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly, as observed by the Hon'ble Apex Court in the case(s) of ***State of M.P. vs. Mansingh (2003) 10 SCC 414; Abdul Sayeed vs. State of M.P. (2010) 10 SCC 259; State of U.P. vs. Naresh; (2011) 4 SCC 324 and Laxman Singh vs. State of Bihar (Now Jharkhand) (2021) 9 SCC 191.***

6. The order impugned dated 09.02.2023 has been challenged on the ground to the effect that the Application No. 30-Kha preferred under Section 319 Cr.P.C. was dismissed as withdrawn vide order dated 03.10.2022 without seeking leave/permission from the court to prefer a fresh application and as such, the second Application No. 37-Kha preferred by the prosecution under Section 319 Cr.P.C. itself was not maintainable and therefore, the impugned order dated 09.02.2023 passed thereon is liable to be interfered with by this Court.

7. Another ground of challenge is to the effect that the impugned order dated 09.02.2023 is not a speaking/reasoned order.

8. The aforesaid can be deduced from the paragraphs 23 and 24 of the instant application, which are extracted hereunder:-

"23. That in view of the aforesaid discussion, learned court below to conclude that since the first application under section 319 Cr.P.C. filed by first informant/opposite party no.2 was got dismissed as not pressed with liberty to file fresh, the second application under section 319 Cr.P.C. filed first informant/opposite party no.2 was clearly not maintainable.

24. That it is well settled principal of law that every order passed by quasi-judicial or judicial authority, must be speaking and reasoned, as held in following cases:-

1. K.R. Deb Vs. The Collector of Central Excise, Shillong, AIR 1971 SC 1447.

2. State of Assam & Anr. Vs. J,N, Roy Biswas, AIR 1975 SC 2277.

3. State of Panjab Vs. Kashmir Singh, 1997 SCC (L&S) 88.

4. Union of India & Ors. Vs. P.Thayagarajan, AIR 1999 SC 449.

5. Union of India Vs. K.D. Pandey & Anr. (2002)10 SCC471.

6. Assistant Commissioner, Commercial, Tax Department, Brothers (JT)2010(4)SC35,

7. CCT Vs. Shukla and Brothers 2010 (4)SCC785."

9. The order dated 03.10.2022 (Annexure No. 7 to the instant application), referred, is extracted hereunder:-

" दिनांक 03.10.2022

सत्र परीक्षण प्रस्तुत हुआ। वादी महेन्द्र प्रताप सिंह की ओर से प्रार्थना पत्र संख्या–30ख, अन्तर्गत धारा–319 दण्ड प्रक्रिया संहिता पर उभयपक्षों के विद्वान अधिवक्ता सहित राज्य की ओर से उपस्थित विद्वान सहायक जिला शासकीय अधिवक्ता दाण्डिक सुना गया तथा पत्रावली का परिशीलन किया गया।

वादी/आवेदक के विद्वान अधिवक्ता द्वारा उपरोक्त प्रार्थना पत्र पर इस आशय टिप्पणी अंकित की गयी है कि वह प्रार्थना पत्र पर बल नहीं देना चाहते हैं।

वर्णित परिस्थितियों में प्रस्तुत प्रार्थना पत्र संख्या–30ख, अन्तर्गत धारा–319 दण्ड प्रक्रिया संहिता बलाभाव में निरस्त किये जाने योग्य है।

आदेश

वादी/आवेदक द्वारा प्रस्तुत प्रार्थना पत्र संख्या–30ख, अन्तर्गत धारा–319 दण्ड प्रक्रिया संहिता बलाभाव में किया जाता है।

सत्र परीक्षण दिनांक 03.11.2022 को अग्रिम आदेश हेतु प्रस्तुत हो।"

10. In support of his submissions, learned counsel for the applicant has placed reliance on the judgment dated 04.11.2022 passed by this Court in ***Criminal Appeal No. 6502 of 2018 (Baccha Lal @ Vijay Singh vs. State of U.P. and another).*** The relevant paragraphs, referred, of the judgment dated 04.11.2022 are extracted hereunder:-

"22. Subsequently, first informant/opposite party-2, filed another application dated 02.03.2017 under Section 319 Cr.P.C. on the same ground praying therein that named but not charge-sheeted accused Bacchalal be also summoned to face trial. Same was registered as paper no. 17 Kha.

23. It transpires from the record that no written objection was filed by charge-sheeted accused to the application dated 02.03.2017 (paper No. 17 Kha).

24. Court below examined the application (paper no. 17 Kha) in the light of the oral testimonies of P.W.-1 Himmatlal, P.W.-2 Sunita and P.W.-3 Ramdhani and opined that complicity of appellant is also established in the crime in question. Accordingly, court below by means of order dated 19.09.2018 allowed aforementioned application and simultaneously summoned the appellant for trial in above-mentioned sessions trial.

25. Thus feeling aggrieved by the order dated 19.09.2018 passed by court-below, appellant has now approached this Court by means present appeal under Section 14-A (I) Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act.

26. Learned counsel for appellants contends that order impugned in present appeal is patently illegal and without jurisdiction. It is an undisputed fact that first informant/opposite party-2 filed an application dated 26.10.2016 (paper no. 16 Kha) under Section 319 Cr.P.C. Aforesaid application was got dismissed as not pressed without obtaining the leave of the Court to file fresh. However, irrespective of above, first informant/opposite party-2 filed subsequent application dated 02.03.2017 under Section 319 Cr.P.C. (paper no. 17 kha). It is this application, which has been allowed by court below by means of the impugned order.

27.According to learned counsel for appellant, though no specific bar is contained in the Code i.e. Cr.P.C. regarding filing of second application under Section 319 Cr.P.C. but public policy prohibits the filing of second application.

28. Per contra, the learned A.G.A. has opposed the present appeal. He contends that second application under Section 319 Cr.P.C. filed by first informant/opposite party-2 was maintainable as the first application under Section 319 Cr.P.C. filed by first informant/opposite party-2 was got dismissed as not pressed in view of inherent mistake in the application. Since the first application under Section 319 Cr.P.C. filed by first informant/opposite party-2 was not decided on merits, as such, no legal bar can be attached to the second application under Section 319 Cr.P.C. The issue as to whether complicity of appellant is there or not in the crime in question can be decided appropriately only during the course of trial. Since prima-facie something more than mere complicity of appellant is established in the crime in question, no illegality has been committed by court below in allowing the appeal. As scuh, no indulgence be granted by this Court in favour of appellant.

29. Before proceeding to consider the veracity of the order impugned in present appeal, this Court is to initially required to examine the maintainability of the application dated 02.03.2017 (paper no. 17 Kha) under Section 319 Cr.P.C. filed by first informant/opposite party-2.

30. Since the present appeal arises out of proceedings under Section 319 Cr.P.C., it is, therefore, desirable to reproduce Section 319 Cr.P.C. For ready reference same is extracted herein-under:-

"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 a fresh, 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."

31. From perusal of Section 319 Cr.P.C., it is apparent that there are no riders by way of proviso attached to Section 319 Cr.P.C. Therefore, Court has to examine the maintainability of the subsequent application under Section 319 Cr.P.C. in the light of law laid done by this

Court/Apex Court with reference to the Code i.e. Cr.P.C.. Section 319 Cr.P.C.particularly when the first application filed by first informant/opposite party under Section 319 Cr.P.C. was got dismissed by first informant/opposite party-2 as not pressed without obtaining the leave of the court to file fresh.

32. To begin with the Code of Criminal Procedure (hereinafter referred to as the Code) does not contain any provision, which bars the filing of a subsequent application under the Code.

33. Therefore, of necessity the Court has to examine the case in hand in the light of conclusions rendered by Apex Court/ this Court in similar circumstances.

34. In ***Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and others (1987) 1 SCC 5****, it was held by Court in paragraph 8 of the report as follows:*

"The Code as it now stands thus makes a distinction between 'abandonment' of a suit and 'withdrawal' from a suit with permission to file a fresh suit. It provides that where the plaintiff abandons a suit or withdraws from a suit without the permission, referred to in subrule (3) of rule 1 of Order XXIII of the Code, he shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim. The principle underlying rule 1 of Order XXIII of the Code is that when a plaintiff once institutes a suit in a Court and thereby avails of a remedy given to him under law, he cannot be permitted to institute a fresh suit in respect of the same subject-matter again after abandoning the earlier suit or by withdrawing it without the permission of the Court to file fresh suit. Invito benificium non datur. The law confers upon a man no rights or benefits which he does not desire. Whoever waives, abandons or disclaims a right will loose it. In order to prevent a litigant from abusing the process of the Court by instituting suits again and again on the same cause of action without any good reason the Code insists that he should obtain the permission of the Court to file a fresh suit after establishing either of the two grounds mentioned in sub-rule (3) of rule 1 of Order XXIII. The principle underlying the above rule is rounded on public policy, but it is not the same as the rule of res judicata contained in section 11 of the Code which provides that no court shall try any suit or issue in which the matter directly or sub- stantially in issue has been directly or substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. The rule of res judicata applies to a case where the suit or an issue has already been heard and finally decided by a Court. In the case of abandonment or withdrawal of a suit without the permission of the Court to file a fresh suit, there is no prior adjudi- cation of a suit. or an issue is involved, yet the Code provides, as stated earlier, that a second suit will not lie in sub-rule (4) of rule 1 of Order XXIII of the Code when the first suit is withdrawn without the permission referred to in sub-rule (3) in order to prevent the abuse of the process of the Court."

35. Aforesaid judgement was re-affirmed by Apex Court ***in Upadhyay and Company Vs. State of U.P. and others***

***(1999) 1 SCC 81**. Paragraph 13 of the judgement is relevant for the controversy in hand. Accordingly same is extracted herein-under:-*

"The aforesaid ban for filing a fresh suit is based on public policy. This Court has made the said rule of public policy applicable to jurisdiction under Article 226 of the Constitution (Sarguja Iransport Service vs. State Transport Appellate Tribunal, Gwalior, 1987 1 SCC 5). The reasoning for adopting it in writ jurisdiction is that very often it happens, when the petitioner or his counsel finds that the court is not likely to pass an order admitting the writ petition after it is heard for some time, that a request is made by the petitioner or his counsel to permit him to withdraw it without seeking permission to institute a fresh writ petition. A court which is unwilling to admit the petition would not ordinarily grant liberty to file a fresh petition while it may just agree to permit withdrawal of the petition. When once a writ petition filed in a High Court is withdrawn by the party concerned he is precluded from filing an appeal against the order passed in the writ petition because he cannot be considered as a party aggrieved by the order passed by the High Court. If so, he cannot file a fresh petition for the same cause once again. The following observations of E.S. Venkataramiah, J. (as the learned chief Justice then was) are to be quoted here:

"We are of the view that the principle underlying Rule 1 of Order 23 of the code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Art. 226 of the Constitution once again. While the withdrawal of a writ petition filed in High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Art.32of the constitution since such withdrawal does not amount to res judicata, the remedy under Art.226 of the Constitution should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission."

*36. Learned A.G.A. has referred to the judgement of Supreme Court in **V. Ravi Kumar Vs. State represented by Inspector of Police, District Crime Branch, Salem Tamilnadu and others (2019) 14 SCC 568,** wherein the Court has held that second complaint in respect of the same cause of action is maintainable. Observation made in paragraphs 16 to 20 of the report are relevant for the controversy in hand. Accordingly same are reproduced herein below:*

*"16. There is no provision in the Criminal Procedure Code or any other statute which debars a complainant from making a second complaint on the same allegations, when the first complaint did not lead to conviction, acquittal or discharge. In **Shiv Shankar Singh v. State of Bihar and Anr**., this Court held:*

"18. Thus, it is evident that the law does not prohibit filing or entertaining of the second complaint even on the same

facts provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete facts could not be placed before the court or where the complainant came to know certain facts after disposal of the first complaint which could have tilted the balance in his favour. However, the second complaint would not be maintainable wherein the earlier complaint has been disposed of on full consideration of the case of the complainant on merit."

17. As held by this Court in Jatinder Singh and Others v. Ranjit Kaur, it is only when a complaint is dismissed on merits after an inquiry, that a second complaint cannot be made on the same facts. Maybe, as contended by the respondents, the first complaint was withdrawn without assigning any reason. However, that in itself is no ground to quash a second complaint. 1 (2012) 1 SCC 130 2 2001 (2) SCC 570

18. In Pramatha Nath Talukdar and Anr. v. Saroj Ranjan Sarkar, this Court dealt with the question whether the second complaint by the respondent should have been entertained when the previous complaint had been withdrawn. The application under Section 482 Cr.P.C. was allowed and the complaint dismissed by the majority Judges observing that an order of dismissal under Section 203Cr.P.C. was no bar to the entertainment of second complaint on the same facts, but it could be entertained only in exceptional circumstances, for example, where the previous order was passed on an incomplete record or a misunderstanding of the nature of the complaint or the order passed was manifestly absurd, unjust or foolish or where there were new facts, which could not, with reasonable diligence, have been brought on record in previous proceedings.

19. In Poonam Chand Jain and Anr. v. Fazru, this Court relied upon its earlier decision in Pramatha Nath (supra) and held that an order of dismissal of a complaint was no bar to the entertainment of second complaint on 3 AIR 1962 SC 876 4 (2010) 2 SCC 631 the same facts, but it could be entertained only in exceptional circumstances, such as, where the previous order was passed on incomplete record, or on a misunderstanding of the nature of the complaint or was manifestly absurd, unjust or foolish or where there were new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings.

20. In Poonam Chand Jain (supra) this Court further held that:-

"...this question again came up for consideration before this Court in Jatinder Singh v. Ranjit Kaur. There also this Court by relying on the principle in Pramatha Nath held that there is no provisions in the Code or in any other statute which debars a complainant from filing a second complaint on the same allegation as in the first complaint. But this Court added when a Magistrate conducts an enquiry under Section 202 of the Code and dismisses a complaint on merits a second complaint on the same facts could not be made unless there are "exceptional cirumstances". This Court held in para 12, if the dismissal of the first complainant then there is no bar in filing a second complaint on the same facts.

However, if the dismissal of the complaint under Section 203 of the Code was on merit the position will be different."

37. The judgement relied upon by learned A.G.A. is clearly distinguishable. The Court in ***V. Ravi Kumar (supra)*** *concluded that the second complaint shall be maintainable if the contingencies specified therein are satisfied.*

38. In the case in hand, the earlier application filed by first informant/opposite party-2 was got dismissed as not pressed but without liberty to file fresh. Consequently the ratio laid down in ***Sarguja Transport (Supra)*** *as applied in* ***Upadhyay and Company (Supra****) is clearly attracted in the present case.*

39. In view of the aforesaid discussion, this Court has no hesitation to conclude that since the first application under Section 319 Cr.P.C. filed by first informant/opposite party-2 was got dismissed as not pressed without liberty to file fresh, the second application under Section 319 Cr.P.C. filed first informant/opposite party-2 was clearly not maintainable.

40. As a result present appeal succeeds and is liable to be allowed.

41. It is accordingly allowed.

42. The impugned order dated 19.09.2018 passed by IInd Additional District and Sessions Judge/ Special Judge, SC/ST Act, Kaushambi in Sessions Trial No.192 of 2014 (State Vs. Sunil Kumar and another), under Sections 304, 308, 323, 504 I.P.C. and Sections 3 (2) (V) SC/ST Act, Police Station-Kokhraj, District-Kaushambi is hereby quashed."

11. Per contra, Sri Ajay Kumar Srivastava, learned AGA appearing for the State and Sri Ajay Pratap Singh-II, learned counsel appearing for the complainant/opposite party No. 2, submitted that this Court while passing the judgment dated 04.11.2022 in the case of Baccha Lal @ Vijay Singh (supra), relied upon by the applicant's counsel, has not considered the earlier judgments passed by the Hon'ble Apex Court on the issue pertaining to exercise of power under Section 319 Cr.P.C. and as such, the judgment dated 04.11.2022 would be of no help to the applicant.

12. Further submission is that principle of 'res-judicata' would not be applicable in the criminal case/proceedings in issue.

13. It is also submitted that in the judgment dated 04.11.2022 passed in the case of ***Baccha Lal @ Vijay Singh (supra),*** this Court has not considered the merits of the case i.e. testimony of the witnesses of the prosecution on which basis the application under Section 319 Cr.P.C. was moved and in fact the same is based upon the judgment passed by the Hon'ble Apex Court in the case of ***Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and others; (1987) 1 SCC 5***, subsequently taken note of in the case of ***Upadhyay and Company Vs. State of U.P. and others; (1999) 1 SCC 81,*** wherein while holding that the second writ petition would not be maintainable if earlier i.e. first writ petition was withdrawn without seeking leave/permission from the court to file a fresh petition, the Hon'ble Apex Court took note of the principles embodied under Sub-rule (3 & 4) of Rule 1 of Order XXIII and Rule VII of Chapter XII of Allahabad High Court Rules, 1952

(in short "Rules of 1952"), and thereafter, observed that "***The principle underlying the above rule is rounded on public policy, but it is not the same as the rule of res judicata contained in section 11 of the Code which provides that no court shall try any suit or issue in which the matter directly or sub- stantially in issue has been directly or substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. The rule of res judicata applies to a case where the suit or an issue has already been heard and finally decided by a Court. In the case of abandonment or withdrawal of a suit without the permission of the Court to file a fresh suit, there is no prior adjudi- cation of a suit. or an issue is involved, yet the Code provides, as stated earlier, that a second suit will not lie in sub-rule (4) of rule 1 of Order XXIII of the Code when the first suit is withdrawn without the permission referred to in sub-rule (3) in order to prevent the abuse of the process of the Court."***

14. It is further submitted that taking note of the reasons in the case of Sarguja Transport (supra) for holding that second writ petition would not be maintainable and also that (i) in the instant case, the injured witnesses namely Rajaram (PW-1) and Mahendra Pratap Singh/complainant (PW-2), on oath, before the trial court have indicated the name of applicant, who was named in NCR dated 08.05.2012 lodged at 23.30 hours at Police Station- Chanda, District- Sultanpur (basis of pending criminal case), according to which, the applicant was involved in the crime/incident referred in the NCR and also that (ii) the first application under Section 319 Cr.P.C. was not withdrawn to avoid the court but for the bonafide reason which relates to death of Pushpa Singh, no interference is required by this Court in the instant case.

15. Clarifying the aforesaid, it is stated that in the instant case, the first application under Section 319 Cr.P.C. was withdrawn for the reason that after filing of first application under Section 319 Cr.P.C. i.e. Application No. 30-Kha, the defence informed that Pushpa Singh, whose name was indicated in the said application, has already been expired and therefore the Application No. 30-Kha was withdrawn and accordingly on this application, the order was passed on 03.10.2022 and thereafter on 08.12.2022, the second application i.e. Application No. 37-Kha was preferred under Section 319 Cr.P.C.

16. It is further stated that to the aforesaid Application No. 37-Kha, two objections were filed and the plea that second application would not be maintainable was not taken in any of the objections.

17. Considered the aforesaid and perused the record.

18. Upon due consideration of the aforesaid, this Court is of the view that in the instant case, following issues/questions are to be answered.

(i) Whether in the facts of the case, including that the impugned order dated 09.02.2023 is based upon the testimony of injured witnesses namely Rajaram (PW-1) and Mahendra Pratap

Singh/complainant (PW-2), interference is to be caused in the impugned order by this Court in exercise of inherent power on the ground that second application under Section 319 Cr.P.C. was preferred without seeking leave/liberty/permission from the Court to file the fresh application and therefore the same was not maintainable.

ii) Whether the judgment passed by the coordinate Bench of this Court in the case of Baccha Lal @ Vijay Singh (supra) is a per incuriam judgment and being so is liable to be ignored.

19. In order to conclude on the aforesaid issues/questions, this Court finds it appropriate to first refer some relevant paragraphs of some judgments passed by the Hon'ble Apex Court, wherein the Hon'ble Apex Court observed with regard to object of Section 319 Cr.P.C. and in what manner the concerned court would exercise its power under Section 319 Cr.P.C., which are as under.

(A) Relevant paragraphs of the judgment passed by the Constitution Bench of the Hon'ble Apex Court in the case of ***Hardeep Singh Vs. State of Punjab, reported in (2014) 3 SCC 92*** in the context of instant case are extracted hereunder:-

"10 [Ed. : Para 10 corrected vide Official Corrigendum No. F. 3/Ed.B.J./2/2014 dated 15-1-2014.] *. In order to answer the aforesaid questions posed, it will be appropriate to refer to Section 351 of the Criminal Procedure Code, 1898 (hereinafter referred to as "the old Code"), where an analogous provision existed, empowering the court to summon any person other than the accused if he is found to be connected with the commission of the offence. However, when the new CrPC was being drafted, regard was had to the 41st Report of the Law Commission where in Paras 24.80 and 24.81 recommendations were made to make this provision more comprehensive. The said recommendations read:*

"24.80.Section 351 limited to offenders in courts*.—It happens sometimes, though not very often, that a Magistrate hearing a case against certain accused finds from the evidence that some person, other than the accused before him, is also concerned in that very offence or in a connected offence. It is only proper that the Magistrate should have the power to call and join him in the proceedings. Section 351 provides for such a situation, but only if that person happens to be attending the court. He can then be detained and proceeded against. There is no express provision in Section 351 for summoning such a person if he is not present in court. Such a provision would make Section 351 fairly comprehensive, and we think it proper to expressly provide for that situation.*

24.81.How is cognizance taken*?—Section 351 assumes that the Magistrate proceeding under it has the power of taking cognizance of the new case. It does not, however, say in what manner cognizance is taken by the Magistrate. The modes of taking cognizance are mentioned in Section 190, and are, apparently, exhaustive. The question is, whether against the newly added accused, cognizance will be supposed to have been taken on the Magistrate's own information under Section 190(1)(c), or only in the manner in which cognizance was first taken of the*

offence against the accused. ... The question is important, because the methods of inquiry and trial in the two cases differ. About the true position under the existing law, there has been difference of opinion, and we think it should be made clear. It seems to us that the main purpose of this particular provision is, that the whole case against all known suspects should be proceeded with expeditiously, and convenience requires that cognizance against the newly added accused should be taken in the same manner against the other accused. We, therefore, propose to recast Section 351 making it comprehensive and providing that there will be no difference in the mode of taking cognizance if a new person is added as an accused during the proceedings. It is, of course, necessary (as is already provided) that in such a situation the evidence must he reheard in the presence of the newly added accused."

11. Section 319 CrPC as it exists today, is quoted hereunder:

"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 reheard;

(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."

(emphasis supplied)

12. Section 319 CrPC springs out of the doctrine judex damnatur cum nocens absolvitur (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 CrPC.

13. It is the duty of the court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial. The question remains under what circumstances and at what stage should the court exercise its power as contemplated in Section 319 CrPC?

14. The submissions that were raised before us covered a very wide canvas and the learned counsel have taken us through various provisions of CrPC and

the judgments that have been relied on for the said purpose. The controversy centres around the stage at which such powers can be invoked by the court and the material on the basis whereof such powers can be exercised.

15. It would be necessary to put on record that the power conferred under Section 319 CrPC is only on the court. This has to be understood in the context that Section 319 CrPC empowers only the court to proceed against such person. The word "court" in our hierarchy of criminal courts has been defined under Section 6 CrPC, which includes the Courts of Session, Judicial Magistrates, Metropolitan Magistrates as well as Executive Magistrates. The Court of Session is defined in Section 9 CrPC and the Courts of the Judicial Magistrates have been defined under Section 11 thereof. The Courts of the Metropolitan Magistrates have been defined under Section 16 CrPC. The courts which can try offences committed under the Penal Code, 1860 or any offence under any other law, have been specified under Section 26 CrPC read with the First Schedule. The Explanatory Note (2) under the heading of "Classification of offences" under the First Schedule specifies the expression "Magistrate of First Class" and "any Magistrate" to include Metropolitan Magistrates who are empowered to try the offences under the said Schedule but excludes Executive Magistrates.

16. It is at this stage that the comparison of the words used under Section 319 CrPC has to be understood distinctively from the words used under Section 2(g) defining an inquiry other than the trial by a Magistrate or a court. Here the legislature has used two words, namely, the Magistrate or court, whereas under Section 319 CrPC, as indicated above, only the word "court" has been recited. This has been done by the legislature to emphasise that the power under Section 319 CrPC is exercisable only by the court and not by any officer not acting as a court. Thus, the Magistrate not functioning or exercising powers as a court can make an inquiry in a particular proceeding other than a trial but the material so collected would not be by a court during the course of an inquiry or a trial. The conclusion therefore, in short, is that in order to invoke the power under Section 319 CrPC, it is only a Court of Session or a Court of Magistrate performing the duties as a court under CrPC that can utilise the material before it for the purpose of the said section.

17. Section 319 CrPC allows the court to proceed against any person who is not an accused in a case before it. Thus, the person against whom summons are issued in exercise of such powers, has to necessarily not be an accused already facing trial. He can either be a person named in Column 2 of the charge-sheet filed under Section 173 CrPC or a person whose name has been disclosed in any material before the court that is to be considered for the purpose of trying the offence, but not investigated. He has to be a person whose complicity may be indicated and connected with the commission of the offence.

18. The legislature cannot be presumed to have imagined all the circumstances and, therefore, it is the duty of the court to give full effect to the words used by the legislature so as to encompass any situation which the court may have to tackle while proceeding to try an offence and not allow a person who deserves to be

tried to go scot-free by being not arraigned in the trial in spite of the possibility of his complicity which can be gathered from the documents presented by the prosecution.

19. The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence.

43. The court cannot proceed with an assumption that the legislature enacting the statute has committed a mistake and where the language of the statute is plain and unambiguous, the court cannot go behind the language of the statute so as to add or subtract a word playing the role of a political reformer or of a wise counsel to the legislature. The court has to proceed on the footing that the legislature intended what it has said and even if there is some defect in the phraseology, etc., it is for others than the court to remedy that defect. The statute requires to be interpreted without doing any violence to the language used therein. The court cannot rewrite, recast or reframe the legislation for the reason that it has no power to legislate.

45. This Court in Rohitash Kumar v. Om Prakash Sharma [(2013) 11 SCC 451 : AIR 2013 SC 30] , after placing reliance on various earlier judgments of this Court held : (SCC pp. 460-61, paras 27-29)

"27. The court has to keep in mind the fact that, while interpreting the provisions of a statute, it can neither add, nor subtract even a single word. ... A section is to be interpreted by reading all of its parts together, and it is not permissible to omit any part thereof. The court cannot proceed with the assumption that the legislature, while enacting the statute has committed a mistake; it must proceed on the footing that the legislature intended what it has said; even if there is some defect in the phraseology used by it in framing the statute, and it is not open to the court to add and amend, or by construction, make up for the deficiencies, which have been left in the Act. ...

28. The statute is not to be construed in light of certain notions that the legislature might have had in mind, or what the legislature is expected to have said, or what the legislature might have done, or what the duty of the legislature to have said or done was. The courts have to administer the law as they find it, and it is not permissible for the court to twist the clear language of the enactment in order to avoid any real or imaginary hardship which such literal interpretation may cause. ...

29. ... under the garb of interpreting the provision, the court does not have the power to add or subtract even a single word, as it would not amount to interpretation, but legislation."

(emphasis in original)

63. The provision and the abovementioned definitions clearly suggest

that it is an exhaustive definition. Wherever the words "means and include" are used, it is an indication of the fact that the definition "is a hard-and-fast definition", and no other meaning can be assigned to the expression that is put down in the definition. It indicates an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expression. (Vide Mahalakshmi Oil Mills v. State of A.P. [(1989) 1 SCC 164 : 1989 SCC (Tax) 56 : AIR 1989 SC 335] , Punjab Land Development and Reclamation Corpn. Ltd. v. Labour Court [(1990) 3 SCC 682 : 1991 SCC (L&S) 71] , P. Kasilingam v. P.S.G. College of Technology [1995 Supp (2) SCC 348 : AIR 1995 SC 1395] , Hamdard (Wakf) Laboratories v. Labour Commr. [(2007) 5 SCC 281 : (2007) 2 SCC (L&S) 166] and Ponds India Ltd. v. CTT [(2008) 8 SCC 369] .)"

(B) In the case of ***Rajesh and Others Vs. State of Haryana, reported in (2019) 6 SCC 368,*** the Hon'ble Apex Court considered the observations made in the cases of ***Hardeep Singh (surpa) and Brijendra Singh v. State of Rajasthan, (2017) 7 SCC 706 : (2017) 4 SCC (Cri) 144*** as also the expression 'evidence' and also various other pronouncements on the issues related to summoning the accused in exercise of power under Section 319 Cr.P.C., which is apparent from the following portion of the report:-

"3.5. Relying upon the decision of this Court in Brijendra Singh v. State of Rajasthan [Brijendra Singh v. State of Rajasthan, (2017) 7 SCC 706 : (2017) 4 SCC (Cri) 144] , it is vehemently submitted by Shri Basant, learned Senior Advocate appearing on behalf of the appellants that, as observed by this Court, merely on the basis of the deposition of the complainant and some other persons, with no other material to support their so-called verbal/ocular version, no person can be arrayed as an accused in exercise of powers under Section 319 CrPC. It is submitted by the learned Senior Advocate appearing on behalf of the appellants that, as observed by this Court in the aforesaid decision, such an "evidence" recorded during the trial is nothing more than the statements which was already there under Section 161 CrPC recorded at the time of investigation of the case. Relying upon the aforesaid decision, it is vehemently submitted by the learned Senior Advocate appearing on behalf of the appellants that, in any case, the learned Magistrate was bound to look into the evidence collected by the investigating officer during investigation which suggested that the accused were not present at the time of commission of the offence. It is submitted that, in the present case, the learned Magistrate on the applications submitted by the SHO in fact discharged the appellant-accused herein and allowed the applications submitted by the SHO in which it was categorically stated that the appellants are innocent and that they were not present at the time of the incident. It is submitted that therefore the High Court has erred in dismissing the revision petition and confirming the order passed by the learned Magistrate in summoning the appellant-accused herein to face the trial for the offences under Sections 148, 149, 323, 324, 325, 302, 307 and 506 IPC, which was passed in exercise of powers under Section 319 CrPC.

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6. While considering the aforesaid question/issue, few decisions of

this Court are required to be referred to and considered.

6.1. The first decision which is required to be considered is a decision of the Constitution Bench of this Court in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] which has been consistently followed by this Court in subsequent decisions.

6.2. In Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , this Court had the occasion to consider in detail the scope and ambit of the powers of the Magistrate under Section 319 CrPC the object and purpose of Section 319 CrPC, etc. In the said case, the following five questions fell for consideration before this Court : (SCC p. 112, para 6)

"6. ... 6.1.(i) What is the stage at which power under Section 319 CrPC can be exercised?

6.2.(ii) Whether the word "evidence" used in Section 319(1) CrPC could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

6.3.(iii) Whether the word "evidence" used in Section 319(1) CrPC has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

6.4.(iv) What is the nature of the satisfaction required to invoke the power under Section 319 CrPC to arraign an accused? Whether the power under Section 319(1) CrPC can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

6.5.(v) Does the power under Section 319 CrPC extend to persons not named in the FIR or named in the FIR but not charged or who have been discharged?"

6.3. While considering the aforesaid questions, this Court observed and held as under : (Hardeep Singh case [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , SCC pp. 114-17, 123 & 125-26, paras 12-14, 17-19, 22, 47 & 53-56)

"12. Section 319 CrPC springs out of the doctrine judex damnatur cum nocens absolvitur (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 CrPC.

13. It is the duty of the court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial. The question remains under what circumstances and at what stage should the court exercise its power as contemplated in Section 319 CrPC?

14. The submissions that were raised before us covered a very wide canvas and the learned counsel have taken us through various provisions of CrPC and

the judgments that have been relied on for the said purpose. The controversy centres around the stage at which such powers can be invoked by the court and the material on the basis whereof such powers can be exercised.

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17. Section 319 CrPC allows the court to proceed against any person who is not an accused in a case before it. Thus, the person against whom summons are issued in exercise of such powers, has to necessarily not be an accused already facing trial. He can either be a person named in Column 2 of the charge-sheet filed under Section 173 CrPC or a person whose name has been disclosed in any material before the court that is to be considered for the purpose of trying the offence, but not investigated. He has to be a person whose complicity may be indicated and connected with the commission of the offence.

18. The legislature cannot be presumed to have imagined all the circumstances and, therefore, it is the duty of the court to give full effect to the words used by the legislature so as to encompass any situation which the court may have to tackle while proceeding to try an offence and not allow a person who deserves to be tried to go scot-free by being not arraigned in the trial in spite of the possibility of his complicity which can be gathered from the documents presented by the prosecution.

19. The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence.

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22. In our opinion, Section 319 CrPC is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also having committed the offence under trial.

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47. Since after the filing of the charge-sheet, the court reaches the stage of inquiry and as soon as the court frames the charges, the trial commences, and therefore, the power under Section 319(1) CrPC can be exercised at any time after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207/208 CrPC, committal, etc. which is only a pre-trial stage, intended to put the process into motion. This stage cannot be said to be a judicial step in the true sense for it only requires an application of mind rather than a judicial application of mind. At this pre-trial stage, the Magistrate is required to perform acts in the nature of administrative work rather than judicial such as ensuring compliance with Sections 207 and 208 CrPC, and committing the matter if it is exclusively triable by the Sessions Court. Therefore, it would be legitimate for us to conclude that the Magistrate at the stage of Sections 207 to 209 CrPC is forbidden, by express provision of Section 319 CrPC, to apply his mind to the merits of the case and

determine as to whether any accused needs to be added or subtracted to face trial before the Court of Session.

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53. It is thus aptly clear that until and unless the case reaches the stage of inquiry or trial by the court, the power under Section 319 CrPC cannot be exercised. ...

54. In our opinion, the stage of inquiry does not contemplate any evidence in its strict legal sense, nor could the legislature have contemplated this inasmuch as the stage for evidence has not yet arrived. The only material that the court has before it is the material collected by the prosecution and the court at this stage prima facie can apply its mind to find out as to whether a person, who can be an accused, has been erroneously omitted from being arraigned or has been deliberately excluded by the prosecuting agencies. This is all the more necessary in order to ensure that the investigating and the prosecuting agencies have acted fairly in bringing before the court those persons who deserve to be tried and to prevent any person from being deliberately shielded when they ought to have been tried. This is necessary to usher faith in the judicial system whereby the court should be empowered to exercise such powers even at the stage of inquiry and it is for this reason that the legislature has consciously used separate terms, namely, inquiry or trial in Section 319 CrPC.

55. Accordingly, we hold that the court can exercise the power under Section 319 CrPC only after the trial proceeds and commences with the recording of the evidence and also in exceptional circumstances as explained hereinabove.

56. ... What is essential for the purpose of the section is that there should appear some evidence against a person not proceeded against and the stage of the proceedings is irrelevant. Where the complainant is circumspect in proceeding against several persons, but the court is of the opinion that there appears to be some evidence pointing to the complicity of some other persons as well, Section 319 CrPC acts as an empowering provision enabling the court/Magistrate to initiate proceedings against such other persons. The purpose of Section 319 CrPC is to do complete justice and to ensure that persons who ought to have been tried as well are also tried. Therefore, there does not appear to be any difficulty in invoking powers of Section 319 CrPC at the stage of trial in a complaint case when the evidence of the complainant as well as his witnesses are being recorded."

6.4. While answering Question (iii), namely, whether the word "evidence" used in Section 319(1) CrPC has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial, this Court, in the aforesaid decision has observed and held as under : (Hardeep Singh case [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , SCC pp. 126-27 & 131-32, paras 58-59, 78 & 82-85)

"58. To answer the questions and to resolve the impediment that is being faced by the trial courts in exercising of

powers under Section 319 CrPC, the issue has to be investigated by examining the circumstances which give rise to a situation for the court to invoke such powers. The circumstances that lead to such inference being drawn up by the court for summoning a person arise out of the availability of the facts and material that come up before the court and are made the basis for summoning such a person as an accomplice to the offence alleged to have been committed. The material should disclose the complicity of the person in the commission of the offence which has to be the material that appears from the evidence during the course of any inquiry into or trial of offence. The words as used in Section 319 CrPC indicate that the material has to be "where ... it appears from the evidence" before the court.

59. Before we answer this issue, let us examine the meaning of the word "evidence". According to Section 3 of the Evidence Act, "evidence" means and includes:

'(1) all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;

(2) all documents including electronic records produced for the inspection of the court; such documents are called documentary evidence.'

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78. It is, therefore, clear that the word "evidence" in Section 319 CrPC means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents. It is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under Section 319 CrPC is to be exercised and not on the basis of material collected during the investigation.

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82. This pre-trial stage is a stage where no adjudication on the evidence of the offences involved takes place and therefore, after the material along with the charge-sheet has been brought before the court, the same can be inquired into in order to effectively proceed with framing of charges. After the charges are framed, the prosecution is asked to lead evidence and till that is done, there is no evidence available in the strict legal sense of Section 3 of the Evidence Act. The actual trial of the offence by bringing the accused before the court has still not begun. What is available is the material that has been submitted before the court along with the charge-sheet. In such situation, the court only has the preparatory material that has been placed before the court for its consideration in order to proceed with the trial by framing of charges.

83. It is, therefore, not any material that can be utilised, rather it is that material after cognizance is taken by a court, that is available to it while making an inquiry into or trying an offence, that the court can utilise or take into consideration for supporting reasons to summon any person on the basis of evidence adduced before the court, who may be on the basis of such material, treated to be an accomplice in the commission of the offence. The inference that can be drawn is that material which is not exactly evidence recorded before the

court, but is a material collected by the court, can be utilised to corroborate evidence already recorded for the purpose of summoning any other person, other than the accused. ...

84. The word "evidence" therefore has to be understood in its wider sense both at the stage of trial and, as discussed earlier, even at the stage of inquiry, as used under Section 319 CrPC. The court, therefore, should be understood to have the power to proceed against any person after summoning him on the basis of any such material as brought forth before it. The duty and obligation of the court becomes more onerous to invoke such powers cautiously on such material after evidence has been led during trial.

85. In view of the discussion made and the conclusion drawn hereinabove, the answer to the aforesaid question posed is that apart from evidence recorded during trial, any material that has been received by the court after cognizance is taken and before the trial commences, can be utilised only for corroboration and to support the evidence recorded by the court to invoke the power under Section 319 CrPC. The "evidence" is thus, limited to the evidence recorded during trial."

(emphasis in original)

6.5. While answering Question (ii), namely, whether the word "evidence" used in Section 319(1) CrPC means as arising in examination-in-chief or also together with cross-examination, in the aforesaid decision, this Court has observed and held as under : (Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , SCC pp. 132-34, paras 86-92

"86. The second question referred to herein is in relation to the word "evidence" as used under Section 319 CrPC, which leaves no room for doubt that the evidence as understood under Section 3 of the Evidence Act is the statement of the witnesses that are recorded during trial and the documentary evidence in accordance with the Evidence Act, which also includes the document and material evidence in the Evidence Act. Such evidence begins with the statement of the prosecution witnesses, therefore, is evidence which includes the statement during examination-in-chief. In Rakesh [Rakesh v. State of Haryana, (2001) 6 SCC 248 : 2001 SCC (Cri) 1090] , it was held that : (SCC p. 252, para 10)

'10. ... It is true that finally at the time of trial the accused is to be given an opportunity to cross-examine the witness to test its truthfulness. But that stage would not arise while exercising the court's power under Section 319 CrPC. Once the deposition is recorded, no doubt there being no cross-examination, it would be a prima facie material which would enable the Sessions Court to decide whether powers under Section 319 should be exercised or not.'

87. In Ranjit Singh [Ranjit Singh v. State of Punjab, (1998) 7 SCC 149 : 1998 SCC (Cri) 1554] , this Court held that : (SCC p. 156, para 20)

'20. ... it is not necessary for the court to wait until the entire evidence is collected for exercising the said powers.'

88. In Mohd. Shafi [Mohd. Shafi v. Mohd. Rafiq, (2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889] , it was held that the prerequisite for exercise of power

under Section 319 CrPC is the satisfaction of the court to proceed against a person who is not an accused but against whom evidence occurs, for which the court can even wait till the cross-examination is over and that there would be no illegality in doing so. A similar view has been taken by a two-Judge Bench in Harbhajan Singh v. State of Punjab [Harbhajan Singh v. State of Punjab, (2009) 13 SCC 608 : (2010) 1 SCC (Cri) 1135] . This Court in Hardeep Singh [Hardeep Singh v. State of Punjab, (2009) 16 SCC 785 : (2010) 2 SCC (Cri) 355] seems to have misread the judgment in Mohd. Shafi [Mohd. Shafi v. Mohd. Rafiq, (2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889] , as it construed that the said judgment laid down that for the exercise of power under Section 319 CrPC, the court has to necessarily wait till the witness is cross-examined and on complete appreciation of evidence, come to the conclusion whether there is a need to proceed under Section 319 CrPC.

89. We have given our thoughtful consideration to the diverse views expressed in the aforementioned cases. Once examination-in-chief is conducted, the statement becomes part of the record. It is evidence as per law and in the true sense, for at best, it may be rebuttable. An evidence being rebutted or controverted becomes a matter of consideration, relevance and belief, which is the stage of judgment by the court. Yet it is evidence and it is material on the basis whereof the court can come to a prima facie opinion as to complicity of some other person who may be connected with the offence.

90. As held in Mohd. Shafi [Mohd. Shafi v. Mohd. Rafiq, (2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889] and Harbhajan Singh [Harbhajan Singh v. State of Punjab, (2009) 13 SCC 608 : (2010) 1 SCC (Cri) 1135] , all that is required for the exercise of the power under Section 319 CrPC is that, it must appear to the court that some other person also who is not facing the trial, may also have been involved in the offence. The prerequisite for the exercise of this power is similar to the prima facie view which the Magistrate must come to in order to take cognizance of the offence. Therefore, no straitjacket formula can and should be laid with respect to conditions precedent for arriving at such an opinion and, if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under Section 319 CrPC and can proceed against such other person(s). It is essential to note that the section also uses the words "such person could be tried" instead of should be tried. Hence, what is required is not to have a mini-trial at this stage by having examination and cross-examination and thereafter rendering a decision on the overt act of such person sought to be added. In fact, it is this mini-trial that would affect the right of the person sought to be arraigned as an accused rather than not having any cross-examination at all, for in light of sub-section (4) of Section 319 CrPC, the person would be entitled to a fresh trial where he would have all the rights including the right to cross-examine prosecution witnesses and examine defence witnesses and advance his arguments upon the same. Therefore, even on the basis of examination-in-chief, the court or the Magistrate can proceed against a person as long as the court is satisfied that the evidence appearing against such person is such that it prima facie necessitates bringing such person to face trial. In fact,

examination-in-chief untested by cross-examination, undoubtedly in itself, is an evidence.

91. Further, in our opinion, there does not seem to be any logic behind waiting till the cross-examination of the witness is over. It is to be kept in mind that at the time of exercise of power under Section 319 CrPC, the person sought to be arraigned as an accused, is in no way participating in the trial. Even if the cross-examination is to be taken into consideration, the person sought to be arraigned as an accused cannot cross-examine the witness(es) prior to passing of an order under Section 319 CrPC, as such a procedure is not contemplated by CrPC. Secondly, invariably the State would not oppose or object to naming of more persons as an accused as it would only help the prosecution in completing the chain of evidence, unless the witness(es) is obliterating the role of persons already facing trial. More so, Section 299 CrPC enables the court to record evidence in absence of the accused in the circumstances mentioned therein.

92. Thus, in view of the above, we hold that power under Section 319 CrPC can be exercised at the stage of completion of examination-in-chief and the court does not need to wait till the said evidence is tested on cross-examination for it is the satisfaction of the court which can be gathered from the reasons recorded by the court, in respect of complicity of some other person(s), not facing the trial in the offence."

(emphasis in original)

6.6. While answering Question (iv), namely, what is the degree of satisfaction required for invoking the power under Section 319 CrPC, this Court after considering various earlier decisions on the point, has observed and held as under : (Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , SCC p. 138, paras 105-06)

105. Power under Section 319 CrPC is a discretionary and an extraordinary 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 CrPC. In Section 319 CrPC 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 CrPC to form any opinion as to the guilt of the accused."

(emphasis in original)

6.7. While answering Question (v), namely, in what situations can the power under Section 319 CrPC be exercised : named in the FIR, but not charge-sheeted or has been discharged, this Court has observed and held as under : (Hardeep Singh case [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , SCC pp. 139 & 141, paras 112 & 116)

"112. However, there is a great difference with regard to a person who has been discharged. A person who has been discharged stands on a different footing than a person who was never subjected to investigation or if subjected to, but not charge-sheeted. Such a person has stood the stage of inquiry before the court and upon judicial examination of the material collected during investigation, the court had come to the conclusion that there is not even a prima facie case to proceed against such person. Generally, the stage of evidence in trial is merely proving the material collected during investigation and therefore, there is not much change as regards the material existing against the person so discharged. Therefore, there must exist compelling circumstances to exercise such power. The court should keep in mind that the witness when giving evidence against the person so discharged, is not doing so merely to seek revenge or is naming him at the behest of someone or for such other extraneous considerations. The court has to be circumspect in treating such evidence and try to separate the chaff from the grain. If after such careful examination of the evidence, the court is of the opinion that there does exist evidence to proceed against the person so discharged, it may take steps but only in accordance with Section 398 CrPC without resorting to the provision of Section 319 CrPC directly.

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116. Thus, it is evident that power under Section 319 CrPC can be exercised against a person not subjected to investigation, or a person placed in Column 2 of the charge-sheet and against whom cognizance had not been taken, or a person who has been discharged. However, concerning a person who has been discharged, no proceedings can be commenced against him directly under Section 319 CrPC without taking recourse to provisions of Section 300(5) read with Section 398 CrPC."

6.8. Considering the law laid down by this Court in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] and the observations and findings referred to and reproduced hereinabove, it emerges that (i) the Court can exercise the power under Section 319 CrPC even on the basis of the statement made in the examination-in-chief of the witness concerned and the Court need not wait till the cross-examination of such a witness and the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination; and (ii) a person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 CrPC, provided from the evidence (may be on the basis of the evidence collected in the form

of statement made in the examination-in-chief of the witness concerned), it appears that such person can be tried along with the accused already facing trial.

6.9. In S. Mohammed Ispahani v. Yogendra Chandak [S. Mohammed Ispahani v. Yogendra Chandak, (2017) 16 SCC 226 : (2018) 2 SCC (Cri) 138] , SCC para 35, this Court has observed and held as under : (SCC p. 243)

"35. It needs to be highlighted that when a person is named in the FIR by the complainant, but police, after investigation, finds no role of that particular person and files the charge-sheet without implicating him, the Court is not powerless, and at the stage of summoning, if the trial court finds that a particular person should be summoned as accused, even though not named in the charge-sheet, it can do so. At that stage, chance is given to the complainant also to file a protest petition urging upon the trial court to summon other persons as well who were named in the FIR but not implicated in the charge-sheet. Once that stage has gone, the Court is still not powerless by virtue of Section 319 CrPC. However, this section gets triggered when during the trial some evidence surfaces against the proposed accused."

6.10. Thus, even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in the FIR but not implicated in the charge-sheet has gone, in that case also, the Court is still not powerless by virtue of Section 319 CrPC and even those persons named in the FIR but not implicated in the charge-sheet can be summoned to face the trial provided during the trial some evidence surfaces against the proposed accused.

7. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that, in the facts and circumstances of the case, neither the learned trial court nor the High Court have committed any error in summoning the appellants herein to face the trial along with other co-accused. As observed hereinabove, the appellants herein were also named in the FIR. However, they were not shown as accused in the challan/charge-sheet. As observed hereinabove, nothing is on record whether at any point of time the complainant was given an opportunity to submit the protest application against non-filing of the charge-sheet against the appellants. In the deposition before the Court, PW 1 and PW 2 have specifically stated against the appellants herein and the specific role is attributed to the appellant-accused herein. Thus, the statement of PW 1 and PW 2 before the Court can be said to be "evidence" during the trial and, therefore, on the basis of the same and as held by this Court in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , the persons against whom no charge-sheet is filed can be summoned to face the trial. Therefore, we are of the opinion that no error has been committed by the courts below to summon the appellants herein to face the trial in exercise of power under Section 319 CrPC."

(C) In the case of **Manjeet Singh Vs. State of Haryana & Ors., reported in (2021) 18 SCC 321,** after considering the various pronouncements on issues related to exercising the powers under Section 319

Cr.P.C. including the judgments passed in the case of Hardeep Singh (supra) and Brijendra Singh (supra), concluded as under:-

"15. The ratio of the aforesaid decisions on the scope and ambit of the powers of the court under Section 319CrPC can be summarised as under:

15.1. That while exercising the powers under Section 319CrPC and to summon the persons not charge-sheeted, the entire effort is not to allow the real perpetrator of an offence to get away unpunished.

15.2. For the empowerment of the courts to ensure that the criminal administration of justice works properly.

15.3. The law has been properly codified and modified by the legislature under CrPC indicating as to how the courts should proceed to ultimately find out the truth so that the innocent does not get punished but at the same time, the guilty are brought to book under the law.

15.4. To discharge duty of the court to find out the real truth and to ensure that the guilty does not go unpunished.

15.5. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial.

15.6. Section 319CrPC allows the court to proceed against any person who is not an accused in a case before it.

15.7. The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency.

15.8. Section 319CrPC is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also having committed the offence under trial.

15.9. The power under Section 319(1)CrPC can be exercised at any stage after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207/208CrPC, committal, etc. which is only a pre-trial stage intended to put the process into motion.

15.10. The court can exercise the power under Section 319CrPC only after the trial proceeds and commences with the recording of the evidence.

15.11. The word "evidence" in Section 319CrPC means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents.

15.12. It is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under Section 319CrPC is to be exercised and not on the basis of material collected during the investigation.

15.13. If the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under Section 319CrPC and can proceed against such other person(s).

15.14. That if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, powers under Section 319CrPC can be exercised.

15.15. That power under Section 319CrPC can be exercised even at the stage of completion of examination-in-chief and the court need not to wait till the said evidence is tested on cross-examination.

15.16. Even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in FIR but not implicated in the charge-sheet has gone, in that case also, the court is still not powerless by virtue of Section 319CrPC and even those persons named in FIR but not implicated in the charge-sheet can be summoned to face the trial, provided during the trial some evidence surfaces against the proposed accused (may be in the form of examination-in-chief of the prosecution witnesses).

15.17. While exercising the powers under Section 319CrPC the court is not required and/or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the trial.

16. Applying the law laid down in the aforesaid decisions to the facts of the case on hand we are of the opinion that the learned trial court as well as the High Court have materially erred in dismissing the application under Section 319CrPC and refusing to summon the private respondents herein to face the trial in exercising the powers under Section 319CrPC. It is required to be noted that in FIR No. 477 all the private respondents herein who are sought to be arraigned as additional accused were specifically named with specific role attributed to them. It is specifically mentioned that while they were returning back, Mahindra XUV bearing no. HR 40A 4352 was standing on the road which belongs to Sartaj Singh and Sukhpal. Tejpal, Parab Saran Singh, Preet Samrat and Sartaj were standing. Parab Sharan was having lathi in his hand, Tejpal was having a gandasi, Sukhpal was having a danda, Sartaj was having a revolver and Preet Singh was sitting in the jeep. It is specifically mentioned in the FIR that all the aforesaid persons with common intention parked the Mahindra XUV HR 40A 4352 in a manner which blocks the entire road and they were armed with the weapons.

17. Despite the above specific allegations, when the charge-sheet/final report came to be filed only two persons came to be charge-sheeted and the private respondents herein, though named in the FIR, were put/kept in Column 2. It is the case on behalf of the private respondents herein that four different DSPs inquired into the matter and thereafter when no evidence was found against them the private respondents herein were put in Column 2 and therefore the same is to be given much weightage rather than considering/believing the examination-in-chief of the appellant herein. Heavy reliance is placed on Brijendra Singh [Brijendra Singh v. State of

Rajasthan, (2017) 7 SCC 706 : (2017) 4 SCC (Cri) 144] .

18. However none of DSPs and/or their reports, if any, are part of the charge-sheet. None of the DSPs are shown as witnesses. None of the DSPs are investigating officer. Even on considering the final report/charge-sheet as a whole there does not appear to be any consideration on the specific allegations qua the accused, the private respondents herein, who are kept in Column 2. Entire discussion in the charge-sheet/final report is against Sartaj Singh only.

19. So far as the private respondents are concerned only thing which is stated is:"During the investigation of the present case, Shri Baljinder Singh, HPS, DSP Assandh and Shri Kushalpal, HPS, DSP Indri found accused Tejpal Singh, Sukhpal Singh, sons of Gurdev Singh, Parab Sharan Singh and Preet Samrat Singh sons of Mohan Sarup Singh caste Jat Sikh, residents of Bandrala innocent and accordingly Sections 148, 149 and 341IPC were deleted in the case and they were kept in Column 2, whereas challan against accused Sartaj has been presented in the Court."

20. Now thereafter when in the examination-in-chief the appellant herein — victim — injured eyewitness has specifically named the private respondents herein with specific role attributed to them, the learned trial court as well as the High Court ought to have summoned the private respondents herein to face the trial. At this stage it is required to be noted that so far as the appellant herein is concerned he is an injured eyewitness. As observed by this Court in State of M.P. v. Mansingh [State of M.P. v. Mansingh, (2003) 10 SCC 414 : (2007) 2 SCC (Cri) 390] (para 9); Abdul Sayeed v. State of M.P. [Abdul Sayeed v. State of M.P., (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262] ; State of U.P. v. Naresh [State of U.P. v. Naresh, (2011) 4 SCC 324 : (2011) 2 SCC (Cri) 216] , the evidence of an injured eyewitness has greater evidential value and unless compelling reasons exist, their statements are not to be discarded lightly. As observed hereinabove while exercising the powers under Section 319CrPC the court has not to wait till the cross-examination and on the basis of the examination-in-chief of a witness if a case is made out, a person can be summoned to face the trial under Section 319CrPC.

21. Now so far as the reasoning given by the High Court while dismissing the revision application and confirming the order passed by the learned trial court dismissing the application under Section 319CrPC is concerned, the High Court itself has observed that PW 1 Manjeet Singh is the injured witness and therefore his presence cannot be doubted as he has received firearm injuries along with the deceased. However, thereafter the High Court has observed that the statement of Manjeet Singh indicates over implication and that no injury has been attributed to either of the respondents except that they were armed with weapons and the injuries concerned are attributed only to Sartaj Singh, even for the sake of arguments if someone was present with Sartaj Singh it cannot be said that they had any common intention or there was meeting of mind or knew that Sartaj would be firing. The aforesaid reasonings are not sustainable at all.

22. At the stage of exercising the powers under Section 319CrPC, the court

is not required to appreciate and/or enter on the merits of the allegations of the case. The High Court has lost sight of the fact that the allegations against all the accused persons right from the very beginning were for the offences under Sections 302, 307, 341, 148 & 149IPC. The High Court has failed to appreciate the fact that for attracting the offence under Section 149IPC only forming part of unlawful assembly is sufficient and the individual role and/or overt act is immaterial. Therefore, the reasoning given by the High Court that no injury has been attributed to either of the respondents except that they were armed with weapons and therefore, they cannot be added as accused is unsustainable. The learned trial court and the High Court have failed to exercise the jurisdiction and/or powers while exercising the powers under Section 319CrPC.

23. Now so far as the submission on behalf of the private respondents that though a common judgment and order was passed by the High Court in Satkar Singh v. State of Haryana [CRR No. 3238 of 2018 reported as Manjeet Singh v. State of Haryana, 2020 SCC OnLine P&H 2782 sub nom Satkar Singh v. State of Haryana] at that stage the appellant herein did not prefer appeal against the impugned judgment and order passed by the High Court in Manjeet Singh v. State of Haryana [Manjeet Singh v. State of Haryana, 2020 SCC OnLine P&H 2782 [Ed. : This also disposed of CRR No. 3238 of 2018 by a common judgment and order]] and therefore this Court may not exercise the powers under Article 136 of the Constitution is concerned the aforesaid has no substance. Once it is found that the learned trial court as well as the High Court ought to have summoned the private respondents herein as additional accused, belated filing of the appeal or not filing the appeal at a relevant time when this Court considered the very judgment and order in Satkar Singh v. State of Haryana [CRR No. 3238 of 2018 reported as Manjeet Singh v. State of Haryana, 2020 SCC OnLine P&H 2782 sub nom Satkar Singh v. State of Haryana] cannot be a ground not to direct to summon the private respondents herein when this Court has found that a prima facie case is made out against the private respondents herein and they are to be summoned to face the trial.

24. Now so far as the submission on behalf of the private respondents that though in the charge-sheet the private respondents herein were put in Column 2 at that stage the complainant side did not file any protest application is concerned, the same has been specifically dealt with by this Court in Rajesh [Rajesh v. State of Haryana, (2019) 6 SCC 368 : (2019) 2 SCC (Cri) 801] . This Court in the aforesaid decision has specifically observed that even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well as who were named in the FIR but not implicated in the charge-sheet has gone, in that case also, the court is still not powerless by virtue of Section 319CrPC.

25. Similarly, the submission on behalf of the private respondents herein that after the impugned judgment and order passed by the High Court there is much progress in the trial and therefore at this stage power under Section 319CrPC may not be exercised is concerned, the aforesaid has no substance and cannot be accepted. As per the settled proposition of law and as observed by this Court in Hardeep

Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , the powers under Section 319CrPC can be exercised at any stage before the final conclusion of the trial. Even otherwise it is required to be noted that at the time when the application under Section 319CrPC was given only one witness was examined and examination-in-chief of PW 1 was recorded and while the cross-examination of PW 1 was going on, application under Section 319CrPC was given which came to be rejected by the learned trial court. The order passed by the learned trial court is held to be unsustainable. If the learned trial court would have summoned the private respondents herein at that stage such a situation would not have arisen. Be that as it may, as observed herein powers under Section 319CrPC can be exercised at any stage from commencing of the trial and recording of evidence/deposition and before the conclusion of the trial at any stage.

26. In view of the above and for the reasons stated above, the impugned judgment and order [Manjeet Singh v. State of Haryana, 2020 SCC OnLine P&H 2782 [Ed. : This also disposed of CRR No. 3238 of 2018 by a common judgment and order]] passed by the High Court and that of the learned trial court dismissing the application under Section 319CrPC submitted on behalf of the complainant to summon the private respondents herein as additional accused are unsustainable and deserve to be quashed and set aside and are accordingly quashed and set aside. Consequently the application submitted on behalf of the complainant to summon the private respondents herein is hereby allowed and the learned trial court is directed to summon the private respondents herein to face the trial arising out of FIR No. 477 dated 27-7-2016 in Sessions Case No. 362 of 2016 for the offences punishable under Sections 302, 307, 341, 148 & 149IPC."

(D) Relevant paragraphs of the judgment passed by the Hon'ble Apex Court in the case of ***Sukhpal Singh Khaira vs. State of Punjab*** reported in ***(2023) 1 SCC 289*** in the context of instant case are extracted hereunder:-

"22. Thus, to put the matter in perspective, a perusal of the recommendation of the Law Commission would indicate the intention that an accused who is not charge-sheeted but if is found to be involved should not go scot-free. Hence, Section 319CrPC was incorporated which provides for the court to exercise the power to ensure the same before the conclusion of trial so as to try such accused by summoning and being proceeded along with the other accused. In Shashikant Singh [Shashikant Singh v. Tarkeshwar Singh, (2002) 5 SCC 738 : 2002 SCC (Cri) 1203] , a Bench of two Hon'ble Judges, on holding that the joint trial is not a must has held the requirement as contained in Section 319(1)CrPC as only directory, and as such the judgment of conviction dated 16-7-2001 against the charge-sheeted accused was considered not to be an impediment for the court to proceed against the accused who was added by the summoning order dated 7-4-2001, which in any case was prior to the conclusion of the trial which in our view satisfies the requirement since the summoning order was before the judgment. In Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] also the power of the court under Section 319CrPC has been upheld, reiterated, and it has been held that such

power is available to be exercised at any time before the pronouncement of judgment. Therefore, there is no conflict or diverse view in the said decisions insofar as the exercise of power, the manner and the stage at which power is to be exercised. However, a certain amount of ironing the crease is required to explain the connotation of the phrase "could be tried together with the accused" appearing in sub-section (1) read with the requirement in sub-section (4)(a) to Section 319CrPC and to understand the true purport of exercising the power as per the phrase "before the pronouncement of judgment".

xxx xxx xxx xxx xxx

38. For all the reasons stated above, we answer the questions referred as hereunder.

39.(I) Whether the trial court has the power under Section 319CrPC for summoning additional accused when the trial with respect to other co-accused has ended and the judgment of conviction rendered on the same date before pronouncing the summoning order?

The power under Section 319CrPC is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced. Hence, the summoning order has to precede the conclusion of trial by imposition of sentence in the case of conviction. If the order is passed on the same day, it will have to be examined on the facts and circumstances of each case and if such summoning order is passed either after the order of acquittal or imposing sentence in the case of conviction, the same will not be sustainable.

40.(II) Whether the trial court has the power under Section 319CrPC for summoning additional accused when the trial in respect of certain other absconding accused (whose presence is subsequently secured) is ongoing/pending, having been bifurcated from the main trial?

The trial court has the power to summon additional accused when the trial is proceeded in respect of the absconding accused after securing his presence, subject to the evidence recorded in the split-up (bifurcated) trial pointing to the involvement of the accused sought to be summoned. But the evidence recorded in the main concluded trial cannot be the basis of the summoning order if such power has not been exercised in the main trial till its conclusion.

41.(III) What are the guidelines that the competent court must follow while exercising power under Section 319CrPC?

41.1. If the competent court finds evidence or if application under Section 319CrPC is filed regarding involvement of any other person in committing the offence based on evidence recorded at any stage in the trial before passing of the order on acquittal or sentence, it shall pause the trial at that stage.

41.2. The court shall thereupon first decide the need or otherwise to summon the additional accused and pass orders thereon.

41.3. If the decision of the court is to exercise the power under Section 319CrPC and summon the accused, such

summoning order shall be passed before proceeding further with the trial in the main case.

41.4. If the summoning order of additional accused is passed, depending on the stage at which it is passed, the court shall also apply its mind to the fact as to whether such summoned accused is to be tried along with the other accused or separately.

41.5. If the decision is for joint trial, the fresh trial shall be commenced only after securing the presence of the summoned accused.

41.6. If the decision is that the summoned accused can be tried separately, on such order being made, there will be no impediment for the court to continue and conclude the trial against the accused who were being proceeded with.

41.7. If the proceeding paused as in para 41.1 above, is in a case where the accused who were tried are to be acquitted, and the decision is that the summoned accused can be tried afresh separately, there will be no impediment to pass the judgment of acquittal in the main case.

41.8. If the power is not invoked or exercised in the main trial till its conclusion and if there is a split-up (bifurcated) case, the power under Section 319CrPC can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split-up (bifurcated) trial.

41.9. If, after arguments are heard and the case is reserved for judgment the occasion arises for the Court to invoke and exercise the power under Section 319CrPC, the appropriate course for the court is to set it down for re-hearing.

41.10. On setting it down for re-hearing, the above laid down procedure to decide about summoning; holding of joint trial or otherwise shall be decided and proceeded with accordingly.

41.11. Even in such a case, at that stage, if the decision is to summon additional accused and hold a joint trial the trial shall be conducted afresh and de novo proceedings be held.

41.12. If, in that circumstance, the decision is to hold a separate trial in case of the summoned accused as indicated earlier:

(a) The main case may be decided by pronouncing the conviction and sentence and then proceed afresh against summoned accused.

(b) In the case of acquittal the order shall be passed to that effect in the main case and then proceed afresh against summoned accused."

(E) In the case of ***Yashodhan Singh and Others Vs. State of U. P. and Others***, reported in ***(2023) LiveLaw (SC) 576 : 2023 INSC 652,*** the Hon'ble Apex Court considered the various pronouncements including the judgment passed in the case of ***Hardeep Singh (supra), Brijendra Singh (supra), Sukhpal Singh Khaira (supra) and Jogendra and Others Vs. State of Bihar and Anr.***, reported in ***(2015) 9 SCC 244***, wherein the Hon'ble Apex Court observed that opportunity to the proposed accused is required, and thereafter dismissed appeal

filed by ***Yashodhan Singh and Others***. The relevant paras are reproduced hereinunder:-

"22. The relevant paragraphs in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] can be crystallised as under:

22.1. The Constitution Bench of this Court was concerned with three aspects : firstly, the stage at which powers under Section 319CrPC can be invoked; secondly, the materials on the basis whereof the invoking of powers under Section 319CrPC can be justified; and thirdly, the manner in which powers under Section 319CrPC have to be exercised. While answering the five questions referred to the Constitution Bench in para 117, it was concluded as under : (Hardeep Singh case [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , SCC pp. 141-42)

"117. We accordingly sum up our conclusions as follows:

Questions (i) and (iii)

— What is the stage at which power under Section 319CrPC can be exercised?

AND

— Whether the word "evidence" used in Section 319(1)CrPC has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

Answer

117.1. In Dharam Pal case [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159 : AIR 2013 SC 3018] , the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of the investigation. Such cognizance can be taken under Section 193CrPC and the Sessions Judge need not wait till "evidence" under Section 319CrPC becomes available for summoning an additional accused.

117.2. Section 319CrPC, significantly, uses two expressions that have to be taken note of i.e. (1) inquiry (2) trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202CrPC, and under Section 398CrPC are species of the inquiry contemplated by Section 319CrPC. Materials coming before the court in course of such inquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319CrPC, and also to add an accused whose name has been shown in Column 2 of the charge-sheet.

117.3. In view of the above position the word "evidence" in Section 319CrPC has to be broadly understood and not literally i.e. as evidence brought during a trial.

Question (ii)—Whether the word "evidence" used in Section 319(1)CrPC could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the

basis of the statement made in the examination-in-chief of the witness concerned?

Answer

117.4. Considering the fact that under Section 319CrPC a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4)CrPC the proceeding against such person is to commence from the stage of taking of cognizance, the court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question (iv)—What is the nature of the satisfaction required to invoke the power under Section 319CrPC to arraign an accused? Whether the power under Section 319(1)CrPC can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

Answer

117.5. Though under Section 319(4)(b)CrPC the accused subsequently impleaded is to be treated as if he had been an accused when the court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319CrPC would be the same as for framing a charge [Ed. : The conclusion of law as stated in para 106, p. 138 c-d, may be compared:"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". See also especially in para 100 at p. 136 f-g.] . The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question (v)—Does the power under Section 319CrPC extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?

Answer

117.6. A person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319CrPC provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, insofar as an accused who has been discharged is concerned the requirement of Sections 300 and 398CrPC has to be complied with before he can be summoned afresh."

22.2. While answering the questions aforesaid, this Court observed in Hardeep Singh [Hardeep Singh v. State

of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] that if the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial. The entire effort, therefore, is not to allow the real perpetrator of an offence to get away unpunished. It is with the said object in mind that a constructive and purposive interpretation should be adopted that advances the cause of justice and does not dilute the intention of the statute conferring powers on the court to carry out the avowed object and purpose to try the person to the satisfaction of the court as an accomplice in the commission of the offence that is the subject-matter of trial. It was pertinently observed by this Court that the desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence.

22.3. While distinguishing a trial from an enquiry, it was observed by this Court that trial follows an inquiry and the purpose of the trial is to fasten the responsibility upon a person on the basis of facts presented and evidence led. Emphasising on the word "course" used in Section 319CrPC, it was observed that the said power can be invoked under the said provision against any person from the initial stage of inquiry by the court up to the stage of conclusion of the trial. Since after the filing of the charge-sheet, the court reaches the stage of inquiry and as soon as the court frames the charges, the trial commences. Thus, the power under Section 319(1)CrPC can be exercised at any time after the charge-sheet is filed before the pronouncement of judgment, except during the stage of Sections 207/208CrPC, committal, etc.

22.4. Elaborating the nuances of Section 319CrPC, it was further observed in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] that what is essential for the purpose of Section 319CrPC is that there should appear some evidence against a person not proceeded against; the stage of the proceedings is irrelevant. Section 319CrPC is an empowering provision particularly where the complainant is circumspect in proceeding against several persons, but the court is of the opinion that there appears to be some evidence pointing to the complicity of some other persons as well.

22.5. It was further observed that circumstances which lead to the inference being drawn up by the court for summoning a person under Section 319 arise out of the availability of the facts and material that come up before the court. The material should disclose complicity of the person in the commission of the offence which has to be the material that appears from the evidence during the course of any inquiry into or trial of offence.

22.6. It was also observed by this Court in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] that apart from evidence in the strict legal sense recorded during trial, any material that has been received by the court after cognizance is taken and before the trial commences, can be utilised only for corroboration and to support the evidence recorded by the court to invoke the power under Section 319CrPC. Holding that the expression "evidence" must be given a broad meaning, it was observed that material which is not exactly evidence recorded before the court, but is a material collected

by the court, can be utilised to corroborate evidence already recorded for the purpose of summoning any other person, other than the accused. Such material would be supportive in nature to facilitate the exposition of any other accomplice whose complicity in the offence may have been suppressed or had escaped the notice of the court. Therefore, any material brought before the court even prior to the trial can be read within the meaning of the expression "evidence" for the purpose of Section 319CrPC. While considering the evidence that emanates during the trial, it was observed by this Court that evidence recorded by way of examination-in-chief and which is untested by cross-examination is nevertheless evidence which can be considered by the court for the exercise of power under Section 319CrPC so long as, it would appear to the court that some other person who is not facing the trial, may also have been involved in the offence.

22.7. Further, Section 319CrPC also uses the words "such person could be tried", which means not to have a mini-trial at the stage of Section 319CrPC by having examination and cross-examination and thereafter coming to a prima facie conclusion on the overt act of such person sought to be added. Such a mini-trial will affect the right of the person sought to be arraigned as an accused rather than not having any cross-examination at all. As under Section 319(4)CrPC, such a person has the right to cross-examine the prosecution witnesses and examine the defence witnesses and advance his arguments. It was further observed that the power under Section 319CrPC can be exercised even after completion of examination-in-chief and the court does not have to wait till the said evidence is tested on cross-examination, for it is the satisfaction of the court which can be gathered from the reasons recorded by the court, in respect of complicity of some other persons, not facing the trial in the offence.

22.8. 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. Therefore, such satisfaction is sine qua non for exercise of power under Section 319CrPC. Ultimately, the exercise of power is for the trial of such persons summoned together with the accused already on trial and not for conviction with the accused. Therefore, at that stage, the court need not form any definite opinion as to the guilt of the accused.

22.9. This Court further observed that the difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Hence, the degree of satisfaction for summoning the original accused and the accused summoned subsequently during the course of trial is different.

22.10. It was further observed by this Court that a person, whose name does not appear even in the FIR or in the charge-sheet or whose name appears in the FIR and not in the main part of the charge-sheet but in Column 2 and has not been summoned as an accused in exercise of the powers under Section 193CrPC can still be summoned by the court, provided the court

is satisfied that the conditions provided in the said statutory provisions stand fulfilled. However, a person who has already been discharged stands on a different footing than a person who was never subjected to investigation or if subjected to, but not charge-sheeted. Such a person has stood the stage of inquiry before the court and upon judicial examination of the material collected during investigation, the court had come to the conclusion that there is not even a prima facie case to proceed against such person. Therefore, the court must keep in mind that the witness when giving evidence against the person so discharged, is not doing so merely to seek revenge or is naming him at the behest of someone or for such other extraneous considerations.

22.11. This Court further observed that it has to be circumspect in treating such evidence and try to separate the chaff from the grain. If after such careful examination of the evidence, the court is of the opinion that there does exist evidence to proceed against the person so discharged, it may take steps but only in accordance with Section 398CrPC without resorting to the provision of Section 319CrPC directly. Section 398CrPC is in the nature of a revisional power which can be exercised only by the High Court or the Sessions Judge, as the case may be. However, a person discharged can also be arraigned again as an accused but only after an inquiry as contemplated by Sections 300(5) and 398CrPC. If during or after such inquiry, there appears to be an evidence against such person, power under Section 319CrPC can be exercised.

23. From the aforesaid observations of the Constitution Bench of this Court in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86], it is noted that an inquiry is contemplated as against a person who has been discharged prior to the commencement of the trial in terms of Section 227CrPC as extracted above but on an inquiry, if it appears that there is evidence against such a discharged person, then power under Section 319CrPC can be exercised against such a discharged person. This clearly would mean that when a person who is not discharged but is to be summoned as per Section 319CrPC on the basis of satisfaction derived by the court on the evidence on record, no inquiry or hearing is contemplated. This would clearly indicate that principle of natural justice and an opportunity of hearing a person summoned under 319 CrPC are not at all contemplated. Such a right of inquiry would accrue only to a person who is already discharged in the very same proceeding prior to the commencement of the trial. This is different from holding that a person who has been summoned as per Section 319CrPC has a right of being heard in accordance with the principles of natural justice before being added as an accused to be tried along with other accused.

24. Further, when a person is summoned as an accused under Section 319CrPC which is based on the satisfaction recorded by the trial court on the evidence that has emerged during the course of trial so as to try the person summoned as an accused along with the other accused, the summoned accused cannot seek discharge. It is necessary to state that discharge as contemplated under Section 227CrPC is at a stage prior to the commencement of the trial and immediately after framing of charge but when power is exercised under Section 319CrPC to summon a person to be added as an accused in the trial to be tried

along with other accused, such a person cannot seek discharge as the court would have exercised the power under Section 319CrPC based on a satisfaction derived from the evidence that has emerged during the evidence recorded in the course of trial and such satisfaction is of a higher degree than the satisfaction which is derived by the court at the time of framing of charge.

25. The learned Senior Counsel Shri S. Nagamuthu strenuously contended that a person summoned in exercise of power under Section 319CrPC must be given an opportunity of being heard before being added as an accused to the trial to be tried along with the other accused and that such person must have an opportunity of filing an application seeking discharge. The same are clearly not envisaged in view of the judgment in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] and hence the said contentions are rejected.

26. Moreover, there is no finality attached to Section 319CrPC. It only indicates commencement of trial qua the added accused. The rationale is that a person need not be heard before being added on or arrayed as an accused. Reference to and reliance placed upon opportunity of hearing to a complainant in the form of protest petition when a closure report is filed is wholly misplaced because there is finality in a closure report; therefore the complainant is given an opportunity.

27. In Sukhpal Singh Khaira [Sukhpal Singh Khaira v. State of Punjab, (2023) 1 SCC 289 : (2023) 1 SCC (Cri) 454] , a Constitution Bench of this Court of which one of us was a member (Nagarathna, J.), adumbrated on the meaning of the expression "conclusion of trial" in the context of Section 319 read with other allied sections of CrPC and after referring to several decisions of this Court including Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] answered the question referred to as under : (Sukhpal Singh Khaira case [Sukhpal Singh Khaira v. State of Punjab, (2023) 1 SCC 289 : (2023) 1 SCC (Cri) 454] , SCC pp. 311-13, paras 39-41)."

20. On the aforesaid issues/questions, this Court also finds it appropriate to refer relevant paragraphs of the judgment(s) passed by the Hon'ble Apex Court in the case of ***Sarva Shramik Sanghatana (KV) v. State of Maharashtra and others*** reported in ***(2008) 1 SCC 494 and Himachal Pradesh Financial Corporation vs. Anil Garg and others*** reported in ***(2017) 14 SCC 634.***

(A) In the judgment passed in the case of ***Sarva Shramik Sanghatana (supra),*** the Hon'ble Apex Court with regard to judgment passed in the case of Sarguja Transport (supra) observed that *"the decision of this Court in Sarguja Transport case [(1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88]* cannot be treated as a Euclid's formula". Further, according to this judgment, the malpractice related to 'Bench Hunting' was discouraged by the decision in ***Sarguja Transport (supra).*** This judgment also indicates that in what manner a decision should be followed. In nutshell, as per this judgment, "Judgments of Courts are not to be construed as statutes" and "Disposal of Cases by blindly placing reliance on a decision is not proper" and also that "A little difference of facts or additional facts

may make a lot of difference in precedential value of a decision". The relevant paragraphs on reproduction are as under:-

"11. Learned counsel for the appellant has strongly relied on the decision of this Court in Sarguja Transport Service v. STAT [(1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] . He has submitted that in that decision this Court has laid down that if a writ petition filed in a High Court is withdrawn without permission to file a fresh writ petition, a second writ petition for the same relief is barred. Learned counsel for the appellant submitted that in the order of the Labour Commissioner dated 12-4-2007, a copy of which is Annexure P-4 to this appeal, it is only mentioned that the applicant Company is allowed to withdraw its application under Section 25-O(1) seeking permission for closure of its textile mill, but there is no mention in the said order that the Company is given liberty or permission to file a fresh application under Section 25-O(1). Accordingly, he submitted that the decision of Sarguja Transport case [(1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] squarely applies to the present case. He submitted that although the decision in Sarguja Transport case [(1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] related to a writ petition, the ratio of that decision was based on public policy and hence it was also application to proceedings under Section 25-O of the Industrial Disputes Act.

12. We have carefully examined the decision of Sarguja Transport Service case [(1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] . In the said decision it is mentioned in para 8 as follows : (SCC p. 11)

"8. ... It is common knowledge that very often after a writ petition is heard for some time when the petitioner or his counsel finds that the court is not likely to pass an order admitting the petition, request is made by the petitioner or by his counsel to permit the petitioner to withdraw the writ petition without seeking permission to institute a fresh writ petition. A court which is unwilling to admit the petition would not ordinarily grant liberty to file a fresh petition while it may just agree to permit the withdrawal of the petition."

In para 9 of the said decision, it is also mentioned as follows : (SCC p. 12)

"9. ... But we are of the view that the principle underlying Rule 1 of Order 23 of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in Bench-hunting tactics."

(emphasis supplied)

We are of the opinion that the decision in Sarguja Transport case [(1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] has to be understood in the light of the observations in paras 8 and 9 therein, which have been quoted above. The said decision was given on the basis of public policy that, if while hearing the first writ petition the Bench is inclined to dismiss it, and the learned counsel withdraws the petition so that he could file a second writ petition before what he regards as a more suitable or convenient Bench, then if he withdraws it he should not be allowed to file a second writ petition unless liberty is

given to do so. In other words, Bench-hunting should not be permitted.

13. It often happens that during the hearing of a petition the court makes oral observations indicating that it is inclined to dismiss the petition. At this stage the counsel may seek withdrawal of his petition without getting a verdict on the merits, with the intention of filing a fresh petition before a more convenient Bench. It was this malpractice which was sought to be discouraged by the decision in Sarguja Transport case [(1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] .

14. On the subject of precedents Lord Halsbury, L.C., said in Quinn v. Leathem [1901 AC 495 : (1900-1903) All ER Rep 1 (HL)] : (All ER p. 7 G-I)

"Before discussing Allen v. Flood [1898 AC 1 : (1895-1899) All ER Rep 52 (HL)] and what was decided therein, there are two observations of a general character which I wish to make; and one is to repeat what I have very often said before—that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."

(emphasis supplied)

We entirely agree with the above observations.

15. In Ambica Quarry Works v. State of Gujarat [(1987) 1 SCC 213] (vide SCC p. 221, para 18) this Court observed:

"18. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."

16. In Bhavnagar University v. Palitana Sugar Mill (P) Ltd. [(2003) 2 SCC 111] (vide SCC p. 130, para 59) this Court observed:

"59. ... It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

(emphasis supplied)

17. As held in Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani [(2004) 8 SCC 579 : AIR 2004 SC 4778] a decision cannot be relied on without disclosing the factual situation. In the same judgment this Court also observed : (SCC pp. 584-85, paras 9-12)

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These

observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton [1951 AC 737 : (1951) 2 All ER 1 (HL)] (AC at p. 761), Lord MacDermott observed : (All ER p. 14 C-D)

'The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge, ...'

10. In Home Office v. Dorset Yacht Co. Ltd. [1970 AC 1004 : (1970) 2 WLR 1140 : (1970) 2 All ER 294 (HL)] Lord Reid said,

'Lord Atkin's speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances.' (All ER p. 297g)

Megarry, J. in Shepherd Homes Ltd. v. Sandham (No. 2) [(1971) 1 WLR 1062 : (1971) 2 All ER 1267] , observed : (All ER p. 1274d)

'One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament;'

And, in British Railways Board v. Herrington [1972 AC 877 : (1972) 2 WLR 537 : (1972) 1 All ER 749 (HL)] Lord Morris said : (All ER p. 761c)

'There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.'

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

12. The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus : (Abdul Kayoom v. CIT [AIR 1962 SC 680] , AIR p. 688, para 19)

'19. ... Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.'

***

'Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My

plea is to keep the path to justice clear of obstructions which could impede it.' "

(emphasis supplied)

18. We have referred to the aforesaid decisions and the principles laid down therein, because often decisions are cited for a proposition without reading the entire decision and the reasoning contained therein. In our opinion, the decision of this Court in Sarguja Transport case [(1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] cannot be treated as a Euclid's formula.

19. In the present case, we are satisfied that the application for withdrawal of the first petition under Section 25-O(1) was made bona fide because the respondent Company had received a letter from the Deputy Labour Commissioner on 5-4-2007 calling for a meeting of the parties so that an effort could be made for an amicable settlement. In fact, the respondent Company could have waited for the expiry of 60 days from the date of filing of its application under Section 25-O(1), on the expiry of which the application would have deemed to have been allowed under Section 25-O(3). The fact that it did not do so, and instead applied for withdrawal of its application under Section 25-O(1), shows its bona fide. The respondent Company was trying for an amicable settlement, and this was clearly bona fide, and it was not a case of Bench-hunting when it found that an adverse order was likely to be passed against it. Hence, Sarguja Transport case [(1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] is clearly distinguishable, and will only apply where the first petition was withdrawn in order to do Bench-hunting or for some other mala fide purpose.

20. We agree with the learned counsel for the appellant that although the Code of Civil Procedure does not strictly apply to proceedings under Section 25-O(1) of the Industrial Disputes Act, or other judicial or quasi-judicial proceedings under any other Act, some of the general principles in CPC may be applicable. For instance, even if Section 11 CPC does not in terms strictly apply because both the proceedings may not be suits, the general principle of res judicata may apply vide Pondicherry Khadi & Village Industries Board v. P. Kulothangan [(2004) 1 SCC 68 : 2004 SCC (L&S) 32] . However, this does not mean that all provisions in CPC will strictly apply to proceedings which are not suits.

21. Learned counsel for the appellant has relied on an observation in the decision of this Court in U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey [(2006) 1 SCC 479 : 2006 SCC (L&S) 250] in para 38 of which it is stated : (SCC p. 491)

"38. Order 7 Rule 7 of the Code of Civil Procedure confers powers upon the court to mould relief in a given situation. The provisions of the Code of Civil Procedure are applicable to the proceedings under the Industrial Disputes Act."

(emphasis supplied)

It may be noted that the observation in the aforesaid decision that the provisions of CPC are applicable to proceedings under the Industrial Disputes Act was made in the context of Order 7 Rule 7 of the Code of Civil Procedure which confers powers upon the court to mould relief in a given situation. Hence, the

aforesaid observation must be read in its proper context, and it cannot be interpreted to mean that all the provisions of CPC will strictly apply to proceedings under the Industrial Disputes Act.

22. No doubt, Order 23 Rule 1(4) CPC states that where the plaintiff withdraws a suit without permission of the court, he is precluded from instituting any fresh suit in respect of the same subject-matter. However, in our opinion, this provision will apply only to suits. An application under Section 25-O(1) is not a suit, and hence, the said provision will not apply to such an application."

(B) Paragraphs 13 to 16 of the judgment passed in the case of Himachal Pradesh Financial Corporation (supra) are as under:-

"13. The question whether there has been an abandonment of the claim by withdrawal of the suit is a mixed question of law and fact as held in Ramesh Chandra Sankla v. Vikram Cement [Ramesh Chandra Sankla v. Vikram Cement, (2008) 14 SCC 58 : (2009) 1 SCC (L&S) 706] . The language of the order for withdrawal will not always be determinative. The background facts will necessarily have to be examined for a proper and just decision. Sarguja Transport Service [Sarguja Transport Service v. STAT, (1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] cannot be applied as an abstract proposition or the ratio applied sans the facts of a case. The extract below is considered relevant observing as follows: (Vikram Cement case [Ramesh Chandra Sankla v. Vikram Cement, (2008) 14 SCC 58 : (2009) 1 SCC (L&S) 706] , SCC pp. 79-80, para 62)

"62. ... '9. ... While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit....' (Sarguja Transport Service case [Sarguja Transport Service v. STAT, (1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] , SCC p. 12, para 9)"

(emphasis in original)

14. The application for withdrawal stated that it was being done to pursue remedies under the Act. Undoubtedly the proceedings under the Act are more expeditious for recovery as compared to a suit, which after decree is required to be followed by the execution proceedings. Section 3(1)(d)(iv) of the Act provided that the remedy under it was without prejudice to any other remedy available under any other law. The appellant, therefore, never intended to abandon its claim by withdrawing the suit. The language of the withdrawal order cannot be determinative without considering the background facts. 15. The bar under Order 23 Rule 1 would apply only to a fresh suit and not proceedings under the Act. In Sarva Shramik Sanghatana (KV) v. State of Maharashtra [Sarva Shramik Sanghatana (KV) v. State of Maharashtra, (2008) 1 SCC 494 : (2008) 1 SCC (L&S) 215] , the application under Section 25-O of the Industrial Disputes Act, 1947 for closure of undertaking was withdrawn as attempts were made for settlement of the matter. Settlement not having been possible, the management filed a fresh application. It was opposed as barred under Order 23 of the Code of Civil Procedure since the earlier application was withdrawn unconditionally with no liberty granted, relying on Sarguja Transport

Service [Sarguja Transport Service v. STAT, (1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] . The argument was repelled holding that the proceedings under the Industrial Disputes Act were not a suit and that withdrawal was bona fide to explore amicable settlement. It was not a withdrawal made mala fide or for Bench hunting holding as follows: (Sarva Shramik Sanghatana case [Sarva Shramik Sanghatana (KV) v. State of Maharashtra, (2008) 1 SCC 494 : (2008) 1 SCC (L&S) 215] , SCC p. 502, para 22)

"22. No doubt, Order 23 Rule 1(4) CPC states that where the plaintiff withdraws a suit without permission of the court, he is precluded from instituting any fresh suit in respect of the same subject-matter. However, in our opinion, this provision will apply only to suits. An application under Section 25-O(1) is not a suit, and hence, the said provision will not apply to such an application."

16. In Vikram Cement [Ramesh Chandra Sankla v. Vikram Cement, (2008) 14 SCC 58 : (2009) 1 SCC (L&S) 706] the earlier petition was dismissed as not pressed and the second application was opposed as not maintainable. Dismissing the objection it was observed as follows: (SCC p. 80, para 65)

"65. It is thus clear that it was not a case of abandonment or giving up of claim by the Company. But, in view of the office objection, practical difficulty and logistical problems, the petitioner Company did not proceed with an "omnibus" and composite petition against several workmen and filed separate petitions as suggested by the Registry of the High Court.""

21. Further, to answer the above indicated issues/questions, expression 'public policy' is also required to be taken note of, as the judgment passed by this Court in the case of ***Baccha Lal @ Vijay Singh (Supra)*** is based upon the judgment passed by the Hon'ble Apex Court in the case of ***Sarguja Transport (supra),*** in which the Hon'ble Apex Court after considering that Sub-Rule 1 Rule 4 of Order XXIII observed that "The principle underlying the above rule is founded on public policy"

(A) In regard to expression 'public policy', reference can be made on the following paragraphs of the judgment passed by the Hon'ble Apex Court in the case ***of P. Rathinam vs. Union of India and another reported in (1994) 3 SCC 394,*** which are extracted hereunder:-

"92. The concept of public policy is, however, illusive, varying and uncertain. It has also been described as "untrustworthy guide", "unruly horse" etc. The leading judgment describing the doctrine of public policy has been accepted to be that of Parke, B. in Egerton v. Brownlow [(1853) 4 HLC 121] in which it was stated as below at p. 123, as quoted in paragraph 22 of Gherulal Parakh v. Mahadeodas Maiya [AIR 1959 SC 781 : 1959 Supp (2) SCR 406] :

" 'Public policy' is a vague and unsatisfactory term, and calculated to lead to uncertainty and error, when applied to the decision of legal rights; it is capable of being understood in different senses; it may, and does, in its ordinary sense, mean 'political expedience' or that which is best for the common good of the community; and in that sense there may be every variety of opinion, according to education

habits, talents and dispositions of each person, who is to decide whether an act is against public policy or not. To allow this to be a ground of judicial decision, would lead to the greatest uncertainty and confusion. It is the province of the statesman and not the lawyer, to discuss, and of the Legislature to determine what is best for the public good and to provide for it by proper enactments. It is the province of the judge to expound the law only; the written from the statutes; the unwritten or common law from the decisions of our predecessors and of our existing courts, from text writers of acknowledged authority, and upon the principles to be clearly deduced from them by sound reason and just inference; not to speculate upon what is the best, in his opinion, for the advantage of the community. Some of these decisions may have no doubt been founded upon the prevailing and just opinions of the public good; for instance, the illegality of covenants in restraint of marriage or trade. They have become a part of the recognised law, and we are therefore bound by them, but we are not thereby authorised to establish as law everything which we may think for the public good, and prohibit everything which we think otherwise."

93. In the aforesaid case a three-Judge Bench of this Court summarised the doctrine of public policy by stating at p. 795 that public policy or policy of law is an illusive concept; it has been described as "untrustworthy guide", "variable quality", "uncertain one", "unruly horse" etc.

94. Different High Courts of the country have had also occasion to express their views on this concept in their judgments in Bhagwant Genuji Girme v. Gangabisan Ramgopal [AIR 1940 Bom 369 : 42 BLR 750 : 191 IC 806] ; Mafizuddin Khan Choudhury v. Habibuddin Shekh [AIR 1957 Cal 336] ; Kolaparti Venkatareddi v. Kolaparti Peda Venkatachalam [AIR 1964 AP 465 : (1964) 1 Andh WR 248] and Ratanchand Hirachand v. Askar Nawaz Jung [AIR 1976 AP 112 : ILR (1975) AP 843 : (1975) 1 APLJ (HC) 344] . In Kolaparti case [AIR 1964 AP 465 : (1964) 1 Andh WR 248] it was stated that the term public policy is not capable of a precise definition and whatever tends to injustice of operation, restraint of liberty, commerce and natural or legal rights; whatever tends to the obstruction of justice or to the violation of a statute and whatever is against good morals can be said to be against public policy. These decisions have also pointed out that the concept of public policy is capable of expansion and modification. In Ratanchand case [AIR 1976 AP 112 : ILR (1975) AP 843 : (1975) 1 APLJ (HC) 344] a Bench of Andhra Pradesh High Court speaking through Chinnappa Reddy, J. as he then was, quoted at p. 117 a significant passage from Professor Winfield, "Essay on Public Policy in the English Common Law" (42 Harvard Law Review 76). The same is as below:

"Public policy is necessarily variable. It may be variable not only from one century to another, not only from one generation to another but even in the same generation. Further it may vary not merely with respect to the particular topics which may be included in it, but also with respect to the rules relating to any one particular topic…. This variability of public policy is a stone in the edifice of the doctrine and not a missile to be flung at it. Public policy would be almost useless without it."

95. As to how the "unruly horse" of public policy influenced English law has been narrated by W. Friedman in his Legal

Theory (5th Edn.) at p. 479 et seq in Part III, Section 2 titled as "Legal Theory, Public Policy and Legal Evaluation". As to the description of public policy as "unruly horse", it may be stated that there have been judges not to shy away from unmanageable horses. Lord Denning is one of them. What this noble judge stated in Enderby Town Football Club Ltd. v. Football Association Ltd. [(1971) Ch 591, 606] at p. 606 is "With a good man in the saddle, the unruly horse can be kept in control. It can take jump over obstacles." (See para 93 of Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly [(1986) 3 SCC 156 : 1986 SCC (L&S) 429 : (1986) 1 ATC 103 : AIR 1986 SC 1571] .) But how many judges can be anywhere near Lord Denning? He is sui generis.

96. The magnitude and complexity of what is or is not public policy or can be a part of public policy, would be apparent from bird's eyeview of what has been stated regarding this at pp. 454 to 539 of Words and Phrases (Permanent Edn., Vol. 35, 1963). To bring home this a few excerpts would be enough. It has been first stated under the sub-heading "In general" as below at pp. 455 and 456:

" 'Public policy' imports something that is uncertain and fluctuating, varying with the changing economic needs, social customs, and moral aspirations, of the people. Barwin v. Reidy [307 P 2d 175, 181 : 62 N.M. 183] .

'Public policy' is in its nature so uncertain and fluctuating, varying with the habits and fashions of the day, with the growth of commerce and the usages of trade, that it is difficult to determine its limits with any degree of exactness. It has never been defined by the courts, but has been let loose and free from definition in the same manner as fraud. Pendeleton v. Greever [j 193 p. 885, 887, j 80 Ok 1, 35 : 17 ALR 317].

'Public policy' is a term that is not always easy to define and it may vary as the habits, opinions and welfare of a people may vary, and what may be the public policy of one State or country may not be so in another. Franklin Fire Ins. Co. v. Moll [58 NE 2nd 947, 950, 951 : 115 Ind. App. 289] ."

(B) On the expression 'public policy', it would also be appropriate to refer paragraph 19 of the judgment passed in the case of ***Himachal Pradesh Financial Corporation (supra),*** which reads as under:-

"19. The phrase "public policy" is not capable of precise definition. In P. Rathinam v. Union of India [P. Rathinam v. Union of India, (1994) 3 SCC 394 : 1994 SCC (Cri) 740] , it was observed: (SCC p. 424, para 92)

"92. The concept of public policy is, however, illusive, varying and uncertain. It has also been described as "untrustworthy guide", "unruly horse", etc. ..."

Broadly it will mean what is in the larger interest of the society involving questions of righteousness, good conscience and equity upholding the law and not a retrograde interpretation. It cannot be invoked to facilitate a loanee to avoid legal obligation for repayment of a loan. The loanee has a pious duty to abide by his promise and repay. Timely repayment ensures facilitation of the loan

to others who may be needy. Public policy cannot be invoked to effectively prevent a loanee from repayment unjustifiably abusing the law. Invocation of the principle of doctrine of election in the facts of the case was completely misconceived."

(C) To the view of this Court, what would be the 'public policy' in regard to criminal cases can be deduced from the following maxims:-

(a) "Crimen Omnia Ex Se Nata Vitiate": Property obtain by crime is tainted/vitiated.

(b) "Commodum Ex Injuria Sua Nemo Habere Debet": Crime vitiates everything which spring from it. The same can also be expressed as- A crime vitiates all things proceedings from it, crime taints all that spring from it, crime vitiate everything born from it.

(c) "Interest reipublicae ne maleficia remaneant impunita". It concerns the commonwealth that crimes do not remain unpunished.

(d) "Maleficia non debent remanere impunita, et impunitas continuum affectum tribuit delinquenti": Evil deeds ought not to remain unpunished, for impunity affords continual excitement to the delinquent.

(e) "Paen ad paucos, metus ad omnes perveniat": A punishment inflected on a few causes a dread to all. Punishment to few, dread or fear to all.

(f) "Spes impunitatis continuum affectum tribuit delinquendi": The hope of impunity holds out a continual temptation to crime.

(g) "Ubi culpa est ibi paean subesse debet": Where there is culpability, there punishment ought to be.

(h) "Ubi quis delinquit ibi punietur": Let a man be punished when he commits the offence.

(D) A conjoint reading of the above referred paragraphs of the judgments passed by the Hon'ble Apex Court in the case of ***P. Rathinam (supra) and Himachal Pradesh Financial Corporation (supra)*** and the maxims, quoted above, would indicate that the expression 'public policy' in the context of the instant case or in the context of criminal cases or the case covered under Section 482 Cr.P.C. (now repealed)/Section 528 BNSS, to the view of this Court, would be that a 'person who commits crime/offence should be punished'. In other words, in so far as criminal cases are concerned, the expression 'public policy' would be that 'evil deeds ought not to remain unpunished'. Therefore, a known suspect/accused should not go scot-free without facing trial.

(E) To fortify the aforesaid, it would be apt to refer following portion of the judgment passed in the case of ***Hardeep Singh (supra)****:-*

"..... It seems to us that the main purpose of this particular provision is, that the whole case against all known suspects should be proceeded with expeditiously, and convenience requires that cognizance against the newly added accused should be taken in the same manner against the other accused. ....."

xxx xxx xxx xxx xxx

12. Section 319 CrPC springs out of the doctrine judex damnatur cum nocens absolvitur (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 CrPC.

13. It is the duty of the court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial. The question remains under what circumstances and at what stage should the court exercise its power as contemplated in Section 319 CrPC?

xxx xxx xxx xxx xxx

17. Section 319 CrPC allows the court to proceed against any person who is not an accused in a case before it. Thus, the person against whom summons are issued in exercise of such powers, has to necessarily not be an accused already facing trial. He can either be a person named in Column 2 of the charge-sheet filed under Section 173 CrPC or a person whose name has been disclosed in any material before the court that is to be considered for the purpose of trying the offence, but not investigated. He has to be a person whose complicity may be indicated and connected with the commission of the offence.

18. The legislature cannot be presumed to have imagined all the circumstances and, therefore, it is the duty of the court to give full effect to the words used by the legislature so as to encompass any situation which the court may have to tackle while proceeding to try an offence and not allow a person who deserves to be tried to go scot-free by being not arraigned in the trial in spite of the possibility of his complicity which can be gathered from the documents presented by the prosecution.

19. The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence."

22. Legal maxim "Per incuriam" has been interpreted by Hon'ble the Apex Court, which could be deduced from the following cases.

(A) In the case of ***K.S. Panduranga v. State of Karnataka, [2013] 1 A.C. R 994,*** the Hon'ble Apex Court observed as under:—

"Para : 30. Presently, we shall proceed to deal with the concept of per incuriam. In A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602, Sabyasachi Mukharji, J. (as His Lordship then was), while dealing with the said concept, had observed thus:
42. … 'Per incuriam' are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on

which it is based, is found, on that account to be demonstrably wrong.

Para : 31. Again, in the said decision, at a later stage, the Court observed:

47…. It is a settled rule that if a decision has been given per incuriam the court can ignore it.

Para : 32. In Punjab Land Development and Reclamation Corporation Ltd. v. Labour Court, (1990) 3 SCC 682, another Constitution Bench, while dealing with the issue of per incuriam, opined as under:

40. The Latin expression 'per incuriam' means through inadvertence. A decision can be said generally to be given per incuriam when this Court has acted in ignorance of a previous decision of its own or when a High Court has acted in ignorance of a decision of this Court.

Para : 33. In State of U.P. v. Synthetics and Chemicals Ltd., (1991) 4 SCC 139, a two-Judge Bench adverted in detail to the aspect of per incuriam and proceeded to highlight as follows:

40. 'Incuriam' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'. (Young v. Bristol Aeroplane Co. Ltd., [1944] 1944 All ER 293 (CA)) Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law.

Para : 34. In Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694, while addressing the issue of per incuriam, a two-Judge Bench, after referring to the dictum in *Bristol Aeroplane Company Ltd. (supra)* and certain passages from *Halsbury's Laws of England and Raghubir Singh (supra)*, has stated thus:

138. The analysis of English and Indian Law clearly leads to the irresistible conclusion that not only the judgment of a larger strength is binding on a judgment of smaller strength but the judgment of a coequal strength is also binding on a Bench of Judges of co-equal strength. In the instant case, judgments mentioned in paras 124 and 125 are by two or three Judges of this Court. These judgments have clearly ignored the Constitution Bench judgment of this Court in Sibbia case, (1980) 2 SCC 565 which has comprehensively dealt with all the facets of anticipatory bail enumerated under Section 438 of the Code of Criminal Procedure. Consequently, the judgments mentioned in paras 124 and 125 of this judgment are per incuriam.

Para : 35. In Government of A.P. v. B. Satyanarayana Rao (dead) byL. Rs., (2000) 4 SCC 262 this Court has observed that the rule of per incuriam can be applied where a court omits to consider a binding precedent of the same court or the superior court rendered on the same issue or where a court omits to consider any statute while deciding that issue."

(B) In the case of ***Sundeep Kumar Bafna v. State of Maharashtra reported in (2014) 16 SCC 623 : (2015) 3***

SCC (Cri) 558, the Hon'ble Apex Court has held as under: (SCC p. 642, para 19)

'19. It cannot be overemphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta. It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam.'

(emphasis by the court)

(C) Likewise, the Supreme Court **in Punjab Land Development & Reclamation Corpn. Ltd. v. Labour Commr. [Punjab Land Development & Reclamation Corpn. Ltd. v. Labour Commr., (1990) 3 SCC 682 : 1991 SCC (L&S) 71]** has held as under: (SCC p. 705, para 40)

'40. We now deal with the question of per incuriam by reason of allegedly not following the Constitution Bench decisions. The latin expression per incuriam means through inadvertence. A decision can be said generally to be given per incuriam when this Court has acted in ignorance of a previous decision of its own or when a High Court has acted in ignorance of a decision of this Court. It cannot be doubted that Article 141 embodies, as a rule of law, the doctrine of precedents on which our judicial system is based. In Bengal Immunity Co. Ltd. v. State of Bihar [Bengal Immunity Co. Ltd. v. State of Bihar, (1955) 6 STC 446 : 1955 SCC OnLine SC 2 : AIR 1955 SC 661 : (1955) 2 SCR 603] , it was held that the words of Article 141, "binding on all courts within the territory of India", though wide enough to include the Supreme Court, do not include the Supreme Court itself, and it is not bound by its own judgments but is free to reconsider them in appropriate cases. This is necessary for proper development of law and justice. May be for the same reasons before judgments were given in the House of Lords in Dawson's Settlement Lloyds Bank Ltd. v. Dawson [Dawson's Settlement Lloyds Bank Ltd. v. Dawson, [1966] 1 WLR 1234] , on 26-7-1966 Lord Gardiner, L.C. made the following statement on behalf of himself and the Lords of Appeal in ordinary:

"Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules. Their Lordships nevertheless recognise that too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the

proper development of the law. They propose, therefore, to modify their present practice and, while treating former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so.

In this connection they will bear in mind the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have been entered into and also the especial need for certainty as to the criminal law.'''

(D) From the aforesaid judgments in ***Sundeep Kumar Bafna case [Sundeep Kumar Bafna v. State of Maharashtra, (2014) 16 SCC 623 : (2015) 3 SCC (Cri) 558] and Punjab Land Development & Reclamation Corpn. Ltd. case [Punjab Land Development & Reclamation Corpn. Ltd. v. Labour Commr., (1990) 3 SCC 682 : 1991 SCC (L&S) 71],*** it emerges that the Hon'ble Apex Court has categorically held that discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation which was not brought to the notice of the court or a decision or judgment can also be per incuriam if the decision of a High Court is not in consonance with the view of the Supreme Court.

(E) In the case of ***Bilkis Yakub Rasool vs. Union of India and others reported in (2024) 5 SCC 481***, the Hon'ble Apex Court observed as under:-

"145. We wish to consider the case from another angle. The order of this Court dated 13-5-2022 [Radheshyam Bhagwandas Shah v. State of Gujarat, (2022) 8 SCC 552 : (2022) 3 SCC (Cri) 517] is also per incuriam for the reason that it fails to follow the earlier binding judgments of this Court including that of the Constitution Bench in V. Sriharan [Union of India v. V. Sriharan, (2016) 7 SCC 1 : (2016) 2 SCC (Cri) 695] vis-à-vis the appropriate Government which is vested with the power to consider an application for remission as per sub-section (7) of Section 432CrPC and that of the nine-Judge Bench decision in Naresh Shridhar Mirajkar [Naresh Shridhar Mirajkar v. State of Maharashtra, 1966 SCC OnLine SC 10 : AIR 1967 SC 1] that an order of a High Court cannot be set aside in a proceeding under Article 32 of the Constitution.

146. In State of U.P. v. Synthetics & Chemicals Ltd. [State of U.P. v. Synthetics & Chemicals Ltd., (1991) 4 SCC 139] ("Synthetics & Chemicals"), a two-Judge Bench of this Court (speaking through Sahai, J. who also wrote the concurring judgment along with Thommen, J.) observed that the expression per incuriam means per ignoratium. This principle is an exception to the rule of stare decisis. The "quotable in law" is avoided and ignored if it is rendered, "in ignoratium of a statute or other binding authority". It would result in a judgment or order which is per incuriam. In Synthetics & Chemicals [State of U.P. v. Synthetics & Chemicals Ltd., (1991) 4 SCC 139] , the High Court relied upon the observations in para 86 of the judgment of the Constitution Bench in Synthetics & Chemicals Ltd. [Synthetics & Chemicals Ltd. v. State of U.P., (1990) 1 SCC 109] , namely, "sales tax cannot be charged on industrial alcohol in the present case, because under the Ethyl Alcohol (Price Control) Orders,

sales tax cannot be charged by the State on industrial alcohol" and struck down the levy.

xxx xxx xxx xxx xxx

153. Thus, although it is the ratio decidendi which is a precedent and not the final order in the judgment, however, there are certain exceptions to the rule of precedents which are expressed by the doctrines of per incuriam and sub silentio. Incuria legally means carelessness and per incuriam may be equated with per ignoratium. If a judgment is rendered in ignoratium of a statute or a binding authority, it becomes a decision per incuriam. Thus, a decision rendered by ignorance of a previous binding 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 is per incuriam. Such a per incuriam decision would not have a precedential value. If a decision has been rendered per incuriam, it cannot be said that it lays down good law, even if it has not been expressly overruled vide Mukesh K. Tripathi v. LIC [Mukesh K. Tripathi v. LIC, (2004) 8 SCC 387 : 2004 SCC (L&S) 1128] , para 23. Thus, a decision per incuriam is not binding.

154. Another exception to the rule of precedents is the rule of sub silentio. A decision is passed sub silentio when the particular point of law in a decision is not perceived by the court or not present to its mind or is not consciously determined by the court and it does not form part of the ratio decidendi it is not binding vide Arnit Das (1) v. State of Bihar [Arnit Das (1) v. State of Bihar, (2000) 5 SCC 488 : 2000 SCC (Cri) 962] ."

23. Now reverting to the issues/questions to be answered by this Court, which at the cost of repetition, are extracted hereinunder:-

(i) Whether in the facts of the case, including that the impugned order dated 09.02.2023 is based upon the testimony of injured witnesses namely Rajaram (PW-1) and Mahendra Pratap Singh/complainant (PW-2), interference is to be caused in the impugned order by this Court in exercise of inherent power on the ground that second application under Section 319 Cr.P.C. was preferred without seeking leave/liberty/permission from the Court to file the fresh application and therefore the same was not maintainable.

(ii) Whether the judgment passed by the coordinate Bench of this Court in the case of Baccha Lal @ Vijay Singh (supra) is a per incuriam judgment and being so is liable to be ignored.

24. In regard to issue/question No. 1, upon due consideration of the law propounded by the Hon'ble Apex Court in judgments, referred above, and also the facts of the case, I am of the view that that the impugned order dated 09.02.2023 is not liable to be interfered with in exercise of its inherent power under Section 482 Cr.P.C. (now repealed)/Section 528 Bharatiya Nagarik Suraksha Sanhita, 2023 (in short "BNSS"). It is for the following reasons:-

(i) The impugned order dated 09.02.2023 has been passed by the trial court after taking note of the testimony of the injured witnesses namely Rajaram (PW-1) and Mahendra Pratap Singh/complainant (PW-2).

(ii) In regard to the testimonies of injured witnesses, the Hon'ble Apex Court

in a catena of judgments has observed that the testimony of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(iii) At this stage, the trial court is not under obligation to appreciate the deposition/evidence of the prosecution witnesses on merits which is required to be done during trial.

(iv) With regard to the aforesaid, it would not be out of place to refer the following paragraphs of the judgment passed in the case of ***Manjeet Singh (supra***):-

"20. Now thereafter when in the examination-in-chief the appellant herein — victim — injured eyewitness has specifically named the private respondents herein with specific role attributed to them, the learned trial court as well as the High Court ought to have summoned the private respondents herein to face the trial. At this stage it is required to be noted that so far as the appellant herein is concerned he is an injured eyewitness. As observed by this Court in State of M.P. v. Mansingh [State of M.P. v. Mansingh, (2003) 10 SCC 414 : (2007) 2 SCC (Cri) 390] (para 9); Abdul Sayeed v. State of M.P. [Abdul Sayeed v. State of M.P., (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262] ; State of U.P. v. Naresh [State of U.P. v. Naresh, (2011) 4 SCC 324 : (2011) 2 SCC (Cri) 216] , the evidence of an injured eyewitness has greater evidential value and unless compelling reasons exist, their statements are not to be discarded lightly. As observed hereinabove while exercising the powers under Section 319CrPC the court has not to wait till the cross-examination and on the basis of the examination-in-chief of a witness if a case is made out, a person can be summoned to face the trial under Section 319CrPC.

21. Now so far as the reasoning given by the High Court while dismissing the revision application and confirming the order passed by the learned trial court dismissing the application under Section 319CrPC is concerned, the High Court itself has observed that PW 1 Manjeet Singh is the injured witness and therefore his presence cannot be doubted as he has received firearm injuries along with the deceased. However, thereafter the High Court has observed that the statement of Manjeet Singh indicates over implication and that no injury has been attributed to either of the respondents except that they were armed with weapons and the injuries concerned are attributed only to Sartaj Singh, even for the sake of arguments if someone was present with Sartaj Singh it cannot be said that they had any common intention or there was meeting of mind or knew that Sartaj would be firing. The aforesaid reasonings are not sustainable at all.

22. At the stage of exercising the powers under Section 319CrPC, the court is not required to appreciate and/or enter on the merits of the allegations of the case. The High Court has lost sight of the fact that the allegations against all the accused persons right from the very beginning were for the offences under Sections 302, 307, 341, 148 & 149IPC. The High Court has failed to appreciate the fact that for attracting the offence under Section 149IPC only forming part of unlawful assembly is sufficient and the individual role and/or overt act is immaterial. Therefore, the reasoning given by the High Court that no injury has been attributed to

either of the respondents except that they were armed with weapons and therefore, they cannot be added as accused is unsustainable. The learned trial court and the High Court have failed to exercise the jurisdiction and/or powers while exercising the powers under Section 319CrPC.

23. Now so far as the submission on behalf of the private respondents that though a common judgment and order was passed by the High Court in Satkar Singh v. State of Haryana [CRR No. 3238 of 2018 reported as Manjeet Singh v. State of Haryana, 2020 SCC OnLine P&H 2782 sub nom Satkar Singh v. State of Haryana] at that stage the appellant herein did not prefer appeal against the impugned judgment and order passed by the High Court in Manjeet Singh v. State of Haryana [Manjeet Singh v. State of Haryana, 2020 SCC OnLine P&H 2782 [Ed. : This also disposed of CRR No. 3238 of 2018 by a common judgment and order]] and therefore this Court may not exercise the powers under Article 136 of the Constitution is concerned the aforesaid has no substance. Once it is found that the learned trial court as well as the High Court ought to have summoned the private respondents herein as additional accused, belated filing of the appeal or not filing the appeal at a relevant time when this Court considered the very judgment and order in Satkar Singh v. State of Haryana [CRR No. 3238 of 2018 reported as Manjeet Singh v. State of Haryana, 2020 SCC OnLine P&H 2782 sub nom Satkar Singh v. State of Haryana] cannot be a ground not to direct to summon the private respondents herein when this Court has found that a prima facie case is made out against the private respondents herein and they are to be summoned to face the trial.

24. Now so far as the submission on behalf of the private respondents that though in the charge-sheet the private respondents herein were put in Column 2 at that stage the complainant side did not file any protest application is concerned, the same has been specifically dealt with by this Court in Rajesh [Rajesh v. State of Haryana, (2019) 6 SCC 368 : (2019) 2 SCC (Cri) 801] . This Court in the aforesaid decision has specifically observed that even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well as who were named in the FIR but not implicated in the charge-sheet has gone, in that case also, the court is still not powerless by virtue of Section 319CrPC.

25. Similarly, the submission on behalf of the private respondents herein that after the impugned judgment and order passed by the High Court there is much progress in the trial and therefore at this stage power under Section 319CrPC may not be exercised is concerned, the aforesaid has no substance and cannot be accepted. As per the settled proposition of law and as observed by this Court in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , the powers under Section 319CrPC can be exercised at any stage before the final conclusion of the trial. Even otherwise it is required to be noted that at the time when the application under Section 319CrPC was given only one witness was examined and examination-in-chief of PW 1 was recorded and while the cross-examination of PW 1 was going on, application under Section 319CrPC was given which came to be rejected by the learned trial court. The order passed by the learned trial court is held to be unsustainable. If the learned trial court would have summoned the

private respondents herein at that stage such a situation would not have arisen. Be that as it may, as observed herein powers under Section 319CrPC can be exercised at any stage from commencing of the trial and recording of evidence/deposition and before the conclusion of the trial at any stage.

26. In view of the above and for the reasons stated above, the impugned judgment and order [Manjeet Singh v. State of Haryana, 2020 SCC OnLine P&H 2782 [Ed. : This also disposed of CRR No. 3238 of 2018 by a common judgment and order]] passed by the High Court and that of the learned trial court dismissing the application under Section 319CrPC submitted on behalf of the complainant to summon the private respondents herein as additional accused are unsustainable and deserve to be quashed and set aside and are accordingly quashed and set aside. Consequently the application submitted on behalf of the complainant to summon the private respondents herein is hereby allowed and the learned trial court is directed to summon the private respondents herein to face the trial arising out of FIR No. 477 dated 27-7-2016 in Sessions Case No. 362 of 2016 for the offences punishable under Sections 302, 307, 341, 148 & 149IPC.""

(v) If this Court interferes in the impugned order dated 09.02.2023 on the ground that second application under Section 319 Cr.P.C. was not maintainable then in that eventuality a person/accused (applicant) would go scot-free without facing trial and the same would be against the 'public policy', as has been observed in paragraph 21 of this judgment.

(vi) The first application under Section 319 Cr.P.C. was not withdrawn to avoid the court but for the bonafide reason. It is in view of the fact that the first Application No. 30-Kha under Section 319 Cr.P.C. was dismissed as withdrawn on 03.10.2022 for the reason that after filing of this application under Section 319 Cr.P.C., the defence informed that Pushpa Singh (name indicated in the said application) has already been expired and thereafter on 08.12.2022, the second application i.e. Application No. 37-Kha was preferred under Section 319 Cr.P.C.

25. In regard to issue/question No. (ii), upon due consideration of the aforesaid, I am of the view that the judgment/decision of coordinate Bench of this Court in the case of ***Baccha Lal @ Vijay Singh (Supra)*** is a 'per incuriam' judgment and being so the same is liable to be ignored. I hold accordingly. It is for the following reasons:-

(i) The judgment/decision in the case of ***Baccha Lal @ Vijay Singh (Supra)*** is not in consonance with the view of the Hon'ble Apex Court expressed in the pronouncements/judgments referred in paragraph 19 of this judgment, in which, the Hon'ble Apex Court has explained the object of Section 319 Cr.P.C. and how power under Section 319 Cr.P.C. would be exercised. According to which, in nutshell, it is the duty of the Court to do justice by punishing the real culprit and a suspect or known accused should not go scot-free without facing trial.

(ii) While passing the judgment in the case of ***Baccha Lal @ Vijay Singh (Supra)***, coordinate Bench of this Court has not considered the judgment passed by the Hon'ble Apex Court in the case of ***Sarva Shramik Sanghatana (supra),*** wherein, it has been observed that "Disposal of cases by blindly placing reliance on a decision is

not proper and also that "In our opinion, the decision of this Court in Sarguja Transport case [(1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] cannot be treated as a Euclid's formula" and also the case of ***Himachal Pradesh Financial Corporation (supra),*** wherein, the Hon'ble Apex Court observed as under:-

"13. The question whether there has been an abandonment of the claim by withdrawal of the suit is a mixed question of law and fact as held in Ramesh Chandra Sankla v. Vikram Cement [Ramesh Chandra Sankla v. Vikram Cement, (2008) 14 SCC 58 : (2009) 1 SCC (L&S) 706] . The language of the order for withdrawal will not always be determinative. The background facts will necessarily have to be examined for a proper and just decision. Sarguja Transport Service [Sarguja Transport Service v. STAT, (1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] cannot be applied as an abstract proposition or the ratio applied sans the facts of a case. The extract below is considered relevant observing as follows: (Vikram Cement case [Ramesh Chandra Sankla v. Vikram Cement, (2008) 14 SCC 58 : (2009) 1 SCC (L&S) 706] , SCC pp. 79-80, para 62)

"62. ... '9. ... While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit....' (Sarguja Transport Service case [Sarguja Transport Service v. STAT, (1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] , SCC p. 12, para 9)"

(emphasis in original)"

(iii) Expression 'public policy' in the context of criminal cases/proceedings, after taking note of the judgment passed in the case ***of P. Rathinam (supra) and Himachal Pradesh Financial Corporation (supra)*** as also the legal maxim(s), referred in paragraph 21 of this judgment, has not been considered by the coordinate Bench of this Court while passing the judgment in the case of ***Baccha Lal @ Vijay Singh (Supra).***

(iv) The coordinate Bench of this Court in the case of ***Baccha Lal @ Vijay Singh (Supra)*** has not advert to the facts of the case which were required for coming to the conclusion on the issue as to whether the first application under Section 319 Cr.P.C. was withdrawn for the bonafide reasons or to avoid the concerned court.

26. In the instant case, the impugned order dated 09.02.2023 passed by the trial court is based upon the testimony of injured witnesses namely Rajaram (PW-1) and Mahendra Pratap Singh/complainant (PW-2), who levelled specific allegations against the applicant, against whom, the allegations were levelled in the NCR also, and therefore, this Court is of the view that the trial court has not committed any irregularity and illegality in passing the impugned order dated 09.02.2023 and summoning the present applicant to face the trial.

27. For the reasons aforesaid, this Court finds no force in the instant application. It is accordingly ***dismissed***. No order as to costs.

28. The Court records the valuable assistance given by Ms. Urmish Shankar, Research Associate, attached with me.

(2025) 6 ILRA 58
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 03.06.2025

BEFORE

THE HON'BLE RAJNISH KUMAR, J.

Application U/S 528 BNSS No. 526 of 2025

Vinay & Anr. ...Applicants
Versus
State of U.P. & Anr. ...Opp. Parties

Counsel for the Applicants:
Shashank Shukla, Prachi Shukla

Counsel for the Opp. Parties:
G.A.

Criminal Law - Bharatiya Nyaya Sanhita, 2023 - Sections 115(2), 352, 351(2), 118(1) & 109(1) - Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 174 - Quashing of criminal proceedings - NCR was lodged on 28.11.2024 under various Sections of BNS for incident that occurred on same day - Subsequently, medical report revealed head injury caused by sharp-edged weapon - Based on this, another Section 118(1), BNS, being cognizable and non-bailable was added and NCR was converted into FIR - Thereafter chargesheet submitted - After filing of charge sheet, Magistrate took cognizance and issued summons, which is under challenge - Petitioners had earlier filed writ petitions but withdrew them on 02.05.2025 without liberty to raise same grounds again - Those grounds are no longer available - Since NCR was converted into FIR due to addition of cognizable offence based on medical report, police was legally empowered to investigate - Considering overall facts, no illegality is found in proceedings - Application lacks merit, dismissed. (Para 6, 12, 15)

Application dismissed. (E-13)

List of Cases cited:

1. Asif Khan Pathan Vs St. Through PP, High Court of Bombay at Porvorim, Goa & ors., Criminal Writ Petition No. 573 of 2023 (F)

2. Shavez & ors. Vs St. of U.P. & anr., Application u/s 482 No. - 38936 of 2019, MANU/UP/4929/2019

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

1. Heard Sri Shashank Shukla, learned counsel for the applicants and learned AGA for the State and perused the record.

2. This petition under Section 482 Cr.P.C. now Section 528 B.N.S.S. 2023 has been filed challenging the summoning order dated 04.03.2025 passed in CIS No. 12917 of 2025 and the charge sheet No.01 dated 05.02.2025, arising out of Case Crime No. 420 of 2024 under Sections 115(2), 352, 351(2), 118(1), 109(1) Bharatiya Nyaya Sanhita (B.N.S.), 2023, Police Station-Katra Bazar, District-Gonda.

3. Learned counsel for the applicants submits that on the basis of identical set of facts a N.C.R. was registered on 28.11.2024 but no permission was sought for the investigation. He further submits that on the same set of facts, the FIR was lodged on 30.11.2024 and after investigation, the charge sheet has been filed, which could not have been done. He relies on a judgment and order dated 16.10.2023 passed by the High Court of Bombay at Goa in ***Criminal Writ Petition No. 573 of 2023 (F) [Mr. Asif Khan Pathan vs. State Through PP, High Court of Bombay at Porvorim, Goa and Others].***

4. Per contra, learned AGA submits that after registration of the N.C.R., a medical report was received, in which an

injury in the head caused by sharp edged weapon was found, therefore, Section 118(1) B.N.S., 2023 was added and accordingly, the N.C.R. was converted into the FIR and registered accordingly. Thus, the contention of the counsel for the applicants is misconceived and not tenable. He further submits that the petitioner No.1-Vinay had earlier filed a Criminal Misc. Writ Petition No. 387 of 2025 (Vinay vs. State of U.P. And 3 Others) before Division Bench of this Court and by means of order dated 22.01.2025, the Division Bench of this Court directed to the Investigating Officer to move an application before the Court concerned for permission to investigate into the FIR. In pursuance thereof, an application was moved by the Investigating Officer before the Court concerned, which has been allowed by means of order dated 03.02.2025 and thereafter, after completing the investigation, the charge sheet was filed on 05.02.2025 referring all the above facts. It is further submitted that the aforesaid writ petition has been withdrawn, which has been allowed by means of order dated 02.05.2025, without liberty to raise the aforesaid ground, therefore, the said ground is not available to the applicants now. Thus, the submission of learned counsel for the applicants is misconceived and lacks merits and this application is liable to be dismissed. In support of his argument, learned AGA placed reliance on the judgment and order dated 05.11.2019 passed by this Court in ***APPLICATION U/S 482 No. - 38936 of 2019 (Shavez And 2 Others vs. State of U.P. and Another).***

5. Having considered the submissions advanced by the learned counsel for the parties, I have perused the documents placed on record of this application.

6. It is apparent that N.C.R. No. 0116 of 2024 was lodged on 28.11.2024 under Sections 115(2), 352 & 351(2) B.N.S., 2023 at Police Station-Katra Bazar, District-Gonda, in regard to incident, which took place on 28.11.2024 at 07:30 A.M. As borne out from the documents on record, a medical report dated 28.11.2024 was received, in which an injury in the head caused by sharp edged weapon was found. Consequently Section 118(1) B.N.S., 2023 was added, which is cognizable and non-bailable, accordingly it was converted into FIR, which was registered. The Police is empowered to investigate the matter in a cognizable offence, thereafter the investigation was conducted thereafter.

7. Section 174 of Bharatiya Nagarik Suraksha Sanhita (hereinafter referred to as "B.N.S.S.") provides information about non-cognizable cases and the investigation of such cases. Sub-section (2) of Section 174 of B.N.S.S. provides that no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial. Sub-Section (4) of Section 174 of B.N.S.S. provides that where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable. Section 174 of B.N.S.S. is extracted here-in-under:

"174. Information as to non-cognizable cases and investigation of such cases-

(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the

substance of the information in a book to be kept by such officer in such form as the State Government may by rules prescribe in this behalf, and,-

(i) refer the informant to the Magistrate;

(ii) forward the daily diary report of all such cases fortnightly to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable."

8. In view of above, it is apparent that if a case relates to two or more offences, of which, one offence is cognizable, the case shall be deemed to be a cognizable case, notwithstanding the fact that the other offences are non-cognizable.

9. Undisputedly, after receipt of medical report having an injury in head caused by sharp edged weapon, Section 118 (1) of B.N.S., 2023 was added, therefore, this case would fall under Section 174(4) of the B.N.S.S. as one of the offences is cognizable. Section 118 of B.N.S., 2023 being relevant is extracted hereinunder:-

"Section 118. Voluntarily causing hurt or grievous hurt by dangerous weapons or means.

(1) Whoever, except in the case provided for by sub-section (1) of section 122, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to twenty thousand rupees, or with both.

(2) Whoever, except in the case provided for by sub-section (2) of section 122, voluntarily causes grievous hurt by any means referred to in sub-section (1), shall be punished with imprisonment for life, or with imprisonment of either description for a term which shall not be less than one year but which may extend to ten years, and shall also be liable to fine."

10. In view of above, the contention of the counsel for the applicants is misconceived. Even otherwise, petitioner No.1-Vinay had approached this Court challenging the aforesaid FIR and N.C.R. on identical grounds on which this application has been filed and the Division Bench by means of the order dated 22.01.2025 after recording the submissions of learned counsel for the applicants provided that let an appropriate application be moved by the Investigating Officer

concerned before the Court concerned within a week from today and the trial Court concerned shall pass appropriate order on the said application within a week thereafter. With similar prayers, petitioner No.2-Ved Wati had also approached this Court by filing Criminal Misc. Writ Petition No. 820 of 2025 (Ved Wati vs. State of U.P. And Others), which was connected with Criminal Misc. Writ Petition No. 387 of 2025 (Vinay vs. State of U.P. And 3 Others).

11. In compliance of the aforesaid order dated 22.01.2025, the Investigating Officer moved an application on 29.01.2025 before the Judicial Magistrate, IInd, Gonda under Section 174(2) B.N.S.S., which was allowed by means of order dated 03.02.2025 and thereafter, after completing the investigation the charge sheet was filed on 05.02.2025 giving reference to all aforesaid facts, in brief, in clause 16, which are extracted here-in-under:-

"श्रीमान जी निवेदन है कि मुकदमा उपरोक्त वादी की तहरीरी सूचना पर दिनांक 28.11.24 को थाना स्थानीय पर एनसीआर नं0 118/24 धारा 115(2), 352, 351 (2) बीएनएस पंजीकृत हुआ मजरूब मोहित कुमार पाठक के सिर में शार्प इज्ड इन्जरी मेडिकल रिपोर्ट में आने के उपरान्त अभियोग में धारा 118 (1) बीएनएस को बढोत्तरी कर एनसीआर उपरोक्त को मु0अ0सं0 420/24 धारा 115(2), 352, 351(2), 118(1) बीएनएस तरमीम कर पंजीकृत हुआ हस्व आदेश प्र०नि० महोदय के विवेचना मुझ उ०नि० को सुपुर्द हुई मुझ उ0नि0 द्वारा विवेचना ग्रहण कर विवेचनात्मक कार्यवाही सम्पादित किया गया संकलित साक्ष्य से धारा 109 (1) बीएनएस का पर्यात आधार मिलने के उपरान्त अभियोग में उक्त धारा की बढोत्तरी किया गया। अभियोग में नामित अभियुक्तगण 1. अजय कुमार; 2. सिद्ध कुमार उर्फ पहलवान पुत्रगण गुरुप्रसाद मिश्रा निवासी कन्धईपुरवा पूरे संगम मौजा बमडेरा थाना कटरा बाजार जनपद गोण्डा को दिनांक 12.01.2025 को गिरफ्तार हुआ जो वर्तमान समय में न्यायिक अभिरक्षा में जिला कारागार गोण्डा में निरूद्ध है तथा अभियुक्त विनय कुमार व अभियुक्ता वेदवती की गिरफ्तारी पर मा० उच्च न्यायालय इलाहाबाद खण्डपीठ लखनऊ द्वारा गिरफ्तारी पर स्थगन आदेश निर्गत किया गया है। अब तब की तमामी विवेचना बयान वादी, निरीक्षण घटनास्थल, बयान मजरूब, बयान गवाहान, बयान डाक्टर अवलोकन मेडिकल रिपोर्ट, अवलोकन सीटी स्कैन व एक्स रे रिपोर्ट, व अन्य साक्ष्य संकलित साक्ष्य से अभियोग में नामित अभियुक्तगण 1. विनय कुमार 2. अजय कुमार, 3. सिद्ध कुमार उर्फ पहलवान पुत्रगण गुरुप्रसाद मिश्रा 4. वेदवती पत्नी गुरूप्रसाद निवासीगण कन्धईपुरवा पूरे संगम मौजा बमडेरा थाना कटरा बाजार जनपद गोण्डा के विरूद्ध जुर्म धारा 115(2), 352, 351(2), 118(1), 109 (1) बीएनएस का अपराध बाखूबी साबित है। अतः अभियुक्तगण 1. विनय कुमार 2. अजय कुमार, 3. सिद्ध कुमार उर्फ पहलवान, 4. वेदवती उपरोक्त का चालान अन्तर्गत धारा 115 (2), 352, 351 (2), 118(1), 109(1) बीएनएस में ज़रिये आरोप पत्र मा० न्यायालय प्रेषित किया जा रहा है। श्रीमान जी से निवेदन है कि सबूत तलब कर दण्डित करने की कृपा करें विवेचना जरिये आरोप पत्र समाप्त की जाती है।"

12. After filing of charge sheet, the cognizance has been taken by the Magistrate concerned and summoning order has been issued, which has been challenged in the present petition. After issuance of summoning order, the aforesaid writ petitions have been withdrawn by the petitioners which has been allowed by means of the order dated 02.05.2025 without liberty to raise the grounds raised in the said writ-petitions in case of challenge to the summoning order and proceedings, therefore, this Court is of the view that the ground taken by the applicants is also not available to the applicants now. Even otherwise, the aforesaid ground is not available, as discussed above, because once the N.C.R. was converted into an FIR on the basis of medical report on account of adding of a cognizable offence, the police was empowered to investigate the matter.

13. So far as the the judgment, relied upon by the counsel for the applicants, passed by the High Court of

Bombay at Goa in the case of ***Mr. Asif Khan Pathan (Supra***) is concerned, the same is not applicable on the facts and circumstances of the present case because in the said case, some additional information was supplied by the informant subsequently, on the basis of which, the N.C.R. was converted into FIR, therefore, the same is distinguishable in the facts and circumstances of the present case.

14. This Court in the case of ***Shavez and Ors. vs. State of U.P. and Ors., MANU/UP/4929/2019*** has held that conversion of NCR into FIR during investigation after finding the fact that accused person has caused serious injuries to victim and had thereby committed cognizable offence, is neither illegal nor impermissible. It has also been held that merely the fact that new crime number was assigned and a Chick FIR was also executed, does not necessarily adversely affect the proceedings in any vital manner nor the applicants can claim that they have prejudiced by the FIR. It has also been held that this Court does not deem it proper and cannot be persuaded to have a pre-trial before the actual trial begins. On a perusal of FIR and the material collected by the Investigating Officer on the basis of which charge sheet has been submitted makes out a prima facie offence against the accused at this stage and there appear to be sufficient ground for proceedings against the applicants.

15. In view of above and considering overall facts and circumstances of this case, this Court does not find any illegality or error in the impugned proceedings against the applicants which may call for interference by this Court. The application has been filed on misconceived ground and lacks merits.

16. Accordingly, the application is **dismissed**.

(2025) 6 ILRA 62
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 20.06.2025

BEFORE

THE HON'BLE SAMEER JAIN, J.

Criminal Appeal No. 2045 of 2025

Kamal Bharbhuja ...Appellant
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Appellant:
Sri Brajesh Nath Rai, Sri Rahul Mishra

Counsel for the Opposite Parties:
Sri Avdhesh Narayan Tiwari, G.A.

Bail -Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act-Criminal appeal u/s 14-A(2)-initially FIR lodged u/s 103 BNS and other sections against the appellant and another -with regard to murder of the wife of the o.p. no.2- but subsequently the case was converted u/s 108 BNS-abatement to suicide-if appellant was having illicit relationship with the deceased –then it cannot be said that due to his abetment she committed suicide-Bail granted.

Appeal allowed. (E-9)

(Delivered by Hon'ble Sameer Jain, J.)

1. Heard Sri Rahul Mishra, learned counsel of the appellant, Sri Deepak Dubey, Advocate holding brief of Avdhesh Narayan Tiwari, learned counsel for the opposite party no.2 and Sri Ashutosh Srivastava, learned A.G.A. for the State.

2. This criminal appeal under Section 14-A(2) Scheduled Castes & Scheduled Tribes (Prevention of Atrocities)

Act, has been filed by the appellant with a prayer to quash the order dated 24.01.2025, passed by the learned Additional District and Session Judge/Special Judge (S.C./S.T. Act), Mahoba in Criminal Misc. Bail Application No. 25 of 2025, (Kamal Bharbhuja Vs. State of U.P.) arising out of Case Crime No. 685 of 2024, under Sections 108, 352, 351(3) of B.N.S. and 3(1)(da), 3(1)(dha), 3(2)(5ka), 3(2)(5) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (as Amended under Act No. 1 of 2015), Kotwali Nagar, District-Mahoba.

3. Learned counsel for the appellant submits, however, initially FIR of the present case was lodged under Section 103 BNS and other sections against the appellant and another with regard to murder of the wife of the o.p. no.2 but subsequently when it was found that actually deceased committed suicide due to the abetment of the appellant then case was converted under Section 108 BNS.

4. He next submits, as per prosecution appellant was having illicit relationship with the deceased and he was continuously pressurizing her to perform marriage with him, therefore, she committed suicide.

5. He next submits, however, entire allegation of abetment made against the appellant is totally false but even if the same is accepted then also it cannot be said that due to the abetment of the appellant deceased committed suicide.

6. He next submits, appellant is not having any previous criminal history and in the present matter he is in jail since 01.01.2025.

7. He further submitted, therefore, the impugned order dated 24.01.2025 passed by the court concerned by which bail application of the appellant has been dismissed is illegal and is liable to be set aside and appellant is entitled to be enlarged on bail in the present matter.

8. Per contra, learned AGA and learned counsel for the opposite party no.2 vehemently opposed the prayer for bail and submitted that appellant is responsible for the death of the deceased and he was not having only illicit relationship with her but he also pressurized her to perform marriage with him and therefore, he does not deserve bail and there is no illegality in the impugned order dated 24.01.2025 passed by the court concerned and therefore instant appeal filed by the appellant is devoid of merit and is liable to be dismissed.

9. I have heard both the parties and perused the record of the case.

10. From the record it reflects FIR of the present case was initially lodged under Section 103 BNS along with other sections against the appellant with the allegation that he committed the murder of the wife of the o.p. no.2 but subsequently during investigation when it was revealed that appellant was having illicit relationship with the deceased and he was continuously pressurizing her to perform marriage with him and therefore she committed suicide then case was converted under Section 108 BNS.

11. This court finds merit in the arguments advanced by learned counsel for the appellant that even if appellant was having illicit relationship with the deceased

then also it cannot be said that due to his abetment she committed suicide.

12. Further, appellant is not having any previous criminal history and in the present matter he is in jail since 01.01.2025.

13. Therefore, considering the facts and circumstances of the case, discussed above, in my view, impugned order dated 24.01.2025 by which bail application of the appellant has been dismissed by the court concerned is illegal and is liable to be set aside and appellant is entitled to be released on bail in the instant matter.

14. Accordingly, the instant appeal stands allowed and the impugned order dated 24.01.2025 passed by the court concerned is hereby set aside and without expressing any opinion on the merit of the case, appellant is directed to be enlarged on bail in the instant matter.

15. Let appellant **Kamal Bharbhuja** be released on bail in the aforesaid case on his furnishing a personal bond and two reliable sureties in the like amount to the satisfaction of the court concerned with the following conditions:

(i) The appellant will not tamper with the evidence during the trial.

(ii) The appellant will not pressurize/ intimidate the prosecution witness.

(iii) The appellant will appear before the trial court on the date fixed, unless personal presence is exempted.

(iv) The appellant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

(v) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

16. In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

(2025) 6 ILRA 64
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 19.06.2025

BEFORE

THE HON'BLE SAMEER JAIN, J.

Criminal Appeal No. 2275 of 2025

Anshu Kushwaha ...Appellant
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Appellant:
Sri Abhishek Kumar Saroj, Nagendra Bahadur Singh

Counsel for the Opposite Parties:
G.A., Sitaram Patel

Criminal Law – Bharatiya Nagarik Suraksha Sanhita, 2023 - Sections 180 & 183 – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Sections – 3(2)(V) & 14-A(2) – Bhartiya Nyay Sanhita, 2023 – Sections 69, 89, 115(2), 333, 352, 351(2) & 351(3) - Criminal Appeal - filed u/s 14-A(2) of SC/ST Act, – for quashing the impugned order – whereby court below rejected Bail Application – FIR – offence of rape and prepared obscene video -

alleged that accused appellant under the pretext of false promise of marriage sexually exploited the victim – arrest – Statement recorded under section 180 and 183 of BNSS – Bail Application – Rejected - pleas taken in defence that, victim is major lady, and she was consenting party — court finds that, there is no video on record, - admittedly, victim lady is major lady and she was in a consensual relationship, – no previous criminal history – held, impugned order by which bail application of the applicant has been dismissed by the court concerned is illegal and is liable to be set aside and appellant is entitled to be released on bail – accordingly, instant appeal stands allowed - Appellant be released on bail with strict conditions to prevent tampering with evidence or influencing witnesses, allowing the prosecution to seek cancellation if any condition is breached. (Para – 10, 11, 12, 13)

Application Allowed. (E-11)

(Delivered by Hon'ble Sameer Jain, J.)

1. None appeared on behalf of opposite party no.2. even in revised call.

2. Heard Sri Nagendra Bahadur Singh, learned counsel for the appellant, and Sri Rajeev Dhar Dwivedi, learned Additional Government Advocate for the State-respondent.

3. This criminal appeal under Section 14-A(2) Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, has been filed by the appellant with a prayer to quash the order dated 05.03.2025, passed by learned Sessions Judge, Scheduled Caste and Scheduled Tribe (Prevention of Atrocities), Auraiya in Criminal Misc. Bail Application No. 248 of 2025 (Anshu Kushwaha Vs. State of U.P.), arising out of Case Crime No. 0047 of 2025, under Section 333, 69, 115(2), 89, 352, 351(2), 351(3) of the Bhartiya Nyay Sanhita & Section 3(2) (V) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Police Station Kotwali, District Auraiya.

4. Learned counsel for the appellant submits, however as per allegation appellant firstly committed rape upon the opposite party no.2 and thereafter, prepared her obscene video and under the pretext of false promise of marriage sexually exploited her but entire allegation levelled against appellant is totally false.

5. He next submits, admittedly opposite party no.2 is major lady and from the FIR and her statements recorded under Section 180 and 183 B.N.S.S. it reflects she was consenting party and prima facie it appears to be a case of consensual relationship. He further submits however there is allegation that appellant also prepared obscene video of the opposite party no.2 but no such video of the opposite party no.2 is on record.

6. He next submits, appellant is not having any previous criminal history and in the present matter he is in jail since 19.01.2025.

7. He further submitted, therefore, the impugned order dated 05.03.2025 passed by the court concerned by which bail application of the appellant has been dismissed is illegal and is liable to be set aside and appellant is entitled to be enlarged on bail in the present matter.

8. Per contra, learned AGA opposed the prayer for bail but could not dispute the aforesaid facts.

9. I have heard both the parties and perused the record of the case.

10. However, as per allegation under the false promise of marriage appellant sexually exploited the opposite party no.2 and committed rape upon her and also prepared obscene video of opposite party no.2 but alleged obscene video of the opposite party no.2 is not on record to substantiate her allegation in this regard.

11. Further, admittedly, opposite party no.2 i.e. informant of the case is major lady and considering the nature of allegation levelled against the appellant prima facie present case appears to be a case of consensual relationship.

12. Further, appellant is not having any previous criminal history and in the present matter he is in jail since 19.01.2025.

13. Therefore, considering the facts and circumstances of the case, discussed above, in my view, impugned order dated 05.03.2025 by which bail application of the appellant has been dismissed by the court concerned is illegal and is liable to be set aside and appellant is entitled to be released on bail in the instant matter.

14. Accordingly, the instant appeal stands allowed and the impugned order dated 05.03.2025 passed by the court concerned is hereby set aside and without expressing any opinion on the merit of the case, appellant is directed to be enlarged on bail in the instant matter.

15. Let appellant **Anshu Kushwaha**, be released on bail in the aforesaid case on his furnishing a personal bond and two reliable sureties in the like amount to the satisfaction of the court concerned with the following conditions:

(i) The appellant will not tamper with the evidence during the trial.

(ii) The appellant will not pressurize/ intimidate the prosecution witness.

(iii) The appellant will appear before the trial court on the date fixed, unless personal presence is exempted.

(iv) The appellant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

(v) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

16. In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

(2025) 6 ILRA 66
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 19.06.2025

BEFORE

THE HON'BLE SAMEER JAIN, J.

Criminal Appeal No. 2284 of 2025

Danish @ Bakra @ Dilshad ...Appellant
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Appellant:
Sri J.B. Singh

Counsel for the Opposite Parties:
G.A.

Criminal Law – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Sections 3(2)(5) & 14-A(2) – Indian Penal Code,1860 - Section – 201 & 302- Criminal Appeal - filed u/s 14-A(2) of SC/ST Act, – for quashing the impugned order – whereby court below rejected the Bail Application – FIR – offence of murder - arrest – Bail application – Rejected - plea taken in defence that, though appellant is named in FIR but it is a case of circumstantial evidence and merely on the basis of alleged evidence of last seen appellant has been made accused - court finds that, it is a case of circumstantial evidence and it appears except the evidence of last seen and the fact that on the pointing out of the appellant on brick allegedly used in crime was recovered and there is no other evidence – as well as no any previous criminal history – held, merely on the basis of recovery of a brick on the pointing out of the appellant at this stage it cannot be said that appellant committed the murder – consequently, impugned order by which bail application of the applicant has been dismissed by the court concerned is illegal and is liable to be set aside and appellant is entitled to be released on bail – instant appeal stands allowed - Appellant be released on bail with strict conditions to prevent tampering with evidence or influencing witnesses, allowing the prosecution to seek cancellation if any condition is breached. (Para – 11, 13, 14, 15, 16)

Application Allowed. (E-11)

(Delivered by Hon'ble Sameer Jain, J.)

1. As per office report dated 30.04.2025 notice has been served to the opposite no.2. personally. Despite service of notice none appeared on behalf of opposite party no.2. therefore the instant appeal is being heard on merits.

2. Heard Sri J.B. Singh, learned counsel for the appellant and Sri Rajeev Dhar Dwivedi, learned Additional Government Advocate for the State-respondent.

3. This criminal appeal under Section 14-A(2) Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, has been filed by the appellant with a prayer to quash the order dated 29-11-2024 passed by learned Special Judge (S.C./S.T. Act), Gautam Budh Nagar in Bail Application No. 4489 of 2024 (Danish @ Bakra @ Dilshad Vs. State of U.P.) arising out of Case Crime No. 177 of 2024 Under Section- 302/201 I.P.C. & section- 3(2)5 of S.C. /S.T. Act Police Station- Dankaur, District-Gautam Budh Nagar.

4. Learned counsel for the appellant submits, however appellant is named in the FIR but it is a case of circumstantial evidence and it appears merely on the basis of alleged evidence of last seen appellant has been made accused in the present matter.

5. He next submits, from the statements of witnesses who provided the evidence of last seen it reflects even the evidence of last seen is not convincing.

6. He next submits,however, apart from the evidence of last seen as per prosecution when appellant was arrested then on his pointing out one brick used in the crime was also recovered but entire recovery is false and baseless. He further submits, even merely on the basis of such recovery at this stage, it cannot be said that appellant committed the murder of the deceased.

7. He further submits except the above evidence, there is no other evidence against the appellant on record but in spite of that court concerned dismissed the bail application of the appellant vide impugned order dated 29.11.2024 and therefore, committed gross illegality and impugned order dated 29.11.2024 passed by the court concerned is illegal and is liable to be set aside and appellant is entitled to be enlarged on bail in the present matter.

8. He next submits, appellant is not having any previous criminal history and in the present matter he is in jail since 02.07.2024 i.e. for last more than 11 months.

9. Per contra, learned AGA opposed the prayer for bail but could not dispute the aforesaid facts.

10. I have heard both the parties and perused the record of the case.

11. It is a case of circumstantial evidence and it appears except the evidence of last seen and the fact that on the pointing out of the appellant one brick allegedly used in the crime was recovered there is no other evidence against the appellant on record.

12. As far as evidence of last seen is concerned after considering the statements of the witnesses this court finds merit in the arguments advanced by the learned counsel for the appellant that evidence of last seen is not convincing.

13. Further, this court also finds merit in the arguments advanced by the learned counsel for the appellant that merely on the basis of recovery of a brick on the pointing out of the appellant at this stage it cannot be said that appellant committed the murder of the deceased.

14. Further, appellant is not having any previous criminal history and in the present matter he is in jail since 02.07.2024 i.e. for last more than 11 months.

15. Therefore, considering the facts and circumstances of the case, discussed above, in my view, impugned order dated 29-11-2024 by which bail application of the appellant has been dismissed by the court concerned is illegal and is liable to be set aside and appellant is entitled to be released on bail in the instant matter.

16. Accordingly, the instant appeal stands allowed and the impugned order dated 29-11-2024 passed by the court concerned is hereby set aside and without expressing any opinion on the merit of the case, appellant is directed to be enlarged on bail in the instant matter.

17. Let appellant **Danish @ Bakra @ Dilshad**, be released on bail in the aforesaid case on his furnishing a personal bond and two reliable sureties in the like amount to the satisfaction of the court concerned with the following conditions:

(i) The appellant will not tamper with the evidence during the trial.

(ii) The appellant will not pressurize/ intimidate the prosecution witness.

(iii) The appellant will appear before the trial court on the date fixed, unless personal presence is exempted.

(iv) The appellant shall not commit an offence similar to the offence of

which he is accused, or suspected, of the commission of which he is suspected.

(v) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

18. In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

(2025) 6 ILRA 69
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 20.06.2025

BEFORE

THE HON'BLE NEERAJ TIWARI, J.

First Appeal From Order No. 2075 of 2024

Km. Sunita ...Appellant
Versus
Smt. Manju & Ors. ...Respondents

Counsel for the Appellant:
Sri Gaurang Dwivedi, Sri Pranvesh, Sr. Adv.

Counsel for the Respondents:
Sri Ajay Sengar, Sri Sanjay Agrawal

Temporary injunction-Transfer of Property Act-Sec.52-Suit for partition filed by the appellant-plaintiff- along with 6C-2 -Temporary Injunction Application was rejected vide impugned order-for granting interim injunction-three factors are required to be considered - prima facie case, balance of convenience and irreparable loss-in present case- it is a case of partition -and plaintiff and defendants both have equal right over the property in dispute- unless it is divided- protection of Section 52 of Transfer of Property Act-but in case interim injunction is not granted-will create multiplicity of litigations-impugned judgment and order and decree are bad and set aside- parties are directed to maintain the status quo.

Appeal allowed. (E-9)

List of Cases cited:

1. H. Anjanappa & ors.Vs A. Prabhakr & ors.-Civil Appeal Nos. 1180-1181 of 2025;

2. Gurmit Singh Bhatia Vs Kiran Kant Robinson & ors.:(2020) 13 SCC 773,

3. Kasturi Vs Iyyamperumal & ors.: (2005) 6 SCC 733

4. Vineeta Sharma Vs Rakesh Sharma & ors: AIR 2020 SC 3717

5. M/s Sri Bankhadi Nath Developers Pvt. Ltd. Vs Dharmendra Kumar Rathore & ors.: 2024(3) ADJ 723)

6. Amar Singh Vs U.O.I.& ors.: (2011) 7 SCC 69 and

7. Ambalal Sarabhai Enterprises Limited Vs KS Infraspace LLP Ltd. & Another: (2020) 5 SCC 410

8. Gujarat Bottling Co. Ltd. & ors.. Vs Coca Cola Company & ors.. (1995) 5 SCC 545

9. Zenith Mataplast P. Ltd. Vs St. of Maharashtra & ors..: (2009) 10 SCC 388

10. Saurabh Gupta Vs Smt. Archana Gupta & ors.: 2024(3) ADJ 241(LB)

11. Sk. Golam Lalchand Vs Nandu Shaw & ors. AIR 2024 SC 4193

12. Ramakant Ambalal Choksi Vs Harish Ambalal Choksi & ors.. MANU/SC/1270/2024

(Delivered by Hon'ble Neeraj Tiwari, J.)

1. Heard Sri M.C. Chaturvedi, learned Senior Counsel, assisted by Sri Pranvesh,

learned counsel for the appellant, Sri Anoop Trivedi, learned Senior Counsel, assisted by Sri Devansh Mishra and Sri Shivam Tiwari, learned counsel for the respondent Nos. 1 to 3 and Sri Ajay Sengar, learned counsel for the respondent No. 4.

2. Present appeal has been filed with the prayer to set aside the judgment and order dated 16.09.2024 and decree dated 19.09.2024 passed by learned Civil Judge(Senior Division), Jalaun at Orai in Original Suit No. 356 of 2023(Km. Sunita Vs. Smt. Manju and Others) and also to allow the Temporary Injunction Application No. 6C-2.

3. With the consent of learned counsel for the parties, the appeal is being decided at the admission stage itself.

4. Brief facts of the case are that a suit for partition being Original Suit No. 356 of 2023 was filed by the appellant-plaintiff on 11.10.2023 against the respondents-defendants for partition along with 6C-2 application. After argument, 6C-2 application was rejected vide impugned order 16.09.2024. Hence the present appeal.

5. Sri M.C. Chaturvedi, learned Senior Counsel, appearing for the appellant submitted that impugned order has been passed basically on two grounds. The first ground is that appellant-plaintiff has concealed certain facts and she has not disclosed the fact regarding agreement to sale executed by her before filing of the suit, therefore, she was not with clean hands. The second ground was that she has not impleaded the subsequent purchasers as defendants in the suit.

6. So far as first ground is concerned, learned Senior Counsel has argued that agreement to sale was executed without right of possession and till date sale deed has not been executed, therefore, right of no coparcener is affected. He next submitted that non discloser of such fact would not affect the nature and consequence of suit. Therefore, this cannot said to be a concealment of fact. So far as second ground is concerned, he argued that total eight sale deeds were executed by the respondent-defendant during the pendency of the suit and appellant-plaintiff was having no knowledge of that, therefore, there is no occasion for the appellant-plaintiff to implead the subsequent purchasers as party in the suit. Immediately after knowing about the execution of the sale deed, she has brought those documents along with records before the court. It is also his argument that appellant-plaintiff is dominus litus i.e. master of suit, therefore, she cannot be forced to implead anyone as defendant in the suit. He next submitted that appellant-plaintiff has not claimed any relief against the persons in favour of whom, sale deeds were executed, therefore, they are not the necessary party in the suit. He also submitted that subsequent purchasers are having full right to file impleadment application under Order 1 Rule 10 CPC, therefore, there is no occasion to consider their grievance in this partition suit. He next submitted that the suit filed by the appellant-plaintiff is a partition suit between the family members and in case subsequent purchasers are impleaded, the nature and consequence of the suit would be changed. Therefore, subsequent purchasers are not the necessary party in the suit. He also submitted that certain objections under Section 6 of the Hindu Succession Act, 1956 were raised and the court has opined that it can only be decided during the course of trial after leading the evidence, therefore, this issue

cannot be raised at this stage. In support of his contention, he placed reliance upon the judgment of Hon'ble Apex Court in the matters of ***Civil Appeal Nos. 1180-1181 of 2025 (H. Anjanappa & Ors. Vs. A. Prabhakr & Ors., Gurmit Singh Bhatia Vs. Kiran Kant Robinson and Ors.:(2020) 13 SCC 773, Kasturi Vs. Iyyamperumal and Ors.: (2005) 6 SCC 733, Vineeta Sharma Vs. Rakesh Sharma and Ors: AIR 2020 SC 3717, and this Court in M/s Sri Bankhadi Nath Developers Pvt. Ltd. Vs. Dharmendra Kumar Rathore and others: 2024(3) ADJ 723).***

7. Sri Anoop Trivedi, learned Senior Counsel, appearing for the respondents, opposed the aforesaid submission and submitted that agreement to sale was executed by the appellant-plaintiff prior to filing of the suit and also one more agreement to sale through power of attorney was executed during the pendency of suit and these facts are concealed by the appellant-plaintiff, therefore, she is not entitled for any relief from this Court. In support of his contention, he placed reliance upon the judgment of Hon'ble Apex Court in the matter of ***Amar Singh Vs. Union of India and Others: (2011) 7 SCC 69 and Ambalal Sarabhai Enterprises Limited Vs. KS Infraspace LLP Limited and Another: (2020) 5 SCC 410.***

8. He next submitted that once the sale deed has been executed in favour of other persons, they are the necessary party and it is required on the part of the plaintiff to implead them as defendants. He next submitted that so far as dominus litus is concerned, under Section 52 of the Transfer of Property Act any property sold out during the pendency of suit shall be subject to the outcome of the suit, therefore, in case subsequent purchaser are not required to be impleaded as defendant, there is no occasion to grant interim protection in light of Section 52 of the Transfer of Property Act. On this Issue, he placed reliance upon the judgment of Hon'ble Apex Court in the matter of ***H. Anjanappa(Supra).***

9. He also submitted that interim injunction against the co-sharers cannot be granted and further, while granting the interim injunction conduct of the party, balance of convenience and irreparable loss is required to be seen. He next submitted that in present case, undisputedly, conduct of the party is not fair and further, interim injunction cannot be granted against the co-sharers, therefore, there is no prima facie case, balance of convenience and irreparable loss of the appellant-plaintiff.

10. I have considered the submission advanced by learned counsel for the parties and perused the record as well as judgments relied upon.

11. The undisputed facts of the case is that the suit filed by the appellant-plaintiff is the partition suit against the family members and appellant-plaintiff has executed one agreement to sale prior to filing of the suit, another after filing of suit through power of attorney and this fact has not been disclosed in the suit. Similarly, in the objection to 6C-2 application, there is no discloser of execution of sale deeds by the respondents-defendants.

12. Now, the basic question before the Court is to decide as to whether during the pendency of partition suit, interim protection is required to be granted or not.

13. I am coming to the first argument of learned counsel for the

appellant-plaintiff about the non discloser of certain facts. If non discloser of these facts would not change the nature and consequence of the suit, that cannot be a ground for rejecting the 6C-2 application coupled with this fact that in the present case, both the parties have concealed the facts.

14. I have also perused judgment of Apex Court in the matter of ***Amar Singh(Supra)***. Relevant paragraph of the said judgment are being quoted hereinbelow:

"53. 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.

54. In Dalglish v. Jarvie {2 Mac. & G. 231,238}, the Court, speaking through Lord Langdale and Rolfe B., laid down:

"It is the duty of a party asking for an injunction to bring under the notice of the Court all facts material to the determination of his right to that injunction; and it is no excuse for him to say that he was not aware of the importance of any fact which he has omitted to bring forward.""

55. In Castelli v. Cook {1849 (7) Hare, 89,94}, Vice Chancellor Wigram, formulated the same principles as follows:

"A plaintiff applying ex parte comes under a contract with the Court that he will state the whole case fully and fairly to the Court. If he fails to do that, and the Court finds, when the other party applies to dissolve the injunction, that any material fact has been suppressed or not property brought forward, the plaintiff is told that the Court will not decide on the merits, and that, as has broken faith with the Court, the injunction must go."

56. In the case of Republic of Peru v. Dreyfus Brothers & Company {55 L.T. 802,803}, Justice Kay reminded us of the same position by holding:

"...If there is an important misstatement, speaking for myself, I have never hesitated, and never shall hesitate until the rule is altered, to discharge the order at once, so as to impress upon all persons who are suitors in this Court the importance of dealing in good faith with the Court when ex parte applications are made."

57. In one of the most celebrated cases upholding this principle, in the Court of Appeal in R. v. Kensington Income Tax Commissioner {1917 (1) K.B. 486} Lord Justice Scrutton formulated as under:

"and it has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts- facts, now law. He must not misstate the law if he can help it –the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have been fully and fairly stated to it, the Court will set aside any

action which it has taken on the faith of the imperfect statement."

58. It is one of the fundamental principles of jurisprudence that litigants must observe total clarity and candour in their pleadings and especially when it contains a prayer for injunction. A prayer for injunction, which is an equitable remedy, must be governed by principles of 'uberrima fide'.

59. The aforesaid requirement of coming to Court with clean hands has been repeatedly reiterated by this Court in a large number of cases. Some of which may be noted, they are: Hari Narain v. Badri Das, Welcome Hotel and others v. State of A.P. and others, G. Narayanaswamy Reddy (Dead) by LRs. and another v. Government of Karnatka and another, S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs. and others, A.V. Papayya Sastry and others v. Government of A.P. and others, Prestige Lights Limited v. SBI, Sunil Poddar and others v. Union Bank of India, K.D.Sharma v. SAIL and others, G. Jayashree and others v. Bhagwandas S. Patel and others, Dalip Singh v. State of U.P. and others.

60. In the last noted case of Dalip Singh (supra), this Court has given this concept a new dimension which has a far reaching effect. We, therefore, repeat those principles here again:

"1. For many centuries Indian society cherished two basic values of life i.e. "satya"(truth) and "ahimsa (non-violence), Mahavir, Gautam Budha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the preindependence 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 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.

2. In the 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."

However, this Court is constrained to observe that those principles are honoured more in breach than in their observance.

61. Following these principles, this Court has no hesitation in holding that the instant writ petition is an attempt by the petitioner to mislead the Court on the basis of frivolous allegations and by suppression of material facts, this court had issued notice and also subsequently passed the injunction order which is still continuing.

15. From the perusal of judgment quoted hereinabove, it is apparently clear that for concealment of fact or

misstatement, there must have been intention to mislead the Court or obtain some order fraudulently. Again para 61 of the aforesaid judgment transpires that that appeal was made by the appellant to mislead the Court on the basis of frivolous allegation and suppression of material facts, but so far as present case is concerned, even if the facts are not disclosed, that would not change in nature of the suit for the very simple reason that it is a partition suit between the family members. Therefore, this judgment would not be applicable on the facts of the present case and the same would not come in the rescue of respondents-defendants.

16. I have also perused judgment of Hon'ble Apex Court in the matter of ***Ambalal Sarabhai(Supra).*** Relevant paragraph of the said judgment are being quoted hereinbelow:

"23. WanderLtd.(supra) prescribes a rule of prudence only. Much will depend on the facts of a case. It fell for consideration again in Gujarat Bottling Co. Ltd. vs. Coca Cola Co., (1995) 5 SCC 545, observing as follows: "47….Under Order 39 of the Code of Civil Procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for"

17. From the perusal of aforesaid judgment, it is apparently clear that the facts of the case are entirely different. It is recorded in this judgment that the fact is having bearing upon the consequences of the suit, which is not in present case. Hence, this judgment would also not benefit the respondents-defendants.

18. Now, I am coming to the another issue as to whether subsequent purchasers are necessary party or not. This issue has been considered by the Hon'ble Apex Court in the matter of ***H. Anjanappa(Supra).*** Relevant parapraph of the aforesaid judgment are being quoted hereinbelow:

"58. From a conspectus of all the aforesaid judgments, touching upon the present aspect, broadly, the following would emerge:

i. First, for the purpose of impleading a transferee pendente lite, the facts and circumstances should be gone into and basing on the necessary facts, the Court can permit such a party to come on record, either under Order I Rule 10 CPC or under Order XXII Rule 10 CPC, as a general principle;"

ii. Secondly, a transferee pendente lite is not entitled to come on record as a matter of right;

iii. Thirdly, there is no absolute rule that such a transferee pendente lite, with the leave of the Court should, in all cases, be allowed to come on record as a party;

iv. Fourthly, the impleadment of a transferee pendente lite would depend upon the nature of the suit and appreciation of the material available on record;

v. Fifthly, where a transferee pendente lite does not ask for leave to come on record, that would obviously be at his peril, and the suit may be improperly conducted by the plaintiff on record;

vi. Sixthly, merely because such transferee pendente lite does not come on record, the concept of him (transferee pendente lite) not being bound by the judgment does not arise and consequently he would be bound by the result of the litigation, though he remains unrepresented;

vii. Seventhly, the sale transaction pendente lite is hit by the provisions of Section 52 of the Transfer of Property Act; and,

viii. Eighthly, a transferee pendente lite, being an assignee of interest in the property, as envisaged under Order XXII Rule 10 CPC, can seek leave of the Court to come record on his own or at the instance of either party to the suit.

19. From careful perusal of para 58 of the aforesaid judgment, it is clear that a transferee pendete lite is not a necessary party as a matter of right. It depends upon the facts and circumstances of the case. So far as present case is concerned, certainly it is a partition suit, therefore, subsequent purchasers are not necessary party in such proceeding.

20. Now, I am coming to the issue of dominus litus. This issue has come up before the Hon'ble Apex Court in the matter of ***Gurmit Singh Bhatia(Supra), Kasturi(Supra)*** and this Court in ***M/s Sri Bankhadi Nath Developers(Supra).*** The Court has held that appellant-plaintiff is a dominus litus and he cannot be forced to add party against whom he does not want to contest the case unless there is provision under the rule of law. In the present case, no relief is sought against the subsequent purchasers, therefore, plaintiff-appellant cannot be forced to implead them as defendants.

21. There is one more issue regarding Section 6 of the Hindu Succession Act, 1956 denying the legal heirship of appellant-plaintiff.

22. This issue was very well considered by the Hon'ble Apex Court in the matter of ***Vineeta Sharma(Supra).*** Relevant paragraph of the aforesaid judgment is being quoted hereinbelow:

"29. In Ghamandi Ram (supra), the formation, concept and incidents of the coparcenary were discussed thus:

"5. According to the Mitakshara School of Hindu Law all the property of a Hindu joint family is held in collective ownership by all the coparceners in a quasi-corporate capacity. The textual authority of the Mitakshara lays down in express terms that the joint family property is held in trust for the joint family members then living and thereafter to be born (see Mitakshara, Ch. I, 1-27). The incidents of co-parcenership under the Mitakshara law are: first, the lineal male descendants of a person up to the third generation, acquire on birth ownership in the ancestral properties of such person; secondly, that such descendants can at any time work out their rights by asking for partition; thirdly, that till partition each member has got ownership extending over the entire property, conjointly with the rest; fourthly, that as a result of such coownership the possession and enjoyment of the properties

is common; fifthly, that no alienation of the property is possible unless it be for necessity, without the concurrence of the coparceners, and sixthly, that the interest of a deceased member lapses on his death to the survivors. A coparcenary under the Mitakshara School is a creature of law and cannot arise by Act of parties except in so far that on adoption the adopted son becomes a coparcener with his adoptive father as regards the ancestral properties of the latter. In Sundaranam Maistri v. Harasimbhulu Maistri and Another, ILR 25 Mad 149 at 154."

Mr Justice Bhashyam Ayyangar stated the legal position thus:

"The Mitakshara doctrine of joint family property is founded upon the existence of an undivided family, as a corporate body (Gan Savant Bal Savant v. Narayan Bhond Savant) [ILR 7 Bom 467] and Mayne's 'Hindu Law and Usage', (6th edition, Paragraph 270) and the possession of property by such corporate body. The first requisite therefore is the family unit; and the possession by it of property is the second requisite. For the present purpose, female members of the family may be left out of consideration and the conception of a Hindu family is a common male ancestor with his lineal descendants in the male line, and so long as that family is in its normal condition viz. the undivided state — it forms a corporate body. Such corporate body, with its heritage, is purely a creature of law and cannot be created by Act of parties, save in so far that, by adoption, a stranger may be affiliated as a member of that corporate family."

6. Adverting to the nature of the property owned by such a family the learned Judge proceeded to state:

"As regards the property of such family, the 'unobstructed heritage' devolving on such family, with its accretions, is owned by the family, as a corporate body, and one or more branches of that family, each forming a corporate body within a larger corporate body, may possess separate 'unobstructed heritage' which, with its accretions, may be exclusively owned by such branch as a corporate body."

23. From perusal of aforesaid judgment, it is apparently clear that learned judge has decided this issue in light of judgment of ***Vineeta Sharma(Supra)*** therefore, co-parcenership of the appellant-plaintiff cannot be denied.

24. Now, I am coming to the issue as to whether in the partition suit, interim protection is required or not. This issue came up before the Apex Court in the matter of ***Gujarat Bottling Co. Ltd. And Ors. Vs. Coca Cola Company and ors. (1995) 5 SCC 545.*** Relevant paragraph of the aforesaid judgment is being quoted hereinbelow:

"46. The grant of an interlocutory injuction during the perdency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the descretion the court. While exercising the discretion the court applies the following tests - (i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the pliantiff would suffer an irreparable injury if his prayer for interlocutory injuction is disallowed. The decision whether or not to grant an interlocutory injuction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its

alleged violation are both contested and uncertain and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injuction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injuction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercisising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the 'balance of convenience' lies. [see:Wander Ltd.& Anr. v,. Antox India P. Ltd., MANU/SC/0595/1990. In order to protect the defendant while granting an interlocutory injuction in his favour the Court can require the plaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial.

25. Again this issue was considered by the Apex Court in the matter of ***Zenith Mataplast P. Ltd. Vs. State of Maharashtra and Ors.: (2009) 10 SCC 388.*** Relevant paragraph of the said judgment are being quoted hereinbelow:

"23. Interim order is passed on the basis of prima facie findings, which are tentative. Such order is passed as a temporary arrangement to preserve the status quo till the matter is decided finally, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing. The object of the interlocutory injunction is, to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. (vide Anand Prasad Agarwalla v. State of Assam vs. Tarkeshwar Prasad & Ors. AIR 2001 SC 2367; and Barak Upatyaka D.U. Karmachari Sanstha (2009) 5 SCC 694)

24. Grant of an interim relief in regard to the nature and extent thereof depends upon the facts and circumstances of each case as no strait-jacket formula can be laid down. There may be a situation wherein the defendant/respondent may use the suit property in such a manner that the situation becomes irretrievable. In such a fact situation, interim relief should be granted (vide M. Gurudas & Ors. Vs. Rasaranjan & Ors. AIR 2006 SC 3275; and Shridevi & Anr. vs. Muralidhar & Anr. (2007) 14 SCC 721.

25. Grant of temporary injunction, is governed by three basic principles, i.e. prima facie case; balance of convenience; and irreparable injury, which are required to be considered in a proper perspective in the facts and circumstances of a particular case. But it may not be appropriate for any court to hold a mini trial at the stage of grant of temporary injunction (Vide S.M. Dyechem Ltd. Vs. M/s. Cadbury (India) Ltd., AIR 2000 SC 2114; and Anand Prasad Agarwalla (supra).

26. In Colgate Palmolive (India) Ltd. Vs. Hindustan Lever Ltd., AIR 1999 SC 3105, this court observed that the other

considerations which ought to weigh with the Court hearing the application or petition for the grant of injunctions are as below :

(i) Extent of damages being an adequate remedy;

(ii) Protect the plaintiff's interest for violation of his rights though however having regard to the injury that may be suffered by the defendants by reason therefor ;

(iii) The court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others;

(iv) No fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each casethe relief being kept flexible;

(v) The issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case;

(vi) Balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;

(vii) Whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise."

27. In Dalpat Kumar & Anr. Vs. Prahlad Singh & Ors., AIR 1993 SC 276, the Supreme Court explained the scope of aforesaid material circumstances, but observed as under:-

"The phrases 'prima facie case', 'balance of convenience' and ' irreparable loss' are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations presented by man's ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice. The facts rest eloquent and speak for themselves. It is well nigh impossible to find from facts prima facie case and balance of convenience."

28. This Court in Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hira Lal, AIR 1962 SC 527 held that the civil court has a power to grant interim injunction in exercise of its inherent jurisdiction even if the case does not fall within the ambit of provisions of Order 39 Code of Civil Procedure.

29. In Deoraj vs. State of Maharashtra & Ors. AIR 2004 SC 1975, this Court considered a case where the courts below had refused the grant of interim relief. While dealing with the appeal, the Court observed that ordinarily in exercise of its jurisdiction under Art.136 of the Constitution, this Court does not interfere with the orders of interim nature passed by the High Court. However, this rule of discretion followed in practice is by way of just self-imposed restriction. An irreparable injury which forcibly tilts the balance in favour of the applicant, may persuade the Court even to grant an interim relief though it may amount to granting the final relief itself. The Court held as under:-

"The Court would grant such an interim relief only if satisfied that

withholding of it would prick the conscience of the court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice."

30. Such a course is permissible when the case of the applicant is based on his fundamental rights guaranteed by the Constitution of India. (vide All India Anna Dravida Munnetra Kazhagam vs. Chief Secretary, Govt. of Tamil Nadu & Ors. (2009) 5 SCC 452)

31. In Bombay Dyeing & Manufacturing Co. Ltd. Vs. Bombay Environmental Action Group & Ors. (2005) 5 SCC 61, this Court observed as under:-

"The courts, however, have to strike a balance between two extreme positions viz. whether the writ petition would itself become infructuous if interim order is refused, on the one hand, and the enormity of losses and hardships which may be suffered by others if an interim order is granted, particularly having regard to the fact that in such an event, the losses sustained by the affected parties thereby may not be possible to be redeemed."

32. Thus, the law on the issue emerges to the effect that interim injunction should be granted by the Court after considering all the pros and cons of the case in a given set of facts involved therein on the risk and responsibility of the party or, in case he looses the case, he cannot take any advantage of the same. The order can be passed on settled principles taking into account the three basic grounds i.e. prima facie case, balance of convenience and irreparable loss. The delay in approaching the Court is of course a good ground for refusal of interim relief, but in exceptional circumstances, where the case of a party is based on fundamental rights guaranteed under the Constitution and there is an apprehension that suit property may be developed in a manner that it acquires irretrievable situation, the Court may grant relief even at a belated stage provided the court is satisfied that the applicant has not been negligent in pursuing the case."

26. This issue has also been considered by this Court in the matter of ***Saurabh Gupta Vs. Smt. Archana Gupta and others: 2024(3) ADJ 241(LB).*** Relevant paragraphs of the aforesaid judgment are being quoted herein below:

"4. The crux of the matter is that the appellant filed a Civil Suit No.23 of 2023, impleading the respondents as defendants, for a declaration that he is the co-sharer of 1/4th part of the property in dispute as the property belongs to joint family property because it was purchased by the father of the appellant, who is also the husband of respondent no.1 in the name of respondent no.1. In the suit above, the specific plea was taken that respondent no.1 was the house maker and did not have any independent source of income. Through a sale deed dated 20.10.1986, the appellant's father purchased the property in dispute from Ram Ratan Gupta. It was further mentioned in the plaint that the appellant also made construction over that plot, and thereafter, the entire family has been running a business therein, and this complex is also known as R.C. Complex. Therefore, an application under Order 39 Rule 1 and 2 C.P.C. was filed during the pendency of the present suit with a prayer

that the respondent may be restrained from transferring the same. In the written statement, respondents have stated that the aforesaid property has been gifted by respondent no.1 to respondent no.2. The application above for interim injunction has been dismissed by the Court below vide order dated 25.07.2023.

13. Law relating to granting interim injunction during the pendency of suit is well-settled which was reiterated by the Apex Court in several judgements. In the case of Neon Laboratories Ltd. vs Medical Technology Ltd. and others; 2016 (2) SCC 672, Hon'ble Apex Court observed as under;

"However, it is now entrenched in our jurisprudence that the appellate Court is not flimsily, whimsically or lightly interfere in the exercise of discretion by a sub-ordinate court unless such exercise is palpably frivolous. Perversity can pertain to the understanding of law or the appreciation of pleadings or evidence."

14. Hon'ble Apex Court in the case of Zenith Metaplast Pvt. Ltd. vs State of Maharastra and others; 2009 (10) SCC 388, while laying down the law relating to granting the injunction, observed that the interim order is a temporary arrangement to preserve the status quo till the matter is decided finally, to ensure that the matter does not become infructuous or a fait accompali before the final hearing. It also further observed that the grant of a temporary injunction is governed by three basic principles, i.e. prima facie case, balance of convenience, and irreparable injury, which must be considered in a proper perspective in the facts and circumstances of the particular case. For reference para 30, 31 and 37 of the above judgments are quoted as below;

"30. Interim order is passed based on prima facie findings, which are tentative. Such order is passed as a temporary arrangement to preserve the status quo till the matter is decided finally, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial (vide Anand Prasad Agarwalla v. Tarkeshwar Prasad [(2001) 5 SCC 568] , and State of Assam v. Barak Upatyaka D.U. Karmachari Sanstha [(2009) 5 SCC 694 : (2009) 2 SCC (L&S) 109]).

31. Grant of an interim relief in regard to the nature and extent thereof depends upon the facts and circumstances of each case as no straitjacket formula can be laid down. There may be a situation wherein the respondent-defendant may use the suit property in such a manner that the situation becomes irretrievable. In such a fact situation, interim relief should be granted (vide M. Gurudas v. Rasaranjan [(2006) 8 SCC 367 : AIR 2006 SC 3275] and Shridevi v. Muralidhar [(2007) 14 SCC 721]). Grant of a temporary injunction is governed by three basic principles, i.e. prima facie case, balance of convenience; and irreparable injury, which are required to be considered in a proper perspective in the facts and circumstances of a particular case. But it may not be appropriate for any court to hold a mini-trial at the stage of grant of temporary injunction [vide S.M.

Dyechem Ltd. v. Cadbury (India) Ltd. [(2000) 5 SCC 573 : AIR 2000 SC 2114] and Anand Prasad Agarwalla [(2001) 5 SCC 568] , SCC p. 570, para 6].

37. Thus, the law on the issue emerges to the effect that interim injunction should be granted by the Court after considering all the pros and cons of the case in a given set of facts involved therein on the risk and responsibility of the party or, in case he loses the case, he cannot take any advantage of the same. The order can be passed on settled principles taking into account the three basic grounds i.e. prima facie case, balance of convenience and irreparable loss."

15. Be that as it may, here the appellant is claiming the declaration of only 1/4th share in the property in dispute on the ground that the property belongs to a joint Hindu family and the property was purchased during lifetime of father of the appellant in the name of respondent no.1, who was homemaker. This Court under Section 114 of Indian Evidence Act may presume the existence of fact that the property purchased by Hindu husband in the name of his spouse, who is homemaker and does not have independent source of income, will be the property of family, because in common course of natural event Hindu husband purchases a property in the name of his wife, who is homemaker and does not have any source of income for the benefit of family. Therefore, in such case prima facie the property is joint Hindu family property and protection of property from transferring to a third party is necessary, consequently this Court finds that the Court below, while passing the impugned order dated 25.04.2023 has not applied his mind despite being a prima facie case, and in such case protection is necessary against further transferring the property or changing the nature of same, if same is not protected, there are chances the property may be transferred or nature of property may be changed in that case even if the appellant's suit is decreed, then he will suffer irreparable loss and injury."

27. Once again the very same issue came up before the Apex Court in the matter of ***Sk. Golam Lalchand Vs. Nandu Shaw and Ors. AIR 2024 SC 4193.*** Relevant paragraph of the said judgment is being quoted hereinbelow:

"*24. The suit property which is undivided is left with the co-owners to proceed in accordance with law to get their shares determined and demarcated before making a transfer.*"

28. This issue again engaged the attention of Hon'ble Apex Court in the matter of ***Ramakant Ambalal Choksi Vs. Harish Ambalal Choksi and Ors. MANU/SC/1270/2024*** and the Court has held as under:

"45. Quite often, in these types of litigations, it is sought to be argued that an injunction restraining the defendant from transferring the suit property was absolutely unnecessary as no post-suit transfer by the defendant can adversely affect the result of the suit because of the provisions of Section 52 of the T. P. Act whereunder all such transfers cannot but abide by the result of the suit. It is true that the doctrine of lis pendens as enunciated in Section 52 of the T. P. Act takes care of all pendente lite transfers; but it may not always be good enough to take fullest care of the plaintiffs interest vis-a-vis such a transfer. We may give one appropriate illustration of a suit for specific

performance of contract based on an agreement of sale. In a suit wherein the plaintiff prays for specific performance and if the defendant is not restrained from selling the property to a third party and accordingly a third party purchases the same bona fide for value without any notice of the pending litigation and spends a huge sum for the improvement thereof or for construction thereon, the equity in his favour may intervene to persuade the Court to decline, in the exercise of its discretion, the equitable relief of specific performance to the plaintiff at the trial and to award damages only in favour of the plaintiff. It must be noted that Rule 1 of Order 39 of the Code clearly provides for interim injunction restraining the alienation or sale of the suit property and if the doctrine of lis pendens as enacted in Section 52 of the T. P. Act was regarded to have provided all the panacea against pendente lite transfers, the Legislature would not have provided in Rule 1 for interim! injunction restraining the transfer of suit property. Rule 1 of Order 39, in our view, clearly demonstrates that, notwithstanding the Rule of lis pendens in Section 52 of the T. P. Act, there can be occasion for the grant of injunction restraining pendente lite transfers in a fit and proper case. (See: Sm. Muktakesi Dawn and Ors. v. Haripada Mazumdar and Anr. reported in AIR 1988 Cal 25)."

29. From the perusal of aforesaid judgments, it is apparently clear that for granting interim injunction, three factors are required to be considered i.e. prima facie case, balance of convenience and irreparable loss. So far as present case is concerned, undisputedly, it is a case of partition suit and plaintiff and defendants both are having equal right over the property in dispute unless it is divided as a consequence of partition suit. Therefore, to protect the property, undisputedly, there is prima facie case and balance of convenience in favour of plaintiff as well as defendants also. Though there is protection of Section 52 of Transfer of Property Act, but in case interim injunction is not granted, that will create multiplicity of litigations. Therefore, at this stage, in case property is protected till the disposal of partition suit, that would be in the interest of larger justice.

30. So far as irreparable loss is concerned, transfer of property during the pendency of litigation may not be irreparable loss, but certainly would create unnecessary litigations resulting into so many complications in execution of decree granted in the present partition suit. There is full likelihood of raising new construction or alteration over the property in dispute by subsequent purchaser and that may absolutely change the nature of property resulting into irreparable loss. Therefore, interim protection is required till the disposal of partition suit.

31. From the conduct of the parties, it is apparently clear that on one hand, plaintiff has executed two agreement to sale and on the other hand, defendants have executed eight sale deeds, therefore, in case interim injunction is not granted, the whole purpose of filing of partition suit would be defeated and even in case of final decree, it would be next to difficult to get the decree executed.

32. Apex Court in so many judgments referred hereinabove has taken the same view that under such facts, it is required on the part of the Court to grant interim protection to protect the property.

33. So far as order impugned is concerned, it has only been passed basically on two grounds, the first is

concealment of fact and the second is non impleadment of subsequent purchasers, which is absolutely unsustainable in view of discussion made hereinabove.

34. Therefore, in view of facts and circumstances of the case, impugned judgment and order dated 16.09.2024 and decree dated 19.09.2024 passed in Original Suit No. 356 of 2023 are bad and hereby set aside.

35. Both the parties are directed to maintain the status quo as on date with regard to nature of property. Both the parties are further directed not to execute any agreement to sale or sale deed and also not create third party right till the final disposal of Original Suit No. 356 of 2023.

36. With the aforesaid observation, Appeal is hereby **allowed.**

37. No order as to costs.

(2025) 6 ILRA 83
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 11.06.2025

BEFORE

THE HON'BLE SAURABH LAVANIA, J.
THE HON'BLE SYED QAMAR HASAN RIZVI, J.

P.I.L. No. 638 of 2025

Deebandhu Samgra Swasthya Avam Siksha Shodh Sansthan ...Petitioner
Versus
U.O.I. & Ors. ...Respondents

Counsel for the Petitioner:
Moti Lal Yadav, Arti Rawat

Counsel for the Respondents:
A.S.G.I., C.S.C., Syed Mohammad Haider Rizvi

Public Interest Litigation – Maintainability – Requirement of disclosure of credentials – Rule 1(3-A), Chapter XXII, Allahabad High Court Rules, 1952 – PIL filed by a Trust through its Chairman challenging alleged irregularities in NEET-2025 Physics paper – No disclosure of credentials in precise and specific manner – No material to show espousal of cause of any marginalized section of society – Absence of authorization/resolution of Trust permitting Chairman to institute proceedings – Petition held not maintainable. (Paras 23, 28 to 32)

HELD:
The requirement of disclosure of credentials from the petitioner is indeed necessary to bring on record the complete background of the person who is coming before the Court. This information helps to establish the petitioner's credibility, locus standi, and his genuineness. Providing credentials also demonstrates that the petitioner has the necessary expertise, knowledge and understanding of the gravity and seriousness involved in the matter. The said information should not be vague and indefinite. The word 'credentials' connotes the qualities and the experience of a person that make him suitable for doing a particular job. (Para 23)

Thus, this Court has no hesitation to note that the petitioner has not disclosed credentials in the manner as required under the relevant Rules. Even otherwise, there is nothing on record to indicate that the petitioner has preferred the instant petition espousing the cause of any member of a disadvantageous section of the society or any person, who is downtrodden or for certain disabled person, who is unable to approach the Court or that the matter in question relates to infringement or denial of any basic human right to such marginalized section of the society which enables the petitioner to espouse their cause. (Para 28)

In the case of Balwant Singh Chaufal (Supra), the Hon'ble Supreme Court has observed that to

save the misuse of the process of the Court in the name of Public Interest Litigation, the Hon'ble Supreme Court has consistently pressed for the proper disclosure of the credential of the petitioner. Furthermore, under the Allahabad High Court Rules, 1952, the words 'should precisely and specifically state' as has been envisaged, itself indicates the importance and necessity of the disclosure of the credentials by the petitioner. The same cannot be ignored/overlooked by the Courts before entertaining a petition as Public Interest Litigation. (Para 30)

Upon due consideration of the facts in the light of the law laid down by Hon'ble Supreme Court, as discussed hereinabove, this Court is of the view that since credentials, as required under Sub-Rule (3-A), Rule 1 of Chapter XXII of the Allahabad High Court Rules, 1952, have not been disclosed as required nor it has been filed on behalf of the marginalized section of the society, poor, deprived, illiterate or the disabled persons, who cannot approach the Court independently for redressal of the legal wrong or the injury caused to them. (Para 31)

In addition to above, no document is on record to show that the person claiming himself to be the Chairman of the Trust is authorized to file the present writ petition on behalf of the Trust. The law on the subject is well settled that in absence of any resolution or the proof of authorization the petition is not entertainable. (Para 32)

Appeal dismissed. (E-14)

List of Cases cited:

1. St. of Uttaranchal Vs Balwant Singh Chaufal, reported in (2010) 3 SCC 402; (2010) AIR SCW 1029

2. Pankaj Srivastava Vs High Court of Judicature at Allahabad, reported in (2014) 3 UPLBEC 1832

3. Ashok Kumar Pandey Vs St. of W.B. & ors., reported in AIR 2004 SC 280

4. Bandhua Mukti Morcha Vs U.O.I. & ors., reported in 1984 (3) SCC 161

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

1. Heard Shri Moti Lal Yadav and Ms. Arti Rawat, learned counsels for the petitioner, Shri Indrajeet Shukla, learned Additional Chief Standing Counsel for the the opposite party no.3, Shri S.B. Pandey, learned Senior Advocate-cum-Deputy Solicitor General of India assisted by Shri Varun Pandey, learned counsel for opposite party no.1/Union of India and Shri Syed Mohammad Haider Rizvi, learned counsel for the opposite party no.4.

2. Notice to the opposite party no.2/National Testing Agency, in view of the order proposed to be passed, is dispensed with.

3. By means of the present petition, the petitioner has sought multiple reliefs in the nature of writ of mandamus which are as under :-

"i. Issue a writ in the nature of certiorari thereby stay/ quash the physics paper and also stay the upcoming result dated 14/06/2025 of NEET-2025 conducted on 04/05/2025 contained as ANNEXURE NO. 8 and 9 in this writ petition.

ii. Issue writ order or direction in the nature of mandamus directing the opposite party NO. 2 i.e. National Testing Agency (NTA) to reconduct the physics question paper of NEET 2025. In the interest of students at large.

iii. Issue a writ order or direction in the nature of mandamus directing the opposite party NO 1 to 4 to publish all the results related to NEET, JEE, IIT etc. in

public domain of all examinations along with response sheet as per the provisions of education policy 1986.

iv. issue a writ order direction in the nature of mandamus directing the opposite party NO 1 to pass an appropriate order for conducting a detailed inquiry of manipulation of physics question paper of NEET 2025 conducted on 04/05/2025 and take appropriate legal actions against the guilty persons involved in this scam.

v. issue a writ order or direction in the nature of mandamus directing the opposite party NO I to pass an appropriate order for conducting a detailed inquiry on huge variation in obtained marks of students belonging to different states of NEET 2024 results of all the states of the nation.

vi. Issue a writ order or direction in the nature of mandamus directing the opposite parties / competent respondents to abolish 15% All India Quota in state seats for saving the states from abnormal variations in NEET results which is against the mandate of article 14 of the constitution of India."

4. Precisely, the case of the petitioner is that the petitioner is a registered trust namely Deenbandhu Samgra Swasthya Avam Siksha Shodh Sansthan having its registered office at 17/675 Indira Nagar, Lucknow.

5. It has been stated that the aim and object of the trust is to promote modern education in the area of science, medicine and technology. The petitioner-Trust has annexed the copy of the Trust Deed as Annexure No. 1 to the writ petition and the Article 3 of the said deed provides the following aim and the objects for which the petitioner's body has been established is as under :-

"*ARTICLE 3.*

AIMS AND OBJECTS FOR WHICH THIS FOUNDATION IS ESTABLISHED ARE:

3.1 To establish, run, support and grant aid/or others financial assurance to schools, Colleges, Hospitals, Medical Institutes, Technological Institutes Nursing Institutes, Dispensaries, Maternity Homes, Child Welfare Centre, Libraries, Reading Rooms, Laboratories, Research Centre and other Institutions of the like nature in India.

3.2 To create awareness regarding the need for National as well as International Integration and Co-operation through self employed experienced, knowledgeable and qualified persons in the area of motivation willing to promote social work.

3.3 To establish a research station for testing the air, water, noise, soil, nuclear radiation and food to help the activists in creating and establishing voluntary and non-government body for promotion of open non-formal education through spiritual discourses for the benefit of humankind.

3.4. To suggest national and international leads, alternatives and approaches to the solution for problems relating to health, environment, peace and justice etc.

3.5. To collaborate, officiate and federate with other government agencies and bodies for implementing the projects of development nature all over the world.

3.6. To provide education that prepare students for social responsibility and communicate effectively and develop a global awareness and sensitivity for a better global understanding of world peace and unity.

3.7. To promote and research the cause of National Integration and unity of India and to fight against the forces of separatism in India."

6. Contention of learned counsel for the petitioner is that the Central Government took a decision to conduct a common examination of the aspirants/candidates for the admission in MBBS Course in all the medical colleges of the country through National-Eligibility-cum-Entrance-Test (in short "NEET") in place of All India Pre-Medical Test for which the Central Government has also taken a decision to conduct the NEET Examination under the umbrella of National Testing Agency (in short "NTA") which is registered under the Societies Registration Act, 1860. The NTA was set up by the Ministry of Education by a cabinet decision dated 10.11.2017.

7. It is also stated that on behalf of the petitioner that since 2017 the aforesaid examination was conducted by the authorities concerned without any interference of the outsider in setting the NEET question papers.

8. Submission of learned counsel for the petitioner giving rise to the present petition is that certain questions in the question paper were included in the aforesaid examination are from outside the syllabus. He submitted that questions can never be out of syllabus and the paper-setters must not be ignorant of the same.

9. It is further submitted by the learned counsel for the petitioner that the questions which were asked in the aforesaid examination were taught by some coaching institutes and the aspirants belonging to that coaching institutes would only be benefited.

10. Learned counsel for the petitioner has quoted certain questions in the writ petition with the allegations that the said questions are erroneously framed and solved problems by 'ALLEN' coaching institute and posted by it on internet on 21.07.2023 and again incidentally 'ALLEN' and 'AKASH' coaching institutes in their key solutions have exactly followed the same errors. It has been very categorically submitted that the paper-setters of the NEET Examination 2025 have taken the said questions from the materials posted by the coaching institutes on the internet without applying their minds.

11. Shri Indrajeet Shukla, learned Additional Chief Standing Counsel appearing for the the respondent no.3, at the very outset, has raised the preliminary objection regarding maintainability of the present Public Interest Litigation, mainly on following grounds :-

(i) Present Public Interest Litigation has been filed by a Trust through its chairman without any resolution or authority in favour of the chairman to file the same.

(ii) The credentials and other details have not been explained as required under Sub-Rule (3-A) of Rule 1 of Chapter XXII of Allahabad High Court Rules, 1952 which has been amended in the light of the judgment passed by Hon'ble Supreme Court in the case of **State of Uttaranchal**

Vs. Balwant Singh Chaufal, reported in **(2010) 3 SCC 402; (2010) AIR SCW 1029.**

12. Contention of learned Additional Chief Standing Counsel is that the present writ petition is neither entertainable nor maintainable for want of compliance of Sub-Rule (3-A) of Rule 1 of Chapter XXII of Allahabad High Court Rules, 1952.

13. He further contends that the present writ petition is a proxy petition filed with material concealment of facts and as such, the same is liable to be dismissed on the aforesaid grounds.

14. Shri Syed Mohammad Haider Rizvi, learned counsel for the Director General of Medical Education and Training, Uttar Pradesh, Lucknow (opposite party no.4) also opposed the present Public Interest Litigation on the ground that the petitioner has not disclosed the basis of challenging the question as quoted in the writ petition and nor has made any categorical statement that it has ever done any research work on the subject matter involved in the Public Interest Litigation before filing the same.

15. He further raised objection regarding locus standi of the petitioner to raise the dispute involved in the present petition by way of Public Interest Litigation.

16. Heard learned counsels appearing for the parties and perused the records.

17. Before entering into the merits of the case, the preliminary objection regarding the maintainability of the writ petition as raised by learned counsel appearing for the respondents is to be dealt with first.

18. On the question of maintainability of the present petition for want of non-disclosure of the credentials as required under Sub-Rule (3-A), Rule 1 of Chapter XXII of the Allahabad High Court Rules, it would be pertinent to note that the aforesaid Rule has been framed in exercise of the Rule making power of the High Court, which is of quasi-legislative nature and has been incorporated as an amendment to Rule 1 of XXII with effect from 01.05.2010 and the validity of the same has been tested and upheld by the Division Bench of this Court in the case of **Pankaj Srivastava Versus High Court of Judicature at Allahabad,** reported in **(2014) 3 UPLBEC 1832**.

19. For ready reference, the said Rule is reproduced as under:

"(3-A) In addition to satisfying the requirements of the other rules in this chapter, the Petitioner seeking to file a Public Interest Litigation, should precisely and specifically state, in the affidavit to be sworn by him giving his credentials, the public cause he is seeking to spouse; that he has no personal or private interest in the matter; that there is no authoritative pronouncement by the Supreme Court or High Court on the question raised; and that the result of the litigation will not lead to any undue gain to himself or anyone associated with him, or any undue loss to any person, body of persons or the State."

20.The aforesaid Rule requires a person espousing a public cause, to file an affidavit narrating his credentials in precise

and specific manner and also the public cause which is sought to be espoused.

21. The word 'credential' has a specific connotation and meaning. It has been defined in Black's Law Dictionary, 8th Edition as "*1. A document or other evidence that proves one's authority or expertise. 2. A testimonial that a person is entitled to credit or to the right to exercise official power. 3. The letter of credence given to an ambassador or other representative of a foreign country. 4. Parliamentary law. Evidence of a delegate's entitlement to be seated and vote in a convention or other deliberative assembly."*

22. Moreover, the Oxford English-English-Hindi Dictionary, 2nd Edition, explains credentials as the quality which makes a person perfect for the job or a document that is a proof that he has the training and education necessary to prove that he is a person qualified for doing the particular job.

23. The requirement of disclosure of credentials from the petitioner is indeed necessary to bring on record the complete background of the person who is coming before the Court. This information helps to establish the petitioner's credibility, locus standi, and his genuineness. Providing credentials also demonstrates that the petitioner has the necessary expertise, knowledge and understanding of the gravity and seriousness involved in the matter. The said information should not be vague and indefinite. The word 'credentials' connotes the qualities and the experience of a person that make him suitable for doing a particular job.

24. The Hon'ble Supreme Court in the case of **Ashok Kumar Pandey versus State of West Bengal & Others,** reported in **AIR 2004 SC 280**, has been pleased to lay down the parameters to be considered while entertaining a Public Interest Litigation, the extract of relevant para 14 is reproduced below:

"14. The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others: and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motive, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the, Executive and the Legislature?"

25. At this stage, it is worth mentioning that the Hon'ble Apex Court in the case of **Balwant Singh Chaufal & Ors. (Supra)** has dealt with the issues of abuse of public interest litigation and the remedial measures by which its misuse can be prevented or curbed. The relevant portion of the said judgement is reproduced below:

"161. Unfortunately, of late, it has been noticed that such an important jurisdiction which has been carefully carved out, created and nurtured with great care and caution by the courts, is being blatantly abused by filing some petitions

with oblique motives. We think time has come when genuine and bona fide public interest litigation must be encouraged whereas frivolous public interest litigation should be discouraged.

162. In our considered opinion, we have to protect and preserve this important jurisdiction in the larger interest of the people of this country but we must take effective steps to prevent and cure its abuse on the basis of monetary and non- monetary directions by the courts."

26. It would not be out of place to note that the Hon'ble Apex Court in the case of **Bandhua Mukti Morcha v. Union of India & Ors.,** reported in **1984 (3) SCC 161,**entertained a petition of even an unregistered association espousing the cause of over downtrodden or its members observing that cause of "little Indians" can be established/espoused by any person having no interest in the matter. In the said public interest litigation where certain workmen were living in bondage and inhuman conditions this cause was brought to the notice of the Court. The Apex Court noticed that it was not expected by the Government that it should raise preliminary objection that no fundamental rights of the petitioner or the workmen on whose behalf the petition has been filed, have been infringed.

27. It is in the aforesaid backdrop that it would be seen that the concept of "person aggrieved", was diluted in context of public interest litigation which primarily have been divided in three phases. The Apex Court in the case of **Balwant Singh Chaufal** (Supra) in Para-43 of the said report have noticed the three phases of public interest litigation which is being reproduced hereinafter:-

"43. In this judgment, we would like to deal with the origin and development of public interest litigation. We deem it appropriate to broadly divide the public interest litigation in three phases:

- Phase I.--It deals with cases of this Court where directions and orders were passed primarily to protect fundamental rights under Article 21 of the marginalised groups and sections of the society who because of extreme poverty, illiteracy and ignorance cannot approach this Court or the High Courts.

- Phase II.--It deals with the cases relating to protection, preservation of ecology, environment, forests, marine life, wildlife, mountains, rivers, historical monuments, etc. etc.

- Phase III.--It deals with the directions issued by the Courts in maintaining the probity, transparency and integrity in governance."

28. Thus, this Court has no hesitation to note that the petitioner has not disclosed credentials in the manner as required under the relevant Rules. Even otherwise, there is nothing on record to indicate that the petitioner has preferred the instant petition espousing the cause of any member of a disadvantageous section of the society or any person, who is downtrodden or for certain disabled person, who is unable to approach the Court or that the matter in question relates to infringement or denial of any

basic human right to such marginalized section of the society which enables the petitioner to espouse their cause.

29. Dealing with the objection raised by the learned counsel for the opposite party no. 4 on the question of locus standi, this Court is of the view that the common rule of locus standi is that the person who suffers a legal injury or whose legal right is infringed, alone has locus standi to invoke the writ jurisdiction to avoid miscarriage of justice. The said rule has been relaxed by the Hon'ble Supreme Court in catena of judgments in the cases where the grievance is raised before the Court on behalf of poor, deprived, illiterate or the disabled persons, who cannot approach the Court independently for redressal of the legal wrong or the injury caused to them on account of violation of any constitutional or legal right. On due consideration of the factual matrix of the instant case this Court is of the definite opinion that the present Public Interest Litigation/petition does not fall within exceptions mentioned herein-above.

30. In the case of **Balwant Singh Chaufal** (Supra), the Hon'ble Supreme Court has observed that to save the misuse of the process of the Court in the name of Public Interest Litigation, the Hon'ble Supreme Court has consistently pressed for the proper disclosure of the credential of the petitioner. Furthermore,under the Allahabad High Court Rules, 1952, the words ***'should precisely and specifically state'*** as has been envisaged, itself indicates the importance and necessity of the disclosure of the credentials by the petitioner. The same cannot be ignored/overlooked by the Courts before entertaining a petition as Public Interest Litigation.

31. Upon due consideration of the facts in the light of the law laid down by Hon'ble Supreme Court, as discussed herein-above, this Court is of the view that since credentials, as required under Sub-Rule (3-A), Rule 1 of Chapter XXII of the Allahabad High Court Rules, 1952, have not been disclosed as required nor it has been filed on behalf of the marginalized section of the society, poor, deprived, illiterate or the disabled persons, who cannot approach the Court independently for redressal of the legal wrong or the injury caused to them.

32.In addition to above, no document is on record to show that the person claiming himself to be the Chairman of the Trust is authorized to file the present writ petition on behalf of the Trust. The law on the subject is well settled that in absence of any resolution or the proof of authorization the petition is not entertainable.

33.In the light of the discussion as made herein-above, the present Public Interest Litigation is not liable to be entertained. Accordingly, it is ***dismissed***. No order as to costs.

34. Before parting, it would be appropriate to make it clear that this Court has declined to entertain the present Public Interest Litigation for the reasons narrated herein-above. We clarify that we have not expressed any opinion on the merits of the case.

(2025) 6 ILRA 91
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 11.06.2023

BEFORE

THE HON'BLE PRAKASH PADIA, J.

Matters Under Article 227 No. 6055 of 2025

Jakhoo Ram ...Petitioner
Versus
Santosh & Ors. ...Respondent

Counsel for the Petitioner:
Sri Santosh Kr. Singh Paliwal

Counsel for the Respondent:

Civil Law - Injunction - Constitution of India, 1950 - Article 227 - Petitioner preferred Original Suit and in the said suit, an interim injunction was granted - respondents filed Misc. Appeal - appellate Court cancelled the interim injunction but no further direction was given to pass fresh order on the injunction application - petition disposed of directing the Court below before whom the Original Suit was pending to decide the interim injunction application afresh after providing opportunity of hearing to all the parties concerned (Para 5, 6).

Allowed. (E-5)

(Delivered by Hon'ble Prakash Padia, J.)

1. The petitoner is a plaintiff and he preferred Original Suit No.1615 of 2013 in the Court of Civil Judge (Senior Division) Azamgarh. In the aforesaid suit, an interim injunction was granted in favour of the petitioner on 21.08.2023. Aggrieved with the aforesaid order, the respondents had filed Misc.Appeal No.73 of 2023.

2. It is argued by learned counsel for the petitioner that the appellate Court has cancelled the interim injunction granted by the trial Court vide order dated 9.05.2025 but no further direction was given to the Court before whom the matter is pending to pass fresh order on the injunction application and prays that the Court before whom the matter is pending be directed to pass fresh order on the injunction application and the parties be directed to maintain status quo till the order passed on the injunction application.

3. In view of the order proposed to be passed herein, no useful purpose would be served by putting the opposite party to notice and keeping this petition pending before this Court. However, in case the opposite party feels aggrieved by the order his/her right to seek modification/variation of the order is being kept reserved.

4. Heard learned counsel for the petitioner and perused the record.

5. In the facts and circumstances of the case, the present petition is disposed of directing the Court below before whom the Original Suit No.1615 of 2013is pending to decide the interim injunction application afresh within a period of two months from the date of production of certified copy of this order but after providing opportunity of hearing to all the parties concerned.

6. Till 31.07.2025 or till the decision taken on the stay application whichever is earlier, the interim order granted by the trial Court on 21.08.2023 will continue.

(2025) 6 ILRA 92
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 09.06.2023

BEFORE

THE HON'BLE ROHIT RANJAN AGARWAL, J.

Matters Under Article 227 No. 14008 of 2024 (Civil)

Tara Chandra Gupta ...Petitioner
Versus
Dr. Shakti Basu & Ors. ...Respondents

Counsel for the Petitioner:
Sri Bhuwan Raj, Sri Shiv Om Vikram Singh Chauhan, Sri Vishnu Gupta (Sr. Adv.), Sri Manish Goyal (Sr. Adv.)

Counsel for the Respondents:
Sri Nitin Yasharth, Sri Yasharth, Sri V.K. Upadhyay (Sr. Adv.)

A. Civil Law - Partition suit - Preliminary decree - Modification of shares on death of co-sharer - Civil Procedure Code, S. 97 - Scope of Section 97 CPC - Power of Court to vary shares before final decree - Pending final decree, the shares are liable to be varied on account of intervening events such as death of a party or change of law, and though Section 97 CPC provides an appeal against a preliminary decree, the said provision would not be a bar to file an application for amendment of a decree. Remedy to question the preliminary decree is under Section 97 CPC by filing appeal and not by making any application for recalling the order. (Para 59-61)

B. Chandi Das Basu filed Suit No. 254 of 1976 seeking partition by metes and bounds of ancestral properties. A preliminary decree determining the shares of co-sharers was passed on 27.11.1979, which was affirmed in First Appeal. For execution, Final Decree Case No. 111 of 1980 was instituted by Chandi Das Basu. On 20.06.1991, defendant no. 1, Ajay Kumar Basu (brother of Chandi Das Basu) died. On 17.02.1993 Chandi Charan Basu, brother of Chandi Das Basu, died issueless and intestate. On 27.03.1995, Chandi Das Basu executed a registered agreement to sell in favour of Tara Chandra Gupta (present petitioner), his own share and also the share of his deceased brother Chandi Charan Basu. The agreement disclosed existence of pending litigation and preliminary decree. In the year 1997, Chandi Das Basu died. His legal heirs filed substitution application in Final Decree Case No. 111/1980 on 01.07.1997, but never pressed it. On 23.08.1997 he executed another agreement to sell in favour of Naseem Uddin and Safiq Ahmad, despite the earlier 1995 agreement in favour of Tara Chandra Gupta. On 28.09.1998, Tara Chandra Gupta filed suit for specific performance against heirs of Chandi Das Basu and Naseem Uddin & Safiq Ahmad. It was decreed on 20.04.2010. First Appeal was dismissed on 22.10.2017; Second Appeal was dismissed on 28.02.2020; SLP dismissed by Supreme Court on 14.09.2021. Tara Chandra Gupta's right to obtain the sale deed attained finality. On 25.04.2009, Amitabh Basu, one of the sons of late Ajay Kumar Basu (original defendant no. 1) filed Application 65-C in Final Decree Case No. 111 of 1980 seeking variation in shares of co-sharers after death of Chandi Charan Basu (who had died issueless). On 07.05.2012 Application 65-C was allowed; preliminary decree modified. On 04.02.2021 Tara Chandra Gupta filed Application 72-C to be impleaded in Final Decree Case No. 111 of 1980; which was allowed on 20.07.2021. On 13.08.2021 Tara Chandra Gupta filed Application 86-C to recall/set aside the order dated 07.05.2012 modifying the preliminary decree. Tara Chandra Gupta argued that order dated 07.05.2012 was ex parte, passed without notice to all necessary parties including heirs of Chandi Das Basu. On 08.12.2021, the sale deed was executed from the Executing Court in favour of Tara Chandra Gupta in respect of

agreement to sell executed by Chandi Das Basu. Courts below rejected Tara Chandra Gupta's recall plea holding that the order of 07.05.2012 was not ex parte, parties were duly represented. Tara Chandra Gupta invoked Article 227 of the Constitution challenging orders rejecting his recall application 86-C. *Held:* Petitioner purchased knowing the litigation and after nine years of modification of the preliminary decree cannot allege the order dated 07.05.2012 as ex-parte. After the death of Chandi Charan Basu no formal application for amendment was moved by his heirs, the application by the legal heirs of defendant no. 1 was rightly allowed on 07.05.2012; twice publication was made for appearance of the heirs of the plaintiff, who after filing substitution application in 1997 stayed away from the litigation and even did not contest the specific performance suit. The order dated 07.05.2012 was therefore not ex-parte, and the remedy to question the preliminary decree is under Section 97 CPC by filing appeal and not by making any application for recalling the order dated 07.05.2012. Petitioner cannot claim the benefit of Section 41 of the Transfer of Property Act as he knew the fact that by preliminary decree dated 27.11.1979, the shares of the parties have been defined and plaintiff-Chandi Das Basu could only transfer his 5/48 and 5/24 share of property mentioned in Schedule-A & B, but has also entered into an agreement for the share of Chandi Charan Basu without there being any modification of preliminary decree. (Para 58, 61)

Dismissed. (E-5)

(Delivered by Hon'ble Rohit Ranjan Agarwal, J.)

1. Heard Sri Vishnu Gupta, learned Senior Counsel along with Sri Manish Goyal, learned Senior Advocate assisted by Shiv Om Vikram Singh Chauhan for the petitioner and Sri V.K. Upadhyay, learned Senior Advocate along with Sri Yasharth, learned counsel for respondent no.7.

2. Present writ petition filed under Article 227 of the Constitution of India questions the order dated 23.09.2024 passed in Civil Revision No.92 of 2024 by Additional District Judge/ Special Judge (E.C. Act), Prayagraj, and order dated 29.05.2024 passed by Judge, Small Cause Court, Prayagraj on Application 86-C for recall of the order dated 07.05.2012 passed in F.D. Case No.111 of 1980 for modifying the preliminary decree passed in Original Suit No.254 of 1976.

3. Facts, in brief, are that one Shyama Charan Basu had two sons, Shrish Chandra Basu and BamanDas Basu. He was employed as a headmaster and later as Registrar at Lahore, and after his death Shrish Chandra Basu and Baman Das Basu settled at Allahabad (now Prayagraj). Shrish Chandra Basu was a District Judge and died in the year 1918 while in service. BamanDas Basu was a medical graduate and was employed as a Major in the Medical Corps in the Indian Army. Both the brothers lived together during their lifetime at 63 Bahadurganj, Allahabad.

4. After death of Shrish Chandra Basu, his sons and grandsons and after the death of Major Baman Das Basu, his son Dr. L.M. Basu continued to live at 63 Bahadurganj. In 1931, L.M. Basu shifted at 249, Leader Road, and since then the branch of BamanDas Basu is not in the occupation of House No.63 Bahadurganj.

5. Shrish Chandra Basu had two sons, Dr. S.N. Basu and Ramendranath Basu. During his lifetime, Shrish Chandra Basu had purchased other immovable property given in Schedule-B to the plaint.

S.N. Basu had died issueless in the year 1967, however, he executed a Will bequeathing his share to the three sons of Ramendranath Basu and lifetime interest in favour of Km. Deepti Basu in respect of House No.63 Bahadurganj.

6. Ramendranath Basu had three sons from his first wife, namely, Ajay Kumar Basu, Chandi Charan Basu and Chandi Das Basu. After death of his first wife, he re-married and had one son Gopal Chandra Basu and two daughters Preeti Basu and Dipti Ghosh. Share of Baman Das Basu was inherited by his son Lalit Mohan Basu and thereafter by his son Deepankar Basu.

7. Chandi Das Basu son of Late Ramendranath Basu filed Suit No.254 of 1976 before the Court of Civil Judge (Senior Division), Allahabad seeking partition by meets and bounds of Property No.63 Bahadurganj, Allahabad described in Schedule-A to the plaint and claimed 5/48 share, while also claimed relief for affecting partition of immovable property detailed in Schedule-B, claiming 5/24 share.

8. According to the plaint, Shrish Chandra Basu and Baman Das Basu had half share in Property No.63 Bahadurganj, while the property described in Schedule-B of the plaint was exclusively purchased by Shrish Chandra Basu during his lifetime which was to be succeeded by his branch i.e. the heirs of Lt. Ramendranath Basu.

9. By the judgment dated 27.11.1979, Civil Judge (Senior Division), Allahabad allotted 5/48 share in property Schedule-A to plaintiff Chandi Das Basu and 5/24 share in Schedule-B. While, defendant no.6- Deepankar Basu was allotted half share in the property mentioned in Schedule-A. Further, a preliminary decree was prepared as regards the share of all the co-sharers of the property mentioned in Schedule-A and B. Chandi Das Basu filed a Final Decree Case No.111 of 1980.

10. Defendant no.1- Ajay Kumar Basu filed First Appeal No.162 of 1980 challenging the preliminary decree before this Court against the order of the trial Court for directing the rendition of accounts, but did not challenge the share determined in the preliminary decree. The appeal was partly allowed and the decree passed by the trial Court for partition of plaintiff's 5/48 share mentioned in Schedule-A and 5/24 share in property mentioned in Schedule-B except House No.71, Bahadurganj and Plot No.27, Bai Ka Bagh, Allahabad was affirmed subject to plaintiff making good the deficiency of court fees amounting to Rs.966/-. Further, the decree passed in favour of defendant no.6 was also affirmed.

11. Amin report dated 13.05.1985 was confirmed by the trial Court, but on objections of one of the defendants, Ajay Kumar Basu, the order was recalled on 12.02.1987. Chandi Das Basu challenged the said order through Civil Revision No.363 of 1987 before this Court. An order of status quo was passed directing the parties not to alienate the property.

12. On 20.06.1991, Ajay Kumar Basu died leaving behind his wife, four sons and three daughters. On 17.02.1993, Chandi Charan Basu also died issueless. A registered agreement to sell was executed by Chandi Das Basu on 27.03.1995 in favour of petitioner- Tara Chandra Gupta in respect of his share and also of his brother

Chandi Charan Basu, in respect of House Nos.63, 65 and 67, Bahadurganj for Rs.4 lakhs. Rs.50,000/- was paid in advance, and the balance amount was to be paid at the time of execution of the sale deed. Amitabh Basu, legal heir of Ajay Kumar Basu filed Contempt No.655 of 1995 against Chandi Das Basu for flouting the orders of this Court passed in Civil Revision No.363 of 1987.

13. On 09.11.1995, Civil Revision No.363 of 1987 was dismissed. An S.L.P. No.8939 of 1996 was filed by Chandi Das Basu before Hon'ble Apex Court which was dismissed on 09.12.1996 and order dated 12.02.1987 passed by Civil Judge asking for fresh amin report was confirmed.

14. On the other hand, Dipankar Basu sold half of his share in favour of Janhit Sahkari Avas Samiti, which thereafter transferred the same to Motilal Gupta, who thereafter instituted proceedings for preparation of final decree which was registered as Final Decree Case No.33 of 1997.

15. On 09.05.2005, Civil Judge (Senior Division) issued direction carving out share of Dipankar Basu by calling second amin report. The said order was challenged through civil appeal before the District Judge by wife of Ajay Kumar Basu. The said appeal was allowed by order dated 12.11.2008, and the matter was remanded back to the trial Court for fresh amin report which is still pending.

16. In the meantime, Amitabh Basu one of the legal heirs of Ajay Kumar Basu filed an application 65-C on 25.04.2009 for variation in share of co-sharers after the death of Chandi Charan Basu who had died issueless and intestate. On 07.05.2012, application 65-C was allowed and preliminary decree was modified.

17. In the meantime, Chandi Das Basu died in the year 1997 and his legal heirs Vishwajit Basu, Samarjit Basu and Smt. Iti Rakshit entered into an agreement to sell with one Naseem Uddin and Safiq Ahmad in respect of share of Chandi Das Basu and Chandi Charan Basu, for which, already an agreement to sell was registered in favour of petitioner- Tara Chandra Gupta on 27.03.1995.

18. Tara Chandra Gupta on 28.09.1998 filed a suit for specific performance which was registered as Suit No.520 of 1998 against Naseem Uddina, Safiq Ahmad and legal heirs of Chandi Das Basu. It was decreed on 20.04.2010. A First Appeal No.74 of 2010 was filed by Naseem Uddin and Safiq Ahmad which was dismissed on 22.10.2017. Against the said judgment, Naseem Uddin and Safiq Ahmad filed Second Appeal No.722 of 2017 before this Court. The Co-ordinate Bench of this Court on 28.02.2020 dismissed the second appeal, against which, a Special Leave to Appeal (C) No.9688 of 2020 was filed before the Hon'ble Apex Court which was dismissed on 14.09.2021.

19. Petitioner- Tara Chandra Gupta filed application 72-C on 04.02.2021 for impleadig him as a party in the Final Decree Case No.111 of 1980. The said application was allowed on 20.07.2021. Thereafter, Tara Chandra Gupta filed application 86-C on 13.08.2021 for setting aside the order dated 07.05.2012 modifying the preliminary decree and the shares of the co-sharers. Objections 94-C was filed by Amitabh Basu.

20. During pendency of the said application, on 08.12.2021, the sale deed

was executed from the Executing Court in favour of Tara Chandra Gupta in respect of agreement to sell executed by Chandi Das Basu. Both the Final Decree Cases No.111 of 1980 and 33 of 1997 were consolidated by the orders of Civil Judge (Senior Division), Allahabad on 11.01.2022.

21. Application 86-C was dismissed by the trial Court on 29.05.2024, against which, the petitioner preferred Civil Revision No.92 of 2024 which was dismissed by order dated 23.09.2024, hence the present writ petition.

22. Sri Manish Goyal, learned Senior Counsel appearing for the petitioner submitted that on the application moved for modification of preliminary decree, it was necessary to issue notice to all the parties. The order dated 07.05.2012 was passed without issuing due notice to all necessary parties. According to him, Chandi Charan Basu had passed away in 1993, and an application for modification in respect of preliminary decree dated 27.11.1979 was filed in the year 2009 i.e. after more than 16 years. He also submitted that Section 141 CPC provides for misc. proceedings and procedures to be followed in regard to suits. Thus, it was mandatory on the part of the Court before allowing modification application to have followed the procedures provided therein.

23. He next contended that modification application dated 25.04.2009 was filed by Dr. Amitabh Basu on behalf of Lt. Ajay Kumar Basu was not maintainable when heirs of Ajay Kumar Basu were taken on record in the year 2015. He also contends that the Court below committed error in allowing the modification application filed in Final Decree Case No.111 of 1980, while dealing with Final Decree Case No.33 of 1997. The order was passed on consent of Motilal Gupta, a stranger to the property in question, without hearing the heirs of Chandi Das Basu and other coparcener, who were necessary parties.

24. He also emphasised that Motilal Gupta had purchased the share of BamanDas Basu which was inherited by his grandson Dipankar Basu who had transferred his half of share in favour of Janhit Sahkari Avas Samiti and proceedings of Final Decree Case No.33 of 1997 were initiated by Motilal Gupta whose consent was immaterial in Final Decree Case No.111 of 1980.

25. He next contended that application seeking recall of order dated 07.05.2012 filed by petitioner ought to have been considered on merit inasmuch as petitioner was entitled to be heard in the first instance. Modification of preliminary decree was done behind the back of heirs of Chandi Das Basu. Once, the petitioner has stepped into shoes of Chandi Das Basu, he had right to contest the application on which orders were passed ex-parte.

26. It was also contended that sale of property to petitioner by Chandi Das Basu which included share of Chandi Charan Basu having been affirmed by Hon'ble Apex Court by dismissal of SLP filed against the judgment upholding agreement to sale would debar petitioner from contesting the same. According to him, Chandi Charan Basu died issueless and according to Dayabhaga school, Chandi Das Basu was the lone surviving brother and the share of Chandi Charan Basu was succeeded by Chandi Das Basu, which both the Courts below failed to consider. He has also relied upon Section 8

of Hindu Succession Act, 1956 especially to the schedule wherein class-II heirs have been mentioned who shall succeed to the property of male Hindu dying instestate. According to him, it is only Chandi Das Basu who was entitled to succeed as Ajay Kumar Basu died in the year 1991, and Chandi Charan Basu died issueless in the year 1993.

27. He lastly contended that petitioner being bonafide purchaser is protected under Section 41 of Transfer of Property Act, 1882 having entered into a registered agreement to sell with Chandi Das Basu during his lifetime on 27.03.1995 and sale deed finally executed after the suit for specific performance was decreed by the trial Court having been confirmed by Hon'ble Apex Court on 08.12.2021. Reliance has been placed upon the decision rendered by Hon'ble Apex Court in the following cases:-

1. Venkata Reddy and others Vs. Pethi Reddy, 1962 SCC OnLine SC 320,

2. Bikoba Deora Gaikwad and another Vs. Hirabai Marutirao Ghorgare, (2008) 8 SCC 198

3. Shri Ramesh Chandra Vs. Seth Ghanshiam Das, 1955 SCC OnLine ALL 75

4. Ram Kumar Vs. State of U.P. and Others, (2023) 16 SCC 691

5. A.V. Papayya Sastry and others Vs. Govt. of A.P. and Others, (2007) 4 SCC 221

6. S.P. Chengalvaraya Naiduv Vs. Jagannath and others, (1994) 1 SCC 1

7. Kantaru Rajeevaru (Sabarimala Temple Review-5 J.) Vs. Indian Young Lawyers Assn., (2020) 2 SCC 1

8. Spencer and Company Ltd. And another vs. Vishwadarshan Distributors Pvt. And others (1995) SCC 1

9. Suganthi Suresh Kumar Vs. Jagdeeshan (2002) 2 SCC 420

10. Titupati Balaji Developers (P) Ltd. vs. State of Bihar (2004) 5 SCC 1

11. Ram Kishore vs. State of U.P. (2012) SCC OnLine All 605

12. Crystal Developers Vs. Asha Lata Ghosh, (2005) 9 SCC 375

13. Syed Abdul Khader Vs. Rami Reddy, (1979) 2 SCC 601

14. Kannappa Chettiar Vs. Abbas Ali, (1952) 2 SCC 124

15. Ram Chandra Aggarwal Vs. State of U.P., (1966) SCC OnLine SC 232

16. Jaswant Singh Vs. Parkash Kaur, (2018) 12 SCC 249

17. Mst. Nagina Devi Vs. Brijnandan Pd. Sinha, (1972) SCC OnLine 74

18. Sheo Soondary Vs. Pirthee Singh, (1877) SCC OnLine 6

19. Rajkishore Lahoory Vs. Gobind Chunder Lahoory, (1875) I.L.R. 1 C 28

20. Asha Vaish Vs. VII Additional District Judge Alld, (1997) SCC OnLine All 308

28. Sri V.K. Upadhyay, learned Senior Counsel appearing for respondent no.7 submitted that partition suit filed in the year 1976 by plaintiff Chandi Das Basu clearly reveals in para 2 of the plaint that common ancestor late Shyama Charan Basu was employed as a headmaster and later on as a Registrar at Lahore. After his death, his sons settled down at Allahabad, and they lived together jointly during their lifetime at 63 Bahadurganj, Allahabad. There is no averment in the plaint that plaintiff and defendant hails from West Bengal and have migrated to U.P. and are governed by principles of Dayabhaga Law in the matter of succession.

29. It is for the first time that subsequent purchaser of plaintiff has raised this question because parties are Bengali. No such issue was raised either before the trial Court, or revisional Court. Applicability of Mitakshara or Dayabhaga is mixed a question of fact to be decided on the basis of pleading and proof on the records of case. Reliance has been placed upon a decision rendered in case of **Badriparasad Jagannath Agrawal and another Vs. Madhu Dr. Harindrakumar Lahiri and others, 2008 (4) Mh.L.J. 185.**

30. It was next contended that the suit filed by Chandi Das Basu clearly reveals that pleadings were based on Mitakshara School of Law, and in absence of initial pleading and necessary proof for Dayabhaga Law, no Court could return any finding on the said question.

31. It is not the right stage or forum to decide question of inheritance of share of deceased Chandi Charan Basu. The Court in its supervisory jurisdiction under Article 227 of the Constitution of India may not consider the submissions made on petitioner's behalf as there is neither pleading nor any material before the Court or any forum where the matter was raised. Reliance has been placed upon the decision rendered in case of **K. Chinnammal (Dead) Thr. Lrs. Vs. L.R. Eknath and another, 2023 SCC OnLine SC 611.**

32. It was next contended that without any adjudication by Court, the purchaser in interest of plaintiff i.e. Chandi Das Basu on his own allocated the share of brother Chandi Charan Basu and unilaterally altered the share of 5/48 in Schedule-A i.e. House No.63 Bahadurganj, and 5/24 in Schedule-B property decided in preliminary decree dated 27.11.1979, which was affirmed by this Court vide its judgment dated 16.05.1986.

33. According to him, it is inconsequential that Executing Court, pursuant to decree in the specific performance suit of the petitioner, had transferred the entire share of Chandi Das Basu including that of Chandi Charan Basu in favour of petitioner as there was no dispute regarding the extent of share of Chandi Das Basu in the said proceedings. As far as the share of Chandi Charan Basu was concerned, it was neither an issue nor was adjudicated by any Court in specific performance suit which culminated by decision of Hon'ble Apex Court. It is only on the basis of narration made in the agreement to sell that the sale deed was executed and the suit for specific performance was decreed.

34. He next contended that application 65-C was filed on behalf of

Ajay Kumar Basu through his legal heirs in Final Decree Case No.111 of 1980. All family members were parties in both the Final Decree Case No.33 of 1997 and 111 of 1980. The heirs of defendant no.1 Ajay Kumar Basu had come on record in Final Decree Case No.33 of 1997 as evident from the order-sheet dated 10.12.2004. Further, the order-sheet reveals that heirs of Chandi Das Basu were served by publication on 12.01.2000 itself and service was deemed sufficient by publication on 25.01.2005. On 08.04.2005, Court directed to put up connected file on 28.05.2005 for final disposal.

35. The order dated 09.05.2005 deciding both the Final Decree Case No.33 of 1997 and 111 of 1980 was passed in the same order-sheet. Moreover, Amitabh Basu son of defendant no.1 and his brothers had already come on record by means of Civil Appeal No.142 of 2005 preferred against the order dated 09.05.2005.

36. He also contended that order-sheet reveals that both the Final Decree Cases were connected though, no formal order was passed. At the time of consideration of application 65-C, petitioner was not the party, and had only agreement to sell in his favour. He despite having knowledge by means of agreement to sell that Final Decree Case No.111 of 1980 was going on, the petitioner deliberately did not move any impleadment application before passing of the order dated 07.05.2012. The petitioner had filed recall application 86-C on 13.08.2021 i.e. after 9 years, though even then at that time, no sale deed was executed in his favour.

37. It was then contended that petitioner cannot be allowed to take up case of heirs of Chandi Das Basu to say that order dated 07.05.2012 is *ex-parte*, as there was conflict of interest between the petitioner and heirs of Chandi Das Basu.

38. Sri Upadhyay then emphasised that heirs of Chandi Das Basu filed substitution application (Paper No.16-A) on 01.07.1997, while they executed agreement to sell on 23.08.1997 in favour of Safiq Ahmad and Naseem Uddin and thereafter, never pressed the substitution application and left the Final Decree Case. However, heirs of Chandi Das Basu were served by publication on 12.01.2000 which is clear from the order dated 25.01.2005 and were again served by publication in Civil Appeal No.142 of 2005 arising out of order dated 09.05.2005. The heirs of Chandi Das Basu never turned before any Court, admittedly even proceedings before all the Courts in specific performance case filed by petitioner right from trial Court uptill Apex Court. It was thus not possible to serve copy of application 65-C to petitioner or legal heirs of Chandi Das Basu. Recall application 86-C moved on 13.08.2021 is primarily on two grounds; (i) that order dated 07.05.2012 is ex-parte and, (ii) application 65-C was moved in Final Decree Case No.111 of 1980, but order was passed in Final Decree Case No.33 of 1997. Revisional Court had recorded categorical findings on both these grounds taken.

39. It was also contended that in a partition suit, modification of shares always take place on birth and death of co-sharers even after passing of preliminary decree and it is only in partition suits that two or more decree can be passed, but not in other suits. A Suit No.386 of 2024 has already been filed for cancellation of sale deed dated 08.12.2021 which is pending consideration before Civil Judge (Senior Division), Allahabad.

40. It has been lastly contended that the petitioner had remedy of challenging the order dated 07.05.2012 in an appeal and no application for modification or recalling the order is maintainable.

41. I have heard respective counsel for the parties and perused the material on record.

42. The case in hand has a long chequered history. In a partition suit filed in the year 1976, a preliminary decree was passed on 27.11.1979 defining the shares of all the co-sharers in the suit. It is an admitted fact that one of the co-sharers/defendant no.1- Ajay Kumar Basu had challenged the preliminary decree before this Court through First Appeal No.162 of 1980. The first appeal was partly allowed on 16.05.1986 and this Court confirmed the preliminary decree of the trial Court to the extent of shares of the parties therein and directed the plaintiff Chandi Das Basu to make good deficiency of court fees.

43. During the pendency of first appeal before this Court, plaintiff Chandi Das Basu had admittedly filed Final Decree Case No.111 of 1980. In the said case, amin report was confirmed, later on the application of one of the parties, the report was recalled by order dated 12.02.1987. The order of the trial Court was challenged by Chandi Das Basu through Civil Revision No.363 of 1987, which was finally dismissed on 09.11.1995. In the meantime, two brothers of Chandi Das Basu, namely, Ajay Kumar Basu and Chandi Charan Basu unfortunately died on 20.06.1991 and 17.02.1993.

44. Chandi Das Basu who had filed Final Decree Case No.111 of 1980 never moved any application before the Court for modifying the preliminary decree. Instead, he entered into a registered agreement to sell on 12.03.1995 with petitioner- Tara Chandra Gupta not only in respect of his 5/48 share in Schedule- A and 5/24 in Schedule-B allotted to him in the preliminary decree, but also in respect of share allotted to his deceased brother Chandi Charan Basu. Entire description of the suit filed in the year 1976 including the preliminary decree and filing of Final Decree Case No.111 of 1980 was disclosed in the agreement to sell.

45. Petitioner- Tara Chandra Gupta immediately became aware of the fact that he was purchasing the property which was in litigation as till date no final decree was prepared and property was not divided by meets and bounds, only the shares of the parties were determined by the preliminary decree which was affirmed by the judgment of this Court rendered in First Appeal No.162 of 1980.

46. Chandi Das Basu had specifically mentioned in the agreement to sell that on the basis of Dayabhaga School of Law, he was entitled to the share of Chandi Charan Basu and was entering into agreement to sell with petitioner- Tara Chandra Gupta, but he never made any application before the Court for getting the preliminary decree modified. It was after his death in the year 1997 that his two sons Vishwajit Basu, Samarjit Basu and daughter Smt. Iti Rakshit moved a substitution application (Paper No.16-A) on 01.07.1997 in Final Decree Case No.111 of 1980. The legal heirs of Chandi Das Basu thereafter executed a registered agreement to sell on 23.08.1997 in favour of Safiq Ahmad and Naseem Uddin in respect of the same property for which Chandi Das Basu

had earlier executed agreement to sell in favour of petitioner on 12.03.1995.

47. This led to filing of Suit No.520 of 1998 by petitioner- Tara Chandra Gupta for specific performance against the legal heirs of Chandi Das Basu and Naseem Uddin and Safiq Ahmad. In the said suit, none of the co-sharers of the property in dispute were arrayed as a party. Though, petitioner- Tara Chandra Gupta had full knowledge of the fact that Final Decree Case which was filed by Chandi Das Basu himself was pending before the Court. It is wrong to say that the heirs of Chandi Das Basu were not made party in subsequent proceedings as they had filed their substitution application (Paper No.16-A), but did not press the same due to the fact that they already transferred their interest to Naseem Uddin and Safiq Ahmad, despite the fact that their father had already entered into agreement to sell with Tara Chandra Gupta in the year 1995.

48. The legal heirs of Chandi Das Basu were never interested in contesting the Final Decree Case No.111 of 1980. The suit for specific performance filed by petitioner- Tara Chandra Gupta attained finality by the orders of Apex Court dated 14.09.2021 and was binding between the parties *inter se*.

49. In the meantime, the other branch of Baman Das Basu where there was no dispute as to their share, his grandson Dipankar Basu had transferred his half share of property mentioned in Schedule-A to Janhit Sahkari Avas Samiti who finally transferred it to Motilal Gupta who had filed Final Decree Case No.33 of 1997. As the heirs of Chandi Das Basu were not pursuing Final Decree Case No.111 of 1980, publication was made in daily newspaper in the year 2000, and Court proceeded to hold the notice to be sufficient upon them in the year 2005. The order dated 09.05.2005 was subjected to challenge in civil appeal in which publication was also made as regards legal heirs of Chandi Das Basu, but they chose to stay away as they had already transferred their share in favour of Naseem Uddin and Safiq Ahmad after taking due consideration from them and suit being contested by petitioner, Naseem Uddin and Safiq Ahmad.

50. The legal heirs of defendant no.1 were left with no option, but to continue with Final Decree Case No.111 of 1980 and moved application 65-C in the year 2009 for getting the preliminary decree modified. Argument raised by petitioner counsel that no notice was issued to legal heirs prior to the passing of modification order dated 07.05.2012 falls flat in view of the fact that after moving substitution application on 01.07.1997, legal heirs of Chandi Das Basu lost interest in contesting the matter as they themselves had executed agreement to sell in favour of Naseem Uddin and Safiq Ahmad on 23.08.1997.

51. Both the father and his children had executed agreement to sell in favour of petitioner and Naseem Uddin and Safiq Ahmad in the year 1995 and 1997 without getting the preliminary decree of 1979 modified.

52. At this stage, petitioner cannot raise question as to shares of all coparceners to be divided on the basis of Dayabhaga School of Law as neither the plaint discloses any fact nor any effort was made by the plaintiff himself after the death of Chandi Charan Basu on 17.02.1993. The

legal heirs of Chandi Das Basu also after 1997 never got the preliminary decree modified on the basis of present claim as raised by petitioner before this Court. Both the alleged transfer of their rights through agreement to sell by Chandi Das Basu and his legal heirs in regard to share of Chandi Charan Basu could not have taken place without the preliminary decree being modified.

53. From the judgment placed before Co-ordinate Bench of this Court rendered in Second Appeal No.722 of 2017, it is clear that issue was never raised or brought to the notice of the Court that share of Chandi Charan Basu is also included in the agreement to sell on the basis of Dayabhaga School of Law. Judgment clearly reveals that only consideration was as to whether the agreement to sell executed and entered by Chandi Das Basu in favour of petitioner- Tara Chandra Gupta would prevail over the subsequent agreement to sell executed by Vishwajit Basu, Samarjit Basu and Iti Rakshit in favour of Naseem Uddin and Safiq Ahmad. It was on the basis of preliminary decree passed in the suit filed by the plaintiff Chandi Das Basu, a registered agreement to sell having been entered on 12.03.1995, the suit for specific performance was decreed and was confirmed by Hon'ble Apex Court.

54. Issue in regard to the shares of other co-sharers after death of Chandi Charan Basu was never in consideration before the Courts, nor the co-sharers were made party in the suit instituted by plaintiff being Suit No.520 of 1998, though he was well aware of Final Decree Case No.111 of 1980 pending consideration among the co-sharers.

55. Chandi Das Basu could not have transferred the share of Chandi Charan Basu without getting the preliminary decree of 1979 modified. It was a fraud played by him upon the other co-sharers as the preliminary decree dated 27.11.1979 had defined share of each co-sharer in the property mentioned in Schedule-A & B of the plaint.

56. Transfer could have only been made after getting the preliminary decree modified. Both Chandi Das Basu and his legal heirs have washed away their hands by entering into their respective agreement to sell with parties leading chaos and unnecessary litigation between co-sharers and outsiders.

57. Petitioner who was well aware that he was purchasing a disputed property and litigation was pending between co-sharers, never moved any application for being impleaded as a party in the said proceedings. On the contrary, after the preliminary decree was modified on 07.05.2012, he has moved an application 86-C for recalling the said order on 13.08.2021 i.e. prior to the decision of the Apex Court as well as before the sale deed was executed on 08.12.2021.

58. He cannot claim the benefit of Section 41 of the Transfer of Property Act being a bonafide purchaser knowing the fact that by preliminary decree dated 27.11.1979, the shares of the parties have been defined which was confirmed in First Appeal No.162 of 1980, and plaintiff- Chandi Das Basu could only transfer his 5/48 and 5/24 share of property mentioned in Schedule-A & B, but has also entered into an agreement for the share of Chandi Charan Basu without their being any modification of preliminary decree.

59. He has knowingly purchased the litigation and after 9 years of modification of preliminary decree, cannot

stand up and allege the order dated 07.05.2012 as ex-parte. Section 97 CPC provides for appeal from preliminary decree, which is as under:-

"97. Appeal from final decree where no appeal from preliminary decree. Where any party aggrieved by a preliminary decree passed after the commencement of this Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree."

60. In **Phoolchand vs. Gopal Lal, 1967 AIR (SC) 1470**, Hon'ble Court laid emphasis that pending final decree, shares are liable to be varied on account of intervening event such as death of a party, or change of law. This was subsequently followed by Hon'ble Apex Court in case of **S. Sai Reddy vs. S.Narayan Reddy, 1991 (3) SCC 647,** wherein the Court held that shares are liable to be varied on account of intervening events.

61. The Apex Court in **Baliram Atmaram Kelapure vs. Indirabai, 1996 (8) SCC 400,** held that though Section 97 CPC provides for an appeal against preliminary decree, but amendment of a decree was not barred. Similar view was taken by Apex Court in case of **S. Satnam Singh & Ors. vs. Surender Kaur & Anr., (2009) 2 SCC 562**, wherein the Apex Court taking a similar view held as under:-

"*20. Indisputably, Section 97 of the Code of Civil Procedure provides for an appeal against preliminary decree but the said provision, in our opinion, would not be a bar to file an application for amendment of a decree.*

21. The court may not have a suo motu power to amend a decree but the same would not mean that the court cannot rectify a mistake. If a property was subject matter of pleadings and the court did not frame an issue which it ought to have done, it can, at a later stage, when pointed out, may amend the decree.

22. The power of amendment, in a case of this nature, as noticed hereinbefore, would not only be dependent upon the power of the court but also the principle that a court shall always be ready and willing to rectify the mistake it has committed."

62. Thus, I find that after the death of Chandi Charan Basu no formal application for amending the preliminary decree as to his share was moved by Chandi Das Basu, nor his legal heirs, thus, the application moved by legal heirs of defendant no.1 was rightly allowed on 07.05.2012, on the basis of material available on record and the parties being represented therein. Once, the legal heirs of Chandi Das Basu were avoiding the Court and petitioner was watching the litigation from outside without intervening the same, the Court could not be faulted for amending the preliminary decree so as to vary the shares of the co-sharers after death of Chandi Charan Basu.

63. Argument raised on behalf of petitioner as to order being an ex-parte order holds no ground in view of above discussion and also the fact that twice publication was made for appearance of legal heirs of Chandi Das Basu, who after filing substitution application in 1997 stayed away from the litigation itself. They had also not contested the suit for specific performance instituted by the petitioner which itself is the revelation of the fact that after getting the money, they were not interested in pursuing the matter.

64. Further, the remedy to question the preliminary decree is under Section 97 CPC by filing appeal and not by making any application for recalling the order dated 07.05.2012 as it is not an ex-parte order and was contested between the parties litigating therein.

65. It was also emphasised by the petitioner that application was moved in Final Decree Case No.111 of 1980, while the order has been passed on Final Decree Case No.33 of 1997. This Court finds that both the final decree cases were going on together, though formal order was not passed for consolidating the two cases. Case No.111 of 1980 was filed by the plaintiff- Chandi Das Basu while Case No.33 of 1997 was filed by the subsequent purchaser Motilal Guptal. The application was moved in Case No.111 of 1980, but order reflected in the order-sheet of Case No.33 of 1997 cannot be construed as a deliberate attempt or any major lapse so as to invite the Court to recall the order dated 07.05.2012.

66. The intent of the said order was to modify the preliminary decree dated 27.11.1979 varying the share of the co-sharer after the death of Chandi Charan Basu. The modification would not affect the final outcome as only the shares of co-sharers of branch of Shrish Chandra Gupta has been varied. Another attempt was made from the petitioner's side that after order dated 09.05.2005, the Final Decree case had attained finality and the Court was not correct to allow the application 65-C.

67. It is clear that against the order dated 09.05.2005, Civil Appeal No.142 of 2005 was filed which was allowed in the year 2008 and the said order was set aside and the matter was remitted back for reconsideration on 12.11.2008.

68. Considering the facts and circumstance of the case, I find that no interference is required in the orders impugned dated 23.09.2024 passed in Civil Revision No.92 of 2024 passed by Additional District Judge/ Special Judge (E.C. Act), Prayagraj, and order dated 29.05.2024 passed by Judge, Small Cause Court, Prayagraj.

69. Writ petition fails and is hereby **dismissed**.

70. Registry is directed to transmit the records of the Court below forthwith.

(2025) 6 ILRA 104
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 10.06.2025

BEFORE

THE HON'BLE SAURABH LAVANIA, J.
THE HON'BLE SYED QAMAR HASAN RIZVI, J.

Writ - A No. 6603 of 2025

U.O.I. & Ors. ...Petitioners
Versus
Govind Narain Mishra ...Respondent

Counsel for the Petitioners:
Varun Pandey

Counsel for the Respondent:

A. Civil Law - Constitution of India,1950 – Article 226 – Writ Petition – Delay and Laches – Discretionary Relief Denied: Unexplained delay of 363 days in challenging Tribunal's order on disciplinary proceedings against a retiring employee bars extraordinary relief under Article 226. Courts must scrutinize laches to prevent injustice from stale claims, even in cases involving fundamental rights. Shiv Dass Vs U.O.I., (2007) 9 SCC 274; UP Jal Nigam Vs Jaswant Singh, (2006) 11 SCC 464 (Paras 8, 9, 10, 11).

B. Central Civil Services (Classification, Control and Appeal) Rules, 1965 – Rule 16 – Disciplinary Proceedings – Recovery of Loss: Recovery of Rs. 20,000 from employee at retirement for irregularities by another official (SPM) is unsustainable without direct culpability. Tribunal's finding of lack of fair hearing opportunity upheld, rendering proceedings vitiated. Tridip Kumar Dingal Vs St.of W.B., (2009) 1 SCC 768; Karnataka Power Corpn. Ltd. Vs K. Thangappan, (2006) 4 SCC 322 (Paras 12, 13).

C. Doctrine of Laches – Application in Service Matters - Laches applies in pension and service disputes; delay defeats equity and causes prejudice. Writ courts exercise discretion judiciously, refusing relief where negligence or inaction is evident, even for continuing causes of action. Chennai Metropolitan Water Supply & Sewerage Board Vs T.T. Murali Babu, (2014) 4 SCC 108 (Paras 13).

Writ Petition Dismissed.

List of Cases cited:

1. Shiv Dass Vs U.O.I., (2007) 9 SCC 274 (Para 8).

2. UP Jal Nigam Vs Jaswant Singh, (2006) 11 SCC 464 (Para 9).

3. Tridip Kumar Dingal Vs St.of W.B., (2009) 1 SCC 768 (Para 12).

4. Karnataka Power Corpn. Ltd. Vs K. Thangappan, (2006) 4 SCC 322 (Para 12).

5. Chennai Metropolitan Water Supply & Sewerage Board Vs T.T. Murali Babu, (2014) 4 SCC 108 (Para 13).

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

1. Heard Sri Varun Pandey, learned Counsel for the petitioner and perused the records.

2. In view of order proposed to be passed, issuance of notice to the private-respondent(s) is hereby dispensed with.

3. The present petition has been filed for the following main reliefs:-

"Issue a writ, order or direction in the nature of certiorari quashing impugned judgment and order dated 22.05.2024 (reserved on 07.05.2024) passed in Original Application No. 332/00378/2013 Govind Narain Mishra Vs Union of India & Others, contained as (Annexure no. 1) to the writ petition."

4. Under challenge is the order passed by the Central Administrative Tribunal at Lucknow (in short 'Tribunal') in Original Application No. 332/00378/2013 (Govind Narayan Mishra Versus Union of India and others).

5. Before further proceedings, it would be apt to indicate that in the year 2013, the applicant-Govind Narayan Mishra, who has been impleaded as private opposite party in the present petition, was aged about 63 years and accordingly at present he would be around 74 years old.

6. Brief facts of the case are as under:

(i) The Govind Narayan Mishra/private opposite party, was going to superannuated in the month of July 2010 from the post of Assistant Post Master, Chowk, Lucknow.

(ii) Just prior to date of retirement a charge-sheet dated 16.07.2010 was served upon Govind Narayan Mishra/private opposite party.

(iii) For the purposes of submission of reply to the charge-sheet dated 16.07.2010, Govind Narayan Mishra/private opposite party, preferred an application dated 21.07.2010, requesting therein to grant permission to inspect the records.

(iv) The permission to inspect the record was granted on 26.07.2010.

(v) Thereafter, the Govind Narayan Mishra/private opposite party, inspected the record on 27.07.2010.

(vi) On 28.07.2010 Govind Narayan Mishra/private opposite party, replied to the charge-sheet issued on 16.07.2010.

(vii) On 29.07.2010, the impugned order dated 29.07.2010 was passed by Senior Superintendent of Post Office, Lucknow Division, Lucknow, the relevant portion of the same reads as under:-

"I have gone through the chargesheet, defence representation and other relevant records and found that the official had performed the work of APM SBSOS for a short period as a stop gap arrangement as mentioned in memo of charges. However, He is responsible for the irregularities committed during the aforesaid period."

(viii) Challenging the order dated 29.07.2010, a departmental appeal was filed by the Govind Narayan Mishra/private opposite party, which was also dismissed by the appellate authority namely Director, Postal Service, HQ, Lucknow vide order dated 31.01.2013. Relevant portion of the same are extracted hereinunder:-

"3. The appellant has raised following arguments in his appeal dated 09.09.2010 for consideration:-

(i) That the Disciplinary Authority admitted the late posting of vouchers of sub- offices including Blunt Square in Para 6(1) of punishment order but any how held that the appellant could not get them immediately and regularly posted in the concerning ledgers which resulted non- detection of irregulatities committed by SPM Blunt Square. The appellant also failed to bring this facts to the notice of higher authorities. The reasons given by disciplinary authorities are not correct, but misleading and also not based on documentary evidence otherwise the receipt book under which vouchers relating to 01.01.2006 to 30.10.2006 were submitted to SBCO would have been provided to the appellant for the inspection before submission of defence representation dated 28.07.2010. Hence the punishment order is not based on factual position but it is biased attitude of the disciplinary authorities to any how impose monetary loss to the appellant at the time of retirement.

(ii) That the back posting was in the knowledge of inspecting authorities who noted it in respective OBRS regularly. Non-posting of vouchers received during the period of the appellant is not relevant to the differences of balances but it is lack of inspecting authorities, who inspected Blunt Square P.O. during period mentioned in the statement of imputation, who could not notice the irregularities persisting at Blunt Square Post office.

(iii) That the appellant had got submitted the vouchers to the SBCO during the period mentioned in the statement of

imputation of misconduct for the dates which were took place for posting during that period. The receipt book could not be made available to the appellant by the Disciplinary Authority as such his observation in Para 6(ii) of the punishment order are baseless and have no legs to stand.

(iv) That the Disciplinary Authority in Para 6 (iii) and (iv) misinterpreted the provisions of Rule 74 of SB Manual Volume I in order to suit his motives to impose penalty appealed against.

(v) That the arguments submitted by the appellant in defence representation dated 28.07.2010 in Para D on page 3 and additional facts at page 3 & 4 were not considered and discussed in the punishment order as such the punishment order is not self contained, so plot making and reasoned order as required under Govt. of India Instruction No. below Rule 15 of CCS (CCA) Rule 1965 and also G.I.M.H.A., Dep. and A.R.O.M. No. 134/1/81 AVD-I dated 13.07.1981 and Dept. Of P&T O.M. No. 134/12/85-AVD-I dated 05.11.1985.

(vi) That the recovery of 50,000/- from leave encashment is against the provision of Rule 39 (iii) of CCS (Pension) rules as amended upto August 2005 (Part III of FRSR) under which the disciplinary authority is imposed to hold while are part of cash equivalent of Earned leave in the case of Govt. Servant who is to be retired and against whom disciplinary/ criminal proceedings are pending and there is possibilities are some money becoming recoverable for adjustment of Govt. dues as such the punishment order is against the provisions of rules.

(vii) That the action of disciplinary authority just within fifteen (15) days of retirement of the appellant was unjustified. The disciplinary authority initiated disciplinary action at the last moment of the retirement of the appellant in hurried manner without application of mind on the circumstances under which the appellant had worked at Chowk HO. As such, the punishment order is against the principles of natural justice. He also added that he was working at PSD Lucknow during period 01.01.2006 to 06.01.2006 as such statement of imputation is in fructuous.

4. I have gone through the arguments made by the appellant in his appeal with the relevant documents of the case. The position emerged as under:-

(i) The appellant was posted as APM SBSO Chowk HO during the period as mentioned in memo of charges. Being, the supervisor of SBSO branch of Chowk HO, he was required to supervise the work of Ledger Assistants who were assigned the duties of posting of Saving Bank Transactions, preparation of compilation and transfer of vouchers to SBCO Chowk HO and get this work completed day by day but instead of doing so, this work was kept in arrears. Due to his slackness, the misappropriation of Govt. money committed by the then SPIvi Blunt Square could not be detected early which resulted a huge misappropriation of Govt. money by the then SPM Blunt Square PO Lucknow in SB accounts. As such, the pleading of the appellant is not admitted.

(ii) The appellant was responsible for updation of back posting as mentioned in the charge sheet. If it was got done by him the discrepancies/ irregularities in the

balances would have been come into light and necessary action committed by the then SPM Blunt Square, would have been detected early. As such, the pleading of the appellant is not acceptable.

(iii) The pleading of the appellant cannot be admitted. In view of the fact that the posting and transfer of vouchers was done regularly, the irregularities committed by SPM Blunt Square PO Lucknow would have been detected early. The appellant failed to point out any irregularity during his working period, which proves that he as not following the rules and procedures as prescribed by the Department.

(iv) As per Rule-74 of SB Manual Volume-i, the special error book is to be maintained in respect of accounts in which transactions have taken place for 1" time after 31 March and Pass Book of which have not been received from SOs for verification of balances and entry of interest. The contention of the appellant that the relevant rules are applicable for 1" March to 31 June of the year is not tenable. This was the gross negligence on the part of appellant in proper supervision of sub ordinate staff working under him and maintenance of special error book. As such, the pleading of the appellant is not convincing.

(v) Not admitted as the plea of the appellant was considered and discussed by Disciplinary Authority in Para IV of the punishment order. As such, the contention of appellant is not convincing.

(vi) Not admitted as the appellant has been identified as subsidiary offender in the Blunt Square PO fraud case and due to the lapses found on his part, the then SPM Blunt Square PO continued to commit misappropriation since long and the Department has sustained a huge loss of Govt. money. As such, the pleading of the appellant is not convincing.

5. From the above facts and circumstances of the case and on overall assessment of the case, I have come to the conclusion that the charges levelled against the appellant are proved, but keeping in view the circumstances as stated by the appellant in his appeal, the penalty awarded by the Disciplinary Authority vide memo no. F/SB-5/08-09 dated 29.07.2010 as mentioned above, is reduced to that of "Recovery of Rs. 25,000/-only." In exercise of powers conferred upon me under Rule 27 of CCS (CCA) Rules 1965. I hereby order accordingly."

(ix) Thereafter, Govind Narayan Mishra/private opposite party filed an Original Application No. 332/00378/2013 (Govind Narayan Mishra Versus Union of India and others) (in short 'O.A.'), before the Tribunal challenging the order dated 29.07.2010 passed by the Disciplinary Authority and order dated 31.01.2013 passed by the Appellate Authority.

(x) The Tribunal after considering the pleadings and documents on record before it, allowed the O.A. filed by Govind Narayan Mishra/private opposite party vide order dated 22.05.2024. The relevant portion of the same are extracted hereinunder:-

"6.5 The events of the charge relate to the period 01.01.2006 to 30.10.2006. The charge sheet was issued on 16.07.2010, i.e., in the month the applicant was due to retire. Application requesting for inspection of records was

made on 21.07.2010 by the applicant. Permission was granted on 26.07.2010. The applicant inspected the records available on 27.07.2020 and submitted his representation on 28.07.2010. The disciplinary authority passed the order imposing punishment on 29.07.2010. The speed with which the disciplinary proceedings were conducted is explained by the respondents in that the proceedings were initiated under rule 16 of CCS (CCA) Rules and were required to be concluded before the applicant retired. However, we find to effective rebuttal of the applicant's claim that he was not shown records listed at S. No. 1 and 3 of his application dated 21.07.2010 which were material in relation to the charge levelled against him. In the hurry to complete the disciplinary proceedings, the principle of affording full opportunity to the applicant to defend himself by supplying all relevant documents has been given short shrift.

6.6 Given the position above, we are of the opinion that the disciplinary proceedings against the applicant are vitiated on account of the respondents not having provided a fair opportunity to the applicant to defend himself by not making available to the applicant specific documents requested by him which cannot be said to be irrelevant to the charge against him.

6.7 Considering that the disciplinary proceedings were taken up against the applicant under rule 16 of the CCS (CCA) Rules, 1965 for events relating to the year 2006 and the fact that the applicant retired in July, 2010, no purpose would be served by remanding the case back to the respondents at this stage.

7.1 In view of the foregoing, the OA is allowed and the order dated 29.07.2010 passed by the disciplinary authority and order dated 31.01.2013 passed by the appellate authority are quashed and set aside. The respondents shall refund the amount deducted to the applicant within a period of three months from the date of receipt of certified copy of this order.

7.2 Pending MAs, if any, are also disposed of.

The Parties shall bear their own costs."

7. In the aforesaid background of the case, the present petition challenging the order dated 22.05.2024 passed by the Tribunal was presented before the Registry of this Court on 20.05.2025, without explaining the delay and laches of about 363 days.

8. It is trite law that delay or latches is one of the factors which should be borne in mind while exercising discretionary powers under Article 226. The High Court may refuse to invoke its extraordinary powers to revive any stale claim in case laxity is found on the part of the applicant.

9. The question of delay or laches in approaching the High Court under Article 226 of the Constitution of India was examined in **Shiv Dass Vs. Union of India and others (2007) 9 SCC 274,** and it was held that in a case of pension though the cause of action continues from month to month, the same cannot be a ground to overlook delay in filing the petition. It was stated thus:-

"6. Normally, in the case of belated approach writ petition has to be dismissed. Delay or laches is one of the factors to be borne in mind by the High Courts when they exercise their discretionary powers under Article 226 of the Constitution of India. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prashad v. Chief Controller of Imports and Exports [(1969) 1 SCC 185 : AIR 1970 SC 769] . Of course, the discretion has to be exercised judicially and reasonably.

10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit the appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone."

10. The basis of the doctrine of laches and the factors which are to be considered where delay and laches would be sufficient to deny relief to the petitioner, were examined in ***UP Jal Nigam and another Vs. Jaswant Singh and another reported in (2006) 11 SCC 464*** and referring to the statement of law in ***Halsbury's Laws of England,*** para 911, p. 395, it was stated thus:-

12. The statement of law has also been summarised in Halsbury's Laws of England, para 911, p. 395 as follows:

In determining whether there has been such delay as to amount to laches, the chief points to be considered are:

(i) acquiescence on the claimant's part; and

(ii) any change of position that has occurred on the defendant's part.

Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches.

11. The principles relating to the effect of discretion under Article 226 of the Constitution to interfere in cases of the undue delay, laches and acquiescence were summarised in **Union of India Vs. N. Murugesan 10 (2022) 2 SCC 25** and the following observations were made:-

"Delay, laches and acquiescence"

20. The principles governing delay, laches, and acquiescence are overlapping and interconnected on many occasions. However, they have their distinct characters and distinct elements. One can say that delay is the genus to which laches and acquiescence are species. Similarly, laches might be called a genus to a species by name acquiescence. However, there may be a case where acquiescence is involved, but not laches. These principles are common law principles, and perhaps one could identify that these principles find place in various statutes which restrict the period of limitation and create non-consideration of condonation in certain circumstances. They are bound to be applied by way of practice requiring prudence of the court than of a strict application of law. The underlying principle governing these concepts would be one of estoppel. The question of prejudice is also an important issue to be taken note of by the court.

Laches

21. The word "laches" is derived from the French language meaning "remissness and slackness". It thus involves unreasonable delay or negligence in pursuing a claim involving an equitable relief while causing prejudice to the other party. It is neglect on the part of a party to do an act which law requires while asserting a right, and therefore, must stand in the way of the party getting relief or remedy.

22. Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy on a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.

23. A defence of laches can only be allowed when there is no statutory bar. The question as to whether there exists a clear case of laches on the part of a person seeking a remedy is one of fact and so also that of prejudice. The said principle may not have any application when the existence of fraud is pleaded and proved by the other side. To determine the difference between the concept of laches and acquiescence is that, in a case involving mere laches, the principle of estoppel would apply to all the defences that are available to a party. Therefore, a defendant can succeed on the various grounds raised by the plaintiff, while an issue concerned alone would be amenable to acquiescence.

Acquiescence

24. We have already discussed the relationship between acquiescence on the one hand and delay and laches on the other.

25. Acquiescence would mean a tacit or passive acceptance. It is implied and reluctant consent to an act. In other words, such an action would qualify a passive assent. Thus, when acquiescence takes place, it presupposes knowledge against a particular act. From the knowledge comes passive acceptance,

therefore instead of taking any action against any alleged refusal to perform the original contract, despite adequate knowledge of its terms, and instead being allowed to continue by consciously ignoring it and thereafter proceeding further, acquiescence does take place. As a consequence, it reintroduces a new implied agreement between the parties. Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms. Hence, what is essential, is the conduct of the parties. We only dealt with the distinction involving a mere acquiescence. When acquiescence is followed by delay, it may become laches. Here again, we are inclined to hold that the concept of acquiescence is to be seen on a case-to-case basis.

12. Hon'ble Supreme Court has reiterated this principle in case of **Mrinmoy Maity Vs. Chhanda Koley and others (2024) SCC OnLine SC 551** as under:

"9. Having heard rival contentions raised and on perusal of the facts obtained in the present case, we are of the considered view that writ petitioner ought to have been non-suited or in other words writ petition ought to have been dismissed on the ground of delay and latches itself. An applicant who approaches the court belatedly or in other words sleeps over his rights for a considerable period of time, wakes up from his deep slumber ought not to be granted the extraordinary relief by the writ courts. This Court time and again has held that delay defeats equity. Delay or latches is one of the factors which should be born in mind by the High Court while exercising discretionary powers under Article 226 of the Constitution of India. In a given case, the High Court may refuse to invoke its extraordinary powers if laxity on the part of the applicant to assert his right has allowed the cause of action to drift away and attempts are made subsequently to rekindle the lapsed cause of action.

10. The discretion to be exercised would be with care and caution. If the delay which has occasioned in approaching the writ court is explained which would appeal to the conscience of the court, in such circumstances it cannot be gainsaid by the contesting party that for all times to come the delay is not to be condoned. There may be myriad circumstances which gives rise to the invoking of the extraordinary jurisdiction and it all depends on facts and circumstances of each case, same cannot be described in a straight jacket formula with mathematical precision. The ultimate discretion to be exercised by the writ court depends upon the facts that it has to travel or the terrain in which the facts have travelled.

11. For filing of a writ petition, there is no doubt that no fixed period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is invoked, it has to be seen as to whether within a reasonable time same has been invoked and even submitting of memorials would not revive the dead cause of action or resurrect the cause of action which has had a natural death. In such circumstances on the ground of delay and latches alone, the appeal ought to be dismissed or the applicant ought to be non-suited. If it is found that the writ petitioner is guilty of delay and latches, the High Court ought to dismiss the petition on that sole ground itself, in as much as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own

wrong. It is true that there cannot be any waiver of fundamental right but while exercising discretionary jurisdiction under Article 226, the High Court will have to necessarily take into consideration the delay and latches on the part of the applicant in approaching a writ court. This Court in the case of ***Tridip Kumar Dingal v. State of W.B., (2009) 1 SCC 768*** *has held to the following effect:*

"56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches. 57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhume matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime (vide State of M.P. v. Bhailal Bhai, [AIR 1964 SC 1006 : (1964) 6 SCR 261], Moon Mills Ltd. v. Industrial Court, [AIR 1967 SC 1450] and Bhoop Singh v. Union of India, [(1992) 3 SCC 136 : (1992) 21 ATC 675 : (1992) 2 SCR 969]). This principle applies even in case of an infringement of fundamental right (vide Tilokchand Motichand v. H.B. Munshi, [(1969) 1 SCC 110], Durga Prashad v. Chief Controller of Imports & Exports, [(1969) 1 SCC 185] and Rabindranath Bose v. Union of India, [(1970) 1 SCC 84]).

58. There is no upper limit and there is no lower limit as to when a person can approach a court. The question is one of discretion and has to be decided on the basis of facts before the court depending on and varying from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose."

12. It is apposite to take note of the dicta laid down by this Court in ***Karnataka Power Corportion Ltd. v. K. Thangappan, (2006) 4 SCC 322*** *whereunder it has been held that the High Court may refuse to exercise extraordinary jurisdiction if there is negligence or omissions on the part of the applicant to assert his right. It has been further held thereunder:*

"6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prashad v. Chief Controller of Imports and Exports, [(1969) 1 SCC 185 : AIR 1970 SC 769]. Of course,

the discretion has to be exercised judicially and reasonably.

7. What was stated in this regard by Sir Barnes Peacock in ***Lindsay Petroleum Co. v. Prosper Armstrong Hurd, [[L.R.] 5 P.C. 221 : 22 WR 492] (PC at p. 239) was approved by this Court in Moon Mills Ltd. v. M.R. Meher, [AIR 1967 SC 1450] and Maharashtra SRTC v. Shri Balwant Regular Motor Service, [(1969) 1 SCR 808 : AIR 1969 SC 329].*** *Sir Barnes had stated:*

"Now, the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy."

8. It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation to Article 32 of the Constitution. It is apparent that what has been stated as regards that article would apply, a fortiori, to Article 226. It was observed in ***Rabindranath Bose v. Union of India, [(1970) 1 SCC 84 : AIR 1970 SC 470]*** *that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution-makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.*

9. It was stated ***in State of M.P. v. Nandlal Jaiswal, [(1986) 4 SCC 566 : AIR 1987 SC 251]*** *that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction*."

13. Reiterating the aspect of delay and latches would disentitle the

discretionary relief being granted, this Court in the case of Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu, (2014) 4 SCC 108 has held:

"16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant ? a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis."

13. Having considered aforesaid, this Court finds that in the instant case no interference is required. It is for the following reasons:-

(i) Laches of 363 days in approaching this Court has not been explained.

(ii) Allegations of misappropriation are against the then SPM, Blunt Square Post Office and not against Govind Narayan Mishra/opposite party and therefore, to the view of this order to recover Rs. 20,000/- from Govind Narain Mishra/opposite party at the verge of retirement is unsustainable.

(iii) The finding of the Tribunal which is to the effect that proper opportunity of hearing was not given to Govind Narain Mishra/opposite party has not been impeached.

14. Accordingly, the present petition is ***dismissed***.

15. Cost made easy.

(2025) 6 ILRA 115
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.06.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ - A No. 15771 of 2024

Dr. Trihuti Kumar ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Rajendra Rai

Counsel for the Respondent:
Avneesh Tripathi, C.S.C., M.N. singh

A. Civil Law - U.P. Government Servant (Discipline and Appeal) Rules, 1999 – Rule 7 – Disciplinary Proceedings – Burden of Proof: In major penalty inquiries, the establishment must prove charges through documentary and oral evidence, including witnesses, regardless of the delinquent's participation. The inquiry officer cannot presume guilt or rely solely on documents without witness testimony. Failure to produce establishment witnesses vitiates the

inquiry. St.of U.P. Vs Saroj Kumar Sinha, (2010) 2 SCC 772; Roop Singh Negi Vs Punjab National Bank, (2009) 2 SCC 570; St.of Uttaranchal Vs Kharak Singh, (2008) 8 SCC 236; Satyendra Singh Vs St.of U.P., 2024 SCC OnLine SC 3325 (Paras 2, 6, 7).

B. Departmental Inquiry – Ex-Parte Proceedings – Establishment's Duty: Even if the delinquent absents, the establishment must produce evidence, including witnesses, at the scheduled inquiry to prove charges by preponderant probability. Absence does not lead to default guilt; ex-parte inquiry requires evidence presentation. St.of U.P. Vs T.P. Lal Srivastava, (1996) 10 SCC 702 (Paras 12, 13).

C. Central Civil Services (Classification, Control and Appeal) Rules, 1965 – Article 351-A – Procedural Fairness: Inquiry flawed by requiring delinquent to produce and cross-examine own witnesses, misunderstanding examination-in-chief and cross-examination principles. Establishment's failure to produce witnesses invalidates findings of guilt. St.of U.P. Vs Kishori Lal, 2018 (9) ADJ 397 (DB); Smt. Karuna Jaiswal Vs St.of U.P., 2018 (9) ADJ 107 (DB); St.of U.P. Vs Aditya Prasad Srivastava, 2017 (2) ADJ 554 (DB) (Paras 2, 10, 11).

D. Judicial Review – Departmental Inquiry – Persistent Procedural Flaws: Despite prior court remand for fresh inquiry, respondents' failure to follow legal principles on evidence production warrants quashing of punishment order. Courts may consider penal costs or disciplinary action against erring authorities for repeated breaches. (Paras 15, 16).

Writ Petition Allowed.

List of Cases cited:

1. St. of U.P. Vs Saroj Kumar Sinha, (2010) 2 SCC 772 (Para 2).

2. Roop Singh Negi Vs Punjab National Bank, (2009) 2 SCC 570 (Para 2).

3. St. of Uttaranchal Vs Kharak Singh, (2008) 8 SCC 236 (Para 2).

4. St. of U.P. Vs Kishori Lal, 2018 (9) ADJ 397 (DB) (Para 2).

5. Smt. Karuna Jaiswal Vs St. of U.P., 2018 (9) ADJ 107 (DB) (Para 2).

6. St. of U.P. Vs Aditya Prasad Srivastava, 2017 (2) ADJ 554 (DB) (Para 2).

7. Satyendra Singh Vs St.of U.P., 2024 SCC OnLine SC 3325 (Para 2).

8. St. of U.P. Vs T.P. Lal Srivastava, (1996) 10 SCC 702 (Para 12).

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

1. Heard Mr. Rajendra Rai, learned Counsel for the petitioner, Mr. Avneesh Tripathi, learned Counsel appearing for respondent No. 5 and the learned Standing Counsel appearing on behalf of respondents Nos.1 to 4.

2. It has been repeatedly emphasized by the Supreme Court and this Court, not in one judgment but successive authorities, that the law for a salutary principle is that in departmental inquiries, involving the imposition of a major penalty, it is essential for the establishment to examine witnesses and prove the charge, even if the delinquent does not appear or defend himself. If he does, he has the right to cross-examine witnesses for the establishment. The delinquent may produce evidence in his defence or not, but that does not absolve the establishment of their liability to produce not only documentary evidence, but witnesses to establish by the standard of preponderant probability the charge(s) against the delinquent, facing disciplinary proceedings. This by far is the law enunciated 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 and **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).** This position of the law has been reiterated as recently as in **Satyendra Singh v. State of U.P. and another, 2024 SCC OnLine SC 3325.**

3. Dr. Trihuti Kumar was an Assistant Director (Fisheries) in the employ of the State Government. He was suspended pending inquiry on 11.10.2006 and disciplinary proceedings instituted against him. The order of suspension was revoked on 11.12.2006, but the disciplinary proceedings continued. The petitioner was served with a charge-sheet on 25.10.2007, the charge-sheet being a document dated 18.10.2007. The petitioner submitted his reply on 07.04.2008. The petitioner was hardly given any opportunity to defend himself and an inquiry report dated 21.10.2008 was submitted. On the basis of the inquiry report, on 12.12.2024, the following punishment was awarded to the petitioner by the State Government, to wit, (i) withholding of integrity, (ii) reversion to the basic grade of the post of Assistant Director (Fisheries), and (iii) recovery of a sum of Rs.23,145/-.

4. The petitioner challenged the aforesaid order before this Court by means of Writ-A No.21325 of 2015. The writ petition was allowed by a Division Bench of this Court vide judgment and order dated 23.04.2015, setting aside the order dated 12.12.2014, but leaving the respondents free to pursue departmental proceedings against the petitioner from the stage of the charge-sheet and the petitioner's reply. One of the flaws that the Division Bench noticed in the earlier departmental inquiry was that no date, time and place for holding the inquiry was scheduled and intimated to the petitioner. The Court also said with reference to authority, particularly, that in **State of Uttaranchal v. Kharak Singh, 2008 (118) FLR 1112**, that it was for the establishment to prove the charges, where the employer should take steps first to lead evidence against the workman and then give opportunity to him to cross-examine witnesses produced for the establishment.

5. Notwithstanding the order of remand and a fresh opportunity given to the respondents by the Division Bench, the respondents do not seem to have realized their folly. Rather, they have persisted with it. They have undertaken a fresh inquiry, where they have redeemed the procedural flaw, but in half measure; not by the requisite standard, so much so that a fundamental flaw vitiating the procedure, by which the inquiry has been held, is still there. That we will presently show.

6. We have carefully gone through the original records of the inquiry, that was resumed after remand by this Court vide order dated 23.04.2015 passed in Writ-A No.21325 of 2015 and find that the respondents have indeed given the petitioner ample opportunity in the sense that they have intimated him of the date, time and place fixed for holding the inquiry, more than once and more than was necessary. We make it bold to say that the petitioner, in consequence, has been on a long rope in the matter of opportunity to participate in the inquiry and defend himself. We have noticed in the record

repeat communications by the inquiry officer, asking the petitioner to appear and defend himself, including availing the facility of cross-examining witnesses. But, the question is whose witnesses? The authorities, that we have referred to in the opening paragraph of this judgment, lay down for a salutary principle and that is the requirement of Rule 7 of the U.P. Government Servant (Discipline and Appeal) Rules, 1999 as well, that in any case, where a major penalty may be imposed, it is the burden of the establishment to prove the charges brought against the delinquent. This means that in the first instance, the establishment not only have to produce documentary evidence in support of the charges, but also oral evidence, which refers to witnesses. It is the testimony of witnesses produced before an impartial inquiry officer through the agency of a presenting officer that imbues life into documents, turning them from idle material into speaking evidence. Much evidence comes from the oral testimony of witnesses. In the absence of witnesses, testifying in support of the charges, the documents are but mute papers and inferences of his own cannot be drawn by the inquiry officer from these documents. The inquiry officer cannot identify himself with the establishment, even if he is their employee. He must act as an impartial arbiter and cannot start with a presumption of guilt against the employee/ delinquent, but one of innocence. The story of guilt has to be written by the establishment, producing both documentary and oral evidence, particularly oral, in a major penalty matter.

7. The witnesses, apart from documentary evidence, who would have to be produced on behalf of the establishment, have to be their witnesses. And, then it does not matter, whether the delinquent appears at the scheduled date, time and venue of inquiry; or he does not. The obligation of the establishment is to produce their evidence, after intimation of the date, time and place of inquiry to the delinquent, but it is not that on the date, time and place of inquiry, the inquiry officer can sit with an approach that the charges are proof of themselves, and it is for the delinquent to call witnesses in defence; and, then in some way by their evidence dispel the charges. It is for the establishment to prove the charges by producing their witnesses, apart from documentary evidence. Even if the delinquent does not participate, the obligation of the establishment to prove the charges by evidence aliunde, which must include oral evidence, that is to say, the testimony of witnesses is a sine qua non for the proof of charges in a major penalty, as a matter of salutary principle.

8. The approach in a case, where the delinquent does not appear, as the case here, which seems to be the aggressive stance of the Principal Secretary, placed before us through his personal affidavit, much in ignorance of the law, would not lead to proof of the charges against the petitioner. The conduct of the petitioner, in not participating in the inquiry, is certainly not appreciable. To that extent, the Principal Secretary, in the stand that he has taken in his personal affidavit, is right that despite multiple dates being scheduled and intimated to the petitioner for holding departmental proceedings, he did not appear. But, the Principal Secretary is shockingly wrong in his understanding of the law when he says that the petitioner was at flaw in not appearing at the inquiry and cross-examining witnesses proposed by him (a reference to the petitioner). K.

Ravinder Naik, Principal Secretary (Fisheries), Government of U.P., Lucknow does not seem to have the slightest of idea about what 'examination-in-chief' and 'cross-examination' mean. It would be horrendous to any trained legal mind to think or even one having the slightest acquaintance with the law that one could cross-examine his own witnesses.

9. A party leads the evidence of his own witnesses in the examination-in-chief and cross-examines witnesses produced by the other side. The Principal Secretary, across the length and breadth of the affidavit, has blamed the petitioner for not producing his own witnesses and cross-examining them. This is an unpardonable breach in the understanding of the fundamentals of a departmental inquiry, which the Principal Secretary has exhibited before this Court on quite an aggressive note of complaint against the petitioner's absenteeism during inquiry. We would shortly deal with the question of absenteeism as well, where the Principal Secretary is right about the complaint, but not the course of action adopted. To elucidate and exemplify the flaw in the approach of the respondents, speaking through the Principal Secretary's personal affidavit, which is effectively the counter affidavit filed in this case, we would refer to some of the paragraphs, where the Principal Secretary's understanding of the law in regard to proof of charges against a delinquent at the inquiry by examining witnesses, is indicated:

"16. That during the inquiry conducted by the Inquiry Officer, Dr. Kedar Nath, the then Deputy Director, Fisheries, Headquarters, Dr. T. Kumar was directed to be present for hearing and cross-examination of the witnesses proposed by him, but he remained absent on most of the occasions on one pretext or the other, which prima facie shows his non-cooperative attitude in the inquiry and his intention to deliberately delay the case.

18. That through the letter dated 16.08.2019 of the Inquiry Officer Dr. Kedar Nath, Deputy Director, Fisheries (Fisheries) informed the petitioner Dr. T. Kumar that out of the witnesses proposed by him for charges number 01, 06 & 07, Shri K. W. Warsi was never posted as Deputy Director Varanasi. A witness named Shri R. B. Verma has never been a Deputy Director in the Fisheries Department. The petitioner's demand to call the above mentioned witnesses for cross-examination in respect of charges number 01, 06 and 07 was not found justified by the Inquiry Officer.

19. That in the context of testimony/cross examination of witnesses, Dr. T. Kumar has been informed that the witness Shri Shankar Lal, Senior Clerk (Retd.) vide his letter dated 02.08.2019 has informed the former Inquiry Officer that it was informed that he is sick and is unable to walk/hear and and he is see, so he has nothing to say in the said case and he is unable to come and go. The witness proposed by the petitioner T. Kumar, Shri Brijesh Kumar Singh, Assistant Statistical Officer, Agra, through his letter dated 03.08.2019, informed the Deputy Director, Fisheries, Agra that from the date of his appointment till now his posting is in the Divisional Office, Agra, he was not posted under Dr. T Kumar in the Districts of Aligarh and Hathras, due to which he has no connection with the matter in question.

20. That the Inquiry Officer has informed Dr. T. Kumar that the name and

address of another witness proposed by him. Mr. Aslam, firm owner Aligarh, was not given correctly. On an inquiry, it was found that the place of Mr. Aslam belongs to Mr. Rashid, Fish Aquarium 25/1 Khirni, Aligarh Gate. The aforementioned firm was enquired by the Deputy Director, Agra, by letter dated 20.09.2019 of the Deputy Director, Agra, the Inquiry Officer, Deputy Director, Fisheries (Headquarters) was informed that the said firm or any shop was not found on the spot. The information about the sudden death of Mr. Lal Singh, retired fisherman, who was included in the list of witnesses in the month of July, 2018, was given to the former Inquiry Officer by letter dated 29.05.2019, Deputy Director, Fisheries Aligarh, Division.

21. That on 27-6-2019 and 05-9-2019, a witness Shri Hakim Ali, Vehicle Driver, Aligarh, Shri Ram Swaroop, Senior Fisheries Inspector, Orai, Shri Nazir Khan, Fisheries Inspector, Mahoba, retired and again on 20-8-2019 Shri Ram Swaroop, Senior Fisheries Inspector, Orai appeared for cross-examination but despite the information of the petitioner Dr. T. Kumar, he did not appear. The cross-examination of witnesses was conducted by the former investigating officer on 12.06.2019 in front of the petitioner, in which written statements of Shri N.P. Singh, Fisheries Inspector, Shri Akhilesh Sharma, Vehicle Incharge/ Fisheries Development Officer, Aligarh were taken.

22. That in the course of request for cross-examination of witnesses of the petitioner Dr. T. Kumar by letter dated 03.12.2021 of Dr. Saroj Kumar, Special Secretary/ inquiry Officer, the petitioner was apprised of the above-mentioned developments and was informed that serious and important efforts were made by the former inquiry officer for cross examination of his proposed witnesses and they were also given ample opportunities to present their side and evidence, but they did not provide full cooperation to the investigating officer and did not show seriousness towards cross-examination by remaining absent on most occasions. The list and names of witnesses have been changed from time to time by the petitioner and along with writing the names and addresses of some witnesses unclearly, cross-examination of some witnesses was requested despite not being related to the case. In respect of the witnesses proposed by the petitioner and the request for cross-examination was made to the former inquiry officer, diligent action and efforts have been made. By the aforesaid letter of the Inquiry Officer dated 03.12.2021, Dr. T. Kumar was informed that he was not cooperating with the previous Inquiry Officer as well as the present Inquiry Officer in the inquiry and efforts were being made to keep the inquiry suspended in one way or the other."

(emphasis by Court)

10. A reading of the paragraphs from the Principal Secretary's affidavit shockingly reveal that the Principal Secretary himself does not understand the essentials of holding a departmental inquiry. The affidavit does not show at all whether any witnesses were produced by the establishment to prove the charges brought against the petitioner. There is not the name of a solitary witness, which the establishment produced to prove the charges. If there were any, the establishment's witnesses would surely have been produced without difficulty. Instead, the paragraphs of the personal affidavit unmistakably reveal that the

establishment required the petitioner to disclose the names of witnesses by whose evidence he wanted to substantiate his defence. The affidavit then indicates that some of these witnesses said that they were irrelevant or their addresses were wrong. One said that he was sick and some did appear, whom the petitioner did not cross-examine. It is indeed placing the cart before the horse in the sense that the petitioner was certainly not obliged to produce witnesses in his defence before the establishment produced evidence, including witnesses, to prove the charges against the petitioner.

11. It is not the petitioner, who has to establish his innocence before the inquiry officer by leading evidence, documentary and oral. It is just the other way round. It is the establishment, who have to prove the petitioner's guilt, may be by the standard of preponderant probability, as already remarked. In doing that the establishment would have to produce their documentary evidence and witnesses one by one, who, if the petitioner attended the inquiry, could be cross-examined. Thereafter, if the petitioner produced evidence in his defence, regarding which time had to be given to him, he could do that. If he did not do that, it would not absolve the establishment of their liability to produce documentary evidence as well as witnesses to prove the charges. Here, surely, the establishment did not produce any witness. All they speak about are the witnesses, referred to by the petitioner in his defence. Even if the said witnesses did not appear or the petitioner did not produce them, it would not establish the charges against the petitioner by default, as if it were.

12. The repeat employment of the expression that the petitioner did not cross-examine his witnesses is shocking. Indeed, no one cross-examines one's own witnesses. It is something unheard of by any person having basic forensic training. Here, this is precisely what the respondents have done as the personal affidavit of the Principal Secretary would show. He has blamed the petitioner for not appearing at the inquiry, which is true for a fact, but how does that lead to proof of the charges has not at all been explained. It has nowhere been shown, who were the witnesses produced on behalf of the establishment to prove the charges. If a delinquent is not appearing at the inquiry on the scheduled date, time and place, which in this case was indeed fixed and intimated to the petitioner, the course of action for the inquiry officer or the inquiry committee, is enunciated by the Supreme Court in *State of U.P. and another v. T.P. Lal Srivastava, (1996) 10 SCC 702,* where it has been held:

"4. This appeal by special leave arises from the judgment of the Allahabad High Court made on 15-3-1993 in Writ Petition No. 12480 of 1987. The admitted position is that while the respondent was working as a Senior Marketing Inspector, a charge-sheet was served on him on 23-11-1984 calling upon him to explain the charges for committing gross irregularities in the movement of wheat outside the State of U.P. Instead of submitting reply to the charge-sheet, he went on dilly-dallying in submitting the reply. Several letters addressed to the respondent proved ineffective. Resultantly, the appellants took a decision on 26-6-1987 holding that the respondent was found guilty of misappropriation. Consequently, he came to be dismissed from service. The respondent challenged the same in the writ petition. The High Court has set aside the

order in the impugned order holding that the documents have not been supplied to the respondent and, therefore, the action was vitiated by error of law. We do not find any justification in the view taken by the High Court; the substratum of the result is that the appellants have not conducted any enquiry though the respondent had been avoiding to give the reply. Since the respondent had avoided to submit the reply, he has forgone his right to submit his reply. Nonetheless, the appellants are not absolved of the duty to hold an ex parte enquiry to find out whether or not the charge has been proved. In the event of the Enquiry Officer finding that the charge is proved, he would submit his report to the disciplinary authority. The disciplinary authority should communicate the copy of the enquiry report to the respondent and seek an explanation for the proposed action thereon. If the respondent submits any explanation, the same may be taken into consideration and appropriate order may be passed according to law. Until then, the respondent must be deemed to be under suspension."

(emphasis by Court)

13. It was the establishment's burden to produce the evidence at the appointed date, time and venue and if the petitioner absented, as the Principal Secretary amply shows by his affidavit – a fact also established from the original records, the respondents ought have proceeded ex parte against the petitioner. *Ex parte* inquiry would mean that the respondents would have to produce evidence before the inquiry officer on behalf of the establishment through a presenting officer on the scheduled date, time and venue of inquiry. The absenting petitioner would be deprived of his right of cross-examining the establishment's witnesses, and, of course, of leading his own evidence in defence. But, it is not that, that the absenting petitioner's conduct could lead to a finding of guilt against him, based on his default without the establishment producing evidence to prove the charges. The establishment's charges carried in the charge-sheet do not come with an inherent proof of themselves. They have to be established before the inquiry officer by the establishment producing evidence. This apparently has not been done in this case.

14. We have perused the original records of the inquiry that were summoned in this case and across the length and breadth of the record, we do not find that the testimony of any establishment's witness was recorded with the petitioner remaining absent on the appointed date, time and venue of inquiry. After all, that was all what was required to be done in a case like the present one, where indeed the petitioner absented on the various dates scheduled for the inquiry by the inquiry officer, despite notice to him.

15. While parting with the matter, we must remark that before criticizing the Principal Secretary's understanding of the law about inquiries, we have given him adequate opportunity by calling his personal affidavit, on the foot of which alone, this writ petition has been heard. He has disclosed his understanding of the law and the fallacies, wherein we have pointed out. The remarks of whatever kind there, are therefore, not without opportunity to him. The remarks are more necessitated because there are not scores, but may be thousands of departmental inquiries in this State, the result whereof, including the ensuing orders of punishment, have to be nullified by the Court for the same

fundamental flaw in the understanding of the officers of the State as to how a departmental inquiry is to be conducted. In most of the inquiries, the Disciplinary Authority and the Inquiry Officer regard the charges proof of themselves because they are officers of the establishment. In their approach, they hardly ever require the establishment to prove the charges. And, for an opportunity, they call the delinquent, asking him during personal hearings to offer proof of his innocence, rather than requiring the establishment to prove the delinquent's guilt. This leads to an utter wastage of public time and money, particularly, of the Government and their various establishments.

16. As this case would show, even a remand by this Court to undertake the inquiry afresh in accordance with law, after referring to relevant authorities, did not affect the single minded and determined breach of salutary procedure, which officers across various establishment of the State commit in the holding of disciplinary proceedings. There have been suggestions in the past that officers of the State should be sent for training how to hold departmental inquiries. We do not think that it would bear fruit. The reason is that the plethora of authority in point, much of which comes from the Supreme Court and this Court, has not been followed by the Government or their other establishments. It is not on account of a mere lack of understanding for the principles there that are not really very complicated to understand and follow. The breach primarily comes because of an idea to resist the principle that the law is what the Court says it is. We do not think that any kind of training for the inquiry officers would serve any purpose. They would have to be made to adhere to the requirements of the law, that has been laid down by the Supreme Court and this Court in the holding of departmental inquiries. If they do not, apart from imposition of penal costs recoverable from the Inquiry Officer and the Disciplinary Authority, including the Appellate Authority, disciplinary action might have to be recommended to the Government against such Authorities, who constantly observe the law laid down by the Supreme Court and this Court in breach. For the present, we are not minded to do that.

17. In the result, this writ petition succeeds and is **allowed**. The impugned orders dated 16.05.2024 passed by the Principal Secretary (Fisheries), Government of U.P., Lucknow is hereby quashed. It will be open to the respondents, if they so elect, to proceed afresh against the petitioner in accordance with Article 351-A of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, holding an inquiry bearing in mind the guidance in this judgment; and if they find the petitioner guilty, inflict a penalty permissible by law, that is condign. However, the Government shall not impose a penalty, if they take fresh proceedings, which is higher than that carried in the order impugned. The arrears of withheld part of the pension shall be payable to the petitioner, subject to event in the disciplinary proceedings, if undertaken. If no fresh disciplinary proceedings are elected to be undertaken, the petitioner would be entitled to the arrears of his reduced part of pension together with 6% simple interest from the date the reduced part of the pension is payable.

18. There shall be no order as to costs.

19. Let the records be returned to the learned Standing Counsel forthwith for

their onward and safe transmission to the respondents.

20. Let a copy of this order be communicated to the Principal Secretary (Fisheries), Government of U.P., Lucknow, the Director (Fisheries), Directorate of Fisheries, U.P., Lucknow, the Finance and Accounts Officer, Directorate of Fisheries, U.P., Lucknow and the Deputy Director (Fisheries), Kanpur Division, Kanpur by the Registrar (Compliance).

(2025) 6 ILRA 124
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 06.06.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ - A No. 18453 of 2024

Rakesh Kumar Tyagi ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioners:
Sujeet Kumar Rai

Counsel for the Respondents:
C.S.C., Satyam Singh

A. Service Law - Constitution of India,1950 - Article 226 & 300A - Payment of Gratuity Act,1972-Section 4(6)-U.P. Cooperative Societies Employees Service Regulations,1975-Regulations 84 and 96- withholding of gratuity and dues-The petitioner , a retired Senior Branch Manager of the District Cooperative Bank Limited Ghaziabad challenged the withholding of Rs. 19.25000 from his post retirement benefits by the Bank-The amount was retained due to loans he had sanctioned, which later became non-performing assests(NPAs)-The court held that such recovery was illegal in the absence of any disciplinary proceedings or criminal conviction-Gratuity and post-retiral benefits are protected u/s 4(6) of the Act,1972 and Article 300A of the Constitution –Recovery from such benefits is impermissible unless services were terminated for proven misconduct-Administrative decisions or internal resolutions cannot override these legal protections-Thus, Impugned orders and resolution quashed-Bank directed to release withheld amount with interest. (Para 22 to 35)

List of Cases cited:

1. U.P. Coop. Union & ors. Vs Prabhu Dayal Srivastava & ors.(1988) SCC Online All 302

2. St. of Jhar. & ors. Vs Jitendra Kr. Srivastava & anr.(2013) 12 SCC 210

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

1. The petitioner questions an order of the Chief Executive Officer, District Cooperative Bank Limited, Ghaziabad dated 18.11.2024 and the resolution of the Committee of Management of the said Bank dated 08.10.2024, in effect, withholding a sum of Rs.19,25,500/- out of his post retiral benefits on account of loan disbursed by the petitioner, that have turned into non-performing assets, allegedly due to callous disbursement of those loans to customers.

2. The petitioner retired from service of the District Cooperative Bank Limited, Ghaziabad (for short, 'the Bank') as a Senior Branch Manager on 31.12.2022. He entered service of the Bank as a Clerk-cum-Cashier on 12.07.1988, steadily earning his promotions to the post of a Senior Branch Manager that he held at the time of retirement. It is the petitioner's case that he had an unblemished service record. Upon

retirement, all that was paid to him was his contributory provident fund and nothing else. The petitioner, therefore, made an application dated 01.01.2024 to the Chief Executive Officer of the Bank, requesting the release of his post retiral benefits and explaining his position in regard to some loans that he had sanctioned, which turned into non-performing assets.

3. On 18.01.2024, the petitioner moved another application, pointing out the lapse on part of other incumbents in the office of the Branch Manager, where the loans had become non-performing assets in not taking timely steps to recover. He moved yet another application on 12.03.2024 to the Bank, claiming release of his post retiral benefits in their entirety. Still another application was made by the petitioner on 16.04.2024 to the Bank, pointing out that in view of the provisions of the Payment of Gratuity Act, 1972, the gratuity of a retired employee can neither be forfeited nor adjusted.

4. Failing in all endeavours under the Uttar Pradesh Co-operative Societies Act, 1965 (for short, 'the Act of 1965'), the petitioner caused a legal notice dated 22.06.2024 to be served upon the Bank through his learned Advocate. Upon this demand, the Bank responded to the legal notice through a memo dated 26.07.2024 addressed to the learned Counsel and another dated 22.08.2024 addressed to the petitioner, which in sum and substance show on one hand the total outstanding post retiral dues in the petitioner's favour with their break-up, and, on the other, the total sum of money, that had become a non-performing asset on account of loans allegedly sanctioned by the petitioner, in a callous fashion, in favour of ten loanees. The particulars of those loans were also indicated. In substance, these two memoranda indicate that the dues of the petitioner stand at a figure of Rs.33,61,045/-, whereas the total sum of loans sanctioned by the petitioner negligently, that have turned into non-performing assets account for a figure of Rs.19,25,397.77 as on 22.07.2024.

5. The post retiral dues standing to the petitioner's credit, to which he was entitled upon retirement, are payable under the following heads:

Sl. No.	Item	Amount
1	Bonus	221561.00
2	Incentive	135862.00
3	Gratuity	2624146.00
4	GroupInsurance	94079.00
5	Earned Leave	285397.00
Total		336 1045.00

6. On the other, the total sum of Rs.19,25,397.77, which account for the Bank loans, sanctioned and disbursed by the petitioner, that have turned non-performing assets, are depicted below in tabular form:

Sl. No	Borrower's Name	Father's / Husband's Name	Address	Loan Account Number	Status as on 22.07.2024

					Original	Interest	Total
1	Neeraj	Parmanand	H.No. 93, Village Nagla Aankhu, P.S. Niwadi, Tehsil Modinagar, Ghaziabad	8080/150	89776	847888.68	745644.68
2	Inderpal	Shishram	Village Hridaypur Mandola, Tehsil Modinagar, Ghaziabad	8080/152	1651 49	152249.97	317398.97
3	Pawan Kumar	Vishambar	Village Latifpur Tibda, Tehsil Modinagar, Ghaziabad	8080/164	42755	–	427550.00
4	Rajendra	Raghuveer	Village Nagla Aankhu, P.S. Niwadi, Tehsil Modinagar, Ghaziabad	8080/166	83483	95594.98	179077.98
5	Hanif	Maqsood	Village Nagla Aankhu, Tehsil Modinagar, Ghaziabad	8080/167	81074	887988.14	1698872.1
6	Brijmohan	Satya prakash	Village Nagla Aankhu, Tehsil Modinagar, Ghaziabad	8080/168	1021 30	111805.79	213935.79
7	Rakesh Devi	Brahm Singh	Village Nagla Aankhu, Tehsil Modinagar, Ghaziabad	8080/170	89708	910688.78	1807776.78
8	Shobinder	Buddh Singh	Village + Post Patla, Ghaziabad	8080/174	1044 55	117887.42	222342.42
9	Jitender Kumar	Tilak Ram	Village + Post Bhaneda Nagla Aankhu, Ghaziabad	8080/175	93912	102803.09	196715.09
10	Raj Kumar	Baleram	Village + Post Patla, Ghaziabad	8080/177	1068 29	211129.92	227958.92

Total Sum: 19,25,397.77

7. Apparently, therefore, the Bank proposed to withhold a part of the petitioner's post retiral benefits, subject to realization of their non-performing assets on account of the loans sanctioned by the petitioner while in service, and recover the Bank's lost money from the petitioner's retirement benefits. The petitioner, therefore, instituted Writ-A No.13459 of 2024 before this Court, where this Court passed the following order on 03.09.2024:

"Heard Sri Sujeet Kumar Rai, learned counsel for the petitioner and Sri Satyam Singh, learned counsel for the contesting respondent Nos. 2 & 3.

By means of this petition filed under Article 226 of the Constitution, petitioner has questioned the notices issued o him dated 26th July, 2024 and 22nd August, 2024, whereby he has been directed to furnish his explanation qua certain dues with regard to the non performance of assets in respect of the loan disbursed by him while he was Senior Branch Manager of the society. He submits that the notice is virtually a direction instead of asking a simplicitor reply.

Sri Satyam Singh, learned counsel for the respondent Nos.- 2 & 3 does not have any objection in the event petitioner is directed to represent the matter against the notice and any further action is taken only after the disposal of the objection/ representation of the petitioner.

In view of the above, this petition stands disposed of with a direction to the petitioner to furnish reply to the notices issued to him within a period of four weeks from today and in the event any such reply is made as directed in here above, the same shall be disposed of first after giving full opportunity of hearing to him within a further period of one month.

It is further provided that until a final decision is taken in the matter as directed herein above, no recovery pursuant to the notice shall be pursued against the petitioner."

8. In compliance with the said order, the Bank issued a notice to the petitioner dated 01.10.2024, calling him for a personal hearing before the Committee of Management of theirs on 08.10.2024 at 10 o'clock in the morning hours at the Bank Headquarters. On 08.10.2024, the petitioner appeared before the Bank's Committee of Management, submitting that he had filed his reply on 12.09.2024, which may be taken into consideration. At the time, this petition was instituted, the petitioner knew the result of the orders made by the Committee of Management and the consequential orders of the Chief Executive Officer, but he did not have with him a copy of the decision taken by the Committee of Management. The result of the decision of the Committee of Management was that a sum of Rs.19,25,000/- has been invested in an FDR standing in the petitioner's name with the Raj Nagar Branch of the Bank, but with the Bank's lien marked on the said sum of money.

9. The FDR for the sum of Rs.19,25,500/- has been pledged by the Bank in their favour, though the instrument stands in the petitioner's name. A photostat copy of the said FDR dated 17.10.2024 is available on record at page No.70 of the paper-book. The date of maturity is 17.10.2025. There is an endorsement across its face, which read: "Pledge – Zila Sahkari Bank Ltd. Ghaziabad. PLEDGE. Sd./- Br.

Manager". The balance of Rs.14,35,554/- due on account of the petitioner's post retiral benefits has been remitted to the petitioner's account, releasing it unconditionally in his favour. The petitioner made a request for the provision of a copy of the resolution passed by the Committee of Management dated 08.10.2024, by which a substantial sum of his post retiral benefits was directed to be withheld in the FDR, invested in his own name, but to no avail.

10. Aggrieved by the non-payment of the balance of his post retiral benefits and deprived of the right of being served with a copy of the Committee of Management's resolution dated 08.10.2024, authorizing retention of the unpaid part of his retirement benefits, the petitioner has instituted the present writ petition under Article 226 of the Constitution. He prayed, amongst others, that the resolution of the Bank, directing the withholding of a part of his post retiral benefits, may be summoned from the respondents and quashed. The petitioner has further prayed that a writ of mandamus be granted by this Court, ordering the third respondent, the Secretary & Chief Executive Officer of the Bank, to release the FDR, bearing No. 0002196, illegally pledged by the Bank in their favour for a sum of Rs.19,25,500/- together with interest.

11. *Vide* order dated 25.11.2024, we required the Secretary & Chief Executive Officer of the Bank to appear in person and show cause why a copy of the order, passed in compliance with our order dated 03.09.2024 in Writ-A No.13459 of 2024, had not been furnished to the petitioner. On the next date, when the matter came up, an affidavit along with an exemption application has been filed on behalf of respondent No.3. Along with this affidavit, a copy of the order dated 18.11.2024 passed by the Chief Executive Officer of the Bank, directing retention of the petitioner's fund and its investment in the FDR in compliance with the Committee of Management's resolution, was enclosed as Annexure No.1 to the CEO's affidavit. This Court, accordingly, proceeded to issue a notice of motion by a detailed order dated 02.12.2024. In compliance, respondent Nos.2 and 3 filed a counter affidavit dated 08.12.2024. Along with the counter affidavit, a copy of the resolution of the Committee of Management, authorizing retention of the petitioner's post retiral benefits and their investment in the FDR, pledged in the Bank's favour was also enclosed. This resolution is one dated 08.10.2024 and annexed as Annexure No.2 to the counter affidavit. Now, therefore, it is the order of the Chief Executive Officer dated 18.11.2024 and the resolution of the Committee of Management of the Bank dated 18.10.2024 that the petitioner wants us to quash and grant him a mandamus for the substantial relief that he desires. The parties having exchanged affidavits, when the petition came up on 09.12.2024, it was admitted to hearing, which proceeded forthwith. Judgment was reserved.

12. Heard Mr. Sujeet Kumar Rai, learned Counsel for the petitioner, Mr. Satyam Singh, learned Counsel for respondent Nos.2 and 3 and Mr. Girijesh Kumar Tripathi, learned Additional Chief Standing Counsel appearing on behalf of the State.

13. The question in this case, that requires consideration is, if for the Bank's accounts, that have become non-performing assets, may be due to some negligence on

the petitioner's part in drawing up papers relating to loans advanced during his time, can the petitioner's post retiral benefits be withheld without holding disciplinary proceedings against him? We do not think so. There is no pension for the petitioner admissible under the Rules and the break-up of his post retiral benefits, in the earlier part of the judgment, would show that out of his total post retiral benefits, that is to say, a sum of Rs.33,61,045/-, Rs.26,24,146/- are comprised of the component of gratuity payable. Now, gratuity under the Uttar Pradesh Co-operative Societies' Employees Service Regulations, 1975 (for short, 'the Regulations of 1975') framed under the Act of 1965, is dealt with under Chapter VII, Regulation 95 of the Regulations of 1975. Regulation 95 is all that is there about gratuity under the Regulations of 1975. Regulation 95 reads:

"95. Gratuity.– (i) A co-operative society may by a resolution of its committee of management allow to its employee gratuity equivalent to not more than 15 days' salary for every complete year of service(part of the year if less than six months, to be ignored), if he has attained the age of superannuation or has been declared invalid for service by the Civil Surgeon or has been retrenched or dies while in service:

Provided he has put in ten years of continuous service immediately preceding retirement, invalidation, or retrenchment or five year's continuous service in case of death, as the case may be. In case of death gratuity shall be payable to the nominee of the employee and in the absence of nomination, to his legal heir.

(ii) For purposes of meeting its obligations under clause (I), a co-operative society may create Employees' Gratuity Fund."

14. Regulation 103 of the Regulations of 1975 reads:

"103. The provisions of these regulations to the extent of their inconsistency, with any of the provisions of the Industrial Disputes Act, 1947, U. P. Dookan Aur Vanijya Adhishthan Adhiniyam, 1962, Workmen's Compensation Act, 1923 and any other labour laws for the time being in force, if applicable to any co-operative society or class of co-operative societies, shall be deemed to be inoperative."

15. The clear purport of Regulation 103 of the Regulations of 1975 is that these regulations, to the extent they are inconsistent with the provisions of the Industrial Disputes Act, 1947, the Workmen's Compensation Act, 1923 and any other labour law for the time being in force, if applicable to any cooperative society or a class of such society, shall be deemed to be inoperative. In other words, in case of conflict between any provision of the Regulations of 1975 and the provisions of the named statutes in Regulation 103, or any other labour laws for the time being in force, the provisions of the Regulations of 1975 would yield to the named statutes or any other conflicting labour laws.

16. Now, the Act of 1972 would certainly fall in the class of 'any other labour laws for the time being in force', mentioned in Regulation 103, but to see if the provisions of the Act of 1972 would exclude the Regulations of 1975, it would have to be determined if there is inconsistency between the provisions of the Act of 1972 and the Regulations of 1975.

As we read the provisions of the two statutes, any inconsistency, that may be there, can be about the computation of gratuity, that is provided under Regulation 95 of the Regulations of 1975, or the eligibility to receive gratuity. There is nothing in Regulation 95 of the Regulations of 1975 or elsewhere in those regulations, that may conflict with the other provisions of the Act of 1972, relating to payment of gratuity to the employees of a Cooperative Society, whose terms and conditions of service are governed by the Regulations of 1975.

17. The foremost question is if the Act of 1972 would apply to a co-operative society, like the respondents, engaged in the business of banking. Section 1 of the Act of 1972 reads:

"1. **Short title, extent, application and commencement**.—(1) This Act may be called the **Payment of Gratuity Act, 1972**.

(2) It extends to the whole of India:

Provided that in so far as it relates to plantations or ports, it shall not extend to the State of Jammu and Kashmir.

(3) It shall apply to—

(a) every factory, mine, oilfield, plantation, port and railway company;

(b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;

(c) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.

(3-A) A shop or establishment to which this Act has become applicable shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time after it has become so applicable falls below ten.

(4) It shall come into force on such date as the Central Government may, by notification, appoint."

(emphasis by Court)

18. The question, whether the Act of 1972 would apply to a co-operative society, fell for consideration before this Court in regard to the Uttar Pradesh Co-operative Union. The Uttar Pradesh Co-operative Union is an apex co-operative society registered under the Act of 1965. If the co-operative union, which is after all a society registered under the Act of 1965, has been held by this Court to be within the ambit of the Act of 1972, regarding it as an 'establishment' within the meaning of Sections 1(3)(b) and 1(3)(c) of the said Act, there is no basis to think that the Bank, who are after all a co-operative society registered under the Act of 1965, are not to be regarded as an establishment within the meaning of Sections 1(3)(b) and 1(3)(c) of the said Act. Now, this holding of a Division Bench of our Court in **Uttar Pradesh Co-operative Union and others v. Prabhu Dayal Srivastava and others, 1988 SCC OnLine All 302,** is to be noted for the relevant remarks of their Lordships. In **Prabhu Dayal Srivastava (supra),** it has been held:

"5. We are conscious that the Act is a progressive, social and beneficial legislation and it has to be interpreted as to promote the purpose or object of the Act. In such matters the construction that promotes the purpose of legislation should be preferred rather than just a literal construction. Under S. 1(3)(c) the relevant clause is "such other establishment" in a State in which ten or more persons are employed or were employed on any day of the preceding twelve months. The preceding Cl. 1(3)(b) was "every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishment in a State." The word "and" even though appears to be conjunction, but keeping in view the legislative intent and applying elementary principles of textual and contextual interpretation it appears to have the meaning of "or" and has been accordingly, used in a disjunctive sense. This preceding clause under S. 1(3)(b) to the effect "every shop or establishment within the meaning of any law for the time being in force in relation to shops" has got a complete meaning with the establishment pertaining to shops. There was no sense in using the word "and," a conjunction, and to add subsequent clause "establishment in a State" in which ten or more persons are employed. This obviously indicates that subsequent expression "establishment in a State" has been used in an independent and different sense than the preceding clause and has nothing to do with the establishment in relation to shops. In our opinion the word "and" has been used disjuntively to mean "or." We are conscious that the word "or" is antithesis of word "and" and the meaning of word "and" has to be sparingly interpreted as "or." The context of expression has been used under Sub-cl. (b) or Sub-cl. (c) of S. 1(3) of the Act. Keeping in view of the intention and purpose of legislation to provide gratuity to employees drawing wages up to Rs. 270 per month or otherwise. The object of the Act can also be in brief looked into, which is to the following effect:

"The Bill provides for payment of gratuity to employees drawing wages up to Rs. 750 per month in factories, plantations, shops, establishments and mines, in the event of superannuation, retirement, resignation and death or total disablement due to accident or disease. The quantum of gratuity payable will be 15 days' wages based on the rate of wages last drawn by the employees concerned for every completed year of service or part thereof in excess of six months subject to a maximum of 15 months' wages. The term wages means basic wages plus dearness allowance."

6. In the aforesaid object of the Act it has been clearly specified that the employees of factories, plantations, shops, establishments and mines have been separately provided. It means that the object of legislation was to provide benefit of gratuity to establishments independently of shops.

7. Much emphasis was laid by the learned counsel for petitioner on the word "establishment" used in second clause after the word "and." the word "establishment" is, however, not a defined term either under the Act or under the General Clauses Act. It is now well-settled principle that dictionary meaning of a word cannot be looked into in case the word has been defined statutorily or has been judicially defined. But where there is no such definition or interpretation, the Court can take the aid of dictionaries to ascertain the meaning in common parlance.

In doing so the Court must bear in mind that the words are used in different sense according to its context and the dictionary gives all the meaning of a word and the Court would, therefore, have to select from the meaning which would be relevant to the contest in which it has to interpret the words. See State of Orissa v. Titaghar Paper Mills Company, Ltd. [1985 Supp SCC 280 : A.I.R. 1985 S.C. 1296].

8. It is better to have some dictionary meanings of the word "establishment." According to Black's Law Dictionary the word "establishment" connotes an institute, a place where conducted, to settle or fix firmly, place of a permanent footing. According to Words and Phrases (Permanent Edn.), Vol. 15, the word "establishment" means a place where one is permanently fixed for residence or business, such as an office or place of business with its fixtures. Further it means an establishment in which employee is or was employed. "Establishment" means merely something established. In Webster's International Dictionary the word "establishment" means an institute or place of business with its fixtures and organized staff. Oxford Dictionary defines the term "establishment" as organized body of men maintained for a purpose. According to Bouvier, Law Dictionary the word "establishment" connotes that which is instituted or established for public or private use.

10. In V. Transport [Private), Ltd. v. Regional Provident Fund Commissioner, Madras [A.I.R. 1965 Mad. 466], it means been held that the word "establishment" has been interpreted to mean an organization which employs persons, where relationship of employee and employer comes into existence.

11. We are accordingly of the opinion that the word "establishment" as used under S. 1(3)(b) or S. 1(3)(c) of the Act connotes an organized body of men and women employed where the relationship of employer and employee comes into existence. There could be no manner of doubt that petitioner 1 has employed a number of employees for a purpose, namely, to carry out the duties assigned to them for the object for which Uttar Pradesh Co-operative Union has been established. There is no doubt that the provisions of Gratuity Act would apply to the employees of petitioner 1. The application of respondent 1 was certainly maintainable and the preliminary objection raised on behalf of the petitioners has correctly been rejected by the impugned order."

19. There is no serious cavil between parties in this case that the Act of 1972 would apply to the Bank. Here, of particular relevance is sub-Section (6) of Section 4 of the Act of 1972, which must be quoted in the togetherness of Section 4, though most of the other sub-Sections might not be directly relevant. Section 4 of the Act of 1972 reads:

"4. Payment of gratuity.—(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,—

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

Explanation.—For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year], the employer shall pay the gratuity at the rate of seven days' wages for each season.

Explanation.—In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.

(3) The amount of gratuity payable to an employee shall not exceed such amount as may be notified by the Central Government from time to time].

(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

(6) Notwithstanding anything contained in sub-section (1),—

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee may be wholly or partially forfeited—

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."

20. Sub-Section (6) of Section 4 provides for contingencies, where the gratuity payable to an employee would stand wholly or partly forfeited. Clauses (a) and (b) of sub-Section (6) of Section 4 of the Act of 1972 would show that for an employee to be liable to a forfeiture of the whole or part of his gratuity, it is essential in each contingency that his services should have been terminated for some blameworthy conduct. Thus, except for a case of termination of service as contemplated under sub-Section (6) of Section 4, the right to receive gratuity cannot be forfeited in view of the Act of 1972.

21. Admittedly, in this case, the petitioner was never subjected to disciplinary proceedings or meted out any kind of punishment while in service. He was also never tried and convicted for a criminal offence on account of the lapses that the Bank impute to him in the documentation of loans sanctioned by him that turned non-performing assets with no avenue for the Bank to recover from the defaulters. He retired from service without the blemish of disciplinary proceedings or facing trial on criminal charges.

22. There is nothing in the Regulations of 1975 or under any other provision of the law, that may authorize the respondents to withhold the petitioner's gratuity upon his retirement. Rather, that course is expressly forbidden by sub-Section (6) of Section 4 of the Act of 1972, except in cases of termination from service envisaged under the aforesaid provision. Therefore, there can be no deduction, and, a fortiori, no retention of the petitioner's funds to the extent of sum of gratuity is concerned. Given the admitted sum of gratuity payable to the petitioner, the sum of money retained and invested in the FDR by the Bank, pledging it in their favour, contingent upon the petitioner's success in securing realization of the bad loans involved, is manifestly illegal.

23. So far as the other post retiral benefits are concerned, there is nothing in the Regulations of 1975, or under any other provision of the law, by dint of which any of the petitioner's post retiral benefits may be withheld, except when the petitioner suffers punishment in the course of disciplinary proceedings. Admittedly, the petitioner was never proceeded with against by the Bank in the exercise of their disciplinary jurisdiction while in employment, nor was he tried on a criminal charge in relation to the lapses that the Bank now say he committed in the matter of documentation for the various loans, that were disbursed during time while the petitioner was in office. There are two sources of authority available with the Bank to recover from an employee or officer under the Regulations of 1975 for any loss caused to the Bank. One is under Regulation 84, occurring in Chapter VII of the Regulations of 1975, which relates to disciplinary proceedings, and, the other is Regulation 96, occurring in Chapter VIII relating to provident funds, gratuity, security, honorarium and pay advance.

24. The penalties, which may be imposed under Regulation 84 of the Regulations of 1975, read:

"84. Penalties.- (i) Without prejudice to the provisions contained in any other regulation, an employee who commits a breach of duty enjoined upon him or has been convicted for criminal offence or an offence under section 103 of the Act or does anything prohibited by these regulations shall be liable to be punished by any one of the following penalties :-

(a) censure,

(b) withholding of increment,

(c) fine on an employee of Category IV (peon, chaukidar, etc.).

(d) recovery from pay or security deposit to compensate in whole or in part for any pecuniary loss caused to the co-operative society by the employee's conduct,

(e) reduction in rank or grades held substantively by the employee,

(f) removal from service, or

(g) dismissal from service.

……..."

(emphasis by Court)

25. Regulation 96 (supra) reads:

"96. Security.- (i) Employees of co-operative societies shall furnish such security as may be specified by the Registrar under sub-section (1) of section 120 of the Act. It shall be recoverable in lump sum or in such instalment as may be required by the Registrar.

(ii) Interest as admissible, on the savings bank account in the post office, shall be given on the amount of the security of the employee concerned.

(iii) When an employee ceases to be in the service of the society or dies, the security amount together with interest due shall be refunded to the employee and in the case of death, his heir, within a period of 3 months from the date of completion of audit following cessation of service or death:

Provided that the society shall deduct any claim of dues outstanding against such employee.

(emphasis by Court)

26. A conjoint reading of Regulation 84(i)(d) and the proviso to Clause (iii) of Regulation 96 would show that recovery can be made from the pay or security deposit to compensate the society in whole or in part for any pecuniary loss sustained on account of their employee's conduct as a measure of penalty or in case of conviction for a criminal offence. Thus, the power to recover under Regulation 84 is limited to cases, if as a measure of punishment in disciplinary proceedings, loss caused by the employee to the society is directed to be recovered from his pay or security deposit envisaged under Regulation 96. It can also be recovered in case of conviction for a criminal offence or an offence under Section 103 of the Act of 1965. The provisions of Regulation 84(i)(d) would show that the recovery of loss caused to the society can be made only in case of the employee being held guilty in

disciplinary proceedings and imposed with the penalty of recovery. The other restriction is that recovery can be made from his pay or security deposit to compensate the society for the loss sustained. Regulation 84 does not authorize recovery of the loss sustained by the society, even if the employee is held guilty from any other sum of money due to him, which include his post retiral benefits in their entirety.

27. The proviso to Clause (iii) of Regulation 96, authorizing the society to deduct any claim of dues outstanding against the employee, for a first would be complementary to the society's power to impose the punishment of recovery in consequence of disciplinary proceedings or conviction on a criminal charge under Regulation 84(i)(d), and, for a second, afford the society a source of authority to deduct or recover any claim or dues outstanding against the employee. The proviso to Regulation 96, therefore, also authorizes the society to recover any claim of theirs against an employee that constitutes outstanding dues, dehors the provisions of Regulation 84, but limits that general authority to recover the security deposit available in their hands.

28. There is, thus, no authority available to the Bank under the Regulations of 1975 to recover from any of the petitioner's post retiral benefits, whether in consequence of an order of penalty passed in their disciplinary jurisdiction, or as a result of the employee's conviction on a criminal charge. The Bank, in this case would, therefore, have no right to recover from the employee's post retiral benefits, including the ones other than gratuity, even if an order of recovery had been passed against him under Regulation 84 after holding disciplinary proceedings, or in the event of him being convicted on a criminal charge. Here, admittedly, no proceedings were taken against him, disciplinary or before a Criminal Court, denuding the respondents of their authority to recover from whatever they could under Regulation 84.

29. The power to recover under Regulation 84, in the petitioner's case, would be limited to his pay or security deposit, if he were found guilty by the Bank of causing pecuniary loss to them in the exercise of their disciplinary jurisdiction. The petitioner while in service was admittedly not proceeded with against by the Bank in their disciplinary jurisdiction. The only other residual power available to the Bank to deduct any claim of dues outstanding against the petitioner available under the proviso to Clause (iii) of Regulation 96 would be limited to the petitioner's security deposit made under the aforesaid Regulation. The residual power of the Bank to recover his dues does not extend to effecting it from the petitioner's post retiral benefits.

30. It was open to the Bank to recover the losses they allege against the petitioner on account of their loans that have become non-performing assets, which they say they cannot recover, because of the petitioner's faulty documentation of the loan papers relating to the defaulters by instituting disciplinary proceedings against the petitioner while he was in service or proceeding against his security deposit, whatever be its worth. While in service, recovery could be made from the petitioner's pay also, besides the security deposit envisaged under Regulation 96. After the petitioner has retired, there is no authority available with the Bank, either to

institute any proceedings against the petitioner or recover from him the loss sustained due to flawed documentation of loans that the petitioner did, as the Bank claim. There is no authority available with the Bank in the exercise of their residual powers, or administrative authority etc., to recover from the petitioner, what during audit or administratively they have found to be blameworthy conduct of the petitioner in doing a flawed documentation of loans, impairing the Bank's remedies against the defaulters. The Bank ought have acted in time while the petitioner was in service.

31. This embargo upon the Bank's power to recover from the petitioner, applies to all kind of post retiral benefits due to the petitioner, available in the hands of the Bank; not just gratuity. Of course, gratuity is placed beyond pale of recovery by virtue of sub-Section (6) of Section 4 of the Act of 1972.

32. It is trite law that gratuity, pension, which is not involved here, and for that matter any other post retiral benefits due to an employee under the rules is property protected by Article 300A of the Constitution. It can be taken away by authority of law; not otherwise. It cannot be taken away by a mere administrative decision or executive instruction, or, still less, what the employer may think to be just and fair in the exercise of his general or supervisory powers as the Head of the Establishment. This principle is far too well settled to brook doubt and finds eloquent and authoritative enunciation in **State of Jharkhand and others v. Jitendra Kumar Srivastava and another, (2013) 12 SCC 210**. In **Jitendra Kumar Srivastava (supra),** it has been held by the Supreme Court:

"16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognised as a right in "property". Article 300-A of the Constitution of India reads as under:

"300-A.Persons not to be deprived of property save by authority of law.—No person shall be deprived of his property save by authority of law."

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

17. It hardly needs to be emphasised that the executive instructions are not having statutory character and, therefore, cannot be termed as "law" within the meaning of the aforesaid Article 300-A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold even a part of pension or gratuity. As we noticed above, so far as statutory Rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these Rules, the position would have been different."

33. **In Jitendra Kumar Srivastava,** the principle, though stated in the context of pension and gratuity, also mentions leave encashment as property of the employee protected by Article 300A of the Constitution, but the umbrella would clearly apply to all post retiral benefits that

the employee is entitled to under the rules at the time of retirement.

34. In view of all that we have found, the impugned order, directing retention of a sum of Rs.19,25,500/- in fixed deposit, pledged in favour of the Bank, subject to the condition that the petitioner ensures recovery of the Bank's non-performing asset, the impairment of the avenues of recovery whereof has been attributed to the petitioner, cannot be sustained. The petitioner has to be paid all his post retiral benefits, without any abridgement or abatement.

35. In the result, this writ petition succeeds and is **allowed**. The impugned order dated 18.11.2024 and the impugned resolution of the Committee of Management dated 08.10.2024, insofar as these relate to the petitioner's claim to his post retiral benefits, are hereby **quashed.** The Secretary & Chief Executive Officer and the Committee of Management of the Bank are commanded by a mandamus to forthwith release and pay to the petitioner the sum of Rs.19,25,500/-, retained with them and invested in an FDR, together with the accrued interest on the instrument.

36. There shall be no order as to costs.

37. Let a copy of this judgment be communicated to the Secretary & Chief Executive Officer, District Cooperative Bank Limited, Ghaziabad and the resolution of the Committee of Management of the said Bank by the Registrar (Compliance).

(2025) 6 ILRA 138
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 09.06.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ - A No. 19042 of 2024

Ranjeet Kumar ...Petitioner
Versus
The Registrar Corporative Societies & Ors. ...Respondents

Counsel for the Petitioner:
Rajendra Prasad Mishra, Ramakant Tiwari

Counsel for the Respondent:
Ashok Kumar Lal, C.S.C.

A. Service Law – UP Co-operative Societies' Employees Service Regulations, 1975 – Reg. 84 – Disciplinary proceeding – Punishment –Withholding of increment with cumulative effect – Principle of natural justice – Applicability – Petitioner took defence against the charges imposed – Non-speaking punishment order was passed – Validity challenged – No discussion about defence was made – Effect – Held, in the absence of a discussion on the particulars of the three charges, the petitioner's defence and reasons to conclude why the charges were held proved, the underlying decision of the Committee of Management, as expressed in the impugned order passed by the Secretary/Chief Executive Officer of the Bank, is certainly violative of natural justice. –The order, despite being verbose on other details, maintains critical silence on what went on in the mind of the decision makers to conclude that the charges against the petitioner are proved by the requisite standard of preponderant probability. (Para 16)

B. Constitution of India,1950 – Article 14 –Classification – Vires of Reg. 84 of Regulation, 1975 not classifying the penalty of withholding of increment as major penalty – How far Court can interfere in the absence of challenge to it – Held, the penalty of withholding increments with cumulative effect, that

would have the effect of postponing future increments, would be certainly a major penalty by all established norms, and Reg. 84, to this extent seems to arbitrarily classify penalties. But, that question cannot be gone into in the absence of a challenge laid by the petitioner to the vires of the said Regulation. (Para 12)

Writ petition allowed. (E-1)

List of Cases cited:

1. Special Leave Petition (C) No.18983 of 2023; Bihar Rajya Dafadar Chaukidar Panchayat (Magadh Division) Vs St. of Bihar & ors., decided on 02.04.2025

2. Basudev Dutta Vs State of W.B. & ors.; 2024 SCC OnLine SC 3616

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

1. This writ petition is directed against the order of the Secretary/Chief Executive Officer, District Cooperative Bank Limited, Bareilly, dated 28.02.2023, inflicting upon the petitioner punishment of withholding two increments with cumulative effect, after holding disciplinary proceedings. The decision carried in the order impugned is one taken by the Committee of Management of the Bank last mentioned, but formally made by the Secretary/ Chief Executive Officer.

2. The petitioner is a clerk in the employ of the District Cooperative Bank Limited, Bareilly (for short, 'the Bank'). The period of time, to which the proceedings giving rise to the present writ petition relate, the petitioner was posted in the Meerganj Branch of the Bank at Bareilly as Cashier-cum-Clerk. The petitioner asserts that his service record is otherwise free from blemish. He was placed under suspension pending inquiry *vide* order dated 20.12.2021 under the provisions of the Uttar Pradesh Co-operative Societies' Employees Service Regulations, 1975 (for short, 'the Regulations of 1975') on allegation that on the day specified therein, when the cash was checked, it was found short. There is also an allegation against the petitioner that he had taken a loan from a member of the public and remained absent from duty without information or leave. A charge-sheet was issued to the petitioner on 04.03.2022, after approval by the Secretary/ Chief Executive Officer of the Bank. The petitioner filed his reply dated 15.04.2022, denying all the charges.

3. During the inquiry, the petitioner was called in by the Inquiry Officer, directing him to appear before him on 04.02.2022 at 11.30 a.m. to defend himself. The petitioner submitted his defence further before the Inquiry Officer on the date fixed, that is to say, on 04.02.2022. The Inquiry Officer submitted his inquiry report or the inquiry note, holding the petitioner guilty. The petitioner was then required by the Secretary/ Chief Executive Officer of the Bank, vide a letter dated 28.07.2022, to appear before him for a personal hearing on 05.08.2022 at 4.00 p.m. In compliance with the said letter, the petitioner appeared before the Secretary/ Chief Executive Officer of the Bank. He denied the charges. This proceeding was followed by another notice dated 01.09.2022 from the Secretary/ Chief Executive Officer, directing the petitioner to appear before the Committee of Management on 05.09.2022 at 1.00 p.m. for a personal hearing and make submissions in his defence. A show cause notice was then issued by the Secretary/ Chief Executive Officer, requiring the petitioner to answer the charges against him finally. The petitioner submitted his

reply dated 15.12.2022, again refuting the charges. The petitioner was called in person to appear before the Committee of Management once again on 24.01.2023, vide letter dated 18.01.2023, scheduling the time at 1.00 p.m., but the petitioner could not appear on account of being ill.

4. The petitioner has pleaded in the writ petition that the impugned order is vitiated because during the course of inquiry, no witness was produced on behalf of the establishment in support of the three charges. It is particularly said that two witnesses, around whom two of the charges centre, to wit, Smt. Gunjan Singh and Smt. Haseena, were not produced by the establishment. It is also urged that no date, time and place was fixed for hearing the witnesses for the establishment, where the petitioner could cross-examine them and lead his own evidence, if he thought so. It is pointed out that the inquiry was lingering on and so was his suspension. Therefore, he instituted Writ-A No.21058 of 2022 before this Court, questioning his order of suspension, or rather his continued suspension. The said writ petition was disposed of with a direction to the Disciplinary Authority to conclude the proceedings within a period of three months of the date of production of a certified copy of the order made in the aforesaid writ petition. It was also provided that if the proceedings are not concluded within the said period of time, the petitioner may submit a representation to the Authority, described as respondent No.3 in this Court's order, who shall consider and decide the petitioner's representation expeditiously, preferably within a period of one month. The said detail appears to be now unnecessary because the impugned order passed by the Secretary/ Chief Executive Officer of the Bank has notified the decision of the Committee of Management to punish the petitioner with the withholding of two increments with cumulative effect. In addition, he has been warned to be careful in future with a direction that in case of repetition of the misconduct, the Bank would be compelled to dismiss him from service. The petitioner was reinstated in service, providing that during the period of suspension, whatever subsistence allowance has been received by him, is all that would be there towards his emoluments and nothing more would be payable on account of salary and allowances.

5. The petitioner has instituted the present writ petition, aggrieved by the order dated 28.02.2023, punishing him as above indicated.

6. A notice of motion was issued vide order dated 02.12.2024, and, in course of time, parties have exchanged affidavits. The writ petition was admitted to hearing on 12.12.2024. The hearing proceeded that day to conclusion. Judgment was reserved. 7. Heard Mr. Umesh Chandra Tiwari, Advocate holding brief of Mr. Rajendra Prasad Mishra, learned Counsel for the petitioner, Mr. Ashok Kumar Lal, learned Counsel for respondent Nos.2 and 3 and Mr. S.C. Upadhyay, learned Standing Counsel, appearing on behalf of respondent Nos.1 and 4.

8. Upon hearing learned Counsel for the parties and perusing the record, what we find is that the following three charges were laid against the petitioner:

"आरोप संख्या - 01

प्रधान कार्यालय के उक्त आदेश के अनुपालन में अधोहस्ताक्षरी द्वारा प्रकरण की जाँच की गयी, जॉच में पाया गया,

कि शाखा प्रबन्धक, शाखा - मीरगंज ने अपने पत्र दिनांक 20.12.2021 के माध्यम से अवगत कराया, कि दिनांक 18.12.2021 को आप द्वारा खाता धारक श्रीमती गुंजन सिंह पत्नी श्री गौरव सिंह को उनके अंकन 70,000=00 रु0 के आहरण पर अंकन 69,500=00 रु0 मात्र का भुगतान किया गया और अंकन 500=00 रु0 का कम भुगतान किया गया, जिसकी जॉच करने पर श्रीमती गुंजन सिंह द्वारा अवगत कराया गया, कि उनके द्वारा शाखा मीरगंज में खुले अपने बचत खाता संख्या - 21248 से दिनांक 18.12.2021 को अंकन 70,000=00 रु0 निकालने के लिए आहरण पत्र उक्त धनराशि का दिया गया, किन्तु तत्समय आप द्वारा उन्हें अंकन 69,500=00 रु0 मात्र का भुगतान किया गया, जो अंकन 500=00 रु0 कम था। उनके बार-बार कहने के उपरान्त भी उन्हें अंकन 500=00 रु0 आप द्वारा नहीं दिये गये, जिसकी शिकायत शाखा प्रबन्धक महोदय से की गयी, तदउपरान्त शाखा प्रबन्धक महोदय ने आपसे अंकन 500=00 रु0 वापस दिलवाये। प्रकरण की जानकारी लेने पर शाखा प्रबन्धक द्वारा अवगत कराया गया, कि शाम को कैश बन्द करते समय कैश गिनने पर 20 रु0 के 20 नोट कम निकले अर्थात 400=00 कैश में कम थे, जिसको पूरा कराने के उपरान्त कैश को बन्द कराया गया। साथ ही शाखा प्रबन्धक द्वारा अवगत कराया गया, कि श्रीमती गुंजन सिंह बैक की पुरानी खाता धारक हैं एवं एक प्रतिष्ठित नागरिक हैं, उनके साथ श्री रंजीत कुमार कैशियर द्वारा इस प्रकार का व्यवहार किये जाने के कारण बैंक की विश्वसनीयता एवं छवि खराब हो रही है। अतः आपको शाखा-मीरगंज पर कैशियर पद पर कार्यरत रहते हुए कैश शार्ट करने, तथा कैशियर के रूप में कार्य करते हुए कैश में हेरा-फेरी कर बैंक की विश्वसनीयता को धूमिल करने के आरोप से आरोपित किया जाता है।

आरोप संख्या-02

प्रकरण की जाँच के दौरान अधोहस्ताक्षरी द्वारा शाखा मीरगंज में शिकायतकर्ता से बयान लिये जा रहे थे तभी शाखा प्रबन्धक की उपस्थिति में शाखा मीरगंज के कई ग्राहकों ने अधोहस्ताक्षरी को अवगत कराया, कि आप द्वारा उनको गुमराह करते हुए नकद रूपये उधार ले लिये गये हैं और बहुत माँगने पर भी वापिस नहीं कर रहे हैं। प्रकरण की जाँच के दौरान दिनांक 04.02.2022 को मुख्यालय में श्रीमती हसीना खाता संख्या 5354 शाखा फरीदपुर द्वारा लिखित रूप से कहा गया है कि आप द्वारा अपने पद का दुरूपयोग एवं उनको गुमराह करते हुए अंकन 10,000=00 रु0 उधार लिये हैं। उक्त शिकायत के सन्दर्भ में जब आपसे अपना पक्ष जानने के लिए जानकारी ली गयी तो आप द्वारा लिखित रूप से अपने उक्त कृत्य की स्वीकारोक्ति की गयी। अतः आप द्वारा बैंक के ग्राहकों को गुमराह करते हुए रूपये उधार लिये जाने की पुष्टि होती है, जिसके कारण आपको ग्राहकों व आम जनता से रूपये उधार लेकर बैंक की छवि धूमिल करने के आरोप से आरोपित किया जाता है।

आरोप संख्या - 03

प्रकरण की जॉच करते समय अधोहस्ताक्षरी द्वारा बैंक प्रधान कार्यालय पत्रांक 3005 / निरी0 - संग्रह / 2021-22 दिनांक 10.01.2022 के माध्यम से शाखा प्रबन्धक शाखा - फरीदपुर सायं0 से, आपके शाखा से अनुपस्थित रहने के सन्दर्भ में सूचना मांगी गयी, साथ ही अधोहस्ताक्षरी द्वारा भी शाखा पर रक्षित कर्मचारियों के उपस्थिति रजिस्टर / प्रपत्रों की जॉच करने पर पाया गया, कि आप दिनांक 01.05.2017, 02.05.2017, 16.08.2017, 02.09.2017, 31.09.2017, 16.10.2017, 17.10.2017, 19.10.2020 को शाखा से बिना किसी सूचना के अनुपस्थित रहे हैं और पाया गया, कि आप द्वारा निम्न दिनांक को शाखा पर कार्य नहीं किया गया, जिसके सम्बन्ध में शाखा प्रबन्धक से जानकारी ली गयी, तो उनके द्वारा अवगत कराया गया, कि उक्त दिनांक पर –

31.07.2017	18.09.2017	27.07.2018	21.08.2018	27.05.2019	07.08.2019	29.08.2019
01.08.2017	29.09.2017	30.07.2018	27.08.2019	27.05.2019	08.08.2019	19.10.2020
02.08.2017	24.07.2018	31.07.2018	29.08.2018	21.06.2019	26.08.2019	18.12.2020
03.08.2017	25.07.2018	01.08.2018	20.10.2018	05.08.2019	27.08.2019	19.12.2020
17.08.2017	26.07.2018	20.08.2018	07.05.2019	06.08.2019	28.08.2019	

आपको अर्जित अवकाश दिखाया गया है, जबकि मुख्यालय के प्रशासन अनुभाग से प्राप्त सूचना से स्पष्ट होता है, कि आप द्वारा न तो कोई अर्जित अवकाश हेतु कोई आवेदन ही किया गया और न ही इस प्रकार का कोई अवकाश मुख्यालय स्तर से आपको प्रदान किया गया।

अग्रेतर जॉच में पाया गया, कि पूर्व में भी आपके द्वारा इस प्रकार की अनियमितता/ पलायन का कृत्य किया जाता रहा है, जिसका संज्ञान लेते हुए प्रधान कार्यालय पत्रांक 217/प्रशासन/2015-16 दिनांक 12.05.2015 द्वारा आपसे दिनांक 21.042015 से 21.04.2015 तक शाखा में बिना सूचना के अनुपस्थित रहने का स्पष्टीकरण माँगा गया था। पूर्व में भी प्रधान कार्यालय पत्रांक 862/प्रशासन/2016-17 दिनांक 20.07.2016 को भी शाखा फरीदपुर सायं0 के 27.06.2016 को बिना किसी सूचना के अद्यतन शाखा में अनुपस्थित रहने और पत्रांक 3348/प्रशासन/ 2018-19 दिनांक 03.01.2019 के द्वारा दिनांक 19.12.2018 से दिनांक 24.12.2018 तक अर्जित अवकाश पर होने परन्तु 27.12.2018 तक शाखा पर उपस्थित न होने के सम्बन्ध में एवं किसी प्रकार की सूचना शाखा पर न देने विषयक स्पष्टीकरण आपसे माँगा गया और बैंक मुख्यालय द्वारा बिना सूचना के अनुपस्थित मानते हुए उक्त तिथियों के वेतन रहित का भी नोटिस आपको दिया गया। इसी क्रम में प्रधान कार्यालय पत्रांक 2387/प्रशासन/2019-20 दिनांक: 15.01.2020 द्वारा आपसे दिनांक 08.01.2020 को शाखा पर बिना किसी सूचना के अनुपस्थित रहने विषयक स्पष्टीकरण माँगा गया। पत्रांक 1023/प्रशासन/20210-21 दिनांक 19.08.2020 द्वारा भी दिनांक 23.07.2020 से 27.07.2020 एवं 01.08.2020 से निरन्तर अनुपस्थित रहने का भी स्पष्टीकरण मांगा गया साथ ही इस सम्बन्ध में मुख्यालय पत्रांक 740/प्रशासन/2021-22 दिनांक 09.07.2021 के द्वारा आपको दिनांक 23.07.2020 से 27.07.2020 तक तथा दिनांक 01.08.2020 से 27.09.2020 तक बिना किसी सूचना के शाखा से पलायित रहने विषयक चेतावनी पत्र भी निर्गत किया गया।

अतः आप शाखा / मुख्यालय को भ्रमित कर बिना सूचना के प्रायः पलायित रहते रहे हैं, जिसके लिए आपको बिना किसी सूचना के शाखा से पलायित रहने और बैंक कार्यों में रूचि न लेने के आरोप से आरोपित किया जाता है।"

9. The petitioner offered his substantial defence to these charges together with a record of his leave on the dates of his absence vide his written statement dated 15.04.2022. It was emphatically argued by the learned Counsel for the petitioner that since disciplinary proceedings were held, a date, time and place of inquiry ought have been intimated to the petitioner, and more than that, in support of the charges, it was the duty of the establishment to lead both documentary and oral evidence through a presenting officer before an inquiry formally convened. The Inquiry Officer did not convene any formal inquiry, nor did he write a formal report. Indeed, a report of the inquiry has not figured on the record; if not placed by the petitioner, by the respondents either. About this issue, the question would be, if the respondents were obliged to hold a formal inquiry. The further issue on the facts of this case that would arise would be if they were obliged to hold an inquiry, where evidence, both documentary and oral, ought have been led, are they so obliged now that they have imposed the punishment of withholding two increments with cumulative effect?

10. We think that going by the settled law that lays down salutary principles governing the holding of disciplinary proceedings, where a major penalty may be imposed, the respondents to begin with, when they held the inquiry, were obliged to formally convene an inquiry before their Inquiry Officer, where they ought have led both documentary and oral evidence. In fact, once they issued a charge-sheet and appointed an Inquiry Officer, it is evident that they had one of the three major penalties envisaged under Regulation 84 (i) (e), (f) and (g) of the Regulations of 1975 in mind. They ought,

therefore, have proceeded with the disciplinary proceedings, adhering to salutary principles, where, apart from fixing a date, time and place for holding the inquiry, they should have convened the inquiry formally with the Inquiry Officer, requiring the establishment to produce evidence, both documentary and oral, in support of the charges. This was apparently not done. This breach would have vitiated the proceedings from the stage of the charge-sheet, meriting an inquiry de novo from that stage, but on facts, the event in the disciplinary proceedings would make the last mentioned principle inapplicable here. The reason is that the penalty that was imposed is one of withholding two increments with cumulative effect and not one of the three penalties under Regulation 84, for which recourse to disciplinary proceedings is mandatory.

11. Generally, under the law and most service rules, the imposition of the penalty of withholding increments – one or more – with cumulative effect is regarded a major penalty. Here, Regulation 84 dictates differently. Regulation 84 of the Regulations of 1975 provides:

"84. Penalties.- (i) Without prejudice to the provisions contained in any other regulation, an employee who commits a breach of duty enjoined upon him or has been convicted for criminal offence or an offence under section 103 of the Act or does anything prohibited by these regulations shall be liable to be punished by any one of the following penalties : -

(a) censure,

(b) withholding of increment,

(c) fine on an employee of Category IV (peon, chaukidar, etc.).

(d) recovery from pay or security deposit to compensate in whole or in part for any pecuniary loss caused to the co-operative society by the employee's conduct,

(e) reduction in rank or grades held substantively by the employee,

(f) removal from service, or

(g) dismissal from service.

(ii) Copy of order of the punishment shall invariably be given to the employee concerned and entry to this effect shall be made in the service record of the employee.

(iii) No penalty except censure shall be imposed unless a show cause notice has been given to the employee and he has either failed to reply within the specified time or his reply has been found to be unsatisfactory by the punishing authority.

(iv) (a) The charge-sheeted employee shall be awarded punishment by the appropriate authority according to the seriousness of the offence:

Provided that no penalty under sub-clause (e), (f) or (g) of clause (i) shall be imposed without recourse to disciplinary proceedings.

(b) No employee shall be removed or dismissed by an authority other than by which he was appointed unless the appointing authority has made prior

delegation of such authority to such other person or authority in writing.

(v) The appointing authority or person authorised by him while passing orders for stoppage of increments shall state the period for which it is stopped and whether it shall have effect of postponing future increments or promotion."

12. One might think that the penalty of withholding increments with cumulative effect, that would have the effect of postponing future increments, would be certainly a major penalty by all established norms, and Regulation 84, to this extent seems to arbitrarily classify penalties. But, that question cannot be gone into in the absence of a challenge laid by the petitioner to the vires of the said Regulation. The rare course of judging the vires of Regulation 84 would arise if, during hearing, this Court had been confronted with the issue and a rule issued to the respondents on the question of vires of the said Regulation. This was never a point that was raised during hearing as well, let alone a formal challenge being raised. The consequence would be that the procedure applicable to the disciplinary proceedings here, would be one strictly governed by Regulation 84 and its own classification of punishments, vis-a-vis the procedure to be followed in order to validly inflict them. In this connection, reference may be made to the guidance of the Supreme Court in **Special Leave Petition (C) No.18983 of 2023, Bihar Rajya Dafadar Chaukidar Panchayat (Magadh Division) v. State of Bihar and others, decided on 02.04.2025.**

13. A perusal of Regulation 84(i) and the proviso to Regulation 84(iii)(a) would show that except for the penalty envisaged under sub-Clauses (e), (f) and (g) of Clause (i) of Regulation 84, it is not necessary to take recourse to disciplinary proceedings. Regulation 84(iii) also shows that all other penalties envisaged under sub-Clauses (a) to (d), except censure, can be imposed by the issue of a show cause notice and giving opportunity to the employee to reply. Here, though the proceedings were set on course for the award of a penalty envisaged under sub-Clauses (e), (f) and (g) of Clause (i) of Regulation 84, but what was awarded at the end of all proceeding was a penalty covered by sub-Clause (b) of Clause (i) of Regulation 84. This penalty under Regulation 84 could be awarded by giving a show cause notice. A perusal of the proceedings taken against the petitioner shows that he was given opportunity and show cause notices at various stages of the proceeding by the Disciplinary Authority, and, in addition, additional opportunity before the Inquiry Officer under the more elaborate procedure was also followed. The effect would be that going by the class of penalty awarded to the petitioner, there is no breach of procedure envisaged.

14. A perusal of the impugned order also shows that the petitioner was given adequate opportunity to show cause before the Disciplinary Authority. The conclusion would, therefore, be that though the disciplinary proceedings, that were taken, were not held according to the procedure envisaged for one of the penalties the respondents possibly had in mind, that is to say, the penalties governed by sub-Clauses (e), (f) and (g) of Clause (i) of Regulation 84, but for the penalty actually awarded, that is to say, the withholding of increments with cumulative effect governed by sub-Clause (b) of Clause (i) of Regulation 84, there was indeed no breach of procedure.

15. The other point that was argued is that the impugned order is vitiated because it is non-speaking and does not carry reasons, which too derogates from the fairness of procedure and even the rules of natural justice. Reference in this connection may be made to **Basudev Dutta v. State of W.B. and others, 2024 SCC OnLine SC 3616**, where the Supreme Court enunciated the principle governing the point, involved here, thus:

"12.2. It is settled law that every administrative or quasi-judicial order must contain the reasons. Such reasons go a long way in not only ensuring that the authority has applied his mind to the facts and the law, but also provide the grounds for the aggrieved party to assail the order in the manner known to law. In the absence of any reasons, it also possesses a difficulty for the judicial authorities to test the correctness of the order or in other words, exercise its power of judicial review. In this context, it will be useful to refer to the judgment of this Court in Kranti Associates (P) Ltd. v. Masood Ahmed Khan,(2010) 9 SCC 496: (2010) 3 SCC (Civ) 852, wherein after a detailed analysis of various judgments, it was held as follows:

"27. In Rama Varma Bharathan Thampuram v. State of Kerala [(1979) 4 SCC 782 : AIR 1979 SC 1918] V.R. Krishna Iyer, J. speaking for a three-Judge Bench held that the functioning of the Board was quasi-judicial in character. One of the attributes of quasi-judicial functioning is the recording of reasons in support of decisions taken and the other requirement is following the principles of natural justice. The learned Judge held that natural justice requires reasons to be written for the conclusions made (see SCC p. 788, para 14 : AIR p. 1922, para 14).

28. In Gurdial Singh Fijji v. State of Punjab [(1979) 2 SCC 368 : 1979 SCC (L&S) 197] this Court, dealing with a service matter, relying on the ratio in Capoor [(1973) 2 SCC 836 : 1974 SCC (L&S) 5 : AIR 1974 SC 87], held that "rubber-stamp reason" is not enough and virtually quoted the observation in Capoor (supra), SCC p. 854, para 28, to the extent that:

"28. ... Reasons are the links between the materials on which certain conclusions are based and the actual conclusions." (See AIR p. 377, para 18.)

29. In a Constitution Bench decision of this Court in H.H. Shri Swamiji of Shri Amar Mutt v. Commr., Hindu Religious and Charitable Endowments Deptt. [(1979) 4 SCC 642 : 1980 SCC (Tax) 16 : AIR 1980 SC 1] while giving the majority judgment Y.V. Chandrachud, C.J. referred to (SCC p. 658, para 29) Broom's Legal Maxims (1939 Edn., p. 97) where the principle in Latin runs as follows:

"Cessante ratione legis cessat ipsa lex."

30. The English version of the said principle given by the Chief Justice is that: (H.H. Shri Swamiji case [(1979) 4 SCC 642 : 1980 SCC (Tax) 16 : AIR 1980 SC 1], SCC p. 658, para 29)

"29. ... 'reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself'." (See AIR p. 11, para 29.)

.....

33. In Star Enterprises v. City and Industrial Development Corpn. of

Maharashtra Ltd. [(1990) 3 SCC 280] a three-Judge Bench of this Court held that in the present day set-up judicial review of administrative action has become expansive and is becoming wider day by day and the State has to justify its action in various fields of public law. All these necessitate recording of reason for executive actions including the rejection of the highest offer. This Court held that disclosure of reasons in matters of such rejection provides an opportunity for an objective review both by superior administrative heads and for judicial process and opined that such reasons should be communicated unless there are specific justifications for not doing so (see SCC pp. 284-85, para 10).

…….

46. The position in the United States has been indicated by this Court in S.N. Mukherjee [(1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242 : (1991) 16 ATC 445 : AIR 1990 SC 1984] in SCC p. 602, para 11 : AIR para 11 at p. 1988 of the judgment. This Court held that in the United States the courts have always insisted on the recording of reasons by administrative authorities in exercise of their powers. It was further held that such recording of reasons is required as "the courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review". In S.N. Mukherjee [(1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242 : (1991) 16 ATC 445 : AIR 1990 SC 1984] this Court relied on the decisions of the US Court in Securities and Exchange Commission v. Chenery Corpn. [87 L.Ed. 626 : 318 US 80 (1943)] and Dunlop v. Bachowski [44 L.Ed.2d 377 : 421 US 560 (1975)] in support of its opinion discussed above.

47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial

decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37]).

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR, at 562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (CA)], wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process"."

16. A perusal of the impugned order in this case shows that though the order does speak a lot of the various steps of procedure about how and at what point of time which notice was given to the petitioner and by what authority, there is no mention by as much as a whisper of how the Secretary/ Chief Executive Officer of the Bank, or for that matter, the real decision maker, the Committee of Management of the Bank, considered the charges, the petitioner's defence against these and by what reasoning did they conclude all the charges proved against the petitioner. In the absence of a discussion on the particulars of the three charges, the petitioner's defence and reasons to conclude why the charges were held proved, the underlying decision of the Committee of Management, as expressed in the impugned order passed by the Secretary/ Chief Executive Officer of the Bank, is certainly violative of natural justice. The order, despite being verbose on other details, maintains critical silence on what went on in the mind of the decision makers to

conclude that the charges against the petitioner are proved by the requisite standard of preponderant probability.

17. It is on this short ground alone that we think that the impugned order ought be quashed and the matter sent back to the respondents to pass a fresh order after considering the petitioner's reply, of course, granting him further opportunity to file a supplementary reply with such papers as he desires and hearing him personally afresh, as done earlier. We think that personal hearing is necessary before the Disciplinary Authority because the earlier decision was taken after hearing the petitioner, and the incumbents in office might have changed or else their memories faded with the lapse of time.

18. No other point was raised.

19. In the result, this writ petition succeeds and is **allowed**. The impugned order dated 28.02.2023 passed by the Secretary/ Chief Executive Officer of the Bank is hereby **quashed.** It will be open to the respondents to pass an order afresh after affording necessary opportunity of hearing to the petitioner, but deciding the disciplinary matter now by a reasoned and speaking order on the merits of the charges, bearing in mind the guidance in this judgment. It is further ordered that in passing the order afresh, should the Disciplinary Authority reach conclusions against the petitioner, a punishment higher than that awarded by the impugned order shall not be imposed.

20. There shall be no order as to costs

21. Let a copy of this judgment be communicated to the Registrar, Cooperative Societies, U.P., Lucknow, the Chairman, Committee of Management, District Cooperative Bank Limited, Bareilly and the Secretary/ Chief Executive Officer, District Cooperative Bank Limited, Bareilly by the Registrar (Compliance).

(2025) 6 ILRA 148
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 13.06.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ - A No. 19578 of 2024

Rakesh Kumar ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Archana Singh, Shreeprakash Singh

Counsel for the Respondents:
C.S.C.,Ravindra Singh

A. Civil Law - Constitution of India, 1950 - Article 226-Uttar Pradesh Cane Co-operative Service Regulations,1975-Regulations 68 and 69-The petitioner challenged disciplinary order dated 11.03.2022 passed by the cane commissioner, U.P. imposing the penalties of withholding two increments with cumulative effect, proportionate recovery of loss and censure and appellate order dated 24.09.2024 affirming the disciplinary action-The charges against the petitioner, a Cashier at a Cane Cooperative Society related to alleged negligence leading to a financial loss of Rs. 75 lakhs-A department inquiry was conducted, wherein the Inquiry Officer found the petitioner guilty –The court found that the inquiry violated mandatory procedural safeguards under Regulations 68 and 69 of the Regulations 1975-No witnesses were examined, and no oral or

documentary evidence was produced during inquiry proceedings-The inquiry officer merely relied on the charg-sheet and reply without proper evidentiary proceedings-The charge-sheet itself was defective as it failed to detail the evidence proposed for each charge-Relying on settled law and Supreme Court precedents, the Court held that disciplinary proceedings require production of evidence and examination of witnesses, especially where major penalties are involved. (Para 1 to 28)

The writ petition was allowed and both the disciplinary and appellate orders were quashed. (E-6)

List of Cases cited:

1. St. of U.P. & ors.Vs Saroj Kr. Sinha (2010) 2 SCC 772

2. Roop Singh Negi Vs PNB & ors.(2009) 2 SCC 570

3. St. of Uttranchal & ors. Vs Kharak Singh (2008) 8 SCC 236

4. St. of U.P. & anr.Vs Kishori Lal & anr.(2018) 9 ADJ 397, DB (LB)

5. Smt. Karuna Jaiswal Vs St. of U.P. (2018) 9 ADJ 107 DB (LB)

6. St. of U.P. Vs Aditya Prasad Srivastava & anr.(2017) 2 ADJ 554 DB (LB)

7. Satyendra Singh Vs St. of U.P. & anr.(2024) SCC Online SC 3325

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

1. This writ petition is directed against an order passed by the Cane Commissioner and Chairman, State Cane Services Authority, U.P., Lucknow, dated 11.03.2022, awarding the petitioner the penalty of withholding two increments with cumulative effect, directing proportionate recovery of the loss sustained by the Sahkari Ganna Vikas Samiti Limited, Shamli, and censuring him, all after holding disciplinary proceedings. The petitioner has further challenged the appellate order dated 24.09.2024 passed by the Commissioner, Cane and Sugar, U.P., Lucknow, dismissing his appeal and affirming the order of the Disciplinary Authority.

2. The petitioner was posted as a Cashier with the Cane Cooperative Development Society, Thana Bhawan, District Shamli w.e.f. 03.10.2018. The petitioner's conditions of service are governed by the Uttar Pradesh Cane Co-operative Service Regulations, 1975 (for short, 'the Regulations of 1975'), as amended from time to time. The petitioner was issued a charge-sheet dated 28.12.2020 by the Deputy Cane Commissioner, Moradabad, who was nominated as the Inquiry Officer, carrying the following charges:

"आरोप पत्र संख्याः 1

गन्ना आयुक्त एवं निबन्धक, सहकारी गन्ना समितियाँ, उ.प्र. के परिपत्र संख्याः 21/सी दिनाँक 10.06.2019 के प्रस्तर-21 में निर्धारित व्यवस्था कि, गन्ना समिति के कोधाध्यक्ष, लेखाकार एवं सचिव का दायित्व होगा कि विनियोजित धनराशि की परिपक्वता तिथि पर धनराशि को समिति खाते में प्राप्त करने अथवा विनियोजित धनराशि को ब्याज सहित आगे की अवधि के लिए विनियोजित किये जाने के सम्बन्ध में ससमय निर्णय करायेंगे। यदि इसमें किसी प्रकार की चूक होती है और गन्ना समिति को ब्याज की हानि होती है, तो सम्बन्धित कोधाध्यक्ष, लेखाकार एवं सचिव का दायित्व निर्धारित किया जायेगा। आप द्वारा उक्त निर्देशों का अनुपालन नहीं किया गया जिसके कारण तत्कालीन कार्यवाहक लेखाकर द्वारा 'सेन्ट्रल बैंक आफ इण्डिया, खतौली से फर्जी एफ.डी.आर. संख्याः 3756234723 दिनाँक 24.05.2019 रू. 75.00 लाख बनवाकर समिति धन का व्यपहरण किया गया है। यदि आप द्वारा अपने पदीय पदायित्वों का निर्वहन करते हुए उक्त एफ.डी.आर. का

सत्यापन किया गया होता तो तत्काल ही व्यवहरण संज्ञानित हो जाता। आप द्वारा अपने पदीय दायित्वों का निर्वहन न करने से उक्त व्यपहरण में आपकी संलिप्तता भी परिलक्षित होती है, जिसके लिए आप दोषी प्रतीत होते हैं।

साक्ष्यः उप गन्ना आयुक्त, सहारनपुर की जाँच आख्या पत्र संख्या 1645/जाँच दिनाँक 01.09.2020

आरोप संख्याः 2

कोषाध्यक्ष के रूप में समिति के संव्यवहारों की निगरानी, विनियोजित धनराशि के मदवार प्राप्ति एवं उनका ससमय सत्यापन करने में आप द्वारा शिथिलता बरती गयी, जिसके कारण उक्त व्यपहरण हुआ। इस प्रकार आप कोषाध्यक्ष पद के पदीय दायित्वों का निर्वहन न करके समिति को वित्तीय क्षति पहुंचाने में संलिप्त रहने के दोषी प्रतीत होते हैं।

साक्ष्यः उप गन्ना आयुक्त, सहारनपुर की जाँच आख्या पत्र संख्या 1645/जाँच दिनाँक 01.09.2020

आरोप संख्याः 3

आप द्वारा समिति के संव्यवहारों से सम्बन्धित बैंक रिकान्सीलेशन स्टेटमेन्ट को सत्यापित करने में शिथिलता बरती गयी, जिसके कारण उक्त व्पहरण ससमय प्रकाश में नहीं आ पाया, जिसके लिए आप दोषी प्रतीत होते हैं।

साक्ष्यः उप गन्ना आयुक्त, सहारनपुर के जाँच आख्या पत्र संख्या 1645/जाँच दिनाँक 01.09.2020

आरोप संख्याः 4

आप अपने पदीय दायित्वों का समुचित निर्वहन न करने, वित्तीय नियमों का अनुपालन न करने विभागीय आदेशों/निर्देशों की अवहेलना करने के दोषी प्रतीत होते हैं।

साक्ष्यः उप गन्ना आयुक्त, सहारनपुर की जाँच आख्या पत्र संख्या 1645/जाँच दिनाँक 01.09.2020"

3. The petitioner filed his reply, denying the charges. His reply is dated 18.01.2021.

4. We do not intend to delve into the contents of the charge-sheet and the petitioner's reply or the evidence considered to hold it proved, because it is indeed not our province to evaluate evidence, which is the preserve of the Disciplinary Authority and the Appellate Authority.

5. What is in question here is the fairness of the procedure adopted during inquiry and if at any step of the proceedings, the petitioner has been denied his right to hearing, or subjected to unfair treatment. The Inquiry Officer submitted his report dated 28.08.2021, holding the petitioner guilty of Charges Nos.1 and 4, but exonerating him of Charges Nos.2 and 3.

6. On the foot of the said inquiry report, the Disciplinary Authority issued a show cause notice dated 24.09.2021, proposing to award a major penalty to the petitioner and requiring him to answer, enclosing with the show cause, a copy of the inquiry report. The petitioner furnished his explanation dated 29.11.2021, requesting an exoneration. The Disciplinary Authority, vide order dated 11.03.2022, punished the petitioner in the terms indicated at the outset of this order. The said order was appealed by the petitioner to the Appellate Authority by his appeal dated 18.09.2023. The appeal was dismissed by the Appellate Authority vide order dated 24.09.2024.

7. Aggrieved, this writ petition has been instituted by the petitioner.

8. A notice of motion was issued on 10.12.2024. In response, a counter affidavit has been filed on behalf of respondent Nos.3, 4 and 5 jointly, and a

separate counter affidavit has been filed on behalf of respondent No.6, adopting the terms of the counter affidavit filed on behalf of respondent Nos.3, 4 and 5. The learned Counsel for the petitioner waived his opportunity to file a rejoinder when the matter came up on 20.12.2024. The parties having exchanged affidavits, the petition was admitted to hearing which proceeded forthwith. Judgment was reserved.

9. Heard Mr. Shreeprakash Singh, learned Counsel for the petitioner, Mr. Ravindra Singh, learned Counsel appearing on behalf of respondent Nos. 3, 4, 5 and 6 and Mr. Sharad Chandra Upadhyay, learned Standing Counsel appearing on behalf of respondent Nos. 1 and 2.

10. The crux of the submissions advanced by the learned Counsel for the petitioner in this case is that though a major penalty has been awarded to the petitioner, the salutary procedure, governing departmental inquiries in a matter where a major penalty may ensue, has not been followed. It has been urged by the learned Counsel for the petitioner that no witness was examined in support of the charges against the petitioner and that without examination of witnesses and production of material evidence on behalf of the establishment, the charges could not have been held proved by the Inquiry Officer, merely going through the charge-sheet and the petitioner's reply.

11. The learned Counsel for the petitioner has drawn the Court's attention to paragraph No.37 of the writ petition, where a specific plea in regard to the non-examination of witnesses and production of evidence has been raised. In the counter affidavit filed on behalf of respondent Nos.3, 4 and 5, the said plea has been answered in paragraph No.41 in the following terms:

"41. That in reply to the contents of paragraph 37 and 38 of the writ petition, it is stated that on examining the defence reply submitted by the delinquent employee, it was found that the delinquent employee has neither submnitted the reply in the context of the allegations found to be proved nor has he expressed his desire for personal hearing in his defence reply, whereas in the show cause notice issued by letter dated 24.09.2021, it has been clearly mentioned that, "If you want personal hearing or are willing to be cross-examined by any witness, then clearly mention it in your defence reply."

Copy of show cause notice issued by letter dated 24.09.2021, is being filed as CA-7 to this Affidavit"

12. We may hasten to add here that in paragraph No.41 of the counter affidavit, after the quoted part, the relevant provisions of the Regulations of 1975 have also been quoted in extenso, but that part is being excluded, for reason that we would quote the relevant provisions ourselves.

13. The learned Counsel for the petitioner has very emphatically argued that the inquiry that was held was not an inquiry in accordance with the Regulations of 1975, which require, in case of every departmental inquiry, where charges are denied, a date, time and place of inquiry to be scheduled by the Inquiry Officer. The Regulations of 1975 also require in accord with salutary principles that if a major penalty is likely to be imposed in consequence of the disciplinary proceedings, at the hearing before the Inquiry Officer, the establishment must

produce their evidence, both documentary and oral. By oral evidence is meant witnesses for the establishment, who would prove their case and also prove documents. Learned Counsel for the petitioner submits that an inquiry cannot be validly held under the Regulations of 1975 by the Inquiry Officer, merely sifting through the charge-sheet and the delinquent's reply to record his conclusions, without production of the necessary evidence, both documentary and oral, on behalf of the establishment.

14. Mr. Ravindra Singh, learned Counsel appearing on behalf of respondent Nos.3, 4, 5 and 6, has argued that under the Regulations of 1975, the charges come with proof of themselves and if the delinquent wants to establish his innocence, that is his burden. It is not the employer's burden to prove the charge/ charges.

15. We have carefully considered the rival submissions advanced by learned Counsel for the parties, perused the record and also the relevant provisions of the Regulations of 1975.

16. The relevant provisions of the Regulations of 1975 are carried in Chapter X and those relevant to the issue are Regulations 68 and 69. Regulations 68 and 69 of the Regulations of 1975 read:

"68. A complaint into which disciplinary proceedings are considered necessary on the basis of the preliminary inquiry, proceedings shall be recorded in writing in the form of charges which shall be communicated to the official concerned and a copy of the same endorsed to the authority concerned as mentioned in column 4 of the second schedule. The basis of each charge and the evidence proposed to be considered in support of the charge should be given in details against each charges. The official shall be called upon by the Enquiring Officer to submit his explanation in writing for each charge, within a specified time and also to state whether he desires to be heard in person or to produce any evidence (documentary or oral) or to examine or cross-examine any witness in his defence. (He will be allowed to see the relevant records if he so desires.

After his explanation has been received a date will be fixed for personal hearing when evidence, both oral and documentary shall be produced. He will be allowed to cross-examine such witnesses as he likes. He will then be given an opportunity to produce his own witness or documents in support of his defence. The Inquiring Officer shall then weigh the entire evidence and given his findings on each charge and recommended, punishment when, in his opinion should be inflicted on the official, to the authority mentioned in column 4 of the second schedule. A record of the proceedings shall be maintained by the Enquiring Officer.

If the official fails to submit his explanations within the time specified in the charge-sheet without sufficient reason, the Inquiring Officer shall be free to give his findings on the basis of the evidence before him and will recommend suitable punishment to the competent authority.

In case, on the basis of the report of the Inquiring Officer, the competent authority proposes to dismiss, remove or reduce in rank the official concerned it shall inform the official concerned, of the action proposed to be taken and shall given another opportunity to the official to defend himself. A copy of the report of the Inquiring Officer shall also be supplied to

the official concerned along with the show-cause notice. He shall be required within a reasonable time to put in a written statement of his defence and to state whether he desires to be heard in person or to give further evidence for which an opportunity will be allowed to the official if so desired by him. The competent authority conducting the enquiry may, however, for sufficient reasons to be recorded in writing, refuse to call a witness. The proceedings of the inquiry shall contain sufficient record of the evidence and statement of the findings and the grounds thereof.

In case the competent authority decides to award a punishment other than dismissal, removal or reduction in rank, it may pass final orders on the basis of the inquiry report of the inquiring officer.

The above procedure shall not apply where the charged official has absconded or where it is for other reasons impracticable to communicate within him. In such cases, the inquiring officer with make a complete report to the competent authority for taking suitable action against the official concerned.

All or any of the provisions of the above procedure may, in exceptional cases and for special and sufficient reasons to be recorded in writing, be waived by the competent authority with the prior and express approval of the cane commissioner in cases where there is difficulty in observing exactly the requirements of the procedure and if those requirements and be waived without in justice to the official charged.

69. At the conclusion of the disciplinary proceedings, the competent authority may impose any or more of the following punishments according to the nature and gravity of the offence:

(a) Censure.

(b)

(b) Withholding the increment or increments including stoppage at in efficiency bar or promotion.

(c) Reduction to a lower post or time-scale or to a lower stage in time-scale.

(d) Fine.

(e) Recovery from the pay of the whole or part of the pecuniary loss caused to the institution or institutions placed under his charge by his negligence or breach of orders.

(f) Removal from service.

(g) Dismissal from service.

N. B.--Dismissal disqualifies an employee from re-employment in the service."

17. It must be remarked at the outset that the salutary principle governing the procedure to hold departmental inquiries in disciplinary matters, mandate a date, time and place of the inquiry to be scheduled by the Inquiry Officer and burdens the establishment to prove the charges by producing evidence in the first instance, both documentary and oral, in cases where a major penalty may be imposed. The salutary principles governing disciplinary proceedings, in general, do not require this onerous procedure to be followed in cases of disciplinary proceedings, where a minor penalty is contemplated, or may ultimately be imposed. The Regulations of 1975, much

contrary to what Mr. Ravindra Singh has urged, provide very differently. These do not differentiate between the procedure of holding an inquiry in a matter where a major penalty may be or is imposed and those where a minor penalty is in contemplation or ultimately imposed.

18. Regulation 69 apparently classifies the penalties contemplated under Clauses (e), (f) and (g) thereof as major penalties, whereas those under Clauses (a), (b), (c) and (d), minor penalties. The distinction in the procedure between penalties covered by Clauses (e), (f) and (g) of Regulation 69 and those covered by Clauses (a), (b), (c) and (d), is attracted at the post-inquiry stage in the matter of the employer's obligation to give a show-cause notice along with a copy of the inquiry report, or as it is generally called, 'the second show cause'. Under Regulation 68 of the Regulations of 1975, in cases where the Disciplinary Authority proposes to dismiss, remove or reduce in rank the delinquent, the Authority is obliged to inform the delinquent of the action proposed to be taken and give him another opportunity to defend himself. For the purpose, a copy of the inquiry report has to be supplied to the delinquent along with the show cause. The delinquent is then to be given reasonable time to put in his written defence and say if he desires to be heard in person or give further evidence, for which opportunity would be allowed to the delinquent, if he asks for it.

19. The Disciplinary Authority, however, for sufficient reasons, to be recorded in writing, may refuse to call a witness. Now, these are very unusual features carried in the Regulations of 1975 about the procedure at the post-inquiry stage. The further unusual procedure under the Regulations of 1975 is that there is no distinction until the stage of completion of the departmental inquiry by the Inquiry Officer between the case of a major penalty or minor penalty. In both cases, a date, time and place has to be scheduled by the Inquiry Officer and the establishment has to produce evidence, both documentary and oral. As already noticed under the salutary principles generally applicable to disciplinary proceedings, the procedure for holding an inquiry, fixing a date, time and place, and requiring the establishment to prove the charges by producing evidence, both documentary and oral, applies only in cases of major penalties; not all penalties. Under the Regulations of 1975, the procedure applies uniformly, irrespective of the severity or the grade of penalty involved.

20. We think that the submission of Mr. Ravindra Singh that under the Regulations of 1975, the charges come with proof of themselves, is one that is swayed by the different and special procedure provided at the stage of the second show cause. It is at that stage that the delinquent has been given the facility of producing further evidence, including a witness in his defence. Perhaps, this has somewhat influenced the submissions of Mr. Ravindra Singh the way he has advanced them before us. Regrettably, we cannot agree.

21. Apart from the fact that the second show cause served in this case reveals that the respondents had a major penalty in contemplation until that time, even if they did not have that in mind and intended to impose the punishment of withholding the increment or increments, including stoppage at the efficiency bar etc., they could not have departed from the procedure of holding a departmental

inquiry, where, after scheduling the inquiry, the Inquiry Officer would be obliged to require the establishment to produce evidence, both documentary and oral, in support of the charges. This is because until that time, there is no distinction in the procedure to be followed, irrespective of the class of punishment to be awarded or contemplated to be awarded under the Regulations of 1975. Regulation 68 requires, irrespective of anything, the Inquiry Officer to fix a date for personal hearing, when evidence, both oral and documentary, shall be produced. Now, these are the precise words employed in the Regulations of 1975. They are followed by the words "*he will be allowed to cross-examine such witnesses as he likes".* Now, cross-examination one does of witnesses produced by the other side.

22. The tenor of the second paragraph of Regulation 68, to our mind, is clear in that after receiving the delinquent's explanation, the date to be fixed by the Inquiry Officer for personal hearing when evidence, both documentary and oral, is required to be produced, does not mean, again, as Mr. Ravindra Singh submits, that the charges come with proof of themselves and the delinquent has to produce evidence to dispel the charges. That could never be the intent of Regulation 68, given the very generous scheme of Chapter X of the Regulations of 1975, where, more than ordinary opportunity is envisaged for the delinquent/ charge-sheeted employee at every stage of the proceeding. Going by the settled principles, which do not seem to have been excluded by the second paragraph of Regulation 68, at the scheduled date fixed for personal hearing, it is the establishment who have to be heard in support of the charges and it is they who have to produce evidence in the first instance, both documentary and oral, to prove the charges.

23. By oral evidence is meant witnesses. The witnesses would introduce and prove the documents, imbuing these with life, what are otherwise idle papers. They would testify to other facts as well, in order to prove the charges. It is these witnesses regarding whom a right has been given distinctly under the second paragraph of Regulation 68 to the delinquent to cross-examine. The words "he will be allowed to cross-examine such witnesses as he likes", employed for the delinquent in paragraph 2 of Regulation 68, are followed by the words "*he will then be given an opportunity to produce his own witness or documents in support of his defence".* These last words quoted are a clincher about the issue that in the opening part of paragraph 2 of Regulation 68, in keeping with the salutary principles, governing departmental inquiries, the burden has been cast on the establishment on the date fixed for personal hearing to hear the establishment's evidence first, before the delinquent is called upon to produce his evidence, both documentary and oral.

24. A perusal of the inquiry report shows that no such procedure was followed by the Inquiry Officer, as mandated by Regulation 68. He has set forth the terms of the charge, followed by the petitioner's defence, and going through idle papers before him, decidedly without the production of any documentary or oral evidence on behalf of the establishment, returned his findings on each charge. This is certainly not the procedure which the Regulations of 1975 contemplate. This is also not the procedure, which the salutary principles, governing departmental inquiries, where a major penalty may be

imposed, countenance. Since procedure for all kinds of punishment under the Regulations of 1975 is the same without distinction of the grade of punishment, all principles evolved in the context of major penalty inquiries would a fortiori apply to the present proceedings held by the respondents.

25. This position of the law is firmly settled, as held 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).**

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

27. There is a further feature involved here that vitiates the charge-sheet partly. Regulation 68 requires that in the charge-sheet, the basis of each charge and the evidence proposed to be considered in support of the charge should be given in detail against each charge. Here, all that is shown for evidence is a copy of a preliminary inquiry report dated 01.09.2020 conducted by the Deputy Cane Commissioner, Saharanpur. This could be the basis of the charges, but not the evidence to prove them. The evidence would be the documents, which would establish the charge and witnesses, who would prove those documents and other facts relevant to the charges, not already mentioned in the documents. A preliminary inquiry report is neither documentary evidence nor is it oral. It can be the basis of the charge alone. Regulation 68 of the Regulations of 1975, by its first paragraph, requires disclosure of the basis of each charge and the evidence proposed to be considered in support of the charge, furnishing it in detail against each of the charges carried in the charge-sheet. The charge-sheet here, as already pointed out, does not carry any details of evidence, by which, it is proposed to prove the charges. There is not even a mention of it, what to speak of details. To this extent, the charge-sheet dated 28.12.2020 is flawed and not in accordance with paragraph 1 of Regulation 68 of the Regulations of 1975.

28. In the result, this writ petition **succeeds** and is **allowed**. The impugned order dated 11.03.2022 passed by the Cane Commissioner and the Chairman, State Cane Services Authority, U.P., Lucknow and the appellate order dated 24.09.2024 passed by the Commissioner, Cane and Sugar, U.P., Lucknow, are hereby **quashed**. It will be open to the respondents, if they so elect, to pursue fresh proceedings against the petitioner. If they so elect, they would be obliged to draw up the charge-sheet in accordance with Regulation 68 of the Regulations of 1975, mentioning therein the details of evidence against each charge, by which, it is proposed to be proved. Apart from that, the charge-sheet dated 28.12.2020 would remain as it is. If the respondents pursue fresh proceedings against the petitioner, the inquiry would be held, bearing in mind the guidance in this judgment for the holding of departmental inquiries. It is further directed that if indeed fresh proceedings are pursued against the petitioner on the basis of the slightly rectified charge-sheet, a punishment higher than that already awarded to the petitioner shall not be imposed. It is made clear that if fresh proceedings are pursued against the petitioner, he would not be entitled to any monetary benefits from the quashing of the orders impugned immediately, but that would depend upon the event in the inquiry proceedings to be taken afresh. If no proceedings are taken, the respondents would be obliged to pay the petitioner the arrears of his emoluments, arising on account of the difference of what he has received and what would be payable with the penalty awarded effaced.

29. There shall be no order as to costs.

30. Let this order be communicated to the Cane Commissioner and Chairman, State Cane Services Authority, U.P., Lucknow and the Commissioner, Cane and Sugar, U.P., Lucknow by the Registrar (Compliance).

(2025) 6 ILRA 157
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 06.06.2025

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.

Writ - A No. 35844 of 2019
With
Writ A No. 589 of 2020

Anand Singh Aswal ...Petitioner
Versus
U.O.I. & Ors. ...Respondents

Counsel for the Petitioner:
Shalabh Singh, Gaurav Kaushik, Navneet Awasthi

Counsel for the Respondent:
A.S.G., Dr. V.K. Singh, Sanjeev Kumar Srivastava, Shailesh Kumar

A. Service Law – Constitution of India,1950 – Article 14 – Principle of natural justice – Appointment – Post of Producer – Withdrawal of appointment – No reason was given in the impugned order – Effect – Held, the manner under which the impugned order withdrawing the offer of appointment has been issued is violative of Article 14 of the Constitution of India inasmuch as it is a settled law that the requirement to record reasons is a fundamental principle of natural justice which acts as a check against arbitrary exercise of powers and ensures fairness. The opposite parties acted arbitrarily and in violation of principles of natural justice. (Para 36)

B. Service Law – Appointment – Irregularity in constitution of Selection Committee – Effect – Principle of legitimate expectation – Applicability – The petitioners was selected and offered appointment – How far petitioners put to suffer due to fault of authorities in constituting the committee – *Food Corporation of India's case* relied upon – Held, though the petitioners have got no absolute right of appointment in these circumstances, but their expectation cannot be defeated arbitrarily or without adhering to principles of fairness and reasonableness. (Para 39 and 40)

C. Service Law – Principle of Promissory Estoppel – Applicability – The petitioners, acting in a good faith manner, appeared before the Selection Committee and also succeeded in selection – Effect – Held, where any party makes promise on which the other party acts to his detriment, the promisor is estopped from going back on the promise – *Motilal Padampat Sugar Mills Co. Ltd.'s case* relied upon. (Para 39 and 40)

Writ petition allowed. (E-1)

List of Cases cited:

1. E.P. Royappa Vs St. of T.N. anr.; (1974) 4 SCC 3

2. Ramana Dayaram Shetty Vs International Airport Authority of India & ors.; (1979) 3 SCC 489

3. ABL International Ltd. and anr. Vs Export Credit Guarantee Corp. of India Ltd. & ors.; (2004) 3 SCC 553

4. St. of Orissa Vs Dr. (Miss) Binapani Dei & ors.; AIR 1967 SC 1269

5. A.K. Kraipak & ors. Vs U.O.I. & ors.; (1969) 2 SCC 262

6. F.C.I. Vs M/s Kamdhenu Cattle Feed Industries; (1993) 1 SCC 71

7. M/s Motilal Padampat Sugar Mills Co. Ltd. Vs The St. of U.P.; (1979) 2 SCC 409

8. Lakshmi Ratan Cotton Mills Co. Ltd., Kanpur Vs J. K. Jute Mills Co. Ltd., Kanpur; AIR 1957 All 311

9. Chairman & MD, BPL Ltd. Vs S.P. Gururaja & ors.; (2003) 8 SCC 567

10. MRF Ltd. Vs Manohar Parrikar & ors.; (2010) 11 SCC 374

11. Tej Prakash Pathak & ors. Vs Rajasthan High Court & ors.; (2025) 2 SCC 1

12. Shankarsan Dash Vs U.O.I.; (1991) 3 SCC 47

(Delivered by Hon'ble Rajesh Singh Chauhan, J.)

1. In both the aforesaid writ petitions since the facts and legal submissions are similar, therefore, with the consent of learned counsel for the parties both the writ petitions have been connected together and are being decided by a common judgment and order.

2. Heard Sri Shalabh Singh, learned counsel for the petitioner, Dr.V.K. Singh, learned counsel for the University/ opposite parties and Sri Sanjeev Kumar Srivastava, learned counsel for the U.G.C./ opposite parties in the first writ petition and Sri Rajesh Kumar, learned Advocate holding brief of Sri Vimal Kumar, learned counsel for the petitioner and Sri S.M. Singh Royekwar, learned counsel for the opposite parties in the second writ petition.

3. In the first writ petition (WRIT-A No.35844 of 2019), the petitioner has prayed the following prayer:-

"(I) to issue a writ, order or direction in the nature of certiorari thereby quashing the order dated 27.11.2019, passed by the opposite party No.4 by means

of which in furtherance of the meeting of Board of Management of opposite party Nos.2, 3, 4 & 5 the offer of appointment given to the petitioner for the post of producer in Electronic Multi Media Research Centre, Babasaheb Bhimrao Ambedkar University, Vidya Vihar, Raebareli Road, Lucknow, annexed to this Writ petition as Annexure No.1.

(I-A) to issue a writ, order or direction in the nature of certorai thereby quashing the order dated 31.10.2018, taken in a closed door Board meeting passed by the opposite party No.5 and communicated to other opposite parties where this arbitrary decision of depriving the petitioner to get the posting even after accepting the appointment letter with all its terms and of cancelling/ withdrawing the post of Producer of EMMRC, in a capricious show of sheer ipse dixit and administrative fiat.

(I-B) to issue a writ, order or direction in the nature of certiorari thereby quashing the order dated 20.08.2019, whereby the aforesaid resolution dated 31.01.2018 was confirmed.

(I-C) to issue a writ, order or direction in the nature of certiorarified mandamus by summoning all the records of the said alleged meeting of Board of Management of opposite party No.5 dated 31.10.2018 and for quashing it forthwith as a blatant exercise of arbitrary discretion and brusque abuse of the powers so conferred where as appointment duly accepted and finalized has been withdrawn callously in a cavalier manner and by allowing not even an opportunity of hearing to the petitioner being the aggrieved party.

II. to issue a writ, order or direction in the nature of mandamus thereby directing the opposite parties to give appointment & joining to the petitioner on the post of Producer in Electronic Multi Media Research Centre, Babasaheb Bhimrao Ambedkar University, Vidya Vihar, Raebareli Road, Lucknow in furtherance of the appoint offered to the petitioner on 08.06.2018.

(III) to issue a writ, order or direction thereby staying the operation & implementation of the order dated 27.11.2019, passed by the opposite party No.4."

4. In the second writ petition (WRIT-A No.-589 of 2020), the petitioner has prayed the following prayer:-

"(a) to issue a writ of certiorari or any other writ, order or direction in the nature thereof quashing the impugned order dated 27.11.2019 issued by the respondent No.2 along with the resolution of the Board of Management dated 31.10.2018 and confirmation order of the Board dated 20.08.2019 as mentioned in the impugned order dated 27.11.2019 contained in Annexure Nos.10 & 11.

(b) to issue a writ of mandamus or any other appropriate writ(s) or order(s) or directions(s) in the nature thereof directing respondent Nos.1 and 2 to abide by its Memorandum/ Offer of appointment dated 08.06.2018 and grant immediate appointment to the petitioner on the post of "Producer" at the Media Center of the Respondent University and immediately intimate the petitioner a date of joining."

5. The facts and circumstances of both the writ petitions are more or less

similar so in this order the relevant submissions of both the writ petitions are being considered.

6. The petitioners by virtue of the aforesaid writ petitions seek to challenge the order dated 27.11.2019 (Annexure No. 1) passed by the Opp. Party No. 4, which withdrew the appointment of the petitioners to the post of Producer in the Electronic Multi Media Research Centre (here-in-after referred to as the "EMMRC").

7. The Board of Management EMMRC (here-in-after referred to as the "Respondent 5") passed a resolution dated 31.10.2018 stating that the appointment to the posts of Producers and Engineers Gr.1 stood cancelled (Annexure 1-A). This was confirmed by the Board of Management of the EMMRC on 20.08.2019.

8. The Babasaheb Bhimrao Ambedkar University, (here-in-after referred to as the "University") Vidya Vihar, Raebareli Road, Lucknow is a Central University situated in Lucknow, which offers courses in the Graduate and Postgraduate degrees. The Consortium for Educational Communication (here-in-after referred to as the "CEC") was established by the UGC with the goal of addressing the higher education needs through television and using emerging technologies. It is the nodal body functioning directly under the UGC. The University, like many others of its kind has an EMMRC which is involved in the production of videos and multimedia-based programs in line with the guidelines of the UGC. Furthermore, it also prepares audio-visual study material for the students who intend to pursue education through Information Communication Technology.

9. The University entered into an MOU with the UGC, CEC dated 02.02.2015. The Memorandum of Understanding (MOU) outlines the roles and responsibilities of the University Grants Commission (UGC), Consortium, Universities/Institutions, and Media Centres as in

the collaboration for educational communication using electronic media and ICT, joint responsibility for structuring and sustaining media use, academic linkages between institutions and Media Centres, provision of funds by the Commission, defined functions and responsibilities,establishment of Board of Management and Regional Council for management and coordination. This MOU aims to promote technology-enabled education and related activities.

10. The University issued an advertisement dated 13.01.2017 (Annexure No.2) for the recruitment on the posts in the EMMRC and the posts in the advertisement was the post of the Producer. The advertisement provided the qualifications for the various posts and the petitioners, fulfilling the same, applied for the post of Producer (Annexure No. 3). Upon clearing the preliminary round, the petitioners were called for an interview to New Delhi which they successfully cleared. Pursuant to this, a meeting was called by the Board of Management of the EMMRC on the 30.01.2018 where the petitioners acceptance was considered. A memorandum containing the acceptance was communicated to the petitioners on 08.06.2018 (Annexure No.6). The petitioners accepted the memorandum and the same was communicated to the EMMRC (Annexure No. 7). At this stage, all the formalities regarding the appointment from the side of the petitioners stood completed and all that was required

was a final letter of appointment to be issued by the Registrar of the University (here-in-after referred to as the "Respondent No.4"). The petitioners filed several representations to the Opposite parties No. 3 & 4 regarding the status of their appointment (Annexure Nos.8 to 11) , but to no avail.

11. The advertisement dated 13.01.2017, issued by the University for the position in question, included specific clauses reserving the University's right to withdraw or not fill any advertised positions at any time (Annexure No. CA-4). For the convenience of this Hon'ble High Court, Clauses 1 and 16 of the advertisement are reproduced herein.

"Clause 1- The University reserves its right to:

a. Withdraw any advertised post(s) under any category at any time without assigning any reason. Any consequential vacancies arising at the time of interview may also be filled up from the available candidates. The number of positions is thus open to change.

b. Offer the post at a level lower than the advertised, depending A upon the qualification, experience and performance of the candidates

c. Draw reserve panel(s) against the possible vacancies in future.

d. Increase or decrease of post under any category or not to fill up any of the positions."

"Clause 16-In case of any inadvertent mistake in process of selection which may be detected at any stage even after issue of appointment letter, the University reserves the right to modify/withdraw/cancel any communication made to the candidates."

12. The petitioner of the first writ petition also filed an RTI wherein he asked 6 questions relating to the status of his appointment, but while providing the answer to 4 questions failed to answer question Nos.5 and 6, which are key to the case of the petitioners. Question No.5 relates to the procedure and selection process used for the appointment of candidates to the post of cameraman, production assistant and graphic artist. Question 6 relates to the reason for delay of more than 15 months in the issuance of the letter of appointment after the issuance of the offer letter.

13. Further, the UGC also served an email to Respondent No.3 dated 23.09.2019 asking them to take necessary action at the earliest (Annexure No. 14). Thereafter, the petitioners represented before the Opposite Parties No. 1 & 2 , but to no avail (Annexure No. 15). The petitioners again represented before the opposite party Nos. 4 & 6 by filing representations dated 22.10.2019 and 09.11.2019 respectively (Annexure 16 and 17). The impugned order withdrawing the appointment of the petitioners was passed on 27.11.19.

14. Further, the learned counsel for the petitioners has contended that the order dated 27.11.2019 issued by Opposite Party No. 4, which followed the meeting of the Board of Management of Opposite Parties No. 2, 3, 4, and 5, and which rescinded the offer of appointment to the petitioners for the post of Producer at the Electronic Multi Media Research Centre, Babasaheb

Bhimrao Ambedkar University, Vidya Vihar, Rae Bareli Road, Lucknow, is illegal, arbitrary, and entirely beyond jurisdiction.

15. The learned counsel for the petitioners has submitted that Selection Committee for appointment of the petitioners and others on the post of Producer, was constituted in accordance with the Memorandum of Understanding entered into between the Respondent No.1 and Consortium for Educational Communication (CEC). It explicitly stated that the quorum for such appointments was confined to Chairperson/ Co-chairperson and at least two outside experts and the quorum was met during the interview of the petitioners and as such his appointment to the post was just and reasonable and there was no tenable ground to withdraw the appointment by the Respondent No.1. It is further important to mention here that from the bare reading of clause 2.3 under the heading of functions and powers of the Board of Management that Board of Management may make appointment to the posts in the grade of Rs.15600-39100+GP 5400/- (Group 'A') and above, the Selection Committee in such cases shall consist of the Vice-Chancellor of Host University, who shall be the Chairperson of the Selection Committee, Director CEC as Co-Chairperson, three outside experts one each to be nominated by the Chairperson, BG, CEC, Vice-Chancellor host University and the Director, CEC. Presence of Chairperson/ Co-chairperson and at least two outside experts will meet the requirement of quorum of Selection Committee. Except in case of the Selection of the Director of Media Centre, the Director of the Media Centre will act as Member Secretary to the Selection Committee in all such cases.

16. Learned counsel for the petitioners has further submitted that the respondents have taken the false and cooked plea to deprived the petitioners from the legal rights. Further, the respondent not on its volition, but only after the petitioner of the second writ petition had approached this court previously by way of a writ petition (Service Single No.23834 of 2019) wherein vide order dated 03.09.2019, this court directed the petitioner to make a fresh representation with his grievance and the same would be decided by passing a detailed and reasoned order by the respondent-University. As is being claimed by the respondent in its reply, if at all the decision to withdraw the post in question had already been taken in a meeting of the Board of Management of EMMRC of the University on 31.10.2018 and confirmed in the meeting held on 20.08.2019, then the respondent has given no justification as to why this was neither communicated to the petitioners when they repeatedly approached the University for joining their post and the petitioner of the first writ petition has also wrote several letters dated 29.06.2018, 27.08.2018, 27.09.2018, 27.02.2019 and 21.08.2019 to respondents but same was neither responded by the respondent nor intimated to the Hon'ble Court in the hearing dated 03.09.2019 when the counsel for respondent-University was preset in the matter. Further, with reference to the selection for the post of Producer the opposite parties did not allow any of the candidates to join, despite the recommendation by the Selection Committee, the issuance of an invitation for appointment and its acceptance by the petitioner citing the withdrawal resolution. Despite this clear approval by the highest executive body (the BOM) on 30.01.2018, the opposite parties later claimed in their

counter affidavit in the second writ petition that the selection process for the Producer post was flawed due to non-compliance with an MOU as on 31.10.2018 and final MOU dated 20.08.2019 regarding Selection Committee composition, necessitating the withdrawal of the offer made to the petitioner. This action is arbitrary and demonstrates non-application of mind because if the Selection Committee process for the Producer post was fundamentally flawed as alleged, then the question arises as to why did the BOM approved the selection recommendation on 30.01.2018. Logically, the flaw, if genuine and significant enough to warrant withdrawal, should have been identified and acted upon before or during the approval stage, not months later. Approving a selection despite a fundamental flaw only to withdraw it later on the basis of that same flaw is contradictory and unreasonable. The action of the opposite parties in withdrawing the offer of appointment vide impugned order dated 27.11.2019 (Annexure No.1) is arbitrary and illegal. The impugned order dated 27.11.2019 was passed without assigning any reasons directing contravening the specific direction of this Court vide order dated 03.09.2019 as mentioned in Annexure No.8 to pass a detailed and reasoned order. The Hon'ble Supreme Court in several cases held and emphasized that the requirement to record reasons is a fundamental principle of natural justice which acts as a check against arbitrary exercise of power and ensures fairness. By failing to provide reasons in the impugned order itself, the opposite parties acted arbitrarily, leaving the petitioner clueless about the grounds for withdrawal until the counter affidavit state, thereby undermining transparency and fairness.

17. Learned counsel for the petitioners has submitted that Article 14 demands that the State act according to reason and law, fairly and non-arbitrarily. Therefore, when the University acts arbitrarily by making an illogical, inconsistent decision regarding the withdrawal, it violates the fundamental guarantee, as has been held by Hon'ble Supreme Court in re: ***E.P. Royappa vs. State of Tamil Nadu and anr., (1974) 4 SCC 3*** in para-85 that equality is a dynamic concept with many aspects and dimensions and it cannot be cribbed, cabined and confined within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies... ". Furthermore, as established by the Hon'ble Supreme Court in ***Ramana Dayaram Shetty vs. International Airport Authority of India and others, (1979) 3 SCC 489*** vide paras- 10, 11, 12, and 21 that the State entities like the opposite parties must act fairly and reasonably even in administrative or contractual matters, and their actions must not be arbitrary or based on irrelevant considerations. In the present case, the arbitrariness is patent from the BOM's contradictory action of approving the petitioners selection on 30.01.2018 and later withdrawing the offer based on an alleged flaw that presumably existed at the time of approval. If the committee was wrongly formed from the beginning, then the question arises as to why did the BOM approved these selection in the first place? It on sets a clear contradiction. A government body shouldn't approve something one day and cancel it the next day based on a reason that existed all along, unless something new and significant came up. This kind of illogical, self-contradictory action is considered arbitrary.

18. The actions of the opposite parties constitute a clear breach of a concluded contract entered into with the petitioners. A valid offer was made by the opposite parties vide Memorandum/Offer letter dated 08.06.2018. The petitioners duly received and unequivocally accepted the offer vide communication dated 19.06.2018 and 13.06.2018. Under Sections 2 (b), 4 and 7 of the Indian Contract Act, 1872, upon the communication of unconditional acceptance through the acceptance letter, the proposal became a promise, resulting in a binding contract between the petitioners and the opposite parties. The opposite parties refusal to permit joining and the subsequent withdrawal order dated 31.10.2018 constitute a repudiation and breach of its contractual obligation to employ the petitioners.

19. As per learned counsel for the petitioners, the opposite parties placed reliance on Clause 16 of the Advertisement as justification is misplaced in law. The Hon'ble Supreme Court in Ramana Dayaram Shetty (supra) and subsequent cases like ***ABL International Ltd. And anr. vs. Export Credit Guarantee Corpn. of India Ltd. and ors., (2004) 3 SCC 553*** vide paras- 10, 19, 22, 27, and 28 has held that State actions, even within the contractual sphere, are subject to the rigours of Article 14 and cannot be arbitrary or unreasonable. Therefore, even if Clause 16 contractually permitted withdrawal for a "mistake", such power must be exercised reasonably, fairly, and non-arbitrarily. Invoking this clause selectively, belatedly and based on contradictory BOM actions, as done here, is an arbitrary exercise of power and cannot legally justify the breach of the concluded contract with the petitioners.

20. The decision to withdraw the appointment offer entails severe civil consequences for the petitioners, impacting their livelihood and career. It is a settled principle, under scored in re: ***State of Orissa vs. Dr. (Miss) Binapani Dei and others, AIR 1967 SC 1269, as stated in para 12 and in re: A.K. Kraipak and others vs. Union of India and others (1969) 2 SCC 262,*** para 20, that even administrative orders involving civil consequences must be passed in conformity with the principles of natural justice. The principle of "Audi Alteram Partem" which is "hear the other side" required the opposite parties to provide the petitionerd with notice of the alleged procedural defect in the selection committee and an opportunity to present their case before the adverse decision to withdraw the offer was taken. Although it is true that the University has discretion in administrative matters. However, for a public body such as "State" under Article 12 of the Indian constitution, this discretion is not absolute. It must be exercised in a reasonable, fair and in a non-arbitrary manner in accordance to law and which also includes principles of natural justice where applicable. The purpose of hearing the candidate is to allow him to potentially explain why the alleged flaw shouldn't invalidate their specific selection, especially after approval and offer. The failure to do so renders the decision unfair and violative of the principles of natural justice.

21. The formal offer of appointment dated 08.06.2018, issued after a full selection process culminating in BOM approval and duly accepted by the petitioners, created a legitimate expectation that they would be appointed. As held by the Hon’ble Supreme Court in re: ***Food***

Corporation of India vs. M/s Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71 in paras-7, 8 and 10 that legitimate expectation arises from express promises or consistent practices of public bodies. While not an absolute right to appointment, this expectation cannot be defeated arbitrarily or without adhering to principles of fairness and reasonableness. The opposite parties arbitrary withdrawal, without demonstrating any overriding public interest or following affair procedure, violates the petitioners' legitimate expectation engendered by its own actions.

22. The doctrine of promissory estoppel is squarely applicable to this case. The opposite parties made a clear and unequivocal promise through its Offer of Appointment (08.06.2018), intending the petitioners to act upon it. The petitioners acted upon this promise by accepting the offer as on 19.06.2018 and 13.06.2018 and consequently waiting for the joining date, potentially foregoing other employment opportunities during this period, thereby altering their position. As law laid down by the Hon'ble Supreme Court in re: ***M/s Motilal Padampat Sugar Mills Co. Ltd .vs. The State of Uttar Pradesh, (1979) 2 SCC 409*** in para-8 onwards where one party makes a promise on which the other party acts to his detriment, the promisor is estopped from going back on the promise, especially when acting as a state entity. The opposite parties are thus estopped from arbitrarily resiling from its promise to appoint the petitioners.

23. In the light of the above submissions, clarifying the factual position and elaborating on the applicable legal principles and precedents, it is reiterated that the impugned order dated 27.11.2019 and the underlying resolutions dated 31.10.2018 and 20.08.2019, cited by opposite parties are illegal, arbitrary, discriminatory, violative of natural justice and the petitioners' legitimate expectation, constitute a breach of contract, are barred by promissory estoppel, and are there for liable to be quashed.

24. Learned counsel for the petitioners have vehemently submitted that the respondent-University should be precluded from citing its own alleged internal procedural irregularity as a ground to invalidate the Offer of Appointment issued to and accepted by the petitioners, based on principles analogous to the Doctrine of Indoor Management (Turquand Rule). While originating in Company Law, its underlying principle protecting innocent outsiders dealing with an entity based on its outward representations is rooted in fairness and estoppel, making it relevant here.

25. The petitioners were an outsider engaging with the University via its official recruitment process. The Offer of Appointment (08.06.2018), issued after BOM approval (30.01.2018), represented that necessary formalities were complete. The petitioners acted in good faith on this representation and had no means or duty to investigate the internal composition of the selection committee or its compliance with internal MOUs - matters of indoor management. The core principle, recognized in Indian jurisprudence as held in re: ***Lakshmi Ratan Cotton Mills Co. Ltd., Kanpur vs. J. K. Jute Mills Co. Ltd., Kanpur AIR 1957 All 311*** vide para-13 is that an outsider acting in good faith is entitled to assume internal procedures have been complied with. Further, the Hon'ble Supreme Court has applied such protective principles to public bodies. In ***Chairman &***

MD, BPL Ltd. vs. S.P. Gururaja and others, (2003) 8 SCC 567, the Court noted an allottee couldn't be expected to know of internal procedural irregularities. Similarly, the petitioners cannot be penalised for the University's alleged internal lapse regarding committee formation.

26. Therefore, learned counsel for the petitioners have submitted that allowing the University to retract its formal Offer based on its own alleged internal lapse, unknown to the petitioner, is grossly inequitable. This aligns with promissory estoppel principles as held in ***Motilal Padampat Sugar Mills*** (supra); ***MRF Ltd. vs. Manohar Parrikar and others, (2010) 11 SCC 374*** where public bodies cannot arbitrarily resile from representations acted upon in good faith. The University, having held out the appointment as valid, should be estopped from citing its internal irregularity consistent with principles protecting bonafide outsiders.

27. The learned counsel for the respondents has contended that the petitioners have filed the present petitions seeking to quash the order dated 27.11.2019 issued by opposite party No. 4, which rescinded the petitioners' appointment offer. However, in the first writ petition, the petitioner has not contested the resolution dated 31.10.2018 passed by opposite party No. 5, which initially decided to cancel the appointment offer. The petitioner has only challenged the subsequent communication regarding the withdrawal of the appointment offer, not the primary order itself, rendering the writ petition non maintainable and liable to be dismissed on this basis alone. Though in the second writ petition, the petitioner has also challenged the resolution of the Board of Management dated 31.10.2018 and confirmation of the Board order dated 20.08.2019 mentioned in the impugned order dated 27.11.2019.

28. Furthermore, the learned counsel stated that opposite party No. 6 through its letter dated 23.07.2012, indicated that a Memorandum of Understanding (here-in-after referred to as 'MOU') was signed on 02.02.2015 between the University Grants Commission, the Consortium for Educational Communication (here-in-after referred to as 'CEC'), and Babasaheb Bhimrao Ambedkar University, Lucknow (referred to as 'University') for the operation of the Media Centre. According to Paragraph 2.3 of the MOU, the Chairperson/Co-chairperson and at least two external experts were required to constitute the quorum of the selection committee. However, upon review, it was found that neither the Director of CEC attended the Selection Committee meeting nor did the Director or the Chairperson of the Government Board of CEC nominate any experts. Due to this procedural deficiency, the opposite party No. 5 resolved to cancel the appointment offer.

29. The learned counsel for the respondents further contended that financial assistance was to be provided by the opposite party No. 6. The establishment of the Media Centre was on a 'project mode,' for which 100% annual assistance was to be provided by opposite party No. 6. As this assistance was not provided, the entire project was affected, leading to the withdrawal of the offer letter dated 08.06.2018, following the meeting of the Board of Management of the opposite party Nos. 2 to 5.

30. The learned counsel for the respondents further contended that the petitioners are not entitled to their claim solely based on the offer and acceptance of

appointment, as the appointment order was not issued to them.

31. The learned counsel for the respondents has thus submitted that in view of the facts, circumstances and grounds mentioned above, the order dated 27.11.2019 passed by opposite party No. 4, which withdrew the petitioners' appointment, is correct and legally sound. Therefore, there is no necessity for this Hon'ble Court to intervene and it is respectfully requested that this Hon'ble Court may dismiss the writ petitions filed by the petitioners with costs, in the interest of justice.

32. In support of the aforesaid contentions, learned counsel for the opposite parties have placed reliance upon the recent judgment of Apex Court rendered in re: ***Tej Prakash Pathak and others vs. Rajasthan High Court and others reported in (2025) 2 SCC 1*** referring paras-63 and 64 thereof. In the aforesaid paras, the Apex Court considered the aspect to the effect that the appointment may be denied even after placement in the select list. In the aforesaid judgment, the Apex Court considered and followed the Constitution Bench judgment of Apex Court rendered in re: ***Shankarsan Dash vs. Union of India*** reported in ***(1991) 3 SCC 47. Paras-63 & 64*** read as under:-

"63. In Section (C) above, we have already noticed the Constitution Bench decision of this Court in Shankarsan Dash [Shankarsan Dash v. Union of India, (1991) 3 SCC 47 : 1991 SCC (L&S) 800] where it was held : (SCC p. 51, para 7)

"7. ... Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted."

64. Thus, in light of the decision in Shankarsan Dash [Shankarsan Dash v. Union of India, (1991) 3 SCC 47 : 1991 SCC (L&S) 800] , a candidate placed in the select list gets no indefeasible right to be appointed even if vacancies are available. Similar was the view taken by this Court in Subash Chander Marwaha [State of Haryana v. Subash Chander Marwaha, (1974) 3 SCC 220: 1973 SCC (L&S) 488] where against 15 vacancies only top 7 from the select list were appointed. But there is a caveat. The State or its instrumentality cannot arbitrarily deny appointment to a selected candidate. Therefore, when a challenge is laid to State's action in respect of denying appointment to a selected candidate, the burden is on the State to justify its decision for not making appointment from the select list."

33. Heard learned counsel for the parties and perused the material available on record as well as the judgments so cited by the learned counsel for the parties.

34. Notably, the Board of Management (BOM), which is a Highest Executive Body, had given an approval on 30.01.2018 for consideration and approval of selection, on the report of Selection Committee, for the post of Producer and the resolution to that effect was passed in favour of the petitioners. The opposite

party No.4 issued a memorandum on 08.06.2018 by means of which the petitioners were offered appointment on the post of Producer. Thereafter, the petitioners sent the acceptance letter on 13.06.2018 along with attestation form sent by the University. It has also been noted that the petitioners could not receive any communication for quite long time so the petitioner in the first writ petition preferred representation under RTI and the reminder representations since February, 2019 till passing of the impugned order dated 27.11.2019. Even no proper information has been provided to the petitioner under RTI inasmuch as the petitioner asked six questions relating to status of his appointment (petitioner of first writ petition), but they provided answers to four questions, failed to answer question Nos. 5 & 6 whereby the question relating to procedure and selection process for appointment in question and the reason of delay for more than fifteen months in issuing a letter of appointment was asked. The petitioner in the second writ petition had earlier filed one writ petition and this Court granted liberty to approach the Competent Authority through a representation and direction was issued to the authority to pass speaking and reasoned order on that representation but impugned order has been passed, which is a non-speaking and un-reasoned order.

35. In the impugned order dated 27.11.2019, no reason of any kind whatsoever has been given inasmuch as only this much has been indicated that the memorandum / offer of appointment for the post of Producer is hereby withdrawn in terms of resolution of Board dated 31.10.2018 confirmed in the meeting of Board of Management of EMMRC held on 20.08.2019.

36. The manner under which the impugned order dated 27.11.2019 withdrawing the offer of appointment has been issued is violative of Article 14 of the Constitution of India inasmuch as it is a settled law that the requirement to record reasons is a fundamental principle of natural justice which acts as a check against arbitrary exercise of powers and ensures fairness. The opposite parties acted arbitrarily and in violation of principles of natural justice. Considering the aforesaid legal position, I am respectfully following the dictums of Apex Court in re: ***E.P. Royappa (supra) and Ramana Dayaram Shetty (supra) and ABL International Ltd. (supra).***

37. I have also noted the fact that before withdrawing the offer of appointment of the petitioners for the post of Producer, no opportunity of hearing has been given to the petitioners whereas the law is trite on the subject in re: ***Dr. Binapani Dei*** (supra) ***and A.K. Kraipak Vs. Union of India*** (supra) wherein the Apex Court has held that if any action or inaction of the authorities entail severe civil consequences, impacting his/ her livelihood or career, those inaction or action must be in conformity with the principles of natural justice.

38. The submission of learned counsel for the petitioners regarding the legitimate expectation finds force inasmuch as the petitioners were absolutely unaware as to whether the constitution of Selection Committee was proper or not and after being appeared before the Selection Committee and being declared successful, the petitioners were issued offer of appointment on 08.06.2018 which was accepted by them on 13.06.2018 and 19.06.2018. The petitioners are having no

employment as informed by learned counsel for the petitioners.

39. Though the petitioners have got no absolute right of appointment in these circumstances, but their expectation cannot be defeated arbitrarily or without adhering to principles of fairness and reasonableness. The aforesaid submission of learned counsel for the petitioners finds support from the dictum of Apex Court in re: ***Food Corporation of India*** (supra). Even in view of the aforesaid facts and circumstances, the 'doctrine of promissory estoppel' would be applicable in the present case. The Apex Court in re:***Motilal Padampat Sugar Mills Co. Ltd.*** (supra) has held that where any party makes promise on which the other party acts to his detriment, the promisor is estopped from going back on the promise.

40. Besides, the petitioners acted in a good faith manner appeared before the Selection Committee and succeeded in such selection. The offer of appointment of the petitioners has been withdrawn on account of fault on the part of the Competent Authorities who had constituted the committee, which as per the opposite parties, was not proper committee and this fact was not known to the petitioners. If the committee was wrongly formed from the very beginning, then the question arises as to why did the Board of Management approve such committee on 30.01.2018 and issued offer of appointment on 08.06.2018. The government body should not approve something one day and cancel it the next day based on reason that existed all along, unless something new and significant came up. Not only the above, if such committee was wrongly formed, such mistake could have been rectified before the date of interview i.e. on 20.11.2017, or at the best on or before 30.01.2018 when the meeting was convened by the Board of Management of EMMRC for consideration and approval of selection on the report of the Selection Committee. It took about two years from the date of interview i.e. on 20.11.2017 till 27.11.2019, the date of impugned order, to understand by the Competent Authority that the committee was wrongly formed and proper information to that effect has not been provided to the petitioners despite the couple of representations have been preferred by the petitioners. Even non-speaking and un-reasoned order dated 27.11.2019 has been passed despite the fact that this Court in earlier writ petition directed the authorities to pass speaking and reasoned order on the representation of the petitioner. Therefore, the impugned order dated 27.11.2019 is liable to be set aside being arbitrary and violative of Article 14 of the constitution of India.

41. The Apex Court in re: ***Shankarsan Dash*** *(supra)* has observed that the State Authority has got no licence of acting in an arbitrary manner and the decision not to fill-up the vacancy is to be taken bonafide for appropriate reasons. In the present case, the action/ inaction on the part of the concerning authorities of the University does not appear to be an action taken in conformity with the principles of natural justice inasmuch as the impugned order is absolutely a non-speaking and un-reasoned order and the same has been intimated to the petitioners after about two years from the date of interview. The fact about wrong formation of Committee must be considered by the Board of Management at the very inception and appointment of the petitioners should have not been approved vide resolution dated 30.01.2018. Therefore, the facts and circumstances of

the present case are different from the facts and circumstances of the case in re: ***Tej Prakash Pathak*** *(supra)* and in re: ***Shankarsan Dash*** *(supra),* therefore, it would not be applicable in the present case.

42. It is apt to note here that there may not be any dispute on the trite law that the appointment may be denied even after placement in the select list.

43. Therefore, in view of what has been considered above, I hereby set aside/ quash the impugned order dated 27.11.2019 issued by the Registrar of Baba Saheb Bhimrao Ambedkar University, Lucknow along with resolution of the Board of Management dated 31.10.2018 and the confirmation order of the Board of Management dated 20.08.2019, as mentioned in the impugned order, so far as it relates to the petitioners of both the aforesaid writ petitions.

44. The opposite parties are directed to forthwith give effect to the offer of appointment dated 08.06.2018 and appoint the petitioners on the post of Producer with all consequential service benefits.

45. Accordingly, both the aforesaid writ petitions are ***allowed***.

46. No order as to cost.

Before parting with, I appreciate the efforts of research work done by Mr. Rudra Singh Krishna and Ms. Mariyam Iqbal, Law Interns in finding out the relevant case laws applicable in the present case.

(2025) 6 ILRA 170
ORIGINAL JURISDICTION

CIVIL SIDE
DATED: ALLAHABAD 10.06.2025

BEFORE

THE HON'BLE PRAKASH PADIA, J.

Writ C No. 38609 of 2019
With other connected cases

M/s Sajid ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Samarth Sinha, Vijay Sinha, Vishal Tandon

Counsel for the Respondents:
C.S.C.

(A) Administrative Law - Fair Price Shop - Cancellation of Licence - The Essential commodities Act,1955 - Section 3/7 & 13(2) - UP Essential Commodities (Regulation of Sale & Distribution Control) Order, 2016 - Information Technology Act, 2000 - Section 43,60,66 - Cancellation of fair price shop licence cannot be ordered merely on the ground of lodging of a criminal case - Government Order dated 05.08.2019 prescribes a mandatory preliminary inquiry prior to cancellation/suspension – Failure to follow prescribed procedure vitiates order of cancellation - Licence of fair price shop cannot be cancelled only on ground of FIR registration under Section 3/7 of the Essential Commodities Act without conducting proper inquiry under Government Order dated 05.08.2019. (Para - 32, 33, 34)

Licence of the petitioner's fair price shop was cancelled - ground - FIR was lodged under Section 3/7 of the U.P. Essential Commodities Act and 66 of I.T. Act - no preliminary inquiry as mandated by the Government Order dated 05.08.2019 was conducted - Statutory appeals under Clause 13(2) of Control Order, 2016 were dismissed. (Para - 3 to 24, 31, 32)

HELD: - Fair price shop licence/agreement could not be cancelled on the ground of registration of F.I.R. under Section 3/7 Essential Commodities Act. It is mandatory for the authorities to conduct a preliminary inquiry as prescribed under the Government Order dated 05.08.2019 before cancelling or suspending the licence. Since this procedure was not followed, the cancellation order is unsustainable. Authorities were directed to restore the fair price shop licences forthwith. (Para 32, 33, 34, 36)

Petitions allowed. (E-7)

List of Cases cited:

1. Bajrangi Tiwari Vs The Commissioner Devi Patan Mandal Gonda & anr., Misc. Single No. 8033 of 2013

2. Amit Kumar Vs St. of U.P. & ors., Writ C No.2029 of 2022

3. Mohd. Amir Vs St. of U.P. & ors., SLP (Civil) No.25501 of 2024

(Delivered by Hon'ble Prakash Padia, J.)

1. Heard Sri Vishal Tandon, learned counsel along with Samarth Sinha, learned counsel for the petitioner and Sri Ashok Mehta, learned Senior Counsel/Additional Advocate General assisted by Sri Vijay Shanker Prasad, learned Additional Chief Standing Counsel for the respondents.

2. Since the question of law involved in all petitions are similar i.e., whether the fair price shop license/agreement could be cancelled/suspended on the ground of registration of F.I.R. under Section 3/7 Essential Commodities Act, they are being decided by this common judgement.

Writ C No. - 38609 of 2019

3. Facts in brief as contained in this petition are that the petitioner was fair price shop license holder and his license of fair price shop was suspended by the respondent No.3/District Supply Officer, Meerut vide its order dated 14.09.2018 only on the ground that an F.I.R. under Section 3/7 of Essential Commodities Act and 66 of the I.T. Act has been lodged against the petitioner. Aggrieved with the aforesaid order, statutory appeal as provided under Section Section 13(2) of U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016 was filed by he petitioner before the respondent No.2/Commissioner, Meerut Division, Meerut which had been rejected by him vide order dated 12.11.2019. Aggrieved with the aforesaid orders, the petitioner has preferred the present petition.

Writ C No. - 21616 of 2019

4. Facts in brief as contained in this petition are that the petitioner was fair price shop license holder and his license of fair price shop was suspended by the respondent No.3/District Supply Officer, Bijnor vide its order dated 06.09.2018 and thereafter the same was cancelled vide order dated 18.01.2019 only on the ground that the petitioner misused the Aadhar Card many times and manipulated the Food Grains. Aggrieved with the aforesaid order, statutory appeal as provided under Section Section 13(2) of U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016 was filed by he petitioner before the respondent No.2/Commissioner, Moradabad Division, Moradabad which had been rejected by him vide order dated 27.05.2019.

Writ C No. - 30465 of 2019

5. Facts in brief as contained in this petition are that the petitioner was fair price shop license holder and his license of fair price shop was suspended by the respondent No.3/District Supply Officer, Bijnor vide its order dated 06.09.2018 and thereafter the same was cancelled vide order dated 19.01.2019 only on the ground that the petitioner misused the Aadhar Card many times and manipulated the Food Grains for which an F.I.R. under Section 3/7 of Essential Commodities Act and 66C of the I.T. Act has been lodged against him. Aggrieved with the aforesaid order, statutory appeal as provided under Section Section 13(2) of U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016 was filed by he petitioner before the respondent No.2/Commissioner, Moradabad Division, Moradabad which had been rejected by him vide order dated 13.08.2019.

Writ C No. - 32174 of 2019

6. Facts in brief as contained in this petition are that the petitioner was fair price shop license holder and his license of fair price shop was suspended by the respondent No.3/District Supply Officer, Ghaziabad vide its order dated 31.08.2018 and thereafter the same was cancelled vide order dated 10.01.2019 on the ground that the petitioner misused the Aadhar Card many times and manipulated the Food Grains for which an F.I.R. under Section 3/7 of Essential Commodities Act and 43 of the I.T. Act has been lodged against him. Aggrieved with the aforesaid order, statutory appeal as provided under Section Section 13(2) of U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016 was filed by he petitioner before the respondent No.2/Commissioner, Meerut Division, Meerut which had been rejected by him vide order dated 28.05.2019.

Writ C No. - 32614 of 2019

7. Facts in brief as contained in this petition are that the petitioner was fair price shop license holder and his license of fair price shop was suspended by the respondent No.3/District Supply Officer, Ghaziabad vide its order dated 31.08.2018 and thereafter the same was cancelled vide order dated 10.01.2019 only on the ground that the petitioner misused the Aadhar Card many times and manipulated the Food Grains for which an F.I.R. under Section 3/7 of Essential Commodities Act and 43 of the I.T. Act has been lodged against him. Aggrieved with the aforesaid order, statutory appeal as provided under Section Section 13(2) of U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016 was filed by he petitioner before the respondent No.2/Commissioner, Meerut Division, Meerut which had been rejected by him vide order dated 02.09.2019.

Writ C No. - 37063 of 2019

8. Facts in brief as contained in this petition are that the petitioner was fair price shop license holder and his license of fair price shop was suspended by the respondent No.3/District Supply Officer, Ghaziabad vide its order dated 31.08.2018 and thereafter the same was cancelled vide order dated 10.01.2019 only on the ground that the petitioner misused the Aadhar Card many times and manipulated the Food Grains for which an F.I.R. under Section 3/7 of Essential Commodities Act and 43 of the I.T. Act has been lodged against him. Aggrieved with the aforesaid order, statutory appeal as provided under Section

Section 13(2) of U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016 was filed by he petitioner before the respondent No.2/Commissioner, Meerut Division, Meerut which had been rejected by him vide order dated 06.11.2019.

Writ C No. - 37249 of 2019

9. Facts in brief as contained in this petition are that the petitioner was fair price shop license holder and his license of fair price shop was suspended by the respondent No.3/District Supply Officer, Ghaziabad vide its order dated 30.08.2018 and thereafter the same was cancelled vide order dated 20.02.2019/21.02.2019 on the ground that the petitioner misused the Aadhar Card many times and manipulated the Food Grains for which an F.I.R. under Section 3/7 of Essential Commodities Act and 43 of the I.T. Act has been lodged against him. Aggrieved with the aforesaid order, statutory appeal as provided under Section Section 13(2) of U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016 was filed by he petitioner before the respondent No.2/Commissioner, Meerut Division, Meerut which had been rejected by him vide order dated 08.11.2019.

Writ C No. - 38622 of 2019

10. Facts in brief as contained in this petition are that the petitioner was fair price shop license holder and his license of fair price shop was suspended by the respondent No.3/District Supply Officer, Meerut vide its order dated 14.09.2018 and thereafter the same was cancelled vide order dated 08.01.2019 only on the ground that the petitioner misused the Aadhar Card many times and manipulated the Food Grains for which an F.I.R. under Section 3/7 of Essential Commodities Act and 66 of the I.T. Act has been lodged against him. Aggrieved with the aforesaid order, statutory appeal as provided under Section Section 13(2) of U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016 was filed by he petitioner before the respondent No.2/Commissioner, Meerut Division, Meerut which had been rejected by him vide order dated 12.11.2019.

Writ C No. - 38638 of 2019

11. Facts in brief as contained in this petition are that the petitioner was fair price shop license holder and his license of fair price shop was suspended by the respondent No.3/District Supply Officer, Meerut vide its order dated 14.09.2018 and thereafter the same was cancelled vide order dated 09.01.2019 only on the ground that the petitioner misused the Aadhar Card many times and manipulated the Food Grains for which an F.I.R. under Section 3/7 of Essential Commodities Act and 66 of the I.T. Act has been lodged against him. Aggrieved with the aforesaid order, statutory appeal as provided under Section Section 13(2) of U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016 was filed by he petitioner before the respondent No.2/Commissioner, Meerut Division, Meerut which had been rejected by him vide order dated 12.11.2019.

Writ C No. - 38643 of 2019

12. Facts in brief as contained in this petition are that the petitioner was fair price shop license holder and his license of fair price shop was suspended by the respondent No.3/District Supply Officer,

Meerut vide its order dated 14.09.2018 and thereafter the same was cancelled vide order dated 09.01.2019 only on the ground that the petitioner misused the Aadhar Card many times and manipulated the Food Grains for which an F.I.R. under Section 3/7 of Essential Commodities Act and 66 of the I.T. Act has been lodged against him. Aggrieved with the aforesaid order, statutory appeal as provided under Section Section 13(2) of U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016 was filed by he petitioner before the respondent No.2/Commissioner, Meerut Division, Meerut which had been rejected by him vide order dated 12.11.2019.

Writ C No. - 38649 of 2019

13. Facts in brief as contained in this petition are that the petitioner was fair price shop license holder and his license of fair price shop was suspended by the respondent No.3/District Supply Officer, Meerut vide its order dated 14.09.2018 and thereafter the same was cancelled vide order dated 09.01.2019 only on the ground that the petitioner misused the Aadhar Card many times and manipulated the Food Grains for which an F.I.R. under Section 3/7 of Essential Commodities Act and 66 of the I.T. Act has been lodged against him. Aggrieved with the aforesaid order, statutory appeal as provided under Section Section 13(2) of U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016 was filed by he petitioner before the respondent No.2/Commissioner, Meerut Division, Meerut which had been rejected by him vide order dated 12.11.2019.

Writ C No.40437 of 2019

14. Facts in brief as contained in this petition are that the petitioner was fair price shop license holder and his license of fair price shop was suspended by the respondent No.3/District Supply Officer, Ghaziabad vide its order dated 31.08.2018 and thereafter the same was cancelled vide order dated 21.02.2019 only on the ground that the petitioner misused the Aadhar Card many times and manipulated the Food Grains for which an F.I.R. under Section 3/7 of Essential Commodities Act and 43 of the I.T. Act has been lodged against him. Aggrieved with the aforesaid order, statutory appeal as provided under Section Section 13(2) of U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016 was filed by he petitioner before the respondent No.2/Commissioner, Meerut Division, Meerut which had been rejected by him vide order dated 08.11.2019.

Writ C No.40444 of 2019

15. Facts in brief as contained in this petition are that the petitioner was fair price shop license holder and his license of fair price shop was suspended by the respondent No.3/District Supply Officer, Ghaziabad vide its order dated 31.08.2018 and thereafter the same was cancelled vide order dated 10.01.2019 only on the ground that the petitioner misused the Aadhar Card many times and manipulated the Food Grains for which an F.I.R. under Section 3/7 of Essential Commodities Act and 43 of the I.T. Act has been lodged against him. Aggrieved with the aforesaid order, statutory appeal as provided under Section Section 13(2) of U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016 was filed by he petitioner before the respondent No.2/Commissioner, Meerut Division,

Meerut which had been rejected by him vide order dated 06.11.2019.

Writ C No.40451 of 2019

16. Facts in brief as contained in this petition are that the petitioner was fair price shop license holder and his license of fair price shop was suspended by the respondent No.3/District Supply Officer, Ghaziabad vide its order dated 31.08.2018 and thereafter the same was cancelled vide order dated 10.01.2019 only on the ground that the petitioner misused the Aadhar Card many times and manipulated the Food Grains for which an F.I.R. under Section 3/7 of Essential Commodities Act and 43 of the I.T. Act has been lodged against him. Aggrieved with the aforesaid order, statutory appeal as provided under Section Section 13(2) of U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016 was filed by he petitioner before the respondent No.2/Commissioner, Meerut Division, Meerut which had been rejected by him vide order dated 06.11.2019.

Writ C No.1852 of 2020

17. Facts in brief as contained in this petition are that the petitioner was fair price shop license holder and his license of fair price shop was suspended by the respondent No.3/District Supply Officer, Ghaziabad vide its order dated 31.08.2018 and thereafter the same was cancelled vide order dated 10.01.2019 only on the ground that the petitioner misused the Aadhar Card many times and manipulated the Food Grains for which an F.I.R. under Section 3/7 of Essential Commodities Act and 43 of the I.T. Act has been lodged against him. Aggrieved with the aforesaid order, statutory appeal as provided under Section Section 13(2) of U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016 was filed by he petitioner before the respondent No.2/Commissioner, Meerut Division, Meerut which had been rejected by him vide order dated 18.11.2019.

Writ C No.1866 of 2020

18. Facts in brief as contained in this petition are that the petitioner was fair price shop license holder and his license of fair price shop was suspended by the respondent No.3/District Supply Officer, Ghaziabad vide its order dated 30.08.2018 and thereafter the same was cancelled vide order dated 10.01.2019 only on the ground that the petitioner misused the Aadhar Card many times and manipulated the Food Grains for which an F.I.R. under Section 3/7 of Essential Commodities Act and 43 of the I.T. Act has been lodged against him. Aggrieved with the aforesaid order, statutory appeal as provided under Section Section 13(2) of U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016 was filed by he petitioner before the respondent No.2/Commissioner, Meerut Division, Meerut which had been rejected by him vide order dated 18.11.2019.

Writ C No. - 2382 of 2019

19. Facts in brief as contained in this petition are that the petitioner was fair price shop license holder and his license of fair price shop was suspended by the respondent No.3/District Supply Officer, Agra vide its order dated 30.08.2018 and thereafter the same was cancelled vide order dated 15.03.2019 only on the ground that the petitioner misused the Aadhar Card many times and manipulated the Food

Grains for which an F.I.R. under Section 3/7 of Essential Commodities Act and under Section 420 & 120B I.P.C has been lodged against him. Aggrieved with the aforesaid order, statutory appeal as provided under Section Section 13(2) of U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016 was filed by he petitioner before the respondent No.2/Commissioner, Agra Division, Agra which had been rejected by him vide order dated 08.11.2019.

Writ C No. - 5595 of 2020

20. Facts in brief as contained in this petition are that the petitioner was fair price shop license holder and his license of fair price shop was suspended by the respondent No.3/District Supply Officer, Meerut vide its order dated 14.09.2018 and thereafter the same was cancelled vide order dated 22.01.2019 only on the ground that the petitioner misused the Aadhar Card many times and manipulated the Food Grains for which an F.I.R. under Section 3/7 of Essential Commodities Act has been lodged against him. Aggrieved with the aforesaid order, statutory appeal as provided under Section Section 13(2) of U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016 was filed by he petitioner before the respondent No.2/Commissioner, Meerut Division, Meerut which had been rejected by him vide order dated 14.11.2019.

Writ C No. - 21467 of 2020

21. Facts in brief as contained in this petition are that the petitioner was fair price shop license holder and his license of fair price shop was suspended by the respondent No.3/District Supply Officer, Amroha vide its order dated 11.09.2018 and thereafter the same was cancelled vide order dated 05.03.2019 only on the ground that the petitioner misused the Aadhar Card many times and manipulated the Food Grains for which an F.I.R. under Section 3/7 of Essential Commodities Act and under Sections 420, 467 & 468 I.P.C. Act has been lodged against him. Aggrieved with the aforesaid order, statutory appeal as provided under Section Section 13(2) of U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016 was filed by he petitioner before the respondent No.2/Additional Commissioner (Administration), Moradabad Division, Moradabad which had been rejected by him vide order dated 24.02.2020.

Writ C No. - 21533 of 2020

22. Facts in brief as contained in this writ ptition are that the petitioner was fair price shop license holder and his license of fair price shop was suspended by the respondent No.3/District Supply Officer, Amroha vide its order dated 11.09.2018 and thereafter the same was cancelled vide order dated 05.03.2019 only on the ground that the petitioner misused the Aadhar Card many times and manipulated the Food Grains for which an F.I.R. under Section 3/7 of Essential Commodities Act and under Sections 420, 467 & 468 I.P.C. Act has been lodged against him. Aggrieved with the aforesaid order, statutory appeal as provided under Section Section 13(2) of U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016 was filed by he petitioner before the respondent No.2/Additional Commissioner (Administration), Moradabad Division, Moradabad which had been rejected by him vide order dated 24.02.2020.

Writ C No. - 22154 of 2020

23. Facts in brief as contained in this petition are that the petitioner was fair price shop license holder and his license of fair price shop was suspended by the respondent No.3/District Supply Officer, Amroha vide its order dated 30.08.2018 and thereafter the same was cancelled vide order dated 01.04.2019 only on the ground that the petitioner misused the Aadhar Card many times and manipulated the Food Grains for which an F.I.R. under Section 3/7 of Essential Commodities Act and under Sections 420, 467 & 468 I.P.C. Act has been lodged against him. Aggrieved with the aforesaid order, statutory appeal as provided under Section Section 13(2) of U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016 was filed by he petitioner before the respondent No.2/Additional Commissioner (Administration), Moradabad Division, Moradabad which had been rejected by him vide order dated 24.02.2019.

Writ C No. - 17812 of 2023

24. Facts in brief as contained in this petition are that the petitioner was fair price shop license holder and his license of fair price shop was suspended by the respondent No.3/District Supply Officer, Moradabad vide its order dated 06.09.2018 and thereafter the same was cancelled vide order dated 08.01.2019 only on the ground that the petitioner misused the Aadhar Card many times and manipulated the Food Grains for which an F.I.R. under Section 3/7 of Essential Commodities Act and under Sections 417, & 419 I.P.C. Act has been lodged against him. Aggrieved with the aforesaid order, statutory appeal as provided under Section Section 13(2) of U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016 was filed by he petitioner before the respondent No.4/Additional Commissioner Second, Moradabad Division, Moradabad which had been rejected by him vide order dated 05.03.2020.Against the aforesaid order, a review application has also been filed before him which was also rejected by the respondent No.4 vide its order dated 07.09.2022.

25. It is argued by learned counsel for the petitioners in all the aforesaid writ petitions that statement of ration card holders were not recorded by the Inquiry Officer in the presence of the petitioner nor opportunity of hearing was provided to him to cross-examine the aforesaid witnesses. It is further stated in the writ petition that no full-fledged enquiry has been conducted against the petitioner (Fair Price Shop Dealer) and no charge sheet has been served upon the petitioner and no date and place of hearing has been informed to the petitioner in respect of the enquiry conducted against him prior passing the impugned termination order. It is further stated that the license of the fair price shop could not be cancelled only on the ground that the F.I.R. has been lodged against the petitioner under Section 3/7 Essential Commodities Act. It is argued that the controversy involved in all the aforesaid writ petitions has already been settled up by the Full Bench of this Court Court in the case of ***Misc. Single No. 8033 of 2013 delivered on 26.10.2017 Bajrangi Tiwari Vs. The Commissioner Devi Patan Mandal Gonda And Another*** in which following questions were referred to the larger Bench which reads as follows:-

"1. Whether the fair price shop licence can be cancelled merely on lodging of a criminal case against the licencee?; and

2. Whether, while passing any such order the Government Order dated

17.8.2002, particularly para-10 of said Government Order would be applicable/considered or not?"

26. The answers of the aforesaid questions have been given by the Full Bench which reads as follows:-

(i) The answer is no. Licence of a fair price shop cannot be cancelled merely on lodging of FIR against the licencee.

(ii) The answer is no. The Government order dated 17.8.2002 relates to allotment of a fair price shop and hence the same cannot be referred to in suspension/cancellation of licence. It is the Government order dated 29.7.2014 according to which the suspension/cancellation of a fair price shop licence can take place.

27. It is further argued that the provisions contained in the Government Order dated 05.08.2019 should be complied with by the respondents before passing the aforesaid orders but the same was not complied with. Hence the order is bad in the eyes of law and the same is liable to be set aside. It is argued that a writ petition was filed by one Amit Kumar being ***Writ C No.2029 of 2022 (Amit Kumar Vs. State of U.P. and others)*** before this Court and this Court taking into consideration the order passed by Full Bench of this Court in the case of ***Bajrangi Tiwari (supra)*** allowed the writ petition vide order dated 11.09.2024 holding therein that fair price shop license could not be cancelled merely on the ground of lodging of F.I.R. under Section 3/7 Essential Commodities Act. The order dated 11.09.2024 reads as follows:-

1. Heard Sri Vishal Tandon, learned counsel for the petitioner and Sri Ravindra *Kumar Tripathi, learned Standing Counsel for the State.*

2. Brief facts of the case are that petitioner was granted a licence for fair price shop and petitioner was running the fair price shop since long. Proceeding against the petitioner was initiated and the licence of the petitioner was cancelled vide order dated 26.12.2018. Appeal filed by petitioner against the cancellation order dated 26.12.2018 was also dismissed vide order dated 4.3.2021. Hence, this writ petition is filed for following reliefs:-

"i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 04.03.2021 passed by Joint Commissioner Food Saharanpur in appeal no.93/2020-21 and 94/2020-21 and order dated 26.12.2018 and 1.9.2018 passed by District Supply Inspector Muzaffar Nagar.

ii) Issue a writ, order or direction in the nature of mandamus directing to the respondent authorities to restore the fare price shop license in favour of the petitioner.

iii) Issue a writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

3. This Court vide order dated 11.02.2022 entertained the matter and directed the State to file counter affidavit.

4. In pursuance of the order dated 11.02.2022 the pleadings have been exchanged between the parties.

5. Learned counsel for the petitioner submitted that fair price shop licence of the petitioner has been cancelled in violation of the provisions contained under the Government Order dated 05.08.2019 as well as provisions contained under the U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016. He next submitted that no preliminary enquiry has been conducted in the matter and the licence of the petitioner has been cancelled on mis-conceived grounds. He submitted that lodging of First Information Report under Section 3/7 of the U.P. Essential Commodities Act 1955 can not be a ground for the suspension or cancellation of the fair price shop licence unless there is proper enquiry in the matter He placed the reliance on the Full Bench Judgment of this Court passed in Misc. Single No. 8033 of 2013. D/d. 26.10.2017 Bajrangi Tiwari Vs. The Commissioner Devi Patan Mandal Gonda And Another in order to demonstrate that on the ground of lodging first information report, fair price shop licence cannot be cancelled. He submitted that in view of the violation of the mandatory provisions contained under the Government Order dated 05.08.2019 and the Control Order, 2016 the impugned orders can not be sustained and are liable to be set aside by this Court.

6. Learned Standing Counsel for the State submitted that proceedings were initiated against the petitioner and it has been found that there was irregularity on the part of the petitioner regarding distribution of essential commodities to the cardholders, as such licence of the petitioner has rightly been cancelled. He submitted that criminal proceeding was also initiated against the petitioner and the First Information Report has been lodged under Section 3/7 of the Essential Commodities Act and Section 420 of Indian Penal Code as such no interference is required in the matter and the writ petition is liable to be dismissed.

7. I have considered the arguments advanced by the learned counsel for the parties and perused the record.

8. There is no dispute about the fact that petitioner was granted fair price shop licence by the Authorities. There is also no dispute about the fact that under the impugned order, the petitioner's licence has been cancelled and the appeal has also been dismissed.

9. In order to appreciate the controversy involved in the matter a perusal of the Government Order dated 05.08.2019, which is applicable to Rural and Urban Area in respect to the suspension/cancellation of the fair price shop licence will be necessary which is as under:

प्रेषक,

ओम प्रकाश वर्मा,
विशेष सचिव,
उत्तर प्रदेश शासन।

सेवा में,

1- आयुक्त, खाद्य एवं रसद विभाग, उ०प्र०।
2- समस्त जिलाधिकारी, उत्तर प्रदेश।
3- समस्त जिला पूर्ति अधिकारी,

उत्तर प्रदेश।
खाद्य एवं रसद अनुभाग-6
लखनऊः दिनांक 05 अगस्त, 2019

विषयः ग्रामीण एवं शहरी क्षेत्र की उचित दर की दुकानों के निलम्बन/निरस्तीकरण एवं सम्बद्धीकरण के सम्बन्ध में प्रक्रिया का निर्धारण।

महोदय,

उपर्युक्त विषयक लक्षित सार्वजनिक वितरण प्रणाली के अन्तर्गत कार्यरत उचित दर दुकानों के विरूद्ध प्राप्त शिकायतों की जांच एवं तत्क्रम में उनके विरुद्ध संपादित की जाने वाली कार्यवाहियों यथा निलम्बन, निरस्तीकरण एवं सम्बद्धीकरण के सम्बन्ध में समय-समय पर विभिन्न शासनादेशों के माध्यम से निर्देश प्रसारित किये गये हैं। वर्तमान में लागू राष्ट्रीय खाद्य सुरक्षा अधिनियम-2013 एवं तत्क्रम में जारी उत्तर प्रदेश आवश्यक वस्तु (विक्रय एवं वितरण नियंत्रण का विनियमन) आदेश-2016 तथा उत्तर प्रदेश खाद्य सुरक्षा नियमावली-2015 के प्रख्यापन तथा लाभार्थियों को आवश्यक वस्तुओं के वितरण में तकनीकी अनुप्रयोग (पब्लिक पोर्टल पर सम्बद्ध लाभार्थियों का ऑनलाइन प्रदर्शन एवं तद्नुसार आवंटन का सृजन तथा ई०पी०ओ०एस० मशीनों के माध्यम से कराये जा रहे वितरण) तथा डोर स्टेप डिलीवरी का कार्य प्रचलित होने के दृष्टिगत पूर्व में निर्गत समस्त शासनादेशों को अवक्रमित करते हुये वर्तमान परिदृश्य में निम्नवत व्यवस्था निर्दिष्ट किये जाने का मुझे निदेश हुआ है:-

1- उचित दर दुकानों के विरूद्ध प्राप्त शिकायतों की जांच-

(1) उचित दर विक्रेताओं के विरूद्ध सामान्यतया आवश्यक वस्तुएँ प्राप्त न होने, विक्रेता द्वारा घटतौली किये जाने, अधिक मूल्य लिये जाने, एवं सूची में नाम न होने का बहाना बनाकर खाद्यान्न न देने, ई-पॉस मशीन में नेटवर्क न आने सर्वर डाउन होने का बहाना बनाकर खाद्यान्न वितरण के पूर्व ही बायोमेट्रिक प्रमाणीकरण कराकर लाभार्थियों को वास्तव में खाद्यान्न न देकर कालाबाजारी कर लेने तथा यूनिट के सापेक्ष कम खाद्यान्न देने, कार्ड में दर्ज यूनिटों के सापेक्ष कम यूनिट के आधार फीड होने का आधार लेकर शेष यूनिटों का खाद्यान्न न देने, उपभोक्ताओं से दुर्व्यवहार करने, समय से दुकान न खोलने, आवश्यक सूचनाओं का प्रदर्शन न करने, आदि शिकायतें प्राप्त होती है। शिकायत मुख्यतः मा० मुख्यमंत्री हेल्प लाइन, विभागीय टोल फ्री नम्बर कॉल सेन्टर, आई०जी०आर०एस०, तहसील दिवस, उप जिलाधिकारी, जिला पूर्ति अधिकारी, जिलाधिकारी, मण्डलायुक्त, खाद्यायुक्त एवं शासन पर लिखित में डाक द्वारा, व्यक्तिगत रूप से एवं दूरभाष पर प्राप्त होती हैं। शिकायतकर्ता मुख्यतः तीन प्रकार के हो सकते हैं, यथा विशिष्ट व्यक्ति, सम्बन्धित उचित दर विक्रेता से सम्बद्ध कार्डधारक एवं सम्बन्धित उचित दर विक्रेता से सम्बद्ध लाभार्थियों से भिन्न अन्य श्रोत/व्यक्तियों के स्तर से प्राप्त शिकायतें।

(2) उपरोक्तानुसार प्राप्त होने वाली शिकायतों पर कार्यवाही जाँच के सम्बन्ध में निम्नवत प्रक्रिया अपनायी जाये-

(क) विशिष्ट व्यक्तियों से प्राप्त शिकायती पत्रों के सम्बन्ध में कार्यवाही आरम्भ करने से पूर्व सम्बन्धित विशिष्ट व्यक्ति को पत्र भेजकर यह पुष्टि कर ली जाय कि पत्र उन्हीं के द्वारा हस्ताक्षरित है और शिकायतों के सम्बन्ध में उनको समाधान हो गया कि शिकायतें तथ्यों पर आधारित हैं।

(ख) सम्बन्धित उचित दर विक्रेता से सम्बद्ध कार्डधारकों के स्तर से प्राप्त शिकायतों पर कार्यवाही से पूर्व शिकायतों की प्रारम्भिक जाँच की जाए। उचित दर दुकानों के विरूद्ध जाँच प्रक्रिया के दौरान विक्रेता द्वारा ई-पॉस के माध्यम से किये गये वितरण का विवरण (एम०आई०एस० रिपोर्ट) जो पब्लिक पोर्टल पर उपलब्ध है, का संज्ञान अवश्य लिया जाय। विक्रेता द्वारा प्रदर्शित वितरण का मिलान कार्डधारकों के राशन कार्ड में दुकानदारों द्वारा की गयी प्रविष्टियों से भी किया जा सकता है। साथ ही शिकायतकर्ता व अन्य सम्बन्धित पक्षों का कथन अंकित करते समय उनका प्रतिपरीक्षण भी अवश्य किया जाये ताकि जाँच कार्यवाही की निष्पक्षता प्रथम दृष्टया स्थापित हो एवं अनावश्यक लिटिगेशन की स्थिति उत्पन्न न हो। (ग) अन्य स्रोतों/व्यक्तियों से प्राप्त शिकायतों के सम्बन्ध में यदि शिकायती पत्र शपथ पत्र से समर्थित नहीं है, तो शिकायतकर्ता से इस बारे में एक शपथ पत्र उपलब्ध कराने को कहा जाए और शपथ पत्र प्राप्त होने के उपरान्त ही आगे की कार्यवाही की जाए।

(घ) उचित दर विक्रेता के विरूद्ध किसी एक या अत्यन्त अल्प संख्या में उपभोक्ताओं द्वारा उचित दर विक्रेता की दुकान पर जाने के बावजूद अपना अनुमन्य खाद्यान्न प्राप्त न होने की स्थिति में वे अपनी शिकायत जिला शिकायत निवारण अधिकारी के समक्ष भी दर्ज करा सकते हैं, जो निर्धारित प्रक्रिया का पालन करते हुए प्रकरण के परीक्षणोपरान्त उसकी नियमानुसार हकदारी/खाद्य सुरक्षा भत्ता दिलाया जाना सुनिश्चित करेंगे।"

10. A perusal of the Government Order as quoted above fully demonstrates that preliminary inquiry is to be conducted by the Authorities before suspension/ cancellation of the fair price shop licence of the licence holder.

11. Perusal of the aforesaid Government Order dated 05.08.2019 as

well as impugned orders and other evidence on record reveals that procedure prescribed under the Government Order has not been followed by the authority and the licence of the petitioner has been cancelled on the ground that first information report has been lodged against the petitioner under Section 3/7 of the U.P. Essential Commodities Act and Section 420 of Indian Penal Code. In full Bench judgment of this Court in Bajrangi Tiwari (Supra) it has been clearly held that fair price shop can not be cancelled merely on the ground of lodging criminal case.

12. Considering the entire facts and circumstances of the case as well as the ratio of law laid down by the Full Bench of this Court in Bajrangi Tiwari (Supra) impugned order dated 26.12.2018 passed by the respondent no. 3 and appellate order dated 4.3.2021 passed by the respondent no. 2 are liable to be set aside and the same are hereby set aside.

13. The writ petition stands allowed and the respondents are directed to restore the fair price shop licence of the petitioner forthwith.

14. No order as to costs.

28. The aforesaid order was challenged before the Hon'ble Supreme Court by one Mohd. Amir by filing ***Special Leave Petition (Civil) No.25501 of 2024 (Mohd. Amir Vs. State of U.P. and others)*** and the aforesaid S.LP. was dismissed by the Hon'ble Supreme Court vide order dated 21.04.2025. The order dated 21.04.2025 reads as follows:-

1. We are not inclined to interfere with the impugned judgement and order of the High Court; hence, the special leave petitions are dismissed.

2. Pending application(s), if any, shall stand disposed of.

29. On the other hand, it is argued by learned Senior Counsel for the respondents that proper enquiry was conducted wherein it was found that petitioner has misused Aadhar card for withdrawing food grains illegally from various ration cards through FPS Automation System through E-POS machine and black marketed them pursuant to the aforesaid offence committed by the petitioner and the F.I.R. has already been registered. In this view of the matter, it is argued that the action was rightly taken by the respondents against the petitioner. Insofar as the law laid down by this Court in the case of ***Bajrangi (supra)*** and ***Amit Kumar (supra)*** is concerned, learned Standing Counsel has admitted that the controversy involved in all the aforesaid petitions has also been settled up to the Hon'ble Supreme Court and law has been laid down that the fair price shop license could not be cancelled only on the ground of registration of F.I.R. under Section 3/7 Essential Commodities Act.

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

31. There is no dispute about the fact that petitioner of all the aforesaid writ petitions was granted fair price shop licence by the Authorities and by the impugned order, the petitioner's licence of fair price shop has been cancelled on the ground that the F.I.R. has been lodged under Section 3/7 of Essential Commodities Act for misusing the Aadhar Card and malpractice in distribution of

food grains and the appeal filed against the aforesaid order has also been dismissed.

32. From perusal of the Government Order dated 05.08.2019 which is quoted above in the judgement of Amit Kumar (supra) fully demonstrates that preliminary inquiry is to be conducted by the Authorities before suspension/cancellation of the fair price shop licence of the licence holder. But from perusal of the impugned orders and other evidence on record reveals that procedure prescribed under the aforesaid Government Order has not been followed by the authority and the licence of the petitioner has been cancelled on the ground that first information report has been lodged against the petitioner under Section 3/7 of the U.P. Essential Commodities Act and Section 60/43 of I.T. Act.

33. The Full Bench judgment of this Court in the case of ***Bajrangi Tiwari (Supra)*** held that license of fair price shop cannot be cancelled merely on the ground of lodging criminal case. The aforesaid law has been again reaffirmed by this Court in the case of Amit Kumar (supra) which has also been affirmed by the Hon'ble Supreme Court in the case of Mohd. Amir (supra).

34. In view of the above discussion, the Court is of the opinion that the fair price shop licence/agreement could not be cancelled on the ground of registration of F.I.R. under Section 3/7 Essential Commodities Act.

35. In this view of the matter, impugned order dated 08.01.2019 & dated 12.11.2019 passed by the District Supply Officer and Appellate Authority in Writ C No. 38609 of 2019, impugned order dated 18.01.2019 & dated 27.05.2019 passed by the District Supply Officer and Appellate Authority in Writ C No. 21616 of 2019, impugned order dated 19.01.2019 & dated 1308.2019 passed by the District Supply Officer and Appellate Authority in Writ C No. 30465 of 2019, impugned order dated 10.01.2019 & dated 28.05.2019 passed by the District Supply Officer and Appellate Authority in Writ C No. 32174 of 2019, impugned order dated 10.01.2019 & dated 02.09.2019 passed by the District Supply Officer and Appellate Authority in Writ C No. 32614 of 2019, impugned order dated 10.01.2019 & dated 06.11.2019 passed by the District Supply Officer and Appellate Authority in Writ C No. 37063 of 2019, impugned order dated 20.02.2019 and 21.02.2019 & dated 08.11.2019 passed by the District Supply Officer and Appellate Authority in Writ C No. 37249 of 2019, impugned order dated 08.01.2019 & dated 12.11.2019 passed by the District Supply Officer and Appellate Authority in Writ C No. 38622 of 2019, impugned order dated 09.01.2019 & dated 12.11.2019 passed by the District Supply Officer and Appellate Authority in Writ C No.38638 of 2019, impugned order dated 09.01.2019 & dated 12.11.2019 passed by the District Supply Officer and Appellate Authority in Writ C No. 38643 of 2019, impugned order dated 09.01.2019 & dated 12.11.2019 passed by the District Supply Officer and Appellate Authority in Writ C No. 38649 of 2019, impugned order dated 21.02.2019 & 08.11.2019 passed by the District Supply Officer and Appellate Authority in Writ C No. 40437 of 2019, impugned order dated 10.01.2019 & dated 06.11.2019 passed by the District Supply Officer and Appellate Authority in Writ C No. 40444 of 2019, impugned order dated 10.01.2019 & dated 06.11.2019 passed by the District Supply Officer and Appellate Authority in Writ C No.40451 of 2019, impugned order dated

10.01.2019 & dated 18.11.2019 passed by the District Supply Officer and Appellate Authority in Writ C No. 1852 of 2020, impugned order dated 10.01.2019 & dated 18.11.2019 passed by the District Supply Officer and Appellate Authority in Writ C No. 1866 of 2020 impugned order dated 05.03.2019 and 15.03.2019 & dated 08.11.2019 passed by the District Supply Officer and Appellate Authority in Writ C No.2382 of 2020, impugned order dated 22.01.2019 & dated 14.11.2019 passed by the District Supply Officer and Appellate Authority in Writ C No. 5595 of 2020, impugned order dated 05.03.2019 & dated 24.02.2019 passed by the District Supply Officer and Appellate Authority in Writ C No.21467 of 2020 impugned order dated 05.03.2019 & dated 24.02.2020 passed by the District Supply Officer and Appellate Authority in Writ C No. 21533 of 2020, impugned order dated 01.04.2019 & dated 24.02.2020 passed by the District Supply Officer and Appellate Authority in Writ C No. 22154 of 2020, impugned order dated 08.01.2019 & dated 07.09.2022 and 05.03.2020 passed by the District Supply Officer and Appellate Authority in Writ C No. 17812 of 2020 are liable to be set aside and the same are hereby set aside.

36. All the writ petitions are allowed and the concerned-respondents are directed to restore the fair price shop licence of the petitioners forthwith.

(2025) 6 ILRA 183
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 03.06.2025

BEFORE

THE HON'BLE RAJAN ROY, J.
THE HON'BLE OM PRAKASH SHUKLA, J.

Writ Tax No. 30 of 2025
With
Writ Tax No. 31 of 2025

Pramod Swarup Agarwal ...Revisionist
Versus
Prin. Director of Income Tax (Inv.) Lko & Ors. ...Opp. Parties

Counsel for the Revisionist:
Anupam Mishra, Shalabh Singh

Counsel for the Opp. Parties:
Neerav Chitravanshi, A.S.G.I., Dr. Ravi Kumar Mishra

A. Taxation Law- The Constitution of India, 1950-Article 226 - The Income Tax Act, 1961-Sections 131(1A) & 132---Writ petition challenging warrant of authorization and the validity of search proceedings conducted at the premise of the petitioners as well as notice issued U/S 131(1A) of the Act---- In order to initiate any action section 132, first of all, there has to be information in possession of the officers referred thereunder. Secondly, such officers should have reason to believe as a consequence of such information and based thereon. Thirdly, this information and reason to believe should have a relation with any of the three clauses (a), (b) or (c) contained therein, otherwise such exercise would be bad in law.

B. The information and reason to believe has to be related/ referrable to clause (b) aforesaid and should have a rational connection with the said clause (b) and if it is not then it can be a ground for interference under Article 226 of the Constitution of India because then it would be a case of absence of such information/ reason to believe in the context of said clause (b) of sub-Section (1) of Section 132 and would lead to a conclusion that it is an arbitrary exercise of power, without application of mind to the provisions of law and legal requirements contained therein.

C. The jurisdictional prerequisites for exercise of power under Section 132 are / were woefully absent in this case and consequently entire search operations based on such satisfaction note and warrant of authorization are illegal--- The authorised officer does not have any power to issue notices under section 131(1A) post-

search, at best issuance of such notice would render the notice invalid. But issuance of notice under s. 131(1A) post-search would not in any manner render the proceedings under section 132 invalid, if they were otherwise initiated pursuant to a valid authorization issued after recording satisfaction on the basis of the material available on record.

Petition allowed. (E-15)

List of Cases cited:

1. L.R. Gupta & ors. Vs U.O.I.& ors. (1992) Income Tax Reports Volume-194 Page 32

2. H.L. Sibal Vs Commissioner of Income Tax & ors.(1975) 101 ITR 112 (P&H)

3. Ganga Prasad Maheshwari Vs CIT' reported in (1981) 6 Taxman 363

4. Principal Director of Income Tax (Investigation) & ors. Vs Laljibhai Kanjibhai Mandalia' (2022) 446 ITR page 18 (SC)

5. Spacewood Furnishers (P) Ltd. Vs DG of Income Tax', reported in (2012) 340 ITR 393

6. Vindhya Metal Cooperation & ors. Vs Commissioner of Income Tax & ors. (1985)' ITR Vol.156 page 233

7. Writ Petition No.122 of 2009 'H.J. Industries Pvt. Ltd. & ors. Vs Mr. Rajendra & ors.

8. Writ Petition No.1729 of 2024 Bal Krushna Gopalrao Buty & ors. Vs Principal Director (Investigation), Nagpur & ors.'

9. Emaar Alloys Pvt. Ltd. Vs Director General of Income Tax (Investigations) & ors.

(Delivered by Hon'ble Rajan Roy, J.)

(1) Heard Sri Jahangir Mistri and Sri J.N. Mathur, learned Senior Advocate assisted by Sri Shalabh Singh, Sri Satish Mody, Sri Anupam Mishra, Sri Mudit Agarwal and Ms. Aishwarya Mathur, learned counsel for the petitioners as well as Sri N. Venkataraman, learned Senior Advocate & Additional Solicitor General of India assisted by Sri Neerav Chitranshi, Sri Kushagra Dikshit and Sri Ravi Kumar Mishra, learned counsel for the opposite parties.

(2) Petitioners of both the above mentioned petitions are husband and wife.

(3) In both the writ petitions, Warrant of Authorization dated 11.12.2024 and issued on 12.12.2024 under Section 132 of the Income Tax Act, 1961 and the validity of search proceedings conducted at the premise of the petitioners based thereon under Section 132 of the Income Tax Act, 1961 has been challenged.

(4) In Writ Tax No.31 of 2025, in addition to the aforesaid challenge, as, a notice was issued to the said petitioner under Section 131(1A) of the Act, 1961, therefore, by way of an amendment, the said notice dated 27.01.2025 has also been challenged.

(5) Inspite of sufficient opportunity, the Revenue did not file any counter affidavit to the writ petitions and in fact, on 11.03.2025, learned Senior counsel appearing for the Revenue made a statement as has been recorded by us in the ordersheet that pleadings are not required to be filed and that he would argue on the basis of facts on record.

(6) Petitioner of Writ Tax No.30 of 2025 is said to be an eighty years old doctor. Though not very relevant but it is said that he is suffering from Alzheimer. He is a promoter shareholder of a company, namely, India Pesticides Limited.

(7) Petitioner of Writ Tax No.31 of 2025 is also aged about eighty years, as claimed and a promoter shareholder of the aforesaid company.

(8) Both the petitioners have been filing their income tax returns for the last more than eighteen years and it has never been the case that any notices were issued to which they did not respond or for that matter any summons for producing any document or information or for appearance may have been issued to the said petitioners but they did not respond. They claim to be filing their returns regularly and disclosing their income.

(9) On 01.07.2021, the petitioners had sold/ transferred equity shares of company under Offer For Sale (O.F.S.) to the public as part of I.P.O. In the case of Pramod Swarup Agrawal, 11,11,486 equity shares were transferred for total consideration of Rs.33,00,00,000/- whereas in the case of Sneh Lata Agarwal, she sold/ transferred 14,05,405 equity shares for a total consideration of Rs.41,59,99,880/-. At the time of such transfer, the company was not a listed company. It was listed on recognized stock exchange on 05.07.2021. It is claimed that the proceeds from the sale of shares were received in the bank account of the petitioners. They paid advance tax on the income arising out of sale of O.F.S. share in I.P.O. but before filing their income tax returns for A.Y.2022-23 after seeking consultations and opinion from various tax consultants they came to the conclusion that consideration received by them on sale/ transfer of shares to public through O.F.S. was not liable to capital gains tax under Section 45 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act, 1961'). For this reason, they did not offer any tax on the said transaction in their returns filed for A.Y. 2022-23 and in fact, claimed refund of the advance tax paid.

(10) According to learned counsel for the petitioner, there was no column in the income tax return which permitted petitioners to inform that the said transactions were not taxable otherwise as claimed they would have done so. However, the petitioners through their Chartered Accountants/ Consultants filed a letter dated 16.01.2023 before the opposite party no.5 i.e. the jurisdictional assessing officer as this is the most they could do, there being no provision for uploading of such information upon the relevant portal of the Income Tax Department. Copy of the said document is annexed as Annexure no.1 in both the writ petitions. It details the reasons why petitioners were not liable to capital gain tax.

(11) The provision contained in Section 55(2)(ac) of the Act, 1961 did not contain any such mechanism under which the 'fair market value' of the shares sold by the petitioners could be calculated which was necessary for calculating the capital gain and paying tax thereon. In the absence of this mechanism, there is no way that Capital Gain Tax could be calculated and paid. Most important, the assessing officer ordered refund of the advance tax paid by the petitioners. Therefore, even the Department understood that the income was not liable to tax, otherwise, proceedings would have been initiated against the petitioners for sentencing etc.

(12) As many similarly placed persons were claiming advantage of not being liable to tax in respect of such transactions, therefore, realizing the lacunae, an amendment was brought in Section 55 of the Act, 1961 on 01.09.2024 making such transactions liable to capital gain tax by providing a mechanism for calculating their fair market value. The absence of any such mechanism in the unamended provision made it impossible

for any willing person to pay the tax. The amendment was made effective from 01.04.2018. It is on account of the aforesaid that petitioners were illegally subjected to search operations under Section 132 of the Act, 1961.

(13) It was contended by Sri Mistri, learned Senior Counsel appearing for the petitioners that in view of this retrospective amendment, the petitioners were liable to pay the tax on the transaction but on account of the search operation conducted by the opposite parties on 12.12.2024, in view of the second proviso to Section 139 (8A) of the Act, 1961, they were statutorily prohibited from doing so. The said proviso provides that a person shall not be eligible to furnish an updated return under the said sub-Section where (a) a search has been initiated under section 132 or books of account or other documents or any assets are requisitioned under section 132A in the case of such person. He also invited our attention to the consequences of initiation of search operations.

(14) It is only when persons similar to the petitioners started claiming the said benefit that the department woke up to amend the provision. Petitioners, according to him, could not be subjected to search operations under Section 132 on account of non-payment of capital gains tax on account of an admitted lacunae in the law which has been rectified only subsequently and this fact could not be the basis for any action under the said provision of the Act, 1961.

(15) According to him, there was no information referable to Section 132(1) (b) and no prudent person could in the facts of this case have a reason to believe referable to clause (b) of sub-Section (1) of Section 132 of the Act, 1961.

(16) He also emphasized upon the fact that normally capital gain tax is payable at the relevant time at the rate of ten percent, however, after the search operations if the assessment takes places, the liability would be sixty percent. In this regard, he referred to Section 113 of the Act, 1961, which refers to tax in the case of block assessment of search cases, a position which could not be refuted by learned counsel for the Revenue. He submitted that the petitioners would now be subjected to block assessment. Therefore, the action in question apart being illegal is highly prejudicial to the petitioners.

(17) Learned counsel for the Revenue, of course, submitted that the scope of judicial review in such matters is very limited and the Court should keep in mind the pronouncement of Hon'ble the Supreme Court especially in the case of '**Principal Director of Income Tax (Investigation) and ors. vs. Laljibhai Kanjibhai Mandalia'** reported in (2022) 446 ITR page 18 (SC) on the subject and should not decide the matter as an appellate court. There was sufficient information and based thereon, reason to believe was formed for the search operation by a competent officer and within the limited bounds of judicial review, this was not a case for interference. He contended that argument of Sri Mistri, learned counsel for the petitioners that the search operations were invalid because of the fact that though the search operations under Section 132 required the competent authority to form a reason to believe which was on a higher footing than the requirement under Section 131 (1A) which only required a reason to suspect, therefore, as in the case of Sneh Lata Agarwal, a notice under Section 131(1A) had been issued subsequent to the search operations, therefore, the search

operations were invalid, was not acceptable and was contrary to law. He also stated that reliance placed by Sri Mistri upon the judgment of Division Bench of this Court in 'Dr. Anita Sahay vs. Director of Income Tax (Investigation) & ors.' reported (2004) ITR Vol.266 597 is misplaced for the reason that the said judgment has been clarified subsequently by another Division Bench in the case of '**Dr. V.S. Chauhan vs. Director of Income Tax, Investigations'** reported in **(2011) 200 Taxman 413 (Allahabad). Secondly, Jharkhand High Court had taken another view and held that this by itself will not validate the search operations which according to him displays a correct understanding of the legal position.**

(18) During course of hearing, an envelope containing the satisfaction note in the context of proceedings under Section 132 of the Act, 1961 was placed before the Court which was sealed and kept on record. We have perused the same. In addition to it, on a subsequent date, another sealed envelope containing certain documents were placed before us which we will refer to hereinafter.

(19) As far as challenge to warrant of authorization and search proceedings under Section 132 of the Act, 1961 both the petitioners being husband and wife reside at the same residence where the search took place on 12.12.2024 and the grounds of challenge in this context are same in both the writ petitions. We will, therefore, first of all deal with this aspect of the matter and in that process, we will consider the arguments and counter-arguments of the rival parties.

(20) Section 132 of the Income Tax Act, 1961 reads as under:-

"Search and seizure.

132.(1) Where the Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or Additional Director or Additional Commissioner or Joint Director or Joint Commissioner in consequence of information in his possession, has reason to believe that—

(a) any person to whom a summons under sub-section (1) of section 37 of the Indian Income-tax Act, 1922 (11 of 1922), or under sub-section (1) of section 131 of this Act, or a notice under sub-section (4) of section 22 of the Indian Income-tax Act, 1922, or under sub-section (1) of section 142 of this Act was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account or other documents as required by such summons or notice, or

(b) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books of account or other documents which will be useful for, or relevant to, any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act, or

(c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been, or would not be, disclosed for the purposes of

the Indian Income-tax Act, 1922 (11 of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property),

then,—

(A) the Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, may authorise any Additional Director or Additional Commissioner or Joint Director, Joint Commissioner, Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer, or

(B) such Additional Director or Additional Commissioner or Joint Director, or Joint Commissioner, as the case may be, may authorise any Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer,

(the officer so authorised in all cases being hereinafter referred to as the authorised officer) to—

(i) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;

(ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available

(iia) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorised officer has reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;

(iib) require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000), to afford the authorised officer the necessary facility to inspect such books of account or other documents;

(iii) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search:

[Provided that bullion, jewellery or other valuable article or thing, being stock-in-trade of the business, found as a result of such search shall not be seized but the authorised officer shall make a note or inventory of such stock-in-trade of the business]

(iv) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;

(v) make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing:

Provided that where any building, place, vessel, vehicle or aircraft referred to in clause (i) is within the area of

jurisdiction of any Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, but such Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c), then, notwithstanding anything contained in section 120, it shall be competent for him to exercise the powers under this sub-section in all cases where he has reason to believe that any delay in getting the authorisation from the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner having jurisdiction over such person may be prejudicial to the interests of the revenue :

Provided further that where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, the authorised officer may serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with the previous permission of such authorised officer and such action of the authorised officer shall be deemed to be seizure of such valuable article or thing under clause (iii):

Provided also that nothing contained in the second proviso shall apply in case of any valuable article or thing, being stock-in-trade of the business:

Provided also that no authorisation shall be issued by the Additional Director or Additional Commissioner or Joint Director or Joint Commissioner on or after the 1st day of October, 2009 unless he has been empowered by the Board to do so.

Explanation.—For the removal of doubts, it is hereby declared that the reason to believe, as recorded by the income-tax authority under this sub-section, shall not be disclosed to any person or any authority or the Appellate Tribunal.

(1A) Where any Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, in consequence of information in his possession, has reason to suspect that any books of account, other documents, money, bullion, jewellery or other valuable article or thing in respect of which an officer has been authorised by the Principal Director General or Director General or Principal Director or Director or any other Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or Additional Director or Additional Commissioner or Joint Director or Joint Commissioner to take action under clauses (i) to (v) of sub-section (1) are or is kept in any building, place, vessel, vehicle or aircraft not mentioned in the authorisation under sub-section (1), such Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may, notwithstanding anything contained in section, authorise the said officer to take action under any of the clauses aforesaid in respect of such building, place, vessel, vehicle or aircraft.

Explanation.—For the removal of doubts, it is hereby declared that the reason to suspect, as recorded by the income-tax authority under this sub-

section, shall not be disclosed to any person or any authority or the Appellate Tribunal.

[(2) The authorised officer may requisition the services of,—

(i) any police officer or of any officer of the Central Government, or of both; or

(ii) any person or entity as may be approved by the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General, in accordance with the procedure, as may be prescribed, in this regard,

to assist him for all or any of the purposes specified in sub-section (1) or sub-section (1A) and it shall be the duty of every such officer or person or entity to comply with such requisition.]

(3) The authorised officer may, where it is not practicable to seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing, for reasons other than those mentioned in the second proviso to sub-section (1), serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.

Explanation.—For the removal of doubts, it is hereby declared that serving of an order as aforesaid under this sub-section shall not be deemed to be seizure of such books of account, other documents, money, bullion, jewellery or other valuable article or thing under clause (iii) of sub-section (1).

(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.

Explanation.—For the removal of doubts, it is hereby declared that the examination of any person under this sub-section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.

(4A) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed—

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

(ii) that the contents of such books of account and other documents are true; and

(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or

which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

(5) [***]

(6) [***]

(7) [***]

(8) The books of account or other documents seized under sub-section (1) or sub-section (1A) shall not be retained by the authorised officer for a period exceeding 76[one month from the end of the quarter in which the order of assessment or reassessment or recomputation is made] under sub-section (3) of section 143 or section 144 or section 147 or section 153A or clause (c) of section 158BC unless the reasons for retaining the same are recorded by him in writing and the approval of the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director for such retention is obtained :

Provided that the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director shall not authorise the retention of the books of account and other documents for a period exceeding thirty days after all the proceedings under the Indian Income-tax Act, 1922 (11 of 1922), or this Act in respect of the years for which the books of account or other documents are relevant are completed.

(8A) An order under sub-section (3) shall not be in force for a period exceeding sixty days from the date of the order.

(9) The person from whose custody any books of account or other documents are seized under sub-section (1) or sub-section (1A) may make copies thereof, or take extracts therefrom, in the presence of the authorised officer or any other person empowered by him in this behalf, at such place and time as the authorised officer may appoint in this behalf.

(9A) Where the authorised officer has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c) of sub-section (1), the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing (hereafter in this section and in sections 132A and 132B referred to as the assets) seized under that sub-section shall be handed over by the authorised officer to the Assessing Officer having jurisdiction over such person within a period of sixty days from the date on which the last of the authorisations for search was executed and thereupon the powers exercisable by the authorised officer under sub-section (8) or sub-section (9) shall be exercisable by such Assessing Officer.

(9B) Where, during the course of the search or seizure or within a period of sixty days from the date on which the last of the authorisations for search was executed, the authorised officer, for reasons to be recorded in writing, is satisfied that for the purpose of protecting the interest of

revenue, it is necessary so to do, he may with the previous approval of the Principal Director General or Director General or the Principal Director or Director, by order in writing, attach provisionally any property belonging to the assessee, and for the said purposes, the provisions of the Second Schedule shall, mutatis mutandis, apply.

(9C) Every provisional attachment made under sub-section (9B) shall cease to have effect after the expiry of a period of six months from the date of the order referred to in sub-section (9B).

[(9D) The authorised officer may, during the course of the search or seizure or within a period of sixty days from the date on which the last of the authorisations for search was executed, make a reference to,—

(i) a Valuation Officer referred to in Section 142A; or

(ii) any other person or entity or any valuer registered by or under any law for the time being in force, as may be approved by the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General, in accordance with the procedure, as may be prescribed, in this regard,
who shall estimate the fair market value of the property in the manner as may be prescribed, and submit a report of the estimate to the authorised officer or the Assessing Officer, as the case may be, within a period of sixty days from the date of receipt of such reference.]

(10) If a person legally entitled to the books of account or other documents seized under smissioner, Principal Director General or Director General or Principal Director or Director under sub-section (8), he may make an application to the Board stating therein the reasons for such objection and requesting for the return of the books of account or other documents and the Board may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit.

(11) [***]

(11A) [***]

(12) [***]

(13) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches and seizure shall apply, so far as may be, to searches and seizure under sub-section (1) or sub-section (1A).

(14) The Board may make rules in relation to any search or seizure under this section ; in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the procedure to be followed by the authorised officer—

(i) for obtaining ingress into any building, place, vessel, vehicle or aircraft to be searched where free ingress thereto is not available ;

(ii) for ensuring safe custody of any books of account or other documents or assets seized

[Explanation 1.—For the purposes of sub-sections (9A), (9B) and (9D), the last of [authorisations] for search shall be deemed to have been executed,—

(a) in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued; or

(b) in the case of requisition under section 132A, on the actual receipt of the books of account or other documents or assets by the authorised officer.]

Explanation 2.—In this section, the word "proceeding" means any proceeding in respect of any year, whether under the Indian Income-tax Act, 1922 (11 of 1922), or this Act, which may be pending on the date on which a search is authorised under this section or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.

Powers to requisition books of account, etc.

132A. (1) Where the Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, in consequence of information in his possession, has reason to believe that—

(a) any person to whom a summons under sub-section (1) of section 37 of the Indian Income-tax Act, 1922 (11 of 1922), or under sub-section (1) of section 131 of this Act, or a notice under sub-section (4) of section 22 of the Indian Income-tax Act, 1922, or under sub-section (1) of section 142 of this Act was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account or other documents, as required by such summons or notice and the said books of account or other documents have been taken into custody by any officer or authority under any other law for the time being in force, or

(b) any books of account or other documents will be useful for, or relevant to, any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act and any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, such books of account or other documents on the return of such books of account or other documents by any officer or authority by whom or which such books of account or other documents have been taken into custody under any other law for the time being in force, or

(c) any assets represent either wholly or partly income or property which has not been, or would not have been, disclosed for the purposes of the Indian Income-tax Act, 1922 (11 of 1922), or this Act by any person from whose possession or control such assets have been taken into custody by any officer or authority under any other law for the time being in force

then, the Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may authorise any Additional Director, Additional Commissioner, Joint Director, Joint Commissioner, Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer (hereafter in this section and in

sub-section (2) of section 278D referred to as the requisitioning officer) to require the officer or authority referred to in clause (a) or clause (b) or clause (c), as the case may be, to deliver such books of account, other documents or assets to the requisitioning officer.

Explanation.—For the removal of doubts, it is hereby declared that the reason to believe, as recorded by the income-tax authority under this sub-section, shall not be disclosed to any person or any authority or the Appellate Tribunal.

(2) On a requisition being made under sub-section (1), the officer or authority referred to in clause (a) or clause (b) or clause (c), as the case may be, of that sub-section shall deliver the books of account, other documents or assets to the requisitioning officer either forthwith or when such officer or authority is of the opinion that it is no longer necessary to retain the same in his or its custody.

(3) Where any books of account, other documents or assets have been delivered to the requisitioning officer, the provisions of sub-sections (4A) to (14) (both inclusive) of section 132 and section 132B shall, so far as may be, apply as if such books of account, other documents or assets had been seized under sub-section (1) of section 132 by the requisitioning officer from the custody of the person referred to in clause (a) or clause (b) or clause (c), as the case may be, of sub-section (1) of this section and as if for the words "the authorised officer" occurring in any of the aforesaid sub-sections (4A) to (14), the words "the requisitioning officer" were substituted.

Application of seized or requisitioned assets.

132B. (1) The assets seized under section 132 or requisitioned under section 132A may be dealt with in the following manner, namely:—

(i) the amount of any existing liability under this Act, the Wealth-tax Act, 1957 (27 of 1957), the Expenditure-tax Act, 1987 (35 of 1987), the Gift-tax Act, 1958 (18 of 1958) 79a[the Interest-tax Act, 1974 (45 of 1974) and the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (22 of 2015)], and the amount of the liability determined on completion of the assessment or reassessment or recomputation and the assessment of the year relevant to the previous year in which search is initiated or requisition is made, or the amount of liability determined on completion of the assessment under Chapter XIV-B for the block period, as the case may be (including any penalty levied or interest payable in connection with such assessment) and in respect of which such person is in default or is deemed to be in default, or the amount of liability arising on an application made before the Settlement Commission under sub-section (1) of section 245C, may be recovered out of such assets :

Provided that where the person concerned makes an application to the Assessing Officer within thirty days from the end of the month in which the asset was seized, for release of asset and the nature and source of acquisition of any such asset is explained to the satisfaction of the Assessing Officer, the amount of any existing liability referred to in this clause may be recovered out of such asset and the remaining portion, if any, of the asset may be released, with the prior approval of the Principal Chief Commissioner or Chief

Commissioner or Principal Commissioner or Commissioner, to the person from whose custody the assets were seized:

Provided further that such asset or any portion thereof as is referred to in the first proviso shall be released within a period of one hundred and twenty days from the date on which the last of the authorisations for search under section 132 or for requisition under section 132A, as the case may be, was executed;

(ii) if the assets consist solely of money, or partly of money and partly of other assets, the Assessing Officer may apply such money in the discharge of the liabilities referred to in clause (i) and the assessee shall be discharged of such liability to the extent of the money so applied;

(iii) the assets other than money may also be applied for the discharge of any such liability referred to in clause (i) as remains undischarged and for this purpose such assets shall be deemed to be under distraint as if such distraint was effected by the Assessing Officer or, as the case may be, the Tax Recovery Officer under authorisation from the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner under sub-section (5) of section 226 and the Assessing Officer or, as the case may be, the Tax Recovery Officer may recover the amount of such liabilities by the sale of such assets and such sale shall be effected in the manner laid down in the Third Schedule.

(2) Nothing contained in sub-section (1) shall preclude the recovery of the amount of liabilities aforesaid by any other mode laid down in this Act.

(3) Any assets or proceeds thereof which remain after the liabilities referred to in clause (i) of sub-section (1) are discharged shall be forthwith made over or paid to the persons from whose custody the assets were seized.

(4) (a) The Central Government shall pay simple interest at the rate of one-half per cent for every month or part of a month on the amount by which the aggregate amount of money seized under section 132 or requisitioned under section 132A, as reduced by the amount of money, if any, released under the first proviso to clause (i) of sub-section (1), and of the proceeds, if any, of the assets sold towards the discharge of the existing liability referred to in clause (i) of sub-section (1), exceeds the aggregate of the amount required to meet the liabilities referred to in clause (i) of sub-section (1) of this section.

(b) Such interest shall run from the date immediately following the expiry of the period of one hundred and twenty days from the date on which the last of the authorisations for search under section 132 or requisition under section 132A was executed to the date of completion of the assessment or reassessment or recomputation.

Explanation 1.—In this section,—

(i) "block period" shall have the meaning assigned to it in clause (a) of section 158B;

(ii) "execution of an authorisation for search or requisition" shall have the same meaning as assigned to it in [Explanation to section 158B].

Explanation 2.—For the removal of doubts, it is hereby declared that the "existing liability" does not include advance tax payable in accordance with the provisions of Part C of Chapter XVII."

(21) Section 132 is a provision which invades the rights and liberties of citizens especially the Right to Privacy, therefore, exercise of power thereunder is hedged by certain conditions so as to ensure avoidance of arbitrary and malafide action and to safeguard citizens from such action. They also balance the demands of the State (Revenue) vis-a-vis the rights and liberties including right to privacy available to the citizens of this country. Therefore, the provisions of Section 132 have to be understood and interpreted strictly just as they have to be complied strictly.

(22) On a bare reading of the above quoted provision, it is evident that in order to initiate any action thereunder, first of all, there has to be information in possession of the officers referred thereunder. Secondly, such officers should have reason to believe as a consequence of such information and based thereon. Thirdly, this information and reason to believe should have a relation with any of the three clauses (a), (b) or (c) contained therein, otherwise such exercise would be bad in law.

(23) In this context, we may fruitfully rely on a Division Bench judgment of Delhi High Court in the case of '**L.R. Gupta & Ors. vs. Union of India & Ors'** reported in (1992) Income Tax Reports Volume-194 Page 32, wherein their lordships have observed as under:-

" A search which is conducted under Section 132 is a serious invasion into the privacy of a citizen. Section 132(1) has to be strictly construed and the formation of the opinion or reason to believe by the authorising officer must be apparent from the note recorded by him. The opinion or the belief so recorded must clearly show whether the belief falls under sub-Clause (a), (b) or (c) of Section 132(1). No search can be ordered except for any of the reasons contained in sub-Clauses (a) (b), or (c). The satisfaction note should itself show the application of mind and the formation of the opinion by the officer ordering the search. If the reasons which are recorded do not fall under Clauses (a), (b) or (c) then an authorisation under Section 132(1) will have to be quashed. As observed by the Supreme Court in Income Tax Officer v. Seth Brothers, (1969) 74 ITR 836, 843:

"Since by the exercise of the power a serious invasion is made upon the rights, privacy and freedom of the tax payer, the power must be exercised strictly in accordance with the law and only for the purposes for which the law authorises it to be exercised. If the action of the officer issuing the authorisation or of the designated officer is challenged, the officer concerned must satisfy the Court about the regularity of his action. If the action is maliciously taken or power under the Section is exercised for a collateral purpose, it is liable to be struck down by the Court. If the conditions for exercise of the power are not satisfied the proceeding is liable to be quashed"."

(24) A Division Bench of the Delhi High Court in **L.R. Gupta (supra)** had the occasion to consider the meaning, purport and scope of Section 132 (1) clauses (a), (b) and (c) and in that context while referring to clause (b) of Section 132(1) of the Act, 1961 observed as under:-

"Sub-clause (b) of Section 132(1) refers to cases where there is reason to believe that if any summons or notice, as specified in the said sub-clause (a) has been issued or will be issued then that person will not produce or cause to be produced the books of account, etc. In other words, the said provision refers to the belief which may be formed by the Appropriate Authority to the effect that the person concerned is not likely to voluntarily, or even after notice, produce documents before the Income Tax authorities. Where, for example, there is information that a person is hiding or likely to hide or destroy documents or books of account which are required or are relevant for the purposes of the Act then, in such case, it can be said that unless and until search is conducted, the said books of account or documents will not be recovered. The belief of the authority must be that the only way in which the Income Tax Department would be in a position to obtain books of account and documents from a person is by the conduct of a search and consequent seizure of the documents thereof. In our opinion, some facts or circumstances must exit on the basis of which such a belief can be formed. For example, if the Department has information that a person has duplicate sets of account books or documents where havala transactions are recorded, then the Department can legitimately come to the conclusion that, if a notice is sent, then that person is not likely to produce the said documents, etc. Duplicate books of account and such like documents are maintained primarily for the reason that they are not to be produced before the Income Tax authorities. To put it differently, the nature of the documents may be such which are not, in the normal course, likely to be produced before the Income Tax authorities either voluntarily or on requisition being sent. It may also happen that the documents may exist and be in the custody of a person which would show the existence of immovable property which he may have acquired from money or income which has been hidden from the Income Tax Department. The past record of the assessee and his status or position in life are also relevant circumstances in this regard. Where, however, documents exist which are not secretly maintained by an assessee, for example pass books, sale deeds which are registered and about the existence of which the Department is aware, then in such a case, it will be difficult to believe that an assessed will not produce those documents."

(25) We respectfully concur with the exposition of law as to the application of clause (b) of Section 132 (1) of the Act, 1961 by the Delhi High Court as quoted hereinabove.

(26) We may in this very context refer to a decision of Punjab and Haryana High Court in the case of '**H.L. Sibal vs. Commissioner of Income Tax & Ors**.' (1975) 101 ITR 112 (P&H) which has been referred in the decision of Delhi High Court in the case of **L.R. Gupta (supra)** and in that case, it was observed as under:-

"The applicability of Section 165, Criminal Procedure Code, to the searches made under Section 132(1) gives an indication that this Section is intended to apply in limited circumstances to persons of a particular bent of mind, who are either not expected to cooperate with the authorities for the production of the relevant books or who are in possession of undisclosed money, bullion and jewellery, etc. Take for instance, a particular assessee

who has utilised his undisclosed income in constructing a spacious building. His premises cannot be subjected to a search under this Section on this score alone. A search would be authorised only if information is given to the Commissioner of Income Tax that such a person is keeping money, bullion, jewellery, etc., in this building or elsewhere. Further, if an assessee has been regularly producing his books of account before the assessing authorities who have been accepting these books as having been maintained in proper course of business, it would be somewhat unjustified use of power on the part of the Commissioner of Income Tax to issue a search warrant for the production of these books of account unless of course there is information to the effect that he has been keeping some secret account books also. He has to arrive at a decision in the background of the mental make up of an individual or individuals jointly interested in a transaction or a venture. A blanket condemnation of persons of diverse activities unconnected with each other on the odd chance that if their premises are searched some incriminating material might be found is wholly outside the scope of Section 165, Criminal Procedure Code. This power has to be exercised in an honest manner and search warrants cannot be indiscriminately issued purely as a matter of policy."

(27) Reason to Believe are contained in the Satisfaction Note. It is this note which is to be seen by us but before doing so, we need to understand the meaning of the term 'Reason to Believe' and scope of judicial review in such matters. This Court had the occasion to explain the phrase 'Reason to Believe' in the case of **'Ganga Prasad Maheshwari vs. CIT'** reported in (1981) 6 Taxman 363 in the following manner:-

"Reason to believe' is a common feature in taxing statutes. It has been considered to be the most salutary safeguard on the exercise of power by the officer concerned. It is made of two words 'reason' and 'to believe'. The word 'reason' means cause or justification and the word 'believe' means to accept as true or to have faith in it. Before the officer has faith or accepts a fact to exist there must be a justification for it. The belief may not be open to scrutiny as it is the final conclusion arrived at by the officer concerned, as a result of mental exercise made by him on the information received. But, the reason due to which the decision is reached can always be examined. When it is said that reason to believe is not open to scrutiny what is meant is that the satisfaction arrived at by the officer concerned is immune from challenge but where the satisfaction is not based on any material or it cannot withstand the test of reason, which is an integral part of it, then it falls through and the court is empowered to strike it down. Belief may be subjective but reason is objective. In ITO v. Lakhmani Mewal Das (1976) 103 ITR 437 (SC), the Supreme Court, while interpreting a similar expression used in section 147 of the Act, held (at page 446 103 ITR):

The expression "reason to believe" does not mean a purely subjective satisfaction on the part of the Income-tax Officer. The reason must be held in good faith. It cannot be merely a pretence."

(28) As regards the scope of judicial review in matters of search under Section 132 of the Act, 1961 and other ancillary issues, we may straightaway refer to a decision of Hon'ble the Supreme Court in the case of '**Principal Director of Income Tax (Investigation) and ors. vs.**

Laljibhai Kanjibhai Mandalia' (2022) 446 ITR page 18 (SC) wherein after considering earlier precedents on the subject, ultimately, observed as under:-

"32. In the light of judgments referred to above, the sufficiency or inadequacy of the reasons to believe recorded cannot be gone into while considering the validity of an act of authorization to conduct search and seizure. The belief recorded alone is justiciable but only while keeping in view the Wednesbury Principle of Reasonableness. Such reasonableness is not a power to act as an appellate authority over the reasons to believe recorded.

33. We would like to restate and elaborate the principles in exercising the writ jurisdiction in the matter of search and seizure under Section 132 of the Act as follows:

i) The formation of opinion and the reasons to believe recorded is not a judicial or quasi-judicial function but administrative in character;

ii) The information must be in possession of the authorised official on the basis of the material and that the formation of opinion must be honest and bona fide. It cannot be merely pretence. Consideration of any extraneous or irrelevant material would vitiate the belief/satisfaction;

iii) The authority must have information in its possession on the basis of which a reasonable belief can be founded that the person concerned has omitted or failed to produce books of accounts or other documents for production of which summons or notice had been issued, or such person will not produce such books of accounts or other documents even if summons or notice is issued to him; or

iv) Such person is in possession of any money, bullion, jewellery or other valuable article which represents either wholly or partly income or property which has not been or would not be disclosed;

v) Such reasons may have to be placed before the High Court in the event of a challenge to formation of the belief of the competent authority in which event the Court would be entitled to examine the reasons for the formation of the belief, though not the sufficiency or adequacy thereof. In other words, the Court will examine whether the reasons recorded are actuated by mala fides or on a mere pretence and that no extraneous or irrelevant material has been considered;

vi) Such reasons forming part of the satisfaction note are to satisfy the judicial consciousness of the Court and any part of such satisfaction note is not to be made part of the order;

vii) The question as to whether such reasons are adequate or not is not a matter for the Court to review in a writ petition. The sufficiency of the grounds which induced the competent authority to act is not a justiciable issue;

viii) The relevance of the reasons for the formation of the belief is to be tested by the judicial restraint as in administrative action as the Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made. The Court shall not examine the sufficiency or adequacy thereof;

ix) In terms of the explanation inserted by the Finance Act, 2017 with retrospective effect from 1.4.1962, such reasons to believe as recorded by income tax authorities are not required to be disclosed to any person or any authority or the Appellate Tribunal."

(29) The Supreme Court of India while rendering the judgment in **Laljibhai Kanjibhai Mandalia (supra)** referred to its earlier judgment in the case of **'Spacewood Furnishers (P) Ltd. v. DG of Income Tax',** reported in (2012) 340 ITR 393 wherein the order of the High Court was set aside disapproving the judgment of High Court wherein the satisfaction note had been reproduced extensively.

(30) In this context, we may also refer to a Division Bench judgment of this Court in the case of '**Vindhya Metal Co-operation & Ors. vs. Commissioner of Income Tax and Ors. (1985)'** ITR Vol.156 page 233 wherein it has been held as under :-

"It is settled that the existence or otherwise of the condition precedent to exercise of power under these provisions is open to judicial scrutiny. The absence of the condition precedent would naturally have the effect of vitiating the authorisation made by the Commissioner in either of the two provisions and the proceedings consequent thereto. While the sufficiency or otherwise of the information cannot be examined by the court, the existence of information and its relevance to the formation of the belief can undoubtedly be gone into. Also, whether on the material available with the Commissioner, any reasonable person could have arrived at the conclusion that a search, seizure or requisition should be authorised is a field open to judicial review. (See Chhugamal Rajpal v. Chaliha [1971] 79 ITR 603 (SC); Motilal v. Preventive Intelligence Officer [1971] 80 ITR 418 (All); Sibal v. CIT [1975] 101 ITR 112 (P&H); ITO v. Lakhmani Mewal Das [1976] 103 ITR 437 (SC); Manju Tandon (Smt.) v. Kapoor [1978] 115 ITR 473 (All) and Ganga Prasad Maheshwari v. CIT [1983] 139 ITR 1043 (All)."

(31) This judgment also explains the scope of judicial review in such matters which is in tune with the decision of Hon'ble the Supreme Court though it has been rendered earlier.

(32) Learned Senior Advocate and A.S.G. appearing for the Revenue relied heavily upon the judgment of Hon'ble Supreme Court in the case of **Laljibhai Kanjibhai Mandalia (supra)** to submit that the scope of judicial review in the case at hand is limited and in view of the information and reason to believe referred and contained in the satisfaction note which has been produced before the Court veritably there is no scope for such review of the impugned action in this case as there is no illegality therein. Not only there is information but reason to believe and in this context he submitted that the petitioners' counsel has proceeded to argue on the incorrect premise as if non-payment of capital gains tax for the sale of shares under the OFS is the only basis for search operations under Section 132 of the Act, 1961 whereas it is not so. In this context, he asked the Court to read the satisfaction note under the heading 'Other Allegations'.

(33) During course of argument Sri N. Venkataramana, learned Senior Advocate and A.S.G. appearing for the Revenue very fairly submitted that clause

(a) and (c) of sub-Section (1) of Section 132 of the Act, 1961 are not at all attracted in the case at hand which is referable only to clause (b) thereof.

(34) The bottomline is that there has to be information referable to clause (b) of sub-Section (1) of Section 132 of the Act, 1961 and reason to believe based thereon that the petitioners before us who had not been issued any summons/ notice prior to search operation, if it was to be issued to them they would not produce or cause to be produced any books of account or other documents which will be useful for, or relevant to, any proceedings under the Indian Income Tax Act, 1961.

(35) The information and reason to believe referred above has to be related/ referrable to clause (b) aforesaid and should have a rational connection with the said clause (b) and if it is not then it can be a ground for interference under Article 226 of the Constitution of India because then it would be a case of absence of such information/ reason to believe in the context of said clause (b) of sub-Section (1) of Section 132 of the Act, 1961 and would lead to a conclusion that it is an arbitrary exercise of power, without application of mind to the provisions of law and legal requirements contained therein.

(36) In the light of the aforesaid, we have perused the satisfaction note carefully. As we are not required to reproduce it nor to refer its context extensively for obvious reason as according to the Revenue, the assessment is still to commence and it is only in view of the explanation to Section 132 such material / information could be available to the assessee only after the assessment proceedings commence and of course, in view of the Supreme Court mandate in the case of **Laljibhai Kanjibhai Mandalia (supra)** but, in order to justify our decision, we will have to refer, even if cursorily, to the Satisfaction Note in the light of the requirements of law.

(37) When we peruse the Satisfaction Note, we do not find any information whatsoever whether under the heading 'Other Allegations' or otherwise, elsewhere, which could be referable to clause (b) of sub-Section (1) of Section 132 for issuance of warrant of authorization for search.

(38) Without impeding upon the requirements of law as referred in the case of **Laljibhai Kanjibhai Mandalia (supra)** or the explanation to Section 132, the information/ material referred in the satisfaction note, other than under the heading 'Other allegation', has absolutely no relation to clause (b). This part is only in the context of sale of shares under O.F.S. and the amendments in Section 55 (2)(ac) of the Act, 1961. The amendment of Section 55(2) (ac) of the Act, 1961 on 01.09.2024 itself demonstrates that because of absence of any mechanism for calculation of Fair market Value in respect of sale of share of an unlisted company, capital gain tax could not be calculated on sale/ transfer of shares by the promoter shareholders under O.F.S. This could not be an information for search under Section 132(1)(b), as the Revenue has failed to demonstrate that such sale/ transfer was liable to capital gain tax as on the date of filing of Return by the petitioner for A.Y. 2022-23. Even under the heading 'Other Allegations', on which great emphasis was laid by learned A.S.G. only one paragraph refers to one of the petitioners, namely, Pramod Swarup Agrawal but this again

contains vague averments which have no relation whatsoever to clause (b) of sub-Section (1) of Section 132. It was asserted by Sri Mistri that petitioners are neither director of Indian Pesticide Ltd. nor in any managerial post therein. There is no information in the satisfaction note which could be the basis for a belief as envisaged under Section 132 that if petitioners were to be issued summons or notice, they would not produce or cause to be produced any books of account or any other documents which will be useful for or relevant to any proceedings under the Act, 1961. No such past conduct of the petitioners is referred therein. Nor any other information is referred which may have any relation to Section 132(1)(b).

(39) No prudent person on a reading of the satisfaction note in the light of requirements of law contained in Section 132(1)(b) can arrive at a conclusion that such information and reason to believe formed by the competent authority in this regard as contained in the handwritten note signed on 10.12.2024 had any relation whatsoever to clause (b) of sub-Section (1) of Section 132 of the Act, 1961 so as to justify a search operation under the said provision in the context of the petitioners.

(40) On a bare reading of the satisfaction note and Section 132, we have no hesitation to conclude that the jurisdictional prerequisites for exercise of power under Section 132 are / were woefully absent in this case and consequently, we have no hesitation to say that the entire search operations based on such satisfaction note and warrant of authorization are illegal. The information and reason to believe based thereon so far as the petitioners are concerned are a mere pretence.

(41) Interestingly, the 'reasons to believe' contained in the satisfaction note are in respect of all the three conditions contained in clause (a), (b) and (c) of Section 132 (1) of the Act, but learned A.S.G. during course of argument very fairly submitted that only clause (b) is attracted and we have no doubt in our mind that there is absolutely no information on the basis of which any prudent person could have formed a reason to believe referable to clause (a) and (c) so far as the petitioner-Pramod Swarup Agrawal and Sneh Lata Agarwal are concerned. Of course, the satisfaction note is in respect of not only Pramod Swarup Agrawal and Sneh Lata Agrawal but several other persons, therefore, possibly, reference to all these three clauses has been made on account of aforesaid fact, otherwise, so far as the petitioners before us in these two petitions are concerned, there is no information referable to clause (a) and (c) of Section (1) of Section 132 nor for that matter to clause (b).

(42) We have already stated earlier that the Revenue has not filed any counter affidavit that in any earlier proceedings under the Income Tax Act, the petitioners had avoided production of documents etc so as to give a reasonable belief that they would do so in this case also, as and when notices or summons are issued. We have also referred to the Division Bench judgment in the case of **L.R. Gupta (supra)** wherein law in the context of clause (b) of sub-Section (1) of Section 132 has been elucidated and with which we have concurred. The Revenue has not contradicted the assertions in the pleadings or by the two petitioners that they have timely filed their income tax returns and always responded to the notices and summons issued by the income tax

authorities. Therefore, this is also a factor which has to be taken into consideration apart from the fact that in the notice there is no such information based on which, any prudent person could form reason to believe referable to clause (b) of sub-Section (1) of Section 132.

(43) In this context, we may refer to the reliance placed by learned A.S.G. upon certain supplementary documents submitted before the Court which according to him were explanation to the satisfaction note. We have gone through the one page note and the documents annexed therewith. We have taken into consideration the submission of learned A.S.G. that the Revenue is only at the investigation stage, therefore, looking at the judgment of Hon'ble the Supreme Court in the case of **Laljibhai Kanjibhai Mandalia (supra)** , this Court should not pass any order which may stall the investigation and ultimately impede the Revenue from taking further action in the matter. He also emphasized the fact that out of the eighteen shareholders of India Pesticide Limited, two had paid the capital gains tax based on the sale of shares held by them under O.F.S., however, he had no answer to the contention of Sri Mistri, learned counsel for the petitioners that if the search operations were not based on the said transaction then why the premises of these two persons were not searched. Be that as it may, can the petitions be thrown out merely because two shareholders paid capital gain tax especially when the petiioner had from the beginning claimed that they were not liable to tax, certainly not. We do not dwell on this aspect any further in view of what has already been stated by us based on our examination of the satisfaction note to the extent it relates to the petitioners before us. Learned A.S.G. even went to the extent of saying that if the petitioners so choose they can file a return by 31.03.2025 in the context of non-payment of capital gains tax. However, on being confronted with the provisions of law as pointed out by Sri Mistri, that is, second proviso to Section 139 (8-A) which prevented the petitioners from doing so, he had no answer. Be that as it may, we are only concerned with the validity of warrant of authorization and search operations conducted under Section 132 as of now.

(44) In the context of the supplementary documents provided by learned A.S.G., we are constrained to observe that these contain information which was discovered post-search. Information and reason to believe referred in Section 132 of the Act, 1961 have to pre-exist the search operations under Section 132. Such search cannot be justified or validated by relying upon post-search material or information or reason to believe. Reference may be made in this regard to decision of Division Bench of Bombay High Court in Writ Petition No.122 of 2009 **'H.J. Industries Pvt. Ltd. And Ors. vs. Mr. Rajendra and Ors.'** as also another Division Bench judgment of the same High Court in Writ Petition No.1729 of 2024 **'Bal Krushna Gopalrao Buty and Ors. vs. Principal Director (Investigation), Nagpur and ors.'** decided on 23.04.2024 (Nagpur Bench).

(45) The search and post-search information or reason to believe cannot form the basis for justifying the warrant of authorization or the search conducted in pursuance thereof. The legal position is settled in this regard.

(46) Even after having gone through the supplementary documents,

especially, the one page note, we find that most of the recitals therein do not find mention in the satisfaction note, and the documents appended relate to post-search information which cannot made the basis for justifying the impugned search but even after taking into consideration the same, for the reasons already given hereinabove, we do not find any reason to change our opinion as expressed hereinabove. It is always open to the Revenue to proceed against the petitioner under other provisions of Act, 1961 such as Section 148 etc as far as it may be permissible but the search under Section 132 can't be sustained. We only wish we could have discussed the satisfaction note more elaborately to disclose our mind on the recitals and information contained therein but the law as declared by Hon'ble the Supreme Court in the case of **Laljibhai Kanjibhai Mandalia (supra)** prevents us from doing so. Suffice it to say, even at the cost of repetition that nothing stated in the satisfaction note is referable to Section 132(1) clause (b) nor clause (a) and (c). Post-search information cannot be used to justify such an act.

(47) The contention of Sri Mistri, learned counsel for the petitioners that the fact that a notice under Section 131 (1A) of the Act, 1961 was issued to one of the petitioners-Sneh Lata Agrawal after the search operations is itself proof of the fact that prior to it there was no reason to believe to undertake an exercise under Section 132 as the requirement of Section 131 is a lesser requirement that is of having reason to suspect whereas the reason to believe stands on a higher footing, is not required to be considered in view of the discussion already made.

(48) In view of the above discussion, we quash the warrant of authorization impugned herein and also declare the search operation impugned before us as illegal. Consequences shall follow accordingly as per law. The benefit of the order shall not be ipso facto available to others whose names figure in the satisfaction note and, their cases, if the occasion so arises, can be considered independenty. Our order shall also not come in the way if the Revenue has a cause to proceed against the petitioners under any other provisions of the Act, 1961.

(49) Now, coming to other issue which arise in the writ petition of Sneh Lata Agrawal, that is, the validity of the notice dated 27.01.2025 issued under Section 131 (1A) of the Act, 1961.

(50) Section 131 of the Act, 1961 reads as under:-

"(1) The Assessing Officer, Deputy Commissioner (Appeals), Commissioner (Appeals), Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and Dispute Resolution Panel referred to in clause (a) of sub-section (15) of section 144C shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely:

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;

(c) compelling the production of books of account and other documents; and

(d) issuing commissions.

(1A) If the Principal Director General or Director General or Principal Director or Director or Joint Director or Assistant Director or Deputy Director, or the authorised officer referred to in sub-section (1) of section 132 before he takes action under clauses (i) to (v) of that sub-section, has reason to suspect that any income has been concealed, or is likely to be concealed, by any person or class of persons, within his jurisdiction, then, for the purposes of making any enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under sub-section (1) on the income-tax authorities referred to in that sub-section, notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other income-tax authority.

(2) For the purpose of making an inquiry or investigation in respect of any person or class of persons in relation to an agreement referred to in section 90 or section 90A, it shall be competent for any income-tax authority not below the rank of Assistant Commissioner of Income-tax, as may be notified by the Board in this behalf, to exercise the powers conferred under sub-section (1) on the income-tax authorities referred to in that sub-section, notwithstanding that no proceedings with respect to such person or class of persons are pending before it or any other income-tax authority.

(3) Subject to any rules made in this behalf, any authority referred to in sub-section (1) or sub-section (1A) or sub-section (2) may impound and retain in its custody for such period as it thinks fit any books of account or other documents produced before it in any proceeding under this Act:

Provided that an Assessing Officer or an Assistant Director or Deputy Director shall not:

(a) impound any books of account or other documents without recording his reasons for so doing, or

(b) retain in his custody any such books or documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner or Principal Director or Director therefor, as the case may be."

(51) In this context, one of the facts which came to light during argument was that an authorized officer under Section 132 of the Act, 1961, namely, Adarsh Kumar who had issued the notice under Section 131(1A) dated 27.01.2025, he could not have done so as the action envisaged under clauses (i) to (v) of sub-Section (1) of Section 132 had already been taken prior to issuance of this notice and sub-Section (1A) of Section 131 prohibited any action by him after the stage of clauses (i) to (v) of sub-Section (1) of Section 132 had been crossed. It was argued by Sri Mistri, learned counsel appearing for the petitioners that Sri Adarsh Kumar who was Authorized Officer under Section 132 was not the assessing officer of the petitioners nor had assessment proceedings started, therefore, he could not have issued such

notice under Section 131 of the Act, 1961. We had specially granted opportunity to learned A.S.G. to address us on this issue vide our order dated 28.03.2025. The only argument advanced by learned A.S.G. was that the Authorized Officer also happened to the Deputy Director of investigation as under sub-Section (1A) and as Deputy Director (Investigation) he was competent to issue such notice under Section 131, therefore, there was no illegality. With respect, we cannot accept this argument.

(52) We have carefully considered the provisions of sub-Section (1A) of Section 131 and we find that several officers have been authorized to exercise the powers conferred under sub-Section (1) if they have 'reason to suspect' that any income has been concealed, or is likely to be concealed by any person or class of persons within his jurisdiction for the purposes of making any inquiry or investigation relating thereto, first is the Principal Director General, who has not issued the notice, second is the Director General who has also not issued the notice, the Principal Director or Director or Joint Director or Assistant Director have also not issued the notice. Now, in addition to the aforesaid, the authorized officer referred to in sub-Section (1) of Section 132 is also empowered to exercise the powers under sub-Section (1) of Section 131 but with a rider that is he can do so before he take action under clauses (i) to (v) of sub-Section (1) of Section 132. Now, if we accept the contention of learned A.S.G. that Sri Adarsh Kumar apart from being Authorized Officer aforesaid was also Deputy Director, therefore, he could issue such notice even after the search operations had been concluded i.e. after the stage contemplated in clauses (i) to (v) of sub-Section (1) of Section 132 had been crossed, and this would not invalidate such notice because he had presumably acted as DDIT and not an authorized officer, then this would amount to negating the restrictions imposed upon the authorized officer under Section 131(1A) and would amount to reading and understanding the provision in a manner so as make it susceptible to abuse and misuse at the hand of the revenue authorities.

(53) The explanation offered in this regard by learned A.S.G. cannot be accepted as it will render the conditions imposed upon the authorized officer under Section 131 (1A) otiose and also leave scope for circumvention of said conditions and its misuse. Sri Adarsh Kumar being the Authorized Officer and he not being the assessing officer of the petitioners nor the assessment proceedings having started, he could have issued such notice only prior to action under clauses (i) to (v) of sub-Section (1) of Section 132 having been taken and not after that. The Revenue cannot be given the benefit of the fact that he also happened to be Deputy Director, therefore, he could have issued the notice. We have gone through the documents on record and there is no dispute about the fact that he was an authorized officers under sub-Section (1) of Section 132 and had issued the impugned notice under Section 131 (1A), therefore, he could not have issued the notice under sub-Section (1) of Section 131 after action had been taken under clauses (i) to (v) of sub-Section (1) of Section 132 and having done so, the said notice dated 27.01.2025 cannot be sustained.

(54) In fact, this is precisely the opinion expressed by a Division Bench of Jharkhand High Court in the case of **'Emaar Alloys Pvt. Ltd. vs Director**

General of Income Tax (Investigations) and Others' reported in (2015) 235 Taxman 569 (Jharkhand) wherein towards the end of the judgment while discussing the question as to whether issuance of notice under Section 131 (1A) subsequent to action under Section 132 would invalidate the search operations, negate the said argument it has been observed that the authorised officer does not have any power to issue notices under section 131(1A) of the Act post-search, as such, at best issuance of such notice would render the notice invalid. But issuance of notice under s. 131(1A) of the Act post-search would not in any manner render the proceedings under section 132 of the Act invalid, if they were otherwise initiated pursuant to a valid authorization issued after recording satisfaction on the basis of the material available on record. We are not expressing any opinion on the issue as to whether issuance of a notice under Section 131(1A) subsequent to exercise under Section 132 would invalidate the latter but are only saying that Sri Adarsh Kumar who was Authorized Officer for exercising power under sub-Section (1) of Section 132 could not have issued the notice under sub-Section (1A) of Section 131 of the Act, 1961 post-search operations as has been observed by Jharkhand High Court. The impugned notice dated 27.01.2025 is accordingly quashed.

(55) In view of the above discussion, both the petitions are allowed.

(56) We, however, make it clear that our judgment shall not come in the way of the opposite parties in initiating proceedings against the petitioners if otherwise permissible, under other provisions of the Act, 1961 such as under Section 148 etc.

(57) The satisfaction note and the supplementary documents which are in sealed cover shall be returned to learned counsel for the Revenue.
